

WINERY AGREEMENT

This Agreement made this ____ day of _____, 20__ between A TASTE OF BUFFALO, INC. (“Taste”), a not-for-profit corporation with a mailing address c/o 4584 Ridgeview Dr S, North Tonawanda, New York 14120 and _____ (“Winery”), with a principal place of business at _____.

Cumulatively, Taste and Winery are referred to herein as the “Parties.”

WHEREAS, Taste will conduct an annual open-air food festival in Buffalo, New York on July 8 and 9, 2017. (Referred to herein as the “Festival Year”); and

WHEREAS, Winery has submitted an application to Taste to participate in the Festival subject to the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, the parties agree as follows:

1. DEFINITIONS

1.1 “Winery” is defined as a public place, whose primary commercial function is to serve wine on a retail basis, and is open year-round in New York State.

1.2 “Festival Site” shall mean Delaware Avenue between Chippewa Street and Niagara Square, Buffalo, New York, unless another Buffalo area location has been designated and agreed to in writing between the Parties.

1.3 “Event Start” Time shall be 11:00 a.m. on the Saturday of the Festival during any Festival Year.

1.4 “Tent Structure” will refer to a single frame tent which, when erected, will measure at least 225 square feet and will provide Winery with a minimum of fifteen (15) feet of frontage from which Winery will serve its menu items to the general public at the Festival.

1.5 “Winery Vending Location” will refer to the allocation of space provided to Winery under the canopy of the Tent Structure as well as an additional 10 feet as measured from one side of the Tent Structure, extending on either the left or right side of tent (not both sides), as designated by the Taste, as viewed from Delaware Avenue or Niagara Square. Winery shall not place any equipment or extend their workspace beyond the front or the back of the tent. **Winery must notify Taste by May 15, 2017, if a pop up tent will be used. Failure to do so will result in an additional fee of \$250.** Taste reserves the right to amend this additional footage where permanent physical obstructions located along the Festival Site deem this allocation impossible or impractical.

1.6 “Winery Committee” will refer to the committee of volunteers, which will be chaired by a member of the Board of Directors of the Taste. The Winery Committee will act as the primary liaison between Winery and the Taste and will coordinate and supervise the Winery’s participation in the Festival.

2. PARTICIPATION IN THE FESTIVAL

2.1 Winery agrees to serve wine items at the Festival, and offer those items for sale to the general public at the Festival. Winery hereby warrants that all items of wine offered for sale to the general public at the Festival are items that are offered at the Winery's principal place of business.

2.2 Winery agrees to pay an **Entry Fee** to Taste in one of the following options:

A) **“Early Entry Fee” One Time Payment:** The Early Entry Fee of \$600 is payable in full by February 11, 2017 and should be remitted with this signed agreement, along with any corrections to your contact information made on the Contact Information Sheet.

If payment in full is not received by February 11, 2017 the winery shall forfeit the “Early Entry Fee” option and will be responsible for the “Standard Entry Fee” of \$700.

B) **“Standard Entry Fee”:** The Standard Entry Fee of \$700 is payable in two installments. The first installment of \$300.00 is due on or before February 11, 2017 along with this signed agreement and any corrections you have made to your contact information on the Contact Information Sheet. The remaining balance of \$400 is due on or before March 1, 2017. Payment in full of \$700.00 must be received on or before March 1, 2017 for winery to be confirmed as a festival participant, if full payment is not received by March 1, 2017 winery shall forfeit its \$300 deposit and will not be eligible to participate in the festival.

2.3 The Winery agrees to pay to the Taste eighteen percent (18%) of the gross sales receipts generated by Winery at the Festival.

2.4 Winery agrees that the Entry Fee is for one Tent Structure and only the additional footage necessary as defined in “Winery Vending Location,” above.

2.5 Upon acceptance into the festival, winery may request approval for a Double Tent Structure. All requests are subject to availability and must receive prior approval by Taste. Upon approval, an additional fee of \$600.00 is payable on or before February 11, 2017 or \$700.00 payable on or before March 1, 2017. A Double Tent Structure will allow for a minimum of 30 feet public serving frontage and a maximum of 30 feet public serving frontage, as well as an additional 10 feet as measured from one side of the Tent Structure, extending on either the left or right side of the tent (not both sides), as designated by the Taste, as viewed from Delaware Avenue, shall not place any equipment or extend their workspace beyond the front or the back of the tent. Taste reserves the right to amend this additional footage where permanent physical obstructions located along the Festival concourse deem this allocation impossible or impractical.

2.6 Taste agrees to provide services in connection with Winery's participation, the performance of both parties subject to the terms and conditions set forth herein.

3. ITEMS TO BE SERVED AND PRICES TO BE CHARGED

3.1 Winery shall be permitted to serve a minimum of three (3) and no more than four (4) wine items. Wineries may, however, serve different sized portions of the same item. For

purposes of counting the number of wine items served, different sized portions of the same item will be considered one item.

3.2 The items to be served, the sizes of the items, and the prices to be charged shall be submitted in writing to the Taste Winery Committee on the Taste Winery Menu Item Sheet. Winery agrees that all items to be served and prices to be charged are subject to prior approval by Taste.

3.3 Subject to prior approval by the Taste, Winery will have the right to serve the same items as it served at the immediately preceding year's Festival if Winery submits payment in full with a fully executed original of this contract on or before February 11, 2017, menu items with pricing, and all other necessary completed paperwork on or before March 1, 2017. If Winery does not submit the items as required, the Taste cannot guarantee menu item protection or participation in the event.

3.4 The prices to be charged by Winery shall not be less than \$1.00 or greater than \$7.50 per item. Prices to be charged shall include appropriate sales tax. Prices shall be in \$.50 increments only. Winery can serve one (1) Premium wine item at \$7.50, and up to three (3) wine items may be served between \$1.00 and \$4.00, inclusive.

3.5 Once approved in writing by Taste, items to be served and prices to be charged shall remain in effect throughout the Festival and may not be altered, unless agreed to in writing by the Parties.

3.6 Any Winery not in compliance with section 3.5 will be considered in default of the terms of this Agreement and the Taste will request that sale of the non-approved item(s) be discontinued and/or price(s) changed to reflect those previously approved. If Winery does not comply within one hour, the Taste will exercise its rights under section 9.0 and close down the Winery booth for the remainder of the Festival.

4. DUTIES OF TASTE

4.1 **Menu Item Protection:** Taste agrees to provide returning Winery's menu items and event participation protection if the requirements mentioned above in Sections 3.3 and 2.2 B are met.

4.2 **Returning Winery Vending Location Preference:** Taste agrees to provide Wineries who participated in the 2016 festival with preference in securing the same vending location as was held the 2016 festival year. In the situation where disputes may arise, the returning Winery with the most seniority in the Festival will be given preference. The Taste reserves the right to make final decisions in the placement of all Winery Vending Locations.

4.3 **Non-Duplication of Items:** Taste will use its best efforts to avoid duplication of items sold at the Festival. Winery agrees that what deems a duplication of items is in the sole discretion of the Winery Committee and the Taste.

4.4 **Winery Vending Location:** Taste shall provide the following to Winery:

- A single Tent Structure as defined above
- Side flaps sufficient to cover three sides of the Tent Structure
- One professionally lettered sign identifying Winery's name
- Adequate stabilizing material in order to support the Tent Structure

- Ongoing maintenance to the Tent Structure.
- Two tables and two chairs per Tent Structure

4.5 **Double Tent Structure Requests:** When requested in writing and pursuant to Section 2.5 above, a Double Tent Structure that will meet the criteria as defined in Section 4.4

4.6 **Utilities**

- A) **Electric:** Taste shall provide electrical power through four outlets with 60 amps at 110 volts. Additional electrical power including 220-volt lines must be requested in writing by March 1, 2017 and shall be provided to Winery by Taste at an extra charge.
- B) **Water:** Taste shall provide a central source of running water that shall be accessible to all of the wineries.
- C) **Refrigeration** will be the responsibility of the Winery.
- D) **Sanitation:** Taste shall maintain garbage pick-up service for Winery's garbage disposal at the Festival Site.

5. **DUTIES OF WINERY**

5.1 Winery Vending Location – Generally

- A) Winery shall be solely responsible for the safekeeping of its Winery Vending Location and any Additional Space Allocations and the Taste shall have no responsibility for any loss or damage to the Winery Vending Location or the property of the Winery located therein.
- B) In circumstances where Winery is utilizing an unauthorized space allocation, Winery will be considered in default of the terms of this Agreement and Taste will request that use of the additional space be discontinued. If Winery does not comply within one hour, Taste reserves the right to deduct \$1,000 from the proceeds of the Winery gross revenues.
- C) Food service equipment required to operate the Winery Vending Location as well as any and all labor and supplies, including, but not limited to, napkins, plates and utensils will be the responsibility of the Winery. Ice will be the responsibility of the Winery (Taste will make every effort to have ice vendor available on site during the festival).
- D) Winery shall be solely responsible for correctly identifying the amount of electrical power it requires to operate its equipment at the Festival by absolutely no later than March 1, 2017. Should Winery change its electrical requirements after March 1, 2017, Winery shall be responsible for any costs incurred by Taste in arranging for such change orders. In addition to the foregoing, if Winery changes its electrical requirements within 72 hours of scheduled start of the Festival, Winery's electrical requirements shall be served only after all requirements of other wineries which are scheduled as of 72 hours prior to the time or the scheduled start of the Festival are serviced. Taste shall have no liability whatsoever should Winery be unable to operate at the scheduled start of the Festival as a result of electrical requirement change.

E) Winery agrees that it has the duty of care to ensure safety to the general public. Winery will not be permitted to erect crowd barriers or other crowd flow or control apparatus at the Winery Vending Location. Winery agrees that Taste shall have the final say on the design and quality of any sign and menu board the winery places on the Winery Vending Location.

F) Winery shall not have any public seating and/or cabaret tables, or live music/entertainment at the Winery Vending Location.

G) Winery shall be responsible to assure that their booth complies with any applicable law and/or regulations, including but not limited to any requirements under the Americans with Disabilities Act, and any state, federal, or local requirements, or the New York State Liquor Authority.

H) Winery must provide a professionally lettered sign visible from 30 feet indicating cost in tickets and sizes of items served.

5.2 Wine Vending

A) Winery will accept only tickets as payment for menu items. No cash sales will be permitted at the Festival by Winery.

B) Winery must serve wine products in Taste-approved cups. Any Winery found utilizing non-approved cups will be instructed to use only approved cups. If Winery does not comply within one hour, the Taste will exercise its rights under Section 9.0 and close down the Winery booth for the remainder of the Festival.

C) Winery shall serve only wine at its booth.

D) Winery shall bring an adequate number of portions of wine to the Festival to ensure continuous operations during the entire operating hours of the Event.

5.3 Sanitation

A) Winery shall keep the area surrounding its tent clear of all garbage. Winery shall dispose of its garbage in the garbage container brought with them to the festival and shall not use receptacles provided for Taste patrons.

B) Winery shall comply with all state, city and county requirements governing the operation of its booth, including, but not limited to, regulations regarding health and fire code ordinances.

C) Winery shall not conduct dishwashing activities at the Festival Site

5.4 Winery Vending Location Setup and Takedown

A) Wineries may enter the footprint and begin setup of their booths no sooner than 5:30 a.m. on Saturday morning, the first day of the Festival.

B) Wineries will affix all signage (other than Taste-provided sign) or other decorations directly to the tent frame, ensuring safety to the general public and will not place

freestanding decorations, signs or other material in front of or alongside of Winery Vending Location. Damage or cleaning charges by Tent Vendor will be the responsibility of the Winery.

C) Winery shall comply with all rules issued by Taste regarding setup and takedown of booths including, but not limited to, rules regarding timing of loading and unloading.

D) Winery agrees to have all Winery trucks off the Festival site between the hours of 10:00 a.m. and 9:30 p.m. or later if deemed necessary by the Taste Security Committee Chairman on Saturday, and 10:00 a.m. and 8:00 p.m., or later if deemed necessary by the Taste Security Committee Chairman on Sunday of the Festival. Failure to comply will result in loss of Taste participation as outlined under section 9.0 – Default, B – Remedies, Number 2, and close down the Winery booth for the remainder of the festival and all future festivals participation denied.

E) Winery shall leave its tent and surrounding area in good condition, cleaned of any soot and grease that may accumulate on tent. Failure to comply will result in Taste deducting the cost of cleaning from Winery's share of the sales.

F) Winery must have booth area inspected and approved by a Winery Committee member before turning in tickets to be counted on Sunday night.

G) Winery shall be ready to sell its products by 11:00 a.m. on both days of the Festival and run continuously through Festival operating hours. Sales are allowed only during SLA-approved hours. Winery may not close early and/or begin break down of their area until festival is closed.

6.0 ACCOUNTING

6.1 All sales of Wine by Winery will be made through tickets purchased by patrons from Taste and Winery shall make no cash sales of any kind.

6.2 Winery is solely responsible for collection and storage and handling of all tickets collected until tickets are weighed and turned over to Taste.

6.3 Winery shall keep all tickets collected in a watertight container and Taste reserves the right to reject any ticket that is wet or mutilated. Wineries submitting wet or damaged tickets may be fined by Taste.

6.4 At the completion of the Festival, Taste shall:

A) Total all tickets received by making two separate weighings of the tickets; however, Winery reserves the right to count its tickets by hand under Taste's supervision.

B) Subtract Taste's 18% portion of the Winery's gross sales.

C) Subtract and remit the appropriate New York State sales tax.

D) Subtract any cleaning charges incurred by Taste relating to Winery, if applicable.

E) Subtract any other additional charges incurred by Winery for booth furnishings, if applicable.

F) If applicable, subtract any application fee monies still outstanding.

G) Remit the net proceeds to Winery within thirty (30) business days after the completion of the Festival unless there are unresolved problems regarding charges to Winery in which event the net proceeds shall be retained by Taste until such problems are resolved.

7.0 INSURANCE

Winery shall have general liability insurance coverage with the following minimum limits: \$1,000,000 for bodily injury and property damage per occurrence and aggregate; \$500,000 for injury to property. The Taste shall be named as a named additional insured on such insurance providing first dollar coverage to Taste for the Festival Event. Proof of general insurance liability shall be furnished to Taste no later than May 15, 2017. Additionally, proof of worker's compensation insurance should be provided for all "employees" working at the Festival Event.

8.0 PERMITS

8.1 Winery shall submit to Taste all fully completed applications, which will be delivered separately by a designated Winery Committee member in February, for necessary permits and licenses to operate its booth at the Festival no later than March 1, 2017, including, but not limited to, applications for the Health Department Temporary Food Stand Permit. Taste shall arrange for issuance of permits at Taste's expense.

8.2 Winery shall submit to the Taste the "Special Events Permit" application for each day to sell Wine at retail for consumption at the Taste no later than March 1, 2017. Winery shall submit payment for application to the Taste, and the Taste shall arrange for issuance of the permits.

8.3 Winery shall provide Taste with a copy of their NYS Liquor License no later than June 1, 2017.

9.0 DEFAULT

9.1 Defaults by Winery:

- (1) Failure of Winery to participate in Festival;
- (2) Failure of Winery to comply with any of the terms and conditions of this Agreement

9.2 Remedies for Taste:

(1) In the event Winery determines it is unable to participate in the Festival, written notice of intent not to participate must be given by Winery to Taste on or before May 15, 2017 or the Winery Entry Fee will be forfeited. In addition, if Winery has requested Taste to provide additional booth furnishings (i.e., Double Tent); Winery shall also pay to Taste any actual hard costs incurred by Taste in procuring such additional furnishings.

(2) In any event Winery fails to comply at any time at the Festival with the terms of and conditions of this Agreement or any rules and regulations issued pursuant thereto, which failure is not remedied within one (1) hour after notification by any member of the Taste Board of Directors to Winery, Winery's booth shall be closed and Winery shall not participate in the Festival of any further. Taste shall account to Winery for any sales made by Winery to that time but shall have no further liability to Winery.

(3) In the event Winery's participation during the Festival is impaired or prohibited by the action of any governmental entity, Taste shall account to Winery for any sales made prior to cessation of Winery's operations but shall have no further liability to Winery.

9.3 Defaults by Taste:

- (1) Failure to secure necessary permits and operating authority prior to Event Start Time.
- (2) Failure to comply with the terms and conditions of the Agreement.

9.4 Remedies for Winery:

(1) If Taste fails to secure the necessary permits and operating authority prior to Event start Time, Winery may cancel this Agreement upon written notice to Taste and Winery's Entry Fee shall be refunded, but Taste shall have no further liability of any kind to Winery, including liability for consequential damages of any kind.

(2) If Taste fails to provide services as provided for in this Agreement, Winery may, upon six (6) hours' notice of the Taste Winery Committee of such non-compliance and failure of Taste to remedy same, cancel this Agreement. Taste shall account to Winery for sales made to that point and shall refund, a pro-rata portion of Winery's Entry Fee (based on time of operation), but Taste shall have no further liability for consequential damages of any kind.

9.5 Dispute Resolution

The Parties may request that a Grievance Committee review a matter if they feel that a violation of this Agreement has occurred. In the case where a Winery Committee member or a member of the Taste Board of Directors feels a violation has occurred, Taste shall appoint a Grievance Committee of three persons to be the final arbiter of grievances of either party to this Agreement. The decision of the Grievance Committee is final.

10. COVENANTS OF WINERY.

10.1 Winery is an independent contractor and, as such, is solely responsible for its acts and omissions prior to, during and after the Festival. Winery is solely responsible for the conduct of its employees, agents, or servants and shall indemnify, defend and hold harmless Taste, its directors and officers, Sell-utions, Inc., its employees, Buffalo Place, Inc. its

Employees, officers and agents and the City of Buffalo, its employees, officers and agents from any and all liability to third parties, including but not limited to, patrons and other winery's at the Festival, arising out of acts of omissions of Winery.

10.2 Winery shall apprise each employee, agent and servant acting for Winery at the Festival of the terms and conditions contained in this Agreement.

10.3 Winery is solely responsible for complying with all local laws and ordinances governing Winery's participation in the Festival and for apprising its employees, agents and servants of same and Taste shall not be responsible for decisions of governmental entities which impair, inhibit or prohibit Winery's participation in the Festival.

11. SEVERABILITY

Shall any term or condition of this Agreement be found invalid or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected thereby but shall remain in full force and effect.

12. ENTIRE AGREEMENT

Except for rules and regulations to be issued by Taste pursuant to this Agreement, this Agreement constitutes the entire Agreement between parties and supersedes any prior agreements. Amendments to or modifications of this Agreement shall be valid and enforceable only if contained in writing and signed by both parties.

13. GOVERNING LAW

This Agreement shall be construed and interpreted in accordance with the law of the State of New York.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

A TASTE OF BUFFALO, INC.

By: _____ Date: _____
(signature)

Print Name: _____Darcy Hitchcock_____

Print Title: _Taste of Buffalo Board Member & Winery Chairperson_____

WINERY

By: _____ Date: _____
(signature)

Print Name: _____

Print Title: _____