

## **PARTICIPATION AGREEMENT**

**(Legal Guardian or Individual over the age of 18)**

**INHERENTLY RISKY RECREATIONAL ACTIVITY –**

**MAY RESULT IN DEATH OR PARALYSIS –**

**USE AT OWN RISK**

THIS **PARTICIPATION AGREEMENT (“Agreement”)** is made and is effective as of the last date executed (hereinafter the "Effective Date") by and between **BUFFALO HOLIDAY MARKET LLC, and BUFFALO COLLECTIVE LLC** (hereinafter "**Market**") and the adult or guardian identified (hereinafter "**Adult**"), who is executing this Participation Agreement personally, and on behalf of themselves and any minor children specified below (the Adult and any minor children on whose behalf Adult signs this Agreement are collectively referred to hereinafter as the "**Participants**"). Market and Participants are collectively referred to hereinafter as the "**Parties**."

WHEREAS, Market owns and/or operates a recreational Holiday Market located at 444 Forest Ave Buffalo, NY 14213 (hereinafter the "**Holiday Market**"); and

WHEREAS, Market makes the Holiday Market available to customers solely for recreational use and enjoyment, not as a service to the general public; and

WHEREAS, Participants desire to participate in **ALL** the recreational activities available at the Holiday Market; and

WHEREAS, Participants know, understand, and acknowledge that participation in **ANY** of the recreational activities available at the Holiday Market is purely voluntary, not essential or necessary, and intended solely for recreational enjoyment; and

WHEREAS, Participants know, understand, and acknowledge that the use of trampoline equipment, obstacle courses, and use or participation in any of the equipment, services, activities, or presence at Holiday Market (collectively “Use of Facility”), constitutes an **inherently risky recreational activity that is likely to result in serious injury (such as paralysis and death), damage to property, and injury to third parties**; and

WHEREAS, Market will not make the Holiday Market available to Participants unless Participants are willing to take **personal responsibility** for any and all known and unknown injuries to Participants, damage to property, and injuries to third parties that may result from Participants' voluntary participation in **ALL** the recreational activities available at the Holiday Market and any of the other causes identified hereinafter.

## AGREEMENT

NOW THEREFORE, in consideration of the premises and the mutual covenants, conditions, representations, and agreements contained herein, as well as the cost of admission to the Holiday Market, the Parties hereby agree as follows:

### 1. Waiver and Release of Liability

To participate in the Use of Facility, all Participants, on behalf of themselves, and their parents, spouses, children/wards, heirs, assigns, representatives, estates, successors, attorneys, insurers, and all other persons, firms, partnerships or corporations connected therewith (collectively referred to hereinafter as the "**Releasing Parties**"), forever, finally, fully, permanently and unconditionally waive, release, acquit and discharge Market, and its present and former employees, owners, members, principals, directors, subsidiaries, affiliates, representatives, predecessors, successors, shareholders, partners, parents, officers, agents, assigns, servants, attorneys, insurers, suppliers, manufacturers, clients, customers, participants, and all other persons, firms, partnerships or corporations connected therewith (collectively referred to hereinafter as the "**Released Parties**"), to the fullest extent permitted by law, from any and all charges, claims, debts, disputes, demands, suits, causes of action, rights of action, dues, sums of money, accounts, liabilities, losses, expenses and damages, absolute or contingent, known or unknown, whether or not asserted, threatened, alleged or litigated, now existing or arising in the future, at law or equity, whether caused by the negligence of Released Parties or otherwise, that arise out of or relate in any way to Participants' Use of Facility at the Holiday Market, and any claims for costs, expenses and attorneys' and expert fees associated therewith.

### 2. Assumption of Risk

Releasing Parties **know, understand** and **acknowledge** that the use of trampoline equipment, obstacle courses, and use or participation in any of the equipment, services, activities, or presence at Holiday Market (collectively "Use of Facility"), **constitutes an inherently risky recreational activity that may result in serious injury (such as paralysis and death), injury to third parties, and damage to property.** Releasing Parties know, understand and acknowledge that these risks include, but are not limited to, falling off equipment, double bouncing, collision with fixed objects and/or people, sudden and unforeseen malfunction of equipment, and **failed attempted jumps and stunts.** Releasing Parties hereby assume the risk both known and unknown of **personal injury or death, injury to third parties, and damage to property** that arise out of or relate in any way to Participants' past, present or future Use of Facility. Releasing Parties **know, understand** and **acknowledge** that they may contract certain illnesses,

viruses, or diseases by being present at or participating at the Holiday Market, including surrounding areas. Releasing Parties hereby assume the risk both known and unknown of contraction of such **illnesses, viruses, or diseases**, that arise out of or relate in any way to Participants' past, present or future Use of Facility.

### **3. Indemnification**

**To the extent allowed by law, the Releasing Parties hereby indemnify and covenant to hold harmless and defend Released Parties from any and all charges, passive and active negligence, claims, debts, illnesses, viruses, diseases, disputes, demands, suits, causes of action, rights of action, dues, sums of money, accounts, liabilities, losses, expenses and damages, absolute or contingent, known or unknown, whether or not asserted, threatened, alleged or litigated, now existing or arising in the future, at law or equity, whether caused by the negligence of Released Parties or otherwise, that arise out of or relate in any way to Participants' Use of Facility, or based on or arising out of any breach of this Agreement, its covenants, representations, or warranties by the Releasing Parties, and any claims for costs, expenses and attorneys'/expert fees associated therewith.**

### **4. Fitness to Participate**

Participants represent that they: (i) Are in good health, and in proper physical condition to participate in the Use of Facility and ALL activities at the Holiday Market; (ii) Are NOT under the influence of alcohol, illicit or prescription drugs that would in any way impair their ability to safely participate in the Use of Facility and ANY activity at the Holiday Market; (iii) Do NOT have ANY preexisting conditions which would make Participants unfit to participate in the Use of Facility and ANY activity at the Holiday Market. It is the sole responsibility of all Participants to determine sufficiency of health, fitness, and ability to participate in the Use of Facility and ANY activity at the Holiday Market.

### **5. Covenant Not to Sue**

Releasing Parties hereby covenant not to sue Released Parties on account of any and all charges, claims, debts, disputes, demands, suits, causes of action, rights of action, dues, sums of money, accounts, liabilities, losses, expenses and damages, absolute or contingent, known or unknown, whether or not asserted, threatened, alleged or litigated, now existing or arising in the future, at law or equity, whether caused by the negligence of Released Parties or otherwise, that arise out of or relate in any way to Participants' Use of Facility, and any claims for costs, expenses and attorneys' fees associated therewith.

### **6. Representations, Warranties, and Further Assurances**

**Adult represents** and warrants that she/he was **given ample opportunity to read** and review this Participation Agreement. Adult further represents, warrants, and covenants (a) that Adult is the **parent or legal guardian of the minor** Participants, (b) that Adult has and will maintain adequate medical or other insurance to cover and pay for any possible injury that may occur to Participants and/or third parties (“Insurance”) that arise out of or relate in any way to Participants' presence at the Holiday Market, participation in any of the activities at the Holiday Market, or Use of Facility at the Holiday Market (“Injury Event”); and (c) that in the event of any Injury Event, the Insurance shall be used as the primary insurance and shall cover all costs, expenses, losses, and damages related to injuries arising from or connected in any way to Use of Facility or such Injury Event, without any rights of subrogation. Participants further represent and warrant that they HAVE read and MUST follow the rules of the Holiday Market as amended from time to time, and will cause other Participants (including minor children) to follow such rules, including without limitation the safety video rules, rules conveyed orally, and any rules posted on signs within the Holiday Market.

## **7. Integration**

This Participation Agreement constitutes the entire and only agreement and understanding between the Parties with respect to the subject matter hereof and may not be altered, enlarged, or abridged except by an agreement in writing executed by all of the Parties hereto.

## **8. Binding Nature of this Participation Agreement**

The provisions of this Participation Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors and assigns. Participants understand that Participants have the chance to consult with an attorney about this Agreement and are otherwise signing it voluntarily.

## **9. Severability**

All the provisions of this Participation Agreement shall be considered as separate terms and conditions. In the event that any provision hereof is determined to be invalid, prohibited, or unenforceable by a court or other body of competent jurisdiction, this Participation Agreement shall be construed as if such invalid, prohibited, or unenforceable provision had been more narrowly drawn so as not to be invalid, prohibited, or unenforceable. Notwithstanding the foregoing two sentences, in the event that any of the provisions of this Participation Agreement should be determined to be invalid, prohibited or unenforceable, the validity, legality and enforceability of the remaining provisions

contained in this Participation Agreement shall not in any way be affected or impaired thereby.

## **10. Choice of Law and Jurisdiction**

This Participation Agreement shall be governed by and construed in accordance with the laws of the State of NEW YORK without regard to any conflict of law rules of another state. Releasing Parties explicitly know, understand and acknowledge that the laws of the State of New York may be more likely to recognize the validity and enforceability of the terms of this Participation Agreement-and particularly the parental waiver and indemnification provisions-than the laws of the other states (including the state where the Holiday Market is located and/or the Releasing Parties reside). In executing this Participation Agreement, Releasing Parties' expressly intend and desire for the substantive laws of the State of New York to govern the validity and enforceability of this Participation Agreement.

## **11. Mediation and Arbitration**

Any and all disputes, claims, or controversies arising out of or relating in any way to this Agreement, including but not limited to Participants' Use of Facility at the Holiday Market may be submitted to a formal mediation using a mediator, or a comparative impartial third party, either appointed by the American Arbitration Association or any other mediator to which the Parties agree in writing. Mediation must commence within any applicable statute of limitations, and shall be deemed to commence when a Party notifies the agreed-upon mediator, in writing, of its request for mediation, the subject of the dispute, and the relief requested. Mediation shall be deemed to be in the nature of settlement negotiations and any dispute not otherwise satisfactorily resolved shall be subject to mandatory, final and binding arbitration. Either Party may initiate arbitration with respect to the matters submitted to mediation by notifying the other Party, in writing and within ten days after the mediation is concluded, of its demand for arbitration. Unless otherwise agreed by the Parties, the mediator shall be disqualified from serving as arbitrator in the case. Except as otherwise agreed in writing by the Parties or as required by applicable law, any mediation and arbitration shall be conducted in New York. Similar to a judge or jury, an arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, however the scope and rules of arbitration differ, and review is limited. In the event the Parties elect not to mediate, arbitration shall be the sole and exclusive forum for resolution of the dispute, claim or controversy, and the award shall be in writing, state the reasons for the award, and be final and binding. Judgment thereon may then be entered in any court of competent jurisdiction. **By signing this Agreement, the Participants, to the fullest extent permitted by law, agree to this Section 11 and agree to settle disputes only by individualized mediation and/or arbitration, with**

**disputes from different participants to be heard in different proceedings. Participants thereby waive their right to seek relief in a court of law and have any and all claims decided by a jury or a judge, or to maintain other available court action or administrative proceedings to settle Participants' disputes.**

## **12. Attorney Fees for Breach of this Participation Agreement**

In the event either Party hereto defaults in any of the covenants or agreements contained herein, including without limitation the eleventh clause, the non-prevailing Party shall pay all costs and expenses, including reasonable attorneys' fees and expert fees, incurred by the prevailing Party as a result of this default.

## **13. Use; Acknowledgment of the Rules**

Participants understand that in order to be present at or participate in Use of Facility at the Holiday Market or any portion thereof, Participants must complete all of the following: (1) sign this Agreement; (2) watch all safety videos; and (3) read and abide by the rules and regulations prescribed by the Holiday Market. Additionally, Participants agree that Participants will ensure any guest Participant brings to the Holiday Market signs Market's standard release form and completes the other steps required for Use of Facility at the Holiday Market or any portion thereof. Participants understand that Participants are responsible for any guests Participants bring to the Holiday Market, and therefore agree to indemnify the Released Parties for any liability arising out of Participants' guest's visit to or Use of Facility at the Holiday Market or any portion thereof. All Participants **MUST READ, UNDERSTAND and FOLLOW** all Holiday Market rules as amended from time to time. By signing this Agreement you are representing and warranting that you have **READ, UNDERSTAND and WILL FOLLOW ALL RULES** as amended from time to time.

## **14. Video, Photo, and Image Release; Data Storage and Use**

The Agreement gives Market the exclusive rights and permissions to use all media captured on the Holiday Market premises, including but not limited to: security footage, photos, and video. Such information may be used for any and all purposes including but not limited to publication in both printed and electronic media, internet, websites, advertisement, and other promotional uses.

In the event Participants choose to provide such data, Market may collect and store data that includes sensitive and personally identifiable information. This includes, for example, names, contact information (such as an address, e-mail, or phone number), and dates of birth. Market may use this data to help towards development of new services or to improve existing services, to provide advertising and other information to Participants (including e-mails about special offers, new services, or other information that may be of interest to

Participants), or for any lawful business purpose, or to allow Market's business partners to do the same. Market also reserves the right to access, use, and share Participants' personally identifying information with others for purposes of health, safety and other matters in the public interest. Market may also provide access to its database or stored data in order to cooperate with investigations or legal proceedings initiated by governmental and/or law enforcement officials, as well as private parties, including, for example, in response to subpoenas, search warrants, court orders, or other legal process.

## **15. Subsequent Visits**

**This Agreement shall apply to ALL of Participants' future visits to Market.**

IN WITNESS WHEREOF, the Adult has signed this Participation Agreement as of the Effective Date.

**Any minor must have his or her parent or legal guardian sign this Agreement before that minor can participate in any activities or Use of Facility at the Holiday Market.** Market may rely completely on the representation made by an individual who claims to be the parent or guardian of a participant and shall not be obligated to independently verify whether or not such individual is in fact the parent or legal guardian of the participant. By signing this Agreement for yourself without a parent or guardian also signing, you are representing to Market that you are at least 18 years of age and that you agree to all of the above terms and conditions.