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**STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION SECTION**

**CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE**

STATE OF OHIO)
)
IN THE MATTER OF:) DOCKET NO. 461176
WINDY CITY BBQ RIBS, INC.)
FDDB ANNIE'S SOUTHERN CATERING)
AND EVENT PLANNING, INC.

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance ("Assurance") is entered into this 30th day of May, 2014 between Windy City BBQ Ribs, Inc. ("Windy City BBQ"), formerly doing business as Annie's Southern Catering and Event Planning, Inc., and the Attorney General of the State of Ohio ("Attorney General"). For purposes of this Assurance, "Windy City BBQ" means Windy City BBQ Ribs, Inc., doing business under its own name, or under any other business name, its agents, representatives, salespersons, employees, instructors, independent contractors, successors and assigns, and all persons acting in concert or participation with Windy City BBQ, directly or indirectly, through any corporate device, partnership or association within the State of Ohio.

WHEREAS, the Attorney General, having reasonable cause to believe that Windy City BBQ has engaged in acts and practices which violate Chapter 1345 of the Revised Code ("Consumer Sales Practices Act") and Chapter 109:4-3 of the Ohio Administrative Code ("Substantive Rules"), has conducted an investigation pursuant to the authority granted him by Section 1345.06 of the Revised Code; and

WHEREAS, the Attorney General may, pursuant to R.C. 1345.06(F), enter into and accept an Assurance of Voluntary Compliance; and

WHEREAS, this Assurance is an assurance in writing by Windy City BBQ of its intent to comply with the provisions of the Consumers Sales Practices Act and the Substantive Rules; and

WHEREAS, Windy City BBQ desires to comply with all aspects of the Consumer Sales Practices Act, Windy City BBQ hereby voluntarily enters into this Assurance with the Attorney General; and

WHEREAS, by entering into this Assurance, Windy City BBQ does not admit liability or guilt to any allegation made by the Attorney General; and

WHEREAS, pursuant to R.C. 1345.06(F), this Assurance is not evidence of a violation by Windy City BBQ of the provisions of the Consumer Sales Practices Act or the Substantive Rules.

NOW THEREFORE, in consideration of the mutual promises and conditions set forth herein, the parties hereto **AGREE** as follows:

- (1) The “Effective Date” shall mean the date indicated on the first page of this Assurance.
- (2) By accepting this written Assurance, the Attorney General agrees to terminate the current investigation of Windy City BBQ’s business practices and actions occurring on or before the Effective Date of this Assurance.
- (3) By giving this written Assurance, Windy City BBQ agrees to comply with all the terms of this Assurance and to conduct its business in compliance with all applicable Ohio laws, including without limitation, the Consumer Sales Practices Act (“CSPA”), R.C. 1345.01 et seq., and the Substantive Rules, Ohio Administrative Code, Section 109:4-3 et seq.

BACKGROUND AND STATEMENT OF FACTS

- (4) Windy City BBQ Ribs, Inc. is an Ohio corporation which has a principal place of business located at 32 Grace Drive, Powell, Ohio 43235.
- (5) Windy City BBQ formerly did business as Annie's Southern Catering & Event Planning, Inc.
- (6) Windy City BBQ is a "supplier" as that term is defined in R.C. 1345.01(C), as Windy City BBQ has been, at all times relevant herein, engaged in the business of effecting consumer transactions by soliciting, offering for sale and selling catering and/or wedding planning services to individual consumers in the State of Ohio, including Franklin County, for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
- (7) Windy City BBQ solicits individual consumers to enter into consumer transactions, specifically by advertising, offering for sale, and selling catering and wedding planning goods and services.
- (8) Windy City BBQ has advertised and marketed their catering and wedding planning services via the Internet, specifically via their website, www.anniessoutherncatering.biz.
- (9) Windy City BBQ has misrepresented that their catering services are of a particular standard or quality.
- (10) Windy City BBQ has misrepresented the quality of food, tableware, and services they provide for their catered events.
- (11) Windy City BBQ has misrepresented to consumers the fact that they have contact with and approval from various other persons and/or entities involved with the catered event (i.e., florists, businesses that provide linens, businesses that provide glassware, etc.).

- (12) Windy City BBQ has provided consumers with inconsistent and inadequate information regarding the qualifications of, the types of food and other goods which would be provided, the staff that would work the catered events, and the cost for such services.
- (13) Many consumers, believing such representations and claims made about the quality of catering and wedding planning services promised were true, contracted with Windy City BBQ for catering and/or wedding planning services.
- (14) Windy City BBQ was to provide the consumers with a written contract which included all material terms and conditions of the contract, including the specific catering or wedding planning goods and/or services that would be provided.
- (15) In some instances, Windy City BBQ failed to provide consumers with a complete written contract in a timely manner.
- (16) In some instances, Windy City BBQ never provided consumers with a complete written contract.
- (17) Windy City BBQ failed to incorporate into the written sales contract material oral representations made to the consumers regarding the catering and/or wedding planning goods and/or services that would be provided.
- (18) Windy City BBQ failed to maintain contact with consumers after the initial meeting and after obtaining the deposit, leaving some consumers worried that Windy City BBQ would not honor their contract or fulfill their obligations.
- (19) In connection with their catering business, Windy City BBQ provides a taste testing.
- (20) In some instances, the food provided at the taste testing – and agreed to and contracted for by the consumers for their events – was not the food that Windy City BBQ provided at the event.

- (21) In some instances, Windy City BBQ staff was either hours late to scheduled appointments or failed to show for scheduled appointments with both consumers and vendors.
- (22) Windy City BBQ has accepted deposits from consumers in connection with catering and/or wedding planning services to be performed and have failed to provide consumers with dated receipts stating the time during which the option is binding and whether the deposit is refundable and under what conditions.
- (23) Windy City BBQ has accepted substantial down payments from consumers in connection with catering and/or wedding planning services to be performed and has failed to deliver the goods and/or services paid for, and failed to refund the down payments.
- (24) Windy City BBQ has represented that catering and/or wedding planning services would be completed within a specified time and then allowed unreasonable lengths of time to elapse without providing the goods or services or without communicating with the consumers.
- (25) Windy City BBQ's failure to deliver the catering and/or wedding planning services contracted for has resulted in harm to consumers and in some instances required that consumers pay for and provide additional catering goods and services for their own events.

COMPLIANCE PROVISIONS

- (26) In connection with the advertising and sale of all catering and/or wedding planning services, Windy City BBQ shall comply with the CSPA, R.C. 1345.01 et seq., and the Substantive Rules enacted thereunder.

- (27) In connection with the advertising and sale of all catering and/or wedding planning services, Windy City BBQ shall refrain from:
- (A) Committing an unfair or deceptive act or practice in connection with a consumer transaction, in violation of the CSPA, R.C. 1345.02(A);
 - (B) Committing an unconscionable act or practice in connection with a consumer transaction, in violation of the CSPA, R.C. 1345.03(A);
 - (C) Failing to respond to consumer inquiries and failing to give consumers accurate information related to delivery and service dates and the completion of services, in violation of the CSPA, R.C. 1345.02(A).
 - (D) Advertising and marketing its catering and wedding planning services without clearly and conspicuously disclosing all material exclusions, reservations, limitations, modifications, or conditions related to those services, in violation of the Exclusions and Limitations in Advertisements Rule, Ohio Admin. Code 109:4-3-02(A)(1) and CSPA, R.C. 1345.02(A).
 - (E) Making certain representations, claims, or assertions of fact regarding their catering and wedding planning services, which would cause a reasonable consumer to believe such statements are true, unless, at the time such representations, claims, or assertions of fact are made, Windy City BBQ possesses or relies upon a reasonable basis in fact or other competent and reliable evidence which substantiates such representations, claims, or assertions of fact, in violation of the Substantiation of Claims in Advertising Rule, Ohio Admin. Code 109:4-3-10(A) and the CSPA, R.C. 1345.02(A).
 - (F) Accepting deposits from consumers for catering and wedding planning services to

be performed and failing to provide dated receipts stating the time during which the option was binding and whether the deposit was refundable and under what conditions, in violation of the Deposits Rule, Ohio Admin. Code 109:4-3-07(B)(4)(5)(6), and the CSPA, R.C. 1345.02(A).

- (G) Representing that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits that it does not have, in violation of the CSPA, R.C. 1345.02(A) and (B)(1).
- (H) Misrepresenting that the subject of a consumer transaction is of a particular standard or quality, in violation of the CSPA, R.C. 1345.02(A) and (B)(2).
- (I) Failing to incorporate material oral representations made to consumers by salespersons into the written sales contracts, in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A).
- (J) Committing an unconscionable act or practice in connection with a consumer transaction by making a misleading statement of opinion on which the consumer is likely to rely to the consumer's detriment, in violation of the CSPA, R.C. 1345.03(A), as set forth by R.C. 1345.03(B)(6); and
- (K) Accepting payments for catering and wedding planning goods or services and then permitting eight weeks to elapse without delivering the goods or performing the services, making a full refund of the payments, or advising the consumer of the duration of an extended delay and offering to send the consumer a refund within two weeks if the consumer so requests, in violation of the Failure to Deliver Rule, Ohio Admin. Code 109:4-3-09, and the CSPA, R.C. 1345.02(A).

- (28) Effective immediately, Windy City BBQ shall modify all of its written contracts and agreements to comply with Ohio law, including, but not limited to, the Deposits Rule, Ohio Admin. Code 109:4-3-07(B)((4)(5)(6), and the CSPA, R.C. 1345.01 et seq.
- (29) Specifically, Windy City BBQ shall modify all of its written contracts and agreements to include the following:
- (A) The date of the contract;
 - (B) The date and time of the scheduled event;
 - (C) A complete list of all goods and services Windy City BBQ is contracting to provide, including, but not limited to, the full names and contact information for all vendors to be used, a complete detailed menu of all food items to be catered, and whether Windy City BBQ will be responsible for set up prior to and clean-up after the scheduled event;
 - (D) A timeline for the estimated completion of all catering and wedding planning goods and services contracted for (i.e., deadline for ordering flowers, deadline for ordering linens, deadline for scheduling entertainment for the scheduled event, etc.)
 - (E) The number of wait service staff who will be required and in attendance at the scheduled event; and
 - (F) The number of guests included in the contract price and the per person price (for catered events).
- (30) Windy City BBQ shall not bind any consumer to any contract and/or to Windy City BBQ's "CANCELLATION POLICY" unless and until Windy City BBQ has fulfilled all of its obligations under the contract, including, but not limited to, adherence to the

timeline for estimated completion of goods and services as should be noted in Windy City BBQ's modified contracts.

GENERAL PROVISIONS

- (31) Windy City BBQ understands and agrees this Assurance applies to Windy City BBQ, doing business under its own name, and to any other business name, its principals, officers, directors, agents, representatives, salespersons, employees, instructors, independent contractors, successors and assigns, jointly and severally.
- (32) This Assurance shall be governed by the laws of the State of Ohio.
- (33) This Assurance does not constitute an approval by the Attorney General of any of Windy City BBQ's business practices and Windy City BBQ shall not represent directly or indirectly, or in any way whatsoever, that the Attorney General has sanctioned, condoned or approved any part or aspect of Windy City BBQ's business practices.
- (34) This Assurance sets forth the entire agreement between the Attorney General and Windy City BBQ (the "Parties") and supersedes all prior agreements or understandings, whether written or oral, between the Parties and/or their respective counsel with respect to the subject matter hereof. This Assurance may be amended by written agreement between the Parties, subject to any further requirements under state law.
- (35) The Parties acknowledge that no other promises, representations or agreements of any nature have been made or entered into by the Parties. The Parties further acknowledge that this Assurance constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.

- (36) Irrespective of Windy City BBQ's obligations under Paragraph (38) below, Windy City BBQ shall continue to negotiate in good faith, and resolve, through the office of the Attorney General, any consumer complaints filed with the Ohio Attorney General's Office, concerning Windy City BBQ's conduct occurring prior to or after the Effective Date of this Assurance, which are brought by consumers that are discovered after entering into this Assurance.
- (37) This Assurance is a public record and shall be maintained in the Public Inspection File.

RESTITUTION AND PAYMENT TO THE STATE

- (38) Windy City BBQ shall provide restitution to the Ohio Attorney General's Office in the amount of Seven Thousand Seven Hundred Fourteen Dollars and 35/100 Cents (\$7,714.35). The Ohio Attorney General acknowledges that Windy City BBQ has made an initial payment of Two Hundred Fifteen Dollars and 35/100 Cents (\$215.00). Windy City BBQ shall pay the remaining balance of Seven Thousand Four Hundred Ninety-Nine Dollars and 35/100 Cents (\$7,499.35) in twenty-nine (29) equal monthly installments of Two Hundred Fifty Dollars (\$250.00) each, beginning on May 30, 2014 and continuing through September 30, 2016. The 30th and final installment payment of Two Hundred Forty-Nine Dollars and 35/100 Cents (\$249.35) shall be due and paid by October 30, 2016. Each payment shall be due by the 30th day of each month and such payments shall not be deemed delinquent unless received after the 30th day of each calendar month. Payments due in the month of February shall be due and made by the 28th day of the month and shall not be deemed delinquent unless received after the 28th day of February. Payment shall be made by delivering a certified check or money order, payable to the "Ohio Attorney General's Office," to:

**Finance Assistant
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215**

- (39) As part of the consideration for the termination of the Attorney General's investigation of Windy City BBQ's business practices under the CSPA, R.C. 1345.01 et seq., Windy City BBQ shall pay Five Thousand Dollars (\$5,000.00) to the Office of the Ohio Attorney General to be placed in the Consumer Protection Enforcement Fund of the Ohio Attorney General's Office. Based in part upon Windy City BBQ's submission of a Financial Statement regarding its inability to pay, said payment shall be suspended in its entirety upon full compliance with the terms of this Assurance. If Windy City BBQ fails to comply with any provision of this Assurance, including payment of the restitution amounts due under Paragraph (38) above, the Five Thousand Dollar (\$5,000.00) payment shall be due and payable upon demand.

PENALTIES FOR FAILURE TO COMPLY

- (40) The Attorney General may assert any claim that Windy City BBQ has violated this Assurance in a separate civil action to enforce this Assurance, or to seek any other relief afforded by law, including attorney fees, investigative costs, and a civil penalty of not more than \$25,000.00, as set forth in R.C. 1345.07(D), for each separate and appropriate violation the Attorney General asserts Windy City BBQ has committed. In any such action or proceeding, relevant evidence of conduct that occurred before the Effective Date shall be admissible on any material issue, including alleged willfulness, intent, knowledge, contempt or breach, to the extent permitted by law. By this paragraph,

Windy City BBQ does not waive any evidentiary objection or any other objection it may have as permitted by law to the admissibility of any such evidence.

- (41) Evidence of a violation of an Assurance of Voluntary Compliance is prima-facie evidence of an act or practice in violation of the CSPA, R.C. 1345.01 et seq., if presented after the violation in an action brought under the CSPA, R.C. 1345.01 et seq.
- (42) This Assurance shall in no way exempt Windy City BBQ from any other obligations imposed by law, and nothing contained herein shall relieve Windy City BBQ of any legal responsibility for any acts or practices engaged in by Windy City BBQ other than those acts specifically resolved by this Assurance.
- (43) Nothing in this Assurance shall in any way preclude any investigative or enforcement action against Windy City BBQ under any legal authority granted to the Attorney General:

- (A) With respect to the transactions or occurrences which are the subject of this enforcement action, if the terms of this Assurance are not fully obeyed; or

- (B) With respect to transactions or occurrences which are not the subject of this action.

WHEREFORE, the Parties hereto affix their signatures in recognition and acceptance of the terms contained herein on this 30th day of May 2014.

SIGNATURES

Accepted:

MICHAEL DEWINE
OHIO ATTORNEY GENERAL

BY: Melissa Wright
MELISSA G. WRIGHT (0077843)
Assistant Section Chief
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215
(614) 466-8169; (866) 528-7423 (facsimile)
melissa.wright@ohioattorneygeneral.gov

5/29/14
Date

Accepted:

WINDY CITY BBQ, INC., FORMERLY DOING BUSINESS AS
ANNIE'S SOUTHERN CATERING AND EVENT PLANNING, INC.
(Authorized Representative)

BY: Victor Martin
VICTOR MARTIN
Owner and President
32 Grace Drive
Powell, Ohio 43065
(614) 805-6812

5/30/14
Date