

RELEASE AND HOLD HARMLESS AGREEMENT RELATED TO OUTDOOR DINING

This Release and Hold Harmless Agreement Related to Outdoor Dining (“Agreement”) is entered into this _____ day of _____, 20__ between _____ dba _____ whose address is _____ (“Applicant”) and the Charter Township of Shelby, whose address is 52700 Van Dyke Ave., Shelby Township, MI (“Township”). (Collectively, Applicant and the Township are the “Parties”).

WHEREAS Applicant has applied for Township permission to set up and utilize a temporary outdoor dining area enclosed with a tent, temporary fence or other temporary enclosure (“Outdoor Dining”), at the following location(s):

(“Subject Location(s)”);

for the following dates/period of time: _____ (“Use Period”).

WHEREAS in consideration of the Township’s grant of permission to Applicant for the Outdoor Dining, the Parties have agreed to enter into a Release and Hold Harmless Agreement whereby Applicant agrees, among other things, to release, indemnify and hold harmless the Township for occurrences directly or indirectly related to the Outdoor Dining; and

WHEREAS the Parties desire to enter into an Agreement which would be effective as to any and all Outdoor Dining and related activities of Applicant for the Use Period;

NOW THEREFORE, in consideration for the mutual covenants and promises contained herein, the adequacy of which is acknowledged, the Parties hereby agree as follows:

I. Release and Hold Harmless.

Applicant, its members, employees, successors and/or assigns (collectively, “Applicant” as used in this Agreement) agrees to indemnify, release and hold harmless the Township, its officers, directors, affiliates, employees, agents, boards, commissions, affiliate entities and insurers (collectively, “Township,” as used in this Agreement) from any and all claims and/or liability which may be made against the Township related to Outdoor Dining at Applicant locations, as follows:

- A. Applicant shall release the Township of and from all demands, claims, actions, fines, penalties, damages, liability, loss, costs, expense and/or potential claims Applicant may have in any way arising or related, directly or indirectly, as a result of the use and/or presence of the Outdoor Dining, and shall assume any and all risks and responsibilities in connection with the Outdoor Dining and/or any action related to the Outdoor Dining, including but not limited to consequential damages, actual attorneys' and other professional fees and court costs incurred in connection therewith (“Related Costs”).

- B. Applicant shall at all times, without expense or cost to the Township, indemnify, keep and save the Township free and harmless from any and all demands, claims, actions, fines, penalties, damages, liability, loss, costs and/or expense whatsoever (“Claims”) to which the Township may be subject by reason of, in any way related to, and/or arising directly or indirectly from the use or presence of the Outdoor Dining, including but not limited to Related Costs. Upon notice and at the sole discretion of the Township, Applicant shall: 1) Assume the defense of any Claims, without expense or cost to the Township; or 2) Pay all costs, expenses, actual attorney’s fees and Related Costs incurred or paid by Township in connection with such Claims.

II. Insurance.

Applicant shall, at no expense to Township, keep in full force and effect a policy of public liability and property damage insurance with respect to the Outdoor Dining, in which the limits of public liability shall be not less than \$1,000,000.00 per occurrence for bodily injury and/or personal injury, and \$1,000,000.00 per occurrence for property damage.

All insurance policies that Applicant is required to maintain must be written by carriers who are authorized to write insurance in Michigan and have an AM Best Company or Standard & Poor’s Rating Agency rating of not less than AAA. Any liability policy that Applicant is required to maintain will:

- (a) name Township as an additional insured;
- (b) be endorsed to provide that it will not be canceled or materially changed for any reason except on 30 days’ prior written notice to Township;
- (c) provide coverage to Township whether or not the event giving rise to the claim is alleged to have been caused in whole or in part by the acts, omissions, or negligence of Township; and
- (d) all policies must be primary, with the policies of Township being excess, secondary, and noncontributing.

The company or companies writing any insurance which Applicant is required to take out and maintain or cause to be taken out or maintained pursuant to this Agreement, as well as the form of such insurance shall at all times be subject to Township’s approval, or approval of the Township’s insurer. The Township may, at the Township’s sole discretion, require Applicant to provide higher levels of insurance coverage and policies as deemed necessary based on risk factors and review by the Township and/or the Township’s insurer.

Said property insurance policies shall include a clause or an endorsement allowing Township and Applicant to release each other from any liability to each other or anyone claiming through or under them by way of subrogation or otherwise, for any loss resulting from risks insured against. If any policy that Applicant is required to maintain is written on a claims-made insurance form, each policy must have a retroactive date that is not later than the date of the Outdoor Dining. Furthermore, if insurance coverage is written on a claims-made basis, Applicant’s obligation to provide insurance will be extended for an additional period equal to the statute of limitations for such claims on the relevant dates, plus one year.

Insurance may be provided in the form of blanket insurance policies covering properties in addition to the subject locations or entities in addition to Applicant. All blanket policies

must provide that the overall aggregate limit of liability that applies to Township or the subject locations is independent from any overall or annual aggregate that applies to other entities or properties.

Applicant must deliver the original insurance policies to Township before the dates of the activities, together with receipts evidencing payment of the premiums. Applicant must deliver certificates of renewal for the policies to Township not less than 30 days before their expiration dates.

If Applicant fails to provide any of the insurance required or fails to maintain the insurance in accord with the requirements of this Lease, Township may procure or renew the insurance to protect its own interests; and Applicant must reimburse any amounts paid by Township for such insurance immediately on demand.

III. Applicable Regulations and Effective Dates.

Applicant acknowledges that it remains obligated to comply with all applicable police, fire, safety and sanitary regulations and all other ordinances, regulations and laws of the Township, the County of Macomb, the State of Michigan and any other governmental authority having jurisdiction over the premises or the activities, and that this Agreement in no way waives or modifies any of Applicant's obligations under the same.

This Agreement remains in effect for Use Period and in the event that Applicant receives future Township approval for Outdoor Dining. This Agreement in no way implies, promises or guarantees to Applicant any future Township approval for Outdoor Dining or for any other activity whatsoever, and Applicant shall remain responsible for any and all application requirements, fees and procedures as set forth in Township Ordinances.

IV. No Waivers.

No failure of Township to exercise any power reserved to it under this Agreement, or to insist on strict compliance with any obligation or condition, and no custom or practice of the parties at variance with this Agreement's terms, shall constitute a waiver of Township's right to demand strict compliance with the terms of this Agreement. Waiver by Township of any particular default or particular obligation shall not affect or impair Township's right with respect to any subsequent default or obligation of the same or of a different nature; nor shall any delay, waiver, forbearance, or omission of Township to exercise any power or rights arising out of any breach or default of any of the terms, provisions, or covenants affect or impair Township's rights, nor shall such constitute a waiver by Township of any right under this Agreement, including the right to declare any subsequent breach or default. Subsequent acceptance by Township of any actions of Applicant shall not be deemed to be a waiver by Township of any preceding breach of any terms, covenants, or conditions of this Agreement.

V. Miscellaneous.

By their execution of this Agreement, the Parties warrant that they have the authority to execute this Agreement and bind their respective entities to its terms and conditions.

By executing this Agreement, the Parties acknowledge that prior to executing this Agreement, they had the opportunity to consult with legal counsel. The Parties

acknowledge the Agreement herein was obtained without duress or coercion, and without reliance on any promises or statements made other than those stated herein.

This Agreement, inclusive of its terms and provisions, shall be binding on and inure to the benefit of, and be enforceable by, the respective heirs, legal representatives, successors, and assigns of the Parties.

This Agreement contains the entire agreement of the Parties and may be altered or amended only by an instrument in writing, duly executed by both Parties.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals:

CHARTER TOWNSHIP OF SHELBY

APPLICANT:

By: Richard Stathakis
Its: Supervisor

Dated: _____, 20__

Acknowledged and sworn to before me, by _____, on behalf of the Charter Township of Shelby on this ____ day of _____, 20__.

/s/ _____
Notary public,
State of Michigan, County of _____.
Acting in _____ County.
My commission expires _____.

[signature of representative]: _____

By: _____

Its: Registered Agent

Dated: _____, 20__

Acknowledged and sworn to before me, by _____, on behalf of _____ on this ____ day of _____, 20__.

/s/ _____
Notary public,
State of Michigan, County of _____.
Acting in _____ County.
My commission expires _____.