

## **EAGLE POINT MARINA OUTSIDE VENDOR AGREEMENT**

This Outside Vendor Agreement (the "Agreement") is made and entered into this 07 day of August, 2018, at Lewisville, Denton County, Texas by and between Trett Enterprises, LLC d/b/a Eagle Point Marina, (the "Marina"), and the party or entity whose name and address appears below (the "Vendor"). The Marina permits persons and entities who are not affiliated with Trett Enterprises, LLC. to perform services for the benefit of the customers of the Marina. This Agreement shall govern the conduct of the Vendor while it is on the premises of the Marina.

### **Independent Contractor Status**

The Vendor shall operate as an independent contractor to the customers of the Marina, and Vendor shall not represent it is in any manner affiliated with the Marina other than as a permitted Vendor. Vendor services allowed by this agreement is to provide a vessel that is outfitted and approved by the City and the Eagle Point Marina to provide a shaved ice vending business in the marina. The plan is to have an assigned slip on 22 house but location within the marina could change if all parties agree and the business warrants it. It is understood that within the marina the Mimi's Shaved Ice business is just for existing marina customers and their guests that have access to the dock area. During operation, MiMi's Shaved Ice vessel shall be adequately tied off. With regards to the concession fee paid to the City, it applies to all MiMi's Shaved Ice business that may occur within the Marina lease boundaries (which is generally to mean within the breakwater boundaries). Business inside the lease boundaries includes if Mimi's Shaved Ice obtains permission to tie up at the boat rental dock area or the restaurant courtesy docks, or the gas dock. It is understood that MiMi's would need to obtain written approval by the boat rental company or the restaurant to do business in these areas. Agreed slip storage rates and electric will be addressed thru our separate slip lease agreement. This agreement is also subject to all terms and conditions included in the master lease from the US Army Corps of Engineers to the City of Lewisville.

### **Maintenance of Insurance**

The Vendor shall at its own expense maintain a policy or policies of commercial general liability insurance with respect to its activities on the Marina premises, with the premiums thereon fully paid on or before the due date, naming Marina (Trett Enterprises LLC d.b.a. Eagle Point Marina, L.J.H. Corporation, the City of Lewisville, Texas, and the United States Army Corps of Engineers as additional insureds by endorsement in form acceptable

to Marina, and issued by and binding upon an insurance company approved by Marina, such insurance to afford minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof. Additionally, Vendor shall maintain workers' compensation insurance for all of its non-shareholder employees or employees for whom workers' compensation is available. All insurance required of Vendor shall be in form and content and written by one or more insurance companies acceptable to Marina. Vendor shall, at Marina's request from time to time, provide Marina with current certificates of insurance evidencing Vendor's compliance with this Agreement. Vendor shall obtain the agreement of Vendor's insurers to notify Marina that a policy is due to expire at least thirty (30) days prior to such expiration.

### **Liability of Marina**

Marina shall not be liable to Vendor or to Vendor's employees, subcontractors, agents, customers, or to any other person whomsoever, and Vendor hereby releases Marina, L.J.H. Corporation, the City of Lewisville, Texas, and the United States Army Corps of Engineers from (i) any injury or damage to person or property due to the condition of the Marina premises, (ii) any loss or damage that may be occasioned by or through the acts or omissions of other Vendors or customers of the Marina on the Marina premises, or (iii) any damage or inconvenience which may arise through repair or alteration of any part of the Marina, INCLUDING WITHOUT LIMITATION, ANY OF THE FOREGOING MATTERS CAUSED BY THE SOLE OR CONCURRENT NEGLIGENCE OF MARINA, L.J.H. CORPORATION, THE CITY OF LEWISVILLE, TEXAS, AND THE UNITED STATES ARMY CORPS OF ENGINEERS. Vendor agrees that all personal property upon the Premises shall be at the risk of Vendor only, and that Marina shall not be liable for any damage thereto or theft thereof.

### **Waiver of Subrogation**

Anything in this Agreement to the contrary notwithstanding, Vendor hereby waives any and all rights of subrogation, recovery, claim, action or cause of action, against the Marina, L.J.H. Corporation, the City of Lewisville, Texas, and the United States Army Corps of Engineers, or the agents, officers, or employees of each, for any loss or damage that may occur to Vendor, its Vendor's employees, subcontractors, agents, customers, or to any other person whomsoever regardless of cause or origin, including negligence of the Marina, L.J.H. Corporation, the City of Lewisville, Texas, and the United States Army Corps of Engineers, or the agents, officers, or employees of each.

### **Indemnity of Marina**

Vendor agrees that it will indemnify and hold Marina, L.J.H. Corporation, the City of Lewisville, Texas, and the United States Army Corps of Engineers harmless of, from and against (i) all fines, suits, loss, cost, liability, claims, demands, actions and judgments of every kind and character by reason of any breach, violation or nonperformance of any term, provision, covenant, agreement or condition on the part of the Vendor hereunder and (ii) all claims, demands, actions, damages, loss, cost, liabilities, expenses and judgments suffered by, recovered from or asserted against Marina, L.J.H. Corporation, the City of Lewisville, Texas, and the United States Army Corps of Engineers on account of injury or damage to person or property to the extent that any such damage or injury may be incident to, arise out of or be caused, either proximately or remotely, wholly or in part, by an act, omission, negligence or misconduct on the part of Vendor or any of its agents, servants, employees, contractors, patrons, guests, licensees or invitees or of any other person entering upon the Marina premises under or with the express or implied invitation or permission of Vendor or when any such injury or damage is the result, proximate or remote, of the violation by Vendor or any of its agents, employees, subcontractors, or customers of any law, ordinance or governmental order of any kind, or when any such injury or damage may in any other way arise from or out of the use by Vendor, its agents, employees, subcontractors, or customers of the Marina premises, SUCH INDEMNITY BY VENDOR SHALL INCLUDE MATTERS ARISING IN WHOLE OR IN PART AS A RESULT OF THE SOLE OR CONCURRENT NEGLIGENCE OF MARINA, L.J.H. CORPORATION, THE CITY OF LEWISVILLE, TEXAS, OR THE UNITED STATES ARMY CORPS OF ENGINEERS. Vendor covenants and agrees that in case Marina shall be made a party to any litigation commenced by or against Vendor or relating to the Agreement or to the Marina premises, then Vendor shall pay all costs and expenses, including attorneys' fees and court costs, incurred by or imposed upon Marina, L.J.H. Corporation, the City of Lewisville, Texas, and the United States Army Corps of Engineers by virtue of any such litigation and the amount of all such costs and expenses, including attorneys' fees and court costs, shall be paid by Vendor to Marina, L.J.H. Corporation, the City of Lewisville, Texas, and the United States Army Corps of Engineers within ten (10) days following receipt of a request therefore, plus interest from the date expended until payment.

#### **Right to Terminate Agreement**

The Marina reserves the right to terminate this Agreement without cause and without prior notice to Vendor. The Vendor agrees that the Marina has the right to the above action and will in no way be held liable or responsible for any damage or loss to Vendor. By no means is this agreement to extend beyond Eagle Point Marina's current master lease agreement term ending April 14, 2025 with the City of Lewisville or subsequent lease term extensions.

#### **Choice of Law and Venue**

This agreement shall be construed under and in accordance with the laws of the State of Texas. All obligations of the parties created in this Agreement are performable in Denton County, Texas, and venue shall be in such County. This written contract is the sole and only Agreement in effect between the parties. This Agreement may only be amended in writing with the signatures of each party on such amendment.

### Notices

Vendor agrees that any notice to be given by Marina may be given by mailing the notices to the address below, and owner agrees to notify Marina promptly of any new mailing address. Notice shall be deemed completed when deposited in the Mail, postage prepaid, addressed to the addressee below.

IN WITNESS WHEREOF, the undersigned Marina and Vendor execute this Agreement as of the day and year above.

### Concession Fees

Vendor shall pay to the Marina 0% of Vendor's gross sales on a quarterly basis with the 1<sup>st</sup> quarter beginning January 1 of each year. Payment to the Marina shall be by the 14<sup>th</sup> of the month following the end of the quarter and include a written accounting of how payment is calculated. Vendor shall also pay to the City of Lewisville 3% of Vendor's gross sales on a quarterly basis (for all business on the Lewisville Lake) at the same time that the Marina payment is due. Vendor shall include a separate accounting of how payment is calculated for the City's concession fee, quarterly.

**MARINA**

Signature

Trett Enterprises, LLC

Title

Printed Name

**VENDOR:**

Malibu MiMi's Shaved Ice

Name of Vendor

Signature

Printed Name

1301 Justin Road, Suite 201-483

ADDRESS (No P.O. Boxes)

(346) 217-6779

Telephone

Lewisville Texas 75077

CITY

STATE

ZIP

(346) 217-6779

Cell Phone