

## **VENDING SERVICE LEASE AGREEMENT**

THIS AGREEMENT, entered into this \_\_\_\_ day of November, 2019, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created under Minnesota Statutes (1989) Chapter 469 ("DEDA"), and MICHAEL AMENDOLA, an individual ("Vendor").

WHEREAS, Vendor entered into a lease agreement with DEDA for the operation of a vending facility in the Lighthouse Lot, which lease agreement terminates on December 31, 2019; and

WHEREAS, DEDA desires to have Vendor continue his vending operation in substantially the same manner and in the same parking lot as had been previously agreed to between Vendor and DEDA.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

1. This Agreement shall commence on January 1, 2020 and shall continue through December 31, 2021 unless earlier terminated as provided for herein. DEDA's Executive Director or his/her designee (the "Executive Director"), at his/her sole discretion or Vendor, may terminate the Agreement without cause prior to the Operating Season (as more specifically described below) by giving written notice of said termination on or before April 1.

2. During the Operating Season (as more specifically described below), Vendor shall have the right to sell popcorn, snow cones/shaved ice, cotton candy, soda and hot beverages from a permitted cart (the "Services"), at a location designated by the Executive Director in the Lighthouse Lot. The Lighthouse Lot is legally described as follows:

All that part of Lots 270, 272, 274, 276, 278, 280, LAKE SHORE, UPPER DULUTH, lying easterly of the westerly line of St. Croix Avenue (as such west line is located by condemnation plat, filed November 24, 1896, in said Register of Deeds office, bearing Register's number 5764) and also lying between the prolongation of the southerly line of Lot 270, Lake Shore, on the south and the prolongation of the center line of Morse Street in said plat of Upper Duluth on the North, to the low watermark on Lake Superior, together with the riparian rights belonging to said lands and lots above described.

The portion of the Lighthouse Lot currently designated for the Vendor consists of two parking spaces, located in the southwest corner of the Lighthouse Lot as shaded in red on the attached Exhibit A (the “Leased Premises”). Vendor is taking the Leased Premises in an “as is” condition and DEDA has no obligation to make any improvements or alterations to the Leased Premises to prepare them for Vendor’s use.

3. Vendor shall operate his Services on a regular daily basis from a minimum of May 15 through September 30, weather permitting (the “Operating Season”). Vendor may extend the Operating Season by a one (1) month period on either side of the Operating Season if he determines in good faith that the extension of Services will benefit both the seasonal tourists and his business. Any extension beyond the forgoing 1-month period must have the prior written approval of the Executive Director.

4. In consideration for the concession, the Vendor agrees to pay DEDA a sum equal to ten percent (10%) of gross receipts from his operation in the Lighthouse Lot, excluding retail sales taxes. Said sum shall be paid to DEDA by the 15th day of each month for the preceding month, and a monthly report of receipts shall be submitted on a form approved by the Auditor of the City of Duluth by the same date.

5. Vendor shall reimburse DEDA for electricity used in the operation of his Services. The Vendor shall use the locking, metered outlet provided by DEDA and shall contact the Executive Director to have the meter read at the beginning and end of each year’s operations. During the Operating Season, Vendor shall pay DEDA, in addition to the amount required under Paragraph 4, the sum of \$50.00 per month toward the cost of this electrical usage payable on the 15th day of each month for the preceding month. At the end of each Operating Season after the final meter reading, the electrical cost shall be reconciled and the Vendor shall pay, or be refunded as the case may be, the difference between his monthly payments and the actual cost of the electricity.

6. All payments and monthly reports should be sent to:

Duluth Economic Development Authority  
Attn: Executive Director  
411 W. First Street, Room 418  
Duluth, MN 55802

7. Vendor shall maintain adequate books and records relating to the operation for Vendor's permitted business in the Lighthouse Parking Lot, which books and records shall be available to DEDA for inspection and audit.

8. Vendor has been informed that Lakewalk reconstruction will occur during the term of this Agreement which may impact the ability of Vendor to operate his vending facility at the Lighthouse Lot. In the event the Lighthouse Lot is impacted by Lakewalk reconstruction to the extent that the Vendor must relocate his vending facility, DEDA will give Vendor thirty (30) days' prior written notice of the relocation requirement. DEDA will endeavor to assist Vendor in finding a temporary location from which to operate the vending facility. Vendor's payment of ten percent (10%) of gross proceeds as set forth in Paragraph 4 and reimbursement for electricity as set forth in Paragraph 5 will be suspended for the period of time that Vendor is relocated.

9. Vendor shall maintain Commercial General Liability insurance on a claims made basis with limits of not less than One Million Five Hundred and No/100s Dollars (\$1,500,000) per claim and One Million Five Hundred and No/100s Dollars (\$1,500,000) per occurrence for personal and bodily injury and, property damage liability. Insurance shall cover:

- a. Public liability, including premises and operations coverage.
- b. Personal injury.
- c. Contractual liability covering the indemnity obligations set forth herein.
- d. Products--completed operations.

Vendor shall maintain Workers' Compensation Insurance in accordance with the laws of the State of Minnesota. All insurance required herein shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota and with companies or underwriters satisfactory to the City Attorney. All insurance policies required above shall be primary and shall not require contribution from any coverage maintained by DEDA and/or City. Vendor agrees to provide a Certificate of Insurance to DEDA prior to the beginning of the Operating Season, evidencing such coverage and naming DEDA and the City of Duluth as additional insureds on the Commercial General Liability insurance.

The Certificates shall provide that the policies shall not be canceled during the life of this Agreement without at least thirty (30) days' advance written notice to DEDA. Neither DEDA nor the City represents or guarantees that these types or limits of coverage are adequate to protect the Vendor's interests and liabilities. It shall be the obligation and responsibility of Vendor to insure, as he deems prudent, his own personal property, against damage. Neither DEDA nor the City has insurance coverage for Vendor's property and DEDA and the City expressly disclaim any and all liability for any and all losses, damage and/or claims to vehicles and/or personal possessions of Vendor.

10. Vendor hereby agrees to indemnify, save harmless, and defend DEDA and the City from any and all claims, including a claim for contribution or indemnity, suits, losses, costs, damages, or expenses on account of injuries or death of any person, including employees of the said Vendor and on account of any and all damages to property to whomsoever belonging, including property owned by, leased to, or in the care, custody and control of Vendor, or for any claim or cause of action arising or growing out of the use of the Leased Premises or the vending activity allowed herein.

11. Vendor shall not assign or transfer any of his rights or interests under this Agreement in any way whatsoever without the prior written consent of the Executive Director. Further, Vendor shall not assign any other person as being primarily responsible for the operation of the vending activity hereunder without the prior written consent of Executive Director.

12. Vendor shall keep the Leased Premises in a neat, orderly condition and shall perform all necessary and proper cleaning. Vendor shall be responsible for providing trash receptacles or utilizing a trash receptacle provided by the City, and picking up litter within 50 feet of Vendor's operation.

13. Vendor shall promptly pay or cause to be paid all lawful taxes and governmental charges, including real estate taxes and fees or taxes in lieu of real estate taxes at any time levied upon or against it or on the Leased Premises. Vendor shall further be obligated to pay any sales and use taxes imposed by any governmental entity entitled to impose such taxes on or before the date they are due and to file all required reports and forms in proper form related thereto on or before their due date; provided that nothing shall prevent Vendor from contesting in good faith, any such payment requirement except as such contest would negatively affect DEDA's rights under this Agreement or result in a lien being placed on the Leased Premises.

14. Vendor shall not create or permit any mortgage, encumbrance or lien or allow any mechanic's or materialmen's liens to be filed or established or to remain against the Leased Premises or any part thereof.

15. Any and all employees of Vendor or any other persons, while engaged in the performance of any service required by Vendor under this Agreement, shall not be considered employees of DEDA and/or the City of Duluth; and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of said employees or any other persons while so engaged, and any and all claims made by third parties as a consequence of any act or omission on the part of Vendor or its agents and employees, or any other persons, while so engaged in any of the Services provided herein, shall in no way be the obligation or responsibility of DEDA or the City of Duluth.

16. Should the Vendor be in default under any terms and conditions of this Agreement, DEDA shall provide the Vendor with written notice of said conditions of default and shall allow the Vendor thirty (30) days within which to cure any defaults set forth therein. If the default is not cured within thirty (30) days, DEDA may immediately terminate this Agreement.

17. Notices to DEDA shall be sufficient if sent by regular United States Mail, postage prepaid, addressed to DEDA at Room 418 City Hall, 411 West First Street, Duluth, Minnesota 55802; and notices to Vendor if sent by regular United States Mail, postage prepaid, addressed to Michael Amendola, 5797 Castle Road, Duluth, Minnesota 55803 or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

18. The Vendor shall, within one (1) week after the end of the Operating Season or, in the event the Agreement is terminated, within one (1) week of said termination, remove from the Leased Premises all Vendor property, goods and effects, and upon failure to do so, DEDA by its officers and agents may cause such removal to be made and said property, goods and effects to be stored at the cost and expense of the Vendor; and DEDA shall have a lien thereon for the cost and expense of such removal and the storage of such goods, property, and effects. Vendor property, goods and effects not claimed within 30 days after the termination of this Agreement shall be deemed to have been abandoned to DEDA and the rights of Vendor to possession thereof shall cease.

19. Vendor shall maintain active membership in the Canal Park Business Association during the term of this Agreement.

20. Vendor agrees to comply in all respects with all federal, state and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter promulgated pertaining to unlawful discrimination.

21. Vendor agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota, City of Duluth, and DEDA and their respective agencies which are applicable to its activities under this Agreement.

22. This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota.

23. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original Agreement or their successors in office.

24. Any waiver by any party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

25. This Agreement constitutes the entire Agreement between DEDA and Vendor and supersedes all prior written or oral agreements and negotiations between the parties relating to the subject matter hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first shown above.

DULUTH ECONOMIC  
DEVELOPMENT AUTHORITY

MICHAEL AMENDOLA

By: \_\_\_\_\_  
Its President

\_\_\_\_\_

By: \_\_\_\_\_  
Its Secretary

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**EXHIBIT A**

**Leased Premises**

