

PLAZA DE LUNA CONCESSIONS AGREEMENT

THIS AGREEMENT (“Agreement”) made and entered into this _____ day of _____, 2022, by and between the Community Redevelopment Agency of the City of Pensacola, Florida, whose address is P.O. Box 12910, Pensacola, Florida 32521, a public body corporate and politic of the State of Florida (“CRA”), and DeLuna’s Chat and Chew LLC, whose address is 8130 Banberry Road, Pensacola FL 32514, a corporation authorized to do business in Florida (“Concessionaire”).

WHEREAS, on October 16, 2017 the parties entered into an agreement for the provision of concession services at Plaza de Luna in the City of Pensacola, as renewed on September 8, 2020 (“Original Agreement”); and

WHEREAS, the Concessionaire has requested the CRA consider its application for a new agreement; and

WHEREAS, the CRA has determined such agreement is in the best interests of the parties.

NOW, THEREFORE, in consideration of the covenants and conditions set forth below and other good and valuable consideration, the parties agree as follows:

ARTICLE I - RECITALS

The recitals above are true and correct and are hereby incorporated as a material part of this Agreement.

ARTICLE II - TERM

The term of this Agreement shall commence upon the date first written above, and shall continue for a period of three (3) years (“Term”).

ARTICLE III - CONCESSIONS REQUIREMENTS AND PROHIBITIONS

Subject to this Agreement, the CRA grants to Concessionaire the exclusive right, privilege and obligation to operate the concession within the CRA facility located in Plaza de Luna, 900 South Palafox Street, Pensacola, Florida.

Concessionaire shall operate a food service concession including all services reasonably necessary for such operation. General merchandise may also be offered for sale. The Concessionaire shall offer, as a minimum, prepared foods, beverages and an assortment of pre-packaged, single serving individually wrapped snacks and candy items. Alcohol sales may be permitted with a Concessionaire-held restaurant license and accessory 2-COP alcoholic beverage license (beer and wine) from the Florida Department of Business and Professional regulation. Consumption of alcoholic beverages must be contained within the Concession Area and may not be allowed in Plaza de Luna. Package alcohol and tobacco sales are prohibited.

The concession shall be operated at such hours as to adequately provide a high level of service to the public using the Plaza de Luna. Concessionaire shall keep its operation open seven (7) days per week during the minimum operating hours as defined below. Concessionaire may extend operating hours in excess of the minimum operating hours required but may not reduce or modify the minimum operating hours as set forth below. Written request for closure must be submitted to and approved by the CRA, in the CRA's sole discretion, in advance of closure events.

The minimum operating hours are as follows:

	In Season (April 1 - October 31)	Off-Season (November 1 - March 31)
Monday -Wednesday	10 a.m. to 6 p.m.	10 a.m. to 5 p.m.
Thursday - Sunday	10 a.m. to 8 p.m.	10 a.m. to 5 p.m.

Concessionaire warrants that all equipment, materials and services furnished will comply with this Agreement. The CRA, or its duly authorized representative, shall at all times have full opportunity to inspect the performance of such services to be provided under this Agreement. Concessionaire shall comply with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to the performance of this Agreement. If the CRA incurs any fines and/or penalties as a result of the acts or omissions of Concessionaire, its employees, invitees, agents and guests, then Concessionaire shall be responsible to pay or reimburse the CRA for all such costs and expenses.

Concessionaire shall use the concession area solely for the operation of a concession and services as set forth in this Agreement and for no other purpose. Concessionaire shall not use, nor permit others to use, the concession area for any commercial or non-commercial purpose, other than the authorized purpose set forth herein, unless the CRA authorizes, in the CRA's sole discretion, said additional use in writing.

Concessionaire is specifically prohibited from operating or selling the following items unless the CRA authorizes, in the CRA's sole discretion, otherwise in writing:

1. Alcoholic beverages (except as permitted under the terms of the Article herein).
2. Tobacco products.
3. Vending machines (dispensing food, drinks, snack items, newspapers, cigarettes, or other sundry items).
4. Other coin operated devices including, but not limited to, pay telephones, video games, and pay televisions.

Should the CRA authorize the Concessionaire to operate or sell any of the above referenced items, it is understood that said authorization will not grant the Concessionaire the exclusive right to operate or sell the item(s) and that the CRA reserves the right to operate or provide under separate contract with others any or all of the above-mentioned exceptions to the concession. Said authorization to operate or sell any of the above items may be revoked at any time by the CRA, in the CRA's sole discretion, by written notification from the CRA Manager to the Concessionaire. Changes in the scope of this Agreement may require the Concessionaire to provide additional or increased limits of insurance coverage.

Should a conflict arise between the Concessionaire and other vendor Concessionaires at Plaza de Luna regarding the scope of the concession privileges, the CRA's decision on the matter shall be final and conclusive.

ARTICLE IV – CONCESSION AREA

The CRA hereby grants permission to Concessionaire to exclusively access and use improvements below at Plaza de Luna ("Concession Area"), specifically described as follows:

Interior Building area:	350 square feet
Storage area:	90 square feet
Brick Patio:	400 square feet (approximately). Concessionaire must maintain pedestrian access through area and access to shower facility in compliance with applicable federal, state and local laws and regulations.
Rear Seating Area:	420 square feet - 6 feet in width by 70 feet in length. Concessionaire must allow pedestrian access through area along the promenade.

A depiction of such Concession Area is shown on Exhibit B attached hereto and incorporated herein by this reference.

ARTICLE V - RESTROOM FACILITIES

The adjoining 390 square foot restroom facilities shall be managed and maintained by the City of Pensacola through an interlocal agreement with the CRA. The facilities shall be accessible to Concessionaire for its use during the course of its operations.

ARTICLE VI - OPERATIONAL STANDARDS

Concessionaire agrees to operate in accordance with this Agreement. The management, maintenance and operation of the Concession Area shall at all times be under the supervision and direction of an active, qualified and competent manager who shall be subject to the direction and control of Concessionaire. The manager shall be assigned to the facility and shall be available during normal business hours. Concessionaire further agrees to assign a qualified employee to be in charge of the Concession Area, services and facilities and to be available in the Concession Area in the absence of the manager.

ARTICLE VII - CONCESSIONAIRE EMPLOYEES

Concessionaire shall ensure that its employees shall be of sufficient number to properly conduct all of the concessions services as contemplated herein. Concessionaire shall ensure all employees maintain their appearance and dress in a clean and neat manner, and further, as Concessionaires in a City of Pensacola park, that they conduct themselves in a professional and courteous matter at all times. Concessionaire shall control the actions of its employees and cooperate with the CRA in controlling any employee whose conduct the CRA feels is detrimental to the best interests of the CRA and the public.

ARTICLE VIII - CONCESSIONAIRE CASH HANDLING

Concessionaire shall at all times observe prudent cash handling procedures, the same of which shall be incorporated into its written policies, rules and regulations covering accounting and handling of all

transactions of merchandise. Concessionaire shall immediately implement any new procedures, or revise any existing procedures, in such a manner as the CRA may, in its sole discretion, require from time to time, provided that the CRA gives written notice thereof to Concessionaire.

Concessionaire's cash registers or other point-of-sale equipment shall be capable of providing the following features:

1. A reasonable number of segregated category addresses to allow for accurate reporting of gross receipts by various merchandise categories.
2. Recording transactions by sequential control number to an audit tape or computer file.
3. Printing a transaction history to tape or computer media by time of day, day, month and year.
4. Printing a customer receipt showing the amount due, amount tendered and change due to the customer as well as the time and date of transaction and name and telephone number of Concessionaire.
5. A fee display of sufficient size and legibility to be readily visible to the customer during a transaction.
6. A reasonable back-up and/or storage of data redundancy to assure sales data are always available and reliable.

ARTICLE IV - OTHER VENDORS PERMITTED

In utilizing the Concession Area, Concessionaire shall not violate in any manner the exclusive use rights that have been granted, or may be granted in the future, by the CRA to other businesses or organizations utilizing the Plaza. Concessionaire acknowledges that other vendors may be present in the vicinity of the Concession Area from time to time.

ARTICLE X - FEES

As consideration for its possessory interest in the Concession area and for the right and privilege of operating a concession therein, Concessionaire shall pay to CRA the greater of a minimum annual privilege fee or percentages of gross concession receipts as follows:

1. The minimum annual privilege fee shall be \$4,000.
2. Percentage of annual gross receipts shall be 8% ("Percentage Gross Receipts").

Concessionaire's obligation to remit payments under this Agreement shall commence upon the date of execution of this Agreement. For purposes of computing Concessionaire's gross receipts for each year of this Agreement, the concession year shall be deemed to commence as of the month in which this Agreement became effective and continue for an additional 11 months, for a total of a 12 month period ("Concession Year"). The term "gross receipts" or "gross revenues" with respect to sales at all locations shall include all charges or other fees charged by Concessionaire on all sales made by Concessionaire of items and all revenues of any kind and character derived from, arising out of, or payable on account of the business conducted by Concessionaire or from the operations of Concessionaire under this Agreement, whether for cash or credit and without any deduction for credit card discounts. The term shall not include any sales tax or excise tax stated separately and collected from the customer for remittance to the taxing authority, tips and gratuities, free or compensatory items for employees of Concessionaire, or any other charges on a reimbursable basis as mutually agreed upon by the CRA Manager and Concessionaire.

Within thirty (30) days following the end of each month this Agreement is in effect, Concessionaire shall pay to the CRA the amount equal to its Percentage Gross Receipts for the previous month (e.g. payment for August due no later than September 30th). At the same time, Concessionaire shall also remit sales tax due on the Percentage Gross Receipts, which constitute its monthly rental payment (“Monthly Installment”). Said Monthly Installment shall be made payable to the “City of Pensacola” and forwarded to the City of Pensacola Finance Department, Attn: Treasury, P.O Box 12910, Pensacola FL, 32502.

At the same time that Concessionaire pays its Monthly Installment, Concessionaire shall provide the CRA Manager with an itemized statement showing its Gross Receipts for the preceding calendar month and a copy of the Concessionaire’s State of Florida Department of Revenue Sales and Use Tax Return Receipt for said month. Except in the event of casualty requiring closure of the Concession Area as provided in Article XXI – DAMAGE CAUSED BY CAUSUALTY, if the Monthly Installments paid to the CRA for the preceding Concession Year were lower than the minimum annual privilege fee, then, at the same time Concessionaire shall provide payment for the difference between the Monthly Installments paid and the minimum annual privilege fee owed, plus applicable sales tax.

Without waiving any other right of action available to the CRA, in the event of default in payment hereunder, said payments shall accrue interest at the rate of 1 ½ percent per month from the due date until receipt of payment. Any partial payments received for said indebtedness shall be applied first to accrued interest and then to principal.

The CRA reserves the right to audit Concessionaire’s books and records, as described in Article XII, BOOKS AND RECORDS, at any time for the purpose of verifying compliance with the terms of this Agreement. Should underpayment exceed 1% of the Monthly Installments or the annual privilege fee owed for the Concession Year, as determined by the audit, Concessionaire shall reimburse the CRA for the cost of the audit. If any audit discloses overpayment of the Monthly Installments or the annual privilege fee, the CRA shall refund the amount of overpayment to Concessionaire within thirty (30) days of said audit.

ARTICLE XI - TAXES AND ASSESSMENTS

Concessionaire shall be responsible for and shall promptly pay all taxes, fees, charges, imposts or levies of any nature, whether general or special, which, at any time, may be in any way imposed by local, state, or federal authorities, or that become a lien upon the Concessionaire, the CRA, and/or the Concession Area pursuant to this Agreement. The CRA warrants and represents that it shall not impose any taxes, assessments, or charges, except those imposed on all other business operating in the City of Pensacola, upon Concessionaire during the term of this Agreement.

ARTICLE XII - BOOKS AND RECORDS

Concessionaire must maintain full and accurate books of account and records in a form acceptable to the CRA, from which Gross Receipts, can be determined according to standard and accepted accounting practices. These books and records shall be stored for a period of at least five (5) years following the end of each Concession Year and be made available to the CRA upon request.

ARTICLE XIII - PRICES OF GOODS AND SERVICES

Prices of goods and services charged by Concessionaire shall be as provided in Exhibit A, Concession Products, Menu and Pricing, attached hereto and incorporated herein by this reference, unless otherwise approved by the CRA. Concessionaire shall provide the CRA with a statement of prices of goods and services within fifteen (15) days of a written request by the CRA.

ARTICLE XIV - SECURITY DEPOSIT

Prior to commencing operations pursuant to this Agreement, Concessionaire must post with the CRA, a security deposit or letter of credit in the amount of \$1,000 to cover Concessionaire's performance of all of its monetary or other obligations to the CRA hereunder. If a letter of credit is to be provided by Concessionaire in lieu of a security deposit, it shall be in a form and from an institution acceptable to the CRA.

The deposit will be returned in full without interest at the termination of the Agreement upon verification by the CRA that the Concessionaire is in compliance with terms and obligations herein. The CRA may, but will not be obligated to, apply all or portions of the deposit on account of Concessionaire's obligations.

ARTICLE XV - INSURANCE AND INDEMNIFICATION

At all times during this Agreement, the Concessionaire shall procure and maintain insurance of the types and to the limits specified. The term CRA as used in this Article is defined to mean the CRA itself, the City of Pensacola and any subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives and agents.

Insurance shall be issued by an insurer whose business reputation; financial stability and claims payment reputation is satisfactory to the CRA, for the CRA's protection only. Unless otherwise agreed, the amounts, form and type of insurance shall conform to the following minimum requirements:

1. Worker's Compensation. Concessionaire shall purchase and maintain Worker's Compensation Insurance Coverage for all Worker's Compensation obligations legally required by law. Additionally, the policy, or separately obtained policy, must include Employer's Liability Coverage of at least One Hundred Thousand Dollars (\$100,000) each person-accident, One Hundred Thousand Dollars (\$100,000) each person disease and Five Hundred Thousand Dollars (\$500,000) aggregate-disease.
2. Commercial General, Automotive, and Umbrella Liability Coverage. The Concessionaire shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability policies filed by the Insurance Services Office. The CRA shall be an Additional Insured and such coverage shall be at least as broad as that provided to the Named Insured under the policy for the terms and conditions of this Contract. The CRA shall not be considered liable for premium payment, entitled to any premium return or dividend and shall not be considered a member of any mutual or reciprocal company. If the required limits of liability required should become impaired by reason of any claim, then the Concessionaire agrees to have such limits reinstated under the policy.

- Commercial General Liability. Coverage must be provided, including bodily injury and property damage liability for the concession area, operations, products and completed operations, and independent contractors. The coverage shall be written on an occurrence-type basis. Minimum limit of \$1,000,000 per occurrence and in the aggregate must be provided. Fire Legal Liability insurance must be endorsed on this policy with a minimum limit of \$100,000 per occurrence. The CRA must be listed as an additional insured.
- Automobile Liability Insurance. Coverage must be provided, including bodily injury and property damage arising out of operation, maintenance, or use of owned, non-owned and hired automobiles as applicable. Minimum limits of \$300,000 CSL must be provided.
- Umbrella Liability Insurance. Coverage shall not be more restrictive than the underlying insurance policy coverages. The coverage shall be written on an occurrence-type basis.
- Liquor Liability Insurance. If alcohol will be furnished, sold or consumed at the concession area, Liquor Liability Insurance must be provided, including coverage for bodily injury and property damage arising out of the furnishing of alcoholic beverages. Minimum limits for this coverage are \$1,000,000 each common cause and in the aggregate. The CRA must be listed as an additional insured.

When alcoholic beverages are to be furnished, sold or consumed at the concession area, the Concessionaire shall not furnish, or sell to or permit its employees, servants, subcontractors, or agents to furnish or sell alcoholic beverages to, or to allow such alcoholic beverages to be consumed by any person who is not lawful drinking age and shall take responsible actions necessary to avoid serving any person habitually addicted to the use of any or all alcoholic beverages, or any person who is, or who would reasonably be expected to be intoxicated. Further, the Concessionaire shall comply whether legally required to do so or not, with Florida Statute 561.705, "Responsible Vendor Qualifications."

3. Property Insurance. To the extent it is available, the CRA will maintain property insurance on the insurable portions of the concession area. The CRA will not maintain property insurance on Concessionaire's contents.
4. Certificates of Insurance. Required insurance shall be documented in the Certificates of Insurance which provide that the CRA shall be notified at least thirty (30) days in advance of cancellation, non-renewal or adverse change or restriction in coverage. The Community Redevelopment Agency and the City of Pensacola shall be named in each Certificate as an Additional Insured and this Agreement shall be listed. If required by the CRA, Concessionaire shall furnish copies of Concessionaire's insurance policies, forms, endorsements, jackets and items forming a part of, or relating to such policies. Certificates shall be on the "Certificates of Insurance" form equal to, as determined by the CRA, an ACORD 25. Concessionaire shall replace any canceled, adversely changed, restricted or non-renewed policies with new policies acceptable to the CRA and shall file with the CRA Certificates of Insurance under the new policies prior to the effective date of such cancellation, adverse change, or restriction. If any policy is not timely replaced, in a manner acceptable to the CRA, Concessionaire shall, upon instructions of the CRA, cease all operations under the Concession Agreement until directed by the CRA, in writing, to resume operations.
5. Insurance of Concessionaire Primary. Concessionaire required coverage shall be considered primary, and all other insurance shall be considered as excess, over and above Concessionaire's

coverage. Concessionaire's policy of coverage will be considered primary as it relates to all provisions of the Concession Agreement.

6. Loss Control and Safety. Concessionaire shall retain control over its employees, agents, servants and subcontractors, as well as control over its invitees, and its activities on and about the subject concession area and the manner in which such activities shall be undertaken and to that end, Concessionaire shall not be deemed to be an agent of the CRA. Precaution shall be exercised at all times by Concessionaire for the protection of all persons, including employees and property. Concessionaire shall make special effort to detect hazards and shall take prompt action where loss control/safety measures should reasonably be expected.
7. Hold Harmless. Concessionaire shall hold harmless the CRA, City of Pensacola, its subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives and agents from any and all claims, suits, actions, damages, liability and expense in connection with loss of life, bodily or personal injury, or property damage including loss of use thereof, directly or indirectly caused by, resulting from, arising out of, or occurring in connection with this Concession Agreement, whether occasioned wholly, or in part, by negligence of Concessionaire. Concessionaire's obligation shall not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance.
8. Payment on Behalf of CRA. Concessionaire agrees to pay on behalf of the CRA, as well as provide a legal defense for the CRA, both of which will be done only if and when requested by the CRA, for all claims as described in the Hold Harmless subparagraph. Such payment on behalf of the CRA shall be in addition to any and all other legal remedies available to the CRA and shall not be considered to be the CRA's exclusive remedy.

ARTICLE XVI - CONDITION OF CONCESSION AREA

The Concession Area is accepted by Concessionaire "AS IS", without any additional services or improvements to be rendered by CRA. Neither the CRA nor the CRA's officers, employees or agents have made any representations or promises whatsoever with respect to the Concession Area or services to the Concession Area or services to be provided by the CRA in connection with the use, except as expressly set forth herein.

ARTICLE XVII - CONCESSIONAIRE'S IMPROVEMENTS

Concessionaire shall be required, at Concessionaire's sole cost and expense, to install or construct within the Concession Area additional improvements necessary to transact Concessionaire's business under this Agreement with prior written consent of CRA.

Title to the improvements shall vest with the CRA upon completion. Concessionaire shall submit to CRA detailed plans and specifications for any contemplated improvements or alterations, any permanent interior improvements, and any fixture.

ARTICLE XVIII - UTILITIES, MAINTENANCE AND CUSTODIAL SERVICES

Utilities. The CRA shall provide, at no cost to the Concessionaire, existing plumbing, sewer, gas and electrical conduits and installations to the Concession Area. Any additional requirements shall be the responsibility of the Concessionaire. The CRA shall not be obligated to provide for the extension of these utilities or to provide for the installation of any other utilities. The Concessionaire, at the Concessionaire's sole cost and expense, shall arrange for the extension of these utilities to the Concession Area as needed. Throughout the term of this Agreement, the Concessionaire shall not render any utility lines inaccessible. Concessionaire shall be responsible for the maintenance and repair of all utility lines from the above referenced point, up to and including, the distribution system inside the Concession Area.

The CRA reserves the right to install, maintain, repair, replace, or remove and replace any utility lines located on the Concession Area as necessary or appropriate, along with the right to enter the Concession Area at all reasonable times in order to accomplish the foregoing, provided, however, that the CRA shall take reasonable precautions to avoid the disruption of the Concessionaire's authorized activity. The CRA agrees to keep and maintain in reasonable condition all trunk water and sewer mains, supply mains and electrical power to the Concession Area.

Due to the unique nature of the Park, the CRA is responsible for the following utilities for the Concession Area: electric, natural gas, water and sewer. Concessionaire is responsible for all others, including but not limited to, garbage, telephone, internet access, alarm system, etc.

Maintenance. During the term of this Agreement, the CRA shall provide, at its expense, structural repairs to the roof, floor, exterior walls and windows of the Concession Area. Should the CRA be required to make any repairs or improvements under the provisions herein contained, the CRA shall not be liable to Concessionaire for any damage caused by disrepair of any kind until the CRA has had reasonable opportunity to perform repairs after being notified in writing of the need for same by Concessionaire.

Concessionaire, at its own expense shall maintain and repair all interior and exterior areas assigned for the Concession, including all equipment and furnishings therein. Concessionaire shall be required to keep all such areas in good operating condition and repair at all times. Items the Concessionaire shall be required to maintain and make necessary repairs to shall include, but not be limited to, the interior windows; doors and entrances; storefronts; signs; floor coverings; interior walls and ceilings; the interior surface; the surfaces of interior columns exclusive of structural deficiencies; and lighting within the Concession Area.

Concessionaire agrees to keep the Concession Area in a neat, clean, safe, sanitary and orderly condition at all times. Concessionaire agrees to provide, at its own expense, such janitorial and cleaning services and supplies for the maintenance of the Concession Area, including exterior window cleaning and pest control services. Should Concessionaire fail to maintain the Concession Area in conformance with the terms and conditions of this Article, the CRA reserves the right to take any action to cure said failure within seven (7) days written notice. The Concessionaire shall pay to the CRA an amount equal to the CRA's cost for such actions plus a ten percent (10%) administrative charge.

ARTICLE XIX - SIGNS

Concessionaire agrees that no signs, logos, or advertising displays shall be painted on or erected, in any manner, upon the Concession Area or in or on any improvements or additions to the Concession Area, without prior approval of the CRA.

ARTICLE XX- DAMAGE TO CONCESSION AREA

Concessionaire shall be liable for any damage, except ordinary wear and tear, to the Concession Area caused by Concessionaire, its partners, officers, agents, employees, invitees, contractors, subcontractors, assigns, or anyone acting under its direction and control. All repairs for which Concessionaire is liable shall be made by Concessionaire with due diligence and in a manner acceptable to the CRA or by the CRA, at the expense of the Concessionaire, in the CRA's sole discretion. If Concessionaire fails to perform such repairs upon written notification from the CRA, then such repairs may be performed by the CRA, at its discretion. In such instance, the Concessionaire shall reimburse the CRA for the cost of the repairs plus a ten percent (10%) administrative charge. Such reimbursement shall be due no later than the date of the next Monthly Installment.

The CRA shall not be liable to Concessionaire, the Concessionaire's employees, patrons, or vendors for any damage to their merchandise, trade fixtures, or personal property caused by water leakage from the roof, water lines, sprinkler, or venting equipment, unless caused by the sole negligence of the CRA.

All work performed by Concessionaire shall be of first class quality in both materials and workmanship, made in compliance with federal, state and local law and inspected and approved by the CRA Manager or his/her designated representative.

ARTICLE XXI – DAMAGE CAUSED BY CAUSUALTY

In the event that the Concession Area shall be damaged by fire or other casualty, Concessionaire shall give immediate notice thereof to the CRA Manager. The damages shall be repaired at the expense of the CRA unless the casualty is the fault of Concessionaire, its partners, officers, agents, employees, invitees, contractors, subcontractors, assigns, or anyone acting under its direction and control.

The CRA shall proceed with the repairs without unreasonable delay unless the CRA determines that the damage is so extensive that repair or rebuilding is not feasible. If the Concession Area is damaged to such an extent that it shall not be rebuilt then, at the option of the CRA and upon notice to Concessionaire, this Agreement shall cease and come to an end and the Monthly Installments, annual privilege fees and/or other charges due hereunder shall be apportioned and paid up to the date of such damage.

If the CRA elects to repair the Concession Area, as provided in this Article, then it shall be obligated only to restore the Concession Area to substantially the condition that existed prior to the casualty event. At such time, Concessionaire or the CRA, in the CRA's sole discretion and at the expense of Concessionaire, shall also proceed with due diligence to restore signs, fixtures, furnishings, improvements and other items provided or installed by Concessionaire, to substantially the condition that such existed prior to the casualty event. Repairs to the Concessionaire's equipment, however, shall be made by the Concessionaire.

If the Concession Area is deemed inoperable, Monthly Installments shall be abated for the duration in which the Concession Area was inoperable and the annual privilege fee shall not apply for the Concession Year impacted.

ARTICLE XXII - DEFAULT AND REMEDIES

The following shall constitute defaults by Concessionaire:

1. Any failure by Concessionaire to perform any covenant or obligation required by this Agreement, specifically such regarding provision of services, hours of operation and other terms made to ensure a high quality concessions operation for the City of Pensacola Plaza de Luna Park, and the failure to cure said default within a period of five (5) days following written notice.
2. The failure to pay any fees owed under this Agreement, when due, and the failure to cure said default within a period of thirty (30) days following written notice.
3. The failure to perform any other conditions pursuant to this Agreement and the failure to cure said default within a period of thirty (30) days following written notice.
4. Concessionaire undertakes any other commercial or non-commercial service or activity not specifically permitted under this Agreement.
5. If during the term of this Agreement Concessionaire shall:
 - (a) Apply for, or consent to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its interests;
 - (b) File a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;
 - (c) Make a general assignment for the benefit of creditors;
 - (d) File a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;
 - (e) File an answer admitting the material allegations of a petition filed against any said assignee or sub-lessee in any bankruptcy, reorganization or insolvency proceedings; or if during the term of this Agreement an order, judgment, or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating Concessionaire bankrupt or insolvent,

or approving a petition seeking a reorganization of Concessionaire, and such order, judgment, or decree shall continue un-stayed and in effect for any period of ninety (90) consecutive days.

6. Abandonment of Concessionaire's operations, which shall be defined as Concessionaire's failure to conduct regular and continuing operations in accordance with the requirements of this Agreement for one (1) month.
7. The management, ownership, or operation of the Concessionaire should change to such an extent that it would not satisfactorily perform.

If Concessionaire defaults, the CRA reserves the right to seek all remedies available under law and the failure of the CRA to employ a particular remedy shall not be regarded by the Parties as a waiver of that or any other available remedy.

In the event of a bankruptcy filing by or on behalf of Concessionaire as debtor, the Parties hereto agree that this Agreement shall be construed to be a nonresidential lease of real property subject to treatment in accordance with 11 U.S.C., Section 365(d).

ARTICLE XXIII - TERMINATION WITHOUT CAUSE

CRA may terminate this agreement without cause upon thirty (30) days prior written notice. The CRA shall not be responsible to the Concessionaire for any lost profits, expenses, liabilities or claims whatsoever that may result from termination by the Concessionaire or the CRA pursuant to this Article.

ARTICLE XXIV - INSPECTION

The CRA and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right to enter upon the Concession Area for the following purposes:

1. To inspect the Concession Area to determine whether Concessionaire has complied with and is complying with the terms and conditions of this Agreement.
2. To perform maintenance and make repairs in any case where Concessionaire is obligated but has failed to do so.
3. To perform any and all things which the Concessionaire is obligated to and has failed after reasonable notice so to do.
4. In the exercise of CRA or City of Pensacola's police powers.

ARTICLE XXV - QUIET ENJOYMENT

The CRA represents that, pursuant to the terms of this Agreement, Concessionaire shall peaceably have, possess and use the Concession Area, as provided herein, without hindrance or disturbance from the CRA.

ARTICLE XXVI - NON-DISCRIMINATION

Concessionaire shall not discriminate on the basis of any class protected by federal, state, or local law in the performance of this Agreement.

ARTICLE XXVII - AUTHORIZATION

The CRA represents that it has the authority to enter into this Agreement and grant the rights contained herein to Concessionaire.

If Concessionaire is a limited or general partnership, the undersigned warrants and represents that (1) he/she is a general partner or agent of said partnership; (2) his/her execution of this Agreement has been authorized by all of the general partners and is in the usual course of the partnership's business; and (3) by his/her execution of this Agreement, the partnership shall be deemed a signator to this Agreement in the same fashion as if all of the general partners of the partnership had executed this Agreement.

If Concessionaire is a corporation, the undersigned warrants and represents that: (1) he/she is an agent of the corporation; (2) he/she is authorized to execute this Agreement on the corporation's behalf; and (3) the corporation shall be bound as a signator to this Agreement by his/her execution of it.

ARTICLE XXVIII - WAIVER

Should Concessionaire breach any of its obligations hereunder, the CRA nevertheless may thereafter accept from Concessionaire any payment or payments due hereunder, and continue this Agreement in effect, without in any way waiving the CRA's right to exercise its default rights hereunder, or any other remedies provided by law, for said breach. In addition, any waiver by the CRA of any default, breach, or omission of Concessionaire under this Agreement shall not be construed as a waiver of any subsequent or different default, breach, or omission.

ARTICLE XXIX - NOTICES

All notices by either party to the other shall be made either by utilizing the registered or certified mail of the United States of America, postage prepaid, or by utilizing any other method of delivery requiring signature for receipt, and such notice shall be deemed to have been delivered and received on the date of such utilization.

All notices to the CRA shall be mailed to:

CRA Manager
Community Redevelopment Agency, City of Pensacola
222 W. Main St., 3rd Floor
Pensacola, Florida 32502

All notices to Concessionaire shall be mailed or emailed to:

Shawn Goad, Owner
DeLuna's Chat and Chew, LLC.
8130 Banberry Road
Pensacola, FL 32514
Shawn.g.delunas@gmail.com

The parties from time to time may designate in writing changes in the address stated.

ARTICLE XXX - RELATIONSHIP OF PARTIES

It is understood that the CRA is not in any way or for any purpose partner or joint-venturer with, or agent of, Concessionaire in the use of the Concession Area.

ARTICLE XXXI - PARTIAL INVALIDITY

If any term or condition of this Agreement or the application thereof to any person or event shall to any extent be deemed invalid and unenforceable, the remainder of this Agreement and the application of such term, covenant, or condition to persons or events other than those to which it is held unenforceable shall not be affected and each term, covenant and condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE XXXII - SUCCESSORS

The provisions, covenants and conditions of this Agreement shall bind and inure to the benefit of the legal representatives, successors and assigns of each of the parties.

ARTICLE XXXIII - ASSIGNMENT

The rights and privileges conferred by this Agreement shall not be assigned or transferred without the written consent of the CRA, which consent shall not be unreasonably withheld.

ARTICLE XXXIV - NO SUBLEASE

Concessionaire shall not sublease any portion of this Agreement or the Concession Area.

ARTICLE XXXV - ATTORNEY'S FEES

In no event shall the CRA be responsible for any attorneys' fees, costs, or other expenses in connection with any claim or proceeding arising out of this Agreement.

ARTICLE XXXVI - SURRENDER UPON TERMINATION

The City owns the land and the buildings and improvements on the Concession Area. Upon expiration or termination of is Agreement, all buildings, fixtures and other improvements built on, or made to, the Concession Area by the Concessionaire shall remain on the Concession Area and shall immediately become the exclusive property of the CRA except that, if so requested by the CRA, the Concessionaire shall remove any improvements built on or made to the Concession Area by Concessionaire within ten (10) days after the expiration of the Agreement. Upon surrender of the Concession Area, Concessionaire shall remove all equipment, trade fixtures and personal property belonging to it or leased from third parties which have not assumed the characteristics of a permanent fixture. All personal property of Concessionaire not removed from the Concession Area upon termination or natural expiration of this Agreement shall be deemed abandoned and

shall become property of the CRA, unless the CRA elects not to assume ownership, in which case the CRA may dispose of the same or store the same for Concessionaire's benefit, in either case at Concessionaire's sole cost and expense.

ARTICLE XXXVII – RESERVED

ARTICLE XXXVIII - RENEWAL

Concessionaire has no guaranteed or preferential right, as against other third parties, of re-letting the Concession Area following the termination of this Agreement. However, no less than six (6) months prior to the expiration of the initial Term, Concessionaire may request renewal of the Agreement by giving written request to CRA, provided that Concessionaire is not in default of any of the provisions of this Agreement. Should the CRA, in the CRA's sole discretion, approve the renewal request, the Agreement may be renewed for three (3) years commencing the day after the initial Term expires.

ARTICLE XXXIX - GOVERNING LAW

The law of the State of Florida shall be the law applied in the resolution of any action, claim or other proceeding arising out of this contract.

ARTICLE XL - VENUE

Venue for any claim, action or proceeding arising out of this contract shall be Escambia County, Florida.

ARTICLE XLI - PUBLIC RECORDS

The parties acknowledge and agree to fulfill all obligations respecting required contract provisions in any contract entered into or amended after July 1, 2016, in full compliance pursuant to Section 119.0701, *Florida Statutes*, and obligations respecting termination of a contract for failure to provide public access to public records. The parties expressly agree specifically that the contracting parties hereto shall comply with the requirements within Attachment "A" attached hereto and incorporated by reference.

ARTICLE XLII - HOLDING OVER

If Concessionaire continues to access the Concession Area after the expiration of this Agreement without any written renewal thereof, such holding over shall not be deemed as a renewal or extension of this Agreement but shall create only a tenancy from month-to-month which may be terminated at any time by the CRA upon thirty (30) days written notice. Such holding over shall otherwise be upon the same terms and conditions as set forth in this Agreement.

ARTICLE XLIII - HEADINGS

The headings contained in this Agreement are inserted only as matter of convenience and for reference and do not define or limit the scope or intent of any provision of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction of said terms and provisions.

ARTICLE XLIV - ENTIRE AGREEMENT

This writing, together with the attached Exhibits, constitutes the entire agreement of the parties. This Agreement supersedes all prior concession agreements, if any, between the CRA and Concessionaire, and no representations, warranties, inducements, or oral agreements that may have been previously made between the parties shall continue in effect unless stated herein. This Agreement shall not be modified except in writing, signed by the CRA and Concessionaire.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in triplicate and sealed the day and year first above written.

**Community Redevelopment Agency of
the City of Pensacola, Florida**

Attest:

Teniade Broughton, CRA Chair

City Clerk

SEAL

DeLuna's Chat and Chew, LLC.

Member

Member

Printed Name: _____

Printed Name: _____

CORPORATE SEAL

Approved as to substance:

Legal in form and valid as drawn:

CRA Manager

City Attorney

Attachment "A"

PUBLIC RECORDS: Contractor shall comply with Chapter 119, Florida Statutes. Specifically, Contractor shall:

- A.** Keep and maintain public records required by the City to perform the service.
- B.** Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C.** Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following the completion of the Contract if Contractor does not transfer the records to the City.
- D.** Upon completion of the Contract, transfer, at no cost, to the City, all public records in possession of Contractor or keep and maintain public records required by the City to perform the service. If Contractor transfers all public records to the City upon completion of the Contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the Contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request of the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

Failure by Contractor to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Contract by the City.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE PUBLIC RECORDS COORDINATOR AT:

THE OFFICE OF THE CITY CLERK, (850) 435-1715

PUBLCRECORDS@CITYOFPENSACOLA.COM

222 WEST MAIN STREET, PENSACOLA, FL 32502

Revised 1/12/2021

EXHIBIT A

CONCESSION PRODUCTS, MENU AND PRICING








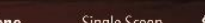

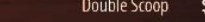


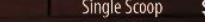
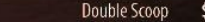

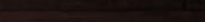
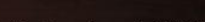
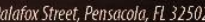
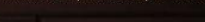






















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EXHIBIT B BUILDING LAYOUT

