

## PLAZA DE LUNA CONCESSIONS AGREEMENT

THIS AGREEMENT ("Agreement") made and entered into this 16th day of October, 2017, 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 22, 2013 the parties entered into an agreement for the provision of concession services at Plaza de Luna in the City of Pensacola, as amended on April 2, 2014 ("Original Agreement"); and

**WHEREAS**, pursuant to Article XXXIX of the Original Agreement, 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 One Hundred Dollars (\$100.00), the receipt and sufficiency of which is hereby acknowledged, and 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 perform all requirements, services and obligations as provided in Exhibit A attached hereto and incorporated herein by this reference. Concessionaire warrants that all equipment, materials and services furnished will comply with the Exhibit A and 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.

Concessionaire shall use the concession area solely for the operation of a concession and services as set forth in Exhibit A hereto 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 Exhibit A).
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 Administrator 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
Men's & Women's Restrooms:	195 square feet/each
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 REQUIREMENTS

Concessionaire shall provide access to the men's and women's restrooms during the operation of the Plaza's interactive fountain and concession service. Concessionaire shall regularly inspect the

restrooms to assure they are clean and maintained for the public during all operational hours and provide all services and supplies necessary for such operation.

#### 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 at all times 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 so as 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 that cooperate with the CRA in controlling any employee whose conduct the CRA feels is detrimental to the best interests of the CRA and public. Concessionaire shall maintain at all times adequate fidelity bonds on its employees who handle cash.

#### 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 shall provide in its cash registers or other point-of-sale equipment the following features:

1. A reasonable number of segregated category addresses to allow for accurate reporting of gross receipts by various merchandise categories.
2. Capable of recording transactions by sequential control number to an audit tape or computer file.
3. Capable of printing a transaction history to tape or computer media by time of day, day, month and year.
4. Capable of 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.

#### 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 the CRA the greater of a minimum annual privilege fee or percentages of gross concession receipts as follows:

1. The minimum annual privilege fees for the term of this Agreement is \$4,000.
2. Percentages of annual gross receipts for the term of the Agreement are: (s) prepared food and pre-packaged snack and candy items (8%); and (b) general merchandising items (8%).

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 at midnight each year this Agreement is in effect and shall be deemed to terminate at 11:59 PM of the following year ("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, and regardless of whether Concessionaire ultimately collects the monies owed for said sales from the customer involved. Any gross receipts included in the formula for determining percentage rentals owed the CRA and determined by Concessionaire at a later date to be uncollectible shall not offset future percentage fees or privilege fees owed the CRA. The term shall also include the value of items when given by Concessionaire to anyone without charge except as provided herein. 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 Administrator and Concessionaire. All gross receipts shall be deemed to be received at the time of the determination of the amount due to Concessionaire, not at the time of billing or payment, unless specifically authorized by the CRA Administrator.

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 payment based on its gross concession revenue for previous month (e.g. payment for August due no later than September 30<sup>th</sup>). Said monthly payments shall be made to the CRA Office. At the same time, Concessionaire shall also remit sales tax due on the monthly rental amount. Said monthly installments shall be made payable to the "City of Pensacola" and forwarded to the office of the CRA Administrator.

At the same time that Concessionaire pays its monthly installment of its percentage payment based on its gross concession receipts, Concessionaire shall provide the CRA Administrator with an itemized statement showing the amount of gross revenues, as defined herein, Concessionaire enjoyed during the preceding calendar month, broken down by gross revenues derived from (a) 8% food item



sales; and (b) 8% merchandising sales during said month, and a copy of the Concessionaire's State of Florida Department of Revenue Sales and Use Tax Return Receipt for said month. Simultaneously with its payment of percentage fees for the last month of the Concession Year, Concessionaire shall furnish the CRA with a written statement signed by the Chief Financial Officer stating that the percentage fees paid to the CRA during the preceding Concession Year were a true and accurate reflection of the revenue generated from the concession and that the payments were made in accordance with the terms and conditions of the Agreement. Additionally, if the percentage fees paid to the CRA for the preceding Concession Year were lower than minimum annual privilege fee as required from Concessionaire for the same year, at the same time as providing its payment of percentage fees for the last month, Concessionaire shall provide payment for the difference between the percentage fee 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 of any and all fees, charges, or taxes hereunder, or in the event any payments required under this Agreement are not received when due, said payments shall accrue interest at the rate of one and one-half 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.

#### ARTICLE XI - TAXES AND ASSESSMENTS

Concessionaire shall be responsible for and shall promptly pay all property taxes; personal property taxes; all sales and other taxes measured by or related to the payments hereunder required under law; all license fees; and any and all other taxes, 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, the concession area, or any improvements thereon, by reason of this Agreement or Concessionaire's activities in, or improvements upon, 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/AUDITS

Concessionaire must maintain full and accurate books of account and records, in a form acceptable to the CRA, from which gross receipts, as defined herein, and the amount of percentage fees owed the CRA hereunder, can be determined according to standard and accepted accounting practices. The books of account and records that Concessionaire must maintain must include, but not be limited to, sales slips, cash register tapes, credit card invoices, monthly sales tax returns, sales and disbursement journals, general ledgers, bank statements, bank books, bank deposit slips and annual federal income tax returns. In lieu of maintaining the books of account and records required herein, Concessionaire may maintain computer records instead, provided that the CRA determines, in its sole discretion, in advance, that said computer records are a reasonably equivalent alternative to the maintenance of books and records otherwise required herein. These books and records shall be stored in Pensacola, Florida, for a period of at least five (5) years following the end of each annual period of this Agreement and be made available to the CRA upon request.

The CRA reserves the right to audit Concessionaire's books and records of gross receipts at any time for the purpose of verifying gross receipts hereunder. If any audit shows percentage payments and other charges that should have been paid to the CRA by the Concessionaire pursuant to the Agreement

were understated or underpaid for the annual period involved, Concessionaire shall, within thirty (30) days' notice of any such deficiency, pay to the CRA the full amount underpaid, plus one and one-half percent (1.5%) interest per month on said underpayment from the time said underpayment should have been paid to the time said underpayment is fully paid. In addition, if the amount of underpayment exceeds one percent of the total percentage payment that was owed by Concessionaire to the CRA for the annual period involved, Concessionaire, in addition to paying the CRA the underpayment owed, shall reimburse the CRA for the cost of the audit. If any audit discloses overpayment of the percentage payments paid to the CRA by Concessionaire, the CRA shall refund the amount of overpayment to Concessionaire within thirty (30) days of said audit.

#### ARTICLE XIII - NOTICES OF PRICES

Concessionaire shall provide the CRA with a statement of prices of goods and services provided pursuant to this Agreement within fifteen (15) days of a written request for said prices 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 for the entire term. 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 Community Redevelopment Agency of the City of Pensacola itself, any subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives and agents. The term CRA is also defined to mean the City Council of the City of Pensacola in its capacity as the Community Redevelopment Agency, the City of Pensacola itself, 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. The acceptance of permission to the concession area “as-is” by the Concessionaire shall be conclusive evidence that the concession area existed in an acceptable and safe condition at the time of acceptance by the Concessionaire regardless of any subsequent claim by the Concessionaire to the contrary. The CRA shall have the right to construct or install over, in, under, or through the concession area new lines, pipes, mains, wires, conduits and



equipment, provided, however, that such repair, alteration, replacement, or construction shall not unreasonably interfere with Concessionaire's use of the concession area. The CRA will repair any damage resulting from such CRA activities.

#### ARTICLE XVII - CONCESSIONAIRE'S IMPROVEMENTS

Concessionaire may at Concessionaire's sole cost and expense install or construct within the concession area additional improvements necessary to transact Concessionaire's business under this Agreement. Title to the improvements shall vest with the CRA upon completion. However, Concessionaire shall not construct any improvements or alterations or alter or add to any improvements without prior written consent of CRA. 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 Concessionaire shall be required to construct all improvements and install all furnishings, equipment, fixtures, etc. that may be required for its operation. 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 invoice the Concessionaire for utilities used by Concessionaire. The Concessionaire shall be solely responsible for the cost of telephone services from the concession area and shall obtain a separate account accordingly. 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.

Maintenance. During the term of this Agreement, the CRA shall provide, at its expense, (a) structural repairs to the roof, floor, exterior walls and windows of the concession area, and (b) general maintenance and upkeep of the Plaza de Luna open park area. 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. 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 and serving Concessionaire.

Custodial. Concessionaire agrees to keep all of the concession area in a neat, clean, safe, sanitary and orderly condition at all times; that it will keep such areas free at all times of all paper, rubbish and debris; and that Concessionaire will deposit all trash and debris resulting from its operations in the concession area in containers approved by the CRA. Concessionaire agrees to provide, at its own expense, such janitorial and cleaning services and supplies for the maintenance of the concession area. Concessionaire also agrees to keep and maintain the concession area in a clean, neat and sanitary condition and attractive appearance and shall additionally provide: (a) building exterior window cleaning, (b) pest control services for the concession area and (c) waste disposal.

General. Should Concessionaire fail to maintain the concession area in conformance with the terms and conditions of this article within a period of seven (7) days following written notice of such failure, the CRA reserves the right to take any action to cure said failure. Should the CRA take action to cure failures, 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 on the concession area, without the prior written approval of the CRA, and said approval shall not be unreasonably withheld; and that signs identifying Concessionaire shall conform to reasonable standards established by the CRA, with respect to type, size, design, condition and location.

#### ARTICLE XX- DAMAGE TO CONCESSION AREA

Concessionaire shall be liable for any damage to the concession area and fixtures therein and to the structure or improvements and to any improvements thereon caused by Concessionaire, its partners, officers, agents, employees, invitees, contractors, subcontractors, assigns, or anyone acting under its direction and control, ordinary wear and tear excepted. All repairs for which Concessionaire is liable shall be made by Concessionaire with due diligence and in a manner acceptable to the CRA unless the CRA determines that it is more appropriate for the CRA to make the repairs. In such a case, the CRA shall make the repairs at Concessionaire's expense. All repairs for which Concessionaire is liable and which are not undertaken after the CRA has given Concessionaire notice to so do shall be performed by the CRA, in which event Concessionaire shall reimburse the CRA for the cost thereof, plus a ten percent (10%) administrative charge, and said amount shall be due no later than the date of the next minimum guarantee payment.

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, its employees or agents.

#### ARTICLE XXI - REPAIRS

In the event that structural or permanent portions of the concession area shall be partially damaged by fire or other casualty, Concessionaire shall give immediate notice thereof to the CRA Administrator.

The same shall be repaired at the expense of the CRA unless fire or other casualty is the fault of Concessionaire, its partners, officers, agents, employees, invitees, contractors, subcontractors, assigns, or anyone acting under its direction and control, in which case Concessionaire shall be liable for expense of the repairs. In any event, 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.

From the date of such casualty until the concession area is repaired, monthly minimum privilege payments hereunder, but not the payment of the percentage of gross receipts, shall abate in such proportion as the part of the concession area so destroyed or rendered inoperable bears to the concession area assigned, provided, however, that if a portion of the concession area shall be so slightly damaged in any such casualty as not to be rendered unfit for occupancy, the monthly minimum privilege payments hereunder shall not cease or be abated during any repair period.

In the event that the damage to the concession area should be so extensive as to render it inoperable, the monthly minimum privilege payments for such area shall cease until such time as it shall again be put in repair. However, in the event the concession area are damaged by fire or other casualty to such an extent as to render it necessary in the sole discretion of the CRA not to rebuild the same then, at the option of the CRA and upon notice to Concessionaire, this Agreement as it applies to said concession area shall cease and come to an end, and the privilege and percentage payments hereunder shall be apportioned and paid up to the date of such damage. If the CRA elects to rebuild said concession area, the CRA shall notify Concessionaire of such intention within thirty (30) days of the date of the notice of damage; otherwise the Agreement as it applies to said concession area shall be deemed canceled and of no further force or effect.

The CRA's obligations to rebuild or repair the concession area under this Article shall in any event be limited to restoring the concession area to substantially the condition that existed prior to the commencement of construction of improvements by Concessionaire. Concessionaire agrees that if the CRA elects to rebuild or repair as provided in this Article, then Concessionaire will proceed with reasonable diligence and, at its sole cost and expense, rebuild, repair and restore its signs, fixtures, furnishings, equipment, improvements and other items provided or installed by Concessionaire, in or about the concession area, in a manner and to a condition at least equal to that which existed prior to its damage or destruction.

Prior to making any repairs other than to its own equipment, Concessionaire shall discuss the same with the CRA Administrator to determine whether the CRA shall make repairs to the concession area using CRA's personnel and charging Concessionaire its standard rates for such service, including overhead, and including all costs for materials. Should the CRA elect not to perform the repairs to the concession area then all work performed by Concessionaire must be inspected and approved by the CRA Administrator or his/her designated representative.

All repairs performed by Concessionaire, or on its behalf by an authorized contractor, shall be of first class quality in both materials and workmanship. All repairs, and the use of an independent contractor shall be made in conformity with the rules and regulations prescribed from time to time by federal, state, or local authorities having jurisdiction over the work in the concession area.

## ARTICLE XXII - DEFAULT AND REMEDIES

The following shall constitute defaults by Concessionaire:

1. As the provision of concessions as contemplated herein is a material inducement to this Agreement, 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 of said default.
2. The failure to pay any fees owed under this Agreement, or under any other agreement between the CRA and Concessionaire, when due, and the failure to cure said default within a period of thirty (30) days following written notice of said default.
3. The failure to perform any other conditions, not related to the provision of concessions, and non-monetary in nature, and the failure to cure said default within a period of thirty (30) days following written notice of said default.
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, then the CRA shall have the right to terminate this Agreement.

If Concessionaire defaults, the CRA may utilize any one or more of the following remedies against Concessionaire. These remedies shall be considered cumulative and not in the alternative:

1. The CRA may sue for specific performance;
2. The CRA may sue for all damages incurred by the CRA, including incidental damages, consequential damages and attorney's fees;
3. The CRA may utilize a portion of or all of the security deposit provided by Concessionaire to remedy the default and to reimburse the CRA for any damages, including attorney's fees and other expenses of collection that it may sustain. In such event, Concessionaire shall not be permitted to resume operations under this Agreement until such time as it furnishes another performance security that satisfies the requirements of Article XII. However, this Agreement shall not be deemed terminated during said period, unless written notice of termination shall have been given and become effective in accordance with subparagraph 4, below. Concessionaire shall be required to fulfill all of the terms and conditions of this Agreement, including the payment of guaranteed minimum privilege fees and percentage fees arising during the time it takes to procure the bond.
4. The CRA may terminate this Agreement, and, at the option of the CRA, any other agreement in effect between the CRA and Concessionaire. The termination of these agreements, however, shall only be effective upon written notice of same provided by the CRA to Concessionaire. In no event shall this Agreement be construed to be terminated unless and until such notice is provided. The termination may be effective immediately upon provision of said notice, or at any other time specified in the notice. If this Agreement is terminated, Concessionaire shall continue to be liable for the performance of all terms and conditions, specifically including those contained in Article XV, INSURANCE AND INDEMNIFICATION, above, and the payment of all fees due hereunder prior to the effective date of said termination, in addition to all damages, including attorney's fees and other expenses of collection, incurred by the CRA as a result of any default.
5. Without terminating the Agreement by so doing, and without further notice to Concessionaire, the CRA may re-enter the concession area with or without process of law, repossess the concession area and all fixtures and improvements thereon, and remove Concessionaire and any third parties who may be occupying or within the concession area and all of their respective personal property, by using either such reasonable force as may be necessary, summary

proceedings, ejectment, or any other means the CRA, in its sole discretion, deems appropriate without being deemed guilty of trespass, eviction, or forcible entry and detainer by so doing. In such case, the CRA shall be obligated to attempt, in good faith, to negotiate the re-letting of the concession area, and any improvements thereon, or any portion thereof, on behalf of Concessionaire, for such period of time and upon such terms and conditions as the CRA deems appropriate. The CRA shall in no way be obligated under the terms of this subparagraph to re-let all or any portion of the concession area, or any improvement thereon, to any third party, or upon terms and conditions that are not acceptable to the CRA, or which the CRA, in its sole discretion, does not feel to be in the best interests of the CRA; nor shall the CRA be responsible for any failure of the sub-Concessionaire or new Concessionaire to pay rent or to perform any other conditions due upon such re-letting. Concessionaire hereby expressly authorizes the CRA to make any reasonable repairs necessary to re-let the concession area, or any improvements thereon, on Concessionaire's behalf. Assuming the CRA attempts to re-let the concession area in good faith, whether or not the CRA is able to re-let the concession area, Concessionaire shall remain liable for the performance of all terms and conditions of the Agreement and the payment of all fees due under the terms of the Agreement for the remainder of the Leasehold term, although Concessionaire shall receive credit for any fees paid or conditions performed as a result of subletting. Concessionaire shall also be responsible for reimbursing the CRA for all costs and expenses the CRA incurs in re-letting or attempting to re-let the concession area, including commission/broker fees and reasonable repair costs. Finally, if, as a result of such re-letting, the CRA becomes entitled to receive excess fees or other benefits over and above what the CRA would have been entitled to receive under this Agreement, the CRA shall be entitled to retain all such surplus fees and other benefits, and Concessionaire shall have no rights or interest therein.

6. The CRA may utilize any other remedy provided by law or equity as a result of Concessionaire's default(s).

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 upon payment of fees when due and upon performance of all other conditions herein, Concessionaire shall peaceably have, possess and enjoy the concession area and uses herein granted without hindrance or disturbance from the CRA, subject to the CRA's audit, inspection, relocation and rights discussed elsewhere herein.

#### ARTICLE XXVI - NON-DISCRIMINATION

1. Concessionaire, for itself, its personal representatives, successors in interest, assigns and as part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, religion, sex, national origin, or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the concession area and any improvements thereon; and (2) no person on the grounds of race, color, religion, sex, national origin, or disability shall be subjected to discrimination in the construction of any improvements on, over, or under the concession area and the furnishing of services therein;
2. Concessionaire shall furnish its accommodations and/or services on a fair, equal, and non-discriminatory basis to all users thereof and it shall charge fair, reasonable, and non-discriminatory prices for each unit or service, PROVIDED THAT Concessionaire may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar type of price reductions to volume purchasers.
3. Concessionaire shall make its accommodations and/or services available to the public on fair and reasonable terms without unjust discrimination on the basis of race, creed, color, sex, age, national origin, or disability.
4. Non-compliance with subparagraphs A, B, or C, above, after written finding, shall constitute a material breach thereof and in the event of such non-compliance the CRA shall have the right to terminate this Agreement and the estate hereby created without liability therefore or at the election of the CRA or the United States either or both said Governments shall have the right to judicially enforce said subparagraphs A, B, and C.
5. Concessionaire assures that it will undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, sex or disability be excluded from participating in any employment activities covered in 14 C.F.R. Part 152, Subpart E. Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Concessionaire assures that it will require that its covered sub-organizations provide assurances to Concessionaire that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations as required by 14 C.F.R. Part 152, Subpart E, to the same effect.

#### 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 Administrator  
Community Redevelopment Agency, City of Pensacola  
222 W. Main St., 3<sup>rd</sup> Floor  
Pensacola, Florida 32502

**All notices to Concessionaire shall be mailed to:**

Shawn Goad, Owner  
DeLuna's Chat and Chew, LLC.  
8130 Banberry Road  
Pensacola, FL 32514

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

Concessionaire shall not assign its interest herein without the written consent of the CRA. The CRA's consent shall not be unreasonably withheld. If an assignment is made, Concessionaire/Assignor shall continue to be liable, jointly and severally, with the Assignee for the fulfillment of all terms and conditions arising under this Agreement subsequent to the assignment, unless the CRA specifically releases Concessionaire/Assignor from said future liability, in writing. The release shall be effective only if made in writing. All subsequent assignors and assignees shall be subject to this Article as if they were the original Concessionaire.

#### ARTICLE XXXIV - NO SUBLEASE

Concessionaire shall not sublease any portion of this Agreement or the concession area.

#### ARTICLE XXXV - ATTORNEY'S FEES

In the event of a breach of this Concession Agreement by Concessionaire, Concessionaire shall pay to the CRA all reasonable attorney's fees, costs and other expense incurred by the CRA in enforcing its rights as a result of said breach, otherwise, the prevailing party in any action, claim or proceeding arising out of this Agreement shall be entitled to attorney's fees and costs from the losing party.

#### ARTICLE XXXVI - SURRENDER UPON TERMINATION

The City owns the land and the buildings and improvements on the concession area. Upon expiration or termination of the term, 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 buildings, fixtures or other improvements built on or made to the concession area by Concessionaire within ten (10) days after the expiration of the term. 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. 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 one (1) year 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 XL - COMPLIANCE WITH RULES AND REGULATIONS

It is expressly understood that the Concessionaire agrees to conform to all Federal, State, and local laws and regulations, as well as all City of Pensacola Codes and Ordinances, all of which may apply to the services to be performed and that the CRA is to be held free and harmless from any act or failures by the Concessionaire to do so.

The Concessionaire shall obtain and maintain in force all licenses, permits and other certificates required by federal, state, county, or municipal authorities for its operation under the terms of this Agreement.

If the CRA incurs any fines and/or penalties imposed by Federal, State, County, or Municipal authorities 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.

#### 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:

Jewel Cannada-Wynn  
Jewel Cannada-Wynn, CRA Chair

Cricka L. Burnett

City Clerk

**DeLuna's Chat and Chew, LLC.**



Shawn Goad  
Member

Yaju Goad  
Member

Printed Name: Shawn Goad

Printed Name: Yaju Goad

CORPORATE SEAL

Approved as to substance:

Legal in form and valid as drawn:

M. Helen Gibson  
M. Helen Gibson, CRA Administrator

Dydia H. Bowling  
City Attorney

### **Attachment "A"**

**PUBLIC RECORDS:** Consultant/Contractor/Vendor shall comply with Chapter 119, Florida Statutes. Specifically, Consultant/ Contractor/Vendor 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 Agreement term and following the completion of the Agreement if Consultant/ Contractor/Vendor does not transfer the records to the City.
- D. Upon completion of the Agreement, transfer, at no cost, to City, all public records in possession of Consultant/Contractor/Vendor or keep and maintain public records required by the City to perform the service. If Consultant/Contractor/Vendor transfers all public records to City upon completion of the Agreement, Consultant/ Contractor/Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant/Contractor/Vendor keeps and maintains public records upon completion of the Agreement, Consultant/Contractor/Vendor 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 Consultant/Contractor/Vendor to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Agreement by City.

**IF CONSULTANT/CONTRACTOR/VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: THE OFFICE OF THE CITY ATTORNEY, (850) 435-1715, PUBLICRECORDS@CITYOFPENSACOLA.COM, 222 WEST MAIN STREET, PENSACOLA, FL 32502.**



## EXHIBIT A

### CONCESSION SERVICES

#### ***Background***

Completed in 2007, Plaza de Luna was constructed on the site of the former Bayfront Auditorium. This 2+ acre park at the terminus of Palafox overlooking Pensacola Bay features generous lawns, onsite parking with a circular drive, and approximately 1,800 lineal feet of waterfront accessibility (including 600 lineal feet at the breakwater. Approximately 1,200 lineal feet of the waterfront is available for fishing.) The Pensacola City Council named the new park for Don Tristan de Luna, the Spanish explorer who established Pensacola in 1559 as the first European settlement in the United States.

The public enjoys numerous casual activities including fishing, jogging, strolling, interactive fountain play, kite flying and Frisbee. City-permitted special events are held at the park and adjacent areas throughout the year, including fishing tournaments, weddings, visiting ships/marine vessels, festivals, and concerts. Thousands of vehicles drive through Plaza de Luna each day, and hundreds of downtown employees are located within walking distance of the park. A concession and restroom facility was constructed in 2009 to complement and enhance the public enjoyment of the plaza. The facility is designed for counter service from two sides of the building, features additional patio space, waterfront and park views, and provides restroom facilities as required for the operation of the adjacent interactive fountain.

While concerned with revenue from its concessions, the CRA is also concerned with meeting the following objectives in this concession program:

- Providing a high level of service to Plaza de Luna visitors.
- Enhancing the image of the Plaza with residents and visitors.
- Enlivening public space through the establishment of family-friendly facilities.
- Providing a clean and secure public restroom for year-round access by the public.

#### ***Grant of Use***

The Concessionaire shall have the right to use the premises solely for the operation of a food service, general merchandise concession, and related services as authorized under the Concession Agreement.

The Concessionaire shall assume the following general obligations:

- 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 leased premises and may not be allowed in Plaza de Luna. Package alcohol and tobacco sales are prohibited.
- Concessionaire shall sell products only at the initial prices set forth in this Exhibit. Any proposed price increases during the term of the agreement must be forwarded to the CRA for

review and approval prior to implementation. The Concessionaire must provide information substantiating the proposed price increase. When reviewing a request to increase prices, the CRA shall take into account the information substantiating the increase, the amount of the proposed increase, and the amount of time elapsed between the increase request and either the commencement of the concession or any previously approved increases. The CRA shall not unreasonably deny such requests.

- Concessionaire shall provide access to the men's and women's restrooms during the operation of the Plaza's interactive fountain and concession service. Concessionaire shall regularly inspect the restrooms to assure they are clean and maintained for the public during all operational hours and provide all services and supplies necessary for such operation.
- Reserved parking spaces in Plaza de Luna will not be provided

#### ***Supplies, Materials and Equipment***

It is the responsibility of the Concessionaire to furnish all services, labor, materials, equipment, tools, insurance, permits, and fees (if any) necessary to render the services as set forth by the CRA. The Concessionaire will be solely responsible for the installation, construction, and furnishing of all items necessary for the operation of the concession. The Concessionaire will also make all required mechanical and electrical installations and connections. All installations shall be in accordance with plans submitted to and approved by the CRA, and/or other City departments as may be applicable. All mechanical and electrical installations and connections shall become the property of the CRA upon installation, except only plug-in connections. Ownership of improvements by the Concessionaire will be governed by the Concession Agreement as executed.

#### ***Maintenance***

All maintenance relating to both the interior and exterior areas assigned for the concession, including restroom floors and walls; plumbing fixtures; supply, refill and cleaning of toilet accessories; electrical fixtures; all equipment and furnishings therein, will be the responsibility of the Concessionaire and it will be required to keep the area in good operating condition and repair and to keep such in a clean and neat condition and appearance. In addition, the Concessionaire will cooperate with the CRA and City in the maintenance and upkeep of the adjacent Park areas. The facility must be returned to the CRA at the completion of the Agreement in the same condition as it was provided to the Concessionaire with allowances for reasonable wear and tear.

#### ***Utilities***

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

#### ***Concessionaire Information***

**Background:** Shawn Goad currently works for Lowe's Home Improvement store on Airport Blvd, and has been a full time employee there for 10 ½ years as the stores only RTM Clerk. Shawn Goad also helped to start, and is now owner of Barbasian LLC, a local food truck serving a combination of infused American BBQ and Asian cuisine. Shawn Goad is a graduate from

Pensacola Christian College with a B.A. degree in Missions, and minor in Business Management. He is a member of a local church, serving as a Children's Director and Deacon. Shawn is married and has three children.

**Principal Point of Contact:** Shawn Goad, Owner

**Authorized Signer for Contract Obligations:** Shawn Goad

**Principal Office Address:** 8130 Banberry Road, Pensacola FL 32514

**Telephone Number:** 850-512-4887

**Email Address:** shawn.g.delunas@gmail.com

**Business Structure:** Sole Proprietorship

***Concession Operation***

Deluna's Chat and Chew is a walk up concession providing foods and snacks. It serves some of the local favorite foods such as hamburgers, hotdogs, fries, chicken tenders, and lots of Hershey's ice cream. Customers of Deluna's Chat and Chew consist of nearby business employees, locals of Pensacola, and tourists visiting the area.

***Hours of Operation***

The concession and restrooms 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.

***Management and Organizational Plan***

Employees of Deluna's Chat and Chew are responsible for cashiering, cooking, serving, and cleaning. All employees will be trained and must obtain a Food Safety Certificate. The owner will be present in busy situations, and most special events due to holidays and Plaza De Luna sponsored activities. Upon owner's absence, the head cook is acting supervisor and has the responsibility to carry out operating procedures as trained.

## ***Personnel Policies***

**Dress:** Employees are to dress professional and be well groomed at all times. Hair nets or Ball caps are required to be worn while in designated cooking areas. Shorts can be worn, but must be to the knee. Pants can be worn, but must be loose fit style. Closed toed shoes must be worn at all times.

**Breaks:** (4 Hour Shift) a 15 min paid break is authorized. (8 Hour Shift) two 15 min paid breaks are authorized and one 30 min non-paid lunch. Any Additional breaks for restroom usage are authorized. Employee is required to post away sign if there are no other employees present.

**Food Prep/Recipes:** Employee agrees not to disclose any recipes used in preparing food for Barbasian, LLC or Deluna's Chat and Chew, LLC to include, but not limited to the ingredients and their quantities used in the making of the rub, barbecue sauce, eggrolls, or pork fried rice. These items are unique to Barbasian, LLC, considered proprietary, and should be safeguarded by all employees.

**Security:** Doors are to remain locked at all times. Windows are to remain closed and locked when not in use. Every effort should be made to secure equipment or property of Barbasian, LLC, and/or Deluna's Chat and Chew. Items to be secured include, but are not limited to: iPad, iPhone, Cash, Smoker, Tables, Chairs, Tractor, Dolly, Tables and Chairs, Wood used for Smoking, etc.

**Accidents:** Any and All accidents no matter how seemingly small or severe are to be immediately reported to Management after taking the appropriate steps are taking to ensure the safety of anyone involved of the accident. Call emergency responders first in an emergency situation before calling management.

**Customer Service:** Employee shall closely follow scripting examples released periodically from management. Secret Shoppers, Audio and Video recording devices, and customer reviews will be routinely consulted to ensure the adherence this policy.

**Cell Phone Usage:** Cell phone usage is strictly limited to business use only. Employee understands that calls, text messages, and all other activities are strictly monitored. Employee is to answer any and all calls that come in throughout the scheduled work period. At the end of the work period employee will set the phone to forward calls to management. Employee will adhere to supplied scripting.

**iPad Usage:** iPad usage is strictly limited to business use only. Employee understands that calls, texts messages, and all other activities are strictly monitored.

**Marketing Calls:** For every marketing call employee should notate the basic details of the call: name of the company, name of the individual, what kind of marketing, a call back number, and a good call back time. **NEVER** should employee give out the name of Owner(s) nor their personal cell phone numbers. Violation of this policy will result in immediate employee termination.



**Tips:** All tips are to be reported. Tips will be paid out on a weekly basis. Tips will be shared by all employees working the same shift while at the same location. Employees are to never verbally ask for tips. Employees are to never verbally suggest tipping. Employees may include an attractive and clean tip jar by the ordering window. Management reserves the right to utilize or not to utilize tipping features in conjunction with cash register software.

**Consent to Monitoring:** Employee consents to audio and video surveillance at all times while performing his/her duties as an employee or while at the premises where Barbasian, LLC, and/or Deluna's Chat and Chew conducts business. These locations include, but are not limited to: 2909 N. Pace Blvd., Pensacola, FL 32505 and 920 S. Palafox Street, Pensacola, FL 32505.

**Safety:** Employee is to notify management immediately if he/she does not have the proper equipment to safely complete any task of his/her job. Employee is to immediately clean any spills. This includes cleaning the spill before assisting a customer. Employee is to keep work area clean at all times and free from debris. Employee shall immediately notify management on any and all perceived unsafe conditions.

**Attendance:** Employee is expected to be on time and ready for work according to the printed employee schedule. Employee must be clocked in using Barbasian, LLC, owned devices no later than 59 seconds past the scheduled clock in time. Tardiness will be handled as follows for any rolling, twelve month period. In the event of a tardy, the employee will receive a verbal warning. In the event of a second tardy, the employee will receive a written warning. In the event of a third tardy, the employee will receive one day off, without pay, to be scheduled by management. In the event of a fourth tardy, the employee will receive two days off, without pay, to be scheduled by management. In the event of a fourth tardy, the employee will be terminated from employment with Deluna's Chat and Chew, LLC. Unauthorized Absences are subject to immediate termination of employment. An unauthorized absence occurs when an employee miss's more than one half of his/her scheduled shift without management approval. Employee shall not be eligible for a raise if tardy or absent in the last 30 calendar days.

**Time Off:** All time off requests must be submitted no later than two weeks prior to the date of the time requested off for consideration. All requests are subject to management approval and are not guaranteed.

### ***Operational Policies***

#### **Opening Guidelines:**

1. Warm appliances
2. Warm food
3. Setup cash register with coins, 30 \$1 bills, 10 \$5 bills, and 5 \$10 bills.
4. Turn on open sign by daily advertised open times

**Cash Drawer:** Cash drawer must be accurate. Cash drawer must be within \$.25 of the generated drawer report. Tips are to be calculated on the spot, separated to a different compartment of the drawer, and reported individually. In any 12 month period that there is an error greater than \$.25 management shall take the following steps: First occurrence, Employee shall receive a verbal

warning and receive continued training, focusing on register accuracy. Second occurrence, Employee shall receive a written warning and receive extensive, remedial training, focusing on register accuracy. Third occurrence, Employee shall receive an unpaid day off to be scheduled by management. Fourth occurrence, Employee shall receive unpaid days off to be scheduled by management. Fifth occurrence, Employee's employment is subject to management review for termination. Cash drawer management features must be turned on and in force for each transaction. All transactions, to include employee discounts, are to be conducted through the point of sale system approved by management.

**Cooking:** Employee shall prepare food according to recipes established by management with no alterations. Employee shall prepare food on a daily basis according to the needs established by management. Employee shall abide by established regulatory procedures with preparing, holding, and storing foods, to include, but not limited to proper labeling. Employee shall freeze foods before their expiration date.

**Hot Holding Foods:** Employee shall log temperatures throughout the day as indicated on the supplied form given by management.

**Cleaning:** Employee shall routinely clean the interior and exterior of the work space as stated on the form supplied from management.

**Inventory:** Employee must daily file an inventory report supplied by management.

**Water Disposal:** Employee must daily drain holding tank into designated container to be disposed of properly by management.

**Closing:** Employee shall secure all equipment, cool all hot held foods, and thoroughly clean, rinse, sanitize, and dry all cookware, utensils, and other items used in the cooking process. The interior and exterior should be perfectly cleaned, and sanitized, ready for inspection. Employee shall not leave anything in the work space unclean.

Closing Guidelines:

1. Turn off "OPEN" sign.
2. Turn off "LED" lights.
3. Turn off steam table.
4. Turn off fryers.
5. Turn off bread warmer
6. Wash all dishes.
7. Tag all food with dates
8. Cool all food before putting in cooler.
9. Wipe all countertops and surfaces.
10. Lock all windows.
11. Count and close Register.
12. Sweep floor.
13. Mop floor.

14. Clock out.
15. Turn off all lights.
16. Lock Bathrooms

**Catering:** Employee must be willing to travel occasionally up to 50 miles one way to fulfill catering requests. Management, at its discretion, reserves the right to authorize additional pay to cover traveling expense.

**Schedule:** Management shall post a schedule two weeks in advance. It is the employee's responsibility to monitor and know his/her own schedule. Schedule is subject to change and management will notify employee of schedule changes as they occur. Employee is not guaranteed any particular shift or amount of hours. Employment is seasonal and temporary.

**Time Clock:** Employee shall clock in and clock out using a devices owned by Barbasian, LLC. Devices owned by Deluna's Chat and Chew, LLC are closely monitored and track times and locations of use. Employee shall notify management immediately of any and all time clock errors and/or discrepancies.

**Discounts:** At the discretion of Management, Deluna's Chat and Chew, LLC employees may receive a discount of 50% off their meal or the meal of an immediate family member. The benefit is not to exceed \$50 in any calendar week. Discount must be processed through the established cash management drawer system. This discount is not to extend to friends or relatives outside of employee's immediate household.


**Regulatory Matters:**


- Employee must be able to acquire Food Management Licensure
- Employee must be able to master knowledgeable of the Food Code
- Employee must possess the knowledge and skills required to comply with local, state, and federal regulations.

***Customer Service Philosophy/Mission Statement***

*Deluna's Chat and Chew, and all employees in association with, are committed to serving its customers fresh, hot, and great tasting food, while providing great customer service from start to finish.*

## Products and Menu



<p><b>DELUNA'S ENTREE'S</b> <i>All entree's include a side of fries.</i></p> <p><b>Smoked Pulled Pork Sandwich</b>      \$ 8 <i>Smoked pulled pork loaded onto a bun, drizzled with our homemade BBQ sauce.</i></p> <p><b>Chicken Tenders</b>      \$ 8 <i>Lightly breaded and juicy chicken tenders fried to perfection and served with a sauce of your choice.</i></p> <p><b>Hamburger</b>      \$ 7 <i>Juicy all beef patties, lettuce, tomato, onions, pickles.</i></p> <p><b>Cheeseburger</b>      \$ 8 <i>Juicy all beef patties, Cheese, lettuce, tomato, onions, pickles.</i></p> <p><b>Big Dog</b>      \$ 5 <i>Juicy steamed Nathan's dog on a bun.</i></p> <p><b>Big Dog with Chili, Cheese, and Onions</b>      \$ 7<sup>50</sup></p> <p><b>Chicken Tender Sandwich</b>      \$ 8 <i>Juicy tenders loaded on a bun, topped with lettuce, tomato, and onions.</i></p> <p><b>KIDS MENU</b> <i>Includes a bag of chips and a juice box.</i></p> <p><b>Kids Chicken Tenders</b>      \$ 5</p> <p><b>Grilled Cheese on a bun</b>      \$ 5</p> <p><b>SALAD</b></p> <p><b>Chicken Tender Salad</b>      \$ 8 <i>Lettuce, tomato, onion, cheese, pickles, juicy tenders on top.</i></p>	<p><b>SIDES AND FRIES</b></p> <p><b>Egg Rolls</b>      \$ 3 <i>Smoked pulled pork, seasoned, rolled, and fried. Served with our homemade BBQ sauce.</i></p> <p><b>Nachos with cheese</b>      \$ 4 <i>Add chili</i>      \$ 5</p> <p><b>Seasoned Fries</b>      \$ 3 <i>Fried to perfection and sprinkled with seasoning.</i></p> <p><b>Chili and cheese Fries</b>      \$ 5 <i>Seasoned fries loaded with melted cheese and topped with chili and onions.</i></p> <p><b>DeLuna's Ribbon Fries</b>      \$ 5 <i>Add chili</i>      \$ 6</p> <p><b>Loaded Fries</b>      \$ 7 <i>Golden crisp fries topped with smoked pulled pork, melted cheese, chopped onions, and drizzled with our homemade sweet BBQ sauce.</i></p> <p><b>DRINKS</b>      \$ 2<sup>50</sup></p> <table border="0" style="width: 100%;"> <tr> <td>Coke</td> <td>Diet Coke</td> </tr> <tr> <td>Dr. Pepper</td> <td>Sprite</td> </tr> <tr> <td>Lemonade</td> <td>Orange Fanta</td> </tr> <tr> <td>Sweet Tea</td> <td>Unsweet Tea</td> </tr> <tr> <td>Bottled Water (Dasani)</td> <td></td> </tr> <tr> <td>Coffee</td> <td>Hot Chocolate</td> </tr> </table>	Coke	Diet Coke	Dr. Pepper	Sprite	Lemonade	Orange Fanta	Sweet Tea	Unsweet Tea	Bottled Water (Dasani)		Coffee	Hot Chocolate	<div style="text-align: center; margin-bottom: 10px;">  <p><small>Please enjoy Hershey's Real but Creamy Milk Tenders.</small></p> </div> <p><b>HERSHEY'S ICE CREAM</b> <i>(Hand-dipped)</i></p> <table border="0" style="width: 100%;"> <tr> <td>• Chocolate</td> <td>• Vanilla</td> </tr> <tr> <td>• Strawberry</td> <td>• Moose Track</td> </tr> <tr> <td>• Mint</td> <td>• Butter Pecan</td> </tr> <tr> <td>• Superman</td> <td>• Featured Flavor?</td> </tr> </table> <table border="0" style="width: 100%;"> <tr> <td><b>Waffle Cone</b></td> <td>Single Scoop</td> <td>\$ 4</td> </tr> <tr> <td></td> <td>Double Scoop</td> <td>\$ 6</td> </tr> <tr> <td><b>Kids Cone</b></td> <td>Single Scoop</td> <td>\$ 3<sup>50</sup></td> </tr> <tr> <td></td> <td>Double Scoop</td> <td>\$ 5<sup>50</sup></td> </tr> <tr> <td><b>Cups</b></td> <td>Single Scoop</td> <td>\$ 3</td> </tr> <tr> <td></td> <td>Double Scoop</td> <td>\$ 5</td> </tr> </table> <p><b>FLOATS</b></p> <table border="0" style="width: 100%;"> <tr> <td>Coke Float</td> <td>\$ 4</td> </tr> <tr> <td>Root Beer Float</td> <td>\$ 4<sup>50</sup></td> </tr> </table>	• Chocolate	• Vanilla	• Strawberry	• Moose Track	• Mint	• Butter Pecan	• Superman	• Featured Flavor?	<b>Waffle Cone</b>	Single Scoop	\$ 4		Double Scoop	\$ 6	<b>Kids Cone</b>	Single Scoop	\$ 3 <sup>50</sup>		Double Scoop	\$ 5 <sup>50</sup>	<b>Cups</b>	Single Scoop	\$ 3		Double Scoop	\$ 5	Coke Float	\$ 4	Root Beer Float	\$ 4 <sup>50</sup>
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## EXHIBIT B BUILDING LAYOUT

