

RESTAURANT OPERATION AGREEMENT

THIS RESTAURANT OPERATING AGREEMENT (the "Agreement") is made and entered into as of the 15th day of ~~June-June~~ 2023 by and between LOTUS HOMEOWNERS ASSOCIATION, INC., a Florida corporation not-for-profit (the "Association") and Devinos LLC D.B.A. Luna Bistro Boca, a Florida limited liability corporation (the "Operator").

RECITALS

- A. Operator is in the business of operating and managing restaurants and desires to provide food and beverage the following services at the Clubhouse located at the residential community situated in Palm Beach County commonly known as "Lotus" (collectively, the "Services"): (i) operate and manage a poolside cafe, together with its preparation area, designated storage and outdoor bar (collectively, the "Restaurant") and (ii) provide food and beverage service on the pool deck of the Clubhouse (the "Pool" Area), on the terms and subject to the conditions hereinafter set forth (the Restaurant and Pool Area is depicted on Exhibit A). The Restaurant and Pool Area are collectively referred to herein as "the Premises".
- B. Association is the owner of ~~those-certaincertain~~ premises within the "Clubhouse" of the residential community commonly known as "Lotus", located at 8190 Paradise Bay Avenue, Boca Raton, Florida, 33496. Association is desirous of having seeks Operator to provide the aforementioned Services, all on the terms and subject to the conditions set forth hereinhereinafter-set-forth.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Association and Operator, intending to be legally bound, do hereby agree as follows:

1. Recitals: The foregoing recitals are true and correct and are incorporated herein by this reference.
2. Operator Services: Association hereby retains Operator to provide the Services and Operator hereby agrees to provide the Services upon the terms, but subject to the conditions, of this Agreement including , without limitation

(a) Operator shall operate and manage the Premises for the sole purpose of providing food and beverage services to the residents of Lotus and members of the Association (the residents and members are herein collectively referred to as the "Members' ") and such Members' guests and invitees. In order to preserve the lifestyle of Lotus, Operator understands and agrees that this Agreement does not allow Operator to invite persons into Lotus or to use the Premises who are not Members or not otherwise permitted access to Lotus. Without limiting the generality of the foregoing, Operator shall not, directly or indirectly, advertise, solicit, entice or otherwise invite the general public, or any persons other than Members and their guests and invitees to patronize the Premises without the express written consent of Association.

(b) Operator covenants and agrees to operate the Premises fifty-two (52) weeks per year as follows

- (i) Restaurant

- a. Lunch: minimum 5 day per week (Wed-Sun) from 10:30am – 3:30pm
- b. Dinner: minimum 5 days per week (Wed-Sun) from 5:00pm-10:00 pm
- c. Happy Hour 5 days per week Wed-Sun (5:00pm – 7:00pm)
- d. The restaurant and bar will be closed Tuesday. There shall only be beverage services on Monday (no food) from 5pm-9pm

(ii) Operator shall make food and beverage services available from the Restaurant on the Pool Area on the days and times that the Restaurant is open; however, the Pool Area shall close each day at dusk. Operator acknowledges and agrees that the Association and its Members will have the right to occupy and utilize the Pool Area daily from dawn until dusk; however, Members will only be permitted to consume alcoholic beverages on the Pool Area during the Operator Pool Area Hours all such beverages will be purchased exclusively from the Operator. In addition, Operator shall have the right to exclude a Member or such Member's guests or invitees from the Pool Area during the Operator Pool Area during the Operator Pool Hours if a Member or such Members' guests or invitees violates any rules and regulations related to the purchase or consumption of alcoholic beverages.

(iii) The days and hours of operation set forth in this Sections 2 may be modified by Operator only with the prior written consent of the Association, which consent may be conditioned or withholds in the Association's sole discretion

(iv) Notwithstanding anything to the contrary above, Operator shall have the right to close business for a total of fourteen (14) days per year ("Vacation Closing"). If Operator elects to utilize its Vacation Closing and close the Premises for business, then each occurrence of the Vacation Closing must: (a) be of a duration of not more ~~thattan~~ seven (7) consecutive days, (b) occur during the months of August and/or September, and (c) not be scheduled on dates that Association has scheduled events intending to utilize the Operator or catering from the Operator. Operator shall make reasonable efforts to provide the Association with not less than (30) days advance written notice of the dates of the Vacation Closing. In addition to the Vacation Closing, and not as part thereof, Operator shall be permitted to close the Premises for business on Yom Kippur, Rosh Hashanah, Thanksgiving and Christmas. Operator acknowledges and agrees that the Premises must be open for business on the following holidays: Martin Luther King Jr. Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day and Veterans Day.

(c) Operator, at Operator's sole expense, shall be responsible for the ordering, purchasing, receiving, stocking, and storing of all food, condiment, snack, beverage and such other items related thereto which are to be offered and/or sold at the Premises. Operator shall select all menu items including but not limited to all food, condiment, snack, and beverage items, as well as the pricing of such menu items, using its professional judgment and subject to final approval by the Association. Operator shall obtain approval from the Association as to what food and beverages Operator will be routinely serving to ensure the menu choices meet the needs and standards of the Lotus community. Operator shall not incur any obligations or enter into any agreements with respect to the purchasing, receiving, stocking, and/or storing of any food, condiment, snack beverage, or other item related thereto for Association's account or on Associations behalf, and Operator shall be solely responsible for all obligations incurred or agreements

entered into by Operator with respect to any of the same, all products sold by operator from the premises shall be of a high quality and of a price mutually agreed upon by Association and Operator. Upon termination of this Agreement, for any reason, Operator shall be entitled to retain all food, condiment, snack, beverage, and other food and beverage and other food and beverage inventory purchased by Operator.

(d) Operator covenants and agrees to provide Services in a manner consistent with an upscale community, Operator also covenants and agrees that any music played on the Premises shall be subject to the Association's approval. Operator shall control any music played in the Premises during operating hours.

(e) Operator, at Operator's sole expense, shall procure and maintain in good standing all licenses and permits required to provide the Services including, but not limited to an occupational license and food and service license. Operator shall keep all such licenses and permits procured by Operator shall be registered and held solely in the name of Operator and not in the name of the Association. The parties acknowledge and agree that, with the exception of any licenses and permits held in the name of the Association (if any), all licenses and permits procured by and held in the name of Operator are not transferable and, in the event this Agreement is terminated by either party, such licenses and permits may not be used by any other operators providing similar services in the Premises without the Operators' express written authority.

(f) Without limiting the foregoing, Operator shall also obtain all necessary licenses and permits to offer beer, wine, and/or liquor as part of the beverage offered for sale at the Premises. All such licenses and permits procured by Operator shall be registered and held solely in the name of Operator and not in the name of the Association. Operator shall provide the Association with copies of all applicable licenses and permits prior to Operator commencing beer, wine and/or sales in the Premises.

(g) Operator, at Operator's sole expense (except as hereinafter specifically provided), shall at all times keep the Restaurant and the furniture, fixtures and equipment located therein or used in connection therewith in a neat and clean condition and in good repair. Operator shall immediately notify the Association and the Association's Lifestyle Director of any damage to any of the furniture, fixtures and/or equipment located in or used in connection with the Premises. Operator shall also be responsible for opening and closing the umbrellas on tables located on the Premise when providing its Services, if any.

(h) Operator, at Operator's sole expense, shall at all times: (i) comply with all applicable laws, statutes, codes, ordinances, rules and regulations now or thereafter in force or effect related to Operators Services, including without limitation, Chapter 64E-11 of the Florida Administrative Code and the 2017 Food and Drug Administrations (FDA) Food Code (Collectively "Laws"), and (ii) comply with and pay all applicable federal, state and local taxes resulting from Operator providing the Services at the Premises.

(i) Operator, at Operator's sole expense shall maintain adequate staff of competent, qualified and knowledgeable employees to provide the Services. Operator, using its professional

judgment and intending to provide high quality service, shall staff the Restaurant with a minimum of 1 manager on duty, 1 bartender, 3 servers, 1 chef, 1 cooks and 1 dishwasher/porter, at all times that the Restaurant is open for business. Operator shall provide any additional staff members (bus staff and host) as are necessary to provide the Services contemplated under this Agreement, with such staffing levels to be mutually agreed upon by Operator and Association. In recognition of the fact that Association wishes to maintain extremely high standards of quality in Lotus (as a community) and the Restaurant (as an amenity), Operator agrees as follows in connection with Operator's employees :

(i) Operator's employees shall comply with all reasonable requirements of Associations regarding dress and personal appearance

(ii) Operator's employees shall at all times act in a professional and courteous manner; and

(iii) Operator shall consider dismissing any employee at the written request of the Association based on the reasons set forth by Association in such written request (it being acknowledged by the Association, however, that Operator shall not be required to dismiss any such employee if dismissal would be a violation of applicable law).

(j) Operator shall strictly comply with the provisions of the Declaration of Covenants, Restrictions and Easements for Lotus and the Rules and Regulations of the Association all as amended from time to time (collectively, "Association Documents"), which govern the conduct of Members and their guests and invitees. Any material default under this Agreement entitling the Association to terminate this Agreement and any other remedies available at law. Operator also acknowledges and agrees that Operator is responsible for ensuring that the Members and their guests and invitees comply with the Association documents within the premises.

Notwithstanding anything to the contrary in the Agreement, if Operator is rendered wholly or practically unable to perform its obligations under this Agreement due to a Force Majeure event, Operator shall be excused from whatever performance is impaired by such Force Majeure Event provided that Operator: (i) promptly gives notice to Association stating the nature of the Force Majeure Event, its anticipated duration and any action being taken to avoid or minimize its effect, and (ii) uses its reasonable commercial efforts to remedy its inability to perform. The suspension of performance shall be of no greater scope and no longer duration than that which is necessary. The parties acknowledge and agree that any suspension of performance described hereunder shall not extend the Term of this Agreement.

For the purpose of this Agreement, "Force Majeure Event" means an event condition or circumstances beyond the reasonable control of, and not due to the action, inaction, fault or negligence of, Operator, and which couldn't have been avoided by use of responsible efforts, which prevents the performance by Operator of its obligations hereunder. Such events include but are not limited to the following impediments: war (whether declared or not), armed conflict or the serious threat of the same (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act of a foreign enemy, extensive military mobilization, civil war, riot, rebellion, revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience, act of terrorism, sabotage or piracy, plague, epidemic, pandemic, outbreaks of infectious

disease or any other public health crisis, including quarantine or other employee restrictions; act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction; expropriation, compulsory acquisition, seizure of works, requisition, nationalization; act of God or natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought; explosion, fire, destruction of machines, equipment, factories and of any kind of installation, prolonged break-down of transport, telecommunication or electric current; general labore disturbance such as but not limited to boycott, strike and lock-out, go-slow, occupation offactories and premises; shortage or inability to obtain critical material or supplies to the extent not subject to the reasonable control of the subject party ("Force Majeure Event"). Increases in the cost of materials or supplies for shall not be deemed a Force Majeure Event

3. Association's Obligations. Association hereby agrees as follows:

- (a) Association will purchase and make available to Operator those certain furniture, fixtures and equipment items necessary for Operator's operation of the Premises in accordance with this Agreement. The specific items of furniture, fixtures, and equipment to be purchased for the Premises shall be selected at Associations sole discretion. All furniture, fixtures and equipment purchased by Association for the Premises shall at all times (including, without limitation ,following termination of this Agreement) be the property of the Association ,and the Operator shall not claim or acquire any interest of any kind whatsoever in the same. Operator shall not be entitled to make any additions, alterations or improvements to the ~~Premises~~Premises, or the furniture, fixtures and equipment located therein without the prior written consent of the Association which consent may be conditioned or withheld in the Association's sole discretion.
- (b) Association, at Association's expense, shall furnish and pay for: (i) air conditioning, electricity, water and sewer to the Premises; (ii) garbage removal for the Premises from designated dumpster not less than two (2) times per week, provided however, it shall be Operator's obligation to bring all garbage, trash, debris, and food waste, from the Premises to and within said designated dumpster on not less than a daily basis, (iii) grease trap maintenance and pumping fees in accordance with prudent business practices; (iv) pest extermination treatment for the Premises on a regular basis; and (v) vent hood and fire maintenance in accordance with prudent business practices and applicable law not less than two (2) times per year. and (vi) all hood inspection fees =. Association shall be responsible for the maintenance and care of the kitchen appliances; however, Operator shall keep Association apprised of any maintenance or other issues that may arise in regard to the kitchen/and or the kitchen appliances.
- (c) Association, at Association's expense, shall maintain the air conditioning system serving the Premises and the structural portions of the Premises in good condition, unless the same are damaged by the acts or omissions of Operator's employees and/or agents, in which event Operator shall be solely responsible for the costs of such repair.
- (d) Association shall purchase a new "point of sale" system for Operator's use in providing the Services, with such system to be selected by Association. All fees, costs and expenses associated with the point of sale system, including, without limitation, any annual licensing/use fees and costs associated with the maintenances thereof, shall be the responsibility of the Association, unless the point of sale system in damaged by the acts or omissions of Operator, its employees

and/or agents, in which event Operator shall be solely responsible for the fees, costs, and expenses related to such repair. To the extent any annual licensing/use fees and costs for the "point of sale" system for the Restaurant is paid directly by the Operator, such licensing/use fees and costs shall be reimbursed by the Association, in arrears, on the first day of each month. The point of sale system shall be the property of the Association, and Operator shall not claim, and Operator shall not acquire, any interest of any kind whatsoever in same.

- (e) Association Represents and warrants to Operator that the Premises, when delivered to Operator, will be in compliance with all governmental rules and regulations required to allow Operator to perform the Services and obtain a liquor license for the sale alcoholic beverages.

4. Compensation. In consideration for Operator providing the Services, Association agrees to pay Operator a monthly fee equal to the sum of (THIRTY TWO (\$32,500.00) THOUSAND DOLLARS. Association also agrees to ~~a-smallwares~~smallware, plates, silverware, kitchen supplies and breakage, annual reimbursement of up to \$6000.00. as needed. Association will also be responsible for monthly linen rental bills up to \$1000 per month. These bills will come from AlSCO linens and/or Atlas rentals. The Fee shall be payable by Association on the first day of in arrears, commencing on the first day of the month following the date on which Association provides Operator written notice that the Premises is ready to be occupied by Operator Commencement is currently scheduled for July 1, 2023. Upon such notification that the Premises ~~is~~ ready to be occupied, Operator shall be permitted to occupy the space full time with full staff ~~(1530)~~ days prior to ~~the~~ scheduled opening. The Fee shall be prorated for any partial month during the term of this Agreement based upon the actual number of days contained in such partial month. In addition to the above, Association shall pay up to \$400.00 per month for point of sale fees incurred by Operator. Said fees will be billed directly to the Association. Any amount beyond \$400.00 shall be the responsibility of the Operator. Association will pay Operator each up to \$400.00 per month for point of sale equipment fees. In addition, Association shall pay Operator the sum of \$18,250.00 prior to the scheduled opening referenced above to assist with the Operator's start-up expenses for the Premises.

5. Term. The term of this Agreement shall be for three (3) years commencing on the date of the Association's written notice to Operator that the Premises is ready to be occupied by Operator (the "Term"), unless sooner terminated as provided in this Agreement. Except as otherwise stated herein, Notwithstanding the foregoing (i) either party shall be entitled to terminate this Agreement for any reason or for no reason whatsoever, at any time, by delivering a written notice of termination to the other party no less than ~~ninety (90)~~ ninety (90) 480 days from intended date of termination. Operator will have a minimum of ninety (90) 480 days to cease operations before termination. Notwithstanding the above, Association may terminate this agreement sooner, if (i) Operator is deemed by the Department of Health Palm Beach County (or other applicable governmental authority) to be in violation of a "Priority Item" (as defined by the 2017 Food and Drug Administration (FDA) Food Code). In such instance, the Association shall have the right to immediately terminate this Agreement upon written notice to the Operator if the operator does not have all "priority items" resolved within 48 hours of notice. (ii) if Operator materially breaches this agreement and fails, to cure said breach within forty (48) eight hours upon being provided written notice of same by the Association and /or (3) Operator and its contractors and employees violate or otherwise fail to adhere to Florida law or otherwise commit a misdemeanor involving dishonestly or violence or any felony. In such case, the Agreement may be terminated immediately by Association. In the event either

party terminates this Agreement pursuant to this Paragraph 5, the Association shall only be responsible to pay Operator all accrued and unpaid Fees through the effective date of termination. Upon termination for any reason, Operator may remove all of its personal property from the Premises. OPERATORS FAILURE TO REMOVE ITS PERSONAL PROPERTY FROM THE PREMISES WITHIN FORTY (48) HOURS AFTER THE TERMINATION DATE SHALL BE DEEMED AN ABANDONMENT OF SUCH PROPERTY WHICH MAY BE DISPOSED OF BY THE ASSOCIATION IN ANY MANNER IT DEEMS APPROPRIATE. OPERATOR AGREES TO WAIVE ANY RIGHT IT MAY HAVE TO SEEK DAMAGES FOR THE DISPOSITION OF ITS PERSONAL PROPERTY.

6. Renewals. Upon expiration of the Term (or any renewal thereof as provided in this paragraph), Operator may request a renewal of the Term for an additional three (3) year period by giving written notice to the Association at least ninety (90) days prior to the expiration of the then current term. In the event Operator timely requests a renewal of the Term, Association shall have thirty (30) days following receipt of such requests to accept or deny the renewal request. During such thirty (30) day period, Association and Operator shall also attempt to agree on a new Fee for the renewal Term, In the event Association and Operator agree on a Fee and the Association agrees to accept the renewal request, then the agreed upon Fee shall be set forth in an amendment to this Agreement to be executed by Association and Operator and the Term shall be renewed for an additional three (3) year period, subject to the terms and conditions of this Agreement which shall all remain the same (other than the mutually agreed upon new Fee and any other terms and conditions that the parties mutually agree in writing to amend). In the event Association does not accept Operator's renewal request or Association and Operator do not agree upon a new Fee within such thirty (30) day period, then this Agreement shall not be renewed, and this Agreement shall terminate at the end of the then current Term, unless otherwise earlier terminated as provided in this Agreement.

7. Insurance and Indemnification. Operator, at Operator's sole expense, shall obtain and maintain at all times during the term of this Agreement, the following insurance policies:

- (a) **Comprehensive General Liability** insurance policy for the benefit of the Association and Boca Raton Associates VIII, LLLP, a Florida limited liability limited partnership (the "Developer"), in the amount of not less than \$1,000,000 per occurrence, \$2,000,000 in aggregate and including \$100,000 (any one occurrence) Damage to Rented Premises and a separate limit of \$1,000,000 per occurrence for liquor liability. The policy(ies) shall include waiver(s) of subrogation and name Association, ~~and Developer~~ and management as as additional insureds using an additional insured endorsement.
- (b) **Workers' Compensation** insurance as required by Florida law, without exemption. Operation represents to the Association that the Operator is not exempt from obtaining workers' compensation insurance under applicable law. Workers' compensation insurance shall not exclude coverage for job related illnesses or injuries for any employees of subcontractors, independent contractors or leased employees retained by restaurant operator.
- (c) **Automobile Liability** insurance with a minimum combined single limit of \$1,000,000 per occurrence, including coverage for owned, hired and non-owned vehicles at all times, ~~when delivery service is offered by Operator.~~ Association, Developer and management shall be listed as an additional insured on said insurance policies.

Such insurance policies shall provide that same are not subject to cancellation, termination or material change without thirty (30) days prior written notice to Association and Developer. Operator shall furnish Association certificates evidencing such policies, waivers, of subrogation and the additional insured endorsement within (10) days following the date of this Agreement and prior to initiating any business activities in the Premises, including without limitation, the preparation of the Premises for business operations. The provisions of this paragraph are not intended ~~to, and to and~~ shall not relieve or excuse Operator from any of Operator's obligations under this Agreement, including, without limitation, those indemnification obligations set forth in the immediately succeeding paragraph.

~~Notwithstanding the foregoing, in the event that Operator: (i) does not offer food delivery service from the Restaurant to Members' residences, or (ii) offers such delivery service through a third party contracted by Operator, Operator shall only be required to obtain and maintain automobile Liability insurance with a minimum combined single limit of \$500,00 per occurrence, including coverage for owners, hired and non-owned vehicles. Further, in the event that Operator offers food delivery service from the Restaurant to Members' residence through~~ In the event Operator uses a third party to offer food delivery service within the Association, an affiliated third party contracted by Operator, the affiliated third party delivery service provider shall be required to obtain and maintain Automobile Liability insurance as set forth in Section 7(c), above and Operator shall provide documentation to the Association evidencing such insurance coverage.

Operator shall indemnify, defend and hold harmless Association and Developer and all of their respective officers, directors, partners, shareholders, agents, and employees, from and against, any and all claims, causes of action, liabilities, damages, costs, fees and expenses, whatsoever (including reasonable attorneys' fees and court costs up to and through all trial, appellate and post-judgment levels and proceedings and whether or not a lawsuit is commenced), in any way arising out of or in connection with (a) Operator providing the Services, (b) Operator's performance or failure to perform under this Agreement and/or (c) the acts or omissions of Operator, its agents and/or employees. All personal property placed or moved into the Premises by ~~Operator~~Operator, or any other person shall be at risk of Operator, and Association and Developer shall not be liable to Operator for any damage to said personal property unless the damage is caused by the gross negligence of Association. The foregoing paragraph shall survive the expiration and/or earlier termination of this Agreement.

8. Further Provisions. Association and Operator further agree as follows:

(a) Signs; Advertising; No Rights In Name

(i) Association and Operator hereby agree that the Restaurant shall be operated under and marketed as "Luna Bistro", or such other name to be determined by Association. Operator shall not place any signs in the Premises or carry out any advertising in connection with the Premises without the prior written approval of Association which shall not be responsible withheld. The placement, size, dimension, content etc. of all signage shall be in accordance with the Association Documents and all county ordinances and standards. In placing any approved signs or carrying out ant approved advertising, and in otherwise performing its obligations under this Agreement, Operator shall not acquire any right, title or

other interest in or to "Luna Bistro", "Lotus", "G.L Homes" and/or any other trade names, trademarks, or logos of Association or Developer, or any entity affiliated with ~~with~~ or related to either of them, directly or indirectly.

(ii) Notwithstanding anything to the contrary contained in the agreement Association shall have the right, but not the obligation, to place a sign within the Premises at the location acceptable to Association which such sign shall make known that: (1) the Premises is operated ~~by~~ Operator and not by the Association or Developer, (2) Operator is an independent contractor who is not an employee, agent or affiliate of the Association or Developer, and (3) neither the Association nor the Developer shall be responsible for or bound by the actions taken or not taken by the Operator. Before placing any sign within the Premises under this paragraph, the Association shall provide Operator with a copy of the same; provided, however, the exact size, dimension, appearance, content, and placement of the sign shall be approved solely by the Association and Operator shall have no approval rights whatsoever with respect to the same. Ther Association shall pay for the cost of such a sign.

(b) Confidentiality. Neither Operator nor Association shall without the other party's prior written consent, which consent may be conditioned or withheld in that party's sole discretion, divulge, reveal or otherwise make available to any other person or entity any Confidential Information disclosed to or otherwise learned by one party regarding the other party, its Members, or its methods of operation. "Confidential Information" as used herein, refers to non-public confidential and proprietary business information of the parties. The foregoing Subparagraph (b) shall survive the expiration and/or earlier termination of this Agreement. Notwithstanding, this Agreement, including any amendment thereto, as well as records concerning payments made to Operator under this agreement, shall not be deemed confidential.

(c) Independent Contractor Relationship. Operator shall at all times during the term of this Agreement act as an independent contractor and nothing contained herein shall be construed to create the relationship of principal and agent, joint venture, and/or employer and employee between Association and Operator. In that regard, neither Association or Operator shall incur any obligations or enter into any agreements whatsoever on the other's behalf, and each shall be responsible for all obligations incurred or agreements entered into by Operator shall not assign any of the Operator's rights or delegate any of the Operator's duties under this Agreement without the prior written consent of the Association, whose consent may be conditioned or withheld in the Association's sole discretion.

(d) Access to Premises. Association shall have the right to enter and inspect the Premises at any time and from time to time without the prior consent of the Operator, and in this regard, Operator shall provide Association with a key to the Premises so that Association is able to perform said inspections.

(e) Access to Financial Records At reasonable times and on reasonable notice, Association shall have the right, not more frequently than twice in any calendar year to review Operator's financial records evidencing Operator's total sales of food and beverages under this Agreement and Operator's expenses related to staffing the Premises.

(f) No Liens. Operator shall not make any alterations or improvements to the Premises, including any structural or exterior alterations, without the prior written consent of the Association. Any approved alterations, additions or improvements, unless otherwise agreed in writing by the Association, shall be at the sole expense of the Operator. Operator shall at all times keep the Premises free of mechanic's liens and any other lien for labor, services, supplies, equipment or material purchased or procured, directly or indirectly, by or for Operator, and shall indemnify, defend and hold harmless Association and Developer from and against any and all such liens, all bond premiums for release of such liens, and all fees, costs, and expenses whatsoever (including without limitation, reasonable attorneys' fees and court costs up to and through all trial and appellate levels and proceedings) incurred by Association and/or Developer in removing and discharging any such liens. The foregoing Subparagraph (f) shall survive the expiration and/or earlier termination of this Agreement. THE ASSOCIATION SHALL BE SUBJECT TO THE LIENS FOR ANY ALTERATION OR IMPROVEMENT MADE BY OPERATOR. THIS SECTION (F) MAY BE RECORDED IN THE PUBLIC RECORDS.

(g) Catering Services. Operator shall be the preferred vendor to provide catering services for events held by the Association and/or Developer at and within the recreational facilities operated by the Association within Lotus. Operator agrees to provide the Association catering services at a 10% discount of the list pricing. Operator shall have the "right of first refusal" to perform catering services for events held by Members at the Event Room or Party Pavilion at Lotus, ~~in which the cost of such catering services exceeds \$1,000.00.~~ In the event that Operator and Members desire for Operator to provide catering services for any event (regardless of the cost of the catering services) at the Event Room or Party Pavilion: (i) such events must solely be for Members and such Members' guests and invitees, and (ii) Operator must enter into an agreement directly with the Members for such catering services. ~~In the event that Members select a company other than the Operator and utilize a caterer licensed only to serve food, not alcoholic beverages for such an event from Operator and utilize a caterer licensed only to serve food, not alcohol.~~ Operator shall not have the right to: (i) provide any catering services at or within Lotus for any event for persons or entities who are not Members and their guests or invitees, and/or (ii) use any portion of the Clubhouse for any catering services for any event for persons or entities who are not Members and the guests and invitees. All revenue generated by Catering Services shall belong to the Operator.

(h) Notwithstanding any contained in this Agreement to the contrary, Operator shall not and Operator hereby covenants and agrees that it shall not, without the prior written consent of the Association's Lifestyle Director (whose consent may be conditioned or withheld in his or her sole and absolute discretion), market, advertise, or hold any event at or within Lotus which such Operator event competes, either directly or indirectly, with such Association event.

(i) Not more than (4) times in any calendar year, and upon at least thirty (30) days advance written notice to Operator, the Association and/or Developer shall have the right to use the Premises for community-wide functions or events held or sponsored by Association and/or Developer, subject to Association and/or Developer having the sole responsibility for cleaning and repairing, if necessary, the Premises and the furniture, fixtures and equipment located therein after such event.

9. NO LEASE. THE PARTIES AGREE THAT THIS OPERATING AGREEMENT DOES NOT CREATE OR OTHERWISE ESTABLISH A LEASE OR RENTAL AGREEMENT BETWEEN THE OPERATOR AND THE ASSOCIATION. THE PARTIES AGREE THAT CHAPTER 83, FLORIDA STATUTE (FLORIDA'S LANDLORD-TENANT ACT) DOES NOT APPLY TO THIS AGREEMENT.

10.9. Miscellaneous Provisions

- (a) Governing Law. This agreement shall be construed and governed in accordance with the laws of the State of Florida
- (b) Severability. In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of the Agreement shall be construed to be full force and effect.
- (c) Venue; Attorneys' Fees. In the event of any litigation between the parties under this Agreement: (i) the parties shall and hereby submit to the jurisdiction of the state ~~and federal~~ courts of the State of Florida, and (ii) venue shall be laid exclusively in Palm Beach County, Florida. All reasonable attorneys' fees, court costs incurred by the prevailing party, including without limitation through all trial, appellate and post-judgement levels and proceedings, shall be reimbursed to the prevailing party by the non-prevailing party. THE PARTIES AGREE THAT THEY WAIVE THEIR RIGHT TO A JURY TRIAL ON ALL MATTERS ARISING FROM THE AGREEMENT
- (d) Exculpation. Association and Developer and all of their respective officers, directors, partners, shareholdings, agents and employees shall not be liable to Operator for any monetary damages whatsoever (including but not limited to, loss of business, loss of profits, indirect damages, special, compensatory, incidental, consequential damages and/or punitive damages), in connection with Association's performance or failure to perform under this Agreement or otherwise; it being acknowledged and agreed by Association and Operator that in the event of a breach of this Agreement by Association, the only liability Association all have to Operator shall be the obligation to cure such breach. The forgoing expulsion shall not apply to Association's obligation to pay the Fee and the indemnity obligations described in this Agreement.
- (e) Construction. In construing this Agreement, the singular shall be held to include the plural, the plural shall be heels to include the singular, the use of any gender shall be held to include every other and all genders, and captions and paragraph headings shall be disregarded.
- (f) Notices. All notices are required or desired to be given under this Agreement shall be in writing and shall be deemed given when either delivered personally or three (3) days after deposited in the United States mail, certified mail, postage prepaid, return receipt requested (or, in the case of notice by certified mail, when the attempted initial delivery is refused or cannot be made because of change of address). Notices shall be sent to the parties as follows:

If to Association:

Lotus Homeowners Association, Inc,
1600 Sawgrass Corporate Parkway, Suite 400.
Sunrise, Florida 33323

Attn: ~~Board of Directors~~ Kara Babcock, President

With a Copy to

Lou Caplan, Esq.

Sachs Sax Caplan

6111 Broken Sound Parkway-Site 200

Boca Raton, FL 33487

If to Operator:

Devinos LLC DBA Luna Bistro Boca
532 NW 77th Street
Boca Raton Florida 33487

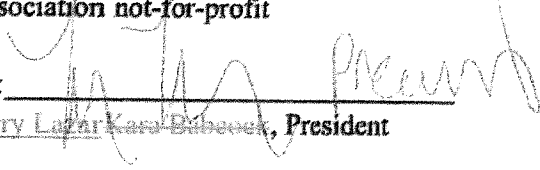
Attn: Jason Savino

- (g) Assignment. This Agreement shall not be assigned, either directly or indirectly, by Operator without the prior written consent of Association, which such consent shall be given or withheld in the sole and absolute discretion of the Association. Any transaction or arrangement which has the effect of changing the control of and over the Operator shall be deemed to be an assignment for the purposes of this Agreement.
- (h) Intended Beneficiary. Developer is hereby declared and made to be, and Operator and Association hereby acknowledge and agree that Developer is, an intended beneficiary of this Agreement, and Developer shall have the protections afforded under and the right to enforce the terms and conditions of this Agreement as if Developer was a dignitary hereto. Other than the Developer, there shall be no other intended beneficiaries or this Agreement.
- (i) Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties and may not be changed, altered or modified except by an instrument in writing signed by both parties hereto. This Agreement shall be binding upon the parties hereto. This agreement shall be binding upon the parties hereto and their respective successors and assigns
- (j) Participation in Preparation: Each Party has participated in negotiating and preparing this Agreement. Therefore, any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

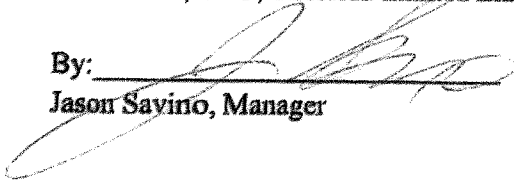
EXECUTED as of the date above indicated in several counterparts, each of which shall be deemed an original, but all constitute only one and the same Agreement.

[SIGNATURES ON FOLLOWING PAGE]

ASSOCIATION
LOTUS HOMEOWNERS ASSOCIATION, INC a Florida
Association not-for-profit

By: 
Larry Lazar Kara Babcock, President

OPERATOR:
DEVINOS, LLC, a Florida Limited Liability Company d/b/a Luna Bistro Boca

By: 
Jason Savino, Manager

END OF DOCUMENT

ADDENDUM TO RESTAURANT OPERATION AGREEMENT

THIS ADDENDUM TO THE RESTAURANT OPERATION AGREEMENT (“**Addendum**”) is made and entered into this ____ day of December, 2024, by and between Lotus Homeowners Association, Inc., a Florida not-for-profit corporation (“**Association**”) and Devinos, LLC, a Florida limited liability company d/b/a Luna Bistro Boca (“**Operator**”) (Association and Operator are sometimes hereinafter collectively referred to as the “**Parties**”).

WITNESSETH

WHEREAS, on June 15, 2023, the Parties entered into a Restaurant Operation Agreement (“**Agreement**”), which is attached hereto as Exhibit “A” and incorporated herein by this reference

WHEREAS, the Parties desire to continue to be bound by the Agreement and to modify certain terms of the Agreement pursuant to Section 10(i), which permits modification of the Agreement;

WHEREAS, any capitalized terms used but not defined in this Addendum will have the meaning(s) ascribed thereto in the Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants, conditions, and obligations herein contained, and such other and further valuable consideration, the receipt and sufficiency of which is acknowledged and accepted by the Parties, the Parties agree to modify the Agreement as follows:

1. **Operator Services.** Section 2 of the Agreement, titled “Operator Services”, is modified to add the following new subsections 2(k), 2(l):

- (k) As of January 1, 2025, and continuing through the expiration or earlier termination of the Term of the Agreement, Operator will provide each residential lot within Lotus a quarterly restaurant credit equal to \$200.00 per unit per quarter (“**Restaurant Credits**”). The Parties may adjust the Restaurant Credits amount by mutual written agreement; provided, however, no such adjustment may be made more frequently than once per calendar year.

Restaurant Credits may be used towards any of the following:

- (i) purchases at the Restaurant, including private events held at the Restaurant;
- (ii) private events booked through Luna Bistro;
- (iii) events catered by Potions in Motion (wherever such events are held);
- (iv) purchases of Glatt Kosher food, which will be purchased from a certified Glatt Kosher Market (SHABBOS) (ORB) (platters, hot & cold food, etc.)
- (v) purchases of wine directly from Luna Bistro (residents will be offered wine at a 20% discount off the wine list price per bottle)

Restaurant Credits are fully transferrable between the record owner(s) of any lots within Lotus (provided, however, any such transfers are subject to

3rd party transaction fees associated with such transfers, which be automatically collected from the Restaurant Credits).

Restaurant Credits issued within any particular quarter but are unused within such quarter (“**Unused Credits**”) will automatically roll over to the remaining quarter or quarters within the same calendar year in which they were issued. Provided, however, any Unused Credits remaining unused at the end of that calendar year (to wit: as of 11:59 pm on December 31st, the “End of the Year”) shall automatically expire (“**Expired Restaurant Credits**”).

Operator is entitled to retain all Expired Restaurant Credits and the same shall be considered Operator’s revenue.

- (l) As of January 1, 2025, and continuing through the expiration or earlier termination of the Term of the Agreement, Operator shall, at Operator’s sole expense, provide a DJ for music entertainment at the Restaurant from _____ pm to _____ pm, at least once per calendar month. Operator is solely responsible for ensuring any and all licensure required for such DJ services, including all music played by the DJ, has been properly obtained and paid.

2. **Compensation.** Section 4 of the Agreement, titled “Compensation”, is modified to add the following:

As of January 1, 2025, and continuing through the expiration or earlier termination of the Term of the Agreement, Association shall pay to Operator, on the first day of each quarter, an amount equal to the total of Restaurant Credits provided by Operator each quarter; to wit, One Hundred Sixty Thousand Eight Hundred Dollars (\$160,800) per quarter (“**Allowance**”). Any adjustment to the Restaurant Credits made by the Parties in accordance with Section 2(k) of the Agreement shall automatically effect an equivalent adjustment to the Allowance amount.

3. **Governing Law.** This Addendum shall be subject to and governed by the laws of the State of Florida, regardless of any conflict of laws principles.

4. **Binding Effect.** This Addendum shall be binding upon and inure to the benefit of Association and Operator and their respective heirs, legal representatives, executors, administrators, successors and permitted assigns.

5. **Entire Agreement.** No change or modification of this Addendum shall be valid unless the same is in writing and signed by both Parties. No waiver of any provisions of this Addendum shall be valid unless in writing and signed by the person or party to be charged.

6. **Severability.** If any portion of this Addendum shall be for any reason, invalid or unenforceable, the remaining portion or portions shall nevertheless be valid, enforceable and carried into effect, unless to do so would clearly violate the present legal and valid intention of the Parties hereto.

7. **Counterparts.** This Addendum may be executed in any number of counterparts, all of which together shall constitute one and the same instrument. The Parties hereby acknowledge and agree that facsimile signatures of this Addendum shall have the same force and effect as original signatures.

8. **Voluntary Agreement.** Operator and Association individually represent and agree that each has reviewed all aspects of this Addendum, that each has had the right to consult with counsel of their choice prior to entering into this Addendum, that each has carefully read and fully understands all provisions of this Addendum, and that each is voluntarily entering into this Addendum.

9. **Conflict Between Agreement And Addendum.** In the event of any conflict or ambiguity between this Addendum, and any other documents, or the Agreement, this Addendum shall control and supersede the Agreement and such documentation.

IN WITNESS WHEREOF, the Parties have knowingly and voluntarily executed this Addendum on the date(s) indicated and set forth below:

ASSOCIATION

OPERATOR

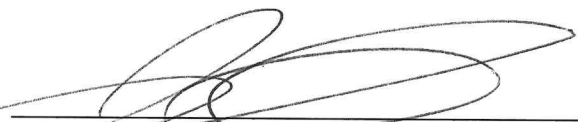


Lotus Homeowners Association, Inc.

By: Nicole Helfman
(Print Name)

As Its: Treasurer

Date: 3/5/25



Devinos, LLC, d/b/a Luna Bistro Boca

By: JASON SAVINO
(Print Name)

As Its: _____

Date: 1/1/2025