

Prepared by and return to:
Matthew W. McMurtrey, Esquire
Lowndes, Drosdick, Doster,
Kantor & Reed, P.A.
Post Office Box 2809
Orlando, Florida 32802-2809

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS?

(Palm Bay Pointe West)

THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS? (“Declaration”) is made and entered into on this ____ day of _____, 2023 (the “Effective Date”), by **KIMAYA, LLC**, a Delaware limited liability company, whose address is 5200 Vineland Road, Suite 200, Orlando, FL 32811 (“Declarant”).

W I T N E S S E T H :

WHEREAS, Declarant is the fee simple owner of certain real property located in the City of Palm Bay (the “**City**”), Brevard County, Florida, known as Palm Bay Pointe West, and being more particularly described in **Exhibit “A”**, attached hereto and incorporated herein by this reference (the “**Property**”). Declarant may in the future transfer ownership of Tracts D-1, C2, CW3, CW4, CW5, CW6, CW7, CW8, CW9, CW10, CW11, CW12, CW13, CW 14, CW15, CW16, R1 and D-3 to third parties (each of Tracts D-1, C2, CW3, CW4, CW5, CW6, CW7, CW8, CW9, CW10, CW11, CW12, CW13, CW 14, CW15, CW16, R1, R2 and D-3 is referred to herein as a “**Tract**,” and the owners of each Tract are referred to herein as “**Owners**” or “**Tract Owners**”) as shown on the Plat of Palm Bay Pointe West attached hereto and incorporated herein by this reference as **Exhibit “B”** (the “**Plat**”);

WHEREAS, Declarant intends to develop the Property in accordance with the Plat;

WHEREAS, the Tracts are intended to share the use of: (i) paved access, roadways, driveways, curbs and sidewalks, (ii) parking areas, (iii) sanitary sewer system, including but not limited to sanitary sewer force mains and lift stations, (iv) integrated stormwater, drainage and retention systems, (v) water, gas, electricity, telephone, fiber optics, and cable systems, (vi) signage and (vii) grading and construction (collectively, the “**Project Infrastructure**”);

WHEREAS, Declarant has determined that the ownership, use and enjoyment of the Property would be enhanced by the granting of certain easement rights related to the construction, use, maintenance, repair and replacement of the Project Infrastructure; and

WHEREAS, Declarant desires to subject the Property to the easements, covenants, restrictions and other provisions of this Declaration, and thereby establish certain rights, duties, easements, appurtenances, interests and benefits related to the Property and Project Infrastructure and applicable to the Tract Owners.

NOW, THEREFORE, for and in consideration of the premises hereof and the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant, stipulate and agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are true and correct and are hereby incorporated into the text of this Declaration.

2. **Access Easement.** Declarant, as the owner of Property, for itself and its successors and assigns, does hereby declare, establish, and grant to the Tract Owners, for the benefit of such Tract Owners, as well as for the benefit of each of their respective officers, tenants, employees, agents, customers, business visitors, guests, licensees, invitees, and all other persons lawfully upon any portion of the Property, as an appurtenance to and for the benefit of each Tract, and each and every portion thereof, a perpetual, non-exclusive easement (the “**Access Easement**”) on, over, across and through the roadways, curbs, sidewalks, and other roadway improvements (collectively, the “**Roadway Improvements**”) to be constructed or as situated on the Property, for the purposes of providing pedestrian and vehicular traffic (including without limitation construction and delivery vehicles and equipment) ingress, egress and regress to, from and between the Tracts and all public roadways adjacent to any or all of the Tracts. No barriers of any kind, including but not limited to fences and walls, shall be constructed or maintained on the Access Easement that would restrict the use of the Access Easement. The Roadway Improvements within each Tract shall be constructed, maintained, repaired and replaced by the Owner of each Tract, at their sole cost and expense, in a good and workmanlike manner and in accordance with the requirements of all applicable governmental authorities. All proposed access points to an Owner’s Tract shall be set forth on the Owner’s site plan and shall be subject to the site plan approval provisions of Section 10 below.

4. **Sanitary Sewer Easement.** Declarant, as the owner of Property, for itself and its successors and assigns, does hereby declare, establish, and grant, to the Tract Owners, for the benefit of such owners, as well as for the benefit of each of their respective officers, tenants, employees, agents, customers, business visitors, guests, licensees, invitees, and all other persons lawfully upon any portion of the Tracts, as an appurtenance to and for the benefit of the Tracts, and each and every portion thereof, a perpetual, non-exclusive easement (the “**Sanitary Sewer Easement**”) on, over, under, across and through the sanitary sewer force mains, pipes, lift stations, and other sanitary sewer improvements located on the Property, including but not limited to any lift stations located on the Property (the “**Sanitary Sewer Facilities**”), as more particularly described and depicted on **Exhibit “C”** (the “**Sanitary Sewer Easement Area**”) for the purposes of the installation, operation, use, maintenance, repair and replacement of the Sanitary Sewer Facilities within the Sanitary Sewer Easement Area. The Sanitary Sewer Facilities within each Tract shall be constructed, maintained, repaired and replaced by the Owner of each Tract, at their sole cost and expense, in a good and workmanlike manner and in accordance with the requirements of all applicable governmental authorities.

5. **Grant of Stormwater Easement.**

(a) **Grant of Easement.** Declarant may construct and install on the Property an integrated and comprehensive stormwater drainage and retention system (the “**Stormwater Facilities**”), including certain stormwater transmission lines and stormwater facilities located on

Tracts S.M.T. – 2, D-1 and D-3 as depicted on the Plat (the “**Declarant Stormwater Tracts**”), to serve the Property, for drainage and retention of stormwater from each Tract. To the extent that Declarant does not construct and install all necessary Stormwater Facilities for any or all of the individual Tracts, each individual Tract Owner shall be responsible for constructing and installing the Stormwater Facilities necessary to serve such Tract Owner’s Tract, including the costs of design, permitting, construction and tying into the SWMS and any additional drainage/retention required by any governmental authority on each individual Tract. Declarant, for itself and its successors and assigns, does hereby declare, establish, and grant, to the Owners of each Tract, for the benefit of each Tract, as well as for the benefit of each of their respective officers, tenants, employees, agents, customers, business visitors, guests, licensees, invitees, and all other persons lawfully upon any portion of the Tracts, as an appurtenance to and for the benefit of each Tract, and each and every portion thereof, a perpetual, non-exclusive drainage, retention, detention and flowage easement through the Property and into the Stormwater Facilities (the “**Stormwater Easement**”). The location of the Stormwater Easement shall be as specified in the City’s approval of final engineering and utility plans for the Stormwater Facilities. The Stormwater Facilities situated within each Tract shall be maintained, repaired and replaced by the Owner of each Tract, at their sole cost and expense, in a good and workmanlike manner and in accordance with the requirements of all applicable governmental authorities. In addition, each Tract Owner shall pay such Owner’s pro rata share (the “**Pro-Rata Share**”) of the repair and maintenance costs of the Declarant Stormwater Tracts, as calculated by using the total acreage of such Tract Owner’s Tract as the numerator, and by using the total acreage of all Tracts (except for the Declarant Stormwater Tracts) as the denominator.

(b) Water Management District Requirements.

(i) Declarant, its successors or assigns, or any individual Tract Owner’s as specified in Section 5(a) above, will cause the surface water management system for the Property, including but not limited to all ponds, swales, drainage lines, drainage pipes and other drainage facilities required for the proper drainage of the Property in accordance with the requirements of the applicable Water Management District permit(s) issued with respect to the Property (which shall be enforceable by such Water Management District (the “**District**”) to the extent provided by law), and shall specifically include any portions of the Property designated for drainage or stormwater management purposes herein, on any Plat or in any Supplemental Declaration or amendment to this Declaration (the “**Surface Water Management System**” or “**SWMS**”) to be constructed within the Property and, to the extent required, on adjacent property. The SWMS is part of the overall drainage plan for the Property encumbered by this Declaration. If, as of the date of this Declaration, a Municipal Services Benefit Unit (“**MSBU**”) has not been approved and established by the City for the maintenance, operation and repair, and if necessary, reconstruction or replacement of the SWMS, Declarant, Tract Owners, or Declarant’s designee shall be responsible for such functions. However, if and when such an MSBU is created, the City shall be responsible for the maintenance, operation and repair, and if necessary, reconstruction or replacement of the SWMS. Maintenance of the SWMS shall mean the exercise of practices which allow the system to provide drainage, water storage, retention ponds, conveyance or other surface water or stormwater management capabilities as permitted by the District. Any repair, reconstruction or replacement of the SWMS shall be as permitted, or if modified, as approved by the District. The City shall have unobstructed ingress to and egress from all portions of the SWMS at all reasonable times to maintain said drainage improvements in a manner consistent with its

responsibilities as provided herein. No Tract Owner shall cause or permit any interference with such access and maintenance.

(ii) Unless and until an MSBU is created for such purpose, each Tract Owner which becomes the owner of a Tract shall maintain at its sole cost and expense all portions of the SWMS which are located on such Tract Owner's Tract and which have not been conveyed to the City, and such Tract Owner shall have the right (but not the obligation) to perform enhanced maintenance, if it so desires, of any portions of the SWMS which have been conveyed to the City. No person, entity, nor Tract Owner shall alter the drainage flow of the Surface Water Management System, including buffer areas or swales, without the prior written approval of the District and Declarant.

(iii) Declarant or the Tract Owners may have constructed drainage swales or berms upon some or all of the Tracts for the purpose of managing and containing the flow of excess surface water, if any, found upon such Tract from time to time. Notwithstanding any provision of this Declaration to the contrary, each Tract Owner shall be responsible for the maintenance, operation and repair of the swales on its Tract in good and workman like order, as applicable, at its sole cost and expense. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow the swales or berms to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the District. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the swales is prohibited. No alteration of the drainage swale or berm shall be authorized and any damage to any drainage swale or berm, whether caused by natural or human-induced phenomena, shall be repaired and the drainage swale or berm returned to its former condition as soon as possible by the Tract Owner(s) of the Tract(s) upon which the drainage swale or berm is located. Should any Tract Owner fail to sufficiently maintain such swale or berm, Declarant or any other Tract Owner approved by Declarant shall have the authority to maintain the same and the cost of such maintenance shall be assessed as an individual assessment against and become a debt of the said Owner and shall become immediately due and payable as provided for in Section 12 below.

(iv) Unless and until an MSBU is created for maintenance, operation and repair, and if necessary, reconstruction or replacement of the SWMS, the City shall have an emergency access easement to and over the SWMS within the Property in the event that inadequate maintenance thereof creates a hazard to the public health, safety, and general welfare. However, this emergency access easement does not impose any obligation, burden, responsibility or liability upon the City to enter upon the SWMS within the Property to take any action to repair or maintain the SWMS unless the same is dedicated to the City and the City assumes the responsibility to take such action or maintenance.

6. Utilities Easement. Declarant, as the owner of Property, for itself and its successors and assigns, does hereby declare, establish, and grant, to the Tract Owners, for the benefit of such owners, as well as for the benefit of each of their respective officers, tenants, employees, agents, customers, business visitors, guests, licensees, invitees, and all other persons lawfully upon any portion of the Tracts, as an appurtenance to and for the benefit of the Tracts, and each and every portion thereof, a perpetual, non-exclusive access, maintenance and construction easement over the Property (the "**Utilities Easement**") for electricity, water, gas, telephone, fiber optics and cable systems (the "**Utilities Improvements**") through and over the Property to serve each Tract in the

areas designated on **Exhibit “D”** attached hereto and incorporated herein by this reference (the “**Utilities Easement Area**”). The Utilities Improvements to be situated within each Tract shall be constructed by the Owner of each Tract, at their sole cost and expense, in a good and workmanlike manner and in accordance with the requirements of all applicable governmental authorities.

7. **Grading and Construction Easement.** Declarant hereby reserves unto itself a temporary grading and construction easement for the purpose of performing construction, grading, and maintenance work and activities on, across, under and through the Tracts. Notwithstanding the foregoing, Declarant shall not be obligated to perform any construction, grading or maintenance work or activities on the Tracts other than as specifically provided in other Sections of this Agreement.

8. **Reimbursement of Construction Costs.** Nothing set forth in this Declaration shall impose an obligation on the part of Declarant to construct or install any Project Infrastructure within the Property. Notwithstanding the foregoing, in the event Declarant does install any portion of the Project Infrastructure within the Property, each Tract Owner shall reimburse Declarant for their “Pro-Rata Share” of the costs and expenses associated with the Declarant’s construction, whether such construction occurs prior to or after the Effective Date of a Tract Owner taking title to one of the Tracts (or a portion thereof) of Property herein, of any Project Infrastructure within the Property (the “**Shared Costs**”) within thirty (30) days following any Declarant’s written request of any such request and reasonable supporting documentation evidencing expenditures and allocations for the Shared Costs. Should any Tract Owner fail to pay its Pro-Rata Share (as defined below) of the Shared Costs within thirty (30) days following such Tract Owner’s receipt of any such request and reasonable supporting documentation evidencing expenditures and allocations for the Shared Costs, failing which the amount due from any Tract Owners, as applicable, shall bear interest at the rate of ten percent (10.0%) per annum from the due date until paid, and Declarant shall be entitled to record among the Public Records of Brevard County, Florida, a claim of lien against the Tract of such defaulting Tract Owner, as applicable. Such claim of lien shall be effective and have priority as of the date recorded, shall secure all amounts owed by the defaulting Tract Owner, as applicable, to Declarant hereunder (including but not limited to reasonable attorneys’ fees and costs incurred in the collection thereof) and may be foreclosed according to law. Each Tract Owner’s pro rata share (the “**Pro-Rata Share**”) shall be calculated by using the total acreage of such Tract Owner’s Tract as the numerator, and by using the total acreage of all Tracts (except for Tracts D-1 and D-3) which do not contain retention and detention facilities as the denominator.

9. **Signage Plan Approval.** Each Tract Owner shall have the right to place one monument sign on their Tract, in accordance with City of Palm Bay requirements. So long as Declarant owns a Tract, Declarant shall have the right to review and approve all monument and building signage plans, in Declarant’s reasonable discretion, prior to the submission of such signage plan to the City. Declarant shall have fifteen (15) days from receipt of the signage plan to approve or disapprove of the signage plan, and in the case of disapproval shall provide the reasons for such disapproval in writing to Tract Owner within such fifteen (15) day period. Failure of the Declarant to provide a response to the signage plan submittal shall be deemed Declarant’s approval of such signage plan. Upon receipt of written disapproval from the Declarant, Tract Owner shall then correct its signage plan and provide such corrected signage plan to Declarant for approval. Upon final written approval by Declarant, Tract Owner may submit its signage plan to the City.

10. Site Plan Approval. So long as Declarant owns a Tract, Declarant shall have the right to review and approve all site plans for development of an Owner's Tract, in Declarant's reasonable discretion, prior to the submission of such site plan to the City. Such site plans shall include elevations and architectural drawings. Declarant shall have thirty (30) days from receipt of the site plan from Tract Owner to approve or disapprove of the site plan, and in the case of disapproval shall provide the reasons for such disapproval in writing to Tract Owner within such thirty (30) day period. Upon receipt of written disapproval from the Declarant, Tract Owner shall then correct its site plan and provide such corrected site plan to Declarant for approval. Upon final written approval by Declarant, Tract Owner may submit its site plan to the City.

11. Administrative Charge. Prior to or simultaneous to the closing of the purchase and sale of each Tract from the Declarant to a purchaser of a Tract hereunder, the purchaser of such Tract shall pay to Declarant a one-time administrative charge, calculated by multiplying the amount of \$27,750.00 by the total number of acres (including partial acres) included in the Tract.

12. Self-Help.

(a) Upon the failure of a defaulting Owner to cure a breach of this Declaration within thirty (30) days following written notice thereof by another Owner or Declarant (including the breach by an Owner of its duty to maintain and repair any and all components of the Project Infrastructure located on or under such Owner's Tract as required by this Declaration), unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion, Declarant (or an Owner which has obtained the consent of Declarant to undertake a cure hereunder) (the "**Curing Owner**") shall have the right to perform such obligation contained in this Declaration on behalf of such defaulting Owner (the "**Cure Work**"). Upon the Curing Owner's delivery to the defaulting Owner of a request for reimbursement and supporting documentation evidencing the reasonable expenditures incurred in connection with the performance of the Cure Work (the "**Cure Costs**"), the defaulting Owner shall reimburse the Curing Owner for the Cure Costs within thirty (30) days following such defaulting Owner's receipt of such request and supporting documentation. Should the defaulting Owner(s) fail to pay the Cure Costs within the time period set forth above, the respective unpaid amounts shall bear interest at the rate of ten percent (10.0%) per annum from the due date until paid, and Declarant shall be entitled to record among the Public Records of Brevard County, Florida, a claim of lien against the Tract of such defaulting Tract Owner, as applicable. Such claim of lien shall be effective and have priority as of the date recorded, shall secure all amounts owed by the defaulting Tract Owner, as applicable, to Declarant hereunder (including but not limited to reasonable attorneys' fees and costs incurred in the collection thereof) and may be foreclosed according to law. Declarant hereby grants to the Owners, and reserves unto itself a nonexclusive easement and right of ingress and egress in, under, over and across any Tract, as may be reasonably necessary for the purpose of performing the Cure Work.

(b) Prior to any Owner's, and their successors, assigns, employees, contractors, agents and licensees (collectively, the "**Entry Parties**"), entry onto any portion of another Tract for the purpose of performing Cure Work, the applicable non-defaulting owner shall deliver to the defaulting owner a policy of commercial general liability insurance with a combined single limit of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate, insuring the

defaulting owner as an additional insured, against injuries or damages to persons or property that may result from or are related to (i) the Entry Parties' entry upon any portion of the applicable Tract, and (ii) any maintenance, repair, replacement or other activities conducted by the Entry Parties thereon, and in such forms and with an insurance company reasonably acceptable to the non-defaulting owner.

13. Dedication of Project Infrastructure. [RESERVED]

14. Prohibited Uses. Declarant, as an appurtenance to each Tract and for the benefit of each Owner, hereby imposes on the Property the restrictions set forth on **Exhibit "E"** (the "**Prohibited Uses**"). Such Prohibited Uses may be amended from time to time at the sole discretion of the Declarant. Notwithstanding the foregoing, any and all uses on the Property shall be subject to the prior written approval of the Declarant.

15. Zoning Requirements. Each Tract Owner shall develop its respective Tract in accordance with all state laws, regulations, ordinances and building codes, including but not limited to the City Zoning Guidelines applicable to such Tract, as amended from time to time, attached hereto as **Exhibit "F"** and incorporated herein by this reference (the "**Zoning Guidelines**").

16. General Provisions. The following general provisions shall apply to all of the terms and provisions set forth in this Declaration.

(a) **Amendment.** Declarant shall have the right to unilaterally amend the Declaration for so long as Declarant is a Tract Owner.

(b) **Duration.** The easements hereby created, granted and conveyed with respect to each easement area set forth in Sections 2, 3, 4, 5, 6, and 7 shall be perpetual in duration and may not be changed, amended, modified, canceled or terminated, except by instrument in writing executed by Declarant, except as specifically provided herein.

(c) **Severability.** Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

(d) **Dedication or Conveyance of Easement.** Declarant reserves the right to dedicate or convey an easement with respect to any of the Project Infrastructure to an applicable governmental authority or utility authority to facilitate the purposes for which any easement(s) herein are being granted. In the event of the occurrence of the dedication or conveyance of such easement(s) by recorded instrument, the applicable easement(s) granted herein shall automatically cease, terminate and be of no further force and effect.

(e) **Assignment of Rights and Duties.** Any and all of the rights, powers and reservations of the Declarant may be, but shall not be required to be, assigned to any person or entity, which owns all or any portion of the Property and which agrees to assume the duties of the Declarant, pertaining to the particular rights, powers and reservations assigned. Upon such assignee evidencing its consent in writing to accept such assignment and assume such duties, such assignee shall, to the extent of such assignment, have the same rights and powers and be subject

to the same obligations and duties as are herein given to and assumed by the Declarant. Further, the Declarant may from time to time delegate any and all of its rights, powers, discretions and duties hereunder to such agent or agents as it may designate.

(f) Agreement Binding; Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Tract Owners and their respective assigns and successors-in-interest and/or title. In the event that a Tract Owner hereafter assigns or conveys its interest in such owner's Tract or any portion thereof, the assignee or successor shall be bound by the provisions of this Declaration to the same extent as the Tract Owner.

(g) Indemnification. Each Tract Owner agrees to indemnify, save, pay, defend and hold the Declarant, their partners, officers, directors, shareholders, affiliates, members and employees, harmless from and against any and all claims, loss, damage or expense, including reasonable attorneys' fees and costs, incurred as a result of or arising out of the activities of the indemnifying party, its agents, contractors, licensees, employees, licensees and invitees with respect to the matters which are the subject of this Declaration.

(h) Notices. Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered or transmitted electronically (e.g., by e-mail) or within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and delivered to the Tract Owners at the address specified on the records of the Brevard County Property Appraiser for such owner's Tract, or at such other address as the receiving Tract Owner may have specified in writing to the other Tract Owners.

(i) Estoppel Certificates. The Declarant and each of the Tract Owners shall, without charge, deliver to any requesting Tract Owner, within fifteen (15) days after receipt of written request therefor, a written instrument duly executed and acknowledged, certifying, to the best of such Tract Owner's knowledge, (i) whether or not any Tract Owner has observed and performed all of the terms and conditions required to be performed and observed under this Declaration, and if not, specifying the details of noncompliance; and (ii) the amounts, if any, which the certifying Tract Owner has expended pursuant to the terms of this Declaration, for which a claim for reimbursement has been made or will be made to another Tract Owner. Failure to deliver such certificate within such time period shall be conclusive evidence against the Tract Owner from whom the certificate was requested that, to the best of such Tract Owner's knowledge, all terms and conditions have been performed and observed, and that no amounts are owed to the Tract Owner failing to deliver the certificate.

(j) No Joint Venture, Partnership or Common Development. None of the terms or provisions of this Declaration shall be deemed to create a partnership between the Tract Owners in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers, partners or members of any joint enterprise.

(k) Captions and Applicable Law. The paragraph and subparagraph captions included herein are for reference only and should not be used in construing any of the terms hereof.

This Declaration shall be governed, enforced and construed in accordance with the laws of the State of Florida.

(l) Legal Proceedings. In the event that any person or entity who or which is either a party to this Declaration or is bound by its terms (whether as an assignee, successor-in-interest or a successor-in-title) institutes legal proceedings against any other person or entity who or which is bound by this Declaration either by virtue of being a party hereto or by virtue of being bound hereby (whether as an assignee, successor-in-interest or successor-in-title) to enforce any term of this Declaration, the person or entity prevailing in said legal proceedings shall be entitled to recover reasonable attorney's and paralegals' fees (including those incurred on appeal and/or in bankruptcy) and court costs incurred incidental thereto from the party not prevailing in said legal proceedings.

(m) Enforcement and Remedies. If any party hereto, or any of its respective successors and assigns, shall violate or attempt to violate any of the provisions of this Declaration, in addition to the other remedies set forth herein, it shall be lawful for any party benefited by such provisions (i) to prosecute proceedings for the recovery of damages against the party violating or attempting to violate the same, or (ii) to maintain a proceeding in any court of competent jurisdiction for declaratory relief, specific performance and/or mandatory and/or injunctive relief for the purpose of compelling performance of the provisions of this Declaration and/or preventing or enjoining all or any such violations or attempted violations. The remedies contained in this provision shall be cumulative of all other remedies now or hereafter permitted at law or in equity. The failure to enforce any terms or provisions of this Declaration, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach of violation occurring prior to or subsequent thereto.

(n) Time. Time is of the essence in connection with this Declaration and each provision hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Declarant has executed and delivered this Declaration on the date below first written.

Signed, sealed and delivered in the presence of:

“DECLARANT”

KIMAYA, LLC, a Delaware limited liability company

Print Name

By: _____

Name: _____

Title: _____

Print Name

Date of Execution: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____, as _____ of **KIMAYA, LLC**, a Delaware limited liability company, on behalf of the company. Said person (check one) ☐ is personally known to me or ☐ produced _____ as identification.

Notary Stamp

Print Name: _____

Notary Public, State of Florida

Commission No.: _____

My Commission Expires: _____

JOINDER OF MORTGAGEE

The undersigned, **WATERSTONE HOLDINGS, LLC**, a Florida limited liability company, as lender under that certain Mortgage and Security Agreement executed by **KIMAYA, LLC**, a Delaware limited liability company in favor of **WATERSTONE HOLDINGS, LLC**, a Florida limited liability company, recorded on the 21st day of July, 2023 in Official Records Book 9843, Page 2302, Public Records of Brevard County, Florida, ("Mortgagee"), hereby consents to and subordinates to the foregoing Declaration of Easements – Waterstone (West).

Signed, sealed and delivered in the presence
of:

WITNESSES:

WATERSTONE HOLDINGS, LLC, a
Florida limited liability company

Print Name: _____

By: _____

Name: _____

Print Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence
or ☐ online notarization, this _____ day of _____, 2023, by
_____, as _____ of **WATERSTONE HOLDINGS,**
LLC, a Florida limited liability company, on behalf thereof. He/She ☐ is personally known to
me or ☐ has produced _____ as identification.

(NOTARY SEAL)

NOTARY SIGNATURE

PRINTED NOTARY NAME

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

All of the real property set forth on that certain plat of Palm Bay Pointe West, as recorded in
Book ____, Page ____, Public Records of Brevard County, Florida

DRAFT

EXHIBIT “B”

PLAT

[final plat to be inserted once approved by the City and recorded in the public records]

DRAFT

EXHIBIT “C”

SANITARY SEWER AREA

[to be inserted upon approval of final engineering and sanitary sewer plans]

DRAFT

EXHIBIT “D”

UTILITIES EASEMENT AREA

[to be inserted upon City’s approval of final engineering and utility plans]

DRAFT

EXHIBIT “E”
Prohibited Uses

1. Any psychic, fortune teller, card reader or similar establishment; or any so-called “strip-club” or “gentlemen’s club” or other similar operation.
2. Any casino, gambling hall, off track betting facility or gambling operation (provided this restriction shall not prohibit incidental sales of lottery tickets).
3. Any adult bookstore, pornography shop or other facility specializing in or exhibiting pornographic material (defined as stores with ten percent (10%) or more of their inventory that is not available for sale or rental to children under sixteen (16) years of age where such inventory explicitly deals with or depicts human sexuality).
4. A mobile home park, trailer court, labor camp or stock yard (except that this provision shall not prohibit the temporary use of construction trailers during any periods of construction, reconstruction or maintenance).
5. A bowling alley.
6. A mortuary.
7. A flea market.
8. A land fill or garbage dump.
9. A used car lot.
10. Any use which emits noxious, toxic or corrosive fumes, chemicals, gases and/or smells.
11. Marijuana dispensary or a so called “vape store”.

EXHIBIT “F”
Zoning Guidelines

- | | | |
|----|----------------------------|-----------|
| 1. | MINIMUM LOT AREA: | 15,000 SF |
| 2. | MINIMUM LOT WIDTH: | 40 FEET |
| 3. | MINIMUM LOT DEPTH: | 120 FEET |
| 4. | MAXIMUM BUILDING COVERAGE: | 60% |
| 5. | MAXIMUM HEIGHT: | 60 FEET |

ADDITIONAL BUILDING HEIGHT MAY BE PERMITTED, SUBJECT TO THE FOLLOWING PROVISIONS:

- A. PROVIDING PUBLIC SPACE OR PUBLIC AMENITY TOTALING 10% OF THE SITE, ENTITLES AN ADDITIONAL 10 FEET IN HEIGHT.
 - B. PROVIDING UNDERSTORY PARKING TO REDUCE REQUIRED SURFACE PARKING, ENTITLES AN ADDITIONAL 10 FEET IN HEIGHT.
 - C. PROVIDE A MIXTURE OF USES, SUCH AS RESTAURANT WITH RESIDENTIAL USES ABOVE, ENTITLES AN ADDITIONAL 10 FEET IN HEIGHT.
 - D. PROVIDING SHARED STORMWATER OR SHARED PARKING WITH NEIGHBORING PROPERTIES, ENTITLES AN ADDITIONAL 10 FEET IN HEIGHT. UPON APPROVAL BY THE CITY, THE SHARED AMENITY SHALL BE RECORDED AS AN EASEMENT OR AGREEMENT, IN THE PUBLIC RECORDS OF BREVARD COUNTY.
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| 6. | MINIMUM FLOOR AREA (COMMERCIAL): | 300 SF |
| 7. | MINIMUM LIVING AREA (MULTIFAMILY): | 500 SF |
| 8. | BUILDING SETBACK (I.E. DISTANCE FROM PROPERTY BOUNDARY): | |
| | A. FRONT: | 15 FOOT MINIMUM |
| | B. SIDE INTERIOR: | 15 FOOT MINIMUM |
| | C. SIDE CORNER: | 15 FOOT MINIMUM |
| | D. REAR: | 15 FOOT MINIMUM |
| | E. FOR BUILDINGS 60 FEET IN HEIGHT, OR GREATER, AND DIRECTLY ADJACENT TO SINGLE-FAMILY DEVELOPMENT, THEN SUCH BUILDING(S) SHALL BE SETBACK A MINIMUM 25 FEET FROM THE PROPERTY BOUNDARY THAT BORDERS THE SINGLE-FAMILY IF THE PROPERTY OR BUILDING IS NOT SEPARATED BY WATERWAY, RAILROAD, OR STREET | |
| 9. | LANDSCAPE BUFFER/PARKING SETBACK REQUIREMENTS (I.E. DISTANCE FROM PROPERTY BOUNDARY): | |

- A. FRONT: 10 FOOT MINIMUM
 - B. SIDE INTERIOR: 5 FOOT MINIMUM
 - C. SIDE CORNER: 10 FOOT MINIMUM
 - D. REAR: 10 FOOT MINIMUM
 - E. NOTWITHSTANDING, IF A SHARED DRIVE AISLE OR SHARED DRIVEWAY EXISTS ALONG A PROPERTY BOUNDARY BETWEEN TWO PARCELS, THEN IN SUCH CASE, NO SIDE SETBACK SHALL BE REQUIRED.
 - F. FOR BUILDINGS 60 FEET IN HEIGHT, OR GREATER, AND DIRECTLY ADJACENT TO SINGLE-FAMILY DEVELOPMENT, THEN SUCH BUILDING(S) SHALL BE SETBACK A MINIMUM 25 FEET FROM THE PROPERTY BOUNDARY THAT BORDERS THE SINGLE-FAMILY IF THE PROPERTY OR BUILDING IS NOT SEPARATED BY WATERWAY, RAILROAD, OR STREET.
10. PARKING - MINIMUM PARKING REQUIREMENTS SHALL MEET CITY CODE REQUIREMENTS OR BE ESTABLISHED BY A PARKING ANALYSIS AND/OR PARKING STUDY ON A PROJECT-BY-PROJECT BASIS.
11. ARCHITECTURAL STANDARDS SHALL BE PER PALM BAY CITY CODE SECTION 185.184, ARCHITECTURAL STYLE REQUIREMENTS.