

This instrument prepared by:

ERIC COFFMAN
DUNAY, MISKEL & BACKMAN, LLP
14 S.E. 4TH STREET, #36
BOCA RATON, FLORIDA 33432

DECLARATION OF CROSS-ACCESS AND PARKING EASEMENT

THIS DECLARATION OF CROSS-ACCESS AND PARKING EASEMENT ("**Agreement**") is made this day of AUGUST 19, 2022 ("**Effective Date**") by LOTIS WELLINGTON, LLC, a Florida limited liability company, with a mailing address of 2300 Glades Road, Suite 202E, Boca Raton, Florida, 33431 ("**Lotis**").

WHEREAS, Lotis is the fee simple owner of certain real property located in Wellington, Florida, which has been subdivided into various tracts (each a "**Tract**") as shown on the plat of LOTIS WELLINGTON, according to the plat thereof, as recorded in Plat Book _____ Page _____ of the Public Records of Palm Beach County, Florida (the "**Plat**").

WHEREAS, Lotis desires to provide for cross-access and shared parking rights among the owners, tenants and other users of certain Tracts shown on the Plat, as more particularly set forth herein.

NOW THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lotis hereby declares and agrees as follows.

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein and made a part of this Agreement.

2. **Definitions.** For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

(a) "**Common Accessways**" means those driveways, sidewalks, accessways and access-related improvements that may from time to time be located within Tract D1, as identified on the Plat, including without limitation, related paving, curbing, curb cuts, entrances and exits.

(b) "**Driveways**" means those driveways, sidewalks, accessways and access-related improvements that may from time to time be located within Tracts C1-C4, including without limitation, related paving, curbing, curb cuts, entrances and exits.

(c) "**Owner**" or "**Owners**" means any owner or owners of fee simple title to all or any portion of one or more of Tract C1, Tract C2, Tract C3 and/or Tract C4, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any leasehold, lien or encumbrance on such real property.

(d) "**Occupant**" means each Person from time to time entitled to use and occupy all or any portion of the improvements from time to time situated on Tracts C1-C4 under an ownership right or under any lease, sublease, license, concession, or other similar agreement.

(e) **"Permittee"** means all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Occupants or an Owner, insofar as their activities relate to the intended development, use and occupancy of Tracts C1-C4.

(f) **"Person"** means any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or governmental authority.

(g) **"Tract C1"** refers to Tract C1, as identified on the Plat.

(h) **"Tract C2"** refers to Tract C2, as identified on the Plat.

(i) **"Tract C3"** refers to Tract C3, as identified on the Plat.

(j) **"Tract C4"** refers to Tract C4, as identified on the Plat.

(k) **"Tracts C1-C4"** refers, collectively, to Tract C1, Tract C2, Tract C3 and Tract C4.

3. **Grant of Cross-Access and Parking Easements.**

(a) Lotis hereby declares, grants and conveys to the Owner(s) of Tracts C1-C4, for their respective use and for the use of each of their respective Permittees, in common with others entitled to use the same:

i. a perpetual, non-exclusive easement for access, ingress and egress for both vehicular and pedestrian traffic over and across those Driveways from time to time situated on Tracts C1-C4, together with the right for the Owner(s) of Tracts C1-C4 to connect those Driveways from time to time situated on such Tracts with: (A) those Driveways situated from time to time on one or more of the adjoining Tracts C1-C4; and (B) the Common Accessways (collectively, the **"Cross-Access Easement Areas"**). Once an Owner of one or more of Tracts C1-C4 has constructed the Driveways any of such Tracts, that Owner shall not close or otherwise block those Driveways except for temporary closings due to emergencies, a condemnation event, maintenance work, a force majeure event or as may be necessary to avoid the public dedication thereof.

ii. a perpetual, non-exclusive easement for the parking of motor vehicles within those portions of Tracts C1-C4 which are designated for parking from time to time by the respective Owner(s) of such Tracts (the area affected by such easement, the **"Cross-Parking Easement Area"**). The Owners' and their respective Permittees' right to park their vehicles within the Cross-Parking Easement Area shall be on a first-come, first-served basis. No overnight parking shall be allowed within the Cross-Parking Easement Area.

Collectively, the easements referenced in this Section 3(a) shall be referenced herein as the **"Easements"**, and the areas affected by said Easements shall be referenced herein as the **"Easement Areas."**

(b) There will be maintained between those Driveways from time to time situated on each of Tracts C1-C4, at the point where said Driveways intersect with: (i) those Driveways from time to time situated on the adjoining Tracts C1-C4, and (ii) the Common Accessways, a generally smooth and level grade transition (taking into account, however, the natural undulation and slope of such Tracts) to allow for safe and efficient pedestrian and vehicular access, ingress and egress between one or more of the adjoining Tracts C1-C4 and the Common Accessway, all with reasonable wear and tear and damage by casualty,

condemnation and any force majeure event excepted.

(c) No utility easements or similar utility rights are conferred herein. No public dedication or right is created by this Agreement. Each Owner of one or more of Tracts C1-C4 shall be responsible for maintaining the Easement Areas from time to time situated on such Tract(s) in commercially reasonable condition and repair, and otherwise in accordance with applicable laws and community standards for similar commercial and/or residential developments.

(d) Each Owner of one or more of Tracts C1-C4 reserves the right and privilege to use and occupy, and to grant others the right to use and occupy, such Tract(s) for any use which does not impair the purposes for which the Easements were granted as set forth herein.

(e) This Declaration shall not be modified or released without first obtaining written consent from the Village of Wellington.

4. **Covenants Running with the Land.** The Easements and other rights conferred by this Agreement are intended to, and do, constitute covenants that run with the land, including with Tracts C1-C4 into which the same may be subdivided or further divided or set apart by grant, mortgage, subdivision or otherwise, and will inure to the benefit of and be binding upon the Owners and their respective grantees, successors, and assigns. Any fee simple title Owner of one or more of Tracts C1-C4, or any portion thereof, will automatically be deemed, by acceptance of the title of such Tract(s) or any part thereof, to have assumed all obligations of this Agreement relating thereto, and to have agreed with the Owner(s) of all of Tracts C1-C4 to execute any and all instruments and do any and all things reasonably required to carry out the intention of this Agreement, and any instrument(s) of conveyance to such Owner will be deemed to incorporate the provisions of this Agreement by reference, whether or not a specific reference to this Agreement is contained therein.

5. **Insurance.** Each Owner shall cause to be maintained, at its expense, and keep in force at all times during the term of this Agreement, a policy of commercial general liability insurance and property damage insurance, including a contractual liability endorsement, and personal injury liability coverage, from one or more responsible insurance companies licensed to do business in the State of Florida, which includes coverage against claims for any injury, death, or damage to persons or property occurring on, in or about the Easement Areas and such Owner's or its Permittee's use thereof, with single limit coverage of at least \$2,000,000.00. Each Owner will cause the other Owners to be named as additional insureds on its insurance policies. Such Owners will furnish to each other within ten (10) days following written request: (a) a certificate of insurance evidencing the foregoing coverages, and providing that such insurance policy may not be cancelled on less than thirty (30) days prior written notice to the other Owners; and (b) proof of payment of the insurance premium.

6. **Limitation of Damages.** IN NO EVENT WILL ANY OWNER OR ANY OF ITS REPRESENTATIVES BE LIABLE UNDER THIS AGREEMENT TO THE OTHER OWNER(S) OR ANY THIRD PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT IT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

7. **Indemnification.** Each Owner agrees to defend, protect, indemnify and hold harmless the other Owner(s) from and against all claims or demands, including any action or proceedings brought thereon, and

all costs, losses, expenses and liability of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the injury to or death of any Person, or damage to the property of any Person located on one or more of Tracts C1-C4 owned by each indemnifying Owner in connection with its use of the Easement Areas or the exercise of any other rights granted to an Owner in this Agreement; provided, however, the foregoing obligation will not apply to claims or demands based on the negligence or willful act or omission of such other Owner, its agents, or employees. In the event it is determined that such other Owner was not at fault, then the indemnifying Owner shall reimburse such other Owner for all reasonable costs and/or expenses incurred by it defending against such claim or demand. This indemnification provision will survive the expiration or sooner termination of this Agreement.

8. **Amendments.** This Agreement supersedes all prior agreements between the Owners with respect to the subject hereof and all discussions, understandings, offers, and negotiations with respect thereto, whether oral or written. This Agreement may not be amended or modified, except in a writing signed by each Owner of one or more of Tracts C1-C4. If amended or modified as permitted by this Section 8, the term "Agreement" will thereafter be read as including all said amendments and modifications. All exhibits that are referenced in this Agreement or attached to it are incorporated herein and made a part hereof as if fully set forth in the body of the document.

9. **Governing Law.** This Agreement and the obligations arising hereunder will be governed by, and construed in accordance with, the laws of the State of Florida, without regard to principles of conflicts of laws.

10. **Jurisdiction and Venue.** All persons and entities benefited or burdened by this Agreement hereby acknowledge that the anticipated performance and execution of this Agreement occurred in Palm Beach County, Florida. Each Owner irrevocably and unconditionally (i) agrees that any suit, action or legal proceeding arising out of or relating to this Agreement will be brought in the courts of record of the State of Florida in Palm Beach County, Florida and, (ii) consents to the jurisdiction of each such court in any suit, action or proceeding in the courts of record of the State of Florida in Palm Beach County.

11. **Further Assurances.** Each Owner agrees to do such things, perform such acts and make, execute, acknowledge, and deliver such documents as may be reasonably necessary and customary to carry out the intent and purposes of this Agreement, so long as any of the foregoing do not materially increase any Owner's obligations hereunder or materially decrease any Owner's rights hereunder.

12. **Attorneys' Fees.** In the event of any dispute between the Owners regarding the enforcement or effect of this Agreement, including one subject to arbitration, the non-prevailing Owner in any such dispute shall pay the prevailing Owner's reasonable attorneys' fees and costs incurred. In the event of arbitration, the fees of the arbitrator and the cost of the arbitration shall be paid by the non-prevailing Owner. In the event that neither Owner wholly prevails, the court or arbitrator, as applicable, may apportion the costs or fees as the court or arbitrator deems appropriate.

13. **Construction and Interpretation.** Whenever required by the context of this Agreement, (i) the singular includes the plural, and vice versa, and the masculine includes the feminine and neuter genders, and vice versa, and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter will not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather will be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstances will, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, will

not be affected thereby and each term, covenant or condition of this Agreement will be valid and enforceable to the fullest extent permitted by law.

14. **Waiver.** No delay or omission by any fee simple title owner of any portion of one or more of Tracts C1-C4, in exercising any right or power accruing upon any default or non-compliance with any of the provisions of this Agreement by any other Owner of any portion of one or more of Tracts C1-C4, will be construed to be a waiver of any subsequent breach of such obligation or waiver of any breach of any other terms, covenants, or conditions of this Agreement.

[SIGNATURE PAGE FOLLOWS BELOW]

IN WITNESS WHEREOF, Owner has executed this Covenant on the day first above written.

OWNER:

LOTIS WELLINGTON, LLC,
a Florida limited liability Company

By: Lotis Wellington Holding, LLC, a
Florida limited liability company, its
Member

By: Lotis Wellington Venture, LLC, a
Florida limited liability company, its
Member

By: JKM Wellington Capital, LLC, a
Florida limited liability company, its
Member

WITNESSES:

Phil K
(Signature)

Richard KASSER
(Print Name)

[Signature]
(Signature)

Zack Hobrock
(Print Name)

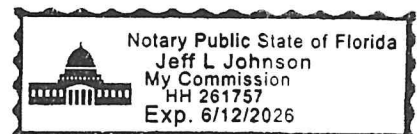
By: Lotis Capital Fund, LLC, a Florida
limited liability company, its Member

By: [Signature]
James S. Gielda, Manager

STATE OF FLORIDA)
) SS:
COUNTY OF Palm Beach)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this 28 day of June, 2022, by James S. Gielda as Manager of Lotis Capital Fund, LLC, a Florida limited liability company, as Member of JKM Wellington Capital, LLC, a Florida limited liability company, as Member of Lotis Wellington Venture, LLC, a Florida limited liability company, as Member of Lotis Wellington Holding, LLC, a Florida limited liability company, as Member of Lotis Wellington, LLC, a Florida limited liability company, who ☒ is personally known to me, or ☐ presented the following identification: _____.

Notary Public
sign [Signature]
print Jeff L. Johnson
State of Florida at Large (Seal)
My Commission Expires:



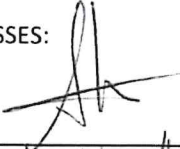
JOINDER AND CONSENT OF MORTGAGEE

LV Wellington LLC, a Florida Limited Liability Company ("Mortgagee"), the holder of that certain Mortgage, Assignment of Leases and Rents, Fixture Filing and Security Agreement recorded on April 1, 2022 in Official Records Book 33438, Page 1180 of the Public Records of Palm Beach County, Florida, and all related instruments evidencing or securing the loans secured thereby (together, the "Mortgage"), which Mortgage constitutes a lien upon the property described in the foregoing Declaration of Cross-Access and Parking Easement (the "Declaration"), hereby consents to subjecting the real property described therein to the provisions of the Declaration and agrees that the Declaration shall be binding upon all present and future owners of the real property encumbered by the Declaration and, further, that the Mortgage shall be subject and subordinate to the Declaration.

Notwithstanding the execution of this Joinder and Consent, nothing herein shall be construed to render the undersigned Mortgagee responsible or liable for any of the covenants, undertakings, acts or omissions of the Developer/Owner under the Declaration.

Dated this 19 day of August, 2022.


WITNESSES:


Print Name: Allen Hernandez

LV WELLINGTON LLC,
a Florida limited liability company

BY: LV LENDING LLC, a Florida limited liability company,
its Manager


Print Name: Daniela Sanmartin B

By: 
Camilo Niño, Manager

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 19 day of August, 2022 by CAMILO NIÑO, as Manager of LV LENDING LLC, a Florida limited liability company, the Manager of LV WELLINGTON LLC, a Florida limited liability company, ☐ who is personally known to me or ☒ who has produced as identification Driver's License # N50010178 0261 or (other identification) (describe) _____.


Notary Public

Print Name: Ileana Alvarado

My Commission Expires: Apr. 05 2026

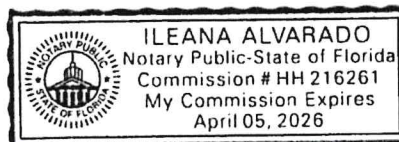


EXHIBIT "A"

A parcel of land being comprised of Tract 10, Tract 11, a portion of Tract 13, Tract 14, Tract 15 and a portion of Tract 16, Block 18, together with a portion of the 25 foot wide Road Reservation lying between Tracts 10, 11, 12, 13, 14, 15 and 16, Block 18, together with a portion of the variable width Road Reservation lying West of Tract 10, Block 18, The Palm Beach Farms Co Plat No. 3, according to the plat thereof, as recorded in Plat Book 2, Pages 45 through 54, the Public Records of Palm Beach County, Florida, being more particularly described as follows:

BEGINNING at the Southwest corner of WELLINGTON MUPD, according to the plat thereof, as recorded in Plat Book 101, Page 132 of the Public Records of Palm Beach County, Florida;

thence North 88°59'11" East, along the South line of said WELLINGTON MUPD plat, a distance of 611.96 feet to the Southeast corner of said WELLINGTON MUPD plat, said point being on the West Right-of-Way line of State Road No. 7 (U.S. 441) as laid out and in use;

thence South 01°37'52" West, along said West Right-of-Way line and the West line of Parcel 115 according to that certain Warranty Deed, as recorded in Official Records Book 9427, Page 665 of the Public Records of Palm Beach County, Florida, a distance of 686.86 feet to a point being on the South line of Tract 13, Block 18 of said Palm Beach Farms Co Plat No.3;

thence South 89°00'05" West, along the South line of Tracts 13, 14, 15, 16, Block 18 and the Westerly extension thereof, of said Palm Beach Farms Co Plat No. 3, a distance of 2369.64 feet to a point being on a line lying 40.00 feet East of and parallel with (as measured at right angles) the West line of the East one-half of Section 12, Township 44 South, Range 41 East, Palm Beach County, Florida;

thence North 01°28'32" East, along said parallel line, a distance of 660.33 feet to a point being on the Westerly extension of the North line of Tract 16, Block 18 of said Palm Beach Farms Co Plat No. 3;

thence South 89°00'05" West, along the Westerly extension of the North line of Tract 16, Block 18 of said Palm Beach Farms Co Plat No. 3, a distance of 40.04 feet to the West line of the East one-half of said Section 12;

thence North 01°28'32" East, along the West line of the East one-half of said Section 12, a distance of 685.35 feet to a point being on the Westerly extension of the North line of Tracts 10 and 11, Block 18 of said Palm Beach Farms Co Plat No. 3;

thence North 89°00'05" East, along said Westerly extension and the North line of Tracts 10 and 11, Block 18 of said Palm Beach Farms Co Plat No. 3, a distance of 1769.21 feet to a point being on the West line of said WELLINGTON MUPD plat;

thence South 01°09'58" East, along the West line of said WELLINGTON MUPD, a distance of 658.44 feet to the POINT OF BEGINNING;

Said lands situate, lying and being in Section 12, Township 44 South, Range 41 East, Village of Wellington, Palm Beach County, Florida.