

Prepared by and return to:  
Harrison W. Poole, Esquire  
Poole & Poole, P.A.  
303 Centre Street, Suite 200  
Fernandina Beach, FL 32034

## NON-EXCLUSIVE UTILITY EASEMENT AGREEMENT

**THIS NON-EXCLUSIVE UTILITY EASEMENT AGREEMENT**, made this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between **CLUB VILLAS ASSOCIATION, INC.**, a Florida not for profit corporation, whose address is 5422 First Coast Highway AMELIA ISLAND, FL 32034 (the "Association"), and **BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY**, a political subdivision of the State of Florida, whose address is 96135 Nassau Place, Suite 1, Yulee, FL, Florida, 32097 (the "County").

WHEREAS, on November 29, 1973, Drummond Point Associates, Ltd. and Amelia Island Utility Company entered into an "Easement" which was recorded in Official Records Book 158 at Page 108 of the public records of Nassau County, Florida, which by its terms is binding on the successors and assigns of the parties, and which is hereinafter referred to as the "Easement";

WHEREAS, the lands affected by the Easement are now part of Club Villas, a Condominium (hereinafter the "Property"), pursuant to the provisions of the Declaration of Condominium recorded simultaneously with the Easement at Official Records 158, Page 116, of the public records of Nassau County, Florida;

WHEREAS, for the purposes of the Easement and this Agreement only, the County, through its operation of Nassau-Amelia Utilities, is the successor in interest to Amelia Island Utility Company, and the Association is the successor in interest to Drummond Point Associates, Ltd.;

WHEREAS, a dispute has arisen between the Association and the County regarding the party's respective maintenance and repair obligations under the Easement, which had led to the Association filing suit in Nassau County, Florida Circuit Case No. 218CA380 (the "Lawsuit");

WHEREAS, the parties wish to resolve the dispute and issues concerning the Lawsuit, and to further clarify, modify, and amend the parties' respective rights and obligations under the Easement;

**NOW THEREFORE, it is agreed that:**

1) *Incorporation of Recitals.* The above recitals are hereby incorporated into this Agreement.

2) *Grant of Non-Exclusive Utility Easement.* The Association, for and in consideration of the sum of Ten and 00/100 dollars (\$10.00) and other good and valuable consideration to them in hand paid by County, the receipt of which is hereby acknowledged, has granted, bargained, sold, and conveyed to the County, its successors and assigns forever, a nonexclusive right of way and easement with the right, privilege, and authority to said Grantee, its successors and assigns, to construct, operate, lay, maintain, improve, and/or repair, and remove lines, pipes and mains, for the purpose of providing water, waste water and sewer services to the Association at Club Villas, and all other equipment and appurtenances as may be necessary or convenient for the purpose of providing water, waste water and sewers services on, along over, through, across, or under the following described land situate in Nassau County, Florida, to wit (the "Easement Property"):

See Exhibit A attached hereto and incorporated herein.

The foregoing shall amend, modify, and replace the legal description described in the Easement recorded at Book 158, Page 108, of the Public Records of Nassau County, Florida. The Easement Property shall include all the above-described lands and any modification, enlargement, or alteration that may be reasonably required by the County to provide sufficient water, wastewater, or sewer services to the Club Villas property. The Easement Property shall include all water service lines from the property line to the meter for each individual Condominium Units at Club Villas or to the meter for water service lines exclusively serving any portion of the common elements at the Club Villas. The Easement Property providing sewer service shall consist of the sewer mains and those portions of the sewer laterals extending from the property line at Club Villas to a point three (3) feet before the sewer laterals cross under the solid block walls outside the front entry to each individual Condominium Unit.

3) *Operation and Maintenance of Lines.* The County shall continue to operate, utilize, maintain and repair the water, wastewater and sewer lines, pipes, or mains that are necessary to provide water and sewer service to the individual service lines at Club Villas as well as providing such services to service lines of the Association. As used herein, "maintain and repair" shall mean performing or contracting for the performance of such repairs, replacements, and other work as is necessary and appropriate to keep the water, wastewater and sewer lines in the Easement Property in good working order in accordance with the local customary industry practices. The County shall promptly backfill any trench and repair any damage it does to the private roads, parking lots, sidewalks, or other improvements within the Property in the course of operating and maintaining the water and sewer lines.

4) *Shared Cost of Repairs.* The Association and County shall equally share the



cost of any repairs or replacements undertaken or overseen by the County pursuant to Paragraph 3 herein. In order to request contribution from the Association for its share of any repairs or replacements as obligated herein, the County shall provide the Association with copies of all invoices, bills, receipts, or any other document evidencing the costs of said repairs, along with a written request for the Association to reimburse the County for the Association's half of said costs. The Association shall, within thirty (30) days of receiving a written request for reimbursement, together with supporting documentation, remit payment to the County. Any payment required hereunder that is not received by the County within thirty (30) days after the Association's receipt of a written request for reimbursement, shall incur interest at the rate of one and a half percent (1.5%) per month, until paid in full.

5) *Association's Repair Responsibility.* Notwithstanding anything to the contrary herein, the Association shall be financially responsible for the cost of the repair or replacement of any of the water, wastewater and sewer lines, pipes, or mains, necessitated by damage to the water, wastewater and sewer lines, pipes caused by negligent or intentional acts, other than for wear and tear, routine, and ordinary use of the lines, pipes, or mains, of the Association, its members, owners, tenants, guests, agents, contractors, or employees. The Association shall be solely responsible for the replacement of any shrubs, trees, or any other landscaping matter, necessitated by the County's repair or replacement of any portion of the Easement Property.

6) *Association's Credit for Repairs.* Upon the execution of this Agreement, the Association shall be given a one-time, initial credit for its share of the costs of any repairs pursuant to paragraph 4 herein in the amount of \$24,349.66. The County shall be solely responsible for all of the costs of repairs until the credit is exhausted.

7) *Easement Continues in Force.* This instrument modifies the Easement, and except as modified and amended herein, the Easement recorded at Official Records Book 158, page 108, of the public records of Nassau County, Florida, shall continue in full force and effect.

8) *Binding Effect.* This Agreement shall be binding on the parties and their successors and assigns.

9) *Choice of Law; Dispute Resolution; Venue.* The parties expressly agree that this Agreement shall be deemed to have been made in and shall be performed entirely within the State of Florida, and that all questions concerning its validity or interpretation, or the performance of any terms or provisions hereof, or the rights or obligations of the parties hereunder, shall be governed by and resolved in accordance with the laws of the State of Florida. Any dispute between the parties hereto shall be submitted to mediation in accordance with mediation rules as established by the Florida Supreme Court. If the parties cannot agree on a mediator, the parties shall each designate a member of the Nassau County Bar Association, and those attorneys shall select a third member, and the vote of a majority of the three members shall determine the mediator. Each party shall equally bear the costs of mediation and shall be responsible for their own attorney's fees.

No litigation shall be commenced unless and until the procedures set forth herein are followed. In any litigation between the parties regarding the terms of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable attorney's fees and costs, whether at trial or on appeal. In any litigation between the parties concerning this Agreement, the proper venue shall lie in Nassau County, Florida.

10) *Contrary Ordinances or Rules.* The provisions of this Agreement shall be controlling, as to the lines within the Easement Property, between the parties hereto notwithstanding any Nassau County ordinance or Nassau-Amelia Utility rule or regulation to the contrary, whether now-existing or adopted in the future.

11) *Dismissal of Court Action.* The Association, within thirty (30) days of the effective date of this Agreement, shall cause a Notice of Voluntary Dismissal With Prejudice be filed in Nassau County Case No. 2018CA380. Each party shall bear their own attorney's fees and costs in that action.

12) *Entire Agreement.* This Agreement contains the entire agreement between the parties relating to the rights granted and the obligations assumed. Any modification of the terms hereof shall be in writing signed by both parties. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect as if the is Agreement had been executed without the invalid provision.

**IN WITNESS WHEREOF**, the Parties have caused these presents to be executed in their names by their duly authorized officers, the day and year first above written.

[signatures on the following page]

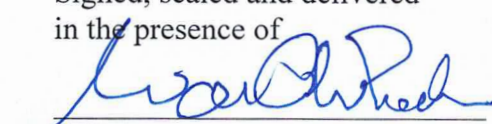
**WITNESSED AND ATTEST AS TO  
CHAIRMAN'S SIGNATURE:**


By: \_\_\_\_\_  
JOHN A. CRAWFORD  
Its: Ex-Officio Clerk

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print or type name

Signed, sealed and delivered  
in the presence of

  
\_\_\_\_\_  
Witness  
WARREN G. WHEELER  
\_\_\_\_\_  
Print or type name

  
\_\_\_\_\_  
Witness  
Devin DeVito  
\_\_\_\_\_  
Print or type name

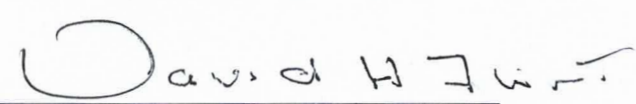
**BOARD OF COUNTY COMMISSIONERS NASSAU  
COUNTY, FLORIDA**

By: \_\_\_\_\_  
JUSTIN M. TAYLOR DANIEL B. LEEPER  
Its: Chairman

**Approved as to form:**

By: \_\_\_\_\_  
MICHAEL S. MULLIN  
Its: County Attorney

**CLUB VILAS ASSOCIATION, INC**

By:   
\_\_\_\_\_  
DAVID H. FLINT  
Title: Its Vice President



STATE OF FLORIDA     )  
  ) ss:  
COUNTY OF NASSAU    )

The foregoing NON-EXCLUSIVE UTILITY EASEMENT AGREEMENT  
THIS NON-EXCLUSIVE UTILITY EASEMENT AGREEMENT was acknowledged  
before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by JUSTIN M. DANIEL B.  
LEEPER TAYLOR, Chairman of the Board of Commissioners of Nassau County, on behalf  
of said County. He is personally known to me \_\_\_\_\_ or produced  
\_\_\_\_\_ as identification.

(Notarial Seal)

\_\_\_\_\_  
Printed Name:  
NOTARY PUBLIC  
State of Florida

My Commission Expires:  
\_\_\_\_\_

STATE OF GEORGIA     )  
  ) ss:  
COUNTY OF FULTON    )

The foregoing NON-EXCLUSIVE UTILITY EASEMENT AGREEMENT was  
acknowledged before me this 3<sup>rd</sup> day of December, 2019, by  
DAVID H. FLINT, Vice President of Club Villas Association, Inc. a Florida not  
for profit corporation, on behalf of said Corporation. He is personally known to  
me X or produced \_\_\_\_\_ as identification.

(Notarial Seal)

*Haydee Gallego Aaronson*  
HAYDEE GALLEGO AARONS  
Printed Name:  
NOTARY PUBLIC, State of Georgia

My Commission Expires:  
\_\_\_\_\_

