

This Instrument Prepared by and after recording return to:

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SHARED AMENITIES MAINTENANCE, COST-SHARING, ACCESS AND EASEMENT AGREEMENT

THIS SHARED AMENITIES MAINTENANCE, COST-SHARING, ACCESS AND EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of the _____ day of _____, 2023 (the “Effective Date”), by and among **EMERALD PARK AMENITIES ASSOCIATION, INC.**, a Florida not-for-profit corporation (“AA”), whose mailing address is 8604 Welch Drive, Panama City Beach, Florida 32408; **EMERALD PARK UNIT OWNERS ASSOCIATION, INC.** formerly known as **VILLAS AT SUNCREST CONDOMINIUM OWNERS ASSOCIATION, INC.**, a Florida corporation not-for-profit (the “**Condominium Association**”), whose mailing address 8603 Welch Drive, Panama City Beach, Florida 32408; and **REMAINING VILLAS AT SUNCREST LLC**, a Florida limited liability company (“**RVS**”) whose mailing address is 8604 Welch Drive, Panama City Beach, Florida 32408. AA, Condominium Association and RVS are hereinafter collectively referred to as “**Party**” or “**Parties**.”

WITNESSETH:

WHEREAS, the Condominium (as defined below) initially legally consisted of 194 residential units of which 116 were built and 78 remained unbuilt; and

WHEREAS, the Condominium was only partially constructed and its common facilities were aging and outdated, more than 80% of the Unit Owners (as defined below) voted to partially terminate the Condominium and remove all property from the Condominium except for the 116 built Condominium units (the “Condominium Units”) and the land located directly under the buildings containing the 116 built Condominium Units described on **Exhibit “A”** attached hereto and made a part hereof (the “**Remaining Condominium Property**”); and

WHEREAS, the 78 unbuilt Condominium Units and all other condominium property other than the Remaining Condominium Property (the “**Released Condominium Property**”) were removed from the Condominium pursuant to the Plan (as defined below) so that RVS was able to proceed to re-develop the Released Condominium Property into (i) the Amenity Parcel (as defined below) including updated facilities, enhanced grounds, and swimming pools available for use by the Unit Owners and the Rental Parcel (as defined below) pursuant to this Agreement and (ii) the residential units on the Rental Parcel; and

WHEREAS, AA will be or is the owner of the real property described on **Exhibit “B”** attached hereto and made a part hereof (“**Amenity Parcel**”) and is the entity responsible for the operation and maintenance thereof; and

WHEREAS, RVS has or will simultaneously herewith convey the driveways adjacent to the Remaining Condominium Property back to the Condominium Association (the “**Condominium Driveways**”; together with the Remaining Condominium Property, the “**Condominium Property**”), which Condominium Property and Association Property is described in **Exhibit “C”** attached hereto made a part hereof; and

WHEREAS, the membership of the Condominium Association is comprised of the owners of units in the Condominium (“**Unit Owners**”), and the Condominium Association is the entity responsible for the operation and maintenance of the Condominium Property, that was established by that certain Declaration of Condominium of Emerald Park Condominium formerly known as Villas at Suncrest Condominium recorded in Official Records Book 2916, Page 756 of the Public Records of Bay County, Florida (“**Records**”) as amended by that certain Amendment to Agreement of Villas at Suncrest Condominium, recorded in O.R. Book 4458, Page 1074 and that certain Amendment to Declaration of Villas at Suncrest Condominium, recorded in O.R. Book 4728, Page 905 both of the Records, as further amended by that certain Amendment to Declaration of Condominium of Emerald Park Condominium (f/k/a Villas at Suncrest Condominium) and Amendment to Bylaws of Emerald Park Unit Owners Association, Inc. (f/k/a Villas at Suncrest Condominium Unit Owners Association, Inc.) dated on or about the date hereof and to be recorded in the Records (collectively the “**Declaration**”) (the “**Condominium**”) and a Plan of Partial Termination of Villas at Suncrest Condominium recorded in O.R. Book 4458, Page 1363 of the Records (the “**Plan**”); and

WHEREAS, RVS has redeveloped or will redevelop (i) the Amenity Parcel (which will include enhanced grounds, amenity centers and swimming pools); and (ii) a residential project containing up to 108 residential units and the parking allocated to the residential project upon the parcel described on **Exhibit “D”** attached hereto and made a part hereof (the “**Rental Parcel**”); and

WHEREAS, the Rental Parcel is or will be owned by RVS, or its affiliate (the “**Rental Parcel Owner**”); and

WHEREAS, the Unit Owners and Rental Parcel Owner and all of their respective guests, tenants, invitees, successors and/or assigns shall have access to, and use of, the Amenity Parcel pursuant to the terms of this Agreement; and

WHEREAS, for the access to and use of the Amenity Parcel, the Condominium Association, along with the Unit Owners and Rental Parcel Owner shall be subject to and responsible for their respective percentage share of the costs and expenses for operating and maintaining the Amenity Parcel which is further described on **Exhibit “E”** attached hereto and made a part hereof (“**Amenities Association Cost Allocation**”); and

WHEREAS, any capitalized term not otherwise defined in this Agreement shall have the meaning set forth in the Declaration; and

WHEREAS, the Parties are desirous of AA governing and operating the Amenity Parcel, assuming all the responsibilities of operation, maintenance, repair, and replacement of all equipment, structures, buildings, walkways, landscaping, water management systems, swimming pools, fountains, utilities, signage, waste management, roads, parking management (including but not limited to the restrictions and rules regarding parking on the Condominium Property and the Rental Parcel), drainage, and any other components of the Amenity Parcel and related operation, maintenance, repair and replacement of such other components, and the collection of the Amenities Association Cost Allocation from the Condominium Association and the Rental Parcel Owner; and

WHEREAS, the Parties are desirous of entering into this Agreement, which provides for the cost sharing of the expenses related to such operation, maintenance, repair and replacement of the Amenity Parcel and access by the Parties thereto;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals**. The recitals set forth above are true and correct and they are incorporated herein by this reference.

2. **Access Easement to the Amenity Parcel**. The Condominium Association, the Unit Owners and the Rental Parcel Owner, as well as their respective guests, invitees, licensees, successors and assigns, are hereby granted the right to access the Amenity Parcel and the use of all the amenities and property located upon the Amenity Parcel, pursuant to the rules and regulations that may be adopted by the AA, in its sole discretion, from time to time (“**AA Rules**”). The access rights granted pursuant to this Agreement include access to the Amenity Parcel and shall be deemed to be easements which shall exist in perpetuity and run with the land included in the Rental Parcel and the Condominium Property.

3. **Operations and Maintenance Responsibility for the Amenity Parcel**. AA shall be responsible for the operations, maintenance, repair and replacement of the Amenity Parcel and all improvements thereon.

a. **Parking**.

The Condominium Association shall be responsible for the operation and enforcement of all Condominium rules related to parking on the Condominium Property (the “**Condominium Parking Rules**”) and the Rental Parcel Owner shall be responsible for the operating and enforcement of all Rental Parcel rules related to parking on the Rental Parcel (the “**Rental Parking Rules**”; together with the Condominium Parking Rules, the “**Parking Rules**”), and both the Condominium Association and the Rental Parcel Owner hereby authorize the AA, in addition to each Parties respective Parking Rules, to enforce the Parking Rules including, without limitation, the following: (i) the right to issue violation notices, fines and implement towing procedures for parking violations; (ii) restrict and/or prohibit overnight guest parking; (iii) limit one assigned parking space per bedroom of each Rental Parcel dwelling unit; (iv) enforce all Parking Rules as may be set forth in leases for the occupancy of Rental Parcel dwelling units; (v) enforce all Parking Rules as may be set forth in the Declaration and/or the Bylaws of the

Condominium; and (vi) adopt and enforce registration procedures for the permitted use of parking spaces including the issuance of stickers and/or placards.

4. **Allocation of Operations and Maintenance Costs.** All amounts due for the maintenance, repair and replacement of the Amenity Parcel and improvements thereon (“**Amenities Association Costs**”) shall be: (i) included within the Amenities Association Budget (as defined below); or (ii) charged as special assessments as may be adopted by a majority of the Board of Directors of the AA from time to time in the sole and absolute discretion of a majority of the Board of Directors of the AA, and in all events shall be allocated between the Condominium Association and the Rental Parcel Owner pursuant to the Amenities Association Cost Allocation and may be invoiced by AA in advance or arrears and on such intervals and calendar basis as determined from time to time by AA in its sole discretion.

5. **Amenities Association Budget.** The “**Amenities Association Budget**” shall be approved annually by a majority of the Board of Directors of the AA, which shall consist of two (2) directors appointed by the Rental Parcel Owner and one (1) director appointed by the Condominium Association.

6. **Payment.**

a. **First Payment Due.**

Payments due to AA for Amenities Association Costs shall begin when the Amenity Parcel is open for use by the members of the Condominium Association and residents of the Rental Parcel as evidenced by the issuance of certificates of occupancy by the applicable governmental authority for the Amenity Parcel and at least one (1) building in the Rental Parcel, with the first invoice to be provided within forty-five (45) days thereof.

b. **Affirmative Covenants to Pay Amenities Association Costs.**

The Condominium Association and the Rental Parcel Owner shall pay to AA their respective Amenities Association Cost based upon the Amenities Association Cost Allocation. AA shall have the right and first responsibility to collect such Amenities Association Costs on such calendar basis as may be determined from time to time by AA. Payment shall be due within thirty (30) days after the day of receipt of the invoice and the Condominium Association and Rental Parcel Owner shall remit to AA their respective Amenities Association Costs based upon the Amenities Association Cost Allocation within thirty (30) days of receipt. Notwithstanding the foregoing, AA reserves the right, as determined from time to time by AA in its sole discretion, to bypass the Condominium Association and invoice and collect Amenities Association Costs directly from the Unit Owners.

In order to fulfill the terms, provisions, covenants and conditions contained in this Agreement and to provide for maintenance and preservation of the Amenity Parcel, there is hereby imposed upon the Condominium Association, the Unit Owners (their successors and/or assigns) and the Rental Parcel Owner the affirmative covenant and obligation to pay the applicable Amenities Association Costs pursuant to this Agreement as determined in accordance with the provisions of this Agreement and all of the covenants set forth herein shall run with the Amenity Parcel, the Condominium Property and the Rental Parcel. Each Unit Owners’ respective share of the Amenities

Association Cost Allocation imposed against the Condominium Association shall be the same as each Condominium Units' undivided share of Common Elements as set forth in the Declaration.

c. Lien and Rights of Enforcement.

AA shall have all of the rights of enforcement, including the right to create a lien against each Condominium Unit and the Rental Parcel and record and foreclose the lien in accordance with all such rights set forth in the Declaration and permitted by law against the Condominium Units owned by Unit Owners and the Rental Parcel Owner for delinquent payments and all other actions permitted by law with regard to delinquencies as related to the Amenities Association Costs due pursuant to this Agreement. By its execution hereof, the Condominium Association hereby assigns to AA the right to collect, lien and foreclose payment obligations of Unit Owners as set forth in the Declaration.

d. Enforcement.

There is imposed against the Condominium Association, the Condominium Units and the Rental Parcel a lien and charge for the allocable portion of the Amenities Association Costs. Such lien shall be superior to the lien rights of the Condominium Association and subordinate to any first mortgage on the Rental Parcel, the Condominium Property and the Condominium Units therein. In the event that the Condominium Association, any Unit Owner or Rental Parcel Owner shall fail to pay any applicable Amenities Association Costs charged to it within thirty (30) days after the same becomes due, then AA shall have the remedies set forth in this Agreement, including the right to record a lien and foreclose specifying the failure.

7. **Failure to Perform Maintenance, Repair and Replacement.** If AA shall fail to operate, maintain, repair or replace the Amenity Parcel required by this Agreement and provided that AA has the requisite funds available from the Amenities Association Costs, and such failure continues for a period of sixty (60) days after written notice to AA by the Condominium Association or the Rental Parcel Owner, or for such longer period of time as shall be reasonable under the circumstances and provided that the cure is not commenced within said sixty (60) day period and pursued thereafter with commercially reasonable diligence to completion, then the Condominium Association and/or the Rental Parcel Owner may (but shall not be obligated to) thereafter cause the maintenance, repair or replacement to be performed and the costs and expenses so incurred by the performing party shall be reimbursed by AA less the portion of such cost otherwise allocable to the performing party. Payment of the reimbursement shall be due thirty (30) days after the day the invoice is delivered to AA. The Party which caused the maintenance, repair or replacement to be performed pursuant to this Section shall have all of the rights of enforcement, including the right to record a lien against the property owned by AA and other actions with regard to delinquencies in assessments set forth in this Agreement.

8. **Damage to the Amenity Parcel.** If AA, the Condominium Association, or Rental Parcel Owner, or their respective assigns, contractors, licensees, invitees, guests, etc., shall cause any damage to the Amenity Parcel or any part thereof, the cost of the repairs and/or replacement resulting from such damage shall be paid by such Party that caused the damage (or its respective assigns, contractors, licensees, guests, etc.). Notices of damage shall be sent by AA, the Condominium Association and/or the Rental Parcel Owner, as appropriate, to the Party, its assigns, contractors, licensees, guests, etc., who caused such damage and the payment for the damages will

be due from such Party within thirty (30) days after written notice to such Party, and such damaging Party must look to their assigns, contractors, guests, etc., to get reimbursed for such damages.

9. **Sale of Excess Land.** To the extent that it is determined, by a vote of the Board of Directors of the AA, that there is excess land within the Amenity Parcel as shown on **Exhibit "G"**, then the AA shall be entitled to sell the excess land to a purchaser subject to the following conditions (i) the sales price shall reflect the fair market value of the excess land as determined by a third-party appraisal and (ii) the purchaser shall be obligated to build and perfect a code required landscape buffer in accordance with the code at the time of such sale. The excess land shall be defined as that land which is not encumbered by any improvements in the Amenity Parcel and is not needed by the AA to comply with building setbacks, landscape buffers and/or any other code requirements at the time of sale.

10. **Term of the Agreement.** The provisions of this Agreement shall run with the land. The term of this Agreement shall be for ninety (90) years and shall automatically renew for periods of ten (10) years each thereafter unless within ninety (90) days after the end of any renewal two (2) of the three (3) Parties (i.e., majority) elect to terminate this Agreement.

11. **No Interference.** No Party shall build, construct or create, or permit others to build, construct or create any barriers, fences, walls, barricades, buildings or other obstacles or obstructions on or within or adjacent to the Amenity Parcel that may interfere with, impede, slow, divert or prevent the prosecution of the maintenance, repair or replacement of the Amenity Parcel.

12. **Notices.** Any notice, demand, request or other correspondence required or permitted to be given hereunder shall be in writing and shall be sent to the Party to be notified by personal delivery, U.S. Certified or Registered Mail, postage prepaid, or by commercial courier such as Federal Express. Notices shall be sent to the address of the Party to be notified set forth in the preamble to this Agreement, or to such other address as shall be designated by any Party by written notice conforming to this section.

13. **Entire Agreement, Modification and Waiver.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. This Agreement may only be modified or rescinded by a written instrument signed by all of the Parties to this Agreement and duly recorded in the Public Records of Bay County, Florida. No course of dealing between the Parties and no delay in exercising any right, power or remedy conferred hereby or now or hereafter existing at law, in equity, by statute or otherwise shall operate as a waiver of, or otherwise prejudice, any such right, power or remedy. Any waiver of any of the foregoing rights, powers or remedies must be in writing and signed by the Party to be charged with the waiver.

14. **Severability.** If any provision of this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and a valid, legal and enforceable provision shall be agreed upon by the Parties and become a part of the contract in lieu of the invalid, illegal or unenforceable provision or if a valid, legal and unenforceable provision cannot be crafted, this Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been contained herein.

15. **Time and Force Majeure.** Time is of the essence in the performance of this Agreement. However, no Party shall be liable for any delay or failure to perform any obligation

hereunder if and to the extent such delay or failure to perform is caused by a Force Majeure Event. As used herein, a “**Force Majeure Event**” shall include only the following: fire, explosion or similar casualty, sabotage, theft, vandalism, riot or civil commotion, acts of terrorism, war, labor disputes, pandemic, hurricane, tropical storm or tornado, and inclement weather. For the purpose of determining a Party’s performance, or default, of this Agreement, the time periods for performance shall be extended by the number of days lost to Force Majeure Events.

16. **AA Not a Condominium.** By execution of this Agreement, the Parties recognize and agree AA is not a condominium association and is nor governed by Florida Statutes, Chapter 718.

17. **Estoppel Certificates.** Within ten (10) business days after receiving a written request from a Unit Owner, a Unit Owner’s designee, a Unit Owner’s mortgagee, RVS, or any holder of a mortgage on the Released Condominium Property, AA shall issue an estoppel certificate. The estoppel certificate may be completed by any AA board member, authorized agent, or authorized representative of AA, including any authorized agent, authorized representative, or employee of any management company authorized by the AA board to complete such form on behalf of AA. Such estoppel certificate will be in form determined by the board of AA in its sole discretion from time to time but will provide up to date information regarding payment of the Amenities Association Costs and whether any Party is in default of any of its obligations under this Agreement. The AA board reserves the right to charge a fee, in an amount determined by the board of AA in its sole discretion from time to time, to the Unit Owner, RVS or RVS mortgagee or any other mortgagee for the issuance of an estoppel certificate issued in accordance with this Agreement.

18. **Governing Law and Disputes; Attorney Fees.** This Agreement is entered into in the State of Florida and shall be construed and interpreted in accordance with its laws and the laws of the United States of America. In the event litigation is commenced for the enforcement of this Agreement, the Parties hereby agree and stipulate that venue for such action shall be in the Circuit Court for the Fourteenth Judicial Circuit in and for Bay County, Florida.

19. **Waiver/Reservation of Rights.** Any waiver by either Party of any term, condition, or breach of this Agreement shall not be construed or deemed to be a waiver of any other provision or conditions of this Agreement, nor a waiver of a subsequent breach of the same or another term or condition and shall not in any way affect, limit or waive either Party’s right thereafter to enforce strict compliance with every other term and condition hereof.

20. **Enforcement of Agreement.** In the event that either Party is required to enforce this Agreement by court proceedings or otherwise, then the prevailing party shall be entitled to recover all fees and costs incurred, including reasonable attorneys’ fees and cost for trial, alternative dispute resolution, or appellate proceedings. In the event of a breach or violation of this Agreement, in addition to the right to sue for damages, the non-defaulting Party has the right to sue for specific performance or an injunction. Notwithstanding the foregoing, AA shall not be liable for damages for any other Party’s failure to comply with this Agreement.

21. **Mortgagee Protection.**

The following provisions shall apply to any first mortgagee holding a mortgage on the Rental Parcel, a Condominium Unit, and/or the Amenity Parcel (each a “**Mortgagee**”):

AA shall make available to any Mortgagee for inspection, upon written request, during normal business hours or under other reasonable circumstances, current copies of this Agreement with all amendments thereto. Any Mortgagee shall be entitled to receive notice from AA of (i) an alleged material default by an owner (“**Applicable Owner**”) whose parcel Mortgagee encumbers in the performance of such Applicable Owner’s obligations under this Agreement, including, without limitation, the failure of Applicable Owner to pay assessments on its Parcel, (i) any condemnation or casualty loss affecting the Amenity Parcel, (ii) the occurrence of a lapse, cancellation or substantial modification of any insurance policy or fidelity bond maintained by AA, and (iii) any proposed action which requires the consent of a specified number of Mortgagees, if any. Any Mortgagee shall have the right (but not the obligation) to pay assessments and/or other charges that are delinquent and have resulted or may result in a lien against a parcel and receive reimbursement from its Applicable Owner, and shall be afforded an additional period of time not less than 30 days with respect to monetary defaults and 90 days with respect to non-monetary defaults to effectuate a cure of any such default by the Applicable Owner prior to the another Owner initiating any foreclosure action against the applicable Parcel. Subject to its rights under its mortgage (and to the extent permitted by law), any Mortgagee shall have the right (but not the obligation) to pay the portion of taxes allocated to the Amenity Parcel that are delinquent and have resulted or may result in a lien against the Amenity Parcel and, in any such case, receive (i) reimbursement from its Applicable Owner and/or the other Owners and (ii) a lien against the Amenity Parcel for such payment. Any Mortgagee shall have the right (but not the obligation) to procure the insurance required for the Amenity Parcel and obtain the same remedies as for payment of taxes. A memorandum has simultaneously been sent or will be sent to each Applicable Owner outlining the protections afforded to each Mortgagee as set forth in **Exhibit “F”**. Notwithstanding anything to the contrary contained in this Agreement and for the avoidance of doubt, each Mortgagee and their respective lien and/or foreclosure rights shall be superior to any lien and/or foreclosure rights granted to the AA hereunder.

22. **Execution and When Effective.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement. This Agreement shall take effect on the date this Agreement is executed by the last Party to sign it (“**Effective Date**”).

23. **Recordation.** This Agreement shall be recorded in the Public Records of Bay County, Florida. This Agreement, including all easements agreements and covenants herein, shall run with the land and shall inure to the benefit of and shall be binding upon the Parties their successors and assigns.

24. **Waiver of Jury Trial.** EACH PARTY TO THIS AGREEMENT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION OR OTHER LEGAL PROCEEDING BASED UPON THIS AGREEMENT OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT CONTEMPLATED AND EXECUTED IN CONNECTION HEREWITH, OR ANY COURSE OF DEALING, COURSE OF CONDUCT, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO.

IN WITNESS WHEREOF, each Party has executed this Agreement as of the date first set forth above.

**EMERALD PARK UNIT OWNERS
ASSOCIATION, INC., formerly known as
VILLAS AT SUNCREST CONDOMINIUM
OWNERS ASSOCIATION, INC., a Florida
not-for-profit corporation**

Witness Signature
Printed name: _____

By: _____
_____, President

Witness Signature
Printed name: _____

STATE OF FLORIDA)
) SS:
COUNTY OF _____)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of physical presence or online notarization, by _____, as President of EMERALD PARK UNIT OWNERS ASSOCIATION, INC., formerly known as VILLAS AT SUNCREST CONDOMINIUM OWNERS ASSOCIATION, INC., a Florida not-for-profit corporation, who is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 202__.

Notary Public

Typed, printed or stamped name of Notary Public

My Commission Expires:

SCHEDULE OF EXHIBITS

Exhibit "A"	Remaining Condominium Property
Exhibit "B"	Amenity Parcel
Exhibit "C"	Condominium Property
Exhibit "D"	Rental Parcel
Exhibit "E"	Amenities Association Cost Allocation
Exhibit "F"	Mortgagee Memorandum

EXHIBIT "A"
REMAINING CONDOMINIUM PROPERTY

EXHIBIT "B"
AMENITY PARCEL

EXHIBIT "C"
CONDOMINIUM PROPERTY AND ASSOCIATION PROPERTY

EXHIBIT "D"
RENTAL PARCEL

**EXHIBIT “E”
AMENITIES ASSOCIATION COST ALLOCATION**

Cost Allocation: Shared Amenities Association – Emerald Park

Rental	108	109,350	42.8%
Condominium	116	146,066	57.2%
Total	224	255,416	100%

EXHIBIT "F"
MORTGAGEE MEMORANDUM