

**FIRST AMENDMENT TO THE  
SHARED USE AGREEMENT**

THIS AMENDMENT to a certain SHARED USE AGREEMENT hereinafter described is entered into this 7th day of November, 2013, by and between CHATEAU CONDOMINIUMS AT MAGNOLIA POINTE ASSOCIATION, INC., a Florida Corporation, hereinafter "CHATEAU," and SWEETWATER RIDGE TOWNHOMES OWNERS ASSOCIATION, INC, a Florida Corporation, hereinafter "SWEETWATER." Collectively or individually Chateau and Sweetwater and such other community association(s) as are hereinafter described may be referred herein to as "the Associations."

**RECITALS:**

WHEREAS, the Associations entered into a certain Shared Use Agreement, ("the Agreement"), dated May 19, 2005 and recorded on November 2, 2005, with the Public Records of Lake County, Florida, at O. R. Book 2994, Pages 1192 - 1202, and

WHEREAS, the third party to the Agreement, Lake Equity Partners, LLC, a Florida Limited Liability Company, has since turned control of the Associations over to the respective Members of each community, and

WHEREAS, the parties now contemplate that the vacant land located in Tract E, Magnolia Pointe, according to the plat thereof, as recorded in Plat Book 40, pages 1 through 6, inclusive, Public Records of Lake County, Florida, on tracts of property adjacent to that occupied by the parties may come to be developed and ultimately may be operated by community associations other than Chateau or Sweetwater, and

WHEREAS, the Associations now desire to modify certain provisions of the Agreement and to otherwise ratify and re-affirm the Agreement.

NOW THEREFORE, in consideration of the premises and for other valuable consideration had and received, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree that the Agreement is hereby amended and shall now read henceforth as follows:

**A. GRANT OF EASEMENTS**

1. **Access and Use:** Lake Equity Partners, LLC, as Owner of the Recreational Amenities granted to Chateau and Sweetwater and to each and every Member and Resident in Chateau and Sweetwater an irrevocable non-exclusive easement for access to and use of the Recreational Amenities for the purposes for which they are intended.

Chateau and Sweetwater do hereby grant to each other and to each and every Member and Resident in Chateau and Sweetwater an irrevocable reciprocal non-exclusive easement for access to the Recreational Amenities for the purposes for which they are intended. The easements granted hereby also shall include (and shall likewise be limited to) all community associations which operate residential communities developed and situated on Tract E , Magnolia Pointe, and each and every Member and Resident in said community associations, which are likewise subject to this Agreement and are granted an irrevocable non-exclusive easement for access to and use of the Recreational Amenities for the purposes for which they are intended. To the extent that such community associations are referred to herein separately from Chateau and/or Sweetwater, they are referred to as the "Other Associations." The use of the plural herein is not intended to indicate that more than one Other Association will exist, or that any Other Association will exist other than Chateau and Sweetwater. In the event no Other Association exists, then the Associations shall refer solely to Chateau and Sweetwater.

The easements granted hereby shall include the right of vehicular and pedestrian passage over, on and through the entrances, roadways, walkways and other Common Elements and Common Areas within the Chateau and Sweetwater Property and the common property operated by the Other Associations as reasonably necessary or convenient to access the Recreational Amenities. The roadways, walkways and other Common Elements of the Magnolia Property and those designated in the Declaration of Condominium for the Chateau Property, are as recorded at O.R. Book 1830, Page 1327 of the Public Records of Lake County, Florida. The roadways, walkways and other Common Areas within the Sweetwater Property shall be those designated on the plat of the Sweetwater Property, or which may be described in a Declaration of Covenants, Conditions, Easements and Restrictions that have been recorded at O.R. Book 2482, Page 668 et seq. of the Public Records of Lake County, Florida as supplemented at O.R. Book 2763, Page 887 et seq. and any other amendment or supplement of record that touches and effects the Sweetwater Property or the Other Associations. Every Unit owner in Chateau and every Unit or Lot Owner in Sweetwater and every owner of a unit, lot or parcel of real property (hereinafter collectively referred to as "Units") in the Other Associations shall have the equal right to use the entranceway, clubhouse and pool, subject to the terms and conditions contained in this Agreement.

The access easements shall not be used in such a manner as may result in unreasonable congestion within the easement areas or the blocking of the access easement areas or driving aisles of either the Chateau Property or the Sweetwater Property or in the property of the Other Associations. No one shall otherwise overburden any easement beyond the uses contemplated herein or use same in a manner inconsistent with law.

Such easements shall also include the right to use the Recreational Amenities in common with Sweetwater and the Members and Residents of the Sweetwater Property, including the right of vehicular parking at the Recreational Amenities, provided that the

use rights of all persons and entities shall in all instances be subject to the terms of this Agreement and the reasonable rules and regulations established hereunder.

The right of the Other Associations and of the Members of the Other Associations to use the Recreational Amenities and to participate in the Recreational Amenities Committee shall be dependent upon such Other Associations performing the obligations imposed upon them under this Agreement, including but not limited to the full and timely payment of monthly budgeted expenses, including reserves, as more fully set forth below.

## **B. RECREATIONAL AMENITIES COMMITTEE**

2. **Recreational Amenities Committee:** A joint committee, to be known as the Recreational Amenities Committee (hereinafter Committee), will be appointed for the purpose of establishing rules and regulations governing the use, insurance, improvement, operation, maintenance, repair and replacement of the Recreational Amenities. For purposes of this Agreement the term "operation" may include but not be limited to the administration, management and oversight of the Recreational Amenities. These rules and regulations will include provisions for the rental of the clubhouse for private parties. The income derived therefrom shall be income of the Committee and shall defray the budgeted expenses of the Committee. The Committee will also have the responsibility for preparing an annual budget for the Recreational Amenities. Meetings of the Committee will be noticed by each Association in accordance with the law governing that Association. Meetings of the Committee shall be deemed committee meetings of each Association. It shall be the obligation of each Association to provide notice of each meeting of the Committee. Except in the case of an emergency, notice shall be posted not less than forty-eight (48) hours in advance in the conspicuous place or places designated by rule of each Board of Directors for the posting of notices of Board or Membership meetings, and upon the portion(s) of the Recreational Amenities designated by the Committee for the posting of notices. Meetings of the Committee shall be open to Members of all Associations or their authorized representatives, and such Members shall be entitled to participate in such meetings in accordance with applicable law, subject to reasonable rule adopted by the Committee. The Committee shall keep minutes of its meetings and votes in accordance with the requirements of law and such minutes, together with all records of the Committee shall be kept at least in duplicate and kept with the official records of each Association. Members desiring to inspect or copy the books and records of the Committee shall direct inquiries to their respective Association. The books of the Committee shall be subject to an annual financial scrutiny by a CPA, who shall conduct a Review of such books, unless either Association shall demand a full Audit in writing. the expenses of the annual financial scrutiny shall be an expense of the Committee and the Review or Audit shall be an official record of each Association. The Committee shall maintain at all times a list of all Owners in all Associations with custody of keys or other means of access to the Recreational Amenities, and the Associations agree to fully cooperate in providing this information to the Committee.

3. **Membership on Committee:** The Committee will initially have four (4) members, two (2) of whom will be appointed by the Board of Directors of Chateau, and two (2) of whom will be appointed by the Board of Directors of Sweetwater. When and if Other Associations become eligible for Committee membership, the Committee will have two (2) members for each of the Other Associations subject to this Agreement. Each member of the Committee shall serve at the pleasure of the Board that appointed them and may be removed at any time, with or without cause. In such event, the Board removing a member will appoint a new member within 30 days. The members of the Committee need not be members of either Board of Directors. In the event of a tie vote on any issue, the Committee shall be obligated to resolve the tie in the following manner: The President of each Board of Directors shall promptly designate a special representative who is not a member of the Committee, which special representative may be the Association's licensed community association manager, so long as no Associations have the same manager or management company. The special representatives shall act to resolve the tie vote, or if they are unable, they shall in turn appoint a single impartial expert with skills appropriate to the subject matter of the tie, who shall resolve the tie. The expenses of the tie resolution process shall be paid for by the Committee.

### C. REGULATION OF RECREATIONAL AMENITIES

4. **Rules:** The Committee may impose reasonable regulations on the use of the Recreational Amenities. Such rules shall be uniform as to the Members and Residents of each Association. Each Association agrees to vigorously enforce the Rules and Regulations of the Committee against its Members, Residents and their families, guests and invitees (collectively "Members"), and each Association hereby appoints the Committee as its attorney in fact with the right, but not the duty, to vigorously enforce the Committee Rules and Regulations in the name and stead of the Association, in the event that an Association neglects or refuses to do so after written notice by the Committee or the other Association. Nothing herein shall be construed to prevent an Association from seeking to compel the other Association to enforce the Committee Rules and Regulations against its Members. In the event the Committee or an Association elects to enforce the Committee Rules and Regulations against a Member of the other Association, the Association of the Member agrees to indemnify the Committee and the other Association from any and all liabilities, losses, costs, fees and expenses, including reasonable attorney's fees.

Nothing in this Agreement is intended to operate to prevent the scheduling and holding of events involving use of the Recreational Amenities that will be open in common to the Members of both Chateau and Sweetwater and to Members of the Other Associations. The Committee may determine that such events are to be funded: (A) only by one Association when the function is held exclusively or primarily for the benefit of the Residents of one (1) Association, or (B) by all Associations in accordance with the formula contained herein for sharing of expenses, if the Committee determines that the event is for the benefit of all communities, or (3) by the participants in the event, if the

Committee determines that the event is not generally of interest to substantially all Members of all of the Associations. In exercising this funding judgment, each member of the Committee shall act toward the Members of each of the Associations in a uniform manner. Each Association shall inform the Other Associations of the need to suspend the use rights of any delinquent lot or unit owner.

#### D. BUDGET FOR RECREATIONAL AMENITIES

5. **Budget procedures:** The Committee shall submit a proposed budget to the Boards of Directors for Chateau and Sweetwater and to the Other Associations before November 1 of each year. This budget will include the reasonable estimated costs of operating, insuring, improving, maintaining, repairing and replacing the Recreational Amenities; shall provide for the establishment of reserves for roof replacement, pool and deck resurfacing, and painting of the exterior of the clubhouse. and may provide replacement of personal property and equipment and such other items. including capital improvements, as are appropriate, in the judgment of the Committee, for the establishment of a reserve. The annual operating budget will provide for the recurring costs of utilities, taxes, comprehensive liability and casualty insurance naming the Committee, Chateau, Sweetwater and the Other Associations as insureds, interior painting, pool and fence maintenance, licensing, furniture, fixtures, equipment, landscaping, pest control and such other items as the Committee deems appropriate. The budget adopted by the Committee shall be approved by the Boards of Directors for Sweetwater and Chateau and the Other Associations, provided that in the event any Association shall adopt a lesser annual assessment amount than recommended by the Committee, the assessment level of the other Associations shall automatically be reduced in the same proportion as the total recommended assessment level bears to the assessment level actually adopted. The Associations agree that the level of funding of reserves allocable to the Recreational Amenities may not be waived or reduced in any fiscal year unless the Members of all Associations have voted to waive or reduce reserves for the same period to the same level. The costs attributable to Chateau, Sweetwater and the Other Associations will then be included in their general budgets and, therefore, in the assessments due from each Unit. The charges provided for in the annual budget shall be collected and remitted no less frequently than monthly by the Associations to the Committee, which shall maintain separate books and accounts. Once a budget is adopted by the Committee, the budget may be amended only by a unanimous vote of the Committee.

The Committee shall maintain and control three separate accounts for deposit of operating and reserve funds in accordance with the adopted Committee budget. Any unbudgeted expenditure in excess of \$1,500.00 shall require Committee approval in advance, except in the event of an emergency where a substantial threat to life or property reasonably appears imminent. One account shall contain the operating funds contributed by all Associations in accordance with the Committee budget, and one account shall contain the reserves contributed by all Associations in accordance with the Committee budget and one account shall contain the rental deposits for renting of

the Recreational Amenities. All rental income shall be payable to the Committee and not to any individual Association. Without exception, each Association shall be responsible to remit the full amount of that Association's monthly share of the Committee reserve funds and operating funds by the 15th day of each month for that current calendar month and any failure to do so shall be a default under this Agreement. In the event of an alleged breach of the obligations imposed hereby by any Association, one or more of the remaining Associations may bring a claim for an accounting and other appropriate relief, legal and equitable, against the Association alleged to be in breach, which action shall be governed by Sections E(12) and (13) hereof. Each bank account shall be maintained with a local banking institution that provides electronic access to the account records, including but not limited to the monthly bank statement and copies of checks and other withdrawals. All RAC members and each Association's licensed community association manager shall be provided with electronic access to the bank records throughout the members' tenure on the Committee. Such access shall be limited to viewing the records.

The Committee shall have the right to contract in its own name, and the Associations shall be jointly liable therefore in the same the proportion as the budgeted expenses are shared, with a right of contribution and indemnification by each Association, including any costs of collection and reasonable attorney's fees incurred, both in defending any action under a Committee contract or any other financial obligation, and in seeking contribution or indemnification. The Committee shall designate one or more agents responsible for leasing some of the Recreational Amenities to third parties upon terms and conditions acceptable to the Committee and shall account to all Associations for the income generated thereby. Such leases may include, but shall not be limited to, short term leases or licenses for social events by Residents of the Magnolia Pointe community. All leases shall be on commercially reasonable arm's length terms acceptable to the Committee and shall account for the expenses of utilities and cleaning, among other expenses.

Notwithstanding any other provision in this Agreement to the contrary, there shall be no material alterations or substantial additions made to the Recreational Amenities above and beyond items of necessary maintenance without the prior approval of each of the Associations in accordance with applicable law and the governing documents of each Association. For purposes of the foregoing, any expense for alterations or additions to the Recreational Amenities that exceeds \$15,000.00 per annum shall be conclusively presumed to be substantial and/or material.

6. **Assessments:** The expenses shown by the annual Committee budget that shall be collected and contributed by the Associations will be apportioned between Chateau, Sweetwater and the Other Associations based upon the ratio the total cost or anticipated expense bears to the total number of Units operated by each Association, subject always to future events of development, condemnation, eminent domain proceedings, or the like. The right of the Other Associations and of the Members of the Other Associations to use the Recreational Amenities shall commence when the Other Associations become obligated to make monthly payments of operating

expenses and reserves to the Committee for each Unit operated by the Association. The right to use the Recreational Amenities shall extend only to those Units within the Other Associations which have an obligation to make such monthly payments. The right of the Other Associations to participate on the Committee shall commence when all Units within each Other Association become obligated to make such monthly payments. In the event that an Association is under control of a development entity, such development entity may not use the Recreational Amenities or participate on the Committee without making monthly payments on behalf of all Units within the Association. In the event that any development entity fails to meet its payment obligation in whole or in part, in no event shall any Other Associations bear any responsibility for the deficit caused by said failure, and the obligation to make up any deficit shall rest solely upon the Members of the Association(s) with the deficit. Notwithstanding the foregoing, the Committee shall reapportion the sharing of expenses to account for the non-payment. However, the delinquent Other Association(s) and their Members shall remain obligated to pay any delinquency as well as any interest, cost of collection and reasonable attorneys' fees, including costs and attorneys' fees incurred prior to filing suit, to collect the delinquency. Upon collection of the delinquency the Committee shall restore the prior apportion the sharing of expenses and the Association's whose share of expenses were increased shall be entitled to be reimbursed for all reapportioned amounts actually paid to the Committee.

The ratio for apportioning the sharing of expenses between Chateau, Sweetwater and the Other Associations shall be adjusted no less frequently than semi-annually, as of the first day of January and July of each year, to account for development and sale of new Units or which otherwise acquire use rights in the Recreational Amenities during the preceding six (6) months.

The operating and reserve funds so accumulated shall be expended by the Committee in accordance with its adopted annual budget. The use of reserves shall be as directed by the Committee.

Each Association shall be entitled to receive, in care of its members on the Committee, a complete monthly copy of all work product prepared by the bookkeeper or other financial professional responsible for maintaining the books and records and recording the financial transactions of the Committee and transactions pertaining to the Recreational Amenities which are the subject of this Agreement.

Notwithstanding any other provision to the contrary in this Agreement, each Association shall at all times be entitled to full disclosure of the funding of reserves and operating funds applicable to the Recreational Amenities by the other Associations as well as the amount and disposition of any income produced by the Recreational Amenities.

Notwithstanding section B(3) of this Agreement, in the event of a dispute over the financial obligations of the Associations to apportion or share costs hereunder or to disclose financial information, that dispute may be resolved by an independent Certified

Public Accountant (CPA) not previously employed by any of the Associations and agreeable to all Associations, the costs of such CPA to be shared in the same proportion then applicable under this agreement for the sharing of expenses generally, based on the number of Units completed and assessable.

7. **Association Responsibility:** Each Association shall be responsible for complying with the requirements of law and with its own community's governing documents with regard to all matters regulated thereby, including without limitation, the adoption of the charges contained in the Committee budget, the proper assessment therefore, and the timely collection and remission of charges to the Committee, and each Association shall be estopped to assert that the failure of that Association to comply with any legal requirement affects the validity of any action taken by the Committee. Each Association hereby agrees to indemnify and hold harmless the other Association(s) from all loss, damage, cost and expense, including reasonable attorney's fees and costs, incurred by the other Association(s) and/or by the Committee by reason of the failure of the defaulting Association to comply with any legal requirement.

8. **Amendment:** This Agreement may be amended only by written instrument executed by the President and Secretary of both Chateau and Sweetwater, and upon the commencement of participation by Other Associations hereunder, by the President and Secretary of the Other Associations then participating. Any amendment must be recorded in the Public Records of Lake County, Florida.

#### E. MISCELLANEOUS

9. **Notices:** Any notice required or permitted to be given by this Agreement, to be effective, must be in writing and sent by certified U. S. mail, federal express or other reputable courier, addressed (as applicable) to the recipient thereof at its address first set forth in the records of the Florida Secretary of State, with postage and courier charges prepaid. Any party hereto may change its respective address, for notice purposes, by delivering notice of such change to the other in accordance with this paragraph. Any notice shall be deemed "delivered" when sent as aforesaid and received, unless receipt is refused, in which case the notice shall be deemed "delivered" when refused. In the alternative, notice shall be deemed given if hand-delivered to its president, as reflected on the records of the Florida Secretary of State.

10. **Time of the Essence:** Time is of the essence in the performance of the obligations contained in this Agreement.

11. **Attorneys Fees:** If any Association or the Committee hereto shall ever seek to enforce their respective rights under this Agreement or engages an attorney to assist it in enforcing any of the terms hereof, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable sums incurred in connection therewith, whether or not suit shall be brought and, if so, then at all pre-trial, trial, appellate, post-judgment, bankruptcy and other proceedings.



12. **Governing Law and Venue:** This Easement Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Exclusive venue shall reside in Lake County, Florida.

13. **Covenants Run with the Land:** All rights, privileges, benefits and burdens created herein are covenants running with the land, binding upon and inuring to the benefit of the Associations, the Committee and their respective assigns and successors in title. References to the Associations shall include their respective successors in title. Notwithstanding anything contained herein to the contrary, the obligations to maintain and repair and other financial liabilities arising hereunder shall bind the parties and their respective successors in title only to the extent arising during their respective periods of holding title, provided that this provision shall not be construed as a limitations period for bringing an action for a claim arising while a party was titleholder.

14. **Relation of the Parties:** Nothing contained herein shall be deemed to create a joint venture or partnership between the parties. No Member of Chateau shall be deemed to be a Member of Sweetwater or of the Other Associations for any purpose by virtue of this Agreement and no Member of Sweetwater shall be deemed a Member of Chateau or of the Other Associations for any purpose by virtue of this Agreement. Notwithstanding the foregoing, the Associations agree that each Association, its Board of Directors and its representative on the Committee shall have a duty as to the other Associations to treat each in a uniform manner on all matters in any way related to the Recreational Amenities and in the conduct of the affairs of the Committee.

15. **Interpretation:** All existing Associations have participated in the negotiating and drafting of this Agreement and it shall not be construed more favorably toward either party as a result of the other party's participation in drafting or production of this Agreement. The parties desire to establish use rights and operation and maintenance obligations in a manner consistent with the consumer protections of the Florida Condominium Act and the Florida Homeowners Association Act, such that each Association shall have all of the right available to protect its interests and that of its Members. Toward that end this Agreement shall not be construed in a light more favorable to either party and shall be construed to terminate, limit or reform the Agreement provided for herein if the rights and duties imposed on the parties hereto are found not to be consistent with or applied in derogation of a fair and equitable reading of the Florida Condominium Act and the Florida Homeowners Association Act as they exist on the date of execution of this Agreement. The invalidity of any portion of this Agreement shall not affect the enforceability of the balance of this Agreement.

16. **Effective Date; Term; Binding Effect:** The Agreement provided for herein shall be effective upon execution by the parties hereto, with the modifications contained in the First Amendment taking effect prospectively as of August 1, 2013, and shall run with the land and shall constitute a use for reciprocal benefits to and burdens

upon the Sweetwater Property and the remainder of Tract E. The Easements provided for herein shall inure to the benefit of and be binding upon the respective successors, successors-in-title, assigns, heirs and tenants of each party hereto and the customers, employees, and invitees of such parties, and shall remain in full force and effect and shall be unaffected by any change in ownership of the Sweetwater Property, the remainder of Tract E or the Recreational Amenities or any of them.

17. **No Dedication:** This Agreement is not intended to, and should not be construed to, create or dedicate the shared amenity areas to the general public, or of any community association or Members of any community association governing property not situated on Tract E, except as provided herein.

In all other respects the parties ratify, reaffirm, endorse and republish the Agreement as though fully set out herein, provided that with the exception of the provision amended hereby it is the intent of the parties that the Agreement continue to be in full force and effect, without lapse, from the date of its original execution.

The parties will execute a stipulation for entry of judgment in accordance with this Agreement.

*[Remainder of page intentionally left blank – signatures follow]*

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first written above.

Signed, sealed and delivered in our presence as witnesses:

James Malloch  
James Malloch  
Tina Morbitzer  
Tina Morbitzer

CHATEAU CONDOMINIUMS AT  
MAGNOLIA POINTE, INC., a Florida  
corporation not for profit

By: Jerry Phillips  
President  
Attest: Ronald H. Bookman  
Its Secretary

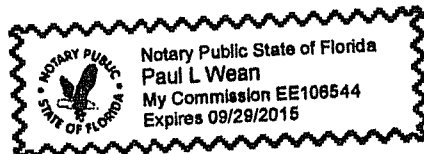
STATE OF FLORIDA  
COUNTY OF LAKE

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of December, 2013 by Jerry Phillips and Ronald Bookman as vice President and Secretary, respectively, of CHATEAU CONDOMINIUMS AT MAGNOLIA POINTE CONDOMINIUM ASSOCIATION, INC., a Florida corporation, on behalf of said corporation. Such person(s):

- (  ) is/are personally known to me.
- ( ) produced a current Florida Driver's license as identification.
- ( ) produced \_\_\_\_\_ as identification.

Print Name: Paul L. Wean  
Notary Public, State of Florida  
My Commission Expires:  
Serial Number:

(SEAL)



IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first written above.

SWEETWATER RIDGE TOWNHOMES OWNERS ASSOCIATION, INC., a Florida corporation not for profit

Walter Stout

Walter Stout

Mary Burns

Mary Burns

By: [Signature]  
R. GILLIS  
Its President

Attest: [Signature]  
H. J. Paganò  
Its Secretary

STATE OF FLORIDA  
COUNTY OF LAKE

The foregoing instrument was acknowledged before me this 23 day of DECEMBER, 2013 by RON GILLIS and HANK BARGIA as President and Secretary, respectively of SWEETWATER RIDGE TOWNHOMES OWNERS ASSOCIATION, INC., a Florida corporation, on behalf of said corporation.

Such person(s):

- is/are personally known to me.
- produced a current Florida Driver's license as identification.
- produced \_\_\_\_\_ as identification.

Print Name: NICHOLAS PAGANO  
Notary Public, State of Florida  
My Commission Expires:  
Serial Number:

(SEAL)

