

DOUGLAS COUNTY, NV

2019-925058

Rec:\$35.00

\$35.00 Pgs=11

01/25/2019 02:54 PM

FIRST AMERICAN TITLE MINDEN

KAREN ELLISON, RECORDER

APNs: 1318-22-310-001, 002, 005;  
1318-22-710-001, 002, 003, 004, 005, 006, 007, 008;  
1318-22-301-006

PREPARED BY AND UPON  
RECORDATION RETURN TO:

Winston & Strawn LLP  
200 Park Avenue  
New York, New York 10166  
Attention: William X. Lang, Esq.

The undersigned hereby affirms that this document, including any exhibits, submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

---

**BEACH CLUB DEVELOPMENT, LLC**, a Delaware limited liability company  
(formerly known as Beach Club Development, LLC, a Nevada limited liability company),  
as assignor

to

**ACORE CAPITAL MORTGAGE, LP**, a Delaware limited partnership,  
in its capacity as administrative agent for and on behalf of the Lenders referred to below,  
as assignee

---

**ASSIGNMENT OF LEASES AND RENTS**

---

Dated: As of January 25, 2019

Location: 9, 17, 25, 33, 41, 49, 57, 65, 73, 81, 89, 90,  
and 97 Beach Club Drive, Stateline, Nevada 89449

County: Douglas

This document was executed  
in counter-part and  
shall be deemed as one.

## ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") made as of the 25<sup>th</sup> day of January, 2019, by **BEACH CLUB DEVELOPMENT, LLC**, a Delaware limited liability company (formerly known as Beach Club Development, LLC, a Nevada limited liability company) ("**Assignor**"), as assignor, to **ACORE CAPITAL MORTGAGE, LP**, a Delaware limited partnership, in its capacity as administrative agent for and on behalf of the Lenders from time to time party to the Loan Agreement (defined below) (together with its successors and/or assigns, "**Assignee**"), as assignee.

### RECITALS:

WHEREAS, pursuant to that certain Loan Agreement dated of even date herewith among Assignor, the Lenders from time to time party thereto, and Assignee (as the same may be amended, the "**Loan Agreement**"), Lender has agreed to make a Loan to Assignor in the original principal amount of up to ONE HUNDRED SEVEN MILLION ONE HUNDRED TEN THOUSAND AND NO/100 DOLLARS (\$107,110,000.00); capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement; and

WHEREAS, Lender is not willing to make the Loan to Assignor unless Assignor executes and delivers this Assignment.

NOW, THEREFORE, as an inducement to Lender to make the Loan to Assignor, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Assignor hereby agrees as follows:

1. Assignment. Assignor hereby absolutely and unconditionally assigns and grants to Assignee all of Assignor's right, title and interest in and to the following property, rights, interests and estates, now owned, or hereafter acquired by Assignor: (a) all existing and future Leases encumbering or relating to the Land (and the Improvements thereon) more particularly described in Exhibit A attached hereto; (b) all rents, rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Action) or in lieu of rent equivalents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, deposits (including, without limitation, security, utility and other deposits), accounts and receipts payable pursuant to any Lease or otherwise from the Land and/or the Improvements whether paid or accruing before or after the filing by or against Assignor of any petition for relief under the 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "**Bankruptcy Code**"), including all claims and rights to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code (collectively, the "**Rents**"); (c) all of Assignor's right, title and interest in and claims under any and all lease guaranties, letters of credit and any other credit support (a "**Lease Guaranty**") given by any Person in connection with any of the Leases; (d) all proceeds from the sale or other disposition of the Leases, the Rents, and the Lease Guaranties; (e) all rights, powers, privileges, options and other benefits of Assignor as lessor under the Leases and beneficiary under the Lease Guaranties, including without limitation the immediate and continuing right to make claim for, receive and collect all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Debt), and to do all other things which Assignor or any lessor is or may become entitled to do under the Leases or the Lease Guaranties; and (f) any and all other rights of Assignor in and to the items set forth in clauses (a) through (e) above, and all amendments, modifications, replacements, renewals and substitutions thereof.

2. Present Assignment and License Back. The assignment described in Section 1 above constitutes a present, absolute assignment of the property and rights described therein (and is not an assignment for security purposes only); provided, however, subject to the terms of the Loan Agreement, Assignee grants to Assignor a revocable license to collect, receive, use and enjoy the Rents and other sums due under the Leases and the Lease Guaranties, and to otherwise deal with the Leases, in accordance with the terms and conditions of the Loan Agreement effective so long as no Event of Default exists.

3. Default; Remedies. During the existence of an Event of Default: (a) the license granted to Assignor in Section 2 of this Assignment shall automatically be revoked, and Assignee shall immediately be entitled to possession of all Rents and sums due under any Lease Guaranties, whether or not Assignee enters upon or takes control of the Property; (b) Assignee shall have the right to enter upon the Property in person, by agent or by court-appointed receiver, and shall have an absolute right to the appointment of a receiver of its choosing, to facilitate or exercise Assignee's rights and remedies hereunder; (c) Assignee, at its option, may, subject to the terms of the Loan Agreement, (i) complete any construction on the Property in such manner and form as Assignee deems advisable, (ii) exercise all rights and powers of Assignor, including, without limitation, the right to negotiate, execute, cancel, enforce or modify any Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents from the Property and all sums due under any Lease Guaranties, (iii) require Assignor to pay monthly in advance to Assignee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupancy of such part of the Property as may be in possession of Assignor, and/or (iv) require Assignor to vacate and surrender possession of the Property to Assignee or to such receiver and, in default thereof, Assignor may be evicted by summary proceedings or otherwise. Assignor hereby authorizes and directs the lessees named in the Leases or any other future lessees or occupants of the Property and all guarantors of a Lease to pay over to Assignee or to such other party as Assignee directs all Rents and all sums due under any Lease Guaranties upon receipt from Assignee of written notice to the effect that Assignee is then the holder of this Assignment and that an Event of Default (as defined in the Loan Agreement) exists, and to continue so to do until otherwise notified by Assignee. Assignor grants Assignee an irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in this Assignment, effective during the existence of an Event of Default. Nothing herein contained shall be construed as constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Assignee. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor, except to the extent such liability is caused by the gross negligence, fraud, illegal acts, or willful misconduct of Assignee.

4. Waivers. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the power and rights granted to Assignee hereunder shall be deemed to be a waiver by Assignee or Lender of its rights and remedies under the Loan Agreement, the Note, or the other Loan Documents and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee or Lender under the terms thereof. The right of Assignee to collect the Debt and to enforce any other security therefor held by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Assignor hereby absolutely, unconditionally and irrevocably waives any and all rights to assert any setoff, counterclaim or crossclaim of any nature whatsoever with respect to the obligations of Assignor under this Assignment, the Loan Agreement, the Note, the other Loan Documents or otherwise with respect to the Loan in any action or proceeding brought by Assignee to collect same, or any portion thereof, or to enforce and realize upon the lien and security interest created by this Assignment, the Loan Agreement, the Note, or any of the other Loan Documents (*provided, however*, that the foregoing shall not be deemed a waiver of Assignor's right to assert (x) any compulsory counterclaim if such counterclaim is compelled under local law or rule of

procedure, nor (y) any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Assignee in any separate action or proceeding).

5. Bankruptcy. Upon or at any time after the occurrence and during the continuance of an Event of Default, Assignee shall have the right to proceed in its own name or in the name of Assignor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Assignor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code. If there shall be filed by or against Assignor a petition under the Bankruptcy Code, and Assignor, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Assignor shall give Assignee not less than ten (10) days' prior notice of the date on which Assignor shall apply to the bankruptcy court for authority to reject such Lease. Assignee shall have the right, but not the obligation, to serve upon Assignor within such ten-day period a notice stating that (i) Assignee demands that Assignor assume and assign the Lease to Assignee pursuant to Section 365 of the Bankruptcy Code and (ii) Assignee covenants to cure or provide adequate assurance of future performance under the Lease. If Assignee serves upon Assignor the notice described in the preceding sentence, Assignor shall not seek to reject such Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Assignee of the covenant provided for in clause (ii) of the preceding sentence.

6. No Liability of Assignee. This Assignment shall not be construed to bind Assignee or Lender to the performance of any of the covenants, conditions or provisions contained in any Lease or Lease Guaranty or otherwise impose any obligation upon Assignee. Neither Lender nor Assignee shall be liable for any loss sustained by Assignor resulting from Assignee's failure to lease space at the Property after an Event of Default or from any other act or omission of Assignee in managing the Property after an Event of Default unless such loss is caused by the gross negligence, fraud, illegal acts, or willful misconduct of Assignee.

7. No Oral Change. This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act on the part of Assignor, Lender or Assignee, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

8. Inapplicable Provisions. If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

9. GOVERNING LAW; JURISDICTION; SERVICE OF PROCESS. WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THE LIENS CREATED PURSUANT TO THIS ASSIGNMENT, THIS ASSIGNMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED (WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF), IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, AND EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THE LOAN DOCUMENTS, THE LAW OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS (OTHER THAN §§ 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW)) SHALL GOVERN ALL MATTERS RELATING TO THIS ASSIGNMENT AND THE OTHER LOAN DOCUMENTS AND ALL OF THE INDEBTEDNESS OR

OBLIGATIONS ARISING HEREUNDER OR THEREUNDER PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW. ALL PROVISIONS OF THE LOAN AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF) PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW. EACH OF ASSIGNOR AND ASSIGNEE (A) AGREES THAT ANY SUIT, ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS ASSIGNMENT MAY BE BROUGHT IN A COURT OF RECORD IN THE COUNTY WHERE THE PROPERTY IS LOCATED OR IN THE COURTS OF THE UNITED STATES OF AMERICA LOCATED IN SAID COUNTY, (B) CONSENTS TO THE JURISDICTION OF EACH SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING AND (C) WAIVES ANY OBJECTION WHICH IT MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY OF SUCH COURTS AND ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH OF ASSIGNOR AND ASSIGNEE IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY SERVICE OF COPIES OF SUCH PROCESS TO THE OTHER PARTY AT ITS ADDRESS PROVIDED HEREIN. NOTHING CONTAINED IN THIS ASSIGNMENT SHALL PREVENT ASSIGNEE FROM BRINGING AN ACTION, ENFORCING ANY AWARD OR JUDGMENT, OR EXERCISING ANY RIGHT OR REMEDY AGAINST ASSIGNOR, OR AGAINST ANY SECURITY OR COLLATERAL FOR THE DEBT, WITHIN ANY OTHER COUNTY, STATE OR ANY OTHER FOREIGN OR DOMESTIC JURISDICTION.

10. WAIVER OF TRIAL BY JURY. ASSIGNOR AND ASSIGNEE (BY ITS ACCEPTANCE OF THIS ASSIGNMENT) HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THIS ASSIGNMENT, THE NOTE, OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ASSIGNEE, THEIR OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH OF ASSIGNOR AND ASSIGNEE AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF ASSIGNOR AND ASSIGNEE ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

11. Termination of Assignment. Upon payment in full of the Debt, this Assignment shall automatically become and be void and of no effect.

12. Notices. All notices or other written communications hereunder shall be delivered in accordance with Section 8.6 of the Loan Agreement.

13. Exculpation. The provisions of Section 6.3 of the Loan Agreement are hereby incorporated by reference into this Assignment to the same extent and with the same force as if fully set forth herein.

14. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of Assignor, Lender and Assignee and their respective successors and assigns forever.

15. State Specific Provisions. The terms and conditions of this Section 15 shall control over any inconsistent terms and conditioned elsewhere in this Assignment.

- (a) Assignee's rights and remedies under this Assignment shall be subject to NRS Chapter 107A.

[NO FURTHER TEXT ON THIS PAGE]

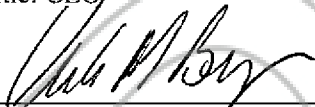


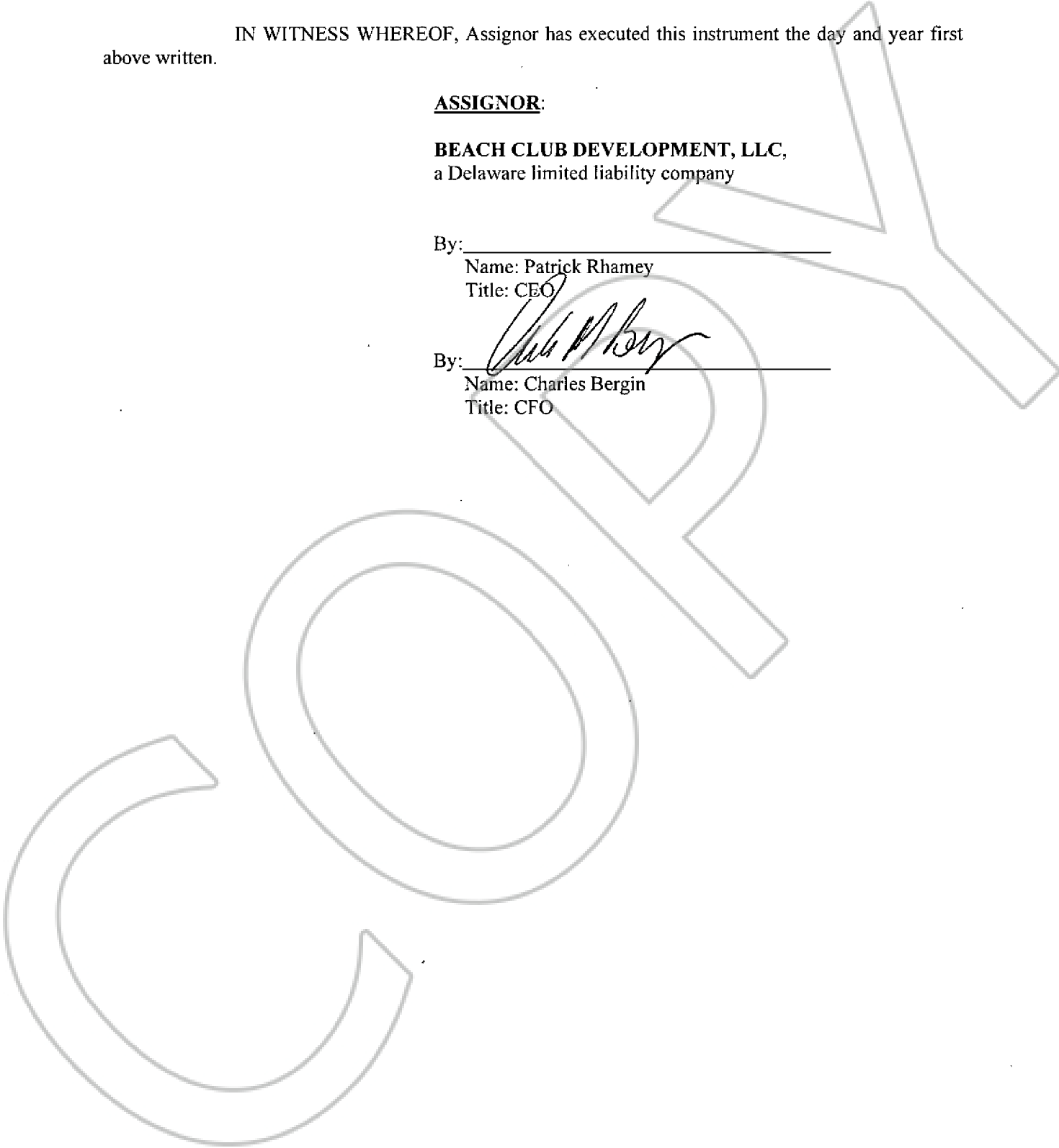
IN WITNESS WHEREOF, Assignor has executed this instrument the day and year first above written.

**ASSIGNOR:**

**BEACH CLUB DEVELOPMENT, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Patrick Rhamey  
Title: CEO

By:  \_\_\_\_\_  
Name: Charles Bergin  
Title: CFO



STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 201\_\_\_, before me, the subscriber, a Notary Public in and for said State and County, personally appeared Patrick Rhamey, the CEO of Beach Club Development, LLC, a Delaware limited liability company, known or identified to me to be the person whose name is subscribed to the within instrument, and in due form of law acknowledged that he/she is authorized on behalf of said company to execute all documents pertaining hereto and acknowledged to me that he/she executed the same as his/her voluntary act and deed on behalf of said company.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed my seal in said State and County on the day and year last above written.

Notary Seal

\_\_\_\_\_  
(Signature of Notary)

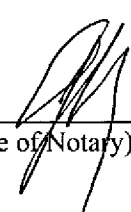
My Commission Expires: \_\_\_\_\_

STATE OF New York )  
 )ss.  
COUNTY OF New York )

On this 11 day of January, 2019, before me, the subscriber, a Notary Public in and for said State and County, personally appeared Charles Bergin, the CFO of Beach Club Development, LLC, a Delaware limited liability company, known or identified to me to be the person whose name is subscribed to the within instrument, and in due form of law acknowledged that he/she is authorized on behalf of said company to execute all documents pertaining hereto and acknowledged to me that he/she executed the same as his/her voluntary act and deed on behalf of said company.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed my seal in said State and County on the day and year last above written.

Notary Seal  
**GEORGE H. WANG**  
Notary Public, State of New York  
No. 02WA4712142  
Qualified in New York County  
Commission Expires JAN. 25, 2019

  
\_\_\_\_\_  
(Signature of Notary)


My Commission Expires: 1/25/2019



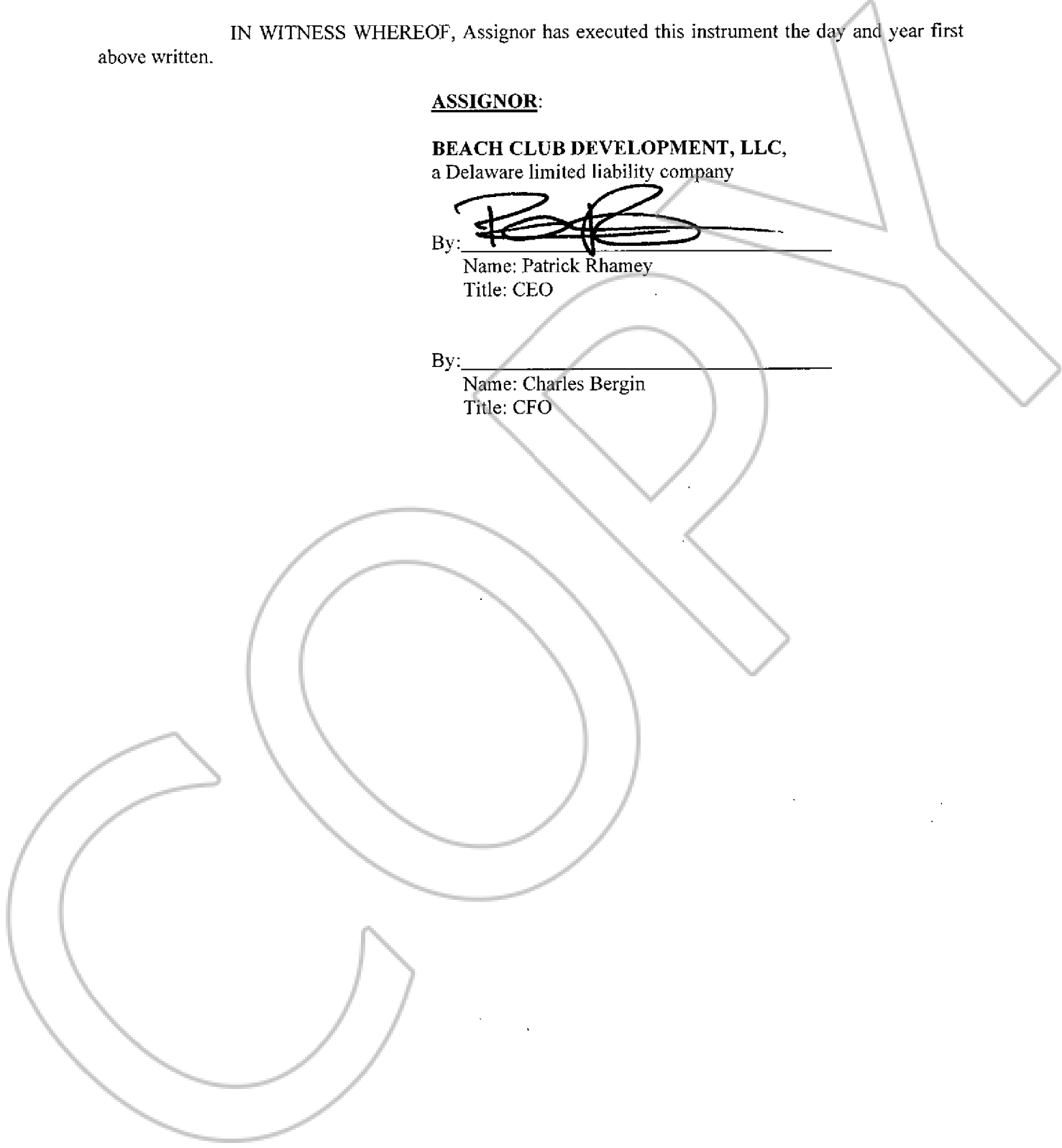
IN WITNESS WHEREOF, Assignor has executed this instrument the day and year first above written.

**ASSIGNOR:**

**BEACH CLUB DEVELOPMENT, LLC,**  
a Delaware limited liability company

By:   
Name: Patrick Rhamey  
Title: CEO

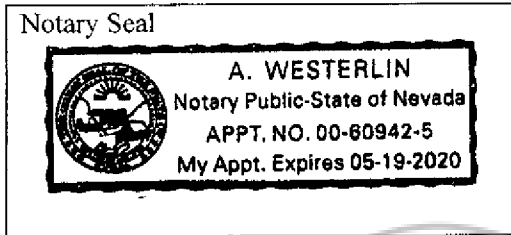
By: \_\_\_\_\_  
Name: Charles Bergin  
Title: CFO



STATE OF Nevada )  
 )ss.  
COUNTY OF Douglas )

On this 15<sup>th</sup> day of January, 2019, before me, the subscriber, a Notary Public in and for said State and County, personally appeared Patrick Rhamey, the CEO of Beach Club Development, LLC, a Delaware limited liability company, known or identified to me to be the person whose name is subscribed to the within instrument, and in due form of law acknowledged that he/~~she~~ is authorized on behalf of said company to execute all documents pertaining hereto and acknowledged to me that he/~~she~~ executed the same as his/~~her~~ voluntary act and deed on behalf of said company.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed my seal in said State and County on the day and year last above written.



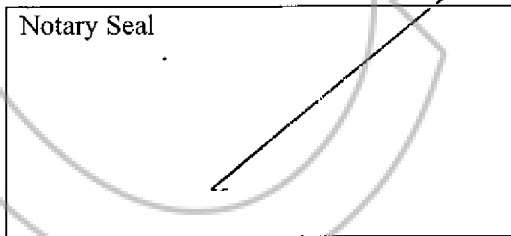
A. West  
(Signature of Notary)

My Commission Expires: 5/19/2020

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 201\_\_\_, before me, the subscriber, a Notary Public in and for said State and County, personally appeared Charles Bergin, the CFO of Beach Club Development, LLC, a Delaware limited liability company, known or identified to me to be the person whose name is subscribed to the within instrument, and in due form of law acknowledged that he/she is authorized on behalf of said company to execute all documents pertaining hereto and acknowledged to me that he/she executed the same as his/her voluntary act and deed on behalf of said company.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed my seal in said State and County on the day and year last above written.



\_\_\_\_\_  
(Signature of Notary)

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

**EXHIBIT A**

(Legal Description of Property)

The land referred to herein below is situated in the County of Douglas, State of Nevada, and described as follows:

**PARCEL I:**

PARCELS 1 AND 2; AND PARCELS 5 THROUGH 13, INCLUSIVE, AND COMMON AREA PARCEL A, AS SHOWN ON THE MAP OF FINAL SUBDIVISION MAP LDA 15-026 OF TAHOE BEACH CLUB, FILED IN THE OFFICE OF THE COUNTY RECORDER OF DOUGLAS COUNTY, STATE OF NEVADA, ON NOVEMBER 27, 2018, AS INSTRUMENT NO. 2018-922870; TOGETHER WITH THOSE EASEMENTS AS SET FORTH IN THAT CERTAIN DOCUMENT ENTITLED "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR TAHOE BEACH CLUB CONDOMINIUMS" RECORDED OCTOBER 8, 2018 AS INSTRUMENT NO. 2018-920587 OF OFFICIAL RECORDS.

**PARCEL II:**

NON-EXCLUSIVE EASEMENTS FOR INGRESS AND EGRESS AS SET FORTH IN THAT CERTAIN RECIPROCAL ACCESS EASEMENT AGREEMENT DATED OCTOBER 18, 2018, RECORDED NOVEMBER 7, 2018 AS INSTRUMENT NO. 2018-921866 OF OFFICIAL RECORDS.