

DOUGLAS COUNTY, NV **2024-1006679**
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FIRST AMERICAN TITLE RENO
SHAWNYNE GARREN, RECORDER

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Andrew Abraham
Burch & Cracchiolo, P.A.
1850 N. Central Avenue, Suite 1700
Phoenix, AZ 85004

15836-2673137-KN

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SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT, dated as of April 12, 2024, is made by GBS CAPITAL, LLC, a Nevada limited liability company (the "**Junior Creditor**"), for the benefit of PACIFIC COACH, INC., an Arizona corporation (with its participants, successors and assigns, "**Senior Lender**").

A. BEACH CLUB DEVELOPMENT PHASE III, LLC, a Delaware limited liability company, (the "**Borrower**"), is now or hereafter may be indebted to Senior Lender on account of loans or the other extensions of credit or financial accommodations from Senior Lender to the Borrower (the "**Senior Debt**") evidenced by that certain Loan Agreement dated as of even date herewith between the Borrower and Senior Lender (the "**Senior Loan Agreement**"). The Senior Debt is secured by that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of even date herewith and recorded in (or to be recorded in) the official records of Douglas County, Nevada (the "**Senior Deed of Trust**").

B. On or about May 21, 2018, the Borrower executed, and thereafter amended, extended and increased a Promissory Note in favor of Junior Creditor (the "**Junior Note**"). The obligations under the Junior Note are secured by (i) that certain Deed of Trust dated April 23, 2021 and recorded on April 26, 2021 as instrument number 2021-966200 in the official records of Douglas County, Nevada, and (ii) that certain Deed of Trust dated April 23, 2021 and recorded on April 26, 2021 as instrument number recorded at 2021-966199 regarding Beach Club Development II, LLC (such deeds of trust, together, the "**Junior Deed of Trust**"). Certain of the property subject to the Junior Deed of Trust is not subject to the Senior Deed of Trust; such property which is not subject to both the Junior Deed of Trust and the Senior Deed of Trust, being hereinafter referred to as the "**Non-Phase III Collateral**."

C. As a condition to entering into the Senior Debt with the Borrower, Senior Lender has required that the Junior Creditor subordinate the payment of the Junior Note to the payment of the Senior Debt to Senior Lender and to subordinate its rights with respect to the Collateral pursuant to the Junior Deed of Trust to the Senior Deed of Trust, in each case pursuant to the terms of this Subordination Agreement. Assisting the Borrower in obtaining loans and other financial accommodations from Senior Lender and subordinating its interests pursuant to the terms of this Agreement are in the Junior Creditor's best interest.

ACCORDINGLY, in consideration of the loans and other financial accommodations that have been made and may hereafter be made available by Senior Lender for the benefit of the Borrower, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Junior Creditor hereby agrees as follows:

1. Definitions. As used herein, the following terms have the meanings set forth below:

“**Borrower Default**” means a Default or Event of Default as defined in any agreement or instrument evidencing, governing, or issued in connection with Senior Debt, including, but not limited to, the Senior Loan Agreement, or any default under or breach of any such agreement or instrument.

“**Collateral**” means all collateral now or hereafter securing payment of the Senior Debt, including the collateral subject to the Senior Deed of Trust as described on Exhibit A attached hereto, and all proceeds thereof.

“**Junior Debt**” means indebtedness under the Junior Note and Junior Creditor’s rights with respect to the Collateral pursuant to the Junior Deed of Trust.

“**Junior Deed of Trust**” has the meaning given to such term in the recitals of this Subordination Agreement, as the same may be amended, supplemented or restated from time to time.

“**Junior Note**” has the meaning given to such term in the recitals of this Subordination Agreement, together with all renewals, extensions and modifications thereof and any note or notes issued in substitution therefor.

“**Lien**” means any security interest, mortgage, deed of trust, pledge, lien, charge, encumbrance, title retention agreement or analogous instrument or device of or on any assets or properties of a Person, whether now owned or hereafter acquired and whether arising by agreement or operation of law.

“**Non-Phase III Collateral**” has the meaning given to such term in the recitals of this Subordination Agreement.

“**Payment in Full**” or “**Paid in Full**” means the indefeasible payment in full in cash of the Senior Debt and the termination of commitments under the Senior Loan Agreement.

“**Senior Loan Agreement**” has the meaning given to such term in the recitals of this Subordination Agreement, as the same may be amended, supplemented or restated from time to time.

“**Senior Debt**” has the meaning given to such term in the recitals of this Subordination Agreement and is used herein in its most comprehensive sense and means any and all advances, debts, obligations and liabilities of the Borrower to Senior Lender pursuant to the Senior Loan Agreement, heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined.

“**Senior Deed of Trust**” has the meaning given to such term in the recitals of this Subordination Agreement.

“**Senior Debt Documents**” means the Loan Documents as defined in the Senior Loan Agreement, as the same may be amended, supplemented or restated from time to time.

2. Subordination. Except to the extent set forth in Section 3 below, the payment of all of the Junior Debt is hereby expressly subordinated to the extent and in the manner hereinafter set forth to the Payment in Full of the Senior Debt; and regardless of any priority otherwise available to the Junior Creditor by law or by agreement, Senior Lender shall hold a first priority Lien in the Collateral, and any Lien claimed therein by the Junior Creditor shall be and remain fully subordinate for all purposes to the Lien of Senior Lender therein for all purposes whatsoever. Specifically, without limiting the above, the Senior Deed of Trust securing the Senior Debt and any renewals or extensions thereof, shall unconditionally be and remain at all times a lien or charge on the property therein described, prior and superior to the lien or charge of the Junior Deed of Trust in the Collateral, regardless of the order in which the deeds of trust were recorded. The Junior Debt shall continue to be subordinated to Senior Debt and Senior Deed of Trust even if Senior Debt is deemed unsecured, under-secured, subordinated, avoided or disallowed under the United States Bankruptcy Code or other applicable law.

3. Payments. Until all of Senior Debt has been Paid in Full, the Junior Creditor shall not, without Senior Lender's prior written consent, demand, receive or accept any payment from the Borrower in respect of the Junior Debt, or exercise any right of, or permit any, setoff in respect of the Junior Debt; provided, however, to the extent that the Junior Creditor is entitled to any payment with respect to the Note related to the sale of Non- Phase III Collateral or as a result of the exercise of its rights in respect of Non-Phase III Collateral pursuant to the Junior Deed of Trust, Junior Creditor shall be entitled to apply such amounts to reduce the payment obligations of the Borrower under the Junior Note.

4. Receipt of Prohibited Payments. If the Junior Creditor receives any payment on the Junior Debt that the Junior Creditor is not entitled to receive under the provisions of this Agreement, the Junior Creditor will hold the amount so received in trust for Senior Lender and will forthwith turn over such payment to Senior Lender in the form received (except for the endorsement of the Junior Creditor where necessary) for application to then-existing Senior Debt (whether or not due), in such manner of application as Senior Lender may deem appropriate. If the Junior Creditor exercises any right of setoff which the Junior Creditor is not permitted to exercise under the provisions of this Agreement, the Junior Creditor will promptly pay over any such amount to Senior Lender, in immediately available funds. If the Junior Creditor fails to make any endorsement required under this Agreement, Senior Lender, or any of its officers or employees or agents on behalf of Senior Lender, is hereby irrevocably appointed as the attorney-in-fact (which appointment is coupled with an interest) for the Junior Creditor to make such endorsement in the Junior Creditor's name.

5. Action on Junior Debt; Junior Debt Maturity Date. The Junior Creditor will not commence any action or proceeding against the Borrower to recover all or any part of the Junior Debt, or join with any creditor (unless Senior Lender shall so join) in bringing any proceeding against the Borrower under any bankruptcy, reorganization, readjustment of debt, arrangement of debt receivership, liquidation or insolvency law or statute of the federal or any state government, or take possession of, sell, or dispose of any Collateral, or exercise or enforce any right or remedy available to the Junior Creditor with respect to the Collateral pursuant to the Junior Deed of Trust, unless and until Senior Debt has been Paid in Full. As additional consideration for this Agreement, the Borrower and the Junior Creditor acknowledge and agree that at all times, the Junior Debt shall not be due and payable until a date that is at least six (6) months beyond the maturity date of the Senior Debt.

6. Action Concerning Collateral.

(a) Notwithstanding any Lien now held or hereafter acquired by the Junior Creditor with respect to the Collateral, Senior Lender may take possession of, sell, dispose of, and otherwise deal with all or any part of the Collateral, and may enforce any right or remedy available to it with

respect to the Borrower or the Collateral, all without notice to, or consent of, the Junior Creditor except as specifically required by applicable law.

(b) In addition, and without limiting the generality of the foregoing, if (i) a Borrower Default has occurred and is continuing, (ii) the Borrower or the Senior Lender intends to sell or otherwise dispose of any Collateral to an unrelated third party outside the ordinary course of business, (iii) Senior Lender has given written notice thereof to the Junior Creditor, and (iv) the Junior Creditor has failed, within ten (10) days after receipt of such notice, to purchase for cash Senior Debt for the full amount thereof, the Junior Creditor shall be deemed to have consented to such sale or disposition, to have released any Lien it may have in such Collateral and to have authorized Senior Lender or its agents to file partial releases (and any related financing statements such as “in lieu” financing statements under Part 7 of Article 9 of the Uniform Commercial Code) with respect to such Collateral.

(c) Senior Lender shall have no duty to preserve, protect, care for, insure, take possession of, collect, dispose of, or otherwise realize upon any of the Collateral, and in no event shall Senior Lender be deemed the Junior Creditor’s agent with respect to the Collateral. All proceeds received by Senior Lender with respect to any Collateral shall be applied, first, to pay or reimburse Senior Lender for all costs and expenses (including reasonable attorneys’ fees) incurred by Senior Lender in connection with the collection of such proceeds, second, to any Senior Debt secured by Senior Lender’s Lien in that Collateral in any order that it may choose, and, third, to the Junior Creditor in respect of the Junior Debt.

7. [Reserved].

8. Bankruptcy and Insolvency. In the event of any receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization or arrangement with creditors, whether or not pursuant to bankruptcy law, the sale of all or substantially all of the assets of the Borrower, dissolution, liquidation or any other marshalling of the assets or liabilities of the Borrower, the Junior Creditor will file all claims, proofs of claim or other instruments of similar character necessary to enforce the obligations of the Borrower in respect of the Junior Debt and will hold in trust for Senior Lender and promptly pay over to Senior Lender in the form received (except for the endorsement of the Junior Creditor where necessary) for application to the then-existing Senior Debt, any and all moneys, dividends or other assets received in any such proceedings on account of the Junior Debt, unless and until Senior Debt has been Paid in Full; provided, however, that any such moneys, dividends or other assets are the proceeds of Non-Phase III Collateral shall not be required to be paid over to the Senior Lender. If the Junior Creditor shall fail to take any such action, Senior Lender, as attorney-in-fact for the Junior Creditor, may take such action on the Junior Creditor’s behalf. The Junior Creditor hereby irrevocably appoints Senior Lender, or any of its officers or employees on behalf of Senior Lender, as the attorney-in-fact for the Junior Creditor (which appointment is coupled with an interest) with the power but not the duty to demand, sue for, collect and receive any and all such moneys, dividends or other assets and give acquittance therefor and to file any claim, proof of claim or other instrument of similar character, to vote claims comprising Junior Debt to accept or reject any plan of partial or complete liquidation, reorganization, arrangement, composition or extension and to take such other action in Senior Lender’s own name or in the name of the Junior Creditor as Senior Lender may deem necessary or advisable for the enforcement of the agreements contained herein; and the Junior Creditor will execute and deliver to Senior Lender such other and further powers-of-attorney or instruments as Senior Lender may request in order to accomplish the foregoing. If Senior Lender desires to permit the use of cash collateral or to provide post-petition financing to the Borrower, the Junior Creditor shall not object to the same or assert that its interests are not being adequately protected.

9. Transfer of Junior Debt. The Junior Creditor is the lawful holder of the Junior Note and has not transferred any interest therein to any other person or entity. Without the prior written consent of Senior Lender, the Junior Creditor will not assign, transfer or pledge to any other person any of the Junior Debt or agree to a discharge or forgiveness of the same.

10. Continuing Effect. This Agreement shall constitute a continuing agreement of subordination, and Senior Lender may, without notice to or consent by the Junior Creditor, modify any term of Senior Debt in reliance upon this Agreement. Without limiting the generality of the foregoing, Senior Lender may, at any time and from time to time, without the consent of or notice to the Junior Creditor and without incurring responsibility to the Junior Creditor or impairing or releasing any of Senior Lender's rights or any of the Junior Creditor's obligations hereunder:

(a) change the interest rate or change the amount of payment or extend the time for payment or renew or otherwise alter the terms of any Senior Debt or any instrument evidencing the same in any manner;

(b) sell, exchange, release or otherwise deal with any property at any time securing payment of Senior Debt or any part thereof;

(c) release anyone liable in any manner for the payment or collection of Senior Debt or any part thereof;

(d) exercise or refrain from exercising any right against the Borrower or any other person (including the Junior Creditor); and

(e) apply any sums received by Senior Lender, by whomsoever paid and however realized (except in respect of Non-Phase III Collateral), to Senior Debt in such manner as Senior Lender shall deem appropriate.

11. No Commitment. None of the provisions of this Agreement shall be deemed or construed to constitute or imply any commitment or obligation on the part of Senior Lender to make any future loans or other extensions of credit or financial accommodations to the Borrower.

12. Notice. All notices and other communications hereunder shall be in writing and shall be (i) personally delivered, (ii) transmitted by registered mail, postage prepaid, or (iii) transmitted by electronic mail, in each case addressed to the party to whom notice is being given at its address as set forth below:

If to Senior Lender:

Pacific Coach, Inc.
2801 E. Camelback Road, Suite 450
Phoenix, AZ 85016
Attn: Andrew Cohn
E-Mail: andrew@levineinvestments.com

If to the Junior Creditor:

GBS Capital, LLC
c/o Excel Realty Holdings, LLC
Gateway Tower West

15 West South Temple, Suite 900
Salt Lake City, Utah 84101
Attention: Mark Burton
E-Mail: mb@excelrealtyholdings.com

or at such other address as may hereafter be designated in writing by that party. All such notices or other communications shall be deemed to have been given on (i) the date received if delivered personally, (ii) the date of posting if delivered by mail, or (iii) the date of transmission if delivered by electronic mail.

13. Revival of Obligations. To the extent that any payment or payments made to Senior Lender under the Senior Debt Documents, or any payment or proceeds of any Collateral received by Senior Lender in the reduction of the indebtedness evidenced therein or with respect to any of the allocations evidenced by the Senior Debt Documents are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, to Borrower or any other person liable for any of the obligations evidenced and/or secured by the Senior Debt Documents, whether directly or indirectly, as a debtor-in-possession or to a receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then the portion of the indebtedness of Borrower or such other liable person intended to have been satisfied by such payment or proceeds (“**Invalidated Payments**”), will be revived and will continue in full force and effect as if such Invalidated Payments had never been received by Senior Lender and for purposes of this Agreement, Senior Lender will not be deemed to be Paid in Full to the extent of the Invalidated Payments and all costs and expenses in connection therewith.

14. No Contest by Junior Creditor. Borrower and Junior Creditor agree that they will not at any time contest the validity, perfection, priority or enforceability of the Senior Debt, the Senior Debt Documents, or the liens and security interests of Senior Lender in the Collateral.

15. Marshalling. Junior Creditor waives the right to assert the doctrine of marshalling with respect to any of the Collateral, and consents and agrees that Senior Lender may proceed against any or all of the Collateral in such order as Senior Lender shall determine in its sole discretion.

16. Conflict in Agreements. If the subordination provisions of any instrument evidencing Junior Debt conflict with the terms of this Agreement, the terms of this Agreement shall govern the relationship between Senior Lender and the Junior Creditor.

17. No Waiver. No waiver shall be deemed to be made by Senior Lender of any of its rights hereunder unless the same shall be in writing signed on behalf of Senior Lender, and each such waiver, if any, shall be a waiver only with respect to the specific matter or matters to which the waiver relates and shall in no way impair the rights of Senior Lender or the obligations of the Junior Creditor to Senior Lender in any other respect at any time.

18. Binding Effect; Acceptance. This Agreement shall be binding upon the Junior Creditor and the Junior Creditor’s legal representatives, successors and assigns and shall inure to the benefit of Senior Lender and its participants, successors and assigns irrespective of whether this or any similar agreement is executed by any other creditor of the Borrower. Notice of acceptance by Senior Lender of this Agreement or of reliance by Senior Lender upon this Agreement is hereby waived by the Junior Creditor.

19. Miscellaneous. The paragraph headings herein are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose. This Agreement

may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

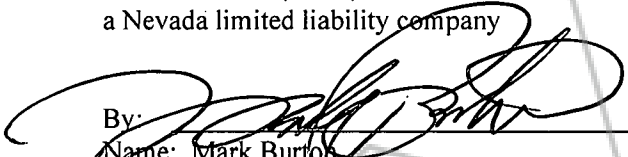
20. Governing Law. The validity, interpretation and enforcement of this Agreement shall be governed by the internal laws of the State of Arizona but excluding any principles of conflicts of law or other rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of Arizona.

21. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

[signature page to follow]

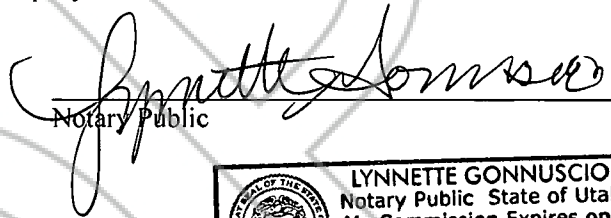
IN WITNESS WHEREOF, the Junior Creditor has executed this Agreement as of the date and year first above-written.

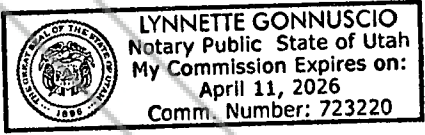
GBS CAPITAL, LLC,
a Nevada limited liability company

By: 
Name: Mark Burton
Its: President

STATE OF Utah)
County of Salt Lake) ss.

This Subordination Agreement, dated April 12 ^{12 KO} ~~12~~, 2024, was acknowledged before me this 12 day of April, 2024, by Mark Burton, the President of GBS Capital, LLC, a Nevada limited liability company, on behalf of the company.



Notary Public



Acknowledgment by Borrower

The undersigned, being the Borrower referred to in the foregoing Agreement, hereby (i) acknowledges receipt of a copy thereof, (ii) agrees to all of the terms and provisions thereof, (iii) agrees to and with Senior Lender that it shall make no payment on the Junior Debt that the Junior Creditor would not be entitled to receive under the provisions of the Agreement, and (iv) agrees that any such payment will constitute a default under Senior Debt.

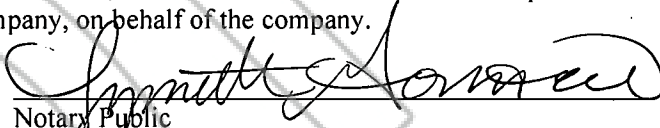
**Beach Club Development Phase III, LLC,
a Delaware limited liability company**

By: 
Name: Mark Burton
Its: President

ACKNOWLEDGMENT

STATE OF Utah)
County of Salt Lake) ss.

This Subordination Agreement, dated April 12 ¹² ~~15~~ ⁴⁰, 2024, was acknowledged before me this 12 day of April, 2024, by Mark Burton, the President of Beach Club Development Phase III, LLC, a Delaware limited liability company, on behalf of the company.


Notary Public

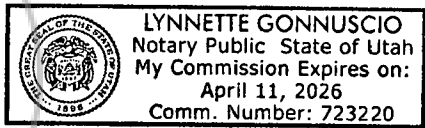


EXHIBIT A
Legal Description

COPY



EXHIBIT 'A'

PARCEL 1A:

AN UNDIVIDED FRACTIONAL INTEREST IN THE COMMON AREAS AS SET FORTH IN THAT AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATIONS OF EASEMENTS FOR TAHOE BEACH CLUB CONDOMINIUMS RECORDED JUNE 19, 2019, AS INSTRUMENT 2019-930614, OFFICIAL RECORDS OF DOUGLAS COUNTY, STATE OF NEVADA, AND AS SET FORTH IN THAT SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR TAHOE BEACH CLUB CONDOMINIUMS RECORDED APRIL 13, 2021 AS INSTRUMENT 2021-965433, OFFICIAL RECORDS; AND FIRST AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR TAHOE BEACH CLUB CONDOMINIUMS RECORDED JANUARY 06, 2022 AS INSTRUMENT 2022-979444 IN THE OFFICE OF DOUGLAS COUNTY, STATE OF NEVADA AND AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMON AREA PARCEL "A" AS SHOWN ON THE MINOR MODIFICATION TO FINAL SUBDIVISION MAP LDA 15-026 FOR TAHOE BEACH CLUB RECORDED AS DOC. NO. 2022-990258 ON SEPTEMBER 21, 2022 IN THE RECORDER'S OFFICE OF DOUGLAS COUNTY, NEVADA.

PARCEL 1B:

PARCELS 8, 10, 11 AND 12 OF THE MINOR MODIFICATION TO FINAL SUBDIVISION MAP LDA 15-026 FOR TAHOE BEACH CLUB RECORDED AS DOC. NO. 2022-990258 ON SEPTEMBER 21, 2022 IN THE RECORDER'S OFFICE OF DOUGLAS COUNTY, NEVADA.

PARCEL 1C:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AS DEFINED IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR TAHOE BEACH CLUB CONDOMINIUMS RECORDED JUNE 19, 2019 AS INSTRUMENT 2019-930614 IN THE OFFICE OF THE DOUGLAS COUNTY RECORDER.

PARCEL 1D:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS RECORDED NOVEMBER 07, 2018 IN A RECIPROCAL ACCESS EASEMENT AGREEMENT IN BOOK N/A AS INSTRUMENT

2018-921866 IN THE OFFICE OF THE DOUGLAS COUNTY RECORDER.

PARCEL 1E:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS TO THE BEACH AREA, AND FOR PASSIVE AND ACTIVE BEACH RECREATION, RECORDED JUNE 19, 2019 IN A BEACH USE AND ACCESS AGREEMENT AS INSTRUMENT 2019-930632 IN THE OFFICE OF THE DOUGLAS COUNTY RECORDER.

