

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date:	June 2, 2020	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Workshop	<input type="checkbox"/> Public Hearing
Department:	Fire-Rescue		


I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to accept: Ingress, Egress and Access Easement granted from Penn Florida Club Properties II, LLC, a Delaware limited liability company (Grantor) to County (Grantee), for the purpose of providing access for fire rescue and emergency services to Whitehall Condominium, which abuts the Easement Premises, and to Grantor's property.

Summary: On August 15, 2017, the Board held a public hearing to adopt a resolution to abandon all of the 60 foot wide right-of-way (ROW) for Balboa Lane, as recorded in the plat of Boca Del Mar No. 2, Plat Book 30, Page 80, Public Records of Palm Beach County (Resolution), to allow redevelopment of the Boca Del Mar Clubhouse at Mizner Golf and Country Club. The ROW functioned as a secondary driveway for access to the clubhouse, the Whitehall Condominium Property and the golf course maintenance facilities. The ROW was located west of Military Trail, south of Palmetto Park Road, east of Powerline Road and north of Camino Real. The Board adopted the Resolution, as amended at the public hearing to require Fire Rescue access. Upon receipt of the Ingress, Egress and Access Easement, the Clerk executed the Resolution, as amended, which is to be recorded in the public records of Palm Beach County. Upon the Board's acceptance of the Easement, it will be recorded in the public records of Palm Beach County. District 4 (SB/YBH)

Background and Justification: Penn Florida Club Properties, LLC, had petitioned to remove the public's interest in the ROW, which was in conflict with their proposed site plan to redevelop their property. The Board adopted the Resolution, as amended at the public hearing on August 15, 2017.

Attachment: Ingress, Egress and Access Easement with Consent and Subordination of Lender

Recommended by:		5-15-2020
	Assistant Fire Chief	Date
Approved by:		5/15/2020
	Fire Rescue Administrator	Date
Approved by:		5/11/2020
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	* 0				
# ADDITIONAL FTE POSITIONS (Cumulative)	0				

Is Item Included in Proposed Budget? Yes No X

Does this item include the use of federal funds Yes No X

Budget Account No.: Fund ____ Dept ____ Unit ____
Revenue Source ____/Object ____

B. Recommended Sources of Funds/Summary of Fiscal Impact:


* There is no fiscal impact associated with this agenda item.

C. Departmental Fiscal Review:

my husband

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:


 5/2-12-20
 OFMB
 5/18
 9AM
 5/20

Dr. J. Jacob 5/29/2020
Contract Development and Control

B. Legal Sufficiency

One Bm 5/28/2020
Assistant County Attorney

C. Other Department Review:

Department Director

REVISED 9/03
ADM FORM 01

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)

PREPARED BY:
Henry B. Handler, Esq.
Weiss, Handler & Cornwell, P.A.
2255 Glades Road, Suite 205-E
Boca Raton, FL 33432
(561) 997-9995

RETURN TO:
Sharon Burrows, Senior Assistant County Attorney
Palm Beach County Attorney's Office
301 N. Olive Ave, Suite 601
West Palm Beach, FL 33401

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**NOT TO BE RECORDED WITHOUT
BOARD OF COUNTY COMMISSIONERS ACCEPTANCE DATE**

INGRESS, EGRESS AND ACCESS EASEMENT

THIS INGRESS, EGRESS AND ACCESS EASEMENT is made this ____ day of _____, 2020, by PENN FLORIDA CLUB PROPERTIES II, LLC, a Delaware limited liability company ("**Grantor**"), whose post office address is 1515 North Federal Highway, Suite 306, Boca Raton, Florida, 33432, to PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida, by and through its Board of County Commissioners ("**Grantee**"), whose post office address is c/o County Attorney's Office, 301 North Olive Avenue, Suite 601, West Palm Beach, FL 33401.

WITNESSETH: That, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

1. Grantor hereby grants unto Grantee, its successors and assigns, a perpetual Ingress, Egress and Access Easement ("**Easement**") over, under, upon, through, and across the land situate in Palm Beach County, Florida, as more particularly described in **Exhibit A**, attached hereto and made a part hereof (the "**Easement Premises**"), for the purpose of providing fire rescue and emergency services to Whitehall Condominium, which abuts the Easement Premises, and to Grantor's property.
2. Grantor hereby covenants with Grantee that it is lawfully seized and in possession of the real property herein described as the Easement Premises and that it has good and lawful right to grant this Easement.
3. The provisions contained in this Easement shall be restrictions and covenants running with the land and shall be binding upon and/or accrue to the benefit of Grantor and Grantee and their respective successors and assigns.

4. Grantor shall be responsible, at its sole cost and expense, to repair, replace and maintain the Easement Premises in good, working condition, free and clear of all debris and obstructions, and in compliance with all applicable fire access road provisions, and any other applicable provisions, of the Florida Fire Prevention Code and the Palm Beach County Local Amendments thereto (collectively "**Fire Code**"). Grantor shall, at its sole cost and expense, equip any gates located on the Easement Premises with a key access system or key switch system that meets the access provisions of the Fire Code, and repair, replace and maintain such gates and systems in good, working condition, free and clear of all debris and obstructions, and in accordance with the access provisions of the Fire Code.

5. Upon Grantor providing a replacement perpetual ingress, egress and access easement ("**Replacement Easement**") with the same or similar terms and for the same purposes as stated herein, Grantee may release, vacate or abandon, as applicable, this Easement or parts thereof. Any Replacement Easement(s) shall abut and connect to Boca Del Mar Drive or other publicly owned and maintained right-of-way, and otherwise be acceptable to the Palm Beach County Fire Rescue Department.

6. Grantor hereby reserves all rights and obligations with respect to the Easement Premises which are not inconsistent with the rights granted herein. No rights shall accrue to the public from this Easement, except as provided herein.

7. Grantor shall pay for all recording fees and doc stamps.

8. This Easement shall be governed by and construed according to the laws of the State of Florida.

9. If any word, sentence, phrase, paragraph, provision, or portion of this Easement is for any reason whatsoever held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion hereof, so long as the purpose and intent of this Easement can still be achieved.

10. The effective date of this Easement shall be the date that it is recorded in the Public Records of Palm Beach, County, Florida. This Easement shall not be

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recorded unless accepted by the Board of County Commissioners.

TO HAVE AND TO HOLD THE SAME unto Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, Grantor has executed this Easement on the 27 day of May, 2020.

WITNESSES:
(Signature and name of two witnesses required)

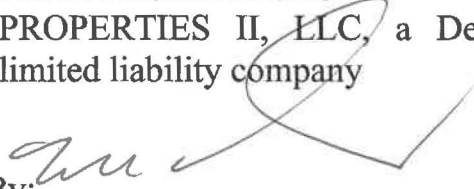

Witness Signature

Michael Tubalski
Witness Name Printed or Typed


Witness Signature

FRANCK CWEID
Witness Name Printed or Typed

PENN FLORIDA CLUB
PROPERTIES II, LLC, a Delaware
limited liability company

By: 

Name: Mark A. Gensheimer

Title: Manager

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STATE OF Florida
COUNTY OF Palm Beach

Before me personally appeared Mark A. Gensheimer, by means of ☒ physical presence or ☐ online notarization, who is (choose one) ☒ personally known to me, or has produced _____ as identification, and who executed the foregoing instrument as Manager of PENN FLORIDA CLUB PROPERTIES II, LLC, a Delaware limited liability company, and severally acknowledged to and before me that he executed such instrument as such officer of said limited liability company, and that said instrument is the free act and deed of said limited liability company.

Witness my hand and official seal this 27 day of May, 2020.



Stephanie Mattorano
Notary Signature
Notary Public, State of Florida
Stephanie Mattorano
Print Notary Name

GG212844
Commission Number

My Commission Expires: 6/17/2022

ACCEPTED BY GRANTEE:

ATTEST:
SHARON R. BOCK,
Clerk & Comptroller

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

BY: _____
Deputy Clerk

BY: _____
_____, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

BY: [Signature]
County Attorney

BY: [Signature]
Fire Rescue



947 Clint Moore Road
Boca Raton, Florida 33487

SURVEYING & MAPPING
Certificate of Authorization No. LB7264

Tel: (561) 241-9988
Fax: (561) 241-5182

SKETCH AND LEGAL DESCRIPTION
(NOT A SURVEY)

VIA MIZNER - FIRE ACCESS EASEMENT

LEGAL DESCRIPTION

A PORTION OF BALBOA LANE, A 60.00 FOOT WIDE ROAD RIGHT-OF-WAY, AS SHOWN ON "BOCA DEL MAR NO. 2 ", AS RECORDED IN PLAT BOOK 30, AT PAGES 80 AND 81 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, IN SECTION 27, TOWNSHIP 47 SOUTH, RANGE 42 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID BALBOA LANE; THENCE NORTH 27° 40' 36" EAST, ALONG THE EAST LINE OF SAID BALBOA LANE, A DISTANCE OF 17.42 FEET TO THE POINT OF BEGINNING; THENCE NORTH 10° 36' 36" WEST, A DISTANCE OF 16.18 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE RIGHT; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 120.00 FEET AND A CENTRAL ANGLE OF 29° 24' 32", A DISTANCE OF 61.59 FEET TO THE POINT OF COMPOUND CURVATURE OF A CIRCULAR CURVE TO THE RIGHT; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 570.00 FEET AND A CENTRAL ANGLE OF 06° 14' 19", A DISTANCE OF 62.06 FEET TO THE POINT OF REVERSE CURVATURE OF A CIRCULAR CURVE TO THE LEFT; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 586.99 FEET AND A CENTRAL ANGLE OF 24° 08' 46", A DISTANCE OF 247.38 FEET TO THE POINT OF TANGENCY; THENCE NORTH 00° 53' 29" EAST, A DISTANCE OF 157.49 FEET TO A POINT ON THE NORTHERLY BOUNDARY OF SAID BALBOA LANE, SAID POINT LYING ON THE ARC OF A CIRCULAR CURVE TO THE LEFT, AT WHICH THE RADIUS POINT BEARS NORTH 00° 37' 26" WEST; THENCE EASTERLY ALONG THE ARC OF SAID CURVE, ALSO BEING SAID NORTHERLY BOUNDARY, HAVING A RADIUS OF 756.20 FEET AND A CENTRAL ANGLE OF 01° 31' 00", A DISTANCE OF 20.02 FEET; THENCE SOUTH 00° 53' 29" WEST, ALONG A NON-RADIAL LINE, A DISTANCE OF 158.28 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE RIGHT; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 606.99 FEET AND A CENTRAL ANGLE OF 24° 08' 46", A DISTANCE OF 255.80 FEET TO THE POINT OF REVERSE CURVATURE OF A CIRCULAR CURVE TO THE LEFT; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 550.00 FEET AND A CENTRAL ANGLE OF 06° 14' 19", A DISTANCE OF 59.89 FEET TO THE POINT OF COMPOUND CURVATURE OF A CIRCULAR CURVE TO THE LEFT; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 100.00 FEET AND A CENTRAL ANGLE OF 23° 48' 32", A DISTANCE OF 41.55 FEET; THENCE SOUTH 27° 40' 36" WEST, ALONG A NON-TANGENT LINE, ALSO BEING THE EAST LINE OF SAID BALBOA LANE, A DISTANCE OF 33.05 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN PALM BEACH COUNTY, FLORIDA.

CERTIFICATION

I HEREBY CERTIFY THAT THE SKETCH AND DESCRIPTION SHOWN HEREON COMPLIES WITH STANDARDS OF PRACTICE AS CONTAINED IN CHAPTER 5J-17.051, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, AND THAT SAID SKETCH AND DESCRIPTION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS PREPARED UNDER MY DIRECTION.

JEFF S. HOBAPP
SURVEYOR AND MAPPER
FLORIDA LICENSE NO. LS5111

Project Name:	VIA MIZNER	DATE:	4/25/2018
JOB NO.	17113	DWG BY:	JSH
		REV.	11/25/2019
		CK'D By:	TP
			SHEET 1 OF 4

Exhibit "A"



947 Clint Moore Road
Boca Raton, Florida 33487

Tel: (561) 241-9988
Fax: (561) 241-5182

SKETCH AND LEGAL DESCRIPTION (NOT A SURVEY)
VIA MIZNER - FIRE ACCESS EASEMENT

NOTES

1. REPRODUCTIONS OF THIS SKETCH ARE NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
2. TITLE INFORMATION IS LISTED ON SHEET 3 OF THIS DOCUMENT.
3. ALL DISTANCES SHOWN ARE GROUND DISTANCES, UNLESS LABELED OTHERWISE. A SCALE FACTOR OF 1.000033 WAS USED FOR THIS SURVEY. BEARINGS SHOWN ARE ASSUMED BEARINGS BASED ON THE WEST LINE OF BALBOA LANE HAVING A BEARING OF NORTH 27°40'36" EAST, ACCORDING TO THE RECORD PLAT. STATE PLANE COORDINATES SHOWN ARE RELATIVE TO COORDINATES ESTABLISHED BY THE PALM BEACH COUNTY ENGINEERING DIVISION BASED ON THE FLORIDA COORDINATE SYSTEM, EAST ZONE, GRID NORTH, 1983 STATE PLANE TRANSVERSE MERCATOR PROJECTION, 1990 ADJUSTMENT. POSITIONAL ACCURACY MEETS OR EXCEEDS A 1:10,000 MINIMUM RELATIVE DISTANCE ACCURACY.
4. EASEMENT CONTAINS 10606 SQUARE FEET (0.244 ACRES), MORE OR LESS.

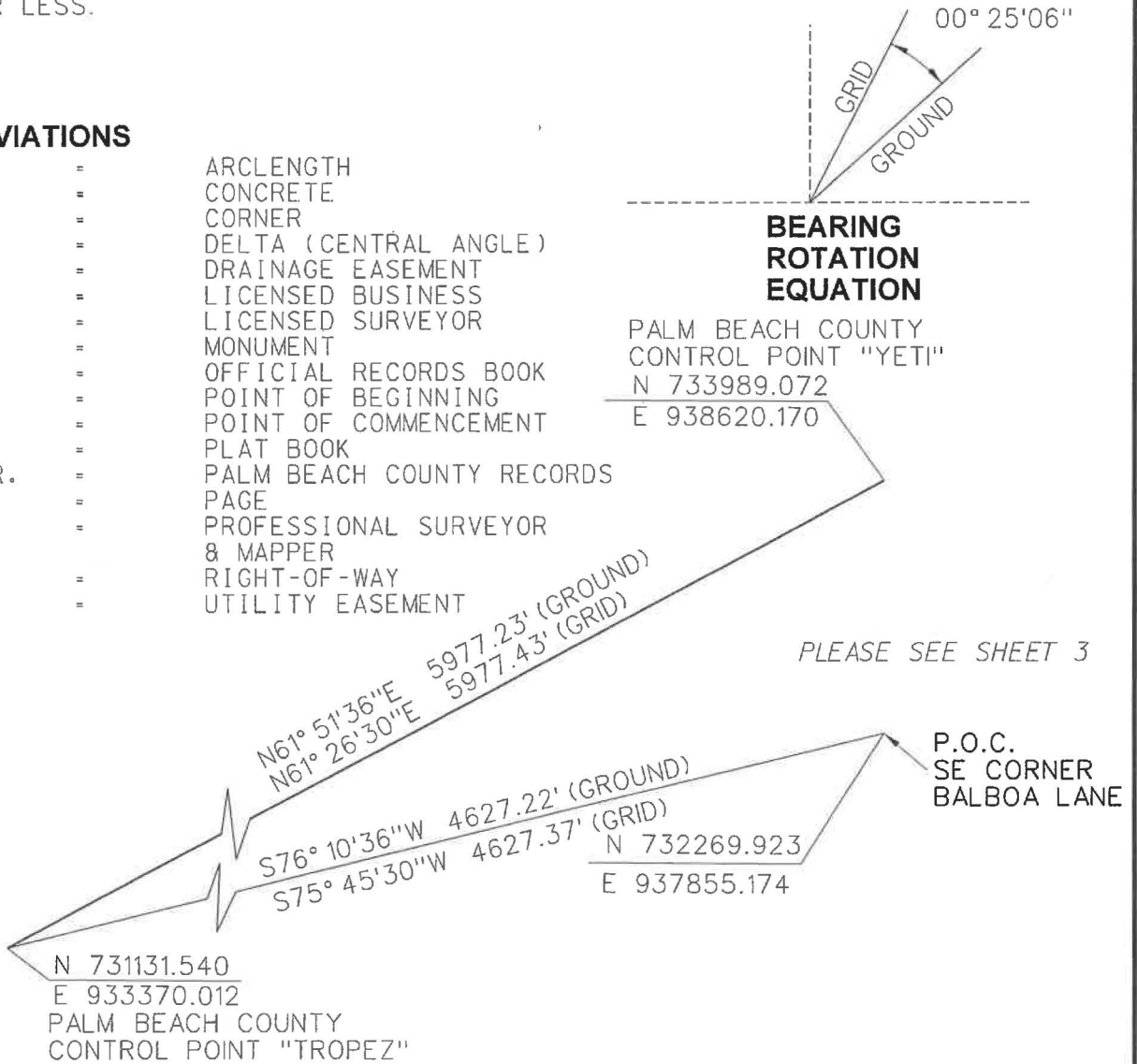
ABBREVIATIONS

L	=	ARCLength
CONC.	=	CONCRETE
COR.	=	CORNER
D	=	DELTA (CENTRAL ANGLE)
D.E.	=	DRAINAGE EASEMENT
L.B.	=	LICENSED BUSINESS
L.S.	=	LICENSED SURVEYOR
MON.	=	MONUMENT
O.R.B.	=	OFFICIAL RECORDS BOOK
P.O.B.	=	POINT OF BEGINNING
P.O.C.	=	POINT OF COMMENCEMENT
P.B.	=	PLAT BOOK
P.B.C.R.	=	PALM BEACH COUNTY RECORDS
PG.	=	PAGE
P.S.M.	=	PROFESSIONAL SURVEYOR & MAPPER
R/W	=	RIGHT-OF-WAY
U.E.	=	UTILITY EASEMENT

**BEARING
ROTATION
EQUATION**

PALM BEACH COUNTY
CONTROL POINT "YETI"
N 733989.072
E 938620.170

PLEASE SEE SHEET 3



JOB NO.	17113	Project Name:	VIA MIZNER	DWG BY:	JSH	SCALE:	NTS	REV.	11/25/2019
				CK'D By:	TP	DATE:	4/25/2018		SHEET 2 OF 4

EXHIBIT A



947 Clint Moore Road
Boca Raton, Florida 33487

SURVEYING & MAPPING
Certificate of Authorization No. LB7264

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Fax: (561) 241-5182

SKETCH AND LEGAL DESCRIPTION (NOT A SURVEY)
VIA MIZNER - FIRE ACCESS EASEMENT

**OWNER AND ENCUMBRANCE PROPERTY
INFORMATION REPORT**

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
FILE NO. 19124072
DATED : OCTOBER 3, 2019 AT 8:00 AM

MORTGAGES AND LIENS OF RECORD

NO.	BOOK /PAGE	DESCRIPTION	APPLIES?	PLOTTED?
1.	29405 /1095	MORTGAGE	NO*	NO
2.	29445 /366	ASSIGNMENT	NO*	NO
3.	30379 /1209	NOTICE OF COMMENCEMENT	NO*	NO
4.	30619 /685	AMENDED NOTICE	NO*	NO
4.	29859 /801	NOTICE OF COMMENCEMENT	NO*	NO

* PORTION OF TRACT D "BOCA DEL MAR NO 1 THAT INCLUDES
BALBOA LANE WAS REPLATTED AND DEDICATED AS RIGHT-OF-WAY
IN PLAT BOOK 30, PAGES 80 & 81.

OTHER ENCUMBRANCES

NO.	BOOK /PAGE	DESCRIPTION	APPLIES?	PLOTTED?
1.	2004 /948	RESTRICTIONS	NO	NO
2.	PB 30 /80	PLAT	YES	YES
3.	3440 /1716	WARRANTY DEED	NO*	NO
4.	30468 /1472	ENV RESOURCE PERMIT	NO*	NO

* PORTION OF TRACT D "BOCA DEL MAR NO 1 THAT INCLUDES
BALBOA LANE WAS REPLATTED AND DEDICATED AS RIGHT-OF-WAY
IN PLAT BOOK 30, PAGES 80 & 81.

JOB NO.	17113	Project Name:	VIA MIZNER	DWG BY:	JSH	SCALE:	NTS	REV.	11/25/2019
				CK'D By:	TP	DATE:	4/25/2018		SHEET 3 OF 4

EXHIBIT A



947 Clint Moore Road
Boca Raton, Florida 33487

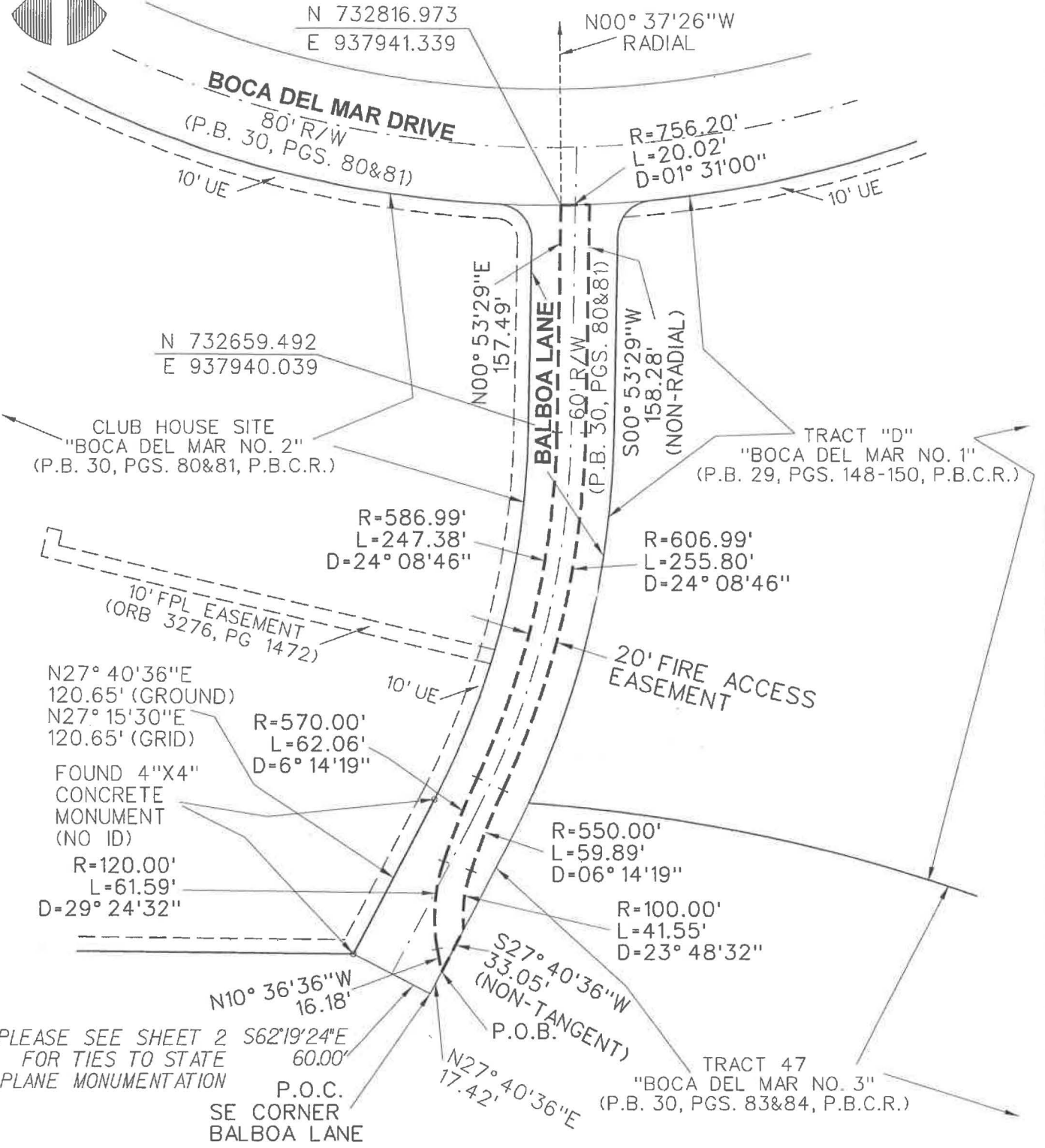
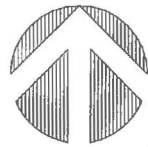
SURVEYING & MAPPING
Certificate of Authorization No. LB7264

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SKETCH AND LEGAL DESCRIPTION (NOT A SURVEY)

VIA MIZNER - FIRE ACCESS EASEMENT

SECTION 27, TOWNSHIP 47 SOUTH RANGE 42 EAST



PLEASE SEE SHEET 2
FOR TIES TO STATE
PLANE MONUMENTATION

JOB NO.	17113	Project Name:	VIA MIZNER	DWG BY:	JSH	SCALE:	1"=100'	REV.	11/25/2019
				CK'D By:	TP	DATE:	4/25/2018		SHEET 4 OF 4

CONSENT AND SUBORDINATION OF LENDER

The undersigned ("**Lender**"), being the present holder of

1. That certain Mortgage, Assignment of Leases and Rents, Fixture Filing and Security Agreement (HOTEL AND GOLF CLUB) from Via Mizner Owner II, LLC, a Delaware limited liability company AND Penn Florida Club Properties II, LLC, a Delaware limited liability company, successor by conversion from Penn Florida Club Properties II, LLC, a Florida limited liability company, to CMTG Lender 4 LLC, a Delaware limited liability company dated September 29, 2017, filed of record October 16, 2017, in Book 29405, Page 1095, Public Records of Palm Beach County, Florida, in the original principal amount of \$115,000,000.00 as assigned to CMTG GS Finance LLC, a Delaware limited liability company, by virtue of that certain Assignment of Mortgage, Assignment of Leases and Rents, Fixture Filing and Security Agreement (Hotel and Golf Club) dated as of September 29, 2017, recorded November 2, 2017 in Official Records Book 29445 Page 366 (the "**Primary Mortgage**").
2. Mortgage, Assignment of Leases and Rents, Fixture Filing and Security Agreement (Hotel and Golf Course Supplemental) executed by Via Mizner Owner II, LLC, a Delaware limited liability company, and Penn Florida Club Properties II, LLC, a Delaware limited liability company, successor by conversion from Penn Florida Club Properties II, LLC, a Florida limited liability company, in favor of CMTG Lender 4 LLC, a Delaware limited liability company, dated September 29, 2017, recorded October 19, 2017 in Official Records Book 29414, Page 78, of the Public Records of Palm Beach County, Florida, in the original principal amount of \$115,000,000.00. as assigned to CMTG GS Finance LLC, a Delaware limited liability company, by virtue of that certain Assignment of Mortgage, Assignment of Leases and Rents, Fixture Filing and Security Agreement (Hotel and Golf Club - Supplemental) dated as of September 29, 2017, recorded November 2, 2017 in Official Records Book 29445, Page 382 (the "**Supplemental Mortgage**").

The Primary Mortgage and Supplemental Mortgage (collectively, the "**Mortgage**") affecting the real property owned by Penn Florida Club Properties II, LLC, a Delaware limited liability company, hereby consents to, and subordinates the Mortgage to the recordation of the Ingress, Egress and Access Easement to which this Consent and Subordination of Lender is attached.

Lender makes no warranty or any representation of any kind or nature concerning the Ingress, Egress and Access Easement, or any of its terms or provisions, or the legal sufficiency thereof, and does not assume and shall not be responsible for any of the obligations or liabilities of Penn Florida Club Properties II, LLC. This consent and subordination is limited to the purposes expressly set forth herein, and does not affect or impair the rights and remedies of Lender as set forth in the Mortgage.

[Signature and acknowledgement on following page]

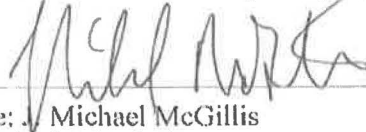
ACTIVE 46710595v1

ACTIVE 46710595v2

IN WITNESS WHEREOF, Lender has executed this instrument on this the _____ day of November, 2019.

LENDER:

CMTG GS FINANCE LLC,
a Delaware limited liability company



Name: J. Michael McGillis
Title: Authorized Signatory

WITNESSES:



Witness Signature

Stephanie Revilla

Witness Name Printed or Typed



Witness Signature

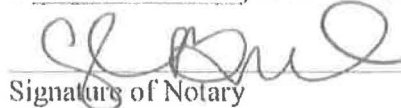
Maria Ramaglia

Witness Name Printed or Typed

NOTARY CERTIFICATE

STATE OF NEW YORK)
)SS.
COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before me this 11 day of November, 2019, by J. Michael McGillis, as Authorized Signatory of CMTG GS Finance LLC, a Delaware limited liability company on behalf of said entity, (☒) who is personally known to me or () who produced _____, as identification.



Signature of Notary

Cheryl Buchel

Printed Notary Name

My commission expires: 2/25/2023

ACTIVE 46710595v1

ACTIVE 46710595v2

CHERYL A BUCHEL
NOTARY PUBLIC-STATE OF NEW YORK
No. 01BU6388094
Qualified in New York County
My Commission Expires 02-25-2023