

RECORDING REQUESTED BY:
CITY OF HUNTINGTON BEACH

WHEN RECORDED MAIL TO:
City Clerk
City of Huntington Beach
P.O. Box 190 / 2000 Main Street
Huntington Beach, CA 92648

Fee exempt per Government Code § 6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**LICENSE AGREEMENT BETWEEN
THE CITY OF HUNTINGTON BEACH AND BEACH HOUSING PARTNERS, L.P., TO
PROVIDE INSTALLATION AND MAINTENANCE OF IMPROVEMENTS IN THE
PUBLIC RIGHT-OF-WAY**

This License Agreement (the "Agreement") is made and entered into by and between the CITY OF HUNTINGTON BEACH, a California municipal corporation, hereinafter referred to as "CITY," and BEACH HOUSING PARTNERS, L.P., hereinafter referred to as "LICENSEE."

WHEREAS, BEACH HOUSING PARTNERS, L.P., is the owner of certain real property located in the City of Huntington Beach, County of Orange, State of California, which is more particularly described in the legal description attached hereto as Exhibit "A" and incorporated by this reference (the "Property"); and

CITY is the owner of those certain areas in the immediate vicinity of the Property that are depicted on Exhibit "B" attached hereto and incorporated herein by this reference (the "Improvement Areas"); and

In connection with the development of the Property, CITY and LICENSEE desire to assign responsibility for the installation and maintenance of improvements within the Improvement Areas, as defined below in Section 5, and the costs associated therewith in accordance with plans and specifications submitted by LICENSEE and as reasonably approved by CITY; and

By this Agreement, CITY and LICENSEE desire to clarify and specifically delineate their obligations with respect to the installation and maintenance of landscaping within the Improvement Areas,

NOW, THEREFORE, in consideration of the promises and agreements hereinafter made and exchanged, CITY and LICENSEE covenant and agree as follows:

1. GRANT OF LICENSE. Subject to terms and conditions hereinafter set forth, CITY hereby grants to LICENSEE a non-exclusive, revocable license ("License") to install and maintain landscaping and hardscaping within the Improvement Areas pursuant to the terms as set forth in this Agreement.

2. TERM. The term of the License (the "Term") granted herein shall be perpetual, provided that CITY may terminate the License and this Agreement upon thirty (30) days written notice to LICENSEE.

3. TERMINATION. In the event of any such termination, the CITY may, at its option, either:

(a) at its sole expense, disconnect existing water and electrical supply sources to the Improvement Areas from the Property (leaving the water and electrical systems serving the Property fully functional and in compliance with law), and construct and reconnect CITY water and electrical supply sources to the Improvement Areas, or

(b) continue to use water and electricity from the Property for the Improvement Areas, in which case CITY shall agree in writing, upon terms acceptable to the parties, to reimburse LICENSEE on a monthly basis for the reasonable costs of such water and electricity, and, at its sole expense, to maintain in a good condition and repair the portion of the water and electrical systems located in the Improvement Areas.

4. DESCRIPTION OF IMPROVEMENTS. All improvements installed within the Improvement Areas shall be as depicted on those certain plans and specifications as approved by the CITY relative to the Property and the subject development thereof. The landscaping and other improvements within the Improvement Areas for which LICENSEE, at its sole cost at no expense to the CITY, shall install, repair, maintain, and/or replace in accordance with the terms of this License shall be collectively referred to as the "LICENSEE'S Improvements" and includes the following:

Concrete paving including sidewalks and driveways, street lighting, including conduit and pull boxes in accordance with the precise grading plans relative to the Property and the subject development thereof submitted by LICENSEE and approved by the CITY.

5. MAINTENANCE RESPONSIBILITIES. At LICENSEE'S sole cost and expense, LICENSEE agrees to perform all maintenance responsibilities for the Improvement Areas, including, but not limited to: sidewalk cleaning; trash disposal; signs; street lighting; and, generally keeping the Improvement Areas in a clean, secure and attractive condition. LICENSEE agrees to maintain and keep the Improvement Areas in good condition and repair, free and clear of litter and debris and free from any nuisances and to comply with all health and police regulations, in all respects at all times. LICENSEE agrees to dispose of litter and debris in a sanitary and legal manner and location. All of the responsibilities listed in this Paragraph 5 (including subparts) shall collectively be referred to as "Maintenance Responsibilities."

(a) Maintenance of Hardscape Material. LICENSEE's maintenance obligations shall include all concrete and enhanced hardscaping material including all sidewalks, driveways, street lighting and related appurtenances. Maintenance includes, but is not limited to, concrete repair and replacement, grinding or patching variations in elevation of sidewalks and driveways for an acceptable riding surface, and the removal of dirt, debris, graffiti, weeds, and any other deleterious items or material on or about the sidewalks or driveways in an expeditious manner.

(b) Utilities Serving the Improvement Areas. LICENSEE shall bear the expense of electricity and any other utility necessary to serve the Improvement Areas. LICENSEE shall be responsible for using such utilities in a secure and hazardless manner, complying in all respects with applicable codes and ordinances.

(c) Signage. LICENSEE shall repair and maintain during the Term any signage constructed and installed on the Improvement Areas by LICENSEE.

6. PLANS AND SPECIFICATIONS. Throughout the Term, LICENSEE shall perform, at its sole cost and expense, any and all repairs, replacements or refurbishing to the Improvements which LICENSEE constructs in the Improvement Areas as necessary to bring the Improvements into an operating condition, all in accordance with plans and specifications as submitted by LICENSEE to CITY, which plans and specifications shall be subject to the prior written approval of CITY. No changes, modifications, or alterations may be made to the Improvement Areas without the prior written consent of CITY.

7. MATERIAL ALTERATIONS. After the approval of the plans and specifications and the installation of the Improvements in the Improvement Areas in accordance with the plans and specifications, no material changes, modifications or alterations may be made to the Improvement Areas without the prior written consent of CITY.

8. CITY REQUIREMENTS. LICENSEE, or anyone performing work on behalf of LICENSEE, shall be properly licensed by CITY for any work performed on the Improvement Areas. Furthermore, LICENSEE, or anyone performing work on behalf of LICENSEE, shall acquire the proper encroachment permit and comply with all other CITY requirements prior to performing any work on Improvement Areas in the public right-of-way.

9. CITY RIGHT TO INSPECT. CITY shall have the right to inspect the Improvement Areas at any time to ensure that LICENSEE is performing its obligations hereunder. CITY and LICENSEE shall negotiate in good faith to come to a mutual agreement as to the time and date for such inspections.

10. DAMAGE TO IMPROVEMENT AREAS. In the event any damage is caused to any pathways, sidewalks, curbs, gutters, street furniture, street lights, medians, streets or utilities as a result of the installation of the landscaped material installed on the Improvement Areas and/or the performance of the maintenance responsibilities of the Improvement Areas, LICENSEE agrees to repair same at its own expense. In the event that damage is caused by the acts of any person or any equipment is broken or breaks or is destroyed, said equipment shall be replaced or restored within ten (10) calendar days of the date of the breakage or destruction. Stolen items will be considered destroyed for purposes of this Section 10.

11. REPAIR BY CITY. Except as otherwise provided for in this License, in the event any damage is caused to any of the LICENSEE's Improvements within the Improvement Areas as a result of the installation, maintenance and/or repair work performed by the CITY or its contractors, agents or employees within the Improvement Areas, CITY shall promptly repair the same at its own expense.

12. COOPERATION. In the event both LICENSEE and CITY are required to repair damage to the improvements the parties shall cooperate with each other so as to minimize the costs incurred by each of them.

13. MECHANICS' LIENS. LICENSEE agrees not to suffer any mechanics' lien(s) to be filed against the Improvement Areas by reason of any work, labor, services or material performed at or furnished to the Improvement Areas, by or through LICENSEE. LICENSEE shall, at its sole cost and expense, cause any mechanics' lien(s) which may be filed against the Improvement Areas to be released or bonded or affirmatively insured within sixty (60) days after the date of filing of such mechanics' lien(s). Nothing in this Agreement shall be construed as consent on the part of the CITY to subject the CITY's estate in the Improvement Areas to any mechanics' lien(s) or liability under the mechanics' lien laws of the State of California.

14. ASSIGNMENT. The License herein granted is personal to LICENSEE and any attempt to assign the License to any entity shall require the prior approval of CITY and is subject to the provisions set forth in Section 37 below. Notwithstanding the foregoing, assignment of the License to a LICENSEE affiliated entity shall not require prior approval of CITY. Other than the License granted hereunder, LICENSEE hereby expressly waives any claim to or interest or estate of any kind or extent whatsoever in the Improvement Areas arising out of the License or out of LICENSEE'S use or occupancy of the Improvement Areas, whether now existing or arising at any future time. This License is appurtenant to the Property and may not be separately assigned apart from the Property or the interests therein. LICENSEE shall give notice in writing to CITY of any such assignment and delegation; such notice shall include the mailing address of the delegee, and will become the delegee's address for service of notices. LICENSEE hereby covenants for itself and its successors and assigns, that conveyance of any interest in the Property shall constitute an assumption by any successors, assigns or transferees of LICENSEE, of the obligations under this License, and upon such conveyance, the predecessor in interest of such assuming party shall be deemed relieved from any further obligations or responsibilities under this License.

15. WORKERS COMPENSATION INSURANCE. Pursuant to California Labor Code §1861, LICENSEE and its successors or assigns acknowledges awareness of Section 3700 et seq. of said California Labor Code, which requires every employer to be insured against liability for workers' compensation. LICENSEE covenants that it will comply with such laws and provisions prior to conducting any activity pursuant to this license. LICENSEE shall maintain such Workers' Compensation Insurance in an amount of not less than One Million Dollars (\$1,000,000) bodily injury by accident, each occurrence, One Million Dollars (\$1,000,000) bodily injury by disease, each employee, and One Million Dollars (\$1,000,000) bodily injury by disease, policy limit, at all times incident hereto, in forms and underwritten by insurance companies reasonably satisfactory to CITY. LICENSEE shall require all subcontractors retained by LICENSEE to perform work hereunder to provide such workers' compensation insurance for all of the subcontractors' employees. LICENSEE shall furnish to CITY a certificate of waiver of subrogation under the terms of the workers' compensation insurance and LICENSEE shall similarly require all subcontractors to waive subrogation.

16. OTHER INSURANCE. In addition to the workers' compensation insurance in Section 15 above and LICENSEE's covenant to indemnify CITY in Section 18 below, LICENSEE or its successors or assigns shall obtain and furnish to the CITY and carry at all times incident hereto, on all activities to be performed in the Improvement Areas as contemplated herein, general liability insurance including coverage for bodily injury, property damage and motor vehicle coverage. All insurance shall be underwritten by insurance companies reasonably satisfactory to CITY. Said insurance shall name the CITY as Additional Insureds and shall specifically provide that any other insurance which may be applicable to all activities to be undertaken by LICENSEE concerning the Improvement Areas shall be deemed excess coverage and that LICENSEE's insurance shall be primary. Said policy of insurance shall pay on behalf of LICENSEE, its officers, agents, and employees, while acting within the scope of their duties, against any and all claims of liability arising out of or in connection with all activities to be undertaken by LICENSEE concerning the Improvement Areas affected by the license. LICENSEE shall subscribe for and maintain said insurance policies in full force and effect during the life of this Agreement, in an amount not less than the following amount: combined single limit bodily injury and property damage, including products/completed operations liability and blanket contractual liability, of One Million Dollars (\$1,000,000) per occurrence. If coverage is provided under a form which includes a designated general aggregate limit, such limit shall be not less than One Million Dollars (\$1,000,000). In the event of aggregate coverage, LICENSEE shall immediately notify CITY of any known depletion of limits. LICENSEE shall require its insurer to waive its subrogation rights against CITY.

17. CERTIFICATE OF INSURANCE; ADDITIONAL INSURED ENDORSEMENTS. Prior to conducting any activity pursuant to this Agreement, LICENSEE shall furnish to CITY certificates of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverage as required by this Agreement; said certificates shall provide the name and policy number of each carrier and policy; and shall state that the policy is currently in force; and shall promise to provide that such policies will not be canceled or modified without providing notice to CITY in accordance with policy provisions. LICENSEE shall maintain the foregoing insurance coverage in force until the Term of this Agreement has expired or this Agreement is terminated. The requirement for carrying the foregoing insurance coverage shall not derogate the obligations of LICENSEE under this Agreement. CITY or its representative shall at all times have the right to demand a copy of all said policies of insurance. LICENSEE shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required. A separate copy of the additional insured endorsement to LICENSEE's liability policy as required hereunder, naming the CITY as Additional Insureds, shall be provided to the CITY Attorney for approval prior to the commencement of any work by LICENSEE pursuant to this Agreement.

18. INDEMNIFICATION AND HOLD HARMLESS. LICENSEE hereby agrees to protect, defend, indemnify and hold and save harmless CITY, its officers, and employees, and assigns (hereinafter collectively called "Indemnified Parties") against any and all liability, claims, judgments, penalties, damages, expenses, costs and demands, including without limitation reasonable attorneys' fees, however caused, including those resulting from death or injury to any person (including without limitation any Indemnified Party), and damage to any property, real or personal, of any kind wherever located and by whomever owned (including, without limitation, property owned by an Indemnified Party), which injury, death or physical damages arises directly or indirectly out of the grant of license herein contained or the activities to be undertaken by

LICENSEE (or LICENSEE's officers, employees, agents, contractors, LICENSEEs, or invitees) concerning the Improvement Areas, caused in whole or in part by any negligent act or omission of the LICENSEE, any of its contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable (collectively, the "LICENSEE Parties"), including but not limited to concurrent active or passive negligence of the LICENSEE Parties, except to the extent caused by the negligence or willful misconduct of CITY or any of its agents, contractors, subcontractors, officers, or employees. City shall provide immediate notice to LICENSEE whereupon LICENSEE shall conduct any defense required hereunder at its sole cost and expense.

19. INDEPENDENT CONTRACTOR. LICENSEE agrees that all work done or undertaken by it on the Improvement Areas shall be for its sole account and not as an agent, servant or contractor for CITY.

20. RULES AND REGULATIONS. LICENSEE agrees to obey and observe (and cause its officers, employees, contractors, invitees and all others doing business with LICENSEE to obey and observe) all rules and regulations of general applicability regarding the Improvement Areas as may be reasonably established by CITY at any time and from time to time during the Term of this Agreement.

21. DEFAULT. In the event LICENSEE does not perform, or cause to be performed, any of the Maintenance Responsibilities as contemplated by this Agreement, CITY shall first provide written notice to LICENSEE in the manner and at the address for notices provided in Section 23, describing the alleged default by LICENSEE. If LICENSEE fails to cure said default within thirty (30) calendar days following the date of delivery of such notice of default, CITY may thereafter cause such maintenance to be performed, and all actual and reasonable costs incurred shall be assessed to and billed directly to the LICENSEE. Any invoice for such costs incurred shall include copies of paid invoices evidencing the costs incurred. Payment from LICENSEE shall be due within thirty (30) calendar days following the date of receipt of invoice. In addition, one and a half (1-1/2%) interest per month shall be added for each month payment hereunder is due but unpaid.

22. APPLICABLE LAW. LICENSEE shall, at its sole cost and expense, faithfully observe in the use and occupation of the Improvement Areas all municipal ordinances, and all state and federal statutes now in force and which may hereafter be in force, and shall fully comply, at its sole expense, with all regulations, orders, and other requirements issued or made pursuant to any such ordinances and statutes. All building permits, business licenses and other applicable permits and licenses shall be secured and paid for by LICENSEE.

23. NOTICES. Any notice or special instructions required to be given in writing under this Agreement shall be given either by personal delivery to LICENSEE (as designated herein) or to CITY as the situation shall warrant, or by enclosing the same in a sealed envelope and sent (i) postage prepaid, and depositing the same in the United States Postal Service, via certified or registered mail, or (ii) using nationally recognized overnight courier service, or (iii) via facsimile transmission (with a copy to also be placed in the United States Mail), and addressed as follows:

TO CITY:

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
ATTN: Director of Public Works
Tel: (714) 536-5431
Facsimile: (714) 374-1573

TO LICENSEE:

BEACH HOUSING PARTNERS L.P.
ATTN: Denise Gutierrez
17701 Cowan Avenue, Suite 200
Irvine, CA 92614

Any mailing address or telefacsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. A person may not give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt, prior to the receipt of the original, of a facsimile copy of the notice.

24. CAPTIONS AND TERMS. The captions and section numbers appearing in the Agreement are for convenience only and are not a part of the Agreement and do not in any way limit, amplify, define, construe or describe the scope of intent of the terms and provisions of this Agreement, or in any way affect this Agreement.

25. RECORDATION. LICENSEE shall record this Agreement in the Official Records of the County of Orange, State of California.

26. NON-EXCLUSIVITY. This License is non-exclusive, and the Improvement Areas shall at all times be open to use by the general public.

27. NONDISCRIMINATION. LICENSEE agrees that in the performance of this Agreement and use of the Improvement Areas it will not engage in, discrimination against any person because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex.

28. COOPERATION. LICENSEE shall in good faith cooperate in connection with its respective rights and obligations under this Agreement, including, but not limited to, performing any acts and executing any further documents that may be reasonably necessary to effectuate the purposes of or rights conferred under this Agreement.

29. SEVERABILITY. If any provision of this Agreement shall to any extent be deemed to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. Each provision of this Agreement, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law.

30. ENTIRE AGREEMENT. This Agreement, together with any attachments hereto or inclusions by reference, constitutes the entire agreement between the parties hereto relating to the rights herein granted and the obligations herein assumed, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any,

between the parties hereto with respect to the rights and obligations contained herein. Any oral representations or modifications concerning this instrument shall be of no force or effect except a subsequent modification in writing, approved by the CITY and signed by the parties to be charged.

31. ATTORNEY'S FEES. If any action or proceeding is brought by either party against the other under this Agreement, whether for interpretation, enforcement or otherwise, each party shall bear its own attorneys' fees. The prevailing party shall not be entitled to recover its attorneys' fees from the nonprevailing party.

32. CITY RIGHT TO ENFORCE. Notwithstanding the provisions of Section 31 above, LICENSEE acknowledges and agrees that CITY has the right and standing, but not the obligation, to enforce any of the terms of this Agreement by any appropriate legal or equitable means and shall be entitled to reimbursement for any costs incurred in enforcing this Agreement. LICENSEE shall provide CITY with, and at all times keep current, contact information for LICENSEE and any property manager acting on its behalf.

33. GOVERNING LAW. This Agreement shall be governed, construed, interpreted, and enforced under and in accordance with and governed by the laws of the State of California.

34. AMENDMENTS. This Agreement may be amended, modified, and/or supplemented only by the written agreement of LICENSEE and CITY, or the successors and assigns of each.

35. COVENANTS. Each of the covenants set forth in this Agreement (i) shall run with the land; (ii) shall be binding upon, and shall inure to the benefit of, any person or entity having or acquiring any interest in any portion of any property benefited or burdened thereby, during the period of such person's or entity's ownership, and all of their respective successive owners and assigns; and (iii) shall be binding upon, and shall inure to the benefit of, the property benefited or burdened thereby and every portion thereof and interest therein. The License granted by this Agreement is subject to all matters of record as of the effective date of this Agreement.

36. DELEGATION OF AUTHORITY. CITY hereby delegates to its City Manager or his or her designee the authority to implement all provisions of this Agreement.

37. EXCLUSIVE BENEFIT OF PARTIES. The provisions of this Agreement are for the exclusive benefit of CITY and LICENSEE and their successors and assigns, subject to the provisions hereof, and neither for the benefit of nor give rise to any claim or cause of action by any other person.


38. SURVIVAL. All representations, warranties, waivers, and indemnities given or made hereunder shall survive termination of this Agreement.

39. AUTHORITY TO SIGN. LICENSEE hereby represents that the individual executing this Agreement on behalf of LICENSEE has full authority to do so and to bind LICENSEE to perform pursuant to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers on _____ 2024.

LICENSEE:
BEACH HOUSING PARTNERS, L.P.

CITY:
CITY OF HUNTINGTON BEACH,
a California municipal corporation

By: 
MICHAEL MASSIE

Mayor

print name

ITS: (circle one) Chairman/President/Vice President

City Clerk

AND

By: 
MARK SCHULTZ

INITIATED AND APPROVED:

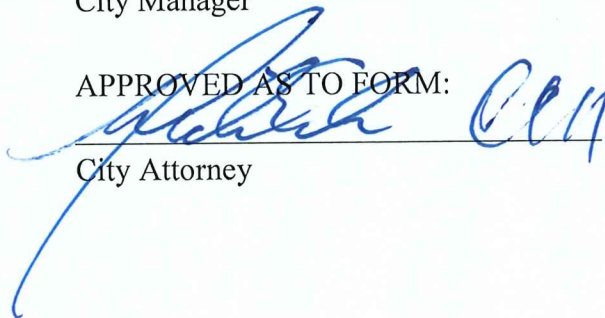

print name

ITS: (circle one) Secretary/Chief Financial Officer/
Asst. Secretary-Treasurer

Director of Public Works

REVIEWED AND APPROVED:

City Manager

APPROVED AS TO FORM:
 0217

City Attorney

State of California
County of _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

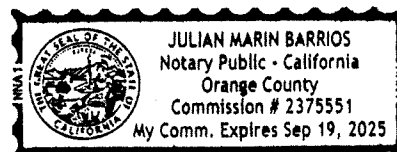
State of California
County of Orange)

On 09/30/24 before me, Julian Marin Barrios, Notary Public
(insert name and title of the officer)

personally appeared Michael Massie,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature *Julian Marin Barrios* (Seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

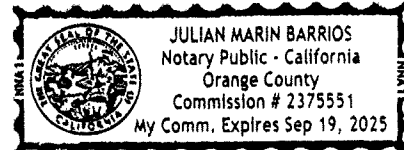
State of California
County of Orange)

On 09/30/24 before me, Julian Marin Barrios, Notary Public
(insert name and title of the officer)

personally appeared Mark Schultz,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature *Julian Marin Barrios* (Seal)

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 2 IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS
PER MAP FILED IN BOOK 76, PAGE 4 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY
RECORDER OF SAID COUNTY

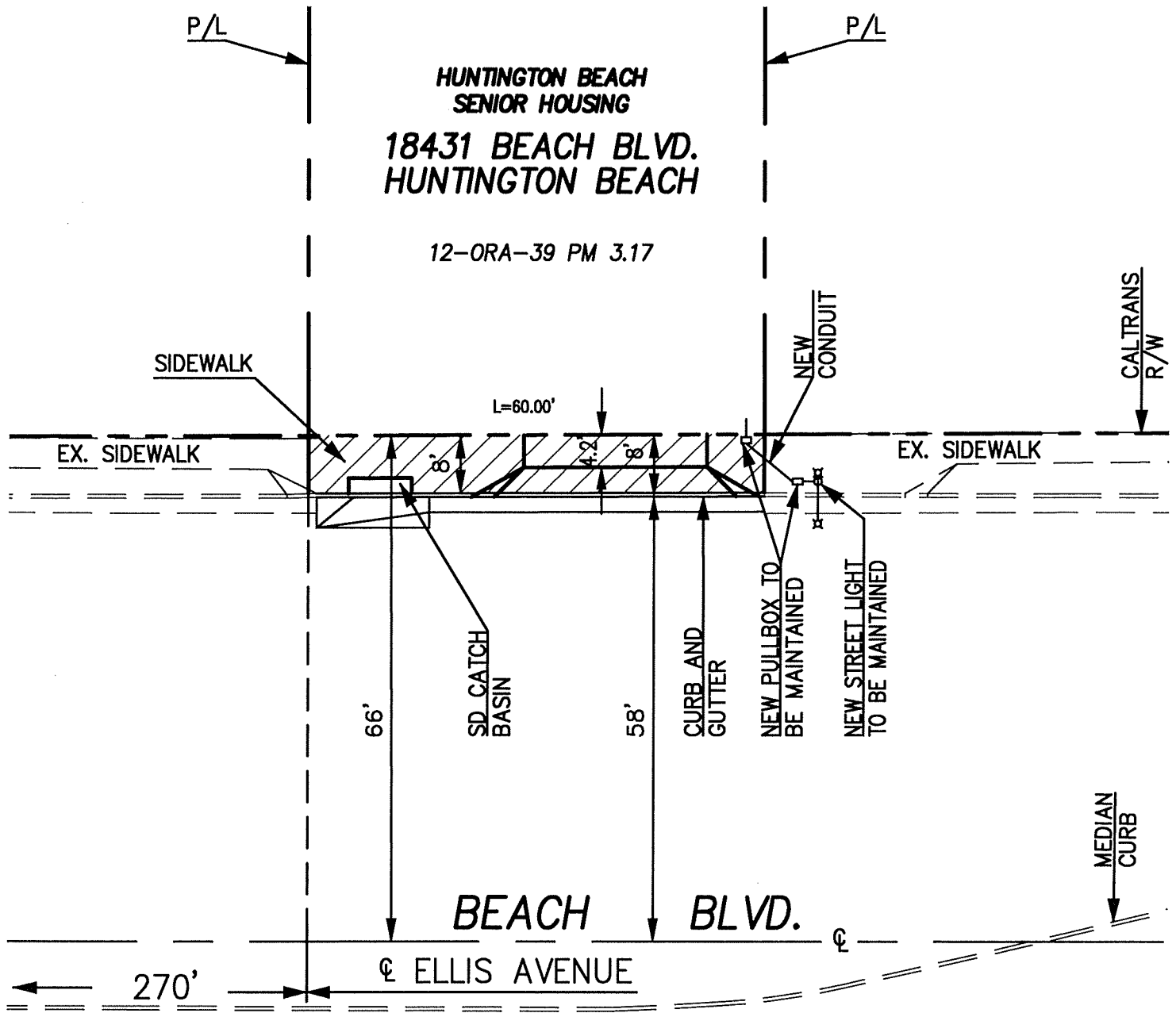
APN 159-031-018

18431 BEACH BOULEVARD

EXHIBIT "B"
IMPROVEMENT AREA

See attached.

EXHIBIT "B"



LEGEND:



HARDSCAPE AREA



CALTRANS RIGHT-OF-WAY



SCALE: 1"=20'

PREPARED BY:



UNITED CIVIL, INC

30141 Agoura Road, Suite 215
Agoura Hills, CA 91301
PH: (818) 707-8648

18431 Beach Blvd.

IMPROVEMENT AREA PER
MAINTENANCE AGREEMENT