

RECORDING REQUESTED BY
FIRST AMERICAN TITLE CO.
NATIONAL COMMERCIAL SERVICES
NCS-588025-SC

Recording Requested By and
When Recorded, Return To:

City Clerk
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

Recorded in Official Records, Orange County

Hugh Nguyen, Clerk-Recorder



48.00

2013000703086 8:00 am 12/23/13

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(Space above this line for Recorder's use only)

AMENDED AND RESTATED

LICENSE AND MAINTENANCE AGREEMENT

THIS AMENDED AND RESTATED LICENSE AND MAINTENANCE AGREEMENT ("**Agreement**") is made by and between 21002 HB, LLC, a Delaware limited liability company ("**21002 HB**"), PC Group Retail, LLC, a California limited liability company ("**PC Group Retail**") and the City of Huntington Beach, a municipal corporation of the State of California ("**City**") with reference to the following facts:

A. 21002 HB is the owner of that certain real property (the "**Residential Property**") situated in the City of Huntington Beach, County of Orange, State of California, described as Lot 1 of Tract No. 16338, as shown on a Subdivision Map recorded in Book 893, Pages 7 through 12, inclusive, of Miscellaneous Maps, in the Office of the County Recorder for the County of Orange, State of California (the "**Tract Map**").

B. PC Group Retail is the owner of that certain real property (the "**Commercial Property**") described as Lots 2 and 3 of the Tract Map.

C. The Residential Property and the Commercial Property (collectively the "**Property**") are the subject of a Master Plan for the Pacific City Mixed Use Project, consisting of residential and retail improvements and a hotel (the "**Project**").

D. City and the predecessor in interest to 21002 HB and PC Group Retail, Makallon Atlanta Huntington Beach, LLC, a Delaware limited liability company entered into a License and Maintenance Agreement dated as of August 20, 2007, and recorded September 28, 2007, as Instrument No. 2007000588431 of the Official Records of the Orange County Recorder (the "**Prior Agreement**").

E. The Prior Agreement contemplated that Makallon would record separate declarations of covenants, conditions, restrictions and reservations of easements against the Residential Property and the Commercial Property and form a property owners association for the Commercial Property and a residential owners association for the Residential Property and that which would, in turn, be members of a master association. The use of tiered property owners associations was based upon the initial Conditions of Approval for the Project.

F. On November 8, 2012, the Planning Commission of the City approved Entitlement Plan Amendment 12-009 which, among other things, deleted the requirement for the tiered property owners associations and recommended approval of a Pacific City Master Declaration of Covenants, Conditions and Restrictions (the "**Project CC&Rs**") which, among

other things, created reciprocal easements among the Residential Property and the Commercial Property, incorporated by reference the terms and conditions of the Prior Agreement, as subsequently amended and modified by the City, and allocated among the Residential Property and the Commercial Property the development conditions and responsibilities established by the City in connection with the Project approvals. The Project CC&Rs were recorded November 20, 2012 as Instrument No. 2012000716927 of the Official Records of Orange County, California.

G. The Project CC&Rs incorporate a number of the terms and provisions of the Prior Agreement.

H. The parties desire to fully amend and restate the Prior Agreement to reflect the elimination of the requirement for the tiered property owners associations and the recordation of the Project CC&Rs.

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto fully amend and restate the Prior Agreement as follows:

1. Grant of License. Subject to the provisions of this Agreement, City grants to 21002 HB and PC Group Retail, LLC, their successors and assigns (individually an "Owner" and collectively the "Owners"), a non-exclusive, revocable license (the "License") to perform all maintenance, repair and replacement of Common Drainage Facilities and Common Maintenance Areas (both as defined in the Project CC&Rs) which are owned by the City or within the City's public right of way.

2. Term. The term of this License shall be perpetual, provided that City may terminate this License upon thirty (30) days prior written notice to the Owners.

3. Initial Construction of Improvements. Each Owner shall perform, at its sole cost and expense, all initial construction of Common Drainage Facilities and Common Maintenance Areas on the portion of the Property owned by such Owner in accordance with plans submitted by such Owner to the City, which plans shall be subject to prior written approval by the City, and pursuant to the Project CC&Rs.

4. Maintenance and Repair of Improvements. During the term of this License, each Owner shall keep and maintain all Common Drainage Facilities and Common Maintenance Areas located on the portion of the Property owned by such Owner in good condition and repair and shall repair and replace such Common Drainage Facilities and Common Maintenance Areas as described in the Project CC&Rs (collectively, "Maintenance Responsibilities").

During the term of this License, the Owners shall keep and maintain all Common Drainage Facilities and Common Maintenance Areas which are owned by the City or within the City's public right of way in good condition and repair and shall repair and replace the same as provided in the Project CC&Rs.

5. Mechanic's Liens. The Owners agree to use commercially reasonable efforts not to suffer any mechanic's lien(s) to be filed against the public right of way by reason of any work, labor, services or material performed at or furnished to the public right of way, the City or to any portion of the Property. In the event that any mechanic's lien is filed as a result of any labor, services or materials performed at or furnished by or for the benefit of an Owner, such Owner

shall cause any such lien to be released or bonded or affirmatively insured against within sixty (60) days after the date of filing of such mechanic's lien. Nothing in this Agreement shall be construed as a consent on the part of the City to subject the City's estate in any portion of the public right of way to any mechanic's lien or liability under the mechanic's lien laws of the State of California.

6. Assignment of License. This License is appurtenant to the Property and may not be separately assigned apart from the Property or the interest therein. This license shall run in favor of each Owner of all or any portion of the Property during the term of such Owner's ownership. Upon any sale or transfer of all or any portion of the Property, this License shall automatically be assigned to and run in favor of the transferee and the transferor shall, effective upon the date of such transfer, be released from any and all duties, responsibilities, obligations or liabilities hereunder. Notwithstanding the foregoing, any assignment of this license to one or more residential homeowners associations formed to govern all or a portion of the Residential Property shall be deemed a valid assignment. 21002 HB or its successors and assigns shall give notice in writing of each such assignment to the City.

7. City Requirements. Each Owner, or anyone performing work on behalf of an Owner, shall be properly licensed by City for any work performed on the Common Drainage Facilities or the Common Maintenance Areas owned by the City or within the City's public right of way. Furthermore, each Owner or anyone performing work on behalf of an Owner, shall acquire the proper encroachment permit and comply with all other City requirements prior to performing any work in the public right of way.

8. City Right to Inspect. City shall have the right, on at least a quarterly basis, to inspect the Common Drainage Facilities and Common Maintenance Areas within the public right of way. City and Owner shall negotiate in good faith to come to a mutual agreement as to the time and date for any such inspection.

9. Workers' Compensation Insurance. Pursuant to California Labor Code Section 1861, 21002 HB and PC Group Retail, LLC and their successors or assigns, acknowledge awareness of California Labor Code Section 3700, *et seq.*, which requires every employer to be insured against liability for workers compensation. Each Owner covenants that it will comply with such provisions prior to commencing performance of any work pursuant to this License. Each Owner shall maintain workers' compensation insurance as required by statute, including employers' liability coverage with limits 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 limits, at all times incident hereto, in forms underwritten by insurance companies satisfactory to City. Each Owner shall require all subcontractors to provide such workers' compensation insurance for all of the subcontractors' employees. Each Owner shall furnish to City a certificate of waiver of subrogation under the terms of the workers' compensation insurance and shall similarly require all subcontractors to waive subrogation, provided that such waiver is reasonably available.

10. Other Insurance. In addition to workers' compensation insurance in Section 8 above and each Owner's covenant to indemnify City in Section 11 below, 21002 HB and PC Group Retail, LLC, their successors and assigns, shall obtain and furnish to City a policy of commercial general liability insurance and commercial automobile liability insurance, covering all activities to be undertaken by them concerning the Common Drainage Facilities and Common Maintenance Areas located within a public right of way affected by this License. Said

policy shall pay on behalf of them, their 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 them concerning Common Drainage Facilities and Common Maintenance Areas located within the public right of way, and shall provide coverage in 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, the aggregate limit must be no less than One Million Dollars (\$1,000,000). Said policy shall name City, its officers, and employees as additional insureds, and shall specifically provide that any other insurance or self-insurance which may be applicable to all activities to be undertaken by an Owner concerning the Maintenance Areas affected by this License shall be deemed excess coverage and that each Owner's insurance shall be primary. Under no circumstances shall said above mentioned insurance contain a self-insured retention, or "deductible" or any similar form of limitation on the required coverage in excess of Twenty Five Thousand Dollars (\$25,000.00).

11. Certificates of Insurance: Additional Insured Endorsements. Prior to commencing performance of the Maintenance Responsibilities, an Owner 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:

- (a) provide the name and policy number of each carrier and policy; and
- (b) shall state that the policy is currently in force; and
- (c) shall promise to provide that such policies will not be canceled or modified without thirty (30) days prior written notice to City.

Each Owner shall maintain the insurance coverage contemplated in Sections 8 and 9 in force until this License is terminated.

12. Indemnification.

(a) Indemnity – License. Each Owner shall indemnify, defend and hold City, its officers, directors, shareholders, employees, agents, successors and assigns (hereinafter collectively called "**Indemnified Parties**") harmless from all liabilities, penalties, costs, damages, expenses, causes of action, claims or judgments (including without limitation reasonable attorneys' fees) (collectively, "**Indemnified Claims**"), resulting from (i) injury or the death of any person (including without limitation any Indemnified Party) or physical damage to 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 damage arises out of or is connected with the use or occupancy by the indemnifying Owner (or its officers, employees, agents, contractors, licensees, or invitees) of any of the Maintenance Areas on the portion of the Property owned by the indemnifying Owner under the authority of the License, except to the extent that such Indemnified Claims are caused by the negligence or willful wrongful acts or omissions of any Indemnified Party, and (ii) the use, generation, processing, production, packaging, treatment, storage, emission, discharge or disposal of Hazardous Materials (as that term is defined herein below) on or about the Maintenance Areas by an Owner, its agents, employees, contractors, invitees or licensees in connection with the exercise of such Owner's rights under the License. For purposes of this Section 12, the term "**Hazardous Materials**" shall mean any substance, material or waste that, because of its

quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment, including, but not limited to petroleum, petroleum-based products, natural gas, or any substance, material, or waste that is or shall be listed, regulated or defined by federal, state or local statute, regulation, rule, ordinance or other governmental requirement to be hazardous, acutely hazardous, extremely hazardous, toxic, radioactive, biohazardous, infectious, or otherwise dangerous.

(b) Notice. City agrees to give prompt notice to an Owner with respect to any Indemnified Claims initiated or threatened against City, at the address for notices set forth herein. The indemnifying Owner shall, at its option but subject to the reasonable consent and approval of City, be entitled to control the defense, compromise or settlement of any such matter through counsel of its own choice; provided, however, that in all cases City shall be entitled to participate in such defense, compromise, or settlement at its own expense.

13. Litigation Expenses.

(a) General. If either party hereto brings an action or proceeding (including any cross-complaint, counterclaim, or third-party claim) against another party by reason of a default, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall NOT be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment.

(b) Alternative Dispute Resolution. City and an Owner, by mutual agreement, may, but are not required to, submit any factual or other (to the extent City is not prohibited by law or otherwise from doing so) dispute arising under this Agreement to non-binding arbitration, mediation, judicial reference or other alternate dispute resolution mechanism ("**ADR**") of non-judicial dispute resolution. The party requesting ADR shall give written notice of its request, specifying the requested ADR procedure, to the other parties, who shall notify the requesting parties of its agreement or refusal to proceed within a reasonable time after receipt of the requesting notice. If the parties agree to proceed, they shall select a mutually acceptable individual, with qualifications appropriate to the subject matter of the dispute, to conduct the designated ADR, or, if the parties cannot agree on such individual, they shall submit the dispute for the applicable ADR to a commercial ADR service. In all events, the proceedings shall be conducted only in a manner acceptable to both parties. The parties may enter into operating memoranda from time to time to establish procedures for the initiation and conduct of such ADR mechanisms.

14. Time. Time is of the essence of this Agreement and each and every part hereof.

15. 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 the 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

16. Amendment. This Agreement may be amended or otherwise modified only in writing signed and acknowledged by the Owners.

17. Delegation of Authority. City hereby delegates to City Manager or his or her designee the authority to implement all provisions of this Agreement.

18. City's Right to Enforce. Notwithstanding the provisions of Section 13 herein, the Owners acknowledge and agree that the City has the right and standing, but not the obligation, to enforce any of the terms of this Agreement by any appropriate legal and/or equitable means and shall be entitled to reimbursement for any costs incurred in enforcing this Agreement. The Owners shall provide City with, and at all times keep current, contact information for the Owners and any property manager acting on their behalf.

19. Successors and Assigns. Subject to Sections 5 and 14 above, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns (except as otherwise specifically provided in Section 17 below), including without limitation all grantees and other successors-in-interest of City and 21002 HB and PC Group Retail in any portion of the Maintenance Areas. Subject to Sections 5 and 14 above, 21002 HB and PC Group Retail shall provide prior notice of any assignment of their rights and obligations hereunder and any such assignment shall either (a) include the insurance provisions hereunder or (b) shall include insurance provisions approved by City.

20. Exclusive Benefit of Parties. The provisions of this Agreement are for the exclusive benefit of City and 21002 HB and PC Group Retail, LLC and their successors and assigns, subject to the provisions hereof, and not for the benefit of nor give rise to any claim or cause of action by any other person.

21. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

22. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be entitled to be the original and all of which shall constitute one and the same agreement.

23. References; Titles. Wherever in this Agreement the context requires, reference to the singular shall be deemed to include the plural. Titles of sections and paragraphs are for convenience only and neither limit nor amplify the provisions of this Agreement.

24. Notice. Any notice given under this Agreement shall be in writing and given by delivering the notice in person, by commercial courier or by sending it by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address notice of which is given. For the convenience of the parties, copies of notices may also be given by telefacsimile, to the telephone number listed below or such other numbers as may be provided from time to time.

Owner: The address of such person as shown on the records of the Orange
County Tax Collector.

For City: Director of Public Works
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Telefacsimile: (714) 536-1573

City Manager
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Telefacsimile: (714) 536-1573

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 telefacsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, or a telefacsimile copy of the notice.

25. Severability. If any provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement (or the application of such provisions to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and 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.

26. Entire Agreement. This Agreement, together with any attachments hereto or inclusions by reference, constitute the entire agreement between the parties on the subject matter hereof, 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 easements which are the subject matter of this Agreement.

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

(Signature page follows.)

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on

12/16, 2013.

21002 HB, LLC,
a Delaware limited liability company

By: [Signature]

Name: SHARON CHRISTENBURY

Title: VICE PRES.

PC GROUP RETAIL, LLC, a California
limited liability company

By: _____

Name: _____

Title: _____

COUNTERPART

CITY OF HUNTINGTON BEACH,
a municipal corporation of the State of California

[Signature]
Matthew M. Mayor
Harper

[Signature]
Joan L. Flynn
City Clerk

APPROVED AS TO FORM:

[Signature]
City Attorney mv-12-3-13

APPROVED AS TO FORM:

[Signature]
Director of Public Works

REVIEWED AND APPROVED:

[Signature]
City Manager

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on
12/16, 2013.

21002 HB, LLC,
a Delaware limited liability company

COUNTERPART

By: _____
Name: _____
Title: _____

PC GROUP RETAIL, LLC, a California
limited liability company

By: _____
Name: _____
Title: _____

* Lindsay Parton

CITY OF HUNTINGTON BEACH,
a municipal corporation of the State of California

Mayor

City Clerk

APPROVED AS TO FORM:

12.5.13  _____
City Attorney *NU-D-3-13*

APPROVED AS TO FORM:

 _____
Director of Public Works

REVIEWED AND APPROVED:

 _____
City Manager

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

On November 22, 2013, before me,
Erica V. Carter, a Notary Public, personally appeared
Sharon Christenbury, 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 Florida that the
foregoing paragraph is true and correct.

WITNESS my hand and Official seal.



Notary Public

(Seal)



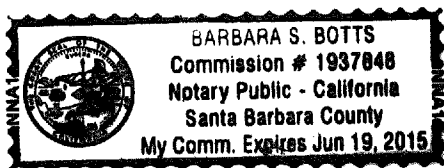
ERICA V. CARTER
NOTARY PUBLIC
STATE OF FLORIDA
Comm# DD0933162
Expires 1/29/2014

STATE OF CALIFORNIA)
COUNTY OF Santa Barbara)

On Nov 22, 2013, before me,
Barbara S. Botts, a Notary Public, personally appeared
Lindsay Parton, 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.



Barbara S. Botts
Notary Public

(Seal)

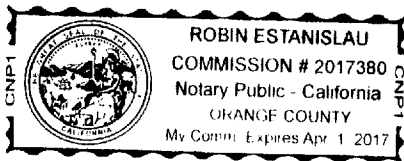
STATE OF CALIFORNIA

COUNTY OF Orange

On December 16, 2013, before me,
Robin Estanislau, a Notary Public, personally appeared
Matthew M. Harper, 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.



Rolim Estanislau
Notary Public

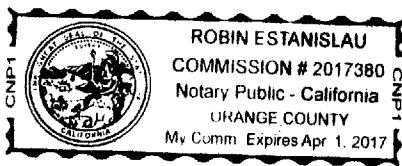
(Seal)

STATE OF CALIFORNIA)
COUNTY OF Orange)

On December 16, 2013, before me,
Robin Estanislau, a Notary Public, personally appeared
Jean L. Flynn, 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.



Robin Estanislau
Notary Public

(Seal)

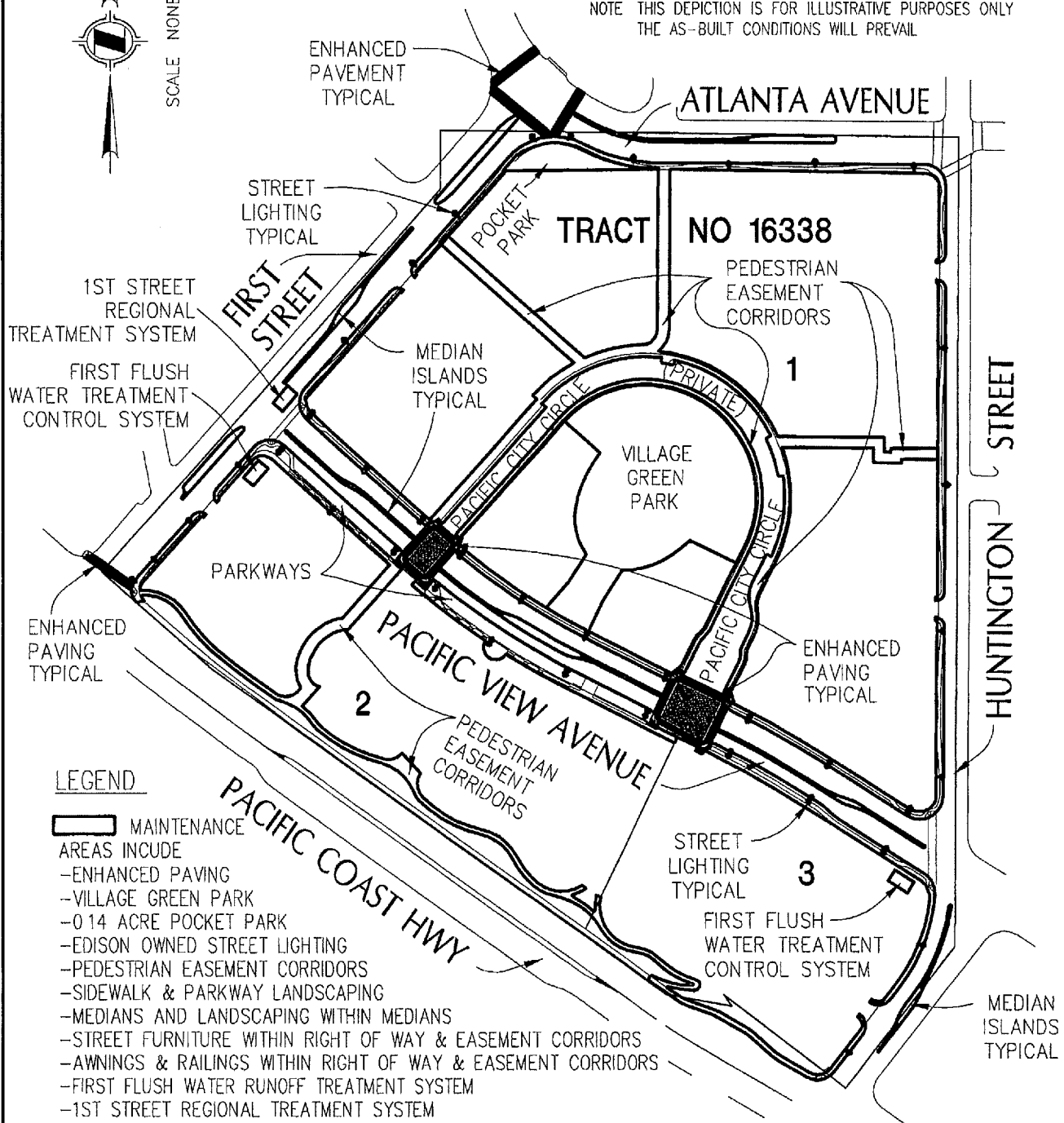
EXHIBIT "A"

MAINTENANCE LICENSE AGREEMENT PACIFIC CITY - HUNTINGTON BEACH



SCALE NONE

NOTE THIS DEPICTION IS FOR ILLUSTRATIVE PURPOSES ONLY
THE AS-BUILT CONDITIONS WILL PREVAIL



NOTE STREET LIGHTING WITHIN PACIFIC VIEW AVENUE AND ALONG THE PROJECT SIDE OF
1ST STREET ATLANTA AVENUE AND HUNTINGTON STREET IS INCLUDED IN THE MAINTENANCE

NOTE MEDIANS WITHIN PACIFIC COAST HIGHWAY ARE NOT INCLUDED IN THE MAINTENANCE

DATE AUGUST 15 2007