

## **LICENSE AGREEMENT TO MAINTAIN FACILITIES IN PUBLIC RIGHT OF WAY**

This License Agreement ("Agreement"), dated as of \_\_\_\_\_, 2025 ("Effective Date") is issued by the CITY OF MENIFEE, a California municipal corporation ("City") to Banner Park Community Association, a California nonprofit mutual benefit corporation ("Licensee"). City and Licensee are sometimes individually referred to herein as a "Party" and collectively referred to herein as the "Parties."

### **RECITALS**

**A.** On February 22, 2023, Planning Commission approved the Conditions of Approval ("COA") for the development of residential Tract 37671 (the "Project"), also known as "Banner Park South," and located at the southwest corner of Domenigoni Parkway and Briggs Road in Menifee, CA.

**B.** Licensee is a property owner's association which has been established pursuant to the City's conditions of approval issued in connection with Tract 32102 Banner Park and Tract 37671 Banner Park South was annexed into in order to, among other purposes, maintain common areas within the Project.

**C.** The City currently maintains, as public right-of-way, the existing roadways or publicly owned lots within and fronting the Project (the "ROW").

**D.** The developer of the Project proposed to construct and Licensee proposes to maintain irrigation facilities within the ROW, along certain portions of Airborne Drive, Parcel "B" per L.L.A. No. LLA24-001, Instrument No. 2024-0221443, and Parcel "CC" per L.L.A. No. LLA24-002, Instrument No. 2024-0229618, (the "Association ROW Irrigation Facilities Maintenance Areas"), as depicted in Exhibit "A", which is attached hereto and incorporated herein by this reference.

**E.** Licensee has requested a license from the City to permit Licensee to access the Association ROW Irrigation Facilities Maintenance Areas and maintain the Licensee Improvements located within the Association ROW Irrigation Facilities Maintenance Areas, including bearing the cost to install, maintain, and repair Association irrigation facilities within polyvinyl chloride pipe sleeves and to restore any City maintained landscaping as a result of the Association's maintenance activities.

**F.** Subject to the terms and conditions set forth below in this Agreement, City has agreed to grant to Licensee the requested license.

**NOW, THEREFORE,** for good and valuable consideration the receipt and sufficiency of which is acknowledged, and the mutual promises, covenants, and conditions herein contained, the Parties agree as follows:

**1. DEFINITIONS.**

- 1.1. "Agency" means any governmental agency or quasi-governmental agency other than the City.
- 1.2. "Association ROW Irrigation Facilities Maintenance Areas" shall have the meaning set forth in Recital D.
- 1.3. "City" means the City of Menifee, a California municipal corporation.
- 1.4. "COA" shall have the meaning set forth in Recital A. 1.5. "Commencement Date" means the first day of the month following the month in which City approves this Agreement.
- 1.6. "Laws" means any applicable judicial decisions, statutes, laws, ordinances, resolutions, regulations, rules, administrative orders, certificates, orders, or other requirements of the City or other Agency having joint or several jurisdiction over the parties to this Agreement, the subject matter of this Agreement, or the ROW, which are in effect either at the time of execution of this Agreement or during the Term of this Agreement.
- 1.7. "Licensee" means the Licensee as defined above and its lawful successors, assigns, and transferees.
- 1.8. "Licensee Improvements" means the irrigation facilities and any other improvements permitted to be constructed and/or installed within the Association ROW Irrigation Facilities Maintenance Areas pursuant to this Agreement.
- 1.9. "Person" means an individual, a corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust, and any other form of business association, other than Licensee.
- 1.10. Project shall have the meaning set forth in Recital A.
- 1.11. "Provision" means any agreement, clause, condition, covenant, qualification, restriction, reservation, term, or other stipulation in this Agreement that defines or otherwise controls, establishes, or limits the performance required or permitted by any Party. All Provisions, whether covenants or conditions, shall be deemed both covenants and conditions.
- 1.12. "ROW" shall have the meaning set forth in Recital C.

## **2. TERM.**

The initial term of this Agreement shall be one (1) year commencing upon the Effective Date of this Agreement, unless otherwise terminated pursuant to the terms of this Agreement ("Initial Term"). Following the Initial Term, if not terminated, this Agreement shall automatically be renewed for one (1) year (each such renewal term, as "Extension Term") on the same terms as set forth in this Agreement unless either Licensor or Licensee terminates this Agreement by written notice to the other Party at least ninety (90) days prior to the expiration of the Initial Term or any Extension Term. The "Term" shall refer to the Initial Term and each Extension Term (if applicable), unless stated elsewhere within this Agreement. All of the terms and conditions in this Agreement shall be applicable during any Extension Term, and any references in this Agreement to the "Term" shall include any Extension Term. Licensee shall reimburse City for any reasonable costs incurred by City to evaluate Licensee's request to terminate this Agreement, including any reasonable legal costs. Upon the expiration or earlier termination of this Agreement, Licensee shall have no further obligations under this Agreement, including without limitation, Licensee shall have no further obligation to maintain the Association ROW Irrigation Facilities Maintenance Areas or to incur costs, including but not limited cost to maintain Association irrigation facilities within polyvinyl chloride (PVC) pipe sleeves and to restore any City maintained landscaping as a result of the Association's maintenance activities associated with the Association ROW Irrigation Facilities Maintenance Areas.

## **3. SCOPE OF LICENSE.**

**3.1. General.** City hereby grants to Licensee a non-exclusive license ("License") in, on, across, and over the Association ROW Irrigation Facilities Maintenance Areas in accordance with the terms, restrictions, and conditions of this Agreement. Any rights granted to Licensee under this Agreement, which shall be exercised at Licensee's sole cost and expense, shall be subject to the prior and continuing right of City under the Laws for any and all parts of the ROW, exclusively or concurrently, with any other Person or Persons, and further shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title as of the installation of any Licensee Improvements, which may affect the Association ROW Irrigation Facilities Maintenance Areas or any adjacent ROW. Licensee shall not infringe on the foregoing without the written approval of the City and any affected Person. If such infringement occurs, City may terminate this Agreement with ten (10) days written notice if such infringement is not cured within thirty (30) days of written notice from City of such infringement. Nothing in this Agreement shall be deemed to grant, convey, create, or vest in Licensee a real property interest in the Association ROW Irrigation Facilities Maintenance Areas.

- 3.2. **Standards and Licensee's Responsibilities.** All of the Licensee Improvements within the Association ROW Irrigation Facilities Maintenance Area shall be maintained by Licensee to City standards. Licensee shall pay for all costs to install, maintain, and repair Licensee Improvements within polyvinyl chloride (PVC) pipe sleeves and to restore any City maintained landscaping associated with maintenance of the Licensee Improvements. Licensee, its officers, employees, contractors, subcontractors, agents, visitors, and volunteers shall not damage the Association ROW Irrigation Facilities Maintenance Areas or commit waste thereon. Licensee shall notify the Director of Public Works/City Engineer a minimum of 48 hours prior to Association maintenance activity within the Association ROW Irrigation Facilities Maintenance Landscape Areas. As consideration for allowing this use, Licensee shall, at its sole cost and expense, and to the satisfaction of the City, install, maintain, and repair Licensee Improvements within polyvinyl chloride (PVC) pipe sleeves and restore any City maintained landscaping in the Association ROW Irrigation Facilities Maintenance Areas in connection with such maintenance activity. If Licensee fails to maintain the Licensee Improvements in the condition required by this Agreement, after providing thirty (30) days' written notice to Licensee of such failure, City may perform such maintenance and Licensee shall be responsible to reimburse City for the costs thereof, plus a ten percent (10%) administrative fee.
- 3.3. **Permits.** This Agreement is made contingent upon Licensee obtaining all certificates, permits, entitlements, environmental review, studies, and other approvals required by Laws and/or that any federal, state, or local authority may require for the construction and/or operation of the Licensee Improvements.
- 3.4. **Non-interference.** Except as permitted by City, in writing, by Laws or by this Agreement, in the performance and exercise of its rights and obligations under this Agreement, Licensee shall not interfere with the existence and operation of any public right-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, electroliners, cable television, and other telecommunications, utility, and municipal property without the express prior written approval of City.
- 3.5. **Compliance with Laws.** Licensee shall comply with all Laws in the exercise and performance of its rights and obligations under this Agreement.
- 3.6. **No warranty.** Access to the Association ROW Irrigation Facilities Maintenance Areas under this Agreement is conditioned upon acknowledgment by Licensee that City makes no representations or warranties concerning the condition of the Association ROW Irrigation Facilities Maintenance Areas as they may exist from time to time and that City has no duty to warn Licensee of any conditions. Licensee agrees to assume all risks associated with Licensee's entry and presence on and within the Association ROW Irrigation Facilities Maintenance Areas. However, to the extent City or any of its agents cause damage to any portion of Association ROW Irrigation Facilities Maintenance Areas, or the improvements made therein, City shall be responsible to make any necessary repairs and restore the Licensee Improvements to their prior condition. If City fails to repair and restore Licensee Improvements, after providing

thirty (30) days' written notice to City of such failure, Licensee may perform such maintenance and restoration of the Licensee Improvements and City shall be responsible to reimburse Licensee for the costs thereof, plus a ten percent (10%) administrative fee.

#### **4. INDEMNIFICATION.**

Licensee shall indemnify, defend, and hold harmless the City of Menifee and its elected city council, appointed boards, commissions, committees, officials, employees, volunteers, contractors, consultants, and agents (herein, collectively, the "Indemnitees") from and against any and all claims, liabilities, losses, fines, penalties, and expenses, including without limitation litigation expenses and attorney's fees, arising out of either (i) approval of this Agreement or actions related to this Agreement, including without limitation any judicial or administrative proceeding initiated or maintained by any Person challenging the validity or enforceability of this Agreement, any finding or determination made and/or any other action taken by any of the Indemnitees in conjunction with such approval, including without limitation any action taken pursuant to the California Environmental Quality Act ("CEQA"), or (ii) the acts, omissions, or operations of the Licensee and the directors, officers, members, partners, employees, agents, contractors, and subcontractors of each person or entity comprising or acting on behalf of the Licensee with respect to the use, planning, design, construction, application process, utility services, and maintenance of the Association ROW Irrigation Facilities Maintenance Areas. City shall notify Licensee of any claim, lawsuit, or other judicial or administrative proceeding (herein, an "Action") within the scope of this indemnity obligation and request that Licensee defend such Action with legal counsel reasonably satisfactory to City. If Licensee fails to so defend the Action, City shall have the right but not the obligation to do so with counsel of City's own choosing, with no right of approval by Licensee and, if City does, Licensee shall promptly pay City's reasonable costs thereof, with payments made at least on a monthly basis. Notwithstanding the foregoing, the indemnity obligation under clause (ii) of the first sentence of this Section 4 shall not apply to the extent the claim arises out of the willful misconduct or the sole active negligence of City. This Section 4 shall survive any final action on this Agreement, including the termination hereof, and shall survive and be independent of any approvals, even if such approvals are invalidated in whole or part.

#### **5. INSURANCE**

Licensee, at Licensee's sole expense, shall obtain and keep in force during the Term the following insurance coverages, with commercially acceptable deductibles: (1) a Commercial General Liability (CGL) policy insuring against all liability of the Licensee arising out of or in connection with this Agreement, which shall have a per occurrence limit of at least Two Million Dollars (\$2,000,000) as indicated by the Insurance Services Office (ISO) Form CG 00 01 covering CGL and if a general aggregate limit applies, either the general aggregate limit shall apply separately to this Agreement or location depicted in Exhibit "A" (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit, which is at least Four Million Dollars (\$4,000,000), shall name the Indemnitees as additional insureds, and shall be primary and non-contributing with

any other insurance available to City; (2) Workers' Compensation insurance, including Employer's Liability coverage, in compliance with statutory requirements, and a Waiver of Subrogation in favor of City; and (3) Automobile Liability insurance covering all owned, hired, and non-owned automobiles, which shall have a per occurrence limit of at least One Million Dollars (\$1,000,000) and an aggregate limit of at least Two Million Dollars (\$2,000,000), shall name the Indemnitees as additional insureds, and shall be primary and non-contributing with any other such insurance available to City. All general liability insurance and property damage insurance shall insure performance by Licensee of the indemnity, defense, protection and hold harmless provisions in this Agreement. The policy shall be written on an occurrence basis and shall include, at a minimum, bodily injury, property damage, personal injury and contractual liability. If the Licensee maintains broader coverage and/or higher limits than the minimums shown above for all policies, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

The limits of insurance liability shall not limit Licensee's indemnification, defense, protection and/or hold harmless obligations under this Agreement. Each insurance policy required by this Agreement shall be evidenced by a certificate of insurance and Additional Insured Endorsement. If the Licensee fails to procure or cause to be procured and maintained the required insurance, City may, but shall not be required to, procure and maintain such insurance, but at the expense of Licensee. Insurance required by this Agreement shall be placed with and issued by companies rated A-; VII or better in "Best's Key Rating Guide." Concurrent with or prior to the commencement of the Term, Licensee shall deliver to City certificate(s) of insurance evidencing the existence and amounts of such insurance. No policy shall be cancelled or coverage reduced prior to the end of the Term.

## **6. NO CITY LIABILITY**

City shall not be liable for, and Licensee waives, all claims against City and its elected city council, appointed boards, commissions, committees, officials, employees, volunteers, contractors, consultants, and agents for loss or damage while using the Association ROW Irrigation Facilities Maintenance Areas or the property of any person claiming by, through or under Licensee, as a consequence of or in connection with this Agreement regardless of the cause including, without limitation, any right to seek, claim or obtain damages, punitive damages or consequential damages, including, without limitation, any claim for lost profits.

## **7. NOTICES.**

All notices which shall or may be given under this Agreement shall be in writing and delivered personally or transmitted: (i) through the United States mail, by registered or certified mail, postage prepaid; or (ii) with prepaid reputable overnight delivery service that provides a receipt with the time and date of delivery, the Parties at the following addresses:

City: City of Menifee  
Attention: Director of Public Works/City Engineer  
29844 Haun Road  
Menifee, CA 92586

With Copy to: Rutan & Tucker, LLP  
18575 Jamboree Road, 9<sup>th</sup> Floor  
Irvine, CA 92612  
Attention: City Attorney, City of Menifee

Licensee: Banner Park Community Association  
c/o Vintage Group  
24422 Avenida de La Carlota, Suite 450  
Laguna Hills, CA 92653  
Attn: Banner Park Community Association Manager

With Copy to: Pulte Home  
27401 Los Altos, Suite 400  
Mission Viejo, CA 92691  
Attn: Banner Park Project Manager

Notices shall be deemed given upon receipt with personal delivery, three (3) days after deposit in the mail, or the next day with overnight delivery. Either Party may occasionally designate any other address for this purpose by written notice to the other Party in the manner set forth above.

## **8 TERMINATION.**

**8.1 Termination for Cause.** In addition to the termination rights set forth in Section 2 and Section 3.1 of this Agreement, this Agreement may be terminated by either Party upon thirty (30) days' prior written notice to the other Party upon a default of any material covenant or term by the other Party, which default is not cured within thirty (30) days after receipt of written notice of default or, if such default is not curable within thirty (30) days, if the defaulting Party fails to commence such cure within thirty (30) days or fails to thereafter diligently prosecute such cure to completion. Upon the expiration or earlier termination of this Agreement, Licensee shall have no further obligations under this Agreement, including without limitation, Licensee shall have no further obligation to maintain the Association ROW Irrigation Facilities Maintenance Areas or Licensee Improvements or to incur any costs, including but not limited water and electrical costs associated with the Association ROW Irrigation Facilities Maintenance Areas and Licensee Improvements; provided, however, that Licensee's indemnification obligations hereunder shall survive any such expiration or earlier termination of this Agreement.

**8.2 Removal of Licensee Improvements.** At City's election, City may require Licensee, in a writing delivered to Licensee prior to the termination of this Agreement, to

remove all of the Licensee Improvements from the Association ROW Irrigation Facilities Maintenance Areas. In such event, all such Licensee Improvements shall be removed within ninety (90) days after the termination of this Agreement.

## **9. MISCELLANEOUS PROVISIONS.**

- 9.1 **Assignment.** Licensee shall not assign, sell, or transfer its interest under this Agreement without the express prior written approval and consent of City, which consent shall not be unreasonably withheld, conditioned, or delayed. Any attempted assignment, sale, or transfer in violation of this Section shall be void. Transferring the rights and obligations of Licensee to a parent, subsidiary, or other affiliate of Licensee, or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of Licensee's stock or assets, shall not be deemed an assignment. Licensee shall give to City written notice of any such transfer within thirty (30) days thereafter. If any proposed transferee will have a financial strength or creditworthiness after the proposed transfer of at least equal to that of Licensee prior to the transfer, it shall not be deemed reasonable for City to withhold its consent to the proposed transfer unless the proposed transferee has a record of nonperformance under similar agreements which is unacceptable to City under a reasonable standard of evaluation. Any transfer, regardless of whether City's prior consent is required, shall not be effective until such time as Licensee and the proposed transferee have entered into an assignment and assumption in a form acceptable to the City Attorney in his or her reasonable discretion.
- 9.2 **No Mechanics Liens.** Licensee shall not permit any mechanics or other liens to be filed against the Association ROW Irrigation Facilities Maintenance Areas as a result of or in connection with the rights granted under this Agreement.
- 9.3 **Entire Agreement.** This Agreement contains the entire understanding between the Parties regarding the subject herein. There are no representations, agreements or understandings (whether oral or written) between or among the Parties relating to the subject of this Agreement, which are not expressed herein.
- 9.4 **Amendments.** This Agreement may not be amended except pursuant to a written instrument signed by both Parties.
- 9.5 **Severability.** If any one or more Provisions of this Agreement shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such Provisions shall be deemed severable from the remaining Provisions of this Agreement and shall in no way affect the validity of the remaining portions of this Agreement.
- 9.5 **Applicable Law; Venue.** This Agreement shall be governed and construed by and under the Laws of the State of California and the City of Menifee Municipal Code, as amended from time-to-time, excluding any choice of law provisions or conflict of law principals which would require reference to the laws of any other jurisdictions, but may be subject to superseding federal Law. In the event that suit is brought by a



Party, the Parties agree that trial of such action shall be vested exclusively in the State Court of California, County of Riverside.

- 9.6 **No Third Party Rights.** Nothing in this Agreement shall be deemed or otherwise construed as granting any rights, benefits or interests to any individual, entity or body who / that is not a party to this Agreement.
- 9.7 **Exhibits.** All exhibits referred to in this Agreement and any addenda, attachments, and schedules which may, occasionally, be referred to in any duly executed amendment to this Agreement are by such reference incorporated in this Agreement and shall be deemed a part of this Agreement as though set forth herein. All requirements or Provisions contained in the exhibits are material terms of this Agreement and enforceable.
- 9.8 **Successors and Assigns.** This Agreement is binding upon the successors and assigns of the parties subject to the requirements of Section 9.1, infra.
- 9.9 **Authority to Execute.** Each individual executing this Agreement on behalf of a Party warrants that: (i) such Party is duly organized and existing, (ii) the signer duly may execute and deliver this Agreement on behalf of the Party, (iii) by so executing this Agreement, such Party is formally bound to this Agreement, (iv) the Party's entry into this Agreement violates no Provision of any other agreement to which said Party is bound, and (v) there is no litigation or legal proceeding that would prevent said Party from signing this Agreement or performing its obligations hereunder.
- 9.10 **Administration.** This Agreement shall be administered and executed on behalf of City by the City Manager. The City Manager shall have the authority to issue interpretations, waive terms and conditions, enter into implementing agreements and amendments of this Agreement on behalf of City provided that such actions do not substantially change the purposes and intent of this Agreement, materially increase the risk of liability, or impair the rights or remedies, of City provided herein. All other waivers or amendments shall require the formal consent of the City Council of City.
- 9.11 **Captions.** The captions of the Sections in this Agreement are for convenience only, and are not intended to be any part of the body of this Agreement, nor are they intended to be referred to in construing this Agreement.
- 9.11 **Counterparts.** This Agreement may be executed in one or more counterparts, and all the counterparts shall constitute but the same agreement, notwithstanding that all parties are not signatories to the same or original counterpart.
- 9.12 **Advice of Counsel; Interpretation.** Each Party acknowledges that it has had the benefit of advice of competent legal counsel regarding its decision to enter this Agreement. This Agreement shall be interpreted to give effect to each Provision hereof, in accordance with the fair meaning thereof, and shall be construed as prepared by both Parties.

9.13 **No Waiver.** The failure of any Party to enforce against the other a Provision of this Agreement shall not constitute a waiver of that Party's right to enforce such Provision at a later time.

9.14 **Disputes.** The Parties agree to make a diligent, good-faith attempt to resolve any claim, controversy or dispute arising out of this Agreement ("Disputes"). An authorized representative shall be selected by each Party to attempt to resolve Disputes by phone or in person. In any action seeking the enforcement or interpretation of any of the terms or provisions of this Agreement, the prevailing Party in that action shall be awarded, in addition to allowable damages, injunctive or other relief, its reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and expert witness fees.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers and representatives as of the Effective Date written at the beginning of this Agreement.

**"City"**

**CITY OF MENIFEE, a California municipal corporation**

**Dated: \_\_\_\_\_, 2025**

**By: \_\_\_\_\_  
Print Name: Ricky Estrada, Mayor**

**APPROVED AS TO FORM  
RUTAN & TUCKER, LLP**

**ATTEST:**

**By: \_\_\_\_\_  
Stephanie Roseen, City Clerk**

\_\_\_\_\_  
**Attorneys for the City of  
Menifee**

**"Licensee"**

**Banner Park Community Association, a  
California nonprofit mutual benefit  
corporation**

**Dated: \_\_\_\_\_, 2025**

**By: \_\_\_\_\_  
Print  
Name: \_\_\_\_\_**

**Its: \_\_\_\_\_**

**Dated:** \_\_\_\_\_, 2025

**By:** \_\_\_\_\_

**Print  
Name:** \_\_\_\_\_

**Its:** \_\_\_\_\_

## **EXHIBIT “A”**

### **DEPICTION OF ASSOCIATION ROW IRRIGATION FACILITIES MAINTENANCE AREAS**

**[Attached hereto.]**

All items, and location of items, shown on illustration are shown for informational purposes only and should not be relied upon for content, precise design or dimension. The actual conditions will control.
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# LEGEND

②

HOA POC WATER METER



HOA MAINTENANCE AREA  
(IRRIGATION MAINLINE  
AND SLEEVE ONLY)

8' HOA MAINTENANCE  
AREA (IRRIGATION MAIN  
AND SLEEVE ONLY)

1

HOA  
52 O.S.

8'

AIRBORNE DRIVE

8' HOA MAINTENANCE  
AREA (IRRIGATION MAIN  
AND SLEEVE ONLY)

DOMENIGONI PARKWAY

8'

CLIFF PARK DRIVE

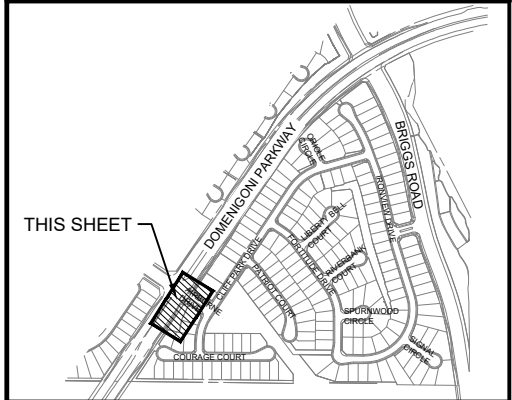
51

PARCEL "CC"  
PER L.L.A. NO.  
LLA24-002,  
INSTRUMENT NO. 50  
2024-0229618

HOA 54 O.S.  
PER TM3767-1

INDEX MAP

NTS



0'



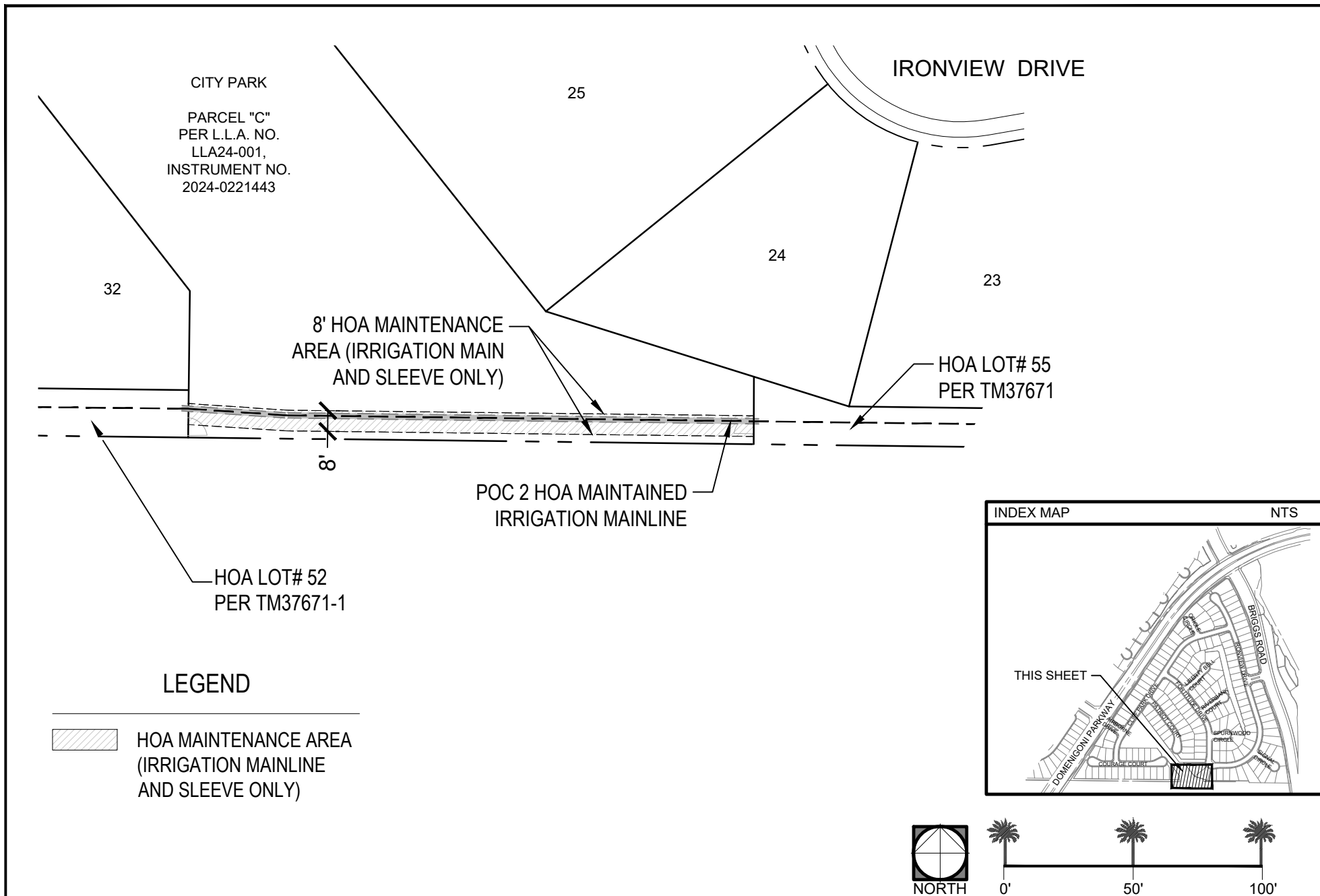
50'



100'

BANNER PARK SOUTH - DOMENIGONI PKWY & AIRBORNE DR

EXHIBIT "A"



# BANNER PARK SOUTH - CITY PARK AT SOUTHERN END

EXHIBIT "A"