




RECOMMENDATION

It is recommended that City Council;

- Approve the acquisition of the fee simple title over a portion of the subject property;
- Authorize the City Manager to execute the Purchase Agreement and make minor modifications as needed, on behalf of the City;
- Authorize the City Clerk to accept the Grant Deed on behalf of the City;
- Authorize the Finance Director to draw a warrant in the amount of Seventy Two Thousand Eight Hundred Sixty Four Dollars (\$72,864) and funds necessary for closing costs.

  
KEITH G. JONES  
Director of Public Works

By:   
Carlos Marquez  
Real Property Agent

**Recommended for Approval**

  
Matthew Fertal  
City Manager

Attachment 1 - Agreement for Acquisition of Real Property and Escrow Instructions  
Attachment 2 - Plot Map

Project: Fairview/Trask  
Project No.: 7255  
APN: 101-652-05  
Address: 13551 Fairview Street, Garden Grove, CA

## AGREEMENT FOR ACQUISITION OF REAL PROPERTY AND ESCROW INSTRUCTIONS

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THIS AGREEMENT FOR ACQUISITION OF REAL PROPERTY AND ESCROW INSTRUCTIONS (the "Agreement") is made and entered into as of \_\_\_\_\_, 2010, by and between the CITY OF GARDEN GROVE, a municipal corporation ("Buyer"), and POMELO, LLC, a California limited liability company ("Seller"), with reference to the following facts:

### RECITALS

A. Seller has entered into an agreement to acquire real property comprised of approximately 39,600 square feet of improved land located at 13551 Fairview Street, City of Garden Grove (the "City"), County of Orange (the "County"), State of California (the "State"), which is designated as Assessor's Parcel No. 101-652-05 and is more particularly described on Exhibit A attached hereto (the "Larger Parcel") for a residential housing project.

B. Seller desires to convey to Buyer and Buyer desires to acquire from Seller fee simple title to a portion of the Larger Parcel consisting of approximately 2,640 square feet of unimproved land area (the "Property") along the easterly portion of the Larger Parcel, as more particularly described as Exhibit B, for the widening of Fairview Street.

### AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by both parties, Buyer and Seller hereby agree as follows:

#### 1. PURCHASE AND SALE.

1.1. Agreement to Buy and Sell. Subject to the terms and conditions set forth herein, Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to acquire and purchase from Seller, the Property. As used herein the "Property" shall include the real property identified on Exhibit B and all of Seller's right, title and interest in and to any and all entitlements, tenements, hereditaments, easements, easement rights, rights to half-widths of all adjacent public streets and public rights of way, mineral rights, oil and gas rights, water, water rights, air rights, development rights and privileges appurtenant to the Property (but not the balance of the Larger Parcel) and all improvements located thereon.

1.2. Purchase Price. The purchase price ("**Purchase Price**") for the Property shall be Seventy Two Thousand Eight Hundred Sixty Four Dollars and 00/100 (\$72,864.00) payable as cash at closing.

2. ESCROW AND CLOSING.

2.1. Opening of Escrow. Within fourteen (14) business days after execution of this Agreement by the last of Seller or Buyer, Buyer shall open an escrow (the "**Escrow**") with Fidelity National Title Company, at the address set forth in Section 7.12 ("**Escrow Holder**"), by depositing with Escrow Holder this Agreement fully executed, or executed counterparts hereof. The date this fully executed Agreement is signed and accepted by Escrow Holder on the last page hereof shall be deemed the "**Opening of Escrow**" and Escrow Holder shall advise Buyer and Seller of such date in writing. The escrow instructions shall incorporate this Agreement as part thereof and shall contain such other standard and usual provisions as may be required by Escrow Holder, provided, however, that no escrow instructions shall modify or amend any provision of this Agreement, unless expressly set forth in writing by mutual consent of Buyer and Seller. In the event there is a conflict between any such standard or usual provisions and the provisions of this Agreement, the provisions of this Agreement shall control.

2.2. Escrow Fees and Other Charges. At the Close of Escrow, Buyer agrees to pay all of Seller's and Buyer's usual fees, charges and costs incidental to the conveyance of the Property which arise in this Escrow.

2.3. Closing Date; Conditions Precedent to Close of Escrow. Provided all of the conditions precedent set forth in this Section 2.3 have been satisfied (or are in a position to be satisfied concurrently with the Close of Escrow), the Close of Escrow shall occur on or before April 27, 2010 (the "**Closing Date**"). As used in this Agreement, the "**Close of Escrow**" shall mean the date a Grant Deed, as provided in Section 2.4.2(a) hereof ("**Grant Deed**"), is recorded in the Official Records of the County.

2.3.1 Conditions to Buyer's Obligations. The Close of Escrow and Buyer's obligation to purchase the Property are subject to the satisfaction of the following conditions or Buyer's written waiver of such conditions on or before the Closing Date. Buyer may waive in writing any or all of such conditions in its sole and absolute discretion.

(a) The Purchase Price shall have been determined in accordance with Section 1.2; and

(b) Seller shall have performed all obligations to be performed by Seller pursuant to this Agreement; and

(c) No event or circumstance shall have occurred which would make any of Seller's representations, warranties and covenants set forth herein untrue as of the Close of Escrow; and

(d) There shall have occurred no material adverse change in the physical condition of the Property (such as those caused by natural disasters) which would render the Property unsuitable for Buyer's intended use or which would materially increase the cost or cause a material delay in the schedule for the development of the Property; and

(e) The Title Company shall be committed to issue to Buyer, as of the Closing Date, the Title Policy (defined below) covering the Property, subject only to the Permitted Exceptions.

2.3.2 Conditions to Seller's Obligations. The Close of Escrow and Seller's obligation to sell and convey the Property are subject to the satisfaction of the following conditions or Seller's written waiver of such conditions on or before the Closing Date. Seller may waive in writing any or all of such conditions as a condition to the Close of Escrow in its sole and absolute discretion.

(a) The Purchase Price shall have been determined in accordance with Section 1.2; and

(b) Buyer shall have performed all obligations to be performed by Buyer pursuant to this Agreement; and

(c) No event or circumstance shall have occurred which would make any of Buyer's representations, warranties and covenants set forth herein untrue as of the Close of Escrow.

2.3.3 Waiver of a Condition Does Not Excuse Performance. If any condition precedent to the Close of Escrow is expressly waived, in writing, as a condition to the Close of Escrow by the party for whose benefit such condition exists, then, to the extent such condition is capable of being satisfied following the Close of Escrow, such condition shall become a condition subsequent to the Close of Escrow and shall be satisfied by the party whose performance is required to satisfy such condition as soon as reasonably possible following the Close of Escrow.

2.4. Closing Documents. The parties shall deposit the following with Escrow Holder prior to the Close of Escrow:

2.4.1 Buyer's Deposits. Buyer shall deposit:

(a) The Purchase Price together with Buyer's escrow and other cash charges; and

(b) A Certificate of Acceptance for the Grant Deed in the form of Exhibit D

2.4.2 Seller's Deposits. Seller shall deposit:

(a) The Grant Deed in the form of Exhibit C attached hereto, conveying the Property subject only to the Permitted Exceptions (defined below);

(b) Subject to Section 2.5.1 below, an executed Affidavit of Non-foreign Status in the form of Exhibit E attached hereto and such other documentation necessary to exempt Seller from the withholding requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder; and

(c) Subject to Section 2.5.1 below, a Withholding Exemption Certificate Form 593 as contemplated by California Revenue and Taxation Code §18662 (the "Withholding Affidavit") duly executed by Seller.

2.4.3 Deposits of Additional Instruments. Seller and Buyer shall each deposit such other instruments as are reasonably required by Escrow Holder or otherwise required to proceed to the Close of Escrow and consummate the sale of the Property in accordance with the terms of this Agreement.

## 2.5. Closing.

2.5.1 Withholding. In the event that, pursuant to Section 2.4.2(b) above, Seller fails to deposit with Escrow Holder the executed Affidavit of Non-foreign Taxpayer Status which exempts Seller from the withholding requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder, Seller hereby authorizes Escrow Holder to withhold ten percent (10%) of the Purchase Price of the Property less any applicable closing costs and to report and transmit the withheld amount to the Internal Revenue Service. Additionally, in the event that, pursuant to Section 2.4.2(c) above, Seller fails to deposit with Escrow Holder any applicable tax document which exempts Buyer from California withholding requirements, if any, Seller hereby authorizes Escrow Holder to withhold such additional percentage of the Purchase Price of the Property as is required by California law, and Escrow Holder shall report and transmit the withheld amount in the manner required by California law. By agreeing to act as Escrow Holder hereunder, Escrow Holder expressly agrees to undertake and be responsible for all withholding obligations imposed pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder and under any similar provisions of California law, and shall defend, indemnify and hold Buyer harmless in connection with such obligations.

2.5.2 Necessary Actions of Escrow Holder. On the Close of Escrow, Escrow Holder shall: (i) record the Grant Deed in the Office of the County Recorder of the County, (ii) pay any transfer taxes, (iii) instruct the County Recorder to return the Grant Deed to Buyer, (iv) distribute to Seller the Purchase Price, and (v) deliver to Buyer the Title Policy covering the Property subject only to the Permitted Exceptions, the Affidavit of Non-foreign Status and the applicable California withholding exemption form, if any.

2.5.3 Taxes and Assessments. Real property taxes and assessments shall be prorated as of the Close of Escrow on the basis of the most recent tax information and such

proration shall be final. Said prorations shall be based on a three hundred sixty-five (365) day year.

2.5.4 Title and Possession. Upon the Close of Escrow, title to and exclusive possession of the Property shall be conveyed to Buyer, subject only to the Permitted Exceptions.

2.6. Failure to Close; Termination.

2.6.1 Neither Party in Default. In the event that any condition set forth in Section 2.3 is not satisfied or waived, in writing, and the Close of Escrow does not occur within the time required herein due to the failure of such condition or the Close of Escrow does not occur within the time frame required herein for any reason other than Seller's or Buyer's breach of or default of its respective obligations hereunder, or if this Agreement is terminated without default by either party as otherwise set forth herein, then Escrow Holder, with no further instructions from the parties hereto, shall return to the depositor thereof any funds, or other materials previously delivered to Escrow Holder, the Escrow shall be automatically terminated and of no force and effect, Buyer shall pay any Escrow termination fees, and except as otherwise provided herein the parties will have no further obligation to one another.

3. ACTIONS PENDING CLOSING.

3.1. Title Review.

3.1.1 Title Report. Within three (3) business days after the Opening of Escrow, Commonwealth Land Title Company (the "Title Company") will furnish Buyer with an updated Title Commitment on the Property together with legible copies of all documents referenced therein as exceptions to title and a plot plan for the Property showing all the locations of all easements referenced therein (collectively, the "Title Commitment").

3.1.2 Title Notices. Buyer shall have ten (10) business days after its actual receipt of the Title Commitment to deliver to Escrow Holder written notice (the "Preliminary Title Notice") of Buyer's approval, conditional approval or disapproval of the title matters disclosed in the Title Commitment. All matters not timely approved by Buyer will be deemed disapproved. All such exceptions disapproved by Buyer are referred to herein as "Disapproved Exceptions".

3.1.3 Permitted Exceptions. "Permitted Exceptions" shall mean all exceptions appearing on the Title Commitment which are: (i) standard printed exceptions in the Title Policy issued by Title Company; (ii) general and special real property taxes and assessments, a lien not yet due and payable; and (iii) any other liens, easements, encumbrances, covenants, conditions and restrictions of record approved, or expressly waived by Buyer pursuant to this Section 3.1.

3.2. Title Policy. Buyer's obligation to proceed to the Close of Escrow shall be conditioned upon the commitment by Title Company to issue an ALTA Standard Coverage

Owner's Policy of Title Insurance (the "Standard Coverage Policy"), showing title to the Property vested in Buyer with liability equal to the Purchase Price, subject only to the Permitted Exceptions. At Buyer's option, Buyer may require an ALTA Extended Coverage Owner's Policy instead of the Standard Coverage Policy provided that Buyer pays any additional premium on account thereof. The form of title policy selected by Buyer shall be referred to herein as the "Title Policy".

3.3. Possession and Use/Right of Entry. It is mutually understood and agreed by and between the parties hereto that the right of possession and use of the Property by the Buyer, including the right to remove and dispose of improvements, shall commence upon the execution of this Agreement by Seller. The Purchase Price includes, but is not limited to, full payment for such possession and use.

3.4. Seller's Covenant Not to Further Encumber the Property. Seller shall not, directly or indirectly, alienate, encumber, transfer, option, lease, assign, sell, transfer or convey its interest or any portion of its interest in the Property, or any portion thereof, or enter into any agreement to do so, so long as this Agreement is in force. Seller shall timely discharge, prior to the Closing, any and all obligations relating to work performed on or conducted at or materials delivered to or for the Property from time to time by Seller, or at Seller's direction or on its behalf, in order to prevent the filing of any claim or mechanic's lien with respect to such work or materials.

3.5. Loss or Damage to Improvements. Loss or damage to the Property, including any improvements thereon, by fire or other casualty, occurring prior to the recordation of the Grant Deed shall be at the risk of Seller. In the event that loss or damage to the Property, or any improvements thereon, by fire or other casualty, occurs prior to the recordation of the Grant Deed, City may elect to require that the Seller pay to Buyer the proceeds of any insurance policy or policies which may become payable to Seller by reason thereof, or to permit such proceeds to be used for the restoration of the damage done, or to reduce the Purchase Price by an amount equal to the diminution in value of the Property by reason of such loss or damage or the amount of insurance payable to Seller, whichever is greater.

#### 4. REPRESENTATIONS, WARRANTIES AND COVENANTS.

4.1. Seller's Representations, Warranties and Covenants. In addition to the representations, warranties and covenants of Seller contained in other sections of this Agreement, Seller hereby represents, warrants and covenants to Buyer as follows, all of which shall survive the Close of Escrow:

4.1.1 Seller's Authority. Seller is the sole owner in fee simple absolute of the Property and has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement. Seller has not alienated, encumbered, transferred, leased, assigned or otherwise conveyed its interest in the Property or any portion thereof except as set forth in the Title Commitment, nor entered into any Agreement to do so, nor shall Seller do so during the



term of this Agreement. The entering into and performance by Seller of the transactions contemplated by this Agreement will not violate or breach any other agreement, covenant or obligation binding on Seller, and there is no consent required from any third party before the Property may be conveyed to Buyer. This Agreement has been duly authorized and executed by Seller, and upon delivery to and execution by Buyer shall be a valid and binding agreement of Seller.

4.1.2 Hazardous Substances. Seller has not used, generated, manufactured, stored or disposed any Hazardous Substances in, at, on, under or about the Property or transported any Hazardous Substance to or from the Property during the period of Seller's ownership and possession of the Property, except in the ordinary course of business and in compliance with all applicable Environmental Laws. Additionally, to the actual knowledge of the management representatives of Seller who have participated in negotiating and preparing this Agreement (i.e., Jim Barisic and Brett Whitehead) and without any duty of investigation or inquiry on Seller's part: (a) the Property is not in violation of and is not currently under investigation by any applicable governmental agency with jurisdiction over the administration or enforcement of any Environmental Laws for the violation of any such Environmental Laws; and (b) there are no underground storage tanks or surface impoundments, any asbestos-containing materials or any polychlorinated biphenyls used in hydraulic oils, electrical transformers or other equipment on or in the Property. Seller hereby assigns to Buyer as of the Close of Escrow all claims, counterclaims, defenses or actions, whether at common law, or pursuant to any other applicable federal or state or other laws which Seller may have against any third parties relating to the existence of any Hazardous Substance in, at, on, under or about the Property. As used in this Agreement, the term "Hazardous Substances" shall have the meaning set forth on Exhibit F attached hereto and the term "Environmental Laws" shall mean any of the federal and State laws identified in Exhibit F and any regulations promulgated pursuant to any such laws. At any time prior to the Close of Escrow, Buyer shall have the right to conduct appropriate tests of water and soil to ascertain the presence of any Hazardous Substances on, in, under and about the Property.

4.1.3 Endangered Species. To Seller's knowledge, there are no endangered species or protected natural habitat, flora or fauna located on the Property, nor is any portion of the Property located in what is or may be designated as a wetland.

4.1.4 Mechanic's Liens. There are no mechanics', material men's or other claims or liens presently claimed or which will be claimed against the Property for work performed or commenced prior to the date of this Agreement or relating to the environmental condition of the Property. Seller agrees to hold Buyer harmless from all costs, expenses, liabilities, losses, charges and fees, including without limitation attorneys' fees, arising from or relating to any such lien or any similar lien claimed against the Property and arising from work performed or commenced prior to the Close of Escrow.

4.1.5 Leases/Easements. There are no leases, rental agreements or other such contracts of any kind or nature affecting possession or occupancy of the Property, and

Seller shall not enter into any such contracts during the term of this Agreement without the prior consent of Buyer.

4.1.6 Other Facts and Circumstances. There are no other facts or circumstances known to Seller that would preclude, prevent or impair the development of the Property.

4.1.7 No Untrue Statements or Omissions of Fact. Neither this Agreement, nor any of the exhibits hereto, nor any document, certificate, or statement referred to herein or furnished to Buyer in connection with the transaction contemplated herein (whether delivered prior to, simultaneously with, or subsequent to the execution of this Agreement) contains any untrue statement of material fact or, omits to state a material fact in any way concerning the Property, or otherwise affecting or concerning the transaction contemplated hereby.

Each of the representations and warranties made by Seller in this Agreement, or in any exhibit, or on any document or instrument delivered pursuant hereto shall be continuing representations and warranties which shall be true and correct in all material respects on the date hereof, and shall be deemed to be made again as of the Close of Escrow and shall then be true and correct in all material respects. The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Seller contained in this Agreement, are conditions precedent to the Close of Escrow. Seller shall immediately notify Buyer of any fact or circumstance which becomes known to Seller which would make any of the foregoing representations or warranties untrue.

4.2. Buyer's Representations and Warranties. Buyer represents and warrants to Seller as follows, all of which shall survive the Close of Escrow:

4.2.1 Buyer's Authority. Buyer has the capacity and full power and authority to enter into and carry out the agreements contained in, and the transactions contemplated by, this Agreement, and that this Agreement has been duly authorized and executed by Buyer and, upon delivery to and execution by Seller, shall be a valid and binding Agreement of Buyer.

4.2.2 No Untrue Statements or Omissions of Fact. Neither this Agreement, nor any of the exhibits hereto, nor any document, certificate, or statement referred to herein or furnished to Seller in connection with the transaction contemplated herein (whether delivered prior to, simultaneously with, or subsequent to the execution of this Agreement) contains any untrue statement of material fact or, omits to state a material fact in any way concerning the Property, or otherwise affecting or concerning the transaction contemplated hereby.

Each of the representations and warranties made by Buyer in this Agreement, or in any exhibit or on any document or instrument delivered pursuant hereto, shall be continuing representations and warranties which shall be true and correct in all material respects on the date hereof, and shall be deemed to be made again as of the Close of Escrow, and shall then be true and correct in all material respects. The truth and accuracy of each of the representations

and warranties, and the performance of all covenants of Buyer contained in this Agreement, are conditions precedent to the Close of Escrow. Buyer shall notify Seller immediately of any facts or circumstances which are contrary to the foregoing representations and warranties contained in this Section 4.2.

4.3. Mutual Indemnity. Seller and Buyer shall defend, indemnify and hold free and harmless the other from and against any losses, damages, costs and expenses (including attorneys' fees) resulting from any inaccuracy in or breach of any representation or warranty of the indemnifying party or any breach or default by such indemnifying party under any of such indemnifying party's covenants or agreements contained in this Agreement.

5. CONDEMNATION. Seller and Buyer acknowledge that this transaction is a negotiated settlement in lieu of condemnation, and Seller hereby agrees and consents to the dismissal or abandonment of any eminent domain action in the Superior Court of the State of California in and for the County of Orange, wherein the herein described property is included and also waives any and all claims to any money on deposit in the action and further waives all attorneys' fees, costs, disbursements, and expenses incurred in connection therewith. Moreover, the total compensation to be paid by Buyer to Seller is for all of Seller's interest in the Property and any rights which exist or may arise out of the acquisition of the Property for public purposes, including without limitation, Seller's interest in the land and any improvements and fixtures and equipment located thereon, improvements pertaining to the realty (if any), severance damages, any alleged pre-condemnation damages, loss of business goodwill (if any), costs, interest, attorney's fees, and any claim whatsoever of Seller which might arise out of or relate in any respect to the acquisition of the Property by the Buyer.

6. BROKERS. Seller and Buyer each represents and warrants to the other that they have not dealt with or been represented by any brokers or finders in connection with the purchase and sale of the Property and that no commissions or finder's fees are payable in connection with this transaction. Buyer and Seller each agree to indemnify and hold harmless the other against any loss, liability, damage, cost, claim or expense (including reasonable attorneys' fees) incurred by reason of breach of the foregoing representation by the indemnifying party. Notwithstanding anything to the contrary contained herein, the representations, warranties, indemnities and agreements contained in this Section 6 shall survive the Close of Escrow or earlier termination of this Agreement.

7. GENERAL PROVISIONS.

7.1. Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument and any executed counterpart may be delivered by facsimile transmission with the same effect as if an originally executed counterpart had been delivered.

7.2. Further Assurances. Each of the parties agrees to execute and deliver such other instruments and perform such acts, in addition to the matters herein specified, as may be appropriate or necessary to effectuate the agreements of the parties, whether the same occurs before or after the Close of Escrow.

7.3. Entire Agreement. This Agreement, together with all exhibits hereto and documents referred to herein, if any, constitute the entire agreement among the parties hereto with respect to the subject matter hereof, and supersede all prior understandings or agreements. This Agreement may be modified only by a writing signed by both parties. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement whether or not actually attached.

7.4. Headings. Headings used in this Agreement are for convenience of reference only and are not intended to govern, limit, or aid in the construction of any term or provision hereof.

7.5. Choice of Law. This Agreement and each and every related document are to be governed by, and construed in accordance with, the laws of the State of California.

7.6. Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction or rendered by the adoption of a statute by the State of California or the United States invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby; provided that the invalidity or unenforceability of such provision does not materially adversely affect the benefits accruing to, or the obligations imposed upon, any party hereunder, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

7.7. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any other remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other remedies unless they are expressly excluded.

7.8. Legal Advice. Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning

and not for or against any party based upon any attribution of such party as the sole source of the language in question.

7.9. Relationship of Parties. The parties agree that their relationship is that of Seller and Buyer, and that nothing contained herein shall constitute either party, the agent or legal representative of the other for any purpose whatsoever, nor shall this Agreement be deemed to create any form of business organization between the parties hereto, nor is either party granted the right or authority to assume or create any obligation or responsibility on behalf of the other party, nor shall either party be in any way liable for any debt of the other.

7.10. Attorneys' Fees. In the event that any party hereto institutes an action or proceeding for a declaration of the rights of the parties under this Agreement, for injunctive relief, for an alleged breach or default of, or any other action arising out of, this Agreement, or the transactions contemplated hereby, or in the event any party is in default of its obligations pursuant thereto, whether or not suit is filed or prosecuted to final judgment, the non-defaulting party or prevailing party shall be entitled to its actual attorneys' fees and to any court costs incurred, in addition to any other damages or relief awarded.

7.11. Assignment. Neither Seller nor Buyer shall assign its rights or delegate its obligations hereunder without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties to this Agreement.

7.12. Notices. No notice, request, demand, instruction, or other document to be given hereunder to any Party shall be effective for any purpose unless personally delivered to the person at the appropriate address set forth below (in which event such notice shall be deemed effective only upon such delivery), delivered by air courier next-day delivery (e.g. Federal Express), delivered by mail, sent by registered or certified mail, return receipt requested, or sent via telecopier, as follows:

If to Buyer, to:

Attn: Carlos Marquez  
Real Property Agent  
City of Garden Grove  
11222 Acacia Parkway  
Garden Grove, CA 92840  
Facsimile No.: (714) 741-5136  
Telephone No.: (714) 741-5131

With a copy to:                   Attn: Thomas F. Nixon, Esq.  
City Attorney  
c/o Woodruff, Spradlin & Smart  
555 Anton Boulevard, Suite 1200  
Costa Mesa, CA 92626  
Facsimile No.: (714) 835-7787  
Telephone No.: (714) 558-7000

If to Seller, to:                   Attn: Jim Barisic  
Brandywine Homes  
16580 Ashton  
Irvine, CA 92606

If to Escrow Holder, to:       Melissa Jankans  
VP, Commercial Escrow Officer  
Fidelity National Title Company  
4350 La Jolla Village Drive, Suite 350  
San Diego, CA 92122  
Phone: (858) 597-2090 ext 201  
Fax: (858) 597-2097

Notices delivered by air courier shall be deemed to have been given the next business day after deposit with the courier and notices mailed shall be deemed to have been given on the second day following deposit of same in any United States Post Office mailbox in the state to which the notice is addressed or on the third day following deposit in any such post office box other than in the state to which the notice is addressed, postage prepaid, addressed as set forth above. Notices sent via telecopy shall be deemed delivered the same business day transmitted. The addresses, addressees, and telecopy numbers for the purpose of this Paragraph, may be changed by giving written notice of such change in the manner herein provided for giving notice. Unless and until such written notice of change is received, the last address, addressee, and telecopy number stated by written notice, or provided herein if no such written notice of change has been received, shall be deemed to continue in effect for all purposes hereunder. Delivery of a copy of a notice as set forth above is as an accommodation only and is not required to effectuate notice hereunder.

7.13. Survivability. All covenants of Buyer or Seller which are intended hereunder to be performed in whole or in part after Close of Escrow and all representations, warranties, and indemnities by either Party to the other, shall survive Close of Escrow and delivery of the Deed, and be binding upon and inure to the benefit of the respective Parties.

7.14. Waiver and Release. Seller agrees that performance of this Agreement by Buyer, including the payment of the Purchase Price, above, shall constitute full and fair compensation

and consideration for any and all claims that Seller, and its successors and assigns, may have against Buyer by reason of the acquisition, improvement, possession, use and/or occupancy of the Property, and Seller, on behalf of itself and its successors and assigns, hereby knowingly and voluntarily waives, and expressly releases and discharges Buyer, and any and all of Buyer's employees, agents, officers, servants, representatives, contractors, attorneys and assigns, from liability in regard to, any and all such claims, including claims for severance or taking compensation or damages to the remainder not taken on account of the acquisition of the Property or the location, establishment, construction and/or operation of the above-named Project. The foregoing waiver and release shall include the waiver and release of any and all rights or claims that Seller has, may have or may in the future have under Article 1, Section 19 of the California Constitution, the Eminent Domain Law, or any other law or regulation; except as provided herein. Seller, on behalf of itself and its successors and assigns, further knowingly and voluntarily waives and expressly releases and discharges Buyer, and any and all of Buyer's employees, agents, officers, servants, representatives, contractors, attorneys and assigns, from liability in regard to any claims for the following: relocation assistance or benefits, if any, to which Seller may be entitled pursuant to applicable sections in Chapter 16 of Division 7 of Title 1 of the California Government Code (Gov. Code Sec. 7260, et seq.) ("California Relocation Assistance Law"), regulations adopted by the State of California to implement or pursuant to the California Relocation Assistance Law, and/or the Federal Uniform Relocation Assistance Act (42 U.S.C. sec. 4601, et seq.), regulations adopted by the Federal Government to implement 42 U.S.C. sec. 4601, et seq., pre-condemnation damages, lost business goodwill, lost profits, damage to or loss of improvements pertaining to the realty, machinery, fixtures, inventory, equipment and/or personal property, interest, any right to repurchase, leaseback from Buyer, or receive any financial gain from, Buyer's sale of any portion of the Property, any right to challenge Buyer's adoption of a resolution of necessity, pursuant to Code of Civil Procedure sections 1245.245, any right to receive any notices pursuant to Code of Civil Procedure section 1245.245, any right to enforce any other obligation placed upon Buyer pursuant to Code of Civil Procedure sections 1245.245 and 1263.615, any other rights conferred upon Seller pursuant to Code of Civil Procedure sections 1245.245 and 1263.615 and 1263.025, and claims litigation expenses, attorney's fees and/or costs. Seller is aware of and understands all potential benefits to which he/she/it is otherwise entitled and has had the opportunity to discuss potential benefits with representatives of the Buyer and with legal counsel of his/her/its choice. This waiver and release shall survive the Close of Escrow. By such release, Seller expressly waives its rights, if any, under California Civil Code Section 1542 which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HIS SETTLEMENT WITH THE DEBTOR."

---

Seller's Initials

7.15 City Council Approval of Agreement. This Agreement is subject to the approval of the Buyer's City Council. If this Agreement remains unapproved by the Buyer's City Council then the parties will have no further obligation under this Agreement.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**BUYER**

**SELLER**

CITY OF GARDEN GROVE,  
a municipal corporation,

POMELO, LLC,  
a California limited liability company  
*Branchwine Homes, Manager*

\_\_\_\_\_  
Matthew J. Fertal  
City Manager

By: *WB*

*Jim Barlow*

Attest:

Its: *Chairman*

\_\_\_\_\_  
City Clerk

Approved as to form by:

WOODRUFF, SPRADLIN & SMART

*Thomas F. Nixon*  
Thomas F. Nixon, Esq.  
City Attorney

Exhibit List

- Exhibit A -- Legal Description of the Larger Parcel
- Exhibit B -- Legal Description of the Property
- Exhibit C -- Form of Grant Deed

- Exhibit D -- Form of Certificate of Acceptance
- Exhibit E -- Affidavit of Non-foreign Taxpayer Status
- Exhibit F -- Definition of Hazardous Substances

**ACCEPTANCE BY ESCROW HOLDER:**

\_\_\_\_\_ hereby acknowledges that it has received a fully executed counterpart of the foregoing Agreement for Acquisition of Real Property and Escrow Instructions and agrees to act as Escrow Holder thereunder and to be bound by and perform the terms thereof as such terms apply to Escrow Holder. By agreeing to act as Escrow Holder hereunder, Escrow Holder expressly agrees to undertake and be responsible for all withholding obligations imposed pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended and the regulations thereunder and California Revenue and Taxation Code §18662 and shall defend, indemnify and hold Buyer harmless in connection with such obligations.

Date: \_\_\_\_\_ [Insert Name of Title Company]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION OF THE LARGER PARCEL

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

The South 1 acre of the East 3 acres of the North 6 acres of the East ½ of the Northeast ¼ , Southeast ¼ , Section 3, Township 5 South, Range 10 West, in the Rancho Las Bolsas, in the City of Garden Grove, as shown on map recorded on Book 51, Page 12 of Miscellaneous Maps, in the Office of the County Recorder of said County. Said land is shown on map of survey recorded in Book 17, Page 25 of Record of Surveys, in the Office of the County Recorder of said County

END OF LEGAL DESCRIPTION

APN: 101-652-05

EXHIBIT B

LEGAL DESCRIPTION OF THE PROPERTY

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

The South 1 acre of the East 3 acres of the North 6 acres of the East ½ of the Northeast ¼ , Southeast ¼ , Section 3, Township 5 South, Range 10 West, in the Rancho Las Bolsas, in the City of Garden Grove, as shown on map recorded on Book 51, Page 12 of Miscellaneous Maps, in the Office of the County Recorder of said County. Said land is shown on map of survey recorded in Book 17, Page 25 of Record of Surveys, in the Office of the County Recorder of said County

Except the Except the West 20.00 feet of the East 50.00 feet of the South half that portion of the Northeast Quarter of the Southeast Quarter of Section 3, Township 5 South, Range 10 West, San Bernardino Base and Meridian, in the City of Garden Grove of said County and State.

END OF LEGAL DESCRIPTION

PORTION OF APN: 101-652-05

**EXHIBIT C**

**FORM OF GRANT DEED**

**RECORDING REQUESTED BY**

**WHEN RECORDED RETURN TO:**

City Clerk  
CITY OF GARDEN GROVE  
11222 Acacia Parkway  
Garden Grove, CA 92840

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
Exempt from recording changes under Government Code § 6103

**GRANT DEED**

**PORTION OF APN: 101-652-05**

This transfer is exempt from Documentary Transfer Tax pursuant to Revenue & Taxation Code § 11922.

**THE UNDERSIGNED SELLER(S) DECLARE(S):**

**FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,**

**POMELO, LLC, a California limited liability company,**

**hereby GRANT(S) to:**

**CITY OF GARDEN GROVE, a municipal corporation,**

**the real property in Orange County, California, more particularly set forth on Exhibit A attached hereto and incorporated herein by this reference.**

**TOGETHER with:**

1. All tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof; and

2. All rights, title, and interests of Seller in and under all covenants, conditions, restrictions, reservations, easements, and other matters of record, including, without limitation, all rights as "Declarant" under any Declarations of Covenants, Conditions and Restrictions ("Declarations") of record.

**SAID GRANT BEING FURTHER SUBJECT TO:**

1. General and special real property taxes for the current fiscal year and all later years.

2. All assessments imposed by a duly empowered governmental entity, whether or not of record.

3. Any and all declarations, covenants, conditions, restrictions, easements, reservations (including, but not limited to, reservations and exceptions to the mineral estate), rights, and rights of way of record.

POMELO, LLC, a California limited liability company,

Date: \_\_\_\_\_

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

Date: \_\_\_\_\_

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

Date: \_\_\_\_\_

ACKNOWLEDGEMENT

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, 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

My Commission Expires: \_\_\_\_\_ *This area for official notarial seal*

Exhibit "A" to the Grant Deed

LEGAL DESCRIPTION OF THE PROPERTY

REAL PROPERTY IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

The South 1 acre of the East 3 acres of the North 6 acres of the East ½ of the Northeast ¼ , Southeast ¼ , Section 3, Township 5 South, Range 10 West, in the Rancho Las Bolsas, in the City of Garden Grove, as shown on map recorded on Book 51, Page 12 of Miscellaneous Maps, in the Office of the County Recorder of said County. Said land is shown on map of survey recorded in Book 17, Page 25 of Record of Surveys, in the Office of the County Recorder of said County

Except the Except the West 20.00 feet of the East 50.00 feet of the South half that portion of the Northeast Quarter of the Southeast Quarter of Section 3, Township 5 South, Range 10 West, San Bernardino Base and Meridian, in the City of Garden Grove of said County and State.

END OF LEGAL DESCRIPTION

PORTION OF APN: 101-652-05



EXHIBIT D

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by Grant Deed from \_\_\_\_\_, Grantor, dated \_\_\_\_\_, 20\_\_, to the City of Garden Grove, a municipal corporation, Grantee, is hereby accepted by the City Clerk of said City, by the order of the City Council of the City of Garden Grove on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and the Grantee consents to recordation thereof by the City Clerk, its duly authorized officer.

CITY OF GARDEN GROVE

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

Name:

Title: City Clerk

DATED: \_\_\_\_\_, 20\_\_

EXHIBIT E

DO NOT RECORD.  
DO NOT SEND  
TO IRS.

TRANSFeree (BUYER)  
MUST RETAIN FOR  
SIX YEARS AFTER  
THE TRANSACTION.

CERTIFICATION OF NON-FOREIGN  
STATUS BY TRANSFEROR

1. Section 1445 of the Internal Revenue Code provides that a transferee (Buyer) of a U. S. real property interest must withhold tax if the transferor (Seller) is a foreign person.

2. In order to inform each transferee that withholding of tax is not required upon disposition of a U. S. real property interest by \_\_\_\_\_  
\_\_\_\_\_ (hereinafter referred to as "the Transferor"), the undersigned hereby certifies, and declares by means of this certification, the following on behalf of the Transferor:

A. The one item marked below is true and correct:

\_\_\_\_\_ (I) The Transferor is not a foreign individual, foreign corporation, foreign partnership, foreign trust, or foreign estate (as these terms are defined in the Internal Revenue Code and Income Tax Regulations).

\_\_\_\_\_ (II) The Transferor is a corporation incorporated under the laws of a foreign jurisdiction but has elected to be treated as a U. S. corporation under Section 897(i) of the Internal Revenue Code, AND HAS ATTACHED TO THIS CERTIFICATE A TRUE AND GENUINE COPY OF THE ACKNOWLEDGMENT OF SUCH ELECTION ISSUED BY THE IRS.

B. The Transferor's social security number is \_\_\_\_\_.

C. The Transferor's address is \_\_\_\_\_  
\_\_\_\_\_.

3. The Transferor understands that this certificate may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained in this certification may be punished by fine or imprisonment (or both).

4. The Transferor understands that each transferee is relying on this certificate in determining whether withholding is required and each transferee may face liabilities if any statement in this certificate is false.

5. The Transferor hereby indemnifies each transferee, and agrees to defend and hold each transferee harmless, from any liability, cost, damage, or expense which such transferee may incur as a result of:

A. the Transferor's failure to pay any U. S. Federal income tax which the Transferor is required to pay under applicable U. S. law, or

B. any false or misleading statement contained herein.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete; I further declare that I have authority to sign this document on behalf of the Transferor.

EXECUTED in \_\_\_\_\_ County, State of \_\_\_\_\_

on \_\_\_\_\_.

Transferor: \_\_\_\_\_

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

Title: \_\_\_\_\_

## EXHIBIT F

### HAZARDOUS SUBSTANCE DEFINITION

The term "Hazardous Substance" as used in this Agreement shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to those substances, materials or wastes regulated now or in the future under any of the statutes or regulations listed below and any and all of those substances included within the definitions of "hazardous substances", "hazardous materials", "hazardous waste", "hazardous chemical substance or mixture", "imminently hazardous chemical substance or mixture", "toxic substances", "hazardous air pollutant", "toxic pollutant" or "solid waste" in the statutes or regulations listed below. Hazardous Substances shall also mean any and all other similar terms defined in other federal state and local laws, statutes, regulations, orders or rules and materials and wastes which are, or in the future become, regulated under applicable local, state or federal law for the protection of health or the environment or which are classified as hazardous or toxic substances, materials or waste, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, and (vii) radioactive materials and waste.

In addition, a Hazardous Substance shall include:

(1) a "Hazardous Substance", "Hazardous Material", "Hazardous Waste", or "Toxic Substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801, et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.;

(2) "Oil" or a "Hazardous Substance" listed or identified pursuant to § 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321, as well as any other hydrocarbonic substance or by-product;

(3) listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity;

(4) a material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose;

(5) any material the presence of which would require remediation, whether or not the presence of such material resulted from a leaking underground fuel tank;

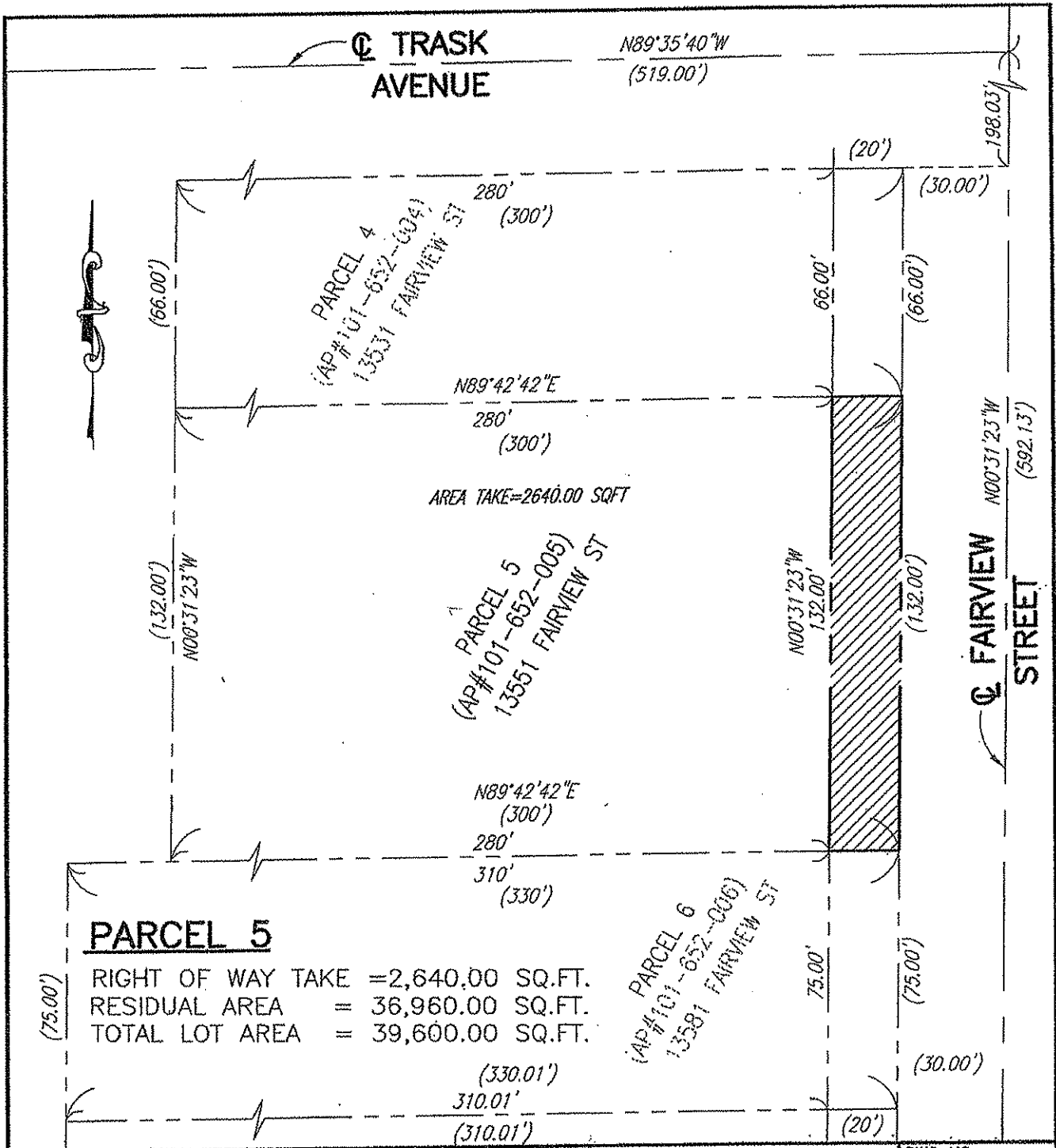
(6) pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.;

(7) asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.;

(8) any radioactive material including, without limitation, any "source material", "special nuclear material", "by-product material", "low-level wastes", "high-level radioactive waste", "spent nuclear fuel" or "transuranic waste", and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq., or the Nuclear Waste Policy Act, 42 U.S.C. §§ 10101 et seq.

(9) industrial process and pollution control wastes, whether or not "hazardous" within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.;

All other laws, ordinances, codes, statutes, regulations, administrative rules, policies and orders, promulgated pursuant to said foregoing statutes and regulations or any amendments or replacement thereof, provided such amendments or replacements shall in no way limit the original scope and/or definition of Hazardous Substance defined herein.



**PARCEL 5**

RIGHT OF WAY TAKE = 2,640.00 SQ.FT.  
 RESIDUAL AREA = 36,960.00 SQ.FT.  
 TOTAL LOT AREA = 39,600.00 SQ.FT.

AREA TAKE=2640.00 SQFT



**City Of Garden Grove**  
**Department Of Public Works**

**ACQUISITION MAP**

R/W NO:	PROJECT NO. :	CHECKED BY:
SCALE: 1"=40'	APPROVED BY:	MU
		CITY ENGINEER

THIS IS NOT A SURVEY BUT IS COMPILED FROM EXISTING RECORDS

DWG NO. :
PREPARED BY :
MCB
DRAWN BY :
MCB