

FINANCIAL IMPACT

- Proceeds from the sale of the subject property will be deposited into the City's General Fund.

RECOMMENDATION

Based on the foregoing, staff recommends that the Agency:

- Conduct a Public Hearing;
- Approve the disposition of the subject property adjoining Avalon Lane, southwest of Trask Avenue and Fairview Street, identified by Assessor's Parcel No. 101-652-09;
- Authorize the Agency Director to execute the Purchase and Sale Agreement, and make minor modifications as needed on behalf of the Agency; and expedite any other necessary documents for the transaction; and
- Authorize the Agency Director to execute the Grant Deed on behalf of the Agency.

GREG BROWN
Real Property Manager

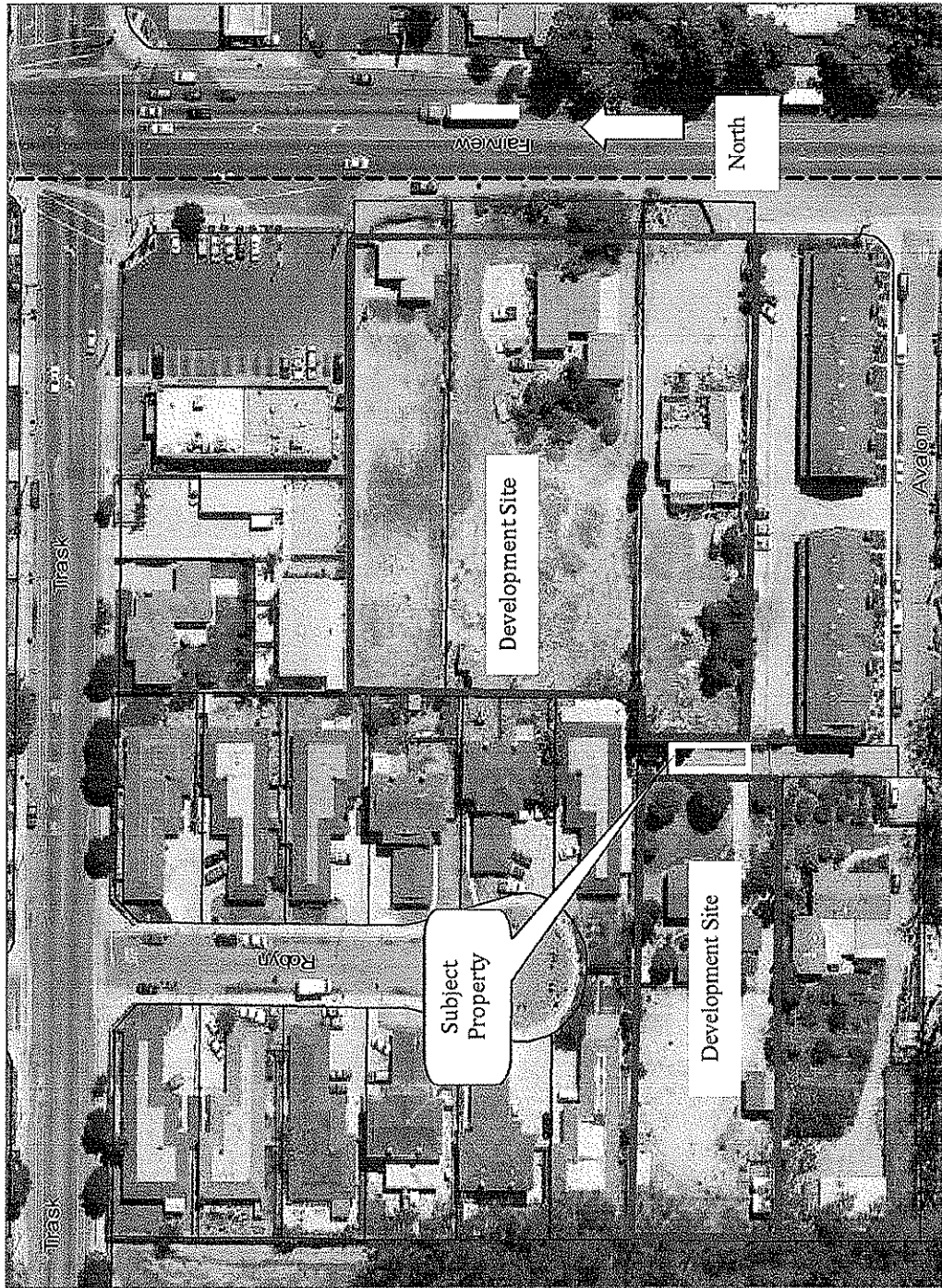
By: Carlos Marquez
Real Property Agent

Approved for Agenda Listing

Matthew Fertal
Matthew Fertal
Director

Attachment 1: Site Map
Attachment 2: Offer and Agreement to Purchase Real Property
Attachment 3: Quitclaim Deed

Site Map of Subject Property



**OFFER AND AGREEMENT TO
PURCHASE REAL PROPERTY**

This Offer and Agreement to Purchase Real Property ("**Agreement**") is made as of November 23, 2010, by and between the GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT, a public body, corporate and politic (hereinafter referred to as "**SELLER**"), and POMELO, LLC, a California limited liability company (hereinafter referred to as "**BUYER**"). SELLER and BUYER shall sometimes hereinafter individually be referred to as "Party" or jointly as "Parties."

RECITALS

- A. SELLER has the right to purchase an approximately 1109 SF rectangular parcel of real property (hereinafter referred to as the "**Property**") described in **Exhibit A** and shown on **Exhibit B**, of that certain "Quitclaim Deed" attached hereto as Attachment I and by this reference made a part hereof.
- B. BUYER has offered to purchase the Property from SELLER for **SIXTEEN THOUSAND SIX HUNDRED AND THIRTY-FIVE DOLLARS (\$16,635)**.
- C. The Property is currently owned by the County of Orange, California ("County"). The County agreed to sell the Property by quitclaim deed to the City of Garden Grove ("City") and the City, pursuant to that certain Cooperation Agreement dated concurrently herewith between the City and the SELLER, has agreed to convey the Property to SELLER by quitclaim deed.
- D. As used herein, "Director" means the Director of the Garden Grove Agency for Community Development.

NOW, THEREFORE, SELLER agrees to sell and BUYER agrees to purchase the Property upon the following terms and conditions:

1. Incorporation of Recitals

The above Recital paragraphs A through C are hereby incorporated herein by this reference.

2. Purchase Price

The purchase price of the Property shall be **SIXTEEN THOUSAND SIX HUNDRED AND THIRTY-FIVE DOLLARS (\$16,635)**, which sum is hereinafter referred to as the "**Purchase Price**". The Purchase Price constitutes the fair market value of the Property.

3. Delivery of Agreement, Purchase Price and Deed

- A. Within ten (10) days after (i) approval of this Agreement by SELLER's governing body and (ii) approval and full execution of that certain Offer and Agreement to Purchase Real Property by and between SELLER and the County relating to the Property, Director shall deliver a fully executed Agreement to BUYER.
- B. Within ten (10) days of receipt of the fully executed Agreement, BUYER shall deliver to Director a check, made payable to the Garden Grove Agency for Community Development, in the amount of the Purchase Price.
- C. Upon receipt of the Purchase Price, and concurrently with the conveyance of the Property by the County to City and by the City to SELLER, Director shall deliver to BUYER an executed Quitclaim

Deed substantially in the form and content attached hereto as **Attachment "I"**.

- D. BUYER shall promptly provide Director with a conformed copy of the Quitclaim Deed after it has been recorded.

4. **BUYER'S Costs**

Except as may otherwise be provided in this Agreement, BUYER shall pay any and all costs in connection with the sale and purchase of the Property. Such costs may include, but shall not be limited to: Purchase Price, escrow fees, title insurance, documentary transfer tax, recording fees, and preliminary change of ownership fees.

5. **Condition of Property**

BUYER acknowledges that SELLER has made no representations, warranties, or agreements as to any matters concerning the Property, including, but not limited to, the marketability of title, the land, topography, climate, air, water, water rights, utilities, present or future zoning, soil, sub-soil, hazardous substances, waste, or materials, the purposes for which the Property is suited, drainage, access to public roads, proposed routes or extensions of roads, or the availability of governmental permits or approvals of any kind. BUYER represents and warrants to SELLER that BUYER has made its own independent inspection and investigation of the Property and BUYER agrees to purchase the Property in its "as-is" condition.

SELLER shall provide no title insurance in this transaction, and BUYER agrees that any policy of title insurance it may elect to purchase shall be purchased at BUYER'S sole cost and expense.

BUYER acknowledges that the conveyance of the Property from SELLER to BUYER may constitute a merger within the meaning of Government Code Section 66424.2 and that there may be a requirement to prepare and file for record a parcel map pursuant to Government Code Section 66428; accordingly, BUYER agrees to:

- A. be solely responsible for the preparation, filing, and cost of any such required parcel map, if such map is required; and
- B. hold SELLER, the City, and the County harmless with regard to the preparation and cost of such parcel map preparation and filing in the event such parcel map is required of BUYER or required of any successor in interest to BUYER.

6. **Permits and Licenses**

BUYER shall be required to obtain any and all permits and/or licenses which may be required in connection with the purchase and/or subsequent development of the Property. No approvals or consents given by SELLER as a Party to this Agreement, shall be deemed approval as to compliance or conformance with applicable governmental codes, laws, or regulations.

7. **Hold Harmless, Waiver & Release**

BUYER hereby releases and waives all claims and recourse against SELLER or the City, including the right of contribution for loss or damage of or property or injury to or death of any person, arising from, growing out of or in any way connected with or related to this Agreement and BUYER's use of the Property except claims arising from the concurrent active or sole negligence of SELLER, its officers, agents, employees and

contractors. BUYER hereby agrees to indemnify, defend (with counsel approved by SELLER), and hold harmless, SELLER and the City and their elected and appointed officials, officers, agents, employees and contractors against any and all claims, losses, demands, damages, cost, expenses or liability for injury to any persons or property, arising out of this Agreement or the operation or maintenance of the Property and/or BUYER's exercise of the rights under this Agreement, except for liability arising out of the concurrent active or sole negligence of SELLER, its elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom. If SELLER and/or City is named as co-defendant in a lawsuit, BUYER shall notify SELLER of such fact and shall represent SELLER and/or City, as applicable, in such legal action unless SELLER and City undertake to represent themselves as co-defendant(s) in such legal action, in which event, BUYER shall pay to SELLER and City their litigation costs and expenses, including without limitation attorneys' fees and expert witness fees. If judgment is entered against SELLER and BUYER by a court of competent jurisdiction because of the concurrent active negligence of SELLER and BUYER, SELLER and BUYER agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

BUYER acknowledges that it is familiar with the language and provisions of California Civil Code Section 1542 which provides as follows:

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 her settlement with the debtor.

BUYER, being aware of and understanding the terms of Section 1542, hereby waives all benefit of its provisions to the extent described in this paragraph.

8. Buyer Covenants

The ownership, use and operation of the Property shall be subject to all covenants, agreements, and requirements described in Sections 15, *et seq.*, and 33, *et seq.* of that certain Purchase and Sale Agreement by and between BUYER and SELLER, dated as of April 13, 2010.

In addition, BUYER covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the BUYER or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

9. Governing Law/Partial Invalidity

This Agreement shall be governed by and construed according to the laws of the State of California. The invalidity of any provision in this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

10. Entire Agreement

This Agreement contains the entire agreement between the Parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth or referred to herein.

11. Amendments

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties, and no oral understanding or agreement not incorporated herein with respect to the matters herein, shall be binding on either of the Parties.

12. Assignment

This Agreement shall not be sold, assigned, or otherwise transferred by BUYER without the prior written consent of SELLER. Failure to obtain SELLER'S required written consent shall render such sale, assignment or transfer void.

13. Survival of Terms, Covenants and Conditions

All terms, covenants and conditions set forth in this Agreement shall survive the transfer of fee title to BUYER, and shall apply to and bind the heirs, successors, executors, administrators, and assigns of the Parties hereto.

14. Notices

All notices, documents, correspondence, and communications concerning this sale and purchase transaction shall be directed as set forth below. Any notice properly addressed shall be deemed received when (i) delivered personally from one to the other, (ii) twenty-four (24) hours after being mailed by U.S. mailing, postage prepaid, (iii) on the date of the first attempted delivery by any nationally recognized overnight delivery/courier service which delivers to the noticed destination and provides proof of delivery to the sender, or (iv) if by facsimile, on the day transmitted, with transmission and receipt confirmed, provided transmitted by 4:30 P.M. (PT) on the receiving Party's regular business day, otherwise delivery shall be deemed to have been given on the next business day. Either Party may change its address by providing three (3) days prior written notice to the other.

To BUYER:

Pomelo, LLC
c/o Brandywine Homes
16580 Aston
Irvine, CA 92606
Attention: Jim Barisic

To SELLER:

Garden Grove Agency for Community Development
11222 Acacia Parkway
P.O. Box 3070
Garden Grove, CA 92842
Attention: Director
Facsimile: (714) 741-5136

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.
BUYER hereby submits this offer with full cognizance of the terms and conditions contained herein.

BUYER:

POMELO, LLC,
a California limited liability company

Brandywine Jones, manager

By: *Jim Borsic*

Its: *chairman & Secretary*

SELLER:

**GARDEN GROVE AGENCY FOR COMMUNITY
DEVELOPMENT,**
a public body, corporate and politic

By: _____

ATTEST:

Agency Secretary

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth,
Agency Counsel

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BUYER hereby submits this offer with full cognizance of the terms and conditions contained herein.

BUYER:

POMELO, LLC,
a California limited liability company

By: _____

Its: _____

SELLER:

**GARDEN GROVE AGENCY FOR COMMUNITY
DEVELOPMENT,**
a public body, corporate and politic

By: _____

ATTEST:

Agency Secretary

APPROVED AS TO FORM:



Stradling Yocca Carlson & Rauth,
Agency Counsel

The GRANTEE herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the GRANTEE or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

AGENCY:

GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT,

a public body, corporate and politic

By: _____

ATTEST:

Agency Secretary

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth,
Agency Special Counsel

ACKNOWLEDGEMENT

State of California
County of Orange

On _____, 20____, before me, _____, 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 of Notary Public

EXHIBIT A

LEGAL DESCRIPTION

AVALON LANE
Facility No.: Z99577
Parcel No.: 101

The south 3 acres of the north 9 acres of the east half of the northeast quarter of the southeast quarter of Section 3, Township 5 South, Range 10 West, in Rancho Las Bolsas, City of Garden Grove, County of Orange, State of California, as shown on a map, filed in book 51, page 12 of Miscellaneous Maps, in the office of the County Recorder of said county.

Excepting therefrom the North 20.00 feet.

Also excepting the East 360.00 feet.

Also excepting the West 280.87 feet.

Also excepting that portion lying southerly of the south line of the North 471.00 feet of the northeast quarter of the southeast quarter, of said Section 3.

Containing 1109 Square Feet, more or less.

See EXHIBIT B attached and by reference made a part.

APPROVED

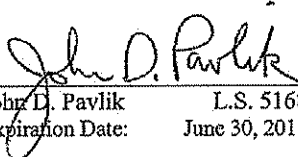
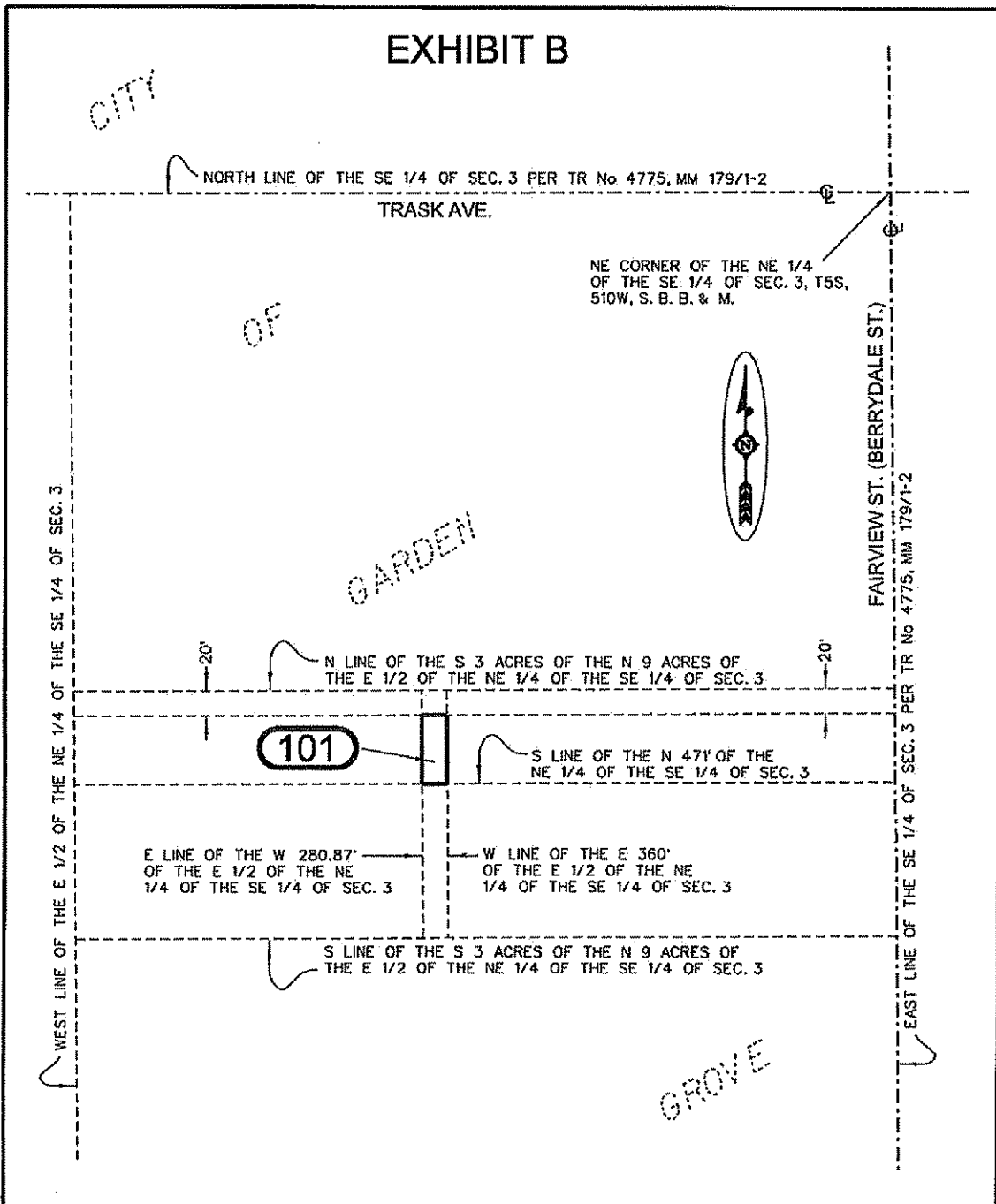
 Date: 10/18/10
John D. Pavlik L.S. 5168
Expiration Date: June 30, 2011



EXHIBIT B



ORANGE COUNTY OC PUBLIC WORKS - RIGHT OF WAY ENGINEERING RIGHT OF WAY MAP - COMPILED FROM PUBLIC RECORDS					
PROJECT: AVALON LANE PARCEL SALE / Z99577-101				SCALE: 1" = 100'	ID # 10 - 052
PREP. BY: ARA	CHKD. BY:	DATE: 100510	EST.:	REC. DATE:	O.R.

RECORDED AT THE REQUEST OF:

Garden Grove Agency for Community
Development
11222 Acacia Parkway
P.O. Box 3070
Garden Grove, CA 92842
Attention: Director

WHEN RECORDED MAIL TO:

Pomelo, LLC
c/o Brandywine Homes
16580 Aston
Irvine, CA 92606
Attention: Jim Barisic

Mail Tax Statements as shown above

THIS SPACE FOR RECORDER'S USE ONLY

DOCUMENTARY TRANSFER TAX \$ _____

This document is exempt from recording fees per Government Code
Sections 6103 and 27383.

By: _____
SIGNATURE OF DECLARANT OR AGENT DETERMINING TAX FIRM NAME

QUITCLAIM DEED

FOR A VALUABLE CONSIDERATION, receipt and adequacy of which is hereby acknowledged,

GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT,
a public body, corporate and politic,
hereinafter referred to as "**AGENCY**"

does hereby **REMISE, RELEASE AND FOREVER QUITCLAIM** to

POMELO, LLC,
a California limited liability company,
hereinafter referred to as "**GRANTEE**",

in an "as is" condition, all **RIGHTS, TITLE and INTEREST** in and to that certain real property legally described in **Exhibit A** and illustrated in **Exhibit B**, which exhibits are attached hereto and made a part hereof, attached hereto and made a part hereof.

Nothing contained herein, or in any document related hereto, shall be construed to imply the conveyance to **GRANTEE** of rights in the property which exceed those owned by **AGENCY**, or any representation or warranty, either express or implied, relating to the nature or condition of the property or **AGENCY'S** interest therein.

The **GRANTEE** herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and

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AGENCY:

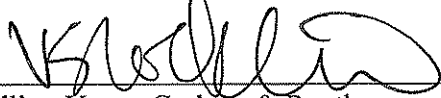
GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT,
a public body, corporate and politic

By: _____

ATTEST:

Agency Secretary

APPROVED AS TO FORM:



Stradling Yocca Carlson & Rauth,
Agency Special Counsel

ACKNOWLEDGEMENT

State of California

County of Orange

On _____, 20 __, before me, _____, 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.

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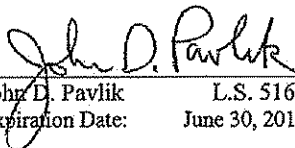
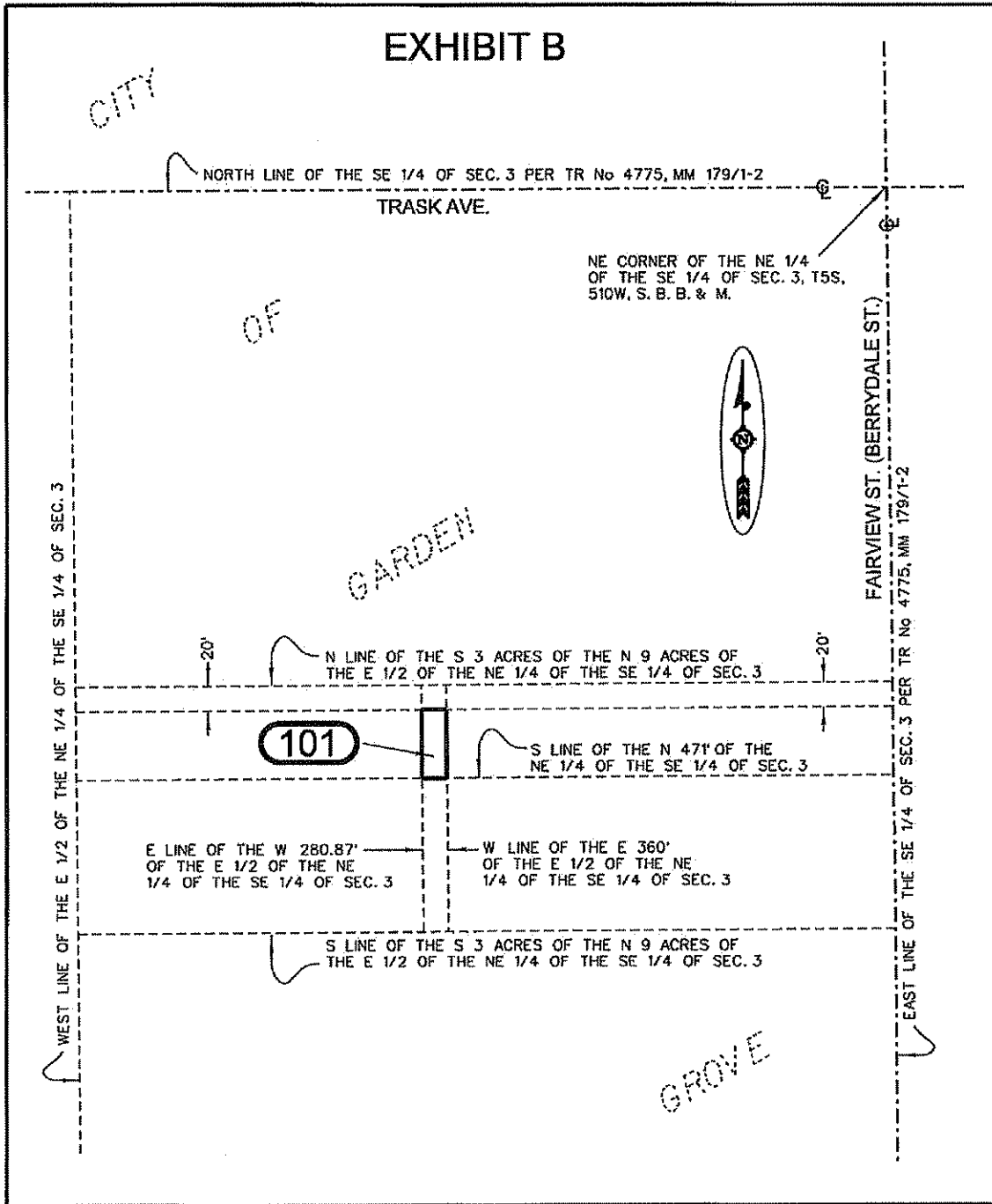
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