

ORDINANCE NO. 28083

An ordinance providing for the abandonment of portions of St. Rita Drive, St. Gabriel Drive, St. Sebastian Drive, St. Matthew Drive, St. Agnes Drive, St. Gerard Drive, 21 5' utility easements, six 10' utility/transformer pad easements, two 7.5' drainage easements, one 5' wall maintenance easement, one variable width wall maintenance easement, two 6'x10' drainage easements, three 10' drainage easements, one 5' drainage easement, one 8'x10' drainage easement, and two 56' wastewater easements located in and adjacent to City Blocks 12/6116, 13/6116, 14/6116, 15/6116, and 16/6116 in the City of Dallas and County of Dallas, Texas; providing for the quitclaim thereof to Dallas Independent School District; providing for the terms and conditions of the abandonment and quitclaim made herein; providing for barricading; providing for the granting of new easements; providing for the conveyance of needed land to the City of Dallas; providing for the indemnification of the City of Dallas against damages arising out of the abandonment herein; providing for the consideration to be paid to the City of Dallas; providing for the payment of the publication fee; providing a future effective date for this abandonment; and providing an effective date for this ordinance.

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WHEREAS, the City Council of the City of Dallas, acting pursuant to law and upon the request and petition of Dallas Independent School District, a governmental instrumentality, hereinafter referred to as **GRANTEE**, deems it advisable to abandon and quitclaim the hereinafter described tracts of land to **GRANTEE**, and is of the opinion that, subject to the terms and conditions herein provided, said portions of St. Rita Drive, St. Gabriel Drive, St. Sebastian Drive, St. Matthew Drive, St. Agnes Drive, St. Gerard Drive, 21 5' utility easements, six 10' utility/transformer pad easements, two 7.5' drainage easements, one 5' wall maintenance easement, one variable width wall maintenance easement, two 6'x10' drainage easements, three 10' drainage easements, one 5' drainage easement, one 8'x10' drainage easement, and two 56' wastewater easements are not needed for public use, and same should be abandoned and quitclaimed to **GRANTEE**, as hereinafter stated; and

WHEREAS, the City Council of the City of Dallas is of the opinion that the best interest

and welfare of the public will be served by abandoning and quitclaiming the same to **GRANTEE** for the consideration and subject to the terms and conditions hereinafter more fully set forth; **Now, Therefore,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the City of Dallas, subject to the conditions, reservations, future effective date, and exceptions hereinafter more fully set out, hereby relinquishes all of its right, title and interest in and to the following described tracts of land to the extent and only to the extent that the portions thereof are located within the approximately 31.685 acre tract of land owned by Dallas Independent School District, a governmental instrumentality, as shown on Instrument No. 20080022645 Official Real Property Records, Dallas County, Texas, and the same are hereby abandoned, vacated and closed insofar as the right, title and interest of the public are concerned:

City Block 12/6116

1. A 5' wide utility easement along the east lot line of Lot 30 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
2. A 5' wide utility easement along the west lot line of Lot 31 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
3. A 5' wide utility easement along the east lot line of Lot 33 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
4. A 5' wide utility easement along the west lot line of Lot 34 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
5. A 10' wide utility easement with transformer pad easements abutting St. Gabriel, St. Sebastian and St. Rita Drives crossing Lots 1 through 58, including Common Area "A", as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
6. A 7.5' wide drainage easement along the southeast lot line of Lot 13 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.) (also shown as a portion of a 15' wide drainage easement);

7. A 7.5' wide drainage easement along the northwest lot line of Lot 14 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.) (also shown as a portion of a 15' wide drainage easement);
8. A 5' wide wall maintenance easement along the south lot line of Lots 28 through 31 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
9. A variable width wall maintenance easement along the south lot line of Lots 32 through 35 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);

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10. A 5' wide utility easement along the south and east lot lines of Lot 3 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
11. A 5' wide utility easement along the north lot line of Lot 4 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
12. A 5' wide utility easement along the north and west lot line of Lot 43 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
13. A 5' wide utility easement along the south lot line of Lot 44 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
14. A 5' wide utility easement along the south, southeast and northeast lot lines of Lot 10 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
15. A 5' wide utility easement along the southeast lot line of Lot 39 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
16. A 5' wide utility easement along the north and east lot lines of Lot 11 abutting Lots 10 and 12 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);

17. A 5' wide utility easement along the west and northwest lot lines of Lot 12 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
18. A 5' wide utility easement along the northwest and southwest lot lines of Lot 38 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
19. A 5' wide utility easement along the east lot line of Lot 24 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
20. A 5' wide utility easement along the east lot line of Lot 27 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
21. A 5' wide utility easement along the west lot line of Lot 25 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
22. A 5' wide utility easement along the west lot line of Lot 26 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
23. A 10' wide utility easement with transformer pad easements abutting St. Gabriel, St. Gerard, St. Rita, St. Matthew, and St. David Drives crossing Lots 1 through 46 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
24. A 6'X10' wide drainage easement at the south corner of Lot 37 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
25. A 10' wide drainage easement along the south and southwest lot lines of Lots 26 through 36 abutting Lots 14 through 25 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);

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26. A 5' wide utility easement along the south lot line of Lot 2 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);

27. A 5' wide utility easement along the south and west lot lines of Lot 27 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
28. A 5' wide utility easement along the north and east lot lines of Lot 3 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
29. A 5' wide utility easement along the north lot line of Lot 26 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
30. A 10' wide utility easement with transformer pad easements abutting St. Matthew, St. Rita, St. Agnes and St. David Drives crossing Lots 1 through 28 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
31. A 6' X 10' wide drainage easement located at the south corner of Lot 24 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
32. A 10' wide drainage easement located along the southwest lot line of Lots 19 through 23 and a portion of the southwest corner of Lot 17 abutting Lots 8 through 14 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
33. A 5' wide drainage easement along the south lot line of Lot 17 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);

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34. A 10' wide utility easement abutting St. David, St. Agnes and St. Rita Drives crossing Lots 1 through 11 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);

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35. A 10' wide utility easement with transformer pad easement along the north lot lines of Lots 5 through 9, including the northwest corner of Lot 9 and the northeast corner of Lot 5 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);

36. A 10' wide utility easement with transformer pad easement along the south lot line of Lots 1 through 4 and the southwest corner of Lot 1 and the southeast corner of Lot 4 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
37. A 10' wide drainage easement along the south lot line of Lots 5 through 8 abutting Lots 1 through 4 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
38. An 8' X 10' wide drainage easement at the southeast corner of Lot 9 as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);

Other areas

39. A 56' wide wastewater easement within the right-of-way of St. Gabriel Drive abutting St. David and St. Gerard Drives as recorded in Volume 2004038, Page 6915 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
40. A 56' wide wastewater easement within the right-of-way of St. Rita Drive abutting St. Gerard and St. Sebastian Drives as recorded in Volume 2004038, Page 6915 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
41. A 56' wide right-of-way known as St. Matthew Drive between St. David Drive and St. Rita Drive as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
42. A 56' wide right-of-way known as St. Agnes Drive between St. David Drive and St. Rita Drive as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
43. A 56' wide right-of-way known as St. Gerard Drive between St. Gabriel Drive and St. Rita Drive as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
44. A 56' wide right-of-way known as St. Sebastian Drive between St. Gabriel Drive and St. Rita Drive as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);

45. A 56' wide right-of-way known as St. Rita Drive between St. Sebastian Drive and St. David Drive abutting St. Gerard, St. Matthew and St. Agnes Drives as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);
46. A 56' wide right-of-way known as St. Gabriel Drive between St. David Drive and St. Sebastian Drive abutting St. Gerard Drive as dedicated by that one certain plat recorded as Instrument No. 20080022645 of the Deed Records of Dallas County, Texas (D.R.D.C.T.);

All of the above described tracts of land are depicted on Exhibit A attached hereto and made a part hereof for all purposes.

SECTION 2. That for and in monetary consideration of the sum of **THREE HUNDRED THIRTEEN THOUSAND SEVEN HUNDRED NINETEEN AND NO/100 DOLLARS (\$313,719.00)** paid by **GRANTEE**, and the further consideration described in Sections 8, 9 and 10, the City of Dallas does by these presents **FOREVER QUITCLAIM** unto the said **GRANTEE**, subject to the conditions, reservations, future effective date and exceptions hereinafter made and with the restrictions and upon the covenants below stated, all of its right, title and interest in and to the certain tracts of land hereinabove described in Section 1 and Exhibit A. **TO HAVE AND TO HOLD** all of such right, title and interest in and to the property and premises, subject aforesaid, together with all and singular the rights, privileges, hereditaments and appurtenances thereto in any manner belonging unto the said **GRANTEE** forever.

SECTION 3. That upon payment of the monetary consideration set forth in Section 2, **GRANTEE** accepts the terms, provisions, future effective date and conditions of this ordinance.

SECTION 4. That the City Controller is authorized to deposit the sum paid by **GRANTEE** pursuant to Section 2 above in the General Fund 0001, Department DEV, Balance Sheet 0519 and Department of Sustainable Development and Construction-Real Estate Division shall be reimbursed for the cost of obtaining the legal description, appraisal and other administrative costs incurred. The reimbursement proceeds shall be deposited in General Fund 0001, Department DEV, Unit 1183, Object 5011 and any remaining proceeds shall be transferred to the General Capital Reserve Fund 0625, Department BMS, Unit 8888, Revenue Source 8416.

SECTION 5. That the abandonment and quitclaim provided for herein are made subject to all present zoning and deed restrictions, if the latter exist, and are subject to all existing easement rights of others, if any, whether apparent or non-apparent, aerial, surface, underground or otherwise and are further subject to the conditions contained in Exhibit B as to St. Rita Drive, St. Gabriel Drive, St. Sebastian Drive, St. Matthew Drive, St. Agnes Drive, and St. Gerard Drive, all of these tracts being depicted on Exhibit A and more specifically described in items 41 through 46 of Section 1.

SECTION 6. That the terms and conditions contained in this ordinance shall be binding upon **GRANTEE**, its successors and assigns.

SECTION 7. That the abandonment and quitclaim provided for herein shall extend only to the public right, title, easement and interest, and shall be construed to extend only to that interest the Governing Body of the City of Dallas may legally and lawfully abandon, relinquish and quitclaim.

SECTION 8. That as a condition of this abandonment and as a part of the consideration for the quitclaim to **GRANTEE** herein, **GRANTEE**, its successors and assigns, agree to indemnify, defend, release and hold whole and harmless the City of Dallas of, from and against any and all claims for damages, fines, penalties, costs or expenses to persons or property that may arise out of, or be occasioned by or from: (i) the use and occupancy of the property described in Section 1 and depicted on Exhibit A by **GRANTEE**, its successors and assigns; (ii) the presence, generation, spillage, discharge, release, treatment or disposition of any Hazardous Substance on or affecting the areas set out in Section 1 and depicted on Exhibit A; (iii) all corrective actions concerning any discovered Hazardous Substances on or affecting the areas described in Section 1 and depicted on Exhibit A, which **GRANTEE**, its successors and assigns, agree to undertake and complete in accordance with applicable federal, state and local laws and regulations; and (iv) the abandonment, closing, vacation and quitclaim by the City of Dallas of the areas set out in Section 1 and depicted on Exhibit A. **GRANTEE**, its successors and assigns, hereby agree to defend any and all suits, claims, or causes of action brought against the City of Dallas on account of same, and discharge any judgment or judgments that may be rendered against the City of Dallas in connection therewith. For purposes hereof, "Hazardous Substance" means

the following: (a) any "hazardous substances" under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., as amended; (b) any "hazardous substance" under the Texas Hazardous Substances Spill Prevention and Control Act, TEX. WATER CODE, Section 26.261 et seq., as amended; (c) petroleum or petroleum-based products (or any derivative or hazardous constituents thereof or additives thereto), including without limitation, fuel and lubricating oils; (d) any "hazardous chemicals" or "toxic chemicals" under the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq., as amended; (e) any "hazardous waste" under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended; and (f) any "chemical substance" under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended. References to particular acts or codifications in this definition include all past and future amendments thereto, as well as applicable rules and regulations as now or hereafter promulgated thereunder.

SECTION 9. That as a condition of this abandonment and as a part of the consideration for the quitclaim made herein, **GRANTEE** shall record a final replat of the adjoining properties within one year of the effective date of this ordinance showing the fee simple dedication of not less than 71,008 square feet of needed street right-of-way in City Block 12/6116. This final replat shall be recorded by **GRANTEE** in the official real property records of the county in which the abandoned areas and the dedicated property are located, after its approval by the City Plan Commission of the City of Dallas. This abandonment shall not be effective unless and until this dedication is completed and failure to record a final replat in accordance with the term of this section shall render this ordinance null and void and of no further effect. Further, the final replat shall be recorded in the official real property records of the county in which the abandoned areas are located before a certified copy of this ordinance shall be delivered to **GRANTEE**.

SECTION 10. That as a condition of this abandonment and as a part of the consideration for the quitclaim made herein, **GRANTEE** shall, immediately upon effectiveness of this abandonment, close, barricade and/or place signs in the areas known as St. Rita Drive, St. Gabriel Drive, St. Sebastian Drive, St. Matthew Drive, St. Agnes Drive, and St. Gerard Drive, all of these tracts being depicted on Exhibit A and more specifically described in items 41 through 46 of Section 1, in accordance with detailed plans approved by the Director of Sustainable Development and Construction. **GRANTEE's** responsibility for keeping the areas known as St. Rita Drive, St. Gabriel Drive, St. Sebastian Drive, St. Matthew Drive, St. Agnes Drive, and St. Gerard Drive, all of these tracts being depicted on Exhibit A and more specifically described in items 41 through 46 of Section 1, closed, barricaded and/or the signs in place shall continue until the street improvements and intersection returns are removed by **GRANTEE**, its successors and assigns, to the satisfaction of the Director of Sustainable Development and Construction.

SECTION 11. That this abandonment, relinquishment and quitclaim of the City's right, title and interest in and to said portions of the 21 5' utility easements, six 10' utility/transformer pad easements, two 7.5' drainage easements, one 5' wall maintenance easement, one variable width wall maintenance easement, two 6'x10' drainage easements, three 10' drainage easements, one 5' drainage easement, one 8' x10' drainage easement, and two 56' wastewater easements shall not become effective until and unless: (i) the existing installations and facilities are relocated, at **GRANTEE's** expense, to the new easements to be provided by **GRANTEE** and acceptable to the Director of Sustainable Development and Construction, as is hereinafter provided; and (ii) plans for the construction and relocation of installations within the new easements are approved by the Director of Sustainable Development and Construction; and (iii) said construction and relocation of installations are completed, approved and accepted in writing by the Director of Sustainable Development and Construction. All work shall be done at the sole cost of **GRANTEE** and to the satisfaction of the Director of Sustainable Development and Construction.

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SECTION 12. That the City Secretary is hereby authorized and directed to certify a copy of this ordinance for recordation in the official real property records of the county in which the abandonment areas are located, which certified copy shall be delivered to the Director of Sustainable Development and Construction, or designee. Upon receipt of the monetary consideration set forth in Section 2, plus the fee for the publishing of this ordinance, which **GRANTEE** shall likewise pay, and the filing of the final replat set forth in Section 9, the Director of Sustainable Development and Construction, or designee: (i) shall deliver to **GRANTEE** a certified copy of this ordinance, and (ii) is authorized to and shall prepare and deliver a **QUITCLAIM DEED** with regard to the areas abandoned herein, to **GRANTEE** hereunder, same to be executed by the City Manager on behalf of the City of Dallas, attested by the City Secretary and approved as to form by the City Attorney. The Director of Sustainable Development and Construction, or designee, shall be the sole source for receiving certified copies of this ordinance for one year after its passage.

SECTION 13. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:
THOMAS P. PERKINS, JR.,
City Attorney

THERESA O'DONNELL
Director of Sustainable Development and
Construction

BY

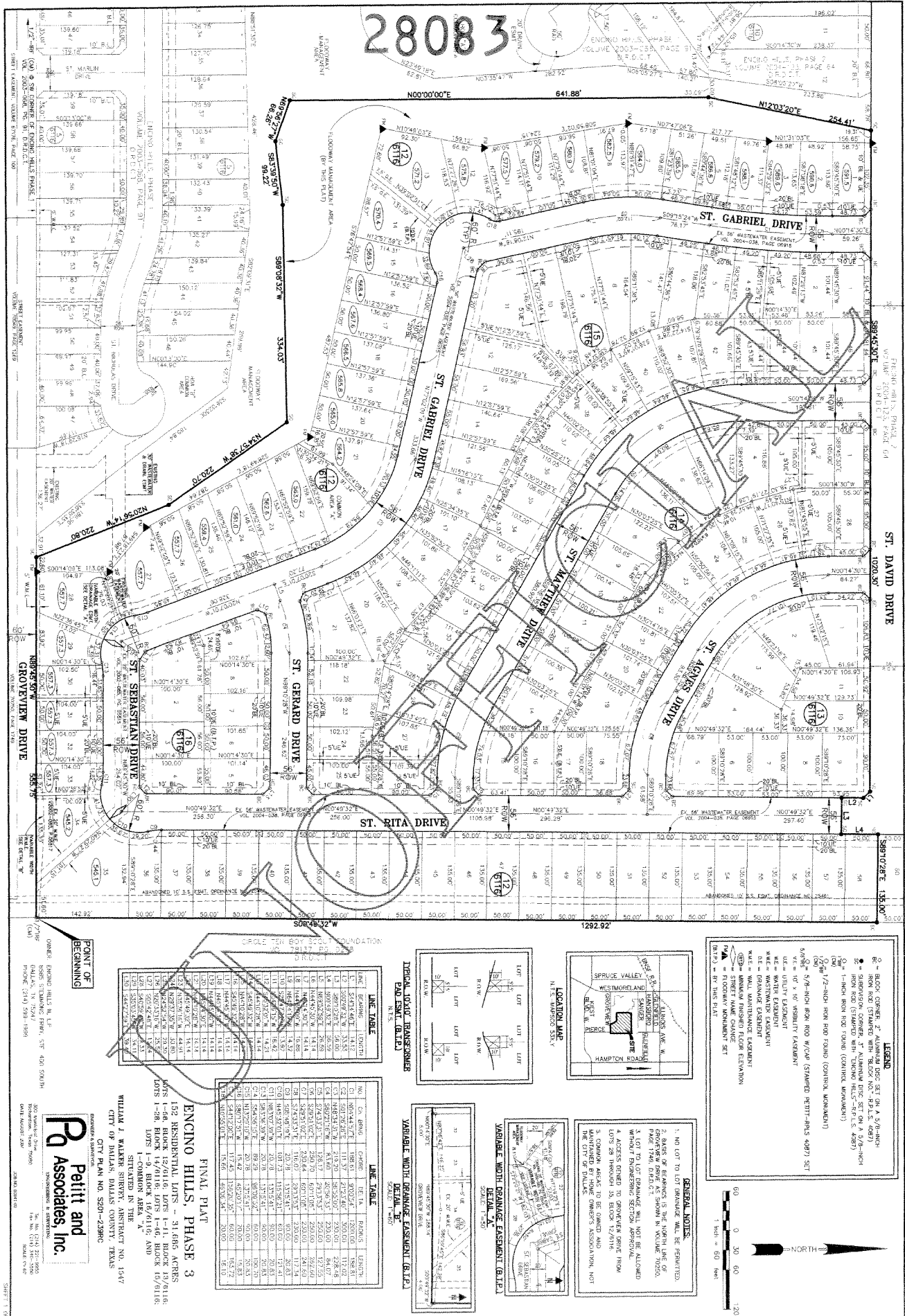
June Woods
Assistant City Attorney

BY

Shirley Sandberg
Assistant Director

PASSED

JAN 12 2011



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EXHIBIT B**ADDITIONAL ABANDONMENT PROVISIONS**

That as a condition hereof, this abandonment is subject to any utilities or communication facilities, including without limitation water and wastewater lines, gas lines, and storm sewers, ("Facilities") presently located within the abandoned area described in Exhibit "A", owned and/or operated by the City of Dallas or any utility or communications company, public or private, ("Utility") and to the rights of any Utility for the use of the abandoned area for its Facilities. It is the intent of the foregoing to confirm and maintain and there is hereby reserved and excepted unto the City of Dallas, and not abandoned or conveyed hereunder, an easement (to which this abandonment is made expressly subject) over, upon, under, through, in, and across the abandoned area for each Utility for its respective Facilities located therein at the time of this abandonment, together with the right to make any subsequent alterations, additions, expansions, upgrades or modifications to such Facilities as may, from time to time be deemed necessary or convenient by the Utility owning and/or operating same. No buildings, structures (above or below ground) or trees shall be constructed or placed within the abandoned area without written consent of each affected Utility. Each Utility shall have the full right to remove and keep removed all or part of any buildings, fences, trees, or other improvements or growths which in any way may endanger or interfere with the construction, maintenance or efficiency of its respective Facilities lying within the abandoned area and shall at all times have the full right of ingress and egress to or from and upon the abandoned area for the purposes of reconstructing, removing, relocating, inspecting, patrolling, maintaining, expanding, upgrading, and/or adding to all or part of its Facilities without the necessity at any time of procuring the permission of anyone. The easement reserved hereunder and the conditions and restrictions to which this abandonment is subject shall remain for the benefit of the applicable Utility and/or operators of the Facilities until said Facilities are removed and relocated from the abandoned area. The relocation, removal or adjustment of any or all such Facilities, if made necessary by GRANTEE'S (whether one or more natural persons or legal entities) use of the abandonment area, shall be at the expense of GRANTEE herein, or GRANTEE'S successors and assigns. Should GRANTEE'S relocation or removal of the Facilities require the obtaining of new easements, the acquisition of same shall be at the expense of GRANTEE, GRANTEE'S successors and assigns. If any of the Facilities (or relocations thereof) are allowed to remain on any part of the abandoned area, the easements and buildings restrictions provided herein shall remain thereon. Upon removal or relocation of all of the Facilities, any easements reserved or created herein relating to such removed or relocated Facilities shall terminate, and any building restrictions herein created shall cease.