

ORDINANCE NO. 28848

An ordinance providing for the abandonment of a portion of Hardy Road located adjacent to City Blocks 616/6113 and 777/6113 in the City of Dallas and County of Dallas, Texas; providing for the quitclaim thereof to American Brownfield MCIC, LLC; providing for the terms and conditions of the abandonment and quitclaim made herein; 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; and providing an effective date for this ordinance.

ooo0ooo

WHEREAS, the City Council of the City of Dallas, acting pursuant to law and upon the request and petition of American Brownfield MCIC, LLC, a Texas limited liability company, hereinafter referred to as **GRANTEE**, deems it advisable to abandon and quitclaim the hereinafter described tract of land to **GRANTEE**, and is of the opinion that, subject to the terms and conditions herein provided, said portion of Hardy Road is 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 tract of land described in Exhibit A, which is attached hereto and made a part hereof for all purposes, be and the same is abandoned, vacated and closed insofar as the right, title and interest of the public are concerned; subject, however, to the conditions hereinafter more fully set out.

SECTION 2. That for and in monetary consideration of the sum of **EIGHTEEN THOUSAND THREE HUNDRED SEVENTY-FOUR AND NO/100 (\$18,374.00) DOLLARS** 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, 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 tract of land hereinabove described in 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, 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, which is attached hereto and made a part hereof for all purposes.

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 and vacate.

SECTION 8. That as a condition of this abandonment and as 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 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 area set out in Exhibit A; (iii) all corrective actions concerning any discovered Hazardous Substances on or affecting the area described in 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 area set out in 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 file a final replat of the adjoining properties prior to the issuance of any building permits affecting the tract of land abandoned and quitclaimed herein. This final replat shall be recorded by **GRANTEE** in the official real property records of the county in which the abandoned area is located after its approval by the City Plan Commission of the City of Dallas.

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 the passage of this ordinance, close, barricade and/or place signs in the area described in Exhibit A in accordance with detailed plans approved by the Director of Department of Sustainable Development and Construction. **GRANTEE's** responsibility for keeping the area described in Exhibit A 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 Department of Sustainable Development and Construction.

SECTION 11. 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 area is located, which certified copy shall be delivered to the Director of Department 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, the Director of Department 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 area 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 Department 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.

28848

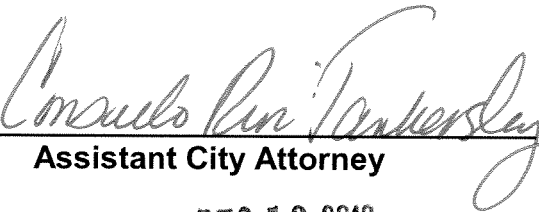
123001

SECTION 12. 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.

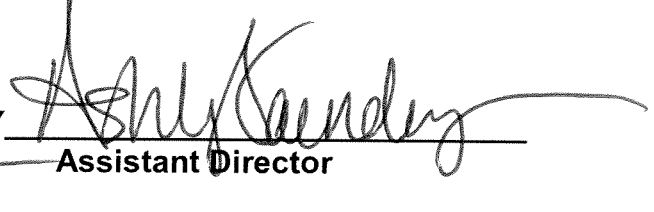
APPROVED AS TO FORM:
THOMAS P. PERKINS, JR.
City Attorney

THERESA O'DONNELL
Director of Department of
Sustainable Development and
Construction

BY


Assistant City Attorney

BY


Assistant Director

DEC 12 2012

Passed _____.

STREET RIGHT OF WAY ABANDONMENT
HARDY ROAD
ADJACENT TO CITY BLOCKS 777/6113 AND 616/6113
CITY OF DALLAS, DALLAS COUNTY, TEXAS

Being a 1.41 acre tract of land located in the Perry Linney Survey, Abstract No. 777 and the Rowland Huitt Survey, Abstract No. 616, adjacent to City Blocks 777/6113 and 616/6113, City of Dallas, Dallas County, Texas, and being a portion of the right-of-way of Hardy Road (a 100 foot width right-of-way) conveyed by Warranty Deed to the County of Dallas, recorded in Volume 2199, Page 12 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), said 1.41 acre tract of land also being a part of a 110.087 acre tract of land (By Deed) described to THE UNITED STATES OF AMERICA recorded in Instrument Number 20080397237 of the Official Public Records of Dallas County, Texas, said 1.41 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING at 5/8" iron rod with plastic cap stamped "LGG" found (controlling monument) for a common interior ell corner of said 110.087 acre tract of land, the most easterly southeast corner of a 14.43 acre tract of land (By Deed) described to UNITED STATES OF AMERICA recorded in Volume 4693, Page 198 of said D.R.D.C.T., the most easterly southeast corner of TRACT 2 of the abandonment of Hardy Road by the City of Dallas Ordinance 8034 and the southwest corner of TRACT 1 of the abandonment of Hardy Road by the City of Dallas Ordinance 8034, said 5/8" iron rod with plastic cap stamped "LGG", being in the centerline of said Hardy Road, from said 5/8" iron rod with plastic cap stamped "LGG" a 5/8" iron rod with plastic cap stamped "LGG" found (controlling monument) for the common most northerly corner of said 110.087 acre tract of land and the most westerly southwest corner of a 43.94 acre tract of land (By Deed) described to UNITED STATES OF AMERICA recorded in Volume 3879, Page 552 of said D.R.D.C.T. bears North 00°21'06" West, at a distance of 508.82 feet from the POINT OF BEGINNING;

THENCE North 89°24'11" East, along the south line of said TRACT 1 and over and across said 110.087 acre tract of land and over and across said Hardy Road, a distance of 50.00 feet to a point for corner in water, said point being the southeast corner of said TRACT 1, said point also being in the east right-of-way line of said Hardy Road;

THENCE South 00°21'06" East, with the east right-of-way line of said Hardy Road and continuing over and across said 110.087 acre tract of land, a distance of 612.35 feet to a point for corner in water, said point being in a common line of said 110.87 acre tract of land and a 347 acre tract of land described to "CITY OF DALLAS" recorded in Volume 2691, Page 315 of said D.R.D.C.T.;

THENCE South 89°13'52" West, along said common line and over and across said Hardy Road, passing at a distance of 50.00 feet a 5/8" iron rod with plastic cap stamped "GORRONDONA & ASSOCIATES" set in the centerline of said Hardy Road, continuing a total distance of 100' to a point for corner in water, said corner being in the west right-of-way line of said Hardy Road;

(For SPRG use only)

Reviewed By: DBF

Date: 12.22.2011

SPRG NO.: 2258

28848
EXHIBIT A

123001

STREET RIGHT OF WAY ABANDONMENT
HARDY ROAD
ADJACENT TO CITY BLOCKS 777/6113 AND 616/6113
CITY OF DALLAS, DALLAS COUNTY, TEXAS

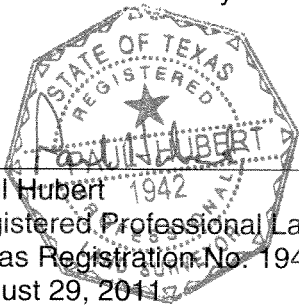
THENCE North 00°21'06" West, with the west right-of-way line of said Hardy Road and over and across said 110.087 acre tract of land, a distance of 612.65 feet to point for corner in water, said point being the southwest corner of said TRACT 2, said point also being in a common line of said 110.87 acre tract and said 14.43 acre tract of land, from said corner a 5/8" iron rod with plastic cap stamped "LGG" found for a common corner of said 100.87 acre tract of land and said 14.43 acre tract of land bears South 89°24'11" West, a distance of 78.66 feet;

THENCE North 89°24'11" East, along the south line of said TRACT 2 and along said common line and over and across said Hardy Road, distance of 50.00 feet to the **POINT OF BEGINNING**.

Containing 1.41 acres of land or 61,248 acres of land, more or less.

All bearings shown are based upon the Texas State Plane Coordinate System, N.A.D. 83 North Central Zone, All coordinates and distances shown are surface and may be converted to grid by dividing with a conversion factor of 1.000136506.

A plat of same survey date herewith accompanies this description.


Paul Hubert 1942
Registered Professional Land Surveyor
Texas Registration No. 1942
August 29, 2011

(For SPRG use only)	
Reviewed By:	<u>DBF</u>
Date:	<u>12-22-2011</u>
SPRG NO.:	<u>2258</u>

STREET RIGHT OF WAY ABANDONMENT
HARDY ROADADJACENT TO CITY BLOCKS 777/6113 AND 616/6113
CITY OF DALLAS, DALLAS COUNTY, TEXASPERRY LINNEY
SURVEY
ABSTRACT
NO. 777HARDY ROAD
ABANDONED
CITY OF DALLAS
ORDINANCE
NO. 8034
(TRACT NO. 2)CALLED 43.94 TRACT
UNITED STATES OF AMERICA
VOL. 3879, PG. 552
D.R.D.C.T.APPROXIMATE WATER LINE
AT TIME OF SURVEY14.43 ACRES
UNITED STATES
OF AMERICA
VOLUME 4693,
PAGE 198
D.R.D.C.T.COTTONWOOD BAY
OF
MOUNTAIN CREEK LAKE

BLOCK 777/6113

THE UNITED STATES OF AMERICA
110.087 AC. (BY DEED)
INST. NO. 20080397237
O.P.R.D.C.T.HARDY ROAD
ABANDONED
CITY OF DALLAS
ORDINANCE NO. 8034
(TRACT NO. 1)

BLOCK 616/6113

ROWLAND HUITT SURVEY
ABSTRACT NO. 616
COTTONWOOD BAY
OF
MOUNTAIN CREEK LAKETHE UNITED STATES OF AMERICA,
110.087 AC. (BY DEED)
INST. NO. 20080397237
O.P.R.D.C.T.

(For SPRG use only)

Reviewed By: DBFDate: 12-22-2011SPRG NO.: 2258

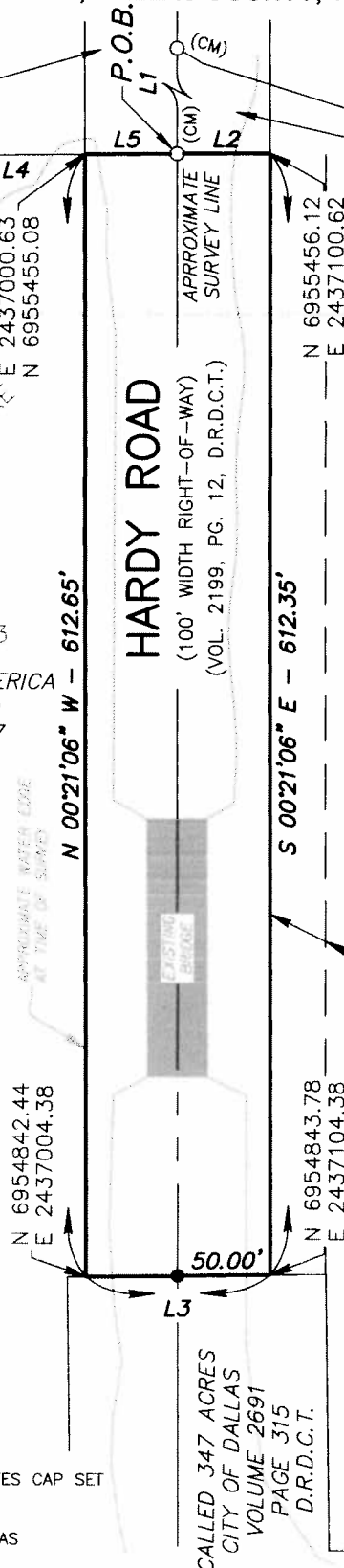
NOTES:

1. A LEGAL DESCRIPTION OF SAME SURVEY DATE HERewith ACCOMPANIES THIS PLAT.
2. ALL BEARINGS SHOWN ARE BASED UPON THE TEXAS STATE PLANE COORDINATE SYSTEM, N.A.D. 83 NORTH CENTRAL ZONE. ALL COORDINATES AND DISTANCES SHOWN ARE SURFACE AND MAY BE CONVERTED TO GRID BY DIVIDING WITH A CONVERSION FACTOR OF 1.000136506.

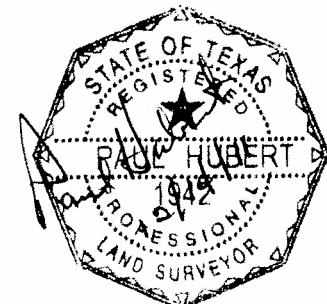
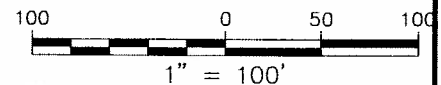
LINE	BEARING	DISTANCE
L1	N 00°21'06" W	508.82'
L2	N 89°24'11" E	50.00'
L3	S 89°13'52" W	100.00'
L4	S 89°24'11" W	78.66'
L5	N 89°24'11" E	50.00'

LEGEND

- 5/8" IRON ROD WITH LGG CAP FOUND (CM)
● 5/8" IRON ROD WITH GORRONDONA & ASSOCIATES CAP SET
CM CONTROLLING MONUMENT
P.O.B POINT OF BEGINNING
O.P.R.D.C.T OFFICIAL PUBLIC RECORDS DALLAS COUNTY, TEXAS

30' DRAINAGE EASEMENT
CITY OF DALLAS
VOL. 2370, PG. 550
D.R.D.C.T.

GRAPHIC SCALE

PAUL HUBERT
REGISTERED PROFESSIONAL LAND SURVEYOR
NO. 1942

ABANDONMENT AREA : 1.41 ACRES / 61,248 SQUARE FEET

JOB NO. NVFC1101.00

DRAWN BY: JDS

CADD FILE: HARDY ROAD BRIDGE ABANDONING

DATE: AUGUST 29, 2011

PAGE 3 OF 3

SCALE: 1" = 100'

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.