

ORDINANCE NO. 29381

An ordinance providing for the abandonment of a portion of Fifth Street (formerly McKee Street), located adjacent to City Blocks 3445 and 3387 in the City of Dallas and County of Dallas, Texas; providing for the quitclaim thereof to Bishop Arts Development, L.P.; providing for the terms and conditions of the abandonment and quitclaim made herein; providing for barricading; 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 Bishop Arts Development, L.P., a Texas limited partnership, 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 street 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 those certain provisions of Section 2-26.2 (f) of the Dallas City Code regarding abandonment fee to the extent, not required by state law or City Charter, are hereby waived with respect to this ordinance.

SECTION 2. 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 3. That for and in monetary consideration of the sum of **FIVE THOUSAND FOUR HUNDRED AND NO/100 (\$5,400.00) DOLLARS** paid by **GRANTEE**, and the further consideration described in Sections 9, 10 and 11, the City of Dallas does by these presents **FOREVER QUITCLAIM** unto the said **GRANTEE**, subject to the conditions, reservations, and exceptions hereinafter made with 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 4. That upon payment of the monetary consideration set forth in Section 3, **GRANTEE** accepts the terms, provisions and conditions of this ordinance.

SECTION 5. That the City Controller is authorized to deposit the sum paid by **GRANTEE** pursuant to Section 3 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 6. 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 7. That the terms and conditions contained in this ordinance shall be binding upon **GRANTEE**, its successors and assigns.

SECTION 8. 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 9. 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 10. 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 11. That as a condition of this abandonment and as a part of the consideration for the quitclaim made herein, **GRANTEE** does consent to closure, vacation, and/or abandonment of the public right-of-way, if any, existing to the west of the tract of land described in Exhibit A and waives and releases any claim for damages that might be attributable thereto. **GRANTEE** covenants and agrees to execute and deliver to the City of Dallas promptly upon request a quitclaim deed as to its interests, if any, to said public right-of-way existing to the west of the tract of land describe in Exhibit A such that the City of Dallas may close, vacate and/or abandon said right-of-way in its discretion, now and in the future, and otherwise approved as to form by the City Attorney.

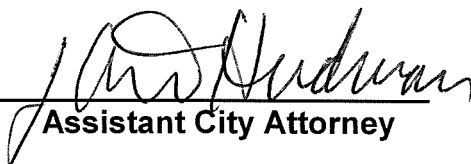
SECTION 12. That as a condition of this abandonment and as a part of the consideration for the quitclaim made herein, **GRANTEE** shall immediately upon the passage of this ordinance, close, barricade and/or place signs in the area described in Exhibit A, in accordance with detailed plans approved by 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 13. 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 3, 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.

SECTION 14. 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:
WARREN M. S. ERNST
 City Attorney

DAVID COSSUM
 Interim Director of Department of Sustainable Development and Construction

BY 
 Assistant City Attorney

BY 
 Assistant Director

Passed JUN 25 2014 .

EXHIBIT A**STREET ABANDONMENT
FIFTH STREET (FORMERLY McKEE STREET)
PART OF CITY BLOCKS 3387 AND 3445**

Being 17,210 square feet situated in the Aaron Overton Survey, Abstract No. 1101, City of Dallas, Dallas County, Texas, and being in City Blocks 3387 and 3445, being part of a 25 foot strip of land dedicated for street purposes and created by Warranty Deed recorded in Volume 665, Page 104, Deed Records of Dallas County, Texas, said strip being part of a tract of land described to Bishop Arts Development, LP by Special Warranty Deed recorded in Instrument Number 201200379811, Official Public Records of Dallas County, Texas, a portion of said strip being part of Lot 4, Block 3387, Resubdivision of Part of Block 3387, Volume 16, Page 139, Map Records, Dallas County, Texas, said strip being part of Fifth Street, named by City Ordinance No. 2535, and being more particularly described as follows:

BEGINNING at a found 1/2 inch iron rod for a corner at the intersection of the northwest line of Van Buren Avenue (a 53 foot right of way) and the centerline of Fifth Street (a 50 foot right of way), said point being the southeast corner of part of a strip of land dedicated for street purposes by Warranty Deeds recorded in Volume 665, Page 104, Volume 2816, Page 447, Volume 2816, Page 452, Volume 2816, Page 457, Volume 2816, Page 463, and Volume 2816, Page 468, Deed Records of Dallas County, Texas, said point being the southwest corner of the said 25 foot strip being abandoned herein, and said point being the southwest corner of said Bishop Arts Development, LP tract;

THENCE, N 00°04'53" W with the centerline of Fifth Street and with the west line of said strip being abandoned herein, and along the west line of said Bishop Arts Development, LP tract, a distance of 659.99 feet to a set 5/8 inch iron rod with a yellow plastic cap stamped "Kadleck No. 3952" for a corner at the northwest corner of said Lot 4, Block 3387, said point being the northwest corner of the said 25 foot strip of land, and said point being the northwest corner of said Bishop Arts Development, LP tract;

THENCE, S 89°17'30" E, with the north line of said Bishop Arts Development, LP tract and Lot 4, Block 3387, a distance of 25.00 feet to a set 5/8 inch iron rod with a yellow plastic cap stamped "Kadleck No. 3952" for a corner;

THENCE, S 00°04'53" E, along the east line of said strip being abandoned herein, over and across said Bishop Arts Development, LP tract, a distance of 680.79 feet to a set 5/8 inch iron rod with a yellow plastic cap stamped "Kadleck No. 3952" for a corner in the northwest line of Van Buren Avenue;

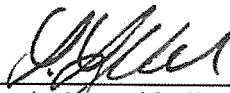
REVIEWED BY

JZ 05.19.2014
SPRG 2927

EXHIBIT ASTREET ABANDONMENT (continued)
FIFTH STREET (FORMERLY McKEE STREET)
PART OF CITY BLOCKS 3387 AND 3445

THENCE, S 59°12'00" W, with the southeast line of said Bishop Arts Development, LP tract and the northwest line of said Van Buren Avenue, a distance of 29.08 feet to the Point of beginning and Containing 17,210 square feet or 0.395 acre of land.

Date: April 18, 2014



L. Lynn Kadleck
Registered Professional
Land Surveyor No. 3952

**Basis of Bearing:**

The bearing basis for this survey is a bearing of S 59°12'00" W for the northwest line of Van Buren Avenue indicated in the Special Warranty Deed to Bishop Arts Development, LP recorded in Instrument Number 201200379811, Official Public Records of Dallas County, Texas.

REVIEWED BY

JZ 05.19.2014
SPRG 2927

STREET ABANDONMENT
FIFTH STREET (FORMERLY MCKEE STREET)
PART OF CITY BLOCKS 3387 AND 3445

EXHIBIT A



SCALE: 1"=100'



Date: April 18, 2014
Job No. 13693

LEGEND

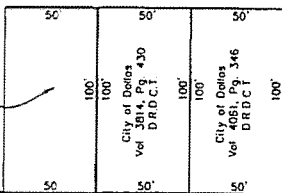
- CM Control Monument
- FIR Found Iron Rod
- SIR 5/8" Set Iron Rod with yellow plastic cap stamped "Kodleck No. 3952"
- ROW Right of Way
- D.R.D.C.T. Deed Records, Dallas County, Texas
- O.P.R.D.C.T. Official Public Records, Dallas County, Texas
- Inst. No Instrument Number
- M.R.D.C.T. Map Records, Dallas County, Texas
- Pg. Page
- Vol. Volume

Dedicated for Street Purposes
Vol. 2816, Pg. 447
Vol. 2816, Pg. 452
Vol. 2816, Pg. 457
Vol. 2816, Pg. 463
Vol. 2816, Pg. 468
and
Dedicated for Street Purposes
Vol. 665, Pg. 104
D.R.D.C.T.

BLOCK 3386

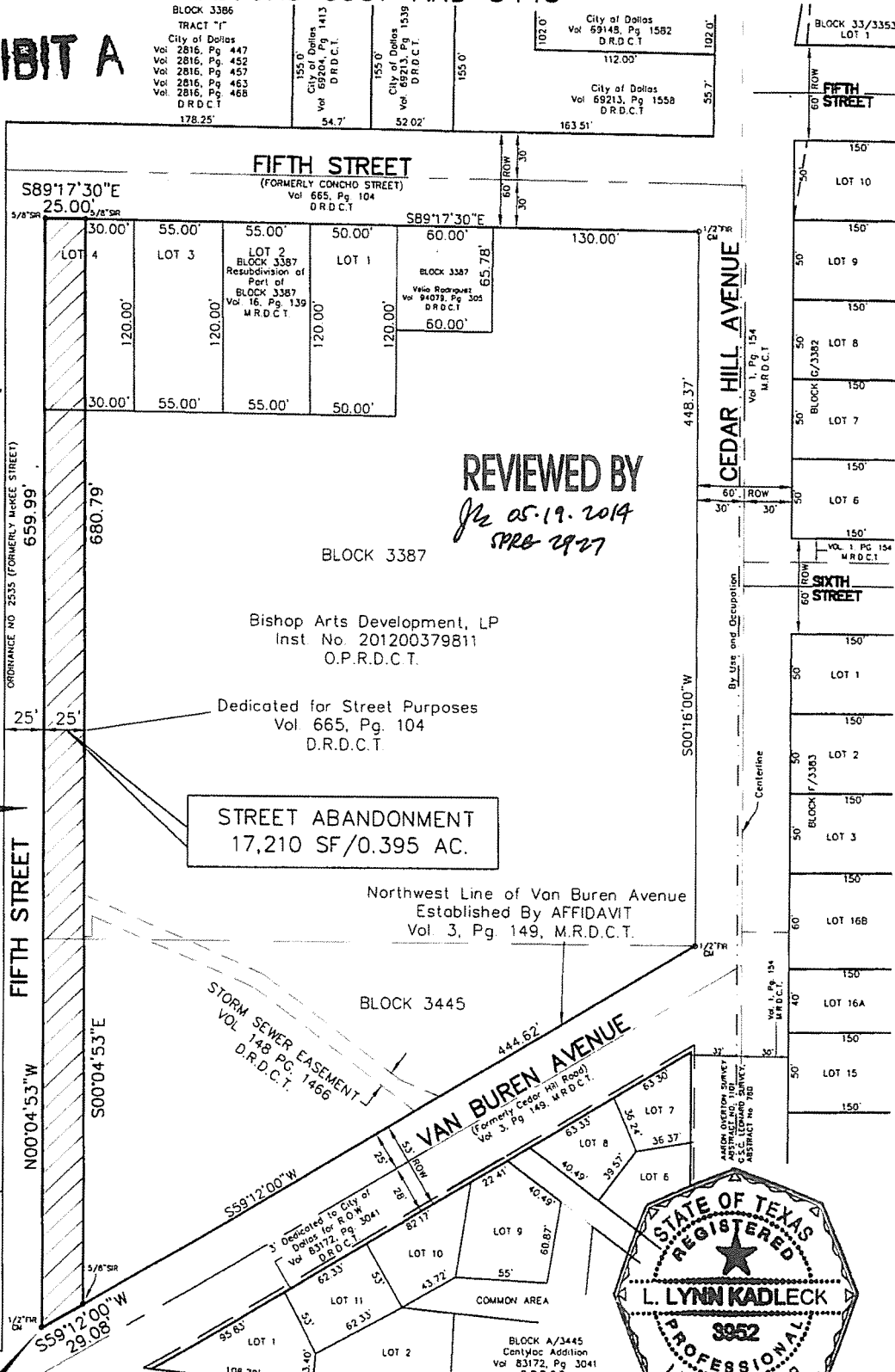
Kidd Springs Park
TRACT "f"
City of Dallas
Vol. 2816, Pg. 447
Vol. 2816, Pg. 452
Vol. 2816, Pg. 457
Vol. 2816, Pg. 463
Vol. 2816, Pg. 468
D.R.D.C.T.

TRACT "d"
City of Dallas
Vol. 2816, Pg. 447
Vol. 2816, Pg. 452
Vol. 2816, Pg. 457
Vol. 2816, Pg. 463
Vol. 2816, Pg. 468
D.R.D.C.T.



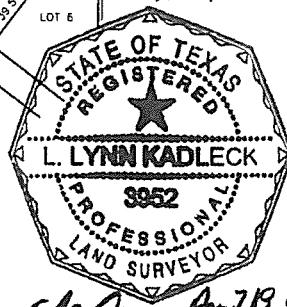
POINT OF BEGINNING

Basis of Bearing:
The bearing basis for this survey is a bearing of S59°12'00"W for the northwest line of Van Buren Avenue indicated in the Special Warranty Deed to Bishop Arts Development, LP recorded in instrument Number 201200379811, Official Public Records of Dallas County, Texas.



REVIEWED BY
JL 05.19.2014
SPR 2927

STREET ABANDONMENT
17,210 SF/0.395 AC.



L. Lynn Kadleck
April 18, 2014

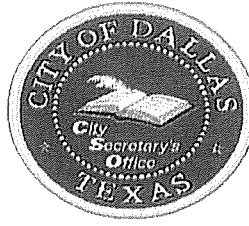
PREPARED BY
KADLECK & ASSOCIATES
ENGINEERING PLANNING SURVEYING
2000 N. CENTRAL EXPY SUITE 113
(972) 881-0771 PLANO, TX 75074
TBPE Reg. No F-6460/TBPLS Reg No 100555-00

Lynn Kadleck
Registered Professional
Land Surveyor No. 3952

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.



PROOF OF PUBLICATION – LEGAL ADVERTISING

The legal advertisement required for the noted ordinance was published in the Dallas Morning News, the official newspaper of the city, as required by law, and the Dallas City Charter, Chapter XVIII, Section 7.

DATE ADOPTED BY CITY COUNCIL JUN 25 2014

ORDINANCE NUMBER 29381

DATE PUBLISHED JUN 28 2014

ATTESTED BY:

A handwritten signature in cursive script, appearing to read "Rose C. Sims".