

ORDINANCE NO. 29382

An ordinance providing for the abandonment of a portion of Trezevant Street located adjacent to City Blocks 1376 and 1377 in the City of Dallas and County of Dallas, Texas; providing for the quitclaim thereof to Two Podners Retail Eateries, LLC; 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.

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WHEREAS, the City Council of the City of Dallas, acting pursuant to law and upon the request and petition of Two Podners Retail Eateries, 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 street right-of-way 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 **SIXTY-NINE THOUSAND SIX HUNDRED SIXTY-FOUR AND NO/100 (\$69,664.00) DOLLARS** paid by **GRANTEE**, and the further consideration described in Sections 8, 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 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 coordinate with State of Texas and take necessary action to maintain that any removal of those drainage easement inlets located on Trezevant Street approximately 40 feet from South Bound SH 352 (referred to as Robert B. Cullum Boulevard in this location of Exhibit A) west gutter line do not adversely impact drainage from SH 352. If the drainage structures are removed, the storm sewer network must be modified to adequately drain SH 352.

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** 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.

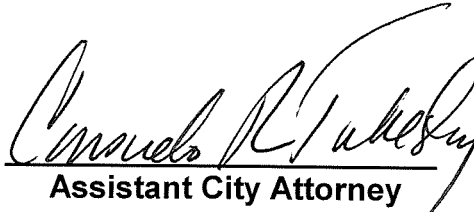
SECTION 12. That the City Secretary is hereby authorized and directed to certify a copy of this ordinance for recordation in the official real property records of the county in which the abandonment area are located, which certified copy shall be delivered to the Director of Department of Sustainable 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.

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:
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
PART OF TREZEVANT STREET
BLOCK 1377

CITY OF DALLAS, DALLAS COUNTY, TEXAS

Being a 11,218 square feet (0.2575 acre) tract of land situated in the Thomas Lagow Survey, Abstract No. 759 in the City of Dallas Block 1377, Dallas County, and being a portion of Trezevant Street (a variable width right-of-way) dedicated by Howard's Fourth Avenue Addition, an unrecorded addition, and a portion of right-of-way dedicated by Replat of Lots 19, 20 and 21, Block 1377 of the Howard's Fourth Avenue Addition, Lot 19A, Block 1377, an Addition to the City of Dallas, Dallas County, Texas, according to the map recorded in Volume 87046, Page 4513, Map Records, Dallas County, Texas, and being more particularly described by metes and bounds as follows:

Commencing at a 1/2 inch iron rod found for corner in the Northeast line of JB Jackson Boulevard (a 50 foot right-of-way), said point being the South corner of said Lot 19A, Block 1377;

Thence North 45 degrees 29 minutes 23 seconds West along the Northeast line of said JB Jackson Boulevard, a distance of 129.50 feet to a 1/2 inch iron rod with yellow cap stamped "TXHS" set for corner, said point being the most Southern West corner of said Lot 19A, Block 1377 and being the Point of Beginning;

Thence North 45 degrees 29 minutes 23 seconds West along the Northeast line of said JB Jackson Boulevard, a distance of 20.50 feet to a 1/2 inch iron rod with yellow cap stamped "TXHS" set for corner;

Thence North 44 degrees 52 minutes 36 seconds West along the Northeast line of said JB Jackson Boulevard, a distance of 35.43 feet to a 1/2 inch iron rod with yellow cap stamped "TXHS" set for corner, said point being the South corner of Lot 17, Block 1376 of said Howard's Fourth Avenue Addition;

Thence North 42 degrees 13 minutes 44 seconds East along the Southeast line of said Lot 17, Block 1376, a distance of 219.44 feet to a 1/2 inch iron rod with yellow cap stamped "TXHS" set for corner, said point being the East corner of said Lot 17, Block 1376, and being in the Southwest line of Robert B. Cullum Boulevard (a 184 foot right-of-way);


Thence South 42 degrees 13 minutes 59 seconds East along the Southwest line of said Robert B. Cullum Boulevard, a distance of 45.69 feet to a Brass Monument found for corner, said point being the original East corner of aforementioned Trezevant Street;

Thence South 44 degrees 59 minutes 07 seconds East along the Southwest line of said Robert B. Cullum Boulevard, a distance of 20.52 feet to a 1/2 inch iron rod with yellow cap stamped "TXHS" set for corner, said point being the most Eastern North corner of said Lot 19A, Block 1377;

Thence South 87 degrees 19 minutes 22 seconds West along the North line of said Lot 19A, Block 1377, a distance of 14.85 feet to a 1/2 inch iron rod with yellow cap stamped "TXHS" set for corner, said point being the most Western North corner of said Lot 19A, Block 1377;

Thence South 44 degrees 54 minutes 33 seconds West along the Northwest line of said Lot 19A, Block 1377, a distance of 194.98 feet to a 1/2 inch iron rod with yellow cap stamped "TXHS" set for corner, said point being the most Northern West corner of said Lot 19A, Block 1377;

Thence South 02 degrees 18 minutes 21 seconds West along the West line of said Lot 19A, Block 1377, a distance of 14.85 feet to the Point of Beginning and containing 11,218 square feet or 0.2575 of an acre of land.


 Gary E. Johnson, R.P.L.S.# 5299



TEXAS HERITAGE SURVEYING, INC.
 10610 Metric Drive, Suite 124, Dallas, TX 75243
 Office 214-340-9700 Fax 214-340-9710
 txheritage.com

BEARINGS ARE BASED UPON THE
 TEXAS STATE PLANE COORDINATE
 SYSTEM, NORTH CENTRAL ZONE,
 NORTH AMERICAN DATUM OF 1983,
 (2011)

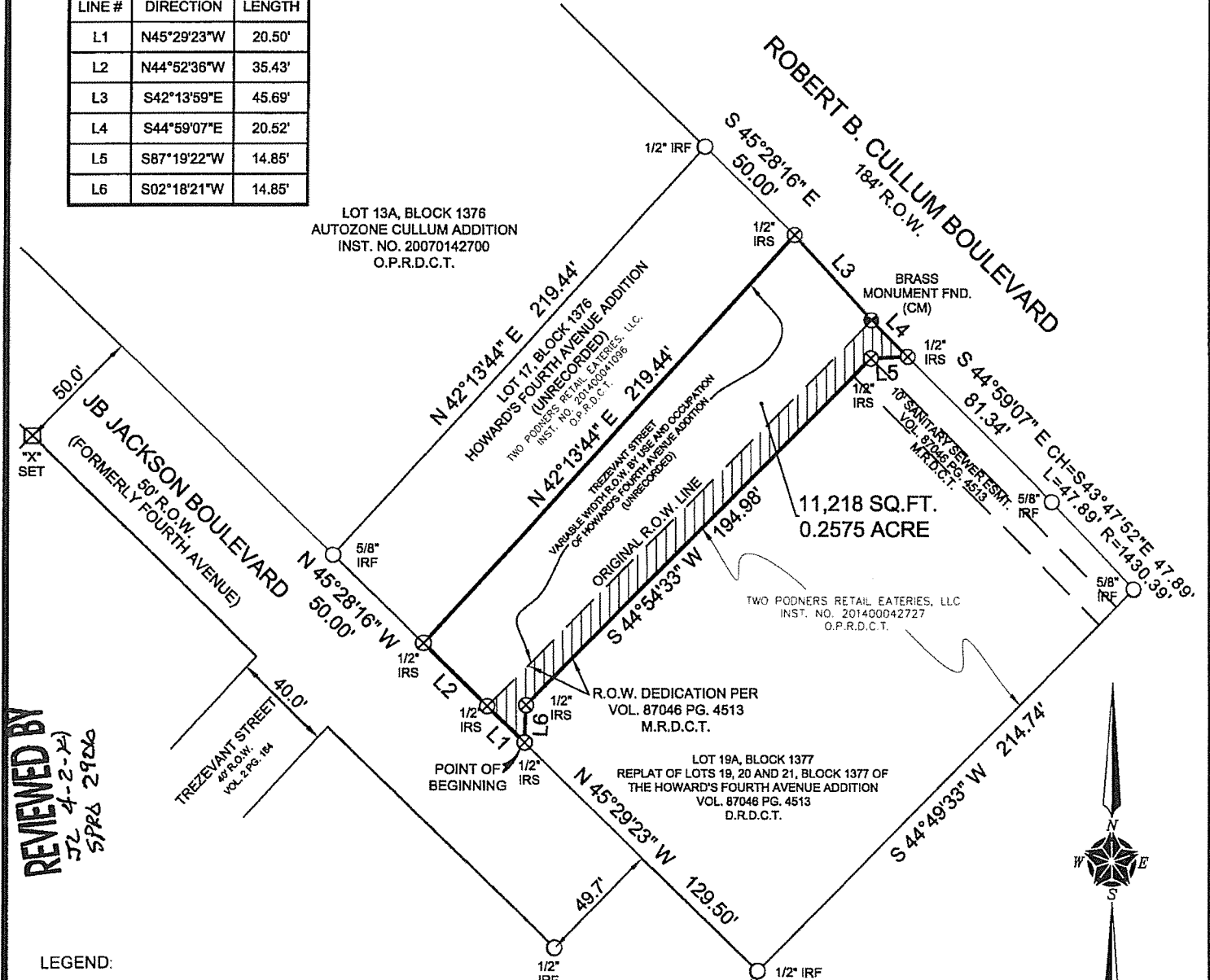
REVIEWED BY
 JL 4-2-14
 SPRL 2906

JOB# 1400616-2
 DATE: 03/20/14
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EXHIBIT A **STREET ABANDONMENT**
PART OF TREZEVANT STREET
BLOCK 1377
CITY OF DALLAS, DALLAS COUNTY, TEXAS

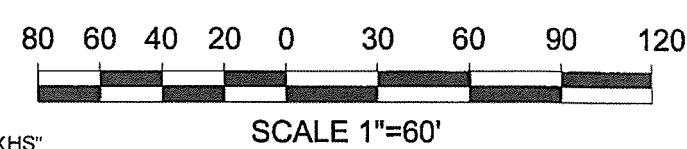
PARCEL LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	N45°29'23"W	20.50'
L2	N44°52'36"W	35.43'
L3	S42°13'59"E	45.69'
L4	S44°59'07"E	20.52'
L5	S87°19'22"W	14.85'
L6	S02°18'21"W	14.85'

LOT 13A, BLOCK 1376
 AUTOZONE CULLUM ADDITION
 INST. NO. 20070142700
 O.P.R.D.C.T.



REVIEWED BY
 JL 4-2-14
 SPRS 2926

- LEGEND:
- CM CONTROLLING MONUMENT
 - IRF IRON ROD FOUND
 - "X" FND. X FOUND IN CONCRETE
 - P.F.C. POINT FOR CORNER
 - SQ.FT. SQUARE FEET
 - R.O.W. RIGHT-OF-WAY
 - D.R.D.C.T. DEED RECORDS, DALLAS COUNTY, TEXAS
 - M.R.D.C.T. MAP RECORDS, DALLAS COUNTY, TEXAS
 - IRS IRON ROD SET WITH YELLOW CAP STAMPED "TXHS"
 - R.O.W. RIGHT-OF-WAY



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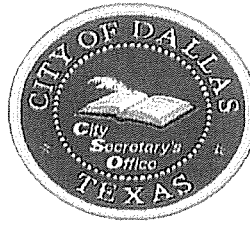
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JOB# 1400616-2
 DATE: 03/20/14
 Page 2 of 2
 Scale: 1" = 60'

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 29382

DATE PUBLISHED JUN 28 2014

ATTESTED BY:

A handwritten signature in cursive script, appearing to read "Rose G. Liss".