

ORDINANCE NO. 30546

An ordinance granting a private license to RBP Adolphus LLC to occupy, maintain and utilize aerial space over a portion of Commerce Street right-of-way located near its intersection with Field Street adjacent to City Block 70 within the limits hereinafter more fully described, for the purpose of installing, maintaining and utilizing one canopy with premise sign; providing for the terms and conditions of this license; providing for the annual compensation to be paid to the City of Dallas; providing for payment of the publication fee; and providing an effective date of this license and ordinance.

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WHEREAS, RBP Adolphus LLC is the owner of that certain structure located near the intersection of Commerce Street and Field Street, said structure being more commonly known as the RBP Adolphus LLC; and

WHEREAS, said structure lies within the Adolphus Historic District, and it is the desire of the City Council of the City of Dallas to promote the restoration and rehabilitation of buildings therein; and

WHEREAS, it is the opinion of the City Council of the City of Dallas that said structure is a "historically significant structure" for the limited purpose mentioned in Chapter 43, Article VI, Section 43-115 (a) (2) of the City Code of the City of Dallas; and

WHEREAS, RBP Adolphus LLC has requested that they be granted a license for the purpose of allowing the use and maintenance of a canopy with premise sign which is an integral part of said historic structure.

Now, Therefore,

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

SECTION 1. That a private license, hereinafter referred to as "license", subject to the restrictions and conditions of this ordinance, is hereby granted to RBP Adolphus LLC, a Delaware limited liability company, its successors and assigns, hereinafter referred to as "**GRANTEE**", to occupy, maintain and utilize for the purpose set out hereinbelow the

SECTION 1. (continued)

aerial space described in Exhibit A, hereinafter referred to as "licensed area" which is attached hereto and made a part hereof.

SECTION 2. That this license is granted for a term of forty (40) years, unless sooner terminated according to other terms and provisions herein contained.

SECTION 3. That **GRANTEE** shall pay to the City of Dallas the sum of **ONE THOUSAND NO/100 (\$1,000.00) DOLLARS** annually for the license herein granted, said sum to become due and payable on the 2nd day of January each year, in advance, during the term hereof; provided, however, that the first payment due hereunder in the sum of **ONE THOUSAND NO/100 (\$1,000.00) DOLLARS** shall be paid prior to the final passage of this ordinance and shall cover the consideration for 2017. Such consideration shall be in addition to and exclusive of any other taxes or special assessments required by law to be paid by **GRANTEE**. Should **GRANTEE** fail to pay the above stated annual fee within sixty (60) days of the due date, the Director of the Department of Sustainable Development may terminate this license. All sums payable to the City of Dallas hereunder shall be paid to the Chief Financial Officer of the City of Dallas and deposited in the General Fund, Fund 0001, Department DEV, Unit 1181, Revenue Code 8200. In the event **GRANTEE's** check for the license fee is dishonored, **GRANTEE** shall pay to the City a processing fee of \$25.00 for each dishonored check. Additionally, all monies owed to the City under this license shall be subject to the assessment of interest at a rate of 10 percent a year from the day after any monies become due until it is paid in full, in accordance with Section 2-1.1 of the Dallas City Code.

SECTION 4. That the licensed area shall be used by **GRANTEE** for the following purpose under the direction of the Director of Department of Sustainable Development and Construction of the City of Dallas: to install, maintain and utilize one canopy with premise sign.

SECTION 5. That this license is subject to the provisions set forth in Exhibit B, attached hereto and made a part hereof.

SECTION 6. That this license is nonexclusive and is made expressly subject and subordinate to the right of the City to use the licensed area for any public purpose. The Governing Body of the City of Dallas reserves the right by resolution duly passed by said Governing Body, to terminate and cancel this license upon giving **GRANTEE** sixty (60) days notice of its intent to cancel. Upon termination, all rights granted hereunder shall thereupon be considered fully terminated and cancelled and the City of Dallas shall not be held liable by reason thereof. Said resolution shall be final and shall not be subject to review by the Courts. **GRANTEE** shall have the right of cancellation upon giving the City of Dallas sixty (60) days written notice of its intention to cancel, and in either event upon the termination or cancellation by the City or **GRANTEE**, as the case may be, this license shall become null and void and **GRANTEE** or anyone claiming any rights under this instrument shall remove, to the extent required by the Director of Department of Sustainable Development and Construction, any improvements and encroachments from the licensed area at **GRANTEE's** expense. Failure to do so shall subject **GRANTEE** to the provisions contained in Exhibit B, Subsection (a). All work shall be done at the sole cost of **GRANTEE** and to the satisfaction of the Director of Department of Sustainable Development and Construction.

SECTION 7. That the license is subject to the following conditions, terms and reservations:

- a) **GRANTEE** shall adhere to final configuration of accessible path along license area and must meet Americans with Disabilities Act and Texas Accessibility Standard requirements.
- b) **GRANTEE** shall obtain the required Building Permits and shall secure a Right-of-Way Permit prior to any work within the right-of-way.

SECTION 8. That upon the effectiveness of this ordinance, the Director of Department of Sustainable Development and Construction, or designee, is hereby authorized to execute a NOTICE OF LICENSE and to file same in the deed records of Dallas County, Texas. Additionally, the Director of Department of Sustainable Development and Construction, or designee, is hereby authorized to execute a cancellation of Notice of

SECTION 8. (continued)

License upon termination by the City or **GRANTEE** and to file such cancellation of Notice of License in the deed records of Dallas County, Texas.

SECTION 9. That the terms and conditions contained in this ordinance shall be binding upon **GRANTEE**, its successors and assigns.

SECTION 10. That this license may not be assigned without prior written approval from the Director of Department of Sustainable Development and Construction, or designee. Such assignment shall recite that it is subject to the terms, restriction and conditions contained in this ordinance. The assignee shall deliver evidence of ownership of property abutting the licensed area, and a copy of the assignment, along with the assignee's written acceptance of the provisions of this ordinance, to the Director of Department of Sustainable Development and Construction within 10 days of such assignment; said assignment and written acceptance shall be forwarded to the City Secretary of the City of Dallas. Should **GRANTEE** fail to obtain prior written approval for assignment of this license or fail to provide the City of Dallas with the required written acceptance and a copy of the assignment, the Director of Department of Sustainable Development and Construction, or designee, may terminate this license.

SECTION 11. That the City Secretary is hereby authorized and directed to certify a copy of this ordinance for recordation in the Deed Records of Dallas County, Texas, which certified copy shall be delivered to the Director of Department of Sustainable Development and Construction, or designee. Upon receipt of the fee pursuant to Section 3 of this ordinance, an acceptable certificate of insurance and the fee for publishing this ordinance which **GRANTEE** shall likewise pay, the Director of Department of Sustainable Development and Construction, or designee, shall deliver to **GRANTEE** the certified copy of this ordinance. 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 12. That this contract is designated as Contract No. DEV-2017-00001831.

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:
LARRY E. CASTO, City Attorney

BY: 
Assistant City Attorney

DAVID COSSUM, Director
Department of Sustainable Development and
Construction

BY: 
Assistant Director

Passed AUG 9 2017 .

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Exhibit A

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BEING a 1,074 square feet (0.025 acre) of aerial space situated in the John. Grigsby Survey, Abstract No. 495, City of Dallas, Dallas County, Texas, and being a portion of Commerce Street as created in City of Dallas Ordinance No. 1-A, Page 133, adjacent to Lot 1A, Block A/70 of The Adolphus Hotel Addition No. 2, an addition to the City of Dallas, Texas, according to the plat, recorded in Volume 95207, Page 3903 of the Deed Records of Dallas County, Texas, and being more particularly described by metes and bounds as follows:

COMMENCING at point which lies inside the exterior wall of an existing building for the southwest corner of aforesaid Lot 1A, and the intersection of the northerly right of way line of Commerce Street, a called 78.7' wide right of way, as created in said Ordinance No. 1-A, Page 133 and the easterly right of way line of Field Street, a 50' wide right of way as created in the final plat of Smith, Murphy & Martin Addition, an addition to the City of Dallas, Texas, as recorded in Volume H, Page 83 of the Map Records of Dallas County, Texas, from which, a found 3/8-inch iron rod bears South 76°00'00" West, 0.50 feet, and a found MAG nail bears South 30°42'W, 7.04 feet;

THENCE North 76°00'00" East, along the southerly line of said Lot 1A, Block A/70 and the northerly right of way line of said Commerce Street, a distance of 140.28 feet to the POINT OF BEGINNING of the herein described aerial space;

THENCE North 76°00'00" East, continuing along the southerly line of said Lot 1A, Block A/70 and the northerly right of way line of said Commerce Street, a distance of 71.58 feet to a corner, from which, an "X" cut set in a concrete sidewalk for the southeast corner of said Lot 1A, Block A/70 bears North 76°00'00" East, 188.14 feet;

THENCE South 14°00'00" East, departing the southerly line of said Lot 1A, the northerly right of way line of said Commerce Street and crossing said Commerce Street, a distance of 15.00 feet to a corner;

THENCE South 76°00'00" West, continuing across said Commerce Street, a distance of 71.58 feet to a corner;

THENCE North 14°00'00" West, continuing across said Commerce Street, a distance of 15.00 feet to the POINT OF BEGINNING and containing 0.025 of an acre (1,074 square feet) of aerial space, more or less.

Bearing system is based on the easterly line of Lot 1A, Block A/70 of The Adolphus Addition No. 2 as recorded in Volume 95207, Page 3903 of the Deed Records, Dallas County, Texas, said bearing being South 14°00'00" E

MICHAEL MARX
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 5181
5750 GENESIS COURT, SUITE 200
FRISCO, TEXAS 75034
PH. 972-335-3580
michael.marx@kimley-horn.com



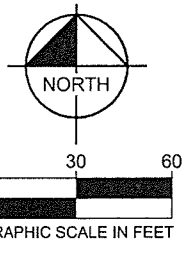
LICENSE AGREEMENT
PART OF COMMERCE STREET
THE ADOLPHUS HOTEL ADDITION NO. 2
ADJACENT TO LOT 1A, BLOCK A/70
JOHN GRIGSBY SURVEY, ABSTRACT NO. 495
CITY OF DALLAS
DALLAS COUNTY, TEXAS

(For SPRG use only)
Reviewed By: A. Rodriguez
Date: 5/15/17
SPRG NO: 4002

Kimley»Horn
5750 Genesis Court, Suite 200 Frisco, Texas 75034 FIRM # 10193822 Tel. No. (972) 335-3580 Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	MBM	KHA	05/15/2017	063227300	1 OF 2

30546



MAIN STREET
(79.5' RIGHT-OF-WAY)
ORDINANCE NO. 1-A,
PAGES 131-133

JOHN GRIGSBY SURVEY
ABSTRACT NO. 495

STORAGE VAULTS AND
UNDERGROUND SERVICE
LINES LICENSE, CITY OF
DALLAS ORDINANCE NO. 20164,
VOL. 99163, PG. 1418, D.R.D.C.T.

TRACTS 1, 2, 6, 7 AND 8
RBP ADOLPHUS LLC
INST. NO. 201200378642
O.P.R.D.C.T.

LOT 1A, BLOCK A/70
THE ADOLPHUS HOTEL
ADDITION No. 2
VOL. 952070, PG. 3903
D.R.D.C.T.

LOT 1A, BLOCK A/70
THE ADOLPHUS HOTEL
ADDITION No. 2
VOL. 952070, PG. 3903
D.R.D.C.T.

SUB-AREA SPACE LICENSE,
CITY OF DALLAS ORDINANCE
NO. 20164, VOL. 99163, PG. 1418,
D.R.D.C.T.

CANOPY LICENSE
0.025 ACRE (1,074 SQ. FT.)

AIRWAY LICENSE, CITY
OF DALLAS ORDINANCE
NO. 20164, VOL. 99163,
PG. 1418, D.R.D.C.T.

P.O.B.

N76°00'00"E
71.58'

N76°00'00"E 188.14'

S14°00'00"E
15.00'

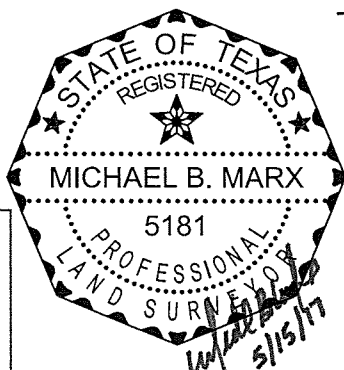
COMMERCE STREET
(78.7' RIGHT-OF-WAY)
ORDINANCE NO. 1-A, PAGE 133

AERIAL LICENSE, CITY OF DALLAS
ORDINANCE NO. 28294, INST. NO.
201100289557, O.P.R.D.C.T.

- LEGEND**
P.O.C. = Point of commencing
P.O.B. = Point of beginning
XF = Scribed "X" found
XS = Scribed "X" set
IRF = Iron rod found
IPF = Iron pipe found
VOL = Volume
PG = Page
INST. NO. = Instrument Number
D.R.D.C.T. = Deed Records of Dallas County, Texas
M.R.D.C.T. = Map Records of Dallas County, Texas
O.P.R.D.C.T. = Official Public Records, Dallas
County, Texas
O = Tract corner or corner monument

NOTE:
Bearing system is based on the easterly line of Lot 1A, Block A/70 of The Adolphus Addition No. 2 as recorded in Volume 95207, Page 3903 of the Deed Records, Dallas County, Texas, said bearing being South 14°00'00" E.

MICHAEL MARX
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 5181
5750 GENESIS COURT, SUITE 200
FRISCO, TEXAS 75034
PH. 972-335-3580
michael.marx@kimley-horn.com



LICENSE AGREEMENT
PART OF COMMERCE STREET
THE ADOLPHUS HOTEL ADDITION NO. 2
ADJACENT TO LOT 1A, BLOCK A/70
JOHN GRIGSBY SURVEY, ABSTRACT NO. 495
CITY OF DALLAS
DALLAS COUNTY, TEXAS

Kimley»Horn

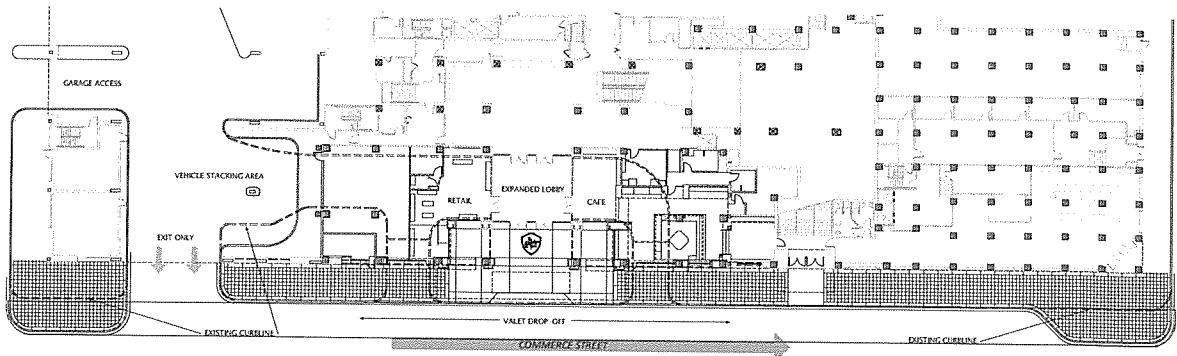
5750 Genesis Court, Suite 200
Frisco, Texas 75034
FIRM # 10193822
Tel. No. (972) 335-3580
Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 60'	MBM	KHA	05/15/2017	063227300	2 OF 2

Exhibit A



COMMERCE STREET COLOR ELEVATION
SCALE - NYS



SITE PLAN
SCALE: 1/16" = 1'-0"
NORTH

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COMMERCIAL ENTITY
ADDITIONAL LICENSE PROVISIONS

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That this license is granted subject to the following additional conditions, terms and reservations:

- (a) That at such time as this license is terminated or canceled for any reason whatsoever, **GRANTEE**, upon orders issued by the City acting through the Director of Sustainable Development and Construction, or designee, shall remove all installations, improvements and appurtenances owned by it situated in, under or attached to the licensed area, and shall restore the premises to its former condition in accordance with the requirements of the Director of Sustainable Development and Construction at the sole cost of **GRANTEE**. In the event, upon termination of this license, **GRANTEE** shall fail to remove its installations, improvements and appurtenances and to restore the licensed area in compliance with orders issued by City, or such work is not done to the satisfaction of the Director of Sustainable Development and Construction, then in either event the City shall have the right to do all work necessary to restore said area to its former condition or cause such work to be done, and to assess the cost of all such work against **GRANTEE**; in neither event shall the City of Dallas be liable to **GRANTEE** on account thereof.
- (b) It is further understood that if and when the City of Dallas, in the exercise of its discretion, shall determine that the grade of any street, sidewalk or parkway should be modified or changed, or that any other work should be done in connection with any public improvement which will affect the licensed area, and/or any of **GRANTEE's** installations and improvements thereon, any modifications or changes to **GRANTEE's** facilities in the licensed area or in construction or reconstruction of any public improvement attributable to **GRANTEE's** use of the licensed area and/or its installations and improvements thereon, shall be made at the sole expense of **GRANTEE** and to the satisfaction of the Director of Sustainable Development and Construction.
- (c) At such time as this license is granted, it is agreed, and a condition hereof, that **GRANTEE** shall procure and keep in full force and effect **Commercial General Liability Insurance** coverage issued by an insurance company authorized and approved by the State of Texas, acceptable to the City of Dallas and issued in the standard form approved by the Texas Department of Insurance. The insured provisions of this policy must name the City of Dallas as an additional insured protecting the City of Dallas against any and all claims for damages to persons or property as a result of or arising out of the use, operation and maintenance by **GRANTEE** of the licensed area and **GRANTEE's** installations, improvements, landscaping and equipment in connection therewith and located therein. The Commercial General Liability coverage must include, but not limited to, Premises/Operations, Independent Contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of not less than \$500,000 per occurrence and \$500,000 annual aggregate. This insurance shall also include coverage for underground, explosion and collapse hazards (i.e. not excluded). If this insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than

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twelve (12) months following termination of this license and removal of the installations, improvements and appurtenances and restoration of the licensed area pursuant to paragraph (a) above. Coverage, including any renewals, shall contain the same retroactive date as the original policy applicable to this license. The City of Dallas reserves the right to review the insurance requirements set forth herein during the effective term of the license and to adjust insurance coverages and their limits when deemed necessary and prudent by the City of Dallas' Risk Management based upon changes in statutory law, court decisions, or the claims history of the industry as well as the City of Dallas.

1. **GRANTEE** agrees that with respect to the above required insurance, all insurance contracts and certificates of insurance will contain and state, in writing, that coverage shall not be canceled, nonrenewed or materially changed except after thirty (30) days written notice by certified mail to Department of Sustainable Development and Construction.
 2. **GRANTEE** shall carry said insurance at its expense and shall furnish the City of Dallas proof of such insurance. In the event said insurance should terminate during the licensing term hereof, or **GRANTEE** fails to furnish proof of insurance coverage in accordance with the specifications as required by this section, the Director of Sustainable Development and Construction, or designee, may terminate the license granted herein.
- (d) **GRANTEE** is prohibited from using the licensed area in any manner which violates Federal, State or local laws, regulations, rules and orders, regardless of when they become or became effective, including without limitation, those related to health, safety, noise, environmental protection, waste disposal and water and air quality, and shall provide satisfactory evidence of compliance upon the request of the City of Dallas. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the licensed area due to **GRANTEE's** use and occupancy thereof, **GRANTEE**, at its expense, shall be obligated to clean up the licensed area to the satisfaction of the City of Dallas and any governmental body having jurisdiction thereover. The City of Dallas may, at its option, clean the licensed area. If the City of Dallas elects to do so, **GRANTEE** shall promptly pay to the City of Dallas the reasonable cost of such cleanup upon receipt of bills therefore. **GRANTEE** agrees that the indemnity provisions contained in paragraph (g) herein shall be fully applicable to the requirements of this paragraph, in event of **GRANTEE's** breach of this paragraph, or as a result of any such discharge, leakage, spillage, emission or pollution arising out of the **GRANTEE's** use of the licensed area.
- (e) This license is subject to all State laws, the provisions of the Charter of the City of Dallas as it now exists, or may hereafter be adopted or amended, and the ordinances of the City of Dallas now in effect or those which may hereafter be passed or adopted. The City of Dallas shall have the right to increase or decrease the compensation to be charged for the use contemplated by this grant in

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accordance with the provisions of the Dallas City Code as it now exists, or as may hereafter be adopted or amended.

- (f) The Governing Body of the City of Dallas reserves the right, at any time without notice, to terminate and cancel this license, by resolution, upon a finding by the Governing Body that this license is inconsistent with the public use of the property or whenever the purpose or use of the license is likely to become a nuisance and all rights granted hereunder shall thereupon be considered fully terminated and canceled and the City of Dallas shall not be held liable by reason thereof. The decision of the Governing Body of the City in this matter shall be final and binding upon all parties insofar as the City's determination as to whether the **GRANTEE's** use of this license constitutes a nuisance or is inconsistent with the public use of the property.
- (g) As a condition hereof, **GRANTEE** agrees and is bound to defend, indemnify and hold the City of Dallas, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for bodily injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by the use, occupancy and maintenance of the licensed area or **GRANTEE's** installations and improvements within the licensed area, from any act or omission of any representative, agent, customer and/or employee of **GRANTEE**, or by **GRANTEE's** breach of any of the terms or provisions of this license, or by any negligent or strictly liable act or omission of **GRANTEE**, its officers, agents, employees or contractors in the use, occupancy and maintenance of **GRANTEE's** installations and improvements within the licensed area; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City of Dallas, its officers, agents, employees or separate contractors, and in the event of joint and concurring negligence or fault of both the **GRANTEE** and the City of Dallas, responsibility and liability, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to the City of Dallas under Texas law and without waiving any defenses of the parties under Texas law. This obligation to indemnify and defend shall also include any claim for damage that any utility or communication company, whether publicly or privately owned, may sustain or receive by reason of **GRANTEE's** use of the licensed area or **GRANTEE's** improvements and equipment located thereon. In addition to the foregoing, **GRANTEE** covenants and agrees never to make a claim of any kind or character whatsoever against the City of Dallas for damage of any kind that it may suffer by reason of the installation, construction, reconstruction, operation or maintenance of any public improvement, utility or communication facility on the licensed area, whether presently in place or which may in the future be constructed or installed, including but not limited to, any water or wastewater mains or storm sewer facilities, regardless of whether such damage is due to

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COMMERCIAL ENTITY
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flooding, infiltration, backflow or seepage caused from the failure of any installation, natural causes, City's negligence, or from any other cause whatsoever.

- (h) This license is subject to any existing utilities or communication facilities, including drainage, presently located within the licensed area, owned and/or operated by the City of Dallas or any utility or communications company, public or private, and to any vested rights presently owned by an utility or communications company, public or private, for the use of the licensed area for facilities presently located within the boundaries of said licensed area. It is the intent of the foregoing that this permission herein is made expressly subject to the utilization of the licensed area for communication and utility purposes, both public and private, including drainage, over, under, through, across and along the licensed area. No buildings shall be constructed or placed upon, over or across the licensed area in such a manner as to interfere with the operation of any utilities and communication facilities. All and any communication company and utility, both public and private, shall have the right to remove and keep removed all or parts of any buildings which may in any way endanger or interfere with the construction, maintenance or efficiency of its respective systems within the licensed area. All communication companies and utilities, both public and private, shall have the full right to remove and keep removed all parts of any buildings, fences, trees, or other improvements or growths which in any way may endanger or interfere with the construction, maintenance and efficiency of its respective system and shall at all times have the full right of ingress and egress to or from and upon the licensed area for the purpose of constructing, relocating, inspecting, patrolling, maintaining and adding to or removing all or part of its respective systems without the necessity at any time of procuring the permission of anyone.



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 AUG 9 2017

ORDINANCE NUMBER 30546

DATE PUBLISHED AUG 12 2017

ATTESTED BY: