

ORDINANCE NO. 31252

An ordinance providing for the abandonment of a portion of Akard Street located adjacent to City Block 360 in the City of Dallas and County of Dallas, Texas; subject to a reverter; providing for the quitclaim thereof to KDP Akard Development Partners, LP; providing for the terms and conditions of the abandonment and quitclaim made herein; providing for barricading; 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**, City Council of the City of Dallas passed Ordinance No. 29104 on August 28, 2013 to abandon a portion of Akard Street, due to untimely action to file final replat within one year of the effective date of the ordinance, the ordinance became null and void and of no further effect.

**WHEREAS**, the City Council of the City of Dallas, acting pursuant to law and upon the request and petition of KDP Akard Development Partners, LP, a Texas limited partnership, hereinafter referred to as **GRANTEE**, deems it advisable to abandon and quitclaim, subject to a reverter, 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 Akard 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, conditions and reverter 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 reverter and conditions and future effective date hereinafter more fully set out.

**SECTION 2.** That for and in monetary consideration of the sum of **ONE HUNDRED NINETY THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$190,400.00)** paid by **GRANTEE**, and the further consideration described in Sections 8, 9, 10 and 11, the City of Dallas does by these presents **QUITCLAIM** unto the said **GRANTEE**, subject to the conditions, reservations, future effective date, the reverter, 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. Provided however, that if **GRANTEE**, its successors and assigns, fails to file a final replat of the adjoining properties as required in Section 9 of this ordinance, but no later than the earlier of (i) the date applicable pursuant to the requirements of the Dallas Development Code Chapter 51A-8.403(a)(4)(D) which provides in pertinent part, as may be amended:

“(D) Except as provided in this subparagraph, a preliminary plat approved by the commission expires five years after the commission action date approving the plat if no progress has been made toward completion of the project in accordance with Texas Local Government Code Section 245.005. An approved minor plat, amending plat (minor), or an administrative plat expires two years after the commission action date approving the plat or within two years after the date of the subdivision administrator’s action letter approving the administrative plat if no progress has been made toward completion of the project in accordance with Texas Local Government Code Section 245.005”;

or (ii) the date that is the sixth anniversary of the passage of this ordinance; THEN this ordinance and quitclaim shall be rendered null and void and the right, title and easement of the public shall absolutely revert without any necessity for suit or re-entry by the City; and no act or omission on the part of the City, its successors and assigns, shall be a waiver of the operation or enforcement of this ordinance. **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**.

**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 Chief Financial Officer is hereby authorized to deposit the sum paid by **GRANTEE** pursuant to Section 2 above in the General Fund, 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, Fund 0001, Department DEV, Unit 1183, Object 5011 and any remaining proceeds shall be transferred to the General Capital Reserve Fund, Fund 0625, Department BMS, Unit 8888, Revenue Code 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 a part of the consideration for the quitclaim to **GRANTEE** herein, **GRANTEE**, its successors and assigns, agree to indemnify, defend, release and hold harmless the City of Dallas as to 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 area 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**,

**SECTION 8.** (continued)

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:

**SECTION 10.** (continued)

- (a) per the City of Dallas Complete Streets Vision, adopted by City Council in January 2016, ensure six feet to eight feet of unobstructed pedestrian walkable space along Akard Street.
- (b) not amend the sidewalk requirement in Planned Development 193 (PD 193) SECTION 51P-193.126. Landscape, Streetscape, Screening and Fencing Standards, under Section (4) Sidewalks. Additionally, **GRANTEE** will not seek a sidewalk waiver in the future as per this condition.

**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 effectiveness of this abandonment, 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 areas 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, subject to a reverter interest, 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 is also designated for City purposes as Contract No. DEV-2019-00009826.

**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:  
CHRISTOPHER J. CASO,  
Interim City Attorney

KRIS SWECKARD, Director  
Department of Sustainable Development and  
Construction

BY:   
Assistant City Attorney

BY:   
502 Assistant Director

Passed                     JUN 26 2019                    .

Exhibit A

ABANDONMENT OF PART OF AKARD STREET  
ADJACENT TO BLOCK 360  
CITY OF DALLAS, DALLAS COUNTY, TEXAS

Being a 560 square feet tract of land situated in the John Grisgby Survey, Abstract No. 495 and being part of N. Akard Street right of way adjacent to City Block 360 as dedicated by the map of Ervin's Addition recorded in Volume 64, Page 403, Deed Records of Dallas County, Texas, said right of way being adjacent to a called 0.253 acre tract of land conveyed to Triton 2422 LLC by Special Warranty Deed recorded under County Clerk Instrument Number 201200203126, Official Public Records of Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a found "x" cut on pavement at the intersection of the northeast line of N. Akard Street (a variable width right of way) with the southeast line of Olive Street (a 50 foot right of way as dedicated by the map of Cole Addition recorded in Volume 84, Page 195, Deed Records of Dallas County, Texas), said point being the north corner of the said 0.253 acre tract;

THENCE, S 44°48'00" E, with the northeast line of N. Akard Street and the southwest line of the said 0.253 acre tract, a distance of 100.00 feet to a found "x" cut on concrete pavement for a corner in the northwest line of Lot 1, Block 2/360 of Downtown Joint Venture Addition, an addition to the City of Dallas, Texas according to the map thereof recorded in Volume 85027, Page 2140, Deed Records of Dallas County, Texas;

THENCE, S 45°23'00" W, with the northeast line of N. Akard Street and the northwest line of said Lot 1, Block 2/360, a distance of 8.00 feet to a found 1/2 inch iron rod for a corner, said point being the west corner of said Lot 1, Block 2/360;

THENCE, N 42°03'00" W, a distance of 100.10 feet to a set mag nail with washer stamped "Block 360" "No. 3952" for a corner in the projected southeast line of said Olive Street;

THENCE, N 45°23'00" E, with the projected southeast line of Olive Street, a distance of 3.20 feet to the Point of Beginning and Containing 560 square feet or 0.013 acres, more or less.

Date: March 11, 2013

L. Lynn Kadleck  
Registered Professional  
Land Surveyor No. 3952



Basis of Bearing:

The bearing basis for this survey is a bearing of S 44°48'00" E for the southwest line of Harry Hines Boulevard as shown on the map of Downtown Joint Venture Addition, an addition to the City of Dallas, Dallas County, Texas according to the map thereof recorded in Volume 85027, Page 2140, Deed Records of Dallas County, Texas.

REVIEWED BY  
JL 4-23-13  
SPAL 2619

ABANDONMENT OF PART OF AKARD STREET  
ADJACENT TO CITY BLOCK 360  
CITY OF DALLAS, DALLAS COUNTY, TEXAS

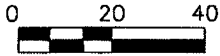
LEGEND

Exhibit A

NUM	BEARING	DISTANCE
L1	N45°23'00"E	3.20'

- CM Controlling Monument
- ROW Right of Way
- FIR Found Iron Rod
- MON Monument
- D.R.D.C.T. Deed Records  
Dallas County, Texas
- O.P.R.D.C.T. Official Public Records  
Dallas County, Texas

SCALE: 1"=40'



Date: March 11, 2013  
K&A Job 3088

International Center Dev. IX Ltd.  
Vol. 2008064, Pg. 8960  
D.R.D.C.T.

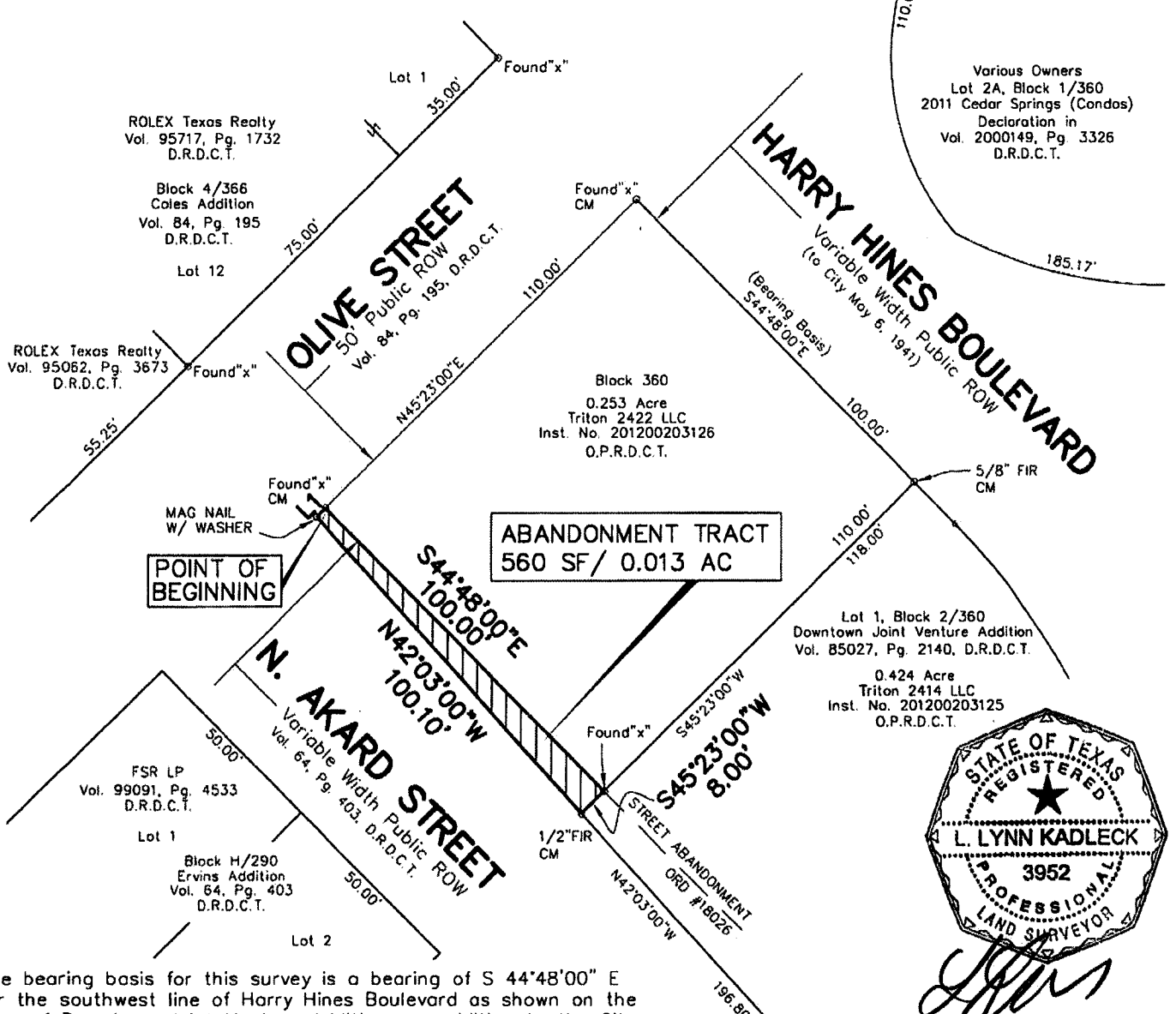
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International Center No. IX  
Inst. No. 200900241302  
O.P.R.D.C.T.

(For SPRG use only)

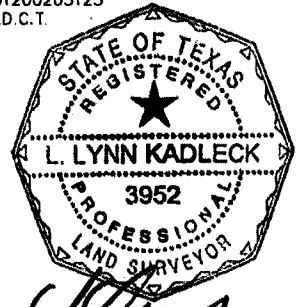
Reviewed by: JL

Date: 4-23-13

SPRG No. 2619



**ABANDONMENT TRACT**  
560 SF / 0.013 AC



L. Lynn Kadleck  
Registered Professional  
Land Surveyor No. 3952

The bearing basis for this survey is a bearing of S 44°48'00" E for the southwest line of Harry Hines Boulevard as shown on the map of Downtown Joint Venture Addition, an addition to the City of Dallas, Dallas County, Texas according to the map thereof recorded in Volume 85027, Page 2140, Deed Records of Dallas County, Texas.



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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.



## 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 26 2019

ORDINANCE NUMBER 31252

DATE PUBLISHED JUN 29 2019

ATTESTED BY: