

ORDINANCE NO. 31398

An ordinance providing for the abandonment of a portion of Dell Garden Avenue located adjacent to City Blocks 6338 and 6339 in the City of Dallas and County of Dallas, Texas; subject to a reverter; providing for the quitclaim thereof to Dallas Independent School District; 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; providing for the waiver of certain provisions of the Dallas City Code; 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 Dallas Independent School District, a governmental instrumentality, 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 and reverter herein provided, said portion of Dell Garden Avenue 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 those certain provisions of Section 51A-8.506(b) of the Dallas City Code regarding dead-end streets 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 reverter and the conditions hereinafter more fully set out.

SECTION 3. That for and in monetary consideration of the sum of **SEVENTEEN THOUSAND NINE HUNDRED FORTY AND NO/100 DOLLARS (\$17,940.00)** paid by **GRANTEE**, and the further consideration described in Sections 9, 10, 11 and 12, the City of Dallas does by these presents **QUITCLAIM** unto the said **GRANTEE**, subject to the conditions, reservations, 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(s) 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 11 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,

SECTION 3. (continued)

together with all and singular the rights, privileges, hereditaments and appurtenances thereto in any manner belonging unto the said **GRANTEE**.

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 Chief Financial Officer is hereby authorized to deposit the sum paid by **GRANTEE** pursuant to Section 3 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 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 a part of the consideration for the quitclaim to **GRANTEE** herein, **GRANTEE**, its successors and assigns, to the extent allowed by law, 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

SECTION 9. (continued)

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 acknowledge AT&T and Dallas Water Utilities (DWU) has existing facilities and retain rights of Exhibit B.

SECTION 11. 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

SECTION 11. (continued)

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 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, 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 14. That this ordinance is also designated for City purposes as Contract No. DEV-2019-00010700.

SECTION 15. 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:


Assistant Director

Passed DEC 11 2019.

31398
STREET RIGHT-OF-WAY ABANDONMENT
Part of Dell Garden Avenue
Adjacent to Blocks 6338 and 6339
William B. Elam Survey, Abstract No. 441
City of Dallas, Dallas County, Texas

Exhibit A
191893

DESCRIPTION, of an 17,940 square foot (0.412 acre) tract of land situated in the William B. Elam Survey, Abstract No. 441, Dallas County, Texas; said tract being part of Dell Garden Avenue (a 60-foot wide right-of-way) as dedicated by Plat of Pleasant Grove Annex Addition, an addition to the City of Dallas, Texas, recorded in Volume 12, Page 359 of the Map Records of Dallas County, Texas and dedicated by Plat of Buckner Heights Addition, an addition to the City of Dallas, Texas, recorded in Volume 12, Page 357 of the Map Records of Dallas County, Texas; said tract also being adjacent to City Block 6339 and City Block 6338 of the City of Dallas, Dallas County, Texas; said 17,940 square foot (0.412 acre) tract of land being more particularly described as follows:

COMMENCING, at a 1-inch iron rod in concrete found in the said south line of the Morelia Mexican Restaurant, Inc. tract recorded in Instrument No. 201700360316 of the Official Public Records of Dallas County, Texas and being the northwest corner of Lot 5 and the northeast corner of Lot 4, City Block 6339 of said, Pleasant Grove Annex Addition; from which a 1/2-inch pipe found (controlling monument) at the southeast corner of said Morelia Mexican Restaurant, Inc. tract, the southwest corner of that certain tract of land described in Warranty Deed to Pleasant Grove Independent School District recorded in Volume 3528, Page 516 of the Deed Records of Dallas County, Texas and being in the north line of said Lot 5 bears North 89 degrees, 26 minutes, 24 seconds East, 18.41 feet;

THENCE, South 00 degrees, 44 minutes, 45 seconds East, along the east line of said Lot 4 and the west line of said Lot 5, a distance of 244.34 feet to a 3-inch aluminum disk stamped "PACHECO KOCH – P.G.S.C." set for corner at the southeast corner of said Lot 4, the southwest corner of said Lot 5 and on the north line of said Dell Garden Avenue; from which a 5/8-inch iron rod with "5111" cap found (controlling monument) in the north right-of-way line of said Dell Garden Avenue and being the southeast corner of Lot 1A of the Resubdivision of Lots 1 and 2 Pleasant Grove Annex Addition, an addition to the City of Dallas, Texas, recorded in Volume 15, Page 251 of the Map Records of Dallas County, Texas bears South 89 degrees, 08 minutes, 10 seconds West, 186.94 feet;

THENCE, North 89 degrees, 08 minutes, 10 seconds East, along the south line of said Pleasant Grove Annex Addition and the said north line of Dell Garden Avenue, a distance of 1.00 feet to a 3-inch aluminum disk stamped "PACHECO KOCH – P.G.S.C." set for the **POINT OF BEGINNING**;

THENCE, North 89 degrees, 08 minutes, 10 seconds East, continuing along the said south line of Pleasant Grove Annex Addition and the said north line of Dell Garden Avenue, a distance of 299.00 feet to a MAG-nail with washer set; said point being the southeast corner of Lot 9, City Block 6339, of said Pleasant Grove Annex Addition, the northeast terminus point of said Dell Garden Avenue and being in the west line of Lot 2, City Block 6337, C.E. Musick's Subdivision, an addition to the City of Dallas, Texas, recorded in Volume 20, Page 229 of the Map Records of Dallas County, Texas;

THENCE, South 00 degrees, 44 minutes, 50 seconds East, along the east terminus line of said Dell Garden Avenue and the west line of said Lot 2, City Block 6337, a distance of 60.00 feet to

| | |
|---------------------|----------------|
| (For SPRG use only) | |
| Reviewed By: | <u>G.S.</u> |
| Date: | <u>6-26-19</u> |
| SPRG NO: | <u>4634</u> |

31398
STREET RIGHT-OF-WAY ABANDONMENT
Part of Dell Garden Avenue
Adjacent to Blocks 6338 and 6339
William B. Elam Survey, Abstract No. 441
City of Dallas, Dallas County, Texas

Exhibit A
191893

a MAG-nail with washer set; said point being the southeast terminus point of said Dell Garden Avenue and the northeast corner of Lot 9, City Block 6338, of said Buckner Heights Addition;

THENCE, South 89 degrees, 08 minutes, 10 seconds West, departing the said east terminus line of Dell Garden Avenue and continuing along the north line of said City Block 6338 and the south line of Dell Garden Avenue, a distance of 299.00 feet to a 3-inch aluminum disk stamped "PACHECO KOCH – P.G.S.C." set for corner in the said north line of Block 6338 and in the said south line of Dell Garden Avenue;

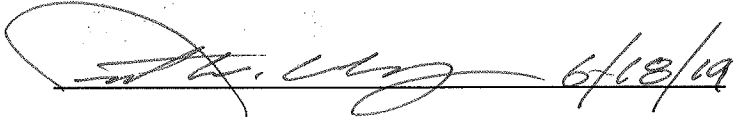
THENCE, North 00 degrees, 44 minutes, 45 seconds West, departing the said south line of Dell Garden Avenue and the said north line of Block 6338 into and across said Dell Garden Avenue, a distance of 60.00 feet to the **POINT OF BEGINNING**;

CONTAINING, 17,940 square feet or 0.412 acre of land, more or less.

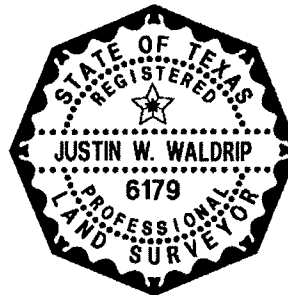
Bearing System is based on the State Plane Coordinate System, North American Datum of 1983 (2011), Texas North Central Zone 4202. Distances shown have been adjusted to surface by applying the Dallas County TxDOT combination factor of 1.000136506.

(A survey plat of even survey date herewith accompanies this description.)

The undersigned, Registered Professional Land Surveyor, hereby certifies that the foregoing description accurately sets out the metes and bounds of the right-of-way abandonment tract described.


Justin W. Waldrip
Registered Professional Land Surveyor No. 6179
Pacheco Koch Consulting Engineers, Inc.
7557 Rambler Road, Suite 1400, Dallas, Texas 75231
(972) 235-3031
TX Reg. Surveying Firm LS-10008000

Date



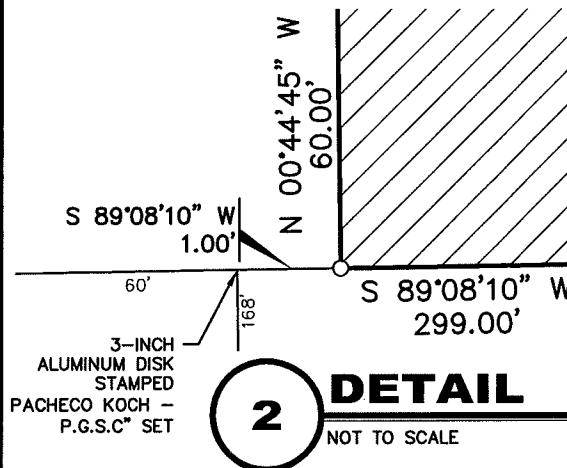
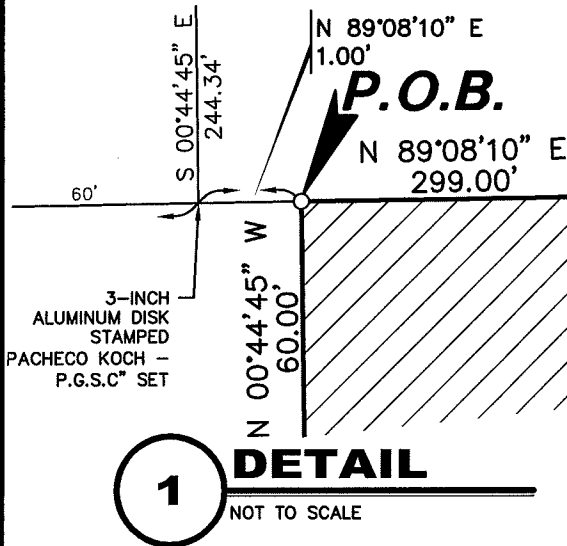
2997-17.492EX1-REV.docx
2997-17.492EX1-REV.dwg LAH

| | |
|---------------------|----------------|
| (For SPRG use only) | |
| Reviewed By: | <u>G. S.</u> |
| Date: | <u>6-26-19</u> |
| SPRG NO: | <u>4634</u> |

3139 8

| | | |
|-------------------------------|-----------------|-------------------------|
| PROPERTY LINE | O.P.R.D.C.T. - | OFFICIAL PUBLIC RECORDS |
| TRACT LINE | | OF DALLAS COUNTY, TEXAS |
| 5/8-INCH IRON ROD WITH | D.R.D.C.T. - | DEED RECORDS OF |
| "PACHECO KOCH" | | DALLAS COUNTY, TEXAS |
| CAP SET | M.R.D.C.T. - | MAP RECORDS OF |
| | | DALLAS COUNTY, TEXAS |
| MAG NAIL W/WASHER SET | R.O.W. - | RIGHT-OF-WAY |
| (C.M.) - CONTROLLING MONUMENT | P.O.C. - | POINT OF COMMENCING |
| VOL. - VOLUME | P.O.B. - | POINT OF BEGINNING |
| PG. - PAGE | | |
| INST. - INSTRUMENT | | |
| NO. - NUMBER | | |

MORELIA MEXICAN RESTAURANT, INC.
(INST. NO. 201700360316)
(O.P.R.D.C.T.)



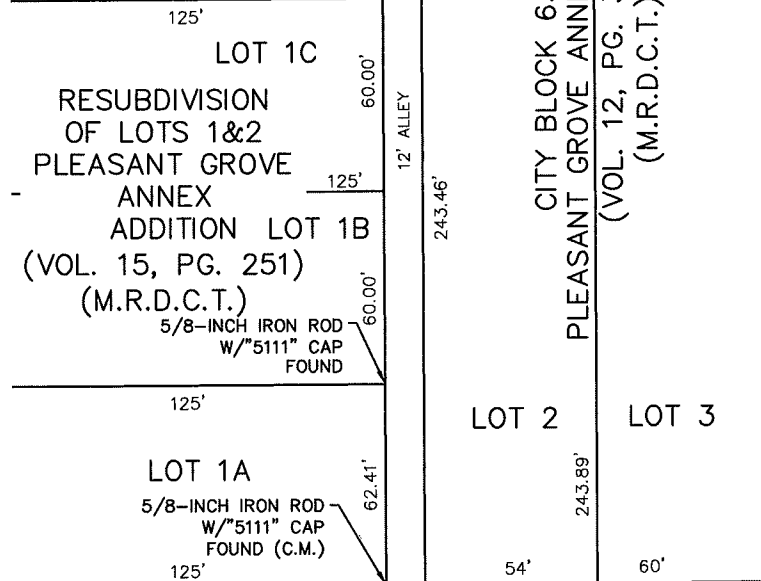
NOTES:

1. A metes and bounds description of even survey date herewith accompanies this plat of survey.
2. Bearing system for this survey is based on the State Plane Coordinate System, North American Datum of 1983 (2011), Texas North Central Zone 4202. Distances shown have been adjusted to surface by applying the Dallas County TxDOT combination factor of 1.000136506.



7557 RAMBLER ROAD, SUITE 1400
DALLAS, TX 75231 972.235.3031
TX REG. ENGINEERING FIRM F-469
TX REG. SURVEYING FIRM LS-10008000

| | | | | |
|-----------------|-------------------|--------------|-------------|-------------------|
| DRAWN BY | CHECKED BY | SCALE | DATE | JOB NUMBER |
| LAH | JWW | 1"=60' | JUNE 2019 | 2997-17.492 |



MATCH LINE (SEE SHEET 4)

DELL GARDEN
A VENUE (V
V
(60' WIDE RIGHT-OF-WAY)

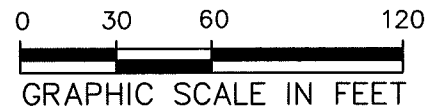
W S 89°08'10" W
186.94'
CENTERLINE
(VOL. 12, PG. 357)
VOL. 12, PG. 359)
(M.R.D.C.T.)

WILLIAM B. ELAM SURVEY
ABSTRACT NO. 441

60' 168' 60'
LOT 2 LOT 4
BUCKNER HEIGHTS
ADDITION
(VOL. 12, PG. 357)
(M.R.D.C.T.)
CITY BLOCK 6338

(For SPRG use only)

Reviewed By: G.S.
Date: 6-26-19
SPRG NO: 4634



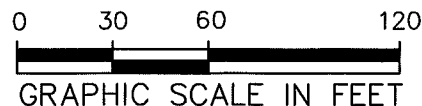
STREET RIGHT-OF-WAY ABANDONMENT

PART OF DELL GARDEN AVENUE
ADJACENT TO BLOCKS 6338 AND 6339
WILLIAM B. ELAM SURVEY, ABSTRACT NO. 441,
CITY OF DALLAS, DALLAS COUNTY, TEXAS
SHEET 3 OF 4

31398

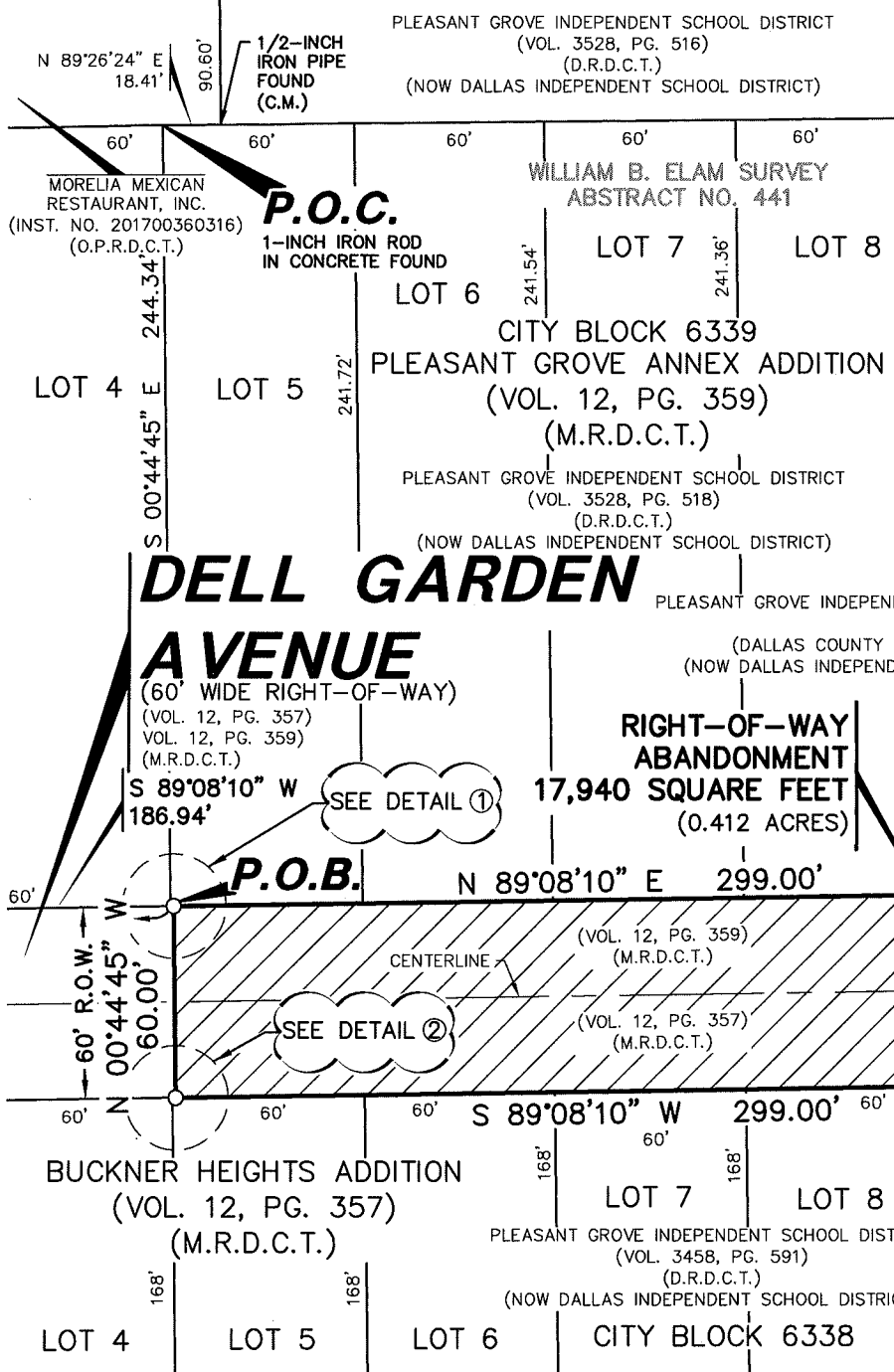
Exhibit A

191893



(For SPRG use only)
 Reviewed By: G.S.
 Date: 6-26-19
 SPRG NO: 4634

MATCH LINE (SEE SHEET 3)



The undersigned, Registered Professional Land Surveyor, hereby certifies that this plat of survey accurately sets out the metes and bounds of the right-of-way abandonment tract described.



Justin W. Waldrip
 Registered Professional
 Land Surveyor No. 6179

Date

Pacheco Koch

7557 RAMBLER ROAD, SUITE 1400
 DALLAS, TX 75231 972.235.3031
 TX REG. ENGINEERING FIRM F-469
 TX REG. SURVEYING FIRM LS-10008000

| DRAWN BY | CHECKED BY | SCALE | DATE | JOB NUMBER |
|----------|------------|--------|-----------|-------------|
| LAH | JWW | 1"=60' | JUNE 2019 | 2997-17.492 |

STREET RIGHT-OF-WAY ABANDONMENT

PART OF DELL GARDEN AVENUE
 ADJACENT TO BLOCKS 6338 AND 6339
 WILLIAM B. ELAM SURVEY, ABSTRACT NO. 441,
 CITY OF DALLAS, DALLAS COUNTY, TEXAS
 SHEET 4 OF 4

LEGEND

- PROPERTY LINE
- TRACT LINE
- 3-INCH ALUMINUM DISK
- STAMPED "PACHECO KOCH
- - P.G.S.C." SET
- MAG NAIL W/WASHER SET
- (C.M.) - CONTROLLING MONUMENT
- VOL. - VOLUME
- PG. - PAGE
- O.P.R.D.C.T. - OFFICIAL PUBLIC RECORDS OF DALLAS COUNTY, TEXAS
- D.R.D.C.T. - DEED RECORDS OF DALLAS COUNTY, TEXAS
- M.R.D.C.T. - MAP RECORDS OF DALLAS COUNTY, TEXAS
- R.O.W. - RIGHT-OF-WAY
- INST. - INSTRUMENT
- NO. - NUMBER
- P.O.C.** - POINT OF COMMENCING
- P.O.B.** - POINT OF BEGINNING

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 DEC 11 2019

ORDINANCE NUMBER 31398

DATE PUBLISHED DEC 14 2019

ATTESTED BY: