

City of Houston, Texas, Ordinance No. 2017- 45

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 9.022 ACRES COMMONLY KNOWN AS 2701 FOOTE STREET, HOUSTON, HARRIS COUNTY, TEXAS; SUPPORTING ISSUANCE OF A MUNICIPAL SETTING DESIGNATION BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AT THE REQUEST OF PINTO EAST END, LLC; CONTAINING OTHER PROVISIONS RELATED TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, Subchapter W, "Municipal Setting Designations," of Chapter 361, "Solid Waste Disposal Act," of the Texas Health and Safety Code authorizes the Texas Commission on Environmental Quality ("TCEQ") to create municipal setting designations; and

WHEREAS, on August 22, 2007, by Ordinance No. 2007-959, the City Council adopted Article XIII, of Chapter 47, Code of Ordinances, Houston, Texas, to provide a process for establishing municipal setting designation ordinances and amended that process on July 14, 2010, by Ordinance No. 2010-556; and

WHEREAS, Sections 47-765(f) and 47-767(a) of the Code of Ordinances, Houston, Texas, authorize municipal setting designation ordinances that prohibit the use of designated groundwater as potable water and thereby enable the TCEQ to certify a municipal setting designation for designated property; and

WHEREAS, on February 24, 2016, **Pinto East End, LLC** ("Applicant") applied to the Director of the Public Works and Engineering Department, requesting that the City Council support a municipal setting designation ordinance for property that is located generally at 2701 Foote Street in Houston, Texas 77020; and

WHEREAS, on December 06, 2016, the Director of the Public Works and Engineering Department conducted a public meeting at the Houston Permit Center, 1002 Washington Avenue, Houston, TX 77002 as required by Section 47-764 of the Code of Ordinances, and notified the community when the City Council public hearing would occur; and

WHEREAS, the Transportation, Technology, and Infrastructure City Council committee, designated by the Mayor, conducted a public hearing on December 12, 2016; and

WHEREAS, the City Council finds that:

(1) the application meets the eligibility criteria of Section 361.803 of the Texas Health and Safety Code;

(2) the municipal setting designation will not have an adverse effect on the current or future water resource needs or obligations of the City of Houston;

(3) there is a public drinking water supply system that satisfies the requirements of Chapter 341 of the Texas Health and Safety Code and that supplies or is capable of supplying drinking water to the designated property and property within one-half mile of designated property; and

(4) this Municipal Setting Designation Ordinance is necessary because the concentration of contaminants of concern exceeds human ingestion protective concentration levels, and the establishment of a municipal setting designation will allow the property to be brought back into productive use; and

WHEREAS, City Council finds that the Director of the Public Works and Engineering Department on behalf of City Council, in accordance with the Charter of the

City of Houston, state law, and the ordinances of the City of Houston, has given the required notices, the Technology, Transportation and Infrastructure Committee of City Council has held the required public hearing regarding this Municipal Setting Designation Ordinance and all procedural requirements have been satisfied; **NOW, THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That for purposes of this Municipal Setting Designation Ordinance, the "designated property" means the property as described in **Exhibit A**, attached to this Ordinance and incorporated by reference herein.

Section 2. That for purposes of this Municipal Setting Designation Ordinance, "designated groundwater" means groundwater beneath the designated property to a depth not to exceed 200 feet that is prohibited from use as potable water by this Ordinance.

Section 3. That use of the designated groundwater from beneath the designated property as potable water, as that term is defined in Section 47-761 of the Code of Ordinances, Houston, Texas, is prohibited.

Section 4. That the designated property must receive a certificate of completion or other analogous documentation issued by the TCEQ or the United States Environmental Protection Agency ("EPA") showing that any site investigations and response actions required pursuant to Section 361.808 of the Texas Health and Safety Code have been completed to the satisfaction of the TCEQ or EPA within the time period required by them.

Section 5. That the City Council supports the application to the TCEQ for a municipal setting designation on the designated property, with the following comment:

(1) The TCEQ and the EPA, as agencies charged to protect human health and the environment, are requested to thoroughly review the conditions on the designated property and issue a certificate of completion only when all contaminants of concern, through the applicable routes of exposure, have been addressed.

Section 6. That any person owning, operating, or controlling the designated property remains responsible for complying with all applicable federal and state laws and regulations and all ordinances, rules, and regulations of the City of Houston. The City Council's approval of a municipal setting designation ordinance in itself does not change any environmental assessment or remediation requirements applicable to the designated property.

Section 7. That approval of this Municipal Setting Designation Ordinance shall not be construed to subject the City of Houston to any responsibility or liability for any injury to persons or damages to property caused by any contaminant of concern.

Section 8. That within 30 days after adoption of this Municipal Setting Designation Ordinance, the Applicant shall provide the Director of the Public Works and Engineering Department with an electronic file showing the location of the designated property and the designated groundwater in a format compatible with the City's geographic information system and its integrated land management system, and shall provide an electronic file showing the location of the designated property and the designated groundwater to the Harris County Appraisal District in a format compatible with its system.

Section 9. That within 30 days after adoption of this Municipal Setting Designation Ordinance, the Director of the Public Works and Engineering Department shall send a certified copy of this ordinance to the Applicant, to TCEQ and to EPA.

Section 10. That the Applicant shall provide the Director of the Public Works and Engineering Department with a copy of the municipal setting designation certificate issued by the TCEQ pursuant to Section 361.807 of the Texas Health and Safety Code within 30 days after issuance of the certificate.

Section 11. That within 30 days after receipt of the municipal setting designation certificate from the TCEQ, the Director of the Public Works and Engineering Department shall file a certified copy of this Municipal Setting Designation Ordinance in the deed records of Harris County.

Section 12. That if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 13. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on that date and shall take effect

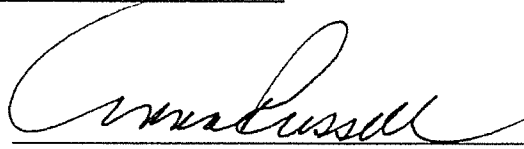
immediately upon its passage and approval by the mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 25th day of January, 2017.

APPROVED this _____ day of _____, 2017.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JAN 31 2017.



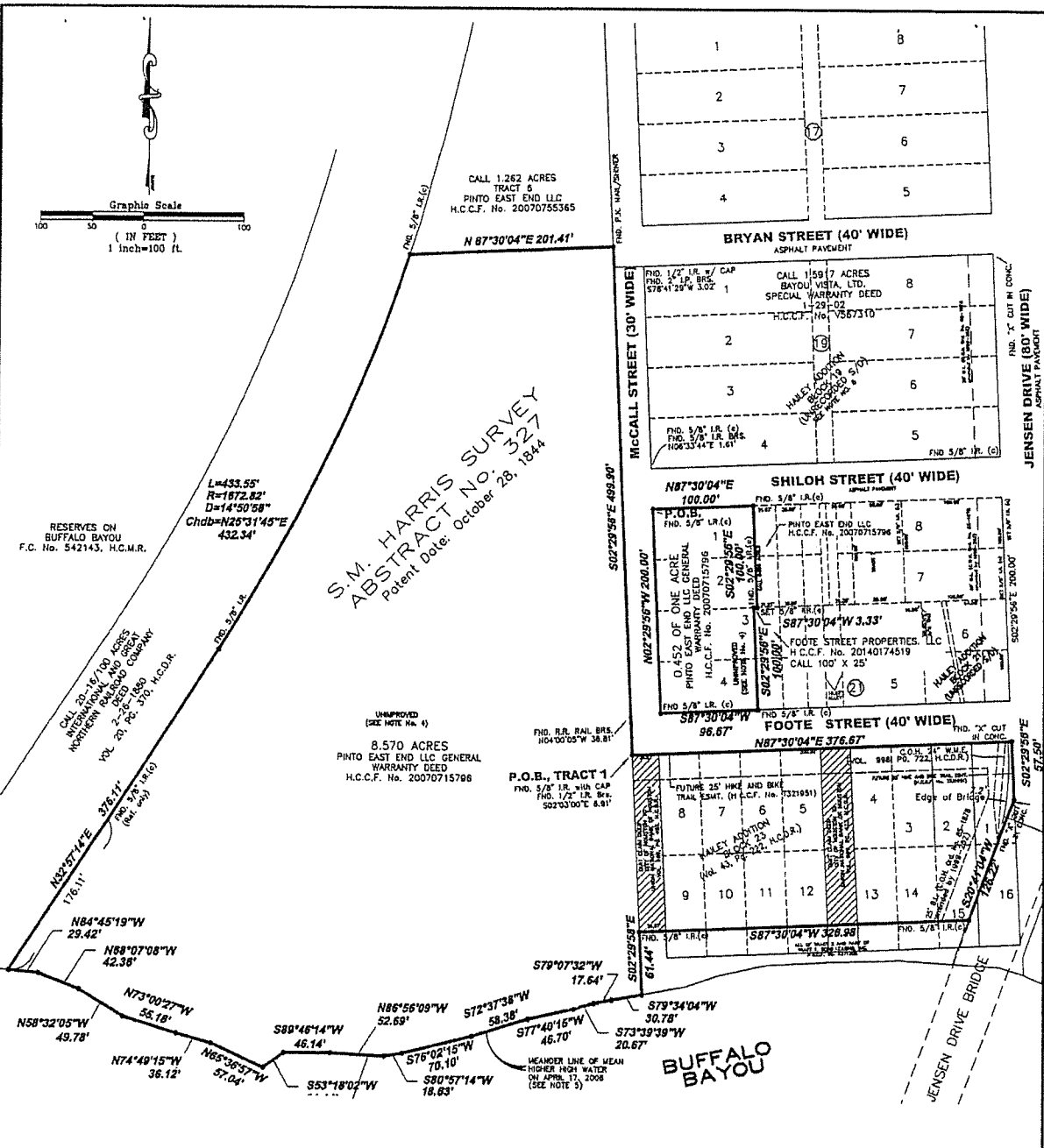
City Secretary

(Prepared by Legal Department Phil M. G. O'Connell ^{GWP})
(PMG/ng/1/12/2017 Assistant City Attorney)
(Requested by Dale A. Rudick, P.E., Director, Public Works and Engineering Department)
(L.D. File No. 063-1600295-001)

AYE	NO	
✓		MAYOR TURNER
••••	••••	COUNCIL MEMBERS
ABSENT		STARDIG
✓		DAVIS
ABSENT		COHEN
✓		BOYKINS
✓		MARTIN
✓		LE
✓		TRAVIS
✓		CISNEROS
✓		GALLEGOS
✓		LASTER
✓		GREEN
✓		KNOX
✓		ROBINSON
ABSENT		KUBOSH
✓		EDWARDS
✓		CHRISTIE
CAPTION	ADOPTED	

EXHIBIT "A"

Survey of Designated Property
(6 pages)



TO:

THIS SURVEY SUBSTANTIALLY COMPLIES WITH THE CURRENT (2006 REVISED ELEVENTH EDITION) TEXAS SOCIETY OF PROFESSIONAL SURVEYORS STANDARDS AND SPECIFICATIONS FOR A CATEGORY 1A, CONDITION II SURVEY.

DATED THIS 22ND DAY OF JULY, 2016.

Ronald G. Harrison
 RONALD G. HARRISON, R.P.L.S.
 TEXAS REGISTRATION No. 5423



- Notes:
- This survey was performed without benefit of a current title report. There may be easements, building lines and other matters of record not shown hereon. The surveyor has not abstracted the subject property.
 - The bearing basis shown hereon is the Texas Coordinate System of 1983, South Central Zone (4204).
 - According to the Federal Management Agency Flood Insurance Rate Map No. 48201C0690M map revised June 9, 2014, the subject property lies partially in Zone "X" Unshaded (areas determined to be outside the 0.2% annual chance floodplain), in Zone "X" Shaded (areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas of less than 1 square mile; and areas protected by levees from 1% annual chance flood), in Zone "AE" (Special Flood Hazard Areas subject to inundation by the 1% annual chance flood event—base flood elevations determined), in Zone "AE—Floodway" (Floodway areas in Zone "AE"; the floodway is the channel of a stream plus any adjacent floodplain areas that must be kept free of encroachment so the 1% annual chance flood can be carried without substantial increases in flood heights).
 - Improvements are not reflected on the survey.
 - Portions of this survey are bounded by Buffalo Bayou which is a "navigable stream" that may require a Licensed State Land Surveyor (LSLS) to delineate. Any bulk-heading, permitting etc. affecting the boundary line on Buffalo Bayou will require a survey by an LSLS.

BENCHMARK ENGINEERING CORPORATION
 Consulting Engineers - Planners - Surveyors

2401 Fountainview Suite 220
 Houston, Texas 77057 U.S.A. (713)266-9930

STANDARD LAND TITLE SURVEY
 8.570 ACRES OF LAND AND 0.452 ACRES OF LAND
 LOCATED IN THE
 S.M. HARRIS SURVEY, ABSTRACT No. 327,
 HARRIS COUNTY, TEXAS

DRAWN BY: SJ	DATE: 07-25-16	SCALE: 1"= 100'
CHECKED BY: RGH	JOB No. 06023-09	SHEET No. 1 OF 2

METES AND BOUNDS DESCRIPTION

8.570 ACRES

373,306 SQUARE FEET

HARRIS COUNTY, TEXAS

July 29, 2016

All that certain 8.570 acre (373,306 square foot) parcel of land situated in the Samuel M. Harris Survey, Abstract Number 327, in Harris County, Texas, and being all a called 8.570 acre tract as conveyed by General Warranty Deed dated December 4, 2007 to Pinto East End, LLC as recorded under Clerk's File no. 20070715796 of the Official Public Records or real Property Harris County, Texas, said 8.570 acres being more particularly described by metes and bounds as follows: (All bearings are referenced to the Texas State Plane Coordinate System, South Central Zone)

COMMENCING at the City of Houston Engineering Department's Reference Monument Number 281, a 3/4 inch iron rod found at the intersection of the call centerline of North St. Charles Street (formerly known as Buffalo Street) (40 feet wide) and the call centerline of Ann Street (40 feet wide). (Texas State Plane Surface Coordinates: N 13843210.1818, E 3128791.1124, Average Combined Scale Factor = 0.99989356457)

THENCE, North 12 Degrees 13 Minutes 25 Seconds West, a distance of 1,376.05 feet to a 5/8 inch iron rod found at the intersection of the south right-of-way (R.O.W.) line of Foote Street (40 feet wide) and the west R.O.W. line of McCall Street (30 feet wide) for an interior corner and **POINT OF BEGINNING** of the herein described tract, and from which a found 1/2 inch iron rod bears South 02 Degrees 03 Minutes 00 Seconds East, a distance of 6.91 feet, and from which a found section of railroad rail protruding from the ground bears North 04 Degrees 00 Minutes 05 Seconds West, a distance of 36.81 feet;

THENCE, with the south R.O.W. line of said Foote Street and the lower north line of the herein described tract, North 87 Degrees 30 Minutes 04 Seconds East, at 26.67 feet pass the call northwest corner of Lot 8, in Block 23, of Block 23 Hailey's Addition to the City of Houston, a subdivision of record in Volume 43, Page 222, of the Harris County Deed Records (H.C.D.R.), and continue, in all, a distance of 376.67 feet to a 5/8 inch iron rod with plastic cap stamped "BENCHMARK ENGR." set in the west R.O.W line of Jensen Drive (width varies at this point) for the call northeast corner of Lot 1 of said Block 23 Hailey's Addition to the City of Houston and the lower northeast corner of the herein described tract;

THENCE, with the west R.O.W. line of said Jensen Drive, the call east line of said Block 23 Hailey's Addition to the City of Houston, and the lower east line of the herein tract, South 02 Degrees 29 Minutes 56 Seconds East, a distance of 57.50 feet to an "X" cut in concrete set for an angle point;

THENCE, continuing with the west R.O.W. line of said Jensen Drive, and through and across said Block 23 Hailey's Addition to the City of Houston, South 20 Degrees 41 Minutes 04 Seconds West, a distance of 126.22 feet to a 5/8 inch iron rod with plastic cap stamped "BENCHMARK ENGR." set for the upper southeast corner of the herein described tract;

THENCE, continuing through and across said Block 23 Hailey's Addition to the City of Houston and with the upper south line of the herein described tract, South 87 Degrees 30 Minutes 04 Seconds West, at 300.31 feet pass the call west line of said Block 23 Hailey's Addition to the City of Houston, and continue, in all, a distance of 326.98 feet to a 5/8 inch iron rod with plastic cap stamped "BENCHMARK ENGR." set for an interior corner of the herein described tract;

THENCE, South 02 Degrees 29 Minutes 58 Seconds East, a distance of 61.44 feet to a point on the north meander line of mean higher high water of Buffalo Bayou, as established by William E. Merten, R.P.L.S., L.S.L.S., on April 17, 2006, for the lower southeast corner of the herein described tract;

THENCE, with the north meander line of mean higher high water of said Buffalo Bayou and the lower south line of the herein described tract, the following sixteen (16) courses:

- 1) South 79 Degrees 34 Minutes 04 Seconds West, a distance of 30.78 feet;
- 2) South 79 Degrees 07 Minutes 32 Seconds West, a distance of 17.64 feet;
- 3) South 73 Degrees 39 Minutes 39 Seconds West, a distance of 20.67 feet;
- 4) South 77 Degrees 40 Minutes 15 Seconds West, a distance of 46.70 feet;
- 5) South 72 Degrees 37 Minutes 38 Seconds West, a distance of 58.38 feet;
- 6) South 76 Degrees 02 Minutes 15 Seconds West, a distance of 70.10 feet;
- 7) South 80 Degrees 57 Minutes 14 Seconds West, a distance of 18.63 feet;
- 8) North 86 Degrees 56 Minutes 09 Seconds West, a distance of 52.69 feet;
- 9) South 89 Degrees 46 Minutes 14 Seconds West, a distance of 46.14 feet;
- 10) South 53 Degrees 18 Minutes 02 Seconds West, a distance of 24.44 feet;
- 11) North 65 Degrees 36 Minutes 57 Seconds West, a distance of 57.04 feet;
- 12) North 74 Degrees 49 Minutes 15 Seconds West, a distance of 36.12 feet;
- 13) North 73 Degrees 00 Minutes 27 Seconds West, a distance of 55.18 feet;
- 14) North 58 Degrees 32 Minutes 05 Seconds West, a distance of 49.78 feet;
- 15) North 68 Degrees 07 Minutes 08 Seconds West, a distance of 42.36 feet;
- 16) North 84 Degrees 45 Minutes 19 Seconds West, a distance of 29.42 feet to the intersection of the north meander line of mean higher high water of said Buffalo Bayou with the easterly line of the residue of that certain call 20-16/100 acres described in a Deed to the International and Great Northern Rail Road (I. & G.N.R.R.) Company in Volume 20, Page 370, of the H.C.D.R.;

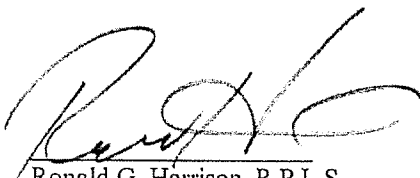
THENCE, with the easterly line of the residue of said 20-16/100 acre tract and the westerly line of the herein described tract, the following two (2) courses:

- 1) North 32 Degrees 57 Minutes 14 Seconds East, at 176.11 feet pass a 5/8 inch iron rod with plastic cap stamped "BENCHMARK ENGR." set for reference, and continue, in all, a distance of 376.11 feet to a 5/8 inch iron rod with plastic cap found for the beginning of a curve to the left;
- 2) 433.55 feet along the arc of said curve to the left having a radius of 1,672.82 feet, a central angle of 14 Degrees 50 Minutes 58 Seconds, and a chord that bears North 25 Degrees 31 Minutes 45 Seconds East, a distance of 432.34 to a 5/8 inch iron rod with plastic cap stamped "BENCHMARK ENGR." set for the southwest corner of that certain called 1.262 acre tract as conveyed by General Warranty Deed dated December 4, 2007 to Pinto East End, LLC as recorded under Clerk's File no. 20070715796 of the Official Public Records or real Property Harris County, Texas and the northwest corner of the herein described tract;

THENCE, with the south line of said 1.262 acre tract and the upper north line of the herein described tract, North 87 Degrees 30 Minutes 04 Seconds East, a distance of 201.41 feet to a "PK" nail with shiner set in the west R.O.W. line of said McCall Street for the southeast corner of said 1.262 acre tract and the northeast corner of the herein described tract;

THENCE, with the west R.O.W. line of said McCall Street and the upper east line of the herein described tract, South 02 Degrees 29 Minutes 56 Seconds East, a distance of 499.90 feet to the **POINT OF BEGINNING** and containing 8.570 acres (373,306 square feet) of land.

This description is based on a survey made on the ground and is issued in conjunction with a Plat of Survey prepared by Benchmark Engineering Corporation dated July 23, 2016.



Ronald G. Harrison, R.P.L.S.
Texas Registration No. 5342



METES AND BOUNDS DESCRIPTION

0.452 OF ONE ACRE

19,667 SQUARE FEET

HARRIS COUNTY, TEXAS

July 29, 2016

All that certain 0.452 of one acre (19,667 square foot) parcel of land situated in the Samuel M. Harris Survey, Abstract Number 327, in Harris County, Texas, and being a portion of that certain call 0.452 acre tract of land as conveyed by General Warranty Deed dated December 4, 2007 to Pinto East End, LLC as recorded under Clerk's File no. 20070715796 of the Official Public Records or real Property Harris County, Texas and further being a portion of Lots 1, 2, 3 and 4 of Block 21 of T. T. Hailey's Subdivision (unrecorded), said 0.452 of one acre being more particularly described by metes and bounds as follows: (All bearings are referenced to the Texas State Plane Coordinate System, South Central Zone)

COMMENCING at the City of Houston Engineering Department's Reference Monument Number 281, a 3/4 inch iron rod found at the intersection of the call centerline of North St. Charles Street (formerly known as Buffalo Street) (40 feet wide) and the call centerline of Ann Street (40 feet wide). (Texas State Plane Surface Coordinates: N 13843210.1818, E 3128791.1124, Average Combined Scale Factor = 0.99989356457)

THENCE, North 09 Degrees 43 Minutes 35 Seconds West, a distance of 1,609.07 feet to a 5/8 inch iron rod with plastic cap stamped "BENCHMARK ENGR." found at the intersection of the south right-of-way (R.O.W.) line of Shiloh Street (40 feet wide) with the east R.O.W. line of McCall Street (30 feet wide) for the northwest corner of Lot 1 of said Block 21 and the northwest corner and **POINT OF BEGINNING** of the herein described tract;

THENCE, with the south R.O.W. line of said Shiloh Street and the north line of the herein described tract, North 87 Degrees 30 Minutes 04 Seconds East, a distance of 100.00 feet to a 5/8 inch iron rod with plastic cap stamped "BENCHMARK ENGR." found for the northwest corner of that certain call 0.050 acre tract as conveyed by General Warranty Deed dated December 4, 2007 to Pinto East End, LLC as recorded under Clerk's File no. 20070715796 of the Official Public Records or real Property Harris County, Texas and the northeast corner of the herein described tract;

THENCE, with the west line of said 0.050 acre tract and the upper east line of the herein described tract, South 02 Degrees 29 Minutes 56 Seconds East, a distance of 100.00 feet to a 5/8 inch iron rod with plastic cap stamped "BENCHMARK ENGR." set in the north line of that certain call 25 X 100 foot tract conveyed by Deed under Order of Sale In Tax Suits dated March 4, 2014 to Foote Street Properties, LLC as recorded under Clerk's File No. 20140174519 of the Official Public Records of Real Property, Harris County, Texas, for the southwest corner of said 0.050 acre tract and the upper southeast corner of the herein described tract;

THENCE, with the north line of said 25 X 100 foot tract, South 87 Degrees 30 Minutes 04 Seconds West, a distance of 3.33 feet to a 5/8 inch iron rod with plastic cap stamped "BENCHMARK ENGR." found for the northwest corner of said 25 X 100 foot tract and an interior corner of the herein described tract;

THENCE, with the west line of said 25 X 100 foot tract and the lower east line of the herein described tract, South 02 Degrees 29 Minutes 56 Seconds East, a distance of 100.00 feet a 5/8 inch iron rod with plastic cap stamped "BENCHMARK ENGR." found in the north R.O.W. line of Foote Street (40 feet

wide) for the southwest corner of said 25 X 100 foot tract and the lower southeast corner of the herein described tract;

THENCE, with the north R.O.W. line of said Foote Street and the south line of the herein described tract, South 87 Degrees 30 Minutes 04 Seconds West, a distance of 96.67 feet to a 5/8 inch iron rod with plastic cap stamped "BENCHMARK ENGR." set at the intersection of the north R.O.W. line of said Foote Street with the east R.O.W. line of said McCall Street for the southwest corner of the herein described tract;

THENCE, with the east R.O.W. line of said McCall Street and the west line of the herein described tract, North 02 Degrees 29 Minutes 56 Seconds West, a distance of 200.00 feet to the **POINT OF BEGINNING** and containing 0.452 of one acre (19,667 square feet) of land.

This description is based on a survey made on the ground and is issued in conjunction with a Plat of Survey prepared by Benchmark Engineering Corporation dated July 23, 2016.



Ronald G. Harrison, R.P.L.S.
Texas Registration No. 5342



I, ANNA RUSSELL, City Secretary of the City of Houston, Texas, do hereby certify that the within and foregoing is a true and correct copy of Ordinance 2017-45 passed and adopted by the City Council of said City on the 25th day of January, 2017, as the same appears in the records in my office.

WITNESS my hand and the Seal of said City this 9th day of February, 2017.



A handwritten signature in blue ink, reading "Anna Russell", is written over a horizontal line.

Anna Russell
City Secretary of the City of Houston