City of Houston, Texas, Ordinance No. 2009-1261

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 3.4231 ACRES COMMONLY KNOWN AS 2806-2818 HULLSMITH DRIVE, AND A PORTION OF THE WESTHEIMER ROAD RIGHT OF WAY, HOUSTON, HARRIS COUNTY, TEXAS; AND SUPPORTING ISSUANCE OF A MUNICIPAL SETTING DESIGNATION BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; 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

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 4, 2009, RealBlue Investments, 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 2806-2818 Hullsmith Drive Site located in Houston, Texas 77063; and

WHEREAS, on October 27, 2009, the Director of the Public Works and Engineering Department conducted a public meeting as required by section 47-764, and notified the community when the City Council public hearing would occur; and

WHEREAS, City Council conducted a public hearing on November 18, 2009; 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 the 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, 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:

Section 1. That for purposes of this Municipal Setting Designation Ordinance, the "designated property" means the two tracts 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 use of the designated groundwater from beneath public rights-of-way immediately adjacent to 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 5. 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 6. 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 7. 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 cleanup requirements applicable to the designated property.

Section 8. 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 9. 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 10. 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, TCEQ and EPA.

Section 11. 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 12. 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 13. 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 applicability 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 14. 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 such date and shall take effect immediately upon its passage and approval by the Mayor.

PASSED AND ADOPTED this 9th **day of** December**, 2009.**

Bill White

Mayor of the City of Houston

Prepared by the Legal Department

DFM

November 18, 2009, Ceil Price, Senior Assistant City Attorney

Requested by Michael Marcotte, P.E., D.WRE, BCEE, Director,
Public Works and Engineering Department
L.D. File No. 0800900066001

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AYE	NO	
✓		MAYOR WHITE
••••	••••	COUNCIL MEMBERS
✓		LAWRENCE
✓		JOHNSON
✓		CLUTTERBUCK
✓		ADAMS
✓		SULLIVAN
✓		KHAN
✓		HOLM
✓		GONZALEZ
✓		RODRIGUEZ
✓		BROWN
✓		LOVELL
✓		NORIEGA
	ABSENT	GREEN
✓		JONES
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT REVIEW
DATE: DEC 1 5 2009

EXHIBIT A

BEING A TRACT OR PARCEL OF LAND CONTAINING 3.4231 ACRES OF LAND, MORE OR LESS, BEING A STRIP OF LAND OUT OF A 16.5 ACRES TRACT IN THE J.D. TAYLOR SURVEY, AS DESCRIBED IN DEED DATED JULY 25, 1917 RECORDED IN VOLUME 388, PAGE 159 OF THE DEED RECORDS OF HARRIS COUNTY, TEXAS, SAID 3.4231 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A 5/8 INCH IRON ROD FOUND AT THE NORTHWEST CORNER OF SAID 16.5 ACRES TRACT SAID 5/8 INCH IRON ROD ALSO BEING ON THE SOUTH RIGHT-OF-WAY LINE OF WESTHEIMER ROAD (120' R.O.W.);

THENCE SOUTH 89 DEG. 44 MIN. 45 SEC. EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE OF WESTHEIMER ROAD A DISTANCE OF 132.34 FEET TO A 5/8 INCH ROD FOUND FOR THE NORTHWEST CORNER AND PLACE OF BEGINNING OF THE HEREIN DESCRIBED TRACT;

THENCE SOUTH 89 DEG. 44 MIN. 45 SEC. EAST CONTINUING ALONG SAID SOUTH RIGHT-OF-WAY LINE OF WESTHEIMER ROAD A DISTANCE OF 170.00 FEET TO A P.K. NAIL SET FOR THE NORTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE SOUTH 00 DEG. 03 MIN. 45 SEC. EAST A DISTANCE OF 661.04 FEET TO A 1/2 INCH IRON ROD SET FOR THE BEGINNING OF A CURVE;

THENCE SOUTHEASTERLY ALONG SAID CURVE TO THE LEFT HAVING A RADIUS OF 60.00 FEET A CENTRAL ANGLE OF 149 DEG. 22 MIN. 30 SEC. A CHORD WHICH BEARS SOUTH 14 DEG. 45 MIN. 45 SEC. EAST A CHORD DISTANCE OF 115.74 FEET AN ARC DISTANCE OF 156.42 FEET TO A 1/2 IRON ROD SET FOR THE END OF THE CURVE;

THENCE SOUTH 00 DEG. 03 MIN. 45 SEC. EAST ALONG THE WEST LINE OF THAT CERTAIN TRACT RECORDED UNDER HARRIS COUNTY CLERK'S FILM CODE NO. 548-10-3074 A DISTANCE OF 98.28 FEET TO A 1/2 INCH IRON ROD FOUND FOR THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE SOUTH 89 DEG. 44 MIN. 48 SEC. WEST ALONG THE NORTH LINE OF BRIARMEADOW, SEC. 1 A DISTANCE OF 200.00 FEET TO THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE NORTH 00 DEG. 01 MIN. 16 SEC. WEST ALONG THE EAST LINE OF THAT CERTAIN TRACT RECORDED UNDER HARRIS COUNTY CLERK'S FILM CODE NO. 023-52-3276 A DISTANCE OF 871.11 FEET TO THE PLACE OF BEGINNING AND CONTAINING 3.4231 ACRES OF LAND, MORE OR LESS.

NOTE: BEARINGS ARE BASED ON INSTRUMENT FILED UNDER H.C.C.F. NO. 023-52-3276.

PROPERTIES OWNED BY THE CITY OF HOUSTON, TEXAS

PORTIONS OF THE DEDICATED STREETS KNOWN AS WESTHEIMER ROAD LOCATED WITHIN OR BETWEEN THE RIGHT-OF-WAY LINE NORTH AND ADJACENT TO THIS TRACT.