City of Houston, Texas, Ordinance No. 2009-1300

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 5.984 ACRES COMMONLY KNOWN AS 13100 MEMORIAL DRIVE, 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 January 19, 2009, SRS Shopping Center, Ltd. ("Applicant") applied to the Director of the Public Works and Engineering Department, requesting that the City Council support a municipal setting designation ordinance for the Rummel Creek Village Shopping Center Site located in Houston, Texas 77079; and

WHEREAS, on November 19, 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 December 16, 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 tract 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; 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 16th **day of** December**, 2009.**

APPROVED this _____ day of _____, 2009.

_____
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is DEC 2 2 2009.

_____
City Secretary

Prepared by the Legal Department

DFA

_____
December 10, 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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CAPTION PUBLISHED IN DAILY COURT REVIEW DATE: DEC 2 2 2009

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

MAY 017 Rev. 11/09

EXHIBIT A

A tract of land containing 5.984 acres, more or less, situated in the Christiana Williams Survey, A-834, Harris County, Texas, said 5.984 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a ¾ inch iron pipe marking the intersection of the Northerly right-of-way line of Memorial Drive (100' ROW) with Easterly line the Houston Lighting and Power Company 150 foot fee strip as recorded by deed in Volume 1220, Page 432 of the Harris County Deed Records;

THENCE, North along the Easterly line of said 150-foot fee strip, a distance of 333.12 feet to a point on the northwesterly line of a 30 foot wide Magnolia Pipeline Company easement as recorded by deed in Volume 5984, Page 227 of the Harris County Deed Records;

THENCE, N 41 deg. 58' 24" E, along the Northwesterly line of said Magnolia Pipeline Company Easement, a distance of 394.91 feet to a point on the Southwesterly line of Rummel Creek Drainage Easement conveyed to Harris County Flood Control District as recorded by deed in Volume 4909, Page 504 of Harris County Deed Records;

THENCE, along the Southwesterly line of said Flood Control Easement, as follows:

S 57 deg. 28' 32" E, 50.58 feet to a point;
S 48 deg. 12' 07" E, 258.12 feet to a point;
S 34 deg. 18' 33" W, 3.85 feet to a point;
S 50 deg. 42' 03" E, 29.11 feet to a point;
S 88 deg. 30' 33" E, 3.68 feet to a point;
S 48 deg. 12' 19" E, 101.93 feet to a point for the Northeast corner of the tract herein described;

THENCE, S 41 deg. 47' 41" W, a distance of 112.81 feet to a point of curvature of a curve on the left;

THENCE, along the arc of said curve to the left, having a radius of 110.00 feet, and subtending a central angle of 42 deg. 05' 15", a distance of 80.80 feet to the point of tangency of said curve;

THENCE, S 00 deg. 17' 34" E, a distance of 177.50 feet to a point for the Southwest Corner of the tract herein described, said point also being on the Northerly right-of-way line of said Memorial Drive;

THENCE, S 90 deg. 42' 26" W, along the Northerly right-of-way line of said Memorial Drive, a distance of 496.97 feet to the POINT OF BEGINNING, and containing 5.984 acres of land, more or less.