

2017016573

ORDINANCE NO. 21,329

PRESENTED: 03-16-2017 09:47:22 AM RECORDED: 03-16-2017 09:52:45 AM

In Official Records of Larry Crane Circuit/County Clerk

PULASKI CO, AR FEE \$65.00

3 **AN ORDINANCE TO PROHIBIT THE WITHDRAWAL AND USE OF**
4 **GROUNDWATER ON CERTAIN LANDS IN LITTLE ROCK, ARKANSAS,**
5 **SO LONG AS THE CITY RETAINS THE ABILITY TO PROVIDE**
6 **ADEQUATE SAFE WATER SUPPLIES TO THESE PROPERTIES; TO**
7 **DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.**

8
9 **WHEREAS**, the Board of Directors of the City of Little Rock, Arkansas (the "City") is authorized and
10 empowered under the provisions of Ark. Code Ann. § 14-55-102 to create ordinances to provide for the
11 safety and preserve the health of the inhabitants thereof; and,

12 **WHEREAS**, the Board of Directors has determined that regulation of the use of groundwater beneath
13 certain lands is in the best interests of the City, and will protect the public health, safety and welfare; and,

14 **WHEREAS**, the City does not use groundwater as a source for public drinking water; and,

15 **WHEREAS**, the City accepts an indemnity agreement from Timex Group, Inc., as a condition for the
16 implementation of this ordinance;

17 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE CITY**
18 **OF LITTLE ROCK, ARKANSAS:**

19 **Section 1. Definitions.**

20 (A) "Person" is any individual, partnership, co-partnership, firm, company, limited liability
21 company, corporation, association, joint stock company, trust, estate, political subdivision, or
22 any other legal entity, or their legal representatives, agents or assigns.

23 (B) "Property" shall mean the Clinton Park Addition Block 13 (lots 1 through 8), Block 14; and
24 Fairgrounds Block 12; and all parts of East 12th Street between Bannockburn Street and
25 Apperson Street; all parts of East 11th Street between Inez Street (Hawkins) and Apperson
26 Street; and all parts of Inze Street (Hawkins), Calhoun Street, and Apperson Street between
27 East 11th Street and East 12th Street.

28 **Section 2. Identification of Lands Subject to the Regulations of this Ordinance.** A legal description
29 of the Property is set forth on the attached Exhibit A and a depiction of such lands is set forth on the attached
30 Exhibit B.

31 **Section 3. Prohibition on Use of Groundwater.**

32 (A) **Prohibition of Use of Groundwater Within the Identified Area.** The use of any and all
33 currently existing groundwater wells within the identified area is prohibited for any purpose other than
34 those exceptions listed in Section 3(B). All existing groundwater wells within the identified area, other

1 than those excepted under Section 3(B), shall be closed and abandoned pursuant to applicable
2 requirements within ninety (90) days of the effective date of this ordinance. The construction of new
3 groundwater wells within the identified area is prohibited for any purpose other than those exceptions
4 listed in Section 3(B). This prohibition shall be in effect upon the effective date of this ordinance and
5 shall remain in effect so long as the City, through Central Arkansas Water or some other entity through
6 which the City obtains water for its citizens, is able to provide water to the Property.

7 (B) **Exceptions for Monitoring and Remediation.** This ordinance shall not apply to wells
8 constructed or used for purposes of investigation, monitoring, removal, and/or remediation of any
9 subsurface contamination or suspected subsurface contamination pursuant to an order of, or with the
10 consent of, the City or any State or Federal Regulatory Agency.

11 **Section 4. Penalties for Violations and Noncompliance.** Any person who is found to have violated
12 this ordinance shall be fined. The maximum fine per violation shall be Five Hundred Dollars (\$500.00).

13 **Section 5. No impact on private party rights.** Nothing in this ordinance alters the rights of any private
14 party with respect to any other private party.

15 **Section 6. Certified Copy of Ordinance to be Filed.** A certified copy of this ordinance, with an
16 executed copy of the indemnity agreement between the City and Timex Group U.S.A., Inc., shall be filed
17 with the Pulaski County Clerk.

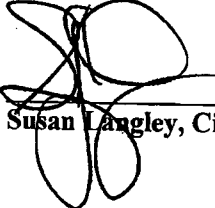
18 **Section 7. Severability.** In the event any title, section, paragraph, item, sentence, clause, phrase or word
19 of this ordinance is declared or adjudged to be invalid or unconstitutional such declaration or adjudication
20 shall not affect the remaining portions of the ordinance which shall remain in full force and effect as if the
21 portion so declared or adjudged invalid or unconstitutional were not originally a part of the ordinance.

22 **Section 8. Repealer.** All laws, ordinances, resolutions, and parts of the same that are inconsistent with
23 the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

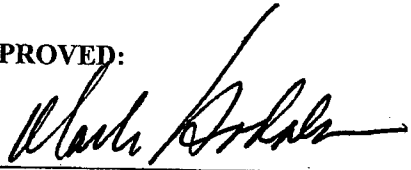
24 **Section 9. Emergency Clause.** *The City has previously declared the importance of assuring the health,
25 safety, and welfare of any person using the groundwater beneath certain lands in the City. The ability to
26 assure the compliance of all landowners with this regulation of the use of groundwater beneath certain
27 lands in the City is essential to the health, safety and welfare; therefore, an emergency is hereby declared
28 to exist, and this ordinance shall be in full force and effect from and after its passage and approval, and
29 the execution of a binding and appropriate indemnity agreement.*

30 **PASSED: November 15, 2016**

31 **ATTEST:**

32 
33 _____
34 Susan Langley, City Clerk
35

APPROVED:

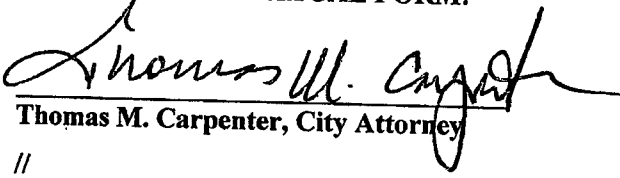


Mark Stodola, Mayor

1 APPROVED AS TO LEGAL FORM:

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Thomas M. Carpenter, City Attorney

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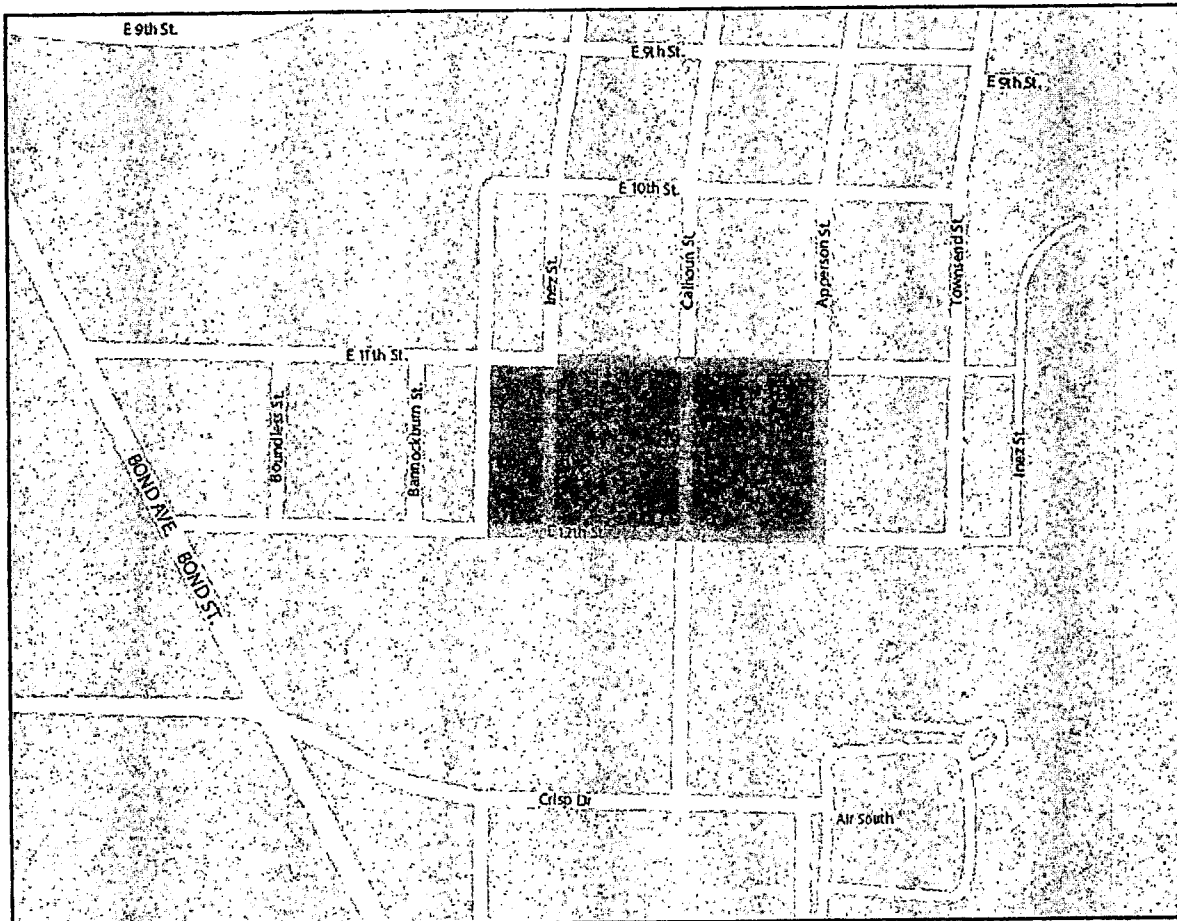
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EXHIBIT B

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INDEMNITY AGREEMENT

This Indemnity Agreement ("Agreement") is made as of the ___ day of October, 2015, by **Timex Group U.S.A., Inc. ("Timex")**, and the **City of Little Rock, Arkansas ("the City")**, hereinafter referred to as "the Parties."

WHEREAS, the City of Little Rock Board of Directors is considering a proposed ordinance (the "Ordinance") that would require the abandonment of any currently existing groundwater wells in a two-and-a-half block residential area ("Affected Area"), and would prohibit the construction of new groundwater wells in that area, except for wells constructed or used for purposes of investigation, monitoring, removal, and/or remediation of any subsurface contamination or suspected subsurface contamination pursuant to an order of, or with the consent of, the City or any state or federal regulatory agency. The Affected Area consists of Clinton Park Addition Block 13 (lots 1 through 8); Block 14; and Fairgrounds Block 12; all parts of East 12th Street between Bannockburn Street and Apperson Street; all parts of East 11th Street between Inez St. (Hawkins) and Apperson Street; and all parts of Inez Street (Hawkins), Calhoun Street, and Apperson Street between East 11th Street and East 12th Street. A copy of the Ordinance is attached as Exhibit A.

WHEREAS, the City of Little Rock has requested, and Timex has agreed, that if the Ordinance in its current form – or in a form that is substantially the same as the current form – is passed by the City of Little Rock Board of Directors, Timex will indemnify the City pursuant to the terms of this Agreement.

The Parties agree as follows:

1. **Trigger.** The indemnity obligation set forth below will be triggered upon the first effective date of the Ordinance promulgated by the City in the form set forth in Exhibit A, or in a form that is substantially the same as the current form. The City will submit to Timex for review and comment any amendments to the Ordinance, as set forth in Exhibit A, prior to promulgation. If the version of the Ordinance that is submitted to the City of Little Rock Board of Directors for a vote is not acceptable to Timex, Timex may void this indemnity by providing notice to the Little Rock City Attorney prior to such vote.
2. **Indemnity.** Once triggered pursuant to Paragraph 1, Timex, on behalf of itself and its successors in interest, will indemnify the City against all lawsuits brought against the City alleging a claim that the Ordinance constitutes a regulatory taking in the Affected Area. Timex will be responsible for fees, costs, and damages associated with the defense of takings claims in such lawsuits. If any such lawsuits are filed, and the City's in-house attorneys defend the lawsuit, Timex will pay litigation costs and witness fees. If the City retains outside counsel to defend the lawsuit, Timex will pay litigation costs and witness fees, as well as attorneys' fees at rates that are ordinary and reasonable for Little Rock. The City, through its counsel, will diligently defend against such lawsuit. If applicable, the City, through its counsel, shall raise a statute of limitations defense. Timex shall be consulted in any settlement negotiations that may arise. No settlement agreement may be executed without Timex's approval, which will not be unreasonably withheld. This indemnity shall not cover claims in any lawsuit other than for regulatory taking. The City and any

instrumentality thereof shall coordinate with Timex to avoid, where reasonably possible, the assertion of any position adverse to Timex with respect to such lawsuits.

3. **Governing Law, Validity, Venue.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Arkansas. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Pulaski County, Arkansas or the United States District Court for the Eastern District of Arkansas. If any provisions of this Agreement or any provisions hereafter adopted shall for any reason be found to be inapplicable, invalid, illegal, or unenforceable in any respect, such inapplicability, invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement.
4. **Counterparts.** This Agreement may be executed in multiple originals. Properly executed signature pages, whether they constitute original signature pages, copied signature pages, or facsimile-copied signature pages, may be attached to the Agreement. Any such copied signature page or facsimile-copied signature page attached to the Agreement will have the same force and effect as an original signature page.
5. **Term.** This Agreement shall remain in effect until (1) the Ordinance is withdrawn, (2) the Ordinance is no longer effective pursuant to its own terms, or (3) the Arkansas Department of Environmental Quality ("ADEQ") (or its successor agency) issues a determination that the Ordinance is no longer necessary to remain in effect to satisfy Timex's requirements set forth in the Remedial Action Decision Document issued by ADEQ regarding the remediation of the former Timex site located at 2215 Crisp Drive in Little Rock.
6. **No Admission of Liability.** By agreeing to indemnify the City pursuant to this Agreement, Timex seeks to ensure promulgation of an ordinance to meet requirements set forth in the Remedial Action Decision Document issued by ADEQ regarding the remediation of the former Timex site located at 2215 Crisp Drive in Little Rock. This Agreement should not be interpreted as any admission that any regulatory taking would be caused by the Ordinance or that Timex has any liability to owners or occupants of properties in the Affected Area, such liability being expressly disclaimed.
7. **Representations.** The Parties represent that:
 - a. each has the sole right and exclusive authority to execute this Agreement;
 - b. when executed and delivered by the Parties, this Agreement will constitute a valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy or other laws affecting the rights and remedies of creditors generally and by general principles of equity (regardless of whether this Agreement is sought to be enforced in a proceeding in equity or at law); and
 - c. before executing this Agreement, it understands the terms, contents, conditions and effects of this Agreement; that in making this Agreement it has had the benefit of and relied on the advice of attorneys of its choosing; and that no promise or representation of any kind has been made to it, except as is expressly stated in this Agreement.

[Signatures on following page]

WITNESS MY HAND to this instrument on this the ___ day of ___, 2015.

Timex Group U.S.A., Inc.

By: [Signature]

Name: David T. Payne

Title: VP General Counsel

THE STATE OF Connecticut

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COUNTY OF New Haven

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Middlebury

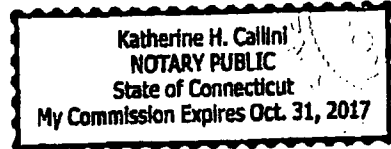
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BEFORE ME, the undersigned authority, on this day personally appeared David T. Payne, known to me to be the person whose name is subscribed to the foregoing Indemnity Agreement and acknowledged to me that 1) he executed the same in the capacity therein stated and for the purposes and consideration therein expressed; and (2) that he is fully authorized to do so by Timex Group U.S.A., Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 15th day of October, 2015.

Katherine H. Callini
Notary Public

Commission Expires: 10/31/2017



WITNESS MY HAND to this instrument on this the ____ day of _____, 2016.

City of Little Rock

By: Mark Stodola
Name: MARK STODOLA
Title: Mayor

THE STATE OF ARKANSAS

COUNTY OF PULASKI

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BEFORE ME, the undersigned authority, on this day personally appeared MARK STODOLA, known to me to be the person whose name is subscribed to the foregoing Indemnity Agreement and acknowledged to me that 1) he executed the same in the capacity therein stated and for the purposes and consideration therein expressed; and (2) that he is fully authorized to do so by the City of Little Rock.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 15th day of November, 2016.

[Signature]
Notary Public

Commission Expires: 6/15/2019

SUSAN K. LANGLEY
PULASKI COUNTY
NOTARY PUBLIC - ARKANSAS
My Commission Expires June 15, 2019
Commission No. 12371826

ATTACHMENT A

[insert residential ordinance]