

ST. TAMMANY PARISH COUNCIL
ORDINANCE

ORDINANCE CALENDAR NO. 3323 COUNCIL ORDINANCE SERIES NO. _____

COUNCIL SPONSOR STEFANCIK/DAVIS PROVIDED BY: PRESIDENT

INTRODUCED BY _____, SECONDED BY _____, ON THE
_____ DAY OF _____, 2005

AN ORDINANCE TO ADOPT A VOLUNTARY DEVELOPMENTAL AGREEMENT BETWEEN THE PARISH OF ST. TAMMANY AND WAINER BROTHERS, THE DEVELOPER OF THE NORD DU LAC COMMERCIAL PROPERTY, LOCATED IN WARD 1, DISTRICT 1

WHEREAS, Wainer Brothers, the developer of the Nord du Lac Commercial Property, has agreed in principle to enter into a voluntary developmental agreement with the Parish of St. Tammany; and

WHEREAS, the St. Tammany Parish Council, having held a public hearing concerning said agreement, does hereby conclude that said agreement is mutually acceptable, binding on all parties, and shall derive benefits for the development, the area and to the Parish in general.

THE PARISH OF ST. TAMMANY HEREBY ORDAINS, that it hereby accepts and enters into said voluntary developmental agreement with the developer of the Nord du Lac Commercial Property, as well as any other boards, commissions, organizations or districts duly created or endorsed by the Parish Council that may be a party hereto.

BE IT FURTHER ORDAINED, that this agreement shall be recorded within the records of the St. Tammany Parish Clerk of Courts Office, if applicable, and a copy of this ordinance shall serve as an attachment thereto.

REPEAL: All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SEVERABILITY: If any provision of this Ordinance is held to be invalid, such invalidity shall not affect other parts or provisions which can be given effect without the invalid provision and to this end the provisions of this Ordinance are hereby declared to be severable.

EFFECTIVE DATE: This Ordinance shall become effective fifteen (15) days after adoption.

MOVED FOR ADOPTION BY _____, SECONDED BY _____,

WHEREUPON THIS ORDINANCE WAS SUBMITTED TO A VOTE AND RESULTED IN THE FOLLOWING:

YEAS:

NAYS:

ABSTAIN:

ABSENT:

AND THIS ORDINANCE WAS DECLARED DULY ADOPTED AT A REGULAR MEETING OF THE PARISH COUNCIL ON THE _____ DAY OF _____, 2006; AND BECOMES COUNCIL ORDINANCE SERIES NO. _____.

STEVE STEFANCIK, COUNCIL CHAIRMAN

ATTEST:

DIANE HUESCHEN, COUNCIL CLERK

KEVIN C. DAVIS, PARISH PRESIDENT

Published introduction _____, 2006

Published adoption _____, 2006

Delivered to the Parish President on _____, 2006 @ _____

Returned to the Council Clerk on _____, 2006 @ _____

DEVELOPMENTAL AGREEMENT
(Nord du Lac Commercial Property)

This Agreement ("Agreement") is made and entered into this 9th day of June, 2006, pursuant to L.S.A. - R.S. 33:4780.21 through 33:4780.33 relative to local zoning and planning, and authorizing parishes or municipalities to enter into developmental agreements with private developers, and any other constitutional and statutory authority, by and among the following parties:

PARISH OF ST. TAMMANY, a political subdivision of the State of Louisiana and the governing authority of St. Tammany Parish, whose mailing address is P.O. Box 628, Covington, LA, 70434, herein appearing by and through Kevin C. Davis, its Parish President, duly authorized by the St. Tammany Parish Home Rule Charter (hereinafter referred to as "Parish");

and

WAINER BROTHERS, a Louisiana partnership, organized and existing under the laws of the State of Louisiana, operating in accordance with the Amended and Restated Agreement of Partnership registered in Partnership Book 11, folio 738 of the records of Jefferson Parish, Louisiana, herein represented by its undersigned partners, duly authorized, which mailing address is declared to be 3421 N. Causeway Blvd, Suite 201, Metairie, Louisiana 70002 (hereinafter referred to as "Wainer");

The above captioned parties hereinafter may be collectively referred to as "Parties" and individually as "Party."

WITNESSETH

WHEREAS, the St. Tammany Parish Police Jury enacted Ordinance No. 92-1655 which authorized the Parish of St. Tammany to enter into Developmental Agreements with developers of land; and to provide for the contents, periodic review, enforcement and applicability of said agreements; for amendment, cancellation, modification and/or suspension; and

WHEREAS, the lack of certainty and the approval of development projects can result in a waste of resources, escalate the cost of development to the consumer, and discourage investment and commitment to comprehensive planning. However, assurances made by the Parish to Wainer that he may proceed with the project in accordance with existing policy, rules, and regulations, will facilitate the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost and impact of development; and

WHEREAS, it is the intent of the Parties to enter into an Agreement which specifies the duration of the agreement, the permitted uses of the property, the density and intensity of use, and any other such provisions deemed appropriate by the Parties; and

WHEREAS, said contract may include terms, restrictions and requirements for subsequent discretionary actions by the Parish, provided that said actions shall not prevent the development of the land by the user and the density or intensity of use as may be set forth within this Agreement.

WHEREAS, the St. Tammany Parish Police Jury enacted Ordinance No. CS No. 04-0990 known as the "Saint Tammany Parish Transportation Impact Fee Ordinance" and, the "St. Tammany Parish Drainage Impact Fee Ordinance" (both referred to as the "Impact Fee Ordinance") for the collection of impact fees to compensate for the impact of development upon transportation and

drainage infrastructure arising from development and construction within St. Tammany Parish all as more fully set forth in the Impact Fee Ordinance;

WHEREAS, Wainer and the Parish desire that certain improvements to public property be made in and around the Nord du Lac Commercial Property and residential property owned by Wainer and affiliated companies situated in Section 47, Township 7 South, Range 11 East, St. Tammany Parish, Louisiana ("Nord du Lac Property"), and in the furtherance of obtaining approvals and payment of impact fees due by Wainer or purchasers of property from Wainer, Wainer and the Parish have agreed to execute this Development Agreement in consideration of improvements to be made by Wainer upon public property.

NOW THEREFORE, in consideration of the premises and the mutual covenants contained within this Agreement, the Parties hereby and henceforth agree to bind themselves as follows:

1. PERIODIC REVIEW.

1.1 In compliance with LSA R.S. 33:4780.23, the Parties agree that this Agreement shall be reviewed periodically, and if necessary, the Wainer or Wainer's successor or interest shall be required to demonstrate good faith compliance with the terms of this Agreement, unless compliance with the agreement has occurred. Provided further that the failure to review this Agreement periodically shall not affect its validity and the same shall remain in full force and effect unless terminated or modified by the Parties in accordance with law.

2. LAND USE.

2.1 Wainer intends to develop property along and near Louisiana Highway 21 and along Interstate Highway 12 for commercial and residential purposes in accordance with the zoning and land use designations assigned by St. Tammany Parish.

2.2 Streets and storm water detention within the commercial property and residential property to be developed may be dedicated to St. Tammany Parish and incorporated into the St. Tammany Parish maintenance system in accordance with the procedures established for subdivision review and development of property owned by Wainer.

3. CONSTRUCTION & IMPROVEMENTS; ASSESSMENT & COLLECTION.

3.1 In conjunction with the development of the Nord du Lac Property, Wainer agrees to permit, obtain approvals for and construct the following improvements within the Louisiana Highway 21 and Interstate Highway 12 rights of way at the sole cost and expense of Wainer:

3.1.1 Traffic signalization of Louisiana Highway 21 at Ochsner Road and Nord du Lac Boulevard right of way according to the design engineers designs, plans and specifications of Sain Associates, Inc.

3.1.2 Modification of Louisiana Highway 21 right of way and Interstate Highway 12 to add additional lanes and highway striping according to plans and specifications by Richard C. Lambert Consultants, design engineers.

All work to be performed is according to the cost itemization and contracts detailed and itemized on the attached Exhibit 3.1.

(herein referred to as "Highway Improvements")

3.2 All Highway Improvements shall be approved by the State of Louisiana prior to the commencement of construction. The Highway Improvements are budgeted to cost Five Hundred Sixty-three Thousand, Five Hundred Twenty-nine and No/100 (\$563,529.00) Dollars. Upon substantial completion of the Highway Improvements Wainer shall be entitled to an impact fee credit

against amounts due or to become due under the Impact Fee Ordinance, as that obligation is amended in this Agreement, in the amount of Five Hundred Sixty-three Thousand, Five Hundred Twenty-nine and No/100 (\$563,529.00) Dollars ("Impact Fee Credits").

3.3 Wainer may apply the Impact Fee Credits, at the option of Wainer, as follows:

3.3.1 Wainer may apply for its Impact Fee Credits to pay and satisfy the amount due under the Impact Fee Ordinance for single family residential lots at the rate of One Thousand and No/100 (\$1,000.00) Dollars per lot; and

3.3.2 Wainer may apply for its Impact Fee Credits to pay and satisfy the amount due for commercial office and industrial construction at the rate of One Dollar and 83/100 (\$1.83) per square foot of commercial, industrial and office uses.

3.4 Wainer may transfer and assign Impact Fee Credits to purchasers of Nord du Lac Property through an instrument of assignment from Wainer to a third party purchaser that complies with the requirements of Section 4 herein and such purchaser or transferee shall be entitled to the Impact Fee Credit set forth in Section 3.3.

3.5 This Agreement and the provisions hereof were negotiated prior to the enactment of the Impact Fee Ordinance. Wainer and the Parish agree that the provisions of this Agreement shall supersede the Impact Fee Ordinance and shall govern and control any obligation of Wainer and the Parish as it related to the matters set forth herein, including but not limited to the amount due for impact fees under the Impact Fee Ordinance.

3.6 The provisions of the Impact Fee Ordinance in conflict with this Agreement, or procedures of the Impact Fee Ordinance not complied with in the execution of an adoption of this Agreement are specifically waived.

4. ACCOUNTING & DISBURSEMENT.

4.1 The Parish shall maintain a strict and accurate accounting of the Impact Fee Credits and the reductions thereof pursuant to the application of all or portions of the Impact Fee Credits to residential lots or commercial construction, as set forth in Section 3.3.

4.2 Wainer shall direct a letter to the Parish applying all or a portion of the Impact Fee Credits to residential lots or commercial construction and provide in such notice the name of the owner of the property for which the credit is requested; the name of the contractor; the lot designation or description of commercial property upon which construction is occurring; and a calculation setting forth the available Impact Fee Credit, the deduction therefrom arising from the current application and the balance of Impact Fee Credit following the deduction for the current application.

4.3 In each instance in which a notice of application of Impact Fee Credits is made, the Parish shall evidence its recognition of the balance of Impact Fee Credits remaining under this Agreement by signing the letter request and returning an original signed copy to Wainer.

5. EXPENDITURE CRITERIA.

5.1 This Agreement for impact fees is made in consideration of Wainer providing a lump sum impact fee in advance of development for Highway Improvements within the Louisiana Highway 21 corridor in St. Tammany Parish, Louisiana.

5.2 The Parish acknowledges that all work under Section 3 of this Agreement has been completed and is accepted by the Parish as complying with the obligations of Wainer under this Agreement

6. ENFORCEMENT.

6.1 The Parties hereto pledge their mutual cooperation in complying with the terms and conditions of this Agreement. Should either the Parish or Wainer fail to comply with its obligations set forth in this Agreement, then either Party shall have the right to sue for specific performance and/or damages, including attorney's fees, incurred by the successful Party to any such litigation.

7. TERMINATION & BINDING NATURE.

7.1 This Agreement shall continue in full force and effect for a period of twenty-five (25) years from the effective date hereof and shall automatically renew thereafter for successive twenty-five (25) year periods. This Agreement may be amended or canceled in whole or in part by mutual consent of all the Parties to this Agreement or their successors in interest. Notice of intention to amend or cancel any portion of this Agreement shall be given in accordance with law.

7.2 Time is of the essence of this contract and the performance of the terms and conditions hereof shall be held in strict accordance with the times and dates specified herein.

8. APPROVAL AND RECORDATION.

8.1 This Agreement shall be approved by ordinance by the Parish governing authority in accordance with law.

8.2 This Agreement shall not be recorded in the mortgage or conveyance records of St. Tammany Parish, Louisiana.

9. HEARINGS AND ORDINANCES.

9.1 A public hearing shall be held by the St. Tammany Parish Planning Commission and the St. Tammany Parish Council regarding the application for approval of this Agreement. Notice of intention to consider adoption and approval of this Agreement and the ordinance to adopt this Agreement by the St. Tammany Parish Council and public hearings related thereto shall be published at least three (3) times in the official journal of the Parish and at least ten (10) days shall elapse between the first publication and the date of the hearing.

9.2 This Agreement shall be approved by ordinance of the governing authority of St. Tammany Parish.

10. CONTRACTUAL VALIDITY.

10.1 In the event that any one or more provisions of this Agreement is for any reason held to be illegal or invalid, the Parties shall attempt in good faith, to amend the defective provision in order to carry out the original intent of this Agreement. Furthermore, all Parties shall agree to negotiate in good faith, refrain from challenging the validity or legality of this Contract, and join in the defense of any legal challenge to this Contract. Any legal expenses incurred as a result of any challenge to the legality of the Agreement by a third party shall be equally shared by the Parties made a part hereto.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed in multiple originals by the hereunder signed officers, each in the presence of the undersigned two (2) competent witnesses in St. Tammany Parish, State of Louisiana, as of the date first herein above set forth, after diligent reading of the whole, in various counterparts.

WITNESSES:

ST. TAMMANY PARISH

BY:

KEVIN C. DAVIS, President

WITNESSES:

Judith Overman

WAINER BROTHERS

BY:

[Signature]
BRUCE WAINER

Rachel L. Miller

EXHIBIT 3.1

3323

Traffic, engineering and consulting fees to Sain Associates, Inc. for traffic signal timing and design modifications for Louisiana Highway 21 at Ochsner Road and Nord du Lac Boulevard	\$22,500.00
Engineering and construction of signalization modification and signal timing by Jack B. Harper, Contractor	\$113,540.00
Engineering Drawings and consulting fees to Richard C. Lambert Consultants for addition of lanes on Louisiana Highway 21 and Interstate Highway 12 and striping	\$46,506.00
Construction of additional travel lanes within Louisiana Highway 21 and Interstate Highway 12 rights of way	\$362,868.00
Project management fee to Gulf States Real Estate Services, Inc.	\$16,124.00
Surveying fees to John E. Bonneau & Associates	\$2,115.00
Total costs for design and construction of improvements within Louisiana Highway 21 and Interstate Highway 12 rights of way set forth above	<u>\$563,529.00</u>