

ST. TAMMANY PARISH COUNCIL

ORDINANCE

ORDINANCE CALENDAR NO: 4724

ORDINANCE COUNCIL SERIES NO: \_\_\_\_\_

COUNCIL SPONSOR: GOULD/BRISTER

PROVIDED BY: PRESIDENT/LEGAL

INTRODUCED BY: \_\_\_\_\_

SECONDED BY: \_\_\_\_\_

ON THE 2 DAY OF FEBRUARY, 2012

ORDINANCE TO AUTHORIZE THE PARISH OF ST. TAMMANY,  
THROUGH THE OFFICE OF THE PARISH PRESIDENT, TO  
REVOKE AN ACT OF DONATION FOR THE VETERAN'S  
CEMETERY PROJECT.

WHEREAS, the St. Tammany Parish Government desires to revoke certain immovable property (hereinafter referred to as "Property"); and

WHEREAS, there is a need and a public purpose for the revocation of certain immovable property for the Veteran's Cemetery Project; and

WHEREAS, the Parish of St. Tammany hereby desires to revoke the Act of Donation, dated January 12, 2005, and recorded on January 18, 2005 as Instrument Number 1473736, a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, the Parish of St. Tammany hereby desires to revoke the 40 acre tract of land donated to the Parish of St. Tammany from McEnery Properties, L.L.C. and authorizes the Office of the Parish President to do whatever is necessary to revoke said Property.

THE PARISH OF ST. TAMMANY HEREBY ORDAINS: to authorize the Parish of St. Tammany, to revoke, all that certain parcel of ground described in Exhibit "B" attached hereto.

BE IT FURTHER ORDAINED that pursuant to all applicable provision of law, the Office of the Parish President is directed and authorized to do whatever is necessary to lease the Property and/or rights-of-way.

BE IT FURTHER ORDAINED that the Office of the Parish President is authorized and instructed to proceed with the lease of the Property and/or rights-of-way in a timely and orderly matter.

BE IT FURTHER ORDAINED that the Office of the Parish President is authorized to exercise its discretion in leasing the Property and/or rights-of-way, together with all agreements and all transactions necessary to carry out the intent of this Ordinance.

BE IT FURTHER ORDAINED that if leased, the lease price shall not exceed the fair market value of the Property as evidenced by an appraisal obtained or supplied to the Parish plus fees and costs.

BE IT FURTHER ORDAINED that any and all actions previously taken by the Office of the Parish President in furtherance of the actions contemplated herein are ratified and accepted accordingly.

REPEAL: All ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SEVERABILITY: If any provision of this Ordinance shall be held to be invalid, such invalidity shall not affect other provisions herein 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: \_\_\_\_\_

THIS ORDINANCE WAS DECLARED DULY ADOPTED AT A REGULAR MEETING OF THE PARISH COUNCIL ON THE 1 DAY OF MARCH , 2012 ; AND BECOMES ORDINANCE COUNCIL SERIES NO \_\_\_\_.

\_\_\_\_\_  
MARTIN W. GOULD, JR., COUNCIL CHAIRMAN

ATTEST:

\_\_\_\_\_  
THERESA L. FORD, COUNCIL CLERK

\_\_\_\_\_  
PATRICIA P. BRISTER, PARISH PRESIDENT

Published Introduction: JANUARY 26 , 2012

Published Adoption: \_\_\_\_\_, 2012

Delivered to Parish President: \_\_\_\_\_, 2012 at \_\_\_\_\_

Returned to Council Clerk: \_\_\_\_\_, 2012 at \_\_\_\_\_

## **Ordinance Administrative Comment**

ORDINANCE TO AUTHORIZE THE PARISH OF ST. TAMMANY, THROUGH THE OFFICE OF THE PARISH PRESIDENT, TO REVOCATE AN ACT OF DONATION FOR THE VETERAN'S CEMETERY PROJECT.

A 40 acre tract of land was donated to St. Tammany Parish from McEnery Properties, L.L.C on January 12, 2005, recorded January 18, 2005 and recorded as Instrument Number 1473736, for the Veteran's Cemetery Project. The Veteran's Cemetery Project has been canceled due to elevated mitigation costs; therefore, this property is being revoked and/or transferred back to McEnery Properties, L.L.C.

EXHIBIT "A"

SEE MAP FILE # 3736 + 3737

ACT OF DONATION

UNITED STATES OF AMERICA

BY: McENERY PROPERTIES, L.L.C.

STATE OF LOUISIANA

TO: THE PARISH OF ST. TAMMANY

PARISH OF ST. TAMMANY

BE IT KNOWN, that on this 12th day of January, 2005,

BEFORE ME, the undersigned Notary Public, duly commissioned and sworn, and in the presence of the hereinafter named and undersigned witnesses,

PERSONALLY CAME AND APPEARED:

1. Appearances

McENERY PROPERTIES, L.L.C. (EIN 20-0907489), a Louisiana limited liability company, its mailing address being: #5 Larkspur Lane, Covington, LA 70433, (hereinafter referred to as "McEnery") herein represented by its Members,

Iolar Holdings, L.L.C., a Louisiana limited liability company, herein represented by its duly authorized Manager, Peter Michael McEnery, Mary Forrest McEnery Broussard, a person of the full age of majority, and a resident of Iberia Parish, Louisiana; and Henry Alfred McEnery, III, a person of the full age of majority, and a resident of Orleans Parish, Louisiana;

THE PARISH OF ST. TAMMANY, a political subdivision created, organized and existing under the laws of the State of Louisiana, herein appearing through Kevin C. Davis, the President of St. Tammany Parish, duly authorized by the St. Tammany Parish Council, the governing authority of all unincorporated areas of St. Tammany Parish, Louisiana, (hereinafter referred to as "Parish"), and

IOLAR DEVELOPMENT, LLC, a Louisiana limited liability company, (hereinafter referred to as "Development") herein represented by its duly authorized Manager, Don A. McMath;

who declared as follows:

2. Preamble.

A. McEnery owns approximately 1200 acres in Sections 28 and 21 T7S-R12E, in State of Louisiana, Parish of St. Tammany, as follows:

CERTAIN PORTIONS OF LAND, together with all the buildings and improvements thereon, and all of the rights, ways, privileges, servitudes, advantages and appurtenances thereunto belonging or in anywise appertaining, containing in all 520 acres in Section 28, Township 7 South, Range 12 East, in St. Tammany Parish, being more particularly described as follows, to wit:

The North half of Section 28, Southeast Quarter of Southwest Quarter, Southeast Quarter of Section 28, Township 7 South, Range 12 East, in St. Tammany Parish;

AND

JDS \Donation\15268 McEnery to Parish Donation

St. Tammany Parish 20  
Instrument # 1473736  
Register # 1466243 ENC  
1/18/2005 3:03:10 PM  
MS CB I HI UGE

CERTAIN PORTIONS OF LAND, together with all the buildings and improvements thereon, and all of the rights, ways, privileges, servitudes, advantages and appurtenances thereunto belonging or in anywise appertaining, containing in all 100 acres in Section 21, Township 7 South, Range 12 East, in St. Tammany Parish, being more particularly described as follows, to wit:

West half of Northeast Quarter of Southeast Quarter. South half of Southeast Quarter of Section 21, Township 7 South, Range 12 East, in St. Tammany Parish.

being that property acquired by Henry Alfred McEnery III, Peter Michael McEnery, and Mary Forest McEnery Broussard by means of An Act of Distribution of Trust Assets before Susan B. Williams, Notary Public, dated the 15<sup>th</sup> of April, 2004;

and being the same property which Peter Michael McEnery conveyed his undivided one third interest to Iolar Holdings, LLC by Act of Exchange before Susan B. Williams, Notary Public, dated the 15<sup>th</sup> of April, 2004;

AND:

A CERTAIN PARCEL OF LAND, together with all the buildings and improvements thereon, and all of the rights, ways, privileges, servitudes, advantages and appurtenances thereunto belonging or in anywise appertaining, containing in all 160 acres in Section 21, Township 7 South, Range 12 East, in St. Tammany Parish, being more particularly described as follows, to wit:

The East Half Of The West Half of Section 21, Township 7 South, Range 12 East in St. Tammany Parish;

Which property was acquired by Henry Alfred McEnery III, by Act of Voluntary Partition before Edward J. Murphy, Notary Public, dated the 28<sup>th</sup> of September, 2001 recorded at Instrument Number 1270273, in the official records of St. Tammany Parish, State of Louisiana;

AND:

A CERTAIN PARCEL OF LAND, together with all the buildings and improvements thereon, and all of the rights, ways, privileges, servitudes, advantages and appurtenances thereunto belonging or in anywise appertaining, containing in all 160 acres in Section 21, Township 7 South, Range 12 East, in St. Tammany Parish, being more particularly described as follows, to wit:

THE NORTH HALF of the Northeast Quarter, the Southwest Quarter of the Northeast Quarter, and the Northwest Quarter of the Southeast Quarter of Section 21, Township 7 South, Range 12 East in St. Tammany Parish;

Which property was acquired by Peter Michael McEnery Broussard by Act of Voluntary Partition before Edward J. Murphy, Notary Public, dated the 28<sup>th</sup> of September, 2001 recorded at Instrument Number 1270273, in the official records of St. Tammany Parish, State of Louisiana;

And further which property was acquired by Iolar Holdings, LLC from Peter Michael McEnery by Act of Exchange before Susan B. Williams, Notary Public, dated the 15<sup>th</sup> of April, 2004;

AND,

A CERTAIN PARCEL OF LAND, together with all the buildings and improvements thereon, and all of the rights, ways, privileges, servitudes, advantages and appurtenances thereunto belonging or in anywise appertaining, containing in all 160 acres in Section 21, Township 7 South, Range 12 East, in St. Tammany Parish, being more particularly described as follows, to wit:

THE WEST HALF OF THE WEST HALF of Section 21, Township 7 South, Range 12 East in St. Tammany Parish;

Which property was acquired by Mary Forest McEnery Broussard by Act of Voluntary Partition before Edward J. Murphy, Notary Public, dated the 28th of September, 2001 recorded at Instrument Number 1270273, in the official records of St. Tammany Parish, State of Louisiana;

(hereinafter the "McEnery Property")

For ease of identification only, and not as a legal description of the property, The McEnery Property is as follows:

Township 7 South, Range 12 East:

Section 21: The North half of the northeast quarter; southwest quarter of the northeast quarter; west half of the Section; west half of the northeast quarter of the southeast quarter; northwest quarter of the southeast quarter; south half of the southeast quarter;

Section 28: North half of the Section; southeast quarter of the southwest quarter; southeast quarter.

- B. McEnery entered into that certain Purchase Agreement (hereinafter the "Purchase Agreement") with Development obligating McEnery to sell all of the McEnery Property to Development, less and except an undefined 40 acre parcel to be donated to the Parish. The Purchase Agreement is attached hereto as Exhibit A.
- C. McEnery and Development wish to identify the 40 acre parcel referenced in the Purchase Agreement and have McEnery donate same to the Parish by means of this Act of Donation.
- D. The Azby Fund owns approximately 160 acres south of the McEnery Property as follows:  
The Northwest Quarter of Section 33, Township 7 South, Range 12 East, St. Tammany Parish (hereinafter "the Azby Property").
- The Azby Property has been granted approval by the Parish for development as a PUD, which approval includes construction of a roadway known as Wadsworth Parkway (hereinafter "Wadsworth Parkway") as shown on the plan of Krebs Lasalle, Lemieux dated 7/28/04 attached hereto as Exhibit B.

### 3. Transfer

McEnery does by these presents, for and in its great care, concern and affection for the Parish, hereby transfers, assigns, sets over, donates and delivers unto the Parish, the parcel described in Section 4 hereinafter referred as the "Subject Property."

The Subject Property is being donated "as-is, where-is" with no warranty except as to title, with full rights of substitution and subrogation to all prior warranties as to title in favor of McEnery. McEnery represents that no Wetlands or Environmental studies or determinations have been performed on the Subject Property. The Parish acknowledges these facts and accepts the donation of the Subject Property with full cognizance of such conditions.

McEnery declares that, to its knowledge, there are no mortgages, liens, and/or encumbrances affecting Subject Property, and that all property taxes shall be paid in full by McEnery for calendar year 2004.

4. Description of the Subject Property

A CERTAIN PORTION OF GROUND, together with all the buildings and improvements thereon and all the rights, ways, privileges, servitudes, advantages, and appurtenances thereunto belonging or in anywise appertaining, situated in the State of Louisiana, Parish of St. Tammany, located in the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 28, T7S-R12E, designated as a 40 ACRE TRACT:

COMMENCE at the Section corner common to Sections 28, 29, 32 and 33, marked by a 60d nail by a white 4" x 4" post;

THENCE, N89°55'40"E a distance of 1386.06 feet along the Section line common to Sections 28 and 33 to the POINT OF BEGINNING;

THENCE, N01°22'55"E a distance of 1310.00 feet to a point, marked by a 1/2" iron rod (set);

THENCE, N89°55'40"E a distance of 1330.50 feet to a point, marked by a 1/2" iron rod (set);

THENCE, S01°22'55"W a distance of 1310.00 feet to a point, marked by a pine knot painted (found);

THENCE, S89°55'40"W a distance of 1330.50 feet to a point, marked by a 1/2" iron rod (set) being the POINT OF BEGINNING.

The above described portion of ground contains 40.00 acres, more or less.

All in accordance with a plan of survey by BFM Corporation, L.L.C. (John S. Teegarden, Registered Professional Land Surveyor), dated November 1, 2004, Drawing No. F-5287-2004, Project No. 4233, a copy of which is annexed hereto as Exhibit C and made a part hereof.

The hereinabove described property is hereinafter referred to as "Subject Property".

5. Consideration for Transfer. This transfer is made for and in consideration of the establishment of various public facilities by the Parish. The net fair market value of this transfer by McEnery to the Parish is estimated to be NINE HUNDRED SIXTY THOUSAND AND NO/100 DOLLARS (\$960,00.00) by the parties hereto.

6. Obligations. The Parish does hereby assume any and all obligations relating to the care, custody and control of Subject Property and hereby relieve McEnery of same.

7. Conditions of Transfer.

7.1 The Parish shall make no use of, nor erect any facility or structure on the Subject Property that would be detrimental to or have a negative effect on the value of McEnery Property to be developed as residential and commercial property pursuant to the Purchase Agreement. The Parish shall be permitted of right, without the prior approval of McEnery to use the Subject Parcel for construction of public schools, meeting places, hospitals, recreational parks, police or fire stations, or other similar public facilities. However, the Parish agrees that it will not erect any public facilities or structures on the Subject Property that would require zoning in either the M-1, M-2 or M-3 categories, seek conditional usage permitting for erection of any such facilities, nor make any use of the Subject Property or any portion thereof, which would not be compatible with the development of the surrounding area as set forth in the PUD plan, such as

regional sewer or recycling centers or sanitary landfills serving areas other than the Azby and McEnery Properties.

7.2 McEnery and the Parish agree that the Parish's failure to fulfill the following conditions shall provide McEnery the unilateral right and option, in its sole discretion, to cancel this transfer and demand transfer of title of the Subject Property back to McEnery, provided said conditions have not been reasonably fulfilled within five (5) years from date hereof, to-wit:

- A. The Parish shall develop all and/or portions of Subject Property, and McEnery shall have the final decision as to the exact name (i.e., naming rights) of various public facility(s) constructed on Subject Property.
- B. One extension road (hereinafter the "Extension Road") connecting with the proposed dedicated public road currently known as "Wadsworth Parkway" shown on the PUD Plan of Krebs Lasalle, Lemieux plan attached as Exhibit B shall be constructed on the Azby and Subject Property to facilitate access to the Subject Property and other McEnery Property. The Extension Road shall also be a dedicated public road and the right of way and road surface shall be the same as, and a safe continuation of "Wadsworth Parkway". The actual location of the Extension Road shall be determined by mutual and reasonable agreement of the parties based upon the use of the site.

7.3 Notwithstanding the foregoing, the construction of a public facility on the Subject Property, as well as the construction of the Extension Road, must be clearly in progress within five (5) years of this Act, failure of which shall provide McEnery the unilateral right and option, in its sole discretion, to cancel this transfer and demand transfer of title of the Subject Property back to McEnery. However, said five (5) year period may be mutually extended by written agreement of both McEnery and Parish.

7.4 Until such time as the Parish erects the Extension Road, and dedicates same as a public road, McEnery, or its successors heirs or assigns shall be permitted a Servitude of Passage over the Subject Property between McEnery Property and Azby Property, Wadsworth Parkway and/or the Extension Road.

7.5 The Parish may not erect any permanent barriers on the Subject Property eliminating access from McEnery Property to Azby Property, Wadsworth Parkway or the Extension Road.

7.6 This transfer is further conditioned upon the granting of a Servitude of Passage and Access by the Azby Fund as grantor, over the Azby Property as the servient estate, to the Parish as grantee and the Subject Property as the dominant estate attached hereto as Exhibit D.

7.7 In the event the construction of Wadsworth Parkway is not clearly in progress on or before December 31, 2006, McEnery shall have the right to require the Parish to assign to McEnery any and all rights of the Parish in and to the Servitude of Passage and Access over the Azby Property, including the right to construct any and all portions of Wadsworth Parkway or the Extension Road all as set forth in the Servitude of Passage and Access attached hereto as Exhibit D.

8. This Act may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original.



THIS DONE AND SIGNED in Covington, Louisiana, on the 22nd day of December, 2004, in the presence of the undersigned competent witnesses and me, Notary, after due reading of the whole.

WITNESSES:

McENERY PROPERTIES, L.L.C.

BY:

Name: \_\_\_\_\_

Mary Forrest McEnery Broussard

Name: \_\_\_\_\_

Henry Alfred McEnery III

IOLAR HOLDINGS, L.L.C.

BY:

PETER MICHAEL McENERY,  
Sole Member and Manager

ST. TAMMANY PARISH

BY:

KEVIN C. DAVIS, PRESIDENT

IOLAR DEVELOPMENT, LLC

BY:

DON A. MCMATH, Manager

Dean P. Staley  
Dean P. Staley  
Gina V. Broussard  
Gina V. Broussard

Bar Roll #19218  
NOTARY PUBLIC

I, the undersigned, being the Sole Member and Manager of Iolar Holdings, LLC, a Louisiana limited liability corporation, and on behalf of Iolar Holdings, LLC, do hereby consent to the donation of the herein referenced Subject Property all as hereinabove described, to St. Tammany Parish.

Iolar Holdings, L.L.C.

By:

Peter Michael McEnery, Manager and Sole Member

I, the undersigned, being the duly appointed Manager of Iolar Development, LLC, a Louisiana limited liability corporation, and on behalf of Iolar Development, LLC, do hereby consent to the identification of the property subject of this donation as the property excepted from the rights and obligations of the parties in the Purchase Agreement between of Iolar Development, LLC as Purchaser and McEnery Properties, LLC, as Seller, and consent to the donation of the herein referenced Subject Property to St. Tammany Parish, all as hereinabove described.

THUS DONE AND SIGNED in Bossier, Louisiana, on the 12<sup>th</sup> day of January, 2005, in the presence of the undersigned competent witnesses and me, Notary, after due reading of the whole.

WITNESSES:

McENERY PROPERTIES, L.L.C.

BY:

Name: C. Williams Jr

Mary Forrest McEnery Bransard

Name: Matthew Zedon

Henry Alfred McEnery III

Name: C. Williams

BY:

PETER MICHAEL McENERY,  
Sole Member and Manager

Name: Richard Carrico

ST. TAMMANY PARISH

BY:

KEVIN C. DAVIS, PRESIDENT

Name: \_\_\_\_\_

IOLAR DEVELOPMENT, LLC

BY:

DON A. MCMATH, Manager

Name: \_\_\_\_\_

NOTARY PUBLIC 19218

I, the undersigned, being the Sole Member and Manager of Iolar Holdings, LLC, a Louisiana limited liability corporation, and on behalf of Iolar Holdings, LLC, do hereby consent to the donation of the herein referenced Subject Property all as hereinabove described, to St. Tammany Parish.

Iolar Holdings, L.L.C.

By: Peter Michael McEnery  
Peter Michael McEnery, Manager and Sole Member

I, the undersigned, being the duly appointed Manager of Iolar Development, LLC, a Louisiana limited liability corporation, and on behalf of Iolar Development, LLC, do hereby consent to the identification of the property subject of this donation as the property excepted from the rights and obligations of the parties in the Purchase Agreement between Iolar Development, LLC as Purchaser and McEnery Properties, LLC, as Seller, and consent to the donation of the herein referenced Subject Property to St. Tammany Parish, all as hereinabove described.

Iolar Development, L.L.C.

By:

Don A. McMath, Manager

THUS DONE AND SIGNED in Coumetea Louisiana, on the 12th day of January, 2005, in the presence of the undersigned competent witnesses and me, Notary, after due reading of the whole.

WITNESSES:

McENERY PROPERTIES, L.L.C.

BY:

Name: \_\_\_\_\_

Mary Forrest McEnery Broussard

Name: \_\_\_\_\_

Henry Alfred McEnery III

IOLAR HOLDINGS, L.L.C.

BY:

Name: \_\_\_\_\_

PETER MICHAEL McENERY,  
Sole Member and Manager

Name: CE WILLIAMS

ST. TAMMANY PARISH

BY:

Name: Michael Davis

KEVIN C. DAVIS, PRESIDENT

Name: MICHAEL CARRERO

IOLAR DEVELOPMENT, LLC

BY:

Name: \_\_\_\_\_

DON A. McMath, Manager

NOTARY PUBLIC

Notary Roll No. 11809

I, the undersigned, being the Sole Member and Manager of Iolar Holdings, LLC, a Louisiana limited liability corporation; and on behalf of Iolar Holdings, LLC, do hereby consent to the donation of the herein referenced Subject Property all as hereinabove described, to St. Tammany Parish.

By: \_\_\_\_\_  
Peter Michael McEnery, Manager and Sole Member

I, the undersigned, being the duly appointed Manager of Iolar Development, LLC, a Louisiana limited liability corporation, and on behalf of Iolar Development, LLC, do hereby consent to the identification of the property subject of this donation as the property excepted from the rights and obligations of the parties in the Purchase Agreement between Iolar Development, LLC as Purchaser and McEnery Properties, LLC, as Seller, and consent to the donation of the herein referenced Subject Property to St. Tammany Parish, all as hereinabove described.

Iolar Development, L.L.C.

By: \_\_\_\_\_  
Don A. McMath, Manager

THUS DONE AND SIGNED in Westwego, Louisiana, on the 10<sup>th</sup> day of January, 2005, in the presence of the undersigned competent witnesses and me, Notary, after due reading of the whole.

WITNESSES:

Adele L. Forrest  
Name: ADELE S. FORREST

John B. Bryant  
Name: JOHN B. BRYANT

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

McENERY PROPERTIES, L.L.C.

BY: Mary Forrest McEnery Brohazzard  
Mary Forrest McEnery Brohazzard

Henry Alfred McEnery III

IOLAR HOLDINGS, L.L.C.

BY: PETER MICHAEL McENERY,  
Sole Member and Manager

ST. TAMMANY PARISH

BY: KEVIN C. DAVIS, PRESIDENT

IOLAR DEVELOPMENT, LLC

BY: DON A. MCMATE, Manager

Robert D. Burt  
NOTARY PUBLIC

BAE # 5709

I, the undersigned, being the Sole Member and Manager of Iolar Holdings, LLC, a Louisiana limited liability corporation, and on behalf of Iolar Holdings, LLC, do hereby consent to the donation of the herein referenced Subject Property all as hereinabove described, to St. Tammany Parish.

Iolar Holdings, L.L.C.

By:

Peter Michael McEnery, Manager and Sole Member

I, the undersigned, being the duly appointed Manager of Iolar Development, LLC, a Louisiana limited liability corporation, and on behalf of Iolar Development, LLC, do hereby consent to the identification of the property subject of this donation as the property excepted from the rights and obligations of the parties in the Purchase Agreement between of Iolar Development, LLC as Purchaser and McEnery Properties, LLC, as Seller, and consent to the donation of the herein referenced Subject Property to St. Tammany Parish, all as hereinabove described.

Iolar Development, LLC

By:

Don A. McMath, Manager

ST. TAMMANY PARISH COUNCIL

ORDINANCE

ORDINANCE CALENDAR NO. 2972 ORDINANCE COUNCIL SERIES NO. 04-1022

COUNCIL SPONSOR MR. GOULD PROVIDED BY PRESIDENT'S OFFICE

INTRODUCED BY MR. GOULD SECONDED BY MR. IMPASTATO

ON THE 4<sup>TH</sup> DAY OF NOVEMBER 2004

ORDINANCE TO AUTHORIZE THE PARISH OF ST. TAMMANY, THROUGH THE OFFICE OF THE PARISH PRESIDENT, TO ACCEPT DONATION OF A 40 ACRE TRACT LOCATED IN THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 28, T7S-R12E, ST. TAMMANY PARISH.

WHEREAS, the St. Tammany Parish Government is charged with protecting the safety and welfare of the citizens of the parish; and

WHEREAS, it is the desire of St. Tammany Parish Government to accept the donation of such parcel of land that has been donated to the Parish by Henry Alfred McNery, III, Mary Forest McNery, and Peter Michael McNery; and

THE PARISH OF ST. TAMMANY HEREBY ORDAINS that it authorizes the Parish of St. Tammany, through the Office of the Parish President, to accept donation of a 40-acre tract located in the Southeast 1/4 of the Southwest 1/4 of Section 28, T7S-R12E, St. Tammany Parish.

BE IT FURTHER ORDAINED that the Office of the Parish President is authorized to exercise its discretion in accepting the donation of this property, together with all agreements and all transactions necessary to carry out the intent of this Ordinance.

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

SEVERABILITY: If any provision of this Ordinance shall be held to be invalid, such invalidity shall not affect other provisions herein 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: MR. CANULETTE SECONDED BY: MR. STEFANCIK

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

YEAS: DEAN, FITZMORRIS, BRISTER, GOULD, SINGLETARY, IMPASTATO, CANULETTE, BAGERT, BELLLOT, STEFANCIK, BINDER, THOMAS, BURKHALTER (13)

NAYS: (0)

ABSTAIN: (0)

ABSENT: THOMPSON (1)

ORDINANCE CALENDAR NUMBER: 2972

ORDINANCE COUNCIL SERIES NO. 04-1022

PAGE 2 OF 2

THIS ORDINANCE WAS DECLARED ADOPTED AT A REGULAR MEETING OF THE  
PARISH COUNCIL ON THE 2<sup>ND</sup> DAY OF DECEMBER 2004; AND BECOMES  
ORDINANCE COUNCIL SERIES NO. 04-1022

  
PATRICIA BRISTER, COUNCIL CHAIRMAN

ATTEST:

  
DIANE HUESCHEN, COUNCIL CLERK

  
KEVIN DAVIS, PARISH PRESIDENT

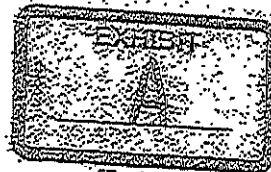
Published introduction: Nov. 11 2004

Published adoption on: Dec. 16 2004

Delivered to Parish President: Dec 9 2004 @ 11:25 AM

Returned to Council Clerk: Dec 9 2004 @ 1:30 PM

## PURCHASE AGREEMENT



THIS PURCHASE AGREEMENT (hereinafter the "Agreement") is made and entered into on this 16th day of FEB, 2004, by and between Newco Development Company, L.L.C. and/or its assigns (hereinafter the "Purchaser") and The McNery Heirs Trust, McNery Properties, L.L.C., Peter Michael McNery, Henry Alfred McNery, III, and Mary Forest McNery Broussard and/or their heirs, successors or assigns (hereinafter collectively referred to as the "Seller").

IN CONSIDERATION of mutual obligations contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each of the parties hereto, the parties agree as follows:

### ARTICLE I. AGREEMENT TO SELL AND PURCHASE

Section 1.01. Seller agrees to sell and Purchaser agrees to purchase over time, approximately 1,148 acres in Sections 21 and 26, Township 7 South, Range 12 East, St. Tammany Parish, which property is more accurately described on Exhibit "A" attached hereto, together with all rights, ways, privileges, servitudes, appurtenances, advantages, and intangibles thereunto belonging and appertaining (hereinafter, the "Property"). The actual amount of acreage may be reduced by approximately 40 acres, which is the subject of a possible donation by Seller to the Parish of St. Tammany.

Section 1.02. Deposit. Within five (5) days following the execution of this Agreement by Seller and as security for the performance of its obligations hereunder, Purchaser shall deposit with Purchaser's attorney a note in the amount of \$10,000.00 which note shall provide for the payment of the principal plus interest at 6% per annum until paid in full.

Section 1.03. In the event Purchaser does not proceed to Closing on the Initial Takedown Parcel within 60 months of the execution of this Purchase Agreement, or such longer time period as is mutually agreed upon, in writing, between Purchaser and Seller, this Agreement shall be null and void and of no legal effect as of the fifth anniversary of this Agreement, or one year after any mutually agreed upon extension of such date.

### ARTICLE II. PURCHASE PRICE

Section 2.01. Amount of Purchase Price, See Takedown Schedule.

Section 2.02. Takedown Schedule. Provided that all conditions described in Article 12 hereof have been satisfied or waived, the transfer of the Property shall occur as follows:

(a). Initial Takedown: Within the earlier to occur of either a) 60 months of the date of execution of this Agreement, or b) 6 months after receipt of an Unlimited Work Order from St. Tammany Parish to begin construction, Purchaser shall acquire at least 200 acres of the Property, as selected by Purchaser, (the "Initial Takedown Parcel") for a cost of \$5,000 per acre by means of a Cash Sale.

(b). Additional Takedowns: Within 36 months of the Closing on the Initial Takedown Parcel, and every two years thereafter, Purchaser shall purchase not less than 100 additional acres, as selected by Purchaser, until such time as all of the Property is acquired by Purchaser. The price for the additional takedown acreage, purchased after the Initial Takedown, shall be based on the mutually agreeable market value of the time of Closing. In the event Purchaser and Seller cannot agree as to the market value of any portion of the Property to be conveyed, each shall appoint an appraiser licensed by the State of Louisiana, at a minimum, as a Certified General Real Estate Appraiser. In the event Purchaser's and Seller's appraisers cannot agree upon the market value of such portion of the Property, they will appoint a third appraiser with similar qualifications and the amount agreed upon by any 2 of the 3 appraisers shall be considered the market value.

Purchaser, at his sole discretion may elect to accelerate any one, or all of the above indicated Takedown dates, however, said election by Purchaser shall not affect any subsequent Takedown dates.

### ARTICLE III. TITLE

Section 3.01. Title Examinations. Prior to Closing, Purchaser shall timely obtain a title insurance commitment (the "Commitment") by a title insurance company selected by Purchaser (the "Title Company"), proposing to insure good and merchantable fee simple title to the Property in the name of Purchaser and in the amount of the purchase price. Within 10 days of receipt of the Commitment from the Title Company, Purchaser shall give Seller a statement of those matters affecting Seller's title to the Property that are disclosed by the Commitment and to which Purchaser objects (the "Title Objections") and of those matters affecting Seller's title to the Property that are disclosed by the Commitment that Purchaser expressly accepts as exceptions to the title to the Property (the "Permitted Exceptions").

Section 3.02. Correction of Title Objections. Upon receipt of notice of Title Objections, Seller shall undertake to cure or remove the Title Objections at its sole cost and expense. Seller shall have sixty (60) days following receipt of such notice to remove such exceptions and to cause the Title Company to deliver endorsements to Purchaser reflecting such removal. If Seller fails or is unable to cure such Title Objections within such period, Purchaser, at its option, may either (i) terminate the Agreement, in which

case, Purchaser shall receive a complete refund of the Deposit, (ii) waive its objections to the uncured Title Objections and proceed to Closing, or (iii) extend the Closing Date until Seller is able to cure the Title Objections to the satisfaction of Purchaser.

**Section 3.03. Exclusion of "Conservation Lands" and Wetlands.** Seller and Purchaser acknowledge that the Parish of St. Tammany is in the process of adopting new land use regulations as proposed by the "Plan 2025". Should any portion of the Property be included in any "conservation area," easements, servitudes, or any restrictions that limit or prevent the development of the Property as a result of the Plan 2025, then Purchaser shall be entitled to exclude such affected property from this Purchase Agreement. Purchaser shall similarly be entitled to exclude from this Purchase Agreement any portion of the Property whose mitigation costs associated with obtaining a Wetlands permit exceeds \$4,500.00 per acre as provided for in Section 12.03 of this Agreement.

#### ARTICLE IV. SURVEY, LEGAL DESCRIPTION

**Section 4.01. Survey.** Prior to the conveyance of any portion of the Property, Purchaser may, at its option, and at its sole cost and expense, have the Property surveyed by a duly licensed surveyor of Purchaser's choice. Purchaser shall give Seller written notice of any exceptions to, or impairments of title disclosed by the Survey, within 10 days of receiving notice of same, which shall be resolved in a manner similar to Title Objections as described above.

#### ARTICLE V. CLOSING

**Section 5.01. Closing Date.** Unless extended pursuant to the terms of this Agreement, the transfer of title to either the Initial Takedown Parcel or any additional takedown parcels, (the "Closing") shall occur sixty (60) business days from the date that all conditions precedent (described in Article 12 hereon) have been satisfied or waived as to the particular parcel being conveyed, or at such other time as mutually agreed to by Purchaser and Seller. Each such Closing shall be held at a location in St. Tammany Parish, as Purchaser shall elect.

#### Section 5.02. Closing Cost.

(a) At Closing, Seller shall pay: (i) the fees and expenses of Seller's attorneys; (ii) the expenses of any curative efforts and of satisfying any encumbrances affecting the Property and recording any releases in connection therewith; (iii) and other costs and expenses incurred by Seller, or agreed to be paid by Seller herein.

(b) At Closing, Purchaser shall pay: (i) the fees and expense of Purchaser's attorneys; (ii) the expenses of any mortgage, conveyance and/or tax research certificates; (iii) the expense of Closing (including all recording costs); (iv) any premiums in connection with the title insurance policy; (v) the costs of the Survey and (vi) and other costs and expenses incurred by Purchaser, or agreed to be paid by Purchaser herein.

**Section 5.03. Prorations.** For each respective portion of the Property to be conveyed, all ad valorem and similar taxes and assessments due for the calendar year of the Closing shall be prorated between Purchaser and Seller as of the Closing Date, based on the most current and accurate tax information available.

#### ARTICLE VI. REPRESENTATIONS AND WARRANTIES

#### Section 6.01. Seller represents to Purchaser as follows:

(a) Seller has the power and authority to enter into and to perform fully the transactions contemplated in this Agreement;

(b) Seller has received no notice of, nor is Seller aware of, any pending, threatened or contemplated action by any governmental authority or agency having the power of eminent domain, that might result in all or any part of the Property being taken by condemnation or conveyed in lieu of such taking;

(c) Seller has received no notice of, nor is Seller aware of, any assessments, fees or charges having been made against all or any part of the Property that are unpaid (except for ad valorem taxes for the current year, which are not yet due and payable), whether or not they have become liens;

(d) Seller has received no notice of, nor is Seller aware of: (i) any claim by any municipality or other governmental or quasi-governmental authority relating to actual or alleged violations of zoning, health, environmental or other statutes, ordinances, regulations or orders affecting the Property, or (ii) any claim by any persons or entities alleging a violation of any zoning ordinance, regulations or deed restrictions pertaining to the Property;

(e) Upon information and belief, no Hazardous Substances or Wastes have been disposed, stored, released or found on any of the Property. "Hazardous Substances or Wastes" means any substance identified as a hazardous substance or waste in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; the Superfund Amendment and Reauthorization Act, or any other state municipal legislation or ordinances.



(f) Upon information and belief, the Property is free and clear of any and all liens and encumbrances, including leases and unrecordable liens, other than a hunting lease.

(g) Seller has received no notice of, nor is Seller aware of any lawsuits existing or threatened against the Property.

(h) The foregoing representations shall be made again and be true and correct at Closing.

**Section 6.02.** Purchaser represents that it has the financial wherewithal to purchase the Property or secure the financing necessary in order to comply with the provisions of this Agreement.

#### ARTICLE VII. AGREEMENTS AFFECTING THE PROPERTY

**Section 7.01. Seller's Agreements.** Seller agrees that, between the date of this Agreement and the Closing on any un conveyed portion of the Property, or termination of this Agreement

(a) Seller shall not sell, contract to sell, option, rent, lease, sell timber, convey (absolutely or as security), grant a security interest in, or otherwise encumber or dispose of all or any part of the Property, other than the previously identified donation to the Parish of St. Tammany, and hunting lease, nor take any action that would change or affect the zoning, physical condition, quantity or quality of all or any part of the Property, without first having obtained Purchaser's consent. Notwithstanding the foregoing, Seller will cooperate with Purchaser to annex and rezone the Property to a zoning classification satisfactory to Purchaser.

Further notwithstanding the foregoing, Sellers may transfer their interests in the Property to one or more business entities, provided, however, that the transferor maintains all voting rights in such business entities and such transfers are made subject to this Purchase Agreement. Seller further retains the right to convey any portion of the Property. Purchaser has elected not to purchase because of Title Objections, Survey Objections, wetlands mitigation costs, casualty, condemnation, or Conservation Land designation pursuant to this Agreement.

(b) Seller shall comply with all federal, state, county and municipal statute ordinances, regulations and orders relating to the Property.

#### **Section 7.02. Purchaser's Agreements.**

(a) Subsequent to Purchaser's purchase of any portion of the Property, Purchaser agrees to allow Seller reasonable access across Purchaser's property conveyed, for ingress and egress or right of passage by Seller to and from any un conveyed portion of the Property. Purchaser agrees to guarantee Seller's ingress and egress rights as provided for herein in the event of any subsequent sale of any portion of the Property.

(b) Purchaser understands that its sole right under this Agreement is to purchase portions of the Property and that prior to such purchase, it may not sell, rent, convey, assign, encumber, transfer, option, lease or in anywise take any actions pertaining to any portions of the Property it has not purchased from Seller pursuant to this Agreement without Seller's express written consent.

(c) This Agreement and Purchaser's rights hereunder may not be assigned, sold, or in any way conveyed by Purchaser without the express written consent of the Seller which consent may be withheld at Seller's option. This restriction, however, does not prevent Purchaser from conveying any portion of the Property it has previously purchased from Seller.

#### ARTICLE VIII. EXAMINATION OF THE PROPERTY

**Section 8.01. Examination of the Property.** Seller hereby grants Purchaser, its agents, employees or representatives the opportunity to enter upon the Property at any reasonable time prior to Closing to conduct soil tests, borings, percolation test and any other test, inspection or examination which Purchaser deems necessary or advisable. Purchaser may also erect and maintain signage on the Property, at its cost and expense for the purpose of marketing. Purchaser shall indemnify, defend and forever hold Seller harmless from any claims, suits, penalties or judgments resulting from any such inspections, examinations or signage.

#### ARTICLE IX. CASUALTY AND CONDEMNATION

**Section 9.01. Casualty and Condemnation.** If, after the date of this Agreement and prior to Closing, there is any material damage to or destruction of any un conveyed portion of the Property, or if there is any taking or threat of taking by condemnation (or any conveyance in lieu of such taking) of all or any such part of the Property by anyone having the power of eminent domain, then Purchaser shall have the right to terminate this Agreement as to that portion of the Property, or to purchase the affected portion of the Property. If Purchaser elects to purchase any damaged or condemned portion of the Property, then, at Closing, Seller shall pay to Purchaser all insurance proceeds and condemnation awards and compensation then received by Seller, and Seller shall transfer and assign all rights and claims of Seller with respect to payment for damages and compensation on account of such damage, destruction, taking or conveyance.

## ARTICLE X- COMMISSION

Section 10.01. Commission. Both Seller and Purchaser acknowledge that neither party is represented by a real estate agent or broker, and as such both parties hereby agree to hold each other harmless from any and all claims arising from any real estate agent or broker with regard to this transaction.

## ARTICLE XI. DEFAULT

Section 11.01. Seller's Default. If Seller defaults or fails to comply with any of the provisions under this Agreement, or if any of Seller's representations and warranties contained herein shall be false then, at Purchaser's option, Purchaser may (i) demand the return of the Deposit, together with all interest thereon, together with Purchaser's out-of-pocket expenses incurred in connection with this Agreement and the transaction contemplated hereunder, as liquidated damages in lieu of any other remedy, or (ii) Purchaser may demand specific performance.

Section 11.02. Purchaser's Default. If Purchaser defaults under this Agreement, then notwithstanding any other terms or conditions of this Agreement, Seller may terminate this Agreement as to any unconveyed portion of the Property and retain the Deposit, together with all interest thereon, as liquidated damages, or, (ii) Seller may demand immediate specific performance as to all remaining portions of the Property.

Section 11.03. Attorney's Fees. If Seller or Purchaser incurs any attorney's fees or other litigation expenses in any action for enforcement of this Agreement, then the party prevailing in such enforcement action shall be entitled to reimbursement from the other for such cost.

## ARTICLE XII. CONDITIONS PRECEDENT

Section 12.01. In General. Notwithstanding anything herein to the contrary, Purchaser's obligation to purchase the Property is conditioned upon fulfillment of each and every one of the terms and conditions below. If said conditions are not fulfilled, Purchaser shall have the option to either waive the specific condition, or cancel this Agreement.

Section 12.02. Approvals. Closing is conditioned upon Purchaser having obtained the approval of all regulatory bodies as required to develop the Property as planned by Purchaser. Seller agrees to execute all documents relative to obtaining all such approvals, including, but not limited to, planning, zoning, and wetland permits.

Section 12.03. Wetlands. Purchaser shall pay all costs and expenses in order to obtain a U.S. Army Corp of Engineers 404 Permit plus all mitigation cost in connection with that Permit. Purchaser may terminate this Agreement if Purchaser is unable to obtain said Permit, or in the event the mitigation cost associated with the Permit exceeds \$4,500 per acre.

Section 12.04. Azby Access Easement/Right of Way. Seller is in the process of obtaining an easement and/or right of way from the Property to Hwy 1088 across adjoining property owned by the Azby Foundation under the terms and conditions as set forth in Exhibit B attached hereto. Purchaser may elect to terminate this Agreement if said easement and/or right of way is not granted or an alternative easement acceptable to Purchaser is not provided from the Property to Hwy 1088. Seller shall grant Purchaser the rights to use the aforementioned easement and/or right of way to the same extent as Seller's rights. When Purchaser acquires the last remaining portion of the Property, Seller shall transfer all such easement rights and obligations to Purchaser.

## ARTICLE XIII. MISCELLANEOUS PROVISIONS

Section 13.01. Exhibits. Each exhibit referred to in this Agreement is attached to and incorporated by reference in this Agreement.

Section 13.02. Entire Agreement. This Agreement contains the sole and entire understanding between Seller and Purchaser with respect to the Property. All promises, inducements, offers, letter of intent, solicitations, agreements, commitments, representations and warranties made between such parties prior to this Agreement are merged into the Agreement. This Agreement shall not be modified or amended in any respect except by a written instrument executed by or on behalf of each of the parties to this Agreement.

Section 13.03. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their legal representatives, respective heirs, successors and assigns.

Section 13.04. Notices. Any notices requested or other communication required or permitted to be given under this Agreement shall be in writing and will be deemed to be given five days after delivery or mailing and shall be delivered by hand or courier (including Federal Express and other such services) or mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each party at its address set forth below or at such other address as they may from time to time direct.

Section 13.05. Counterparts. This Agreement may be executed in multiple counterparts each of which shall constitute an original and all of which together shall constitute one and the same instrument.

Section 13.06. Survival. All of the representation, warranties and indemnities contained herein shall survive the Closing and/or the rescission, cancellation, termination or consummation of this Agreement.

Section 13.07. Date of Agreement. The later of the dates on which Seller and Purchaser execute this Agreement, as evidenced by the date below their respective executions, shall be the "date of the Agreement" for all purposes and shall be inserted in the blank in the preamble.

Section 13.08. Time. Time is of the essence with respect to each provision of this Agreement, which requires that action be taken by either party within a stated time period or upon a specified date.

Section 13.09. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, and shall be enforced to the greatest extent permitted by law.

Section 13.10. No Construction Against Draftsman. The parties acknowledge that this is a negotiated Agreement, and that in no event shall the terms hereof be construed against either party on the basis that such party, or its counsel, drafted this Agreement.

Section 13.11. Captions. The descriptive captions contained herein are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

Section 13.12. Applicable Law. This Agreement shall be governed by the laws of the State of Louisiana.

Section 13.13. Venue. The parties hereto agree that any action to enforce any of the terms of this Agreement shall be brought exclusively in the 22<sup>nd</sup> Judicial District for the Parish of St. Tammany, State of Louisiana.


THIS OFFER REMAINS OPEN AND IRREVOCABLE THRU MIDNIGHT February 18, 2004.

Newco Development Company, LLC, as referred to in paragraph one of this Purchase Agreement (to be name at a later date) shall be owned as follows:

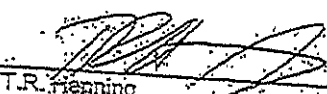
1/3 ownership	McEnery Group
1/3 ownership	Don A. McMath
1/3 ownership	T.R. Henning

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement, to be effective the later of the dates of execution by Seller and Purchaser below.

OFFERED BY:  
PURCHASER:

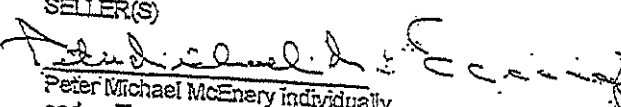
  
Don A. McMath

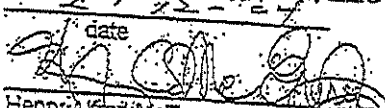
1125 N. Causeway Blvd. Suite 2  
Mandeville, LA 70471 985-624-9010  
2-16-04  
date

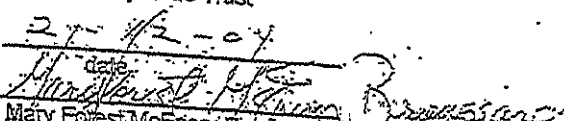
  
T.R. Henning

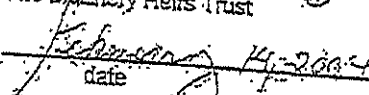
P.O. Box 67  
Mandeville, LA 70470 985-628-8836  
2-16-04  
date

ACCEPTED BY:  
SELLER(S)

  
Peter Michael McEnery individually,  
and as Trustee and/or Beneficiary of  
The McEnery Heirs Trust, and Managing  
Member of McEnery Properties, LLC  
2-12-04  
date

  
Henry Alfred McEnery, individually,  
and as Trustee and/or Beneficiary of  
The McEnery Heirs Trust  
2-12-04  
date

  
Mary Forest McEnery Brossard individually,  
and as Trustee and/or Beneficiary of  
The McEnery Heirs Trust  
2-12-04  
date

  
John McEnery  
2-12-04  
date

FIRST AMENDMENT TO PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO PURCHASE AGREEMENT (the "First Amendment") executed this \_\_\_\_ day of \_\_\_\_, 2004 by and among Iolar Development, LLC, Newco Development Company LLC represented by Don A. McMath and T.R. Henning and McEnery Properties, LLC (hereinafter "The Purchaser") and The McEnery Heirs Trust, McEnery Properties, LLC, Peter Michael McEnery, Henry Alfred McEnery III, and Mary Forest McEnery Broussard (collectively "The Seller")

RECITALS

A. Purchaser and Seller entered into that certain Purchase Agreement dated February 16, 2004 (the "Exchange Agreement") pursuant to which Newco Development Company, LLC agreed to purchase approximately 1,200 acres of property from Sellers (Exhibit A).

B. At the time the Purchase Agreement was signed by the Parties, they envisioned the establishment of a Limited Liability Company to be the actual Purchasers. That Limited Liability Company was to be owned one-third each by 1) the Sellers, 2) Don A. McMath and 3) T.R. Henning, and was identified in the Agreement as Newco Development Company, LLC, merely for the convenience of the Parties. However, the actual name for such entity had not yet been determined nor its existence established.


C. Since signing the Purchase Agreement, the Parties have agreed to form Iolar Development, LLC which shall act as the Purchaser under the Purchase Agreement.

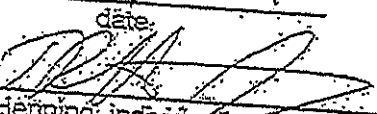
NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by all parties, it is agreed that the Purchase Agreement shall be amended by the substituting Iolar Development, LLC for Newco Development Company, LLC wherever its name appears.

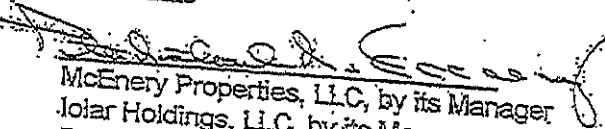
Except as modified by this First Amendment, the terms and conditions of the Purchase Agreement shall remain in full force and effect and this First Amendment shall be a part thereof.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment the day and year first above written.

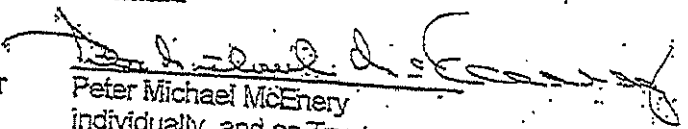
PURCHASER:


  
Don A. McMath, individually as a Member  
of Iolar Development, LLC  
1125 N. Causeway Blvd. Suite 2  
Mandeville, LA 70471 985-624-9010  
4-20-04  
date

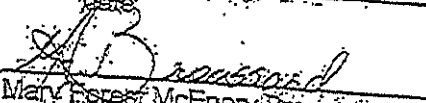
  
T.R. Henning, individually as a Member  
of Iolar Development, LLC  
P.O. Box 67  
Mandeville, LA 70470 985-626-8836  
4-20-04  
date

  
McEnery Properties, LLC, by its Manager  
Iolar Holdings, LLC, by its Manager  
Peter Michael McEnery  
4-15-04  
date

SELLER:

  
Peter Michael McEnery  
individually, and as Trustee  
and/or Beneficiary of The  
McEnery Heirs Trust, and Manager of  
McEnery Properties, LLC  
4-15-04  
date

  
Henry Alfred McEnery, individually  
and as Trustee and/or Beneficiary of  
The McEnery Heirs Trust  
April 15, 2004  
date

  
Mary Forest McEnery Broussard,  
individually, and as Trustee and/or  
Beneficiary of The McEnery Heirs Trust  
04-15-04  
date

SERVITUDE OF PASSAGE AND ACCESS \* UNITED STATES OF AMERICA  
 BY \*  
 THE AZBY FUND \* STATE OF LOUISIANA  
 IN FAVOR OF \* PARISH OF ST. TAMMANY  
 THE PARISH OF ST. TAMMANY \*  
 \* \* \* \* \*

BEFORE the undersigned, Notaries, duly commissioned and qualified in and for the  
 Parishes and State hereinafter named, and on the dates and at the places hereinafter  
 named and in the presence of the witnesses hereinafter named:

PERSONALLY CAME AND APPEARED:

The Azby Fund, a Louisiana Non-Profit Corporation, herein represented  
 by Patrick W. Fitzmorris, its Assistant Managing Director, duly authorized.

Mailing Address: 650 Poydras Street, Suite 2521  
 New Orleans, Louisiana 70130  
 (hereinafter, "Grantor")

and

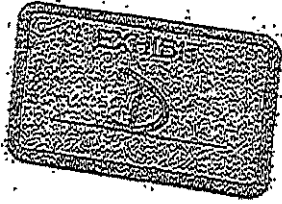
THE PARISH OF ST. TAMMANY, a political subdivision created, organized and  
 existing under the laws of the State of Louisiana, herein represented and  
 appearing through the Honorable Kevin Davis, the President of St. Tammany  
 Parish, duly authorized pursuant to the Parish charter to sign and enter into this  
 Agreement on behalf of the Parish.

Mailing Address: P. O. Box 628  
 Covington, Louisiana 70434  
 (hereinafter, "Grantee")

who declared before us, Notaries, that they agree as follows:

Grantor and Grantee, for the mutual consideration herein recited, the mutual  
 benefits and advantages accruing to Grantor and Grantee, and other good, valuable and  
 serious consideration, the adequacy and receipt of which are hereby acknowledged, agree  
 as follows:

- Grantor, as owner of the following described property, to-wit:  
 The Northwest Quarter of Section 33, Township 7 South, Range 12 East,  
 St. Tammany Parish, Louisiana.  
 (such property hereinafter referred to as the "Servient Estate")  
 does hereby grant unto Grantee and the following described property, to-wit:



The Southeast Quarter of the Southwest Quarter of Section 28,  
Township 7 South, Range 12 East, St. Tammany Parish,  
Louisiana.

(such property being hereinafter referred to as the "Dominant Estate")

a servitude of passage and access on, under, over, through and across the following  
described property located on the Servient Estate (such portion of the Servient Estate  
being hereinafter sometimes referred to as the "Servitude Strip"), to wit:

A CERTAIN PORTION OF GROUND, situated in the State of Louisiana,  
Parish of St. Tammany, located within Section 33, Township 7 South -  
Range 12 East, designated as Wadsworth Parkway ("Wadsworth  
Parkway") on a plan of Krebs, LaSalle, LeMieux dated  
\_\_\_\_\_ (the "Krebs Plan"), and approved by  
the Parish of St. Tammany, State of Louisiana, on March 6, 2003 (the  
"PUD Approval"), and is more fully described as follows:

COMMENCE at the Section corner common to Sections 28, 29, 32 & 33;

THENCE, proceed along the common section line for Sections 28 and 33,  
S 89°31'47" E a distance of 2,720.46 feet to a point;

THENCE, proceed, S 01°55'27" W a distance of 2,545.66 feet to a point  
on the northerly right-of-way line of La. State Highway 1088 at the  
intersection with the easterly right-of-way line of Wadsworth Parkway,  
being the POINT OF BEGINNING;

THENCE, proceed along the aforesaid northerly right-of-way line,  
S 66°04'28" W a distance of 100.00 feet to a point at the intersection of  
the aforesaid northerly right-of-way line and the westerly right-of-way line  
of Wadsworth Parkway;

THENCE, proceed along the aforesaid westerly right-of-way line, N  
23°55'37" W a distance of 39.17 feet to a point of curve;

THENCE, continue along the aforesaid westerly right-of-way line,  
along a curve to the right, in a northwesterly direction, with a radius of  
350.00 feet, having an arc length of 270.11 feet, along a chord bearing of  
N 01°49'05" W a distance of 263.46 feet to a point of reverse curve;

THENCE, continue along the aforesaid westerly right-of-way line,  
along a curve to the left in a northwesterly direction, with a radius of  
150.00 feet, having an arc length of 137.20 feet, along a chord bearing of  
N 05°54'44" W a distance of 132.47 feet to a point of tangent;

THENCE, continue along the aforesaid westerly right-of-way line,  
N 32°06'55" W a distance of 180.96 feet to a point of curve;

THENCE, continue along the aforesaid westerly right-of-way line,  
along a curve to the right in a northwesterly direction, with a radius of  
650.00 feet, having an arc length of 386.16 feet, along a chord bearing of  
N 15°05'44" W a distance of 380.51 feet to a point of tangent;

THENCE, continue along the aforesaid westerly right-of-way line,

N 01°55'27" E a distance of 1,637.10 feet to a point on the Section Line common to Sections 28 and 33;

THENCE, proceed along the aforesaid Section Line, S 89°31'47" E a distance of 100.03 feet to a point on the easterly right-of-way line of Wadsworth Parkway;

THENCE, proceed along the aforesaid easterly right-of-way line, S 01°55'27" W a distance of 1,639.64 feet to a point of curve;

THENCE, continue along the aforesaid easterly right-of-way line, along a curve to the left in a southeasterly direction, with a radius of 550.00 feet, having an arc length of 326.75 feet, along a chord bearing of S 15°05'44" E a distance of 321.97 feet to a point of tangent;

THENCE, continue along the aforesaid easterly right-of-way line, S 32°06'55" E a distance of 180.96 feet to a point of curve;

THENCE, continue along the aforesaid easterly right-of-way line, along a curve to the right in a southeasterly direction, with a radius of 250.00 feet, having an arc length of 228.66 feet, along a chord bearing of S 05°54'44" E a distance of 220.78 feet to a point of reverse curve;

THENCE, continue along the aforesaid easterly right-of-way line, along a curve to the left, in a southeasterly direction, with a radius of 250.00 feet, having an arc length of 192.94 feet, along a chord bearing of S 01°49'05" E a distance of 188.18 feet to a point of tangent;

THENCE, continue along the aforesaid easterly right-of-way line, S 23°55'37" E a distance of 39.17 feet to the POINT OF BEGINNING.

The above described portion of ground contains 262,941.36 square feet or 6.036 acres.

2. The aforesaid servitude is granted to and accepted by Grantee, as owner of the Dominant Estate, in favor of and for the benefit of the Dominant Estate and Grantee, and for the purposes of affording Grantee and any other future owner or owners of the Dominant Estate and any portions thereof the right to construct, operate, repair, maintain, inspect, remove, and/or replace a roadway and appurtenances for vehicular and pedestrian traffic, for ingress to the Dominant Estate from Louisiana Highway 1088 (or such other public highway that may replace or be in addition to Louisiana Highway 1088) and egress from the Dominant Estate to Louisiana Highway 1088 (or such other public highway that may replace or be in addition to Louisiana Highway 1088), including, without limitation, the right, at Grantee's sole cost and expense, to pave and otherwise improve, repair, maintain and replace the roadway constructed on the Servitude Strip. Grantor agrees that neither it, nor its successors or assigns or any future owner or owners of the Servitude Strip, shall

directly obstruct the Servitude Strip or construct or erect any buildings or permanent structures on or over the Servitude Strip.

3. In accordance with applicable law, Grantee may at reasonable times, upon prior written notice to Grantor, subject to the provisions of Paragraph 6 hereof, with due consideration to minimizing damage to and interference with Grantor, enter onto the Servient Estate for purposes of constructing, inspecting, removing, replacing, repairing, and maintaining the roadway hereafter constructed in the Servitude Strip.

4. This Servitude of Passage and Access shall be binding upon, and shall inure to the benefit of, Grantor, its successors and assigns, and any future owner or owners of the Servient Estate, as well as Grantee, its successors and assigns, and any future owner or owners of the Dominant Estate.

5. Notwithstanding anything to the contrary contained herein, Grantor, and the future owners of the Servient Estate, shall have the right to use the Servitude Strip for ingress to the Servient Estate from Louisiana Highway 1088 (or such other public highway that may replace or be in addition to Louisiana Highway 1088) and egress from the Servient Estate to Louisiana Highway 1088 (or such other public highway that may replace or be in addition to Louisiana Highway 1088).

6. Notwithstanding anything to the contrary contained herein, Grantee shall have no rights to make any use of the Servient Estate until one of the following events first occur:

a. Wadsworth Parkway is constructed by either Grantor or Grantor's successor(s) or assign(s) in accordance with the PUD Approval on all or part of the area colored in red on the Krebs Plan, a copy of which is annexed hereto and made a part hereof.

1. If Wadsworth Parkway is constructed by either Grantor or Grantor's successor(s) or assign(s) in accordance with the PUD Approval on all or part of the area colored in red on the Krebs Plan, Grantee agrees that upon completion of the area colored in red on the Krebs Plan, the area colored in red on the Krebs Plan shall be maintained, repaired, replaced or



otherwise improved by Grantee, thereby becoming a public roadway, provided, however, that Grantor shall retain the right, but not the obligation, to enhance and improve the unpaved portions of the Servitude Strip colored in red on the Krebs Plan, including appropriate residential and commercial signage for the Wadsworth subdivision development approved by the PUD Approval (the "Wadsworth Subdivision Development"), in a manner approved by Grantee, in its reasonable discretion.

ii. If Wadsworth Parkway is constructed by either Grantor or Grantor's successor(s) or assign(s) in accordance with the PUD Approval on all or part of the area colored in red on the Krebs Plan, Grantee shall have the right to construct the extension of Wadsworth Parkway colored in blue on the Krebs Plan. In the event Wadsworth Parkway is constructed by either Grantor or Grantor's successor(s) or assign(s) in accordance with the PUD Approval on all or part of the area colored in red on the Krebs Plan, Grantee shall have the right, at Grantee's sole cost and expense, to pave and otherwise improve, repair, maintain and replace the extension of Wadsworth Parkway colored in blue on the Krebs Plan, and the extension of Wadsworth Parkway colored in blue on the Krebs Plan shall become a public roadway. Further, Grantee agrees that any extension of Wadsworth Parkway constructed on the Dominant Estate will continue to carry the name Wadsworth Parkway, which name shall not be changed or altered in any manner.

b. Wadsworth Parkway is constructed by either Grantor or Grantor's successor(s) or assign(s) in accordance with the PUD Approval, as said PUD Approval may be hereafter amended by Grantee, in a location different from that shown on the Krebs Plan.

i. If Wadsworth Parkway is constructed by either Grantor or Grantor's successor(s) or assign(s) in accordance with the PUD Approval, as said PUD Approval may be hereafter amended by the Parish of St.

Tammany, in a location different from that shown on the Krebs Plan, Grantee agrees that upon completion of the portion of Wadsworth Parkway constructed by either Grantor or Grantor's successor(s) or assign(s) in accordance with the PUD Approval, as said PUD Approval may be hereafter amended by the Parish of St. Tammany, in a location different from that shown on the Krebs Plan, such portion of Wadsworth Parkway shall be maintained, repaired, replaced or otherwise improved by Grantee, thereby becoming a public roadway, provided, however, that Grantor shall retain the right, but not the obligation, to enhance and improve the unpaved portions of the Servitude Strip, including appropriate residential and commercial signage for the Wadsworth Subdivision Development, in a manner approved by Grantee, in its reasonable discretion.

ii. If Wadsworth Parkway is constructed by either Grantor or Grantor's successor(s) or assign(s) in accordance with the PUD Approval, as said PUD Approval may be hereafter amended by the Parish of St. Tammany, in a location different from that shown on the Krebs Plan, Grantee shall have the right to construct the extension of Wadsworth Parkway, from the northern end of Wadsworth Parkway as constructed by either Grantor or Grantor's successor(s) or assign(s) in a location different from that shown on the Krebs Plan, to the southern boundary of the Dominant Estate, at a location mutually agreeable to both Grantee and Grantor or their respective successor(s) and assign(s). In the event Wadsworth Parkway is constructed by either Grantor or Grantor's successor(s) or assign(s) in accordance with the PUD Approval, as said PUD Approval may be hereafter amended by the Parish of St. Tammany, in a location different from that shown on the Krebs Plan, Grantee shall have the right, at Grantee's sole cost and expense, to pave and otherwise improve, repair, maintain and replace the extension of Wadsworth Parkway in accordance with the PUD Approval as said Approval may be hereafter amended by the Parish of St. Tammany, in a location

other than as shown on the Krebs Plan, to the southern boundary of the Dominant Estate, in a location mutually agreeable to both Grantee and Grantor or their respective successor(s) and assign(s), and such extension of Wadsworth Parkway shall become a public roadway. Further, Grantee agrees that any extension of Wadsworth Parkway constructed on the Dominant Estate will continue to carry the name Wadsworth Parkway, which name shall not be changed or altered in any manner.

iii. If Wadsworth Parkway is constructed by either Grantor or Grantor's successor(s) or assign(s) in accordance with the PUD Approval, as said PUD Approval may be hereafter amended by the Parish of St. Tammany, in a location different from that shown on the Krebs Plan, Grantee and Grantor or their respective successor(s) or assign(s) agree to amend this servitude agreement to reflect the revised location of the Servitude Strip, such that it shall have the same basic width as it currently has (100 feet), with the revised location of Wadsworth Parkway in the center of such Servitude Strip.

c. If, by a date no later than six (6) months after the issuance by the United States Army Corps of Engineers of a 404 Permit on the Servient Estate, or December 31, 2006, whichever first occurs, neither (1) the construction of Wadsworth Parkway has commenced by either Grantor or Grantor's successor(s) or assign(s) in accordance with the PUD Approval on all or part of the area colored in red on the Krebs Plan, or (2) the construction of Wadsworth Parkway has commenced by either Grantor or Grantor's successor(s) or assign(s) in accordance with the PUD Approval, as said PUD Approval may be hereafter amended by Grantee, in a location different from that shown on the Krebs Plan, then, in such event, Grantee shall have the right to construct Wadsworth Parkway across the Servient Estate in accordance with the PUD Approval and as depicted on the area colored in red and blue on the Krebs Plan. In the event Grantee constructs Wadsworth Parkway across the Servient Estate in accordance with the PUD

Approval and as depicted on the area colored in red and blue on the Krebs Plan, Grantee shall have the right and obligation, at Grantee's sole cost and expense, to pave and otherwise improve, repair, maintain and replace Wadsworth Parkway, which shall become a public roadway, provided, however, that Grantor shall retain the right, but not the obligation, to enhance and improve the unpaved portions of the Servitude Strip colored in red on the Krebs Plan, including appropriate residential and commercial signage for the Wadsworth Subdivision Development, in a manner approved by Grantee, in its reasonable discretion. Further, Grantee agrees that any extension of Wadsworth Parkway constructed on the Dominant Estate will continue to carry the name Wadsworth Parkway, which name shall not be changed or altered in any manner.

7. If a portion of the Servient Estate is transferred to the Louisiana Department of Transportation and Development or any other state or federal governmental entity pursuant to the proposed interchange of Interstate 12, and/or Louisiana Highway 1088, and/or Louisiana Highway 3241, as the case may be, and if said portion of the Servient Estate includes part of the Servitude Strip, then Grantee shall not, and shall have no rights to, object to such transfer by Grantor, and Grantee's rights to the portion of the Servitude Strip so transferred shall then terminate and be of no further force and effect. Furthermore, Grantee shall not be entitled to any compensation from Grantor, its successors or assigns, for any loss of Grantee's rights to the portion of the Servitude Strip so transferred.

8. Grantee shall fully pay, indemnify and hold harmless the said Grantor, its successors and assigns, from, against and in connection with any and all loss, damage, liability and expenses of every nature and kind, however caused or occurring, including injuries or death to persons and damage to property, either belonging to Grantor or to others, directly or indirectly arising from and out of or resulting from Grantee's construction, maintenance, operation, relocation or removal of any roadway constructed by Grantee, its successor(s) and assign(s), on the Servient Estate pursuant to the rights granted to Grantee hereunder or from or out of or the result of any activities of Grantee hereunder. Without limitation of the foregoing, Grantee shall

hold Grantor harmless from and shall answer and defend any action instituted against Grantor for any losses, damage or injury covered by the scope of this indemnity, which shall include in all instances court costs and attorneys' fees.

9. It is understood and agreed that any and all rights granted by Grantor to Grantee under the terms of this instrument shall be and are subject to and subordinate to any and all existing oil, gas or mineral leases that may have been executed by Grantor, and also to all agricultural, grazing, trapping and hunting leases, and all utility servitudes, including overhead electric line servitudes and pipeline servitudes, heretofore granted by Grantor, and to any and all timber contracts and leases heretofore executed by Grantor.

10. Grantor further reserves the rights to place any and all utilities needed for the remainder of the Servient Estate under and through the Servitude Strip, including any roadway constructed on the Servitude Strip.

11. This instrument is executed without any warranty of title whatever by Grantor and without recourse against Grantor.

12. The covenants and conditions herein contained shall apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto. Wherever the term "Grantor" is used herein, it shall include the successors and assigns of Grantor. Wherever the term "Grantee" is used herein, it shall include the successors and assigns of Grantee.

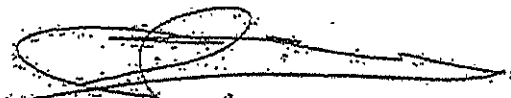
13. In the event a lawsuit is filed by either party to enforce their rights hereunder, the attorney's fees and court costs of the prevailing party shall be paid for by the other party.

14. This instrument may be executed in any number of counterparts, each of which shall be considered an original for all purposes.

STATE OF LOUISIANA  
PARISH OF ST. TAMMANY

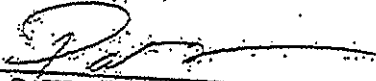
THUS DONE AND PASSED, in multiple originals in my office at Covington,  
Louisiana on the day, month and year herein first above written, in the presence of the  
undersigned competent witnesses, who hereunto sign their names with the said  
appearers, and me, Notary, after reading of the whole.

WITNESSES:

  
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NOTARY PUBLIC  
RECORD CARRIER

GRANTOR:

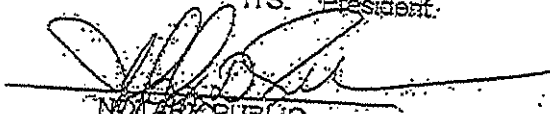
THE AZBY FUND

BY:   
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ITS: PATRICK W. FITZMORRIS  
ASSISTANT MANAGING  
DIRECTOR

GRANTEE:

THE PARISH OF ST. TAMMANY

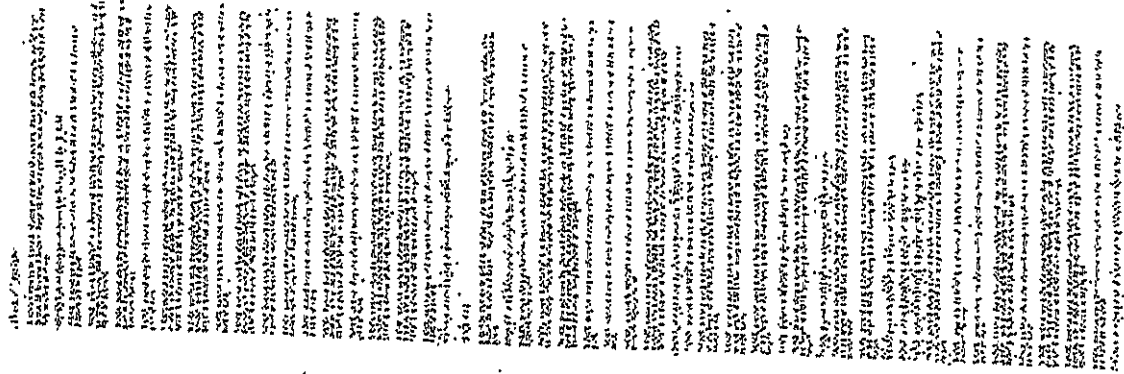
BY:   
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ITS: Honorable Kevin Davis  
President

  
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NOTARY PUBLIC  
Bar Roll No. 11809

SEE MAP FILE # 3736  
INSTRUMENT # 1473736  
ORIGINALLY FILED DATE 1-18-05  
MAP FILED DATE 1-18-05  
St. Tammany Parish Clerk of Court  
Deputy Clerk Sharon H. Cate

SEE MAP FILE # 3737  
INSTRUMENT # 1473736  
ORIGINALLY FILED DATE 1-18-05  
MAP FILED DATE 1-18-05  
St. Tammany Parish Clerk of Court  
Deputy Clerk A. K. K. K. K.





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## SECTION 28

## 10.00 ACCESS TRAIL

Northwest 1/4  
of Section 51

DRYING SAILS

SURVEY OF A 40-ACRE TRACT  
LOCATED IN THE SOUTHEAST 1/2 OF  
THE SOUTHWEST 1/4 OF SECTION 28, T2S-17E-  
R2E  
ST. TAMMANT PARISH, LA.

[illegible]

EXHIBIT "B"

St Tammany Parish Clerk of Court - Map#137 - MAPS MAY NOT PRINT TO SCALE

