

ST. TAMMANY PARISH COUNCIL

ORDINANCE

ORDINANCE CALENDAR NO: 4753

ORDINANCE COUNCIL SERIES NO: _____

COUNCIL SPONSOR: GOULD/BRISTER

PROVIDED BY: PRESIDENT/LEGAL

INTRODUCED BY: _____

SECONDED BY: _____

ON THE 5 DAY OF APRIL , 2012

ORDINANCE TO AUTHORIZE THE PARISH OF ST. TAMMANY, THROUGH THE OFFICE OF THE PARISH PRESIDENT, TO ACQUIRE, BY DONATION, CERTAIN RIGHTS OF WAY AND/OR SERVITUDES LOCATED AT THE INTERSECTION OF HWY. 190 AND N. SECOND STREET IN COVINGTON, LOUISIANA.

WHEREAS, the St. Tammany Parish Government desires to acquire certain rights of way and/or servitudes (hereinafter referred to as "Property"); and

WHEREAS, there is a need and a public purpose for the acquisition of certain rights of way and/or servitudes of immovable property for roadway improvements and drainage to service the improvements located at the Covington Neighborhood Wal-Mart; and

WHEREAS, the necessary rights of way and/or servitudes extends from the Parish's existing right of way along N. Second Street, as depicted on the plans by Acadia Land Surveying, LLC attached hereto as Exhibit "A"; and

WHEREAS, the Parish of St. Tammany hereby desires to acquire the rights of way and/or servitudes and authorizes the Office of the Parish President to do whatever is necessary to acquire said rights of way and/or servitudes.

THE PARISH OF ST. TAMMANY HEREBY ORDAINS: to authorize the Parish of St. Tammany, to acquire by donation all the rights of way and/or servitudes attached hereto as Exhibit "B".

BE IT FURTHER ORDAINED that pursuant to all applicable provisions of law, the Office of the Parish President is directed and authorized to do whatever is necessary to accept the donation of the rights of way and/or servitudes.

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

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

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REPEAL: All ordinances or parts of Ordinances in conflict herewith are hereby repealed.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 3 DAY OF MAY, 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: Marh 29, 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 ACQUIRE, BY DONATION, CERTAIN RIGHTS OF WAY AND/OR SERVITUDES LOCATED AT THE INTERSECTION OF HWY 190 AND N. SECOND STREET IN COVINGTON, LOUISIANA.

St. Tammany Parish and Wal-Mart Louisiana, LLC will execute a Servitude Agreement, for N. Second Street at Intersection Highway 190, for roadway improvements and drainage to service the roadway improvements. The roadway improvements will be constructed by the Covington Neighborhood Wal-Mart. This Servitude Agreement is for no consideration.

EXHIBIT "B"

Covington, Louisiana
Store No. 3042

Servitude Agreement

Before the undersigned Notaries Public and witnesses personally appeared:

WHS, LLC, a Louisiana limited liability company, whose permanent mailing address is P.O. Box 98, Covington, Louisiana 70434, represented herein by its duly authorized Manager, Kathryn D. Smith ("**WHS**");

Wal-Mart Louisiana, LLC, a Delaware limited liability company, whose permanent mailing address is 2001 S.E. 10th Street, Bentonville, Arkansas 72716-0550, represented herein by its duly authorized representative ("**Wal-Mart**"); and

St. Tammany Parish, Louisiana, a political subdivision of the State of Louisiana, whose permanent mailing address is P.O. Box 628, Covington, Louisiana, 70434, represented herein by Patricia P. Brister, its President (the "**Parish**");

who declared the following:

Recitals

A. WHS is the owner/lessor and Wal-Mart is the lessee of that certain parcel of land designated as Tract A located in the City of Covington, St. Tammany Parish, Louisiana ("**Wal-Mart Parcel**"), pursuant to that certain Ground Lease by and between WHS and Wal-Mart dated May 6, 2011, as amended, as evidenced by that certain Memorandum of Ground Lease recorded at Instrument #1811112 in the conveyance records of St. Tammany Parish, Louisiana, as amended.

B. The survey entitled "ALTA/ACSM Land Title Survey of Tract A, Town of Claiborne Located in Section 42, Township 7 South, Range 11 East, City of Covington, St. Tammany Parish, Louisiana for Wal-Mart Louisiana L.L.C.", prepared by Byron Oncale, P.L.S., dated January 26, 2012 and recorded at Instrument No. _____ of the conveyance records of St. Tammany Parish, Louisiana, depicts a drainage ditch (the "**Ditch**") owned by the Parish on the Wal-Mart Parcel.

C. In conjunction therewith, Wal-Mart desires to construct certain drainage and pavement improvements in or around the Ditch and dedicate said improvements to the Parish. WHS and Wal-Mart are willing to grant, and the Parish is willing to accept, a non-exclusive predial servitude over a certain portion of the Wal-Mart Parcel more fully described on Exhibit A and identified as the "Proposed Drainage and Roadway Servitude" on Exhibit B, both of which are attached hereto and made a part hereof (the "**Servitude Area**").

Agreement

On the terms and conditions hereinafter set forth and in consideration of the mutual benefits to be derived by the parties and their respective properties, the sufficiency and receipt of which is hereby acknowledged by the parties hereto, the parties hereby agree as follows and do incorporate the foregoing recitals into such Agreement:

1. **Donation and Dedication.** Wal-Mart will construct certain drainage and pavement improvements in or around the Ditch, including a drainage culvert, catch basin, curbing and roadway pavement over, under and across the Servitude Area. Upon completion by Wal-Mart and acceptance of improvements by the Parish, WHS and Wal-Mart hereby donate and dedicate the drainage and pavement improvements to the Parish, in similar form and substance as the Act of Donation attached hereto as **Exhibit C**.

2. **Grant of Servitude.** WHS and Wal-Mart hereby grant to the Parish a non-exclusive predial servitude over, under, along and across the Servitude Area for the access, use, operation, repair, replacement and maintenance of the Ditch and any drainage or pavement improvements located therein, subject to the following terms, covenants and conditions (the "Servitude").

3. **Use, Repair and Maintenance.** The Parish agrees to comply with all federal, state and local laws in its use of the Servitude Area and in the repair, replacement and maintenance of the Ditch, drainage and pavements improvements therein. The Parish shall not unreasonably interfere with Wal-Mart's use of the Wal-Mart Parcel while utilizing the Servitude Area. In accordance with Parish requirements, the Parish agrees to return the Servitude Area to the condition which existed prior to the condition requiring repair, replacement and maintenance of the Ditch or drainage and pavement improvements therein.

4. **Relocation.** The Parish shall, upon Wal-Mart's request and at Wal-Mart's sole cost and expense, relocate the Servitude Area, the Ditch and any and all drainage and pavement improvements located therein, to a new location mutually acceptable to the parties.

5. **Reservations.** Wal-Mart reserves the right to use the Servitude Area; to construct improvements within the Servitude Area, including but not limited to performing site work, grading, constructing ditches, driveways and parking lots, surfacing with pavement or asphalt, installing utility and drainage improvements, and planting grass, sod and small shrubbery; and to maintain, repair and remove any such improvements.

6. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of WHS, Wal-Mart, the Parish and their successors and assigns.

7. **Headings.** Descriptive headings are for convenience only and will not control or affect the meaning or construction of any provision of this Agreement.

8. **Severability.** If any provision of this Agreement will hereafter be held to be invalid, unenforceable or illegal, in whole or in part, under the laws of the State of Louisiana, such provision will (i) be reformed to the minimum extent necessary to cause such provision to be valid, enforceable and legal while preserving the intent of the parties as expressed herein and the benefits to the parties provided by this Agreement; or (ii) if such provision cannot be so reformed, such provision will be severed from this Agreement and an equitable adjustment will be made to this Agreement including the addition of necessary further provisions to this Agreement so as to give effect to the intent so expressed and the benefits so provided. No such holding, reformation, severance or adjustment will affect or impair the legality, validity or enforceability of any other provision of this Agreement.

9. **Entire Agreement; Modification.** This Agreement constitutes the entire understanding among the parties hereto with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written are merged into this Agreement. This Agreement may not be modified or amended except by an instrument in writing signed by WHS, Wal-Mart and the Parish against which the enforcement of such modification or amendment is sought, and properly recorded in the official records of the St. Tammany Parish, State of Louisiana.

10. **Counterparts.** To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. All counterparts will collectively constitute one and the same instrument. The parties hereto agree that the signature pages of each party may be detached from separate individually executed counterparts of this Agreement and combined to form one or more fully executed original counterparts.

11. **Applicable Law.** This Agreement will be governed by and construed in accordance with the law of the State of Louisiana. Any suit filed by a party to this Agreement to resolve a dispute or controversy regarding the matters which are the subject of this Agreement shall be filed in the 22nd Judicial District Court for the Parish of St. Tammany, which shall have exclusive venue and jurisdiction for any such action.

12. **Compliance with Law.** The Parish will use and operate the Servitude in accordance with all applicable federal, state, parish and local laws, rules and regulations.

[The remainder of this page is intentionally left blank]

Signed this ____ day of _____, 2012, in Bentonville, Arkansas,
before the undersigned Notary Public and witnesses.

Witnesses:

Wal-Mart Louisiana, LLC

Name: _____

By: _____

Name: Brian Hooper

Title: Vice President of Real Estate

Name: _____

Notary Public

Name: _____

#: _____

Signed this ____ day of _____, 2012, in
_____, before the undersigned Notary Public and witnesses.

Witnesses:

St. Tammany Parish, Louisiana

Name: _____

By: _____

Name: _____

Title: _____

Name: _____

Notary Public

Name: _____

#: _____

Signed this ____ day of _____, 2012, in _____, before the undersigned Notary Public and witnesses.

Witnesses:

WHS, L.L.C.

Name: _____

By: _____

Name: Kathryn D. Smith

Title: Manager

Name: _____

Notary Public

Name: _____

#: _____

Exhibit A
Description of Servitude Area

A certain piece or portion of land designated as PROPOSED DRAINAGE AND ROADWAY SERVITUDE, situated on a portion of Tract A, Town of Claiborne, containing 0.027 acres or 1,194 square feet, located in Section 42, Township 7 South, Range 11 East, City of Covington, St Tammany Parish, Louisiana, and being more fully described as follows:

Commencing at the intersection of the easterly right of way line of U.S. Highway No. 190 and the northerly right of way line of N. Second Street, said point being the "POINT OF BEGINNING" and labeled "P.O.B.,"

Then, continuing along the easterly right of way line of U.S. Highway No. 190, along a curve to the right having a delta of 00 degrees 15 minutes 48 seconds, a radius of 3,759.72 feet, an arc length of 17.29 feet, a chord bearing of North 13 degrees 13 minutes 28 seconds West and a chord distance of 17.29 feet to a point;

Then, departing said right of way line, North 83 degrees 03 minutes 51 seconds East a distance of 19.06 feet to a point;

Then, North 57 degrees 05 minutes 22 seconds East a distance of 34.41 feet to a point;

Then, North 58 degrees 49 minutes 14 seconds East a distance of 50.02 feet to a point;

Then, North 57 degrees 09 minutes 51 seconds East a distance of 129.14 feet to a point;

Then, South 32 degrees 50 minutes 09 seconds East a distance of 1.93 feet to a point, said point being located on the northerly right of way line of N. Second Street;

Then, continuing along said right of way line, South 56 degrees 02 minutes 39 seconds West a distance of 236.55 feet to the "POINT OF BEGINNING."

Exhibit B
Drawing of Proposed Servitude Area

{B0768363.S}

**Exhibit C
Act Of Donation**

ACT OF DONATION

UNITED STATES OF AMERICA

**BY: WHC, LLC and
WAL-MART LOUISIANA, LLC**

STATE OF LOUISIANA

TO: PARISH OF ST. TAMMANY

PARISH OF ST. TAMMANY

BE IT KNOWN, that on the dates hereinafter set forth,

BEFORE EACH OF US, the undersigned Notaries Public, duly commissioned and qualified in and for the Parish and State hereinafter set forth, and in the presence of the undersigned and competent witnesses, personally came and appeared:

WHS, LLC, a Louisiana limited liability company, whose permanent mailing address is P.O. Box 98, Covington, Louisiana 70434, represented herein by its duly authorized Manager, Kathryn D. Smith (“**WHS**”); and

Wal-Mart Louisiana, LLC, a Delaware limited liability company, whose permanent mailing address is 2001 S.E. 10th Street, Bentonville, Arkansas 72716-0550, represented herein by its duly authorized representative (“**Wal-Mart**”)

(**WHS** and **Wal-Mart** are collectively referred to as “**Donor**”); and

St. Tammany Parish, Louisiana, a political subdivision of the State of Louisiana, whose permanent mailing address is P.O. Box 628, Covington, Louisiana, 70434, represented herein by Patricia P. Brister, its President (the “**Donee**”);

Donor declares that it does, by these presents, irrevocably give, grant, transfer and assign and make a donation inter vivos with all legal warranties and with full subrogation and substitution in and to all owners unto said Donee, hereby appearing for the purposes of accepting the same, of the following described property located in Section 42, Township 7 South, Range 11 East, City of Covington, St. Tammany Parish, Louisiana, which property being transferred is described as follows, to-wit:

The drainage improvements, including all drainage culvert, catch basin, curbing, roadway pavement and any and all other equipment, and appurtenances contained in said system, including all materials, all as

more fully set forth on the property whose description is provided in Exhibit "A" attached hereto.

Donee after being duly sworn did declare and state that Donee hereby accepts this donation with gratitude.

[The remainder of this page is intentionally left blank]

Signed this ____ day of _____, 2012, in Bentonville, Arkansas, before the undersigned Notary Public and witnesses.

Witnesses:

Wal-Mart Louisiana, LLC

Name: _____

By: _____
Name: Brian Hooper
Title: Vice President of Real Estate

Name: _____

Notary Public

Name: _____
#: _____

Signed this ____ day of _____, 2012, in _____, before the undersigned Notary Public and witnesses.

Witnesses:

St. Tammany Parish, Louisiana

Name: _____

By: _____
Name: _____
Title: _____

Name: _____

Notary Public

Name: _____
#: _____

Signed this ____ day of _____, 2012, in _____, before the undersigned Notary Public and witnesses.

Witnesses:

WHS, L.L.C.

Name: _____

By: _____

Name: _____

Title: _____

Name: _____

Notary Public

Name: _____

#: _____