

## FULL AND FINAL RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (the "Release") is entered into and executed in triplicate originals on the dates set forth below by the following parties:

PARTIES:

PLAINTIFF: **Mary Vial**

DEFENDANT (ALSO REFERRED AS RELEASED PARTY OR PARTIES): **St. Charles Parish**

1. SUMMARIZED ALLEGATIONS AND FACTS OF MARY VIAL, ET AL., VERSUS ST. CHARLES PARISH, #69251 OF THE 29<sup>TH</sup> JUDICIAL DISTRICT COURT, PARISH OF ST. CHARLES, STATE OF LOUISIANA LITIGATION:

This Release arises the allegations asserted in the Original Petition for Just Compensation filed by Mary Vial against St. Charles Parish.

On April 20, 2009 Mary Vial filed suit against the Parish of St. Charles in Action # 69251 which involved various alleged claims as pertaining to the below property.

Plaintiff Mary Vial owns that certain immovable property that was made part of this litigation in St. Charles Parish more fully described as follows:

**A certain tract of land situated in T-13-S, R-9-E, Section 38, and T-12-S, R-9-E, Section 43, in St. Rose, Parish of St. Charles, State of Louisiana on the left descending bank of the Mississippi River, measuring 1/2 arpent on the south right of way line of the Illinois Central Gulf Railroad, by a depth between parallel lines to the south right of way lines of the property owned formerly by the vendors that was acquired by expropriation by the Louisiana Department of Transportation and Development in Docket No. 35,063, 29th Judicial District Court, St. Charles Parish, Louisiana, and recorded in COB404, folio 96. The subject property is bounded on the north by the south right of way line of the ICG RR, on the upper side by property owned by Rivet Dragline and Marshbuggy Co., Inc., on the north by property of LA, DOTD and on the lower side by that of the John Lambert Estate. The subject property is purchased together with all of the rights, ways, privileges, servitudes and advantages thereunto belonging or in anywise appertaining. Being a portion of the same property acquired by vendors by purchase from Evan J. Lambert, et al, by act dated March 24, 1983, before Emile R. St. Pierre, Notary Public, and recorded in COB 295, folio 429, St. Charles Parish, Louisiana.**

Among the many allegations Plaintiff asserted in her suit as summarized below. She alleges that:

"At some point in 2006, Warren Treme was in the process of developing a subdivision (hereafter the "Subdivision") in St. Charles Parish.

The Subdivision was located in a flood plain, and Mr. Treme thus had to secure drainage for the Subdivision before it could be fully developed. Treme thus swapped two (2) lots in the Subdivision for ten (10) acres of land then owned by the St. Charles Parish School Board. As part of the deal struck with the School Board, Mr. Treme required a guarantee by St. Charles Parish (hereinafter the "Parish") that it would provide drainage for the Subdivision.

The Parish did not have ownership of or access to the property necessary to provide this drainage. Required was the property owned by Plaintiffs.

Commencing late 2006, the Parish trespassed onto Plaintiff's property, dug a canal through Plaintiff's property, and built a road accessing the canal through a portion of Plaintiff Mary Vial's land. The canal continues to fill with water and overflow onto Plaintiffs' land.

At no time did Plaintiffs give the Parish permission to trespass onto her land or to dig a canal on her property; nor did Plaintiff Mary Vial give permission to the Parish to utilize her property to build the road that provides access to the canal.

At no time did the Parish ever commence expropriation proceedings to take Plaintiff's' land, nor did the Parish ever tender just compensation or damages.

Plaintiff owned all rights in and to the property that is now covered by the: canal, and

Plaintiff Mary Vial owned all rights in and to the property that is now covered by the road.

The Parish took the property in that it has now placed a canal and a road on the property.

As a result, Plaintiff has been divested of her ability to enjoy all rights in and to said property.

The Parish took the property for a public purpose in that the canal is utilized to provide drainage for the Subdivision and the road is utilized to provide access to the canal.

The canal and road divide, sever and damage Plaintiff's property and diminish the value the remainder of Plaintiffs' property.

Pursuant to the Fifth Amendment to the United States Constitution, Louisiana Constitution Article I, §4 and La. R.S. 13:5111, Plaintiff would have been entitled to just compensation to the full extent of her loss resulting from Defendants' taking of her property, including, but not limited to; (1) damages equivalent to the market value of the property actually taken to build the canal and road; (2) damages to the remainder of Plaintiff's property as a result of the taking; (3) damages caused by Defendant's creation of a flowage easement across Plaintiff's property-both inside and outside the banks of the canal dug by Defendant; (4) costs to cure; and (5) all attorneys' fees, expert fees and costs incurred in connection with this proceeding."

Plaintiff, Mary Vial, filed an **1<sup>st</sup> Supplement, Amended and Superceding (sic) Petition for Just Compensation** against Defendant on June 22, 2009.

In the Petition, she asserted the following summary of allegations:

In the fourth quarter of 2005 and the first quarter of 2006, Warren Treme was in the process of developing a subdivision in St. Charles Parish. The Subdivision was located in a flood plain, with the Subdivision abutting the South and Southwest boundaries of Plaintiff's property, and Mr. Treme thus had to secure drainage for the Subdivision before it could fully be developed. Treme thus swapped two (2) lots in the Subdivision for ten (10) acres of land then owned by the St. Charles Parish School Board. As part of the deal struck with the School Board, Mr. Treme required a guarantee by St. Charles Parish (hereinafter the "Parish") that it would provide drainage for the Subdivision.

The Parish did not have ownership of or access to the property necessary to provide this drainage. Required was the property owned by Plaintiff. Furthermore, the existing drainage system for the Parish would not permit adequate drainage for the subdivision.

At a time unknown to Plaintiffs because of the secrecy with which the project occurred, but commencing at some point in the fourth quarter of 2006, the Parish entered onto Plaintiff's property without permission, dug a canal through Plaintiff's property, and built a road accessing the canal through a portion of Plaintiff Mary Vial's land. The canal continues to fill with water and overflow onto Plaintiff's land.

A Kansas City Railway Line (hereafter "KC Line") runs through the subject property. Running perpendicular to the line is Beltway Drive, which also bisects the subject property. Commencing approximately fifty (50) yards from the intersection between Beltway and the KC Line, and running in a westerly direction from that point, is the primary canal dug by St. Charles Parish (hereafter the "East-West Canal"). The East-West Canal traverses all of the subject property, running parallel with the KC Line. The East-West Canal widens to a breadth of no less than thirty (30) feet at its widest point, with the spoil bank further encroaching on Plaintiff's property.

As a result of the dredging and other operations necessary to dig this canal, the Parish recklessly deposited substantial dredging debris, trees, vegetation and other spoil along the banks of the primary canal. Not only does the spoil itself cause significant contamination and harm to Plaintiffs' property, but it further has eroded the banks of the canal and caused its breach in areas, resulting in further flooding of Plaintiff's property. On the Vial property, a second canal has been cut-in using a North-South direction (hereafter the "North-South Canal"), causing an oxbow effect and extending the spoil bank along the North-South Canal. This spoil bank includes debris, tress, vegetation and other spoil along the banks.

In constructing and maintaining these two (2) canals, the Parish constructed an access road parallel to the North-South. Primarily on the Vial property, the Parish cut a road parallel to the North-South Canal and destroyed trees and vegetation in connection with that work. This road and other access areas on Plaintiffs' property have created public access routes which subject Plaintiffs to trespassing by the general public. The Parish's construction of this road littered the property with debris and substantially damaged both the area utilized for the road and the adjacent property.

The Parish additionally engaged in additional unauthorized construction activities, including, but not limited to: (1) an additional V-shaped drainage structure

(hereafter the "V Drainage Structure") on the Vial property North of the adjacent subdivisions abutting the Vial property; (2) an additional drainage ditch and jack-and-bore culvert allowing water to pass underneath the KC Line; (3) a vehicular route through the Vial property that adjoins the N-S Canal; and (4) an offshoot canal running parallel to the KC Line.

Over and above the damage done directly to their property as a result of the creation of these canals, ditches, roads and paths, Plaintiffs have further suffered damage as a result of the Parish's use of their property as the primary drainage for the adjacent developments. On the Lambert property, which abuts the adjacent development, substantial flooding has occurred due to the fact the development plan approved by the Parish permitted that property to drain directly onto the Lambert property. The fill from the adjacent development further encroaches the Lambert Property.

As the canal waters move north, the waters intersect with the railroad track running East-West across the subject property. Due to the elevation of the railroad track, the water leaches backwards and floods the property, thus creating a "puddling" effect.

Lots abutting the Lambert property are allowed to drain onto the Lambert property because the Parish failed to require adequate safeguards—such as a drainage receptacle or retaining wall—along the boundary of the subdivisions.

Plaintiff never authorized or gave permission to the Parish to enter upon or engage in any type of construction activities upon her property.

The Parish neither commenced expropriation proceedings nor tendered just compensation or damages.

Plaintiff owned all rights in and to the property that is now covered by the canals, ditches, paths and roads.

The Parish took the property in that it has now placed canals, ditches, paths, roads and drainage ponds on the property. As a result, Plaintiff has been divested of her ability to enjoy all rights in and to said property, because said property is now fully overrun with water and/or has been cleared for paths and roads such that the property is no longer fit for the purposes to which Plaintiff had previously put the property to use.

The Parish took the property for a public purpose in that they purportedly constructed the canals, ditches, paths, roads and drainage ponds so as to provide drainage to the adjacent property, albeit in a manner that has by-passed the existing drainage plan of the Parish and caused extensive flooding and puddling on Plaintiff's property. The property rose to the level of a taking in that it permanently deprived Plaintiff of her rights to free and unfettered enjoyment of her property by converting the property to uses Plaintiff never contemplated and depriving Plaintiff of the ability to put the property to its highest and best use.

The canals, ditches, paths and roads divide, sever and damage Plaintiff's property and diminish the value of the remainder of Plaintiff's property. The property suffered diminished value where the canal rests because the overrun of the water makes the property unmarketable nor could the property be put to its highest and best use. She claims that the Parish further diminished the value of the surrounding property in that they subjected it to overflow, erosion, spoliation and puddling of water that prevent the utilization of the property for its highest and best use. The Parish has essentially rendered the property economically useless.

Pursuant to the Fifth Amendment to the United States Constitution, Louisiana Constitution Article I, §4 and La. R.S. 13:5111, Plaintiff is entitled to just compensation to the full extent of her loss resulting from Defendant's taking of her property, including, but not limited to: (1) damages equivalent to the market value of the property actually taken to build the canals, ditches, paths, roads and drainage ponds; (2) damages to the remainder of Plaintiff's property as a result of the taking; (3) damages caused by Defendant's creation of a flowage easement across Plaintiff's property—both inside and outside the banks of the canals dug by Defendant; (4) costs to cure; and (5) all attorneys' fees, expert fees and costs incurred in connection with this proceeding.

## 2. PAYMENTS AND CONSIDERATION:

In consideration of this Settlement and Release, the Defendant hereby pays Ten Thousand Dollars and 00/100 cents (\$10,000.00) to Mary Vial and she hereby acknowledges receipt of this payment.

## 3. GENERAL RELEASE AND DISCHARGE

In consideration of the payments stipulated herein, Plaintiff, her heirs, assigns, successors and any person of interest completely release, acquit and forever discharge the Defendant, its predecessors, successors, parents, affiliates, subsidiaries, divisions, agents, assigns and anyone else acting or purporting to act on its behalf, as well as any and all others for whose acts or omissions any of the said parties might be responsible (collectively referred to as the "Released Parties") from any and all rights, claims, demands, damages, liabilities, responsibilities or actions of any kind or nature whatsoever which Plaintiff now has, or may have in the future, in whole or in part arising out of, related to, resulting from, or contributed to by Plaintiff's allegations, whether asserted or not asserted. As part of this Release, Plaintiff hereby authorizes and directs her attorney to dismiss her lawsuit *Mary Vial et al. versus St. Charles Parish*, #69251 of the 29<sup>th</sup> District Court, Parish of St. Charles, State of Louisiana with full prejudice against Defendant and Released Parties forever barring any action in the future involving the claims as asserted and summarized above.

This Release shall be a full, binding final and complete settlement and release of all existing claims and of all claims which may arise in the future between the parties regarding Plaintiff's claims involving her property. This Release shall serve as the only evidence necessary to prove complete compromise of all claims regarding the claims stated above involving the above property, and to support and prove any obligation thereunder, and may be offered in evidence and pled in support thereof without objection.

Plaintiff further agrees that she does hereby release the Defendant from her claims as summarized above forever and more particularly found in *Mary Vial et al. versus St. Charles Parish*, #69251 of the 29<sup>th</sup> District Court, Parish of St. Charles, State of Louisiana

Plaintiff hereby agree that this Release is a general release, and that she waives and assumes the risk of any and all claims for damage, loss or injury that exist as of this date, whether through ignorance, oversight, error, negligence, or otherwise, and that if known would materially affect Plaintiff's decision to enter this Release and Settlement Agreement. It is, nonetheless, Plaintiff's intention and agreement that any claims she may have against the Released Parties for any such injury, are the subject of this Release and are hereby completely released, acquitted and forever discharged.

Plaintiff further agrees to accept payment of the sum specified in Section 2 of this Release in complete compromise of any rights, claims, demands or actions of any kind or nature whatsoever that may arise in the future including, but not limited to claims that she may have at any time in the future that in any way arise out of her owner of her Property and the claims asserted in Section 1 above. It is Plaintiff's intention and desire that this Release be as broad and comprehensive as possible so that the Released Parties are never to be liable, directly or indirectly, to Plaintiff or her successors, or assigns or any person or entity claiming by, through, under or on behalf of them for any claims, demands, actions or causes of action of whatsoever nature or character regarding Plaintiff's claims against Defendant involving her property as summarized in the allegations above. It is understood and agreed by and among the parties that this settlement is a compromise of disputed claims and disputed issues of law and fact, and the payments made in connection herewith are not to be construed as an admission of liability or fault on the part of the Released Parties, all of whom expressly deny any liability in connection therewith.

#### 4. ATTORNEY'S FEES

Plaintiff shall bear all attorneys' fees arising from the action of her own counsel in connection with the Lawsuit, this Release, and the matters and documents referred to therein.

#### 5. WARRANTY OF CAPACITY TO EXECUTE AGREEMENT

Plaintiff warrant that no other person or entities have any interest in the claims referred to in this Release, and that she has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or actions referred to in this Release.

#### 6. ENTIRE AGREEMENT AND SUCCESSORS IN INTEREST

This Release contains the entire agreement between Plaintiff and the Released Parties with regard to the matter set forth herein, and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each. Plaintiff hereby agrees that this Release shall be construed in the broadest possible sense of favor of the Released Parties.

It is also the intention of the parties entering into this Release that the various provisions of this Release be considered as separate and distinct. Further, if any portion or portions of this Release are deemed invalid or ineffective, the otherwise valid portion or portions of the Release shall remain valid and in full effect and, further, that any invalid portion or portions of the Release be severed without invalidation of the Release as a whole.

7. REPRESENTATION OF COMPREHENSION OF DOCUMENTS

In entering into this Release, Plaintiff represents that the terms of this Release have been completely explained to her by her attorney, and that those terms are fully understood and accepted by her.

This Release is the product of arm's length negotiations between parties represented by counsel. No party shall be deemed to be the drafter of this Release or any provision. No presumption shall be deemed to exist in favor for or against any party as a result of the preparation or negotiation of this Release.

8. CONFIDENTIALITY:

The terms of this Release and Settlement agreement shall remain confidential upon the execution of the agreement except should there be a FOIA or Public Records Request under State Law, then the terms and conditions of the agreement may be released as required by law. Further, nothing in this agreement shall prevent the parties from disclosure to those parties that may be require to have the information such as any taxing authority and nothing shall prevent the Released Party from recording any servitude agreement in the public records. The Parties recognize that certain public officials will be privy to the terms and conditions of this Release and Settlement Agreement and will make every effort to assure the Plaintiff that the terms and conditions are not released after the execution of this agreement. Nothing in this provision shall create a separate and distinct cause of action for damages.

9. OVERNING LAW:

This Release shall be construed and interpreted in accordance with the substantive law of the State of Louisiana, excluding its choice of law rules.

10. ADDITIONAL DOCUMENTS

All parties agree to cooperate fully and execute any and all supplemental documents and to take all additional action that may be necessary or appropriate to give full force and effect to the basic terms and intent of the collective agreements and this Release.

PLAINTIFF:

\_\_\_\_\_  
MARY VIAL

\_\_\_\_\_  
Date

\_\_\_\_\_  
RANDY SMITH  
MARY NELL BENNETT  
ATTORNEYS FOR MARY VIAL:

EXECUTED AS OF THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.

DEFENDANT, ST. CHARLES PARISH

\_\_\_\_\_  
LARRY COCHRAN IN HIS CAPACITY AS PRESIDENT OF ST. CHARLES PARISH

\_\_\_\_\_  
CHARLES M. RAYMOND  
ATTORNEY FOR ST. CHARLES PARISH

EXECUTED AS OF THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.

**ACKNOWLEDGEMENT**

STATE OF LOUISIANA  
PARISH OF ST. CHARLES

BEFORE ME, the undersigned and in the presence of the undersigned witnesses and Notary Public, personally came and appeared Mary Vial, a person of full age and majority and a resident of the Parish of ST. CHARLES, State of Louisiana, , who, being by me first duly sworn, did depose and state:

That she has read and fully understand the above and foregoing Full and Final Release and Settlement Agreement, and that she has executed this instrument in multiple counterparts of her own free will and accord, for the purposes herein set forth, and in the presence of the witnesses set forth below.

\_\_\_\_\_  
MARY VIAL

WITNESSES:

\_\_\_\_\_  
PRINT NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

\_\_\_\_\_  
PRINT NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

SWORN TO AND SUBSCRIBED before me,  
this \_\_\_\_\_ day of \_\_\_\_\_,  
2016.

\_\_\_\_\_  
NOTARY PUBLIC  
PRINTED NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
COMMISSION NUMBER: \_\_\_\_\_  
COMMISSION EXPIRATION: \_\_\_\_\_

SEAL