

The parties are represented by experienced counsel, each of whom is familiar with the facts and the law applicable to this Litigation, and after considering the delay, uncertainty, cost and risk of continuing this Litigation. These counsel have determined and hereby represent that the parties' proposed settlement is fair, adequate and reasonable. The Class Representatives and Plaintiffs' Counsels further believe and represent that the proposed settlement is in the best interest of the class as a whole and that it should be preliminarily approved by the Court at this time and finally approved after notice and hearing as provided by law.

7.

After the promulgation of notice of the proposed settlement, and after consideration by the Court of any objections that may be filed to the fairness, adequacy or reasonableness of the settlement, the parties ask that the Court finally approve the settlement. Should the Court grant final approval of the settlement and upon completion of the surveys, recording any payments contained in the settlement, all claims relating to the incidents described in the class definition contained in the Court's April 26, 2025 order of certification, including all claims that were or could have been asserted by any Class Member against the Compromising Defendants, will be forever released, dismissed with prejudice by final judgment of the Court, and forever barred. This Court would retain jurisdiction until all payments and activities required by the settlement agreement are completed.

8.

The Court's consideration of the fairness, reasonableness and adequacy of the proposed settlement may include consideration of factors such as:

- a. The existence of fraud or collusion behind the settlement;
- b. The complexity, expense and likely duration of the litigation;
- c. The stage of the proceedings and the amount of discovery completed;
- d. The probability of plaintiffs' success on the merits of the case;
- e. The range of possible recoveries that might be anticipated herein; and
- f. The opinions of class counsel, the Class Representatives and absentees as to the fairness, reasonableness and adequacy thereof.

9.

The parties consent to the Court scheduling a hearing, on June 25, 2025, at _____ o'clock ____m., to consider the fairness, adequacy and reasonableness of the proposed settlement to the Class as a whole.

It is contemplated by the parties that the Court, upon granting final approval of the settlement, will enter a final order and judgment of approval and will dismiss all claims against the Compromising Defendants in the litigation with prejudice. The Settlement Funds shall not become the property of the plaintiff Class, or disbursed without written consent of the Compromising Defendants until after occurrence of the Final Settlement Date, which shall not occur until after finality of the Court's final order of approval.

WHEREFORE, the Class and the Compromising Defendants jointly pray for entry of an order preliminarily approving their Settlement Agreement, together with all exhibits and attachments, as fair, reasonable and adequate and within the possible range of judicial approval pursuant to Article 594 of the Louisiana Code of Civil Procedure; the parties further pray that the Court order the parties to file a Motion for Final Approval of Class Settlement Notice.

Respectfully Submitted,

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And

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Attorneys for Defendants
Southeast Louisiana Flood Protection
Authority – East and
Orleans Levee District

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Attorneys for Defendants
Southeast Louisiana Flood Protection
Authority – East and
Orleans Levee District

CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading was served upon all counsel of record via e-mail on June __, 2025.

New Orleans, Louisiana, June __, 2025

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CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

DOCKET NO: 2016-9374

DIV. "F", SECTION 14

JOSEPH ROBERT, et al.

VERSUS

STATE OF LOUISIANA,
SOUTHEAST LOUISIANA FLOOD PROTECTION AUTHORITY – EAST,
AND ORLEANS LEVEE DISTRICT, ET AL

FILED: _____

DEPUTY CLERK

MEMORANDUM IN SUPPORT OF
JOINT MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT

MAY IT PLEASE THE COURT:

Plaintiffs (hereafter the Class) and all Defendants, the Southeast Louisiana Flood Protection Authority – East ("FPA") and the Orleans Levee District ("OLD"), and the State of Louisiana (collectively "Compromising Defendants"), hereby jointly urge this Court to grant preliminary approval of the settlement between the Class and the Compromising Defendants, pursuant to Article 594 of the Louisiana Code of Civil Procedure, for the following reasons¹:

Statement of Facts and Procedural History

This class action lawsuit was filed in 2016 concerning property rights for properties abutting the levees along the London Avenue Canal in New Orleans, Louisiana. Among the claims being asserted by the plaintiffs are compensation for immovable property taken, reimbursement of property taxes, improper taking of property, and claims for injunctive and declaratory relief.

The class is bounded on the North by Allen Toussaint Boulevard, and on the South by North Broad Street at Pumping Station Number 3. The properties which abut the London Avenue Canal on Warrington, Gentilly Boulevard, London Avenue, Benefit and Florida, Pratt, Mirabeau, Rayne, Virgil, Sere, and Lafreniere are within the Class definition, and include seven properties that abut the London Avenue Canal owned by the City of New Orleans ("City")² and the former Gregory

¹ Plaintiffs adopt and incorporate herein, *in globo* and *in extenso*, their Memorandum, and Supplemental Memorandum, and Exhibits thereto, filed in support of the previously-granted Motion For Class Certification, including but not limited to the various Maps of properties within the Class definition.

² 4000 Rayne Drive (Dillard West Wetlands) – 1,950 lin. ft.
2829 Gentilly Boulevard (North East of Dillard) – 1,075 lin. ft.
2830 Pratt 35467 (Siphon Pipe at Prentiss) – 120 lin. ft.
2831 Warrington 35293 (Pumping Station at Prentiss) – 270 lin. ft.
2832 London Avenue 3441201 (vacant - North of Sere) - 145 lin. ft.
2833 London Avenue 3398401 (vacant - South of Sere) - 150 lin. ft.
2834 Florida Avenue 33541 (vacant - South of Treasure) – 88 lin. ft.

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High School site owned by the Orleans Parish Schol Board (“OPSB”)³. The plaintiffs, among other claims and causes of action, alleged that the amendment of La. R.S. 38:225 by Act 2015, No. 287 and effective on August 1, 2015 (hereinafter “Statute”), to specify an area within six feet of any part of certain specific drainage canals adversely affected the private property owners who owned property abutting the London Avenue Canal in New Orleans, Louisiana, continues to adversely affect such owners, and that the defendants are liable for any and all damages flowing from the restrictions imposed by the statute on that six foot area. They also contend that the defendants’ grants of rights to the United States Army Corp of Engineers of an additional nine feet of property also constitutes a taking of their property without compensation.

The plaintiffs in this lawsuit are property owners, as of August 1, 2015 to the present, whose property abuts the London Avenue Canal. These plaintiffs have sued the Orleans Levee District, the operators of the levee, the Governor, the State of Louisiana, the State Land Office and the Southeast Louisiana Flood Protection Authority. The plaintiffs seek damages to the property owners resulting from the permitting and operation of the levees on the east and west sides of the London Avenue Canal including that defendants pay plaintiffs for the land. The plaintiffs are also asking the Court to make the defendants refund all taxes paid on the property taken by defendants and for residual damages to their property.

The Orleans Parish District Court, Division F-14 issued a ruling on April 26, 2023, that allows this case to be brought as a class action. Class members are defined as those who own property abutting the London Avenue Canal, on August 1, 2015 to the present, except for the land owned by defendants **State of Louisiana, Through the Governor, The Division of Administration, State Land Office (“SLO”), and the Southeast Louisiana Flood Protection Authority - East (“FPA”) jointly with Orleans Levee District (“OLD”) (collectively the “Defendants”)**.

Before the 2015 amendments to the Statute, it did not apply to drainage canals. The 2015 amendments imposed unique, onerous and uncompensated restrictions on 215 properties owned by Class Members, which abut the London Avenue Canal, resulting in the immediate taking of a six foot prohibited zone along the rear of each property, and the assignment to the U.S. Army Corps of Engineers of an additional nine foot prohibited zone along each property. Plaintiffs seek class-wide adjudication, compensation and injunctive relief, as described in their original and amended Petitions.

³ The City and the OPSB comprise a sub-class, as set forth in more detail below, due to their status as political entities, and the attendant impact on the value of their specific claim(s), to be determined in the future by consent of by a decision of this Court. The City and the OPSB have both received written and verbal notice of this litigation and their treatment as a sub-class. Neither entity has indicated any objection to the overall terms and conditions of this Settlement, nor any objection to their inclusion in a sub-class in the event they elect not to opt-out, and neither entity will suffer any prejudice if they either opt-out or are included herein as a sub-class

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To establish inverse condemnation, Plaintiffs must submit evidence in support of their claims that (1) a recognized species of property right has been affected; (2) the property has been taken or damaged in a constitutional sense; and (3) the taking or damaging was for a public purpose under Article I, § 4 of the Louisiana Constitution. Based on the affidavits of the Roberts and Ms. Bierria, and the cash sale deed and act of donation from the conveyance records, the court of appeal found that the first element of inverse condemnation was met. The Roberts and Ms. Bierria, as the owners of their respective property, had, among other rights, the rights of use and enjoyment.

Defendants have vigorously defended against plaintiffs' individual and class-wide claims, and have asserted factual and legal defenses to causation and damages. The defendants deny the plaintiffs' claims, and contend that they had the right to use the property in question for levee purposes. Defendants' position that a taking has not occurred, because they have not enforced the six-foot and 15-foot use prohibitions imposed by Acts 2015, No. 287, is contrary to federal and Louisiana jurisprudence and potentially endangers the citizens of New Orleans.

FPA/OLD argues that, on its face, La. R.S. 38:225, as amended in 2015, was a regulation that did not rise to an unconstitutional taking, explaining:

A limited restriction enacted for the public good on the use of a portion of property does not rise to the level of an unconstitutional taking. This general principle has long been found in Louisiana jurisprudence. The Louisiana Supreme Court held in *Petit Anse Coteau Drainage Dist v. Iberia & V.R. Co.*, "uncompensated obedience to a regulation enacted for the public safety under the police power of the state" does not amount to an unconstitutional taking. 50 So. 512, 517 (La. 1909).

FPA/OLD further argue that La. R.S. 38:225, as amended in 2015, did not transfer ownership of Plaintiffs' property to the State, and it did not "deprive them of all economically beneficial use of property" to constitute an unconstitutional taking on the face of the statute. FPA/OLD assert that a factual inquiry was necessary to determine if Plaintiffs' properties were subject to enforcement of La. R.S. 38:225 and the extent of the alleged taking, if any, and the district court legally erred in failing to do so.

Regarding the seven properties that abut the London Avenue Canal owned by the City of New Orleans, the City is planning to develop the 4000 Rayne property into a stormwater retention facility to be known as "Dillard Wetlands Park," as detailed in *Gentilly 2050: A Vision Plan for the Gentilly Resilience District (GRD)*, available on City of New Orleans website. The City considers that the OPSB Gregory School property at 1700 Pratt Drive might be developed into a nature park and storm water retention facility as Phase 2 of the Dillard Wetlands Park. The City's Gentilly 2050 plan also envisions building a new pumping station on the Pratt 35467 site. The City's plans for the 2829 Gentilly Boulevard property and other sites are currently unknown, but the Dillard Wetlands Park and a new pumping station are likely to require extensive engineering analysis, consultation and permitting with the U.S. Army Corps of Engineers

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and the Southeast Louisiana Flood Protection Authority – East / Orleans Levee District to preserve the integrity of the levees.

Plaintiffs' counsel have communicated with the City Attorney and with General Counsel for the Orleans Parish School Board regarding creating a subclass for the City and School Board properties, such that the City and School Board would opt out of the class for this settlement. The City and School Board's claims would be reserved without prejudice for possible consideration in the future. The City and the School Board have not objected to being excluded from this settlement. The Compromising Defendants are amenable to the City and the School Board opting out of the class for this settlement. This Motion and Settlement Agreement is based upon the Court creating a sub-class comprised of the City and the OPSB until such reasonable time as their claims are resolved.

SETTLEMENT AGREEMENT

Plaintiffs and Compromising Defendants, the Southeast Louisiana Flood Protection Authority – East and the Orleans Levee District, have agreed to settle this litigation. The Compromising Defendants have approved the allocation of six millions dollars (\$6,000,000.00) for resolution of the class claims against Compromising Defendants. This amount is, based on the authority and initial approval of the board of the Southeast Louisiana Flood Protection Authority – East and the Orleans Levee District, and initial approval and acceptance by the class representatives⁴, subject to the final approval of the Court:

(1) The property owner agrees he/she shall not place, or caused to be placed, within six feet of the levee toe made subject of this servitude any object, material or manner of any kind or character which obstructs or interferes with the safety of the levees, or is an obstacle to the inspection, construction, maintenance, or repair of any levee, and grants in favor of the Southeast Louisiana Flood Protection Authority-East and Orleans Levee District the right, after 48-hours' notice to the property owner, to remove the object or objects, structures or other obstructions within this servitude at the owner's expense. However, any class member property owner shall have 30 days from the date upon which the Court enters an order or judgment approving the settlement to remove any object, material, or matter of any kind or character which obstructs or interferes with the safety of the levees or is an obstacle to the inspection, construction, maintenance, or repair of any levee from the rear six feet of the property. Thereafter, the time period set forth in the agreed upon servitude language (48-hours notice by the Flood Protection Authority) shall govern. The above is subject to any emergency declarations related to flood, hurricane, or need for emergency levee maintenance or repair. This servitude shall not include underground pipelines or cables in existence as of the date of this servitude.

(2) The Flood Protection Authority shall pay **\$2,950,000** in exchange for a 30-year recordable servitude across the rear six feet of each class property as determined by a survey of each class property to be obtained at the expense of the Flood Protection Authority.

a. The servitude shall state as follows:

The property owner agrees he/she shall not place, or caused to be placed, within six feet of the rear property line or the levee toe, whichever is greater, any object, material or manner of any kind or character which obstructs or interferes with the safety of the levees, or is an obstacle to the inspection, construction, maintenance, or repair of any levee, and grants via this servitude, in favor of the Southeast Louisiana Flood Protection Authority- East and Orleans Levee District, the right, after 48-hours notice to the property owner, to remove the object or objects, structures or other obstructions

⁴ The Class Representatives will receive a Class Representative stipend, to be paid solely by the Class counsel.

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within this servitude at the owner's expense. This servitude shall not include underground pipelines or cables in existence as of the date of this servitude's filing into the mortgage and conveyance records. This servitude shall expire 30 years from the date of its filing in the mortgage and conveyance records.

- b. The distribution of the \$2,950,000 among the class members shall be made at the price of **\$30.56** per square foot of land that falls within the established servitude on each participating class property (6 feet multiplied by the width of each property established by the survey) for each class member who provides a proof of claim in accordance with the claims process established pursuant to paragraph (5) below.⁵
- c. The payment of \$2,950,000 set forth above is recognized as a minimum payment in accordance with the following provisions:
 - i. The servitude shall apply to the rear six feet of each class property regardless of where the levee toe sits in relation to the rear property line.
 - ii. In the event the survey of each property obtained by Southeast Louisiana Flood Protection Authority-East reveals the levee toe to be situated within the rear property line of any specific class property, the servitude for that specific class property shall extend to six feet from the levee toe as determined by that survey.
 - iii. For any class property in which the servitude extends greater than six feet from the rear property line, the owner(s) of that individual class property shall be compensated at a rate of **\$30.56** per square foot for the area of the servitude beyond six feet from the rear property line.⁶
 - iv. Any additional payments owed by the Flood Protection Authority pursuant to this paragraph for any class property where the servitude extends beyond six feet from the rear property line shall first be made out of any remaining funds from the payments by the Flood Protection Authority made pursuant to paragraphs (1) (\$2,950,000) and (2) (\$2,000 per class property - \$430,000 total), which may result from either class members who opt out of the settlement or class members who fail to submit a proof of claim or establish title ownership of property in accordance with the claims process established pursuant to paragraph (5) below.
- d. The surveys of the class properties shall be completed within 120 days of final approval of the settlement by the Court. The necessary title work also shall be completed within 120 days of final approval of the settlement by the Court. These deadlines may be extended in the event of a declared emergency that delays the surveys, or upon agreement by the Flood Protection Authority and class counsel. During said 120 day period, and continuing thereafter if necessary, until completion, the Compromising Defendants will provide bi-monthly status reports to the Court regarding the progress made towards completion of the necessary survey work and the necessary title work.

- (2) The Flood Protection Authority will also pay **\$2,000.00** per class property participating in the settlement, to be divided among each titled owner of each specific class property, on a pro rata basis of such titled ownership, as determined by the survey(s) and title work to be done in accordance with the terms of this Settlement Agreement, to settle claims for equitable relief asserted in the subject lawsuit, estimated to be **\$430,000.00**. All such payments will occur within thirty (30) days of the completion by the Compromising Defendants, of the necessary

⁵ The \$30.56 price per square foot herein is established by dividing the \$2,950,000 payment by 96,516 total square feet of the servitude across all class properties. This total square feet amount was determined by multiplying the linear feet of class properties set forth on page 3 (Preliminary Land Valuation by Zone) of the February 11, 2025 report of plaintiffs' expert Jimmie Thoms, Jr., by a 6 foot depth. In the event the surveys obtained by the Flood Protection Authority reveal a total square feet area of the servitude different than 96,516, the price per square foot shall be adjusted to match the sum of \$2,950,000 divided by the new total square feet area of the servitude for all class properties, whether opting in or out of the settlement. (Example: $2,950,000 / 95,000 \text{ feet} = \$31.05 \text{ price per sq foot}$).

⁶ This price per square foot would also be adjusted to match any change in the price per square foot established by the process set forth in FN1.

within this servitude at the owner's expense. This servitude shall not include underground pipelines or cables in existence as of the date of this servitude's filing into the mortgage and conveyance records. This servitude shall expire 30 years from the date of its filing in the mortgage and conveyance records.

- b. The distribution of the \$2,950,000 among the class members shall be made at the price of **\$30.56** per square foot of land that falls within the established servitude on each participating class property (6 feet multiplied by the width of each property established by the survey) for each class member who provides a proof of claim in accordance with the claims process established pursuant to paragraph (5) below.⁵
- c. The payment of \$2,950,000 set forth above is recognized as a minimum payment in accordance with the following provisions:
 - i. The servitude shall apply to the rear six feet of each class property regardless of where the levee toe sits in relation to the rear property line.
 - ii. In the event the survey of each property obtained by Southeast Louisiana Flood Protection Authority-East reveals the levee toe to be situated within the rear property line of any specific class property, the servitude for that specific class property shall extend to six feet from the levee toe as determined by that survey.
 - iii. For any class property in which the servitude extends greater than six feet from the rear property line, the owner(s) of that individual class property shall be compensated at a rate of **\$30.56** per square foot for the area of the servitude beyond six feet from the rear property line.⁶
 - iv. Any additional payments owed by the Flood Protection Authority pursuant to this paragraph for any class property where the servitude extends beyond six feet from the rear property line shall first be made out of any remaining funds from the payments by the Flood Protection Authority made pursuant to paragraphs (1) (\$2,950,000) and (2) (\$2,000 per class property - \$430,000 total), which may result from either class members who opt out of the settlement or class members who fail to submit a proof of claim or establish title ownership of property in accordance with the claims process established pursuant to paragraph (5) below.
- d. The surveys of the class properties shall be completed within 120 days of final approval of the settlement by the Court. The necessary title work also shall be completed within 120 days of final approval of the settlement by the Court. These deadlines may be extended in the event of a declared emergency that delays the surveys, or upon agreement by the Flood Protection Authority and class counsel. During said 120 day period, and continuing thereafter if necessary, until completion, the Compromising Defendants will provide bi-monthly status reports to the Court regarding the progress made towards completion of the necessary survey work and the necessary title work.

(2) The Flood Protection Authority will also pay **\$2,000.00** per class property participating in the settlement, to be divided among each titled owner of each specific class property, on a pro rata basis of such titled ownership, as determined by the survey(s) and title work to be done in accordance with the terms of this Settlement Agreement, to settle claims for equitable relief asserted in the subject lawsuit, estimated to be **\$430,000.00**. All such payments will occur within thirty (30) days of the completion by the Compromising Defendants, of the necessary

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⁶ This price per square foot would also be adjusted to match any change in the price per square foot established by the process set forth in FN1.