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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR MARICOPA COUNTY**

STATE OF ARIZONA ex rel., JOHN
HALIKOWSKI, Director, Department of
Transportation,

Plaintiff,

v.

FOOTHILLS RESERVE MASTER OWNERS'
ASSOCIATION, INC. an Arizona Corporation;
MARICOPA COUNTY;

Defendants.

and

DIETMAR HANKE AND LINDA HANKE,

Intervenors.

No. CV2017-010359

**JUDGMENT – ALL DEFENDANTS
AND CLAIMANTS EXCEPT
INTERVENORS**

(Assigned to Hon. Timothy Thomason)

Plaintiff State of Arizona (“Plaintiff”) and Defendant Foothills Reserve Master
Owners’ Association, Inc. (the “HOA”), in its representative capacity on behalf of 589

1 homeowners in the Foothills Reserve subdivision (the “ 589 Owners”), have entered into a
2 settlement and have stipulated to the Judgment between them.

3 Good cause appearing, the Court finds there is no just reason for delay and enters final
4 Judgment as follows:

5 1. The Court finds that the fee simple interest in the real property sought to be
6 condemned, as described in Exhibit A, is required by Plaintiff for a necessary and public use.

7 2. Plaintiff has judgment condemning for its use the real property as described in
8 Exhibit A and any improvements thereon.

9 3. The Court entered a stipulated partial judgment on July 10, 2018, (the “HOA
10 Partial Judgment”). The HOA Partial Judgment awarded the HOA (on its own behalf, and
11 not representing the 589 Owners or the Intervenor) a stipulated sum of \$6,500,000.00, plus
12 statutory interest, for Plaintiff’s condemnation of real property owned by the HOA, as
13 described by Exhibit A attached hereto and incorporated herein. Plaintiff has satisfied the
14 HOA Partial Judgment.

15 4. The Court acknowledges the following by way of background:

16 a. The HOA Partial Judgment was without prejudice to the claims for just
17 compensation of the 589 Owners or the Intervenor after construction of the South Mountain
18 Freeway, by virtue of the taking by Plaintiff of the property rights the 589 Owners enjoyed
19 in the property condemned by Plaintiff and for the construction of the Plaintiff’s project
20 pursuant to A.R.S. §12-1122.

21 b. The 589 Owners’ damages claims included, among other items, claims to the
22 alleged diminished value of their homes as a result of factors such as noise, pollution, loss of

1 view, and unsightliness as a result of the South Mountain Freeway., i.e., proximity damages.

2 c. Dietmar and Linda Hanke, Intervenor, own a single-family home in the
3 Foothills Reserve subdivision (which was one of the 590 remaining homes) and elected to
4 pursue their own severance damage claim and have appeared as an intervenor. The HOA
5 does not represent the Hanks and this Judgment concerning the HOA and the 589 Owners
6 does not affect the Hanks' severance damage claim. The Court bifurcated the Hanks'
7 claim into a separate trial.

8 d. The Court ordered that the 589 Owners' proximity damage claims may be
9 maintained in the same case by the HOA, acting in a representative capacity, without the
10 need for the 589 Owners to be named as parties and neither the HOA nor the 589 Owners
11 were required to file counterclaims against Plaintiff. Plaintiff waived any statute of
12 limitations or notice of claim defenses with regard to the claims made in this lawsuit.

13 e. The Court determined that the HOA, pursuant to the provisions of the
14 Covenants, Conditions, Restrictions and Easements governing the Foothills Reserve
15 subdivision, was required to represent the 589 Owners' claims for just compensation, but
16 only in a representative capacity.

17 f. The Court signed an Order of Immediate Possession on July 3, 2018. The HOA
18 and the Plaintiff agreed that the date of the OIP established the date of taking and agreed that
19 that the date the OIP was entered by the Court would be used as the date of valuation for the
20 determination of just compensation (including severance damages to the 589 homes that the
21 HOA represented solely in a representative capacity).

1 5. The Court enters the following monetary judgment and accompanying terms as
2 concerns the Plaintiff and the HOA in its representative capacity for the 589 Owners:

3 a. The HOA, in its representative capacity, shall have the monetary judgment
4 against Plaintiff for Eighteen Million Dollars (\$18,000,000.00) plus statutory interest
5 accruing from July 3, 2018 until paid.

6 b. Plaintiff shall pay the HOA's taxable costs incurred herein in the amount of
7 \$35,084.88.

8 c. Plaintiff shall pay Six Million Dollars (\$6,000,000.00), plus statutory interest
9 on Six Million Dollars (\$6,000,000.00), from July 3, 2018 until paid, plus taxable costs, by
10 wire transfer into the State Bar Trust Account of Zeitlin & Zeitlin, P.C. ("Zeitlin & Zeitlin"),
11 attorneys for the HOA, upon entry of this Judgment.

12 d. Plaintiffs' attorneys, at the time Plaintiff wires the money to Zeitlin & Zeitlin,
13 shall provide Zeitlin & Zeitlin with a written accounting showing the principal and accrued
14 interest.

15 e. The Hanks, as Intervenors and separately-represented parties, shall not be
16 entitled to make any claim(s) to the amounts of just compensation paid by Plaintiff to the
17 HOA in its representative capacity in this Judgment. The Hanks shall have no right or
18 standing to object, to contest, or to appeal this Judgment. Further, the Hanks shall have no
19 right to object, contest, or participate in the administration of the distribution by the HOA to
20 the 589 Owners of the proceeds in this Judgment.

21 f. The 589 Owners' claims, and any monies paid to the HOA in its representative
22 capacity for those claims, shall be the property of the 589 Owners, excluding the Hanks,

1 and not the HOA, and shall not be the property or assets of the HOA; although the HOA may
2 set up a separate bank account or escrow to hold the monies in trust for the 589 Owners.
3 Provided, however, that the HOA may pay out of the proceeds of this Judgment its
4 reasonable attorneys' fees and other costs incurred in the administration and distribution of
5 the Judgment proceeds.

6 g. Plaintiff preserves the right to appeal only the Court's legal decision that the
7 589 Owners are entitled to proximity damages caused by Plaintiffs' Project (the South
8 Mountain Freeway) as set forth in the Court's minute entry ruling dated June 28, 2019, and
9 filed July 2, 2019 (the "Court's Decision").

10 h. If at the completion of the appellate process (which may include petitions for
11 review to the Arizona Supreme Court) the Court of Appeals (or on a petition for review, the
12 Arizona Supreme Court) determines that the 589 Owners are not entitled to proximity
13 damages, then Plaintiff shall only be liable for the payment of Six Million Dollars
14 (\$6,000,000.00), plus statutory interest, and shall not be liable for paying the additional
15 Twelve Million Dollars (\$12,000,000.00), plus statutory interest, of this Judgment. If after
16 the completion of the appellate process (including a petition for review to the Supreme
17 Court) the result is that the 589 Owners are entitled to recover proximity damages (in any
18 amount), then Plaintiff shall pay the remaining portions of the Judgment, which will be the
19 principal amount of Twelve Million Dollars (\$12,000,000.00), plus statutory interest thereon
20 from July 3, 2018, plus any additional taxable costs incurred by the HOA during the appeal
21 process until paid. Plaintiff shall pay the above sum by wire transfer to the State Bar Trust
22 Account of Zeitlin & Zeitlin, P.C. At the time the wire is made, Plaintiff's attorneys shall

1 provide Zeitlin & Zeitlin with an accounting showing the principal and accrued interest. If
2 Plaintiff decides to forgo the appellate process or if the appellate process is abandoned by
3 Plaintiff or dismissed due to any fault of Plaintiff, Plaintiff shall be liable for the additional
4 Twelve Million Dollars (\$12,000,000.00), plus statutory interest thereon from July 3, 2018,
5 plus any additional taxable costs incurred by the HOA during the appeal process until paid.

6 i. The bond in the amount of Fifteen Million Dollars (\$15,000,000.00) that was
7 filed by Plaintiff pursuant to the Order for Immediate Possession shall remain in effect until
8 further order.

9 j. The bond remaining in effect, Plaintiff may continue in possession of the
10 property condemned in this action.

11 k. Because many of the homes within the Foothills Reserve subdivision have
12 been sold and may be sold pending appeal, this Judgment does not prevent the Court from
13 taking action to” (i) approve a plan for reasonable notice to the 589 Owners (as some of their
14 whereabouts may not be known); (ii) after notice pursuant to an approved plan of notice and
15 a reasonable period for any of the 589 Owners to file objections to the proposed distribution
16 with the Court, approve a proposed plan of distribution to the 589 Owners; (iii) to determine
17 the rights as between persons who owned each home on July 3, 2018, the date of the taking,
18 and subsequent purchasers; and (iv) make any other necessary orders.

19 l. Plaintiff will not participate in these actions. Plaintiff shall have no liabilities
20 for any delay in distribution of the funds.

21 6. Defendant Maricopa County, having filed a disclaimer in this matter, takes
22 nothing by this Judgment.

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7. Each party to this action shall bear their own attorneys' fees.

8. The Court finding there is no just reason for delay, this Judgment is final and is entered pursuant to Rule 54(b), Ariz. R. Civ. P.

DONE IN OPEN COURT this ____ day of _____, 2022.

Honorable Timothy J. Thomason
Judge of the Superior Court

Doc#10180843

PROJECT: S202 MA 056 H8827 01R
HIGHWAY: SR202 SOUTH MOUNTAIN FREEWAY
LOCATION: Pecos – Segment A
PARCEL: 7-11506
DATE: May 19, 2017

Foothills Reserve Master Owners' Association

DESCRIPTION FOR FEE ESTATE

That portion of the Grantor's property that is described in the following **PROPERTY DESCRIPTION** located in the Southeast quarter of Section 35, Township 1 South, Range 2 East, Gila and Salt River Base and Meridian, Maricopa County, Arizona, which lies southerly of the following described **NEW RIGHT OF WAY LINE**:

PROPERTY DESCRIPTION:

Tracts A, D and E, Foothills Reserve Parcel C, according to Book 552 of Maps, Page 37, records of Maricopa County, Arizona;

EXCEPT 1/16th of all oil, gas, other hydrocarbon substances, helium or other substances of a gaseous nature, coal, metals, minerals, fossils, fertilizer of every name and description and except all materials which may be essential to the production of fissionable material as reserved in Arizona Revised Statutes.

NEW RIGHT OF WAY LINE DESCRIPTION:

Commencing at a found 2003 2 inch Maricopa County aluminum cap on a ½ inch rebar, 0.3 feet down, marking the Southeast corner of said Section 35, from which a found 2000 2 inch SCI aluminum cap in concrete, 0.15 feet down, LS 21780, marking the East quarter corner of said Section 35, bears North 00°08'35" East 2639.01 feet;

thence along the section line North 00°08'35" East 110.00 feet to the Southerly right of way line of Pecos Road;

thence continuing along said section line North 00°08'35" East 348.32 feet to the POINT OF BEGINNING;

thence South 88° 51' 43" West 70.32 feet;

thence North 00° 09' 50" East; 53.00 feet;

thence North 89° 50' 12" West 110.00 feet;

EXHIBIT "A"
(Continued)

thence South 00° 09' 50" West 23.66 feet;

thence South 84° 53' 02" West 765.32 feet;

thence Northwesterly, a distance of 68.48 feet along a tangent curve to the right having a radius of 50.00 feet;

thence South 84° 53' 02" West 111.03 feet;

thence North 86° 56' 15" West 56.85 feet;

thence South 85° 10' 19" West 205.20 feet;

thence North 83° 17' 36" West 97.11 feet;

thence South 88° 22' 46" West 411.32 feet;

thence North 78° 31' 38" West 329.84 feet;

thence South 88° 36' 42" West 381.70 feet;

thence North 85° 13' 38" West 60.92 feet to the POINT OF ENDING on the North-South mid section line of said Section 35, from which a found 1 ½ inch iron pipe w/plastic cap, LS 5068, marking the Center quarter corner of said Section 35, bears North 00° 04' 48" East 2145.11 feet.

The Grantor's remaining land shall have no right or easement of access to State Route 202L (SOUTH MOUNTAIN FREEWAY).

Excepting Tract D, Foothills Reserve Parcel C, according to Book 552 of Maps, Page 37, records of Maricopa County, Arizona

EXHIBIT "A"

DESCRIPTION FOR DRAINAGE EASEMENT

That portion of the Grantor's property that is described in the following **PROPERTY DESCRIPTION** located in the Southeast quarter of Section 35, Township 1 South, Range 2 East, Gila and Salt River Base and Meridian, Maricopa County, Arizona, which lies within the following described **TRACT**:

PROPERTY DESCRIPTION:

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EXCEPT 1/16th of all oil, gas, other hydrocarbon substances, helium or other substances of a gaseous nature, coal, metals, minerals, fossils, fertilizer of every name and description and except all materials which may be essential to the production of fissionable material as reserved in Arizona Revised Statutes.

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thence along the East line of said Section 35 North 00°08'35" East 110.00 feet;

thence South 89°39'38" West 1.22 feet

thence South 89°50'48" West 1605.38 feet to the Point of Beginning;

thence South 00°12'06" East 99.95 feet;

thence South 89°50'09" West 1033.42 feet to the North-South mid section line of said Section 35;

thence along the North-South mid section line of said Section 35 North 00°04'48" East 100.14 feet;

thence North 89°50'48" East 1032.93 feet to the Point of Beginning.

PROJECT: S202 MA 056 H8827 01R
HIGHWAY: SR202 SOUTH MOUNTAIN FREEWAY
LOCATION: Pecos – Segment A
PARCEL: 7-11784
DATE: May 19, 2017

Foothills Reserve Master Owners' Association

DESCRIPTION FOR FEE ESTATE

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EXHIBIT "A"
(Continued)

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thence North 89°50'48" East 1032.93 feet to the Point of Beginning.

EXHIBIT "A-1"

eSignature Page 1 of 1

Filing ID: 14003376 Case Number: CV2017-010359
Original Filing ID: 13991961

Granted with Modifications



/S/ Timothy Thomason Date: 3/3/2022
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2017-010359

SIGNATURE DATE: 3/3/2022

E-FILING ID #: 14003376

FILED DATE: 3/4/2022 8:00:00 AM

DALE S ZEITLIN

DAVINA DANA BRESSLER

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