

NOTICE OF JUDGMENT AND DISTRIBUTION OF PROCEEDS

IF YOU OWNED A HOME IN THE FOOTHILLS RESERVE SUBDIVISION ON JULY 3, 2018, YOU MAY BE ENTITLED TO PAYMENT

This is a notice to inform you about whether you may be entitled to be paid from the monies received by the HOA, in its representative capacity, pursuant to the Judgment entered by the Court in the eminent domain action titled *State of Arizona ex rel., John Halikowski, Director, Department of Transportation v. Foothills Reserve Master Owners' Association, Inc.* (Case No.: CV2017-010359).

This notice describes the Judgment, the proposed plan of allocation and your rights and options – **and the deadlines to exercise them** – so please read this notice carefully.

I. WHO IS ENTITLED TO BE PAID?

Absent a contractual agreement between a buyer and seller allocating the rights to eminent domain proceeds in the event the home had been sold, and excluding one homeowner who appeared as an intervenor party in the lawsuit, a homeowner in the Foothills Reserve Subdivision as of July 3, 2018 is entitled to be paid. The amount of proposed distribution to be paid to each entitled person is set forth by address for each home on Exhibit 1 attached. The amount of the proposed distribution for each home is based on an analysis and report authored by William M. Dominick, a State Certified Real Estate Appraiser.

II. WHAT ARE YOUR RIGHTS?

Submit a Claim: If you believe you are entitled to a distribution, you **MUST** submit a claim form and a deed proving you owned a home (or homes) in the Foothills Reserve subdivision on July 3, 2018. Your claim **MUST BE SUBMITTED on or before October 20, 2022** at the following website: www.FoothillsReserveJudgment.com. You may be asked for further documentation proving entitlement to the proceeds after submitting your claim form.

If you do not submit a claim form on or before October 20, 2022, or if the claim form you submit does not provide a deed showing that you owned the home as of July 3, 2018, you

shall forever be barred from receiving any distribution from the Judgment and no money will be distributed to you.

File an Objection: If you wish to object to the amount of the distribution as shown on Exhibit 1, or whether you should have a right to receive a portion of the proceeds, even if you did not own your home on July 3, 2018 stating the reasons therefore, in the pending lawsuit with the Maricopa County Superior Court in Case No.: CV2017-010359 before the Honorable Timothy Thomason **on or before June 20, 2022.**

Any objection to the allocations of proceeds must be accompanied with a plan of distribution that shows the amount of distribution for each of the 589 homes. A failure to file a timely objection or an objection that does not set forth a plan of distribution for all 589 homes will not be considered by the Court at the hearing and you will have waived any and all rights to object to the plan of distribution as set forth in Exhibit 1.

The Court will decide any objection(s) at a one-day evidentiary hearing on **June 30, 2022 starting at 9:00 a.m.** before the Honorable Timothy Thomason at the Maricopa County Superior Court, East Court Building, located at 201 W. Jefferson St. Phoenix, Arizona 85003.

You may join the hearing using the following link:

<https://tinyurl.com/jbazmc-cvj23>

Teams Phone Number: +1 917-781-4590 Access Code: 269 483 919#

If there is a failure to appear, the Court may make such orders as are just, including granting the relief requested by the party who appears. However, whether or not you attend the hearing, you will be bound by any order entered by the Court as a result of the evidentiary hearing.

III. DESCRIPTION OF THE EMINENT DOMAIN LAWSUIT

The State of Arizona filed a lawsuit in which it condemned a portion of the common areas owned by the HOA for the construction of the Loop 202 South Mountain Freeway (the “Freeway”).

The HOA and the State settled the value of the common areas and the State paid the HOA. This Notice does not involve that issue or settlement.

In that same lawsuit, the HOA on behalf of 589 homeowners, asserted damage claims caused by the taking of the homeowners' easement rights in the taken common areas. That damage claim included, among other items, claims to the alleged diminished value of the 589 homes as a result of factors such as noise, pollution, loss of view, and unsightliness caused by the Freeway ("proximity damages"). The State argued that it was not liable for proximity damages. But the Court determined that the State was liable for proximity damages. The Court ordered that the 589 homeowners' damage claims would be maintained by the HOA in a representative capacity in the lawsuit.

The Court entered an order allowing the State to take immediate possession of the common area property on July 3, 2018. Under eminent domain law, the date of immediate possession constitutes a taking of property. The Court ordered that this July 3, 2018 date is the date on which a homeowner who owned a home in the Foothills Reserve Subdivision would be entitled to the net proceeds of this lawsuit, absent a private agreement to the contrary.

The State and the HOA, in its representative capacity, settled the 589 homeowner claims for proximity damages. The Court entered Judgment. The Judgment awarded the HOA, in its representative capacity, a monetary sum in the amount of eighteen million dollars (\$18,000,000.00) plus statutory interest accruing from July 3, 2018 until paid. The State shall pay six million dollars (\$6,000,000.00), plus statutory interest on that amount from July 3, 2018, plus taxable costs, to the HOA on behalf of the 589 entitled homeowners.

The State has appealed this issue as to whether it is liable for proximity damages. If at the competition of the appellate process, it is determined that the 589 homeowners are not entitled to proximity damages, then the State shall only be liable for the payment of the six million dollars (\$6,000,000.00), plus statutory interest. If after the completion of the appellate process, the result is

that the 589 homeowners are entitled to recover proximity damages, then the State shall pay the remaining portion of the Judgment, which will be the principal amount of twelve million dollars (\$12,000,000.00), plus statutory interest thereon from July 3, 2018, until paid, plus additional taxable costs incurred during the appeal process.

If, but only if, the HOA prevails on appeal, will you then be entitled to a second distribution. We do not know how long the appeal process will take, but we anticipate that it will take at least two to three years.

IV. ADDITIONAL INFORMATION

There are additional documents and information posted on the following website:
www.FoothillsReserveJudgment.com.