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PRESENTED & RECORDED

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LYNNE JOHNSON

REGISTER OF DEEDS

BY: EVELYN R. DIXON

DPTV

BK: RE 3422

PG: 1693-1695

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ENVELOPE

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF FORSYTH

SUPERIOR COURT DIVISION

17 CVS 3920

DEPARTMENT OF TRANSPORTATION,
Plaintiff.

v.

**AMENDED MEMORANDUM OF
ACTION**

(Inverse Condemnation G.S. 136-111)

SHERRELL D. WHICKER and wife,
NANCY L. WHICKER,
Defendants.

Take Notice

The above-captioned Defendants, Sherrell D. Whicker and wife, Nancy L. Whicker, hereby record this Memorandum of Action pursuant to the provisions of N.C.G.S. § 136-111:

1. On June 21, 2017, the Department of Transportation ("Plaintiff") filed a direct condemnation action, as captioned above, in the Superior Court of Forsyth County.

2. As a result of said condemnation filing, Plaintiff filed a Memorandum of Action with the Forsyth County Register of Deeds. The present Memorandum of Action incorporates by reference the information contained in Plaintiff's Memorandum of Action recorded at Book 3353, Page 2715-2716, Forsyth County Registry.

3. Defendants assert that the taking of their property that is the subject of the above-captioned condemnation action began on November 26, 2008 pursuant to Plaintiff's actions of filing a transportation corridor map under the Map Act. It is recorded with the Defendants' chain of title in Book 2863, Page 3866, Forsyth County Registry.

4. In *Kirby v. N.C. Dep't of Transp.*, 239 N.C. App. 345, 769 S.E.2d 218 (2015), *aff'd by separate opinion*, *Kirby v. N.C. Dep't of Transp.*, 368 N.C. 847, 786 S.E.2d 919 (2016), the North Carolina Court of Appeals held that A) the Transportation Corridor Official Map Act empowered NCDOT with the right to exercise the State's power of eminent domain, and B) the NCDOT exercised its power of eminent domain by filing transportation corridor maps in accordance with provisions of the Map Act.

5. On November 26, 2008, in accordance with the Map Act, the NCDOT recorded a transportation corridor official map in Book 2863, Page 3866, Forsyth County Register of Deeds encumbering the subject property in the present case for the proposed construction of the Winston-Salem Northern Beltway (Eastern Section) project.

6. The filing of the aforesaid transportation corridor official map was a taking of the Defendant's property on November 23, 2008 with interest being acquired that defined in "Map Act" statute.

7. On July 11, 2016, the North Carolina Legislature effectively cancelled all prior "Map Act" takings essentially returning the subject property to the defendants herein. [Act of July 1, 2016, ch.90, sec. 17(a), 2016 N.C. Sess. Laws 2016] ("All transportation corridor official maps adopted pursuant to Article 2E of Chapter 136 of the General Statutes, and any amendments thereto, are hereby rescinded, and all restrictions under Article 2E of Chapter 136 of the General Statutes shall no longer apply to properties or portions of properties within the affected transportation corridors.").

8. On June 21, 2017, the Plaintiff initiated this action to take the property herein by a direct condemnation action.

9. The Defendants are entitled to just compensation for the inverse taking of their property on November 26, 2008 and for the subsequent direct taking of their property by the Complaint herein.

10. The property subject to the inverse taking is the same property described in the direct taking.

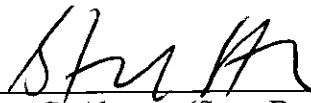
11. The people with an interest in the subject property in the inverse condemnation are the same people who have an interest in the direct condemnation herein.

12. The NCDOT did not allege this temporary taking when it filed its Complaint, Declaration of Taking and Notice of Deposit, and Memorandum of Action herein.

13. Consequently, Defendants are filing this Inverse Condemnation pursuant to G.S. §136-111 and 4 N.C. Const. art. I, §19.

This the 28th day of August, 2018.

NC EMINENT DOMAIN LAW FIRM

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