

EMINENT DOMAIN SUIT CHECKLIST

Suit Name: _____
Project Name: _____
Start Date: _____
Completion Date: _____

1. BEFORE STARTING THE DRAFTING OF THE LAWSUIT:

- a. Confirm that Engineering Memo was prepared for attachment to BCC agenda item in support of adoption of the Resolution authorizing exercise of eminent domain. Engineering Memo should include public purpose findings and five factors considered to establish necessity (alternate alignments; long-range planning; safety; environmental impacts; costs). For an example from 2015, see Pullen at Old Bainbridge Intersection Improvement Project (F14-00081).
- b. Confirm that the appropriate Resolution authorizing this eminent domain lawsuit has been adopted by BCC pursuant to Section 127.02, Fla. Stat. The Resolution can combine multiple parcels to be acquired from different properties. The Engineering Memo supporting public purpose and necessity should be an attachment to agenda item. For an example from 2015, see Pullen at Old Bainbridge Intersection Improvement Project (F14-00081).
- c. Confirm that Florida D.E.P. or Northwest Florida Water Management District has been notified of the use of eminent domain for this project-Section 373.023(3), Fla. Stat.
- d. Confirm that the Title Commitment for each parcel has updated within the last 30 days. If not, request updates in writing from the title company.
- e. Confirm that appraisals have been updated. The Appraisals must be no more than 3 months old at the date of the O.T. hearing.
 - (1) The suit can be filed with good faith estimates of value from appraisals older than 3 months, BUT the good faith estimates of value testified to for the Order of Taking must be more recent than 3 months -- so make sure updated appraisals are completed before the O.T. hearing.
- f. Confirm that the first written offer letter has been mailed to the fee simple owner(s) in accordance with Section 73.015, Fla. Stat., and that 30 days have passed since either owner's receipt of letter or since the date the notice is returned as undeliverable. For an example from 2015, see Pullen at Old Bainbridge Intersection Improvement Project (F14-00081).
- g. Confirm that any business owners have been notified in accordance with Section 73.015, Fla. Stat. For example from 2013, see Parcel 701 of the North Monroe Street Turn-Lane Project (L13-022).

- h. If property being acquired is part of the common elements of a condominium, confirm that notification requirements in Section 73.073, Fla. Stat., have been satisfied with regard to certified mail to condo unit owners of record.
 - i. If property being acquired is part of common property owned by a Homeowners Association (“HOA”), consider naming HOA as class representative for all HOA members who have a common easement interest in common elements [see Rule 1.221, Fla. R. Civ. Pro.].
- 2. **DRAFTING PETITION. [for example from 2016, see L16-007 LC v. Tanglewood Apartments of Tallahassee, LLC, et al]**
 - a. Determine the named defendants from the content of the Title Commitment: *this should be done under close supervision of attorney.*
 - (1) The Requirements page on the Title Commitment will identify the individuals or entities required to sign a Warranty Deed. These are typically the fee simple owners to be named as defendants.
 - For any HOA common property, consider naming HOA as class representative for all HOA members who have a common easement interest in common elements [see Rule 1.221, Fla. R. Civ. Pro.]. For an example from 2018, see the Lakeshore Gardens HOA suit for the Meridian Road Crossdrain Project (L17-088).
 - For any common elements of a condominium, the only parties required to be named as defendants, pursuant to Fla. Stat. 73.073, are the condo association, as class representative of the unit owners, and those owners of units which timely objected to the taking or appraisal within the 30-day period.
 - (2) Other property interests will be identified, such as:
 - Mortgagees.
 - Judgment liens.
 - Utility liens.
 - Associations (condo/homeowners) lien.
 - (3) Review these other interests and name them as defendants if they need to be extinguished to obtain clear title.
 - (4) The Exceptions page on the Title Commitment will identify property interests that would be listed as exceptions to the Title Policy:
 - Utility Easements
 - Cross Access easements
 - Lessees/tenants, others in possession.
 - (5) Exceptions must be confirmed and named as a defendant if we need to extinguish them to build the road or other improvement.

- (6) There may be some property interests, such as utility easements, that we do not want to extinguish or otherwise acquire any interest in. For these, an allegation can be included that lists these interests but states that we do not seek to acquire them. Here's how it looked in the Petition from the Lakeshore Gardens HOA suit (L-17-083):

9. → Additionally, Petitioner has identified the following interests and encumbrances on the Property, but Petitioner does not seek to acquire these interests:¶

a. → Utility Easement dedicated to the public per plat of Lakeshore Gardens, as recorded in Plat Book 12, Page 2, of the Official Records of Leon County, Florida;¶

b. → Utility Easement recorded in Book 895, Page 860, of the Official Records of Leon County, Florida, in favor of the City of Tallahassee, a municipal corporation created and existing under the laws of the State of Florida;¶

c. → Encroachment Agreement recorded in Book 1768, Page 1920, of the Official Records of Leon County, Florida, regarding an easement for pipeline facilities in favor of Florida Gas Transmission Company; and¶

d. → Corrective Conservation Easement recorded in Book 1948, Page 297, of the Official Records of Leon County, Florida, in favor of Leon County, Florida, a charter county and political subdivision of the State of Florida.¶

b. Create caption of case:

- (1) List defendants by grouping together the interests in each parcel:
 - first party listed for each parcel should be fee owner, followed by tenants, followed by judgment lienors and mortgagees.
- (2) If property is a residence, also name an “Unknown Tenant” unless we are sure of tenant’s name or sure that only the fee owner has possession (i.e., property vacant).
 - When the process server attempts service at the property address, he will either provide written confirmation of the unknown tenant’s name on the Summons or will confirm a “non-serve” of unknown tenant if none is discovered.
- (3) If property is a residence and no spouse is named on the most recent Deed as a Grantee, name an “Unknown Spouse” for each individual Grantee unless we have confirmed with the fee owner that he/she is either unmarried or the property is not his/her homestead.
 - The process server will use the same process as with the unknown tenant above.
- (4) If fee owner is deceased, investigate whether or not a probate matter was commenced:

- If probate is pending, name executor or administrator of estate without joining the devisees or heirs [see Section 73.021(4), Fla. Stat.]
 - If no probate was commenced, try to determine any known heirs or devisees and name them as defendants along with naming “UNKNOWN HEIRS of the Estate of _____”.
 - It may be necessary after commencing the suit to request the court to appoint an attorney ad litem to represent the unknown heirs and unknown claimants.
- (5) If property owner is a Trust, name the trustee as a defendant without joining the *cestui que trust* [see Section 73.021(4), Fla. Stat.].
- (6) If the property is part of any common elements of a condominium, the only parties required to be named as defendants, pursuant to Fla. Stat. 73.073, are the condo association, as class representative of the unit owners, and those owners of units which timely objected to the taking or appraisal within the 30-day period.
- (7) If the property is an HOA common area owned by the HOA, it likely is subject to an easement for use and enjoyment in favor of each of the lot owners as established in the restrictive covenants for the subdivision. If so, in accordance with Fla. R. Civ. P. 1.221 and Fla. Stat. § 720.303(1), the HOA can be named as representative for the class of all lot owners by virtue of their common easement interests in the property. Here’s how it looked in the caption and the body of the Petition in the Lakeshore Gardens HOA suit (L17-083):

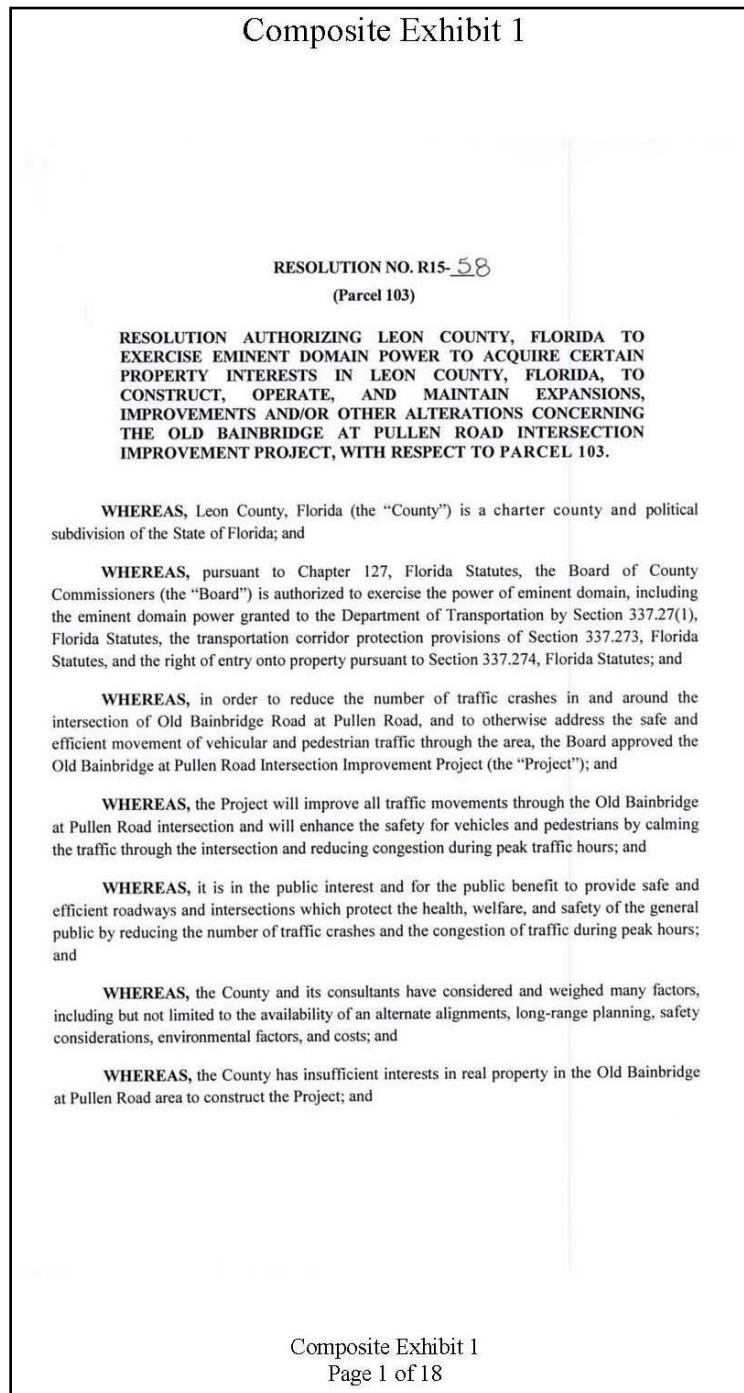
| | |
|--|--|
| LEON COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, ¶ → → → Petitioner, ☐ v. ☐ LAKESHORE GARDENS HOMEOWNERS’ ASSOCIATION, INC., a Florida not for profit corporation; LAKESHORE GARDENS HOMEOWNERS’ ASSOCIATION, INC., a Florida not for profit corporation, as the representative for the class of all lot owners of Lakeshore Gardens, as per plat thereof recorded in Plat Book 12, Page 2, of the Official Records of Leon County, Florida; LEON COUNTY TAX COLLECTOR; and LEON COUNTY PROPERTY APPRAISER. ¶ → → → Defendants ¶ _____/☐ | → → → → → → → ¶ Case No.: 2018-CA- _____ ☐ ☐ ¶ Parcel No. 803 ☐ |
| <u>PETITION IN EMINENT DOMAIN</u> ¶ | |

8. → In accordance with Fla. R. Civ. P. 1.221 and Fla. Stat. § 720.303(1), Petitioner has named Defendant, LAKESHORE GARDENS HOMEOWNERS' ASSOCIATION, INC., as the representative for the class of all lot owners of Lakeshore Gardens, as per plat thereof recorded in Plat Book 12, Page 2, of the Official Records of Leon County, Florida, by virtue of the common interests of said lot owners to a right and easement of enjoyment in and to the Property as set forth in Article II, Section 1 of the Declaration of Covenants, Conditions and Restrictions for Lakeshore Gardens recorded in Book 1498, Page 1011, of the Official Records of Leon County, Florida.¶

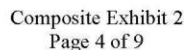
- (8) Here's an example of the caption from the Petition in the Tangle wood Apartments suit (L16-007):

| IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA | |
|---|----------------------------------|
| LEON COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, | Case No.: 2016 CA 000568 |
| Petitioner, | |
| v. | |
| TANGLEWOOD APARTMENTS OF TALLAHASSEE, LLC, a Florida Limited Liability Company; EMBARQ FLORIDA, INC. d/b/a CenturyLink and f/k/a Southeastern Telephone Company, a Florida corporation; FEDERAL NATIONAL MORTGAGE ASSOCIATION a/k/a Fannie Mae, a corporation organized and existing under the laws of the United States of America; | Parcel No. 103 |
| Defendants | |
| GLEN KEVIN THOMPSON and CYNTHIA DIANE THOMPSON, husband and wife; SHEILA WILLIAMS; EDNA GASQUE; ZACHARY HASTIE; DARBY YOUNG; BARBARA WILLIAMS; KEN BEADNELL; KELVIN DAVIS; GAYLA DAVIS; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. a/k/a MERS, a Delaware corporation, as nominee for Branch Banking and Trust Company; | Parcel Nos. 101, 701A, 701B, 702 |
| Defendants | |
| LEON COUNTY TAX COLLECTOR; LEON COUNTY PROPERTY APPRAISER; | As to All Parcels |
| Defendants. | |
| <u>PETITION IN EMINENT DOMAIN</u> | |

- c. Create Composite Exhibit 1 as follows: obtain a **certified copy of the Resolution** from Board Secretary in Clerk's Office and import it as an image into Composite Exhibit 1. Page numbers on the exhibit should be something similar to Composite Exhibit 1 Page ___ of ___. Here's an example from L16-007:



- (1) Legal Description should preferably be in electronic format so that it does not need to be retyped. Alternatively, a sketch of description can be used by importing each as an image similar to Composite Exhibit 1.
- (2) If legal descriptions in electronic format are being used, add caption information as needed to appropriately identify each legal description by property location and/or street address, and cut and paste each into Composite Exhibit 2.
- (3) **REMEMBER:** For each easement parcel, including TCE's, you must include the term sheet or other appropriate language in addition to the legal description or sketch of description to identify the purpose of each easement and how it will be used. Here's an example from L16-007:



(PARCEL 701A)
TEMPORARY CONSTRUCTION EASEMENT – TERM SHEET

A Temporary Construction Easement ("TCE") over the parcel of land described herein for the purpose of facilitating the harmonization of the subject property's driveway connection(s) to Pullen Road as a part of Leon County's Old Bainbridge at Pullen Road Intersection Improvement Project ("Project"), limited to the uses as follows, to wit:

- (a) Leon County and its contractors shall have the right to ingress, egress and use the above described lands to perform all work necessary for the purpose of tying in and harmonizing the remainder property and the improvements thereon to the improvements to be constructed in connection with the Project, including without limitation sloping, grading, clearing, grubbing, storage of materials and equipment, excavation, and restoration, subject to subparagraph (d), below;
- (b) Following completion of construction, Leon County and/or its contractors shall remove its materials and equipment associated with said activities, and shall restore, repair or replace any pre-existing asphalt, curbing, and/or sod within the TCE area disturbed by such activities. Pre-existing sod or landscaping, if any, within the TCE disturbed by the construction shall be replaced with sod or plants of such comparable species and size, as are readily available;
- (c) Leon County and/or its contractors shall have the right to operate vehicles and equipment within the TCE area and to use said easement to park said vehicles and equipment and store materials, subject to subparagraph (d), below;
- (d) The TCE shall be non-exclusive and Leon County and/or its contractor's use and enjoyment of the rights granted herein shall not interfere with reasonable vehicular or pedestrian access to the remaining property over the TCE area;
- (e) The TCE shall expire upon the final completion of the construction of the Project, but in no event later than three years from the date on which Leon County acquires title to the TCE.

Composite Exhibit 2
Page 5 of 9

e. Create Exhibit 3 by listing defendants and determining who will be served:

- (1) Pursuant to Section 73.021(4), Fla. Stat., the Petition must allege that you have conducted a "... diligent search and inquiry to ascertain the names, places of residence, legal disabilities, if any, and interests in the Property of any and all owners, lessees, mortgagees, judgment creditors, lienholders, executors, administrators, trustees, and any other persons or entities having or claiming to have any right, title, or interest in the Property. Those facts, as known, together with any

unknown persons having an interest in the Property in those instances when Petitioner was unable to ascertain the identity of such known persons by diligent search and inquiry...", and those facts must be set forth in Exhibit 3.

(2) Has an attorney agreed to service?

- Check attorney authorization forms to confirm that owner who signed authorization form is same as party defendant.
- Contact attorney to request that attorney will accept service of process on behalf of his/her defendant client. If yes, list the attorney name and address on Exhibit 1

(3) Is it an out-of-state defendant?

- If so, we will serve by publication of Notice of Action and, if we have an address, by mail through the Clerk of the Court with Certificate of Mailing.

(4) Is it an unknown defendant? For example:

- when we have not been able to confirm the identity of a tenant, we would name the defendant as "UNKNOWN TENANT" and serve him/her at the property address.
- If the subject property is the owner's homestead and we have not been able to confirm the owner's marital status, we would extinguish any possible spousal homestead interest by naming an "UNKNOWN SPOUSE of _____" as a defendant and serve him/her at the property address.
- The process server can confirm the unknown defendant's identity at the time of service.

(5) Is it an in-state defendant? If so, is address good? If not good address, service of process may take longer, or the defendant may ultimately have to be included in the Notice of Action and served by publication -- **NOTE:** if the Notice of Action has already been published, your O.T. hearing may have to be delayed to allow for another publication, so it's important to have good information.

- Consider the source of the address:
 - If defendant's mailing address is the subject property, has the acquisition agent or consultant confirmed that the defendant still lives there?
 - If the defendant is a Florida corporation, does the address match the information on the Sec. of State corporation website?
 - If the defendant is an out-of-state corporation or bank, have you searched the internet for the best and most recent address?
 - Depending on the source of the address information, you should do as much investigation as necessary to obtain the best address and eliminate any chance of delays from service of process problems.

f. Fill in appropriate information for each defendant regarding the various property interests being acquired. The O.R. Book and Page of the document identifying each defendant's

interest should be listed based on the information provided in the Title Commitment. Here's an example from L16-007:

Exhibit 3

**List of Defendants' Names, Residences, Legal Disabilities,
and Interests in or Claims to the Property**

Parcel 103

1. TANGLEWOOD APARTMENTS OF TALLAHASSEE, LLC

- a. Name: Tanglewood Apartments of Tallahassee, LLC, a Florida Limited Liability Company
- b. Residence/Principal Address: 905 Biscayne Boulevard., Suite 1, Deland, FL 32724
- c. Legal Disabilities: None known.
- d. Interest in or claim to Property sought to be acquired: May claim an ownership interest in Parcel 103 pursuant to a Special Warranty Deed recorded at O.R. Book 4719, Page 841, Official Records of Leon County, Florida.
- e. Serve: Charles S. Stratton, Esq., Broad and Cassel, 215 S. Monroe Street, Tallahassee, FL 32301

2. EMBARQ FLORIDA, INC. d/b/a CenturyLink and f/k/a Southeastern Telephone Company

- a. Name: Embarq Florida, Inc., a Florida corporation
- b. Residence/Principal Address: 100 CenturyLink Drive, Monroe, LA 71203
- c. Legal Disabilities: None known.
- d. Interest in or claim to Property sought to be acquired: May claim an ownership interest in Parcel 103 as successor in interest to Southeastern Telephone Company pursuant to an Easement recorded at O.R. Book 630, Page 293, Official Records of Leon County, Florida.
- e. Serve: CT Corporation System, Registered Agent, 1200 South Pine Island Road, Plantation, FL 33324

3. FEDERAL NATIONAL MORTGAGE ASSOCIATION a/k/a Fannie Mae

- a. Name: Federal National Mortgage Association, a corporation organized and existing under the laws of the United States of America
- b. Residence/Principal Address: 3900 Wisconsin Avenue, NW, Washington, DC 20016-2892
- c. Legal Disabilities: None known
- d. Interest in or claim to Property sought to be acquired: May claim a lien interest in Parcel 103 as Assignee of the Multifamily Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing recorded at O.R. Book 4719, Page 845, Official Records of Leon County, Florida pursuant to an Assignment of Mortgage recorded at O.R. Book 4719, Page 867, Official Records of Leon County, Florida.
- e. Serve: Federal National Mortgage Association, Attention: Legal Resource Center, 3900 Wisconsin Avenue, NW, Washington, DC 20016-2892

4. **LEON COUNTY TAX COLLECTOR**

- a. Name: Doris Maloy, in her official capacity as Leon County Tax Collector
- b. Residence/Principal Address: 1276 Metropolitan Boulevard, Suite 102, Tallahassee, FL 32312
- c. Legal Disabilities: None known
- d. Interest in or claim to Property sought to be acquired: May claim rights in Parcel 103 as a lienor for any outstanding property taxes for Parcel ID 21-15-20-412-000-0.
- e. Serve: Timothy R. Qualls, Esq., Young vanAssenderp, P.A., 215 South Monroe Street, Suite 802, Tallahassee, FL 32301

5. **LEON COUNTY PROPERTY APPRAISER**

- a. Name: Bert Hartsfield, CFA, in his official capacity as Leon County Property Appraiser
 - b. Residence/Principal Address: 315 South Calhoun Street, Third Floor, Tallahassee, FL 32301
 - c. Legal Disabilities: None known
 - d. Interest in or claim to Property sought to be acquired: May claim an interest in Parcel 103 as Property Appraiser.
 - e. Serve: Terry J. Harmon, Esq., Sniffen & Spellman, P.A., 123 N. Monroe Street, Tallahassee, FL 32301
6. All other unknown persons claiming interests by, through, under, or against the above-named Defendants, and all other persons having or claiming to have any right, title, or interest in Parcel 103 as described in the Petition.

Parcels 101, 701A, 701B, 702

1. **GLEN KEVIN THOMPSON**

- a. Name: Glen Kevin Thompson
- b. Residence Address: 31 Belin Court, Crawfordville, FL 32327
- c. Legal Disabilities: None known
- d. Interest in or claim to Property sought to be acquired: May claim an ownership interest in Parcels 101, 701A, 701B, and 702 pursuant to separate Warranty Deeds for four abutting properties recorded at and O.R. Book 3817, Page 1502 (for 2539-2541 Old Bainbridge Road), O.R. Book 3817, Page 1500 (for 2535-2537 Old Bainbridge Road), O.R. Book 3817, Page 1525 (for 2531-2533 Old Bainbridge Road), O.R. Book 3817, Page 1548 (for 2525 Old Bainbridge Road), all in the Official Records of Leon County, Florida.
- e. Serve: Glen Kevin Thompson, 31 Belin Court, Crawfordville, FL 32327

2. CYNTHIA DIANE THOMPSON

- a. Name: Cynthia Diane Thompson
- b. Residence Address: 31 Belin Court, Crawfordville, FL 32327
- c. Legal Disabilities: None known
- d. Interest in or claim to Property sought to be acquired: May claim an ownership interest in Parcels 101, 701A, 701B, and 702 pursuant to separate Warranty Deeds for four abutting properties recorded at and O.R. Book 3817, Page 1502 (for 2539-2541 Old Bainbridge Road), O.R. Book 3817, Page 1500 (for 2535-2537 Old Bainbridge Road), O.R. Book 3817, Page 1525 (for 2531-2533 Old Bainbridge Road), O.R. Book 3817, Page 1548 (for 2525 Old Bainbridge Road), all in the Official Records of Leon County, Florida.
- e. Serve: Cynthia Diane Thompson, 31 Belin Court, Crawfordville, FL 32327

3. SHEILA WILLIAMS

- a. Name: Sheila Williams
- b. Residence Address: 2541 Old Bainbridge Road, Tallahassee, FL 32303
- c. Legal Disabilities: None known
- d. Interest in or claim to Property sought to be acquired: May claim rights to Parcels 101, 701A, 701B, and 702 as Lessee occupying residence address pursuant to an unrecorded agreement.
- e. Serve: Sheila Williams, 2541 Old Bainbridge Road, Tallahassee, FL 32303

4. EDNA GASQUE

- a. Name: Edna Gasque
- b. Residence/Principal Address: 2539 Old Bainbridge Road, Tallahassee, FL 32303
- c. Legal Disabilities: None known
- d. Interest in or claim to Property sought to be acquired: May claim rights to Parcels 101, 701A, 701B, and 702 as Lessee occupying residence address pursuant to an unrecorded agreement.
- e. Serve: Edna Gasque, 2539 Old Bainbridge Road, Tallahassee, FL 32303

5. ZACHARY HASTIE

- a. Name: Zachary Hastie
- b. Residence/Principal Address: 2537 Old Bainbridge Road, Tallahassee, FL 32303
- c. Legal Disabilities: None known
- d. Interest in or claim to Property sought to be acquired: May claim rights to Parcels 101, 701A, 701B, and 702 as Lessee occupying residence address pursuant to an unrecorded agreement.
- e. Serve: Zachary Hastie, 2537 Old Bainbridge Road, Tallahassee, FL 32303

6. **DARBY YOUNG**

- a. Name: Darby Young
- b. Residence/Principal Address: 2535 Old Bainbridge Road, Tallahassee, FL 32303
- c. Legal Disabilities: None known
- d. Interest in or claim to Property sought to be acquired: May claim rights to Parcels 101, 701A, 701B, and 702 as Lessee occupying residence address pursuant to an unrecorded agreement.
- e. Serve: Darby Young, 2535 Old Bainbridge Road, Tallahassee, FL 32303

7. **BARBARA WILLIAMS**

- a. Name: Barbara Williams
- b. Residence/Principal Address: 2533 Old Bainbridge Road, Tallahassee, FL 32303
- c. Legal Disabilities: None known
- d. Interest in or claim to Property sought to be acquired: May claim rights to Parcels 101, 701A, 701B, and 702 as Lessee occupying residence address pursuant to an unrecorded agreement.
- e. Serve: Barbara Williams, 2533 Old Bainbridge Road, Tallahassee, FL 32303

8. **KEN BEADNELL**

- a. Name: Ken Beadnell
- b. Residence/Principal Address: 2531 Old Bainbridge Road, Tallahassee, FL 32303
- c. Legal Disabilities: None known
- d. Interest in or claim to Property sought to be acquired: May claim rights to Parcels 101, 701A, 701B, and 702 as Lessee occupying residence address pursuant to an unrecorded agreement.
- e. Serve: Ken Beadnell, 2531 Old Bainbridge Road, Tallahassee, FL 32303

9. **KELVIN DAVIS**

- a. Name: Kelvin Davis
- b. Residence/Principal Address: 2525 Old Bainbridge Road, Tallahassee, FL 32303
- c. Legal Disabilities: None known
- d. Interest in or claim to Property sought to be acquired: May claim rights to Parcels 101, 701A, 701B, and 702 as Lessee occupying residence address pursuant to an unrecorded agreement.
- e. Serve: Kelvin Davis, 2525 Old Bainbridge Road, Tallahassee, FL 32303

10. GAYLA DAVIS

- a. Name: Gayla Davis
- b. Residence/Principal Address: 2525 Old Bainbridge Road, Tallahassee, FL 32303
- c. Legal Disabilities: None known
- d. Interest in or claim to Property sought to be acquired: May claim rights to Parcels 101, 701A, 701B, and 702 as Lessee occupying residence address pursuant to an unrecorded agreement.
- e. Serve: Gayla Davis, 2525 Old Bainbridge Road, Tallahassee, FL 32303

11. MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. a/k/a MERS, as nominee for Branch Banking and Trust Company

- a. Name: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware corporation
- b. Residence/Principal Address: 1818 Library Street, Suite 300, Reston, VA 20190
- c. Legal Disabilities: None known
- d. Interest in or claim to Property sought to be acquired: May claim a lien interest in Parcels 101, 701A, 701B, and 702 as Mortgagee, acting as nominee for Branch Banking and Trust Company, pursuant to separate Mortgages on four abutting properties recorded at and O.R. Book 4010, Page 1509 (for 2539-2541 Old Bainbridge Road), O.R. Book 3826, Page 127 (for 2535-2537 Old Bainbridge Road), O.R. Book 4010, Page 1321 (for 2531-2533 Old Bainbridge Road), O.R. Book 4010, Page 1292 (for 2525 Old Bainbridge Road), all in the Official Records of Leon County, Florida.
- e. Serve: CT Corporation System, Registered Agent, 1200 South Pine Island Road, Plantation, FL 33324

12. LEON COUNTY TAX COLLECTOR

- a. Name: Doris Maloy, in her official capacity as Leon County Tax Collector
- b. Residence/Principal Address: 1276 Metropolitan Boulevard, Suite 102, Tallahassee, FL 32312
- c. Legal Disabilities: None known
- d. Interest in or claim to Property sought to be acquired: May claim rights in Parcel 103 as a lienor for any outstanding property taxes for Parcel ID 21-15-20-412-000-0.
- e. Serve: Timothy R. Qualls, Esq., Young vanAssenderp, P.A., 215 South Monroe Street, Suite 802, Tallahassee, FL 32301

13. LEON COUNTY PROPERTY APPRAISER

- a. Name: Bert Hartsfield, CFA, in his official capacity as Leon County Property Appraiser
 - b. Residence/Principal Address: 315 South Calhoun Street, Third Floor, Tallahassee, FL 32301
 - c. Legal Disabilities: None known
 - d. Interest in or claim to Property sought to be acquired: May claim an interest in Parcel 103 as Property Appraiser.
 - e. Serve: Terry J. Harmon, Esq., Sniffen & Spellman, P.A., 123 N. Monroe Street, Tallahassee, FL 32301
14. All other unknown persons claiming interests by, through, under, or against the above-named Defendants, and all other persons having or claiming to have any right, title, or interest in Parcels 101, 701A, 701B, or 702 as described in the Petition.

Exhibit 3
Page 6 of 6

- g. Finalize Petition and all Exhibits as first draft for review.
 - h. Once Petition and Exhibits are approved by attorney, finalize the draft for e-filing with the Clerk.
3. DRAFTING LIS PENDENS.
- a. Create Exhibit 1 (list of defendants) using the same information as in Exhibit 3 of the Petition.
 - b. Create Composite Exhibit 2 (description of property) using the same information as in Composite Exhibit 2 of the Petition.

4. DRAFTING DECLARATION OF TAKING.

- a. For the “good faith estimate of value”, use the appraiser’s estimate of full compensation, as shown on the “Certification of Appraiser” page of the most recent appraisal.

(1) Remember: if the date of the O.T. hearing will be more than three months after the date of value in most recent appraisal, the appraiser will need to update the appraisal before he testifies at the O.T. hearing.

5. DRAFT MOTION TO REGULATE SERVICE AND PLEADINGS.

- a. No need for this motion if all parcels are being acquired from only one property.
- b. Motion should include paragraph grouping the defendants with the appropriate parcel for which they will be served after this Motion is granted. Here’s an example from L16-007:

| | |
|---|--|
| IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA | |
| LEON COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, Petitioner, | Case No.: 2016 CA 000568 |
| v. | |
| TANGLEWOOD APARTMENTS OF TALLAHASSEE, LLC, a Florida Limited Liability Company; et al. Defendants | Parcel Nos. 103, 101, 701A, 701B, 702 |

**PETITIONER'S MOTION TO REGULATE
SERVICE OF PLEADINGS AND PAPERS**

COMES NOW, Petitioner, LEON COUNTY, FLORIDA, by and through its undersigned counsel, and moves this honorable Court for an Order pursuant to Fla.R.Civ.P. 1.080(c), regulating service of pleadings and papers in this cause, and states as follows:

1. This eminent domain action involves Petitioner's acquisition of parcels from more than one property. The acquisitions from each property involve substantive issues separate and distinct from each other and, therefore, Defendants having an interest in one parcel are not necessarily affected by the substantive issues of another parcel.

2. Requiring each party to serve every other party with every pleading after the initial pleading and with every Order or Judgment not entered in open court, and with every other paper filed in this action would be unduly burdensome when considering such pleading or paper has no effect on any other party other than those also having interest in that same parcel acquisition.

3. Included in the Petition filed herein is Exhibit 3 which lists the names of each Defendant under the numbered parcel in which they have an interest, as follows:

Parcel 103

TANGLEWOOD APARTMENTS OF TALLAHASSEE, LLC
EMBARQ FLORIDA, INC. d/b/a CenturyLink and f/k/a Southeastern Telephone Company
FEDERAL NATIONAL MORTGAGE ASSOCIATION a/k/a Fannie Mae
LEON COUNTY TAX COLLECTOR
LEON COUNTY PROPERTY APPRAISER

Parcels 101, 701A, 701B, 702

GLEN KEVIN THOMPSON
CYNTHIA DIANE THOMPSON
SHEILA WILLIAMS
EDNA GASQUE
ZACHARY HASTIE
DARBY YOUNG
BARBARA WILLIAMS
KEN BEADNELL
KELVIN DAVIS
GAYLA DAVIS
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. a/k/a MERS, as nominee for Branch Banking and Trust Company
LEON COUNTY TAX COLLECTOR
LEON COUNTY PROPERTY APPRAISER

4. Petitioner requests an Order regulating the service of pleadings and paper normally contemplated by the Rules of Civil Procedure to require the parties herein to serve only those other parties whose interests in this action may be affected by the pleading or paper being served, as may be determined in accordance with the list of Defendants set forth in paragraph 3 above.

WHEREFORE, Petitioner hereby respectfully requests this Court to enter an Order Regulating Service of Pleadings and Papers which require the parties herein to serve only those

other parties whose interests in this action may be affected by the pleading or paper being served, as may be determined in accordance with the list of Defendants set forth in paragraph 3 above.

The undersigned certifies that a true and correct copy hereof has been furnished along with the original service of process of the Summons to Show Cause and Notice of Petition Date to the addressees listed on the attached mailing list.

RESPECTFULLY SUBMITTED, this 9th day of March, 2016.

LEON COUNTY, FLORIDA

By: /s/ Daniel J. Rigo, Esq.
DANIEL J. RIGO, ESQ.
Assistant County Attorney
Florida Bar No. 972797
rigod@leoncountvfl.gov
301 South Monroe Street, Suite 202
Tallahassee, FL 32301
(850) 606-2500

and

/s/ Murray M. Wadsworth, Jr., Esq.
MURRAY M. WADSWORTH, JR., ESQ.
Attorney at Law
Florida Bar No. 54356
murray@mwadsworth.com
241 John Knox Road, Suite 200
Tallahassee, FL 32303
(850) 879-2806

Co-counsel for Petitioner, Leon County, Florida

L16-007

Page 3 of 3

- c. This motion will be served along with the service of process of the Summons, Petition, Lis Pendens, etc., so include the appropriate language in the Certificate of Service as shown in the example.

6. E-FILE SUIT AND GET NAME OF ASSIGNED JUDGE.

- a. The following pleadings will be e-filed to commence the lawsuit:
 - (1) Petition
 - (2) Lis Pendens
 - (3) Declaration of Taking
 - (4) Motion to Regulate Service and Pleadings (if applicable)
- b. The Clerk will charge the County's account for the filing fees, and the amount will ultimately be charged to the public works account number for that project.
- c. As soon as you get the name of the Judge assigned to the case, you need to start coordinating the scheduling of the Order of Taking hearing and begin the preparation of the Summonses.

7. NOTIFY COMMISSIONERS AND STAFF OF COMMENCEMENT OF LAWSUIT (MEMO)

- a. Notify BCC by Memo that this project's unacquired parcels are now involved in litigation or same is imminent, and that all inquiries are to be referred to the County Attorney's Office.
- b. Notify Public Works Project Manager and Right-of-Way Agent of commencement of each suit with suit information, including style, hearing date, and name of Judge.

8. DETERMINE PREFERRED RETURN DATE AND HEARING DATE.

- a. Prior to preparing the Summonses, you must determine the "Return Date" and the "Hearing Date" to be included in the Summons to each defendant.
 - (1) The "Return Date" is the date specified in the Summons to show cause and the published summons provided in §73.031 for the defendants to serve written defenses to the Petition and, if a defendant requests, a hearing on the Petition for Order of Taking.
 - (2) The "Hearing Date" is the date specified in the Summons on which the Petitioner will petition the court for an Order of Taking and must be coordinated with the Judge's judicial assistant, the County's expected witnesses, and, if applicable, any opposing attorneys that may be involved at this point.
- b. **TIME-SENSITIVE PROJECTS: Title to be acquired as soon as legally permissible, but with higher risk of delay.**
 - (1) Assuming the Petition is e-filed and Summonses are issued on Day 1, the earliest permissible date that an Order of Taking hearing can be scheduled is Day 30, based on the following:
 - The Return Date cannot be less than 28 days from the date of the Summons. [see Section 73.031(1), Fla. Stat.].
 - The Hearing Date can be no earlier than one day following the Return Date. [see Section 74.041(3), Fla. Stat.].

- (2) In order for the Order of Taking hearing to take place on Day 30, ***everything*** must proceed exactly as planned, without any unanticipated problems.
- A Notice of Action must be published in the newspaper directed to any out-of-state defendants, any defendants whose names or residences are unknown, and any defendants that cannot be personally served for any other reason.
 - The Notice of Action must be published once a week for two consecutive weeks before the Return Date [see Section 73.031(1), Fla. Stat.], and the first publication must be not less than 20 days prior to the Hearing Date. [see Section 74.041(3), Fla. Stat.].
 - The newspaper typically requires that the Notice of Action be delivered at least three days prior to the publication date.
 - So, no later than Day 7, the Notice of Action must be issued by the Clerk and delivered to the newspaper for publication no later than Day 10.
 - So, no later than Day 7, you need to know which of the defendants the Notice of Action will be directed to, including any known defendants who have been unable to be served personally for any reason.
 - No less than 20 days before the Return Date, all in-state defendants must be served a copy of the Summons, Petition, and Declaration of Taking, in the manner provided by law for service of original process in eminent domain actions. [see Section 73.031(1) and 74.041(1), Fla. Stat.].
 - So, no later than Day 9, all defendants must be served personally or included in the Notice of Action for service by publication.
 - Otherwise, the Order of Taking hearing would have to be re-scheduled to a later date.
 - If, during service of process, a previously unknown party is discovered to have an interest in the property (such as a tenant or a spouse), it would likely require an amendment to the Petition, the issuance of a new Summons, and a possible continuation of the Order of Taking hearing if the new defendant could not be served by Day 9.
 - This is why it is critical to know everything about the ownership interests in the property immediately prior to e-filing the Petition.
- (3) ***PROCEED WITH CAUTION:*** Before proceeding with a proposed Hearing Date on Day 30, the client should be fully advised of the pitfalls that could occur along the way which, in turn, could result in a continuation of the Order of Taking hearing and a delay in the Project:
- c. **PROJECTS NOT TIME-SENSITIVE: More time allowed for acquisition of title with less risk of delay.**
- (1) If the Project schedule will allow for additional time, the Return Date and Hearing Date should be determined with room for error in the event of unanticipated

problems. Typically, the preferred Return Date would be no earlier than Day 50, with the Hearing Date no earlier than 10 days later on Day 60.

- This will allow you to wait until as late as Day 37 to prepare the Notice of Action for issuance by the Clerk and delivery to the newspaper for a first publication on Day 40.
 - This will also allow you until Day 40 to personally serve any in-state defendants who may be out of town or otherwise temporarily unavailable.
 - And, this will also allow you additional time to amend the Petition to add any new defendants discovered during service of process.
- (2) If it is anticipated that the Order of Taking hearing may be contested, you should add an additional numbers of days between the Return Date and the Hearing Date to review and analyze any responsive pleadings and to reply accordingly.

9. OBTAIN HEARING DATE FROM JUDGE.

- a. Once you determine the preferred Hearing Date, obtain several possible Hearing Dates from the Judge's assistant for no earlier than the preferred date as determined above.
- (1) Typically, a one hour hearing will allow sufficient time for an uncontested Order of Taking. If you anticipate or know that the Order of Taking will be contested, request a hearing of at least two hours, or up to one day if you think it might be is needed.
- Remember, it's always better to have more than enough time for the hearing than to risk a delay in the project with a continuance of the hearing.
- (2) Upon obtaining possible hearing dates, confirm availability with any other attorneys involved and with County's consultant witnesses and staff that will be involved.
- (3) Obtain a Court Reporter for the Order of Taking Hearing

10. PREPARE SUMMONSES.

- a. Draft one Summons for each defendant, including unknown defendants.
- b. Use same defendant information and service information as on Exhibit 3 in Petition.
- c. The documents to be served along with the Summons should include the Petition, Lis Pendens, Declaration of Taking, Motion to Regulate Service (if applicable), and Notice of Hearing.

- d. Use the Return Date and the Hearing Date as determined above. Here's an example from L16-007:

IN THE CIRCUIT COURT OF THE SECOND
JUDICIAL CIRCUIT, IN AND FOR LEON
COUNTY, FLORIDA

LEON COUNTY, FLORIDA, a charter county and
political subdivision of the State of Florida,

Petitioner,

Case No.: 2016 CA 000568

v.

TANGLEWOOD APARTMENTS OF
TALLAHASSEE, LLC, a Florida Limited Liability
Company; EMBARQ FLORIDA, INC. d/b/a
CenturyLink and f/k/a Southeastern Telephone
Company, a Florida corporation; FEDERAL
NATIONAL MORTGAGE ASSOCIATION a/k/a
Fannie Mae, a corporation organized and existing
under the laws of the United States of America; LEON
COUNTY TAX COLLECTOR; LEON COUNTY
PROPERTY APPRAISER; et al.

Parcel No. 103

Defendants.

**SUMMONS TO SHOW CAUSE
AND NOTICE OF PETITION DATE**
(Tanglewood Apartments of Tallahassee, LLC)

THE STATE OF FLORIDA:

To All and Singular Sheriffs of the State:

YOU ARE COMMANDED to serve this Summons along with copies of the Notice of Lis Pendens, the Declaration of Taking, the Petition in Eminent Domain, the Petitioner's Motion to Regulate Service of Pleadings and Papers and the Notice of Hearing in this action on:

TANGLEWOOD APARTMENTS OF TALLAHASSEE, LLC
905 Biscayne Boulevard, Suite 1
Deland, FL 32724

Serve Counsel:

Charles S. Stratton, Esq.
Broad and Cassel
215 S. Monroe St., Suite 400
Tallahassee, Florida 32301

This action has been filed to acquire certain property interests in Leon County, Florida.

Each Defendant is required to serve written defenses, if any, to the Petition on:

Murray M. Wadsworth, Jr., Esq.
Attorney at Law
murray@mwadsworth.com

241 John Knox Road, Suite 200
Tallahassee, FL 32303
(850) 879-2806

Attorney for Petitioner, Leon County, Florida

on or before **May 5, 2016**, and to file the original of the defenses with the Clerk of this Court either before service on Petitioner's attorney or immediately thereafter, showing what right, title, interest, or lien Defendant has in or to the property described in the Petition and to show cause why that property should not be taken for the uses and purposes set forth in the Petition. If any Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the Petition.

PLEASE TAKE NOTICE that a Declaration of Taking has been filed in this cause and that Petitioner will apply for an Order of Taking and any other order the Court deems proper before the **Honorable John C. Cooper** one of the judges of this Court, on **Thursday, May 12, 2016**, at **3:00 p.m.**, in chambers at the Leon County Courthouse, **Room 365-B**, 301 South Monroe Street, Tallahassee, Florida 32301. All Defendants in this action may request a hearing at the time and place designated and be heard. Any Defendant failing to file a request for hearing shall waive any right to object to the Order of Taking.

WITNESS my hand and the seal of the Court on March _____, 2016.

BOB INZER
As Clerk of the Circuit Court
and Comptroller

BY: _____
As Deputy Clerk

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Susan Wilson, Office of the Court Administrator, Leon County Courthouse, 301 S. Monroe Street, Room 225, Tallahassee, FL 32301, (850) 577-4401, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days. If you are hearing or voice impaired, call 711.

- e. Summonses for any defendants to be served by constructive service with a publication of a Notice of Action and Certificate of Mailing should include the following additional language in bold just below the defendant's name and address -- serve by publication and mail. Those types of defendants will include:
- (1) Out-of-state defendants (nonresidents of Florida)
 - (2) Defendants with unknown names or addresses
 - (3) Defendants who are unable to be personally served for any other reason
 - (4) Here's an example from L16-007:

| | |
|---|--------------------------|
| IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA | |
| LEON COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, | Case No.: 2016 CA 000568 |
| Petitioner, | |
| v. | |
| TANGLEWOOD APARTMENTS OF TALLAHASSEE, LLC, a Florida Limited Liability Company; EMBARQ FLORIDA, INC. d/b/a CenturyLink and f/k/a Southeastern Telephone Company, a Florida corporation; FEDERAL NATIONAL MORTGAGE ASSOCIATION a/k/a Fannie Mae, a corporation organized and existing under the laws of the United States of America; LEON COUNTY TAX COLLECTOR; LEON COUNTY PROPERTY APPRAISER; et al. | Parcel No. 103 |
| Defendants. | |

**SUMMONS TO SHOW CAUSE
AND NOTICE OF PETITION DATE**
(Federal National Mortgage Association a/k/a Fannie Mae)

THE STATE OF FLORIDA:

To All and Singular Sheriffs of the State:

YOU ARE COMMANDED to serve this Summons along with copies of the Notice of Lis Pendens, the Declaration of Taking, the Petition in Eminent Domain, the Petitioner's Motion to Regulate Service of Pleadings and Papers and the Notice of Hearing in this action on:

FEDERAL NATIONAL MORTGAGE ASSOCIATION a/k/a Fannie Mae
Attention: Legal Resource Center
3900 Wisconsin Avenue, NW
Washington, DC 20016-2892

Serve by publication and mail (out-of-state defendant)

This action has been filed to acquire certain property interests in Leon County, Florida.

Each Defendant is required to serve written defenses, if any, to the Petition on:

Murray M. Wadsworth, Jr., Esq.
Attorney at Law
murray@mwadsworth.com
241 John Knox Road, Suite 200
Tallahassee, FL 32303
(850) 879-2806

Attorney for Petitioner, Leon County, Florida

on or before **May 5, 2016**, and to file the original of the defenses with the Clerk of this Court either before service on Petitioner's attorney or immediately thereafter, showing what right, title, interest, or lien Defendant has in or to the property described in the Petition and to show cause why that property should not be taken for the uses and purposes set forth in the Petition. If any Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the Petition.

PLEASE TAKE NOTICE that a Declaration of Taking has been filed in this cause and that Petitioner will apply for an Order of Taking and any other order the Court deems proper before the **Honorable John C. Cooper** one of the judges of this Court, on **Thursday, May 12, 2016**, at **3:00 p.m.**, in chambers at the Leon County Courthouse, **Room 365-B**, 301 South Monroe Street, Tallahassee, Florida 32301. All Defendants in this action may request a hearing at the time and place designated and be heard. Any Defendant failing to file a request for hearing shall waive any right to object to the Order of Taking.

WITNESS my hand and the seal of the Court on March _____, 2016.

BOB INZER
As Clerk of the Circuit Court
and Comptroller

BY: _____
As Deputy Clerk

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Susan Wilson, Office of the Court Administrator, Leon County Courthouse, 301 S. Monroe Street, Room 225, Tallahassee, FL 32301, (850) 577-4401, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days. If you are hearing or voice impaired, call 711.

L16-007

Page 2 of 2

- f. Deliver completed Summonses (original and a copy) to Clerk for issuance. Clerk will keep copy and return original to you; you will send original and copy with pleadings to be served to process server, keeping a copy for the file.

11. PREPARE NOTICE OF HEARING FOR ORDER OF TAKING.

- a. The Notice of Hearing will be served along with the service of process of the Summons, Petition, Lis Pendens, etc., so include the appropriate language in the Certificate of Service.
- b. E-file the Notice of Hearing with the Clerk.

12. COORDINATE DELIVERY OF SUMMONSES AND PLEADINGS FOR SERVICE OF PROCESS ON ALL KNOWN IN-STATE DEFENDANTS.

- a. For those defendants with attorneys who have agreed to accept service of process for their clients, prepare an Acceptance of Service and Waiver of Process and simply hand-deliver or mail it along with the Summonses and Pleadings package to the attorney.
 - (1) Request the attorney to return the signed Acceptance form to you for later e-filing with the Court along with other returns of service. Here's an example from L16-007:

| | |
|--|--------------------------|
| IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA | |
| LEON COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, | |
| Petitioner, | Case No.: 2016 CA 000568 |
| v. | |
| TANGLEWOOD APARTMENTS OF TALLAHASSEE, LLC, a Florida Limited Liability Company; EMBARQ FLORIDA, INC. d/b/a CenturyLink and f/k/a Southeastern Telephone Company, a Florida corporation; FEDERAL NATIONAL MORTGAGE ASSOCIATION a/k/a Fannie Mae, a corporation organized and existing under the laws of the United States of America; LEON COUNTY TAX COLLECTOR; LEON COUNTY PROPERTY APPRAISER; | Parcel No. 103 |
| Defendants. | |
| <u>ACCEPTANCE OF SERVICE AND WAIVER OF PROCESS</u> | |
| Defendant, TANGLEWOOD APARTMENTS OF TALLAHASSEE, LLC, a Florida Limited Liability Company, through its undersigned counsel, hereby accepts service of the Summons to Show Cause and Notice of Petition Date, along with the Notice of Lis Pendens, Declaration of Taking, Petition in Eminent Domain, Motion to Regulate Service of Pleadings and Papers, and Notice of Hearing filed in the above action. | |
| Defendant acknowledges and agrees that this Acceptance of Service and Waiver of Process shall be considered to satisfy the Petitioner's statutory requirement in Fla. Stat. §§73.031(1) and 74.041(1) to serve a copy of the Summons, the Petition, and the Declaration Taking in the manner provided by law. | |
| DATED this ____ day of March, 2016. | |
| Charles S. Stratton, Esq. Florida Bar No. 0221589 BROAD AND CASSEL 215 S. Monroe, Suite 400 Tallahassee, Florida 32301 (850) 681-6810 | |
| <small>L16-007</small> | |

County Attorney's Office
301 S. Monroe Street, Suite 202
Leon County Courthouse
Tallahassee, Florida 32301
(850) 606-2500

March 18, 2016

VIA HAND DELIVERY

Charles S. Stratton, Esq.
BROAD AND CASSEL
215 S. Monroe, Suite 400
Tallahassee, Florida 32301

RE: Leon County, Florida v. Tanglewood Apartments of Tallahassee, LLC; et al;
Old Bainbridge at Pullen Road Intersection Improvement Project;
Parcel 103 (Tanglewood Apartments of Tallahassee, LLC);
Case No.: 2016 CA 000568

Dear Mr. Stratton:

It is my understanding that you will accept service on behalf of your client Tanglewood Apartments of Tallahassee, LLC. Enclosed is a copy of the Notice of Lis Pendens, Petition in Eminent Domain, Declaration of Taking, Petitioner's Motion to Regulate Service of Pleadings and Papers, and Notice of Hearing along with a Summons to Show Cause and Notice of Petition Date. If you choose to accept service on behalf of your client, please call my legal assistant, Shawn Williams, so she can have the original signed Acceptance picked up and filed with the Court.

If you have any questions, please call the County Attorney's Office.

Sincerely,

COUNTY ATTORNEY'S OFFICE
LEON COUNTY, FLORIDA

Daniel J. Rigo
Assistant County Attorney

DJR/dr

Enclosures

L16-007

- b. For all other in-state defendants, arrange for a process server to personally serve those defendants.
 - (1) Be sure to include an instruction letter to the process server that contains the deadline for service of process. The defendants must be served **NO LATER THAN 20 DAYS BEFORE RETURN DATE**.
 - (2) Be sure the process server understands to inform you of any service problems in time for you to make a determination of whether that defendant should be served

by constructive service by being included in the publication of Notice of Action and Certificate of Mailing.

13. PREPARE AFFIDAVIT SUPPORTING CONSTRUCTIVE SERVICE OF PROCESS, NOTICE OF ACTION FOR PUBLICATION, AND CLERK'S CERTIFICATE OF MAILING.

a. Prepare an Affidavit Supporting Constructive Service of Process per Section 49.031, Fla. Stat.

- (1) For Schedule A of the Affidavit, use the same information as in Exhibit 3 of the Petition.
- (2) The Affidavit will need to be e-filed prior to the Clerk's issuance of the Notice of Action.
- (3) Here's an example of an Affidavit from L16-007:

| | |
|---|--|
| IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA | |
| LEON COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, | |
| Petitioner, | Case No. 2016 CA 000568 |
| v. | |
| TANGLEWOOD APARTMENTS OF TALLAHASSEE, LLC, a Florida Limited Liability Company; et al. | Parcel Nos. 103, 101, 701A, 701B, 702 |
| Defendants | |
| _____ / | |
| <u>AFFIDAVIT SUPPORTING CONSTRUCTIVE SERVICE OF PROCESS</u> | |
| STATE OF FLORIDA COUNTY OF LEON | |
| Before me, the undersigned authority, personally appeared, DANIEL J. RIGO, ESQ. | |
| ("Affiant"), who was duly sworn and says upon oath or affirmation as follows: | |
| 1. That Affiant is Co-counsel for the Petitioner, Leon County, Florida. | |
| 2. That, to the best of Affiant's knowledge and belief, diligent search and inquiry have been made by the Petitioner, through its authorized employees and/or agents, to ascertain the names, addresses, legal disabilities, and interests of the occupants, owners, and lienors of the Property described in Exhibit 2 of the Petition in this matter (the "Property") and which description is hereby incorporated herein by reference. | |
| 3. That the occupants, owners, and lienors of the Property discovered by Petitioner's diligent search and inquiry have been named as Defendants in the Petition. | |
| 4. That the names, addresses, legal disabilities, and interests of the Defendants named in the Petition are set forth in Schedule A attached hereto and incorporated herein, as particularly as | |

is known to Affiant. To the best of Affiant's knowledge and belief, none of the individual Defendants named in this Affidavit is under the age of 18 years.

5. That personal service may be unavailable on some Defendants and there may be unknown parties claiming an interest in the Property by, through, under or against Defendants named in the Petition.

FURTHER AFFIANT SAYETH NOT.

Daniel J. Rigo, Esq.

SWORN To or affirmed and subscribed before me this ____ day of _____, 2016, by
Daniel J. Rigo, Esq., who is personally know to me or has produced _____
as identification.

Notary Public

My Commission Expires:

Page 2 of 2

- b. Prepare the Notice of Action in Eminent Domain and Notice of Hearing for Constructive Service of Process. Wait as long as possible to allow sufficient time for process server to diligently attempt service on all in-state defendants. If any defendants are unable to be located or otherwise served, they need to be included in the publication of Notice of Service.
 - (1) The latest you can hold off on the Clerk's issuance of the Notice of Action is approximately 30 days before the Return Date, in order to allow sufficient time for coordinating the advertisements once a week for two consecutive weeks.

- (2) When determining when to issue the Notice of Action, remember:
 - i. both advertisements must take place before the Return Date [see Section 73.031(2), Fla. Stat.]; and
 - ii. At least one of the advertisements must take place no later than 20 days before the Hearing Date [see Section 74.041(2), Fla. Stat.]
- (3) Prepare an Exhibit A list of defendants to be included in the Notice of Action by revising the Exhibit 3 used in the Petition to remove all in-state defendants served personally through their attorneys or by the process server.
- (4) On the line following each defendant's address, include additional language to denote whether this defendant will be served by publication and mail or just by publication (in those instances when the address is unknown) and whether the defendant is an out-of-state defendant.
- (5) Prepare a Composite Exhibit B parcel legal descriptions by obtaining from the surveyor an electronic Word version of each of the legal descriptions to cut and paste into Exhibit B.
 - i. A sketch of description cannot be used for this because it will need to be published in the newspaper and will not be readable as an image and also increases the cost of the advertisement.
 - ii. Remember to include the term sheet language for any TCE legal description.
 - iii. Also include the property address for the parcel. Although this isn't required by statute, it assists anyone who reads the ad to identify the location of the property.
- (6) Use Return Date and Hearing Date as determined above.

(7) Here's an example, with only the TCE legal description included, from L16-007:

IN THE CIRCUIT COURT OF THE SECOND
JUDICIAL CIRCUIT, IN AND FOR LEON
COUNTY, FLORIDA

LEON COUNTY, FLORIDA, a charter county and
political subdivision of the State of Florida,

Petitioner,

Case No.: 2016 CA 000568

v.

TANGLEWOOD APARTMENTS OF
TALLAHASSEE, LLC, a Florida Limited Liability
Company; EMBARQ FLORIDA, INC. d/b/a
CenturyLink and f/k/a Southeastern Telephone
Company, a Florida corporation; FEDERAL
NATIONAL MORTGAGE ASSOCIATION a/k/a
Fannie Mae, a corporation organized and existing
under the laws of the United States of America;

Parcel No. 103

Defendants

GLEN KEVIN THOMPSON and CYNTHIA DIANE
THOMPSON, husband and wife; SHEILA
WILLIAMS; EDNA GASQUE; ZACHARY HASTIE;
DARBY YOUNG; BARBARA WILLIAMS; KEN
BEADNELL; KELVIN DAVIS; GAYLA DAVIS;
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC. a/k/a MERS, a Delaware corporation,
as nominee for Branch Banking and Trust Company;

Parcel Nos. 101, 701A, 701B, 702

Defendants

LEON COUNTY TAX COLLECTOR; LEON
COUNTY PROPERTY APPRAISER;

As to All Parcels

Defendants.

NOTICE OF ACTION IN EMINENT DOMAIN AND
NOTICE OF HEARING FOR CONSTRUCTIVE SERVICE OF PROCESS

To: All Defendants named in Exhibit A, attached; all parties claiming interests by, through, under,
or against the named Defendants; and all parties having or claiming to have any right, title, or
interest in the property described in Composite Exhibit B.

A Petition in Eminent Domain has been filed to acquire certain property interests in Leon
County, Florida.

Each Defendant is required to serve written defenses, if any, to the Petition on:

Murray M. Wadsworth, Jr., Esq.
Attorney at Law
murray@mwadsworth.com
241 John Knox Road, Suite 200
Tallahassee, Florida 32303
(850) 879-2806
Attorney for Petitioner, Leon County, Florida

on or before **May 5, 2016**, and to file the original of the defenses with the Clerk of this Court either before service on the Petitioner's attorney or immediately thereafter, showing what right, title, interest, or lien Defendant has in or to the property described in the Petition, and to show cause why that property should not be taken for the uses and purposes set forth in the Petition. If any Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the Petition.

PLEASE TAKE NOTICE that a Declaration of Taking has been filed in this cause and that Petitioner will apply for an Order of Taking and any other order the Court deems proper before the **Honorable John C. Cooper**, one of the judges of this Court, on **Thursday, May 12, 2016 at 3:00 p.m.**, in chambers at the Leon County Courthouse, **Room 365-B**, 301 S. Monroe Street, Tallahassee, Florida. All Defendants in this action may request a hearing at the time and place designated and be heard. Any Defendant failing to file a request for hearing shall waive any right to object to the Order of Taking.

WITNESS my hand and the seal of the Court on April _____, 2016.

BOB INZER
As Clerk of the Circuit Court
and Comptroller, Leon County

BY: _____
As Deputy Clerk

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Susan Wilson, Office of the Court Administrator, Leon County Courthouse, 301 S. Monroe Street, Room 225, Tallahassee, FL 32301, (850) 577-4401, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days. If you are hearing or voice impaired, call 711.

Advertised on:

April 17, 2016
April 24, 2016

L16-007

EXHIBIT A

OUT-OF-STATE DEFENDANTS:

FEDERAL NATIONAL MORTGAGE ASSOCIATION a/k/a Fannie Mae
Attention: Legal Resource Center
3900 Wisconsin Avenue, NW
Washington, DC 20016-2892

LEGAL DESCRIPTION PARCEL 701A

Old Bainbridge At Pullen Road Intersection Improvement Project

Temporary Construction Easement

(south side of Pullen Road just east of Old Bainbridge Road)

Property Address: 2541/2539 Old Bainbridge Road

COMMENCE AT A CONCRETE MONUMENT (FOUND, 4"X4", NO CAP) MARKING THE NORTHEAST CORNER OF SECTION 22, TOWNSHIP 1 NORTH RANGE 1 WEST, LEON COUNTY, FLORIDA S 89°51'39" W 793.30 FEET ALONG THE SOUTH MONUMENTED RIGHT OF WAY LINE OF PULLEN ROAD; THENCE RUN N 00°07'42" E, A DISTANCE OF 7.03 FEET TO THE MAINTAINED RIGHT OF WAY LINE OF PULLEN ROAD AND THE POINT OF BEGINNING; FROM SAID POINT OF BEGINNING RUN S 00°07'42" W A DISTANCE OF 5.59 FEET; THENCE RUN N 89°52'18" W, A DISTANCE OF 35.28 FEET; THENCE RUN N 00°07'42" W, A DISTANCE OF 5.59 FEET; THENCE RUN N 89°52'18" E, A DISTANCE OF 35.28 FEET TO THE POINT OF BEGINNING. CONTAINING 197 SQ. FT. ±.

A Temporary Construction Easement ("TCE") over the parcel of land described herein for the purpose of facilitating the harmonization of the subject property's driveway connection(s) to Pullen Road as a part of Leon County's Old Bainbridge at Pullen Road Intersection Improvement Project ("Project"), limited to the uses as follows, to wit:

- (a) Leon County and its contractors shall have the right to ingress, egress and use the above described lands to perform all work necessary for the purpose of tying in and harmonizing the remainder property and the improvements thereon to the improvements to be constructed in connection with the Project, including without limitation sloping, grading, clearing, grubbing, storage of materials and equipment, excavation, and restoration, subject to subparagraph (d), below;
- (b) Following completion of construction, Leon County and/or its contractors shall remove its materials and equipment associated with said activities, and shall restore, repair or replace any pre-existing asphalt, curbing, and/or sod within the TCE area disturbed by such activities. Pre-existing sod or landscaping, if any, within the TCE disturbed by the construction shall be replaced with sod or plants of such comparable species and size, as are readily available;
- (c) Leon County and/or its contractors shall have the right to operate vehicles and equipment within the TCE area and to use said easement to park said vehicles and equipment and store materials, subject to subparagraph (d), below;
- (d) The TCE shall be non-exclusive and Leon County and/or its contractor's use and enjoyment of the rights granted herein shall not interfere with reasonable vehicular or pedestrian access to the remaining property over the TCE area;
- (e) The TCE shall expire upon the final completion of the construction of the Project, but in no event later than three years from the date on which Leon County acquires title to the TCE.

- (8) Upon the Clerk's issuance of the Notice of Action, you must coordinate the advertisement of the Notice of Action in the Tallahassee Democrat once per week for two consecutive weeks.
 - i. Even though the statute implies that the Clerk is responsible for the advertisement, the Clerk will typically require the attorney's office to handle it.
 - ii. When determining when to advertise the Notice of Action, remember:
 - o both advertisements must take place before the Return Date [see Section 73.031(2), Fla. Stat.]; and
 - o At least one of the advertisements must take place no later than 20 days before the Hearing Date [see Section 74.041(2), Fla. Stat.]
- (9) Prepare the Certificate of Mailing for the Clerk.
 - i. The Certificate of Mailing should include the list of all defendants with known addresses included in the Notice of Action. Although §73.031 requires mailings to only out-of-state defendants, in an abundance of caution, any other defendants with known addresses should be included also. [see Section 49.12, Fla. Stat.].
 - ii. The Clerk's mailing to each of such defendants needs to include the Summons, Petition, Lis Pendens, Declaration of Taking, Motion to Regulate (if applicable), Notice of Hearing, and Notice of Filing Affidavit Supporting Constructive Service of Process.
 - iii. Prepare envelopes, addressed and with postage, for the Clerk to use for mailings and deliver them, along with the Summonses and pleadings, as a package to the Clerk.

iv. Here's an example from L16-007:

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| IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA | |
| LEON COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, | Case No. 2016 CA 000568 |
| Petitioner, | |
| v. | |
| TANGLEWOOD APARTMENTS OF TALLAHASSEE, LLC, a Florida Limited Liability Company; et al. | Parcel Nos. 103, 101, 701A, 701B, 702 |
| Defendants | |

CLERK'S CERTIFICATE OF MAILING

I, BOB INZER, Clerk of the above-mentioned Court, do hereby certify that, pursuant to Sections 73.031(2) and 74.041(2), Florida Statutes, I have mailed on this date, by regular U.S. Mail, a copy of the Summons To Show Cause and Notice Of Petition Date, Notice Of Lis Pendens, Declaration Of Taking, Petition In Eminent Domain, Petitioner's Motion To Regulate Service Of Pleadings and Papers, Notice Of Hearing, and Notice of Filing Affidavit Supporting Constructive Service of Process to the following entity:

FEDERAL NATIONAL MORTGAGE ASSOCIATION a/k/a Fannie Mae
Attention: Legal Resource Center
3900 Wisconsin Avenue, NW
Washington, DC 20016-2892

GIVEN under my hand and seal on this ____ day of April, 2016.

BOB INZER

CLERK OF THE CIRCUIT COURT
AND COMPTROLLER, LEON COUNTY

By: _____
Deputy Clerk

L16-007

- (10) Obtain copies from the Clerk of the Certificates of Mailing for each defendant that was mailed a package.
- (11) Obtain Tallahassee Democrat's **"Proof of Publication" (Affidavit)** of the advertisement(s) of Notice of Action. (This must be e-filed with the Clerk of Court)
** This document is generated by TDO then sent to Purchasing. **CALL** Purchasing ASAP after the add is published to obtain a copy of the Proof of Publication to e-file with the Court.

14. CONFIRM THAT SUIT FILE IS READY FOR ORDER OF TAKING HEARING.

- a. Include copies of all first written offer letters and any notice letters to business owners, along with proof of receipt by for each letter.
- b. Include a copy of notification letter to D.E.P.
- c. Include all pleadings e-filed by County at commencement of suit.
- d. Include all responsive pleadings e-filed by any defendants.
- e. Include all County pleadings e-filed subsequent to commencement of suit.
- f. Include all discovery received and sent.
- g. Include all Affidavits of Service from Process Server to confirm personal service.
- h. Include the Tallahassee Democrat's proof of publication of the advertisement(s) of Notice of Action.
- i. Include all Certificates of Mailing by the Clerk.
- j. Obtain original certified copy of the Resolution, giving authority for taking.
- k. Obtain most current set of the following for entering into evidence at the O.T. Hearing:
 - (1) Full set of Right-of-Way Plans.
 - (2) Full set of Construction Plans.
- l. Prepare proposed Order Regulating Service and Pleadings for entry at Order of Taking Hearing. Use the same format as in Motion grouping defendants with appropriate parcels.
- m. Prepare a proposed Order of Taking for review by opposing counsel.
 - (1) For the Exhibit "A" legal descriptions, use the Composite Exhibit "C" from the Petition.
 - (2) For the "good faith estimate of value", use the appraiser's estimate of full compensation, as shown on the "Certification of Appraiser" page of the most recent appraisal to be testified to by the appraiser at the O.T. hearing.
 - (3) **MAKE SURE THE ORDER OF TAKING INCLUDES LANGUAGE REQUIRING THE CLERK TO RECORD THE ORDER IN THE OFFICIAL RECORDS --** pursuant to Fla. Stat. §28.29 – as of October 2007, the Clerk no longer automatically records Orders of Taking as they have in the past.
 - (4) Request the opposing counsel to review the form of the proposed Order of Taking.
 - (5) Once agreed as to content/form, check with Judge's J.A. to confirm that the Order will be e-filed by Judge after entry, and make sure any copies are then e-mailed or mailed, if non-attorney with no known email address, to defendants not registered in the e-portal.