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Melissa J. Knight, Esquire
[REDACTED]

February 21, 2019

VIA EMAIL ONLY ([REDACTED])

Mr. David C. Jordan, Esquire
David C. Jordan, PLLC
P.O. Box 1568
Land O' Lakes, FL 34639

Re: Proper Operation and Maintenance of Surface Water Management System
SWFWMD Environmental Resource Permit No.: 44020082.013
Project Name: Worthington (f/k/a Panther Trace Ph 2 Townhomes, Village 6)

Dear Mr. Jordan:

As you know, our office represents the Worthington Community Association, Inc. (the "Association") related to the proper operation and maintenance of the surface water management system or drainage system within the Worthington community pursuant to that Southwest Florida Water Management District ("SWFWMD") Environmental Resource Permit ("ERP") No. 44020082.013 (the "Permit"). We are in receipt of your correspondence dated January 3, 2019 concerning certain activities and improvements—namely construction of a swimming pool—on your client's property located at 12319 Holmwood Greens Place, Riverview, FL 33579 (the "Property"). Such construction damaged a corrugated 12" HDPE drainage pipe located on the Property that is part of the master drainage collection and conveyance system located within the Worthington subdivision. Accordingly, your correspondence requested assistance from the Association and the CDD to take corrective measures to repair, replace, or even reroute the damaged pipe on the Property. The Association's position follows below.

Short Answer:

Because the Panther Trace II Community Development District ("CDD") is the responsible operation and maintenance entity for the Permit and such operation and maintenance responsibility includes all stormwater related infrastructure located within the Worthington subdivision—including the large drainage pipe on your client's Property—the CDD, not the Association, is the responsible party to ensure that the subject pipe will be repaired, replaced or rerouted and that the entire surface water management system will be operated and maintained in compliance with Florida Statutes and Administrative Code and the conditions of the Permit. Should the CDD shirk its responsibilities and



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refuse to take or facilitate corrective action immediately, proper operation and maintenance of the master drainage system may be jeopardized.¹

Discussion:

Regrettably, the CDD has taken the position that the Association is the proper entity to operate and maintain the drain on your client's Property. The basis for this stance is that the subject drain pipe is not part of the master surface water management system located throughout the Worthington subdivision, but, rather, simply a yard drain connected to your client's lot. Specifically, the CDD cites Section 11.6, entitled "Yard Drains," of the Declaration for Worthington (the "Declaration") and argues such governing provision requires the Association to operate and maintain the subject drain pipe based on an express grant of easement in favor of the Association over and across the Property for reasonable and necessary maintenance of yard drains. This narrow interpretation of the Declaration is completely misplaced and needlessly renders the rest of the governing provisions concerning the master surface water management and drainage systems—including, but not limited to, Section 11.9, entitled "Surface Water Management System," Section 14.12 "Drainage System," Section 17.10, entitled "Drainage"—wholly meaningless. The Declaration, like a contract, must be read as a whole and all provisions concerning drainage must be interpreted together.

Accordingly, the Association absolutely rejects the CDD's misguided interpretation and steadfastly points out that the CDD is the established operation and maintenance entity responsible for correcting the unfortunate situation at your client's Property. Simply put, the subject drainage pipe is not a yard drain (typically, a small 4" pipe that an owner ties into a main drainage system to drain water away from her home). The damaged pipe is clearly a larger component (12" to 14" HDPE corrugated drainage pipe) of the designed and permitted collection and conveyance system for surface and stormwater management in the Worthington subdivision. The subject pipe is demonstrated on the as-built street and master drainage plans, which were inspected and approved by SWFWMD when the Permit transferred to the operation phase following the CDD's express, written agreement to accept system operation and maintenance responsibility on June 6, 2007.

Furthermore, SWFWMD regulatory staff and legal counsel also confirmed that SWFWMD has no information from the CDD or another entity otherwise that the drainage system is not as it was permitted or that it was altered in any way. Rather, the drainage system has remained unchanged as designed and permitted and has been consistently operated and maintained by the CDD since the

¹As required by Specific Condition No. 12 of the Permit, the CDD must submit an inspection report, including the SWFWMD "Statement of Inspection for Proper Operation and Maintenance" form certified by a Florida registered Professional Engineer, verifying that the entire surface water management system is properly operated and maintained. Such inspection report is due by March 11, 2019.



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effective date of operation authorization by SWFWMD on August 23, 2007. Thus, any reference to this stormwater pipe as a yard drain is entirely misplaced, and ascribing maintenance responsibility to the Association thereby is completely erroneous.

Moreover, the CDD cannot unilaterally transfer the permit nor such responsibility to the Association as the Association neither has ownership or control over the Permit area nor responsibility to maintain the permitted stormwater management systems. Pursuant to the Declaration Section 11.9.1, entitled “Duty to Maintain,” the surface water management system within Worthington will be maintained and operated by the “Association or the District [CDD] as permitted by SWFWMD.” The CDD is and always has been the permitted operation and maintenance entity, and Sections 17.8 through 17.12 of the Declaration are further evidence of that fact by granting blanket easements and necessary control over the entire Worthington subdivision to the CDD into perpetuity.

Likewise, the express, written terms of the dedications and declarations on both the face of the old plat (Panther Trace Phase 2 Townhomes, as recorded in Plat Book 112, Pages 5-18 in the Public Records of Hillsborough County, Florida) and the replat for Worthington (Worthington, as recorded in Plat Book 119, Pages 11-20 in the Public Records of Hillsborough County, Florida) evince a settled purpose to dedicate and reserve responsibility for the construction and maintenance of CDD facilities related to drainage, surface water management systems, and utilities to the CDD. This includes reservation of both fee simple interests in drainage tracts and drainage areas and perpetual, non-exclusive drainage easements in favor of the CDD. Contrariwise, the only operation and maintenance responsibilities dedicated to the Association via the replat were roadways, potable water, waste water and sewer systems, not drainage systems. The Association also wishes to draw attention to certain deeds of conveyance evidencing the transfer of drainage tracts and areas to the CDD—to wit, that Special Warranty Deed dated April 20, 2007 as recorded at Book 17706, Page 926 in the Public Records of Hillsborough County, Florida and that Quitclaim Deed as recorded at Book 20861, Page 1728 in the Public Records of Hillsborough County, Florida.

Finally, the Association has not contractually agreed to accept any operation or maintenance responsibilities via a separate maintenance agreement with the CDD. Thus, the CDD has no authority (neither legal nor regulatory) to transfer unilaterally the permit to the Association, and the Association will not agree to accept such transfer of responsibility.

Conclusion:

Based on the provisions of the Declaration, the plat and Worthington replat, various deeds of conveyance, and the operation of the SWFWMD Permit itself, the CDD is the settled operation and maintenance entity responsible for the drainage pipe correction on your client’s Property. Following the receipt of your January 3, 2019 correspondence, your client submitted a revised pool construction application to the Association that reconfigured the pool shape and size to facilitate the



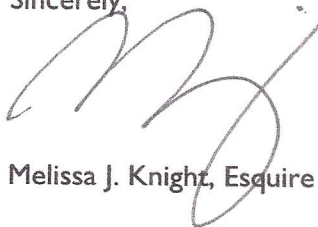
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repair and replacement of the subject drainage pipe, as opposed to rerouting or reconfiguring the drainage pipe. The Association promptly reviewed and approved the revised application on February 15, 2019. This solution is the preferred solution of SWFWMD regulatory staff and the Association, as it is the simplest and quickest path to resolution to avoid potential structural damage and additional water quantity impacts to adjacent lots and properties. Moreover, this option does not require a formal application or Permit modification (nor the CDD's willingness to be a co-permittee on the Permit modification). Thus, the Association considers this matter on the Property resolved.

Despite resolution of the instant matter, the Association maintains its position that the CDD, not the Association, is the responsible operation and maintenance entity for the Permit, and such responsibility includes all stormwater related infrastructure and works located within the Worthington community, the performance of any necessary maintenance procedures or remedial actions to ensure the proper operation and maintenance of the entire surface water management system, and all such associated costs for operation and maintenance of the system.

Should you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Sincerely,



Melissa J. Knight, Esquire

Cc: Panther Trace II Community Development District C/o Kristen M. Schalter, Esquire
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Cc: Southwest Florida Water Management District C/o Hillary A. Ryan, Esquire
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Cc: Worthington Community Association, Inc. C/o Jeana Wynja, LCAM
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