

# Hopping Green & Sams

Attorneys and Counselors

## MEMORANDUM

To: Board of Supervisors  
Lakeside Plantation Community Development District

From: Michael C. Eckert

Date: October 17, 2016

Re: Routine Maintenance Responsibilities of the Trees within the Rights-of Way owned by the Lakeside Plantation Community Development District (“District”)

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This memorandum provides an analysis of the routine maintenance responsibilities for the trees within the rights-of-way owned by the District (“ROW”). The conclusions below were reached after reviewing the District’s Engineer’s Report, recorded plats, the Master Declaration of Protective Covenants, Conditions and Restriction for Lakeside Plantation (the “Master Declaration of Covenants”) and each neighborhood’s Declaration of Covenants, Conditions and Restrictions. In summary and as set forth below, the routine maintenance responsibility for the vast majority of trees in the ROW currently falls on either the homeowner or the individual neighborhood association.

### ***Engineer’s Report***

When the District was created and the issuance of Bonds was contemplated, the District commissioned the preparation of the Engineering Report dated February 1, 1999 as revised on October 19, 1999 (“Engineer’s Report”). The purpose of the Engineer’s Report was to set forth what infrastructure the District would fund, and consequently own and maintain. Page 2 and Exhibit B of the Engineer’s Report indicates that the collector roadways within the individual neighborhoods will be constructed, owned and maintained by the District.

### ***Recorded Plats***

There are numerous, recorded plats for the various neighborhoods within the District. Each of the recorded plats indicates that the collector roadways within the individual neighborhoods are dedicated to the District. As a result of such dedication, the District owns the entire right-of-way in the various neighborhoods, not just the asphalt surface. In many cases, the ROW includes sidewalks, trees and landscaping. Because the District is an owner of the ROW, the District has the right to trim and/or remove any tree in the ROW. In addition, our advice is that the District should trim or remove any tree in the ROW if the tree is defective and consequently threatens the health or safety of the public. However, as explained further below, the responsibility to perform routine maintenance on trees in the ROW has largely been imposed on persons and entities other than the District.

## ***Master Declaration of Protective Covenants, Conditions and Restriction for Lakeside Plantation***

We are aware that the enforceability of the Master Declaration of Covenants by a Master Association has been called into question. We are not the lawyers for the HOA. However, covenants and deed restrictions are in the nature of contract and all homeowners generally owe a duty to each other to comply with the Master Declaration of Covenants regardless of whether a Master HOA exists or has enforcement power. Under the Master Declaration of Covenants, the homeowner is assigned responsibility for maintaining the landscaping on their lot including the landscaping between the sidewalk and the curb.<sup>1</sup> Therefore, the homeowner has the responsibility for routine tree maintenance in the ROW between their lots and the roadway curb according to the Master Declaration of Covenants. It is next necessary to see if the homeowner's responsibility for routine maintenance of the trees in the ROW between their lots and the roadway curb has been usurped by neighborhood-specific covenants and restrictions.

### ***Towns Neighborhood***

- The Towns POA is responsible for all landscaping care and grounds maintenance (that is not within an enclosed area of a lot).<sup>2</sup>
- Therefore, the Towns POA has assumed responsibility for routine tree maintenance in the ROW.

### ***Villas at Lakeside Plantation Neighborhood***

- The Villas POA is responsible for landscaping and road maintenance required by the city of North Port, Florida ("City").<sup>3</sup>
- It is assumed that the landscaping installed in the ROW was required by the development approvals issued by the City as is typically the case.
- The Villas Covenants also provide that the homeowner is responsible for the maintenance of their front yard to the edge of the roadway asphalt.<sup>4</sup> This is consistent with the Master Declaration of Covenants.
- Therefore, the Villas POA is responsible for the routine tree maintenance in the ROW and the homeowner is also responsible for routine tree maintenance in their front yard to the edge of the roadway pavement.

### ***Village Neighborhood***

- The Village POA is responsible for all landscape maintenance for each lot, in Common Areas and along the boundary between any lot and Common Area.<sup>5</sup>

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<sup>1</sup> Art. 8 § 8.02 of the Master Declaration of Protective Covenants, Conditions and Restriction for Lakeside Plantation recorded October 13, 1999.

<sup>2</sup> Art. II § 11(a) of the Declaration of Covenants, Conditions and Restrictions of Towns at Lakeside recorded October 8, 2004.

<sup>3</sup> Art. 1 § 1.11 of the Declaration of Covenants, Conditions and Restrictions for the Villas at Lakeside recorded December 14, 2001, as amended on May 21, 2010.

<sup>4</sup> *Id.* at Art. 10 § 10.01(y).

- It is unclear whether the ROW constitutes Common Area under the Village POA Declaration of Covenants.
- If the ROW constitutes Common Area, then the Village POA is responsible for routine tree maintenance in the ROW.
- If the ROW is not considered Common Area, the Village POA would only be responsible for routine tree maintenance in the ROW if the ROW is located between a lot and Common Area.
- If the ROW is not Common Area and the ROW is also not located between a lot and Common Area, the homeowner remains responsible for routine tree maintenance in the ROW between their lot and the roadway curb under the Master Declaration of Covenants.
- If the ROW is not Common Area and the tree in question is not in an area between a lot and a Common Area, and also not in area between a lot and the roadway curb, the District is responsible for routine tree maintenance. Because the District's responsibility would involve very few trees, if any, it would be most efficient for the Village POA to agree to perform this routine tree maintenance.

### *Carriage Homes Neighborhood*

- The Carriage Homes POA's responsibility regarding tree maintenance and removal is unclear.
- One section of the Amended and Restated Declaration of Covenants, Restrictions and Easements for the Carriage Homes of Lakeside Plantation (the "Carriage Homes Covenants") requires the POA to be responsible for all landscaping care and maintenance for each lot and for Common Areas and Buffer Areas.<sup>6</sup> The ROW does not appear to fall within the definition of Common Areas. It is unclear whether all or a portion of the ROW is included within the definition of Buffer Areas.
- Another section seems to indicate that the Carriage Homes POA is not automatically undertaking routine maintenance of trees within the ROW.<sup>7</sup>
- A third section in the Carriage Homes Covenants provides that the Carriage Homes POA has the right to carry out routine tree maintenance if it so chooses.<sup>8</sup>
- Consequently, the Carriage Homes POA may be responsible for routine tree maintenance in the ROW.
- If the ROW is not considered a Buffer Area, and if the Carriage Homes POA has not exercised their right to provide routine tree maintenance in the ROW, the homeowner is responsible for routine tree maintenance in the ROW between their lot and the roadway curb according to the Master Declaration of Covenants.
- If the ROW is not considered a Buffer Area, and if the Carriage Homes POA has not exercised their right to provide routine tree maintenance in the ROW, and if the tree in question is not in an area between a lot and the roadway curb, the District is responsible for routine tree maintenance. Because the District's responsibility would involve very

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<sup>5</sup> Art. V § 2(a)(viii) of the Declaration of Covenants, Conditions and Restrictions of Lakeside Plantation Village recorded April 24, 2003, as amended on February 16, 2007.

<sup>6</sup> Art. V § 5.1(d) and (g) of the Amended and Restated Declaration of Covenants, Restrictions and Easements for the Carriage Homes of Lakeside Plantation recorded April 19, 2016.

<sup>7</sup> *Id.* at Art. V § 5.1(h).

<sup>8</sup> *Id.* at Art. V § 5.3(g).

few trees, if any, it would be most efficient for the Carriage Homes POA to agree to perform this routine tree maintenance.

If you have any questions, please feel free to contact me.