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IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

LARUE AND LORI ELLIS,
Husband and wife,

Plaintiffs,

v. CASE NO:
DIVISION:

THE CITY OF JACKSONVILLE, FLORIDA,
ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT,
CDM SMITH INC., PITMAN-
HARTENSTEIN & ASSOCIATES, INC.
ENGINEERS, HNTB CORPORATION,
BOWEN CIVIL ENGINEER, INC.,
THE GIBBS GROUP, PLLC,
ROBERT ALDERMAN,
CHANTAL BOWEN, SHELDON GIBBS
and THOMAS NICHOLS,

Defendants.
_____/

COMPLAINT

Plaintiffs, LaRue C. Ellis and Lori W. Ellis, sue Defendants, City of Jacksonville, Florida, a municipal corporation, St. Johns River Management District, CDM Smith, Inc., Pitman-Hartenstein & Associates, Inc. Engineers HNTB Corporation, Bowen Civil Engineer, Inc., The Gibbs Group, PLLC, Robert Alderman, Chantal Bowen, Sheldon Gibbs and Thomas Nichols, and say:

GENERAL ALLEGATIONS

The Parties

1. Plaintiffs are the owners of certain real property located at 2194 San Pablo Road South, Jacksonville in Duval County, Florida, more particularly described on the attached

Exhibit "A" (the "Property") which property is the site of their home, now under construction.

2. Defendant, City of Jacksonville, Florida (the "City"), is a municipal corporation established and existing under the Laws and a Charter of the State of Florida, which owns the real property more particularly described as: that portion of a drainage outfall, commonly known as the Sandalwood Canal, lying between the easterly right-of-way line of Hodges Boulevard and the easterly right-of-way of San Pablo road. The canal exists in a City right-of-way from Hodges Boulevard to a point East of Osprey Point drive West where it enters various easements as it meanders to San Pablo road.

3. Defendant, St. Johns River Water Management District ("SJRWMD") is a water management district for the State of Florida.

4. Defendant, CDM Smith, Inc. f/k/a Camp Dresser & McKee, Inc. ("CDM") is a foreign corporation registered and authorized to do business in the State of Florida.

5. Defendant, Pitman-Hartenstein & Associates, Inc. Engineers ("Pitman") is a Florida corporation who does business in the State of Florida.

6. Defendant, HNTB Corporation ("HNTB") is a foreign corporation registered and authorized to do business in the State of Florida.

7. Defendant, Bowen Civil Engineering, Inc. ("Bowen Engineer") is a Florida corporation with its principal location of business in Duval County, Florida.

8. Defendant, The Gibbs Group, PLLC ("Gibbs Group") is a Florida limited liability company with its principal location of business in Duval County, Florida.

9. Defendant, Robert Alderman, P.E. ("Alderman") is an individual who was employed by HNTB and performed services at issue in this matter in Duval County, Florida.

10. Defendant, Chantal Bowen, P.E. ("Bowen") is an individual who was employed

by Bowen Engineer and performed services at issue in this matter in Duval County, Florida.

11. Defendant, Sheldon Gibbs, P.E. ("Gibbs") is an individual who was employed by the Gibbs Group and performed services at issue in this matter in Duval County, Florida.

12. Defendant, Thomas Nichols, P.E. is an individual who was employed by CDM and performed services at issue in this matter in Duval County, Florida.

13. Venue is appropriate in Duval County, Florida as all of the actions complained of herein took place in Duval County, Florida.

The Property

14. Plaintiffs acquired the Property, which is the subject matter of this lawsuit, to build their home and domicile in 1997.

15. The Property is located adjacent to and north of Hogpen Creek, on the west side of San Pablo Road. Approximately 1.51 acres of the 2.95 acre Property is defined as a saltwater marsh.

16. At the time Plaintiffs acquired their Property, they possessed and used the following rights:

a. To be free from trespass.

b. To quiet enjoyment.

c. To livability, in that their home would function for its purpose, being a residence.

The Improvements

17. The Sandalwood Canal is a man-made storm water conveyance ditch that was constructed sometime in the 1950s to provide drainage for upstream development and on property owned by the City.

18. At the time Plaintiffs acquired the Property, the City owned and operated the Sandalwood Canal, which transported surface water from upstream development through an open outfall into the Hogpen Creek marsh.

19. From the outfall at the Hogpen Creek marsh, the Sandalwood Canal takes a meandering path through the marsh and crosses the Property before joining with Hogpen Creek just west of San Pablo Road.

20. On information and belief, from 2007-2011, the City undertook improvements to a 2,100 lineal feet section of the Sandalwood Canal and concurrently widened Hodges Boulevard between Beach Boulevard and Atlantic Boulevard (collectively the "Improvements").

21. At a time presently unknown, additional improvements may have been made to Kernan Blvd.

22. Defendant CDM was retained by the City as the professional consultant for those Improvements and CDM retained Pittman as its subconsultant for the Improvements. Nichols was the Professional Engineer of record for CDM.

23. HNTB Company, by and through Alderman, acted as the Professional Engineer of record for the road improvements.

24. Bowen Engineer, by and through Bowen, acted as the Professional Engineer of record to obtain the canal permit.

25. The Gibbs Group, by and through Gibbs, acted as the Professional Engineer of record for value engineering done on the canal project.

26. The Improvements increased the flow capacity and velocity into the Sandalwood Canal, which flow is exacerbated by the value engineering that revised the designs so that only three of the original four canal weirs were constructed. Additionally, it is believed that at least

one, and possibly more, of the weirs is not performing as designed.

27. Furthermore, the Improvements resulted in the direct discharge of storm water from the southern section of the Hodges Blvd. alignment, from Beach Boulevard into the Sandalwood Canal. Previously, that storm water had drained into roadside swales/ditches, which allowed for storage, percolation and attenuation of storm water. The Improvements, therefore, diverted surface water from Hodges Blvd. into the Sandalwood Canal, which also increased the downstream discharge volume and flow velocity onto the Property.

28. In 2011, Plaintiffs had a sheet pile retaining wall installed above the safe upland lien elevation of 2.7 ft. NGVD in order to prevent erosion around the foundation of the proposed home so as to comply with the Florida Building Code slope requirements. See Exhibit "B."

29. In May 2012, due to continuing erosion from the diverted surface water from the improvements, a segment of the retaining wall was undermined and ultimately collapsed. See Exhibit "C."

30. Further, in May 2012, the diverted surface water resulted in the erosion and loss of significant portions of the stream bank adjacent to the upland portion of the Property and also to the shoreline of Plaintiffs' island within the channel on the Property.

31. Due to this substantial erosion, on or about July 2014, Plaintiffs commissioned an engineering report to determine its cause.

32. On or about July 2014, Plaintiffs were informed that the erosion was due to the diverted surface waters created by the Improvements.

33. Plaintiffs have provided proper notice of this action to the City and SJRWMD in accordance with Section 768.28, Florida Statutes and Section 112.201 et seq. Jacksonville Municipal Code to the City and to the Department of Financial Services, Division of Risk

Management.

34. Plaintiffs have complied with all conditions precedent or the Defendants have waived the same.

COUNT I
(Trespass By The City)

35. Paragraphs 1-34 are realleged and incorporated herein by reference.

36. Plaintiffs are in lawful possession of their Property which is being eroded continuously due to the City's improper diversion of surface water.

37. The City has intentionally or negligently caused surface water to be diverted from Hodges Boulevard to enter and remain on the lands of Plaintiffs.

38. The Plaintiffs have not licensed or authorized the City to do so.

39. By unlawfully causing surface water to be diverted onto Plaintiffs property, the City is continuously trespassing and encroaching upon Plaintiffs' Property and is wrongfully interfering with and disturbing the rightful possession, use and enjoyment of the Property by Plaintiffs.

40. The City is and has previously been aware that the diversion of surface water is damaging Plaintiffs' property.

41. Plaintiffs are entitled to damages for the City's trespass and unlawful encroachment upon Plaintiffs' property and for the City's wrongful interference with Plaintiffs' right to use and enjoy their property.

42. In addition, the Plaintiffs have suffered damages and will suffer future damages in excess of $15,000.00 for the loss of their retaining wall, island and the costs of installing a bulkhead to prevent further erosion and damage to their property, including the fact that they cannot continue building their house on the Property under the current circumstances.

WHEREFORE, Plaintiffs demand judgment against the City for compensatory damages, pre and post judgment interest, costs and any such further relief the Court deems appropriate.

COUNT II
(Private Nuisance Against The City)

43. Paragraphs 1-34 are realleged and incorporated herein by reference.

44. The City authorized, funded, constructed and operated a surface water system that results in the diversion of excess surface water flowing off of the lands of the City and invading the interests of Plaintiffs.

45. The City's diversion of surface water has caused excess water to invade the Plaintiffs' Property resulting in erosion of the Plaintiffs' property.

46. This erosion substantially and unreasonably interferes with the Plaintiffs' use and enjoyment of their Property.

47. The conduct of the City was intentional in that it knew that the damage to the Plaintiffs was resulting or was substantially certain to result from the diversion of surface water due to the Improvements.

48. The conduct of the City in diverting the surface water onto the Plaintiffs' Property was unreasonable and wrongful.

49. The wrongful conduct of the City is the legal cause of the invasion of the Plaintiffs' rights.

50. Plaintiffs have no adequate remedy at law for future inundation of improperly diverted storm water and damage to the Plaintiffs' property.

51. Until the inundation of the surface water ceases, damage to the Plaintiffs' Property will continue.

52. The continuing nature of the Defendants' acts would necessitate a separate action

by Plaintiffs for damages for each act and would subject Plaintiffs, Defendants and this Court to the expense, annoyance and inconvenience of a multiplicity of suits.

53. For these reasons, the diversion of surface waters onto the Plaintiffs' property caused by the City causes irreparable injury to the Plaintiffs.

54. The Plaintiffs are entitled to an injunction prohibiting the City from continuing to engage in practices that invade and damage the Plaintiffs' property.

55. Plaintiffs are entitled to recover the damages they have suffered due to the City's wrongful interference with Plaintiffs' right to use and enjoy their property and to enjoin such further nuisance by the City.

WHEREFORE, Plaintiffs demand judgment against the City for compensatory damages, pre and post judgment interest, costs, an injunction be entered against the City ordering the City to abate this nuisance and any such further relief the Court deems appropriate.

COUNT III
(Public Nuisance against the City and SJRWMD)

56. This is an action in the alternative to paragraph 34-54 for injunctive relief pursuant to Fla. Stat. 373.444.

57. Paragraphs 1-34 are realleged and incorporated herein by reference.

58. Chapter 373.444, of the Florida Statutes provides that,

> Any storm water management system, dam, impoundment, reservoir, appurtenant work, or works which violates the laws of this state or which violates the standards of the governing board or the department shall be declared a public nuisance. The operation of such storm water management system, dam, impoundment, reservoir, appurtenant work, or works may be enjoined by suit by the state or any of its agencies or by a private citizen.

59. Chapter 373.444 further provides that, "[t]he governing board or the department shall be a necessary party to any such suit." SJRWMD permitted this system and under Chapter

373.444, Florida Statutes is a necessary party to this action.

60. The City has permitted, funded or overseen the construction of the Improvements and under Chapter 373.444, Florida Statutes is a necessary party to this action.

61. Under Florida law, the City is required to exercise reasonable care and may not cause damage to downstream landowners or establish a nuisance. Thus, these violations of Florida law are declared public nuisances by section 373.444, Florida Statutes.

62. The surface water diverted from the Improvements are in violation of the laws of Florida by allowing excess waters to exit the City's property, which is adversely impacting environmental resources and offsite land uses.

63. The Defendants have created a public nuisance by their wrongful actions.

64. Chapter 373.444, Florida Statutes does not require a showing of special injury by Plaintiffs; however, Plaintiffs have suffered and are suffering special injury as the Defendants' actions have caused physical harm to the Plaintiffs' property.

65. Plaintiffs are entitled to enjoin such further nuisance by the Defendants.

WHEREFORE, Plaintiffs demand an injunction be entered against the City and the SJRWMD ordering the City and/or SJRWMD to abate this nuisance and any such further relief the Court deems appropriate.

COUNT IV
(Inverse Condemnation Against The City)

66. Paragraphs 1-34 are realleged and incorporated herein by reference.

67. This is an action for inverse condemnation for a portion of the Property and is in the alternative to some of the damages alleged in Counts I-III.

68. Inverse condemnation is a cause of action against a governmental defendant to recover the value of property, which has been taken in fact by the government defendant, even

though no formal exercise of the power of eminent domain has been attempted by the taking agency.

69. Prior to construction, the City voluntarily participated in the design and funded construction of the Improvements that discharge excess and unwanted surface water from Hodges Blvd., which water flows into Plaintiffs' property.

70. The City represented to the pubic that there would be no increased flow or rise in the current water canal due to the Improvements.

71. The City implemented this design and construction with the knowledge that the Sandalwood Canal would serve as a conduit to convey the surface water downstream onto lands owned by the Plaintiffs.

72. The Improvements, however, have in fact functioned as a conduit that conveys increased, unwanted and diverted surface water downstream onto Plaintiffs' Property with the effect that the City has taken a flowage easement over Plaintiffs' Property and has caused Plaintiffs' Property to erode significantly.

73. This taking of a flowage easement was in violation of the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, section 9 and Article X, section (6)a of the Florida Constitution.

74. The City knows that this water was in quantities greater than and in a manner different than before the Improvements in that surface water that previously drained through swails/ditches on Hodges Blvd. has now been diverted directly into the Sandalwood Canal, which flows downstream onto Plaintiffs' property.

75. As a result, the City has taken a flowage easement from the Plaintiffs without paying just compensation.

WHEREFORE, Plaintiffs demand judgment against the City for compensatory damages, pre and post judgment interest, costs and any such further relief the Court deems appropriate.

COUNT V
(Professional Negligence in the Design of the Improvements against CDM, Pittman, HNTB, Bowen Engineer, the Gibbs Group, Alderman, Bowen, Gibbs and Nichols)

76. This is an action for damages in excess of $15,000.00 exclusive of pre judgment interests and costs against CDM, Pittman, HNTB, Bowen Engineer, the Gibbs Group, Alderman, Bowen, Gibbs and Nichols.

77. Paragraphs 1-34 are realleged and incorporated herein by reference.

78. CDM, Pitman, HNTB, Bowen Engineer, the Gibbs Group, Alderman, Bowen, Gibbs and Nichols (the "***Engineering Defendants***") participated in the design, development and engineering of the Improvements.

79. At the time of the design, development and engineering of the Improvements, the Engineering Defendants knew or in the exercise of due care should have known, that there was a great likelihood of damage to the property downstream of the Improvements if there was an increase in volume and/or flow through the Sandalwood Canal due to the Improvements.

80. Therefore, the Engineering Defendants had a duty to downstream owners, such as Plaintiffs, to design, develop and engineer the Improvements in a way that there would not be an increase in surface water diverted onto Plaintiffs' Property.

81. At the time of the design, development and engineering of the Improvements, the Engineering Defendants knew or in the exercise of due care should have known, that their design would result in an increase in volume and/or flow through the Sandalwood Canal thereby damaging the property of downstream owners.

82. As a direct and proximate result of the negligently, defective and improper design of the Improvements, Plaintiffs' Property has been damaged due to excessive erosion, which damage is a continuing harm.

83. The damages alleged in this complaint are damages of a continuing and progressive nature, and for that reason plaintiffs request leave to amend this complaint at the time of trial to include any further damages that may occur subsequent to the filing of this complaint.

84. As of the filing of this complaint, plaintiffs have no knowledge as to the extent to which the damages alleged in this complaint can be repaired, and therefore, ask leave to amend this complaint to include reasonable costs of repair as soon as those costs have been ascertained.

WHEREFORE Plaintiffs demand judgment against the Engineering Defendants for compensatory damages, pre and post judgment interest, costs and any such further relief the Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial as to all claims so triable.

DURANT, SCHOEPPEL,
DECUNTO & RATCHFORD, P.A.

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A portion of the Bartolemeo De Castro Y. Ferrer Grant, Section 38, Township 2 South, Range 28 East, Duval County, Florida and being more particularly described as follows: For a point of beginning, commence at the Northeast corner of Covington Creek, as recorded in Plat Book 44, pages 33-331 of the current public records of Duval County, Florida, said point also lying in the Westerly right of way line of San Pablo Road (an 80 foot right of way as now established); thence North 87 degrees 35' 41" West along the Northerly line of said Covington Creek, a distance of 538.66 feet to an intersection with the Easterly line of Osprey Pointe, as recorded in Plat Book 44, pages 38-38D of the aforesaid current public records; thence North 05 degrees 04' 17" West along said Easterly line, a distance of 235.19 feet, thence North 84 degrees 54' 35" East a distance of 466.42 feet to an intersection with the aforementioned Westerly right of way line of San Pablo Road, thence South 17 degrees 33' 41" East along said Westerly right of way line, a distance of 312.84 feet to the point of beginning.

Commonly known as 2194 San Pablo Road South, Jacksonville, Florida

EXHIBIT "A"

EXHIBIT "B"

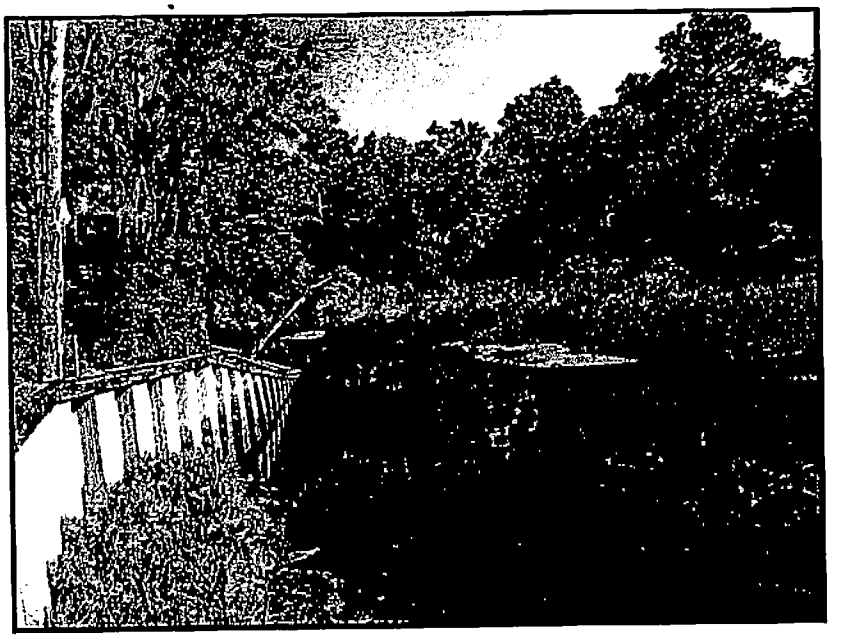

EXHIBIT "C"