

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
COLLIER COUNTY, FLORIDA CIVIL DIVISION

FLOW WAY COMMUNITY DEVELOPMENT  
DISTRICT,

Plaintiff,

v.

CASE NO. 20-CA-4147

TAYLOR MORRISON OF FLORIDA, INC.,  
TAYLOR MORRISON ESPLANADE NAPLES,  
LLC, TIM HALL, TURRELL, HALL & ASSOCIATES,  
INC., STEPHEN REITER, ADAM PAINTER,  
ANDREW MILLER, JOHN WOLLARD,  
CHRISTOPHER NIRENBERG, and ESPLANADE  
GOLF & COUNTRY CLUB OF NAPLES, INC.,

Defendants.

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**DEFENDANT, TIM HALL's ANSWER AND AFFIRMATIVE DEFENSES  
TO THE THIRD AMENDED COMPLAINT**

COME NOW the Defendant, TIM HALL ("HALL"), by and through his undersigned attorney,  
and files this Answer and Affirmative Defenses to the Third Amended Complaint filed by Plaintiff and  
further state as follows:

**ANSWER**

**JURISDICTION AND VENUE**

1. To the extent the allegations of Paragraph 1 are conclusions of law, they do not require  
an answer. To the extent they include allegations of fact, Defendant, HALL admits that Plaintiff  
purports to seek an action for declaratory relief and damages, but denies that Plaintiff is entitled to the  
relief it seeks.

2. Defendant, HALL admits the allegations of Paragraph 2.

**PARTIES**

3. Defendant, HALL admits the allegations of Paragraph 3.

4. Defendant, HALL admits the allegations of Paragraph 4.
5. Defendant, HALL admits the allegations of Paragraph 5.
6. Defendant, HALL admits that he is an adult individual who is the senior ecologist and principal at Defendant, THA, but denies the remainder of the paragraph.
7. Defendant, HALL admits the allegations of Paragraph 7.
8. Defendant, HALL admits the allegations of Paragraph 8.
9. Defendant, HALL admits the allegations of Paragraph 9.
10. Defendant, HALL admits the allegations of Paragraph 10.
11. Defendant, HALL admits the allegations of Paragraph 11.
12. Defendant, HALL admits the allegations of Paragraph 12.
13. Defendant, HALL admits the allegations of Paragraph 13.

#### GENERAL ALLEGATIONS

14. To the extent the allegations of Paragraph 14 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL admits that The Esplanade Golf and Country Club of Naples (“Esplanade”) is a residential community within Naples, Collier County, Florida, in which Defendants were involved in the development of, but denies the remainder of the paragraph.

15. To the extent the allegations of Paragraph 15 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL admits only that there is a preserve, but denies the remainder of the paragraph.

16. To the extent the allegations of Paragraph 16 are conclusions of law, they do not require an answer. To the extent they include allegations of fact set forth in Paragraph 16a through e, Defendant, HALL admits that such areas are properly described in the permitting documents described elsewhere in their Amended Complaint, but denies the remainder of the paragraph.

17. To the extent the allegations of Paragraph 17 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL admits that such areas are properly described in the permitting documents described elsewhere in their Amended Complaint, but denies the remainder of the paragraph.

18. To the extent the allegations of Paragraph 18 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL admits that Collier County Ordinance No. 01-20 speaks for itself, otherwise denied.

19. To the extent the allegations of Paragraph 19 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL admits that the amendment referenced in Paragraph 19 speaks for itself, but denies the remainder of the paragraph.

20. To the extent the allegations of Paragraph 20 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL admits that the Ordinance speaks for itself, but denies the remainder of the paragraph.

21. Defendant, HALL lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 21 and therefore denies.

22. Defendant, HALL lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 22 and therefore denies.

23. To the extent the allegations of Paragraph 23 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 23 and therefore denies.

24. To the extent the allegations of Paragraph 24 are conclusions of law, they do not require

an answer. To the extent they include allegations of fact, Defendant, HALL admits that Permit No. 11-02031-P and permit No. SAJ-2000-01926 are permits applicable to the Preserves, but denies the remainder of the paragraph.

25. To the extent the allegations of Paragraph 25 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL admits that the referenced Exhibit “A” speaks for itself, but denies the remainder of the paragraph.

26. To the extent the allegations of Paragraph 26 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL admits that the referenced Exhibit “A” speaks for itself, but denies the remainder of the paragraph.

27. To the extent the allegations of Paragraph 27 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL admits that Special Condition 21 of the permit speaks for itself, but denies the remainder of the paragraph.

28. To the extent the allegations of Paragraph 28 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL admits that Special Condition 25 of the permit speaks for itself, but denies the remainder of the paragraph.

29. Defendant, HALL lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 29 and therefore denies.

30. To the extent the allegations of Paragraph 30 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL admits that Exhibit “B” speaks for itself, but denies the remainder of the paragraph.

31. To the extent the allegations of Paragraph 31 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL admits that Special Condition 12 speaks for itself, but denies the remainder of the paragraph.

32. To the extent the allegations of Paragraph 32 are conclusions of law, they do not require

an answer. To the extent they include allegations of fact, Defendant, HALL admits that Special Condition 13 speaks for itself, but denies the remainder of the paragraph.

33. To the extent the allegations of Paragraph 33 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL admits that Special Condition 12 of the Modified Corps Permit speaks for itself, but denies the remainder of the paragraph.

34. To the extent the allegations of Paragraph 34 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL admits that the cited provision speaks for itself, but denies the remainder of the paragraph.

35. To the extent the allegations of Paragraph 35 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL admits that the MMM Plan speaks for itself, but denies the remainder of the paragraph.

36. To the extent the allegations of Paragraph 36 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL admits that Exhibit “D” speaks for itself, but denies the remainder of the paragraph.

37. To the extent the allegations of Paragraph 37 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL admits that Exhibits “E” and “F” speak for themselves, but denies the remainder of the paragraph.

38. Defendant, HALL lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 38 and therefore denies.

39. To the extent the allegations of Paragraph 39 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL admits that the Original Corps Permit speaks for itself, but denies the remainder of the paragraph.

40. To the extent the allegations of Paragraph 40 are conclusions of law, they do not require

an answer. To the extent they include allegations of fact, Defendant, HALL admits that SFWMD or Army Corps Permits speaks for themselves, but denies the remainder of the paragraph.

41. Defendant, HALL lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 41 and therefore denies.

42. To the extent the allegations in Paragraph 42 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL denies the allegations of Paragraph 42.

43. To the extent the allegations of Paragraph 43 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL denies the allegations of Paragraph 43.

**COUNT I**  
**DECLARATORY JUDGMENT**  
*Against TM Defendants and the Association*

44-60. Defendant, HALL is not required to answer the allegations contained in this count as they are not directed to Defendant, HALL. Notwithstanding the foregoing, in the event an answer is required from Defendant, HALL, the Defendant is without knowledge as to the allegations contained in paragraphs 44-60 of Plaintiff's Complaint and, therefore, generally and specifically, denies same and demand strict proof thereof.

**COUNT II**  
**DECLARATORY JUDGMENT**  
*Against TM Directors and the Association*

61-83. Defendant, HALL is not required to answer the allegations contained in this count as they are not directed to Defendant, HALL. Notwithstanding the foregoing, in the event an answer is required from Defendant, HALL, the Defendant is without knowledge as to the allegations contained

in paragraphs 61-83 of Plaintiff's Complaint and, therefore, generally and specifically, denies same and demand strict proof thereof.

**COUNT III**  
**UNJUST ENRICHMENT**  
*Against TM Defendants*

84-92. Defendant, HALL is not required to answer the allegations contained in this count as they are not directed to Defendant, HALL. Notwithstanding the foregoing, in the event an answer is required from Defendant, HALL, the Defendant is without knowledge as to the allegations contained in paragraphs 84-92 of Plaintiff's Complaint and, therefore, generally and specifically, denies same and demand strict proof thereof.

**COUNT IV**  
**Breach of Fiduciary Duty**  
*Against TM Directors*

93-104. Defendant, HALL is not required to answer the allegations contained in this count as they are not directed to Defendant, HALL. Notwithstanding the foregoing, in the event an answer is required from Defendant, HALL, the Defendant is without knowledge as to the allegations contained in paragraphs 93-104 of Plaintiff's Complaint and, therefore, generally and specifically, denies same and demand strict proof thereof.

**COUNT V**  
**Breach of Fiduciary Duty**  
*Against THA and Hall*

105. Defendant reaffirms his responses to paragraphs 1 through 43 as if fully set forth herein.

106. To the extent the allegations of Paragraph 106 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL admits that Plaintiff purports to seek an action for breach of fiduciary duty, but denies that Plaintiff is entitled to the relief it seeks.

107. To the extent the allegations in Paragraph 107 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL denies the allegations of Paragraph 107.

108. To the extent the allegations in Paragraph 108 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL denies the allegations of Paragraph 108.

109. To the extent the allegations in Paragraph 109 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL denies the allegations of Paragraph 109.

110. To the extent the allegations in Paragraph 110 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL denies the allegations of Paragraph 110.

111. To the extent the allegations in Paragraph 111 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL denies the allegations of Paragraph 111.

112. To the extent the allegations in Paragraph 112 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL denies the allegations of Paragraph 112.

113. To the extent the allegations in Paragraph 113 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL denies the allegations of Paragraph 113.

114. Defendant, HALL lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 114 and therefore denies.



115. To the extent the allegations in Paragraph 115 are conclusions of law, they do not require an answer. To the extent they include allegations of fact, Defendant, HALL denies the allegations of Paragraph 115.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

As his First Affirmative Defense, Defendant, HALL states that Plaintiff has failed to state a cause of action against him by failing to state the proper elements and improperly incorporating statements outside the confines of its pleading.

#### **SECOND AFFIRMATIVE DEFENSE**

As his Second Affirmative Defense, Defendant, HALL states that Plaintiff fails to state a proper justiciable issue for determination upon declaratory judgment with respect to a justiciable question pursuant to Florida Statute Section 86.011.

#### **THIRD AFFIRMATIVE DEFENSE**

As his Third Affirmative Defense, Defendant, HALL states that Plaintiff fails to state a cause of action for breach of fiduciary duty against Defendant, HALL because it fails to properly allege that a fiduciary duty exists.

#### **FOURTH AFFIRMATIVE DEFENSE**

As his Fourth Affirmative Defense, Defendant, HALL states that Plaintiff waived its rights to raise the arguments presented because it expressly condoned and participated in all of the decisions.

#### **FIFTH AFFIRMATIVE DEFENSE**

As his Fifth Affirmative Defense, Defendant, HALL states that Plaintiff failed to mitigate its damages.

### **SIXTH AFFIRMATIVE DEFENSE**

As his Sixth Affirmative Defense, Defendant, HALL states that Plaintiff is precluded from relief pursuant to the doctrine of Equitable Estoppel. Plaintiff actively participated in all decisions and Defendant, HALL relied upon those decisions and involvement to his detriment.

### **SEVENTH AFFIRMATIVE DEFENSE**

As his Seventh Affirmative Defense, Defendant, HALL adopts and incorporates herein ALL of Defendants, TAYLOR MORRISON OF FLORIDA, INC., TAYLOR MORRISON ESPLANADE NAPLES, LLC, TURRELL, HALL & ASSOCIATES, INC., STEPHEN REITER, ADAM PAINTER, ANDREW MILLER, JOHN WOLLARD, CHRISTOPHER NIRENBERG and ESPLANADE GOLF & COUNTRY CLUB OF NAPLES, INC's Affirmative Defenses, as if stated herein.

### **EIGHTH AFFIRMATIVE DEFENSE**

As his Eighth Affirmative Defense, Defendant, HALL states that he is entitled to a setoff for all settlements, judgments and other sums of money that Plaintiff obtains from any party or non-party to this action.

### **NINTH AFFIRMATIVE DEFENSE**

As his Ninth Affirmative Defense, Defendant, HALL states that to the extent that Plaintiff is able to prove that Defendants are liable to Plaintiff (which liability is hereby expressly denied), then any such liability found on the part of any or all Defendants and any damages awarded in favor of Plaintiff are subject to the comparative fault provisions of Section 768.81, Florida Statutes. Moreover, pursuant to *Fabre v. Martin*, 623 So.2d 1182 (Fla. 1993) any damages that are awarded to Plaintiff are subject to apportionment by the jury of total fault of all persons or entities who contributed to the occurrence and any resulting damages.

### **TENTH AFFIRMATIVE DEFENSE**

As his Tenth Affirmative Defense, Defendant, HALL states that Plaintiff's own negligence proximately caused or contributed to the damages that Plaintiff asserts in the Complaint and, accordingly, Plaintiff's claims against Defendants are barred.

### **ELEVENTH AFFIRMATIVE DEFENSE**

As his Eleventh Affirmative Defense, Defendant, HALL states that Plaintiff is comparatively negligent with respect to the damages asserted in the Complaint and, as a result, any claim for damages against Defendants should be proportionately reduced by the degree of comparative negligence on the part of decedent.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of Court using the E-Filing Portal System which will send a notice of electronic filing to:

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This 1st day of June, 2021.

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