

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

FLOW WAY COMMUNITY DEVELOPMENT  
DISTRICT,

CASE NO. 20-CA-4147

Plaintiff,

v.

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. \_\_\_\_\_ /

**DEFENDANT TURRELL, HALL & ASSOCIATES, INC.'S  
ANSWER AND AFFIRMATIVE DEFENSES  
TO PLAINTIFF'S THIRD AMENDED COMPLAINT**

**COMES NOW**, Defendant, TURRELL, HALL & ASSOCIATES, INC. ("THA"), by and through its undersigned attorneys, and hereby files this its Answer and Affirmative Defenses to Plaintiff FLOW WAY COMMUNITY DEVELOPMENT DISTRICT's Third Amended Complaint as follows:

**JURISDICTION AND VENUE**

1. Defendant THA admits the allegations set forth in Paragraph 1 for jurisdictional purposes. Otherwise, denied.

2. Defendant THA admits the allegations set forth in Paragraph 2.

**PARTIES**

3. Defendant THA admits the allegations set forth in Paragraph 3.

4. Defendant THA admits the allegations set forth in Paragraph 4.

5. Defendant THA admits the allegations set forth in Paragraph 5.
6. Defendant THA denies the allegations set forth in Paragraph 6.
7. Defendant THA admits the allegations set forth in Paragraph 7.
8. Defendant THA admits the allegations set forth in Paragraph 8.
9. Defendant THA admits the allegations set forth in Paragraph 9.
10. Defendant THA admits the allegations set forth in Paragraph 10.
11. Defendant THA admits the allegations set forth in Paragraph 11.
12. Defendant THA admits the allegations set forth in Paragraph 12.
13. Defendant THA admits the allegations set forth in Paragraph 13.

#### **GENERAL ALLEGATIONS**

14. Defendant THA 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. Otherwise, denied.

15. Defendant THA admits only that there is a preserve. Otherwise, denied.

16. Regarding Plaintiff’s allegations set forth in Paragraph 16a through e, the Defendant THA admits that such areas are properly described in the permitting documents described elsewhere in their Amended Complaint. Otherwise, denied.

17. Regarding Plaintiff’s allegations set forth in Paragraph 17, the Defendant THA admits that such areas are properly described in the permitting documents described elsewhere in their Amended Complaint. Otherwise, denied.

#### **A. THE DEVELOPMENT**

18. Defendant THA admits that Collier County Ordinance No. 01-20 speaks for itself. Otherwise, denied.

19. Defendant THA admits that the amendment referenced in Paragraph 19 speaks for itself. Otherwise, denied.

20. Defendant THA admits that the Ordinance speaks for itself. Otherwise, denied.

21. Defendant THA is without knowledge as to the allegations set forth in Paragraph 21. Therefore, denied.

#### **B. DEFENDANT'S ACTIONS**

22. Defendant THA is without knowledge as to the allegations set forth in Paragraph 22. Therefore, denied.

23. Defendant THA is without knowledge as to the allegations set forth in Paragraph 23. Otherwise, denied.

24. Defendant THA admits that the permit documents speak for themselves. Otherwise, denied.

25. Defendant THA admits that the referenced Exhibit "A" speaks for itself. Otherwise, denied.

26. Defendant THA admits that the permit speaks for itself. Otherwise, denied.

27. Defendant THA admits that Special Condition 21 of the SWFWD Permit speaks for itself. Otherwise, denied.

28. Defendant THA is without knowledge as to what permit the Plaintiff is referring to in its Paragraph 28. Therefore, denied.

29. Defendant THA is without knowledge as to the allegations set forth in Paragraph 29. Therefore, denied.

30. Defendant THA is without knowledge as to the allegations set forth in Paragraph 30. Therefore, denied.

31. Defendant THA admits Special Condition 12 of the Army Corps Permit speaks for itself. Otherwise, denied.

32. Defendant THA is without knowledge with regard to what permit the Plaintiff is referring to. Therefore, denied.

33. Defendant THA admits that the Army Corps Permit speaks for itself. Otherwise, denied.

34. Defendant THA admits that the language contained in the November 2012 Mitigation, Monitoring, and Maintenance Plan speaks for itself. Otherwise, denied.

35. Defendant THA admits that Exhibit "C" speaks for itself. Otherwise, denied.

36. Defendant THA admits that Exhibit "D" speaks for itself. Otherwise, denied.

37. Defendant THA admits that Exhibits "E" and "F" speak for themselves. Otherwise, denied.

38. Defendant THA is without knowledge as to the allegations in Paragraph 38. Therefore, denied.

39. Defendant THA is without knowledge as to the allegations in Paragraph 39. Therefore, denied.

40. Defendant THA is without knowledge as to the allegations in Paragraph 40. Therefore, denied.

41. Defendant THA is without knowledge as to the allegations set forth in Paragraph 41. Therefore, denied.

42. Defendant THA is without knowledge as to the allegations set forth in Paragraph 42. Therefore, denied.

43. Defendant THA admits that the cited provision speaks for itself. Otherwise, denied.

**COUNT I  
DECLARATORY JUDGMENT  
(CDD V. TM DEFENDANTS AND THE ASSOCIATION)**

44-60. Defendant THA is not required to answer these allegations as the Plaintiff's Count I is not directed to THA. Otherwise, denied.

**COUNT II  
DECLARATORY JUDGEMNT  
(THE CDD V. TM DIRECTORS AND ASSOCIATION)**

61-83. The Defendant THA is not required to answer these allegations as Count II is not directed against Defendant THA. Otherwise, denied.

**COUNT III  
UNJUST ENRICHMENT  
(TM DEFENDANTS)**

84-92. The Defendant THA is not required to answer these allegations as Count III is not directed against Defendant THA. Otherwise, denied.

**COUNT IV  
BREACH OF FIDUCIARY DUTY  
(THE CDD V. TM DIRECTORS)**

93-104. The Defendant THA is not required to answer these allegations as Count IV is not directed against Defendant THA. Otherwise, denied.

**COUNT V  
BREACH OF FIDUCIARY DUTY  
(THE CDD V. THA AND HALL)**

105. Defendant THA realleges and incorporates its responses to Paragraphs 1 through 104.

106. Defendant THA admits that the Plaintiff is alleging a breach of fiduciary duty. Otherwise, denied.

107. Defendant THA admits that it entered into a contract with the Plaintiff to provide certain services. Otherwise, denied.

108. Defendant THA admits only that the Defendant Hall provided contracted services to the Plaintiff pursuant to the parties' contract. Otherwise, denied.

109. Defendant THA denies the allegations set forth in Paragraph 109.

110. Defendant THA denies the allegations set forth in Paragraph 110.

111. Defendant THA denies the allegations set forth in Paragraph 111.

112. Defendant THA denies the allegations set forth in Paragraph 112.

113. Defendant THA admits that it and Defendant Hall performed work that the Plaintiff requested pursuant to the parties' contract. Otherwise, denied.

114. Defendant THA denies the allegations set forth in Paragraph 114.

115. Defendant THA denies the allegations set forth in Paragraph 115.

## **DEFENDANT THA'S AFFIRMATIVE DEFENSES**

### **First Affirmative Defense**

#### **Failure to State a Cause of Action for Breach of Fiduciary Duty**

116. Defendant THA is an independent contractor that was hired by the Plaintiff, Flow Way Community Development District. Defendant Tim Hall is a principal of THA and has an ownership interest in Defendant THA. The Plaintiff fails to reference the contract entered into by the parties dated September 18, 2018. Further, the Plaintiff has failed to comply with Fla. R. Civ. P. 1.110(b) which requires that a plaintiff provide a short and plain statement of ultimate facts in support of the relief the plaintiff requests. Conclusory allegations that one party placed trust and confidence in another are insufficient to plead a fiduciary duty. The Plaintiff has plead

no facts to support a claim for fiduciary duty, rather just a conclusory statement.<sup>1</sup> When parties deal at arm's length, a fiduciary duty does not exist because there is no duty imposed upon either party to act for the benefit or protection of the other party or to disclose facts that the other party could have discovered.<sup>2</sup> The agreement between the Defendant THA and the Plaintiff is an arm's length contract.

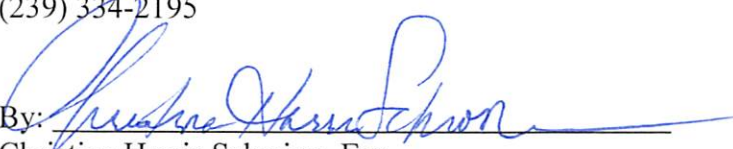
### **Second Affirmative Defense**

117. As its Second Affirmative Defense, Defendant THA adopts and incorporates herein ALL of Defendants TAYLOR MORRISON OF FLORIDA, INC., TAYLOR MORRISON ESPLANADE NAPLES, LLC, STEPHEN REITER, ADAM PAINTER, ANSREW MILLER, JOHN WOLLARD, CHRISTOPHER NIRENBERG, ESPLANADE GOLF & COUNTRY CLUB OF NAPLES, INC. AND TIM HALL's Affirmative Defenses as if stated herein.

**WHEREFORE**, Plaintiff's Count V against Defendant THA should be dismissed as the Plaintiff has failed to state a cause of action for breach of fiduciary duty.

**PAVESE LAW FIRM**

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<sup>1</sup> *Raymond, James & Associates, Inc. v. Zumstorchen Investment, Ltd.*, 488 So.2d 843 (Fla. 2<sup>nd</sup> DCA 1986).

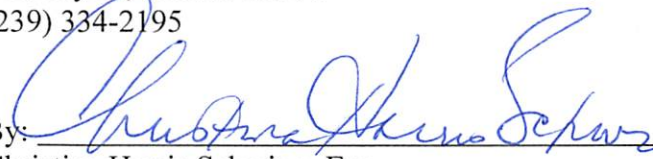
<sup>2</sup> *Watkins v. NCNB Nat. Bank of Florida, N.A.*, 622 So.2d 1063 (Fla. 3<sup>rd</sup> DCA 1993).

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of Court via the E-Filing Portal on this 9<sup>th</sup> day of June, 2021, which will send notification to the following counsel of record.

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