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

CASE NO.: 2017-CA-002706

DIVISION: CV-B

SHIRLEY A. DEMPSEY, individual and on behalf of all others similarly situated owners of residential property located at Fairway Oaks Community,

Plaintiff,

v.

HABITAT FOR HUMANITY OF JACKSONVILLE, INC., and CITY OF JACKSONVILLE, FLORIDA,

Defendants.
_____/

CITY OF JACKSONVILLE'S ANSWER AND AFFIRMATIVE DEFENSES TO THIRD AMENDED COMPLAINT

Defendant, CITY OF JACKSONVILLE (the "City"), through its undersigned counsel and pursuant to Rules 1.110(c), 1.110(d), and 1.140(b) of the Florida Rules of Civil Procedure, answers the Third Amended Complaint filed by Plaintiff, SHIRLEY A. DEMPSEY ("Plaintiff"), and presents its affirmative defenses thereto as follows:

ANSWER

1. The City admits that the residential development known as the "Fairway Oaks Development" is located between Interstate 95 and Moncrief Road. The City is without knowledge of the remaining allegations of paragraph 1.

2. The City admits that Plaintiff purchased a home from Defendant, Habitat for Humanity of Jacksonville, Inc. ("HabiJax"). The City denies that Plaintiff's home was constructed "on or adjacent to a former landfill." The City is without knowledge of the remaining allegations of paragraph 2.

3. The City is without knowledge of the allegations of paragraph 3.

4. The City is without knowledge of whether HabiJax is the mortgagee of a mortgage with respect Plaintiff's property or other properties located within the Fairway Oaks Development. The City denies that it sold the land upon which the Fairway Oaks Development is located to HabiJax. The City denies the remaining allegations of paragraph 4.

5. The City denies that it is a "Gubernatorial Institution." The City admits that City Hall is located at 117 W. Duval Street, Jacksonville, Florida 32202.

6. The City admits that a landfill known as the Castellano and West 45th Street landfill (the "Castellano Landfill") once existed near Castellano Avenue and West 45th Street; that at a housing project called Golfbrook Terrace Apartment Complex (the "Golfbrook Terrace Development") once existed at the site of the current Fairway Oaks Development; that portions of the Golfbrook Terrace Development were demolished and redeveloped into the Fairway Oaks Development; and that Plaintiff purchased a single family home in the Fairway Oaks Development. Subject to further review and investigation, the City is without knowledge of the allegation that "[o]n or about 1971," the City "prepared the undeveloped area south of the creek for construction of a housing project." The City denies that class certification is appropriate. The City is without knowledge of the remaining allegations of paragraph 6.

7. The City is without knowledge of the allegations of paragraph 7. The City denies that class certification is appropriate.

8. The City denies that it is a "Gubernatorial Institution."

9. Admitted for purposes of jurisdiction only.

10. Admitted for venue purposes only.

11. The City denies that it is a "gubernatorial institution." The City admits that venue is proper in Duval County.

12. Paragraph 12 contains legal conclusions to which no response is required. The City denies the factual allegations, if any, of paragraph 12. The City further denies that class certification is appropriate under Rule 1.220(b)(1)(A) of the Florida Rules of Civil Procedure.

13. Paragraph 13 contains legal conclusions to which no response is required. The City denies the factual allegations, if any, of paragraph 13. The City further denies that class certification is appropriate.

14. Paragraph 14 contains legal conclusions to which no response is required. The City denies the factual allegations, if any, of paragraph 14. The City further denies that class certification is appropriate under Rule 1.220(b)(2) or (3) of the Florida Rules of Civil Procedure.

15. Paragraph 15 contains legal conclusions to which no response is required. The City is without knowledge as to the condition of the properties at the Fairway Oaks Development. The City denies that class certification is appropriate. The City further denies that the homes in the Fairway Oaks Development are uninhabitable and alleges that Plaintiff and other residents of the Fairway Oaks Development currently inhabit their homes and that many residents, including Plaintiff, have done so continuously for as long as 17 years. The City denies the remaining factual allegations, if any, of paragraph 15.

16. Paragraph 16 contains legal conclusions to which no response is required. The City denies the factual allegations, if any, of paragraph 16. The City further denies that class certification is appropriate.

17. Paragraph 17 contains legal conclusions to which no response is required. The City denies the factual allegations, if any, of paragraph 17. The City further denies that class certification is appropriate.

18. Paragraph 18 contains legal conclusions to which no response is required. The City denies the factual allegations, if any, of paragraph 18. The City further denies that class certification is appropriate.

19. Paragraph 19 contains legal conclusions to which no response is required. The City denies the factual allegations, if any, of paragraph 19 and its subparts. The City further denies that class certification is appropriate.

20. Paragraph 20 contains legal conclusions to which no response is required. The City is without knowledge as to the factual allegations of paragraph 20. The City denies that class certification is appropriate.

21. Paragraph 21 contains legal conclusions to which no response is required. The City denies the factual allegations, if any, of paragraph 21 and its subparts. The City further denies that class certification is appropriate.

22. Paragraph 22 contains legal conclusions to which no response is required. The City admits that Plaintiff purchased a home from HabiJax on November 8, 2000. The City denies the remaining factual allegations, if any, of paragraph 22. The City further denies that class certification is appropriate.

23. Paragraph 23 contains legal conclusions to which no response is required. The City is without knowledge as the factual allegations, if any, of paragraph 23. The City denies that class certification is appropriate.

24. Paragraph 24 contains legal conclusions to which no response is required. The City denies that class certification is appropriate.

25. The City admits that it supports, encourages, and has sought to provide affordable housing to residents of the City. The City is without knowledge as to the remaining allegations of paragraph 25.

26. The City admits that the Castellano Landfill was located west of Moncrief Creek near West 45th Street and Castellano Avenue. Subject to further review and investigation, the City is without knowledge as to when the Castellano Landfill was established. The City is without knowledge of the remaining allegations of paragraph 26.

27. Denied.

28. The City is without knowledge as to what are "[t]he properties at issue in this litigation." The City admits that the Fairway Oaks Development is located, in whole or in part, on the site of the Golfbrook Terrace Development.

29. The City admits that it owned the land where the Golfbrook Terrace Development was later located on or about October 1, 1970. Subject to further review and investigation, the City is without knowledge as to exactly when construction of the Golfbrook Terrace Development was completed.

30. Subject to further review and investigation, the City is without knowledge of when the "Doeboy dump" was established or what, if anything, the Doeboy dump has to do with this lawsuit. The City is without knowledge of the remaining allegations of paragraph 30.

31. The City is without knowledge of the allegations of paragraph 31.

32. Subject to further review and investigation, the City is without knowledge as to when the Castellano Landfill was closed.

33. The City admits that the U.S. Environmental Protection Agency ("EPA") issued a Final Expanded Site Inspection in July 1993, which speaks for itself. The City is without knowledge of the remaining allegations of paragraph 33.

34. The City denies that contaminants are or were "escaping and continuing to escape" from the Castellano Landfill. The City is without knowledge as to the remaining allegations of paragraph 34.

35. The City denies that the Golfbrook Terrace Development was constructed "on the site, or adjacent to the site" of the Castellano Landfill. Subject to further review and investigation, the City is without knowledge as to exactly when construction of the Golfbrook Terrace Development was completed. The City is without knowledge of the remaining allegations of paragraph 35.

36. The City is without knowledge of the allegations of paragraph 36.

37. The City admits that a Phase II Site Screening Inspection Report was issued by the EPA and the Florida Department of Environmental Regulation ("FDER") in August 1992 (the "1992 Phase II Report"), which speaks for itself. The City is without knowledge of the remaining allegations of paragraph 37.

38. The City is without knowledge of the existence of a "1991 Phase II site screening conducted by the DEP and EPA." The City admits that a Final Expanded Site Inspection report was issued by the EPA in July 1993 (the "1993 ESI Report"). The City admits that the 1993 ESI Report states that "areas where solid wastes were encountered on the south-side of Moncrief Creek are not associated with the landfill operation of the Castellano and 45th Street Dump site." The City is without knowledge of the remaining allegations of paragraph 38.

39. The City is without knowledge of a "1991 Phase II site screening." The City admits the 1992 Phase II Report speaks for itself. The City is without knowledge of the remaining allegations of paragraph 39.

40. The City is without knowledge of a "1991 Phase II site screening." The City is without knowledge of the remaining allegations of paragraph 40.

41. The City is without knowledge of the allegations of paragraph 41.

42. The City is without knowledge of the allegations of paragraph 42.

43. The City admits that Jacksonville Engineering & Testing issued a report in May 1992 (the "JET Report") concerning 60 soil borings it performed around the Golfbrook Terrace Development. The JET Report speaks for itself. The City admits that the JET Report states that "the majority of the area occupied by the housing is relatively free of refuse. Out of the sixty (60) borings performed, only trace amounts of refuse consisting of glass, wood and construction rubble were found." The City notes that paragraph 43 of the Third Amended Complaint misleadingly quotes a portion of the JET Report that only concerns the findings of soil borings conducted at the site of a former baseball field located on the site of the former Castellano Landfill—which is on the opposite side of Moncrief Creek from the Fairway Oaks Development on land that is not and has never been part of the Fairway Oaks Development or the Golfbrook Terrace Development. The City denies the remaining allegations of paragraph 43.

44. The City admits that the Office of Inspector General of the United States Department of Housing & Urban Development ("HUD") issued a report in June 1992 (the "1992 HUD Report"). The 1992 HUD Report speaks for itself. The City specifically denies that the Golfbrook Terrace Development or the Fairway Oaks Development were constructed on the site

of the former Castellano Landfill. The City is without knowledge of the remaining allegations of paragraph 44.

45. The 1992 HUD Report speaks for itself. The allegations of paragraph 45 are otherwise denied.

46. The 1992 HUD Report speaks for itself. The allegations of paragraph 46 are otherwise denied.

47. The City admits that GWL/EMCON Southeast issued a report in July 1992 (the GWL/EMCON Report"). The GWL/EMCON Report speaks for itself. The City specifically denies that GWL/EMCON found heptachlor epoxide "all around" the Golfbrook Terrace Development. Further, the City admits that the GWL/EMCON Report states that "the heptachlor epoxide does not appear to be originating from a point source within the study area."

48. The 1992 Phase II Report speaks for itself. The City specifically denies that the Castellano Landfill included "known fill areas" within the present day Fairway Oaks Development. Paragraph 48 refers to a document that is not attached to the Third Amended Complaint. Therefore, the City neither admits nor denies the assertions, if any, contained in the referenced document, as the document is not incorporated into the Third Amended Complaint. The remaining allegations of paragraph 48 are denied.

49. The 1992 Phase II Report speaks for itself. The allegations of paragraph 49 are otherwise denied.

50. The 1992 Phase II Report speaks for itself. The City specifically denies that the 1992 Phase II Report states what Plaintiff alleges it does. Plaintiff misleadingly alleges that each of the listed chemicals was found at levels "exceeding background levels by approximately 13 times." The remaining allegations of paragraph 50 are denied.

51. The GWL/EMCON Report speaks for itself. The City admits that the report states that "the heptachlor epoxide does not appear to be originating from a point source within the study area." Paragraph 51 refers to a document that is not attached to the Third Amended Complaint. Therefore, the City neither admits nor denies the assertions, if any, contained in the referenced document, as the document is not incorporated into the Third Amended Complaint. The remaining allegations of paragraph 51 are denied.

52. The 1993 ESI Report speaks for itself. The City admits that the 1993 ESI Report states that the Golfbrook Terrace Development is not considered to be part of the former Castellano Landfill; that analytical data does not support the attribution of the low levels of contamination found in Moncrief Creek to the Castellano Landfill; that "areas where solid wastes were encountered on the south-side of Moncrief Creek are not associated with the landfill operation of the Castellano and 45th Street Dump site"; that "no contamination is present in the surface and subsurface soil samples collected from the landfill"; that "[a]lthough contaminants are present in Moncrief Creek at low levels, they cannot be attributed to the Castellano and 45th Street Dump site"; that "levels of contamination present in the surface soils, subsurface soils, sediments, groundwater, and the creek do not represent a public health threat"; that the site of the former Castellano Landfill "has been determined to be a solid waste landfill with no evidence of hazardous waste disposal"; and that a disposition of "Site Evaluation Accomplished" was recommended. Subject to further review and investigation, the City is without knowledge of the remaining allegations of paragraph 52.

53. Subject to further review and investigation, the City is without knowledge of the allegations of paragraph 53.

54. The plaintiff's allegations in *Manual J. Thomas, Jr., et al. v. City of Jacksonville*, 1993-CA-3739, Div. CV-A (Fla. 4th Jur. Cir., Duval County) (the "Thomas Litigation") speak for themselves. The City admits that it settled the Thomas Litigation without admitting any liability. The City denies that the settlement occurred in 1993.

55. The City admits that part of the Golfbrook Terrace Development was demolished after the Thomas Litigation was settled. The City denies that there is a causal connection between that settlement and the demolition.

56. The City admits that Law Engineering and Environmental Services, Inc. prepared a Phase I Environmental Site Assessment Report in October 1996 (the "1996 Law Report"). The 1996 Law Report speaks for itself.

57. The1996 Law Report speaks for itself. The City admits that the 1996 Law Report states that the Castellano Landfill "is considered to present a relatively low potential to adversely impact the subject site."

58. The 1996 Law Report speaks for itself. The City denies the allegations of paragraph 58.

59. The City admits that Ellis & Associates, Inc. prepared a Report of Limited Soil Investigation in August 1997 (the "1997 E&A Soil Report"). The 1997 E&A Soil Report speaks for itself. The City specifically denies that the 1997 E&A Soil Report found that any of the soil samples taken contained arsenic in excess of 9.70 mg/kg. The City further alleges that the Third Amended Complaint seriously overstates the applicable soil clean up goal.

60. The City admits that Ellis & Associates, Inc. prepared a Report of Limited Groundwater Investigation in August 1997 (the "1997 E&A Groundwater Report"). The 1997 E&A Groundwater Report speaks for itself. The City denies that the 1997 E&A Ground Water

Report found that chlorobenzene, dichlorobenzene, and o-xylene were at detectible levels in three wells. These chemicals were detected in only one well and at levels well below maximum contaminant levels.

61. The City admits that Bhide & Hall Architects, P.A. prepared an architectural inspection report in March 1998 (the "1998 B&H Architectural Report") concerning the Golfbrook Terrace Development. The 1998 B&H Architectural Report speaks for itself. The City specifically denies that the B&H Architectural Report made any findings of its own concerning concentrations of pollutants identified in paragraph 61. The City further alleges that the 1998 B&H Architectural Report does not mention the pollutants identified in paragraph 61.

62. The 1998 B&H Architectural Report speaks for itself. The City specifically denies that the B&H Architectural Report made any findings of its own concerning concentrations of pollutants. Paragraph 62 refers to a document that is not attached to the Third Amended Complaint. Therefore, the City neither admits nor denies the assertions, if any, contained in the referenced document, as the document is not incorporated into the Third Amended Complaint.

63. The City is without knowledge of the allegations of paragraph 63.

64. Denied.

65. Denied.

66. Denied.

67. Subject to further review and investigation, the City admits that some or all of the Golfbrook Terrace Development was demolished by a third party.

68. Admitted with respect to Plaintiff. The City denies that class certification is appropriate.

69. Denied.

70. Subject to further review and investigation, the City can neither admit nor deny the allegations concerning which governmental entity, if any, monitored HabiJax's use of public funds with respect to the Fairway Oaks Development.

71. The City is unable to admit or deny the allegation because it is not clear what is meant by "the execution of HabiJax." Further, the City is unable to locate at this time a "written agreement" with HabiJax concerning HabiJax's use of funds for the development of the Fairway Oaks Development.

72. The City denies that class certification is appropriate. The City admits that Plaintiff purchased a home in the Fairway Oaks Development from HabiJax on November 8, 2000.

73. The City is without knowledge of the allegations of paragraph 73 and its subparts.

74. The City is without knowledge of the allegations of paragraph 74. The City denies that it is in possession of any purchase and sale agreement between HabiJax and Plaintiff or any other individual.

75. The City is without knowledge of the allegations of paragraph 75.

76. Denied.

77. The SHIP/HOME Match Agreement speaks for itself. The City denies that paragraph 77 accurately quotes the SHIP/HOME Match Agreement.

78. The City is without knowledge of the allegations of paragraph 78.

79. The City is without knowledge of the allegations of paragraph 79.

80. The City is without knowledge of the allegations of paragraph 80.

81. The City is without knowledge of the allegations of paragraph 81.

82. The City is without knowledge of the allegations of paragraph 82.

83. The City is without knowledge of the allegations of paragraph 83. The City denies that class certification is appropriate.

84. The City is without knowledge of the allegations of paragraph 84.

85. The City is unable to admit or deny the allegations of paragraph 85 because it is not clear what is meant by "the home"—*i.e.*, whose home is being referenced. The City is without knowledge of the allegations of paragraph 85.

86. The City is without knowledge of the allegations of paragraph 86.

87. The City is without knowledge of the allegations of paragraph 87.

88. The City is without knowledge of the allegations of paragraph 88.

89. The City is without knowledge of the allegations of paragraph 89.

90. Denied. The factual basis for the alleged causes of action asserted herein very likely became apparent to Plaintiff and the purported class members well before 2007. The City denies that class certification is appropriate.

91. The City is without knowledge of the allegations of paragraph 91.

92. The City is without knowledge of the allegations of paragraph 92.

93. Admitted.

94. Denied.

95. The City is without knowledge of the allegations of paragraph 95 and its subparts.

96. The City denies that class certification is appropriate. The City denies the remaining allegations of paragraph 96.

97. The City denies that class certification is appropriate. The City denies the remaining allegations of paragraph 97.

98. Paragraph 98 contains legal conclusions to which no response is required. The City denies the factual allegations, if any, of paragraph 98. The City further denies that class certification is appropriate.

99. The City is without knowledge of the allegations of paragraph 99.

100. The City denies that class certification is appropriate. The City denies the remaining allegations of paragraph 100.

101. Denied.

102. The City denies that class certification is appropriate. The City denies the remaining allegations of paragraph 102.

103. Paragraph 103 contains legal conclusions to which no response is required.

104. The City denies that class certification is appropriate. The City denies the remaining allegations of paragraph 104.

105. Denied.

106. Denied.

107. Denied.

108. Denied.

109. Denied.

110. Denied.

111. The City denies that Plaintiff has satisfied the pre-suit notice requirements of § 768.28(6), Florida Statutes, because Plaintiff did not present her claims to the City and the Department of Financial Services within three years after her claims accrued.

112. Denied.

113. Paragraph 113 refers to documents that are not attached to the Third Amended Complaint. Therefore, the City neither admits nor denies the assertions, if any, contained in the referenced documents, as the documents are not incorporated into the Third Amended Complaint. The City denies the remaining allegations of paragraph 113.

114. The City admits that the agreements referenced in paragraph 114 speak for themselves.

115. Denied.

116. Denied.

117. The City is without knowledge of the allegations of paragraph 117.

118. The City is without knowledge of the allegations of paragraph 118.

119. The City is without knowledge of the allegations of paragraph 119.

120. The City denies that class certification is appropriate. The City denies the remaining allegations of paragraph 120.

121. The City is unable to admit or deny the allegations of paragraph 121 at this time. Investigation is continuing.

122. Denied.

[Paragraphs 123 through 140 are directed solely to HabiJax. Therefore, no response from the City is required.]

COUNT II
NEGLIGENCE AGAINST CITY

141. The City realleges its responses to the allegations of paragraphs 1 through 122.

142. Admitted for jurisdictional purposes only.

143. Denied.

144. Denied.

145. Denied.

146. Denied.

147. Denied.

148. Denied.

149. Denied.

150. Denied.

151. Denied.

152. Denied.

153. Denied.

154. Denied.

155. Denied.

156. Denied.

157. Denied.

158. Denied.

[Paragraphs 159 through 185 are directed solely to HabiJax. Therefore, no response from the City is required.]

COUNT IV
NEGLIGENT MISREPRESENTATION AGAINST CITY

186. The City realleges its responses to the allegations of paragraphs 1 through 122.

187. Admitted for jurisdictional purposes only.

188. Denied.

189. Denied.

190. Denied.

191. Denied.

192. Denied.

193. Denied.

194. Denied.

195. Denied.

196. Denied.

197. Denied.

198. Denied.

199. Denied.

200. Denied.

201. Denied.

202. Denied.

203. Denied.

204. Denied.

205. Denied.

206. Denied.

207. Denied.

208. Denied.

209. Denied.

210. Denied.

211. Denied.

212. Denied.

[Paragraphs 213 through 257 are directed solely to HabiJax. Therefore, no response from the City is required.]

COUNT X
MEDICAL MONITORING INJUNCTIVE CLAIM AGAINST CITY

258. The City realleges its responses to the allegations of paragraphs 1 through 122.

259. Subject to further review and investigation, the City is without knowledge of the allegations of paragraph 259.

260. Denied.

261. The City admits that Moncrief Creek runs along the north and northwest side of the Fairway Oaks Development. The City admits that Dr. Cristopher A. Williams of Ecology and Environment, Inc. issued a report in September 1997 (the "1997 E&E Report"). The 1997 E&E Report speaks for itself. The City admits that the 1997 E&E Report states: "I do not believe that the arsenic concentrations in soil at this location are a threat to human health." The City is without knowledge of the remaining allegations of paragraph 261.

262. The 1997 E&A Soil Report speaks for itself.

263. Denied.

264. Denied.

265. Denied.

266. Denied.

267. Denied.

268. Denied.

269. Denied.

[Paragraphs 270 through 283 are directed solely to HabiJax. Therefore, no response from the City is required.]

COUNT XII
PRIVATE NUISANCE AGAINST CITY

284. The City realleges its responses to the allegations of paragraphs 1 through 122.

285. Denied.

286. Denied.

287. Denied.

288. Denied.

289. Denied.

290. Denied.

291. Denied.

292. Denied.

293. Denied.

294. Denied.

295. Denied.

296. Denied.

COUNT XIII
VICARIOUS LIABILITY AGAINST CITY BY WAY OF JOINT ENTERPRISE

297. The City realleges its responses to the allegations of paragraphs 1 through 122.

298. Admitted for jurisdictional purposes only.

299. Paragraph 299 contains legal conclusions to which no response is required. The City denies the factual allegations, if any, of paragraph 299.

300. Denied.

301. Denied.

302. Denied.

303. Denied.

304. Denied.

305. Denied.

306. Denied.

307. Denied.

308. Denied.

309. Denied.

310. Although City is unclear as to what exactly is being alleged in paragraph 310, the City denies that it closed the Golfbrook Terrace Development. The City admits that HabiJax proposed to purchase the property in order to develop residences for sale to various then-unknown individuals and that HabiJax succeeded in acquiring title to the property for that purpose. Subject to further review and investigation, the City is without knowledge at this time as to the specifics of the demolition process and, therefore, denies those allegations. The City denies that class certification is appropriate.

311. Denied.

312. Denied.

COUNT XIV
VICARIOUS LIABILITY AGAINST CITY BY WAY OF AGENCY BY ESTOPPEL

313. Admitted for jurisdictional purposes only.

314. Paragraph 314 contains a legal conclusion to which no response is required.

315. Paragraph 315 contains legal conclusions to which no response is required.

316. Paragraph 316 contains legal conclusions to which no response is required.

317. Denied.

318. Denied.

319. Denied.

320. Denied.

321. Denied.

322. Denied.

323. Denied.

324. Denied.

325. Denied.

326. Denied.

[Paragraphs 327 through 335 are directly solely to HabiJax. Therefore, no response from the City is required.]

COUNT XVI
BREACH OF CONTRACT AGAINST CITY

336. The City realleges its responses to the allegations of paragraphs 1 through 122.

337. Admitted for jurisdictional purposes only.

338. Denied.

339. Denied.

340. Denied.

341. Denied.

342. Denied.

343. Denied.

344. Denied.

PRAYER

The City denies that Plaintiff is entitled to the relief requested.

DEMAND FOR JURY TRIAL

The City demands a trial by jury on all issues so triable.

AFFIRMATIVE DEFENSES

FIRST DEFENSE
(Statute of Limitations)

1. The Agreement to Extend Statutes of Limitation ("Tolling Agreement"), which was first effective on April 22, 2010, expressly provided that the City agreed to toll the running of the limitation period for causes of action which were not already barred as of April 22, 2010. As set forth below, the causes of action in the Third Amended Complaint were already barred by their applicable statutes of limitation before April 22, 2010. Therefore, the Tolling Agreement did not operate to toll or extend the running of the statute of limitations for any of Plaintiff's causes of action in the Third Amended Complaint.

2. Further, the Tolling Agreement is inapplicable to Count X for medical monitoring and Count XII for private nuisance for the additional reason that these causes of action were not contained within the "Proposed Complaint" referenced in the Tolling Agreement. The Tolling Agreement expressly stated that the City agreed to toll the running of unexpired limitation periods with respect to "legal claims and rights of the Fairway Oaks Residents set forth in the Proposed Complaint," which had been provided by Plaintiff's prior counsel. Because Counts X and XII were not set forth in the Proposed Complaint, the statutes of limitation were not tolled as to these counts.

3. Count II for negligence and Count IV for negligent misrepresentation are barred by the four-year statute of limitation set forth in § 95.11(3)(a), Florida Statutes. Plaintiff's causes of action in Counts II and Count IV accrued on November 8, 2000, which is the date Plaintiff purchased her property from HabiJax. The limitation period expired four years later, on November 8, 2004. Because the limitation period had already expired before the effective date of

the Tolling Agreement (April 22, 2010), the Tolling Agreement is inapplicable. Therefore, Counts II and IV are barred by the statute of limitations.

4. To the extent that § 95.031(2)(a), Florida Statutes, applies to Count IV for negligent misrepresentation, Plaintiff discovered or should have discovered with the exercise of due diligence the facts giving rise to Count IV prior to April 22, 2006. For example, according to paragraph 87 of the Third Amended Complaint, in "late 2006," Plaintiff reported to HabiJax a "settlement-related problem" concerning a crack in the concrete foundation of her home spanning the entire width of the home. It is likely that a crack of that size would have manifested itself much earlier than late 2006, indicating that Plaintiff knew or should have known that she had a claim to assert. Accordingly, Plaintiff's cause of action in Count IV accrued no later than April 22, 2006. Thus, if § 95.031(2)(a), Florida Statutes (concerning delayed accrual), is applicable to Count IV, the four-year limitation period in § 95.11(3)(a), Florida Statutes, began to run at that time and expired before April 22, 2010. Because the limitation period had already expired before the effective date of the Tolling Agreement (April 22, 2010), the Tolling Agreement is inapplicable. Therefore, Count IV is barred by the statute of limitations.

5. Count X for medical monitoring is barred by the statute of limitation set forth in § 95.11(3)(a) or (p), Florida Statutes. Count X is based on allegations that the City was negligent. Plaintiff's cause of action in Count X accrued on November 8, 2000, which is the date Plaintiff purchased her property from HabiJax. The limitation period expired four years later on November 8, 2004. Because the limitation period had already expired before the effective date of the Tolling Agreement (April 22, 2010), the Tolling Agreement is inapplicable. Therefore, Count X is barred by the statute of limitations.

6. Count XII for private nuisance is barred by the statute of limitation set forth in § 95.11(3)(g) or (p), Florida Statutes. Count XII purports to allege that the City has created a nuisance of a permanent nature. Therefore, Plaintiff's cause of action in Count XII accrued on November 8, 2000, which is the date Plaintiff purchased her property from HabiJax. The limitation period expired four years later on November 8, 2004. Because the limitation period had already expired before the effective date of the Tolling Agreement (April 22, 2010), the Tolling Agreement is inapplicable. Accordingly, Count XII is barred by the statute of limitations.

7. Count XVI for breach of contract is barred by the statute of limitation set forth in § 95.11(2)(b), Florida Statutes, to the extent Count XVI purports to be based on a written contract. If Plaintiff and the City had entered into a written agreement concerning her purchase of her residence, that agreement was allegedly breached on November 8, 2000, which is the date Plaintiff purchased her residence. The five-year limitation period in § 95.11(2)(b), Florida Statutes, expired November 8, 2005. Because the limitation period had already expired before the effective date of the Tolling Agreement (April 22, 2010), the Tolling Agreement is inapplicable. Therefore, Count XVI is barred by the statute of limitations to the extent it is predicated on a written agreement.

8. Count XVI for breach of contract is barred by the statute of limitation in § 95.11(3)(k), Florida Statutes, to the extent Count XVI is based on an unwritten contract. If Plaintiff and the City had entered into an unwritten agreement concerning her purchase of her residence, that agreement was allegedly breached on November 8, 2000, which is the date Plaintiff purchased her residence. The four-year limitation period in § 95.11(2)(b), Florida Statutes, expired November 8, 2004. Because the limitation period had already expired before the effective date of the Tolling Agreement (April 22, 2010), the Tolling Agreement is

inapplicable. Therefore, Count XVI is barred by the statute of limitations to the extent it is predicated on an unwritten agreement.

9. Counts XIII and XIV for vicarious liability against the City are not independent causes of action. Nonetheless, the causes of action against HabiJax for which Plaintiff seeks to hold the City vicariously liable are barred by the applicable statute of limitations.

SECOND DEFENSE
(Sovereign Immunity/Separation of Powers/Lack of Duty)

10. Plaintiff's and purported class members' tort causes of action are barred by sovereign immunity and § 768.28(9), Florida Statutes, to the extent that they are predicated on alleged acts and omissions committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.

11. Plaintiff's and purported class members' tort causes of action are barred by sovereign immunity, the separation of power doctrine, and lack of a statutory or common law duty to the extent that they are predicated on the City's alleged determination that Plaintiff's home and the other homes in the Fairway Oaks Development passed building inspection and complied with applicable building codes. *See Trianon Park Condo. Ass'n v. City of Hialeah*, 468 So. 2d 912 (Fla. 1985); *Commercial Carrier Corp. v. Indian River Cty.*, 371 So. 2d 1010 (Fla. 1979).

12. Plaintiff's and purported class members' tort causes of action are barred by sovereign immunity, the separation of powers doctrine, and lack of a statutory or common law duty to the extent they are based on the City's alleged decision to locate the Fairway Oaks Development on the site of the former Golfbrook Terrace Development. *See Trianon Park*, 468 So. 2d 912*; Commercial Carrier*, 371 So. 2d 1010.

13. Plaintiff's and purported class members' tort causes of action are barred by sovereign immunity, the separation of powers doctrine, and lack of a statutory or common law duty to the extent they are based on the City's alleged decision to transfer property to HabiJax for the development of the Fairway Oaks Development. *See Trianon Park*, 468 So. 2d 912*; Commercial Carrier*, 371 So. 2d 1010.

14. Plaintiff's and purported class members' tort causes of action are barred by sovereign immunity, the separation of powers doctrine, and lack of a statutory or common law duty to the extent they are based on the City's alleged oversight of HabiJax's use of federal or City funds with respect to compliance with laws or regulations in connection with the construction of the Fairway Oaks Development. *See Trianon Park*, 468 So. 2d 912*; Commercial Carrier*, 371 So. 2d 1010.

15. Plaintiff's and purported class members' causes of action are barred by sovereign immunity to the extent that they are predicated on actions that occurred prior to January 1, 1975, which is the effective date of the enactment of § 768.28, Florida Statutes.

16. Counts XIII and XIV for vicarious liability against the City are barred by sovereign immunity for lack of an express, written agreement creating vicarious liability on the part of the City for the actions of HabiJax.

17. Count XVI for breach of contract against the City is barred by sovereign immunity to the extent that it is based on an unwritten contract. *See County of Brevard v. Miorelli Eng'g*, 703 So. 2d 1049 (Fla. 1998).

18. To the extent that Plaintiff and the purported class members seek an order compelling the City to relocate them from their current homes to homes more to their liking (*see*

paragraph 12 of the Third Amended Complaint), such an order would be barred by the doctrine of separation of powers.

19. The City reserves the right to assert the defenses of sovereign immunity, separation of powers doctrine, and the lack of common law duty with respect other aspects of Plaintiff's and purported class members' claims in light of discovery.

THIRD DEFENSE
(Failure to Comply with § 768.28(6), Florida Statutes)

20. Plaintiff's and purported class members' tort causes of action are barred for failure to comply with § 768.28(6), Florida Statutes, because Plaintiff and the purported class members did not present their claims in writing to the City and the Department of Financial Services within three years after their alleged claims accrued.

21. Count X for medical monitoring and Count XII for private nuisance are barred by § 768.28(6), Florida Statutes, because Plaintiff did not present notice of these alleged claims to the City and the Department of Financial Services.

FOURTH DEFENSE
(Failure to Mitigate Damages)

22. Plaintiff's and purported class members' causes of action are barred, in whole or in part, for their failure to mitigate damages. Plaintiff and the purported class members permitted the alleged property damage to their homes to worsen by their failure to timely report such damages to HabiJax or take remedial steps themselves that would have mitigated the alleged damage. Further, subject to further discovery, upon information and belief, Plaintiff's and purported class members' alleged exposures to hazardous substances were worsened by their failure to timely seek appropriate medical care. Therefore, Plaintiff's and the purported class member's damages should be denied or reduced accordingly.

FIFTH DEFENSE
(Contributory Fault)

23. Plaintiff's and purported class members' damages, if any, are barred or reduced by the contributory fault of Plaintiff and class members in causing or failing to mitigate their alleged damages. *See* § 768.81(2), Fla. Stat. All or a part of Plaintiff's and purported class members' alleged damage to their homes and property was caused by their own failure to properly maintain or repair their property. Further, all or a part of Plaintiff's and purported class members' alleged exposures to hazardous substances were caused by their own failure to avoid contact with such alleged substances or their own failure to seek appropriate medical treatment. Further, the City incorporates the allegations of its Fourth Defense set forth above concerning Plaintiff's and purported class members' failure to mitigate their damages.

SIXTH DEFENSE
(Comparative Fault)

24. Plaintiff's and class members' damages, if any, are barred or reduced by the comparative fault of third parties not related to the City, including co-Defendant HabiJax. To the extent the City may be found to be at fault, the City is entitled to an apportionment of damages in accordance with § 768.81, Florida Statutes.

SEVENTH DEFENSE
(Allocation of Fault to Nonparties)

25. Plaintiff's and purported class members' damages, if any, must be reduced by the allocation of fault to non-parties whose actions or inactions caused or contributed to plaintiff's and class members' damages, if any, and over whom the City had no responsibility or control. *See* § 768.81, Fla. Stat.; *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993). Such nonparties include, but are not limited to, the former owners of the land upon which the Fairway Oaks Development was constructed (believed to be Duval Engineering and Contracting, Co.; Alexander Brest;

George H. Hodges Jr.; and Golfair Manor, Inc.); Fairway Oaks Homeowners Association of Jacksonville, Inc.; the U.S. Environmental Protection Agency; the U.S. Housing and Urban Development Department; the U.S. Department of Health and Human Services; the Florida Department of Environmental Regulation; the Florida Department of Environmental Protection; or other regulatory bodies involved in the inspection and testing and approval of the closure of the Castellano Landfill; individuals or entities involved in the inspection and testing of the soil or water at the Castellano Landfill, Moncrief Creek, or the site of the Golfbrook Terrace Development or the Fairway Oaks Development (including those entities referenced *supra* in the City's Answer to the Third Amended Complaint); the contractors, engineers, builders, organizers, or other persons who participated substantially in the site preparation, design, construction, or repair of Plaintiff's and class members' homes; unknown persons who deposited, released, or buried trash, debris, chemicals, or other materials or substances in and on the real property upon which Plaintiffs' and purported class members' homes were constructed; unknown persons who deposited or released trash, debris, chemicals or other materials or substances into Moncrief Creek; unknown persons involved in the selection or qualification of Plaintiff or purported class members to purchase property in the Fairway Oaks Development; unknown persons involved in the sale of the land and residences to Plaintiff or class members; and unknown prior owners of residences in Fairway Oaks Development who may have sold their homes to current owners of homes in the Fairway Oaks Development.

EIGHTH DEFENSE
(Laches)

26. Plaintiff's and purported class members' causes of action are barred by the doctrine of laches because Plaintiff and class members have unreasonably delayed asserting their causes of action which has resulted in undue prejudice to the City, including the loss of

potentially probative evidence and the City's inability to investigate the Plaintiff's and purported class members' claims and the City's defenses thereto, to interview and preserve testimony of material witnesses, or to locate and preserve relevant documents or other materials.

NINTH DEFENSE
(Waiver)

27. Plaintiff's and purported class members' causes of action are barred by waiver because Plaintiff and class members had the opportunity to inspect their properties prior to purchase and accepted their properties as they were. Further, Plaintiff and some or all of the purported class members have lived in their homes for more than 18 years and have, therefore, waived any causes of action based on their purchases.

TENTH DEFENSE
(Estoppel)

28. Plaintiff and some or all of their purported class members are estopped from asserting claims against the City because they accepted their properties and have continuously resided in them for more than 18 years.

ELEVENTH DEFENSE
(Open & Obvious)

29. As to any purported class members who may have purchased their homes after pronounced or visible sinking of the property or cracks in the foundation or homes were open and obvious, such claims are barred.

TWELFTH DEFENSE
(Merger)

30. Plaintiff's and purported class members' causes of action are barred by the doctrine of merger. Representations made prior to the closing of the Plaintiff's or class members' causes of action are considered to have "merged" into the deed, such that they do not survive closing and cannot form the basis of a cause of action.

THIRTEENTH DEFENSE
(Compliance With Regulations)

31. If and to the extent that the location and closure of the Castellano Landfill is or may become relevant to the claims of Plaintiff or any purported class members and to the further extent that the City was involved in the closure of the Castellano Landfill, the City complied with the then applicable laws, rules, and regulations for such closure. In particular, upon information and belief, there was no requirement at the time that closure of the Castellano Landfill include the installation of a non-permeable liner or leachate collection system.

FOURTEENTH DEFENSE
(Setoff)

32. Plaintiff's and purported class members' damages, if any, should be offset by all collateral sources paid or payable to Plaintiff or class members.

FIFTEENTH DEFENSE
(Intervening Cause)

33. Plaintiff's and purported class members' causes of action are barred because the acts or omissions of other individuals or entities constitute an intervening cause, which supersedes and breaks the chain of causation as to any supposed liability of the City for its acts or conduct.

SIXTEENTH DEFENSE
("*Slavin* Doctrine")

34. Plaintiff's and purported class members' causes of action are barred by pursuant to the rule announced in *Slavin v. Kay*, 108 So. 2d 463 (Fla. 1959), because the alleged defects with respect to Plaintiff's and class members' properties were patent at the time of their purchases.

SEVENTEENTH DEFENSE
(Assumption of Risk)

35. Plaintiff's and purported class members' causes of action are barred because Plaintiff and purported class members willingly, knowingly, and voluntarily assumed the risk of their injuries, if any.

EIGHTEENTH DEFENSE
(Statute of Repose)

36. Plaintiff's and purported class members' causes of action are barred by the statute of repose set forth in the applicable version of § 95.11(3)(c), Florida Statutes, or its statutory predecessors or other provisions of law, to the extent they are founded on the design, planning, or construction of an improvement to real property.

37. Count IV for negligent misrepresentation is barred by the statute of repose set forth in § 95.031(2)(a), Florida Statutes, because the alleged misrepresentation or omission, if any, was committed November 8, 2000, which is the date of Plaintiff's purchase of her home. Because Count IV was not filed within the repose period, it is barred.

NINETEENTH DEFENSE
(Economic Loss Rule)

38. Plaintiff's and purported class members' claims for economic loss are barred by the economic loss doctrine.

TWENTIETH DEFENSE
(Failure to State a Cause of Action)

39. Plaintiff's Third Amended Complaint fails to state a cause of action upon which relief may be granted.

DATED this 29th day of August, 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of August, 2018, a true and correct copy of the foregoing was filed with the Clerk of Court via the Florida Courts e-Filing Portal, which will send notice of electronic filing to the following:

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