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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

**GALLERY COMMUNITY
ASSOCIATION, an Arizona non-profit
corporation,**

Plaintiff,

v.

**K. HOVNANIAN AT GALLERY, LLC, an
Arizona limited liability company; K.
HOVNANIAN ARIZONA OPERATIONS,
LLC, an Arizona limited liability company;
K. HOVNANIAN DEVELOPMENTS OF
ARIZONA, INC., an Arizona corporation;
K. HOVNANIAN COMPANIES OF
ARIZONA, LLC, an Arizona limited
liability company; JOHN DOES I-X AND
JANE DOES I-X, WHITE
CORPORATIONS I-X; BLACK
PARTNERSHIPS I-X; AND GRAY
LIMITED LIABILITY COMPANIES I-X,**

Defendants.

Case No. CV2020-008714

**DEFENDANTS' ANSWER TO
COMPLAINT**

(Assigned to the Hon. Michael Kemp)

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1 Defendants K. Hovnanian at Gallery, LLC, K. Hovnanian Arizona Operations, LLC, K.
2 Hovnanian Developments of Arizona, Inc., and K. Hovnanian Companies of Arizona, LLC
3 (collectively the “Defendants”), by and through undersigned counsel, submits their Answer to
4 Plaintiff as follows:

5 1. Defendants admit only that the Plaintiff is Gallery Community Association
6 (hereinafter the “Association”), an Arizona nonprofit corporation that acts as the property owners
7 association for the property known as the Gallery, located in Scottsdale, Arizona. Defendants
8 otherwise deny the allegations therein.

9 2. Defendants admit only that the Plaintiff was incorporated under the laws of the State
10 of Arizona. Defendants otherwise deny the allegations therein.

11 3. Defendants admit the allegations therein.

12 4. Defendants admit the allegations therein.

13 5. Defendants admit the allegations therein.

14 6. Defendants admit the allegations therein.

15 7. Defendants admit the allegations therein.

16 8. Defendants admit only that K. Hovnanian at Gallery, LLC conveyed the common
17 elements of the project to the Association in a quit claim deed dated October 6, 2016. Defendants
18 otherwise deny the allegations therein.

19 9. Defendants admit the allegations therein.

20 10. Defendants admit the allegations therein.

21 11. Defendants admit only that K. Hovnanian Developments of Arizona, Inc. is a
22 member of K. Hovnanian at Gallery, LLC, and K. Hovnanian Arizona Operations, LLC.
23 Defendants otherwise deny the allegations therein.

24 12. Defendants admit the allegations therein.

25 13. Defendants deny the allegations therein.

26 14. Defendants admit the allegations therein.

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1 **FIRST CAUSE OF ACTION**

2 **(Negligence – Against All Defendants)**

- 3 15. Defendants reallege their prior responses as if incorporated herein.
4 16. Defendants deny the allegations therein.
5 17. Defendants deny the allegations therein.
6 18. Defendants deny the allegations therein.
7 19. Defendants deny the allegations therein.
8 20. Defendants deny the allegations therein.
9 21. Defendants deny the allegations therein.
10 22. Defendants deny the allegations therein.

11 **SECOND CAUSE OF ACTION**

12 **(Breach of Implied Covenant of Good Faith and Fair Dealing – Against Defendants**
13 **K. Hovnanian at Gallery, LLC, K. Hovnanian Developments of Arizona, Inc., and**
14 **K. Hovnanian Companies of Arizona, LLC)**

- 15 23. Defendants reallege their prior responses as if incorporated herein.
16 24. Defendants deny the allegations therein.
17 25. Defendants deny the allegations therein.
18 26. Defendants deny the allegations therein.
19 27. Defendants deny the allegations therein.
20 28. Defendants deny the allegations therein.
21 29. Defendants deny the allegations therein.
22 30. Defendants deny the allegations therein.
23 31. Defendants deny the allegations therein.

24 **THIRD CAUSE OF ACTION**

25 **(Breach of Implied Warranty of Workmanship and Habitability – Against All Defendants)**

- 26 32. Defendants reallege their prior responses as if incorporated herein.
27 33. Defendants deny the allegations therein.

1 34. Defendants deny the allegations therein.

2 35. Defendants deny the allegations therein.

3 36. Defendants deny the allegations therein.

4 **FOURTH CAUSE OF ACTION**

5 **(Breach of Contract – Against Defendants K. Hovnanian at Gallery, LLC, K. Hovnanian**
6 **Developments of Arizona, Inc., and K. Hovnanian Companies of Arizona, LLC)**

7 37. Defendants reallege their prior responses as if incorporated herein.

8 38. Defendants deny the allegations therein.

9 39. Defendants deny the allegations therein.

10 40. Defendants deny the allegations therein.

11 **ALL ALLEGATIONS NOT EXPRESSLY ADMITTED ABOVE ARE HEREBY DENIED.**

12 **AFFIRMATIVE DEFENSES**

13 Further answering the Complaint, Defendants assert the following affirmative defenses:
14 assumption of risk, estoppel, failure of consideration, laches, license, payment, release, statute of
15 frauds, waiver, and any other matter constituting an avoidance or affirmative defense.

16 Additionally, Plaintiff's negligence claim must be dismissed because Defendants owed no
17 duty of care and it is barred by the economic loss rule; Plaintiff's breach of contract and breach
18 of implied covenant of good faith and fair dealing claims fail because Plaintiff is not in privity of
19 contract with Defendants; and Plaintiff's breach of implied warranty of workmanship and
20 habitability claim fails because Plaintiff is not a homeowner, and the claim is conclusory at best.

21 In order to preserve and not waive all affirmative defenses under Ariz. R. Civ. P. 8(d) and
22 12(b), Defendants hereby allege them generally. Should, through discovery, disclosure, or other
23 means, Defendants become aware of facts or law which support these additional defenses,
24 Defendants will specifically disclose the defenses and amend their answer and pleadings, in
25 compliance with the Arizona Rules of Civil Procedure, Orders of the Court and/or the agreement of
26 the parties.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Defendants seek relief against Plaintiffs as follows:

- 3 A. For dismissal of the Complaint with prejudice, and an award of judgment thereon
4 to Defendants;
- 5 B. For an award of Defendants' reasonable attorneys' fees and costs against Plaintiffs,
6 pursuant to A.R.S. §§ 12-341.01, 12-341, and any other applicable authority;
- 7 C. For such other and further relief as the Court deems just and proper.

8

9 **RESPECTFULLY SUBMITTED** this 22nd day of September 2020.

10 **WILENCHIK & BARTNESS, P.C.**

11 */s/ Dennis I. Wilenchik*

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13 Matthew V. Moosbrugger, Esq.

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18 *Attorneys for Defendants*

19 **ELECTRONICALLY FILED** September 22, 2020

20 Via AZTurboCourt

21 **E-SERVED** September 22, 2020 upon:

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Attorneys for Plaintiff

/s/ Hilary Myers