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5
6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
7 **IN AND FOR THE COUNTY OF MARICOPA**

9 GALLERY COMMUNITY
ASSOCIATION, an Arizona non-profit
10 corporation

11 Plaintiffs,

12 vs.

13 K. HOVNANIAN AT GALLERY, LLC,
et al.

14 Defendants

15 K. HOVNANIAN AT GALLERY, LLC,
et al.

16 Third-Party Plaintiffs,

17 vs.

18 CHAS ROBERTS AIR
19 CONDITIONING, INC., et al.

20 Third-Party Defendants.

NO. CV2020-008714

**ANSWER BY THIRD-PARTY
DEFENDANT CUSTOM LEASING, INC.**

(Assigned to the Hon. Michael Kemp)

21 Third-Party Defendant Custom Leasing, Inc. d/b/a Home Builders Site Services
22 of Arizona, LLC (hereinafter, "Defendant"), by and through its attorney undersigned,
23 admits, denies and alleges the following in response to Third-Party Plaintiff K.
24 Hovnanian at Gallery, LLC, et. al.'s (hereinafter, "Plaintiffs") Complaint (hereinafter
25 "the Complaint"). Defendant denies all allegations in the Complaint unless expressly
26 admitted herein.

27 **PARTIES**

28 1. The allegations contained in paragraphs 1 – 8 of Plaintiffs' Complaint are not

1 directed to this Defendant. To the degree a response is deemed necessary,
2 Defendant is without sufficient knowledge or information with which to admit or
3 deny the allegations contained in paragraphs 1 – 8 of the Complaint and,
4 therefore, denies the same.

- 5 2. Defendant admits the allegations contained in Paragraph 9 of the Complaint.
- 6 3. The allegations contained in paragraphs 10 – 15 of Plaintiffs’ Complaint are not
7 directed to this Defendant. To the degree a response is deemed necessary,
8 Defendant is without sufficient knowledge or information with which to admit or
9 deny the allegations contained in paragraphs 10 – 15 of the Complaint and,
10 therefore, denies the same.
- 11 4. The allegations contained in paragraph 16 of the Complaint do not state factual
12 assertions to which any response is required, but rather assert legal conclusions.
13 To the degree a response is deemed necessary, Defendant is without sufficient
14 knowledge or information with which to admit or deny the allegations contained
15 in paragraph 16 of the Complaint, and, therefore, denies the same.

16 **JURISDICTION AND VENUE**

- 17 5. Defendant is without sufficient knowledge or information with which to admit or
18 deny the allegations contained in paragraph 17 of the Complaint, and, therefore,
19 denies the same
- 20 6. Defendant admits the allegations contained in paragraph 18 of the Complaint.

21 **GENERAL ALLEGATIONS**

- 22 7. Defendant is without sufficient knowledge or information with which to admit or
23 deny the allegations contained in paragraphs 19-22 of the Complaint and,
24 therefore, denies the same.
- 25 8. The allegations contained in paragraph 23 of the Complaint do not state factual
26 assertions to which any response is required, but rather assert legal conclusions.
27 To the degree a response is deemed necessary, Defendant is without sufficient
28 knowledge or information with which to admit or deny the allegations contained

1 without sufficient knowledge or information with which to admit or deny the
2 allegations contained therein, and, therefore, denies the same.

3 **COUNT THREE**
4 **(Breach of Contract)**

5 16. Defendant repeats and incorporates its answers to the preceding paragraphs 1-37
6 of the Complaint as if fully set forth herein.

7 17. The allegations contained in paragraphs 38-41 of the Complaint do not state
8 factual assertions to which any response is required, but rather assert legal
9 conclusions. To the degree a response is deemed necessary, Defendant is
10 without sufficient knowledge or information with which to admit or deny the
11 allegations contained therein, and, therefore, denies the same.

12 **COUNT FOUR**
13 **(Negligence)**

14 18. Defendant repeats and incorporates its answers to the preceding paragraphs 1-41
15 of the Complaint as if fully set forth herein.

16 19. The allegations contained in paragraphs 43-46 of the Complaint do not state
17 factual assertions to which any response is required, but rather assert legal
18 conclusions. To the degree a response is deemed necessary, Defendant is
19 without sufficient knowledge or information with which to admit or deny the
20 allegations contained therein, and, therefore, denies the same.

21 **COUNT FIVE**
22 **(Common Law Implied Indemnity)**

23 20. Defendant repeats and incorporates its answers to the preceding paragraphs 1-46
24 of the Complaint as if fully set forth herein.

25 21. Defendant is without sufficient knowledge or information with which to admit or
26 deny the allegations contained in paragraph 48 of the Complaint and, therefore,
27 denies the same.

28 22. The allegations contained in paragraphs 49 of the Complaint do not state factual
assertions to which any response is required, but rather assert legal conclusions.
To the degree a response is deemed necessary, Defendant is without sufficient

1 knowledge or information with which to admit or deny the allegations contained
2 therein, and, therefore, denies the same.

3 **COUNT SIX**
4 **(Contractual Indemnity)**

5 23. Defendant repeats and incorporates its answers to the preceding paragraphs 1-49
6 of the Complaint as if fully set forth herein.

7 24. Defendant is without sufficient knowledge or information with which to admit or
8 deny the allegations contained in paragraphs 51-53 of the Complaint and,
9 therefore, denies the same.

10 25. The allegations contained in paragraphs 54 of the Complaint do not state factual
11 assertions to which any response is required, but rather assert legal conclusions.
12 To the degree a response is deemed necessary, Defendant is without sufficient
13 knowledge or information with which to admit or deny the allegations contained
14 therein, and, therefore, denies the same.

15 **COUNT SEVEN**
16 **(Declaratory Relief – Re: Duty to Defend)**

17 26. Defendant repeats and incorporates its answers to the preceding paragraphs 1-54
18 of the Complaint as if fully set forth herein.

19 27. Defendant is without sufficient knowledge or information with which to admit or
20 deny the allegations contained in paragraph 56 of the Complaint and, therefore,
21 denies the same.

22 28. The allegations contained in paragraphs 57-61 of the Complaint do not state
23 factual assertions to which any response is required, but rather assert legal
24 conclusions. To the degree a response is deemed necessary, Defendant is
25 without sufficient knowledge or information with which to admit or deny the
26 allegations contained therein, and, therefore, denies the same.

27 **COUNT EIGHT**
28 **(Declaratory Relief – Re: Duty to Indemnify)**

29 Defendant repeats and incorporates its answers to the preceding paragraphs 1-61

1 of the Complaint as if fully set forth herein.

2 30. The allegations contained in paragraphs 63-65 of the Complaint do not state
3 factual assertions to which any response is required, but rather assert legal
4 conclusions. To the degree a response is deemed necessary, Defendant is
5 without sufficient knowledge or information with which to admit or deny the
6 allegations contained therein, and, therefore, denies the same.

7 **COUNT NINE**
8 **(Declaratory Relief – Re: Contractual Duties)**

9 31. Defendant repeats and incorporates its answers to the preceding paragraphs 1-65
10 of the Complaint as if fully set forth herein.

11 32. The allegations contained in paragraphs 67-68 of the Complaint do not state
12 factual assertions to which any response is required, but rather assert legal
13 conclusions. To the degree a response is deemed necessary, Defendant is
14 without sufficient knowledge or information with which to admit or deny the
15 allegations contained therein, and, therefore, denies the same.

16 **COUNT TEN**
17 **(Contribution)**

18 33. Defendant repeats and incorporates its answers to the preceding paragraphs 1-68
19 of the Complaint as if fully set forth herein.

20 34. The allegations contained in paragraphs 70 of the Complaint do not state factual
21 assertions to which any response is required, but rather assert legal conclusions.
22 To the degree a response is deemed necessary, Defendant is without sufficient
23 knowledge or information with which to admit or deny the allegations contained
24 therein, and, therefore, denies the same.

25 **AFFIRMATIVE DEFENSES**

26 35. Defendant asserts the Complaint fails to state a claim against Defendant for which
27 relief can be granted.

28 36. Defendant denies it is liable to Plaintiff or Third-Party Plaintiff in the sum or sums
alleged, or in any sum or sums at all.

- 1 37. Defendant asserts it was without either actual or constructive notice of the issues
2 raised within the Complaint.
- 3 38. Defendant asserts Third-Party Plaintiffs have failed to join necessary or
4 indispensable parties pursuant to the Arizona Rules of Civil Procedure.
- 5 39. Defendant asserts Third-Party Plaintiffs caused or contributed to the event and any
6 associated damages.
- 7 40. Defendant asserts Third-Party Plaintiffs may have failed to mitigate their damages.
- 8 41. Defendant asserts Third-Party Plaintiffs' claims, if any, are barred by the
9 affirmative defenses of release, accord and satisfaction, assumption of the risk,
10 workers compensation exclusivity, laches, waiver, and estoppel.
- 11 42. Defendant assert Plaintiffs' claims, if any, are barred by the affirmative defenses
12 of release, accord and satisfaction, assumption of the risk, workers compensation
13 exclusivity, laches, waiver, and estoppel and further asserts its right to amend its
14 affirmative defenses with any applicable to the facts of Third-Party Plaintiffs'
15 claims as they become known throughout the course of litigation as set forth in
16 Rules 8 and 12 of the Arizona Rules of Civil Procedure.

17

18 WHEREFORE, having fully answered Plaintiffs' Complaint in the above
19 captioned cause, Defendant Custom Leasing, Inc., prays the Third-Party Plaintiffs'
20 Complaint be dismissed with prejudice as to all claims raised against them and further
21 request Third-Party Plaintiffs recover nothing thereby. Defendant, Custom Leasing, Inc.
22 further reserves the right to request reimbursement of its taxable costs of suit herein
23 incurred.

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1 DATED this 11th day of August, 2021.

2
3 **LIBERTY MUTUAL GROUP FIELD LEGAL OFFICES**

4
5 By: /s/ Michael Ryan Williams

6 Michael Ryan Williams, Esq.

7 P.O. Box 7218

8 London, KY 40742

9 *Attorney for Defendant Custom Leasing, Inc.*

10 **ORIGINAL** of the foregoing electronically filed
11 this 12th day of August, 2021, with:

12 Maricopa County Superior Court

13 and a **COPY** of the foregoing electronically mailed
14 this 12th day of August, 2021, to:

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By: 