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9 *Attorneys for Defendants/Third-Party Plaintiffs K. Hovnanian*
10 *at Gallery, LLC and K. Hovnanian Arizona Operations, LLC*

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF MARICOPA**

13
14 GALLERY COMMUNITY ASSOCIATION, an
Arizona non-profit corporation,
15
16 Plaintiff,

17 v.

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

24 Defendants.

25 K. HOVNANIAN AT GALLERY, LLC, an
Arizona limited liability company; K.
26 HOVNANIAN ARIZONA OPERATIONS, LLC,
an Arizona limited liability company; K.
27 HOVNANIAN DEVELOPMENTS OF
ARIZONA, INC., an Arizona corporation; K.
28 HOVNANIAN COMPANIES OF ARIZONA.

Case No. CV2020-008714

**STATEMENT OF FACTS IN SUPPORT
OF DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT REGARDING
EACH OF PLAINTIFF'S CAUSES OF
ACTION**

(Assigned to the Honorable Katherine
Cooper)

1 LLC, an Arizona limited liability company;
2
3 Third-Party Plaintiffs,
4
5 v.
6 CHAS ROBERTS AIR CONDITIONING, INC.,
7 an Arizona corporation; DESERT VISTA, INC.,
8 an Arizona corporation; GOTHIC
9 LANDSCAPING, INC., a California corporation;
10 HOME BUILDERS SITE SERVICES OF
11 ARIZONA, LLC, an Arizona limited liability
12 company; LEBLANC BUILDING CO., INC., an
13 Arizona corporation; LIBERTY
14 CONSTRUCTORS, LLC, an Arizona limited
15 liability company, dba LIBERTY ARIZONA;
16 RENCO LLC, an Arizona limited liability
17 company, dba RENCO ROOFING; R/S SERVICE
18 & SUPPLY, INC., an Arizona corporation;
19 SARGON MASONRY CONSTRUCTION, LLC,
20 an Arizona limited liability company; and DOES
21 1-50.
22
23 Third-Party Defendants,
24

25 COME NOW Defendants K. Hovnanian at Gallery, LLC and K. Hovnanian Arizona
26 Operations, LLC, by and through undersigned counsel, pursuant to Ariz.R.Civ.P. 56 do hereby
27 submit their Statement of Facts in Support of Defendants' Motion For Summary Judgment
28 Regarding Plaintiff's Causes Of Action.

1. Plaintiff is the Homeowner's Association formed to maintain common areas, collect assessments, and enforce terms of the Declaration of Covenants, Conditions, Restrictions, and Easements for Gallery. Exhibit A, Declaration of Covenants, Conditions, Restrictions, and Easements for Gallery, Exhibit A hereto, GALLERY_000163-000206 at page GALLERY_000168.)

2. The Declarant who formed the Association is K. Hovnanian at Gallery, LLC. (Exhibit A, at page GALLERY_000168 and at § 1.15 / p GALLERY_000170.)

3. The Declaration/CC&Rs do not include any agreement to perform construction or any warranty regarding the construction of improvements at the property. (Exhibit A.)

1 4. The Declaration/CC&Rs mainly concerns agreements between the individual lot
2 owners and the Association, for the benefit of owners and other interest holders in the subject lots
3 and common areas. (*Id.* generally and at Recitals A-D, page GALLERY_000168.)

4 5. Sales agreements were entered between K. Hovnanian at Gallery, LLC and
5 purchasers of homes at The Gallery. (Sale Agreement, Exhibit B, GALLERY-JONES_3104-
6 0000218-252.)

7 6. Terms of the purchase agreements include limited warranties to the homebuyers.
8 (Exhibit B, at Section E. Warranties p. 9-10/ GALLERY-JONES_3014-000226-227, and Home
9 Builder’s Limited Warranty Agreement, Exhibit C hereto, KHOV00000052-66.)

10 7. The warranties include specific provisions for raising claims and for arbitration of
11 all disputes. (Exhibit C, at page KHOV00000053.)

12 8. Plaintiff has had professional management including throughout the turnover
13 process. (Deposition of R. Vander Waal, excerpts attached hereto as Exhibit E, at pp. 47: 16-22.)

14 9. Plaintiff accepted responsibility for all common area improvements in 2018 and
15 acknowledged at that time that requested punch list repairs had been completed. (Exhibit D, pp.
16 41:9-47:15, and Common Area, Landscape and Financial Acceptance by Gallery Community
17 Association, Exhibit E hereto, EX 20 to deposition Defendants’ 30(b)(6) representative James
18 Harvey/KHOV00000046-51.)

19 10. Plaintiff, through its counsel, gave notice of claims by correspondence purporting
20 to be a Notice of Claim under A.R.S. § 12-1363. (Exhibit F).

21 11. Plaintiff’s counsel stated in correspondence regarding its pre-litigation Notice of
22 Claim under A.R.S. § 12-1361 et seq. and 33-2002 et seq. that “The Notice was on behalf of the
23 Association only and for issues that are within the Association’s responsibility to maintain and
24 repair under the Declaration of Covenants, Conditions, Restrictions and Easements for Gallery
25 [and] The Association is not bringing claims on behalf of one or more individual unit owners for
26 issues that the owners are solely responsible to maintain and repair.” Plaintiff’s counsel confirmed
27 in related correspondence that its claims was not based on rights of individual homeowners.
28 (Letter dated February 21, 2020, Exhibit G hereto.)

1 12. Plaintiff has identified in its Disclosures a number of provisions of the Declaration
2 that reference the Declarant. (Exhibit H, excerpts from Plaintiff's 19th Supplemental Disclosure at
3 pp. 4-5.)

4 Dated: September 30, 2022

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18 Original of the foregoing e-filed
this 30th day of September, 2022 with:

19 Clerk of the Court
20 Maricopa County Superior Court
101 W. Jefferson
21 Phoenix, AZ 85003

22 COPY of the foregoing emailed this
30th day of September, 2022 to:

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