

# EXHIBIT 7

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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  
COPRPORTATIONS I-X ; BLACK  
PARTNERSHIPS I-X; AND GRAY  
LIMITED LIABILITY COMPANIES I-  
X,

Defendants.

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K. HOVNANIAN AT GALLERY, LLC,  
an Arizona limited liability company; K.  
HOVNANIAN ARIZONA  
OPERATIONS, LLC, an Arizona limited

NO. CV2020-008714

**THIRD-PARTY DEFENDANT RENCO,  
LLC DBA RENCO ROOFING'S FIRST  
SUPPLEMENTAL RULE 26.1  
DISCLOSURE STATEMENT**

*(Assigned to the Honorable Michael Kemp)*

1 liability company; K. HOVNANIAN  
2 DEVELOPMENTS OF ARIZONA, INC.,  
3 an Arizona corporation; K.  
4 HOVNANIAN COMPANIES OF  
5 ARIZONA, LLC, an Arizona limited  
6 liability company;

7 Third-Party Plaintiffs

8 v.

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

Third-Party Defendants.

Third-Party Defendant Renco LLC d/b/a RENCO Roofing (“Renco”) by and through undersigned counsel, hereby submits its ***First Supplemental*** Rule 26.1 Disclosure Statement pursuant to Arizona Rules of Civil Procedure. Discovery is ongoing in this matter and Renco reserves its right to supplement this disclosure as discovery progresses. ***Supplemental information appears in bold, italic font.***

1 **I. FACTUAL BACKGROUND**

2 This construction defect case arises out of the construction of the Gallery Condominium  
3 Complex located at 3124 North 71<sup>st</sup> Street, Scottsdale, Arizona 85251 (the “Project”). The  
4 Project included four buildings and eighteen units. The Certificate of Occupancy was issued  
5 on or about July 13, 2017. The Gallery Community Association (“Plaintiff”), is an Arizona  
6 nonprofit corporation that acts as the property owners’ association for the Property.

7 Defendant/Third-Party Plaintiff K. Hovnanian Arizona Operations, LLC. was the  
8 general contractor responsible for the construction of the Project. Based on available  
9 information, Defendant/Third-Party Plaintiff K. Hovnanian Developments of Arizona, Inc., is  
10 and was a member of Defendants/Third-Party Plaintiffs K. Hovnanian at Gallery, LLC and K.  
11 Hovnanian Arizona Operations, LLC. Plaintiff is asserting Defendant/Third-Party Plaintiff K.  
12 Hovnanian Companies of Arizona, LLC (Third-Party Plaintiffs collectively, “K. Hovnanian”)  
13 was involved in the development, design, construction and/or sale of the Project and the units.

14 On or about July 24, 2016, Renco was hired by K. Hovnanian to perform roofing work  
15 for this Project. Renco fulfilled its obligations in a workmanlike manner in accordance with  
16 applicable construction standards and project documents. Therefore, Renco denies the  
17 allegations as set forth in this disclosure.

18 **II. LEGAL THEORIES OF DEFENSE**

19 Renco raises all defenses set forth in Rule 8 and 12(b) of the *Arizona Rules of Civil*  
20 *Procedure*. Additional defenses when known or discovered through discovery will be asserted  
21 and this section will be supplemented. Renco asserts the following defenses at this time:

22 **A. Breach of Contract**

23 The party alleging a breach of contract has the burden of proving both the existence of  
24 a valid contract and breach of the same. *See U.S. West Communications, Inc. v. Arizona Corp.*  
25 *Com’n*, 197 Ariz. 16, 22, 3 P.3d 936, 942 (App. 1999). In the present case, this requires K.

1 Hovnanian to prove 1) that a contract existed between K. Hovnanian and Renco; 2) that K.  
2 Hovnanian performed pursuant to the contract's terms; 3) that Renco did not perform pursuant  
3 to the contract's terms; and 4) that Renco's failure to perform resulted in damages to K.  
4 Hovnanian. *See Watson Construction Co. v. Amfac Mortgage Corp.*, 124 Ariz. 570, 581, 606  
5 P.2d 421, 432 (App. 1979). K. Hovnanian is attempting to pass through any and all claims as  
6 asserted by Plaintiff. K. Hovnanian does not have independent damages. K. Hovnanian has  
7 not alleged any facts to support its breach of contract claim, and Renco denies there was a  
8 breach, causation or damages in this matter. Renco also affirmatively asserts that the work it  
9 performed under the Contract was done in a good and workmanlike manner. All work by  
10 Renco was done at the direction, under the supervision, and with the approval of K. Hovnanian.  
11 Accordingly, Renco did not breach any terms of the Contract, express or implied, nor did it  
12 breach any express or implied warranties regarding the same.

13 **B. Breach of Implied Warranty of Workmanship and Express Warranty**

14 Renco denies any breach of warranty, express or implied. Arizona law imposes upon  
15 the builder an implied warranty that the construction is performed in a workmanlike manner  
16 and that the structure is habitable. *Columbia Western Corp. v. Vela*, 122 Ariz. 28; 592 P.2d  
17 1294 (App. 1979). The test for breach of the implied warranty of habitability and proper  
18 workmanship is "reasonableness, not perfection; the standard being, ordinarily, the quality of  
19 work that would be done by a worker of average skill and intelligence." *Nastri v. Wood Bros.*  
20 *Homes, Inc.*, 142 Ariz. 439, 444; 690 P. 2d 158 (App. 1984). Renco performed its contractual  
21 obligations in a workmanlike manner and in compliance with contract specifications and all  
22 applicable codes, usages, procedures, practices, and standards.

23 Finally, upon information and belief, prior to instigation of the present lawsuit, Renco  
24 was not notified of the claimed damages relating to its work at the Project. Further, it was not  
25 given an opportunity to cure any alleged defects/damages. Additionally, all work performed

1 by Renco at the Project was completed in a good and workmanlike manner and in accordance  
2 with applicable contract provisions, plans, specifications, building codes and industry  
3 standards. Renco's work was free from defect. As such, Renco is not in breach, nor has it  
4 ever been in breach, of any applicable express or implied warranties.

### 5 **C. Negligence**

6 To prove a negligence, K. Hovnanian must establish: 1) the existence of a duty  
7 recognized by law; 2) a breach of that duty; 3) a causal connection between the breach and  
8 injury; and 4) actual injuries or damages. *Ontiveros v. Borak*, 136 Ariz. 500, 504, 667 P.2d  
9 200, 204 (1983) (citation omitted). The Arizona Supreme Court has held that the duty or  
10 obligation must be recognized by law in order to maintain a negligence action. *Ferguson v.*  
11 *Cash, Sullivan and Cross Ins. Agency, Inc.*, 171 Ariz. 381, 384, 831 P.2d 380, 383 (App.  
12 1991) (citing *Hamman v. County of Maricopa*, 161 Ariz. 58, 61, 775 P.2d 1122, 1125 (1989)).  
13 The danger reasonably perceived defines the duty owed, and when a duty exists, the defendant  
14 must conform to a particular standard of conduct in order to protect others from unreasonable  
15 risks of harm. *Id.* (citations omitted).

16 Here, K. Hovnanian failed to meet its burden of proof. Renco affirmatively asserts that  
17 it performed its work in accordance with industry standards, and thus did not breach any duty  
18 owed to K. Hovnanian. Further, Renco was not the cause of K. Hovnanian's alleged damages.  
19 K. Hovnanian's damages are wholly attributable to parties other than Renco.

### 20 **D. Indemnification**

21 Arizona law precludes a developer/general contractor from simultaneously recovering  
22 under claims for express indemnity and common-law indemnity. Arizona law is quite clear  
23 that if a written contract addresses indemnity issues, then no common law rights exist. *See INA*  
24 *Ins. Co. of N. Am. v. Valley Forge Ins. Co.*, 150 Ariz. 248, 252 (App. 1986). In this case, K.  
25 Hovnanian has made both a contractual indemnity claim and a common-law indemnity claim.

1 K. Hovnanian cannot recover under both.

2 **1. Implied Indemnity**

3 In Arizona, the existence of a written indemnity clause wholly displaces any right to  
4 common law indemnity. *Id.* If K. Hovnanian is able to prove a written subcontract agreement  
5 exists between K. Hovnanian and Renco covering the homes Renco worked on in this case,  
6 and that written subcontract agreement contains an express indemnity provision, then K.  
7 Hovnanian’s claims of common law indemnity are inappropriate and should be dismissed as  
8 a matter of law. Even if K. Hovnanian had a viable common law indemnity claim, K.  
9 Hovnanian could not recover under this legal theory.

10 Common law indemnity is an “all or nothing” proposition. *See Herstam v. Deloitte &*  
11 *Touche, LLP*, 186 Ariz. 110, 118 (App. 1996) (citations omitted). If, for any reason, K.  
12 Hovnanian is found to have breached any of its duties or obligations to Plaintiff, then K.  
13 Hovnanian is not entitled to common law indemnity from Renco. Any alleged omission of the  
14 general contractor necessarily excluded subcontractors from indemnity liability. This is  
15 because an “omission” can be considered active negligence. *See Cella Barr Assocs., Inc. v.*  
16 *Cohen*, 177 Ariz. 480, 485-86 (App. 1994). If K. Hovnanian is not found liable for damages,  
17 then there is no indemnity duty that Renco would owe to K. Hovnanian. To the extent that  
18 Plaintiffs claim injuries to work other than that performed by Renco on the Project, K.  
19 Hovnanian has suffered no injury from Renco and is not entitled to recovery on a theory of  
20 indemnity from Renco.

21 **2. Express Indemnity**

22 K. Hovnanian alleges Renco owes a duty to defend and indemnify K. Hovnanian from  
23 any and all damages to the extent caused by defects in Renco’s work. K. Hovnanian has the  
24 burden of proving that the purported indemnification provision, if any, contains the required  
25 language of *Wash. Elementary Sch. Dist. No. 6 v. Baglino Corp.*, 169 Ariz. 58, 61-62 (1991)

1 [hereinafter *Baglino*]. If the agreement fails to specifically address the effect of K.  
2 Hovnanian's own negligence, the provision is deemed to be general. *See Pioneer Roofing Co.,*  
3 *v. Mardian Constr. Co.*, 152 Ariz. 455, 475-76 (App. 1986) (holding that a general indemnity  
4 agreement is one which does not specifically address what effect the indemnitee's negligence  
5 will have on the indemnitor's obligation to indemnify). The alleged indemnification provision  
6 needs to clearly and specifically require Renco to indemnify K. Hovnanian for its own active  
7 negligence as required in *Hauskins v. McGillicuddy*, 175 Ariz. 42, 50 (App. 1992) (citing, *inter*  
8 *alia*, *Pioneer Roofing Co.*, 152 Ariz. 455, and *Baglino*, 169 Ariz. 58). To the extent Plaintiffs  
9 claim injuries to work other than that performed by Renco on the Project, K. Hovnanian has  
10 suffered no injury from Renco and is not entitled to recover on a theory of indemnity from  
11 Renco.

12 Here, K. Hovnanian has not asserted any factual allegations that would give rise to  
13 Renco's express indemnity obligation, if any. K. Hovnanian's Third-Party Complaint is devoid  
14 of any specific allegations pertaining to Renco. Therefore, K. Hovnanian cannot maintain an  
15 action for express indemnity.

16 **E. Declaratory Relief re: Duty to Defend/Duty to Indemnify**

17 K. Hovnanian's alleged right to defense and/or indemnity arises exclusively out of the  
18 written agreements between Renco and K. Hovnanian. *Schweber Elec. V. Nat'l Semiconductor*  
19 *Corp.*, 174 Ariz. 406, 410, 850 P.2d 119, 123 (App. 1992) ("When the parties expressly agree  
20 upon indemnity provisions in their contract, the extent of the duty is defined by the contract  
21 itself rather than common law principles."). Of course, "[t]he extent of a contractual duty to  
22 indemnify must be determined from the contract itself." *Superior Cos v. Kaiser Cement Corp.*,  
23 152 Ariz. 575, 577, 733 P.2d 1158, 1160 (App. 1986) (citations omitted). The Master  
24 Agreement does not grant K. Hovnanian a right to defense and/or indemnity when materials  
25 installed at the Project by Renco are damaged as the result of another subcontractor's work, or

1 for claims arising solely out of K. Hovnanian's negligence. As such, no Arizona court will  
2 impute such a right into the Agreements. *See MT Builders, LLC v. Fisher Roofing, Inc.*, 219  
3 Ariz. 297, 303 (App. 2008) (interpreting indemnity agreement based "specific language" of  
4 the indemnification provision); *Grubb & Ellis Mgmt. Servs., Inc. v. 407417 B.C., L.L.C.*, 213  
5 Ariz. 83, 88, 138 P.3d 1210, 1215 (App. 2006) ("We construe contracts to cover losses or  
6 liabilities that reasonably appear to have been intended by the parties."). K. Hovnanian is thus  
7 precluded from claiming any right of indemnity or defense from Renco in this action.

8 In any event, a conflict of interest prevents Renco from assuming the defense of K.  
9 Hovnanian in this action. Under Arizona law, a conflict of interest exists when "the injured  
10 person's claim against the indemnitee is such that it could be sustained on different grounds,  
11 one of which is within the indemnitor's obligation to indemnify and another of which is not."  
12 *Manzanita Park, Inc. v. Insurance Company of North America*, 857 F.2d 549, 552 (1988);  
13 *citing Vagnozzi*, 675 P.2d at 708 (*quoting* Restatement (Second) of Judgments § 58 (1982)).  
14 The Restatement (Second) of Judgments explains exactly why such a conflict precludes the  
15 assumption of defense:

16  
17 In such circumstances, it is to the interests of the indemnitee that, if  
18 liability be established against him, it be established on a ground  
19 within the indemnity obligation so that he can shift the loss to the  
20 indemnitor. It is to the interest of the indemnitor that, if liability be  
21 established against the indemnitee, it be on a ground outside the  
22 indemnity obligation. Neither of them could defend the action in a  
23 way that would fairly protect the interests of the other in all respects.  
24 Because of the conflict, the indemnitor cannot properly be called  
25 upon to take control of the defense of the action, for he would be  
required either to sacrifice his own interests without a fair  
opportunity to litigate questions concerning his liability or to commit  
a breach of his duty to conduct a vigorous defense of the indemnitee.  
Accordingly, when the claim against the indemnitee is one as to  
which he and the indemnitor have a conflict of interest, the  
indemnitor is not estopped in a subsequent action on the indemnity  
obligation to dispute the existence or extent of the indemnitee's  
liability to the injured person.

1 Restatement (Second) of Judgments, § 57 (1982).

2 Assuming, *arguendo*, that Renco assumed K. Hovnanian's defense in the action, an  
3 insurmountable conflict of interest would arise. Renco would have to defend Renco's work by  
4 showing that Plaintiff's claims arose solely out of K. Hovnanian's negligence – in order to  
5 avoid any express, indemnity-based liability or obligation. At the same time and contrary to  
6 Renco's own interests, Renco would have to defend K. Hovnanian's interests by showing that  
7 any ultimate liability incurred by K. Hovnanian falls within the express indemnity obligations  
8 that arise out of the Master Agreement. Such a conflict of interest precludes Renco from  
9 effectively defending both parties' interests. K. Hovnanian's claim for declaratory relief – duty  
10 to defend/indemnify cannot be maintained as a matter of law.

11 Under no circumstances, therefore, can K. Hovnanian claim against Renco and/or  
12 Renco a right to defense or indemnity in this action.

13 **F. Declaratory Relief re: Contractual Duties**

14 Upon information and belief, Renco complied with all duties and obligations arising  
15 out of the Master Agreement, whether express or implied. K. Hovnanian, therefore, has no  
16 basis to seek a declaration from the Court with respect to any alleged failure by Renco to  
17 comply with any contractual duties or obligations.

18 **G. Contribution**

19 According to K. Hovnanian, Renco should be compelled to reimburse K. Hovnanian  
20 for its attorneys' fees and legal costs resulting from any settlement, damages or judgment  
21 against K. Hovnanian, provided that such reimbursement is in proportion to the comparative  
22 fault of Renco. However, Renco affirmatively alleges that all of Renco's work at the Project  
23 was performed in a workmanlike manner and in compliance with all applicable plans,  
24 specifications, codes and industry standards in effect at the time of original construction.  
25 Renco, therefore, did not cause any damage to K. Hovnanian or the Plaintiff. As such, K.

1 Hovnanian has no claim to a right of contribution under either the Master Agreement or A.R.S.  
2 § 12-2501.

3 **H. Comparative Fault of Parties and Non-Parties**

4 In assessing the “percentage of fault” of each party, the fact-finder must assess the fault  
5 of all parties and non-parties who have been designated, and who contributed to the injuries  
6 or damages. *See* ARIZ.R.CIV.P., Rule 26(b)(5); *see also* A.R.S. § 12-2506(B) (Uniform  
7 Contribution Among Tortfeasors Act) (hereinafter “The Act”). The Act broadly defines fault  
8 as:

9 an actionable breach of legal duty, act or omission proximately causing or  
10 contributing to injury or damages sustained by a person seeking recovery,  
11 including negligence in all of its degrees, contributory negligence, assumption  
of risk, strict liability, breach of express or implied warranty of a product,  
products liability and misuse, modification or abuse of a product.

12 A.R.S. §12-2506(F)(2); *see also* *Zuern v. Ford Motor Co.*, 188 Ariz. 486, 490-91, 937 P.2d  
13 676, 680-81 (App. 1996).

14 Any alleged defects or damage to the Project likely resulted from work, actions or  
15 inactions of other persons or entities, and not the work of Renco. Those other entities include  
16 Plaintiff, K. Hovnanian and all other subcontractors, anyone who performed repairs,  
17 maintenance, inspections, and expert testing at the Project, other than Renco. Additionally, K.  
18 Hovnanian was supposed to, and agreed to, supervise, direct, inspect, and approve the work of  
19 Renco to ensure that all applicable requirements were met. K. Hovnanian also possessed the  
20 duty to act reasonably and prudently to ensure that all of the work undertaken and performed  
21 by Renco was performed in a workmanlike manner before it was accepted. K. Hovnanian  
22 must take responsibility for its own failure to adequately supervise or inspect Renco’s work  
23 before said work product was accepted and payment made. K. Hovnanian is, therefore, subject  
24 to the contributory/comparative affirmative defense if they indeed failed to properly ensure  
25

1 the work conducted at their direction and to the extent that they altered or approved Renco's  
2 work. Renco reserves the right to argue that K. Hovnanian failed to supervise/instruct Renco.

3 **I. Non-Parties at Fault**

4 Pursuant to A.R.S. § 12-2506(B) and ARIZ.R.CIV.P., Rule 26(b)(5), Renco hereby gives  
5 notice that the following individuals or entities may be wholly or partially at fault for damages  
6 alleged in this matter:

7 **1.** Each individual unit owner to the extent any damages alleged relate to  
8 unit owners' conduct, repairs, maintenance, modifications, or failure to maintain, and further  
9 based on their failure to provide notice at the time of identification of alleged deficiencies  
10 at the Project. This delay in identification of the alleged deficiency may have caused all or part  
11 of the damages identified in its subsequent claim to Renco;

12 **2.** Any design professionals, architects, and consultants responsible for the  
13 design and development of the plans and specifications for the Project to the extent that any  
14 damages alleged relate to design or specification issues;

15 **3.** Any individuals or entities who performed repair, maintenance, warranty,  
16 or other work at the Project to the extent their work caused or contributed to the alleged  
17 damages complained of;

18 **4.** Any municipal, county, state, or other inspector if they performed  
19 inspections at the Project and approved the work as complete and in accordance with  
20 applicable codes and standards;

21 **5.** Any municipal, county, state, or other inspector who performed  
22 inspections/reviews of the plans of the Project and approved the plans as in compliance with  
23 applicable codes and standards; and

24 **6.** Any person or entities that damaged, removed, or altered the work  
25 performed by Renco while investigating or performing testing at the Project prior to, or during,

1 the course of this litigation. To the extent that any of these non-parties caused or contributed  
2 to damages alleged by Plaintiffs, or liabilities incurred by Plaintiffs, the jury must allocate said  
3 damages to the respective non-parties at fault and Renco cannot be held liable for said  
4 damages.

5 **J. Statutory Defenses**

6 Renco affirmatively alleges all defenses available under A.R.S. § 12-2501 and Rules 8,  
7 12, and 19 of the Arizona Rules of Civil Procedure, as they may apply to this litigation.

8 **K. Failure to Comply with A.R.S. § 12-2602**

9 Renco is a licensed contractor, and therefore, K.Hovnanian has a duty to comply with  
10 A.R.S. § 12-2601 et seq.

11 **L. Attorneys' Fees**

12 Pursuant to A.R.S. §§ 12-341 and 12-341.01, and any contract between the parties,  
13 Renco is entitled to recover its costs and reasonable attorneys' fees in defending this litigation.  
14 To the extent that attorneys' fees are allowed to any party, the Court should award such fees  
15 and costs based upon a party's percentage of success as to each separate claim for damages  
16 and not based upon a party's status as the prevailing party as to the claims as a whole. *Pioneer*  
17 *Roofing Company v. Mardian Construction Company*, 152 Ariz. 455, 467, 733 P.2d 652, 664  
18 (App.1986).

19 **M. Waiver**

20 Waiver is an intentional relinquishment of a known right. *See Am. Cont'l Life Ins. Co.*  
21 *v. Ranier Constr. Co.*, 125 Ariz. 53, 607 P.2d 372 (1980). A waiver may be express or implied  
22 by actions that are inconsistent with an intention to assert a particular contractual right. *See id.*  
23 Similarly, by knowingly and unconditionally accepting defective performance, a party has  
24 waived any objections to it. *See id.* To the extent K. Hovnanian relinquished any of its rights  
25 to bring a cause of action for work performed by Renco, K. Hovnanian has waived its right to

1 bring those claims. Furthermore, Plaintiff and K. Hovnanian waived their right to recover  
2 where they or others made modifications with respect to Renco’s work which caused or  
3 contributed to the alleged defects.

4 Moreover, K. Hovnanian has waived its right to pursue Renco for breach of contract  
5 for failing to procure required insurance by allowing Renco to start work and paying Renco  
6 for its work at the Project. *See Bott v. J.F. Shea Co., Inc.*, 388 F.3d 530 (5<sup>th</sup> Cir. 2004) (holding  
7 general contractor waived insurance requirement of subcontract by allowing subcontractor to  
8 start work without required insurance, allowing subcontractor to complete the work and paying  
9 subcontractor in full without required insurance).

10 **N. Consent, Completion, Acceptance, and Estoppel**

11 K. Hovnanian consented to and accepted the work performed by Renco. Upon  
12 completion of Renco’s work on the Project, K. Hovnanian accepted and approved Renco’s  
13 work. Therefore, K. Hovnanian is estopped from arguing Renco’s work was performed  
14 improperly and that it is entitled to indemnification or recovery for any alleged damage as a  
15 result of Renco’s work on the project.

16 **O. Economic Waste**

17 Arizona has adopted the rule of economic waste from the first Restatement of Contracts,  
18 §346, in *Blecick v. School District No. 18 of Cochise County*, 2 Ariz.App. 115, 406 P.2d 750  
19 (1996) and *County of Maricopa v. Walsh & Oberg Architects*, 16 Ariz. App. 439, 441, 494  
20 P.2d 44, 46 (1972). The rule prohibits a party pursuing a breach of contract claim from  
21 measuring damages based on cost of repair when the measure would create economic waste.  
22 *Blecick*, at 122, 406 P.2d 757. If economic waste is to occur, the rule requires the measure of  
23 damages to be “the difference between the value that the product contracted for would have  
24 had and the value of the performance that has been received by the Plaintiff.” *Id.*

25 In *Fairway Builders, Inc. v. Malouf Towers Rental Company*, 125 Ariz. 242, 602 P.2d

1 513 (App. 1979), the Court addressed the question whether economic waste would result given  
2 the proposed cost of repair measure for the repair to exterior walls in the building. The Court  
3 quoted a comment to the Restatement (First) of Contract, §346, explaining:

4           The purpose of money damages is to put the injured party in as good  
5 a condition as that in which full performance would have put him;  
6 but that does not mean that he is to be put in the same specific  
7 physical position . . . There are numerous cases . . . in which the value  
8 of the finished product is much less than the cost of producing it after  
9 the breach has occurred. Sometimes the defect in a completed  
structure cannot be physically remedied without tearing down and  
rebuilding, at a cost that would be imprudent and unreasonable. The  
law does not require damages to be measured by the method  
requiring such an economic waste.

10 *Id.* at 253, 603 P.2d 515, 524. The Court noted that economic waste occurs, for example, when  
11 there will be reasonable duplication of effort or substantial destruction of a building to affect  
12 the repair in question. *Id.* The result of such proof is that damages must be awarded “on the  
13 basis of the difference in the value of the building had it been completed in accordance with  
14 the contract and the value of the building as erected,” rather than based on the cost to repairs  
15 to conform. *Id.*

16           Renco intends to assert this affirmative defense at the time of trial.

17           **P. Other Affirmative Defenses**

18           Renco further alleges the additional following affirmative defenses: stigma damages;  
19 accord and satisfaction; arbitration and award; assumption of risk; lack of jurisdiction; lack of  
20 standing; payment; release; *res judicata*; collateral estoppel, statute of limitations and/or  
21 repose; failure to provide notice of defective condition; failure to provide notice of breach of  
22 warranty; laches; settlement and release; and waiver. Renco hereby reserves the right to amend  
23 its Disclosure Statement to allege such additional further affirmative defenses including, but  
24 not limited to, those affirmative defenses set forth in Rules 8(c) and 12(b), Arizona Rules of  
25

1 Civil Procedure and any others as may be developed through subsequent investigation and  
2 discovery.

3 **III. WITNESSES**

4 A. Eric Lahti  
5 Renco, LLC d/b/a Renco Roofing  
6 **c/o Rai & Barone, P.C.**  
7 3033 North Central Avenue, Suite 500  
8 Phoenix, Arizona 85012

8 Eric Lahti is the president of Renco, LLC. He is expected to testify regarding his  
9 knowledge of the nature and quality of services performed by Renco, as well as scope of work,  
10 with respect to the construction of the Project with regard to the written contract, if any exists,  
11 at issue in this matter.

12 B. ***Robert Vander and/or Representative of*** Gallery Community Association  
13 **c/o Burg Simpson Eldredge Hersh & Jardine P.C.**  
14 8310 South Valley Highway, Suit 270  
15 Englewood, CO 80112

16 One or more representative for Plaintiff are expected to testify concerning the nature of  
17 their claims against K. Hovnanian.

18 C. Representative(s) of K. Hovnanian ***at Gallery, LLC***  
19 **c/o Dennis I. Wilenchik, Matthew V. Moosbrugger**  
20 Wilenchik & Bartness  
21 2810 N Third Street  
22 Phoenix, AZ 85004

22 One or more representatives of K. Hovnanian ***at Gallery, LLC*** are expected to testify  
23 regarding K. Hovnanian's ***knowledge***, direction and oversight of Renco's work at the Project,  
24 K. Hovnanian's acceptance of Renco's work at the Project, with regard to the written contract,  
25 if any exists, and regarding any and all further knowledge pertaining to this litigation. ***K. Hovnanian at Gallery, LLC is also expected to testify regarding knowledge of alleged***

1 *construction deficiencies, inspections, repairs and warranties undertaken, and alleged*  
2 *resultant damages.*

3  
4 D. Representative(s) of K. Hovnanian *Arizona Operations, LLC*  
5 c/o **Dennis I. Wilenchik, Matthew V. Moosbrugger**  
6 Wilenchik & Bartness  
7 2810 N Third Street  
8 Phoenix, AZ 85004

9 One or more representatives of K. Hovnanian *Arizona Operations, LLC* are expected  
10 to testify regarding K. Hovnanian's *knowledge*, direction and oversight of Renco's work at  
11 the Project, K. Hovnanian's acceptance of Renco's work at the Project, with regard to the  
12 written contract, if any exists, and regarding any and all further knowledge pertaining to this  
13 litigation. *K. Hovnanian Arizona Operations, LLC is also expected to testify regarding*  
14 *knowledge of alleged construction deficiencies, inspections, repairs and warranties*  
15 *undertaken, and alleged resultant damages.*

16 E. Representative(s) of K. Hovnanian *Developments of Arizona, Inc.*  
17 c/o **Dennis I. Wilenchik, Matthew V. Moosbrugger**  
18 Wilenchik & Bartness  
19 2810 N Third Street  
20 Phoenix, AZ 85004

21 One or more representatives of K. Hovnanian *Developments of Arizona, Inc.* are  
22 expected to testify regarding K. Hovnanian's *knowledge*, direction and oversight of Renco's  
23 work at the Project, K. Hovnanian's acceptance of Renco's work at the Project, with regard to  
24 the written contract, if any exists, and regarding any and all further knowledge pertaining to  
25 this litigation. *K. Hovnanian Developments of Arizona, Inc. is also expected to testify*  
*regarding knowledge of alleged construction deficiencies, inspections, repairs and*  
*warranties undertaken, and alleged resultant damages.*

1 F. Representative(s) of K. Hovnanian *Companies of Arizona, Inc.*  
2 c/o **Dennis I. Wilenchik, Matthew V. Moosbrugger**  
3 Wilenchik & Bartness  
4 2810 N Third Street  
5 Phoenix, AZ 85004

6 One or more representatives of K. Hovnanian *Companies of Arizona, Inc.* are expected  
7 to testify regarding K. Hovnanian's *knowledge*, direction and oversight of Renco's work at  
8 the Project, K. Hovnanian's acceptance of Renco's work at the Project, with regard to the  
9 written contract, if any exists, and regarding any and all further knowledge pertaining to this  
10 litigation. *K. Hovnanian Companies of Arizona, Inc. is also expected to testify regarding*  
11 *knowledge of alleged construction deficiencies, inspections, repairs and warranties*  
12 *undertaken, and alleged resultant damages.*

13 G. Gallery Unit Owners

14 It is expected the unit owners will testify regarding any alleged defects and/or  
15 damages at the Project and regarding any and all further knowledge pertaining  
16 to this litigation.

17 H. Representative(s) of Chas Roberts Air Conditioning, Inc.  
18 c/o Teresa Hayashi Wales  
19 **WELSH LAW GROUP, PLC**  
20 11811 North Tatum Blvd.  
21 Suite P125  
22 Phoenix, AZ 85028

23 I. Representative(s) of Gothic Landscaping, Inc.  
24 c/o Amanda Hough  
25 **JABURG WILK**  
3200 N. Central Ave.  
Phoenix, AZ 85012

J. *John Leblanc and/or* Representative(s) of LeBlanc Building Co., Inc.  
c/o Stephen Best  
**JONES, SKELTON & HOCHULI, P.L.C.**  
40 N. Central Ave.  
Suite 2700  
Phoenix, AZ 85004

- 1 K. Representative(s) of Liberty Constructors d/b/a Liberty Arizona  
2 c/o Tom Shorall  
3 Jason Boblick  
4 **SHORALL MCGOLDRICK BRINKMAN**  
5 1232 E. Missouri Ave.  
6 Phoenix, AZ 85014
- 7 L. Representative(s) of Sargon Masonry Construction, LLC  
8 c/o Leonard Fink  
9 **SPRINGEL & FINK**  
10 9075 W. Diablo Dr.  
11 Suite 302  
12 Las Vegas, NV
- 13 M. Representative(s) of Desert Vista, Inc.  
14 *c/o Shannon Huff*  
15 *RAI & BARONE, PC*  
16 *3033 N. Central Ave*  
17 *Phoenix, AZ 85012*
- 18 N. Representative(s) of Home Builders Site Services of Arizona, LLC
- 19 O. Representative(s) of R/S Service & Supply, Inc.
- 20 P. *Any and all individuals, companies, contractors, subcontractors, experts*  
21 *and/or entities responsible for performing warranty, repairs, maintenance,*  
22 *destructive testing, or other work that altered, modified, corrected,*  
23 *transformed, updated, adjusted, and/or amended the Project.*
- 24 Q. Applicable city and county inspectors who viewed, inspected, and approved all  
25 work by Defendant during construction of the project.
- R. Any Arizona Registrar of Contractors' inspectors who viewed or inspected Renco's work at the Project.
- S. Any and all custodians of records.
- T. Any and all witnesses listed on K. Hovnanian's and other Third-Party Defendants' disclosure statements and witness lists, subject to available objections, even if later withdrawn.

1 **IV. PERSONS WHOM RENCO BELIEVES MAY HAVE KNOWLEDGE OR**  
2 **INFORMATION TO THE EVENTS, TRANSACTIONS, OR APPEARANCES**  
3 **GIVING RISE TO THIS ACTION**

4 All persons with relevant knowledge or information have been identified above. Renco  
5 reserves the right to reserve this section that may be revealed in future discovery proceedings.

6 **V. WITNESS STATEMENTS**

7 Renco is not aware of any statements given by anyone relative to the work of Renco at  
8 the project at this time.

9 **VI. EXPERT WITNESSES**

10 A. Chad Polivka  
11 **MC Consultants, Inc.**  
12 530 East McDonnell Rd #107  
13 Phoenix, AZ 85016

14 Chad Polivka is a licensed general contractor and certified installer by the Tile Roofing  
15 Institute (TRI). Mr. Polivka is expected to testify regarding any and all allegations asserted by  
16 the Plaintiff, K. Hovnanian, or any other party, along with alleged cost of repair, methods of  
17 repair, and responding to other experts' opinions. Mr. Polivka is also expected to testify  
18 regarding the standards of care employed by Renco.

19 Further, Mr. Polivka will also testify to the contents of the reports prepared by himself  
20 and other experts employed in this matter, as they become available. It is expected that Mr.  
21 Polivka will testify regarding the conditions observed at the Project, the results of any  
22 inspections or testing performed, and his general impressions regarding the Project. A copy of  
23 Mr. Polivka's CV and Fee Schedule are attached hereto and Bates Stamped No.: RENCO  
24 000051 – 000054.  
25

1           **B. Jeffrey Harris**  
2           **MC Consultants, Inc.**  
3           530 East McDonnell Rd #107  
4           Phoenix, AZ 85016

5           Jeff Harris is a licensed general contractor and cost estimator. Mr. Harris is expected  
6 to testify regarding any and all allegations asserted by the Plaintiff, K. Hovnanian, or any other  
7 party, along with alleged cost of repair, methods of repair, and responding to other experts'  
8 opinions.

9           Further, Mr. Harris will also testify to the contents of the reports prepared by himself  
10 and other experts employed in this matter, as they become available. It is expected that Mr.  
11 Harris will testify regarding the conditions observed at the Project, the results of any  
12 inspections or testing performed, and his general impressions regarding the Project. A copy of  
13 Mr. Harris's CV and Fee Schedule are attached hereto and Bates Stamped No.: RENCO  
14 000054 – 000056.

15           ***Renco reserved the right to supplement this portion of its disclosure statement as  
16 discovery continues.***

17           **VII. DAMAGES**

18           Renco is seeking its costs and all expenses incurred in the defense of this action,  
19 pursuant to A.R.S. §12-341. Renco also seeks its attorneys' fees insofar as such fees are  
20 recoverable under Arizona law and/or Rules of Civil Procedure.

21           **VIII. TANGIBLE EVIDENCE AND DOCUMENTS**

22           1. Master Subcontract Agreement between K. Hovnanian Great Western Building  
23 Co., LLC and K. Hovnanian Building Company, LLC and Renco related to the Project (Bates  
24 Stamp Nos.: RENCO 000001 – 000040).

25           2. Work Agreement between K. Hovnanian Great Western Building Company,  
LLC and Renco Roofing dated July 21, 2016 (Bates Stamp Nos.: RENCO 000041 – 000047).

1 3. Certificate of Occupancy dated July 13, 2017 (Bates Stamp Nos.: RENCO  
2 000048).

3 4. Photographs of leak taken on March 12, 2021 (Bates Stamp Nos.: RENCO  
4 000049 – 000050).

5 5. Chad Polivka's CV and Fee Schedule (Bates Stamp Nos.: RENCO 000051 –  
6 000054).

7 6. Jeff Harris' Fee Schedule and CV (Bates Stamp Nos.: RENCO 000054 –  
8 000056).

9 7. *MC Consultants' Defect Issue Report dated January 31, 2022 (Bates Stamp  
10 Nos.: RENCO 00246 – 00262).*

11 8. *MC Consultants' Cost of Repair Estimate dated January 31, 2022 (Bates  
12 Stamp Nos.: RENCO 000263 – 000266).*

13 9. Any photographic evidence regarding defective work allegedly performed by  
14 Renco.

15 10. Any other documents related to agreements between K. Hovnanian and Renco  
16 only with regard to the Project, including non-privileged communication.

17 11. Any and all documents listed by any other party, subject to available objections,  
18 even if later withdrawn.

19 12. Any other relevant tangible evidence or documents are they are provided through  
20 discovery or otherwise come to light.

21 **IX. INSURANCE AGREEMENT**

22 During the relevant timeframe, Renco was insured under the following general liability  
23 insurance policies:

24 United Specialty Insurance Company, Policy Number ATN-SF172055, effective May  
25 1, 2017 through May 1, 2018. (Bates Stamp Nos.: RENCO 000057 – 000121).

1 United Specialty Insurance Company, Policy Number ATN-SF1831819, effective May  
2 1, 2018 through May 1, 2019. (Bates Stamp Nos.: RENCO 000122 – 000183).

3 United Specialty Insurance Company, Policy Number ATN-SF1944431, effective May  
4 1, 2019 through May 1, 2020. (Bates Stamp Nos.: RENCO 000184 – 000245).

5  
6 **DATED** this 31<sup>st</sup> day of January 2022.

7  
8 **RAI & BARONE, P.C.**

9  
10 By: /s/ Mohamad Tokko  
11 Shannon Huff  
12 Mohamad H. Tokko  
*Attorneys for Third-Party Defendant Renco,  
LLC dba Renco Roofing*

13  
14 **COPIES** of the foregoing e-mailed  
15 This 31<sup>st</sup> day of January 2022, to:

16 *(See attached Service List)*

17 By: /s/ Tracy L. O'Brien  
18  
19  
20  
21  
22  
23  
24  
25

## Service List

### *Gallery Community Association v. K. Hovnanian at Gallery, LLC*

**CV2020-008714**

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