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Third Party Plaintiffs*

**IN THE SUPERIOR COURT OF MARICOPA COUNTY**

**IN AND FOR THE STATE OF ARIZONA**

**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**

**THIRD-PARTY COMPLAINT**

**(Assigned to the Hon. Michael Kemp)**

1 **K. HOVNANIAN AT GALLERY, LLC, an**  
2 **Arizona limited liability company; K.**  
3 **HOVNANIAN ARIZONA OPERATIONS,**  
4 **LLC, an Arizona limited liability company;**  
5 **K. HOVNANIAN DEVELOPMENTS OF**  
6 **ARIZONA, INC., an Arizona corporation;**  
7 **K. HOVNANIAN COMPANIES OF**  
8 **ARIZONA, LLC, an Arizona limited**  
9 **liability company;**

10 **Third-Party Plaintiffs**

11 **v.**

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

**Third-Party Defendants.**

Defendant/Third-Party Plaintiffs K. Hovnanian At Gallery, LLC, K. Hovnanian Arizona Operations, LLC, K Hovnanian Developments of Arizona, Inc. and K. Hovnanian Companies of Arizona, LLC (collectively, “K. Hovnanian”), by and through undersigned counsel, hereby file their Third-Party Complaint against the named Third-Party Defendants and DOES 1-50 and hereby allege as follows:

**PARTIES**

1  
2 1. Plaintiff Gallery Community Association (“Association”) is an Arizona nonprofit  
3 corporation that acts, or purports to act, as the property owners’ association for the property known  
4 as “The Gallery”, located in Scottsdale, Arizona.

5 2. Third-Party Plaintiff K. Hovnanian At Gallery, LLC is a limited liability company  
6 duly organized under the laws of the State of Arizona, and is, and at all relevant times was,  
7 qualified to conduct business in the State of Arizona.

8 3. Third-Party Plaintiff K. Hovnanian Arizona Operations, LLC is a limited liability  
9 company duly organized under the laws of the State of Arizona, and is, and at all relevant times  
10 was, qualified to conduct business in the State of Arizona.

11 4. Third-Party Plaintiff K. Hovnanian Developments of Arizona, Inc. is an Arizona  
12 corporation duly organized under the laws of the State of Arizona, and is, and at all relevant times  
13 was, qualified to conduct business in the State of Arizona.

14 5. Third-Party Plaintiff K. Hovnanian Companies of Arizona, LLC is a limited liability  
15 company duly organized under the laws of the State of Arizona, and is, and at all relevant times  
16 was, qualified to conduct business in the State of Arizona.

17 6. Third Party Defendant Chas Roberts Air Conditioning, Inc. is a corporation duly  
18 organized under the laws of the State of Arizona, and is, and at all relevant times was, qualified  
19 to conduct business in the State of Arizona.

20 7. Third Party Defendant Desert Vista, Inc. is a corporation duly organized under the  
21 laws of the State of Arizona, and is, and at all relevant times was, qualified to conduct business in  
22 the State of Arizona.

23 8. Third Party Defendant Gothic Landscaping, Inc. is a corporation duly organized  
24 under the laws of the State of California, and is, and at all relevant times was, qualified to conduct  
25 business in the State of Arizona.

1 9. Third-Party Defendant Home Builders Site Services of Arizona, LLC is a limited  
2 liability company duly organized under the laws of the State of Arizona, and is, and at all relevant  
3 times was, qualified to conduct business in the State of Arizona.

4 10. Third Party Defendant LeBlanc Building Co., Inc. is a corporation duly organized  
5 under the laws of the State of Arizona, and is, and at all relevant times was, qualified to conduct  
6 business in the State of Arizona.

7 11. Third-Party Defendant Liberty Constructors, LLC (dba Liberty Arizona) is a limited  
8 liability company duly organized under the laws of the State of Arizona, and is, and at all relevant  
9 times was, qualified to conduct business in the State of Arizona.

10 12. Third-Party Defendant Renco, LLC (dba Renco Roofing) is a limited liability  
11 company duly organized under the laws of the State of Arizona, and is, and at all relevant times  
12 was, qualified to conduct business in the State of Arizona

13 13. Third Party Defendant R/S Service & Supply, Inc. is a corporation duly organized  
14 under the laws of the State of Arizona, and is, and at all relevant times was, qualified to conduct  
15 business in the State of Arizona.

16 14. Third-Party Defendant Sargon Masonry Construction, LLC is a limited liability  
17 company duly organized under the laws of the State of Arizona, and is, and at all relevant times  
18 was, qualified to conduct business in the State of Arizona.

19 15. Third-Party Defendants DOES 1-50 inclusive, and each of them, are sued herein  
20 under fictitious names. K. Hovnanian is ignorant as to the true names and capacities of DOE  
21 Defendants, 1-50 inclusive, and each of them, and therefore sues each of them under fictitious  
22 names. K. Hovnanian will stipulate with the adverse parties or request leave of Court to amend  
23 this Third-Party Complaint to state their true names and capacities when the same have been  
24 ascertained.

25 16. K. Hovnanian is informed, believes, and thereon alleges that, at all times mentioned  
26 herein, each fictitiously named Third Party Defendant (herein "Third Party DOE Defendants")  
27 are responsible in some manner or capacity for the occurrences herein alleged, and that K.

1 Hovnanian’s damages, as herein alleged, were proximately caused by all of said Third Party DOE  
2 Defendants.

3 **JURISDICTION AND VENUE**

4 17. The named Third Party Defendants and Third-Party DOE Defendants caused the  
5 acts and events to occur as complained of herein in Maricopa County in the State of Arizona, out  
6 of which these claims arise.

7 18. This Court has jurisdiction over this action pursuant to A.R.S §12-123 and venue is  
8 proper before this Court pursuant to A.R.S §12-401.

9 **GENERAL ALLEGATIONS**

10 19. The named Third-Party Defendants and Third-Party DOE Defendants were  
11 involved in planning, constructing, maintenance, service, and repair work at a new residential  
12 development commonly known as The Gallery (hereinafter, “The Gallery” or “subject property”),  
13 which is a community of townhomes located in Scottsdale, Arizona, pursuant to contract and/or  
14 subcontract agreements with its developer K. Hovnanian.

15 20. In connection with the aforementioned contract or subcontract agreements, the  
16 named Third-Party Defendants and Third-Party DOE Defendants supplied plans, material, labor,  
17 or professional/engineering/design services to The Gallery.

18 21. On July 5, 2019, the abovementioned Plaintiff Association served on Defendants K  
19 Hovnanian a July 3, 2019 Notice of Defect letter (“NOD Letter”), alleging defects that implicate  
20 the work provided by, or resulting from, the above-named Third Party Defendants’ and Third  
21 Party DOE Defendants’ provision of plans, material, or labor under the subcontract agreements.

22 22. On July 27, 2020, the abovementioned Plaintiff Association filed a Complaint and  
23 Jury Demand against Defendants K Hovnanian in the above-titled action, alleging negligence,  
24 breach of the implied covenant of good faith and fair dealing, breach of the implied warranty of  
25 workmanship and habitability and breach of contract against one or more of the Defendants K  
26 Hovnanian.

1 23. To the extent that the above-referenced Plaintiff's allegations are true, the named  
2 Third-Party Defendants and Third-Party DOE Defendants are wholly liable.

3  
4 **COUNT ONE**  
**(Breach of Express Warranty)**

5 24. Paragraphs 1 through 23 of this Third-Party Complaint are hereby re-alleged and  
6 incorporated herein.

7 25. K. Hovnanian's contract and subcontract agreements with the named Third-Party  
8 Defendants and Third-Party DOE Defendants contain the named Third-Party Defendants' and  
9 Third-Party DOE Defendants' express provisions warranting that their plans, workmanship,  
10 materials, and/or professional/engineering/design services shall be of merchantable quality, safely  
11 and properly designed, constructed, and erected, and reasonably fit for their intended purpose.

12 26. K. Hovnanian's contract and subcontract agreements with the named Third-Party  
13 Defendants and Third-Party DOE Defendants contain the named Third-Party Defendants' and  
14 Third-Party DOE Defendants' express provisions warranting that their maintenance, service,  
15 and/or repair shall be of merchantable quality, safely and properly designed, constructed, and  
16 erected, and reasonably fit for their intended purpose.

17 27. To the extent that Plaintiff's allegations are true, the named Third-Party Defendants  
18 and Third-Party DOE Defendants have breached this express warranty as their plans,  
19 workmanship, materials, professional/engineering/design services, maintenance, service, and/or  
20 repair, as alleged by Plaintiff, were not safely and/or properly designed, constructed and/or  
21 erected, serviced, maintained, or repaired in a reasonably fit manner for their intended purpose,  
22 and/or of merchantable quality and free from defects.

23 28. K. Hovnanian has given proper and timely notice of such allegedly defective  
24 conditions of the subject property and, notwithstanding such notice, the named Third Party  
25 Defendants and Third Party DOE Defendants have failed to acknowledge responsibility for the  
26  
27

1 same or to cause the appropriate restoration or repairs to be made to the subject property at their  
2 cost and expense.

3 29. As a direct and proximate result of these breaches of express warranty, K.  
4 Hovnanian has sustained, and in the future will sustain, direct and consequential damages in an  
5 amount not yet known but in excess of the Court's minimal jurisdictional amount, and K.  
6 Hovnanian is entitled to recover these amounts from the named Third-Party Defendants and Third-  
7 Party DOE Defendants.

8 30. This Third-Party Complaint arises out of the contract and subcontract agreements  
9 between K. Hovnanian, the named Third-Party Defendants and Third-Party DOE Defendants and,  
10 as a result, reasonable attorneys' fees and costs may be awarded to K. Hovnanian pursuant to  
11 specific contract and subcontract provisions, as well as A.R.S. §§ 12-341 and 12-341.01.

12  
13 **COUNT TWO**  
**(Breach of Implied Warranty)**

14 31. Paragraphs 1 through 32 of this Third-Party Complaint are hereby re-alleged and  
15 incorporated herein.

16 32. The named Third-Party Defendants and Third-Party DOE Defendants impliedly  
17 warranted that their plans, workmanship, materials, and/or professional/engineering/design  
18 services would be of merchantable quality, safely and properly designed, constructed and erected,  
19 reasonably fit for their intended purpose, and/or that they have exercised their skills with care and  
20 diligence and in a reasonable, non-negligent manner.

21 33. K. Hovnanian's contract and subcontract agreements with the named Third-Party  
22 Defendants and Third-Party DOE Defendants contain the named Third-Party Defendants' and  
23 Third-Party DOE Defendants' implied warranty of their maintenance, service, and/or repair of the  
24 subject property.

25 34. To the extent that Plaintiff's allegations are true, the named Third-Party Defendants  
26 and Third-Party DOE Defendants have breached this implied warranty as their plans,  
27

1 workmanship, materials, professional/engineering/design services, maintenance, service, and/or  
2 repair as alleged by Plaintiff, were not properly designed, constructed and/or erected, serviced,  
3 maintained, or repaired in a reasonably fit manner for their intended purpose, of merchantable  
4 quality, free from defects, and/or they have failed to exercise their skills with care and diligence.

5 35. K. Hovnanian has given proper and timely notice of such allegedly defective  
6 conditions of the subject property and, notwithstanding such notice, the named Third-Party  
7 Defendants and Third-Party DOE Defendants have failed to acknowledge responsibility for the  
8 same or to cause the appropriate restoration or repairs to be made to the subject property at their  
9 cost and expense.

10 36. As a direct and proximate result of these breaches of warranty, K. Hovnanian has  
11 sustained, and in the future will sustain, direct and consequential damages in an amount not yet  
12 known but in excess of the Court's minimal jurisdictional amount, and K. Hovnanian is entitled  
13 to recover these amounts from the named Third-Party Defendants and Third-Party DOE  
14 Defendants.

15 37. This Third-Party Complaint arises out of the contract and subcontract agreements  
16 between K. Hovnanian, the named Third-Party Defendants and Third-Party DOE Defendants, and  
17 as a result, reasonable attorneys' fees and costs may be awarded to K. Hovnanian pursuant to  
18 specific contract and subcontract provision and A.R.S. §§ 12-341 and 12-341.01.

19  
20 **COUNT THREE**  
**(Breach of Contract)**

21 38. Paragraphs 1 through 37 of the Third-Party Complaint are hereby re-alleged and  
22 incorporated herein.

23 39. By their failure to perform as required by the express, implied, and warranted terms  
24 of the contracts and subcontracts, as alleged by the Plaintiff, the named Third-Party Defendants  
25 and Third-Party DOE Defendants breached the contracts and subcontracts.

1 40. As a direct and proximate result of these breaches, K. Hovnanian has sustained, and  
2 in the future will sustain, direct and consequential damages in an amount not yet known but in  
3 excess of the Court’s minimal jurisdictional amount, and K. Hovnanian is entitled to recover these  
4 amounts from the named Third-Party Defendants and Third-Party DOE Defendants.

5 41. This Third-Party Complaint arises out of the contract and subcontract agreements  
6 between K. Hovnanian and the named Third-Party Defendants and Third-Party DOE Defendants,  
7 as a result, reasonable attorneys’ fees and costs may be awarded to K. Hovnanian pursuant to  
8 specific contract and subcontract provisions and to A.R.S. §§ 12-341 and 12-341.01.

9  
10 **COUNT FOUR**  
**(Negligence)**

11 42. Paragraphs 1 through 41 of the Third-Party Complaint are hereby re-alleged and  
12 incorporated herein.

13 43. At the time the subject property was constructed, the named Third-Party Defendants  
14 and Third-Party DOE Defendants owed K. Hovnanian a duty to exercise reasonably prudent and  
15 ordinary care in the design and construction of the subject property. The named Third-Party  
16 Defendants and Third-Party DOE Defendants violated this duty, to the extent that the Plaintiff’s  
17 allegations are true, by performing their work in a negligent manner.

18 44. After the subject property was constructed, the named Third-Party Defendants and  
19 Third-Party DOE Defendants owed K. Hovnanian a duty to exercise reasonably prudent and  
20 ordinary care in the continued maintenance, service, and repair of the subject property. The named  
21 Third-Party Defendants and Third-Party DOE Defendants violated this duty, to the extent that the  
22 Plaintiff’s allegations are true, by performing their work in a negligent manner.

23 45. The named Third-Party Defendants’ and Third-Party DOE Defendants’ negligent  
24 acts or omissions are, among other things:

- 25 a. Failing to design, construct, and market the subject property in a reasonable or  
26 safe manner;

- b. Failing to provide, establish, or follow proper and adequate quality control methods and procedures to provide a reasonably safe property;
- c. Failing to maintain, service, and repair the subject property in a reasonable or safe manner;
- d. Failing to act as a reasonably prudent person would have under the same or similar circumstances; and
- e. Otherwise failing to use due care under the circumstances.

46. Each of named Third-Party Defendants' and Third-Party DOE Defendants' above-referenced acts or omissions, singularly or in combination with others, constituted negligence, which proximately caused the Plaintiff's alleged damages, which are in excess of the minimum jurisdictional limits of this Court.

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

47. Paragraphs 1 through 46 of the Third-Party Complaint are hereby re-alleged and incorporated herein.

48. K. Hovnanian is entirely without active fault with regard to the acts and omissions giving rise to the Claims alleged by the Plaintiff.

49. Pursuant to the facts of this case and the parties' relationships, K. Hovnanian is entitled to common law indemnity from the named Third-Party Defendants and Third-Party DOE Defendants as to any amounts sought against K. Hovnanian by the Plaintiff in any action that may be brought against K. Hovnanian, together with attorneys' fees and cost.

**COUNT SIX**  
**(Contractual Indemnity)**

50. Paragraphs 1 through 51 of the Third-Party Complaint are hereby re-alleged and incorporated herein.

1 51. K. Hovnanian is informed and believes, and thereon alleges, that the named Third-  
2 Party Defendants and Third-Party DOE Defendants entered into written agreements with K.  
3 Hovnanian which include an indemnity provision.

4 52. K. Hovnanian is informed and believes, and thereon alleges, that the damages  
5 claimed by the Plaintiff, if proven to be true, were caused by the named Third-Party Defendants  
6 and Third-Party DOE Defendants, and each of them, arising out of, or relating in any way, directly  
7 or indirectly, with the performance of the named Third-Party Defendants' and Third-Party DOE  
8 Defendants' obligations pursuant to the written/oral contracts entered into by each of them with  
9 K. Hovnanian.

10 53. K. Hovnanian is informed and believes, and thereon alleges, that named Third-Party  
11 Defendants and Third-Party DOE Defendants and each of them entered into contracts with others  
12 in the performance of services provided in the construction of the subject property and are  
13 responsible for all acts and omissions of their agents and employees.

14 54. K. Hovnanian, by this action, demands that the named Third-Party Defendants and  
15 Third-Party DOE Defendants, and each of them, defend, indemnify, and hold K. Hovnanian  
16 harmless pursuant to the terms of their agreements.

17  
18 **COUNT SEVEN**  
**(Declaratory Relief – Re: Duty to Defend)**

19 55. Paragraphs 1 through 54 of the Third-Party Complaint are hereby re-alleged and  
20 incorporated herein.

21 56. K. Hovnanian is informed and believes, and thereon alleges, that an express  
22 written/oral contract exists between K. Hovnanian, the named Third-Party Defendants and Third-  
23 Party DOE Defendants, and each of them. Each said express/oral contract is incorporated herein  
24 by reference as though fully set forth herein.

25 57. K. Hovnanian is informed and believes, and thereon alleges, that the express  
26 written/oral contract required the named Third-Party Defendants and Third-Party DOE  
27

1 Defendants to defend K. Hovnanian from any claim respecting the named Third-Party Defendants  
2 and Third-Party DOE Defendants’ scope of work under the contracts.

3 58. K. Hovnanian is informed and believes, and thereon alleges, that a claim, loss, or  
4 suit within the meaning of the express written/oral contract has arisen by virtue of the fact that the  
5 Plaintiff has sued for damages against K. Hovnanian for alleged breaches of a duty to design,  
6 construct, maintain, service, and/or repair alleged construction deficiencies to the subject property  
7 which is the subject matter of this lawsuit, and that construction deficiencies claimed by the  
8 Plaintiff pertain to the scope of work performed and/or materials provided by the named Third-  
9 Party Defendants and Third-Party DOE Defendants, and each of them.

10 59. K. Hovnanian is informed and believes, and thereon alleges, that the named Third-  
11 Party Defendant and Third-Party DOE Defendants, and each of them, have a present duty to  
12 defend against any claims made against K. Hovnanian pursuant to the subcontract and contract  
13 agreement, and as a result of the assertion of a claim, loss and/or suit arising out of the work of  
14 the named Third-Party Defendants and Third-Party DOE Defendants, and each of them. K.  
15 Hovnanian has a present legal right to be provided a defense by the named Third-Party Defendants  
16 and Third-Party DOE Defendants, and each of them.

17 60. A dispute has arisen and an actual controversy now exists between K. Hovnanian  
18 and the named Third-Party Defendants and Third-Party DOE Defendants, in that K. Hovnanian  
19 asserts that it is entitled to a present defense from the named Third-Party Defendants and Third-  
20 Party DOE Defendants, and each of them, while the named Third-Party Defendants and Third-  
21 Party DOE Defendants, and each of them, deny such obligations under the contract.

22 61. K. Hovnanian hereby seeks a declaration by the Court as to its respective rights and  
23 said named Third-Party Defendants’ and Third-Party DOE Defendants’ duties and obligations as  
24 to the duty to defend in connection with matters herein alleged, and a judgment in K. Hovnanian’s  
25 favor as to any obligations by said named Third-Party Defendants and Third-Party DOE  
26 Defendants, and each of them, to K. Hovnanian.

27

1  
2 **COUNT EIGHT**  
3 **(Declaratory Relief – Re: Duty to Indemnify)**

4 62. Paragraphs 1 through 61 of the Third-Party Complaint are hereby re-alleged and  
5 incorporated herein.

6 63. K. Hovnanian is informed and believes, and thereon alleges, that under the  
7 abovementioned indemnity agreement, the named Third-Party Defendants and Third-Party DOE  
8 Defendants, and each of them, are obligated to indemnify K. Hovnanian from any claim, liability,  
9 loss, damage, cost, expenses, including attorneys’ fees, etc. in this action relating to matters  
10 embraced by the indemnity and arising out of the scope of work of the named Third-Party  
11 Defendants and Third-Party DOE Defendants, and each of them.

12 64. A dispute has arisen and an actual controversy now exists between K. Hovnanian  
13 and the named Third-Party Defendants and Third-Party DOE Defendants, in that K. Hovnanian  
14 asserts that the subcontractor agreements and contracts indemnify them from any claim, liability,  
15 loss, damage, cost, expenses, including attorneys’ fees, etc.

16 65. K. Hovnanian hereby seeks a declaration by the Court as to its respective rights and  
17 said named Third-Party Defendants’ and Third-Party DOE Defendants’ duties and obligations as  
18 to matters herein alleged, and a judgment in K. Hovnanian’s favor as to the existence of the  
19 indemnity agreement and present duty to indemnify.

20 **COUNT NINE**  
21 **(Declaratory Relief – Re: Contractual Duties)**

22 66. Paragraphs 1 through 65 of the Third-Party Complaint are hereby re-alleged and  
23 incorporated herein.

24 67. An actual controversy has arisen and now exists between K. Hovnanian and the  
25 named Third-Party Defendants and Third-Party DOE Defendants, concerning their respective  
26 rights, duties and obligations under their respective contracts/subcontractor agreements in that K.  
27

1 Hovnanian claims that the named Third-Party Defendants and Third-Party DOE Defendants, and  
2 each of them, breached their duties and obligations under their contracts.

3 68. K. Hovnanian alleges that a declaration by the Court as to the rights, duties, and  
4 obligations of the parties herein is required in order to resolve the existing controversies and  
5 disputes so that the parties may ascertain their true obligations and discharge those obligations  
6 accordingly. Specifically, K. Hovnanian requests that the Court determine that K. Hovnanian's  
7 interpretation of the contractual provisions is correct, including the indemnity provision, the  
8 requirement for the named Third-Party Defendants and Third-Party DOE Defendants to name K.  
9 Hovnanian as an additional insured for completed operations coverage, and the payment of  
10 attorneys' fees and costs, among others; and that the named Third-Party Defendants and Third-  
11 Party DOE Defendants are obligated to defend and indemnify K. Hovnanian against any claim,  
12 liability, loss, damage, cost, expenses, including attorneys' fees, awards, fines or judgments.

13 **COUNT TEN**  
14 **(Contribution)**

15 69. Paragraphs 1 through 68 of the Third-Party Complaint are hereby re-alleged and  
16 incorporated herein.

17 70. As a direct result of the named Third-Party Defendants' and Third-Party DOE  
18 Defendants' conduct as set forth herein, liability, if any, for the damages claimed by the Plaintiff  
19 rests at least in part, on a comparative-fault basis, on the named Third-Party Defendants and Third-  
20 Party DOE Defendants, and, only in part, if any, on a comparative basis on K. Hovnanian. The  
21 named Third-Party Defendants and Third-Party DOE Defendants, and each of them, are obligated  
22 to reimburse K. Hovnanian for its attorneys' fees and legal costs and to indemnify K. Hovnanian  
23 for any sums K. Hovnanian pays, is compelled to pay, or may be compelled to pay as a result of  
24 settlement, damages, judgment or other awards herein, and to pay a share of any judgment  
25 rendered against K. Hovnanian which is in proportion to the comparative fault of the named Third-  
26  
27

1 Party Defendants and/or Third-Party DOE Defendants in causing the Plaintiff's alleged damages,  
2 if any, under A.R.S. §12-2501 and A.R.S. §12-2506, *et seq.*

3 **WHEREFORE**, K. Hovnanian prays for judgment against the named Third-Party  
4 Defendants and Third-Party DOE Defendants, and each of them, as follows:

- 5 A. For direct and consequential damages in an amount to be proven at trial;  
6 B. For reimbursement of any amounts K. Hovnanian is adjudged to owe the Plaintiff  
7 arising out of the Claims, if the Plaintiff establishes any legal liability as against K.  
8 Hovnanian;  
9 C. For pre-judgment and post-judgment interest at the statutory rate;  
10 D. For costs, expenses, and reasonable attorneys' fees incurred;  
11 E. For this Court's declaration(s) as set forth above, regarding the named Third-Party  
12 Defendants and Third-Party DOE Defendants and each of them, contractual duties  
13 owed to K. Hovnanian, including the duties to defend and indemnify K. Hovnanian,  
14 for the claims asserted by the Plaintiff; and  
15 F. For such other relief as is just and proper.

16  
17 **DATED** October 6, 2020.

18  
19 **WILENCHIK & BARTNESS, P.C.**

20 /s/ Dennis I. Wilenchik

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22 Matthew V. Moosbrugger, Esq.

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**ELECTRONICALLY FILED** October 6, 2020 via AZTurboCourt

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9 *Attorneys for Plaintiff*

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9 /s/ *Hilary Myers* \_\_\_\_\_