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

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

11 Plaintiff,

12 vs.

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

25 Defendants.

26 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;

Case No. CV2020-008714

**THIRD PARTY DEFENDANT
CHAS ROBERTS AIR
CONDITIONING INC.'S
ANSWER TO THIRD PARTY
COMPLAINT**

(Assigned to the Hon. Michael
Kemp)

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Third-Party Plaintiffs

v.

CHAS ROBERTS AIR CONDITIONING, INC., an Arizona corporation; DESERT VISTA, INC., an Arizona corporation; GOTHIC LANDSCAPING, INC., a California corporation; HOME BUILDERS SITE SERVICES OF ARIZONA, LLC, an Arizona limited liability company; LEBLANC BUILDING CO., INC., an Arizona corporation; LIBERTY CONSTRUCTORS, LLC, an Arizona limited liability company, dba LIBERTY ARIZONA; RENCO LLC, an Arizona limited liability company, dba RENCO ROOFING; R/S SERVICE & SUPPLY, INC., an Arizona corporation; SARGON MASONRY CONSTRUCTION, LLC, an Arizona limited liability company; and DOES 1-50.

Third-Party Defendants.

Third-Party Defendant Chas Roberts Air Conditioning, Inc. (“Chas Roberts”), by and through undersigned counsel, hereby responds to Defendants’/Third-Party Plaintiffs’ Third-Party Complaint as follows:

PARTIES

1. Third-Party Defendant Chas Roberts is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of Third-Party Plaintiffs’ Third-Party Complaint, and therefore denies same.

2. Third-Party Defendant Chas Roberts is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of Third-Party Plaintiffs’ Third-Party Complaint, and therefore denies same.

3. Third-Party Defendant Chas Roberts is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of Third-Party Plaintiffs’ Third-Party Complaint, and therefore denies same.

1 4. Third-Party Defendant Chas Roberts is without information or knowledge
2 sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of
3 Third-Party Plaintiffs' Third-Party Complaint, and therefore denies same.

4 5. Third-Party Defendant Chas Roberts is without information or knowledge
5 sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of
6 Third-Party Plaintiffs' Third-Party Complaint, and therefore denies same.

7 6. Third-Party Defendant Chas Roberts admits that Third-Party Defendant
8 Chas Roberts is a corporation duly organized under the laws of the State of Arizona.
9 Third-Party Defendant Chas Roberts is without information or knowledge sufficient to
10 form a belief as to the truth of the remaining allegations contained in paragraph 6 of Third-
11 Party Plaintiff's Third-Party Complaint, and therefore denies the same.

12 7. Third-Party Defendant Chas Roberts is without information or knowledge
13 sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of
14 Third-Party Plaintiffs' Third-Party Complaint, and therefore denies same.

15 8. Third-Party Defendant Chas Roberts is without information or knowledge
16 sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of
17 Third-Party Plaintiffs' Third-Party Complaint, and therefore denies same.

18 9. Third-Party Defendant Chas Roberts is without information or knowledge
19 sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of
20 Third-Party Plaintiffs' Third-Party Complaint, and therefore denies same.

21 10. Third-Party Defendant Chas Roberts is without information or knowledge
22 sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of
23 Third-Party Plaintiffs' Third-Party Complaint, and therefore denies same.

24 11. Third-Party Defendant Chas Roberts is without information or knowledge
25 sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of
26 Third-Party Plaintiffs' Third-Party Complaint, and therefore denies same.

1 Party Complaint are intended to allege any form of wrongdoing or liability on the part of
2 Third-Party Defendant Chas Roberts those allegations are expressly denied.

3 27. Third-Party Defendant Chas Roberts denies the allegations contained in
4 paragraph 27 of Third-Party Plaintiffs' Third-Party Complaint as to Third-Party Defendant
5 Chas Roberts.

6 28. Third-Party Defendant Chas Roberts denies the allegations contained in
7 paragraph 28 of Third-Party Plaintiffs' Third-Party Complaint as to Third-Party Defendant
8 Chas Roberts.

9 29. Third-Party Defendant Chas Roberts denies the allegations contained in
10 paragraph 29 of Third-Party Plaintiffs' Third-Party Complaint as to Third-Party Defendant
11 Chas Roberts.

12 30. Third-Party Defendant Chas Roberts denies the allegations contained in
13 paragraph 30 of Third-Party Plaintiffs' Third-Party Complaint as to Third-Party Defendant
14 Chas Roberts.

15 **COUNT TWO**

16 **(Breach of Implied Warranty)**

17 31. Third-Party Defendant Chas Roberts incorporates by reference all previous
18 admissions, denials and allegations set forth herein above.

19 32. Third-Party Defendant Chas Roberts is without information or knowledge
20 sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of
21 Third-Party Plaintiffs' Third-Party Complaint, and therefore denies same.

22 33. Third-Party Defendant Chas Roberts neither admits nor denies the
23 allegations contained within paragraph 33 to Defendants'/Third-Party Plaintiffs' Third-
24 Party Complaint, as the purported contract speaks for itself. To the extent that any of the
25 allegations contained within paragraph 33 of Defendants'/Third-Party Plaintiffs' Third-
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1 Party Complaint are intended to allege any form of wrongdoing or liability on the part of
2 Third-Party Defendant Chas Roberts those allegations are expressly denied.

3 34. Third-Party Defendant Chas Roberts denies the allegations contained in
4 paragraph 34 of Third-Party Plaintiffs' Third-Party Complaint as to Third-Party Defendant
5 Chas Roberts.

6 35. Third-Party Defendant Chas Roberts denies the allegations contained in
7 paragraph 35 of Third-Party Plaintiffs' Third-Party Complaint as to Third-Party Defendant
8 Chas Roberts.

9 36. Third-Party Defendant Chas Roberts denies the allegations contained in
10 paragraph 36 of Third-Party Plaintiffs' Third-Party Complaint as to Third-Party Defendant
11 Chas Roberts.

12 37. Third-Party Defendant Chas Roberts denies the allegations contained in
13 paragraph 37 of Third-Party Plaintiffs' Third-Party Complaint as to Third-Party Defendant
14 Chas Roberts.

15 **COUNT THREE**

16 **(Breach of Contract)**

17 38. Third-Party Defendant Chas Roberts incorporates by reference all previous
18 admissions, denials and allegations set forth herein above.

19 39. Third-Party Defendant Chas Roberts denies the allegations contained in
20 paragraph 39 of Third-Party Plaintiffs' Third-Party Complaint as to Third-Party Defendant
21 Chas Roberts.

22 40. Third-Party Defendant Chas Roberts denies the allegations contained in
23 paragraph 40 of Third-Party Plaintiffs' Third-Party Complaint as to Third-Party Defendant
24 Chas Roberts.

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AFFIRMATIVE DEFENSES

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2 1. That Third-Party Plaintiffs' Third-Party Complaint, and each and every
3 portion thereof, fails to set forth facts sufficient to constitute any viable cause of action as
4 against answering Third-Party Defendant Chas Roberts.

5 2. That Third-Party Plaintiffs' Third-Party Complaint is barred by the
6 applicable statute of limitations and statute of repose.

7 3. That, by virtue of Third-Party Plaintiffs' own acts, representations and
8 conduct, Plaintiffs are estopped from asserting any claims against answering Third-Party
9 Defendant Chas Roberts.

10 4. That by virtue of Third-Party Plaintiffs' own acts, representations and
11 conduct, Plaintiffs have waived any right to assert any claims against answering Third-
12 Party Defendant Chas Roberts.

13 5. That Third-Party Plaintiffs' Third-Party Complaint is barred by the doctrine
14 of laches, in that Third-Party Plaintiffs have unreasonably delayed in asserting their
15 alleged claims against answering Third-Party Defendant Chas Roberts.

16 6. That Third-Party Plaintiffs have failed to make reasonable efforts to mitigate
17 their damages, if any, in whole or in part.

18 7. That if, at or about the time and place referenced in the Third-Party
19 Complaint, Third-Party Plaintiffs were caused to suffer any injury or damages, which
20 Third-Party Defendant Chas Roberts denies, any such injury or damage was proximately
21 and legally caused and contributed to by the negligence and fault of Third-Party Plaintiffs,
22 and said negligence and fault of Third-Party Plaintiffs reduces, pro rata, any recovery
23 otherwise available to Third-Party Plaintiffs.

24 8. That, without admitting Third-Party Plaintiffs have suffered, or will suffer,
25 any damages or injuries as a result of conduct alleged in the Third-Party Complaint, Third-
26 Party Defendant Chas Roberts alleges that any damages or injuries which were or will be

1 sustained by Third-Party Plaintiffs were caused in whole or in part, by the negligence
2 and/or tortious acts, omissions and/or conduct of persons, parties or entities other than
3 Third-Party Defendant Chas Roberts. Any damages recoverable by Third-Party Plaintiffs
4 must be diminished in proportion to the amount of fault attributable to said other persons,
5 parties or entities.

6 9. That if, at or about the time and place referenced in Third-Party Plaintiffs’
7 Third-Party Complaint, Third-Party Plaintiffs were caused to suffer any injury or damage,
8 which Third-Party Defendant Chas Roberts denies, then any such injury or damage was
9 proximately and legally caused by the superseding and intervening conduct on the part of
10 third parties, persons and entities other than answering Third-Party Defendant and that, by
11 virtue of said intervening and superseding conduct, answering Third-Party Defendant Chas
12 Roberts has no legal liability to Third-Party Plaintiffs herein.

13 10. That, by virtue of Third-Party Plaintiffs’ own acts and conduct, Third-Party
14 Plaintiffs knowingly, voluntarily and reasonably assumed all risks, if any, which were
15 present at or about the time and place referenced in the Third-Party Complaint.

16 11. That Third-Party Plaintiffs willingly, voluntarily and knowingly assumed
17 each, every, and all the risks and hazards involved in the activities referred to in the Third-
18 Party Complaint.

19 12. Third-Party Plaintiffs’ claims are barred by A.R.S. §12-711.

20 13. Although answering Third-Party Defendant Chas Roberts, at this time, may
21 not presently have specific facts in support of the remaining defenses, it wishes to put
22 Plaintiffs on notice that it hereby raises the following defenses, which, through subsequent
23 discovery, may indeed be supported by facts: accord and satisfaction, arbitration and
24 award, lack of jurisdiction, payment, release, *res judicata*, collateral estoppel, and
25 settlement and release.

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WELSH LAW GROUP, PLC

1 *Attorneys for Defendants/Third-*
2 *Party Plaintiffs*

3 Copy of foregoing emailed this
4 same date to:

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13 *Attorneys for Plaintiffs*

14 _____
15 */s/Amy Gurka*