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8 Attorneys for Third-Party Defendant,  
SARGON MASONRY CONSTRUCTION, LLC  
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10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
11 **IN AND FOR THE COUNTY OF MARICOPA**  
12

13 GALLERY COMMUNITY ASSOCIATION, an ) CASE NO. CV2020-008714  
Arizona non-profit corporation, )  
14 ) **THIRD-PARTY DEFENDANT SARGON**  
Plaintiff, ) **MASONRY CONSTRUCTION, LLC'S**  
15 ) **ANSWER TO DEFENDANTS/THIRD-PARTY**  
vs. ) **PLAINTIFFS K. HOVNIANIAN AT GALLERY,**  
16 ) **LLC; K. HOVNIANIAN ARIZONA**  
K. HOVNIANIAN AT GALLERY, LLC, an ) **OPERATIONS, LLC; K. HOVNIANIAN**  
Arizona limited liability company; K. ) **DEVELOPMENTS OF ARIZONA, INC.; AND**  
17 HOVNIANIAN ARIZONA OPERATIONS, LLC, ) **K. HOVNIANIAN COMPANIES OF ARIZONA,**  
18 an Arizona limited liability company; K. ) **LLC'S THIRD-PARTY COMPLAINT**  
HOVNIANIAN DEVELOPMENTS OF ARIZONA, )  
19 INC., an Arizona corporation; K. HOVNIANIAN )  
20 COMPANIES OF ARIZONA, LLC, an Arizona )  
limited liability company; JOHN DOES I-X AND )  
21 JANE DOES I-X, WHITE CORPORATIONS I-X; )  
22 BLACK PARTNERSHIPS I-X; AND GRAY )  
LIMITED LIABILITY COMPANIES I-X, )  
23 )  
24 Defendants. )  
25 )  
26 )  
AND RELATED CROSS-ACTIONS. )  
27 )  
28 )

1 **THIRD-PARTY DEFENDANT SARGON MASONRY CONSTRUCTION, LLC'S ANSWER TO**  
2 **DEFENDANTS/THIRD-PARTY PLAINTIFFS K. HOVNANIAN AT GALLERY, LLC; K.**  
3 **HOVNANIAN ARIZONA OPERATIONS, LLC; K. HOVNANIAN DEVELOPMENTS OF**  
4 **ARIZONA, INC.; AND K. HOVNANIAN COMPANIES OF ARIZONA, LLC'S THIRD-PARTY**  
5 **COMPLAINT**

6 Third-Party Defendant SARGON MASONRY CONSTRUCTION LLC ("Third-Party  
7 Defendant"), by and through its attorneys of record, the law firm of Springel & Fink LLP, hereby submits  
8 its Answer to Defendant/Third-Party Plaintiffs DEFENDANTS/THIRD-PARTY PLAINTIFFS K.  
9 HOVNANIAN AT GALLERY, LLC; K. HOVNANIAN ARIZONA OPERATIONS, LLC; K.  
10 HOVNANIAN DEVELOPMENTS OF ARIZONA, INC.; AND K. HOVNANIAN COMPANIES OF  
11 ARIZONA, LLC'S ("Third-Party Plaintiffs") Third-Party Complaint as follows:

12 **I.**

13 **PARTIES**

14 1. Answering Paragraphs 1 through 13, and Paragraphs 15 through 16 of Third-Party  
15 Plaintiffs' Third-Party Complaint, Third-Party Defendant states that it is without sufficient knowledge or  
16 information upon which to form a belief as to the truth or falsity of the allegations contained therein, and  
17 upon said grounds, denies same.

18 2. Answering Paragraph 14 of Third-Party Plaintiffs' Third-Party Complaint, Third-Party  
19 Defendant admits.

20 **II.**

21 **JURISDICTION AND VENUE**

22 3. Answering Paragraphs 17 and 18 of Third-Party Plaintiffs' Third-Party Complaint, Third-  
23 Party Defendant states that it is without sufficient knowledge or information upon which to form a belief  
24 as to the truth or falsity of the allegations contained therein, and upon said grounds, denies same.

25 **III.**

26 **GENERAL ALLEGATIONS**

27 4. Answering Paragraphs 19 through 23 of Third-Party Plaintiffs' Third-Party Complaint,  
28 Third-Party Defendant states that it is without sufficient knowledge or information upon which to form a  
belief as to the truth or falsity of the allegations contained therein, and upon said grounds, denies same.

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IV.

**COUNT 1: BREACH OF EXPRESS WARRANTY**

5. Answering Paragraph 24 of Third-Party Plaintiffs' Third-Party Complaint, Third-Party Defendant repeats and realleges its answers to Paragraphs 1 through 23, inclusive, of Third-Party Plaintiffs' Third-Party Complaint, and incorporates the same by reference as though fully set forth herein.

6. Answering Paragraphs 25 through 27, and Paragraphs 29 through 30 of Third-Party Plaintiffs' Third-Party Complaint, Third-Party Defendant states that it is without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations contained therein, and upon said grounds, denies same.

7. Answering Paragraph 28 of Third-Party Plaintiffs' Third-Party Complaint, Third-Party Defendant denies.

V.

**COUNT 2: BREACH OF IMPLIED WARRANTY**

8. Answering Paragraph 31 of Third-Party Plaintiffs' Third-Party Complaint, Third-Party Defendant repeats and realleges its answers to Paragraphs 1 through 30, inclusive, of Third-Party Plaintiffs' Third-Party Complaint, and incorporates the same by reference as though fully set forth herein.

9. Answering Paragraphs 32 through 34, and Paragraphs 36 through 37 of Third-Party Plaintiffs' Third-Party Complaint, Third-Party Defendant states that it is without sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations contained therein, and upon said grounds, denies same.

10. Answering Paragraph 35 of Third-Party Plaintiffs' Third-Party Complaint, Third-Party Defendant denies.

VI.

**COUNT 3: BREACH OF CONTRACT**

11. Answering Paragraph 38 of Third-Party Plaintiffs' Third-Party Complaint, Third-Party Defendant repeats and realleges its answers to Paragraphs 1 through 37, inclusive, of Third-Party Plaintiffs' Third-Party Complaint, and incorporates the same by reference as though fully set forth herein.

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1 **XIII.**

2 **COUNT 10: CONTRIBUTION**

3 26. Answering Paragraph 69 of Third-Party Plaintiffs' Third-Party Complaint, Third-Party  
4 Defendant repeats and realleges its answers to Paragraphs 1 through 68, inclusive, of Third-Party  
5 Plaintiffs' Third-Party Complaint, and incorporates the same by reference as though fully set forth herein.

6 27. Answering Paragraph 70 of Third-Party Plaintiffs' Third-Party Complaint, Third-Party  
7 Defendant states that it is without sufficient knowledge or information upon which to form a belief as to  
8 the truth or falsity of the allegations contained therein, and upon said grounds, denies same.

9 **AFFIRMATIVE DEFENSES**

10 **FIRST AFFIRMATIVE DEFENSE**

11 1. Failure to State a Claim. Third-Party Plaintiffs' Third-Party Complaint, and each and every  
12 purported cause of action therein, fails to state a claim for which relief can be granted against this  
13 answering Third-Party Defendant.

14 **SECOND AFFIRMATIVE DEFENSE**

15 2. Statute of Limitations. Third-Party Defendant alleges that the claims for relief set forth in  
16 Third-Party Plaintiffs' Third-Party Complaint are barred by all applicable Nevada Statutes of Limitations  
17 and/or Repose.

18 **THIRD AFFIRMATIVE DEFENSE**

19 3. Failure to Mitigate. Third-Party Plaintiffs, though under a duty to do so, have failed and  
20 neglected to mitigate their alleged damages. Said failure was the direct and proximate cause of any and  
21 all alleged damages and, therefore, Third-Party Plaintiffs cannot recover against this answering Third-  
22 Party Defendant, whether as alleged or otherwise.

23 **FOURTH AFFIRMATIVE DEFENSE**

24 4. Contribution. Third-Party Defendant alleges that the damage suffered by Third-Party  
25 Plaintiffs, if any, is the direct and proximate result of the negligence of parties, persons, corporations  
26 and/or entities other than this answering Third-Party Defendant, and that the liability of Third-Party  
27 Defendant, if any, is limited in direct proportion to the percentage of fault actually attributable to Third-  
28 Party Defendant.

1 **FIFTH AFFIRMATIVE DEFENSE**

2 5. Contributory Negligence. Third-Party Defendant is informed and believes, and thereon  
3 alleges, that at all times mentioned herein, Third-Party Plaintiffs were negligent, careless, reckless, and  
4 unlawfully conducted themselves as to directly and proximately contribute to the happening of the incident  
5 and the occurrence of the alleged damages. Said negligence bars either completely or partially the recovery  
6 sought by Third-Party Plaintiffs.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 6. Estoppel. Third-Party Defendant is informed and believes, and thereon alleges, that Third-  
9 Party Plaintiffs engaged in conduct and/or activities with respect to the subject of Third-Party Plaintiffs’  
10 Third-Party Complaint, and by reason of said conduct and/or activities, Third-Party Plaintiffs are estopped  
11 from asserting any claims for damages, or seeking any other relief against this answering Third-Party  
12 Defendant.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 7. Waiver. Third-Party Defendant is informed and believes, and thereon alleges, that  
15 Plaintiffs and other Defendants (other than this answering Third-Party Defendant) have engaged in  
16 conduct and activities sufficient to constitute a waiver of any alleged breach of duty, negligence, act,  
17 omission, or any other conduct, if any, as set forth in Third-Party Plaintiffs’ Third-Party Complaint.

18 **EIGHTH AFFIRMATIVE DEFENSE**

19 8. Intervening and Superseding Causes. Third-Party Defendant is informed and believes, and  
20 thereon alleges, that the injuries and damages of which Plaintiffs’ complains, was proximately caused by,  
21 or contributed to, by the acts of other Defendants (other than this answering Third-Party Defendant),  
22 persons and/or other entities, and that said acts were an intervening and superseding cause of the injuries  
23 and damages, if any, of which Plaintiffs complains, thus barring Third-Party Plaintiffs from any recovery  
24 against this answering Third-Party Defendant.

25 **NINTH AFFIRMATIVE DEFENSE**

26 9. Assumption of the Risk. Third-Party Defendant alleges that Third-Party Plaintiffs  
27 expressly, voluntarily and knowingly assumed all risks about which they complain in their Third-Party  
28 Complaint and, therefore, are barred either totally or to the extent of said assumption from any damages.



1 against Third-Party Defendant must be reduced by an amount equal to the proportionate fault of said third-  
2 parties.

3 **SIXTEENTH AFFIRMATIVE DEFENSE**

4 16. Several Liability for Non-Economic Damages. Third-Party Plaintiffs' liability for the  
5 claims asserted by Third-Party Plaintiffs is greater than the liability, if any, of Third-Party Defendant.

6 **SEVENTEENTH AFFIRMATIVE DEFENSE**

7 17. Comparative Negligence of Plaintiffs. Third-Party Plaintiffs have failed to exercise  
8 ordinary care on their own behalf, which negligence and carelessness was a proximate cause of some  
9 portion up to and including the whole thereof, of the injuries and damages complained of in this action.  
10 Therefore, Third-Party Plaintiffs' recovery against this answering Third-Party Defendant should be barred  
11 or reduced according to principles of comparative negligence.

12 **EIGHTEENTH AFFIRMATIVE DEFENSE**

13 18. Implied Assumption of Risk. Prior to the event in which Third-Party Plaintiffs were  
14 allegedly injured as a result of Third-Party Defendant's alleged negligence, Third-Party Plaintiffs, by their  
15 conduct, impliedly assumed the risk of a known and appreciated danger, and thus may not recover  
16 damages from Third-Party Defendant for its injury.

17 **NINETEENTH AFFIRMATIVE DEFENSE**

18 19. Lack of Standing. Third-Party Defendant is informed and believes, and thereon alleges,  
19 that Third-Party Plaintiffs herein lack standing to bring said action against Third-Party Defendant.

20 **TWENTIETH AFFIRMATIVE DEFENSE**

21 20. Non-Joinder of Necessary Parties. Third-Party Plaintiffs have failed to join all parties  
22 necessary for full and final resolution of this lawsuit.

23 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

24 21. Product Used in an Abnormal Manner. Third-Party Defendant is informed and believes,  
25 and thereon alleges, that Third-Party Plaintiffs' damages, if any, proximately resulted from the use of the  
26 product in question in an unintended and abnormal manner, and not from any defect or mechanical failure  
27 of, or failure to service properly, said product or any of its components.

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1 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

2 22. Misuse or Modification of Product. Third-Party Defendant is informed and believes, and  
3 thereon alleges, that if there was any defect in the product referred to in Third-Party Plaintiffs' Third-Party  
4 Complaint at the time the product left the possession of this answering Third-Party Defendant, the defect  
5 was caused by the misuse, abuse, changes, modifications, improper maintenance and alterations of others,  
6 including Third-Party Plaintiffs herein, and that any damages were caused by such misuse, changes,  
7 alterations, lack of maintenance and modifications.

8 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

9 23. No Breach of Warranties. Third-Party Defendant is informed and believes, and thereon  
10 alleges, that it did not breach any warranties, express or implied, and that no warranties, express or implied,  
11 arose in the instant situation. Warranties arise only in connection with the sale of a product, not in  
12 connection with the performance of a service.

13 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

14 24. Inadequate Warranty Notice. Third-Party Plaintiffs have not provided timely notice of  
15 warranty claims.

16 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

17 25. Third-Party Defendant asserts that any products that are provided that are for the benefit of  
18 the property in question were only incidental to the services that are performed such that Third-Party  
19 Defendant did not place any products into the stream of commerce that would subject it to strict products  
20 liability.

21 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

22 26. Third-Party Defendant did not sell anything to anyone and did not, therefore, improperly  
23 warn anyone under the implied warranties of merchantability or warranty that it was fit for a particular  
24 purpose.

25 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

26 27. Third-Party Plaintiffs have failed to reasonably defend against Plaintiff's claims.

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**SERVICE LIST**  
**Gallery Community Association v. K. Hovnanian At Gallery, LLC Inc., et al.**  
**Superior Court Case No.: CV2020-008714**

ORIGINAL of the foregoing e-filed with the  
Court this 23<sup>rd</sup> day of November 2020; and

A COPY of the forgoing sent via e-service this  
23<sup>rd</sup> day of November 2020.

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By:           /s/ Phaedra L. Calaway            
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