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6 *Attorneys for Third-Party Defendant Desert Vista, Inc.*

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

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

11 Plaintiff;

12 v.

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

22 Defendants.

23 _____
24 K. HOVNANIAN AT GALLERY, LLC,
an Arizona limited liability company; K.
HOVNANIAN ARIZONA
25 OPERATIONS, LLC, an Arizona limited

NO. CV2020-008714

**THIRD-PARTY DEFENDANT DESERT
VISTA, INC.'S ANSWER TO THIRD-
PARTY COMPLAINT**

*(Assigned to the Honorable Katherine
Cooper)*

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 Desert Vista, Inc. (“Desert Vista”) hereby Answers the Third-Party Complaint brought by K.Hovnanian at Gallery, LLC., K. Hovnanian Arizona Operations, LLC., K.Hovnanian Developments of Arizona, Inc., K. Hovnanian Companies of Arizona, LLC. (collectively the “TPP”), and admits, denies, and alleges as follows:

1 **PARTIES**

2 1. Desert Vista is without information or knowledge sufficient to form a belief as
3 to the truthfulness of the allegations contained in Paragraphs 1 through 6 and therefore denies
4 those allegations.

5 2. In response to Paragraph 7, Desert Vista admits it was at all times material hereto
6 a corporation duly organized under the laws of the State of Arizona, and qualified to conduct
7 business in the State of Arizona.

8 3. Desert Vista is without information or knowledge sufficient to form a belief as
9 to the truthfulness of the allegations contained in Paragraphs 8 through 16 and therefore denies
10 those allegations.

11 **JURISDICTION AND VENUE**

12 4. In response to Paragraph 17, Desert Vista admits that it performed work at the
13 Project known as The Gallery located in Scottsdale, Arizona, Maricopa County, only, but
14 denies the remaining allegations.

15 5. In response to Paragraph 18, Desert Vista admits the allegations for jurisdiction
16 and venue purposes, only.

17 **GENERAL ALLEGATIONS**

18 6. In response to Paragraphs 19 and 20, Desert Vista admits that it performed work
19 on the subject property pursuant to a written contract and the language of the contract speaks
20 for itself. Desert Vista is without information or knowledge sufficient to form a belief as to the
21 truthfulness of the remaining allegations contained in Paragraphs 19 and 20 and therefore
22 denies those allegations.

23 7. Desert Vista is without information or knowledge sufficient to form a belief as
24 to the truthfulness of the allegations contained in Paragraphs 21 through 22 and therefore
25 denies those allegations.

1 duty may have existed, but affirmatively asserts that it performed all its work in conformance
2 with any such duty and denies any breach of duty.

3 23. Desert Vista denies the allegations in Paragraphs 45 through 46 as they relate to
4 Desert Vista, only.

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

7 24. Desert Vista incorporates Paragraphs 1 through 23 of its Answer as if set forth
8 fully.

9 25. Desert Vista is without information or knowledge sufficient to form a belief as
10 to the truthfulness of the allegations contained in Paragraphs 48 through 49 and therefore
11 denies those allegations.

12 **COUNT SIX**
13 **(Contractual Indemnity)**

14 26. Desert Vista incorporates Paragraphs 1 through 25 of its Answer as if set forth
15 fully.

16 27. In response to Paragraph 51, Desert Vista admits that it performed work on the
17 subject property pursuant to a written contract and the language of the contract speaks for
18 itself. Desert Vista is without information or knowledge sufficient to form a belief as to the
19 truthfulness of the remaining allegations contained in Paragraph 51 and therefore denies those
20 allegations.

21 28. In response to Paragraph 52, Desert Vista admits that it performed work on the
22 subject property pursuant to a written contract and the language of the contract speaks for
23 itself. Desert Vista denies the remaining allegations.

24 29. In response to Paragraphs 53 and 54, Desert Vista admits that it performed work
25 on the subject property pursuant to a written contract and the language of the contract speaks
for itself. Desert Vista is without information or knowledge sufficient to form a belief as to the

1 truthfulness of the remaining allegations contained in Paragraphs 53 and 54, and therefore
2 denies those allegations.

3 **COUNT SEVEN**

4 **(Declaratory Relief – Re: Duty to Defend)**

5 30. Desert Vista incorporates Paragraphs 1 through 29 of its Answer as if set forth
6 fully.

7 31. In response to Paragraphs 56 and 61, Desert Vista admits that it performed work
8 on the subject property pursuant to a written contract and the language of the contract speaks
9 for itself. Desert Vista is without information or knowledge sufficient to form a belief as to the
10 truthfulness of the remaining allegations contained in Paragraphs 56 and 61, and therefore
11 denies those allegations.

12 **COUNT EIGHT**

13 **(Declaratory Relief – Re: Duty to Indemnify)**

14 32. Desert Vista incorporates Paragraphs 1 through 31 of its Answer as if set forth
15 fully.

16 33. In response to Paragraphs 63 and 65, Desert Vista admits that it performed work
17 on the subject property pursuant to a written contract and the language of the contract speaks
18 for itself. Desert Vista is without information or knowledge sufficient to form a belief as to the
19 truthfulness of the remaining allegations contained in Paragraphs 63 and 65, and therefore
20 denies those allegations.

21 **COUNT NINE**

22 **(Declaratory Relief – Re: Contractual Duties)**

23 34. Desert Vista incorporates Paragraphs 1 through 33 of its Answer as if set forth
24 fully.

25 35. In response to Paragraphs 67 and 68, Desert Vista admits that it performed work
on the subject property pursuant to a written contract and the language of the contract speaks

1 for itself. Desert Vista denies the remaining allegations.

2 **COUNT TEN**
3 **(Contribution)**

4 36. Desert Vista incorporates Paragraphs 1 through 35 of its Answer as if set forth
5 fully.

6 37. In response to Paragraph 68, Desert Vista admits that it performed work on the
7 subject property pursuant to a written contract and the language of the contract speaks for
8 itself. Desert Vista denies the remaining allegations.

9 **AFFIRMATIVE DEFENSES**

10 1. Desert Vista affirmatively alleges that the Complaint, in each and every portion
11 thereof, fails to set forth facts sufficient to constitute any viable cause of action against Desert
12 Vista, and must therefore be dismissed pursuant to Arizona Rule of Civil Procedure 12(b)(6).

13 2. Desert Vista affirmatively alleges that Plaintiffs and TPP have failed to make
14 reasonable efforts to mitigate their damages, if any, in whole or in part.

15 3. That, by virtue of TPP's own acts, representations and conduct, Plaintiffs are
16 estopped from asserting any claims against answer Third-Party Defendant Desert Vista.

17 4. That, by virtue of TPP's own acts, representations and conduct, Plaintiffs have
18 waived any right to assert any claims against answering Third-Party Defendant Desert Vista.

19 5. That TPP's Third-Party Complaint is barred by the doctrine of laches, in that
20 TPP have unreasonably delayed in asserting their alleged claims against answer Third-Party
21 Defendant Desert Vista.

22 6. That TPP willingly, voluntarily and knowingly assumed each, every, and all the
23 risks and hazards involved in the activities referred to in the Third-Party Complaint.

24 7. Desert Vista affirmatively alleges that at or about the time and place referenced
25 in the Complaint, if TPP suffered any injury or damages, which Desert Vista denies, that any

1 such injury or damage was proximately and legally caused and contributed to by the
2 negligence and fault of TPP, and that said negligence and fault of TPP reduces, *pro rata*, any
3 recovery otherwise available to TPP.

4 8. Desert Vista affirmatively alleges and without admitting TPP has suffered, or
5 will suffer, any damages or injuries as a result of conduct alleged in the Complaint, that any
6 damages or injuries which were or will be sustained by TPP cause in whole or in part, by the
7 negligence and/or tortuous acts, omissions and/or conduct of persons, parties or entities other
8 than Desert Vista. Any damages recoverable by TPP must be diminished in proportion to the
9 amount of fault attributable to said other persons, parties or entities.

10 9. Desert Vista affirmatively alleges that the resulting injuries and damages, if any
11 sustained by TPP were not proximately caused by any acts or omissions of Desert Vista.
12 Desert Vista is informed and believes that the damages and injuries, if any, which were or will
13 be sustained by TPP were proximately caused by the action and/or inaction of third parties,
14 and that, by virtue of said action and/or inaction, Desert Vista has no legal liability to TPP.
15 Desert Vista affirmatively alleges that if any repairs have been conducted on the Project, any
16 damages recoverable by TPP must be diminished in proportion to the amount of fault
17 attributable to said repair persons, parties, or entities.

18 10. Desert Vista affirmatively alleges that if Desert Vista is found to have made an
19 express warranty, then TPP are limited in any recovery to said warranty.

20 11. Desert Vista affirmatively alleges that the Complaint and causes of action
21 against Desert Vista fail to set forth acts sufficient to give rise to exemplary or punitive
22 damages.

23 12. Desert Vista affirmatively alleges that the Complaint fails to set forth acts
24 sufficient to give rise to stigma damages.

25 13. Desert Vista affirmatively alleges that the Complaint has failed to state any claim

1 that entitles TPP to attorneys' fees, costs or other damages.

2 14. Desert Vista incorporates any and all affirmative defenses of any and all parties
3 hereto.

4 15. Although Desert Vista does not presently have specific facts in support of the
5 remaining defenses, it wishes to put TPP on notice that it hereby raises the following defenses,
6 which through subsequent discovery, may indeed be supported by facts: accord and
7 satisfaction, comparative and contributory fault, accepted work, arbitration and award,
8 assumption of risk, estoppel, failure to mitigate damages, failure to minimize damages, laches,
9 unclean hands, lack of jurisdiction, payment, economic loss rule, economic waste doctrine,
10 release, *res judicata*, collateral estoppel, statute of limitations, statute of repose, settlement and
11 release, and waiver.

12 16. Desert Vista denies all allegations not expressly admitted.

13 17. Desert Vista hereby reserves the right to plead further affirmative defenses
14 including but not limited to, those affirmative defenses set forth in Arizona Rules of Civil
15 Procedure 8(c) and 12(b) as may be justified by the facts determined during discovery.

16 **WHEREFORE**, having fully answered the Third-Party Complaint, Desert Vista
17 respectfully requests this Court enter judgment in its favor and against TPP as follows:

- 18 a. That the Third-Party Complaint be dismissed with prejudice and that TPP take
19 nothing thereby;
- 20 b. That Third-Party Defendant Desert Vista be awarded its costs and reasonable
21 attorneys' fees incurred herein pursuant to any contract(s) relevant to this matter,
22 A.R.S. §§ 12-3401.01(A) and -1364; and
- 23 c. For such other and further relief as this Court deems just and proper under the
24 circumstances.

Service List

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

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