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Attorneys for Third-Party Defendants Renco, LLC dba Renco Roofing and Desert Vista, Inc.

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.

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

NO. CV2020-008714

**THIRD-PARTY DEFENDANT DESERT
VISTA, INC AND RENCO, LLC DBA
RENCO ROOFING'S SEPARATE
STATEMENT OF FACTS IN SUPPORT
OF ITS MOTION FOR SUMMARY
JUDGMENT**

*(Assigned to the Honorable Katherine
Cooper)*

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

8 Third-Party Plaintiffs

9 v.

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

Third-Party Defendants.

Third-Party Defendant Desert Vista, Inc. (“Desert Vista”) and Renco, LLC dba Renco Roofing (“Renco”) hereby submit their Separate Statement of Facts in support of their Motion for Summary Judgment.

1. Plaintiff Gallery Community Association is the property owners’ association of The Gallery Complex of townhomes located at 3124 North 71st Street, Arizona (the “Project”). (See **Court Record**, Plaintiff’s Complaint filed July 27, 2020, ¶ 1).

1 2. K. Hovnanian Arizona Operations, LLC acted as the general contractor for the
2 construction of the Project; K. Hovnanian at Gallery, LLC acted as the developer and owed
3 the Project before conveying it to Plaintiff. (See **Court Records**, Defendants' [KHov's]
4 Answer to Complaint filed September 22, 2020, p. 2).

5 3. On June 24, 2016, Renco signed a Master Subcontractor Agreement with K.
6 Hovnanian Great Western Building Company, LLC and K. Hovnanian Building Company,
7 LLC to provide labor and materials at the Project relating to the foam roofs and walking decks.
8 (See **Exhibit 1**, Renco's Master Subcontract Agreement)

9 4. On or around March 3, 2010, Desert Vista entered into a Master Subcontractor
10 Agreement with K. Hovnanian Great Western Building Company, LLC and on July 21, 2016
11 Desert Vista entered into a Work Agreement for the Project wherein Desert Vista would
12 provide labor and materials related to the stucco at the Project. (See, **Exhibit 2**, Desert Vista's
13 Master Subcontractor Agreement)

14 5. On or around July 3, 2019, Plaintiff provided KHov with a notice of construction
15 defect related to the Project pursuant to A.R.S. § 12-1361, et seq. (See **Exhibit 3**, PDA Notice
16 dated July 3, 2019).

17 6. On July 27, 2020, Plaintiff filed a Complaint against KHov in Maricopa County
18 Superior Court asserting causes of action related to construction defects at the Project. (See
19 **Court Record**, Plaintiff's Complaint filed July 27, 2020).

20 7. Plaintiff filed a Certificate of Expert Testimony pursuant to A.R.S. § 12-2602
21 which provided "expert testimony will be required to prove the standard of care and establish
22 liability against defendants." (See **Court Record**, Plaintiff's Notice Regarding Expert
23 Testimony filed July 27, 2020)

24 8. On October 6, 2020, KHov filed its Third-Party Complaint against Desert Vista
25 and Renco and other various subcontractors who were associated with the Project. (See **Court**

1 **Record**, Third-Party Complaint filed October 6, 2020).

2 9. On April 5, 2021, Renco filed its Answer to KHov's Third-Party Complaint
3 generally denying liability. (See **Court Record**, Third-Party Defendant Renco's Answer to
4 Third-Party Complaint filed April 6, 2021).

5 10. On October 25, 2021, Desert Vista filed its Answer to KHov's Third-Party
6 Complaint generally denying liability. (See **Court Record**, Third-Party Defendant Desert
7 Vista's Answer to Third-Party Complaint filed October 25, 2021).

8 11. Both Renco and Desert Vista filed Certificates of Expert Testimony pursuant to
9 A.R.S. § 12-2602 certifying that KHov required expert testimony to prove its claims against
10 Renco and Desert Vista. (See **Court Record**, Third Party Defendant Renco Roofing's
11 Certificate Regarding Expert Testimony Pursuant to A.R.S. 12-2602(A) filed April 6, 2021
12 and Third Party Defendant Desert Vista's Certificate Regarding Expert Testimony Pursuant to
13 A.R.S. 12-2602(A) filed October 25, 2021).

14 12. The Court issued a Scheduling Order on May 25, 2021, pursuant to which
15 KHov's deadline for liability expert reports and opinions was July 23, 2021 and their cost of
16 repair expert reports and opinions were due August 23, 2021. (See **Court Record**, Scheduling
17 Order issued on May 25, 2021).

18 13. Two weeks after KHov's July 23, 2021 report deadline, Plaintiff's counsel
19 advised that Plaintiff and KHov agreed to extend KHov's expert report deadline until August
20 11, 2021. (See **Exhibit 4**, Correspondence from P. Manship to S. Huff dated August 4, 2021).

21 14. On August 11, 2021, KHov disclosed its liability expert reports including a
22 Geotechnical Engineering Report by Peterson Geotechnical Group dated August 10, 2021, and
23 a Defense Response Report by Bert L. Howe & Associates, Inc. ("BHA"). This BHA report
24 did not include opinions or conclusions as to the cause of the alleged defects or the identity of
25 the responsible party for the defects. (See **Exhibit 5**, Defendant/Third-Party Plaintiffs' First

1 Supplemental Disclosure Statement dated August 11, 2021).

2 15. On August 23, 2021, KHov disclosed a BHA Preliminary Defense Costs of
3 Defense Scope Estimate report. (See **Exhibit 6**, Bert L. Howe & Associates' Preliminary
4 Defense Cost of Defense Scope Estimate)

5 16. Desert Vista and Renco timely disclosed their expert reports on January 31,
6 2022. See **Exhibit 7**, Third-Party Defendant Renco Roofing's First Supplemental Disclosure
7 Statement dated January 31, 2022; See also, **Exhibit 8**, Third-Party Defendant Desert Vista's
8 First Supplemental Disclosure Statement dated January 31, 2022).

9 17. Desert Vista disclosed a HCCI Investigation & Preliminary Report authored by
10 West Harrington of Harrington Construction Co., Inc. This Report did not include opinions or
11 testimony regarding the cause of the defects or the responsible party. (See **Exhibit 9**, HCCI
12 Investigation and Preliminary Report dated January 31, 2022, p. 2).

13 18. Renco retained Chad Polvika of MC Consultants as their expert, whose
14 investigation and retention did not involve opining on what caused the defects or the
15 responsibility of the subcontractors. (See **Exhibit 10**, Deposition Transcript of Chad Polivka
16 dated September 2, 2022, p. 40).

17 19. On February 18, 2022, KHov's counsel indicated to the parties that they intended
18 to disclose new expert reports and opinions. (See **Exhibit 11**, correspondence from A. Wilkins
19 to P. Manship dated February 18, 2022)

20 20. On February 25, 2022, KHov disclosed three new expert reports: (1) BHA's
21 Defense Response Report; (2) BHA's Preliminary Defense Cost of Repair; (3) BHA's
22 Subcontractor Allocation Summary. (See **Exhibit 12**, Defendants/Third-Party Plaintiffs' Third
23 Supplemental Disclosure Statement dated February 25, 2022).

24 21. Desert Vista and Renco's counsel objected to KHov's untimely disclosure and
25 met and conferred with KHov's counsel on March 11, 2022. (See **Exhibit 13**, Correspondence

1 from S. Huff to A. Wilkins dated March 10-11, 2022).

2 22. On March 29, 2022 Desert Vista and Renco filed a Third-Party Defendants' Joint
3 Objection and Motion to Preclude Defendant/Third-Party Plaintiffs' Untimely and New Expert
4 Reports and Opinions. KHov filed its Response on April 18, 2022, and the Reply was filed on
5 April 28, 2022. (See **Court Record**, Third-Party Defendants' Joint Objection and Motion to
6 Preclude Defendants/Third-Party Plaintiffs' Untimely and New Expert Reports and Opinions
7 dated March 29, 2022).

8 23. The Court held oral argument on the Motion on June 10 2022, and ordered
9 supplemental briefing, which was jointly filed by KHov and Desert Vista and Renco on July
10 1, 2022. (See **Court Record**, Joint Notice of Filing Supplemental Documentation Pursuant to
11 the Court's June 10, 2022 Order filed July 1, 2022).

12 24. On July 29, 2022 the Court issued an Order granting the Motion to Preclude and
13 excluded KHov's February 25, 2022 reports from evidence. (See **Court Record**, Ruling Re
14 Motion to Preclude dated July 29, 2022)

15 25. The insurance carrier(s) through which Renco and Desert Vista have commercial
16 general liability policies applicable to this matter have picked up the additional insured
17 coverage and have been issuing payments to KHov's counsel of record to defend KHov in this
18 litigation.

19 **DATED** this 30th day of September, 2022.

20 **RAI DUER, P.C.**

21
22 By: /s/ Marcus McGillivray

23 Rina Rai

Marcus McGillivray

24 ***Attorneys for Third-Party Defendants Renco,
25 LLC dba Renco Roofing and Desert Vista,
Inc.***

1 **ORIGINAL** of the foregoing e-filed
This 30th day of September, 2022, with:

2 Clerk of the Court
3 **Maricopa County Superior Court**
201 W. Jefferson
4 Phoenix, Arizona 85003

5 **COPY** of the foregoing e-delivered
6 This 30th day of September, 2022, to:

7 The Honorable Katherine Cooper
Maricopa County Superior Court
8 **East Court Building – 711**
101 W Jefferson
9 Phoenix, AZ 85003

10 **COPIES** of the foregoing e-mailed
11 This 30th day of September, 2022, to:

12 (See Attached Service List)

13 By: /s/ Tracy L. O'Brien
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Service List

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

CV2020-008714

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