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9 *Attorneys for Defendants/Third-Party Plaintiffs K. Hovnanian*
10 *at Gallery, LLC and K. Hovnanian Arizona Operations, LLC*

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF MARICOPA**

13
14 GALLERY COMMUNITY ASSOCIATION, an
Arizona non-profit corporation,
15
16 Plaintiff,

17 v.

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

24 Defendants.

25 K. HOVNANIAN AT GALLERY, LLC, an
Arizona limited liability company; K.
26 HOVNANIAN ARIZONA OPERATIONS, LLC,
an Arizona limited liability company; K.
27 HOVNANIAN DEVELOPMENTS OF
ARIZONA, INC., an Arizona corporation; K.
28 HOVNANIAN COMPANIES OF ARIZONA.

Case No. CV2020-008714

**DEFENDANTS'/THIRD-PARTY
PLAINTIFFS' SEPARATE
STATEMENT OF FACTS IN
SUPPORT OF ITS RESPONSE TO
THIRD-PARTY DEFENDANT
LEBLANC'S JOINDER IN THIRD-
PARTY DEFENDANTS DESERT
VISTA, INC. AND RENCO LLC dba
RENCO ROOFING'S JOINT
MOTION FOR SUMMARY
JUDGMENT**

(Assigned to the Honorable Katherine
Cooper)

1 LLC, an Arizona limited liability company;
2
3 Third-Party Plaintiffs,
4
5 v.
6 CHAS ROBERTS AIR CONDITIONING, INC.,
7 an Arizona corporation; DESERT VISTA, INC.,
8 an Arizona corporation; GOTHIC
9 LANDSCAPING, INC., a California corporation;
10 HOME BUILDERS SITE SERVICES OF
11 ARIZONA, LLC, an Arizona limited liability
12 company; LEBLANC BUILDING CO., INC., an
13 Arizona corporation; LIBERTY
14 CONSTRUCTORS, LLC, an Arizona limited
15 liability company, dba LIBERTY ARIZONA;
16 RENCO LLC, an Arizona limited liability
17 company, dba RENCO ROOFING; R/S SERVICE
18 & SUPPLY, INC., an Arizona corporation;
19 SARGON MASONRY CONSTRUCTION, LLC,
20 an Arizona limited liability company; and DOES
21 1-50.
22
23 Third-Party Defendants,

24 Defendants/Third-Party Plaintiffs K Hovnanian at Gallery, LLC and K. Hovnanian
25 Arizona Operations, LLC (“Defendants/KHov”), hereby submits its Separate Statement of Facts
26 in support of its Response and Opposition to LeBlanc Building Co., Inc’s (“LeBlanc”) Joinder in
27 Third-Party Defendant Desert Vista, Inc. and Renco, LLC dba Renco Roofing’s Joint Motion for
28 Summary Judgment, dated October 3, 2022.

19 **SEPARATE STATEMENT OF FACTS**

20 1. Nautilus expert Stefen Gustafson’s basis for his opinions on cost and repairs relies
21 on repair recommendations made by SBSA expert Mr. Fronapfel. See Exhibit C to Defendants’
22 Separate Statement of Facts in Support of their Response to Desert Vista and Renco’s Joint Motion
23 for Summary Judgment, Deposition of S. Gustafson, at p 6:15-21.

24 2. Mr. Fronapfel in his report addressed the LFRS generally and the applicable code
25 standards, industry standard, and project-specific standard, including those standards that are set
26 forth in the Hovnanian’ project specifications. See Exhibit A to Defendants’ Separate Statement
27 of Facts in Support of their Response to Desert Vista and Renco’s Joint Motion for Summary
28 Judgment, report by SBSA, at GALLERY-SBSA_004976. Mr. Fronapfel identified an area on

1 unit 3111 of building D where it was a buckled steel strap and missing exterior woof sheathing
2 failed to comply with braced/shear wall plan on the structural drawing and assigns liability to,
3 among others, subcontractors who performed the work. *Id.*

4 3. LeBlanc's expert was asked whether LeBlanc constructed the shear wall panel
5 correctly. He testified that it was not constructed consistently with the plans. He testified it was
6 possible there was a conflict or that LeBlanc was excused from constructing the condition but did
7 not have evidence or information that would support this. See Exhibit A hereto, Deposition of E.
8 Marshall, at pp. 42:2-44:2.

9 4. LeBlanc's expert testified as to possible causes for the buckling of the strap, but had
10 not responded to Plaintiff's expert's claims that the strap was improperly nailed. Exhibit A hereto,
11 pp. 44:04-45:23.

12 5. Plaintiff's expert provided opinions regarding the slope of the deck, in which he
13 addressed the applicable code standards, industry standard, and project specific standard including
14 those set forth in the project specifications. Exhibit A to Defendants' Separate Statement of Facts
15 in Support of their Response to Desert Vista and Renco's Joint Motion for Summary Judgment,
16 report by SBSA, at pp. 186-191/GALLERY-SBSA_005137-5142. Mr. Fronapfel identified decks
17 that were defective and did not meet the applicable standards, in which he assigns liability to
18 subcontractors who performed the work. *Id.*

19 6. Defense expert Terry Ingo reported on and was asked at deposition regarding the
20 decks and testified as to his opinion of the applicable standards, whether the decks as built
21 complied with the standards, and whether repairs were required. See Exhibit B hereto, BHA report
22 at KHOV1720 and Exhibit C hereto, Deposition of T. Ingo at pp. 139:04-141:16.

23 7. LeBlanc's expert testified that he understood the allegations and that he believed
24 based on his inspection that the condition had been installed per the architect's detail. Exhibit A
25 hereto, Deposition of E. Marshall, pp. 37:17-41:07.

26 8. Renco's expert MC Consultants Chad Polivka opined on the issue of the non-
27 compliant scope, stating in their analysis that the allegation of the non-compliant slope falls
28

1 outside its client's scope of work, and per the plans the slope was to be provided by framing.
2 Exhibit D hereto, MC Consulting Report, at p. RENCO 000260.

3 9. Movant entered into a Work Agreement with K. Hovnanian on May 6, 2015, that
4 detailed the responsibilities, obligations, liabilities, and duties in the performance of the work.
5 LeBlanc's Ariz.R.Civ.P. 30(b)(6) representative designated to testify regarding the scope of work
6 confirmed that LeBlanc's work included:

- 7 a. "Install wood framing making proper provisions for work of other trades."
- 8 b. "Provide wood backing, furring, stripping or blocking indicated of required for
9 installation and attachment of the work of the other trades."
- 10 c. "To install ridge and eave blocking, etc., as required by approved construction
11 documents to insure a rigid roof construction."
- 12 d. "Crickets and mop boards installed per approved construction document and all
13 applicable codes and specifications." Exhibit E hereto, Deposition of M. des
14 Grosilliers, LeBlanc representative, at pp. 22:22-29:19, and Exhibit 1 to LeBlanc's
15 Joinder, Subcontract at KHOV 00000606.

14 Dated: November 7, 2022

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1 Original of the foregoing e-filed
this 7th day of November, 2022 with:

2 Clerk of the Court
3 Maricopa County Superior Court
101 W. Jefferson
4 Phoenix, AZ 85003

5 COPY of the foregoing emailed this
7th day of November, 2022 to:

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