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10                   *Attorneys for the Plaintiff*

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

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

16                   Plaintiff,

17                   vs.

18                   K. HOVNANIAN AT GALLERY, LLC,  
19                   an Arizona limited liability company; et  
20                   al.

21                   Defendants.

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22                   K. HOVNANIAN AT GALLERY, LLC,  
23                   an Arizona limited liability company; et  
24                   al.

25                   Third-Party Plaintiffs,

26                   v.

27                   ARTISTIC STAIRS, LTD., an Arizona  
28                   limited liability company; et al.

                    Third-Party Defendants.

Case No. CV2020-008714

Assigned to Hon. Michael Kemp

**GOOD FAITH CONSULTATION  
CERTIFICATE IN SUPPORT OF  
PLAINTIFF'S REQUEST FOR RULE  
56(d) RELIEF AND EXPEDITED  
HEARING**

**(Oral Argument Requested)**

1           Undersigned counsel for Plaintiff Gallery Community Association (“Plaintiff” or  
2 “Association”) herein hereby submits this Good Faith Consultation Certificate in order to  
3 establish compliance with the requirements of Ariz. R. Civ. P. 56(d)(1)(B), which requires  
4 the submission of such certificate in compliance with Ariz. R. Civ. P. 7.1(h). This  
5 certificate is filed contemporaneously with Plaintiff’s Request for Rule 56(d) Relief and  
6 Expedited Hearing.

7           The following efforts have been made to resolve this matter before resorting to the  
8 Court for relief:

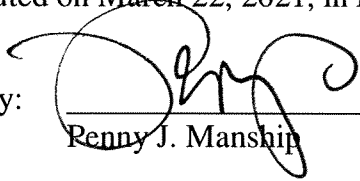
- 9           • On March 15, 2021, I emailed counsel for Defendants/Third-Party Plaintiffs,  
10           Dennis Wilenchik and Barbara Stansil, stating that I was “writing pursuant to Rules  
11           7.1(h) and 56(d) to confer regarding evidence necessary to oppose Defendants’  
12           Motion for Summary Judgment.” And requesting “additional time to oppose the  
13           motion because there has been no discovery to date.”
- 14           • I indicated in my email that “[a]t a minimum we require Defendants’ initial  
15           disclosures and the 30(b)(6) deposition of each Defendant to determine the scope of  
16           each of their involvement in The Gallery project” and that “[t]here may be additional  
17           discovery that we determine is necessary once we receive the initial disclosures.”
- 18           • I then requested in my email that Defendants’ counsel “stipulate that Plaintiff’s  
19           opposition to the motion is not due until the parties engage in reasonable discovery  
20           pursuant to a scheduling order.”
- 21           • Finally, I stated in my email that “given the status of discovery in this case and the  
22           lack of any evidence provided in support of Defendants’ Motion, we strongly believe  
23           that the Motion is premature and request that it be withdrawn until the parties can  
24           engage in appropriate discovery.”
- 25           • On March 22, 2021, I called counsel for Defendants, and spoke with Barbara Stansil  
26           referring to my March 15, 2021 email and the issues raised therein. Ms. Stansil  
27           indicated that she would discuss the matter with Mr. Wilenchik and get back to me.  
28           Ms. Stansil called me later on March 22nd, and after a discussion we determined  
          that we were unable to reach an agreement to resolve this discovery dispute.

1 • Attached hereto is a true and correct copy of my email dated March 15, 2021 to  
2 Defendants' counsel.

3 Based upon the foregoing, undersigned counsel for Plaintiff hereby certifies that, after  
4 personal consultation and good faith efforts to do so, counsel for the parties have been  
5 unable to satisfactorily resolve this discovery dispute which is the subject of the Request  
6 for Rule 56(d) Relief and Expedited Hearing filed by Plaintiff.

7 Undersigned counsel for Plaintiff further certifies that, as required by Ariz. R. Civ. P.  
8 7.1(h), such consultation was by telephone, and not merely by letter or email.

9 I declare under penalty of perjury under the laws of the State of Arizona that the  
10 foregoing is true and correct. Executed on March 22, 2021, in Englewood, Colorado.

11 By:   
12 Penny J. Manship

13  
14 STATE OF COLORADO  
15 COUNTY OF DOUGLAS

16 Subscribed and sworn to before me on this 22nd day of March, 2021, by  
17 Penny J. Manship. Witness my hand and official seal. My commission expires: 12/28/2024

18 [SEAL]

19  
20 Notary Public, State of Colorado

21 

JESSICA L HARMON  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 2011402818  
MY COMMISSION EXPIRES DECEMBER 28, 2024

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23  
24  
25  
26  
27  
28

**From:** [Penny J. Manship](#)  
**To:** [Dennis Wilenchik \(diw@wb-law.com\)](#); ["barbaras@wb-law.com"](#); [Mario Campos](#)  
**Cc:** [Craig S. Nuss](#); [Jessica Harmon](#)  
**Bcc:** [Jennifer Seidman](#)  
**Subject:** Gallery - Conferral under Rules 7.1(h) and 56(d)  
**Date:** Monday, March 15, 2021 3:13:22 PM

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Counsel,

I am writing pursuant to Rules 7.1(h) and 56(d) to confer regarding evidence necessary to oppose Defendants' Motion for Summary Judgment.

Although we do not feel Defendants met their initial burden on summary judgment because there was no evidence supporting the motion, out of an abundance of caution, we request additional time to oppose the motion because there has been no discovery to date. At a minimum we require Defendants' initial disclosures and the 30(b)(6) deposition of each Defendant to determine the scope of each of their involvement in The Gallery project. There may be additional discovery that we determine is necessary once we receive the initial disclosures. Therefore, we request that you stipulate that Plaintiff's opposition to the motion is not due until the parties engage in reasonable discovery pursuant to a scheduling order. I emailed regarding this issue on Friday, March 12, 2021, and hope that we can meet and confer soon and come to an agreement on a scheduling order. Moreover, given the status of discovery in this case and the lack of any evidence provided in support of Defendants' Motion, we strongly believe that the Motion is premature and request that it be withdrawn until the parties can engage in appropriate discovery.

Please let us know as soon as possible if you will agree to withdraw the motion or stipulate that Plaintiff's opposition is not due until after appropriate discovery is conducted pursuant to an agreed upon scheduling order.

Thank you.

**Penny J. Manship**  
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**BURGSIMPSON**  
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