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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                   v.

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

**PLAINTIFF’S RESPONSE TO  
DEFENDANT’S STATEMENT OF  
FACTS IN SUPPORT OF  
DEFENDANTS’ MOTION FOR  
SUMMARY JUDGMENT  
REGARDING EACH OF  
PLAINTIFF’S CAUSES OF  
ACTION, and**

**PLAINTIFF’S CONTROVERTING  
STATEMENT OF FACTS IN  
OPPOSITION TO DEFENDANTS’  
MOTION FOR SUMMARY JUDGMENT  
REGARDING EACH OF PLAINTIFF’S  
CAUSES OF ACTION**

1 Plaintiff, Gallery Community Association (“Plaintiff” or “Association”), by and  
2 through undersigned counsel, submits the following Response to Defendants’ *Statement of*  
3 *Facts in Support of Defendants’ Motion for Summary Judgment Regarding Each of*  
4 *Plaintiff’s Causes of Action* (“Defendants’ SOF”) and *Plaintiff’s Controverting Statement*  
5 *of Facts in Opposition to Defendants’ Motion for Summary Judgment Regarding Each of*  
6 *Plaintiff’s Causes of Action* (“Assoc. SOF”).

7 **I. Plaintiff’s Response and opposition to Defendants’ Statement of Facts.**

8 1. Plaintiff is the Homeowner’s Association formed to maintain common areas,  
9 collect assessments, and enforce terms of the Declaration of Covenants, Conditions,  
10 Restrictions, and Easements for Gallery. Exhibit A, Declaration of Covenants, Conditions,  
11 Restrictions, and Easements for Gallery, Exhibit A hereto, GALLERY\_000163-000206 at  
12 page GALLERY\_000168.)

13 Undisputed that these are among some of the Association’s purposes.

14 2. The Declarant who formed the Association is K. Hovnanian at Gallery, LLC.  
15 (Exhibit A, at page GALLERY\_000168 and at § 1.15 / p GALLERY\_000170.)

16 Undisputed.

17 3. The Declaration/CC&Rs do not include any agreement to perform  
18 construction or any warranty regarding the construction of improvements at the property.  
19 (Exhibit A.)

20 Objection. The Declaration’s requirements speak for themselves, and include  
21 obligations of all Owners, including Declarant, to pay the Association for the cost to  
22 correct any Common Area the Owner damaged. Assoc. SOF ¶ M.

23 4. The Declaration/CC&Rs mainly concerns agreements between the individual  
24 lot owners and the Association, for the benefit of owners and other interest holders in the  
25 subject lots and common areas. (Id. generally and at Recitals A-D, page  
26 GALLERY\_000168.

27 Disputed. This is a gross oversimplification of the Declaration’s provisions. *See*  
28 Assoc. SOF ¶¶ A, E-M.

1           5.       Sales agreements were entered between K. Hovnanian at Gallery, LLC and  
2 purchasers of homes at The Gallery. (Sale Agreement, Exhibit B, GALLERY-  
3 JONES\_3104-0000218-252.)

4           Undisputed.

5           6.       Terms of the purchase agreements include limited warranties to the  
6 homebuyers. (Exhibit B, at Section E. Warranties p. 9-10/ GALLERY-JONES\_3014-  
7 000226-227, and Home Builder's Limited Warranty Agreement, Exhibit C hereto,  
8 KHOV00000052-66.)

9           Objection, the documents speak for themselves and the Association does not concede  
10 Defendants' interpretation of the legal effect of their provisions. For purposes of the  
11 Association's response to the *Motion* only, the Association does not dispute that the  
12 purchase agreements purport to contain limited warranties.

13           7.       The warranties include specific provisions for raising claims and for  
14 arbitration of all disputes. (Exhibit C, at page KHOV00000053.)

15           Objection, the documents speak for themselves and the Association does not concede  
16 Defendants' interpretation of the legal effect of their provisions.

17           8.       Plaintiff has had professional management including throughout the turnover  
18 process. (Deposition of R. Vander Waal, excerpts attached hereto as Exhibit E, at pp. 47:  
19 16-22.)

20           Undisputed.

21           9.       Plaintiff accepted responsibility for all common area improvements in 2018  
22 and acknowledged at that time that requested punch list repairs had been completed.  
23 (Exhibit D, pp. 41:9-47:15, and Common Area, Landscape and Financial Acceptance by  
24 Gallery Community Association, Exhibit E hereto, EX 20 to deposition Defendants'  
25 30(b)(6) representative James Harvey/KHOV00000046-51.)

26           Undisputed that the Association executed the cited document. The document speaks  
27 for itself and the Association does not concede Defendants' interpretation of the legal  
28 effect of its provisions. To the extent Defendants infer otherwise, Plaintiff disputes

1 the legal conclusion that the turnover process resulted in the homeowner-controlled  
2 Association accepting responsibility for the Project’s latent defects.

3 10. Plaintiff, through its counsel, gave notice of claims by correspondence  
4 purporting to be a Notice of Claim under A.R.S. § 12-1363. (Exhibit F).

5 Undisputed.

6 11. Plaintiff’s counsel stated in correspondence regarding its pre-litigation Notice  
7 of Claim under A.R.S. § 12-1361 et seq. and 33-2002 et seq. that “The Notice was on behalf  
8 of the Association only and for issues that are within the Association’s responsibility to  
9 maintain and repair under the Declaration of Covenants, Conditions, Restrictions and  
10 Easements for Gallery [and] The Association is not bringing claims on behalf of one or  
11 more individual unit owners for issues that the owners are solely responsible to maintain  
12 and repair.” Plaintiff’s counsel confirmed in related correspondence that its claims was not  
13 based on rights of individual homeowners. (Letter dated February 21, 2020, Exhibit G  
14 hereto.)

15 Undisputed.

16 12. Plaintiff has identified in its Disclosures a number of provisions of the  
17 Declaration that reference the Declarant. (Exhibit H, excerpts from Plaintiff’s 19th  
18 Supplemental Disclosure at pp. 4-5.)

19 Undisputed.

20 **II. Plaintiff’s Controverting Statement of Facts in Opposition to Defendants’**  
21 **Motion for Summary Judgment Regarding Each of Plaintiff’s Causes of Action.**

22 A. In addition to being the Project Declarant, K. Hovnanian at Gallery, LLC  
23 (“KHov Gallery”) owned and “developed the project,” “conveyed the common elements of  
24 the project to the Association in a quit claim deed dated October 6, 2016,” and “acted as the  
25 vendor by selling individual unit owners their units at The Gallery.” Complaint ¶¶ 8-9;  
26 Answer ¶¶ 8-9; Decl. (Exhibit A to Defs’ SOF) at 1, Recitals § A.

27 B. Defendant K. Hovnanian Arizona Operations, LLC (“KHov Arizona”) was  
28 the Project’s general contractor. Complaint ¶ 10; Answer ¶ 10.

1 C. The Gallery Community Association was formed as a nonprofit corporation  
2 under A.R.S. § 10-3101, et seq., *i.e.*, the Arizona Nonprofit Corporation Act, through the  
3 Articles of Incorporation of Gallery Community Association (“Articles”). Exh. 1, Articles.

4 D. The Articles state that the “Character of Affairs” of the Association is to  
5 “manage, maintain and administer the Common Area and common facilities, ... and to  
6 administer and enforce, the Declaration of Covenants, Conditions, Restrictions and  
7 Easements for Gallery....” Exh. 1, Articles § 2.

8 E. The Declaration defines “Owner” to “include Declarant so long as Declarant  
9 or a Related Entity owns or has a Recorded option to purchase any Lot within the Property.”  
10 Decl. at 5, § 1.34.

11 F. The Declaration states that the Declarant formed the Association “for the  
12 purpose of the efficient preservation of the values and amenities of the Property” and the  
13 Declaration gives the Association “powers of administering and maintaining the Common  
14 Area [and] enforcing this Declaration.” Decl. at 1, Recitals § B.

15 G. The Declaration was made to establish “**mutually beneficial** covenants,  
16 conditions, restrictions, easements and obligations with respect to the proper **development**,  
17 use and maintenance of the Property” for **Declarant’s “own benefit”** and the “mutual  
18 **benefits of all future Owners, or other holders of interests** in any portion of the  
19 Property.” Decl. at 1, Recitals § C.

20 H. The Declaration was “declared and agreed to be in furtherance of Declarant’s  
21 general plan for, and improvement and sale of, the Property and is established for the  
22 purpose of enhancing and perfecting the value, desirability and attractiveness of the  
23 Property. This Declaration shall run with all of the Property for all purposes and **shall be**  
24 **binding upon and inure to the benefit of Declarant, the Association, all Owners,**  
25 **Members and their respective successors in interest.”** Decl. at 6-7, § 2.1. (emphasis  
26 added).

27 I. The Declaration granted certain rights and duties to the Declarant, KHov  
28 Gallery, and/or any “Related Entity,” which is defined as “any entity related to Declarant

1 or Homebuilder.” Decl. § 8.1.1.

2 J. The rights and duties granted to Declarant, its affiliates and Related Entities,  
3 include but are not limited to:

- 4 • The duty to convey fee simple title to the Common Area to the Association, which  
5 “shall automatically be deemed accepted by the Association.” (“Declarant covenants  
6 that it shall convey fee simple title to the Common Area to the Association, free of  
7 all encumbrances except current real and personal property taxes and other  
8 easements, conditions, reservations and restrictions then of record.”).
- 9 • The right of “Declarant, or its successors or assigns” to have at least one (1) position  
10 on the Board of Directors for ten (10) years after the period of Declarant control  
11 ceases ....”
- 12 • The right to “maintain an absolute control over the Association, including  
13 appointment and removal of the President, the members of the Board, and the  
14 members of the Architectural Committee, until the Transition Date ....”
- 15 • The right of “Declarant, Homebuilder or any entity related to Declarant or  
16 Homebuilder (a ‘Related Entity’) ... to use any Lot owned or leased by Declarant,  
17 Homebuilder or a Related Entity for purposes related to the development and  
18 marketing of the Property ...”
- 19 • The right to construct all Dwelling Units on the Property “as long as Declarant or a  
20 Related Entity owns or has a Recorded option to purchase one or more Lots.”

21 Decl. §§ 1.8, 3.5, 4.3.1, 5.3, 8.1.1, 8.1.30 (Construction. As long as **Declarant or a Related**  
22 **Entity owns or has a Recorded option to purchase one or more Lots**, all Dwelling Units  
23 on the Property must be constructed by Declarant or its designees....”) (emphasis added).

24 K. The Declaration also granted the Association certain rights and duties,  
25 including but not limited to:

- 26 • The duty to maintain “Association Property” for the benefit of all the Owners.
- 27 • “[S]uch rights, duties and powers as set forth [in the Declaration] and in the Articles  
28 and Bylaws.”
- “In order to insure a uniform appearance of the Property, the Association will, from  
time to time, as it may determine appropriate, paint the exterior of the Dwelling Units  
and repair, maintain and replace the exterior walls, stucco, facade, roofs or other  
surfaces.”
- “the right, in its sole and absolute discretion, as to the Common Area conveyed,  
leased or transferred to it or as to any other area placed under its jurisdiction: . . .  
Reconstruct, repair, replace or refinish any improvement or portion thereof upon the  
Common Area or any other area placed under its jurisdiction ....”

Decl. §§ 1.8, 4.4, 8.1.7, 8.2.3.

L. Defendants have admitted that the Declaration creates the Association’s  
repair and maintenance obligation. Complaint ¶ 5, Answer ¶ 5.

M. The Declaration also grants the Owners, which by definition includes  
Declarant, rights and obligations:

- 1 • “By acceptance of a deed or by acquiring any ownership interest in any portion of  
2 the Property, each Owner, its heirs, representatives, successors, transferees and  
3 assigns, binds itself, its heirs, representatives, successors, transferees and assigns, to  
4 restrictions, covenants, conditions, rules and regulations now or hereafter imposed  
5 by this Declaration and any amendments thereof to the extent permitted by law.”
- 6 • **“If any Common Area is damaged or destroyed by an Owner or any of its guests,**  
7 **tenants, licensees or agents, such Owner does hereby authorize the Association to**  
8 **repair such damaged area, and the Association shall so repair such damaged area**  
9 **in a good workmanlike manner** in conformity with the original plans and  
10 specifications of the area involved, or as the area may have been modified or altered  
11 subsequently by the Association, in the discretion of the Association. **The amount**  
12 **necessary for such repairs shall be paid by such Owner, to the Association,** and  
13 the Association may enforce collection of such amounts in the same manner as  
14 provided elsewhere in this Declaration for collection and enforcement of  
15 Assessments.”
- 16 • “If any portion of any Lot is maintained so as to: (a) present a public or private  
17 nuisance, (b) substantially detract from or affect the appearance or quality of any  
18 surrounding Lot or the Property, or (c) is used in a manner which violates this  
19 Declaration, or if the Owner or Resident of any Lot fails to perform its obligation  
20 under this Declaration or the Community Rules and Regulations, the Association or  
21 any Owner may give notice to the violating Owner that corrective action must be  
22 completed within fourteen (14) days of the receipt of such notice. If the violating  
23 Owner fails to take corrective action within said period of time, the Association, or  
24 the notifying Owner, may take, at the violating Owner’s cost, appropriate corrective  
25 action to remedy such nuisance, detraction, violation or failure of performance  
26 including, without limitation, appropriate legal action....”

27 Decl. §§ 10.1, 8.2.4, 10.2 (emphasis added).

28 N. KHov Gallery retained 100% control of the Association by appointing all  
board members until the transition to homeowner control on December 17, 2016. Exh. 2,  
Vander Waal Decl. (previously executed in connection to a different pleading in this case)  
¶¶ 3, 7.

Respectfully submitted this 9<sup>th</sup> day of November, 2022.

BURG | SIMPSON | ELDREDGE | HERSH | JARDINE PC

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29 /s/ Laura M. Ramirez

## **EXHIBIT 1**

JUN 27 2016

ARIZONA CORP. COMMISSION  
CORPORATIONS DIVISION

Clear Form

Print Form

DO NOT WRITE ABOVE THIS LINE; RESERVED FOR ACC USE ONLY.

## ARIZONA CORPORATION COMMISSION CORPORATIONS DIVISION

**COVER SHEET****USE A SEPARATE COVER SHEET FOR EACH DOCUMENT****1. WHAT ARE YOU FILING?** New Entity     Change to existing entity     Re-submission/Correction**2. ENTITY NAME:**

GALLERY COMMUNITY ASSOCIATION

**3. CALCULATE YOUR FEES** (copies, certificate of good standing and expedited processing are all optional):

Document filing fee (fees are listed on the bottom of the form or on the fee schedule)	Subtotal:	40.00
Do you want EXPEDITED processing? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO    If YES, add \$35.00	Subtotal:	35.00
<input type="checkbox"/> Corporation certified copies    \$ 5.00 each x    (enter number of copies requested)	Subtotal:	
<input type="checkbox"/> LLC certified copies    \$10.00 each x    (enter number of copies requested)	Subtotal:	
<input type="checkbox"/> Certificate of Good Standing    \$10.00 each x    (enter number of copies requested)	Subtotal:	
<b>TOTAL YOUR AMOUNT OWED</b>	<b>TOTAL AMOUNT DUE:</b>	<b>75.00</b>

**4. PAYMENT METHOD:** MOD Account #**Cash** - do not mail cash. Cash may be used only for in-person submittals.**Checks or money orders** - must be made payable to "Arizona Corporation Commission," with all words spelled out and no abbreviations. Checks must be completely and properly filled out, including the amount sections. **UNACCEPTABLE CHECKS** include: no imprinted or preprinted name and address of the account holder; no imprinted or preprinted check number; handwritten or stamped names, addresses, or check numbers; temporary checks (new accounts).**Credit cards** - may be used for in-person submittals, and for online corporation annual reports, online name reservations, or online certificates of good standing. We accept only Visa, MasterCard, and American Express.**5. REQUIRED - RETURN DELIVERY OPTION (PLEASE PRINT CLEARLY and select only ONE):**

<input checked="" type="checkbox"/> Email	Email address: bpeterson@trestlemaagement.com		
<input type="checkbox"/> Pick up	Name:	Phone:	
<input type="checkbox"/> Mail	Name:		
	Address:		
	City:	State:	Zip:
	Phone:		

**DOCUMENTS WILL BE MAILED IF THEY ARE NOT PICKED UP IN A TIMELY MANNER (APPROXIMATELY ONE WEEK)****FOR ARIZONA CORPORATION COMMISSION USE ONLY**

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JODI JERICH  
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Director  
Corporations Division

**ARIZONA CORPORATION COMMISSION**

June 30, 2016

JAMES BASKA  
% TRESTLE MANAGEMENT GROUP, LL  
4025 S MCCLINTOCK DR #208  
TEMPE, AZ 85282

RE: GALLERY COMMUNITY ASSOCIATION  
File Number: 21035852

We are pleased to notify you that the Articles of Incorporation for the above-referenced entity HAVE BEEN APPROVED.

You must publish the Articles of Incorporation in their entirety. The publication must be in a newspaper of general circulation in the county of the known place of business in Arizona for three consecutive publications. A list of newspapers is available on the Commission website, <http://www.azcc.gov/Divisions/Corporations/Newspaper-list-for-publishing.pdf>.

Publication must be completed WITHIN 60 DAYS after June 30, 2016, which is the date the document was approved for filing by the Commission. The corporation may be subject to administrative dissolution if it fails to publish. You will receive an Affidavit of Publication from the newspaper, and you may file it with the Commission.

Corporations are required to file an Annual Report with the Commission. Your Annual Report is due on 06/27/2017, and on the anniversary of that date each subsequent year. It is your responsibility to file the corporation's Annual Report by the deadline each year. You can file it electronically through our website at <http://ecorp.azcc.gov>, or you can complete the form online, print it, and mail it in, or you can call the Annual Reports section at 602-542-3285.

TO SUBSCRIBE TO THE ANNUAL REPORT EMAIL REMINDER SERVICE, GO ONLINE TO <http://ecorp.azcc.gov>. USE THE SERVICE FEATURE AND SELECT "SUBSCRIBE TO EMAIL REMINDER TO FILE ANNUAL REPORT." YOU CAN ALSO SUBSCRIBE USING THE SEARCH FEATURE TO FIND YOUR CORPORATION'S RECORD, THEN CLICK ON THE BUTTON FOR "ANNUAL REPORT EMAIL REMINDERS." IF YOU CHOOSE NOT TO SUBSCRIBE, YOU WILL NOT RECEIVE ANY REMINDER AT ALL FROM THE COMMISSION.

Corporations must notify the Commission immediately, in writing, if they change their corporate address, statutory agent, or statutory agent address. Address change orders must be signed by a duly authorized corporate officer. A forwarding order placed with the U.S. Postal Service is not sufficient to change your address with the Commission.

We strongly recommend you periodically monitor your corporation's record with the Commission, which can be viewed at <http://ecorp.azcc.gov>. If you have questions or need further information please contact us at (602) 542-3026 in Phoenix, or Toll Free (Arizona residents only) at 1-800-345-5819.

JUN 8 7 2016

ARTICLES OF INCORPORATION  
OF  
GALLERY COMMUNITY ASSOCIATION

FILE NO. 2103585-2

(an Arizona nonprofit corporation)

---

The undersigned incorporator hereby adopts the following Articles of Incorporation (the "Articles"), for the purpose of forming a nonprofit corporation under the laws of the State of Arizona, including A.R.S. Section 10-3101, *et seq.*, dealing with nonprofit corporations, as amended from time to time (the "Nonprofit Corporation Act").

1. Name. The name of the nonprofit corporation is GALLERY COMMUNITY ASSOCIATION (the "Association").

2. Character of Affairs. The character of affairs that the Association initially intends to conduct is to act as a property owners association and to perform all things and exercise all the power and rights of a corporation that are lawful and consistent with the foregoing purposes and the nonprofit character of the Association. Without limiting the generality of the foregoing, the Association is organized to manage, maintain and administer the Common Area and common facilities, to collect and disburse assessments lawfully charged against the Owners of the Lots subject to assessment, and to perform or exercise all duties of, and to administer and enforce, the Declaration of Covenants, Conditions, Restrictions and Easements for Gallery (the "Declaration"), to be recorded in the official records of Maricopa County, Arizona.

3. Board of Directors. The board of directors (the "Board") shall consist of three members, subject to increase as provided in the Association's bylaws (the "Bylaws"). The initial directors and their addresses are:

Chad Fuller  
20830 N. Tatum Boulevard, Suite 250  
Phoenix, Arizona 85050

George Cannon  
20830 N. Tatum Boulevard, Suite 250  
Phoenix, Arizona 85050

Jim Harvey  
20830 N. Tatum Boulevard, Suite 250  
Phoenix, Arizona 85050

4. Statutory Agent. The name and address of the Association's initial statutory agent are:

James Baska  
c/o Trestle Management Group, LLC.  
4025 S. McClintock Drive, #208  
Tempe, AZ 85282

5. Known Place of Business. The street address of the known place of business of the Association is the same as the address of the initial statutory agent.

6. Incorporator. The name and address of the incorporator of the Association are:

Chad Fuller  
20830 N. Tatum Boulevard, Suite 250  
Phoenix, Arizona 85050

All powers, duties and responsibilities of the incorporators shall cease as of the date of delivery of these Articles to the Arizona Corporation Commission for filing.

7. Officers. The initial officers of the Association shall consist of a president, vice-president, secretary and treasurer. The Board shall appoint the officers of the Association.

8. Members. The Association shall have Members. The Members of the Association shall consist of the Owners of Lots that are subject to assessment. Member's rights and obligations of Membership in the Association shall be specifically defined by the Declaration and/or the Bylaws. Membership is appurtenant to, and inseparable from, ownership of a Lot.

9. Liability of Directors. A director of this Association shall not be personally liable to the Association or its members for monetary damages for breach of fiduciary duty. This article shall not eliminate or limit the liability of a director for any conduct described in clauses (a) through (d) of A.R.S. Section 10-3202(B)(1). If the Nonprofit Corporation Act is amended to authorize further elimination or limitation of the liability of a director, then the liability of a director of the Association shall be eliminated or limited to the fullest extent permitted by the Nonprofit Corporation Act as so amended. Any repeal or modification of this article shall not increase the liability of a director of the Association arising out of acts or omissions occurring before the repeal or modification becomes effective.

10. Indemnification. The power of indemnification under the Arizona Revised Statutes shall not be denied or limited by the Bylaws. The Association shall indemnify each of its directors, officers, employees and agents to the fullest extent permissible: (a) under the provisions of the Arizona Nonprofit Corporation Act, including, without limitation, Title 10, Chapter 31, Article 5 of the Arizona Revised Statutes; (b) under indemnification provisions of successor or amended statutes; (c) as provided in the Declaration and/or the Bylaws; or (d) by any agreement adopted pursuant to the provisions of Title 10, Chapter 31, Article 5 of the Arizona

Revised Statutes. The private property of the members, directors and officers of the Association shall be exempt from all Association debts, obligations and liabilities of whatsoever kind and nature.

11. Distribution of Income. No part of the income or profit of the Association shall inure to the benefit of, or be distributable to its members, directors, officers or other private persons, except that the Association shall be authorized and empowered to pay reasonable compensation to its Members, Directors or Officers for services rendered and to make payments and distributions in furtherance of the purposes and business set forth in these Articles. No substantial part of the activities of the Association shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Association shall not participate in, or intervene in any political campaign on behalf of any candidate for public office, including, without limitation, the publishing or distribution of statements. Use of funds for acquisition, construction, management or maintenance of association property or rebates to Members of excess assessments or fees shall not constitute an inurement of net earnings.

12. Dissolution. Upon dissolution or final liquidation of the Association, the Board of Directors shall, after paying or making provision for payment in full of all debts and obligations of the Association of whatsoever kind and nature, dispose of all of the Association's assets exclusively for the purpose of the Association by dedicating such assets to a public body or conveying such assets to a nonprofit organization, upon such terms and conditions and in such amounts and proportions as the Board of Directors may impose and determine in accordance with applicable law. Any such assets not disposed of shall be disposed of by the Superior Court of the county in which the principal office of the Association is then located, exclusively for such purpose or to such organization or organizations, as such Court shall determine, which are organized and operated exclusively for such purpose.

13. Conflict. If there is any conflict between these Articles or the Bylaws and the Declaration, the Declaration shall prevail and control. If there is any conflict between these Articles and the Bylaws, these Articles shall prevail and control. These Articles shall not be amended or otherwise changed or interpreted, for any reason, so as to be inconsistent with the Declaration.

14. Amendments. Subject to any additional limitations imposed by the Declaration, these Articles and the Bylaws may only be amended in the following manner. The Board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of Members, which may be either a regular or a special meeting, and if approved by (either personally or by absentee ballot): (a) in the case of an amendment to these Articles, two-thirds (2/3rds) of the Members in the Association, or (b) in the case of an amendment to the Bylaws, a majority of the voting power in the Association (including votes otherwise eligible to be cast but not represented personally or by absentee ballot at such meeting), such amendment shall have been adopted, provided, however, that a copy of any such proposed amendment or a summary of the changes to be effected shall have been given to each Member in good standing not fewer than fifteen (15) days, but no more than sixty (60) days, prior to said meeting of the Members. Any number of amendments may be submitted and voted upon at any one meeting. The Articles shall not be amended so as to change the Association from a nonprofit corporation dedicated to the

purposes above stated, and qualified for exemption under the above cited Internal Revenue laws and regulations, and the analogous laws of the State of Arizona.

15. Defined Terms. Except as otherwise defined in these Articles, all capitalized terms shall have the meanings given them in the Declaration.

DATED: June 3, 2016.

INCORPORATOR:

By:

Name: Chad Fuller

**ACCEPTANCE OF APPOINTMENT BY STATUTORY AGENT**

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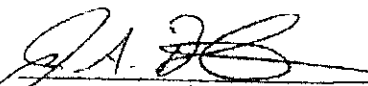
James Baska, having been designated to act as Statutory Agent for GALLERY COMMUNITY ASSOCIATION, an Arizona nonprofit corporation, hereby consents to act in that capacity until removed or his resignation is submitted in accordance with the Arizona Revised Statutes.

DATE:

June 6<sup>th</sup>, 2016

By:

Name:

  
James A. Baska

Address:

Trestle Management Group, LLC.  
4025 S. McClintock Drive, #208  
Tempe, AZ 85282

DO NOT WRITE ABOVE THIS LINE; RESERVED FOR ACC USE ONLY.

## CERTIFICATE OF DISCLOSURE

Read the Instructions C003i

1. **ENTITY NAME** - give the exact name of the corporation in Arizona:

GALLERY COMMUNITY ASSOCIATION

2. **A.C.C. FILE NUMBER** (If already incorporated or registered in AZ):

Find the A.C.C. file number on the upper corner of filed documents OR on our website at: <http://www.azcc.gov/Divisions/Corporations>

3. **Check only one of the following to indicate the type of Certificate:**

- Initial (accompanies formation or registration documents)  
 Annual (credit unions and loan companies only)  
 Supplemental to COD filed \_\_\_\_\_ (supplements a previously-filed Certificate of Disclosure)

### 4. FELONY/JUDGMENT QUESTIONS :

Has any person (a) who is currently an officer, director, trustee, or incorporator, or (b) who controls or holds over ten per cent of the issued and outstanding common shares or ten per cent of any other proprietary, beneficial or membership interest in the corporation been:

4.1	Convicted of a felony involving a transaction in securities, consumer fraud or antitrust in any state or federal jurisdiction within the seven year period immediately preceding the signing of this certificate?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
4.2	Convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, theft by false pretenses or restraint of trade or monopoly in any state or federal jurisdiction within the seven-year period immediately preceding the signing of this certificate?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
4.3	Subject to an injunction, judgment, decree or permanent order of any state or federal court entered within the seven-year period immediately preceding the signing of this certificate, involving any of the following: a. The violation of fraud or registration provisions of the securities laws of that jurisdiction; b. The violation of the consumer fraud laws of that jurisdiction; c. The violation of the antitrust or restraint of trade laws of that jurisdiction?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
4.4	If any of the answers to numbers 4.1, 4.2, or 4.3 are <b>YES</b> , you <b>MUST</b> complete and attach a Certificate of Disclosure Felony/Judgment Attachment form C004.		

**5. BANKRUPTCY QUESTION:**

<p><b>5.1</b> Has any person (a) who is currently an officer, director, trustee, incorporator, or (b) who controls or holds over twenty per cent of the issued and outstanding common shares or twenty per cent of any other proprietary, beneficial or membership interest in the corporation, served in any such capacity or held a twenty per cent interest in <b>any other corporation</b> (not the one filing this Certificate) on the bankruptcy or receivership of the <b>other corporation</b>?</p>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<p><b>5.2</b> If the answer to number 5.1 is <b>YES</b>, you <b>MUST</b> complete and attach a Certificate of Disclosure Bankruptcy Attachment form C005.</p>		

**IMPORTANT:** If within 60 days of the delivery of this Certificate to the A.C.C. any person not included in this Certificate becomes an officer, director, trustee or person controlling or holding over ten per cent of the issued and outstanding shares or ten per cent of any other proprietary, beneficial or membership interest in the corporation, the corporation must submit a SUPPLEMENTAL Certificate providing information about that person, signed by all incorporators or by a duly elected and authorized officer.

**SIGNATURE REQUIREMENTS:**

Initial Certificate of Disclosure:	This Certificate must be signed by all incorporators. If more space is needed, complete and attach an Incorporator Attachment form C084.
Foreign corporations:	This Certificate may be signed by a duly authorized officer or by the Chairman of the Board of Directors.
Credit Unions and Loan Companies:	This Certificate must be signed by any 2 officers or directors.

**CHAD FULLER**

Name: \_\_\_\_\_

Address 1: **20830 N. TATUM BLVD., SUITE 250**


Address 2: \_\_\_\_\_

City: **PHOENIX** State: **AZ** Zip: **85050**

Country: **UNITED STATES**

**SIGNATURE - see Instructions C003i:**

By typing or entering my name and checking the box marked "I accept" below, I acknowledge *under penalty of perjury* that this document together with any attachments is submitted in compliance with Arizona law.

  I ACCEPT

Signature: \_\_\_\_\_

Printed Name: **CHAD FULLER** Date: **6/23/14**

**REQUIRED - check only one:**

- Incorporator** - I am an incorporator of the corporation submitting this Certificate.
- Officer** - I am an officer of the corporation submitting this Certificate.
- Chairman of the Board of Directors** - I am the Chairman of the Board of Directors of the corporation submitting this Certificate.
- Director** - I am a Director of the credit union or loan company submitting this Certificate.

Name: \_\_\_\_\_

Address 1: \_\_\_\_\_

Address 2: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Country: \_\_\_\_\_

**SIGNATURE - see Instructions C003i:**

By typing or entering my name and checking the box marked "I accept" below, I acknowledge *under penalty of perjury* that this document together with any attachments is submitted in compliance with Arizona law.

I ACCEPT

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

**REQUIRED - check only one:**

- Incorporator** - I am an incorporator of the corporation submitting this Certificate.
- Officer** - I am an officer of the corporation submitting this Certificate.
- Chairman of the Board of Directors** - I am the Chairman of the Board of Directors of the corporation submitting this Certificate.
- Director** - I am a Director of the credit union or loan company submitting this Certificate.

Filing Fee: None  
All fees are nonrefundable - see Instructions.

Mail: Arizona Corporation Commission - Corporate Filings Section  
1300 W. Washington St., Phoenix, Arizona 85007  
Fax: 602-542-4100

Please be advised that A.C.C. forms reflect only the minimum provisions required by statute. You should seek private legal counsel for those matters that may pertain to the individual needs of your business.  
All documents filed with the Arizona Corporation Commission are public record and are open for public inspection.  
If you have questions after reading the Instructions, please call 602-542-3026 or (within Arizona only) 800-345-5819.

## **EXHIBIT 2**

1                   **BURG SIMPSON ELDREDGE**  
2                   **HERSH & JARDINE P.C.**

3                   8310 South Valley Highway, Suite 270  
4                   Englewood, CO 80112  
5                   Phone: (303) 792-5595  
6                   Fax: (303) 708-0527  
7                   Craig S. Nuss – 033839  
8                   Penny J. Manship – 034985  
9                   pmanship@burgsimpson.com  
10                  azcourt@burgsimpson.com

11                  *Attorneys for the Plaintiff*

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

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

17                                  Plaintiff,

18                  vs.

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

22                                  Defendants.

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

26                                  Third-Party Plaintiffs,

27                  v.

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

                                    Third-Party Defendants.

Case No. CV2020-008714

Assigned to Hon. Michael Kemp

**DECLARATION OF BOB VANDER  
WAAL IN SUPPORT OF PLAINTIFF'S  
RESPONSE TO DEFENDANTS'/THIRD-  
PARTY PLAINTIFFS' MOTION FOR  
SUMMARUY JUDGMENT**

**(Oral Argument Requested)**

1 I, Bob Vander Waal, declare and state as follows:

2 1. I have personal knowledge, or am otherwise competent to testify as to, each  
3 and every fact set forth in this Declaration.

4 2. I am currently the president of the board of directors of Gallery Community  
5 Association (the "Association").

6 3. I have served on the Association's board of directors since December 14,  
7 2017, when the first homeowners were elected to the board and transition of control of the  
8 Association from the Declarant to a homeowner-elected board occurred.

9 4. Prior to December 14, 2017, all members of the Association's board of  
10 directors were appointed by the Declarant and none were homeowners at The Gallery.

11 5. Since, December 14, 2017, the Association's board of directors has been  
12 comprised solely of volunteer homeowners.

13 6. I have no personal experience or knowledge relating to construction or  
14 engineering and, to the best of my knowledge, none of the other current or former  
15 homeowner elected board members had knowledge or experience relating to construction  
16 or engineering.

17 7. As a board member, I am familiar with the business records of the  
18 Association.

19 a. Attached hereto as Exhibit \_\_ is a true and correct copy of the Articles of  
20 Incorporation of Gallery Community Association filed with the Arizona  
21 Corporation Commission, File No. 21035852, on June 27, 2016.

22 b. Attached hereto as Exhibit \_\_ is a true and correct copy of the Bylaws of  
23 Gallery Community Association adopted on July 16, 2016.

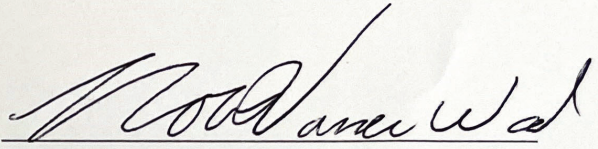
24 c. Attached hereto as Exhibit \_\_ is a true and correct copy of the Notice of  
25 2017 Annual/Transition Meeting set for December 14, 2017.

26 d. Attached hereto as Exhibit \_\_ is a true and correct copy of the Annual  
27 Meeting Minutes for December 14, 2017.  
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I declare under penalty of perjury under the laws of the State of Arizona that the foregoing is true and correct.

Executed on March 22, 2021, in Goodyear (city), AZ (state).

By:   
Bob Vander Waal, Declarant