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[REDACTED]

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Hidden Manor Homeowners Association, Inc.  
P. O. Box 10813  
Glendale, Arizona 85318-0813

*Re: Legal Opinion – Commercial Vehicles*

Dear Board of Directors:

As you know, I am general counsel attorney for Hidden Manor Homeowners Association, Inc. (“Association”). The Association recently requested that I provide a legal opinion regarding the Association’s authority to prohibit the parking of commercial vehicles within the community. In preparing this legal opinion, I reviewed the Amended and Restated Consolidated Declaration of Covenants, Conditions and Restrictions for Hidden Manor, recorded in Document No. 2012-0310701, official records of Maricopa County, Arizona (“Declaration”); the Association’s Bylaws (“Bylaws”), as well as relevant Arizona law. As we have communicated previously, it is our understanding that the Association is not subject to either the Arizona Planned Communities Act (A.R.S. Section 33-1801, et seq) or the Arizona Condominium Act (A.R.S. Section 33-1201, et seq).<sup>1</sup>

Relevant Provisions of the Declaration and Arizona Law

Pursuant to Article 6 of the Declaration, provided in relevant part,

[c]ars, light trucks having a one-ton rating or less, sport utility vehicles, passenger vans, and golf carts may be parked in garages, carports or driveways at any time. No other vehicles, including without limitation, **trucks having more than a one-ton rating, commercial vehicles**, motor homes, mobile homes, trailers (including but not limited to travel trailers, tent trailers and boat trailers), camper shells, detached campers, recreational vehicles, boats, motorcycles, motorbikes, all-terrain vehicles, golf carts, and off-road vehicles shall be parked, kept or maintained on public streets or on any portion of a Lot other than in a garage or parked behind Lot walls, for a period in excess of 72 hours in any given 20 day period. (emphasis provided)

Pursuant to Article 12 of the Declaration,

<sup>1</sup> Please be advised that SB1184, which became law in July, 2014, expanded the definition of Planned Communities pursuant to ARS 33-1802 to include a Non-Profit Corporation that either has an easement or a covenant to maintain roadways. However, it is my understanding that the Association roadways are maintained by the City (the Declaration does not address easements or maintenance of roadways).



[t]he Board may adopt, amend and repeal rules and regulations, to be known as the Rules, that restrict and govern the operation of the Association and policies and procedures the Board will follow to enforce those covenants. The Rules may not unreasonably discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Rules as they may from time to time be adopted, amended or repealed, shall be available for inspection by the Members at reasonable times in accordance with Arizona law. Upon adoption, the Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Also, pursuant to A.R.S. §28-5201, a "[c]ommercial motor vehicle" is defined as "a motor vehicle or combination of motor vehicles that is designed, used or maintained to transport passengers or property in the furtherance of a commercial enterprise on a highway in this state, that is not exempt from the gross weight fees as prescribed in section 28-5432, subsection B and that includes any of the following:

- (a) A single vehicle or combination of vehicles that has a gross vehicle weight rating of twenty-six thousand one or more pounds and that is used for the purposes of intrastate commerce.
- (b) A single vehicle or combination of vehicles that has a gross vehicle weight rating of ten thousand one or more pounds and that is used for the purposes of interstate commerce.
- (c) A school bus.
- (d) A bus.
- (e) A vehicle that transports passengers for hire and that has a design capacity for eight or more persons.
- (f) A vehicle that is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation authorization act of 1994 (49 United States Code sections 5101 through 5128) and that is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to this chapter.

Finally, pursuant to A.R.S. §28-5432, a three-quarter ton or less vehicle is not considered a commercial vehicle unless that vehicle is "operated more than one thousand hours in a vehicle registration year for the transportation of passengers or property in the furtherance of a commercial enterprise."

#### **Background**

It is my understanding that there are a number of owners within the Association who own commercial vehicles. Two owners in particular, who have both received notices and fines for commercial vehicle violations, have been vocal in their opposition to the Association on this matter. The first owner, [REDACTED] received violation notices in the past for a larger vehicle, and informed the Board he was going to purchase a smaller vehicle. However, [REDACTED] smaller vehicle has business logos on it, and violations have been issued for this vehicle, as well. The second owner, [REDACTED] has a truck with business information on it, and has also received violation notices and fines. [REDACTED] claims



that the Association's CC&Rs do not define a "commercial vehicle" and that the Association must follow state definitions of what a commercial vehicle is.

Also, it is my understanding that the Association has issued commercial vehicle violations since 2014 (and possibly prior to this), but that in light of the recent challenges to its authority to do so, the Board has suspended commercial vehicle violations/fines until this matter can be examined further.

#### Legal Opinion

As the Association has acknowledged, Article 6 of the Declaration does not specifically define what a "commercial vehicle" is. In the event that an item is not clearly defined in the Declaration, we typically look to secondary sources for guidance. In this matter, the Association could refer to the commercial vehicle definition set forth in A.R.S. §28-5201, or other available definitions of a commercial vehicle, such as state vehicle registration information.<sup>2</sup> Another possible option for the Association is to enforce the "one-ton truck" prohibition in Article 6 of the Declaration, as many larger pick-up trucks may be considered as having a "one-ton" rating.

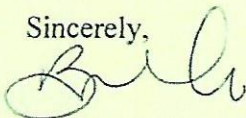
In the event that the Association does not reasonably believe the vehicle meets the definition set by the state, whether due to weight/size of the vehicle or any other reason, and the Association wishes to restrict that vehicle, it is my recommendation that the Board of Directors adopt a rule defining the term "commercial vehicle." Such a rule can include references to business logos, ladder racks, etc.; our office can assist with providing sample language defining "commercial vehicles" if the Board would like. However, the safest way to address this matter is for the Association to amend its Declaration to further define commercial vehicles, as including the definition in the Declaration is the most "challenge-proof" method.

#### Next Steps

If the Association would like our firm to send a violation letter to an owner or owners regarding a commercial vehicle violation, please let us know. Also, after the Board has decided whether it will enforce the Declaration using the state's commercial vehicle definition, or whether it would like to adopt a rule further clarifying the definition (or amend its Declaration), our firm can help draft communication on this issue to be included in an upcoming Association newsletter.

Please contact my office with any additional questions. Thank you for the opportunity to represent the Association.

Sincerely,



Beth Mulcahy

BM/jr

Enclosure