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June 2, 2017

Via Email Only (gm@hvla.com)

Hidden Valley Lake Association  
18174 Hidden Valley Road  
Hidden Valley Lake, CA 95467

Attn: Rod Wood

Re: Hidden Valley Lake Association

- Opinion Regarding Association's Duty to Repair the Common Area

Dear Owners,

The Board of Directors ("Board") for Hidden Valley Lake Association ("Association") asked me to prepare an opinion to be distributed to the owners regarding its obligations with respect to the maintenance, repair, and replacement of the Association's Common Area. According to the Board, several owners have expressed that because they do not use these facilities, they should not be responsible for paying for their upkeep and that the Association should simply board them up and shut them down if this means they cannot maintain these buildings. Simply put, this is not an option for the Board nor do owners have the ability to decide what portions of the Common Area they will and will not pay for.

**Factual Background**

The Association's Community Center, Maintenance Operations Building, and the Hartmann Building are badly in need of repairs. Over the past few years, several structural engineers and contractors have inspected the three buildings and provided the Association with reports regarding their condition, all of which can be found on the Association's website. According to the structural engineer's report on the Community Center, extensive dry rot, water damage, an unstable roof, and severe structural damage have rendered the Community Center unsafe for human habitation. A contractor's report determined that the cost of repairing the Community Center would exceed its current value, which means it must be brought into full compliance with all current building codes. As a result, it would likely be more cost effective to rebuild the Community Center rather than repair the existing damage.

The same contractor who inspected the Community Center also inspected the Maintenance Operations Building. His report specifically noted that because of the current state of repair and extensive water intrusion this past winter have rendered the building neither serviceable nor salvageable. As a result, it (like the Community Center) would need to be replaced as well. Finally, another structural engineer concluded that several significant structural

issues will require to the Hartmann Building to be replaced as well within the next five years.

### **Legal Discussion**

Under Article II, Section 1 of the Association's CC&Rs, the Association is responsible for "the maintenance, repair, upkeep, and preservation of all common areas." As the Community Center, Maintenance Operations Building, and Hartmann Building are all part of the Common Area, this responsibility extends to them. Even if the CC&Rs were silent on this, maintaining the Common Area would still be the Association's responsibility under Civil Code §4775(a)(1). In addition, although the Association has broad authority to determine how it carries out this responsibility, it cannot choose to ignore a responsibility delegated to it under the Association's CC&Rs. *Eckstrom v. Marquesa at Monarch Beach Homeowners Ass'n* (2008) 168 Cal.App.4<sup>th</sup> 1111, 1123. Consequently, the Association has an absolute obligation to repair the Community Center, Maintenance Operations Building, and Hartmann Building. In fact, failure to repair these buildings could result in the Association being sued for failure to enforce its CC&Rs. *Posey v. Leavitt* (1991) 229 Cal.App.3d 1236. The Association's refusal to maintain its Common Area facilities could even lead to lawsuits by recent buyers who purchased their homes in reliance of the fact that they would be able to enjoy them.

In addition, Civil Code §5600 requires associations to levy assessments in an amount sufficient to meet their obligations under the governing documents. Having established that the Board has the responsibility to repair these buildings, it also needs to ensure adequate funding for those repairs. Though the Board wishes this were not the case, it will likely require an assessment increase. Under Civil Code §5605, the Association has the authority to increase its regular assessments by up to 20% in a given year and levy a special assessment of up to 5% of the Association's budgeted gross assessments during that year without owner approval. Assuming that a structural engineer concludes the current condition of the Maintenance Operations Building is a safety hazard, Civil Code §5610(b) additionally allows the Association to levy an emergency special assessment in any amount to repair it. As this building is necessary for the Association to properly function, this is very much a viable option for the Association.

It is also important to note that whatever option the Board elects to use to fund these repairs, all owners will be subject to that assessment. According to Article VII, Section 1 of the Association's CC&Rs, the acceptance of a deed by an owner means the owner agrees to pay all assessments levied by the Association. This section (and Civil Code §5650) goes on to say and that assessments are each owner's personal obligation. In addition, owners are not allowed to withhold assessment payments from the Association. See, *Park Place Estates Homeowners Ass'n v. Naber* (1994) 29 Cal.App.4<sup>th</sup> 427, 432. Taken together, this means that all owners are responsible to pay for the maintenance, repair, or replacement of the Common Area facilities regardless of whether they actually use them.

Finally, owners should consider the pragmatic implications of these repairs. Regardless of what Common Area facilities they might use, it goes without saying that all owners view their

property in the Association as an investment. As an investment, it is in their best interest for their property values to improve. One of the best ways they can ensure that will happen is to do whatever it can to keep the Common Area in a first-class condition, as having multiple properly-maintained amenities will increase demand in Hidden Valley Lake which in turn will drive property values up. Similarly, having facilities in a state of disrepair will lead to decreased demand in Hidden Valley Lake which will only serve to drive property values down. Therefore, any controversy surrounding these repairs is simply misplaced.

Consequently, the Board hopes all owners understand the importance of these repairs and the positive impact they can have on the entire community. As the Board asked me to prepare this letter as a one-time courtesy and did not authorize me to speak with any members directly to control costs, please feel free to contact Manager Rod Wood at (gm@hvla.com) with any questions or concerns you might have.

Very truly yours,



Aaron T. Schwarzkopf, Esq.  
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A Professional Law Corporation

ATS  
Cc: Board of Directors