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July 1, 1998

Mr. Fred R. Moore, Jr.
Cloverdale Heights
Homeowner's Association
142 Cloverdale Heights
Charles Town, WV 25414

Dear Mr. Moore:

I have reviewed the questions raised in your letter of June 29, 1998, and have set forth my responses thereto. The first matter that I will discuss concerns the continuing saga of the Helmet fence. I agree with your statement that combining the various types of materials permitted was not within the intent of the framer of the covenant. Unfortunately, the language did not clearly reflect that intent. As with many of the issues that are encountered in interpreting these provisions, arguments can be made in either direction. Generally, the covenant is construed against the drafter. The Executive Board may adopt reasonable construction of the covenants, so long as that reasonable construction is published and circulated to the homeowners pursuant to the provisions of the Declaration,

That may be too little - too late, in the case of the Helmets. An alternative to the foregoing would be to amend the covenants and retain the required sixty-seven percent (67%) majority vote needed to accomplish the same. This may be done in conjunction with your attempted elimination of the year 2000 sunset provision in one of the other covenants. The bottom line is that I do not believe it a wise expenditure of association funds to seek court determination of the meaning of Section 10.1 as it relates to the Helmet fence. The requirement of uniformity of materials should be placed either within architectural guidelines or a covenant amendment.

In response to the remaining questions regarding Article 10, I will divide my responses between the covenants and questions in the order presented in your letter.

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With respect to your first question regarding Secuon 10.1, **covenant no. (15), pertaining to lawn mowers, bicycles, electric/motorized wheelchairs, etc.;** the covenant would **prohibit** the operation of the same if the **same** were to be **strictly interpreted**. Reasonableness, however, is required. **Inasmuch as the Americans With Disabilities Act** would prohibit the **discrimination against persons with disabilities**, the prohibition of **electric/motorized wheelchairs** would constitute an **unlawful discrimination**. **As with covenants relating to race matters**, the **same** would be unenforceable. **As to lawn mowers**, the **argument** to be made that inasmuch as covenants no. (8), authorizes the **mowing and maintenance** of lawns, it is in **conflict with covenant no. (15)**, regarding the **prohibition** of motorized or self-propelled lawn mowers. **Thus**, the **prohibition** of lawn mowers would constitute an unreasonable reading of that particular **section**. **Bicycles** would technically be prohibited. **i would** doubt that that would be a desired result.

The answer to your **second** question regarding covenant no. (15), is **yes**. **Strictly speaking**, no commercial vehicles should be driven or ridden upon the **streets** of the subdivision. However, it would be **absurd** to prohibit vendors and repair persons from bringing their **vehicles** into the subdivision on a temporary basis for the purpose of rendering appropriate **services** to the homeowners. Commercial **vehicles**, however, may be prohibited **from** being parked upon **any** unit for other purposes. However, given the fact that many businesses **allow** their **employees** to **keep** their company **vehicles**, the enforcement of the covenant may **cause** hardship upon the **unit owners**. **In terms of drafting an** interpretive bulletin **with** respect to **this** matter, some solution may be **sought** whereby these **vehicles** are parked within **enclosed** garages. However, it is my **belief** that these are presently prohibited. I believe that the covenants leave no doubt that such items such as **bulldozers, backhoes and bobcats, which** are used in **commercial ventures**, are not to be parked upon any of the **units**. **As a matter** of fact, it may violate The zoning ordinance to operate such a **business** out of a person's residence, if that is **what** is being **done**.

I again **reiterate** that while **certain things** are prohibited by a strict **reading** of the **rule**, **reasonableness** calls for a **different** construction. An amendment of the covenant or the adoption of **some type** of interpretive position may alleviate much **of the confusion** in this area.

In answer to your third question under covenant no. (16), the **answer** would be **yes**. Covenant no. (16), is really somewhat redundant of covenant no. (15), and therefore, **technically unnecessary**. Inasmuch as the **drafter** took the time to include **covenant no. (16)**, it may be argued that the

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specificity of it **governs those** indicated items and no others. However, I believe **that the intent of covenant no. (16), in using the term "or the like", would lead to the conclusion that the same are prohibited.**

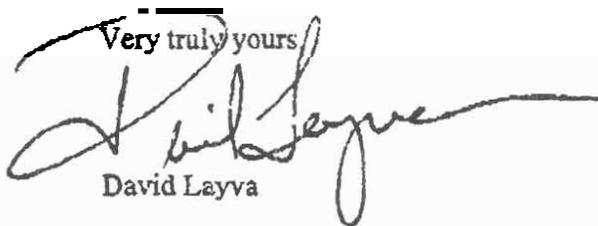
Again, a rule of **reasonableness should obtain.**

The answer to **question 4., with respect to covenant no. (21), relating to the sunset provision for the submission of plans, is answered in the affirmative. That is, plans will not be required to be submitted after December 31, 2000.**

In **response to your fifth question concerning minimum building standards outlined in covenant no. (22), the 2000 sunset limitation does not apply to that covenant and that covenant would still remain enforceable. As a practical matter, however, without the ability to approve or review the plans, it could be very difficult to determine compliance with covenant no. (22) of Section 10.1.**

As you can see, the drafting of any rule has to take into account variations that will take place over time as a result of change of circumstances and different interpretations. It is most difficult to draft something in black and white without allowing variances.

if you **have any further questions or comments with respect to the above,** please do not hesitate to contact me.

Very truly yours

David Layva

DL:dg