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August 5, 1998

Attorney Peter Rotelli
1 James Street
Providence RI 02903

Via Facsimile Transmission
(401) 751-1146

Re: Sinnott Farm, Bloomfield CT

Dear Peter:

I am writing this letter to you to summarize my analysis of the present situation regarding land described as "The Knoll" which is part of the common interest community known as The Common at Sinnott Farm in Bloomfield, Connecticut. This is a planned unit development. I think the easiest way for me to write this letter is to do it in paragraph form. Incidentally, I should mention that my thinking has advanced since yesterday, because I have had a limited opportunity to review the Connecticut General Statutes more closely.

1. When the condominium was prepared, a Public Offering Statement was provided. In paragraph 20, the developer indicated that the declarant has reserved the right to add land to the common interest community and to create units and limited common elements in that area. This is of interest only because it shows what the declarant intended to do. In fact, the declarant did not follow the plan as indicated in the Public Offering Statement, and this mistake certainly added to the confusion that followed.

2. When the condominium was declared, the declarant reserved certain development rights in Article VIII of the Declaration. The pertinent development right that was reserved is the following:

"The right to add land and Units, Limited Common Elements, and Common Elements in the Common Interest Community in the location shown as "Additional Land Development Rights Reserved in this Area" on the Survey and Site Plans."

Therefore, you will note that the location in which land could be added and units could be created was to be specifically indicated on the survey and site plans.

3. In reality, there was no land to add, because all of the intended land, including The Knoll, was included in the description of the land declared as part of the common interest community.

4. In Schedule A-1 of the Declaration, the land was described by reference to a survey which is on file in the Bloomfield land records. The same survey is referred to in Schedule A-3.

5. A review of the survey shows that no area was labeled "Additional Land Development Rights Reserved in this Area". (Interestingly, I have obtained a copy of a map labeled Schedule A-3 in which the appropriate language is shown on the land which is The Knoll. However, this survey was never recorded or referred to in the Declaration.)

6. Section 47-224(a)(8) of the Connecticut General Statutes provides that there must be a legally sufficient description of the real property to which the development rights apply. In our case, this requirement has not been met. (A copy of this subsection of the statute is enclosed.)

7. Since the statutory requirement has not been met, I do not believe development rights have been created.

8. If the conclusion in the paragraph above is correct, then the question is can the development rights be recreated. Section 47-236(g) and (j) of the Connecticut General Statutes says that development rights may be created by amendment to the Declaration if persons entitled to cast at least eighty percent of the votes in the association (including eighty percent of the votes allocated to units not owned by the declarant), agree to that action. Please note that subsection (j) was specifically incorporated to address a common interest community like ours which does require unanimous vote for the creation of development rights according to the Declaration. (A copy of this section of the statutes is enclosed.) Since I want to get this memorandum to you, I have not checked whether the owner is a declarant, but I would think so. However, see the veto type provisions in subparagraph (j).

9. If The Knoll is a common element (I'm taking no position on ownership at this point because I haven't had a full opportunity to analyze it, but it certainly may be a common element since it was included in the Declaration). (See the following paragraph for a further discussion.) Perhaps you want to treat this as a sale rather than the recreation of development rights. In that event, section 47-254(a) of the Connecticut General Statutes applies. Again, we have the eighty percent test referred to in the Declaration. However, since this is not a condominium, it does not appear that mortgagee approval is required.

see
47-207(12)
↑

10. As to the issue of ownership of the land, that is a difficult question. The land was included within the Declaration and the development rights have expired. Therefore, an argument can be made that the land is part of the common interest community. On the other hand, the Declaration defines common elements as land that is transferred to the association in fee simple, and there is no actual deed transferring The Knoll to the association. That is an open question.

* { 11. After analyzing the information provided above, it does appear that the better procedure might be to have the association quitclaim its interest in The Knoll pursuant to section 47-254. In this case The Knoll would operate as a separate piece of property. If the adjoining road has been conveyed to the town, then the right to pass and repass over the road would be in place.

None { 12. I would note that in the Declaration there is mortgagee protection in section 18. This section requires an eighty percent approval by all eligible mortgagees for the sale of common elements. Of course, an eligible mortgagee is a holder of a first security interest who has notified the association in writing of its name and address and that it holds the security interest. Generally, there are no eligible mortgagees, although that has to be checked with the association.

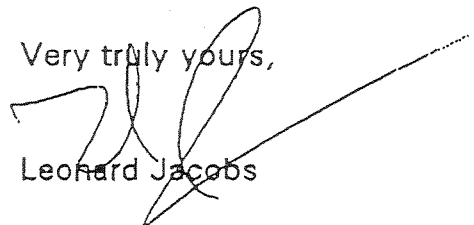
I think that I have provided enough information for you to consider this, and to discuss it with Steve Winkler. I will be interested in Steve's comments.

I should also point out to you that the information that I've provided is based on preliminary research, and I have not had significant time to review all of this information.

Finally, I want to advise you that the information which I have put together has been compiled for Bruce Fischman and Joe DeMaio, and they have consented to my transferring this information to you.

After you review this, if you have any questions regarding this please contact me.

Very truly yours,



Leonard Jacobs

LJ/sm
enclosures
cc: Joseph DeMaio

AGREEMENT

This Agreement is made this _____ day of _____, 1998 by and between The Common at Sinnott Farm, Inc. ("The Common") and James Street Development Corp, LLC ("JSDC").

JSDC has acquired the balance of undeveloped units in the development commonly known as "Sinnott Farms" in Bloomfield, Connecticut. In addition, JSDC has acquired land described on Exhibit A known as "The Knoll", which land was intended for future residential development. The original plans of Sinnott Farms which were recorded in the Bloomfield Land Records should have referred to The Knoll as "Additional Land, Development Rights Reserved in this Area" but did not. In order to correct this error, and for one dollar (\$1.00) and other good and valuable consideration, The Common hereby agrees to execute a Quit Claim Deed of The Knoll to JSDC on or before March 1, 1999, as and when requested by JSDC.

In addition, JSDC will request individual unit owners of Sinnott Farm to execute a Unit Owner's Consent in the form attached as Exhibit B.

In witness whereof, this Agreement has been executed as of the _____ day of _____ 1998.

Witness:

The Common at Sinnott Farm, Inc.

By _____

James Street Development Corp.

By _____
Peter J. Rotelli, Manager

State of
County of

Personally appeared _____ of The Common at Sinnott Farm, Inc.
signer and sealer of the foregoing instrument and acknowledged the same to be free
act and deed and the free act and deed of said corporation, before me.

My commission expires

State of
County of

Personally appeared Peter J. Rotelli of James Street Development Corp., LLC,
signer and sealer of the foregoing instrument and acknowledged the same to be his free act
and deed and the free act and deed of said limited liability company, before me.

My commission expires

EXHIBIT B

UNIT OWNER'S CONSENT

The undersigned, being an owner of a unit in a common interest community known as The Common at Sinnott Farm hereby consents to the entry into an agreement between The Common at Sinnott Farm, Inc. ("Association") and James Street Development Corp., LLC to transfer the property known as The Knoll to James Street Development Corp., LLC in accordance with the agreement attached hereto and labeled Schedule A. The undersigned further consents to any action taken by the Association to carry out its obligations as set forth in the agreement.

Unit Owner

Unit Number _____

State of Connecticut

County of _____

Personally appeared _____, signer and sealer of the foregoing instrument and acknowledged the same to be his/her free act and deed, before me.
