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October 28, 1988

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Mr. Warren Conner  
 C-1-E Coffee Run Condominiums  
 614 Loveville Road  
 Hockessin, Delaware 19707

Dear Mr. Conner:

The Coffee Run Condominium Council has requested my opinion, as special legal counsel, concerning the nature and extent of the rights of the Declarant (Max Ambach & Sons), pursuant to the recorded Declaration of Condominium and Declaration Plan, to construct an additional condominium apartment building depicted in the Declaration Plan as Building A. In formulating my opinion, I have reviewed the Declaration of Condominium dated September 21, 1973 as recorded in the office of the Recorder of Deeds in and for New Castle County at Deed Record H, Volume 88, p. 703; the five (5) sheet Declaration Plan depicting the condominium buildings and structures, units and common elements, certified September 21, 1973 and recorded as aforesaid at Microfilm No. 2418; the Code of Regulations recorded as aforesaid September 21, 1973 at Deed Record H, Volume 88; and the Record Land Development Plan of Coffee Run Condominiums dated May 30, 1972, as approved by the New Castle County Department of Planning on June 6, 1972, and recorded on June 14, 1972 at Microfilm No. 2023. I have also reviewed the Delaware Unit Properties Act, 25 Del.C. Ch. 22, and the New Castle County Zoning Code and Subdivision Regulations, to the extent applicable to the question posed.

Based upon the foregoing, I conclude and advise as follows:

Mr. Warren Conner

October 28, 1988

Page 2

1. The recorded Declaration of Condominium and Declaration Plan legally established a condominium regime for the subject property comprising 226 condominium units, spatially defined within the perimeters of Buildings A-F as located on the Declaration Plan. The forty-five (45) condominium units depicted within proposed Building A are legally existing condominium units and real property interests retained and owned by the Declarant, notwithstanding the fact that they have not as yet been physically constructed. The land beneath depicted Building A is a common element owned in common by the condominium Unit Owners, and presently controlled and maintained by the Council on their behalf, subject to the reserved right of the Declarant to construct Building A thereupon.

2. There is no time limitation upon the Declarant's reserved right to construct Building A pursuant to the approved and recorded Record Land Development Plan and the recorded Declaration Plan.

3. The condominium regime was initially established as a whole, comprising all 226 units, rather than as an "expandable" condominium to which additional units might later be dedicated and added with appropriate adjustments to the Unit Owners' proportionate interests. Accordingly, because the 45 units, defined in space within depicted Building A, are legally extant condominium units, they have been and are subject to County property tax assessment for their 1/226 proportionate ownership interests in the common elements property, and are also subject to their proportionate share of common expenses and special assessments pursuant to the Declaration and Code of Regulations. I am advised that the Council, in its business judgment and discretion, has not in fact heretofore assessed these 45 legally existing but unbuilt units for their proportionate share of monthly current assessments or special assessments, but I do not believe that this constitutes a waiver of the Council's right to make such assessments.

4. The Declarant, as holder of the reserved right to construct Building A and as owner of the legally existing 45 condominium units within Building A, has the legal right to sell, transfer or assign its reserved Building A development right and legally existing but unbuilt 45 units. Any such assignee or successor of the Declarant would have the same rights, and the same obligations, as the Declarant.

Mr. Warren Conn.

October 28, 1988

Page 3

5. The Declarant (or its successor or assign) is entitled to construct Building A, but only as depicted on the approved and recorded Record Land Development Plan, and the recorded Declaration Plan. That is, nothing other than the five-story condominium apartment building as depicted on the Plan, of the same size, shape, and unit configuration as shown on the Plan, can be constructed without a formally adopted and recorded Amendment to the Declaration of Condominium and the Declaration Plan which is incorporated therewith. Any such Amendment would require the approval of Unit Owners having at least three-fourths (3/4) of the total vote (170.25 of the total 226 unit votes).

6. In the event of any action by the Declarant (or its successor or assign) inconsistent with its limited reserved right to construct Building A and the units therein as depicted, and only as depicted, in the recorded Declaration Plan, the Coffee Run Condominium Council, or any individual Unit Owner, would have legal standing and legal grounds to oppose or seek revocation of any governmental permit or approval for construction inconsistent with the recorded Declaration Plan, or to seek injunctive relief from the Court of Chancery against any construction inconsistent with the recorded Declaration Plan. It should be noted in this regard that the recorded Declaration Plan identifies only the spatial configuration of Building A and the units contained therein, and does not constitute a detailed building plan and specifications, so that Building A other than its defined spatial configuration could possibly deviate from the other similarly configured Buildings with respect to building materials (exterior and interior), mechanical systems and services, and other building construction details except as may be expressly defined in and required by the recorded Declaration Plan. Whether any such differences or distinctions might result in either greater or lesser common expenses attributable to the condominium units within Building A might or might not be considered by the Council to warrant some differential treatment in the manner of assessment of common expenses. As a general proposition, any such differential in actual costs of services, or maintenance and repair, may be (and often are) disregarded by a Council in its business judgment in the interest of a uniform assessment of common expenses on a basis directly proportionate to all Unit Owners' percentage ownership interests in all of the common elements.

In conclusion and summary, it is my opinion that  
(1) the Declarant (or its successor or assign) retains the

Mr. Warren Conner

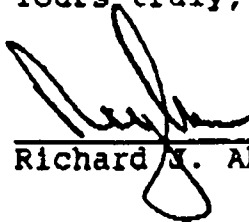
October 28, 1988

Page 4

right to construct Building A and the forty-five additional condominium units contained therein, as depicted in the recorded Declaration Plan, and (2) any such further property development and building construction by the Declarant (or its successor or assign) must be in strict accordance with the spatial and dimensional configuration of the building and units as depicted in the recorded Declaration Plan, absent an Amendment to the Declaration and Declaration Plan approved by a three-quarter (3/4) vote of all Unit Owners (including the legally extant but unbuilt units within proposed Building A).

Please let me know if you have any further questions, or if I can provide any further advice or assistance.

Yours truly,



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Richard A. Abrams

RJA/rcb