

Law Offices

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This office has been asked to review the easement agreement between the Columbia Association and the Inner Arbor Trust, Inc. dated March 14, 2014 in light of the existing legal documents which govern Columbia. The property involved is a 37 + acre tract known as Symphony Woods located in downtown Columbia.

Columbia Legal Documents. The basic legal documents which govern Columbia are a set of covenants dated December 13, 1966, and the charter of the Columbia Association (CA) dated December 10, 1965. The CA charter provided for Howard Research and Development (HRD) to transfer land to CA for park and recreational purposes. The 1966 deed provided that all HRD land, some 14,000 acres, was encumbered by the legal obligation to pay annual assessments to support CA and in return the property owners and residents acquired legal rights to use and enjoy the community facilities owned by CA. HRD transferred Symphony Woods to CA in 1968 as part of the initial development of Columbia. The 1966 deed provided that CA could not convey its community facilities away free and clear of the legal rights of the Columbia property owners and residents unless the conveyance was "to a public body for public use". Thus prior to the 2014 easement, the Columbia Association owned Symphony Woods and the Columbia owners and residents had legal rights in Symphony Woods pursuant to the long standing legal architecture of Columbia in effect now for 49 years.

2014 Perpetual Easement to Inner Arbor Trust. The 2014 perpetual easement conveyed, for no consideration, an easement on Symphony Woods from CA to Inner Arbor. The easement encompasses the entire 37 acres. Its purpose is to allow Inner Arbor to develop Symphony Woods according to a concept plan attached to the easement. The easement places 22 acres under easement immediately, and the remaining 15 acres are brought under the terms of the easement in stages provided certain benchmarks are attained. These benchmarks are undefined terms, such as the creation of the "Children's Sculpture", and these undefined terms do not, in my opinion, establish a legally enforceable method of measuring progress. The only stated obligation of Inner Arbor is to develop the property pursuant to the concept plan. The concept plan is a 1 page depiction of Symphony Woods as developed. The various structures and uses are not

identified on the concept plan. The permissible uses are broad including retail. I do not believe that the concept plan establishes any real obligation on the part of Inner Arbor.

The 2014 perpetual easement is a detailed legal document recorded in the land records. It gives Inner Arbor the right to “manage and control all activities” on the property. This broad language gives exclusive use and control of Symphony Woods, in perpetuity, to Inner Arbor with the exception of the right of CA to locate its headquarters on the property. In addition, the easement requires that CA must agree to subordinate its property interest in Symphony Woods to any financing requested by Inner Arbor. This means that in the event Inner Arbor defaulted on a loan, CA’s ownership interest would be extinguished. CA has representation on the Inner Arbor board, but it is a minority interest and does not give CA the ability to control Inner Arbor.

Conclusion. The 2014 perpetual easement extinguishes the rights of CA and the Columbia owners and residents in Symphony Woods in perpetuity. It is my opinion that the 2014 easement is invalid because it is in conflict with the 1966 deed which provides that CA’s community facilities may only be conveyed free and clear of the interests of the Columbia residents and owners if the conveyance is to a public body. Inner Arbor is a private, non-stock corporation, not a public body. However, since it is an executed, recorded document, the 2014 perpetual easement is binding on CA and on the Columbia residents and property owners in the absence of a court decree invalidating it.

A handwritten signature in black ink that reads "John C. Murphy". The signature is written in a cursive, slightly stylized font.

John C. Murphy