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10 September 2004

BY FACSIMILE & REGULAR MAIL

Douglas S. Walker, Esquire
Royston, Mueller, McLean & Reid, LLP
The Royston Building, Suite 600
102 West Pennsylvania Avenue
Towson, Maryland 21204-4575

Re: **Murray Hill Committee**

Dear Mr. Walker:

You have requested that the Clerk of the Circuit Court for Baltimore County (the "Clerk") file a certified copy of the Deed and Agreement, dated 21 June 1939, between Murray Hill Corporation and George Hebner, Jr. as recorded in the Land Records of the Clerk of the Circuit Court for Baltimore County in Liber 1065, folio 84 *et seq.* (the "Deed") in the Homeowners Association Depository (the "HOA Depository") maintained by the Clerk pursuant to § 11B-113(b) of the Real Property Article of the Maryland Code.¹ A copy of the Deed is attached to this letter.

The Deed imposed certain covenants, conditions, easements and restrictions on the development known as Murray Hill. In addition to the quasi-zoning code and quasi-building code covenants and restrictions found in Sub-Divisions II through IV of the Deed (which would be enforceable by any lot owner), Sub-Division V of the Deed authorizes the election of a "Committee" to review, approve or disapprove, and keep on file all plans and specifications for building or altering improvements on the lots within Murray Hill. Your client is such Committee. It is your position, on behalf of your client, that the Deed qualifies

¹ Such section is part of Title 11B of the Real Property Article, which, pursuant to § 11B-114 thereof, may be cited as the Maryland Homeowners Association Act.

BALTIMORE COUNTY CIRCUIT COURT (Homeowners Association Record) SM 08, p. 0440, MSA_0539_08. Date available 09/04/2024.

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as a "declaration,"² Murray Hill qualifies as a "development,"³ and the Committee qualifies as a "homeowners association"⁴ or "governing body."⁵

When first presented for filing, the Clerk's staff, on my advice, did not accept the Deed for filing in the HOA Depository on the grounds that, for purposes of the Maryland Homeowners Association Act, (i) because the Deed does not authorize the imposition of "any mandatory fee in connection with the provision of services or otherwise for the benefit of some or all of the lots, the owners or occupants of lots, or the common areas," it is not a "declaration," (ii) because the Deed is not a "declaration," Murray Hill cannot be a "development" and the Committee cannot be a "homeowners association" or a "governing body," and (iii) without a "homeowners association," there can be no disclosures required under § 11B-112(c) that the Clerk would be required to file in the HOA Depository pursuant to § 11B-113(c)(3).

However, your position is that there is authority in the Deed for the Committee to charge fees in connection with its services. In addition, you point out that, if a court were to determine that, contrary to my analysis, the Deed is a "declaration," then the consequences for the Committee could be severe — § 11B-112(c)(3) provides that a declaration or other required disclosure is unenforceable until deposited in the appropriate homeowners association depository.

² As of the date of this letter, § 11B-101(d) defines "declaration" as follows:

(1) "Declaration" means an instrument, however, denominated, recorded among the land records of the county in which the property of the declarant is located, that creates the authority for a homeowners association to impose on lots, or on the owners or occupants of lots, or on another homeowners association, condominium, or cooperative housing corporation any mandatory fee in connection with the provision of services or otherwise for the benefit of some or all of the lots, the owners or occupants of lots, or the common areas.

(2) "Declaration" includes any amendment or supplement to the instruments described in paragraph (1) of this subsection.

(3) "Declaration" does not include a private right-of-way or similar agreement unless it requires a mandatory fee payable annually or at more frequent intervals.

³ As of the date of this letter, § 11B-101(f) defines "development" as follows:

(1) "Development" means property subject to a declaration.

(2) "Development" includes property comprising a condominium or cooperative housing corporation to the extent that the property is part of a development.

(3) "Development" does not include a cooperative housing corporation or a condominium.

⁴ As of the date of this letter, § 11B-101(h) defines "homeowners association" as follows:

(1) "Homeowners association" means a person having the authority to enforce the provisions of a declaration.

(2) "Homeowners association" includes an incorporated or unincorporated association.

⁵ As of the date of this letter, § 11B-101(g) defines "governing body" as "the homeowners association, board of directors, or other entity established to govern the development."

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I have discussed your position with the Clerk's staff and we have decided to accept the Deed for filing in the HOA Depository, provided that it be filed with a copy of this letter to evidence your acknowledgment that:

- (1) the filing of the Deed in the HOA Depository may not be construed as an express or implied determination or agreement by the Clerk that, for purposes of the Maryland Homeowners Association Act, that the Deed qualifies as a "declaration," Murray Hill qualifies as a "development," or the Committee qualifies as a "homeowners association" or "governing body"; and
- (2) the restrictive covenant in the second paragraph of Sub-Division II of the Deed⁶ is null, void and of no effect as contrary to the laws and public policy of the County of Baltimore and the State of Maryland, as well as contrary to the Constitution and laws of the United States of America.

The Clerk's staff will enter "Murray Hill Committee" as the name of the "homeowners association" in the index maintained pursuant to § 11B-113(c)(2) and file the Deed in the HOA Depository under that name.

Please do not hesitate to contact me if you have any questions or would like to discuss this matter further. In addition to the telephone and facsimile numbers listed above, I can be reached via e-mail at bbenshoof@oag.state.md.us.

Sincerely,



Bruce L. Benshoof
 Assistant Attorney General

BLB

Attachment

cc: Ms. Suzanne Mensh (by fax & mail)
 Ms. Sonia Reynolds (by fax & mail)
 Ms. Deborah Malvaso (by fax & mail)

⁶ Such paragraph states that:

At no time shall the land included in said tract or any part thereof or any building erected thereon be occupied by any oriental, negro or person of negro or oriental extraction. This prohibition however is not intended to include the occupancy by a negro domestic servant or other person while employed in or about the premises by the owner or occupant of any land included in said tract.