

CHRYSALIS USE AGREEMENT

THIS CHRYSALIS USE AGREEMENT (the "Agreement") is made this 3rd day of May, 2016 by and between **HOWARD COUNTY, MARYLAND** (the "County"), a body corporate and politic and the **INNER ARBOR TRUST, INC.** (the "Trust"), a not-for-profit corporation formed in accordance with the laws of the State of Maryland, in good standing with the Maryland State Department of Assessments and Taxation, and designated as a 501(c)(3) entity by the Internal Revenue Service. **IT'S MY AMPHITHEATER, INC. ("IMA")**, a corporation formed in accordance with the laws of the state of Maryland and in good standing with the Maryland State Department of Assessments and Taxation, hereby acknowledges this Chrysalis Use Agreement. IMA and the Trust entered into a License, Easement, and Operating Agreement dated March 6, 2015 (the "Operating Agreement"). **COLUMBIA ASSOCIATION, INC. ("CA")**, a corporation formed in accordance with the laws of the state of Maryland and in good standing with the Maryland State Department of Assessments and Taxation, hereby acknowledges this Chrysalis Use Agreement.

WHEREAS, pursuant to the Amended and Restated Declaration of Restrictive Covenants and Easement Agreement dated March 14, 2014 and recorded among the Land Records of Howard County, Maryland (the "Land Records") at Liber 15556, folio 377, and rerecorded at Liber 15703, folio 229, granted by CA, the Trust holds a Perpetual Easement on certain real property known as Merriweather Park at Symphony Woods, open space Lot 23 and portions of Lot 9B as shown on the subdivision plat entitled "Final Plat Columbia, Lots 13 and 23, Plat of Revision Town Center, Section 1" and recorded among the Land Records as Plat Nos. 13535 and 13536 and part of parcel 9B as shown on the subdivision plat entitled Sheet 2 or 5, Columbia Town Center Subdivision, Section 1" and recorded among the Land Records in Plat Book 12, folio 64 (the "Perpetual Easement Agreement").

WHEREAS, the County agreed to grant the Trust up to Six Million Three Hundred Ninety Five Thousand Dollars (\$6,395,000.00) for planning, designing, engineering, and constructing an amphitheater to be located in Merriweather Park at Symphony Woods and referred to herein as the "Chrysalis" pursuant to a Grant Agreement dated December 18, 2013, amended by Amendment to Grant Agreement dated October 31, 2014, and Second Amendment to Grant Agreement dated April 24, 2015, and further amended by Amendment Three to Grant Agreement dated September 18, 2015 (as amended, the "Grant Agreement").

WHEREAS, pursuant to the terms of the Grant Agreement, the continued funding of the grant requires the parties to enter into the instant Chrysalis Use Agreement.

WHEREAS, IMA is the operator of the Merriweather Post Pavilion amphitheater; and, pursuant to the Operating Agreement, IMA has certain limited rights to hold events in the Chrysalis.

WHEREAS, the County and the Trust desire for the Chrysalis to be available for the use and enjoyment of County residents for arts and cultural purposes and desire to enter into this Agreement to acknowledge the public investment of funds in the Chrysalis and agree upon the

use of the Chrysalis for certain County sponsored events.

NOW, THEREFORE, in consideration of the covenants and agreements set forth in the Grant Agreement, as amended, and the foregoing recitals hereby incorporated herein, the County and the Trust, binding their respective successors and assigns, agree as follows:

1. **Term, Recording:**

The term of this Agreement shall be from the date of this Agreement through the date which is the later of: (i) fifty (50) years from the date of this Agreement, or (ii) the date the Chrysalis, as repaired or replaced from time to time, is removed from Symphony Woods and not replaced. This Agreement shall be recorded among the Land Records of Howard County, Maryland.

2. **Use of the Chrysalis:**

2.1 Wine in the Woods

The Trust and the County agree that the County shall have the exclusive use of the Chrysalis (and such other portions of Merriweather Park at Symphony Woods directly needed by the County) (hereinafter the "Use Area or "Chrysalis") for the County's annual Wine in the Woods Festival on the third consecutive Saturday and Sunday of May (with non-exclusive use of the aforementioned Park grounds so as to set up and break down the week before and the week after). The Chrysalis shall be reserved for such use by the County each year during the term of this Agreement so long as the County continues to hold the Wine in the Woods Festival.

2.2 Other County Uses; Scheduling

The Trust and the County agree that the County shall have the right to use the Chrysalis for the County sponsored activities set forth in **Exhibit A in accordance with Section XI Scheduling of the "License, Easement and Operating Agreement" between The Trust and IMA**. In addition to the activities listed in Exhibit A, the County shall have the right to use the Chrysalis for up to three (3) non-consecutive days and/or evenings each month from April 1 through October 31 for arts and cultural events and programs **in accordance with Section XI Scheduling of the "License, Easement and Operating Agreement" between The Trust and IMA**. No use of the Chrysalis by the County may violate the Perpetual Easement Agreement. The Trust, the County, IMA, and CA shall meet annually in December to determine the County's specific uses of the Chrysalis and to schedule the dates of those uses during the calendar year following each December meeting **in accordance with Section XI Scheduling of the "License, Easement and Operating Agreement" between The Trust and IMA**. If the County does not plan to hold the Wine in the Woods Festival in any given year, it shall provide notice of that decision at the December meeting preceding the year in which the Festival would otherwise be held.

2.3 Emergency Uses

The Trust and the County agree that the County shall be entitled to use the Chrysalis area to meet the needs of the County's residents in the event of declared states of

emergency due to weather or protracted events. Such right to use the Chrysalis shall be instituted pursuant to the Notice provisions herein.

2.4 No Rent

The County need not make a rental payment to the Trust for use of the Chrysalis pursuant to Section 2.1, 2.2, and/or 2.3 of the Chrysalis Use Agreement. Notwithstanding, the County is responsible for all set up, break down, and cleanup costs associated with the County's use. Within twenty-four (24) hours of the completion of all cleanup work by the County, a representative from the Trust and a representative from the County shall inspect the premises, and any damages caused by the County's use will be repaired by the County.

2.5 Sponsored and Co-sponsored Events

All County use of the Chrysalis shall be for events and other direct uses sponsored or co-sponsored by the County. The County agrees to accept full responsibility for such uses of the Chrysalis and agrees that it will be in a position of control and authority for all events that the County schedules in the Chrysalis.

3. Insurance:

3.1 County's Insurance:

For each use of the Chrysalis or any portion of the Use Area pursuant to Sections 2.1, 2.2, and/or 2.3 of this Agreement, the County shall maintain (and shall require its vendors or contractors to maintain) occurrence-based liability insurance throughout the period of use, including all set up and break down (the "Use Period"), against any claim for bodily injury, personal injury, death, or property damage. The County shall keep the Use Area insured throughout each Use Period as follows:

(1) Pursuant only to Section 2.1 of this Agreement for the "Wine in the Woods" Use:

(a) Commercial General Liability insurance, including contractual, liquor liability and products liability coverage covering all of the County's vendors and contractors, evidencing coverage of not less than Two Million Dollars (\$2,000,000) per occurrence, with respect to personal injury, bodily injury and death, and property damage. Inner Arbor Trust, Inc., Columbia Association, the Howard Hughes Corporation, Howard Research and Development, Inc., the Downtown Columbia Arts and Culture Commission, Inc., and It's My Amphitheater, Inc. shall be designated as Additional Insureds on each policy of Commercial General Liability insurance carried by the County under this Section 3.1 (1) (a).

(b) Deductibles allowed at the discretion of the County, it being understood that the Trust shall not be responsible for any deductible amount.

(2) For all County Uses under Sections 2.1, 2.2 and 2.3 of this Agreement

(a) Commercial General Liability insurance in accordance with a self-insurance program established under Section 23.100 Title 23 of the Howard County Code.

(b) Worker's Compensation coverage in accordance with the state of Maryland's requirements.

(c) Automobile liability insurance in the amount of One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage.

(d) All insurance provided for in this Chrysalis Use Agreement shall be effected under enforceable policies issued by insurers of recognized responsibility and licensed to do business in the State of Maryland and shall be subject to the Trust's approval. The Trust acknowledges that the County is self-insured and may satisfy the insurance requirements herein at its own cost and expense, through its program of self-insurance. The County shall provide to the Trust all requisite certificates and other proof of insurance as contained in this Agreement.

(e) The County shall provide at least (30) days' notice to the Trust of any change or cancellation of any insurance required under this Agreement.

(f) At least five (5) business days prior to the commencement of the use, the County shall deliver to the Trust Certificates of Insurance evidencing the required coverage and the payment of premium if applicable.

3.2 Mutual Waiver of Subrogation:

If either party hereto is paid any proceeds under any policy of insurance naming such party as an insured on account of any loss or damage, then such party and its insurer hereby releases the other party, to the extent of the amount of such proceeds including applicable deductibles, from any and all liability for such loss or damage, notwithstanding that such loss, damage or liability may arise out of the negligent or intentionally tortious act or omission of the other party, its agents, invitees or employees; provided that such release shall be effective only as to loss or damage occurring while the appropriate policy of insurance of the releasing party provides for the insured's ability to recover thereunder. Each party shall assure that its insurance carriers agree to waive subrogation in the event of a loss.

4. Indemnification:

4.1 The County hereby agrees to indemnify the Trust and CA and defend and hold them harmless from and against any and all claims, liens, actions, damages, liabilities and/or expenses, including reasonable costs and reasonable attorney's fees, in connection with loss of life, bodily injury, personal injury and/or damage to property arising from or out of the occupancy and/or use by the County of the Use Area. The foregoing indemnification obligation shall not be deemed a waiver of any governmental immunity or any provisions of the Local Government Tort Claims Act (Section 5-301 *et seq.* of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland) as to any third party. The County's limit of liability under this section is Two Million Dollars (\$2,000,000.00) per occurrence, including any attorneys' fees, payable to Indemnitees identified above. Any payment from the County to the Trust pursuant to this Agreement is contingent upon the availability of the County's insurance proceeds, funds or appropriation in an amount sufficient to satisfy such payment at the time that

payment is required by County. The County's indemnification shall not apply to any claims, liens, actions, damages, liabilities and/or expenses, including costs and attorney's fees, in connection with loss of life, bodily injury, personal injury and/or damage to property arising from the negligence of the Trust.

4.2 It is expressly agreed that, except to the extent caused by the act or omission of the Trust, the Trust shall not be liable or responsible for:

(a) the quality, quantity, impairment, interruption, stoppage, or other interference with service involving water, gas, electricity, or any other service or utility; or

(b) any damage to or loss or theft of property of the County or of others located on the Use Area.

4.3 It is expressly understood that the County shall hold the Trust and CA harmless from any and all claims, including subrogation claims by insurance carriers, arising out of damage to the County's property as a result of the use of the Chrysalis or any portion of Merriweather Park at Symphony Woods pursuant to Sections 2.1, 2.2, and/or 2.3 of this Agreement, except to the extent such claim is caused by an act or omission of the Trust.

5. **Notices:** Any notice to be given hereunder shall be in writing and shall be delivered when mailed postage prepaid or by overnight delivery or by hand to the addresses set forth below or as may be specified in writing to the other parties or in the event of an emergency by telephone:

Inner Arbor: Inner Arbor Trust, Inc., Attention: President, 10630 Little Patuxent Parkway, Century Plaza, Suite 315, Columbia, Maryland, 21044; Telephone: (410) 740-0029.

County: Howard County, Maryland, Director Department of Planning and Zoning 3430 Courthouse Drive, Ellicott City Maryland 21043; and Director of Department of Recreation and Parks, 7120 Oakland Mills Road, Columbia, Maryland 21046 Telephone: 410-313-4640.

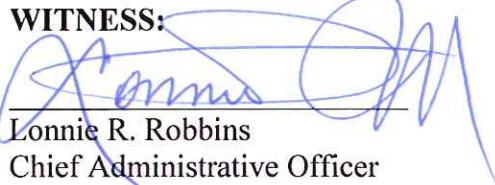
6. **Law of Maryland; Venue:** This Agreement shall be governed by the laws of the State of Maryland. Any action regarding this Agreement shall be filed in the Circuit Court for Howard County, Maryland, or the District Court of Maryland for Howard County.

7. **Amendments; Counterparts:** This Agreement may be amended only by a written instrument executed and delivered by the parties hereto. This Agreement may be executed in counterparts, each of which when taken together shall be an original of this Agreement.


8. **Certification; Successors and Assigns:** Each person executing this Agreement certifies that this Agreement has been approved in accordance with its respective organizational documents. This Agreement shall inure to and be binding upon the parties hereto, and their respective successors and assigns.

IN WITNESS WHEREOF, the duly authorized representative of each of the parties has executed this Agreement, under seal, as of the day and year first above written.

WITNESS:


Lonnie R. Robbins
Chief Administrative Officer

HOWARD COUNTY, MARYLAND

By: 
Allan H. Kittleman 5-5-16
County Executive


APPROVED:


Valdis Lazdins, Director
Department of Planning and Zoning

APPROVED:


John Byrd, Director
Department of Recreation and Parks

APPROVED FOR SUFFICIENCY OF FUNDS:

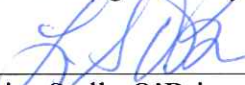

Stanley J. Milesky, Director
Department of Finance

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

this 3rd day of May 2016.


Gary W. Kuc
County Solicitor

Reviewing Attorney:

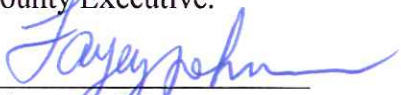

Lisa Stello O'Brien
Senior Assistant County Solicitor

STATE OF MARYLAND, Howard COUNTY, TO WIT:

I HEREBY CERTIFY that on this 6th day of May, 2016, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County

aforesaid, personally appeared Allan H. Kittleman, the County Executive for Howard County, Maryland, a party to the Chrysalis Use Agreement, who acknowledged the same to be the act of the County and that he executed the foregoing Agreement for the purposes therein contained by signing in my presence the name of Howard County, Maryland as County Executive.

AS WITNESS my Hand and Notarial Seal.



Notary Public

My Commission Expires: 7/21/19

(Signatures continue on the next page.)



WITNESS/ATTEST:

[Signature]
N.M.A. FBU

INNER ARBOR TRUST, INC.,
a Maryland corporation

BY: [Signature] (SEAL)
Michael McCall
President

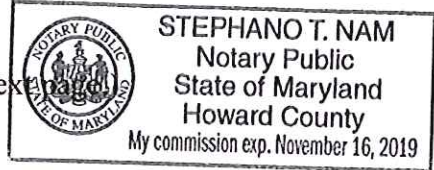
STATE OF MARYLAND, HOWARD COUNTY, TO WIT:

I HEREBY CERTIFY that on this 3rd day of May, 2016, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Michael McCall, President of the Inner Arbor Trust, Inc., a Maryland corporation, a party to the Chrysalis Use Agreement, and he acknowledged the same to be the act of the corporation for the purposes stated therein.

AS WITNESS my Hand and Notarial Seal. [Signature]
Notary Public

My Commission Expires: NOV. 16, 2019

(Signatures continue on the next page)



ACKNOWLEDGEMENT OF CHRYSALIS USE AGREEMENT

IT'S MY AMPHITHEATER, INC. ("IMA"), a corporation formed in accordance with the laws of the state of Maryland and in good standing with the Maryland State Department of Assessments and Taxation, hereby acknowledges the foregoing Chrysalis Use Agreement. IMA hereby further certifies that the foregoing Chrysalis Use Agreement is in accordance with the License, Easement, and Operating Agreement between IMA and the Inner Arbor Trust, Inc. dated March 6, 2015.

WITNESS/ATTEST:

IT'S MY AMPHITHEATER, INC.,

a Maryland corporation

Dante P...

BY: *Brad Canfield* (SEAL)
Brad Canfield
President

STATE OF MARYLAND, Howard COUNTY, TO WIT:

I HEREBY CERTIFY that on this 29 day of April, 2016, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Brad Canfield, President of It's My Amphitheater, Inc., a Maryland corporation, a party to the Chrysalis Use Agreement, and he acknowledged the same to be the act of the corporation for the purposes stated therein.

AS WITNESS my Hand and Notarial Seal.

[Signature]
Notary Public

My Commission Expires: July 30, 2019



ACKNOWLEDGEMENT OF AND CONSENT TO CHRYSALIS USE AGREEMENT

COLUMBIA ASSOCIATION, INC. ("CA"), a corporation formed in accordance with the laws of the state of Maryland and in good standing with the Maryland State Department of Assessments and Taxation, hereby acknowledges the foregoing Chrysalis Use Agreement. CA hereby consents to the Other County Uses set forth in Exhibit A of the foregoing Chrysalis Use Agreement in accordance with the Amended and Restated Declaration of Restrictive Covenants and Easement Agreement between CA and the Inner Arbor Trust, Inc. dated March 14, 2014 and recorded among the Land Records of Howard County, Maryland at Liber 15556, folio 377, and rerecorded at Liber 15703, folio 229.

WITNESS/ATTEST:

COLUMBIA ASSOCIATION, INC.,

a Maryland corporation

Steve V.G. Frazee

By:

Name:

Title:

(SEAL)

STATE OF MARYLAND, Howard COUNTY, TO WIT:

I HEREBY CERTIFY that on this 10th day of May, 2016, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Keith W. Matthews, the President/CEO of Columbia Association, Inc., a Maryland corporation, and he/she acknowledged the Acknowledgment of and Consent to Chrysalis Use Agreement to be the act of the corporation for the purposes stated therein.

AS WITNESS my Hand and Notarial Seal.

Karen R. Turcan

Notary Public

My Commission Expires: 10/23/2019



Chrysalis Use Agreement

Exhibit A

Other County Uses Section 2.2

Event	Anticipated Occurrence
Traveling Band Concert	Weekday evening in July, estimated 4 hours
Spring Concert	Weekday evening in April, estimated 4 hours
Fall Concert	Weekday evening in September, estimated 4 hours
Lunch time Children's Concert	June, July, or August any weekday, estimated 3 hours
Children's Arts Camps in Collaboration with CA	Summer weekdays for one week, estimated 6 hours per day

Additional arts and cultural events and programs.