

350279.002

The Maryland-National Capital Park and Planning Commission
Prince George's County Planning Department

14741 Governor Oden Bowie Drive
Upper Marlboro, MD 20772

Prince George's Cty Cir Crt
IMP FD SURE \$40.00
RECORDING FEE \$20.00

TOTAL \$60.00
ME CW
Feb 02, 2022 12:00 pm

Tax Id: 15-5588036

Private Recreation Facilities Agreement Third Agreement to Amend Westphalia Row, Third Amendment

Prince George's County, MD
Approved by RSS 01/28/2022 \$0.00
Recordation Tax Paid
Transfer Tax Paid \$0.00

THIS THIRD AGREEMENT TO Amend made this 12 day of JANUARY 2022, by and between the Maryland-National Capital Park and Planning Commission ("Commission"), a public body corporate, and Westphalia Row Partners, LLC, ("Developer"), with its principal office located at 6110 Executive Blvd, Suite 310, Rockville, MD 20852. The Commission and the Developer are collectively referred to in this Agreement as the "parties."

WHEREAS, the Commission is a public body corporate, created by the State of Maryland and authorized by Division II of the Land Use Article of the Annotated Code of Maryland, to maintain and operate a park system within the Metropolitan District; and

WHEREAS, the Commission has delegated authority over the operation of parks and recreation in Prince George's County to the Prince George's County Planning Board ("Planning Board"); and

WHEREAS, the Planning Board is charged by Division II of the Land Use Article, of the Annotated Code of Maryland with the authority to approve subdivision plats for recordation in the designated sections of the Maryland-Washington Regional District located in Prince George's County; and

WHEREAS, Section 24-135 of the Subdivision Regulations of the Prince George's County Code provides that, in conjunction with certain types of development, private recreation facilities which equal or exceed the requirements for mandatory dedication may be provided by a subdivision applicant to satisfy the mandatory dedication requirement of the Subdivision Regulations; and

WHEREAS, the Developer is the current owner of certain property that is the subject of DSP-08039, as amended, as shown on a subdivision plat entitled Westphalia Row, The property being the same land conveyed by deed to Westphalia Row Partners, LLC, which is recorded in the Land Records of Prince George's County, Maryland, in Liber 32814, folio 00170 comprising approximately 20 acres of land, being in the 15th Election District, Prince George's County, Maryland; and

WHEREAS, the Developer has proposed to provide private recreation facilities to satisfy the requirements of mandatory dedication; and

WHEREAS, the Developer and the Commission, parties hereto, entered into a Recreation Facilities Agreement dated December 18, 2009, recorded among the Land Records of Prince George's County, Maryland at Liber 31300, Folio 291 (the "Original RFA") for the purpose of Developer constructing Private Recreational Facilities at Westphalia Row per Detailed Site Plan DSP-08039; and

WHEREAS, the Developer and the Commission, parties hereto, amended said RFA on October 15, 2014, via an Agreement to Amend the Recreational Facilities Agreement ("1st Amendment to RFA") for Westphalia Row recorded among the Land

Records of Prince George's County, Maryland at Liber 36520, Folio 206 for the purpose of the Developer constructing Private Recreational Facilities at Westphalia Row per DSP-08039/06; and

WHEREAS, the Developer and the Commission, parties hereto, further amended the 1st Amendment to RFA on October 15, 2016, via the Second Agreement to Amend the Recreational Facilities Agreement for Westphalia Row ("2nd Amendment to RFA") recorded among the Land Records of Prince George's County, Maryland at Liber - 38641, Folio 296 for the purpose of the Developer constructing Private Recreational Facilities at Westphalia Row per DSP-08039/08. The RFA recorded at Liber 31300, Folio 291, the 1st Amendment to RFA at Liber 36520, Folio 206, and the 2nd Amendment to RFA at Liber 38641, Folio 296 shall be collectively referred to as the RFA; and

WHEREAS, within the intervening time since the execution of the RFA, the Developer and the Commission agreed to further amend the RFA as more fully stated by the Commission in Preliminary Plan of Subdivision 4-20024 and DSP-08039/10; and

WHEREAS, the Developer and the Commission, parties hereto, have agreed to so amend the RFA, by the execution of this Third Agreement to Amend (the "Third Agreement"); and

WHEREAS, the Commission has accepted the Developer's proposal;

NOW, THEREFORE, in consideration of the acceptance by the Commission of the Developer's offer to provide private recreation facilities in lieu of mandatory dedication, the mutual promises and obligations contained in this Agreement, and for other good and valuable consideration which is acknowledged by the parties, the parties agree to the following provisions:

1. Recreation Facilities. The Developer will construct private recreation facilities on that portion of the property being subdivided in compliance with approved plan **DSP-08039/10** and this Agreement.

(a) Prior to the issuance of the 208th building permit:

Parcel E: Developer shall commence the construction of the 2,400 sq. ft. Community Building, including 267 lf 5' wide walks, 38 lf 6' wide walks (circular), 45 lf 8' wide walks, 50 lf 10' wide walks, associated fencing, trellis, and gazebo as approved with DSP-08039 or subsequent amendments. There shall be no fewer than three pieces of exercise equipment in the Community Building (Collectively the "Community Building"). As of the date of this Third Agreement, Developer has constructed the Community Building.

Parcel G: Metal fenced play area with 3 benches, spider climber, dome climber and 150 lf. of 5' wide walks; Sitting area as shown on the approved DSP 08039 plans, or as amended, with 2 benches. As of the date of this Third Agreement, the recreational facilities on Parcel G are built.

Parcel J: Metal Fenced Play area with 4 benches, swing set, grass play area as shown on the approved DSP 08039, or as amended, and 171 lf 5' wide walks; Sitting area with two benches across a concrete area and 50 lf of 5' wide walks; Sitting area with 4 benches and 98 lf of 5' wide walks. As of the date of this Third Agreement, the recreational facilities on Parcel J are built.

- (b) Townhomes Phase II. Concurrent with the construction of lots 77 through 81, Block A in Phase II:

Parcel N: Sitting area #1 with 3 benches, grassy play area as shown on the approved DSP 08039/06 plan, or as amended, and 80 lf 5' wide walks. As of the date of this Third Agreement, the recreational facilities on Parcel N are built.

- (c) Townhomes Phase III. Concurrent with the completion of the townhomes in Phase III, as shown on DSP-08039-08:

Parcel B - Sitting Area #2 - 4 benches facing an oval grass area with 115 LF of 5' wide concrete sidewalk. As of the date of this Third Agreement, the recreational facilities on Parcel B are built.

Parcel R - Sitting Area #3 - 8 benches facing a rectangular grass area with 190 LF of 5' wide concrete sidewalk and 128 LF of 4' wide concrete sidewalk. As of the date of this Third Agreement, the recreational facilities on Parcel R are built.

- (d) Townhomes Phase III (Lots 162 to 180). Concurrent with the completion of the townhomes on Lots 176 through 180 as shown on DSP-08039-10:

Parcel P - Sitting Area #4 - 4 benches with 38 LF of 5' wide concrete sidewalk.

All facilities listed above must be inspected by staff of the Planning Department in order to be deemed complete.

2. Performance Bonds for Private Recreation Facilities.

(a) To guarantee the prompt and satisfactory construction of the recreation facilities set forth in paragraph 1 above, the Developer, his heirs, successors and/or assigns, shall deliver to the Planning Department, immediately prior to the application of the 276th townhome building permit a suitable financial guarantee as defined in 2(f) of this Agreement, for the portion of the recreational facilities in paragraph 1 which have not been built and inspected for completion by that date. The amount of the performance bond shall be determined by the Planning Department. The Developer shall request in writing from the Planning Department a determination as to the amount of the required performance bond not less than two weeks prior to filing an application for building permits.

(b) The performance bond will run to the benefit of the Commission and not be conditional. It is agreed by the parties that if the Commission finds that the Developer has failed to satisfactorily construct the recreation facilities as required by this Agreement, the Commission may choose, in its sole discretion, to construct the recreation facilities in accordance with the plans filed by the Developer by drawing on the performance bond. The Commission's decision as to the satisfaction of the construction or completion of the facilities will be binding on all parties. All recreation facilities will be constructed in accordance with the standards in the Parks and Recreation Facilities Guidelines, the manufacturer's specifications and the guidelines in the latest edition of the Handbook for Public Playground Safety published by the Consumer Products Safety Commission, American Society of Testing and Materials (ASTM) standards, and the Americans with Disabilities Act (ADA).

- (c) In the event that the performance bond is used by the Commission for the failure to

satisfactorily complete construction of any recreation facilities, the Commission will not incur any liability for the construction or completion of the recreation facilities.

(d) At such time that the Commission determines the recreation facilities have been completed, and the Developer has executed a Recreation Facility Certification, the performance bond or any remainder will be returned to the Developer.

(e) If the construction of the recreation facilities referred to in paragraph 1, above, is not completed within five (5) years from the date the performance bond was issued, the Commission reserves the right to re-evaluate the amount of the performance bond and to require that the Developer post an additional bond amount.

(f) **Definition:** For purposes of this Agreement, adequate financial security means a surety bond, letter of credit, escrow agreement, or other suitable financial guarantee as determined by the Commission's Office of the General Counsel.

3. Non-discrimination. The Developer will not discriminate against any employee or applicant for employment due to age, sex, race, creed, color, national origin, or disability.

4. Indemnification. The Developer will indemnify, save harmless, and defend the Commission from and against all actions, liability, claims, suits, damages, cost or expense of any kind that may arise, or be alleged to have arisen, out of or in connection with the Developer's performance of, or failure to perform, any of the obligations under the terms of this Agreement.

5. Binding Covenant. The provisions of this Agreement will be a covenant which runs with the land and is binding on the Developer, its heirs, successors and assigns. In the event that the Developer assigns this RFA to more than one successor, the Commission reserves the right to require a new or amended RFA for each successor.

6. Recordation. This Agreement will be recorded in the Land Records of Prince George's County prior to the acceptance of the above-referenced plat by the Development Review Division. All recording fees will be paid by the Developer. The original recorded RFA will be returned to the Development Review Division. The failure of the Developer to record this Agreement will preclude the issuance of any building permits applied for in the above-named subdivision.

7. Modification. Any substantial modification to this Agreement, as determined by the Commission, will be permitted only upon the filing of a new preliminary plat or site plan by the Developer, approval by the Planning Board or its designee, and the recording of an Amended Recreation Facilities Agreement.

8. Entire Agreement. This instrument contains the entire Agreement between the parties and will not be modified except by written agreement signed by the parties.

9. Severability. The invalidity or illegality of any provision of this Agreement will not affect the remainder of this Agreement or any other provision.

10. Applicable Law and Forum. This Agreement will be interpreted and enforced in accordance with the laws of the State of Maryland.

11. Waiver. The failure of the Commission to enforce any part of this Agreement will not be deemed as a waiver thereof.

12. Termination. This Agreement will extend for twenty-five (25) years from the date of execution. All obligations of the Developer under this Agreement will become due one (1) year prior

to the expiration of this Agreement.

13. **Recitals.** The Recitals are hereby incorporated in this Agreement

IN WITNESS WHEREOF, the parties have caused this Agreement to be properly executed on the day and year first written above.

SEAL/WITNESS:

Westphalia Row Partners, LLC
By: Westphalia Row Partners, Inc., its Manager

Aram S. Balian
Aram S. Balian
Vice President

Gregory S. Balian
Gregory S. Balian
President

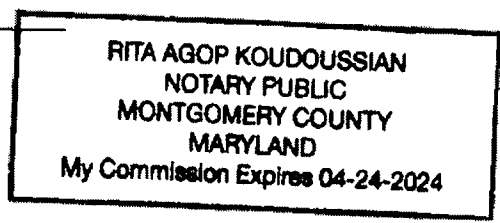
STATE OF MARYLAND :
COUNTY OF MONTGOMERY :

I hereby certify that before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Gregory S. Balian, President who acknowledged that he is authorized to execute the above Agreement.

Witness my hand and official seal this 15th day of December, 2021.

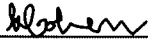
Rita Agop Kouduoussian
Notary Public

My commission expires: 4/24/2024



ATTEST:

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

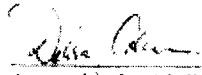


Gavin Cohen (Jan 13, 2022 09:29 EST)

Gavin Cohen
Secretary-Treasurer



Asuntha Chiang-Smith
Executive Director



Approved for Legal Sufficiency
M-NCPPC Office of General
Counsel

STATE OF MARYLAND :
COUNTY OF ~~PRINCE GEORGE'S~~ ss

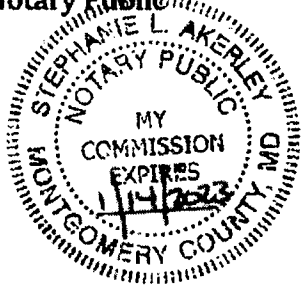
Montgomery

I hereby certify that before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Asuntha Chiang-Smith, Executive Director, who acknowledged that she is authorized to execute the above Agreement for the reasons and purposes stated therein.

Witness my hand and official seal this 12th day of January, 2022

[signature] *Stephanie Lakerley*
Notary Public

My commission expires: 1/14/2023



Upon Recordation, please return this document to:

Gregory S. Balian
Westphalia Row Partners, LLC
6110 Executive Blvd, Suite 310
Rockville, MD 20852
301-864-6500

STATE OF MARYLAND :
COUNTY OF ~~PRINCE GEORGE'S~~ ss

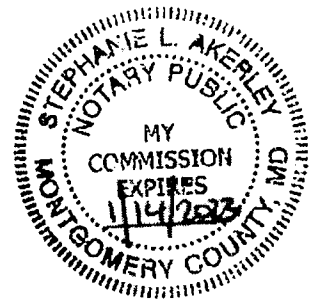
Montgomery

I hereby certify that before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Asuntha Chiang-Smith, Executive Director, who acknowledged that she is authorized to execute the above Agreement for the reasons and purposes stated therein.

Witness my hand and official seal this 12th day of January, 2022.

[signature] *Stephanie L. Akerley*
Notary Public

My commission expires: 1/14/2023



Upon Recordation, please return this document to:

Gregory S. Balian
Westphalia Row Partners, LLC
6110 Executive Blvd, Suite 310
Rockville, MD 20852
301-864-6500

State of Maryland Land Instrument Intake Sheet

Baltimore City County: Prince George's

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office Only. (Type or Print in Black Ink Only—All Copies Must Be Legible)

Space Reserved for Circuit Court Clerk Recording Validation

1 Type(s) of Instruments () Check Box if addendum Intake Form is Attached.
2 Conveyance Type Check Box Improved Sale Arms-Length [1] Unimproved Sale Arms-Length [2] Multiple Accounts Arms-Length [3] Not an Arms-Length Sale [9]
3 Tax Exemptions (if applicable) Recordation State Transfer County Transfer

4 Consideration and Tax Calculations Consideration Amount Purchase Price/Consideration \$ 0.00 Any New Mortgage \$ Balance of Existing Mortgage \$ Other: \$ Full Cash Value: \$ Finance Office Use Only Transfer and Recordation Tax Consideration Transfer Tax Consideration \$ X () % = \$ Less Exemption Amount - \$ Total Transfer Tax = \$ Recordation Tax Consideration \$ X () per \$500 = \$ TOTAL DUE \$

5 Fees Amount of Fees Doc. 1 Doc. 2 Recording Charge \$ 20.00 \$ Surcharge \$ 60.00 \$ State Recordation Tax \$ State Transfer Tax \$ County Transfer Tax \$ Other \$ Other \$ Agent: Tax Bill: C.B. Credit: Ag. Tax/Other:

6 Description of Property SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i). District Property Tax ID No. (1) Grantor Liber/Folio Map Parcel No. Var. LOG (5) Subdivision Name Lot (3a) Block (3b) Sect/AR (3c) Plat Ref. SqFt/Acreage (4) Location/Address of Property Being Conveyed (2) 1601 Sansbury Road, Largo, MD 20774 Other Property Identifiers (if applicable) Water Meter Account No. Residential [X] or Non-Residential Fee Simple [X] or Ground Rent Amount: Partial Conveyance? Yes [X] No Description/Amt. of SqFt/Acreage Transferred: If Partial Conveyance, List Improvements Conveyed:

7 Transferred From Doc. 1 - Grantor(s) Name(s) Doc. 2 - Grantor(s) Name(s) Westphalia Row Partners, LLC Doc. 1 - Owner(s) of Record, if Different from Grantor(s) Doc. 2 - Owner(s) of Record, if Different from Grantor(s)

8 Transferred To Doc. 1 - Grantee(s) Name(s) Doc. 2 - Grantee(s) Name(s) Maryland-National Capital Parks and Planning Commission New Owner's (Grantee) Mailing Address 6110 Executive Blvd, #310, Rockville, MD 20852

9 Other Names to Be Indexed Doc. 1 - Additional Names to be Indexed (Optional) Doc. 2 - Additional Names to be Indexed (Optional)

10 Contact/Mail Information Instrument Submitted By or Contact Person Name: Mark E. Simon Firm Village Settlements, Inc. Address: 177 Kentlands Blvd, 2nd Floor Gaithersburg, MD 20878 Phone: (301) 590-9300 Return to Contact Person Return Address Provided

11 IMPORTANT: BOTH THE ORIGINAL DEED AND A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER Assessment Information Yes [X] No Will the property being conveyed be the grantee's principal residence? Yes [X] No Does transfer include personal property? If yes, identify: Yes [X] No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Assessment Use Only - Do Not Write Below This Line Terminal Verification Agricultural Verification Whole Part Tran. Process Verification Transfer Number Date Received: Deed Reference: Assigned Property No.: Year 20 20 Geo. Map Sub Block Land Zoning Grid Plat Lot Buildings Use Parcel Section Occ. Cd. Total Town Cd. Ex. St. Ex. Cd. REMARKS:

Space Reserved for County Validation