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Clerk of the
Circuit Court

2014 JUL 18 PM 3:13

**Private Recreation Facilities Agreement
WESTPHALIA TOWN CENTER - PHASE I**

Preliminary Plan 4-08002/CSP-07004-01/DSP-13006

PR GEO CO MD #89

THIS AGREEMENT made this 11th day of July, 2014, by and between THE MARYLAND - NATIONAL CAPITAL PARK AND PLANNING COMMISSION (hereinafter the "Commission"), a public body corporate, and **Walton Westphalia Development (USA), LLC**, a Maryland limited liability company, and **Walton Westphalia Europe, LP** (hereinafter collectively the "Owner"), with its principal office located at 11800 Sunrise Valley Drive, Suite 300, Reston, VA 20191.

WHEREAS, the Commission is a public body corporate, created by the State of Maryland and authorized by 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 (hereinafter the "Planning Board"); and

WHEREAS, the Planning Board is charged by 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, recreation facilities which equal or exceed the requirement for mandatory dedication may be provided by a subdivision applicant to satisfy the mandatory dedication requirement of the Subdivision Regulations; and

WHEREAS, Phase I of the Westphalia Town Center is approximately 90 acres, and is subject to Preliminary Plan No. 4-08002 as shown on a Detailed Site Plan (DSP-13006) entitled Westphalia Town Center, Phase I and includes 348 townhouse lots and 23 parcels and 4 outlots; and

WHEREAS, the Owner has proposed to provide recreation facilities to satisfy the requirements of mandatory dedication for Phase I; and

WHEREAS, the Commission has accepted the Owner's proposal.

NOW, THEREFORE, in consideration of the acceptance by the Commission of the Owner's offer to provide private recreation facilities in lieu of mandatory dedication, the mutual promises and obligations contained herein, and for other good and valuable consideration which is hereby acknowledged, the parties hereto have agreed to the following provisions:

1st FD SURE \$	40.00
RECORDING FEE	20.00
CERTIFIED COPY	5.00
PHOTOCOPY-A	3.50
TOTAL	68.50
Rest PCBs	
Rest # 61078	
Blk # 3869	
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PRINCE GEORGE'S COUNTY CIRCUIT COURT (Land Records) MMB 36174, p. 0547, MSA_CE64_36483, Date available 07/24/2014, Printed 08/28/2014.

1. **Recreation Facilities.** The Owner shall construct on the Phase I portion of the property being subdivided, in accordance with approved plans for Preliminary Plan 4-08002 and DSP-13006, the recreation facilities approved by the Planning Board as specified below.

The recreation facilities to be constructed by the Owner and the location of same, along with the triggering events by which they are to be bonded and completed, are as follows:

Recreational Facility	Quantity	Bonded by	Constructed
6ft steel benches	97	Prior to first building permit.	Prior to the 200 th building permit.
wooden stage	1	Prior to first building permit.	Prior to the 200 th building permit.
artisan pergola, vinyl (10' x 16')	1	Prior to first building permit.	Prior to the 200 th building permit.
artisan pergola, vinyl (10' x 8')	1	Prior to first building permit.	Prior to the 200 th building permit.
8' asphalt trail – Outparcel A	1040 linear feet	Prior to first building permit.	Prior to the 200 th building permit.
8' asphalt trail – around SWM Pond No.2	1835 linear feet	Bonded with Pond 2 permit No. 33972-2012	Prior to the 200 th building permit.
Central circle public plaza, 5000 square feet decorative pavers.	1	Prior to first building permit.	Prior to 200 th building permit.

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 Owner, his heirs, successors and/or assigns, shall deliver to the Planning Department, prior to the application for the applicable building permits as shown in Paragraph 1 above, an irrevocable performance bond (i.e. surety bond, letter of credit or other suitable financial guarantee). The amount of the performance bond shall be determined by the Planning Department. The Owner 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 shall run to the benefit of the Commission and not be conditional. It is agreed by the parties hereto that the Commission shall use the performance bond if it finds that the Owner has failed to satisfactorily construct the recreation facilities as required by this Agreement, and in accordance with the plans filed with the Commission. The Commission's decision as to the satisfaction of the construction or completion of the facilities shall be binding on all parties. All recreation facilities shall 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 shall not incur any liability for the construction or completion of said recreation facilities.

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

(e) If the construction of the recreation facilities specified 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 Owner post an additional bond amount.

(f) Definition: For purposes of this Agreement, "Performance Bond" shall mean 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 Owner shall not discriminate against any employee or applicant for employment due to age, sex, race, creed, color, national origin or disability.

4. Indemnification. The Owner shall indemnify and save harmless the Commission from and against all actions, liability, claims, suits, damages, cost or expense of any kind arising from the Owner's negligence or failure to perform any of the obligations under the terms of this Agreement.

5. Binding Covenant. The provisions of this Agreement shall be a covenant which runs with the land and is binding on the Owner, his heirs, successors and/or assigns. In the event that the Owner 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 shall 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 shall be paid by the Owner. The original recorded RFA shall be returned to the Development Review Division. The failure of the Owner to record this Agreement shall 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, shall be permitted only upon the filing of a new or revised preliminary plat or site plan by the Owner, 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 shall not be modified except by written agreement signed by the parties and attached hereto.

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9. **Severability.** The invalidity or illegality of any provision of this Agreement shall not affect the remainder of this Agreement of any other provision contained herein.

10. **Applicable Law and Forum.** This Agreement shall 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 shall not be deemed as a waiver thereof.

12. **Termination.** This Agreement shall extend for twenty-five (25) years from the date of execution. All obligations of the Owner under this Agreement shall 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 hereto have caused this Agreement to be properly executed on the day and year first written above.

**WALTON WESTPHALIA
DEVELOPMENT (USA), LLC**, a Maryland
limited liability company

By: *Melaine Graf* (Seal)
Name: Melaine Graf
Title: Authorized Signatory
Date: 6-20-2014

STATE OF VIRGINIA

COUNTY OF FAIRFAX, to wit:

I HEREBY CERTIFY that on this 20 day of June, 2014, before me, a Notary Public, personally appeared Melaine Graf to me personally known, who by me duly sworn (or affirmed), did say that she is an Authorized Signatory of Walton Westphalia Development (USA), LLC, a Maryland limited liability company and that said instrument was signed by authority of its Authorized Signatory, and acknowledged said instrument to be their free act and deed on behalf of the said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year last above written.

M. Huggins
Notary Public



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My Commission Expires: Aug. 31, 2017

WALTON WESTPHALIA EUROPE, LP,
a Delaware limited partnership

By: *M. Graf* (Seal)
Name: Melanie Graf
Title: Authorized Signatory
Date: 6-20-2014

STATE OF VIRGINIA
COUNTY OF FAIRFAX, to wit:

I HEREBY CERTIFY that on this 20 day of June, 2014, before me, a Notary Public, personally appeared Melanie Graf to me personally known, who by me duly sworn (or affirmed), did say that sh is an Authorized Signatory of Walton Westphalia Europe, LP, a Delaware limited partnership and that said instrument was signed by authority of its Authorized Signatory, and acknowledged said instrument to be their free act and deed on behalf of the said partnership.

In WITNESSS WHEREOF, I have hereunto set my hand and affixed my seal the date and year last above written.

M. Huggins
Notary Public



My Commission Expires: Aug 31, 2017

ATTEST:

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Barbara Water
for Joseph Zimmerman
Secretary-Treasurer

By: *Patricia Colihan Barney*
Patricia Colihan Barney
Executive Director

APPROVED AS TO LEGAL SUFFICIENCY
Patricia Colihan Barney
M-NCPPE Legal Department

Date 6/27/14

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

Witness by Patricia Colihan Barney official seal this 11th day of July, 2014.



Stephanie Akeley
Notary Public

My commission expires: 1/14/16

State of Maryland Land Instrument Intake Sheet
Baltimore City County: Prince Georges

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 Station

1 Type(s) of Instruments
2 Conveyance Type
3 Tax Exemptions (if Applicable)
Cite or Explain Authority

Table with 4 columns: Consideration Amount, Finance Office Use Only, Transfer and Recordation Tax Consideration, and other financial details.

Table with 4 columns: Fees, Doc. 1, Doc. 2, and Agent/Other categories.

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).

7 Transferred From
Doc. 1 - Grantor(s) Name(s)
Doc. 2 - Grantor(s) Name(s)

8 Transferred To
Doc. 1 - Grantee(s) Name(s)
Doc. 2 - Grantee(s) Name(s)
New Owner's (Grantee) Mailing Address

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: Paul J. Gable
Firm: SALTESI
Address: 4300 FORBES BLVD, SUITE 230 LANHAM MD 20706 Phone: (301) 794-7555

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

Table with 4 columns: Terminal Verification, Agricultural Verification, Deed Reference, and Tran. Process Verification. Includes fields for Transfer Number, Date Received, Deed Reference, and Assigned Property No.

Distribution: White - Clerk's Office
Canary - SDAT
Pink - Office of Finance
Goldenrod - Preparer
AOC-CC-300 (6/95)

PRINCE GEORGE'S COUNTY CIRCUIT COURT (Land Records) MMB 36174, p. 0553, MSA_CE64_36483, Date available 07/24/2014, Printed 08/28/2014.