

Private Recreation Facilities Agreement
[Subdivision Name]

THIS AGREEMENT made this [Leave Blank] day of [Leave Blank], 20 [Leave Blank] by and between The Maryland-National Capital Park and Planning Commission (hereinafter the Commission), a public body corporate, and _____, (hereinafter the Developer), with its principal office located at _____.

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 (hereinafter the 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, 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 which is the subject of [specify the application name and number of preliminary plat, SDE or SP], as shown on a subdivision plat entitled _____. Said parcel being the same land conveyed by deed to _____, which is recorded in the Land Records of Prince George's County, Maryland, in Liber _____, folio _____, comprising approximately _____ acres of land, being in the _____ Election District, Prince George's County, Maryland; and

WHEREAS, the Developer has proposed to provide recreation facilities to satisfy the requirements of mandatory dedication; 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 herein, and for other good and valuable consideration which is hereby acknowledged, the parties hereto have agreed to the following provisions:

1. Recreation Facilities. The Developer shall construct on that portion of the property being subdivided, in accordance with approved plan [specify applicable plan name and number], the recreation facilities approved by the Planning Board as specified below:

- (a) The recreation facilities to be constructed by the Developer and the location of same are as follows:
[specify facilities by type and amount]

(b) Construction of the recreation facilities listed in sub-paragraph (a) above shall be completed as follows:

The applicant shall comply with the recreation phasing triggers in accordance with Condition No. __ of Resolution No. _____ for DSP- _____, or any revision to or reconsideration thereof, which is herein incorporated by reference.

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 prior to the application for any building permits, 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 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 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 Developer 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 Developer has executed a Recreation Facility Certification, the performance bond or any remainder thereof shall be returned to the Developer.

(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 Developer post an additional bond amount.

(f) Definition: For purposes of this Agreement, a 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 Developer shall not discriminate against any employee or applicant for employment due to age, sex, race, creed, color, national origin or disability.
4. **Indemnification.** The Developer 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 Developer'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 lands and is binding on the Developer, his heirs, successors and/or 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 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 Developer. The original recorded RFA shall be returned to the Development Review Division. The failure of the Developer 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 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 shall not be modified except by written agreement signed by the parties and attached hereto.
9. **Severability.** The invalidity or illegality of any provision of this Agreement shall not affect the remainder of this Agreement or 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 Developer 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.

SEAL/WITNESS:

[Developer Name]

[Signature]

Name: [Print]

Title: [Print]

ATTEST:

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Joseph Zimmerman
Secretary-Treasurer

Anju Bennett
Acting Executive Director

STATE OF MARYLAND :
COUNTY OF PRINCE GEORGE'S :

I hereby certify that before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared [Developer representative], [title] who acknowledged that he/she is authorized to execute the above Agreement for the reasons and purposes stated therein.

Witness my hand and official seal this _____ day of _____, 20__.

[signature]

Notary Public

My commission expires: _____

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

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 she is authorized to execute the above Agreement for the reasons and purposes stated therein.

Witness my hand and official seal this _____ day of _____, 20__.

[signature]

Notary Public

My commission expires: _____