

RECREATIONAL FACILITIES AGREEMENTSNOWDEN POND AT MONTPELIERSP-920540571?
CLERK OF THE
CIRCUIT COURT

Jul 5 10 23 AM '94

THIS AGREEMENT, made this 8th day of April, 1994, by and between THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, a public body corporate, (hereinafter referred to as the "Commission"), and Trafalgar House Property, Inc., a Delaware corporation, by its Trafalgar House Residential, Maryland division (hereinafter referred to as the "Developer"), with its principal offices located at 8965 Guilford Road, Suite 290, Columbia, Maryland 21046,

WITNESSES, THAT:

WHEREAS, the Commission is a public body corporate, created by the State of Maryland and authorized by Article 28, Annotated Code of Maryland, to maintain and operate a park system within the Maryland-Washington Regional and Metropolitan District; and

WHEREAS, the Commission has delegated authority over the operation of parks 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 Article 28, Annotated Code of Maryland, with the authority to approve subdivision plats for recordation in that portion of the Maryland-Washington Regional District located in Prince George's County; and

WHEREAS, Section 24-135 of the Subdivision Regulations, 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 Prince George's County Subdivision Regulations; and

WHEREAS, Developer is the current owner of 78.5172 acres, more or less, as shown on Subdivision Plats entitled "Snowden Pond at Montpelier, Plats 1-9", recorded among the Land Records of Prince George's County, Maryland in Plat Book VJ165, Plat Nos. 93 through 100, and Plat Book VJ166, Plat No. 1; and as shown on a preliminary subdivision plan entitled "Cluster Preliminary Plan 197 Investment Partnership Property", said property being the same land as conveyed by: 197 Investment Partnership, a Maryland general partnership, Harold S. Tidler, Trustee, M. Louis Offen, individually, and M. Louis Offen and Norman Freidler, Trustees, to Trafalgar House Property, Inc., a Delaware corporation, by a deed

dated October 4, 1993 and recorded among the Land Records of Prince George's County, Maryland, at Liber 9173, folio 272, comprising approximately 78.5772 acres, more or less, all being in the 14th Election District, Prince George's County, Maryland.

NOW, THEREFORE, in consideration of the acceptance by the Commission of the Developer's offer to provide private recreational facilities in lieu of mandatory dedication as provided for in Section 24-135 of the Subdivision Regulations for Prince George's County, Maryland, and for other good and valuable consideration, the parties hereto have agreed to the following provisions:

(1) Recreation Facilities. The Developer shall construct on that portion of its property being subdivided, in accordance with the approved site plan captioned "Cluster Preliminary Plan 197 Investment Partnership Property", the recreational facilities approved by the Prince George's County Planning Board, to wit:

(a) The recreation facilities to be constructed by the Developer and the location of same are as follows:

Section I

- (1) Wooden Bridge
Approximately 180 linear feet of a 61 wide pedestrian path
- Approximately 210 linear feet of wooden boardwalk

Section II

- (1) Tot Lot
- (1) Pre-Teen Area
- (1) Sitting Area
- (1) Picnic Area
- (1) Wooden Gazebo with seating
Remaining linear feet of a total of 780 linear feet of a 6' wide pedestrian path

(b) Construction of the recreation facilities listed in subparagraph (a) above, shall be completed as follows:

Section I facilities will be Completed prior to applying for Building Permit No. 46.

Section II facilities will be completed prior to applying for Building Permit No. 93

(2) Performance Bond.

(a) To assure the prompt and satisfactory construction of the facilities set forth in (1) above, the Developer, its successors and/or assigns, shall deliver to the Department of Planning, a Performance Bond for each Section, all as provided for in Paragraph (1) above, in an amount to be determined by the Department of Planning. Within two (2) weeks prior to the Developer's filing for application for building permits, said Developer shall request in writing from the Department of Planning a determination as to the amount of the required Bond. Prior to the issuance of building permits for each section, in accordance with the schedule set forth above in Paragraph (1), said Bonds shall be delivered to the MNCPPC, Development Review Division, 14741 Governor Oden Bowie Drive, Upper Marlboro, Maryland 20772.

(b) The Bond shall run to the benefit of the Commission and not be conditional. The parties hereto agree that the Commission shall use the Bond if it finds that the Developer named herein has failed to construct the recreational facilities as set forth in Paragraph (1) above 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 set forth in (1) above shall be binding on all parties. At such time as the Commission deems the recreational facilities for each section completed and satisfactory, it shall return the Bond for that section to the Developer.

(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 are completed and a signed Recreation Facility Certification form is provided, the Performance Bond, or any remainder thereof, shall be returned to the Developer.

(e) This Agreement and Performance Bonds shall insure the completion of the facilities set forth in paragraph 1(a) above. With each phase of construction, as evidenced by the application for building permits and as determined by the Commission, the Developer shall provide a proportionate share of the amenities as set forth in paragraph 1(b) above.

(f) 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 required pursuant to paragraph 2(a) above and increase or decrease same.

(g) 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 Developer will not discriminate against any employee or applicant for employment because of age, sex, race, creed, color, national origin or physical handicap. The Developer will take affirmative action to insure that applicants are employed and the employees are treated during employment, without regard to age, sex, race, creed, color, national origin or physical handicap.

(4) Indemnification. The Developer shall indemnify and save harmless the Commission from and against all actions, liability, claims, suits, damages, cost or expenses 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 shall run with the land and be binding on the successors and/or assigns of the Developer. 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 among the Land Records of Prince George's County. All recording fees to be paid by the Developer. The original recorded Agreement is to be returned to the Department of Planning. The failure of the Developer to record this Agreement shall preclude the issuance of any building permits that may be applied for in the above named subdivision.

(7) Modification. Any substantial modification of 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 be severed from this Agreement and 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 not exceed a period of twenty (20) years from the date of execution. In the event that the recreation facilities specified in Paragraph (1) above are not constructed as required, the Commission may require the Developer to enter into a new Recreation Facilities Agreement and post an additional or new performance bond.

(13) Recitals. The Recitals are hereby incorporated in this Agreement.

IN WITNESS WHEREOF, the parties hereto have affixed their respective hands and seals and caused this Agreement to be properly executed as of the day and year first above written.

ATTEST:

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

A. Edward Navarra BY: Leroy J. Hedgepeth (SEAL)
A. Edward Navarra Leroy J. Hedgepeth
Secretary-Treasurer Executive Director

SEAL/WITNESS:

DEVELOPER:

TRAFALGAR HOUSE PROPERTY, INC.,
A DELAWARE CORPORATION
BY ITS TRAFALGAR HOUSE RESIDENTIAL,
MARYLAND DIVISION

Robert M. Francis

BY: [Signature] (SEAL)

APPROVED AS TO LEGAL SUFFICIENCY
[Signature]
M-N-CPPC LEG & COUNSEL
Date 2/25/94

STATE OF MARYLAND, COUNTY OF Montgomery, to wit:

I HEREBY CERTIFY That before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Leroy J. Hedgepeth, Executive Director for the Maryland-National Capital Park and Planning Commission, and Acknowledged that he executed the above Agreement for the reasons and purposes stated therein.

WITNESS my hand and official seal this 8 day of April, 1994.

[Handwritten Signature]

Notary Public

My Commission Expires: 1-1-96

STATE OF MARYLAND, COUNTY OF Howard,

On this 17th day of February, 1994, before me, the Undersigned officer, personally appeared Thomas H. Lawrence, known to me, (or satisfactorily proven) to be the person whose name is subscribed as attorney-in-fact for Trafalgar House Property, Inc., and acknowledged that he executed the same as the act of his principal for the purposes therein contained and certified that this conveyance is not part of a transaction in which there is a sale, lease, exchange, or other transfer of all or substantially all of the property and assets of the Grantor Corporation.

In witness whereof I hereunto set my hand and official seal.

[Handwritten Signature]


Notary Public

My Commission Expires: 2/1/98



ATTORNEY'S CERTIFICATION

This instrument has been prepared by or under the supervision of the undersigned Maryland attorney or by one of the parties named in this instrument.



RUSSELL D. KARPOOK

POST RECORDING RETURN TO:

~~Russell D. Karpook, Esquire
FRANCOIANO & KARPOOK, P.A.
20 S. Charles Street, 8th Floor
Baltimore, Maryland 21201~~

MNCPPC
B. Nordan
14741 Governor Oden Bowie Dr.
Upper Marlboro, MD 20772

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