

DEVELOPMENT AGREEMENT

BETWEEN

WEST FALLS
COMMUNITY DEVELOPMENT AUTHORITY

AND

FCGP DEVELOPMENT LLC

Dated as of _____ 1, 2022

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Exhibit A-1 – Description of CDA Eligible Facilities

Exhibit A-2 – Description of Series 2022 Bond Facilities

Exhibit B – Form of Requisition

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT, dated as of ____ 1, 2022 (this “Development Agreement”), is by and between WEST FALLS COMMUNITY DEVELOPMENT AUTHORITY, a political subdivision of the Commonwealth of Virginia (the “Authority”), and FCGP DEVELOPMENT LLC, a Delaware limited liability company (the “Developer”).

The Authority was created pursuant to an ordinance enacted August 9, 2021, by the City Council (the “City Council”) of the City of Falls Church, Virginia (the “City”), for the purpose of financing all or a portion of the cost of the acquisition, design, construction, development and equipping of public improvements in conjunction with the construction and development of a mixed-use project, including commercial, retail and residential components (the “West Falls Development”), to be located in the City, which includes the public improvements as described on Exhibit A-1 attached hereto (the “CDA Eligible Facilities”).

The Authority proposes to issue its Series 2022 Bonds (as defined herein), to finance all or a portion of the costs of completion of certain CDA Eligible Facilities, as described in Exhibit A-2 (the “Series 2022 Bond Facilities”). In this Development Agreement, the Authority and the Developer desire to set forth certain terms and conditions with respect to the completion of the Series 2022 Bond Facilities.

In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Developer agree as follows.

ARTICLE I DEFINITIONS

The following terms shall have the meanings ascribed to them in this Article I for purposes of this Development Agreement. Unless otherwise indicated, any other capitalized terms, when used herein shall have the meanings ascribed to them in the Indenture, as hereinafter defined.

“Act” means Virginia Code Sections 15.2-5152 *et seq.*

“Actual Cost” means the substantiated costs with respect to the CDA Eligible Facilities which costs include:

(i) costs for acquisition, construction, demolition, reconstruction, renovation, replacement, repair, extension, equipping and enlargement of all roads, public utilities, improvements, structures, rights, rights-of-way, franchises, easements, licenses, interests and other real or personal property owned or to be owned by or on behalf of the Authority or other Public Entity;

(ii) deposits, charges and fees payable to bonding companies or sureties with respect to payment or performance bonds required by governmental authorities;

- (iii) costs for architectural, engineering, financial, legal and other consultant services;
- (iv) costs for plans, specifications, construction drawings, studies and surveys;
- (v) administrative expenses of the Authority or the City; and
- (vi) other expenses as may be necessary or incident to the construction, acquisition, equipping and financing of the CDA Eligible Facilities.

“Affiliate” means any corporation, limited liability company, partnership, other form of business organization, entity, or, as applicable, natural person, which, whether by ownership or any formal or informal arrangement, controls or is controlled by, the Developer.

“Authority’s Administrator” means the individual or firm engaged by the Authority to serve as its administrator, initially MuniCap, Inc., a Maryland corporation.

“Authorized Authority Representative” means any person or persons designated to act on behalf of the Authority by a certificate signed by the Chairman or Vice Chairman of the Authority and filed with the Trustee.

“Available Money” means money in the Project Fund, but not including any money in the Capitalized Interest Account (as defined in the Indenture).

“CDA Eligible Facilities” means the public infrastructure described on Exhibit A-1 to this Agreement.

“City” means the City of Falls Church, Virginia.

“City Assessor” means the Real Estate Assessment Office of the City of Falls Church.

“City Council” means the City Council of the City of Falls Church, Virginia.

“Closing” means the date on which the Series 2022 Bonds are issued and delivered to the initial purchasers thereof.

“District” means the West Falls District created by the Ordinance.

“Developer” means FCGP Development LLC, a Delaware limited liability company, and its successors and assigns.

“EDA” means the City of Falls Church Economic Development Authority.

“Engineer” means _____ or any successor consultant under contract with the Authority or the Developer to provide consulting or inspection services regarding the Series 2022 Bond Facilities or an authorized designee acting as such under this Development Agreement.

“Indenture” means the Trust Indenture, dated as of _____ 1, 2022, between the Authority and the Trustee, pursuant to which the Bonds will be issued.

“MOU” means the Memorandum of Understanding, dated as of _____, 2022, among the Authority, the City, the Developer and other Property Owners (as defined in the MOU).

“Ordinance” means the ordinance adopted by the City Council on August 9, 2021, creating the District and the Authority.

“Plans” means the plans and specifications as incorporated into the construction contracts for the Series 2022 Bond Facilities and, to the extent required prior to construction, approved pursuant to the Falls Church City Code and applicable standards and directives of the City or the applicable laws, standards and directives of any other public entity that will own, operate or maintain the Series 2022 Bond Facilities when completed.

“Project Fund” means the project fund created under Section 7.1(a) of the Indenture.

“Public Entity” means the Authority, the City, the EDA or other governmental entity, political subdivision or body corporate and politic that will take or retain title to, or other interest in, a Series 2022 Bond Facility by dedication, easement, grant, lease or other transfer of ownership or control or maintain such Series 2022 Bond Facility.

“Rate and Method” means the Rate and Method of Apportionment of Special Assessments attached to each Declaration of Notice of Special Assessment recorded with respect to each parcel of land in the District.

“Requisition” means a document, substantially in the form of Exhibit B hereto, to be used by the Developer in requesting payment, together with any supporting documentation required thereunder or hereunder.

“Series 2022 Bond Facilities” means the Facilities expected to be financed with proceeds of the Series 2022 Bonds, as shown on Exhibit A-2 and, to the extent of any available proceeds of the Series 2022 Bonds, any other CDA Eligible Facilities.

“Series 2022 Bonds” means the Revenue Bonds Series 2022A [and Taxable Series A-T] in the aggregate principal amount of \$_____ issued by the Authority pursuant to the Indenture, and any other bonds issued under the Indenture to refund such bonds.

“Special Assessments” means the special assessments levied on real property within the District by ordinance adopted by the City Council on _____, 2022.

“Trustee” means U.S. Bank Trust Company, National Association, as trustee under the Indenture, or any successor in trust under the Indenture.

**ARTICLE II
REPRESENTATIONS OF THE AUTHORITY**

Section 2.01 Authority. The Authority is a political subdivision created pursuant to the Act established by the Ordinance in accordance with the Act.

Section 2.02 Facilities. The Authority has determined that the CDA Eligible Facilities are necessary or desirable to meet the increased demands placed upon the City as a result of development within the District. The Authority has the authority under the Act to finance, acquire, construct, equip and maintain the CDA Eligible Facilities and to issue the Series 2022 Bonds therefor. The Authority agrees that all CDA Eligible Facilities financed with proceeds of the Series 2022 Bonds will be owned by the City, the EDA or the Authority or conveyed by or on behalf of the Authority to another Public Entity.

Section 2.03 Construction. The Authority hereby determines that it is in the best interest of the Authority to provide for the construction and completion of the Series 2022 Bond Facilities by the Developer and financed as a whole or in part with proceeds of the Series 2022 Bonds pursuant to this Development Agreement.

**ARTICLE III
CONSTRUCTION OF THE FACILITIES**

Section 3.01 Plans. To the extent that it has not already done so, the Developer shall cause Plans to be prepared for the Series 2022 Bond Facilities. The Developer shall obtain written or other evidence of approval of such Plans from all governmental authorities in accordance with applicable ordinances and regulations of such governmental authorities. Prior to the payment from proceeds of the Series 2022 Bonds for any CDA Eligible Facilities or any portion thereof, the Developer shall provide to the Engineer copies of all approved Plans and current condition or as built drawings for any portion of such Facilities, to the extent deemed reasonably necessary by the Engineer. If requested by the Authority, written assignment of the Plans (including any warranties under any contracts with respect to the design, development or construction of any CDA Eligible Facilities to be financed with proceeds of the Series 2022 Bonds) for any portion of such Facilities shall be provided to the Authority or such other Public Entity as may be designated by the Authority prior to its payment for all or a portion of such Facilities. Prior to the initial payment to Developer from the Series 2022 Bond proceeds, the Developer shall provide the Authority with such assurances as the Authority may reasonably request in writing from all third-party contractors and consultants providing construction or other services in connection with the Series 2022 Bond Facilities.

Section 3.02 Duty of Developer to Construct. All Series 2022 Bond Facilities shall be constructed by or at the direction of the Developer in accordance with the Plans and otherwise in accordance with this Development Agreement. The Developer shall perform its obligations hereunder and shall conduct all operations with respect to the construction of the Series 2022 Bond Facilities in a good, workmanlike and commercially reasonable manner in compliance with all applicable legal requirements with the standard of diligence and care normally employed by duly qualified persons utilizing their best efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The

Developer shall employ adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of the Series 2022 Bond Facilities.

The Developer shall (i) construct all Series 2022 Bond Facilities financed with proceeds of the Series 2022 Bonds and (ii) use its own funds to pay all costs thereof in excess of the Available Money. The Developer shall not be relieved of its obligation to construct the Series 2022 Bond Facilities in accordance with the terms hereof if there is insufficient Available Money, and, in any event, this Development Agreement shall not affect any obligation of the Developer under any other agreement to which the Developer is a party or any governmental approval to which the Developer is subject, including without limitation proffer obligations, with respect to the public improvements required in connection with the development of the land within the District.

The Developer will complete the Series 2022 Bond Facilities, or such other CDA Eligible Facilities as may be approved by an Authorized Authority Representative, with proceeds of the Series 2022 Bonds, or such money as may be provided by the Developer, in accordance with the requirements of this Development Agreement.

Section 3.03 Independent Contractor. In performing this Development Agreement, the Developer is an independent contractor and not the agent or employee of the Authority. The Authority shall not be responsible for making any payments to any contractor, subcontractor, agent, consultant, employee or supplier of the Developer including, but not limited to, with respect to any contracts approved by the Authority, other than from Available Money and the Developer shall indemnify, defend and hold harmless the Authority and the City and their respective employees, officers and agents with respect to any claim from any such party.

Section 3.04 Completion and Sufficiency of Funds. The Developer shall build or cause to be built the Series 2022 Bond Facilities in accordance with the Plans. The Authorized Authority Representative shall not approve any Requisition with respect to any Series 2022 Bond Facility (or portion thereof) unless it is reasonably satisfied that after such disbursement there will be sufficient funds available to pay for costs associated with causing the Series 2022 Bond Facilities to be constructed and completed from (i) undisbursed Available Money and (ii) other funds available to the Developer and, if required by the City or the Authority, placed in an escrow account (the “Escrowed Developer Funds”) reasonably acceptable to the Developer, the City and the Authority for the purpose of completing the Series 2022 Bond Facilities as determined by the Authorized Authority Representative in such officer’s reasonable discretion.

Section 3.05 Payment and Performance Bonds to Governmental Authorities. The Developer shall post all payment and performance bonds for the Series 2022 Bond Facilities as may be required by any applicable governmental authority including the City and the Commonwealth of Virginia. The release of these payment and performance bonds shall be controlled by the payment and performance bond documentation between the Developer and such governmental authority. Notices of any posting of bonds and requests for reductions or releases of such bonds shall be provided to the Engineer and the Authority simultaneously with the submission of such bond or request for reduction or release to such governmental authority. For Series 2022 Bond Facilities to be conveyed to a Public Entity other than the Authority or the

City, such payment and performance bonds shall be in form and substance as shall be required by such Public Entity.

Section 3.06 Permits. The Developer shall obtain, as needed, all required City or other governmental authority permits for the Series 2022 Bond Facilities.

Section 3.07 Change Orders/Allocation of Contingency Funds. The Developer shall be responsible for entering into all contract amendments and any supplemental agreements (herein referred to as “change orders”) required for the construction of the Series 2022 Bond Facilities in a manner consistent with this Development Agreement. Copies of all such change orders shall be provided to the Engineer and the Authority within five (5) Business Days of their execution. Any change orders entered into prior to the date hereof shall be provided to the Engineer simultaneously with the execution hereof. The Developer shall not enter into any change order that materially reduces the scope of the Series 2022 Bond Facilities to be constructed hereunder, unless approved in writing by the Authorized Authority Representative.

The Developer may approve and implement any change orders; provided, however, that amounts shall not be disbursed from the Available Money to pay for any change order which increases the total cost of the Series 2022 Bond Facilities to an amount that exceeds the amount of Available Money and such other funds as are available to the Developer, unless approved by the Authorized Authority Representative upon receipt of evidence reasonably satisfactory to such officer that the Developer has sufficient money to pay amounts necessary, in addition to Available Money to complete the Series 2022 Bond Facilities and, if requested by the City or the Authority, such money is deposited in escrow.

Section 3.08 Defective or Nonconforming Work. If the workmanship or materials furnished for any Series 2022 Bond Facility are found by the Engineer or by a Public Entity to be defective or not in accordance with the applicable Plans or applicable laws and regulations and standards of the entities that will own, operate or maintain such Facility, the Developer shall correct such defect or nonconformance at its sole cost and expense.

Section 3.09 Maintenance, Insurance and Warranties. Until any CDA Eligible Facilities financed with proceeds of the Series 2022 Bonds have been constructed and completed, the Developer shall maintain such Facilities or the applicable portion thereof in good and safe condition (including providing snow removal and removal of excessive dust or mud from construction activities). The Developer shall maintain adequate insurance on the CDA Eligible Facilities or the applicable portion thereof while the Developer is responsible for the maintenance of such portion of such Facilities. Upon completion of any CDA Eligible Facilities, the Developer shall assign to the applicable Public Entity all of the Developer’s rights in any applicable legally required warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to such Facilities. [NTD-cross reference to Declaration of Covenants, Conditions, Easements and Restrictions for West Falls.]

Section 3.10 No Obligations if Series 2022 Bonds are not Issued. If the Series 2022 Bonds are not issued, the Developer shall not be required to perform its obligations hereunder.

**ARTICLE IV
RESERVED**

Section 4.01 Reserved.

**ARTICLE V
PAYMENT FOR CONSTRUCTION AND COMPLETION OF FACILITIES**

Section 5.01 Payment for Facilities.

(a) Requisitions for Payment. Subject to the satisfaction of the requirements relating to Requisitions, the Authority shall pay to the Developer from proceeds of the Series 2022 Bonds constituting Available Money, the cost of construction and completion of the Series 2022 Bond Facilities. Such payments shall be made not more frequently than monthly upon submission of a Requisition, in the form attached as Exhibit B, to the Authority and the Authority's Administrator, including a certification by the Engineer in the form attached to the Requisition. The Authority will submit promptly all such Requisitions to the Trustee in accordance with the Indenture and the following paragraphs and payments under this Development Agreement shall be subject to the provisions of the Indenture.

(b) Submission to Engineer. No payment from the Project Fund under the Indenture shall be made for the Actual Cost of a Facility attributable to costs of construction until the work with respect to such Actual Cost has been inspected and found to be completed or proportionately completed in accordance with the approved Plans by the Engineer. The Engineer shall make or cause to be made regular ongoing site inspections of the Series 2022 Bond Facilities. Upon receipt of a Requisition (and all accompanying documentation) from the Developer, the Engineer shall conduct a review in order to (i) verify that the work with respect to the Series 2022 Bond Facility identified therein for which payment is requested was completed or proportionately completed in accordance with the Plans, with the terms of this Development Agreement and with all applicable governmental permits and (ii) verify and approve the Actual Costs of such work specified in such Requisition (collectively, the "Compliance Requirements"). The approval of the Requisition by the Engineer shall constitute a representation by the Engineer to the City and the Trustee that the Compliance Requirements have been satisfied with respect to the Series 2022 Bond Facilities identified therein. The Developer agrees to cooperate with the Engineer in conducting each such review and to provide to the Engineer such additional information and documentation as is reasonably necessary for the Engineer to conclude each such review.

Within 10 Business Days after receipt of any Requisition from the Developer, the Engineer shall (i) approve and execute the Requisition and forward the same to the Administrator in accordance with Section 5.01(c) hereof or (ii) in the event the Engineer disapproves the Requisition, give written notification to the Developer of the Engineer's disapproval, in whole or in part, as applicable, of such Requisition, specifying the reasons for such disapproval and the additional requirements to be satisfied for approval of such Requisition. If a Requisition seeking reimbursement is approved only in part, the Engineer shall specify the extent to which the Requisition is approved and shall deliver such partially approved Requisition to the Administrator in accordance with Section 5.01(c) hereof, and any such work shall be processed

for partial payment notwithstanding such partial denial. Approval or rejection of a Requisition by the Engineer shall not affect the Developer's obligation to construct the Series 2022 Bond Facilities in accordance with approved plans and applicable codes, rules and regulations.

(c) Submission to Administrator. Within five Business Days after receipt from the Engineer of any Requisition, the Administrator shall (i) approve such Requisition, and all accompanying documentation, as to compliance with form requirements of this Development Agreement and the Indenture, and deliver such approved Requisition to the Authority or (ii) in the event the Administrator disapproves the Requisition, give written notification to the Developer of its disapproval of such Requisition, specifying the reasons for such disapproval and the additional requirements to be satisfied for approval of such Requisition. The Developer agrees to cooperate with the Administrator during such approval process and to provide to the Administrator such additional information and documentation as is reasonably necessary for the Administrator to grant such approval.

(d) Submission to Authority. Subject to Sections 5.01(f) and 5.02 hereof, the Administrator shall deliver the approved or partially approved Requisition to the Authority. Within ten (10) Business Days after receipt of any Requisition from the Administrator and subject to Sections 5.01(f) and 5.02 hereof, the Authority shall (i) approve and execute the Requisition and forward the same to the Trustee in accordance with Section 5.01(a) hereof or (ii) in the event the Authority disapproves the Requisition, give written notification to the Developer of the Authority's disapproval, in whole or in part, as applicable, of such Requisition, specifying the reasons for such disapproval and the additional requirements to be satisfied for approval of such Requisition.

(e) Joint or Third-Party Payments. Except as provided below, Requisitions shall be deemed to request payment jointly to the Developer, contractor or supplier of materials, as their interests may appear. Requisitions may request joint payment or payment solely to a third party, if the Developer so requests the same in writing or if the Authorized Authority Representative or Engineer otherwise determines such joint or third-party payment is appropriate to assure payment to such contractor. Payment may appropriately be made solely to, or for the account of, the Developer if evidence of payment of an Actual Cost by the Developer and of the release of the related lien, if applicable, is presented.

(f) Withholding Payments. The Authority or the Administrator or the Engineer on behalf of the Authority shall be entitled to cause the Trustee to withhold any payment hereunder if the Developer or any Affiliate is delinquent in the payment of ad valorem real property taxes, Special Assessments or other taxes or special assessments levied in the District. In the event of any such delinquency, the Authority may cause the Trustee to make payments hereunder directly to contractors hired by the Developer or to any assignee of the Developer's interests in this Development Agreement (and not to the Developer or any Affiliate of the Developer), until such time as the Developer or any Affiliate of the Developer provides the Authority and Engineer with evidence that all such delinquent taxes and assessments have been paid.

The Authorized Authority Representative and the Administrator or the Engineer on behalf of the Authority shall be entitled to cause the Trustee to withhold any payment hereunder, if at the time of any Requisition there are any liens for labor and material from a contractor with

respect to a Series 2022 Bond Facility, the provision for payment of which has been previously approved and for which no lien releases have been provided by the Developer.

Nothing in this Development Agreement shall be deemed to prohibit the Developer from contesting in good faith the validity or amount of any mechanic's or materialman's lien or judgment and shall not limit the remedies available to the Developer with respect thereto so long as such delay in performance shall not subject the Series 2022 Bond Facilities to foreclosure, forfeiture, or sale. In the event that any such lien or judgment are contested, the Developer shall be required to post or cause the delivery of a bond in the amount of such lien.

Section 5.02 Limitations on Payment. Notwithstanding any contrary provisions of this Development Agreement, the Authority shall not be liable for any payments to the Developer except from Available Money in the Project Fund established under the Indenture. The Developer shall pay any costs in excess of Available Money in the Project Fund necessary to complete the Series 2022 Bond Facilities, as shown on the Engineer's Certificate attached to the Requisition. The Authority makes no warranty, express or implied, that the proceeds of the Series 2022 Bonds constituting Available Money will be sufficient to pay the costs of the Series 2022 Bond Facilities. The Authority shall have no responsibility to the Developer with respect to the investment of funds under the Indenture, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment.

The Developer agrees that any shortfall in Available Money shall in no way diminish the obligation of the Developer to construct and complete the Series 2022 Bond Facilities financed with proceeds of the Series 2022 Bonds.

Section 5.03 Inspection. No payment hereunder shall be made by the Authority to the Developer for any portion of construction of a Series 2022 Bond Facility until such portion of such Facility has been inspected and found to be completed in accordance with the approved Plans by the Engineer (or with respect to Completed Facilities certified as complete by the Engineer) and the Authorized Authority Representative and the Authority Administrator have each approved the Requisition. In addition to such inspection by the Engineer, the Developer shall be responsible for obtaining any inspections required by the Public Entity acquiring such Facility or third-party inspectors and providing written evidence thereof to the Engineer. The Engineer's fees shall be paid from Available Money. To the extent Available Money is not sufficient to pay inspection, review and other similar fees applicable to the construction of the Series 2022 Bond Facilities (including the Engineer's fees), the Developer shall pay all such fees.

Section 5.04 Final Payment of Series 2022 Bond Proceeds. Upon completion of the Series 2022 Bond Facilities, to the extent the Developer has incurred unreimbursed Actual Costs with respect to the Series 2022 Bond Facilities, the Authority, upon receipt of an appropriate Requisition from the Developer, will submit promptly a Requisition to the Trustee for any amounts remaining in the Project Fund to be paid to the Developer.

ARTICLE VI
REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE DEVELOPER

Section 6.01 Representations, Covenants and Warranties of the Developer. The Developer represents and warrants or covenants for the benefit of the Authority as follows:

(a) Organization. The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware authorized to do business in the Commonwealth of Virginia, is in compliance with the applicable laws of such jurisdictions, and has the power and authority to own its properties and assets and to carry on its business in the Commonwealth of Virginia as now being conducted and as hereby contemplated.

(b) Authority. The Developer has the power and authority to enter into this Development Agreement, and the Developer has taken all action necessary to cause this Development Agreement to be executed and delivered, and this Development Agreement has been duly and validly executed and delivered by the Developer.

(c) Binding Obligation. This Development Agreement is a legal, valid and binding obligation of the Developer enforceable against the Developer in accordance with its terms, subject to bankruptcy and equitable principles.

(d) Compliance with Laws. The Developer shall not commit, suffer or permit any act to be done with respect to the Series 2022 Bond Facilities in violation of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the Series 2022 Bond Facilities and shall promptly correct any such non-compliance.

(e) Requests for Payment. The Developer represents and warrants that (i) it will not request payment from the Authority for the acquisition of any improvements that are not part of the CDA Eligible Facilities, and (ii) it will diligently follow all procedures set forth in this Development Agreement with respect to the Requisitions.

(f) Financial Records. The Developer covenants to maintain proper books of record and account for the construction of the Series 2022 Bond Facilities and all costs related thereto. Such accounting books shall be maintained in accordance with accepted accounting principles, and shall be available for inspection by the Authority or its agent at any reasonable time during regular business hours on reasonable notice.

(g) Plans. The Developer represents that it has obtained or will obtain, as needed, approval of the Plans for Series 2022 Bond Facilities from all appropriate departments of the City and from any other Public Entity or public utility from which such approval must be obtained. The Developer further agrees that the Series 2022 Bond Facilities have been or will be constructed in full compliance with such approved plans and specifications and any supplemental agreements (change orders) consistent with this Development Agreement.

(h) Land Sales or Leases. The Developer agrees that in the event that it or any Affiliate sells or leases any land leased or owned by it within the boundaries of the District, it will (i) notify the purchaser or lessee, as applicable, in writing, of the existence of the District

and the lien for Special Assessments in connection therewith, and otherwise comply with any applicable provisions of the Act, and (ii) notify the Authority and the Authority's Administrator in writing of such sale or lease, indicating the City Assessor's tax map parcel number of such property and the purchaser or lessee of such property.

(i) Additional Information. The Developer agrees to perform its obligations under the Continuing Disclosure Agreement and to cooperate with all reasonable written requests for nonproprietary information by the Trustee, the Authority, the owners from time to time of the Series 2022 Bonds, or the Authority's Administrator related to the status of construction of improvements within the District, the anticipated completion dates for future improvements and any other matters reasonably deemed material by such parties.

(j) Ownership by Affiliates. The Developer agrees to provide to the Authority's Administrator, upon five Business Days' written request from the Authority's Administrator, a written list of (i) all land located within the District owned by or under option to the Developer, indicating the parcels of land by City Assessor's tax map parcel number, and (ii) all Affiliates that own or control the ownership of land located within the District, or that have options on land within the District, indicating the parcels of land by City Assessor's tax map parcel number of all such land so owned or optioned.

(k) Special Assessments. The Developer agrees to the Special Assessments and represents that the apportionment of such Special Assessment to property within the District is supported by a rational basis and further covenants that it will not challenge the methodology related to the imposition of such Special Assessment. The Developer acknowledges that the City may commence foreclosure proceedings for the collection of delinquent Special Assessments and, if applicable, Special Taxes on parcels within the District and that the City shall have no obligation to pay any such Special Assessments or, if applicable, Special Taxes, which shall instead be paid out of the proceeds of such foreclosure.

Section 6.02 Enforcement of Remedies. The Developer agrees that notwithstanding anything to the contrary and notwithstanding any termination of this Agreement, the Authority shall have any and all legal or equitable remedies available to it for a breach by the Developer under this Development Agreement.

ARTICLE VII TERMINATION

Section 7.01 Mutual Consent. This Development Agreement may be terminated by the mutual, written consent of the Authority and of the Developer.

Section 7.02 Authority's Election for Cause. The following events shall constitute grounds for the Authority, at its option, to terminate this Development Agreement, without the consent of the Developer:

(a) The Developer or any Affiliate shall voluntarily file for reorganization or other relief under any federal or state bankruptcy or insolvency law.

(b) The Developer or any Affiliate shall have any involuntary bankruptcy or insolvency action filed against it, or shall permit a trustee in bankruptcy or insolvency or receiver to take possession of the assets of the Developer or any Affiliate or shall permit an attachment or levy of execution to be made against the property it owns within the District unless, in any of such cases, such circumstance shall have been terminated or released within 90 days thereafter.

(c) The Developer shall abandon construction of the Series 2022 Bond Facilities for a period of more than 120 days or fail to diligently and continuously pursue the construction and completion of the Series 2022 Bond Facilities in a commercially reasonable manner in accordance with this Development Agreement.

(d) The Developer shall breach any material covenant or default in the performance of any material obligation hereunder.

(e) The Developer shall transfer any of its rights or obligations under this Development Agreement except as permitted in Section 8.05 hereof.

(f) The Developer shall have made any material misrepresentation or omission in any written materials furnished in connection with any offering document or bond purchase contract used in connection with the sale of the Series 2022 Bonds.

(g) The Developer or any Affiliate shall at any time challenge the validity of the District or any of the Series 2022 Bonds, or the levy of Special Assessments within the District, other than on the grounds that such levy was not made in accordance with the terms of the Rate and Method.

If any such event occurs (other than an event under Section 7.02(a) or (b) above for which no notice or cure period is applicable), the Authority shall give written notice of its knowledge thereof to the Developer, and the Developer agrees to meet and confer with the Engineer and the Authority and other appropriate persons as to options available to assure timely completion of the Series 2022 Bond Facilities. Such options may include, but not be limited to, the termination of this Development Agreement by the Authority. Other options may include, but not be limited to, the assignment of certain rights or delegation of certain duties to any commercial bank lender, mortgagee or trust deed beneficiary of the Developer. If the Authority elects to terminate this Development Agreement (other than pursuant to an event under Section 7.02(a) or (b) above), the Authority shall first notify the Developer (and any bank lender, mortgagee or trust deed beneficiary specified in writing by the Developer and to the Authority to receive such notice) of the grounds for such termination and allow the Developer (and such bank lender, mortgagee or trust deed beneficiary) a minimum of 30 days to eliminate or mitigate to the satisfaction of the Authority the grounds for such termination. Such period may be extended up to 120 days so long as, in the discretion of the Authority, the Developer (or such bank lender, mortgagee or trust deed beneficiary) is diligently pursuing such elimination or mitigation. Such period may be further extended, at the sole discretion of the Authority, if the Developer, to the satisfaction of the Authority, continues to proceed with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof), as determined solely by the Authority, the Developer (or such bank lender, mortgagee or trust deed beneficiary) has not eliminated or completely mitigated such grounds to the satisfaction of the Authority, the

Authority may then terminate this Development Agreement. In the event of the termination of this Development Agreement, the Developer (or such bank lender, mortgagee or trust deed beneficiary) is entitled to reimbursement for work accepted by the Authority related to the CDA Eligible Facilities undertaken prior to the termination date of this Development Agreement, but such reimbursement shall be solely from any Available Money in the Project Fund according to the terms and conditions set forth in this Development Agreement. No such termination shall prevent the Authority from pursuing any claim it may have against the Developer hereunder at law or in equity.

Notwithstanding the foregoing, so long as any event listed in any of clauses (a) through (g) above has occurred, notice of which (to the extent required) has been given by the Authority to the Developer, and such event has not been cured or addressed (to the satisfaction of the Authority) by the Developer, the Authority may in its discretion cease making payments for the Series 2022 Bond Facilities under Article V hereof.

In the event that this Development Agreement is terminated by the Authority for cause, the Authority or its designee (which, without limitation, may include any commercial bank lender, mortgagee or trust deed beneficiary of the Developer) may either execute contracts for or perform any remaining work related to the Series 2022 Bond Facilities and use all or any portion of the funds then in the Project Fund or other amounts subsequently transferred to the Project Fund, and the Developer shall have no claim or right to any further payments for such Facilities hereunder, except as otherwise may be provided upon the mutual written consent of the Authority. The Developer agrees, to the extent it has not previously done so, to assign all the Plans (including contracts with contractors and consultants) to the Authority, or its designee.

Section 7.03 Force Majeure. Whenever performance is required of a party hereunder, that party shall use all due diligence and take all necessary measures in good faith to perform, but if completion of performance is delayed by reasons of floods, fires, earthquakes, severe weather conditions, or other acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, moratoria, epidemic, pandemic, sabotage, restraint by court or public authority, damage to work in progress by casualty or by any other cause beyond the reasonable control of the party (financial inability excepted), then the specified time for performance shall be extended by the amount of the delay actually so caused.

ARTICLE VIII MISCELLANEOUS

Section 8.01 Limited Liability of Authority. The Developer agrees that any and all obligations of the Authority arising out of or related to this Development Agreement are special obligations of the Authority, and the Authority's obligations to make any payments hereunder are restricted entirely to the Available Money, if any, in the Project Fund and will not be made from any other source. No member of the Authority shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

Section 8.02 Audit. The Engineer, the Authority's Administrator and the Authority shall have the right, during normal business hours and upon the giving of three Business Days'

prior written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer for any of the CDA Eligible Facilities and any bids taken or received for the construction thereof or materials therefor.

Section 8.03 Notices. Any notice, payment or instrument required or permitted by this Development Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within 24 hours after such transmission) or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

Authority: West Falls Community Development Authority
300 Park Avenue
Falls Church, Virginia 22046
Attention: Wyatt Shields, Falls Church City Manager

with a copy to: Carol McCoskrie, Esq.
Falls Church City Attorney
300 Park Avenue
Falls Church, Virginia 22046

with a copy to: MuniCap, Inc.
8965 Guilford Road, Suite 210
Columbia, Maryland 21046
Attention: Keenan Rice, President

Engineer:

Developer: FCGP Development LLC
c/o Hoffman & Associates, Inc.
760 Maine Avenue, S.W.
Washington, D.C. 20025
Attention: Shawn Seaman

with a copy to: Pillsbury Winthrop Shaw Pittman LLP
1650 Tysons Boulevard, 14th Floor
McLean Virginia 22102
Attention R.J. Davis

Trustee: U.S. Bank Trust Company, National Association, as trustee
Three James Center
1051 East Cary Street, Suite 600
Richmond, Virginia 23219
Attention Global Corporate Trust

Each party may change its address or addresses for delivery of notice by delivering written notice of such changes of address to the other party.

Section 8.04 Severability. If any part of this Development Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Development Agreement shall be given effect to the fullest extent possible.

Section 8.05 Successors and Assigns. This Development Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Development Agreement shall not be assigned by the Developer without the prior written consent of the Authority. In connection with any such consent of the Authority, the Authority may condition its consent upon the acceptability of the financial condition of the proposed assignee, upon the assignee's express assumption of all obligations of the Developer hereunder, as applicable, or upon any other reasonable factor which the Authority deems relevant in the circumstances. In any event, any such assignment shall be in writing, shall clearly identify the scope of the rights and obligations assigned and shall not be effective until approved by the Authority and shall not relieve the assignor of any of its obligations hereunder unless the Authority agrees in writing to such relief. The Authority may assign by a separate writing its rights hereunder to the Trustee and the Developer hereby consents to such assignment.

Section 8.06 Other Agreements. The obligations of the Developer hereunder shall be those of a party hereto and not as an owner of the property in the District. Nothing herein shall be construed as affecting the Developer's or Authority's rights or duties to perform their respective obligations under other agreements, use regulations or subdivision requirements relating to the development of the lands in the District. This Development Agreement shall not confer any additional rights, or waive any rights given, by either party hereto under any development or other agreement to which they are a party.

Section 8.07 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Development Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Development Agreement thereafter.

Section 8.08 Merger. This Development Agreement supersedes any other agreement, whether written or oral, that may have been made or entered into by parties relating to the matters contemplated hereby. This Development Agreement constitutes the entire agreement by and among such parties except as expressly set forth herein.

Section 8.09 Parties in Interest. Nothing in this Development Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the Authority, the EDA, the City, the Trustee and the Developer any rights, remedies or claims under or by reason of this Development Agreement or any covenants, conditions or stipulations hereof, and all covenants, conditions, promises and agreements in this Development Agreement contained by or on behalf of the Authority or the Developer shall be for the sole and exclusive benefit of the Authority, the EDA, the City, the Trustee and the Developer, except as provided in the Indenture.

Section 8.10 Amendment. This Development Agreement may be amended, from time to time in a manner consistent with the Ordinance by written amendment hereto and executed by the Authority and the Developer and consented to in writing by the Trustee.

Section 8.11 Governing Law. This Development Agreement shall be governed by the laws of the Commonwealth of Virginia without regard to conflicts of laws principles

Section 8.12 Counterparts. This Development Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

Section 8.13 Consent of Authority and Engineer. Whenever in this Agreement any matter is subject to the consent or approval of the Authority and the Engineer, such provisions shall be read to mean such matter is subject to the consent or approval of the Authority after receiving a recommendation, if any is requested by the Authority, from the Engineer.

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, the parties have executed this Development Agreement as of the day and year first above written.

AUTHORITY

WEST FALLS COMMUNITY DEVELOPMENT
AUTHORITY

By: _____
Chairman

DEVELOPER

FCGP DEVELOPMENT LLC
a Delaware limited liability company

By: HOFFMAN & ASSOCIATES, LLC,
a District of Columbia limited liability company

By: _____
Name:
Title:

ACKNOWLEDGED AND ACCEPTED:

MUNICAP, INC., a Maryland corporation,
as Administrator

By: _____
President

EXHIBIT A-1
To
Development Agreement
DESCRIPTION OF ELIGIBLE FACILITIES

EXHIBIT A-2
To
Development Agreement
DESCRIPTION OF SERIES 2022 BOND FACILITIES

EXHIBIT B
to
Development Agreement

WEST FALLS COMMUNITY DEVELOPMENT AUTHORITY

REQUISITION NO. _____

Date: _____

FCGP DEVELOPMENT LLC (the “Developer”), hereby requests payment in the total amount of \$_____ for a portion of cost of the Series 2022 Bond Facilities (in accordance with the Development Agreement (“Development Agreement”) between the West Falls Community Development Authority (the “Authority”), and the Developer) as more fully described in Attachment 1 hereto. All capitalized terms used herein shall have the meanings set forth in the Development Agreement. In connection with this Requisition, the undersigned hereby represents and warrants to the Authority as follows:

1. The undersigned is a duly authorized officer of the Developer, qualified to execute this Requisition for payment on behalf of the Developer and is knowledgeable as to the matters set forth herein.

2. To the extent that this Requisition is with respect to a Facility that has been completed in accordance with the applicable Plans, the Developer has submitted or submits herewith to the Authority (a) a final release and waiver of liens and (b) any plans and specifications for the items to be paid for as listed in Attachment 1 hereto.

3. All costs of the Series 2022 Bond Facilities for which payment is requested hereby (a) consist of work actually performed or materials, supplies or equipment actually furnished or installed in connection with the Series 2022 Bond Facilities and (b) such materials, supplies or equipment are not subject to any lien or security interest or any such lien or security interest will be released or discharged upon payment of this Requisition. The amount requested does not exceed the Actual Cost of the work performed or goods provided.

4. Supporting documentation (such as third-party invoices) is attached with respect to each cost for which payment is requested.

5. The Series 2022 Bond Facilities for which payment is requested were constructed in accordance with all applicable City or other governmental standards and in accordance with the Plans.

6. The Developer is in compliance with the terms and provisions of the Development Agreement.

7. Neither the Developer nor any affiliate of the Developer is in default in the payment of ad valorem real property taxes or Special Assessments levied in the District.

8. The Developer certifies that the disbursement being requested herein is a proper charge against Available Money, in accordance with the terms of the Development Agreement and the Indenture.

9. No portion of the amount being requested to be disbursed was set forth in any Requisition previously filed requesting a disbursement.

10. An AIA Form, completed in accordance with industry custom is attached hereto as Attachment 2 (if applicable).

11. The Developer acknowledges that the Authority shall not approve any Requisition that requires an amount from the Project Fund which would cause the sum of all amounts paid for the Series 2022 Bond Facilities to exceed the sum of all Available Money and any other money made available therefor pursuant to the Development Agreement. The Developer certifies that following disbursement of the amount requested, the amount of the undisbursed Available Money and other available Developer funds will be sufficient for the completion of the Series 2022 Bond Facilities.

12. The Developer has not received any notice of mechanics' or other liens or encumbrances on the CDA Eligible Facilities by reason of labor, materials, services or equipment supplied in connection with the CDA Eligible Facilities.

[Remainder of Page Intentionally Left Blank/Signature Page Follows]

Dated: _____

DEVELOPER

FCGP DEVELOPMENT, LLC
a Delaware limited liability company

By: HOFFMAN & ASSOCIATES, LLC,
a District of Columbia limited liability company

By: _____

Name:

Title:

APPROVAL OF ADMINISTRATOR

The undersigned hereby certifies that s/he reviewed this requisition, including all attachments and exhibits hereto, and found it to be in the appropriate form required by the Development Agreement and the Indenture (as defined in the Development Agreement). This Requisition is hereby approved by the undersigned with respect to such form requirements in satisfaction of Section 5.01(c) of the Development Agreement. The Administrator has not undertaken an independent review of the Facilities relating to this Requisition.

MUNICAP, Inc., Administrator

By: _____

Date: _____

ATTACHMENT 1
TO
REQUISITION NO. _____
WEST FALLS COMMUNITY DEVELOPMENT AUTHORITY

SCHEDULE I
PROJECT FUND REIMBURSEMENT AND THIRD PARTY PAYMENTS

(1) Total amount of disbursement pursuant to this Draw Request: \$ -

(2) Reimbursement to Developer:

<u>Item</u>	<u>Contractor/Supplier</u>	<u>Invoice #</u>	<u>Date of Payment</u>	<u>Amount</u>	<u>Payment Instructions*</u>
1.					Wire to:
2.					
3.					
4.					
5.					
6.					
	Total			\$ -	

(3) Payment Jointly to Developer AND third party payees:

<u>Item</u>	<u>Contractor/Supplier</u>	<u>Invoice #</u>	<u>Invoice Date</u>	<u>Amount</u>	<u>Payment Instructions*</u>
1.					
2.					
3.					
	Total Vendor				
	Total			\$ -	

(4) Payment to third party payees (only):

<u>Item</u>	<u>Contractor/Supplier</u>	<u>Invoice #</u>	<u>Invoice Date</u>	<u>Amount</u>	<u>Payment Instructions*</u>
1.					
2.					
3.					
	Total Vendor				
	Total			\$ -	

The items listed for reimbursement to the Developer or payment jointly or to third party payees are supported by attached copies of invoices, statements, or other proof expenditures included on the Supplement to Schedule II.

*If a check is to be mailed, include payee address. In the case of a wire transfer, include bank name, address, contact name at bank, ABA number and account number.

ATTACHMENT 2
TO
REQUISITION NO. _____
WEST FALLS COMMUNITY DEVELOPMENT AUTHORITY

[AIA Form to be included (if applicable)]

ENGINEER'S CERTIFICATE

REQUISITION NO. _____

WEST FALLS COMMUNITY DEVELOPMENT AUTHORITY

The undersigned is serving as the "Engineer" pursuant to the Development Agreement (the "Development Agreement") between the West Falls Community Development Authority (the "Authority") and FCGP Development LLC (the "Developer"). All capitalized terms used herein shall have the meanings set forth in the Development Agreement. The undersigned certifies as follows:

1. The amounts requested on the attached Requisition No. _____ represent the actual costs of labor, material, equipment or supplies furnished in connection with the acquisition and completion of the Series 2022 Bond Facilities, and such costs are reasonable.

2 To the extent the amounts requested represent payment for Series 2022 Bond Facilities that have been completed, based on inspections of the work, and reviews of the Plans and the certifications by third parties and documentation received from the Developer by the Engineer, such Facilities have been completed in accordance with the Plans and such Facilities have been completed in accordance with the requirements of the Public Entity which will be acquiring or accepting for maintenance such Facilities..

3. [The attached Requisition relates to work completed in conformity with the attached AIA form.]

Dated: _____

[_____].

By: _____

Its: _____

AUTHORITY'S CERTIFICATE
REQUISITION NO. _____

WEST FALLS COMMUNITY DEVELOPMENT AUTHORITY

The undersigned submits this Certificate in accordance with the provisions of the Trust Indenture, dated as of ____ 1, 2022 (the "Indenture"), between the West Falls Community Development Authority (the "Authority") and U.S. Bank Trust Company, National Association, as Trustee. All capitalized terms used herein shall have the meanings set forth in the Indenture. The undersigned certifies as follows:

1. The undersigned is an Authorized Authority Representative.
2. The obligation or obligations set forth in the attached Requisition No. _____ have been incurred by the Authority to pay Costs of the Facilities and are proper charges against the Project Fund.
3. The amount or amounts requested pursuant to Requisition No. _____ have not been the basis for a prior requisition which has been paid from the Project Fund.
4. The undersigned has approved the Requisition in accordance with the provisions of the Development Agreement between the Authority and FCGP Development LLC (the "Developer").
5. The Representations made herein are based on accompanying certifications of the Developer and the Engineer as defined in the Development Agreement.
6. Payment is to be made [jointly] [by check] [by wire transfer]
to: _____.

Dated: _____, 202_

WEST FALLS COMMUNITY DEVELOPMENT
AUTHORITY

By: _____

Its: _____