

1 **VOLUNTARY CONCESSIONS, COMMUNITY BENEFITS,**
2 **TERMS AND CONDITIONS**

3 West Falls Church Economic Development Project

4 Special Exception Entitlement

5 FCGP Development, LLC

6 Originally Approved: July 8, 2019

7 As Amended: Month, Day, 2021

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9 The following Voluntary Concessions, Community Benefits, Terms and Conditions
10 (“Voluntary Concessions”) are voluntarily proffered by the Owner for the benefit of the
11 community and for the City of Falls Church, Virginia. These Voluntary Concessions are proffered
12 in association with the City’s approval of the application for an amended Special Exception
13 Entitlement (“SEE”) Application filed with the City of Falls Church on (DATE), for the phased
14 development of a 9.78-acre area located on portions of RPC #51-221-007 and -008 located at 7124
15 Leesburg Pike in the City of Falls Church (also called the “Subject Property”). The Subject
16 Property is more specifically shown on the attached Exhibit A. As used herein “Owner” shall refer
17 to the applicant, any contract owner, the property owner, and any successors or assignees:

18
19 The Owner agrees that these Voluntary Proffered Concessions will apply to and be binding upon
20 all future owners, and upon all heirs, successors and assigns of any owner of any portion of the
21 Subject Property, and the Owner further agrees that it will provide a copy of these Voluntary
22 Proffered Conditions to any such future owner, heir, successor and assign prior to transferring
23 any interest in any part of the Subject Property to any such person, firm, corporation, or other
24 entity.

25
26 The owner acknowledges that through this SEE approval it has been granted additional height,
27 and certain bonuses and other benefits in return for its agreements, as set forth in these voluntary
28 concessions. The City’s approval of the SEE is based upon the final drawings and documentation
29 submitted as part of that SEE application as amended on (DATE). The Owner understands and
30 agrees that the SEE approval will govern the general location of the buildings, the maximum height
31 of buildings; the general location, type, and amount of individual uses on the site, the infrastructure
32 and transportation on the site, the public facilities and utilities, and other aspects of the future
33 approvals and development on the Subject Property, including, by way of illustration and not
34 limitation, all elements set forth in the SEE voluntary concessions. These SEE voluntary
35 concessions shall govern any SESP approved for the Subject Property. The Owner may modify
36 those items specifically bound by the SEE by obtaining City Council approval of an application
37 for a SEE amendment that may be submitted concurrently with a SESP application or
38 independently. Upon approval of an amended SEE and/or SESP, those approvals will function as
39 one approval that includes all elements of both applications and the voluntary concessions for
40 which will together govern development on the Subject Property. These elements may include but

41 will not be limited to, site design, public improvements, environmentally sustainable and energy-
42 efficient building design, affordable housing creation, and other contributions as part of the
43 development. In addition, Owner agrees that these SEE voluntary concessions have been combined
44 with some elements of the SESP approval for convenience, and therefore govern the project in its
45 entirety not just for the SEE approval.

46
47 **1. Conformance with SEE Application:**

48 The Owner agrees that these amended SEE voluntary concessions, as approved by City
49 Council on [DATE] have been developed in conjunction with a Phase 1 SESP application as
50 approved by City Council on [DATE]. For simplicity, the SEE conditions address matters
51 covered by both the SEE and SESP and shall be interpreted as governing all features
52 approved through the SESP. The Owner agrees that this SEE approval shall be governed by
53 any approved SESP Application(s) for development the Subject Property in substantial
54 conformance with the final drawings and documentation of SEE Application approved per
55 Section 48-488(B)(1) and (2) on July 8th, 2019, as amended on (Month, Date, Year).

56
57 **2. Uses:**

58 Uses shall be as shown in the “Binding Development Plan Program” chart on sheet 8 of the
59 SEE Application. The binding elements of the use table are as follows:

60 • Phase 1:

- 61 ○ A minimum of 122,500 GSF of office use.
- 62 ○ A limited or full-service hotel with a minimum of 78,400GSF and maximum
63 of 204,000GSF.
- 64 ○ A minimum of 12,740 GSF of programmable civic space that will be managed
65 by the Owner and which includes an approximately 2,940 GSF event
66 space/conference center, a 3,920 GSF outdoor space in the Commons that can
67 be used for music/entertainment, and an additional 6,860 GSF occupied by
68 performing arts/education studio or school use. The Owner agrees to create a
69 reservation system for the event space/conference center so the public can
70 make reservations through the future property management of the common
71 areas of the project, to be determined prior to the release of certificate of
72 occupancy for the Block C Condo building.
- 73 ○ Approximately 25,000-45,000 GSF for a grocery tenant (provided that, if a
74 grocer is less than 39,200 GSF, a total of at least 39,200 GSF will be leased
75 to a grocer or other retailer(s) (but not service) with an equivalent to or better
76 fiscal impact than a 39,200GSF grocery tenant (i.e., generating aggregate
77 taxes to the City equivalent to a grocery occupying 39,200 GSF with average
78 gross revenue of \$400/GSF).
- 79 ○ A minimum of 117,600GSF of retail including the grocery use and general
80 retail, but exclusive of the civic uses. In addition to the merchandising plan
81 included in their the Comprehensive Agreement, dated (XXX) (“CA”), the
82 SESP Phase 1 submission contains a generalized merchandising plan showing
83 primary and secondary retail areas. Said merchandising plan may vary from
84 the ultimate square footage of uses as the market dictates.
- 85 ○ The retail is divided into approximate areas of primary and secondary retail.
86 The primary retail is intended to denote areas of the site where the activity
87 and vibrancy will be most emphasized. These retail spaces will be expected

88 to generate visible activity and energy 7 days a week. (i.e.
89 bars/restaurants/boutique fitness, etc.) while secondary retail will still drive
90 foot traffic to the site but generally not appear as visibly active (i.e. soft goods
91 or mercantile uses.)

- 92 ▪ **Primary Retail:** Predominate frontage of the buildings are planned
93 for retail sales, food, entertainment establishments, boutique fitness or
94 similar best in class retailers, service providers,
95 brewery/winery/distillery with seating and/or food service, and
96 restaurants. The Primary Retail zones will be dynamic, high energy
97 areas intended to attract significant foot traffic. FCGP has
98 intentionally located these primary retail locations at key focal points
99 throughout the project to provide an active and engaging streetscape
100 and pedestrian environment.
- 101 ▪ **Secondary Retail:** Planned for any type of retail use as permitted by
102 zoning, unless prohibited by the SEE/SESP Voluntary Concessions.
103 These uses may include fitness, spa/medspa, hair salon, medical (e.g.
104 physical therapy, primary care services), maker workshops.

- 105 ○ A maximum of 561,000 GSF of residential (exclusive of senior housing), of
106 which the maximum non-micro multifamily apartment use is 280,500GSF
107 (with an average size for all of the residential units in the building of no more
108 than 900 net rentable square feet) and the maximum condominium use is
109 280,500GSF.
- 110 ○ A maximum of 102,000GSF of the condominium use described above can be
111 converted to micro-apartment rental units with an average size of no more
112 than 675 net rentable square feet for one-bedroom units (with no dens
113 included) and an average size of no more than 500 net rentable square feet for
114 studio apartments.
- 115 ○ Owner agrees that no Certificate of Occupancy allowing residency in the
116 Building A residential apartment building will be released until submission
117 of complete building permit application for office and hotel. (Complete
118 building permit application will be defined as meeting the requirements
119 outlined in City of Falls Church Plan Submission Requirements,
120 Informational Brochure #3 of 3).
- 121 ○ A maximum of 265,200 GSF of senior housing.

- 122 • Phase 2:
 - 123 ○ A minimum of 147,000 GSF office building.
 - 124 ○ A maximum of 157,080GSF of condominium use.
 - 125 ○ A minimum of 6,272 GSF of retail use.

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127 *Floor area* shall be interpreted as being the gross floor area. Gross floor area shall be the
128 sum of the gross horizontal area of the floor or several floors of a building measured from
129 the exterior faces of all exterior walls or from the centerlines of party walls if the portions of
130 a building are to be computed separately including basements and habitable penthouses.

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3. Commercial Space:

The Owner agrees that the following commercial uses that may otherwise be allowed in the B-2 zoning district shall not be permitted on the Subject Property without the approval of the City Council.

Prohibited Uses:

- Gun stores or firearm dealers, or shooting ranges, or other weapons dealers
- Roller rink
- Pornographic book store, pornographic theatre or amusement facility, or any other facility selling or displaying pornographic materials or having such displays
- Second hand store, except upscale consignment
- Auction house
- Flea market
- Blood bank
- Funeral home
- Industrial uses, except for small-scale production use which may also sell items to the public
- Car wash, except for mobile car wash uses within the parking garages
- Carnival, amusement park or circus
- Bingo hall
- Church, temple, synagogue, mosque, or other house of worship
- Facility for the sale of paraphernalia for use with illicit drugs
- Vape stores or other tobacco uses or related dealers

Design Requirements:

The Owner agrees that the following design standards shall be met for all retail space identified as part of the SEE Application:

- Restaurants that require ventilation through a grease shaft for a grill hood, shall have access to a ventilation shaft through the roof with roof curb, or space for a scrubber within the retail space or elsewhere in the building, which meets all City Building Code requirements for restaurant use, prior to issuance for a certificate of occupancy for tenant occupancy for such spaces.
- The Owner agrees that the ground floor retail or other ground floor space wall shall have either an average 70% transparency, unless the City Manager has approved architectural placemaking elements for the area of any wall facing the Commons, State Route 7, Haycock, and Mustang Alley, and Street A for the area that is between three (3) feet and eight (8) feet above grade with the exception of loading areas, back of house, garages, and garage entrances as approved on the SEE, Sheet X In areas with steep grade, the measuring point for the (3) feet and eight (8) feet may be modified. This provision is not

176 intended to prohibit merchandise displays that are viewed from the street within the
177 transparency area or restaurants that utilize blinds or curtains to intermittently shade
178 customers from unwelcomed sunlight.

- 179
- 180 • Façade and other design enhancements will be submitted as part of an SESP application
181 for any development on the Subject Property.
- 182
- 183 • Owner agrees to step back the building height above 35’ for a portion of the building
184 immediately adjacent to the school plaza within Block C.
- 185
- 186 • Owner will provide necessary streetscape revisions around building D-1 and amend the
187 amenities in the Commons via an administratively approved addendum to the SESP so
188 long as the design is in general conformance with the original SESP approval, as part of
189 the separate D-1 Senior SESP submission
- 190
- 191 • The Owner agrees to provide and maintain amenities in the Commons for the life of the
192 project in conformance with the Placemaking and Amenities Plan. Minor changes to the
193 design of the Commons may be approved by the City Manager, such as relocating or
194 redesigning landscape elements without reduction in size or amount greater than 5% in
195 total. Amenities in the Commons such as furniture, games or play equipment may be
196 replaced with the same or similar features from time to time, as is appropriate for
197 maintenance and refreshment of the space.
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200 **4. Senior Housing Residential Building Condition:**

201 The Owner agrees to include in a SESP application a Senior Housing residential building as
202 shown on the approved SEE that will be managed and operated to provide housing for
203 persons fifty-five (55) years of age or older in accordance with the State and Federal Fair
204 Housing Acts and the Federal Housing for Older Persons Act of 1995 (Pub. L. 104-76, 109
205 Stat. 787, approved December 28, 1995), as amended, and as implemented by HUD
206 regulations at 24 CFR part 100. The Senior Housing building shown in the **SEE**, Sheet/Page
207 X shall have a maximum of **265,200 GSF**, and at least 60% of units will be independent
208 living and/or active adult. The Owner further agrees that the Senior Housing building will at
209 all times be managed and operated so that it meets all of the requirements of the applicable
210 Federal and Virginia laws. The Owner agrees to promulgate a set of written management
211 standards for the operators of the Senior Housing building that requires the lease for each
212 apartment unit to include a prohibition as legally provided, on individuals eighteen (18) years
213 of age or younger from residing in the building, and the Owner and any designated operator
214 agrees to enforce such lease restriction. The Owner agrees to obtain approval of the rules and
215 regulations in the leases from the City Attorney or City Manager as being consistent with
216 this condition before any Certificates of Occupancy are issued for the age restricted housing.
217 The rules and regulations will be in place as governing the management of the age restricted
218 housing before any Certificates of Occupancy for a dwelling unit are issued. This rule
219 prohibiting persons eighteen (18) and under from residing in the building shall not be
220 changed without review and approval by the City Council through a SEE or SESP
221 amendment.

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5. **Affordable Housing Contribution:**

The Owner agrees to include in future SESP's affordable housing on the following terms:

- (a) As the Owner and the City agree is consistent with the City of Falls Church Affordable Housing Policy, the Owner will provide affordable dwelling units (“ADUs”) in the project equal to six (6) percent of the total number of dwelling units to be included on the Subject Property, including the independent living units associated with the Senior Housing (rounded up to the nearest whole number) unless the City Manager and the Owner agree to a different percentage of affordable units as a means to either increase the number of larger affordable units or provide units at a lower AMI, and such revised affordable housing plan is included in the Voluntary Concessions when the SESP is approved for the respective multifamily residences. In the event the Senior Housing Building includes assisted living units, the City shall have the right to receive from the Owner, in lieu of the value of all or some of the affordable independent living residences, an annual accounting subsidy acceptable to both the City and the Owner, adjusted annually, for eligible low or moderate-income residents with incomes at or below 80% of the AMI. The proportion of ADUs for studio, one bedroom, and two bedroom units will follow the same proportionate mix for the market rate units in the project unless the City Manager and the Owner agree to a different unit mix and such mix is included in the Voluntary Concessions when the SESP is approved for the respective multifamily residences. For each unit type, the ADU’s shall be equivalent in size to other market rate units of the same type. All ADUs will be dispersed throughout the project with the exception of the top floor of each residential building. Parking shall be provided for ADUs at the same rate as for the market rate units. If a parking fee is imposed upon market rate tenants, the same parking fee shall apply to ADU tenants. The Owner shall require the payment of security deposits and other deposits or fees (including amenity fees proportional to the AMI level) for ADU units that are also charged to market rate units.
- (b) The Owner shall have the right but not the obligation to provide ADUs generated from the residential condominium buildings within the rental apartment buildings on the site. If Phase 2 includes a residential condominium building and no rental apartment building, as is currently envisioned, the Owner shall have the right to convert market rate apartment units within the Phase 1 apartment building to ADU’s in lieu of providing the ADU’s within the Phase 2 condominium building.
- (c) The Owner agrees to record Restrictive Covenants among the land records of the Clerk of the Circuit Court of Arlington County, which shall define terms and conditions of the ADUs as such terms and conditions are agreed to in these Voluntary Concessions regarding issues including, but not limited to, price control periods and owner/renter occupancy and the matters agreed to in these Voluntary Concessions. These Covenants shall run with the land and be an encumbrance on the ADUs. The Covenants shall be recorded with the City’s land records in Arlington County, and evidence of such recordation will be provided to the Zoning Administrator before a Certificate of Occupancy is issued for any dwelling unit in the project.
- (d) The Owner will rent the ADUs directly or through its designated agent to qualified tenants, as determined by the City. The City will regulate and establish ADU qualification

269 priorities and evaluate compliance with program terms in accordance with the Affordable
270 Unit Program official administrative procedures and regulations.
271

272 (e) The monthly rent for the ADUs will be set by the Housing Commission with reference to
273 the U.S. Department of Housing and Urban Development (“HUD”) Washington Primary
274 Metropolitan Statistical Area (“PMSA”) area median household income (“AMI”). The
275 ADU’s that are included in the six (6) percent of total units shall be offered for rents that
276 are affordable to households whose income is no more than 60% of HUD PMSA AMI.
277 Alternatively, the City and the Owner may agree to the provision of an equivalent number
278 of ADUs based upon the qualification for residents with incomes in the range of 40% to
279 80% of HUD PMSA AMI; such terms shall be set out in the Voluntary Concessions agreed
280 to in the SESP governing such multifamily housing. Conceptually, to the extent ADU’s are
281 provided at a reduced income threshold of 40%, other units shall be provided at 80%
282 resulting in an average of 60% AMI for all ADU’s provided. Such rents, subject to changes
283 permitted by this Voluntary Concession will be in effect for the life of the Project. ADU
284 monthly rent shall include an additional amount as calculated by the percentage increase
285 in AMI, but not less than the original ADU monthly rents listed above.

286 (f) ADU tenants will have the same duties, rights and privileges as all other tenants in the
287 project, including access to amenity spaces, except as such ADU duties, rights and
288 privileges are expressly altered by these Voluntary Concessions.
289

290 (g) A minimum of one of the ADU units shall be an ANSI Type A accessible unit as defined
291 by federal law. However, if the Type A unit is rented to a person(s) who does not require
292 the accessibility features, temporary adaptations to the accessible features, such as cabinet
293 doors, may be provided as allowed by applicable law. Additionally, as provided by federal
294 law, all ADU and market rate units shall be ADA ANSI Type B adaptable.
295

296 (h) The Owner will comply with all applicable fair housing laws.
297

298 (i) Upon the issuance of the first residential certificate of occupancy for the project, and
299 subsequently upon the annual anniversary of the issuance of the first residential certificate
300 of occupancy, and upon the written agreement of the City, the Owner may make a cash
301 contribution to the City’s Housing Trust Fund in lieu of providing some or all of the ADUs
302 otherwise required because of this Voluntary Concession in an amount equivalent to the
303 value of the units and acceptable to both the Owner and the City. The formula for
304 determining the cash payment will be determined prior to SESP approval and is intended
305 to be economically-neutral to the Owner when compared to providing affordable units. If
306 the City and the Owner cannot mutually agree upon a contribution amount, then the Owner
307 will provide ADUs in conformance with this Voluntary Concession.

308 **6. Pedestrian Oriented Design Elements:**

309 **Streetscape:** The Owner agrees that, in order to create a more pedestrian-oriented
310 environment and to help preserve and protect the character of the new neighborhood,
311 streetscape improvements within the public rights-of-ways on Leesburg Pike and Haycock
312 Road will be consistent with the City Streetscape Standards. The Owner has provided
313 options for enhanced streetscape and creative seating options in this corridor in the

314 submitted draft Placemaking and Amenity Plan to be refined in the SESP. In the event the
315 Owner and the City Manager agree that deviation from such established City Streetscape
316 Standards would be desirable for the City, then the City Manager may approve such
317 deviation. In order to enhance the pedestrian experience along these corridors, Owner
318 agrees to ensure that street frontages are active and will pursue retail to the extent feasible.
319

320 The Owner further agrees that a building setback of at least 20 feet from the face of curb
321 will be maintained on all street frontages on Leesburg Pike and Haycock Road, except as
322 shown at the curb at Block D-3. The owner agrees there will be a 10 foot clear area for
323 pedestrian travel (“Clear Sidewalk”) within that setback along the entire streets on
324 Leesburg Pike and Haycock Road; however, in areas designated on the SEE for possible
325 outdoor dining, and where obstructions such as tree pits prevent the required Clear
326 Sidewalk, modifications to the streetscape or a decrease in the required Clear Sidewalk
327 may be made to no less than 6 feet to allow a restaurant tenant a commercially reasonable
328 amount of space for outdoor dining. Setback and sidewalk width referenced above assumes
329 no future taking by VDOT to expand the Leesburg Pike ROW.
330

331 The Owner agrees to maintain the streetscape improvements (including street trees but
332 excluding the maintenance of and cost of electricity for City standard streetlights)
333 constructed as part of this project as long as the project remains. The terms of such
334 maintenance responsibilities will be set forth in a Streetscape Maintenance Agreement
335 to be negotiated between the Owner and the City, which agreement will be finalized,
336 approved by the City Manager, and executed by the Owner prior to issuance of the first
337 Certificate of Occupancy for any occupiable space in the project.
338

339 The Owner agrees to the following criteria for streetlight power sources, recognizing that
340 the exact location of facilities is to be determined by the City and Owner at the SESP and/or
341 construction phase:
342

- 343 - Power meters shall not be located in the clear sidewalk. They should be out of the
344 walkway and discreet.
- 345 - Power disconnects/shutoffs for Rt. 7 and Haycock streetlights in the public ROW
346 shall not be located inside a building. They need to be accessible from the outside.
- 347 - Owner agrees to provide electric in street tree pits and provide a tree lighting
348 program for trees in the public ROW on Haycock and Leesburg Pike, and may
349 provide tree lighting along Commons Drive
350

351 The Owner agrees to provide two, 2” empty conduits for use by the City, to run under State
352 Road 7 (West Broad Street/Leesburg Pike) and Haycock Road sidewalks and crosswalks
353 constructed by the Owner. Conduits shall also include VDOT standard pull junction
354 boxes/hand-hole vaults at ends of right of way property boundary and at intervals of no
355 more than 600’ along the conduit path.
356

357 **Accessibility:** The Owner agrees that the development will meet the ADA Standards for
358 Accessible Design.
359

360 **Signage:** The Owner agrees to complete a Comprehensive Signage Plan that will address

361 temporary signage, wayfinding, retail signage, and general branding/building signage. The
 362 Owner will incorporate the City’s adopted wayfinding and public parking signage where
 363 appropriate.

364
 365 **The Commons:** The Owner agrees to construct and maintain the surface level plaza and
 366 public space in The Commons, with the proposed features and amenities as shown in the
 367 approved SESP Design. The Owner agrees to coordinate with the Recreation and Parks
 368 Department as well as the Arts and Humanities Council of Falls Church at SESP regarding
 369 Commons design and programming, as well as the design of other publicly accessible
 370 places within the project.

371
 372 **Undergrounding of Utilities:** The Owner agrees to include in its SESP a plan to place all
 373 on-site utilities underground except for switchgear equipment and transformers. The
 374 Owner agrees that any switchgear equipment or transformers placed above ground will
 375 have vegetative or other decorative screening sufficient that the switchgear equipment and
 376 transformers cannot be seen from the right of way.

377
 378 As part of the Northern Virginia Transportation Authority TransAction ID #66 & #334
 379 grant work, FCGP Public Infrastructure LLC, on behalf of the Owner, agrees to enter into
 380 a contract with the City to underground the aerial utilities as provided for in the grant and
 381 as shown in the plat sheet C-0402 in the SEE Application materials. This design and
 382 construction work for the undergrounding of utilities associated with the NVTA grant will
 383 occur prior to the issuance of a Certificate of Occupancy for the Subject Property. The
 384 Owner agrees to work in concert with the City Manager and the City Manager’s staff to
 385 design, submit, and approve an NVTA Grant Transportation Improvements Plan for the
 386 NVTA grant scope prior to or in conjunction with the SESP.

387
 388 **7. Environmental Improvements:**

389 **Green Building Criteria:** The Owner agrees that any SESP for development of the Subject
 390 Property will include third-party certification within eighteen (18) months of the completion
 391 of the building and for “ND” certification, within eighteen (18) months of project completion
 392 and the following commitment for Environmental Improvements, as they may be applicable
 393 to such SESP:

Site/Building Type	Required Certification Level	Notes
Entire Site	LEED-ND Gold v4 or equivalent	
Office	LEED-BD+C Core and Shell Gold v4 or equivalent	
Residential	LEED-NC v4 Gold, LEED-Multifamily Mid-Rise v4 or equivalent	Secured by bond or letter of credit, not to exceed \$50,000 per building, which can be used by City if the Owner is only able to achieve LEED Silver
Senior Housing	LEED-NC v4 Gold, LEED-Multifamily Mid-Rise v4 or equivalent	Secured by bond or letter of credit, not to exceed \$50,000 per building, which can be used by City if the Owner is only able to achieve LEED Silver
Hotel	LEED-NC Silver v4 or equivalent	

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 396
 397 The bonds or letters of credit as noted in the above chart relate to the use-specific buildings
 398 in total as defined by the LEED application, and not to individual buildings as may be defined
 399 from a permitting or code perspective. For example, the multi-phase multi-family residential
 400 apartment building in Phase One is considered, for LEED purposes, to be one building and

401 thus bound by one \$50,000 bond or letter of credit.
402

403 **Future Solar Panels:** The Owner agrees to include in each SESP application elements that
404 will aggregate rooftop mechanical systems to the best extent possible without having to
405 change the intended mechanical system for the building, and to take into consideration the
406 possibility that in the future an opportunity may arise for installation of rooftop solar panels
407 to capture solar energy to be sold to the grid, including the installation of conduit to allow for
408 future solar panels, as well as space in the Main Electrical Room for future equipment as
409 needed to process the solar panels. In such future event the Owner agrees to a good faith
410 evaluation of the feasibility of allowing the installation of solar panels for providing solar
411 energy to the grid; provided however, the Owner may install solar panels to provide solar
412 energy to be consumed exclusively by the project.
413

414 **Electric Vehicle Charging Station:** The Owner agrees that a minimum of ten (10) charging
415 stations for electric vehicles will be provided in the project parking garage, as well as a
416 minimum of one (1) additional publicly accessible fast-charge station at a location to be
417 determined at SESP within the project. The Owner further agrees to provide conduit for the
418 future installation of thirty (30) additional charging stations for electrical vehicles. The
419 location of the charging station will be determined at SESP Approval, but will include
420 stations and conduit in both the residential and commercial portions of the project.
421

422 **Storm Drainage and Runoff:** The Owner will manage stormwater on the site in a way
423 that integrates green infrastructure, low-impact and sustainable landscape designs, and tree
424 canopy coverage. The Owner agrees that the development will meet the following water
425 quantity and quality criteria:
426

- 427 • A good faith effort to maximize the use of green roof on concrete construction
428 building with a target of 20% of total roof area of concrete construction buildings.
- 429 • All water quality requirements will be met on the Subject Property. No offsite
430 credits will be purchased.
- 431 • Owner will aspire to achieve a 10% reduction, based on the post-developed rate as
432 determined by Chapter 35 of the City Code, in peak run-off for a 10-year storm.
433

434 **Removal of Contaminated Soil:** During any work on the Subject Property, the Owner agrees
435 to remove contaminated soils if required from the site and transport the same to a site
436 authorized and able to handle such contaminated soils in accordance with applicable
437 environmental state and federal regulations. The Owner agrees to provide documentation
438 of compliance with this requirement to the City before issuance of any permit for above-
439 grade construction.
440

441 **8. Installation of Vegetation:**

442 The Owner agrees that the vegetation installed for the project will consist in general of
443 native and regionally adapted species. Final sizes, species and placement will be
444 determined at SESP Approval. Plant materials shall be at least the following sizes at
445 installation:
446

- 447 • Evergreen trees (8 to 10 feet in height at planting)

- 448 • Shade trees (minimum 2.5” to 3” inch caliper, 16 feet in height at planting
449 on Leesburg Pike and Haycock Road and minimum 2.5 inch caliper
450 otherwise)
- 451 • Shrubs (minimum spread 24 inches)

452
453 In the event a substitution of approved native plants is required to enable the Owner to
454 meet LEED criteria, the City Manager or his designee may approve a substitute plant or
455 procedure for one called for in these Voluntary Concessions to meet the requirements
456 for LEED certification, if he finds the substitute plant has similar visual characteristics,
457 size and growth habitat, and could perform in a similar fashion for the specific location in
458 which the plant is envisioned. The timing of installation of vegetation shall be determined
459 during the SESP Approval. The City Arborist may allow modification to the timing of
460 installation based on the planting season, availability of plant materials, or weather, which
461 may not permit installation of plant materials and/or street trees by the required timing.
462

463 **9. Lighting:**

464 The Owner agrees that all exterior lighting and lighting within perimeter parking garages
465 for the Subject Property shall comply with City Ordinances with respect to spill over to
466 residential neighborhood adjacent to the project, and exterior lighting shall be shielded and
467 directed away from any adjacent residential property. Any building mounted signs which
468 face the residential neighborhoods shall not be internally illuminated with translucent
469 panels. The lighting plan for exterior lighting that is visible by residential neighborhoods
470 will incorporate dark sky lighting principles in accordance with the standards of the
471 International DarkSky Association.
472

473 **10. Transportation Improvements:**

474 The Owner has provided an updated Transportation Impact Analysis. The Owner agrees to
475 provide the Transportation Improvements shown on the SEE, subject to further design
476 work. The Owner agrees to work collaboratively with the City to determine the precise
477 nature of the Transportation Improvements that it will provide, and that such improvements
478 may be different from what is shown on the SEE provided both the Owner and the City
479 mutually agree to any material changes from the SEE proposed Transportation
480 Improvements that impact street sections and/or building footprints. The Owner further
481 agrees that all changes to the Transportation Improvements described below and in the SEE
482 will be subject to approval of the City Manager, and ultimately to the approval of the City
483 Council through the SESP process.
484

485 **Traffic Signals:** The Owner agrees to include in its SESP and the NVTA Transportation
486 Improvement Plan traffic signals as shown on the SEE as may be warranted and/or approved
487 by the City, Fairfax County Department of Transportation (FCDOT) and Virginia
488 Department of Transportation (VDOT) where applicable. Except when acting as executioner
489 of the aforementioned NVTA grant, the Owner will be responsible for the design, Traffic
490 Impact Assessment, warrant study, easement/right-of-way acquisition, and installation of
491 these traffic signals. Any signals or HAWK beacons within the City limits will match the
492 specifications that the City provides. The City shall work with the Owner to ensure that all
493 necessary easement, for construction of the Traffic Signals are able to be acquired when

494 needed. The Owner shall be found to have fulfilled this condition upon approval of the traffic
495 signal as fully operational by the City Manager. The Owner shall provide a phasing plan for
496 the installation and operations of the Traffic Signals which shall be approved at SESP. With
497 the exception of buildings identified in the Phasing Plan and which are expected to be open
498 prior to installation of the Traffic Signals, the Owner agrees to obtain the City Manager's
499 approval of the traffic signals as fully operational before issuance of the first certificates of
500 occupancy for any buildings for which a certificate of occupancy is issued, provided the City
501 review process is reasonably diligent and not delayed by FCDOT/VDOT review. In the
502 event there is any delay due to FCDOT/VDOT review, the City Manager shall permit
503 issuance of such certificate of occupancy if the Owner provides reasonable assurances that
504 it will diligently pursue construction of the traffic signals called for in this Voluntary
505 Concession as approved by the City.

506 **Street Capacity and Safety Improvements:** The Owner agrees to include in any SESP
507 for development on property adjacent to the road listed below, and the NVTA
508 Transportation Improvement Plan, whichever is completed first the following
509 improvements, subject to change based on results of the Transportation Impact Analysis
510 and mutually agreed to by both the Owner and the City:

- 511 • Leesburg Pike (subject to FCDOT/VDOT approval)
 - 512 ○ Median modifications at intersection of The Commons and Chestnut Street to
 - 513 provide at least a left turn lane into the Commons and to provide other movements
 - 514 in and out of Chestnut Street and Commons as agreed upon by VDOT in
 - 515 coordination with Fairfax County.
 - 516 ○ Traffic Signal at The Commons and Leesburg Pike including at least a left turn
 - 517 into the project from Leesburg Pike and other movements in and out of Chestnut
 - 518 Street and Commons as agreed upon by VDOT in coordination with Fairfax
 - 519 County.
 - 520 ○ Accessible curb ramps and crosswalk on western, northern, and southern side of
 - 521 signalized intersection.
 - 522 ○ Right or shared right turn lane into The Commons.
 - 523 ○ Right or shared right turn lane into Mustang Alley.
 - 524 ○ Accessible curb ramps and crosswalks at all corners of Leesburg Pike and
 - 525 Haycock intersection.
 - 526 ○ Project shall be designed to allow for the location of a potential curbside future
 - 527 Northern Virginia Transportation Commission (NVTC) Bus Rapid Transit (BRT)
 - 528 station along Route 7.
- 529 • Haycock Road
 - 530 ○ Median modifications to provide a left turn lane into Street C.
 - 531 ○ Traffic Signal at Street C (with City of Falls Church coordination)
 - 532 ○ Accessible Curb Ramps and crosswalk on northern and southern side of Street C
 - 533 traffic signal.
 - 534 ○ Signal at Mustang Alley (with City of Falls Church coordination)
 - 535 ○ Accessible Curb Ramps and Crosswalk on northern and southern side of Mustang
 - 536 Alley Signal.
- 537 • The Commons

- 538 ○ Owner agrees to post a speed limit on The Commons of no more than 20 MPH.
- 539 ● The Owner agrees to repair and/or reconstruct sidewalk sections that are damaged by
540 project construction at the end of the construction phase of the portion of the project that
541 is included in an SESP, per specifications provided by the City Public Works
542 Department, including the frontages along Haycock Road and Leesburg Pike. All
543 pavement in VDOT ROW shall be designed in accordance with the most recent VDOT
544 design guidelines and standards. Any existing or proposed mid-block crossings shall
545 have striping and curb ramps meeting current regulations.
- 546 ● The Owner agrees to continue coordinating with FCCPS, WMATA, and Virginia Tech
547 on ensuring appropriate transportation improvements compatible with anticipated future
548 development on these sites.

549

550 **11. Parking Garages:**

551 The Owner agrees that any parking garage spandrel panels that are visible from, and across
552 a street from, a single family home or school, shall be at least 42 inches high, so as to
553 block headlights of vehicles parking in the garage from shining across the street, or as
554 otherwise approved by the City Council at SESP. The Owner further agrees to work to
555 ensure that lighting is designed based on best practices and is sensitive to visibility from
556 neighboring buildings.

557

558 The Owner agrees to provide detail regarding the facades of any and all above grade
559 garages in the project at SESP. To the extent the Owner determines that some amount of
560 the currently designed above grade parking is no longer needed, the Owner can request to
561 amend the SEE to seek permission from the City to convert it to another use.

562

563 **12. Transportation Demand Management (TDM) and Parking Management Plan:**

564 The Owner agrees to submit with each SESP application a TDM program as conceptually
565 referenced in the Transportation Management Plan that was submitted with the SEE
566 application. Said TDM Plan shall then be refined during the SESP process for the part of the
567 project to be constructed, and in coordination with previously approved SESP. The Owner
568 agrees to obtain the City Manager's approval of the TDM program as meeting the standards
569 of this Voluntary Concession and as likely to achieve the goals outlined in the TDM Draft
570 included in the SEE, before SESP approval. In addition, the Owner will develop and
571 implement a Parking Management Plan, which the Owner agrees to finalize and obtain
572 approval for as part of SESP approval. The Owner further agrees that the Parking
573 Management Plan will meet all City parking standards in effect at the time of SESP
574 approval or as modified by the parking minimum and maximums outlined in the SEE
575 application.

576

577 **Access to Property for Monitoring of Parking Utilization and Monitoring of TDM and**
578 **Parking Management Plans:** The Owner agrees that City of Falls Church staff upon prior
579 written notice to the Owner's designated representative will have access to the garage(s) on
580 the Subject Property at all times to conduct parking utilization counts and to monitor
581 compliance with the TDM and Parking Management Plans.

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13. BikeShare:

Bike Share: The Owner agrees to grant an easement to the City for installation and operation of the either the relocated existing bike share station or a new 12-space bike share station, as determined by Owner.

14. Public Art and Commons Use:

The Owner agrees to include in the SESP a requirement to include a minimum of \$100,000 worth of public art on site. The Owner agrees to provide evidence of such investment having been made prior to issuance of the first residential certificate of occupancy for the Project. The Owner also agrees to work in concert with the City’s various departments, including the Arts and Humanities Council of Falls Church, to accommodate special events on The Commons. The Owner agrees to allow the City of Falls Church to hold up to two one-day events annually on the Commons at no rental fee, as long as the City provides adequate security, set-up, trash collection, crowd control, etc. to ensure no additional operational costs to Owner and clean-up such that the property is restored to the same condition it was found in prior to the event. The City and other groups may also hold additional events annually in The Commons (planned and scheduled in coordination with Owner), which will have rental/cleaning/etc. fees, as Owner deems appropriate. The Owner also agrees to engage with the Arts and Humanities Council, Recreation and Parks, Historical Commission, and Historical Architectural Review Board on furthering the details initially laid out in the draft Placemaking and Amenity Plan related to public art, public space design, festivals, events including farmers’ markets, and City history.

15. Construction Management:

The Owner agrees that each SESP shall include, by way of illustration and not limitation, the following commitment to a Construction Management Plan developed in coordination with the City and Falls Church City Public Schools:

Construction Parking and Staging Plan: Prior to issuance of any demolition and/or building permits the Owner agrees to prepare, submit, and obtain the City Manager’s approval of a demolition and staging plan for the project, which shall not be unreasonably withheld. All demolition and construction of the project shall be done in conformance with the approved demolition and staging plan. Once a contractor has been selected for the project, the Owner will prepare a Construction Parking Plan and a Construction Traffic and Staging Plan to be enforced by the Owner for the entire the construction phase of the project, and to obtain the City Manager’s approval of the plan as providing sufficient parking or other transportation services for working to the site, and not having an adverse impact on traffic safety, prior to the issuance of any building permit for the project. The Owner acknowledges and agrees that violations of these Plans during construction can result in a Stop Work Order and other enforcement measures by the City.

Community Liaison: The Owner agrees to designate a representative who is physically present on a regular basis on the Subject Property to serve as a liaison to the community for the period leading up to the issuance of the first Certificate of Occupancy and for two

627 years thereafter. The Owner agrees to provide the name and telephone number of the
628 liaison, in writing, to the City Manager prior to commencement of any work on the site.
629 The Owner agrees to have the representative schedule meeting with the community, at an
630 accessible location, no less frequently than quarterly. The Owner further agrees to hold
631 such meetings, after notifying the City Manager, and the citizens at least ten days prior to
632 the date of such meeting, and to permit citizens to speak at the meeting to air their concerns.

633
634 **Excavation Monitoring:** The Owner agrees to continuously monitor for soil movement
635 and structural damage to adjacent structures during and after excavation for any part of the
636 project. Structures within a distance equivalent to or less than the depth of the excavation
637 plus 10 feet will be surveyed by the Owner for pre-development conditions and compared
638 to post-development conditions. For such structures, the Owner agrees to provide insurance
639 coverage for damage caused by excavations or construction activities, as independently
640 verified by a third party engineering consultant provided by the Owner. In no way will this
641 provision limit the liability of the Owner or its contractors for damages caused by
642 construction activity.

643
644 **Sidewalk Accessibility:** The Owner agrees to maintain safe pedestrian walkways
645 throughout construction and thereafter, and to ensure that such walkways are, at all
646 times, separated from street traffic. Sidewalks shall not be completely closed on either side
647 of the street, unless the City Manager or his designee approves such closing, after finding
648 that the Owner (1) cannot reasonably provide such a pedestrian walkway, (2) will
649 provide clear signs and access to the sidewalk on the other side of the street, and (3) will
650 manage the closure so that the pedestrian walkway is not closed for more than 15
651 consecutive days, unless City Manager (or his designee) approves a longer duration.

652
653 **Pest Control:** The Owner agrees to contract with a certified pest control company licensed
654 to do business in Virginia for a thorough extermination of any pests and/or rodents that
655 may be present on the Property prior to the start of demolition work and/or any other land
656 disturbing activities, and throughout construction.

657
658 **Coordination:** The Owner agrees to ensure that throughout construction of the project,
659 the parties undertaking development coordinate their efforts to:

- 660 - protect the members of the public,
- 661 - continue ongoing access to Metro by the public, and
- 662 - minimize disruption to the adjacent school and the public in general.

663
664 **16. Public Safety:**

665 The Owner agrees to work with the City Police Department to provide a shared touchdown
666 space. The Owner agrees that each SESP for work on the Subject Property shall include,
667 whether or not expressly set forth therefore, the following commitments to Public Safety:

668
669 **Public Safety Radio:** The Owner agrees to ensure that all buildings and parking garages
670 on the Subject Property are constructed in a manner that permit public safety radio
671 signals to be transmitted and received throughout all areas within the building and from
672 those areas to all outdoor areas of the property that is the subject of the Special Exception.
673 The Owner will install the necessary equipment and, with at least five days' notice to the

674 City Manager, perform a radio transmission test upon completion of the project, but prior
675 to issuance of the first Certificate of Occupancy, in order to establish that there exists the
676 ability to transmit and receive public safety radio signals from the interior of the building
677 and parking garages, including the subterranean levels. The Owner agrees to permit the
678 City Manager or his designee to be present at the site during the tests and to verify the
679 results. Should the test fail, the Owner will find and implement a solution acceptable to
680 the City so as to resolve the problem with 90 days of the test. The Owner also agrees to
681 have the system be placed on the Emergency Generator.

682
683 **Emergency Call Boxes:** The Owner agrees to install emergency call boxes in locations
684 deemed appropriate by the City Police Department.

685
686 **Life Safety:** To provide building safety for residents and responders during an emergency
687 and to have the appropriate resilience to meet the demands for community safety, the
688 Owner agrees to provide:

689 A. Natural gas emergency generator sized to accommodate:

690 Code-required items, including:

- 691 a. Public safety radio
- 692 b. Fire alarm;
- 693 c. Exit lights;
- 694 d. Emergency lighting;
- 695 e. A minimum of one elevator in each building;
- 696 f. A fire pump, if required.

697 Additional items that may not otherwise be required by code:

- 698 g. Domestic water pumps; and
- 699 h. Night lighting as may apply to the senior housing and office uses.

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704 B. Fire command center with annunciation of elevators, generator, fire pump and
705 HVAC systems, including a separate cooling system for the command center.

706
707 **Loading:** The Owner agrees to coordinate with the City and FCCPS regarding the safe
708 operation of loading and unloading and the implications of and interaction with school
709 hours and school buses.

710
711 **Driveway/Ramp Load Capacity:** Any street or road which may carry Emergency
712 Response Equipment shall be engineered and constructed to support the weight of, and
713 permit passage of, a 79,000-pound ladder truck as currently used by the fire department, as
714 well as able to support repetitive loading of garbage trucks.

715 Pavement shall be designed in accordance with VDOT Pavement Design Guide for
716 Subdivision and Secondary Roads in Virginia (revised 2018) and Chapter VI: Pavement
717 Design and Evaluation from VDOT's Manual of Instruction (MOI).

718
719 **17. Easements:**

720 The Owner agrees to provide such Easements to the City, in a form and substance as
721 approved by the City Manager, as are shown on the SEE or otherwise called for in these
722 Voluntary Concessions.
723

724 **18. Other Terms and Conditions:**
725

726 **FCCPS Surge Parking:** The Owner plans to construct approximately 300 commercial
727 parking spaces that shall be available evenings and weekends as shared paid parking for
728 visitors to the School and the property for special events, shopping, and dining. The Owner
729 shall coordinate scheduling for limited special events with FCCPS and the Recreation and
730 Parks Department to minimize parking demand conflicts. Reference the “Tripartite
731 Memorandum of Understanding Among CFC, FCCPS, FCGP” dated September 23, 2020
732 for more specific information regarding this requirement.
733

734 **Dog Facilities:** The Owner acknowledges the importance of providing spaces for dog
735 relief, and will continue to consider this at SESP.
736

737 **Owner Acknowledgements:** The Owner acknowledges, understands and agrees that the
738 Subject Property will be developed in accordance with the applications approved by the
739 City Council for the Subject Property and in full compliance with all applicable laws,
740 codes, ordinances, charters, statutes, rules, regulations, agreements, and commitments.
741

742 The Owner acknowledges and agrees that the SEE, as granted, runs with the land and is
743 not transferable to other land.
744

- 745 1. Execution of the Developer’s Voluntary Concessions, Community Benefits, Terms
746 and Conditions, dated July 8, 2019 (“voluntary concessions”) and as amended on
747 (DATE), for Special Exception Entitlement for a Mixed-Use Development at the
748 subject site, shall be a condition for the approval of the Special Exception Entitlement;
749 and the City Manager is hereby authorized and directed to execute the voluntary
750 concessions, as submitted, on behalf of the City; and
751
- 752 2. No development shall occur on the site until the Developer has obtained approval of a
753 Special Exception Site Plan (“SESP”) for the portion of the site to be developed. Such
754 SESP shall be consistent with this SEE approval, including without limitation general
755 locations of the buildings, the height of buildings; the location, type, and amount of
756 individual uses on the site, the infrastructure and transportation on the site, the public
757 facilities and utilities as it may be amended from time to time; and
758
- 759 3. Phasing of construction of the development of the site will be in accordance with the
760 SEE and the voluntary concessions; and
761
- 762 4. Violation of any of the conditions of this Special Exception Entitlement shall be
763 grounds for revocation of the Special Exception Entitlement approval by City Council.
764
765

766 **Access for Commissioner of Revenue:** The Owner agrees that each SESP for the Subject
767 Property will provide for the City of Falls Church Commissioner of Revenue (CoR)
768 and/or his designated staff upon prior written notice to an Owner designated
769 representative to have access to the garage(s) on the Subject Property at all times for
770 inspection of window stickers related to personal property taxes for vehicles. The CoR
771 and staff will be provided all credentials necessary to have access to parking garage(s) by
772 vehicle at all times. In the event the access credentials are changed or updated, the CoR
773 will be provided notice and updated access credentials within 30 calendar days.

774
775 **Terms and Conditions Incorporated in Resolution:** The Owner voluntarily submits the
776 foregoing concessions, terms, and conditions to the City Council to be incorporated by
777 reference into the Resolution for the Special Exception, should City Council grant the
778 applications for Special Exception with the conditions set forth in this submission.
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FALLS CHURCH COMMONS JV LLC,
a Delaware limited liability company

By: PNH WFC LLC,
a District of Columbia limited liability company,
its Manager

By: LH 1-Manager LLC,
a Delaware limited liability company,
its Manager

By: _____
Name: _____
Title: _____

And By: FCC MEMBER 1 LLC,
a Delaware limited liability company,
its Co-Manager

By: EYA FCC Investments LLC,
a Delaware limited liability company,
its Manager

By: _____
Name: _____
Title: _____

Date: _____, 2019.

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EXHIBIT A

Final preliminary plat with Parcel D highlighted

(attached)