

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

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

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

41 voluntary concessions for which will together govern development on the Subject Property. These  
42 elements may include but will not be limited to, site design, public improvements,  
43 environmentally sustainable and energy-efficient building design, affordable housing creation,  
44 and other contributions as part of the development. In addition, Owner agrees that these SEE  
45 voluntary concessions have been combined with some elements of the SESP approval for  
46 convenience, and therefore govern the project in its entirety not just for the SEE approval.  
47

48 **1. Conformance with SEE Application:**

49 The Owner agrees that these amended SEE voluntary concessions, as approved by City  
50 Council on [DATE] have been developed in conjunction with a Phase 1 SESP application  
51 as approved by City Council on [DATE]. For simplicity, the SEE conditions address  
52 matters covered by both the SEE and SESP and shall be interpreted as governing all  
53 features approved through the SESP. The Owner agrees that this SEE approval shall be  
54 governed by any approved SESP Application(s) for development the Subject Property in  
55 substantial conformance with the final drawings and documentation of SEE Application  
56 approved per Section 48-488(B)(1) and (2) on July 8<sup>th</sup>, 2019, as amended on (Month, Date,  
57 Year).  
58

59 **2. Uses:**

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

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

88 The primary retail is intended to denote areas of the site where the activity  
89 and vibrancy will be most emphasized. These retail spaces will be expected  
90 to generate visible activity and energy 7 days a week. (i.e.  
91 bars/restaurants/boutique fitness, etc.) while secondary retail will still drive  
92 foot traffic to the site but generally not appear as visibly active (i.e. soft  
93 goods or mercantile uses.)

- 94       ▪ **Primary Retail:** Predominate frontage of the buildings are planned  
95 for retail sales, food, entertainment establishments, boutique fitness or  
96 similar best in class retailers, service providers,  
97 brewery/winery/distillery with seating and/or food service, and  
98 restaurants. The Primary Retail zones will be dynamic, high energy  
99 areas intended to attract significant foot traffic. FCGP has  
100 intentionally located these primary retail locations at key focal points  
101 throughout the project to provide an active and engaging streetscape  
102 and pedestrian environment.
- 103       ▪ **Secondary Retail:** Planned for any type of retail use as permitted by  
104 zoning, unless prohibited by the SEE/SESP Voluntary Concessions.  
105 These uses may include fitness, spa/medspa, hair salon, medical (e.g.  
106 physical therapy, primary care services), maker workshops.
- 107       ○ A maximum of 561,000 GSF of residential (exclusive of senior housing), of  
108 which the maximum non-micro multifamily apartment use is 280,500GSF  
109 (with an average size for all of the residential units in the building of no  
110 more than 900 net rentable square feet) and the maximum condominium use  
111 is 280,500GSF.
- 112       ○ A maximum of 102,000GSF of the condominium use described above can  
113 be converted to micro-apartment rental units with an average size of no  
114 more than 675 net rentable square feet for one-bedroom units (with no dens  
115 included) and an average size of no more than 500 net rentable square feet  
116 for studio apartments.
- 117       ○ Owner agrees that no Certificate of Occupancy allowing residency in the  
118 Building A residential apartment building will be released until submission  
119 of complete building permit application for office and hotel. (Complete  
120 building permit application will be defined as meeting the requirements  
121 outlined in City of Falls Church Plan Submission Requirements,  
122 Informational Brochure #3 of 3).
- 123       ○ A maximum of 265,200 GSF of senior housing.
- 124     • Phase 2:
  - 125       ○ A minimum of 147,000 GSF office building.
  - 126       ○ A maximum of 157,080GSF of condominium use.
  - 127       ○ A minimum of 6,272 GSF of retail use.

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129 *Floor area* shall be interpreted as being the gross floor area. Gross floor area shall be the  
130 sum of the gross horizontal area of the floor or several floors of a building measured from  
131 the exterior faces of all exterior walls or from the centerlines of party walls if the portions of

132 a building are to be computed separately including basements and habitable penthouses.  
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137 **3. Commercial Space:**

138 The Owner agrees that the following commercial uses that may otherwise be allowed in  
139 the B-2 zoning district shall not be permitted on the Subject Property without the approval  
140 of the City Council.  
141

142 **Prohibited Uses:**

- 143 • Gun stores or firearm dealers, or shooting ranges, or other weapons dealers
- 144 • Roller rink
- 145 • Pornographic book store, pornographic theatre or amusement facility, or any other  
146 facility selling or displaying pornographic materials or having such displays
- 147 • Second hand store, except upscale consignment
- 148 • Auction house
- 149 • Flea market
- 150 • Blood bank
- 151 • Funeral home
- 152 • Industrial uses, except for small-scale production use which may also sell items to  
153 the public
- 154 • Car wash, except for mobile car wash uses within the parking garages
- 155 • Carnival, amusement park or circus
- 156 • Bingo hall
- 157 • Church, temple, synagogue, mosque, or other house of worship
- 158 • Facility for the sale of paraphernalia for use with illicit drugs
- 159 • Vape stores or other tobacco uses or related dealers  
160

161 **Design Requirements:**

162 The Owner agrees that the following design standards shall be met for all retail space identified  
163 as part of the SEE Application:  
164

- 165 • Restaurants that require ventilation through a grease shaft for a grill hood, shall have  
166 access to a ventilation shaft through the roof with roof curb, or space for a scrubber  
167 within the retail space or elsewhere in the building, which meets all City Building Code  
168 requirements for restaurant use, prior to issuance for a certificate of occupancy for  
169 tenant occupancy for such spaces.  
170
- 171 • The Owner agrees that the ground floor retail or other ground floor space wall shall  
172 have either an average 70% transparency, unless the City Manager has approved  
173 architectural placemaking elements for the area of any wall facing the Commons, State  
174 Route 7, Haycock, and Mustang Alley, and Street A for the area that is between three  
175 (3) feet and eight (8) feet above grade with the exception of loading areas, back of

176 house, garages, and garage entrances as approved on the SEE, Sheet X In areas with  
177 steep grade, the measuring point for the (3) feet and eight (8) feet may be modified.  
178 This provision is not intended to prohibit merchandise displays that are viewed from the  
179 street within the transparency area or restaurants that utilize blinds or curtains to  
180 intermittently shade customers from unwelcomed sunlight.  
181

- 182 • Façade and other design enhancements will be submitted as part of an SESP application  
183 for any development on the Subject Property.  
184
- 185 • Owner agrees to step back the building height above 35’ for a portion of the building  
186 immediately adjacent to the school plaza within Block C.  
187
- 188 • Owner will provide necessary streetscape revisions around building D-1 and amend the  
189 amenities in the Commons via an administratively approved addendum to the SESP so  
190 long as the design is in general conformance with the original SESP approval, as part of  
191 the separate D-1 Senior SESP submission  
192
- 193 • The Owner agrees to provide and maintain amenities in the Commons for the life of the  
194 project in conformance with the Placemaking and Amenities Plan. Minor changes to the  
195 design of the Commons may be approved by the City Manager, such as relocating or  
196 redesigning landscape elements without reduction in size or amount greater than 5% in  
197 total. Amenities in the Commons such as furniture, games or play equipment may be  
198 replaced with the same or similar features from time to time, as is appropriate for  
199 maintenance and refreshment of the space.  
200  
201

202 **4. Senior Housing Residential Building Condition:**

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

223 the City Council through a SEE or SESP amendment.

224 **5. Affordable Housing Contribution:**

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

226

227 (a) As the Owner and the City agree is consistent with the City of Falls Church Affordable  
228 Housing Policy, the Owner will provide affordable dwelling units ("ADUs") in the  
229 project equal to six (6) percent of the total number of dwelling units to be included on  
230 the Subject Property, including the independent living units associated with the Senior  
231 Housing (rounded up to the nearest whole number) unless the City Manager and the  
232 Owner agree to a different percentage of affordable units as a means to either increase the  
233 number of larger affordable units or provide units at a lower AMI, and such revised  
234 affordable housing plan is included in the Voluntary Concessions when the SESP is  
235 approved for the respective multifamily residences. In the event the Senior Housing  
236 Building includes assisted living units, the City shall have the right to receive from the  
237 Owner, in lieu of the value of all or some of the affordable independent living residences,  
238 an annual accounting subsidy acceptable to both the City and the Owner, adjusted  
239 annually, for eligible low or moderate-income residents with incomes at or below 80% of  
240 the AMI. The proportion of ADUs for studio, one bedroom, and two bedroom units  
241 will follow the same proportionate mix for the market rate units in the project unless the  
242 City Manager and the Owner agree to a different unit mix and such mix is included in the  
243 Voluntary Concessions when the SESP is approved for the respective multifamily  
244 residences. For each unit type, the ADU's shall be equivalent in size to other market rate  
245 units of the same type. All ADUs will be dispersed throughout the project with the  
246 exception of the top floor of each residential building. Parking shall be provided for  
247 ADUs at the same rate as for the market rate units. If a parking fee is imposed upon  
248 market rate tenants, the same parking fee shall apply to ADU tenants. The Owner shall  
249 require the payment of security deposits and other deposits or fees (including amenity  
250 fees proportional to the AMI level) for ADU units that are also charged to market rate  
251 units.

252

253 (b) The Owner shall have the right but not the obligation to provide ADUs generated from the  
254 residential condominium buildings within the rental apartment buildings on the site. If  
255 Phase 2 includes a residential condominium building and no rental apartment building, as  
256 is currently envisioned, the Owner shall have the right to convert market rate apartment  
257 units within the Phase 1 apartment building to ADU's in lieu of providing the ADU's  
258 within the Phase 2 condominium building.

259

260 (c) The Owner agrees to record Restrictive Covenants among the land records of the  
261 Clerk of the Circuit Court of Arlington County, which shall define terms and conditions  
262 of the ADUs as such terms and conditions are agreed to in these Voluntary Concessions  
263 regarding issues including, but not limited to, price control periods and owner/renter  
264 occupancy and the matters agreed to in these Voluntary Concessions. These Covenants  
265 shall run with the land and be an encumbrance on the ADUs. The Covenants shall be  
266 recorded with the City's land records in Arlington County, and evidence of such  
267 recordation will be provided to the Zoning Administrator before a Certificate of  
268 Occupancy is issued for any dwelling unit in the project.



- 269  
270 (d) The Owner will rent the ADUs directly or through its designated agent to qualified  
271 tenants, as determined by the City. The City will regulate and establish ADU  
272 qualification priorities and evaluate compliance with program terms in accordance with  
273 the Affordable Unit Program official administrative procedures and regulations.  
274
- 275 (e) The monthly rent for the ADUs will be set by the Housing Commission with reference to  
276 the U.S. Department of Housing and Urban Development (“HUD”) Washington Primary  
277 Metropolitan Statistical Area (“PMSA”) area median household income (“AMI”). The  
278 ADU’s that are included in the six (6) percent of total units shall be offered for rents that  
279 are affordable to households whose income is no more than 60% of HUD PMSA  
280 AMI. Alternatively, the City and the Owner may agree to the provision of an equivalent  
281 number of ADUs based upon the qualification for residents with incomes in the range of  
282 40% to 80% of HUD PMSA AMI; such terms shall be set out in the Voluntary  
283 Concessions agreed to in the SESP governing such multifamily housing. Conceptually, to  
284 the extent ADU’s are provided at a reduced income threshold of 40%, other units shall be  
285 provided at 80% resulting in an average of 60% AMI for all ADU’s provided. Such rents,  
286 subject to changes permitted by this Voluntary Concession will be in effect for the life of  
287 the Project. ADU monthly rent shall include an additional amount as calculated by the  
288 percentage increase in AMI, but not less than the original ADU monthly rents listed  
289 above.
- 290 (f) ADU tenants will have the same duties, rights and privileges as all other tenants in  
291 the project, including access to amenity spaces, except as such ADU duties, rights and  
292 privileges are expressly altered by these Voluntary Concessions.  
293
- 294 (g) A minimum of one of the ADU units shall be an ANSI Type A accessible unit as defined  
295 by federal law. However, if the Type A unit is rented to a person(s) who does not require  
296 the accessibility features, temporary adaptations to the accessible features, such as cabinet  
297 doors, may be provided as allowed by applicable law. Additionally, as provided by  
298 federal law, all ADU and market rate units shall be ADA ANSI Type B adaptable.  
299
- 300 (h) The Owner will comply with all applicable fair housing laws.  
301
- 302 (i) Upon the issuance of the first residential certificate of occupancy for the project, and  
303 subsequently upon the annual anniversary of the issuance of the first residential certificate  
304 of occupancy, and upon the written agreement of the City, the Owner may make a cash  
305 contribution to the City’s Housing Trust Fund in lieu of providing some or all of the ADUs  
306 otherwise required because of this Voluntary Concession in an amount equivalent to the  
307 value of the units and acceptable to both the Owner and the City. The formula for  
308 determining the cash payment will be determined prior to SESP approval and is intended  
309 to be economically-neutral to the Owner when compared to providing affordable units. If  
310 the City and the Owner cannot mutually agree upon a contribution amount, then the Owner  
311 will provide ADUs in conformance with this Voluntary Concession.

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

313 **Streetscape:** The Owner agrees that, in order to create a more pedestrian-oriented

314 environment and to help preserve and protect the character of the new neighborhood,  
315 streetscape improvements within the public rights-of-ways on Leesburg Pike and  
316 Haycock Road will be consistent with the City Streetscape Standards. The Owner has  
317 provided options for enhanced streetscape and creative seating options in this corridor in  
318 the submitted draft Placemaking and Amenity Plan to be refined in the SESP. In the event  
319 the Owner and the City Manager agree that deviation from such established City  
320 Streetscape Standards would be desirable for the City, then the City Manager may  
321 approve such deviation. In order to enhance the pedestrian experience along these  
322 corridors, Owner agrees to ensure that street frontages are active and will pursue retail to  
323 the extent feasible.

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

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

343  
344 The Owner agrees to the following criteria for streetlight power sources, recognizing that  
345 the exact location of facilities is to be determined by the City and Owner at the SESP  
346 and/or construction phase:

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

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



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

**Signage:** The Owner agrees to complete a Comprehensive Signage Plan that will address temporary signage, wayfinding, retail signage, and general branding/building signage. The Owner will incorporate the City’s adopted wayfinding and public parking signage where appropriate.

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

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

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

**7. Environmental Improvements:**

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

401 The bonds or letters of credit as noted in the above chart relate to the use-specific buildings  
402 in total as defined by the LEED application, and not to individual buildings as may be  
403 defined from a permitting or code perspective. For example, the multi-phase multi-family  
404 residential apartment building in Phase One is considered, for LEED purposes, to be one  
405 building and thus bound by one \$50,000 bond or letter of credit.  
406  
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408 **Future Solar Panels:** The Owner agrees to include in each SESP application elements that  
409 will aggregate rooftop mechanical systems to the best extent possible without having to  
410 change the intended mechanical system for the building, and to take into consideration the  
411 possibility that in the future an opportunity may arise for installation of rooftop solar panels  
412 to capture solar energy to be sold to the grid, including the installation of conduit to allow  
413 for future solar panels, as well as space in the Main Electrical Room for future equipment as  
414 needed to process the solar panels. In such future event the Owner agrees to a good faith  
415 evaluation of the feasibility of allowing the installation of solar panels for providing solar  
416 energy to the grid; provided however, the Owner may install solar panels to provide solar  
417 energy to be consumed exclusively by the project.  
418

419 **Electric Vehicle Charging Station:** The Owner agrees that a minimum of ten (10)  
420 charging stations for electric vehicles will be provided in the project parking garage, as  
421 well as a minimum of one (1) additional publicly accessible fast-charge station at a  
422 location to be determined at SESP within the project. The Owner further agrees to provide  
423 conduit for the future installation of thirty (30) additional charging stations for electrical  
424 vehicles. The location of the charging station will be determined at SESP Approval, but  
425 will include stations and conduit in both the residential and commercial portions of the  
426 project.  
427

428 **Storm Drainage and Runoff:** The Owner will manage stormwater on the site in a way  
429 that integrates green infrastructure, low-impact and sustainable landscape designs, and tree  
430 canopy coverage. The Owner agrees that the development will meet the following water  
431 quantity and quality criteria:  
432

- 433 • A good faith effort to maximize the use of green roof on concrete construction  
434 building with a target of 20% of total roof area of concrete construction buildings.
- 435 • All water quality requirements will be met on the Subject Property. No offsite  
436 credits will be purchased.
- 437 • Owner will aspire to achieve a 10% reduction, based on the post-developed rate as  
438 determined by Chapter 35 of the City Code, in peak run-off for a 10-year storm.  
439

440 **Removal of Contaminated Soil:** During any work on the Subject Property, the Owner  
441 agrees to remove contaminated soils if required from the site and transport the same to a  
442 site authorized and able to handle such contaminated soils in accordance with applicable  
443 environmental state and federal regulations. The Owner agrees to provide documentation  
444 of compliance with this requirement to the City before issuance of any permit for above-  
445 grade construction.  
446

447 **8. Installation of Vegetation:**

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

- 452
- 453 • Evergreen trees (8 to 10 feet in height at planting)
- 454 • Shade trees (minimum 2.5” to 3” inch caliper, 16 feet in height at planting  
455 on Leesburg Pike and Haycock Road and minimum 2.5 inch caliper  
456 otherwise)
- 457 • Shrubs (minimum spread 24 inches)
- 458

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

469

470 **9. Lighting:**

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

479

480 **10. Transportation Improvements:**

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

491

492 **Traffic Signals:** The Owner agrees to include in its SESP and the NVTa Transportation  
493 Improvement Plan traffic signals as shown on the SEE as may be warranted and/or  
494

495 approved by the City, Fairfax County Department of Transportation (FCDOT) and  
496 Virginia Department of Transportation (VDOT) where applicable. Except when acting as  
497 executioner of the aforementioned NVTA grant, the Owner will be responsible for the  
498 design, Traffic Impact Assessment, warrant study, easement/right-of-way acquisition, and  
499 installation of these traffic signals. Any signals or HAWK beacons within the City limits  
500 will match the specifications that the City provides. The City shall work with the Owner to  
501 ensure that all necessary easement, for construction of the Traffic Signals are able to be  
502 acquired when needed. The Owner shall be found to have fulfilled this condition upon  
503 approval of the traffic signal as fully operational by the City Manager. The Owner shall  
504 provide a phasing plan for the installation and operations of the Traffic Signals which shall  
505 be approved at SESP. With the exception of buildings identified in the Phasing Plan and  
506 which are expected to be open prior to installation of the Traffic Signals, the Owner agrees  
507 to obtain the City Manager's approval of the traffic signals as fully operational before  
508 issuance of the first certificates of occupancy for any buildings for which a certificate of  
509 occupancy is issued, provided the City review process is reasonably diligent and not  
510 delayed by FCDOT/VDOT review. In the event there is any delay due to FCDOT/VDOT  
511 review, the City Manager shall permit issuance of such certificate of occupancy if the  
512 Owner provides reasonable assurances that it will diligently pursue construction of the  
513 traffic signals called for in this Voluntary Concession as approved by the City.

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

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

- 541 traffic signal.
- 542 ○ Signal at Mustang Alley (with City of Falls Church coordination)
- 543 ○ Accessible Curb Ramps and Crosswalk on northern and southern side of
- 544 Mustang Alley Signal.
  
- 545 ● The Commons
- 546 ○ Owner agrees to post a speed limit on The Commons of no more than 20 MPH.
  
- 547 ● The Owner agrees to repair and/or reconstruct sidewalk sections that are damaged by
- 548 project construction at the end of the construction phase of the portion of the project
- 549 that is included in an SESP, per specifications provided by the City Public Works
- 550 Department, including the frontages along Haycock Road and Leesburg Pike. All
- 551 pavement in VDOT ROW shall be designed in accordance with the most recent VDOT
- 552 design guidelines and standards. Any existing or proposed mid-block crossings shall
- 553 have striping and curb ramps meeting current regulations.
  
- 554 ● The Owner agrees to continue coordinating with FCCPS, WMATA, and Virginia Tech
- 555 on ensuring appropriate transportation improvements compatible with anticipated
- 556 future development on these sites.

557

558 **11. Parking Garages:**

559 The Owner agrees that any parking garage spandrel panels that are visible from, and across

560 a street from, a single family home or school, shall be at least 42 inches high, so as to

561 block headlights of vehicles parking in the garage from shining across the street, or as

562 otherwise approved by the City Council at SESP. The Owner further agrees to work to

563 ensure that lighting is designed based on best practices and is sensitive to visibility from

564 neighboring buildings.

565

566 The Owner agrees to provide detail regarding the facades of any and all above grade

567 garages in the project at SESP. To the extent the Owner determines that some amount of

568 the currently designed above grade parking is no longer needed, the Owner can request to

569 amend the SEE to seek permission from the City to convert it to another use.

570

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

572 The Owner agrees to submit with each SESP application a TDM program as conceptually

573 referenced in the Transportation Management Plan that was submitted with the SEE

574 application. Said TDM Plan shall then be refined during the SESP process for the part of the

575 project to be constructed, and in coordination with previously approved SESP. The Owner

576 agrees to obtain the City Manager’s approval of the TDM program as meeting the standards

577 of this Voluntary Concession and as likely to achieve the goals outlined in the TDM Draft

578 included in the SEE, before SESP approval. In addition, the Owner will develop and

579 implement a Parking Management Plan, which the Owner agrees to finalize and obtain

580 approval for as part of SESP approval. The Owner further agrees that the Parking

581 Management Plan will meet all City parking standards in effect at the time of SESP

582 approval or as modified by the parking minimum and maximums outlined in the SEE

583 application.

585 **Access to Property for Monitoring of Parking Utilization and Monitoring of TDM and**  
586 **Parking Management Plans:** The Owner agrees that City of Falls Church staff upon prior  
587 written notice to the Owner’s designated representative will have access to the garage(s) on  
588 the Subject Property at all times to conduct parking utilization counts and to monitor  
589 compliance with the TDM and Parking Management Plans.  
590

591 **13. BikeShare:**

592  
593 **Bike Share:** The Owner agrees to grant an easement to the City for installation and  
594 operation of the either the relocated existing bike share station or a new 12-space bike share  
595 station, as determined by Owner.

596 **14. Public Art and Commons Use:**

597 The Owner agrees to include in the SESP a requirement to include a minimum of  
598 \$100,000 worth of public art on site. The Owner agrees to provide evidence of such  
599 investment having been made prior to issuance of the first residential certificate of  
600 occupancy for the Project. The Owner also agrees to work in concert with the City’s  
601 various departments, including the Arts and Humanities Council of Falls Church, to  
602 accommodate special events on The Commons. The Owner agrees to allow the City of  
603 Falls Church to hold up to two one-day events annually on the Commons at no rental fee,  
604 as long as the City provides adequate security, set-up, trash collection, crowd control, etc.  
605 to ensure no additional operational costs to Owner and clean-up such that the property is  
606 restored to the same condition it was found in prior to the event. The City and other groups  
607 may also hold additional events annually in The Commons (planned and scheduled in  
608 coordination with Owner), which will have rental/cleaning/etc. fees, as Owner deems  
609 appropriate. The Owner also agrees to engage with the Arts and Humanities Council,  
610 Recreation and Parks, Historical Commission, and Historical Architectural Review Board  
611 on furthering the details initially laid out in the draft Placemaking and Amenity Plan  
612 related to public art, public space design, festivals, events including farmers’ markets, and  
613 City history.

614 **15. Construction Management:**

615 The Owner agrees that each SESP shall include, by way of illustration and not limitation,  
616 the following commitment to a Construction Management Plan developed in coordination  
617 with the City and Falls Church City Public Schools:  
618

619 **Construction Parking and Staging Plan:** Prior to issuance of any demolition and/or  
620 building permits the Owner agrees to prepare, submit, and obtain the City Manager’s  
621 approval of a demolition and staging plan for the project, which shall not be  
622 unreasonably withheld. All demolition and construction of the project shall be done in  
623 conformance with the approved demolition and staging plan. Once a contractor has  
624 been selected for the project, the Owner will prepare a Construction Parking Plan and a  
625 Construction Traffic and Staging Plan to be enforced by the Owner for the entire the  
626 construction phase of the project, and to obtain the City Manager’s approval of the  
627 plan as providing sufficient parking or other transportation services for working to the  
628 site, and not having an adverse impact on traffic safety, prior to the issuance of any



629 building permit for the project. The Owner acknowledges and agrees that violations of  
630 these Plans during construction can result in a Stop Work Order and other enforcement  
631 measures by the City.

632  
633 **Community Liaison:** The Owner agrees to designate a representative who is physically  
634 present on a regular basis on the Subject Property to serve as a liaison to the community  
635 for the period leading up to the issuance of the first Certificate of Occupancy and for  
636 two years thereafter. The Owner agrees to provide the name and telephone number of the  
637 liaison, in writing, to the City Manager prior to commencement of any work on the site.  
638 The Owner agrees to have the representative schedule meeting with the community, at an  
639 accessible location, no less frequently than quarterly. The Owner further agrees to hold  
640 such meetings, after notifying the City Manager, and the citizens at least ten days prior to  
641 the date of such meeting, and to permit citizens to speak at the meeting to air their  
642 concerns.

643  
644 **Excavation Monitoring:** The Owner agrees to continuously monitor for soil movement  
645 and structural damage to adjacent structures during and after excavation for any part of  
646 the project. Structures within a distance equivalent to or less than the depth of the  
647 excavation plus 10 feet will be surveyed by the Owner for pre-development conditions  
648 and compared to post-development conditions. For such structures, the Owner agrees to  
649 provide insurance coverage for damage caused by excavations or construction activities,  
650 as independently verified by a third party engineering consultant provided by the Owner.  
651 In no way will this provision limit the liability of the Owner or its contractors for  
652 damages caused by construction activity.

653  
654 **Sidewalk Accessibility:** The Owner agrees to maintain safe pedestrian walkways  
655 throughout construction and thereafter, and to ensure that such walkways are, at all  
656 times, separated from street traffic. Sidewalks shall not be completely closed on either  
657 side of the street, unless the City Manager or his designee approves such closing, after  
658 finding that the Owner (1) cannot reasonably provide such a pedestrian walkway, (2)  
659 will provide clear signs and access to the sidewalk on the other side of the street, and (3)  
660 will manage the closure so that the pedestrian walkway is not closed for more than 15  
661 consecutive days, unless City Manager (or his designee) approves a longer duration.

662  
663 **Pest Control:** The Owner agrees to contract with a certified pest control company  
664 licensed to do business in Virginia for a thorough extermination of any pests and/or  
665 rodents that may be present on the Property prior to the start of demolition work and/or  
666 any other land disturbing activities, and throughout construction.

667  
668 **Coordination:** The Owner agrees to ensure that throughout construction of the project,  
669 the parties undertaking development coordinate their efforts to:

- 670 - protect the members of the public,
- 671 - continue ongoing access to Metro by the public, and
- 672 - minimize disruption to the adjacent school and the public in general.

673  
674 **16. Public Safety:**

675 The Owner agrees to work with the City Police Department to provide a shared touchdown

676 space. The Owner agrees that each SESP for work on the Subject Property shall include,  
677 whether or not expressly set forth therefore, the following commitments to Public Safety:  
678

679 **Public Safety Radio:** The Owner agrees to ensure that all buildings and parking garages  
680 on the Subject Property are constructed in a manner that permit public safety radio  
681 signals to be transmitted and received throughout all areas within the building and from  
682 those areas to all outdoor areas of the property that is the subject of the Special  
683 Exception. The Owner will install the necessary equipment and, with at least five days'  
684 notice to the City Manager, perform a radio transmission test upon completion of the  
685 project, but prior to issuance of the first Certificate of Occupancy, in order to establish  
686 that there exists the ability to transmit and receive public safety radio signals from the  
687 interior of the building and parking garages, including the subterranean levels. The  
688 Owner agrees to permit the City Manager or his designee to be present at the site  
689 during the tests and to verify the results. Should the test fail, the Owner will find and  
690 implement a solution acceptable to the City so as to resolve the problem with 90 days of  
691 the test. The Owner also agrees to have the system be placed on the Emergency  
692 Generator.  
693

694 **Emergency Call Boxes:** The Owner agrees to install emergency call boxes in locations  
695 deemed appropriate by the City Police Department.  
696

697 **Life Safety:** To provide building safety for residents and responders during an  
698 emergency and to have the appropriate resilience to meet the demands for community  
699 safety, the Owner agrees to provide:  
700

701 A. Natural gas emergency generator sized to accommodate:  
702

703 Code-required items, including:

- 704 a. Public safety radio
- 705 b. Fire alarm;
- 706 c. Exit lights;
- 707 d. Emergency lighting;
- 708 e. A minimum of one elevator in each building;
- 709 f. A fire pump, if required.

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

- 711 g. Domestic water pumps; and
- 712 h. Night lighting as may apply to the senior housing and office uses.  
713

714  
715 B. Fire command center with annunciation of elevators, generator, fire pump and  
716 HVAC systems, including a separate cooling system for the command center.  
717

718 **Loading:** The Owner agrees to coordinate with the City and FCCPS regarding the safe  
719 operation of loading and unloading and the implications of and interaction with school  
720 hours and school buses.  
721

722 **Driveway/Ramp Load Capacity:** Any street or road which may carry Emergency

723 Response Equipment shall be engineered and constructed to support the weight of, and  
724 permit passage of, a 79,000-pound ladder truck as currently used by the fire department,  
725 as well as able to support repetitive loading of garbage trucks.

726 Pavement shall be designed in accordance with VDOT Pavement Design Guide for  
727 Subdivision and Secondary Roads in Virginia (revised 2018) and Chapter VI: Pavement  
728 Design and Evaluation from VDOTs Manual of Instruction (MOI).  
729

730 **17. Easements:**

731 The Owner agrees to provide such Easements to the City, in a form and substance as  
732 approved by the City Manager, as are shown on the SEE or otherwise called for in these  
733 Voluntary Concessions.  
734

735 **18. Other Terms and Conditions:**  
736

737 **FCCPS Surge Parking:** The Owner plans to construct approximately 300 commercial  
738 parking spaces that shall be available evenings and weekends as shared paid parking for  
739 visitors to the School and the property for special events, shopping, and dining. The  
740 Owner shall coordinate scheduling for limited special events with FCCPS and the  
741 Recreation and Parks Department to minimize parking demand conflicts. Reference the  
742 “Tripartite Memorandum of Understanding Among CFC, FCCPS, FCGP” dated  
743 September 23, 2020 for more specific information regarding this requirement.  
744

745 **Dog Facilities:** The Owner acknowledges the importance of providing spaces for dog  
746 relief, and will continue to consider this at SESP.  
747

748 **Owner Acknowledgements:** The Owner acknowledges, understands and agrees that the  
749 Subject Property will be developed in accordance with the applications approved by  
750 the City Council for the Subject Property and in full compliance with all applicable  
751 laws, codes, ordinances, charters, statutes, rules, regulations, agreements, and  
752 commitments.  
753

754 The Owner acknowledges and agrees that the SEE, as granted, runs with the land and is  
755 not transferable to other land.  
756

- 757 1. Execution of the Developer’s Voluntary Concessions, Community Benefits, Terms  
758 and Conditions, dated July 8, 2019 (“voluntary concessions”) and as amended on  
759 (DATE), for Special Exception Entitlement for a Mixed-Use Development at the  
760 subject site, shall be a condition for the approval of the Special Exception Entitlement;  
761 and the City Manager is hereby authorized and directed to execute the voluntary  
762 concessions, as submitted, on behalf of the City; and  
763
- 764 2. No development shall occur on the site until the Developer has obtained approval of a  
765 Special Exception Site Plan (“SESP”) for the portion of the site to be developed. Such  
766 SESP shall be consistent with this SEE approval, including without limitation general  
767 locations of the buildings, the height of buildings; the location, type, and amount of

768 individual uses on the site, the infrastructure and transportation on the site, the public  
769 facilities and utilities as it may be amended from time to time; and

770  
771 3. Phasing of construction of the development of the site will be in accordance with the  
772 SEE and the voluntary concessions; and

773  
774 4. Violation of any of the conditions of this Special Exception Entitlement shall be  
775 grounds for revocation of the Special Exception Entitlement approval by City Council.

776  
777  
778 **Access for Commissioner of Revenue:** The Owner agrees that each SESP for the  
779 Subject Property will provide for the City of Falls Church Commissioner of Revenue  
780 (CoR) and/or his designated staff upon prior written notice to an Owner designated  
781 representative to have access to the garage(s) on the Subject Property at all times for  
782 inspection of window stickers related to personal property taxes for vehicles. The CoR  
783 and staff will be provided all credentials necessary to have access to parking garage(s)  
784 by vehicle at all times. In the event the access credentials are changed or updated, the  
785 CoR will be provided notice and updated access credentials within 30 calendar days.

786  
787 **Terms and Conditions Incorporated in Resolution:** The Owner voluntarily submits  
788 the foregoing concessions, terms, and conditions to the City Council to be incorporated  
789 by reference into the Resolution for the Special Exception, should City Council grant  
790 the 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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826  
827  
828  
829  
830

**EXHIBIT A**

Final preliminary plat with Parcel D highlighted

(attached)