

VOLUNTARY CONCESSIONS, COMMUNITY BENEFITS, TERMS AND CONDITIONS

West Falls Church Economic Development Project (“West Falls”)

FCGP Development LLC

Approved: Month, Date, Year

The following Concessions, Community Benefits, Terms and Conditions (“Voluntary Concessions”) are voluntarily proffered by the Owner for the benefit of the community and for the City of Falls Church, Virginia. These Voluntary Concessions are proffered in association with the City’s approval of the Phase I Special Exception Site Plan (“SESP”) Application filed with the City of Falls Church on June 10, 2020, for the phased development of a 9.78 acre area located on portions of RPC #51-221-006 and -007 located at 7124 Leesburg Pike in the City of Falls Church (also called the “Subject Property”). The Subject Property is more specifically shown on the attached Exhibit A. As used herein “Owner” shall refer to the applicant, any contract owner, the property owner, and any successors or assignees:

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

The owner acknowledges that through the Special Exception Site Plan (“SEE”) original approval, dated July 8, 2019, and proposed amendment it has been granted additional height, and certain bonuses and other benefits in return for its agreements, as set forth in these voluntary concessions. The City’s approval of the SEE is based upon the final drawings and documentation submitted as part of that SEE application on June 7, 2019 and as amended on (DATE). The Owner understands and agrees that the SEE approval governs the general location of the buildings, the maximum height of buildings; the general location, type, and amount of individual uses on the site, the infrastructure and transportation on the site, the public facilities and utilities, and other aspects of the future approvals and development on the Subject Property. To the extent not specifically bound by the SEE, the location of specific uses and heights of buildings may be amended or refined with this Special Exception Site Plan (“SESP”) application. The Owner may modify those items specifically bound by the SEE through a SEE amendment that may be submitted concurrently with a SESP application or independently. The Owner further agrees that, under the City Zoning the SEE does not permit the Owner to obtain building permits or to begin construction or implementation of any of the buildings or uses approved through the SEE. Such further construction or implementation may be pursued only after approval of a SESP Application(s) which will govern more specific features, design elements, uses, services, or amenities voluntarily offered by the Owner. These features may include but will not be limited to, site design, public improvements, environmentally sustainable and energy-efficient building

design, affordable housing creation, and other contributions as part of the development. All development on the Subject Property, and all SESP applications for development thereon, will be done in a manner that conforms to the general terms of the SEE approval as it may be amended, through City Council approval, from time-to-time if not in accordance with SEE approval.

1. Conformance with SEE Application:

The Owner agrees to develop Phase I of the Subject Property in conformance with (a) final drawings and documentation of SEE Application and associated materials approved per Section 48-488(B)(1) and (2) on July 8th, 2019, as amended on (Month, Date, Year), (b) the SESP plans dated DATE as prepared by Walter L. Phillips, Inc., and (c) the Transportation Management Plan and Parking Management Plan (TMP & PMP) dated (DATE) prepared by Gorove/Slade Associates, Inc. The City Manager may approve minor deviations from conformance with these documents, as requested by the Owner, provided the deviations do not conflict with what is specifically agreed to in these Voluntary Concessions, are consistent with the purpose and intent of the City Council’s approval of the SEE and SESP, and are either (i) necessary to permit reasonable construction of the project, or (ii) as determined by the City Manager, improve the project’s overall functioning or benefit to the City. The Owner may appeal an adverse decision by the City Manager to the City Council.

2. Uses:

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

- Phase 1:
 - A minimum of 125,000 GSF of office use.
 - A limited or full-service hotel with a minimum of 80,000 GSF and maximum of 200,000 GSF.
 - A minimum of 13,000 GSF of programmable civic space that will be managed by the Owner and which includes an approximately 2,000 to 3,000 GSF event space/conference center, a 4,000 GSF outdoor space in the Commons that can be used for music/entertainment, and an additional 8,000 to 14,000 GSF occupied by performing arts/education studio or school use. The Owner proposes to create a reservation system for the event space/conference center so the public can make reservations through the future property management of the common areas of the project, to be determined prior to the release of certificate of occupancy for the Block C Condo building.
 - Approximately 25,000-45,000 GSF for a grocery tenant (provided that, if a grocer is less than 40,000 GSF, a total of at least 40,000 GSF will be leased to a grocer or other retailer(s) (but not service) with an equivalent to or better fiscal impact than a 40,000 GSF grocery tenant (i.e., generating aggregate taxes to the City equivalent to a grocery occupying 40,000 GSF with average gross revenue of \$400/GSF).
 - A minimum of 100,000 GSF of retail including the grocery use and general retail, but exclusive of the civic uses. Included in the Comprehensive Agreement, dated (XXX) (“CA”) is a target merchandising plan approved by the City that indicates suggested square footages of types of retail uses, such as for the grocer, restaurants, retail, and retail services. Said

merchandising plan may vary from the ultimate square footage of uses as the market dictates.

- A maximum of 550,000 GSF of residential (exclusive of senior housing), of which the maximum non-micro multifamily apartment use is 275,000 GSF (with an average size for all of the residential units in the building of no more than 900 net rentable square feet) and the maximum condominium use is 275,000 GSF.
- A maximum of 100,000 GSF of the condominium use described above can be converted to micro-apartment rental units with an average size of no more than 675 net rentable square feet for one-bedroom units (with no dens included) and an average size of no more than 500 net rentable square feet for studio apartments. Owner agrees that the final Certificate of Occupancy for the Building A residential apartment building will not be released until release of building permit for any of the Phase I non-residential and/or senior housing uses.
- A maximum of 225,000 GSF of senior housing.
- Phase 2:
 - A minimum of 150,000 GSF office building.
 - A maximum of 154,000 GSF of condominium use.
 - A minimum of 6,400 GSF of retail use

For the purposes of this Binding Development Plan Program, Gross Floor Area (GSF) shall be calculated as follows:

GSF may vary from the minimums/maximums outlined above by +/- 2% to account for physical/design constraints.

As permitted by the international standards set forth by BOMA (Building Owners and Managers Association), office GSF shall include office uses per floor and service/loading areas.

Residential* GSF shall include residential GSF per floor (including amenities above the ground floor) plus any dedicated residential amenity or lobby spaces at the ground level.

Retail GSF shall include Gross Leasable Area (including dedicated retail elevator lobbies).

Hotel GSF shall include hotel GSF per floor (including amenities above the ground floor) plus any shared spaces, dedicated hotel amenity or lobby spaces at the ground level.

*Residential includes senior housing, residential rental and for-sale units.

3. Commercial Space:

Permitted Uses:

The Owner intends to create vibrant retail environment on the Subject Property that meets

the economic development and placemaking objectives of the City. In furtherance of this goal, the Owner anticipates providing a variety of different types of retail tenants. The Owner proposes to include as permitted uses the following uses that are not explicitly listed in the B-2 zoning district but otherwise reasonable for this development:

- Daycare, provided:
 - Daycare space does not front onto The Commons; and
 - The amount is limited to 12,000 GSF or as otherwise approved by the City Manager so long as any increase above 12,000 GSF does not decrease retail GSF across the remainder of the project.
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- Bowling
- Pet services such as a veterinarian with temporary boarding for medical purposes
- Brewery/winery/distillery
- Fitness
- Spa/medspa
- Hair salon
- Music/dance school
- Radio station
- Mobile food service (food trucks and commissary/ghost kitchens)

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 agreement of the City Manager or on an appeal of said City Manager's decision to 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 or architectural placemaking elements for the area of any wall facing the Commons, State Route 7, Haycock, and Mustang Alley, and Street A that is between three (3) feet and eight (8) feet above grade with the exception of loading areas, back of house, garages, garage entrances, and alleys. In areas with steep grade, the measuring point for the (3) feet and eight (8) feet may be modified. This provision is not intended to prohibit merchandise displays that are viewed from the street within the transparency area or restaurants that utilize blinds or curtains to intermittently shade customers from unwelcomed sunlight.
- Façade and other design enhancements will be submitted as part of an SESP application for any development on the Subject Property.
- The Block C building footprint location has been adjusted since the SEE submission. The proposed building on Block C maintains the building stepbacks as outlined in the SEE.
- Minor changes to the streetscape adjacent to Building D-1 may be approved administratively to accommodate the future SESP submission for this building. Minor changes may include relocating or redesigning landscape elements without reduction in size or amount greater than 5%, minor adjustments to grade to accommodate design features or accessibility issues, etc.
- Minor changes to the design of the Commons may be approved administratively, such as relocating or redesigning landscape elements without reduction in size or amount greater than 5%. Amenities in the Commons such as furniture, games or play equipment may be replaced with the same or similar features from time to time, as is appropriate for maintenance and refreshment of the space.

4. Senior Housing Residential Building Condition:

The Owner agrees that a future, separate SESP submission will contain the Senior Housing residential building as shown on the approved SEE that will be managed and operated with the intent to provide housing for those persons fifty-five (55) years of age or older in accordance with the State and Federal Fair Housing Acts and the Federal Housing for Older Persons Act of 1995 (Pub. L. 104-76, 109 Stat. 787, approved December 28, 1995),

as amended, and as implemented by HUD regulations at 24 CFR part 100. The Senior Housing building shown in the SEE shall have a maximum of 225,000 GSF, and at least 60% of units will be independent living and/or active adult. The Owner further agrees that the Senior Housing building will at all times be managed and operated so that it meets all of the requirements of the applicable Federal and Virginia laws. The Owner agrees to promulgate a set of written management standards for the operators of the Senior Housing building that requires the lease for each apartment unit to include a prohibition as legally provided, on individuals eighteen (18) years of age or younger from residing in the building, and the Owner and any designated operator agrees to enforce such lease restriction. The rules and regulations in the leases will be shown to the City Attorney or City Manager for approval as being consistent with this condition before any Certificates of Occupancy are issued for the age restricted housing. The rules and regulations will be in place as governing the management of the age restricted housing before any Certificates of Occupancy for a dwelling unit are issued. This rule prohibiting persons eighteen (18) and under from residing in the building shall not be changed without review and approval by the City Council through a SEE or SESP amendment.

5. Affordable Housing Contribution:

The Owner agrees to include in its SESP 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 will not require ADU units to pay amenity fees, but may require the payment of security deposits and other deposits or fees 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 priorities and evaluate compliance with program terms in accordance with the Affordable Unit Program official administrative procedures and regulations.
- (e) The monthly rent for the ADUs will be set by the Housing Commission with reference to the U.S. Department of Housing and Urban Development ("HUD") Washington Primary Metropolitan Statistical Area ("PMSA") area median household income ("AMI"). The ADU's that are included in the six (6) percent of total units shall be offered for rents that are affordable to households whose income is no more than 60% of HUD PMSA AMI. Alternatively, the City and the Owner may agree to the provision of an equivalent number of ADUs based upon the qualification for residents with incomes in the range of 40% to 80% of HUD PMSA AMI; such terms shall be set out in the Voluntary Concessions agreed to in the SESP governing such multifamily housing. Conceptually, to the extent ADU's are provided at a reduced income threshold of 40%, other units shall be provided at 80% resulting in an average of 60% AMI for all ADU's provided. Such rents, subject to changes permitted by this Voluntary Concession will be in effect for the life of the Project. ADU monthly rent shall include an additional amount as calculated by the percentage increase in AMI, but not less than the original ADU monthly rents listed above.
- (f) ADU tenants will have the same duties, rights and privileges as all other tenants in the project, including access to amenity spaces, except as such ADU duties, rights and privileges are expressly altered by these Voluntary Concessions.
- (g) A minimum of one of the ADU units shall be an ANSI Type A accessible unit as defined by federal law. However, if the Type A unit is rented to a person(s) who does not require the accessibility features, temporary adaptations to the accessible features, such as cabinet doors, may be provided as allowed by applicable law. Additionally, as provided by federal law, all ADU and market rate units shall be ADA ANSIType B adaptable.
- (h) The Owner will comply with all applicable fair housing laws.

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

6. Pedestrian Oriented Design Elements:

Streetscape: The Owner agrees that, in order to create a more pedestrian-oriented environment and to help preserve and protect the character of the new neighborhood, streetscape improvements within the public rights-of-ways on Leesburg Pike and Haycock Road will be substantially consistent with the City Streetscape Standards. The Owner has provided options for enhanced streetscape and creative seating options in this corridor in the submitted draft Placemaking and Amenity Plan to be refined in the SESP. In the event the Developer and the City Manager agree that deviation from such established City Streetscape Standards would be desirable for the City, then the City Manager may approve such deviation. In order to enhance the pedestrian experience along these corridors, Owner has provided active uses in Building A along Haycock, including retail, to the extent feasible.

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

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

The Owner agrees to the following criteria for streetlight power sources, recognizing that exact location is to be determined by the City and Owner at the construction phase:

- Power meters shall not be located in the clear sidewalk. They should be out of the walkway and discreet.
- Power disconnects/shutoffs for streetlights in the public ROW shall not be located inside a building. They need to be accessible from the outside.
- Owner agrees to provide electric in street tree pits and coordinate with the City on a tree lighting program for trees in the public ROW on Haycock and Leesburg Pike and will provide tree lighting along Commons Drive

The owner agrees that the streetlights to be installed on Haycock and Route 7 will comply with the City's standards as applicable at the time of building permit.

The Owner agrees to provide two, 2" empty conduits for use by the City, to run under State Road 7 (West Broad Street/Leesburg Pike) and Haycock Road sidewalks and crosswalks constructed by the Owner. Conduits shall also include VDOT standard pull junction boxes/hand-hole vaults at ends of right of way property boundary and every 600' maximum along the conduit path.

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

Signage: The Owner intends to complete a Comprehensive Signage Plan that will address temporary signage, wayfinding, retail signage, and general branding/building signage. The Owner understands that the EDA will soon have developed wayfinding and signage standards for the City, and will incorporate these City standards where appropriate.

The Commons: Unless otherwise provided for in a Commercial Development Authority agreement with approval by the City Council, the Owner agrees to construct and maintain the surface level plaza and public space in The Commons, with the features and amenities as proposed in the SESP application documents.

Undergrounding of Utilities: The Owner included in the 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. Refer to Sheet (C-1403 and/or L103).

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 in 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 and SHEET XXX in the SESP 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	Required Certification Level	Notes
Site	LEED-ND Gold v4 or equivalent	
Office	LEED-BD+C Core & 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 the City if the Owner is only able to achieve LEED Silver
Hotel	LEED-NC Silver v4 or equivalent	

The bonds or letters of credit as noted in the above chart relate to the use-specific buildings in total as defined by the LEED application, and not to individual buildings as may be defined from a permitting or code perspective. For example, the multi-family residential apartment building in Phase One is considered, for LEED purposes, to be one building and thus bound by one \$50,000 bond or letter of credit.

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

Electric Vehicle Charging Station: The Owner agrees that a minimum of ten (10) charging stations for electric vehicles will be provided in the project parking garage, as well as a minimum of one (1) additional publicly accessible fast-charge station at a location to be determined at SESP within the project. The Owner further agrees to provide conduit for the future installation of thirty (30) additional charging stations for electrical vehicles. The general locations of these charging stations have been identified in the SESP Application materials, but may be adjusted during the building permit process as needed. The SESP Application materials show general locations for stations and conduit in both the residential and commercial portions of the project.

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

- A good faith effort to reasonably maximize the use of green roof on concrete construction building with a target of 20% of total roof area of concrete construction buildings.
- All water quality requirements will be met on the Subject Property. No offsite credits will be purchased.
- Owner will aspire to achieve a 10% reduction in peak run-off for a 10-year storm as determined by Ch. 35 of the City Code.

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

8. Installation of Vegetation:

The Owner agrees that the vegetation installed for the project will consist in general of native and regionally adapted species. Plant materials shall be at least the following sizes at installation:

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

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

9. Lighting:

The Owner agrees that all exterior lighting and lighting within perimeter parking garages for the Subject Property shall comply with City Ordinances with respect to spill over to

residential neighborhood adjacent to the project, and exterior lighting shall be shielded and directed away from any adjacent residential property. Any building mounted signs which face the residential neighborhoods shall not be internally illuminated with translucent panels. The lighting plan for exterior lighting that is visible by residential neighborhoods will incorporate dark sky lighting principles in accordance with the standards of the International DarkSky Association. (Sheet X)

10. Transportation Improvements:

The Owner provided an updated Transportation Impact Analysis (dated X) as part of the SESP Application Materials. The Owner agrees to provide the Transportation Improvements shown on the SEE, subject to further design work. The Owner agrees to work collaboratively with the City to determine the precise nature of the Transportation Improvements that it will provide, and that such improvements may be different from what is shown on the SEE provided both the Owner and the City mutually agree to any material changes from the SEE proposed Transportation Improvements that impact street sections and/or building footprints. The Owner further agrees that all changes to the Transportation Improvements described below and in the SEE will be subject to approval of the City Manager, and ultimately to the approval of the City Council through the SESP process.

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

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

- Leesburg Pike (subject to FCDOT/VDOT approval)
 - Median modifications at intersection of The Commons and Chestnut Street to provide at least a left turn lane into the Commons and to provide other movements in and out of Chestnut and Commons as agreed upon by VDOT in coordination with Fairfax County.
 - Traffic Signal at The Commons and Leesburg Pike including at least a left turn into the project from Leesburg Pike and other movements in and out of Chestnut and Commons as agreed upon by VDOT in coordination with Fairfax County. Any transportation improvements made at this intersection will protect against left turn movements in or out of Chestnut Street.
 - Accessible curb ramps and crosswalk on eastern side of signalized intersection.
 - Right or shared right turn lane into The Commons.
 - Right or shared right turn lane into Mustang Alley.
 - Accessible curb ramps and crosswalks at all corners of Leesburg Pike and Haycock intersection.
 - Project shall be designed to allow for the location of a potential curbside future BRT station along Route 7.
- Haycock Road
 - Median modifications to provide a left turn lane into Street C.
 - Traffic Signal at Street C (subject to FCDOT/VDOT approval)
 - Accessible Curb Ramps and crosswalk on northern side of Street C traffic signal.
 - Signal at Mustang Alley (subject to FCDOT/VDOT approval)
 - Accessible Curb Ramps and Crosswalk on southern side of Mustang Alley Signal.
- The Commons
 - Owner agrees to post a speed limit on The Commons of no more than 20 MPH.
- The Owner agrees to replace and reconstruct sidewalk sections that are damaged by project construction at the end of the construction phase of the portion of the project that is included in an SESP, per specifications provided by the City Public Works Department, including the frontages along Haycock and Leesburg Pike. All pavement in VDOT ROW shall be designed in accordance with the most recent VDOT design guidelines and standards. Any existing or proposed mid-block crossings shall have striping and curb ramps meeting current regulations.
- The Owner agrees to continue coordinating with FCCPS, WMATA, and Virginia Tech on ensuring appropriate transportation improvements compatible with anticipated future development on these sites.

11. Parking Garages:

The Owner agrees that any parking garage spandrel panels that are visible from, and across a street from, a single family home or school, shall be at least 36 inches high, so as to block headlights of vehicles parking in the garage from shining across the street, or as otherwise approved by the City Council at SESP. The Owner further agrees to work to ensure that lighting is designed based on best practices and is sensitive to visibility from neighboring buildings.

The SESP Application materials contain detail regarding the facades of all above grade garages in Phase I of the project (**SHEET XX**). To the extent the Owner determines that some amount of the currently designed above grade parking is no longer needed, the Owner can request to amend the SEE to seek permission from the City to convert it to another use.

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

The Owner submitted a TDM program and Parking Management Plan with the SESP Application materials that is consistent with the conceptually referenced Transportation Management Plan included with the SEE application, to be approved by the City Manager as meeting the standards of this Voluntary Concession and as likely to achieve the goals outlined in the TDM Draft included in the SEE, before SESP approval. The Owner further agrees that the Parking Management Plan will meet all City parking standards in effect at the time of SESP approval or as modified by the parking minimum and maximums outlined in the SEE application.

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

13. Bicycle Parking, Storage and BikeShare:

Bike Parking and Storage: The Owner has provided Class 3 visitor bike racks as shown on the SEE and Class 1 bike storage consistent with the City of Falls Church bicycle parking standards and requirements, as shown on the SESP Application materials (**Sheet XX**)

Bike Share: The Owner agrees to grant an easement to the City for installation and operation to relocate the existing bike share facility located in the FCCPS parking lot at Haycock and Leesburg Pike, or if relocation and reuse is infeasible, provide a new 12-space bike share facility, at the Owner's own cost, at the location shown on the SESP Application Materials (**Sheet XX**).

14. Public Art:

The Owner agrees 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 also agrees to engage with the Arts and Humanities Council, Recreation and Parks, Historical Commission, and HARB 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. The Owner agrees to hold a quarterly meeting during the placemaking and public art selection process (starting prior to and continuing during the construction period) to present the direction and themes of the

public art and placemaking elements for comments from staff and representatives from the above-referenced groups as a way for the Owner to gather input and feedback prior to making final decisions on these elements.

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. Owner is permitted to use Phase Two land for temporary parking and/or landscaping, as well as for construction staging during Phase One construction. As agreed to, the schools are permitted to use half of the Phase Two Block B (office) parcel for parking during Phase One construction.

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

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

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

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

Coordination: The Owner agrees to ensure that, to the extent more than one SESP is approved for construction of various parts of the Subject Property, the parties undertaking development of the parts of the Subject Property are coordinating their efforts to protect the members of the public, continue ongoing access to Metro by the public, and minimize disruption to the adjacent school and the public in general.

16. Public Safety:

The Owner agrees to work with the City Police Department to provide a shared touchdown space within the on-site property management office, or some other similar location, if desired. The Owner agrees that each SESP for work on the Subject Property shall include the following commitments to Public Safety:

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

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

Life Safety: To provide building safety for residents and responders during an emergency and to have the appropriate resilience to meet the demands for community

safety, the Owner agrees to provide:

A. Natural gas emergency generator sized to accommodate:

Code-required items, including:

- a. Fire alarm;
- b. Exit lights;
- c. Emergency lighting;
- d. A minimum of one elevator in each building;
- e. A fire pump, if required.

Additional items that may not otherwise be required by code:

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

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

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

Driveway/Ramp Load Capacity: Any street or road which may carry Emergency Response Equipment shall be engineered and constructed to support the weight of, and permit passage of, a 60,000-pound ladder truck as currently used by the fire department, as well as able to support repetitive loading of garbage trucks.

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

17. Easements:

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

18. Other Terms and Conditions:

FCCPS Surge Parking: The Owner agrees to provide surge parking to FCCPS in compliance with the terms of the "Tripartite Memorandum of Understanding Among CFC, FCCPS, FCGP" dated September 9, 2020.

Dog Facilities: The Owner acknowledges the importance of providing spaces for dog relief, and has designed areas for such use, included in the SESP Application Materials on **Sheet XX**.

Collaboration with FCCPS: The Owner acknowledges the importance of the relationship between FCCPS activities and the site activities and will work together to

collaborate with FCCPS as appropriate to create educational opportunities through elements such as art, murals, and signage.

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

The Owner acknowledges and agrees that the SESP, as granted, runs with the land and is not transferable to other land.

1. Execution of the Developer's Voluntary Concessions, Community Benefits, Terms and Conditions, dated DATE ("voluntary concessions, for Special Exception Site Plan for a Mixed-Use Development at the subject site, shall be a condition for the approval of the Special Exception Site Plan; and the City Manager is hereby authorized and directed to execute the voluntary concessions, as submitted, on behalf of the City; and
2. No development shall occur on the site until the Developer has obtained approval of a Special Exception Site Plan ("SESP") for the portion of the site to be developed. Such SESP shall be consistent with this SEE approval, including without limitation general locations of the buildings, the height of buildings; the location, type, and amount of individual uses on the site, the infrastructure and transportation on the site, the public facilities and utilities as it may be amended from time to time; and
3. Phasing of construction of the development of the site will be in accordance with the SEE and the voluntary concessions; and
4. Violation of any of the conditions of this Special Exception Site Plan shall be grounds for revocation of the Special Exception Site Plan approval by City Council.

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

Terms and Conditions Incorporated in Resolution: The Owner voluntarily submits the foregoing concessions, terms, and conditions to the City Council to be incorporated by reference into the Resolution for the Special Exception, should City Council grant the applications for Special Exception with the conditions set forth in this submission.

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: _____, 2021.

EXHIBIT A

Final preliminary plat with Parcel D highlighted

(attached)