

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

3 West Falls Church Economic Development Project

4 Special Exception Entitlement

5 FCGP Development, LLC

6 Originally Approved: July 8, 2019

7 As Amended: **Month, Day, 2021**

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

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

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

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

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

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

60 • Phase 1:

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

Commented [A1]: This is referencing the program page in the 7/8/19 approved SEE. Since some of the use details are proposed to change, this page should be amended and included with SEE amendment documents.

Commented [A2R1]: FCGP—we will do this as part of final submission

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

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

- 105 ○ A maximum of 561,000 GSF of residential (exclusive of senior housing), of
106 which the maximum non-micro multifamily apartment use is 280,500GSF
107 (with an average size for all of the residential units in the building of no more
108 than 900 net rentable square feet) and the maximum condominium use is
109 280,500GSF.
- 110 ○ A maximum of 102,000GSF of the condominium use described above can be
111 converted to micro-apartment rental units with an average size of no more
112 than 675 net rentable square feet for one-bedroom units (with no dens
113 included) and an average size of no more than 500 net rentable square feet for
114 studio apartments.
- 115 ○ Owner agrees that no Certificate of Occupancy allowing residency in the
116 Building A residential apartment building will be released until submission
117 of complete building permit application for office and hotel. (Complete
118 building permit application will be defined as meeting the requirements
119 outlined in City of Falls Church Plan Submission Requirements,
120 Informational Brochure #3 of 3).
- 121 ○ A maximum of 229,500 GSF of senior housing.

- 122 • Phase 2:

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

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

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3. Commercial Space:

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

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Prohibited Uses:

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- Gun stores or firearm dealers, or shooting ranges, or other weapons dealers

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- Roller rink

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- Pornographic book store, pornographic theatre or amusement facility, or any other facility selling or displaying pornographic materials or having such displays

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- Second hand store, except upscale consignment

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- Auction house

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- Flea market

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- Blood bank

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- Funeral home

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- Industrial uses, except for small-scale production use which may also sell items to the public

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- Car wash, except for mobile car wash uses within the parking garages

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- Carnival, amusement park or circus

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- Bingo hall

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- Church, temple, synagogue, mosque, or other house of worship

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- Facility for the sale of paraphernalia for use with illicit drugs

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- Vape stores or other tobacco uses or related dealers

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Design Requirements:

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

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- 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.

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- The Owner agrees that the ground floor retail or other ground floor space wall shall have either an average 70% transparency, unless the City Manager has approved architectural placemaking elements for the area of any wall facing the Commons, State Route 7, Haycock, and Mustang Alley, and Street A for the area that is between three (3) feet and eight (8) feet above grade with the exception of loading areas, back of house, garages, and garage entrances as approved on the SEE, Sheet X In areas with steep grade, the measuring point for the (3) feet and eight (8) feet may be modified. This provision is not 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

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

202 The Owner agrees to include in a SESP application a Senior Housing residential building as
203 shown on the approved SEE that will be managed and operated to provide housing for
204 persons fifty-five (55) years of age or older in accordance with the State and Federal Fair
205 Housing Acts and the Federal Housing for Older Persons Act of 1995 (Pub. L. 104-76, 109
206 Stat. 787, approved December 28, 1995), as amended, and as implemented by HUD
207 regulations at 24 CFR part 100. The Senior Housing building shown in the SEE, Sheet/Page
208 X shall have a maximum of 225,000 GSF, and at least 60% of units will be independent
209 living and/or active adult. The Owner further agrees that the Senior Housing building will at
210 all times be managed and operated so that it meets all of the requirements of the applicable
211 Federal and Virginia laws. The Owner agrees to promulgate a set of written management
212 standards for the operators of the Senior Housing building that requires the lease for each
213 apartment unit to include a prohibition as legally provided, on individuals eighteen (18) years
214 of age or younger from residing in the building, and the Owner and any designated operator
215 agrees to enforce such lease restriction. The Owner agrees to obtain approval of the rules and
216 regulations in the leases from the City Attorney or City Manager as being consistent with
217 this condition before any Certificates of Occupancy are issued for the age restricted housing.
218 The rules and regulations will be in place as governing the management of the age restricted
219 housing before any Certificates of Occupancy for a dwelling unit are issued. This rule
220 prohibiting persons eighteen (18) and under from residing in the building shall not be
221 changed without review and approval by the City Council through a SEE or SESP
222 amendment.

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223 **5. Affordable Housing Contribution:**

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

Commented [A4]: In progress

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- 226 (a) As the Owner and the City agree is consistent with the City of Falls Church Affordable
227 Housing Policy, the Owner will provide affordable dwelling units (“ADUs”) in the project
228 equal to six (6) percent of the total number of dwelling units to be included on the Subject
229 Property, including the independent living units associated with the Senior Housing
230 (rounded up to the nearest whole number) unless the City Manager and the Owner agree
231 to a different percentage of affordable units as a means to either increase the number of
232 larger affordable units or provide units at a lower AMI, and such revised affordable housing
233 plan is included in the Voluntary Concessions when the SESP is approved for the respective
234 multifamily residences. In the event the Senior Housing Building includes assisted living
235 units, the City shall have the right to receive from the Owner, in lieu of the value of all or
236 some of the affordable independent living residences, an annual accounting subsidy
237 acceptable to both the City and the Owner, adjusted annually, for eligible low or moderate-
238 income residents with incomes at or below 80% of the AMI. The proportion of ADUs
239 for studio, one bedroom, and two bedroom units will follow the same proportionate mix
240 for the market rate units in the project unless the City Manager and the Owner agree to a
241 different unit mix and such mix is included in the Voluntary Concessions when the SESP
242 is approved for the respective multifamily residences. For each unit type, the ADUs shall
243 be equivalent in size to other market rate units of the same type. All ADUs will be dispersed
244 throughout the project with the exception of the top floor of each residential building.
245 Parking shall be provided for ADUs at the same rate as for the market rate units. If a parking
246 fee is imposed upon market rate tenants, the same parking fee shall apply to ADU tenants.
247 The Owner shall require the payment of security deposits and other deposits or fees
248 (including amenity fees proportional to the AMI level) for ADU units that are also charged
249 to market rate units.
- 250
- 251 (b) The Owner shall have the right but not the obligation to provide ADUs generated from the
252 residential condominium buildings within the rental apartment buildings on the site. If
253 Phase 2 includes a residential condominium building and no rental apartment building, as
254 is currently envisioned, the Owner shall have the right to convert market rate apartment
255 units within the Phase 1 apartment building to ADUs in lieu of providing the ADUs within
256 the Phase 2 condominium building.
- 257
- 258 (c) The Owner agrees to record Restrictive Covenants among the land records of the Clerk
259 of the Circuit Court of Arlington County, which shall define terms and conditions of the
260 ADUs as such terms and conditions are agreed to in these Voluntary Concessions regarding
261 issues including, but not limited to, price control periods and owner/renter occupancy
262 and the matters agreed to in these Voluntary Concessions. These Covenants shall run
263 with the land and be an encumbrance on the ADUs. The Covenants shall be recorded with
264 the City’s land records in Arlington County, and evidence of such recordation will be
265 provided to the Zoning Administrator before a Certificate of Occupancy is issued for any
266 dwelling unit in the project.
- 267
- 268 (d) The Owner will rent the ADUs directly or through its designated agent to qualified tenants,
269 as determined by the City. The City will regulate and establish ADU qualification
270 priorities and evaluate compliance with program terms in accordance with the Affordable
271 Unit Program official administrative procedures and regulations.

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- (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.
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- (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.
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- (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 ANSI Type B adaptable.
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- (h) The Owner will comply with all applicable fair housing laws.
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- (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.
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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 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 Owner and the City Manager agree that deviation from such established City Streetscape

317 Standards would be desirable for the City, then the City Manager may approve such
318 deviation. In order to enhance the pedestrian experience along these corridors, Owner
319 agrees to ensure that street frontages are active and will pursue retail to the extent feasible.
320

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

332 The Owner agrees to maintain the streetscape improvements (including street trees but
333 excluding the maintenance of and cost of electricity for City standard streetlights)
334 constructed as part of this project as long as the project remains. The terms of such
335 maintenance responsibilities will be set forth in a Streetscape Maintenance Agreement
336 to be negotiated between the Owner and the City, which agreement will be finalized,
337 approved by the City Manager, and executed by the Owner prior to issuance of the first
338 Certificate of Occupancy for any occupiable space in the project.
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340 The Owner agrees to the following criteria for streetlight power sources, recognizing that
341 the exact location of facilities is to be determined by the City and Owner at the SESP and/or
342 construction phase:
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- 344 - Power meters shall not be located in the clear sidewalk. They should be out of the
345 walkway and discreet.
- 346 - Power disconnects/shutoffs for Rt. 7 and Haycock streetlights in the public ROW
347 shall not be located inside a building. They need to be accessible from the outside.
- 348 - Owner agrees to provide electric in street tree pits and provide a tree lighting
349 program for trees in the public ROW on Haycock and Leesburg Pike, and may
350 provide tree lighting along Commons Drive
351

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

358 **Accessibility:** The Owner agrees that the development will meet the ADA Standards for
359 Accessible Design.
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361 **Signage:** The Owner agrees to complete a Comprehensive Signage Plan that will address
362 temporary signage, wayfinding, retail signage, and general branding/building signage. The
363 Owner will incorporate the City’s adopted wayfinding and public parking signage where

364 appropriate.

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

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

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

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389 **7. Environmental Improvements:**

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

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

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

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404 **Future Solar Panels:** The Owner agrees to include in each SESP application elements that

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

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

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

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

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

441
442 **8. Installation of Vegetation:**

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

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

463 **9. Lighting:**

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

473 **10. Transportation Improvements:**

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

485 **Traffic Signals:** The Owner agrees to include in its SESP and the NVTA Transportation
486 Improvement Plan traffic signals as shown on the SEE as may be warranted and/or approved
487 by the City, Fairfax County Department of Transportation (FCDOT) and Virginia
488 Department of Transportation (VDOT) where applicable. Except when acting as executioner
489 of the aforementioned NVTA grant, the Owner will be responsible for the design, Traffic
490 Impact Assessment, warrant study, easement/right-of-way acquisition, and installation of
491 these traffic signals. Any signals or HAWK beacons within the City limits will match the
492 specifications that the City provides. The City shall work with the Owner to ensure that all
493 necessary easement, for construction of the Traffic Signals are able to be acquired when
494 needed. The Owner shall be found to have fulfilled this condition upon approval of the traffic
495 signal as fully operational by the City Manager. The Owner shall provide a phasing plan for
496 the installation and operations of the Traffic Signals which shall be approved at SESP. With
497 the exception of buildings identified in the Phasing Plan and which are expected to be open
498 prior to installation of the Traffic Signals, the Owner agrees to obtain the City Manager's

499 approval of the traffic signals as fully operational before issuance of the first certificates of
500 occupancy for any buildings for which a certificate of occupancy is issued, provided the City
501 review process is reasonably diligent and not delayed by FCDOT/VDOT review. In the
502 event there is any delay due to FCDOT/VDOT review, the City Manager shall permit
503 issuance of such certificate of occupancy if the Owner provides reasonable assurances that
504 it will diligently pursue construction of the traffic signals called for in this Voluntary
505 Concession as approved by the City.

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

- 511 • Leesburg Pike (subject to FCDOT/VDOT approval)
 - 512 ○ Median modifications at intersection of The Commons and Chestnut Street to
 - 513 provide at least a left turn lane into the Commons and to provide other movements
 - 514 in and out of Chestnut Street and Commons as agreed upon by VDOT in
 - 515 coordination with Fairfax County.
 - 516 ○ Traffic Signal at The Commons and Leesburg Pike including at least a left turn
 - 517 into the project from Leesburg Pike and other movements in and out of Chestnut
 - 518 Street and Commons as agreed upon by VDOT in coordination with Fairfax
 - 519 County.
 - 520 ○ Accessible curb ramps and crosswalk on western, northern, and southern side of
 - 521 signalized intersection.
 - 522 ○ Right or shared right turn lane into The Commons.
 - 523 ○ Right or shared right turn lane into Mustang Alley.
 - 524 ○ Accessible curb ramps and crosswalks at all corners of Leesburg Pike and
 - 525 Haycock intersection.
 - 526 ○ Project shall be designed to allow for the location of a potential curbside future
 - 527 Northern Virginia Transportation Commission (NVTC) Bus Rapid Transit (BRT)
 - 528 station along Route 7.
- 529 • Haycock Road
 - 530 ○ Median modifications to provide a left turn lane into Street C.
 - 531 ○ Traffic Signal at Street C (with City of Falls Church coordination)
 - 532 ○ Accessible Curb Ramps and crosswalk on northern and southern side of Street C
 - 533 traffic signal.
 - 534 ○ Signal at Mustang Alley (with City of Falls Church coordination)
 - 535 ○ Accessible Curb Ramps and Crosswalk on northern and southern side of Mustang
 - 536 Alley Signal.
- 537 • The Commons
 - 538 ○ Owner agrees to post a speed limit on The Commons of no more than 20 MPH.
- 539 • The Owner agrees to repair and/or reconstruct sidewalk sections that are damaged by
540 project construction at the end of the construction phase of the portion of the project that
541 is included in an SESP, per specifications provided by the City Public Works
542 Department, including the frontages along Haycock Road and Leesburg Pike. All

543 pavement in VDOT ROW shall be designed in accordance with the most recent VDOT
544 design guidelines and standards. Any existing or proposed mid-block crossings shall
545 have striping and curb ramps meeting current regulations.

- 546 • The Owner agrees to continue coordinating with FCCPS, WMATA, and Virginia Tech
547 on ensuring appropriate transportation improvements compatible with anticipated future
548 development on these sites.

549
550 **11. Parking Garages:**

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

557
558 The Owner agrees to provide detail regarding the facades of any and all above grade
559 garages in the project at SESP. To the extent the Owner determines that some amount of
560 the currently designed above grade parking is no longer needed, the Owner can request to
561 amend the SEE to seek permission from the City to convert it to another use.

562
563 **12. Transportation Demand Management (TDM) and Parking Management Plan:**

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

576
577 **Access to Property for Monitoring of Parking Utilization and Monitoring of TDM and**
578 **Parking Management Plans:** The Owner agrees that City of Falls Church staff upon prior
579 written notice to the Owner's designated representative will have access to the garage(s) on
580 the Subject Property at all times to conduct parking utilization counts and to monitor
581 compliance with the TDM and Parking Management Plans.

582
583 **13. BikeShare:**

584
585 **Bike Share:** The Owner agrees to grant an easement to the City for installation and operation
586 of the either the relocated existing bike share station or a new 12-space bike share station, as
587 determined by Owner.

588

14. Public Art and Commons Use:

589 The Owner agrees to include in the SESP a requirement to include a minimum of
 590 \$100,000 worth of public art on site. The Owner agrees to provide evidence of such
 591 investment having been made prior to issuance of the first residential certificate of
 592 occupancy for the Project. The Owner also agrees to work in concert with the City’s
 593 various departments, including the Arts and Humanities Council of Falls Church, to
 594 accommodate special events on The Commons. The Owner agrees to allow the City of
 595 Falls Church to hold up to two one-day events annually on the Commons at no rental fee,
 596 as long as the City provides adequate security, set-up, trash collection, crowd control, etc.
 597 to ensure no additional operational costs to Owner and clean-up such that the property is
 598 restored to the same condition it was found in prior to the event. The City and other groups
 599 may also hold additional events annually in The Commons (planned and scheduled in
 600 coordination with Owner), which will have rental/cleaning/etc. fees, as Owner deems
 601 appropriate. The Owner also agrees to engage with the Arts and Humanities Council,
 602 Recreation and Parks, Historical Commission, and Historical Architectural Review Board
 603 on furthering the details initially laid out in the draft Placemaking and Amenity Plan
 604 related to public art, public space design, festivals, events including farmers’ markets, and
 605 City history.

606

15. Construction Management:

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

610

Construction Parking and Staging Plan: Prior to issuance of any demolition and/or
 611 building permits the Owner agrees to prepare, submit, and obtain the City Manager’s
 612 approval of a demolition and staging plan for the project, which shall not be unreasonably
 613 withheld. All demolition and construction of the project shall be done in conformance with
 614 the approved demolition and staging plan. Once a contractor has been selected for the
 615 project, the Owner will prepare a Construction Parking Plan and a Construction Traffic
 616 and Staging Plan to be enforced by the Owner for the entire the construction phase of
 617 the project, and to obtain the City Manager’s approval of the plan as providing sufficient
 618 parking or other transportation services for working to the site, and not having an adverse
 619 impact on traffic safety, prior to the issuance of any building permit for the project. The
 620 Owner acknowledges and agrees that violations of these Plans during construction can
 621 result in a Stop Work Order and other enforcement measures by the City.
 622

623

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

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

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

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

657
658 **Coordination:** The Owner agrees to ensure that throughout construction of the project,
659 the parties undertaking development coordinate their efforts to:
660 - protect the members of the public,
661 - continue ongoing access to Metro by the public, and
662 - minimize disruption to the adjacent school and the public in general.

663
664 **16. Public Safety:**

665 The Owner agrees to work with the City Police Department to provide a shared touchdown
666 space. The Owner agrees that each SESP for work on the Subject Property shall include,
667 whether or not expressly set forth therefore, the following commitments to Public Safety:
668

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

680 the City so as to resolve the problem with 90 days of the test. The Owner also agrees to
681 have the system be placed on the Emergency Generator.

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

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

689 A. Natural gas emergency generator sized to accommodate:

690 Code-required items, including:

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

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

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

700
701
702
703
704 B. Fire command center with annunciation of elevators, generator, fire pump and
705 HVAC systems, including a separate cooling system for the command center.

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

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

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

718
719 **17. Easements:**

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

723
724 **18. Other Terms and Conditions:**

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

733
734 **Dog Facilities:** The Owner acknowledges the importance of providing spaces for dog
735 relief, and will continue to consider this at SESP.

736
737 **Owner Acknowledgements:** The Owner acknowledges, understands and agrees that the
738 Subject Property will be developed in accordance with the applications approved by the
739 City Council for the Subject Property and in full compliance with all applicable laws,
740 codes, ordinances, charters, statutes, rules, regulations, agreements, and commitments.

741
742 The Owner acknowledges and agrees that the SEE, as granted, runs with the land and is
743 not transferable to other land.

- 744
745 1. Execution of the Developer’s Voluntary Concessions, Community Benefits, Terms
746 and Conditions, dated July 8, 2019 (“voluntary concessions”) and as amended on
747 (DATE), for Special Exception Entitlement for a Mixed-Use Development at the
748 subject site, shall be a condition for the approval of the Special Exception Entitlement;
749 and the City Manager is hereby authorized and directed to execute the voluntary
750 concessions, as submitted, on behalf of the City; and
- 751
752 2. No development shall occur on the site until the Developer has obtained approval of a
753 Special Exception Site Plan (“SESP”) for the portion of the site to be developed. Such
754 SESP shall be consistent with this SEE approval, including without limitation general
755 locations of the buildings, the height of buildings; the location, type, and amount of
756 individual uses on the site, the infrastructure and transportation on the site, the public
757 facilities and utilities as it may be amended from time to time; and
- 758
759 3. Phasing of construction of the development of the site will be in accordance with the
760 SEE and the voluntary concessions; and
- 761
762 4. Violation of any of the conditions of this Special Exception Entitlement shall be
763 grounds for revocation of the Special Exception Entitlement approval by City Council.

764
765
766 **Access for Commissioner of Revenue:** The Owner agrees that each SESP for the Subject
767 Property will provide for the City of Falls Church Commissioner of Revenue (CoR)
768 and/or his designated staff upon prior written notice to an Owner designated
769 representative to have access to the garage(s) on the Subject Property at all times for
770 inspection of window stickers related to personal property taxes for vehicles. The CoR
771 and staff will be provided all credentials necessary to have access to parking garage(s) by

772 vehicle at all times. In the event the access credentials are changed or updated, the CoR
773 will be provided notice and updated access credentials within 30 calendar days.

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

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FALLS CHURCH COMMONS JV LLC,
a Delaware limited liability company

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

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

By: _____
Name: _____
Title: _____

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

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

By: _____
Name: _____
Title: _____

Date: _____, 2019.

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EXHIBIT A

Final preliminary plat with Parcel D highlighted

(attached)

