

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

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

4 Special Exception Entitlement Site Plan (SESP)

5 FCGP Development LLC

6 **Approved: Month, Date, Year**

7
8 The following Voluntary Concessions, Community Benefits, Terms and Conditions
9 (“Voluntary Concessions”) are voluntarily proffered by the Owner for the benefit of the
10 community and for the City of Falls Church, Virginia. These Voluntary Concessions are proffered
11 in association with the Phase I Special Exception Site Plan (“SESP”) Application filed with the
12 City of Falls Church on June 10, 2020 and revised through XX, for Phase 1 of the phased
13 development of a 9.78-acre area located on portions of RPC #51-221-007 and -008 located at 7124
14 Leesburg Pike in the City of Falls Church (also called the “Subject Property”). The 8.83-acre area
15 subject to the Phase I SESP approval is more specifically shown on the attached Exhibit A. As
16 used herein “Owner” shall refer to the applicant, any contract owner, the property owner, and any
17 successors or assignees:

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

25
26 The Owner acknowledges that this Phase 1 Special Exception Site Plan is part of the Special
27 Exception Entitlement (“SEE”) for the Subject Property, having an original approval date
28 of July 8, 2019, and amended on DATE. The SEE, together with this SESP, has granted
29 additional height, and certain bonuses and other benefits in return for its agreements, as set
30 forth in the SEE and these SESP voluntary concessions. The City’s approval of the SEE is based
31 upon the final drawings and documentation submitted as part of that SEE application on June 7,
32 2019 and as amended on (DATE). This SESP approval is based on the SEE approval and final
33 drawings and documents submitted as part of that application. The Owner understands and agrees
34 that the SEE approval governs the general location of the buildings, the maximum height of
35 buildings; the general location, type, and amount of individual uses on the site, the infrastructure
36 and transportation on the site, the public facilities and utilities, and other aspects of the future
37 approvals and development on the Subject Property. The Owner further understands and agrees
38 that this Phase 1 SESP Application governs more specific features, design elements, uses, services,
39 or amenities voluntarily offered by the Owner. These features may include but will not be limited
40 to, site design, public improvements, environmentally sustainable and energy-efficient building
41 design, affordable housing creation, and other contributions as part of the development.

42 Development on the Subject Property included in Phase I will be done in a manner that conforms
43 to the general terms of the SEE and Phase 1 SESP approval as it may be amended, through City
44 Council approval, from time-to-time if not in accordance with the SEE or Phase 1 SESP approval.
45 In addition, Owner agrees that voluntary concessions approved for SEE shall apply, together with
46 voluntary concessions approved as part of this SESP application, and that both will govern the
47 project. In the event of an irreconcilable conflict between the two, voluntary concessions approved
48 as part of the SESP shall govern.

49
50 **1. Conformance with SEE and SESP-Phase 1 Applications:**
51 The Owner agrees to develop Phase I of the Subject Property in conformance with (a) final
52 drawings and documentation of SEE Application and associated materials approved per
53 Section 48-488(B)(1) and (2) on July 8th, 2019, as amended on (Month, Date, Year), and
54 revised through XXXX (b) the SESP plans dated DATE as prepared by Walter L. Phillips,
55 Inc., and (c) the Transportation Management Plan and Parking Management Plan (TMP &
56 PMP) dated (DATE) prepared by Gorove/Slade Associates, Inc. (d) 11x17 Supplemental
57 Package; Placemaking & Amenity Plan; Comprehensive Signage and Retail Guidelines. The
58 City Manager may approve minor deviations from conformance with these documents, as
59 requested by the Owner, provided the deviations do not conflict with what is specifically
60 agreed to in these Voluntary Concessions, are consistent with the purpose and intent of the
61 City Council's approval of the SEE and SESP, and are either (i) necessary to permit
62 reasonable construction of the project, or (ii) as determined by the City Manager, improve
63 the project's overall functioning or benefit to the City. The Owner may appeal an adverse
64 decision by the City Manager to the City Council.

65
66 **2. Uses:**
67 Uses shall be as shown in the "Binding Development Plan Program" chart on sheet 14 and
68 SESP Sheet C-0202 of the approved SESP for Phase 1, and as listed in the approved SEE.
69

70 **3. Commercial Space:**
71 Prohibited Uses:
72 The Owner agrees that the commercial uses listed in the SEE voluntary concessions shall not
73 be permitted on the Subject Property.
74

75 **Design Requirements:**
76 In addition to the design standards approved as part of the SEE, the Owner agrees that the
77 following design standards shall be met for all retail space identified as part of the Phase 1
78 SESP Application:
79
80 • Façade and other design enhancements shall be consistent with the approved
81 architectural elevations, Placemaking and Amenity Plan, and Comprehensive Signage
82 Plan and Retail Guidelines.
83
84 • The Block C building footprint location has been adjusted since the original SEE

85 submission. The proposed building on Block C maintains the building setbacks as
86 outlined in the SEE. Owner agrees to maintain building setbacks as shown in Block C
87 in the event that the use or building design revisions are proposed sometime in the future.
88

89 **4. Affordable Housing Contribution:**

90 The Owner agrees to include in this, as well as all future SESP, affordable housing on the
91 following terms:
92

Commented [A1]: In progress

- 93 (a) As the Owner and the City agree is consistent with the City of Falls Church Affordable
94 Housing Policy, the Owner will provide affordable dwelling units (“ADUs”) in the project
95 equal to six (6) percent of the total number of dwelling units to be included on the Subject
96 Property, including the independent living units associated with the Senior Housing
97 (rounded up to the nearest whole number) unless the City Manager and the Owner agree
98 to a different percentage of affordable units as a means to either increase the number of
99 larger affordable units or provide units at a lower AMI, and such revised affordable housing
100 plan is included in the Voluntary Concessions when the SESP is approved for the respective
101 multifamily residences. In the event the Senior Housing Building includes assisted living
102 units, the City shall have the right to receive from the Owner, in lieu of the value of all or
103 some of the affordable independent living residences, an annual accounting subsidy
104 acceptable to both the City and the Owner, adjusted annually, for eligible low or moderate-
105 income residents with incomes at or below 80% of the AMI. The proportion of ADUs
106 for studio, one bedroom, and two bedroom units will follow the same proportionate mix
107 for the market rate units in the project unless the City Manager and the Owner agree to a
108 different unit mix and such mix is included in the Voluntary Concessions when the SESP
109 is approved for the respective multifamily residences. For each unit type, the ADUs shall
110 be equivalent in size to other market rate units of the same type. All ADUs will be dispersed
111 throughout the project with the exception of the top floor of each residential building.
112 Parking shall be provided for ADUs at the same rate as for the market rate units. If a parking
113 fee is imposed upon market rate tenants, the same parking fee may apply to ADU tenants.
114 The Owner will not require ADU units to pay amenity fees, but may require the payment
115 of security deposits and other deposits or fees for ADU units that are also charged to market
116 rate units.
117
- 118 (b) The Owner shall have the right but not the obligation to provide ADUs generated from the
119 residential condominium buildings within the rental apartment buildings on the site. If
120 Phase 2 includes a residential condominium building and no rental apartment building, as
121 is currently envisioned, the Owner shall have the right to convert market rate apartment
122 units within the Phase 1 apartment building to ADUs in lieu of providing the ADUs within
123 the Phase 2 condominium building.
124
- 125 (c) The Owner agrees to record Restrictive Covenants among the land records of the Clerk
126 of the Circuit Court of Arlington County, which shall define terms and conditions of the
127 ADUs as such terms and conditions are agreed to in these Voluntary Concessions regarding
128 issues including, but not limited to, price control periods and owner/renter occupancy
129 and the matters agreed to in these Voluntary Concessions. These Covenants shall run
130 with the land and be an encumbrance on the ADUs. The Covenants shall be recorded with
131 the City’s land records in Arlington County, and evidence of such recordation will be

132 provided to the Zoning Administrator before a Certificate of Occupancy is issued for any
133 dwelling unit in the project.

134
135 (d) The Owner will rent the ADUs directly or through its designated agent to qualified tenants,
136 as determined by the City. The City will regulate and establish ADU qualification
137 priorities and evaluate compliance with program terms in accordance with the Affordable
138 Unit Program official administrative procedures and regulations.

139
140 (e) The monthly rent for the ADUs will be set by the Housing Commission with reference to
141 the U.S. Department of Housing and Urban Development (“HUD”) Washington Primary
142 Metropolitan Statistical Area (“PMSA”) area median household income (“AMI”). The
143 ADU’s that are included in the six (6) percent of total units shall be offered for rents that
144 are affordable to households whose income is no more than 60% of HUD PMSA AMI.
145 Alternatively, the City and the Owner may agree to the provision of an equivalent number
146 of ADUs based upon the qualification for residents with incomes in the range of 40% to
147 80% of HUD PMSA AMI; such terms shall be set out in the Voluntary Concessions agreed
148 to in the SESP governing such multifamily housing. Conceptually, to the extent ADU’s are
149 provided at a reduced income threshold of 40%, other units shall be provided at 80%
150 resulting in an average of 60% AMI for all ADU’s provided. Such rents, subject to changes
151 permitted by this Voluntary Concession will be in effect for the life of the Project. ADU
152 monthly rent shall include an additional amount as calculated by the percentage increase
153 in AMI, but not less than the original ADU monthly rents listed above.

154
155 (f) ADU tenants will have the same duties, rights and privileges as all other tenants in the
156 project, including access to amenity spaces, except as such ADU duties, rights and
157 privileges are expressly altered by these Voluntary Concessions.

158
159 (g) A minimum of one of the ADU units shall be an ANSI Type A accessible unit as defined
160 by federal law. However, if the Type A unit is rented to a person(s) who does not require
161 the accessibility features, temporary adaptations to the accessible features, such as cabinet
162 doors, may be provided as allowed by applicable law. Additionally, as provided by federal
163 law, all ADU and market rate units shall be ADA ANSI Type B adaptable.

164
165 (h) The Owner agrees to comply with all applicable fair housing laws.

166
167 (i) Upon the issuance of the first residential certificate of occupancy for the project, and
168 subsequently upon the annual anniversary of the issuance of the first residential certificate
169 of occupancy, and upon the written agreement of the City, the Owner may make a cash
170 contribution to the City’s Housing Trust Fund in lieu of providing some or all of the ADUs
171 otherwise required because of this Voluntary Concession in an amount equivalent to the
172 value of the units and acceptable to both the Owner and the City. The formula for
173 determining the cash payment will be determined prior to SESP approval and is intended
174 to be economically-neutral to the Owner when compared to providing affordable units. If
175 the City and the Owner cannot mutually agree upon a contribution amount, then the Owner
176 will provide ADUs in conformance with this Voluntary Concession.

177 5. **Pedestrian Oriented Design Elements:**

178 The Owner agrees to provide the pedestrian oriented design elements for streetscape,
179 accessibility, signage, The Commons, and undergrounding of utilities as described in the
180 approved SEE voluntary concessions and SESP, Sheets X.

181
182 **6. Environmental Improvements:**
183 The Owner agrees to provide the environmental improvements for green building criteria,
184 future solar panels, electric vehicle charging stations, stormwater drainage and runoff, and
185 removal of contaminated soil, as described in the approved SEE voluntary concessions and
186 SESP, Sheets X.

187
188 **7. Installation of Vegetation:**
189 The Owner agrees to provide the installation of vegetation, as described in the approved
190 SEE voluntary concessions and SESP, Sheets X.

191
192 **8. Lighting:**
193 The Owner agrees to provide lighting, as described in the approved SEE voluntary
194 concessions and SESP, Sheets X.

195
196 **9. Transportation Improvements:**
197 The Owner provided an updated Transportation Impact Analysis (dated X) as part of these
198 Phase 1 SESP Application Materials. The Owner agrees to provide the Transportation
199 Improvements shown on the SESP, Sheets X. Any material changes from the SESP
200 proposed Transportation Improvements that impact street sections and/or building
201 footprints may require an amendment to the SESP and governing SEE to be processed
202 through City Council.

203
204 **Traffic Signals:** The Owner included in the Phase 1 SESP and the NVTA Transportation
205 Improvement Plan, traffic signals as shown on the SEE as may be warranted and/or
206 approved, where applicable, by the City, Fairfax County Department of Transportation
207 (FCDOT), and Virginia Department of Transportation (VDOT). Except when acting as
208 executer of the aforementioned NVTA grant, the Owner will be responsible for the design,
209 Traffic Impact Assessment, warrant study, easement/right-of-way acquisition, and
210 installation of these traffic signals. Any signals or HAWK beacons within the City limits
211 will match the specifications that the City provides. The City shall work with the Owner to
212 ensure that all necessary easements for construction of the Traffic Signals are able to be
213 acquired when needed. The Owner shall be found to have fulfilled this condition upon
214 approval of the traffic signal as fully operational by the City Manager. The Owner shall
215 provide a phasing plan for the installation and operations of the Traffic Signals which shall
216 be approved at SESP. With the exception of buildings identified in the Phasing Plan and
217 which are expected to be open prior to installation of the Traffic Signals, the Owner agrees
218 to obtain the City Manager’s approval of the traffic signals as fully operational before
219 issuance of any certificates of occupancy for the project. In the event there is any delay due
220 to FCDOT/VDOT review, the City Manager shall permit issuance of such certificate of
221 occupancy if the Owner provides reasonable assurances that it will diligently pursue
222 construction of the traffic signals called for in this Voluntary Concession as approved by the
223 City.

Commented [A2]: Have these been provided?
Commented [A3R2]: FCGP—confirming timing

224 **Street Capacity and Safety Improvements:** The Owner agrees to provide the
225 improvements listed in the approved SEE VCs as shown in the Phase 1 SESP plans, for
226 development on property adjacent to the road listed below, and the NVTA Transportation
227 Improvement Plan, whichever is completed first. Any material change may require an
228 amendment to this Phase 1 SESP and SEE.

229

230 **10. Parking Garages:**

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

237

238 The SESP Application materials contain detail regarding the facades of all above grade
239 garages in Phase I of the project (SHEET XX).

240

241 To the extent the Owner determines that some amount of the currently designed above
242 grade parking is no longer needed, the Owner can request to amend the SEE and SESP to
243 seek permission from the City to convert it to another use.

244

245 **11. Transportation Demand Management (TDM) and Parking Management Plan:**

246 The Owner agrees to implement the TDM program and Parking Management Plan
247 submitted with the SESP Application materials. The Owner further agrees that the Parking
248 Management Plan will meet all City parking standards in effect at the time of SESP
249 approval or as modified by the parking minimum and maximums outlined in the SEE
250 application.

251

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

257

258 **12. BikeShare:**

259 The Owner agrees to grant an easement to the City for installation and operation of a new 12-
260 space bike share facility, at the Owner's own cost, at the location shown on the SESP
261 Application Materials (Sheet XX). At the City's option, the existing station located at Haycock
262 Road and Leesburg Pike can be relocated and reused, or a new 12-space bike share station can
263 be provided by the Owner.

264 **13. Public Art and Commons Use:**

265 The Owner agrees to include a minimum of \$100,000 worth of public art on site. The
266 Owner agrees to provide evidence of such investment having been made prior to issuance
267 of the first residential certificate of occupancy for the Project. The Owner also agrees to
268 work in concert with the City's various departments, including the Arts and Humanities

Commented [A4]: Reference sheets that show details in addition to locations; e.g. example art in Placemaking Plan. Also, include sentence here that references back to art review process VC #11 below. Include commitment on green walls here and indicate on plan sheets.

269 Council of Falls Church, to accommodate special events on The Commons as described in
270 the approved SEE voluntary concessions.

271 The Owner also agrees to engage with the Arts and Humanities Council, Recreation and
272 Parks, Historical Commission, and Historical Architectural Review Board on furthering
273 the details initially laid out in the Placemaking and Amenity Plan related to public art,
274 public space design, festivals, events including farmers' markets, and City history. The
275 Owner agrees to hold two meetings during the placemaking and public art selection
276 process (starting prior to and continuing during the construction period) to present the
277 direction and themes of the public art and placemaking elements for comments from staff
278 and representatives from the above-referenced groups as a way for the Owner to gather
279 input and feedback prior to making final decisions on these elements.

280 **14. Construction Management:**

281 The Owner agrees that this Phase 1 SESP shall include, by way of illustration and not
282 limitation, a commitment to a Construction Management Plan developed in coordination
283 with the City and Falls Church City Public Schools, as agreed to in the SEE approval.
284

285 **15. Public Safety:**

286 The Owner agrees to provide a shared touchdown space within the on-site property
287 management office, or at some other similar location, if desired. The Owner agrees that the
288 Phase 1 SESP for work on the Subject Property shall include the commitments to Public
289 Safety, as agreed to in the approved SEE.
290

291 **16. Easements:**

292 The Owner agrees to provide such Easements to the City, in a form and substance as
293 approved by the City Manager, as are shown on the SEE and/or SESP or otherwise called
294 for in these Voluntary Concessions.
295

296 **17. Other Terms and Conditions:**

297
298 **FCCPS Surge Parking:** The Owner agrees to provide surge parking to FCCPS in
299 compliance with the terms of the "Tripartite Memorandum of Understanding Among
300 CFC, FCCPS, FCGP" dated September 9, 2020.
301

302 **Dog Facilities:** The Owner acknowledges the importance of providing spaces for dog
303 relief, and has designed and agrees to provide areas for such use, included in the SESP
304 Application Materials on **Sheet XX**.
305

306 **Collaboration with FCCPS:** The Owner acknowledges the importance of the
307 relationship between FCCPS activities and the site activities and will collaborate with
308 FCCPS to create educational opportunities through elements such as art, murals, and
309 signage.
310

311 **Owner Acknowledgements:** The Owner acknowledges, understands and agrees that the

312 Subject Property will be developed in accordance with the applications approved by the
313 City Council for the Subject Property and in full compliance with all applicable laws,
314 codes, ordinances, charters, statutes, rules, regulations, agreements, and commitments.
315

316 The Owner acknowledges and agrees that the SESP, as granted, runs with the land and is
317 not transferable to other land.
318

- 319 1. Execution of the Developer’s Voluntary Concessions, Community Benefits, Terms
320 and Conditions, dated DATE (“voluntary concessions), for Special Exception Site
321 Plan for a Mixed-Use Development at the subject site, shall be a condition for the
322 approval of the Special Exception Site Plan; and the City Manager is hereby
323 authorized and directed to execute the voluntary concessions, as submitted, on behalf
324 of the City; and
325
- 326 2. No development shall occur on the site except for that which was approved by this
327 Special Exception Site Plan (“SESP”) within the specified portion of the site subject to
328 this SESP. Such SESP shall be consistent with this SEE approval, including without
329 limitation general locations of the buildings, the height of buildings; the location, type,
330 and amount of individual uses on the site, the infrastructure and transportation on the
331 site, the public facilities and utilities as it may be amended from time to time; and
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- 333 3. Phasing of construction of the development of the site will be in accordance with the
334 SEE Amendment, approved on DATE and its associated voluntary concessions; and
335
- 336 4. Violation of any of the conditions of this Special Exception Site Plan shall be grounds
337 for revocation of the Special Exception Site Plan approval by City Council.
338

339 **Access for Commissioner of Revenue:** The Owner agrees that the City of Falls Church
340 Commissioner of Revenue (CoR) and/or his designated staff shall, upon prior written
341 notice to an Owner designated representative, have access to the garage(s) on the Subject
342 Property at all times for inspection of window stickers related to personal property taxes
343 for vehicles. The CoR and staff will be provided all credentials necessary to have access
344 to parking garage(s) by vehicle at all times. In the event the access credentials are
345 changed or updated, the CoR will be provided notice and updated access credentials
346 within 30 calendar days.
347

348 **Terms and Conditions Incorporated in Resolution:** The Owner voluntarily submits the
349 foregoing concessions, terms, and conditions to the City Council to be incorporated by
350 reference into the Resolution for the Special Exception, should City Council grant the
351 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: _____, 2021.

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EXHIBIT A

Final preliminary plat with Parcel D highlighted
(attached)

Commented [A5]: Need updated plat with proposed new lot layout.