

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (this “**Agreement**”) is entered into as of April ___, 2022, by and among the CITY OF FALLS CHURCH, VIRGINIA, a city incorporated in the Commonwealth of Virginia (the “**City**”), the CITY OF FALLS CHURCH ECONOMIC DEVELOPMENT AUTHORITY, a political subdivision of the Commonwealth of Virginia (the “**Authority**”) and FCGP DEVELOPMENT, LLC., a Delaware limited liability company with an address c/o Hoffman & Associates, 760 Maine Ave., SW, Washington, DC 20024, and its permitted successors and assigns (the “**Developer**”).

RECITALS:

The City proposes to enter into this Agreement with the Authority and the Developer in order to promote economic development objectives as described herein. The City, the Authority and the Developer propose to facilitate certain transportation, pedestrian, streetscape and landscape improvements, stormwater controls, site infill, erosion control and retaining wall construction in connection with the first phase of development of an approximately 9.78 acre site, containing approximately 8.6 acres, located at 7124 Leesburg Pike, Falls Church, Virginia (the “**Site**”). Portions of the Site (i) will be leased from the Authority, as lessor, to the Developer (or one or more designees), as lessee (the “**Ground Lease Parcels**”), pursuant to one or more Ground Leases (as defined in the Comprehensive Agreement (defined herein)) and (ii) will be purchased from the City (the “**Fee Parcel**”) all as contemplated in that certain Comprehensive Agreement by and between the City and the Developer and dated June 12, 2019 as amended on February 26, 2021, January 24, 2022, and January 25, 2022 (“**Comprehensive Agreement**”). The Site is identified on Exhibit A attached hereto and made a part hereof. The Site will be improved by the Developer (or one or more designees) with a mixed-use development (“**Development**”) to be constructed and developed as set forth in the Comprehensive Agreement. The Site is Phase I as described in the Comprehensive Agreement.

The City, the Authority and the Developer expect that the Development, during and after construction will provide necessary or desirable infrastructure and public improvements and result in increased employment opportunities for the residents of the City, increased tax revenues for the City, a strengthened economic base and other economic benefits to the City which will further the well-being of the City and its residents. The City is authorized pursuant to Section 15.2-953 of the Code of Virginia of 1950, as amended (the “**Virginia Code**”), to make donations and appropriations of money to the Authority for the purposes of promoting economic development. The Authority is authorized pursuant to Section 15.2-4905 of the Virginia Code to make grants to businesses for various purposes, including promoting economic development.

The City and the Authority have each determined that the incentives provided by this Agreement are necessary to induce the Developer to develop and construct the Development in the City of Falls Church in accordance with the Comprehensive Agreement and acknowledge that the Developer has relied on the incentives described in this Agreement in its decision to develop the Development. The City and the Authority acknowledge that they have determined that the incentives to be received by the Developer hereunder are reasonable in light of the foregoing and based upon the City staff’s independent research and consultation with industry experts.

The Base Rent (as defined in the Ground Lease(s) due to the Authority may be paid, in part, as Incentive Credits (defined below), as provided for in this Economic Development Agreement, to facilitate the development of the Development. This incentive credit structure represents no upfront cost to the City. The City has determined that there will be no effect on the City's credit rating and there will be no additional tax burden on City residents.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, the Authority and the Developer hereby agree as follows:

1. Recitals; Undefined Terms. The foregoing recitals are incorporated into and made a part of this Agreement as though they were fully set forth in this Paragraph 1 and constitute the representations, findings and understandings of the City, the Authority and the Developer. Any capitalized, but undefined terms set forth herein shall have the meaning ascribed to such term in the Comprehensive Agreement.

2. City Undertakings.

(a) Subject to compliance in all prior "Tax Years" (as defined by Section 40.283 of the Code of Ordinances of the City of Falls Church, Virginia (the "**Falls Church Ordinances**")), which Tax Year begins on July 1 and concludes on June 30 of the following calendar year) by the Developer with each and all of the Developer Undertakings (in accordance with Paragraph 4 below), the City agrees to provide to the Authority, subject to the limitations and conditions set forth in this Agreement, and if and to the extent provided by the City, the Authority agrees to provide to the Developer or its designee, e.g., the ground lessee under a Ground Lease and/or the owner of the Fee Parcel (the "**Incentive Designee(s)**"): incentive grants as follows: (1) for the Ground Lease Parcels, either (A) a credit to be applied against payments of Base Rent due under each Ground Lease (each, a "**Incentive Credit**"), or (B) if no Base Rent is due for such Tax Year (i.e., all payments of Base Rent have theretofore been paid under the terms of the Ground Lease(s) in full), a payment to the Developer or the applicable Incentive Designee(s) in the amount of any unused Incentive Credit ("**Incentive Payment**"); and (2) for the fee parcel, an incentive payment as more particularly described in Paragraph 2(c) below.

(b) With respect to the Ground Lease Parcels, the Incentive Credit Payment or Incentive Credit (either, the "**Incentive**") shall be provided in each Tax Year during the six (6)-year period following the year in which the Phase 1 Closing occurs under the Comprehensive Agreement (the "**Incentive Term**"). During the Incentive Term, at least thirty (30) days before the date on which real property taxes ("**Taxes**") are due, the Authority will advise the Developer of the actual amount of any Incentive that will be available to Developer or the applicable Incentive Designee(s). After payment of Taxes, the Authority shall either: (1) credit the Incentive Credit against the next payment of Base Rent, additional rent or any other rent due under the Ground Lease(s) ("**Ground Lease Rent**"); or (2) if no Base Rent is or will be due during such Tax Year, make an Incentive Payment to Developer or the applicable Incentive Designee(s) (in accordance with this Paragraph (b) below). The amount of the Incentive for the Ground Lease Parcels for each Tax Year shall be calculated as follows*:

(i) In Tax Year 1 (which is the first Tax Year that commences after the Phase 1 Closing), the Incentive shall equal one hundred percent (100%) of the amount of Taxes timely paid by Developer or the applicable Incentive Designee(s) under the Ground Lease(s).

(ii) In Tax Year 2 (which is the Tax Year immediately following Tax Year 1), the Incentive shall equal one hundred percent (100%) of the amount of Taxes paid timely by Developer or the applicable Incentive Designee(s) under the Ground Lease(s).

(iii) In Tax Year 3 (which is the Tax Year immediately following Tax Year 2), the Incentive shall be equal to one hundred percent (100%) of the amount of Taxes timely paid by Developer or the applicable Incentive Designee(s) under the Ground Lease(s) (subject to addition of the Fee Parcel, if applicable, as provided in Paragraph 2(d) below), minus \$1,000,000. In the event the difference is zero, or less than zero, there shall be no Incentive in Tax Year 3.

(iv) In Tax Year 4 (which is the Tax Year immediately following Tax Year 3), the Incentive shall be equal to one hundred percent (100%) of the amount of Taxes timely paid by Developer or the applicable Incentive Designee(s) under the Ground Lease(s), minus \$1,500,000. In the event the difference is zero, or less than zero, there shall be no Incentive in Tax Year 4.

(v) In Tax Year 5 (which is the Tax Year immediately following Tax Year 4), the Incentive shall be equal to one hundred percent (100%) of the amount of Taxes timely paid by Developer or the applicable Incentive Designee(s) under the Ground Lease(s), minus \$2,000,000. In the event the difference is zero, or less than zero, there shall be no Incentive in Tax Year 5.

(vi) In Tax Year 6 (which is the Tax Year immediately following Tax Year 5), the Incentive shall be equal to one hundred percent (100%) of the amount of Taxes timely paid by Developer or the applicable Incentive Designee(s) under the Ground Lease(s), minus \$3,000,000. In the event the difference is zero, or less than zero, there shall be no Incentive in Tax Year 6.

(vii) In Tax Year 7 (which is the Tax Year immediately following Tax Year 6), and for all Tax Years thereafter, there shall be no Incentive under this Agreement.

*For each Tax Year, the Falls Church Ordinances provide for payment of Taxes in two installments (on December 5 and on June 5 of each Tax Year). Any Incentive Payment(s) to an Incentive Designee will be paid by the Authority within thirty (30) days after the payment of each installment of Taxes in proportion to the amount paid in such installment. If an Incentive Credit is due to Developer or the applicable Incentive Designee(s), the Incentive Credit for all installments of Taxes will be deducted from the then-current payment of Ground Lease Rent, as provided above.

(c) With respect to the Fee Parcel, notwithstanding the Incentive Term (as defined in Paragraph (b) above), any and all Incentive Payments or Incentive Credits related to the Fee Parcel shall only apply until (but without limiting any Incentive Payments or Incentive Credits arising from to period(s) prior to) the first to occur of: (i) issuance of a certificate of occupancy for any residential condominium unit on the Fee Parcel, or (ii) the expiration of Tax Year 3; and thereafter, this Agreement shall no longer apply to the Fee Parcel. During Tax Year 1 and Tax Year 2 of the Incentive Term, the Incentive Payment or Incentive Credits for the Fee Parcel shall equal one hundred percent (100%) of the amount of Taxes timely paid by Developer (or the owner of the Fee Parcel) for such Tax Year. For Tax Year 3, if no such certificate of occupancy has been issued for any residential condominium unit on the Fee Parcel, then (notwithstanding anything to the contrary) the Fee Parcel shall be treated as though it were a Ground Lease Parcel and taxes paid on it shall be included in the calculation set forth in Paragraph 2(b)(iii) above. Within thirty (30) days after receipt by the City of each installment of Taxes from the Developer or the applicable Incentive Designee(s) during any applicable Tax Year, the Authority shall, to the extent applicable under the terms of this Agreement, make the Incentive Payment to Developer or the applicable Incentive Designee(s) with respect to such installment.

(d) In the event the Authority has entered into more than one Ground Lease for the Site, any Incentive shall be apportioned among all of the Ground Lease(s) (and the Fee Parcel, if applicable) in the amount or percentage specified by Developer from time to time among all, any or specific Ground Lease(s) (and the Fee Parcel, if applicable), and if not so specified by Developer, in the same percentage as the tax assessment for the property subject to each Ground Lease (and the Fee Parcel, if applicable) bears to the total of all assessments for the Ground Lease Parcels (plus the Fee Parcel, if applicable).

(e) This Agreement constitutes the entire agreement of the parties relating to the Incentive.

(f) Nothing in this Agreement shall constitute an undertaking on the part of the City to apply the real property tax assessment laws and regulations of the Commonwealth of Virginia or of the City as they pertain to the Site and the Development in any manner other than the manner in which such laws and regulations would apply if this Agreement were not in effect.

(g) In the event the Authority fails to timely provide Developer or the applicable Incentive Designee any credit or payment due under this Agreement, then without limiting any other right or remedy of the Developer or the applicable Incentive Designee, after providing any notice required under a Ground Lease, Developer or the applicable Incentive Designee shall have the right to offset the amount of any such credit or payment from the payment of Ground Lease Rent.

3. Authority Undertakings.

(a) The Authority agrees to cooperate with the City and the Developer to provide for and apply the Incentive to payments of Base Rent under the Ground Lease(s) and to facilitate the development and construction of the Development on the terms set forth herein.

(b) The Authority shall, notwithstanding anything to the contrary, (i) permit the Developer (or any Incentive Designee(s)) to use the Incentive Credit(s) described in Paragraph 2(b) above as credit against payments of Ground Lease Rent due under the Ground Lease(s), and; accordingly, unless and until the Developer (or any Incentive Designee(s)) specifies in writing to the contrary, Developer (or any Incentive Designee(s)) shall receive an Incentive Credit, and (ii) in the event the Incentive Credit exceeds the Ground Lease Rent for any Tax Year, pay the difference between the Incentive Credit and the Ground Lease Rent to the Developer or the applicable Incentive Designee(s) as an Incentive Payment (the “**Excess Payment**”). Such Excess Payment shall, as necessary, carry forward as an additional Incentive Credit for the subsequent Tax Year(s). In furtherance of the foregoing, it is acknowledged that the Ground Leases entered into concurrently with the execution and delivery of this Agreement reflect (and allocate) certain Incentive Credit(s) against Ground Lease Rent, as further set forth in such Ground Leases. The Authority’s obligation to make Incentive Payments shall be contingent on funding from the City for such Incentive Payments, provided, however, the Authority shall request funding from the City in an amount sufficient to satisfy the Authority’s obligations hereunder regarding Incentive Payments. No payments to be made by the Authority in accordance with this Agreement shall constitute general obligations of the Authority and the Incentive Payments to be made hereunder shall not be payable from any monies of the Authority other than those received from the City (if any). Neither the Authority nor the Authority’s members assume liability beyond those obligations specifically set forth herein.

4. Developer Undertakings.

(a) In order to receive the Incentive as described in Paragraph 2 above, the Developer shall undertake or cause to be undertaken with respect to Phase 1 the following (the “Developer Undertakings”):

(i) To acquire fee simple title to the Fee Parcel and to lease, as lessee, the Ground Lease Parcels;

(ii) To perform all of Developer’s obligations set forth in the Comprehensive Agreement, and as required in the Zoning Approvals, until Final Completion of the Horizontal Development; and

(iii) To pay the acquisition cost of the Fee Parcel and all Rent (including Additional Rent) under each of the Ground Lease(s) when due (including paying some amounts using Incentive Credit); provided, however, the liability for Rent under each of the Ground Leases shall be several (and not joint and several) and limited to the tenant named in such Ground Lease.

For the avoidance of doubt, if a tenant under a Ground Lease, after the application of any Incentive Credit, fails to pay all Rent, including Additional Rent, when due under its Ground Lease, the Authority shall have no obligation for any incentive payment or credit pursuant to this Agreement with respect to such Ground Lease Parcel; the obligations to pay Rent or any Additional Rent under the Ground Lease(s) are independent covenants under Ground Lease(s).

5. Notices. Any notice, request, demand, instruction or other document required or permitted by the provisions of this Agreement to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and (i) sent by first class mail, (ii) personally delivered, (iii) faxed or telecopied or (iv) sent by a recognized reputable overnight courier service to the City, the Authority and/or the Developer.

If to the City:

City of Falls Church, Virginia
Attn: City Manager
300 Park Avenue
Falls Church, Virginia 22046
Phone: (703) 248-5004
Fax: (703) 248-5146

If to the Authority:

City of Falls Church Economic
Development Authority
Attn: Economic Development Director
300 Park Avenue
Falls Church, Virginia 22046
Phone: (703) 248-5491
Fax: (703) 248-5103

If to the Developer:

Hoffman & Associates, Inc.
760 Maine Avenue, S.W.
Washington, D.C. 20024
Attn: Shawn Seaman
e-mail: sseaman@hoffman-dev.com

And with a copy to:

Pillsbury Winthrop Shaw Pittman LLP
1650 Tysons Boulevard
McLean, Virginia 22102
Attn: R.J. Davis
e-mail: rj.davis@pillsburylaw.com

6. Liability; Disclaimer of Warranties; Limited Obligations of City and Authority.

(a) The Developer acknowledges that neither the City nor the Authority (i) has made any recommendation, given any advice or taken any other action with respect to the choice of any contractor, supplier, vendor or designer of, or any other contractor with respect to, the Developer Undertakings or any component part thereof; or (ii) has made any warranty or other representation, express or implied, with respect to the Developer Undertakings (other than as expressly set forth in the Comprehensive Agreement), it being agreed that the Developer is to bear all risks relating to the Developer Undertakings and the completion thereof or the transactions contemplated hereby and that the Developer hereby waives the benefits of any and all implied warranties and representations of the City or the Authority with respect thereto. Nothing in this Agreement constitutes a waiver by the City or the Authority of any right, tax, obligation of police or regulatory authority otherwise applicable to the Site of the Development.

(b) No provision in this Agreement shall be deemed to constitute a pledge of the faith and credit of the Commonwealth of Virginia, the Authority or the City. Neither the faith

and credit nor the taxing power of the Commonwealth of Virginia, the Authority or the City is pledged to the payments described herein. The City's obligations in this Agreement to make Incentive Payments or otherwise to pay money are subject to annual appropriation for that purpose by the City Council. The Authority has no taxing power. The Authority's obligation for the payments described herein shall be limited as described in Paragraph 3(b) above. No supervisor, director, officer, employee or agent of the City, the Authority or the Developer shall be subject to any personal liability by reason of this Agreement.

(c) The Developer is not obligated to further document for the benefit of, or disclose to, the City or the Authority, costs and expenses actually incurred in connection with the Site or Development, or any other records related thereto.

7. Representations and Warranties. The parties under this Agreement represent and warrant to the others that each party has (i) all requisite right, power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, (ii) has taken all necessary action to authorize the execution, delivery and performance of this Agreement, (iii) duly executed and delivered this Agreement, and this Agreement constitutes the legal, valid and binding obligations of each party, enforceable against it in accordance with its terms, and (iv) the person signing this Agreement on behalf of each party is authorized to do so.

8. Sovereign Immunity. Nothing in this Agreement shall be deemed to be a waiver of the City's or the Authority's sovereign immunity from suit.

9. Rights Subject to Comprehensive Agreement and Ground Lease(s). The Parties' rights and obligations for development of the Site are further defined in the Comprehensive Agreement and the Ground Lease(s).

10. Amendments; Assignment. This Agreement constitutes the full agreement among the parties and may not be amended or assigned, except to the extent the Comprehensive Agreement or the Ground Lease(s) are amended or assigned, and only then in accordance with such agreements.

11. Governing Law; Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia. The parties hereto (a) agree that any suit, action or other legal proceeding, as between the parties hereto, arising out of or relating to this Agreement shall be brought and tried only in the Circuit Court of Arlington County, Virginia or federal district court in Alexandria, Virginia, (b) consent to the jurisdiction of such court any such suit, action or proceeding, and (c) waive any objection which any of them may have to the laying of venue of any such suit, action or proceeding in such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. The parties hereto agree that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

12. WAIVER OF TRIAL BY JURY. THE CITY, THE AUTHORITY AND THE DEVELOPER HEREBY WAIVE A TRIAL BY JURY IN ANY ACTION OR

PROCEEDING TO WHICH THE CITY, THE AUTHORITY AND THE DEVELOPER MAY BE PARTIES, ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS AGREEMENT. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE CITY, THE AUTHORITY AND THE DEVELOPER, AND THE CITY, THE AUTHORITY AND THE DEVELOPER HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT.

13. Severability. If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section had not been contained in it.

14. Counterparts. This Agreement may be signed in several counterparts, each of which shall be an original and all of which together shall constitute the same instrument.

15. Successors and Assigns. This Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties and their permitted successors and assigns. The City acknowledges that the Developer intends to have affiliates (or third-party designees), in accordance with the Comprehensive Agreement, ground lease and/or acquire portions of the Site and such affiliates and/or third-party designees are, therefore, each an intended third-party beneficiary under this Agreement.

16. Survival; Conflicts. This Agreement shall survive and remain in full force and effect until all Incentives under this Agreement have been provided.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF FALLS CHURCH, VIRGINIA, a city incorporated in the Commonwealth of Virginia

By: _____
Its: City Manager

CITY OF FALLS CHURCH ECONOMIC DEVELOPMENT AUTHORITY, a political subdivision of the Commonwealth of Virginia

By: _____
Its: Chairman

FCGP DEVELOPMENT, LLC., a Delaware limited liability company

By: _____
Name: _____
Title: _____

Approved as to form:

City Attorney

Exhibit A
Site Description