

# VOLUNTARY CONCESSIONS, COMMUNITY BENEFITS, TERMS AND CONDITIONS

## MCRT INVESTMENTS LLC / Founders Row II

June 8, 2021

In association with the requested special exception to allow the redevelopment of the property with addresses of 1001 and 1003 West Broad Street, having real property codes 52-102-060 (the “Carpet Store”) and 52-102-065 (the “Rite Aid”), collectively the “Subject Property,” MCRT Investments LLC (the “Owner”) voluntarily proffers the following for the benefit of the community and the City of Falls Church (the “City”). The Owner acknowledges that through special exception approval, it has been granted certain bonuses, including height and increased residential uses, and other benefits in reliance upon its agreements as set forth below, to provide certain features, design elements, uses, services, or amenities desired by the City, including but not limited to, site design, public improvements, environmentally sustainable and energy-efficient building design, affordable housing creation, and capital contributions to City parks, library, and schools as part of the development. As used herein “Owner” shall refer to the applicant, any contract owner, the property owner, and any successors or assigns:

1. Conformance with Conceptual Development/Special Exception (CDP/SE) Plan: The Owner agrees to develop the Subject Property in conformance with (1) the Conceptual Development Plan (CDP) dated November 17, 2020 and revised on June 8, 2021, as prepared by Walter L. Phillips, Inc; (2) the Special Exception Application Submission (Drawings) dated November 17, 2020 and revised on June 8, 2021, as prepared by Odell Associates, Inc.; and (3) the Traffic Impact Study (TIA) dated November 17, 2020 and revised on June 8, 2021, prepared by Wells & Associates. The Owner agrees that the project will include no more than 280 residential units in total, and twelve percent (12%) of the total residential units will be set aside for affordable housing as provided for in Section 11 of these Voluntary Concessions. None of the residential units shall be 3 bedroom units. The Owner further agrees that the residential gross floor area (apartments, lobbies, and amenity space) in the project is capped at 309,555 square feet. The City Manager may approve minor deviations from conformance with these documents, as requested by the Owner, provided the deviations do not conflict with what is specifically agreed to in these Voluntary Concessions, are consistent with the purpose and intent of the City Council's approval of the Special Exception, and either (i) are necessary to permit reasonable construction of the project, or (ii) as determined by the City Manager, improve the project's overall functioning or benefit to the City. The Owner may appeal an adverse decision by the City Manager to the City Council.
2. Uses: The Owner agrees that the uses allowed on the Subject Property shall be limited to the following: a multifamily use, which is intended to be rental, but can be converted to condominiums at the discretion of the Owner, and

ground floor uses as described below. Uses shall be approximately as shown in the building square foot amounts and in the locations on the CDP.

i. Ground Floor Uses.

i. Commercial Plan. The Owner shall provide the following ground floor uses:

1. A minimum of 15,000 square feet of ground floor space shall be reserved for retail sales and services allowed by the B-1 Zoning district, except as expressly prohibited in the following subsection. Of the 15,000 square feet, a minimum of 5,000 square feet will be designated for restaurant uses. The Owner anticipates a variety of retail sales uses and restaurant types, including, but not limited to restaurants (either fast casual or full-service), bakery/cafés, and neighborhood-serving retail tenants.
2. A minimum of 5,800 square feet shall be reserved for medical/professional office space. The Owner anticipates medical users including but not limited to doctors, dentists, and optometrists, or professional users such as CPA's, and other consulting/advisory services.
3. A minimum of 5,000 square feet shall be reserved for a Co-Working space to be utilized by residents of the multifamily community, along with City-affiliated associations/non-profits/advocacy groups on a reservation basis. The location of the entrance to the Co-Working space shall be at least partially at grade with visibility from the street sidewalk (either along West Broad or South West Street).

ii. Prohibited. The following uses shall be prohibited in the ground floor of the proposed building:

1. Public buildings and facilities
2. Hotels, motels
3. Inns, bed and breakfasts
4. Group homes permitted by Section 48-486(10)
5. Parking lots as a principal use
6. Self-service laundries
7. Shoe repair shops
8. Antique shops
9. Mortuaries
10. Adult uses
11. Any drug paraphernalia establishment
12. Amusement arcade, as a principal or accessory use
13. Satellite television antenna or ground-mounted conventional television or radio antenna
14. The preparation, processing, assembling of electronic devices and equipment, including computer systems, communication systems, security systems, fire protection systems, control

systems and the like

15. Temporary shelters
16. Auction house
17. Flea market
18. Blood bank
19. Car wash
20. Rental car offices or sales
21. Car dealerships
22. Gun stores or firearm dealers, or shooting ranges
23. Church, temple, synagogue, mosque, or other house of worship
24. Stores selling primarily tobacco, electronic cigarettes, vaping supplies, e-liquids or similar materials, or cannabis products.

3. Ground Floor Design Requirements: The Owner agrees that the following design standards shall be met for all commercial space identified as part of the GLA in the project:
  - i. Retail ceiling heights: the ground floor retail spaces shall be constructed with a minimum interior ceiling height in at least 75% of the retail space (measured “slab to slab”) of at least 16 feet in height.
  - ii. The Owner agrees that the ground floor retail or other ground floor commercial space wall fronting W. Broad Street or S. West Street shall have an average 40% transparency (meaning a clear view from the outside to the interior space and activity and not obstructed by drapes or blinds, or by any other window coverings, or shelving or other furniture) for the area of any wall facing said streets that is between three (3) feet and eight (8) feet above grade. This provision is not intended to prohibit merchandise displays that are viewed from the street within the transparency area or restaurants that utilize blinds or curtains to intermittently shade customers from unwelcomed sunlight. Further, this provision is not intended to prohibit restaurants from placing seating adjacent to windows.
  - iii. The Owner agrees that all retail businesses that front W. Broad Street and S. West Street shall have retail storefront entrances that provide retail customers ingress and egress to and from the adjacent street.
  - iv. At least 5,000 square feet of ground floor space shall have access to a ventilation shaft through the roof that meets all City Building Code requirements for restaurant use. Such access shall be provided prior to issuance of a certificate of occupancy for ground floor restaurant spaces.
  - v. Prior to issuance of a certificate of occupancy for the final five percent (5%) of the total residential units, the Owner agrees that the shell retail spaces for the entirety of the project will be completed, and that a minimum of 50% of the total commercial retail will have tenant improvements underway. These shell commercial spaces will include installed water and sewer lines available within or below the tenant’s individual space; adequate utilities including electrical power and natural gas located in the Landlord’s utility rooms; shaft access for kitchen exhaust vents and HVAC

line sets; and adequate designated rooftop space for the installation of the tenant's HVAC equipment. The vacant spaces will be climate controlled to prevent freezing of lines.

4. Architectural Design. The architectural design and building materials shall be in general conformance with the illustrative elevations included in the special exception application, but may be modified by the Applicant as part of final engineering and building design, provided that such modifications provide an equivalent quality of design and materials to those shown on the illustrative elevations included in the special exception application, subject to approval by the Planning Commission with recommendation by the Architectural Advisory Board. Any exterior vents on the façade shall be painted to match the color of the surrounding material.
5. Pedestrian Improvements
  - i. Streetscape:
    - i. The Owner agrees to construct streetscape improvements along W. Broad Street and S. West Street in conformance with the City of Falls Church's adopted Streetscape Standards adopted March 13, 2017. Notwithstanding the above, the streetscape design for the public park/open space and areas adjacent to it at the intersection of S. West and Ellison Streets will be designed to integrate into the overall design of the open space and may deviate from the adopted Streetscape Standards. Streetscape improvements along Ellison Street shall be provided with appropriate residential-scale streetscape.
    - ii. The Owner agrees to maintain the streetscape improvements (including street trees but excluding maintenance of and cost of electricity for City standard streetlights) constructed as part of this project as long as the project remains. The terms of such maintenance responsibilities will be set forth in a Streetscape Maintenance Agreement to be negotiated between the Owner and the City, which agreement will be finalized, approved by the City Manager, and executed by the Owner prior to issuance of a Certificate of Occupancy for any occupiable space in the project.
    - iii. The Owner agrees to provide two, 2" empty conduits for fiber optic cable, for use by the City, to run under the West Broad Street sidewalks and crosswalks constructed by the Owner. The conduit and pull boxes shall be located along the frontage of the lot and shall comply with the specifications provided by the City. Pull boxes shall be placed at each intersection corner and with spacing not to exceed 600'. Pull boxes located at intersection corners shall have separate pull boxes from the traffic signal boxes; however, two, 2" conduits will be required to connect the two pull boxes.
    - iv. The Owner agrees to install an exterior electrical outlet (quad outlet) at each planter bed, and an exterior water bib every 100 linear feet along S. West Street and W. Broad Street along the building face.

- ii. Bus Stop: The Owner agrees to construct a bus stop including a shelter with appropriate signage and landing pad amenities at a location generally shown on the CDP, but with the final location to be determined in coordination with the City Manager as being consistent with the City's Bus Stop & Shelter Plan during Site Plan approval. The bus stop design and amenities shall be included in the Site Plan approval, and will be in conformance with the City's adopted Bus Stop & Shelter Plan, which provides specifications and target locations for such bus stops. The shelter shall include conduit and electrical service to allow for installation of a real time bus information sign. The Owner further agrees that, in lieu of building the shelters, and at the discretion of City, the Owner may pay the City \$40,000 prior to the issuance of building permits for the project, as its contribution toward a bus shelter elsewhere in the City.
  - iii. Crosswalks.
    - i. The Owner agrees to construct pedestrian crosswalks along the northwest and southwest legs of the West Broad and North West Street intersection.
    - ii. The Owner agrees to provide crosswalk/pedestrian improvements across North west Street in the vicinity of the North Ellison Street intersection.
  - iv. Ellison Street Parking. The Owner agrees to work with the City Staff to effectuate a parking zone restriction along Ellison Street restricting on-street parking to residents of the adjacent neighborhood only. No residents, workers, or visitors of the Subject Property shall be allowed to park along Ellison Street.
6. Schools Capital Cost Contribution. The Owner agrees to make a voluntary contribution to the City of Falls Church to offset school capital costs. The developer agrees to voluntarily contribute \$1,500 for each of the market rate rental apartments to offset school capital costs. The total contribution shall be paid at the time of the issuance of the first residential certificate of occupancy.
7. Public Safety
- i. Public Safety Radio: The Owner agrees to ensure that all buildings and parking garages on the Subject Property are constructed in a manner that permits public safety radio signals to be transmitted and received throughout all areas within the building and from those areas to all outdoor areas of the property that is the subject of the Special Exception. The Owner will install the necessary equipment and, with at least five days' notice to the City Manager, perform a radio transmission test upon completion of the project, but prior to issuance of the first Certificate of Occupancy, in order to establish that there exists the ability to transmit and receive public safety radio signals from the interior of the building and parking garages, including the subterranean levels. The Owner agrees to permit the City Manager or his designee to be present at the site during the tests and to verify the results. Should the test fail,

the Owner will find and implement a solution acceptable to the City so as to resolve the problem with 90 days of the test.

- ii. Life Safety: The Owner agrees to provide:
  - i. Emergency Generator: Natural gas, or other approved power supply, generator sized to accommodate the following loads all at one time for the Subject Property:
    - 1. Fire Alarm System
    - 2. Fire Pump, if equipped
    - 3. Emergency Hall and Exit Lighting
    - 4. One Elevator for the Standard Multifamily Use and One Elevator for the Age-Restricted Multifamily Use.
    - 5. Domestic Water Pumps, if equipped, and
    - 6. Sump Pumps.
  - ii. Fire command center with control and annunciation of elevators, generator, fire pump, and HVAC systems, including a separate cooling system for the command center.

8. Transportation Demand Management (TDM) and Parking Management Plan. The Owner agrees to develop and implement a TDM program as shall be referenced in a Transportation Management Plan that will be prepared as a part of the site plan approval process. The Owner agrees to obtain the City Manager's approval of the TDM program as meeting the standards of this VC and as likely to achieve the goals listed below, before site plan approval. The Owner agrees to implement the TDM program and Parking Management Plan, together, in a way that achieves the goals of i) reducing onsite parking demand by 17 percent from City Standards; and ii) reducing the number of PM peak hour vehicle trips for the multi-family uses by 25 percent from ITE Trip Generation Manual 10<sup>th</sup> Edition predictions. The TDM program will include a list of infrastructure and incentives to be provided as well as monitoring programs and additional techniques to be administered in the event performance goals are not achieved. In addition, the TDM program will categorize infrastructure, techniques and incentives (hereafter collectively referred to as "elements") as falling into one or more of four categories: (1) Site Design, Infrastructure and Options; (2) Promotion, education and incentives; (3) Monitoring and Enforcement; and/or (4) Adaptive Management. The Owner agrees to work with the City Manager to reach agreement as to how the elements will be used at any given time. The TDM program will conform to these documents and the CDP and will be finalized and approved as part of the Site Plan process. The Owner agrees that City of Falls Church staff upon prior written notice to the Owner's designated representative will have access to the garage(s) on the Subject Property at all times to conduct parking utilization counts and to monitor compliance with the TDM and Parking Management Plans.

9. W. Broad Street Traffic Signal. The Owner agrees to work with the City and VDOT on appropriate signal timing/phasing adjustments to optimize the

performance of the signal at the intersection of W. Broad and S. West Street.

10. Environmental Improvements:

- i. Green Building Criteria: The Owner agrees to have the project designed such that a Leadership in Energy and Environmental Design (“LEED”) Accredited Professional (“LEED AP”) can and will certify that the project is likely to yield at least the points necessary to achieve status of LEED Gold under LEED v4. Prior to site plan approval, the Owner will provide the City with a LEED checklist as prepared by a LEED AP. Following completion of construction and occupancy, and in accordance with LEED guidelines, the Owner will prepare the necessary documentation to seek official LEED certification from the U.S. Green Building Council. Prior to the issuance of first certificate of occupancy, the Applicant will post a \$50,000 bond or letter of credit for the project which includes terms approved in advance by the City Manager to assure the City that the Owner will satisfy its obligations under this paragraph to achieve LEED Gold certification. If the project achieves the intended LEED certification within three (3) years after issuance of a certificate of occupancy for the last residential unit, then the associated bond or letter of credit will be released by the City. If the project does not achieve the intended LEED certification within three (3) years after the issuance of the last certificate of occupancy but fell within five (5) points of attainment intended LEED certification, 50% of the bond or letter of credit will be released to the Owner; the City will redeem the other 50% of the associated bond or letter of credit for City environmental improvements at the project location and/or vicinity with the scope at the City’s sole discretion. If the project does not achieve the intended LEED certification within three (3) years after the issuance of the last certificate of occupancy but was more than five (5) points from attaining the intended LEED certification, the City will redeem the associated bond or letter of credit for City environmental improvements at the project location and/or vicinity with the scope at the City’s sole discretion.
- ii. Future Solar Panels: The Owner agrees to aggregate rooftop mechanical systems to the best extent possible, and to take into consideration the possibility that in the future an opportunity may arise for installation of rooftop solar panels to capture solar energy to be sold to the grid. In such future event the Owner agrees to a good faith evaluation of the feasibility of allowing the installation of solar panels for providing solar energy to the grid; provided however, the Owner reserves the right for the future installation of solar panels to provide solar energy to be consumed exclusively by the project.
- iii. Electric Vehicle Charging Station: The Owner agrees that a minimum of fifteen charging stations for electric vehicles will be provided in the project parking garage. The Owner further agrees to provide conduit for the future installation of fifteen additional charging stations for electrical vehicles.

The location of the charging station will be determined at Site Plan Approval, but will include stations and conduit in both the residential and commercial portions of the project.

- iv. Sanitary Sewer Capacity: The Owner agrees to conduct a sewer capacity analysis by a qualified engineer to an extent determined by the Director of Public Works, but not more than 1,000 feet downstream of the project in any direction. During Site Plan the Owner and Public Works will determine if any sanitary sewer improvements are necessary to alleviate capacity concerns identified after development flows are modeled. The design and construction costs to perform necessary improvements (excluding capacity analysis) will be determined during Site Plan approval. The Owner agrees to design and construct the system improvements. The City will waive part or all of Sewer Availability fees in an amount equal to the verified costs of design and construction of said improvements.
- v. Storm Drainage and Runoff: The Owner agrees to provide storm water management in conformance with that shown on the CDP. Owner agrees to reduce the storm water runoff from the site during a 10-year storm by an additional 20% from the minimum requirements set forth in Chapter 35 of the City Code. Existing conditions may be used as the basis of the peak flow calculation.
- vi. Stormwater Fund Contribution: The Owner agrees to contribute \$20,000 to the City's Stormwater Fund for the purpose of mitigating the removal of currently existing on site tree canopy coverage. City Arborist to determine how these funds are utilized.
- vii. Installation of Vegetation: The Owner agrees that the vegetation installed for the project will consist of native and regionally adapted species with a majority being from the City's list of recommended plants. Final sizes, species and placement will be determined at Site Plan Approval. Plant materials shall be at least the following sizes at installation:
  - i. Evergreen trees (8 to 10 feet in height at planting)
  - ii. Shade trees (minimum 2.5 inch caliper, 14 feet in height at planting on W Broad Street and minimum 2.5 inch caliper otherwise)
  - iii. Large shrubs (minimum 24 inches)
  - iv. Small shrubs (minimum 18 inches)

The timing of installation of vegetation shall be determined during the Site Plan 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.

- 11. Affordable Housing Contribution: The Owner agrees to provide affordable housing on the following terms:
  - i. Provision of Affordable Dwelling Units
    - i. Baseline: The Owner will provide affordable dwelling units ("ADUs") in the project equal to twelve (12) percent of the total number of

dwelling units (rounded up to the nearest whole number) actually constructed. The proportion of ADUs will follow the same proportionate mix for the market rate units in the project. The ADU's shall be offered for rents split equally (50% each) at two income tiers: those that are affordable to households whose income is no more than 60% of HUD PMSA AMI, and those that are affordable to households whose income is no more than 80% of HUD PMSA AMI.

- ii. Cash in Lieu Payment. Prior to issuance of the first residential occupancy permit for the project, 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 described in this Voluntary Concession. The amount of the cash contribution shall be mutually agreed upon by the City and the Owner. If the City and the Owner cannot mutually agree upon a contribution amount, then the Owner will provide ADUs in conformance with the provisions in this Voluntary Concession 11.
- iii. Conditions Applicable to ADUs. The following conditions are applicable to any ADUs provided pursuant to this Voluntary Concession 11. They shall not apply if a cash in lieu payment is provided.
  - i. The ADU size will be in keeping with the typical unit size in the project for each similar unit type. The ADUs will be dispersed throughout the project. If the Owner provides parking for market-rate units, the Owner shall provide at least one parking space for each comparable ADU unit. If a parking fee is imposed, the same parking fee shall apply to comparable ADU units. The Owner shall have the right to require the payment of security deposits and other deposits or fees for ADU units that are also charged to market-rate units with the exception of amenities fees. Tenants of the ADUs shall have access to the same amenities as market rate tenants.
  - ii. The Owner agrees to record Restrictive Covenants among the land records of the Clerk of the Circuit Court of Arlington County, which shall define terms and conditions of the ADUs as such terms and conditions are agreed to in these Voluntary Concessions regarding issues including, but not limited to, price control periods and owner/renter occupancy and the matters agreed to in these voluntary concessions. These Covenants shall run with the land and be an encumbrance on the ADUs. The Covenants shall be recorded with the City's land records in Arlington County, after certification by the City Manager of their conformance with these Voluntary Concessions, and evidence of such recordation will be provided to the Zoning Administrator before a Certificate of Occupancy is issued for any dwelling unit in the project.
  - iii. The Owner will rent the ADUs directly or through its designated agent to qualified tenants, as determined by the City. The City will regulate and establish ADU qualification priorities.
  - iv. 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”). Such rent and unit mixes 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.

- v. If any ADU rental units are marketed for sale as individually and separately owned condominiums within 20 years after the certificate of occupancy is issued for the residential building, then such ADU units will become home ownership units subjected to the conditions in **Voluntary Concession 11(iii)(vi-vii)** below. The City will be notified a minimum of 120 days prior to the sale of the first ADU condominium unit. All ADUs that the Owner desires to sell will be made available for sale within 6 months after the 120 notice. Tenants of individual ADU units will be given the right to purchase their individual unit at prices established under **Voluntary Concession 11(vii)**. ADU tenants opting not to purchase will receive relocation benefits from the Owner as outlined in the City of Falls Church Voluntary Relocation policy.
- vi. If sold as a condominium, the Owner agrees to use commercially reasonable efforts to reduce and minimize condominium fees for such ADUs as allowed by the Virginia Condominium Act and applicable law. Upon written notification by the Owner (as outlined by the City) that an ADU is available for sale, the City or its designee will have the right of first offering to purchase the for-sale ADU for a 60-day purchase offer period following delivery of such written notification to the City Manager. In the event the City does not exercise such right to purchase the ADU or ultimately to close on the sale of the ADU, the ADU shall be offered for sale exclusively to City qualified and designated non-profit organizations for a period of 30 days.
- vii. In the event that the ADU is not sold as outlined above, the Owner will be entitled to sell the ADU without further restrictions at market rate. Net sale proceeds received by the Owner in excess of the ADU price will be divided equally between the City and the Owner. The Owner agrees that the ADU sales price will be set by the Housing Commission with reference to the HUD PMSA AMI at a sales price that are affordable to households whose income is no more than 65% of HUD PMSA AMI.
- viii. The ADU sales price will include an additional amount as calculated by the percentage increase in HUD median income at the time building permits are issued, but not less than the original sales prices listed above. The limitations on sale of ADUs will apply for a period of twenty years following the initial sale and with resale within that first twenty years of each subsequent ADU owner's date

of purchase.

- ix. ADU tenants/owners will have the same duties, rights and privileges as all other tenants/owners in the project, except as such ADU duties, rights and privileges are expressly altered by these voluntary concessions.
  - x. A minimum of one of the ADU units shall be accessible as defined by federal law. Additionally, as provided by federal law, all ADU and market-rate units shall be ADA adaptable.
  - xi. The Owner will comply with all applicable fair housing laws.
12. Libraries, Parks and Recreation. In return for various benefits to the Owner granted through the special exception process and to ameliorate the reduction of open space in the City and increase in residents resulting from the Special Exception Approval, the Owner agrees to increase the sustainability of its project by contributing to the City's libraries and parks. The Owner agrees to provide a contribution to the City of \$250 per residential unit (excluding ADUs) in support of community improvements and future planned upgrades to City libraries and City owned Parks. The total contribution will be paid prior to issuance of the first residential certificate of occupancy.
13. Lighting: The Owner agrees that all exterior lighting for the Subject Property shall comply with the City Ordinances with respect to spill over to residential neighborhood south of the project, and exterior lighting shall be shielded and directed away from any adjacent residential property. To the extent feasible, low energy light fixtures will be used. The lighting plan for exterior lighting on Ellison Street will incorporate dark sky lighting principles in accordance with the standards of the International Dark Sky Association.
14. Construction Management:
- i. Construction Parking and Staging Plan: Prior to issuance of any demolition and/or building permits the Owner agrees to prepare, submit, and obtain the City Manager's approval of a demolition and staging plan for the project. All demolition and construction of the project shall be done in conformance with the approved demolition and staging plan. Once a contractor has been selected for the project, the Owner will prepare a Construction Parking Plan and a Construction Traffic and Staging Plan to be enforced by the Owner for the entire construction phase of the project, and to obtain the City Manager's approval of the plan as providing sufficient parking or other transportation services for working to the site, and not having an adverse impact on traffic safety, prior to the issuance of any building permit for the project. The Owner acknowledges and agrees that violations of these Plans during construction can result in a Stop Work Order and other enforcement measures by the City.
  - ii. Community Liaison During Construction: The Owner agrees to designate a representative who is physically present on a regular basis on the Subject Property to serve as a liaison to the community throughout the duration of

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

- iii. Excavation Monitoring: The Owner agrees to continuously monitor for soil movement and structural damage to adjacent structures during and after excavation for the project. Structures within a distance equivalent to or less than the depth of the excavation plus 10 feet will be surveyed by the Owner for pre-development conditions and compared to post-development conditions. For such structures, the Owner agrees to provide insurance coverage for damage caused by excavations or construction activities, as independently verified by a third party engineering consultant provided by the Owner. In no way will this provision limit the liability of the Owner or its contractors for damages caused by construction activity.
- iv. Sidewalk Accessibility: The Owner agrees to maintain safe pedestrian walkways throughout construction and thereafter, and to ensure that such walkways are, at all times, separated from street traffic. Sidewalks shall not be completely closed on either side of the street, unless the City Manager or his designee approves such closing, after finding that the Owner (1) cannot reasonably provide such a pedestrian walkway, (2) will provide clear signs and access to the sidewalk on the other side of the street, and (3) will manage the closure so that the pedestrian walkway is not closed for more than 15 consecutive days, unless City Manager (or his designee) approves a longer duration.
- v. Pest Control and Plan: The Owner agrees to contract with a certified pest control company licensed to do such business in the Commonwealth of Virginia for a thorough extermination of any pests and/or rodents that may be present on the Subject Property and provide a containment plan prior to the start of demolition work and/or any other land disturbing activities, and throughout construction. The pest containment plan is subject to review and approval by the Building Official prior to issuance of a demolition permit.
- vi. Pavement Rideability During Construction: The Owner agrees to monitor, by visual observation, the integrity of the roadway surfaces adjacent to the Subject Property, including W. Broad Street, S. West Street, and Ellison Street, during construction of the project. The Owner agrees to repair those portions of the adjacent streets that are agreed upon by Owner and the Director of Public Works and having been damaged by construction traffic associated with the project and that materially impact the safe use of the roadway from a rideability standpoint. This periodic repair during construction, if necessary, shall be in addition to any paving or patch work required upon completion of the project. The required repair shall be only

that directly caused by construction traffic on the Subject Property and shall not include damage caused by any other source, including but not limited to that caused by others not associated with the project, utility company improvements, and other not in the direct control of the Owner or Owner's representatives. Furthermore, the Owner shall conduct a pre-construction site visit with the Director of Public Works in order to document the existing road conditions prior to the start of construction.

15. Bicycles: The Owner shall provide secure bicycle storage facilities consistent with those shown on the CDP for the residential uses of the project as well as short-term bicycle parking for the commercial uses of the project. Bike storage shall be consistent with the Bicycle Parking Requirements of the City's Zoning Ordinance, and these facilities will be finalized and approved as part of Site Plan approval.
  
16. Other terms and Conditions
  - i. Owner acknowledges that the Special Exception as granted, runs with the land and is not transferable to other land.
  - ii. Owner acknowledges that if granted, the Special Exception will be contingent upon the conditions noted above, and shall not relieve the Owner from compliance with the provisions of all applicant ordinances, regulations, or adopted standards.
  - iii. Owner acknowledges that if granted, the Special Exception shall automatically expire, without notice, thirty-six (36) months after the date of approval unless the use has been established or construction has commenced and been diligently pursued, in accordance with Division 3. Section 48-90. (d), (6) of the City of Falls Church Zoning Ordinance.
  - iv. Site plan approval is defined as approval of the site plan for the subject property by the Planning Commission pursuant to Section 48-1142 of the Zoning Ordinance. Owner shall apply within 90 days of that Site Plan approval for associated administrative staff approvals and related bonds using good faith efforts to complete these approvals in a timely manner. There may be consideration of one extension of three (3) months for the above timeframe at the discretion of the Director of Community Planning and Economic Development Services (CPEDS).
  - v. The City of Falls Church Commissioner of Revenue and/or his designated staff shall be provided access to the residential portions of parking garage for inspection of window stickers related to personal property taxes for vehicles. In the event the access methods are changed or updated the Commission of Revenue shall be provided notice within thirty (30) calendar days.
  - vi. Timing of Commitments. Notwithstanding the foregoing, upon demonstration that despite diligent efforts or due to factors beyond the Owner's control commitments specified in these Voluntary Concessions

have been delayed beyond the timeframes specified, the City Manager may agree to a later date for completion of said commitments.

- vii. Should the Owner sell its interest or a portion thereof, rights, approvals, or convey a controlling interest to their respective corporations or similar legal entity, any purchaser of such interests, rights, approvals, or controlling interest shall be bound by the terms and conditions contained herein.
- viii. Owner voluntarily submits the foregoing concessions, terms, and conditions to the City Council to be incorporated by reference within the Resolution for the Special Exception, should City Council grant the application for Special Exception.
- ix. The Owner acknowledges, understands and agrees that the property shall only be developed in accordance with the Special Exception as granted.

MCRT INVESTMENTS, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

City of Falls Church

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_