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June 23, 2021

Via Email Only

Mr. Wyatt Shields, City Manager
City of Falls Church
300 Park Avenue, Suite 203 East
Falls Church, Virginia 22046

**Re: Amendment to Special Warranty Deed Covenants
One City Center Mixed-Use Development Project
Atlantic Realty Companies, Inc. (the “Applicant”)
RPC #52-309-119 and -116 (jointly, the “Property”)**

Dear Mr. Shields:

On behalf of the above-referenced Applicant, please accept this letter as a request to amend a Special Warranty Deed (the “Special Warranty Deed”) executed on August 1, 2013 between The City Council of the City of Falls Church (the “City”), which is the Grantor of the Special Warranty Deed, and Falls Church Project, L.L.C., which is a special purpose entity affiliated with the Applicant and is the Grantee of the Special Warranty Deed.

As set forth more fully below, the proposed “Amendment to Covenants and Restrictions” (the “Amendment”) seeks to remove the covenant that limits the use of the Property to non-residential uses, revise a separate covenant governing permitted and non-permitted commercial uses in order to make it consistent with the removal of the covenant restricting non-residential uses. The proposed Amendment would permit redevelopment of the Property, along with adjacent parcels owned by the Applicant, into a new mixed-use building that will include both new commercial and residential uses as a component of a vibrant, walkable, urban downtown for the City.

Background

By way of background, the Property comprises two parcels of record, more particularly identified as follows:

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- RPC #52-309-119: This parcel comprises approximately 0.11 acres and is currently improved with a single-story 1,150-square foot freestanding commercial building constructed in 1950.
- RPC #52-309-116: This parcel comprises approximately 2,600 square feet and is located at the corner of W. Broad Street and S. Maple Avenue.

Pursuant to an agreement dated July 3, 2013, the City agreed to convey the Property to the Applicant subject to certain covenants and restrictions. The Special Warranty Deed was formally executed between the City and the Applicant on August 1, 2013, and was recorded as Document 2013225078 in the Land Records of Arlington County, Virginia.

The Special Warranty Deed lists specific covenants and restrictions (the “Covenants”); Covenant 1 of which limits use of the Property to non-residential uses and prohibits residential uses of any kind; Covenant 2 of the Special Warranty Deed describes a series of non-residential uses, including undesirable commercial uses. These Covenants run with the land and remain binding; however, Provision 4 expressly states that the City reserves the right, in its sole and absolute discretion, to waive any portion of the Covenants in the future, so long as such waiver is made in writing and signed by an authorized signatory of the City.

Special Exception Application

The Applicant recently filed special exception applications (together, the “Special Exception”) to construct a new mixed-use building with a maximum height of 115 feet as well as for improvements to existing buildings. The Special Exception was assigned land use application number MUNIS 2021-0047, and includes five parcels of record, inclusive of the Property. The Special Exception request includes a repositioning of the existing George Mason Square plaza, the retention of the existing building at 150 S. Washington Street, and the construction of a new mixed-use building and parking garage, portions of which will be located on the Property.

The proposed Special Exception is in accordance with the recommendations of the 2005 Comprehensive Plan, the West End Small Area Plan, and the City’s Future Land Use Map in terms of an appropriate mix of uses, parcel consolidation, redevelopment, and transportation improvements.

The proposed Amendment would permit residential uses on the Property as part of the Applicant’s proposed Special Exception. The proposed residential units will help meet the increasing demand for a variety of housing options within the City, and will fulfill the vision for a high quality mixed-use development in the downtown area by providing a mix of retail, office, and multifamily residential uses. Therefore, the request to waive the non-residential use limitation contained in the Special Warranty Deed is appropriate and warranted.

I would appreciate the acceptance and processing of this request in conjunction with the submitted Special Exception application. Thank you for your time and consideration in this matter, and please feel free to call me directly at (571) 209-5775 should you have any questions.

Very truly yours,

WALSH, COLUCCI, LUBELEY & WALSH, P.C.



Andrew A. Painter

Enclosure

cc: Mr. Wyatt Shields, City Manager
Mr. James B. Snyder, AICP, Community Planning & Economic Development Services
Mr. Paul Stoddard, AICP, Community Planning & Economic Development Services
Mr. Gary Fuller, AICP, Community Planning & Economic Development Services
Ms. Becky Witsman, Community Planning & Economic Development Services
Mr. David Ross, Atlantic Realty Companies
Mr. Adam Shulman, Atlantic Realty Companies
Mr. Mike Arena, Atlantic Realty Companies
Mr. Thomas Dinneney, AIA, DCS Design
Ms. Kim Silva, DCS Design
Mr. R. Randall Vosbeck, Jr., AIA, DCS Design
Mr. Eric S. Siegel, P.E., Urban, Ltd.
Mr. Peter Crawford, P.E., Urban, Ltd.
Mr. Ryan G. David, P.E., LEED AP, Urban, Ltd.
Mr. Mil L. Wallen, III, Trinity Group Construction, Inc.
Mr. Chad A. Baird, P.E., Gorove/Slade, Inc.
Ms. Maria C. Lashinger, P.E., PTOE, Gorove/Slade Associates, Inc.
Mr. Dimitri A. Georgelakos, KLNB Commercial Real Estate Services
Mr. Jake W. Levin, KLNB Commercial Real Estate Services
Kathryn R. Taylor, Esq., Walsh, Colucci

Prepared by and return to:
Walsh, Colucci, Lubeley & Walsh, P.C.
2200 Clarendon Blvd., Suite 1300
Arlington, Virginia 22201

RPC: 52-309-119; portion of 52-309-116

AMENDMENT TO COVENANTS AND RESTRICTIONS

THIS AMENDMENT TO COVENANTS AND RESTRICTIONS (this "Amendment") is made effective as of __ day of _____, 2021 (the "Effective Date") by **THE CITY COUNCIL OF THE CITY OF FALLS CHURCH**, a body politic (the "City"); and **FALLS CHURCH PROJECT, L.L.C.**, a Virginia limited liability company ("FCP").

WHEREAS, by Special Warranty Deed dated July 23, 2013 and recorded August 13, 2013 as Document No. 2013225078 among the land records of Arlington County, Virginia (the "Deed"), the City conveyed to FCP certain property located in the City of Falls Church, Virginia known as RPC #52-309-119 and a portion of RPC #52-309-116, all as more particularly described on Exhibit A attached to the Deed (the "Property");

WHEREAS, the Deed included certain covenants and restrictions pertaining to the use of the Property including, but not limited to, restricting the Property to non-residential uses (the "Covenants"); and

WHEREAS, the City and FCP now desire to amend the Covenants contained in the Deed in order to allow for residential use on the Property.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Amendment, the sum of Ten Dollars (\$10.00) and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Recitals. The foregoing recitals are incorporated herein by this reference.
2. Amendment.

(a) The parties hereby agree that Covenant #1 in the Deed prohibiting residential use on the Property is deleted in its entirety and shall be of no further force or effect. The Property may be used for any and all residential uses that are permitted on the Property pursuant to the Zoning Ordinance for the City of Falls Church, Virginia.

(b) The parties hereby agree that the first sentence of Covenant #2 in the Deed is hereby deleted and replaced with the following: "The Property may only be used for residential or Commercial purposes."

(c) The parties hereby agree that the following portion of the second sentence of Covenant #2 is hereby deleted: “but excluding any uses that are exclusively related to residential uses (i.e., facilities that function primarily as living quarters for individuals)”, so that the second sentence of Covenant #2 now reads in its entirety: “The term “Commercial” means any use for which the primary purpose is to conduct the buying or selling of goods, merchandise, commodities and services.”

3. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to its conflicts of laws principles.

4. Counterparts. This Amendment may be executed in multiple original counterparts, each of which shall be an original, but all of which together shall constitute one and the same Amendment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the City and FCP have signed and sealed this Amendment as of the Effective Date set forth above.

CITY COUNCIL OF THE CITY OF FALLS CHURCH,
VIRGINIA, a body politic

By: _____ (SEAL)
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA,
CITY OF FALLS CHURCH, to wit:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that _____, as _____ of the City Council of the City of Falls Church, Virginia, whose name is signed to the foregoing Amendment, has acknowledged the same before me in my jurisdiction aforesaid.

GIVEN under my hand and seal this _____ day of _____, 2021.

NOTARY PUBLIC

My commission expires: _____
Notary Registration No.: _____

[Notary Seal]

FALLS CHURCH PROJECT, L.L.C.,
a Virginia limited liability company

By: _____ (SEAL)
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA,
COUNTY OF _____, to wit:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that _____, as _____ of Falls Church Project, L.L.C., a Virginia limited liability company, whose name is signed to the foregoing Amendment, has acknowledged the same before me in my jurisdiction aforesaid.

GIVEN under my hand and seal this _____ day of _____, 2021.

NOTARY PUBLIC

My commission expires: _____
Notary Registration No.: _____

[Notary Seal]