



MEMORANDUM

TO: Beverly R. Cameron, City Manager
FROM: Bill Freehling, Assistant Director for Economic Development
DATE: May 5, 2016 (For May 10, 2016 Council meeting)
SUBJECT: Air-rights lease at Liberty Place

ISSUE

The revised plans for the Liberty Place development include six residential balconies that would overhang the Amelia Street right-of-way. City Council is being asked to enter into a 60-year lease with Liberty Place Partners LLC for the air space above the Amelia Street right of way.

RECOMMENDATION

City Council should defer action on this item to the May 24 meeting.

BACKGROUND

The Amelia Street side of the Liberty Place development includes six residential balconies that overhang the right of way below (two balconies per floor). The total encroachment of all six balconies is 258 square feet, or 86 square feet per floor. The balconies do not overhang the sidewalk but rather a landscaping area between the building and the sidewalk. The three encroaching balconies closer to Douglas Street go about 2.3 feet into the right of way, and the three balconies closer to Winchester Street go about 1.5 feet into the right of way.

Because property rights extend from the center of the Earth to the sky, the balconies are technically on public property. Because they are permanent improvements to the structure, an air-rights lease is required to build the balconies. The City of Fredericksburg previously entered into an air-rights lease with the University of Mary Washington for the pedestrian bridge over U.S. 1, and with CW Corner LLC for a balcony from the Castiglia's rooftop project over the William Street right of way.

The proposed lease between the City of Fredericksburg and Liberty Place Partners LLC would run for 60 years. Upon execution of the air-rights lease, Liberty Place Partners LLC would pay an upfront fee of \$500 to the City of Fredericksburg that would cover advertising costs associated with the public hearing. The lease includes safeguards to ensure the quality of construction and public safety. Following the 60-year lease, the agreement will either be renewed or the balconies will be removed.

FISCAL IMPACT

The Liberty Place development is expected to generate about \$750,000 in incremental annual tax revenue for the City of Fredericksburg. City Council is being asked to consider a Tax Increment

ITEM #5B-3

Financing proposal that would allow the developer to receive 45 percent of the incremental real estate tax revenue derived from Liberty Place, an amount estimated at \$185,000 annually.

ATTACHMENTS

Exhibit showing encroaching balconies

Ordinance authorizing lease

Deed of lease

Architect
 MV+A | Muehlenberg Voldre Associates
 1200 G Street NW
 Suite 250
 Washington, DC 20005
 202.682.2822

Owner
 Liberty Place Partners LLC
 400 Charles St.
 Fredericksburg, VA 22401
 540-372-4565

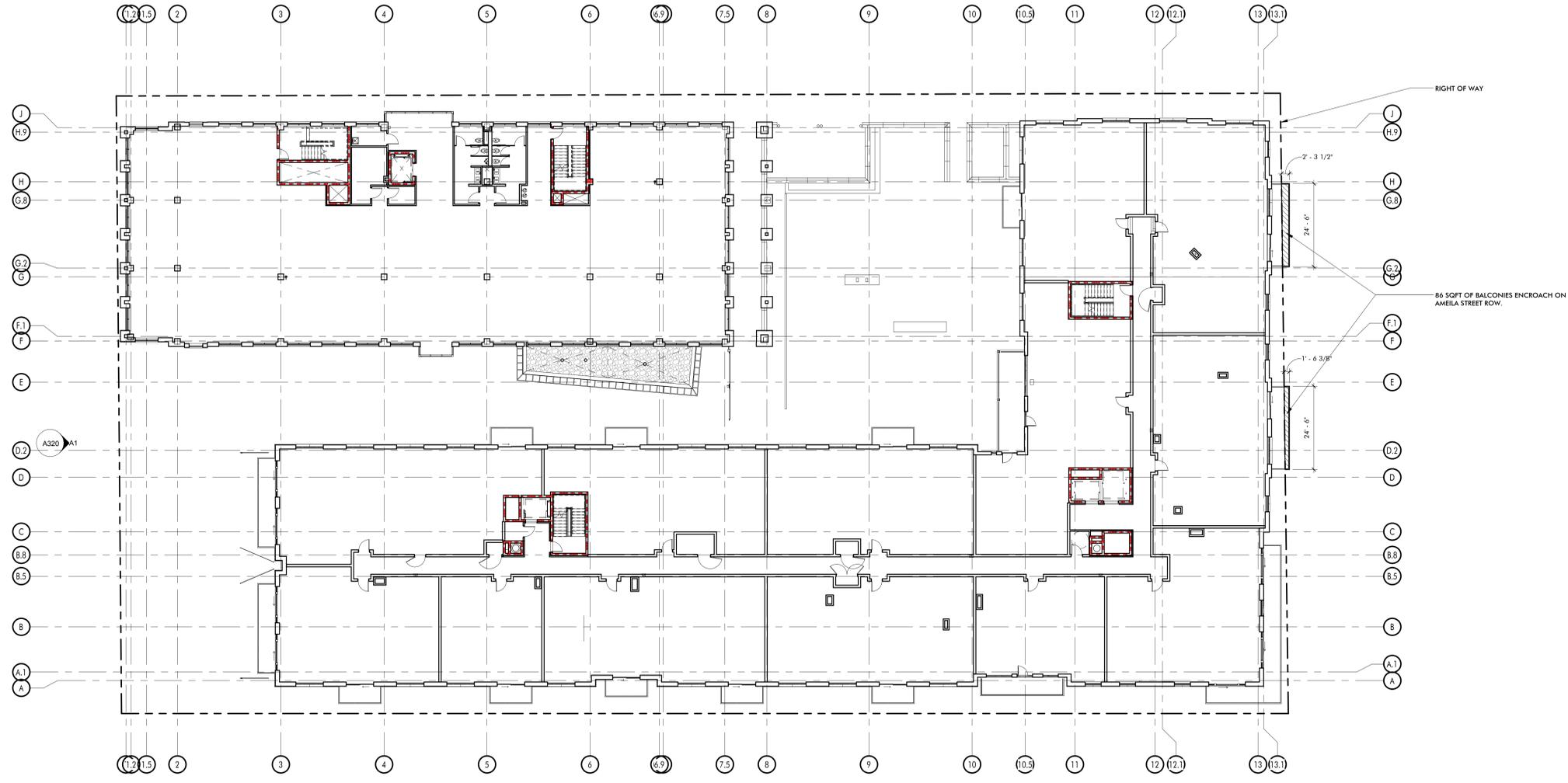
Structural Engineer
 STRUCTURA INC.
 111 Rockville Pike
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 Rockville, MD 20850
 301-987-9234

Mechanical, Plumbing & Electrical Engineer
 SSA LLC
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 Ste. 510
 Bethesda, MD 20814
 301-657-7630

Landscape Architect
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 703.548.5010

Civil Engineer
 Bowman Consulting
 450-A Nelson Circle
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 540-371-0268

LIBERTY PLACE - 2ND FLOOR BALCONIES IN RIGHT OF WAY DIAGRAM
 04/25/2016 SCALE: 1/16"=1'-0"



2ND LEVEL FLOOR PLAN

LIBERTY PLACE
 FREDERICKSBURG
 VIRGINIA

**BALCONIES IN ROW
 DIAGRAMS**

PROJECT NUMBER
14067.01

DRAWN BY: Author CHECKED BY: Checker

REV.	ISSUE:	DATE
	PROGRESS PRINT	04.01.2016
	BID SET	04.22.2016

KEY PLAN

DRAWING STAMP

**NOT FOR
 CONSTRUCTION**

SHEET NUMBER

01

Architect
 MV+A | Muehlenberg Voldre Associates
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LIBERTY PLACE
 FREDERICKSBURG
 VIRGINIA

BALCONIES IN ROW
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PROJECT NUMBER
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DRAWN BY: Author
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REV.	ISSUE:	DATE
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KEY PLAN

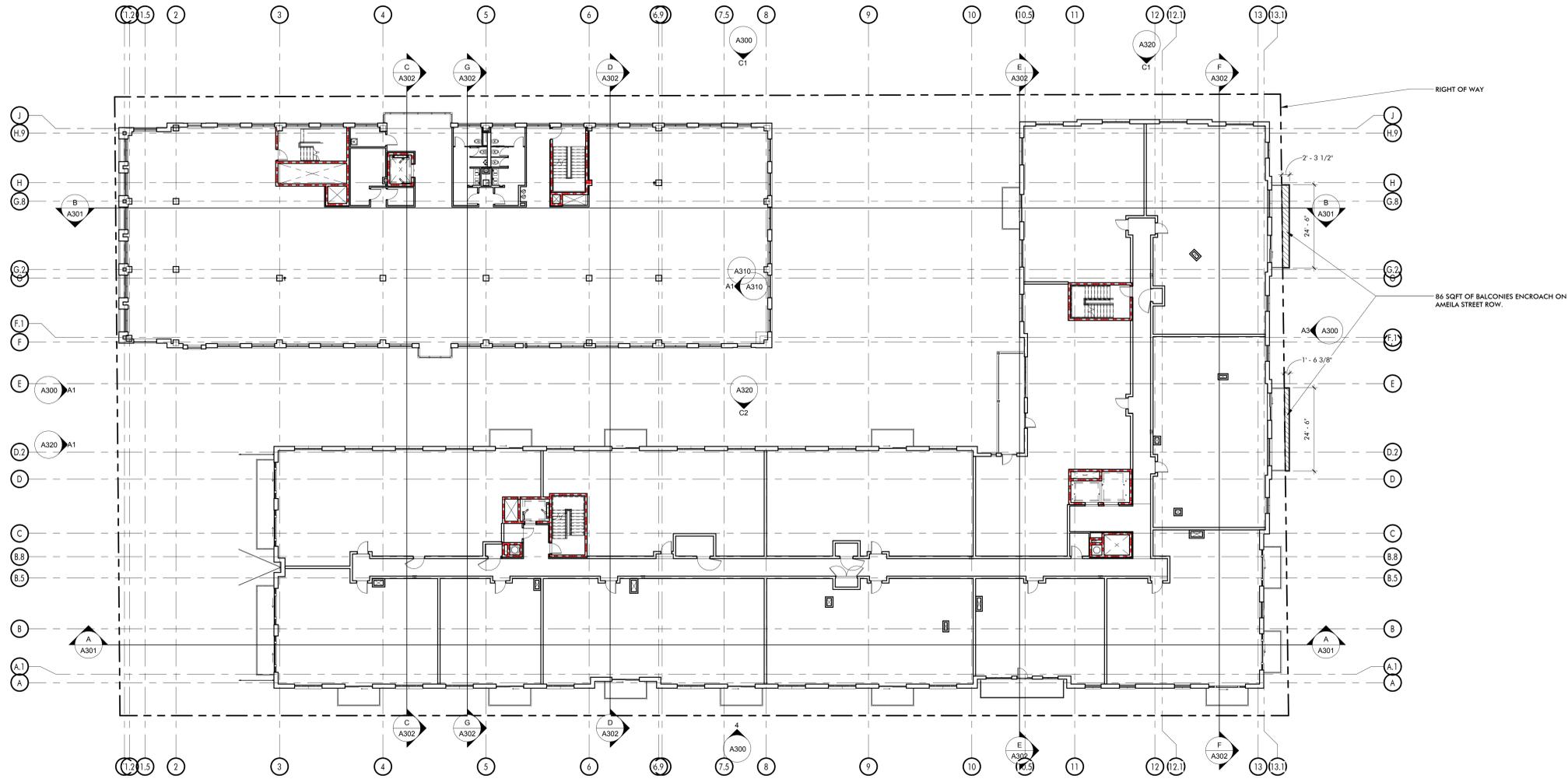
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**NOT FOR
 CONSTRUCTION**

SHEET NUMBER

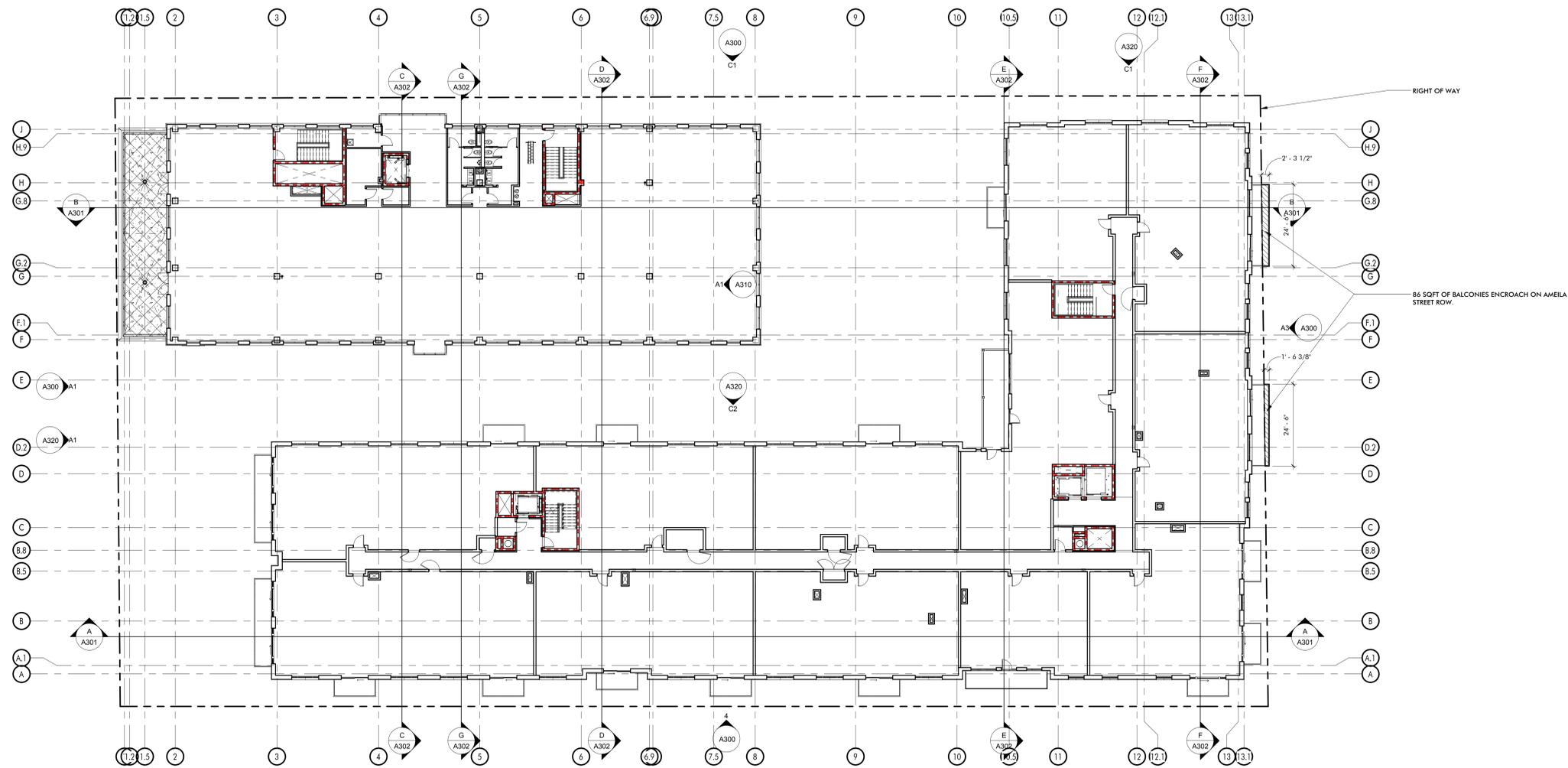
02

LIBERTY PLACE - 3RD FLOOR BALCONIES IN RIGHT OF WAY DIAGRAM
 04/25/2016 SCALE: 1/16"=1'-0"



3RD LEVEL FLOOR PLAN

LIBERTY PLACE - 4TH FLOOR BALCONIES IN RIGHT OF WAY DIAGRAM
 04/25/2016
 SCALE: 1/16"=1'-0"



4TH LEVEL FLOOR PLAN

LIBERTY PLACE
 FREDERICKSBURG
 VIRGINIA

**BALCONIES IN ROW
 DIAGRAM**

PROJECT NUMBER
14067.01

DRAWN BY: Author
 CHECKED BY: Checker

REV.	ISSUE:	DATE
	PROGRESS PRINT	04.01.2016
	BID SET	04.22.2016

KEY PLAN

DRAWING STAMP

**NOT FOR
 CONSTRUCTION**

SHEET NUMBER

03

GENERAL NOTES

- ALL DIMENSIONS ARE TO FINISH FACE OF WALL, GRID LINE OR CENTER OF COLUMN UNLESS OTHERWISE NOTED

Architect

MVA | Mashinsky Yorlke Associates
1200 G Street NW
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Owner

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LIBERTY PLACE
FREDERICKSBURG
VIRGINIA

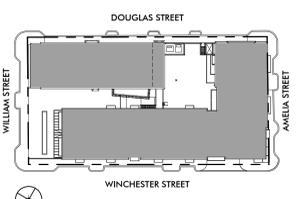
**1/16" FLOOR PLAN -
P1 LEVEL**

PROJECT NUMBER
14067.01

DRAWN BY: CA
CHECKED BY: EK

REV.	ISSUE:	DATE
	PROGRESS PRINT	04.01.2016
	BID SET	04.22.2016

KEY PLAN

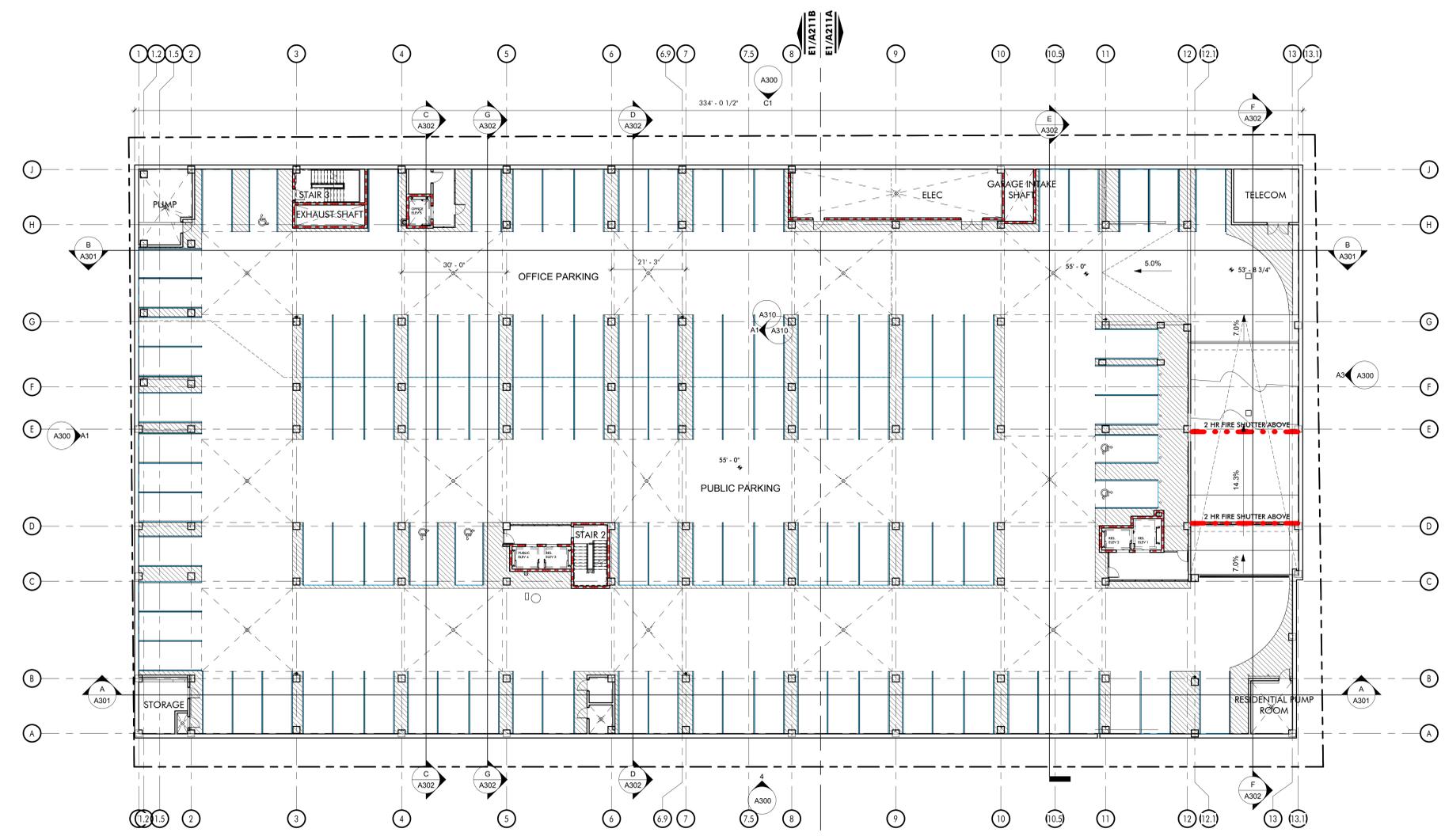


DRAWING STAMP

SHEET NUMBER

**NOT FOR
CONSTRUCTION**

A201



C1 P1 LEVEL FLOOR PLAN
A201 SCALE 1/16" = 1'-0"

GENERAL NOTES

- ALL DIMENSIONS ARE TO FINISH FACE OF WALL, GRID LINE OR CENTER OF COLUMN UNLESS OTHERWISE NOTED

Architect

MVA | Muesinyo Yorlke Associates
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LIBERTY PLACE

FREDERICKSBURG
VIRGINIA

**1/16" FLOOR PLAN -
GROUND LEVEL**

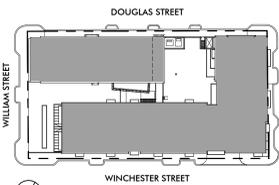
PROJECT NUMBER

14067.01

DRAWN BY: CA
CHECKED BY: RZ

REV.	ISSUE:	DATE
	PROGRESS PRINT	04.01.2016
	BID SET	04.22.2016

KEY PLAN

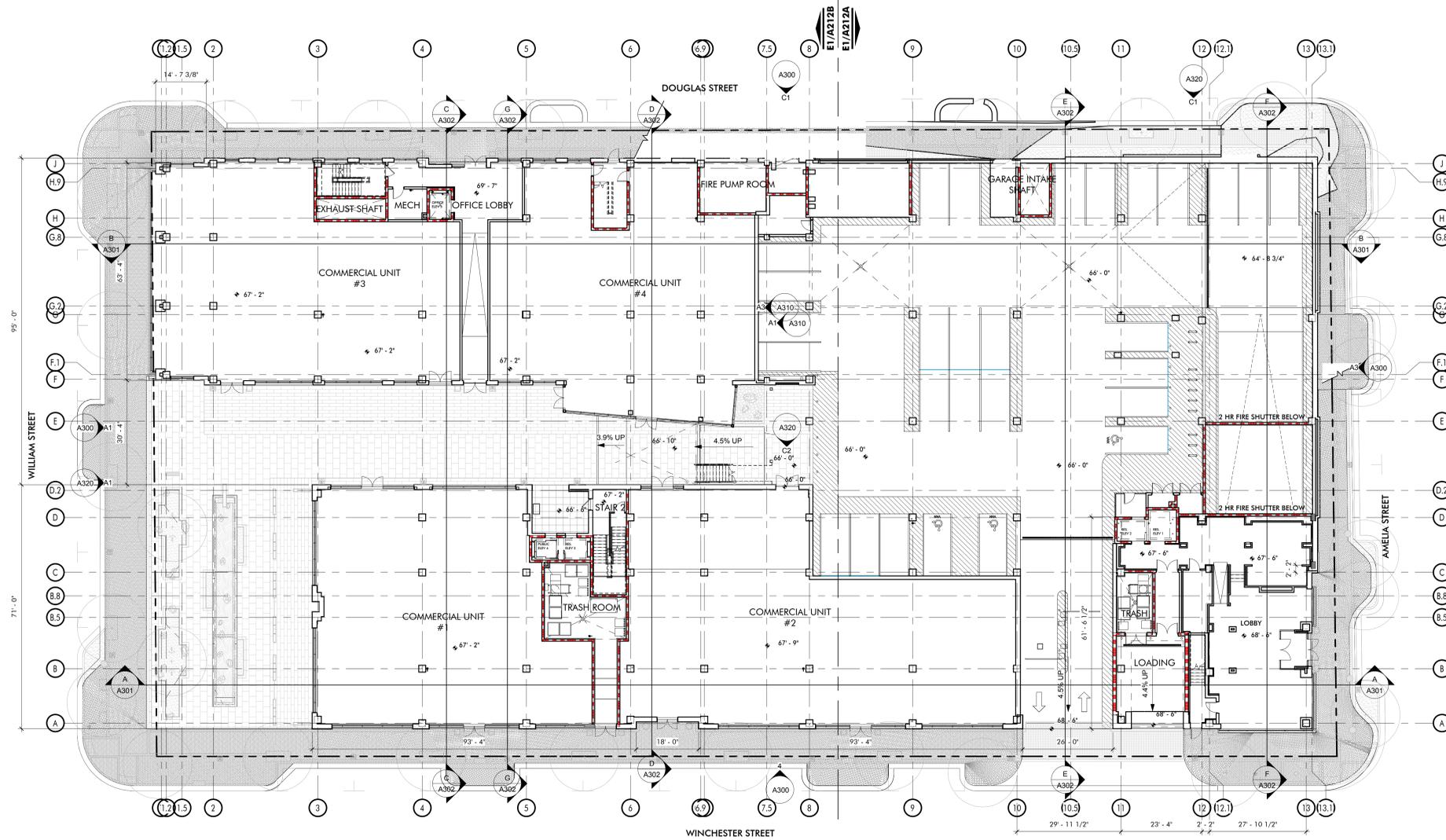


DRAWING STAMP

**NOT FOR
CONSTRUCTION**

SHEET NUMBER

A202



C1 G1 LEVEL FLOOR PLAN
A202 SCALE 1/16" = 1'-0"

GENERAL NOTES
 1. ALL DIMENSIONS ARE TO FINISH FACE OF WALL, GRID LINE OR CENTER OF COLUMN UNLESS OTHERWISE NOTED

Architect

MVA | MASHINSKY VOLZKE ASSOCIATES
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Owner

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Civil Engineer

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LIBERTY PLACE

FREDERICKSBURG
 VIRGINIA

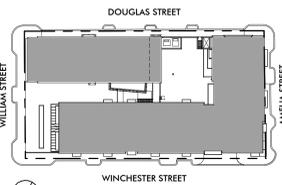
**1/16" FLOOR PLAN -
 1ST LEVEL**

PROJECT NUMBER
14067.01

DRAWN BY: AA CHECKED BY: EK

REV.	ISSUE:	DATE
	PROGRESS PRINT	04.01.2016
	BID SET	04.22.2016

KEY PLAN

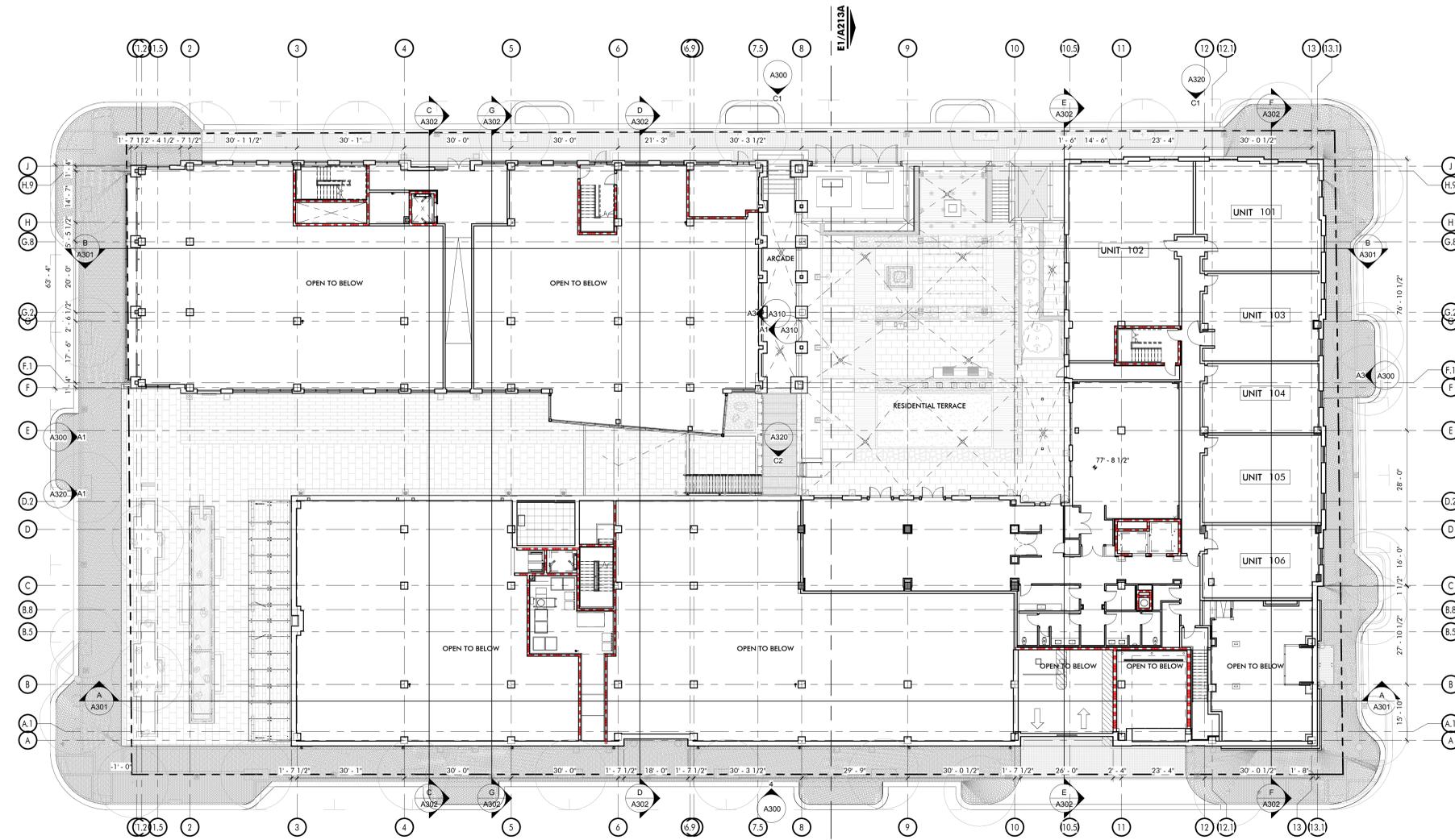


DRAWING STAMP

**NOT FOR
 CONSTRUCTION**

SHEET NUMBER

A203



C1 1ST LEVEL FLOOR PLAN
 SCALE 1/16" = 1'-0"



May 10, 2016
Regular Meeting
Ordinance No. 16-__

MOTION:

SECOND:

RE: GRANTING LIBERTY PLACE PARTNERS, LLC A SIXTY YEAR LEASE FOR THE AIR SPACE ABOVE THE PUBLIC SIDEWALK IN THE 600 BLOCK OF AMELIA STREET, FOR THE CONSTRUCTION, OPERATION, MAINTENANCE, AND REPLACEMENT OF 11 RESIDENTIAL BALCONIES

ACTION: APPROVED; Ayes: 0; Nays: 0

FIRST READ: _____ **SECOND READ:** _____

SEC. I. Introduction.

The City of Fredericksburg owns and maintains public rights of way as part of the system of City streets and sidewalks, which include the superjacent airspace. City is authorized under Article VII, Section 9 of the Constitution of Virginia, and Code of Virginia sections 15.2-1800 and 15.2-2030 to lease as lessor its airspace, subject to restrictions and conditions contained in those laws. Liberty Place Partners, LLC is the owner of a 1.42 acre parcel located in the City of Fredericksburg, consisting of the City block bounded by Amelia Street, Douglas Street, Winchester Street, and William Street. Liberty Place Partners, LLC proposes to construct a mixed use building on the block, including residential units on the Amelia Street side. Six balconies for residential units are proposed to extend from the Amelia Street façade of the building and over the public sidewalk.

City Council wishes to lease the air space above the public sidewalk on the 600 block of Amelia Street to Liberty Place Partners, LLC in accordance with the terms and conditions of a Deed of Lease and associated exhibits negotiated with Liberty Place Partners, LLC. Council held a public hearing and received bids for this proposed lease on May 10, 2016.

SEC. II. Grant of Lease.

The City Manager is authorized to execute, deliver, and carry out the terms of the Deed of Lease for that portion of the superjacent airspace above the public sidewalk, depicted on the plan entitled "Liberty Place, Fredericksburg, Virginia, Balconies in ROW Diagrams," by mv+a/Mushinsky Voelzke Associates, Project Number 14067.01 pages 01, 02, 03, A201, A202, and A203, dated 04.01.2016, last revised 04.25.2016, and associated agreements, on behalf of the City of Fredericksburg, in substantially the form submitted for approval.

SEC. III. Effective Date.

This ordinance is effective immediately. The City Attorney shall record a certified copy of this ordinance with the Deed of Lease or Memorandum of Lease in the records of the Clerk of the Circuit Court of the City of Fredericksburg.

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

Approved as to form:

Kathleen Dooley, City Attorney

Clerk's Certificate

I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Ordinance No. 16- duly adopted at a meeting of the City Council meeting held _____ at which a quorum was present and voted.

Tonya B. Lacey, CMC
Clerk of Council

DEED OF LEASE

This Deed of Lease is dated the _____ day of _____, 2016 (Effective Date), between the **CITY OF FREDERICKSBURG**, a Virginia municipal corporation, as Grantor (Landlord or City), and **LIBERTY PLACE PARTNERS, LLC**, a Virginia limited liability company, as Grantee, and its permitted assigns (Tenant).

RECITALS:

- A. City owns and maintains public rights of way as part of the system of City streets and sidewalks, which include the superjacent airspace, the property being comprised of a section of the sidewalk along Amelia Street extending from Winchester Street to Douglas Street.
- B. City is authorized under Article VII, Section 9 of the Constitution of Virginia, and Code of Virginia sections 15.2-1800 and 15.2-2030 to lease as lessor its airspace, subject to restrictions and conditions contained in those laws.
- C. Tenant is the owner of real estate located in the City of Fredericksburg, located at 600 block of William Street, Amelia Street, Douglas Street and Winchester Street, Fredericksburg, Virginia, designated as City GPIN 7789-04-0822, having acquired the same by deed dated February 20, 2015 and recorded in the Clerk's Office of the Circuit Court of the City of Fredericksburg, Virginia (Clerk's Office) as Instrument Number 150000385. Tenant plans to construct a mixed-use, office, retail and residential condominium project known as Liberty Place. Tenant plans to construct a residential building (Building) along Amelia Street to include six balconies on the Amelia Street façade of the Building, which would extend from the face of the Building and over the public sidewalk (Balcony or Balconies).
- D. The Fredericksburg City Council provided public notice and hearing, and accepted bids in public as required by Virginia law, and adopted Ordinance 16-__ on [date] authorizing the City Manager to execute this lease on behalf of the City.

LEASE:

- 1. Leased Premises.
 - a. The Landlord leases to Tenant, and Tenant leases from the City, that portion of the superjacent airspace more than sixteen feet six inches over and above the public right of way occupied by the Balconies extending from the face (Amelia Street side) of the Building over the public sidewalk as depicted on the plan titled "Liberty Place, Fredericksburg, Virginia, Balconies in ROW Diagrams," by mv+a/Mushinsky Voelzke Associates, Project Number 14067.01 pages 01, 02, 03, A201, A202, and A203, dated 04.01.2016, last revised 04.25.2016 ", copies are attached as

Exhibit 1 and made a part of this lease, together with the right of access over, across and through the right of way for the purpose of exercising the rights granted to Tenant and to enable Tenant to perform its obligations (Leased Premises).

- b. It is the intent of the parties that the Leased Premises is and shall be deemed to be the area occupied by the Balconies extending from the face (Amelia Street side) of the Building over the public right of way at the completion of their construction.
 - c. In addition, the Tenant shall have the right to occupy portions of the airspace immediately adjacent to the Leased Premises for purposes of performing construction, inspections, maintenance and repair of one or more of the Balconies, under reasonable conditions that the City may impose on a right of way or other applicable permit.
 - d. Except as otherwise provided in this lease, the Balconies extending from the face (Amelia Street side) of the Building over the public right of way and all property (real and personal) in the Leased Premises shall be the exclusive property of the Tenant or its assigns.
2. Term. The term of this lease (Term) is sixty (60) years, beginning at 12:01 a.m. on July 1, 2016 and ending at midnight on June 30, 2066, but if construction of the Balconies is not commenced within four years of the Effective Date of this lease, then the lease shall automatically terminate and be of no further force or effect. The Tenant shall not occupy the Leased Premises or any part thereof until it has fully complied with all applicable provisions of this lease, including but not limited to the completion of the construction of the Balconies, except that Tenant may occupy the Leased Premises prior to completion of construction of the Balconies, solely for purposes of constructing the Balconies.

3. Rent.

Due to the minimal size and impact of the Leased Premises (a total of 258 square feet) Tenant shall pay Landlord rent a single lump sum of \$500 upon the Effective Date of the lease. This payment will cover the City's costs associated with the public hearings required to authorize this lease including advertising expenses.

4. Design Phase.

- a. Tenant will complete construction documents for the Balconies, consisting of drawings and specifications and a construction schedule prepared by licensed professionals. Tenant will make the construction documents available to the City and its advisors for review and approval. The City's review and approval under this lease shall be for the purpose of ensuring the public safety of the Balconies as they affect the Leased Premises during the Term of this lease (including the

quality and durability of the construction design, methods, and materials), the safety of the public rights of way, and the minimization of disruption to the public street and sidewalk during construction.

- b. Tenant shall provide an inspection and maintenance schedule for the finished Balconies, prepared by licensed professionals. This schedule shall provide for periodic inspection and maintenance of the Balconies with respect to their occupation of the Leased Premises, and provide for the preventative maintenance of the structures to provide protection to the public. Tenant will make the inspection and maintenance schedule available to the City and its advisors for review and approval.

5. Construction Phase.

- a. Tenant shall complete its design phase obligations prior to commencing construction of the Balconies.
- b. Tenant shall cause the Balconies to be constructed in substantial accordance with the approved construction plans, in a good and workmanlike manner and otherwise in accordance with all applicable laws, regulations, codes, ordinances and rulings. The construction work shall be conducted in such a way as to minimize interference with the use of the public sidewalk below the Leased Premises. Tenant shall not permit an accumulation of trash or debris on the sidewalk during construction.
- c. Construction of the Balconies shall be substantially complete within two years from the date construction is commenced, subject to force majeure. "Force majeure" is defined as labor shortages, work stoppages, strikes, lockouts, unavailability of labor, craftsmen, or materials, actions of the elements, restrictive governmental laws or regulation or moratorium and acts of God.
- d. Tenant shall contract for the construction of the Balconies with construction contractor(s) lawfully authorized to do business in the Commonwealth of Virginia.
- e. Tenant shall diligently construct the Balconies in accordance with the approved construction documents and all applicable laws, regulations, codes, ordinances and rulings. No material changes may be made to the approved construction documents without the prior written consent of the City Manager, which shall not be unreasonably withheld, delayed or conditioned. The parties agree that it would not be unreasonable to withhold approval for changes in construction materials or methods which are related to public safety or the long-term structural integrity of the Balconies.
- f. In the event any liens, bond claims, or other claims are filed against Landlord or the Leased Premises as a result of the construction of the Balconies within the

Leased Premises, Tenant shall have all such liens or claims released within forty-five (45) days of written notice from Landlord or otherwise bond off such lien or claim that is not released within such forty-five day period. The Tenant has no authority to serve as the Landlord's agent or to bind the interest of the Landlord. This prohibition shall be included in any memorandum of lease.

6. Use and Cooperation.

The Leased Premises shall be used by the Tenant exclusively for residential use and the related construction, upkeep, repair, inspection, maintenance and replacement of the Balconies and the removal thereof as required at the expiration of the Term or other earlier termination of this lease. The Balconies shall be limited common elements to the Residential Unit of the Liberty Place Master Condominium to be formed by Tenant.

The Landlord agrees to cooperate in good faith with the Tenant in the design, construction, operation, maintenance, repair, replacement and removal of the Balconies and not to take any action to unreasonably impair the Tenant's ability to do so throughout the Term. This duty to cooperate, however, shall not be construed as limiting the ability of the Landlord in its capacity as the local governing body to adopt ordinances, regulations, and policies affecting the health, welfare, and safety of the public.

7. Periodic inspection and maintenance.

- a. Tenant shall maintain the Leased Premises and all improvements therein in good repair, and in a safe and attractive condition at all times during this lease.
- b. Throughout the Term of this lease, Tenant shall conduct periodic inspections of the Balconies in accordance with the approved inspection and maintenance schedule, prepared during the design phase.
- c. Tenant shall provide Landlord with reasonable advance notice of any periodic inspection of the Balconies, and permit the Landlord to assign one or more people to accompany the inspector during the inspection. Tenant shall provide Landlord with documentation that required inspections and maintenance have been completed in accordance with the approved inspection and maintenance schedule.

8. Rights and obligations upon expiration of the Term.

- a. Landlord and Tenant agree to begin lease expiration or renewal planning, discussion and negotiation during the first six months of the 58th year of the Term.
- b. If the parties have not entered into a new lease or other extension or renewal of this lease at the beginning of the 59th year of the lease Term, Tenant shall provide Landlord its plans and specifications to demolish and remove its encroachment into the Leased Premises at its sole cost, expense and liability.

- c. Tenant shall apply for permits for the demolition and removal of the Balconies from the Leased Premises. Upon the issuance of the permits, Tenant shall diligently complete the work of removal. The removal of the Balconies from the Leased Premises shall be complete before the expiration of the lease Term.
 - d. Landlord may require Tenant to post a completion bond as a condition to granting demolition permits.
 - e. Tenant shall exercise due care in the demolition and removal of the Balconies from the Leased Premises, shall comply with all applicable laws and regulations governing the process, and shall maintain all insurances required in this lease throughout the demolition and removal process.
 - f. Upon expiration or earlier termination of this lease, the Leased Premises shall be surrendered to the Landlord, free and clear of all liens.
 - g. Tenant's obligation to remove the Balconies from the Leased Premises shall survive the termination or expiration of this lease.
9. Assignment or subleasing.

Tenant may assign this lease to the Liberty Place Master Association, Inc. or to 600 Amelia Street Unit Owners Association, Inc. on or after the completion of the Balconies, provided the new owner assumes all liabilities and obligations hereunder. Except as provided in the foregoing sentence, Tenant may not assign this lease or sublease the Leased Premises (in whole or in part) without Landlord's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, in the event Tenant sells or conveys the Building, then Tenant may assign this lease to the new owner without the Landlord's consent, provided the new owner assumes all liabilities and obligations hereunder.

10. Liens.

- a. Tenant shall not permit any lien to be placed against the Leased Premises except as expressly permitted by this lease.
- b. Notwithstanding any other provision herein, the lien of any deed of trust encumbering the Leased Premises and the Balconies shall be subordinate to and subject to this lease. Landlord shall have no obligation to subordinate this lease or its fee simple estate in the right of way to any deed of trust or mortgage, and Tenant acknowledges that Landlord will not subordinate this lease or its fee simple estate in the right of way. Any such attempted assignment, subletting, hypothecation, or mortgaging of this lease without the Landlord's prior consent shall be of no force or effect and shall confer no rights upon any assignee, sublessee, licensee, sub-licensee, mortgagee or pledgee. In the event that Landlord consents to a mortgage of Tenant's interest in this lease to which Landlord has the right to consent under this lease, Landlord will cooperate in

executing the form of consent and non-disturbance agreement as may be reasonably required by the Tenant's mortgagee. Except as provided to the contrary in any consent and non-disturbance agreement executed by Landlord and Tenant, upon any foreclosure or other exercise of remedies by a permitted mortgagee of the Balconies, all rights of Landlord and all obligations of Tenant under this lease shall remain in full force and effect.

- c. Tenant will indemnify, defend, and hold harmless the Landlord from any claims or mechanic's liens brought against the Landlord or against the Leased Premises as a result of the failure of the Tenant or its contractors, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred in connection with this lease. Within three days of receiving written notice from the Landlord that such a claim or mechanic's lien has been filed, Tenant shall commence to take the steps necessary to discharge the claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If the Tenant fails to do so, the Landlord will have the right to discharge the claim or lien and hold Tenant liable for the costs and expenses incurred, including attorneys' fees.

11. Indemnification.

Tenant, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Landlord, its officers and employees from and against claims, losses, damages, and liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction arising out of or relating to its use of the Leased Premises. This obligation shall survive the expiration or termination of this lease.

12. Insurance.

- a. Tenant shall, at all times during the Term of this lease, keep in full force and effect, at its own expense, the following policies of insurance with a company or companies reasonably acceptable to the Landlord:
 - i. Tenant shall maintain a fire and extended coverage insurance policy on the Leased Premises in the full amount of the cost of replacement or removal thereof. During construction, the insurance may be in the form of a "builder's risk" policy that may be secured by Tenant's general contractor. The Tenant shall supply Landlord with evidence of the coverage in the form of a certificate of insurance.
 - ii. Commercial General Liability insurance (on an occurrence basis) for a combined single limit for bodily injury and property damage of not less than \$1,000,000, with coverage, at a minimum, for (i) broad form contractual liability; (ii) products liability and completed operations; and (iii) broad form property damage coverage;
 - iii. Umbrella or Excess Liability insurance for a minimum single limit of \$2,000,000 supplementing the Commercial General Liability policy.

- b. Tenant shall send Certificates of Insurance evidencing that all coverages, limits and endorsements required are maintained and are in full force and effect.
- c. The Commercial General Liability and Umbrella or Excess Liability policies shall name the City as an Additional Insured.
- d. The Landlord reserves the right to review and reasonably revise any insurance requirement, not limited to limits, sublimits, deductibles, coverages and endorsements, based upon any material adverse change in insurance market conditions after the date of this lease affecting the availability or affordability of coverage.

13. Casualty loss.

- a. If a Balcony within the Leased Premises is damaged or destroyed by fire, the elements, unavoidable accident or other casualty, Tenant may either (i) cause the damage to be repaired, restored, or replaced or (ii) remove the Balcony from the Leased Premises.
- b. Immediately after any casualty damage, Tenant shall take all necessary steps, at its sole expense, to protect the health and safety of the public on the nearby public right-of-way.
- c. Tenant shall make its election under subsection (a) within 30 days of the date of the damage or destruction of the Balcony. It shall promptly and diligently act upon its election to repair or remove the balcony. All of the provisions of this lease regarding the design and construction of the Balconies shall govern the repair, replacement or removal of the Balcony.

14. Disputes.

- a. The parties shall first endeavor to resolve any disputes, claims or other matters in question between them through direct negotiations, and if such direct negotiations fail, by non-binding mediation, with the site of the mediation being the City of Fredericksburg, Virginia, which is agreed to be the sole and exclusive venue. Should the dispute, claim, or other matter in question remain unresolved for the shorter of (i) following negotiation and mediation, or (ii) more than ninety (90) days after mediation is requested by a party, either party may proceed in accordance with subparagraph 14(b) below.
- b. If the foregoing procedures have been followed, but, more than ninety (90) days have passed since a party has requested mediation, and the dispute, claim or matter in question remains unresolved, then either party may institute a lawsuit or chancery action, as appropriate, in the Circuit Court of the City of Fredericksburg, Virginia, and may pursue all available appeals in Virginia state courts, to the extent they have jurisdiction.

- c. Nothing in paragraphs (a) or (b) shall prevent a party from seeking temporary injunctive or other temporary equitable relief in the Circuit Court of the City of Fredericksburg, Virginia if circumstances so warrant.

15. Landlord's rights upon Tenant's default.

- a. Tenant shall be in default under this lease if Tenant persistently violates or breaches or fails to keep or perform any covenant, term or condition of this lease. Tenant shall have ninety (90) days following receipt of written notice from the Landlord within which to cure any such default; provided, if the nature of the default is such that the same cannot reasonably be cured within such ninety (90) day period, the cure period shall be extended for so long as may be reasonably necessary to cure the default so long as Tenant commences the cure within the initial ninety (90) day period, thereafter diligently prosecutes the cure to completion in good faith, and furnishes Landlord with such assurances and indemnities as Landlord may reasonably require to ensure completion of the cure and to fully and completely protect Landlord from any loss or liability resulting from any such default or any delay by Tenant in curing the default. Notwithstanding the foregoing cure periods, Tenant shall only have ten (10) business days to cure a default of its failure to carry any of the insurance required of it in Section 12 or a default of this lease that poses an imminent threat to the safety, welfare or health of the users of the Balconies, the public, or the Landlord. If a default is not cured within the applicable cure period, if any, then Landlord may declare the lease terminated for default by providing written notice to Tenant of such declaration.
- b. If Tenant fails to comply with the Inspection and Maintenance schedule and/or Tenant fails to provide Landlord with documentation that required inspections and maintenance have been completed in accordance with the approved schedule pursuant to paragraph 7 (c) of this lease, Landlord will have the right, but not the obligation, to access the Balconies, including the Building, at any reasonable time with at least forty-eight (48) hours' notice to Tenant and the residential condominium unit owner who may use the balcony as a limited common element, in order to perform the required inspection or maintenance. The expense of this inspection or maintenance shall be paid by Tenant within 30 days of its receipt of the Landlord's invoice.
- c. If Tenant fails to remove the Balconies from the Leased Premises before the expiration of this lease, or within 90 days of the termination of this lease, Landlord will have the right to access the Balconies, including the Building on which they are constructed, at any reasonable time with at least seven (7) days' notice to Tenant and the residential condominium unit owner who may use the Balcony, in order to perform the demolition and removal of the Balconies from the Leased Premises. The expense of this demolition and removal shall be paid by the Tenant within 30 days of its receipt of Landlord's invoice.

- d. Tenant's obligation to pay Landlord's expenses as provided in this Section shall survive the termination or expiration of the lease.

16. Miscellaneous.

- a. A memorandum or short form of this lease shall be recorded by Tenant at its cost. Landlord agrees to join in the memorandum promptly upon request. The memorandum shall comply with the laws of the Commonwealth of Virginia and shall describe the parties, the Leased Premises, the Term of this lease and shall incorporate this lease by reference.
- b. Within fifteen (15) days of a request, Landlord shall deliver to Tenant or any actual or prospective lender of Tenant, a statement or statements in writing setting forth the information relating to this lease and the Leased Premises as the requesting party may reasonably request, including, without limitation, the commencement and termination dates of this lease; a certification as to whether this lease is in full force and effect; a certification that this lease has not been changed, modified or amended, or if it has, stating the specific changes, modifications or amendments thereto; and a certification that there are no defaults under this lease nor defenses or offsets thereto, or if there are any such defaults, defenses or offsets, stating the specific defaults, defenses or offsets claimed.
- c. Tenant shall pay all real estate taxes, personal property taxes, business taxes and any other state and local taxes attributable to the Balconies during the Term of this lease. The improvements shall be assessed and attributed to Tenant's tax parcel.
- d. This lease shall be construed in accordance with the laws of the Commonwealth of Virginia. In the event either party to this lease brings any legal action to interpret or enforce its provisions, such action shall be subject to the exclusive jurisdiction of the Circuit Court of the City of Fredericksburg.
- e. All notices shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, or sent by overnight carrier to the following addresses:

To the City: City Manager
 City of Fredericksburg
 715 Princess Anne Street
 P.O. Box 7447
 Fredericksburg, Virginia 22404

With a copy: City Attorney
 City of Fredericksburg
 P.O. Box 7447
 Fredericksburg, Virginia 22404

To Tenant: Liberty Place Partners, LLC
400 Charles Street
Fredericksburg, Virginia 22401

With a copy: John McManus, Esq.
Hirschler Fleischer
725 Jackson Street, Suite 200
Fredericksburg, Virginia 22401

- f. The parties may amend this lease only by written agreement, signed by both parties, with the written consent of Tenant's lender, if required. It shall be Tenant's sole responsibility to obtain any necessary consent of its lender.
- g. This lease may be signed in one or more counterparts, each of which will constitute an original and all of which shall comprise the entire lease.
- h. If any date for the occurrence of an event or act under this lease falls on a Saturday or Sunday or legal holiday in the Commonwealth of Virginia, then the time for the occurrence of the event or act shall be extended to the next succeeding business day.
- i. The City Manager is authorized to execute this Deed of Lease on behalf of the City of Fredericksburg by Ordinance 16-yyy, adopted by the Fredericksburg City Council on [date].
- j. Thomas J. Wack is authorized to execute this Deed of Lease on behalf of Liberty Place Partners, LLC, a Virginia limited liability company as its manager.

The parties are signing this Deed of Lease on the Effective Date.

LANDLORD: CITY OF FREDERICKSBURG, VIRGINIA

Date: _____ By: _____
Beverly R. Cameron, City Manager

Commonwealth of Virginia
City of Fredericksburg:

I certify that Fredericksburg City Manager Beverly R. Cameron acknowledged this deed in my presence on _____, 2016.

_____ notary seal:
Notary Public

My registration number: _____
My commission expires: _____

Approved as to form:

Kathleen Dooley, City Attorney

TENANT: LIBERTY PLACE PARTNERS, LLC, a
Virginia limited liability company

_____ By: _____
Date Name: Thomas J. Wack
Title: Manager

STATE OF _____
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me
this _____ day of _____, 201_, by Thomas J. Wack, as Manager of Liberty Place
Partners, LLC, a Virginia limited liability company on behalf of the company.

My commission expires: _____
Notary registration no.: _____

Notary Public