

ORDINANCE NO. _____

AN ORDINANCE authorizing the tenant and owners of the property located at 115 and 117 King Street, in the City of Alexandria, Virginia to construct and maintain an encroachment for an awning on the front building wall at that location.

WHEREAS, Lotto Virginia 1, LLC and 117 King Street, LLC are the Owners (“Owners”) of the property located at 115 and 117 King Street respectively in the City of Alexandria, Virginia; and

WHEREAS, Noe Landini D/B/A Landini Brothers Restaurant is the Tenant (“Tenant”) of the property located at 115 and 117 King Street in the City of Alexandria, Virginia; and

WHEREAS, Owners and Tenant desire to establish and maintain an awning that will encroach 5.5 feet into the right of way with a total length of up to 60.83 feet on the front building wall at that location; and

WHEREAS, the public sidewalk right-of-way at that location will not be significantly impaired by this encroachment; and

WHEREAS, in Encroachment No. 2014-0002 the Planning Commission of the City of Alexandria recommended approval to the City Council subject to certain conditions at one of its regular meetings held on April 1, 2014, which recommendation was approved by the City Council at its public hearing on April 12, 2014 and

WHEREAS, it has been determined by the Council of the City of Alexandria that this encroachment is not detrimental to the public interest; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Owners and Tenant be, and the same hereby are, authorized to establish and maintain an encroachment into the public sidewalk right-of-way at 115 and 117 King Street in the City of Alexandria, Virginia as shown in the attached Exhibit labeled as Exhibit A, prepared by CORE Architects and dated August 8, 2013, said encroachment consisting of an awning approximately 5.5 feet in width and 60.83 feet in length, until the encroachment is removed or destroyed or the authorization to maintain it is terminated by the city; provided, that this authorization to establish and maintain the encroachment shall not be construed to relieve Owners or Tenant of liability for any negligence on their part on account of or in connection with the encroachment and shall be subject to the provisions set forth below.

Section 2. That the authorization hereby granted to establish and maintain said encroachment shall be subject to and conditioned upon Owners and/or Tenant maintaining, at all times and at their own expense, liability insurance, covering both bodily injury and property

1 damage, with a company authorized to transact business in the Commonwealth of Virginia and
2 with minimum limits as follows:

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4 Bodily Injury: \$1,000,000 each occurrence
5 \$1,000,000 aggregate

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7 Property Damage: \$1,000,000 each occurrence
8 \$1,000,000 aggregate
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10 This liability insurance policy shall identify the City of Alexandria and Owners and/or Tenant as
11 named insureds and shall provide for the indemnification of the City of Alexandria and Owners
12 and/or Tenant against any and all loss occasioned by the establishment, construction, placement,
13 existence, use or maintenance of the encroachment. Evidence of the policy and any renewal
14 thereof shall be filed with the city attorney's office. Any other provision herein to the contrary
15 notwithstanding, in the event this policy of insurance lapses, is canceled, is not renewed or
16 otherwise ceases to be in force and effect, the authorization herein granted to establish and
17 maintain the encroachment shall, at the option of the city, forthwith and without notice or
18 demand by the city, terminate. In that event, Owners and Tenant shall, upon sixty (60) days
19 notice from the city, remove the encroachment from the public right-of-way, or the city, at its
20 option, may remove the encroachment at the expense and risk of Owners and Tenant. Nothing in
21 this section shall relieve Owners and Tenant of their obligations and undertakings required under
22 this ordinance.

23
24 Section 3. That the authorization hereby granted to establish and maintain said
25 encroachment shall in addition be subject to and conditioned upon the following terms:

- 26
27 (a) Neither the City of Alexandria nor any public or private utility company shall be
28 responsible for damage to Owners' or Tenant's property encroaching into the public
29 right-of-way during repair, maintenance or replacement of the public right-of-way or
30 any public facilities or utilities in the area of encroachment.
31
32 (b) The Owners and Tenant shall be responsible for replacement and repairs to the
33 adjacent City right-of-way, including any areas damaged during construction
34 activity.
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36 (c) In the event the City shall, in the future, have need for the area of the proposed
37 encroachment, the Owners or Tenant shall remove any structure that encroached into
38 the public right-of-way, within 60 days, upon notification by the City.
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40 Section 4. That by accepting the authorization hereby granted to establish and
41 maintain the encroachment and by so establishing and/or maintaining the encroachment, Owners
42 and Tenant shall be deemed to have promised and agreed to save harmless the City of

1 Alexandria from any and all liability (including attorneys' fees and litigation expenses) arising by
2 reason of the establishment, construction, placement, existence, use or maintenance of the
3 encroachment.
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5 Section 5. That the authorization herein granted to establish and maintain the
6 encroachment shall be subject to Owners and Tenant maintaining the area of the encroachment at
7 all times unobstructed and free from accumulation of litter, snow, ice and other potentially
8 dangerous matter.
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10 Section 6. That nothing in this ordinance is intended to constitute, or shall be
11 deemed to be, a waiver of sovereign immunity by or on behalf of the City of Alexandria or any
12 of its officers or employees.
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14 Section 7. That the authorization herein granted to establish and maintain the
15 encroachment shall be terminated whenever the City of Alexandria desires to use the affected
16 public right-of-way for any purpose whatsoever and, by written notification, demands from
17 Owners or Tenant the removal of the encroachment. Said removal shall be completed by the
18 date specified in the notice and shall be accomplished by Owners or Tenant without cost to the
19 city. If Owners or Tenant cannot be found, or shall fail or neglect to remove the encroachment
20 within the time specified, the city shall have the right to remove the encroachment, at the
21 expense of Owners or Tenant, and shall not be liable to Owners or Tenant for any loss or damage
22 to the structure of the encroachment or personal property within the encroachment area, caused
23 by the removal.
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25 Section 8. The terms "Owners" and "Tenant" shall be deemed to include Lotto
26 Virginia 1, LLC, 117 King, LLC and Noe Landini D/B/A Landini Brothers Restaurant and their
27 respective successors in interest.
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29 Section 9. That this ordinance shall be effective upon the date and at the time of its
30 final passage.
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33 WILLIAM D. EUILLE
34 Mayor
35

36 Attachment: Encroachment plat
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38 Introduction: May 13, 2014

39 First Reading: May 13, 2014

40 Publication:

41 Public Hearing: May 17, 2014

42 Second Reading: May 17, 2014

43 Final Passage: May 17, 2014
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