

## Crane Overswing Agreement

THIS CRANE OVERSWING AGREEMENT (this "**Agreement**") is entered into on October ~~11<sup>th</sup>~~, 2017 by and between (i) **CHUN-CHAU LAM**, an individual, (ii) **SHING WAI LAM**, an individual and (iii) **RS LIQUORS, INC.**, a District of Columbia corporation (collectively, jointly and severally, the "**Construction Lot Owner**"), **1319 SOUTH CAPITOL ASSOCIATES, LLC**, a District of Columbia limited liability company ("**Developer Owner**"), and **GREGORY KEAGLE**, an individual, **SHEILA SAMADDAR** an individual, and **DARIN WEAVER**, an individual (each, jointly and severally, an "**Adjacent Property Owner**" and collectively the "**Adjacent Property Owners**").

### **BACKGROUND**

A. Adjacent Property Owners and Developer Owner own certain real property in the District of Columbia (collectively being referred to herein as the "**Adjacent Property**"), more particularly described in that certain Adjacent Property Owner Agreement dated of even date herewith by and between the parties hereto (the "**Adjacent Property Owner Agreement**") as portions of the "Adjacent Property" and the "Development Site", respectively;

B. Mr. Chun-Chau Lam is the owner in fee simple of certain real property lying and being in the District of Columbia, known as Square 653, Lot 65, having an address of 4A N Street SW ("**Lot 65**"), and Square 653, Lot 66, having an address of 4 N Street SW, ("**Lot 66**");

C. Mr. Shing Wai Lam is the owner in fee simple of certain real property lying and being in the District of Columbia, known as Square 653, Lot 827, having an address of 1307 South Capitol Street ("**Lot 827**");

D. RS Liquors, Inc., is the owner in fee simple of certain real property lying and being in the District of Columbia, known as Square 653, Lot 829, having a street address of 1301 South Capitol Street SW ("**Lot 829**"), and Square 653, and Lot 830, having an address of 1301 South Capitol Street SW ("**Lot 830**");

E. Lot 65, Lot 66, Lot 827, Lot 829, and Lot 830 are referred to herein collectively as the "**Construction Lots**";

F. Construction Lots Owner intends to construct a project on one (1) or more of the Construction Lots (the "**Project Improvements**");

G. To facilitate the construction of the Project Improvements, Construction Lots Owner has requested from Developer Owner and the Adjacent Property Owners the temporary use of the air space above any or all of the Adjacent Properties (the "**Project Crane Swing Area**") for the sole purpose of permitting the swing of one (1) or more construction tower cranes (the "**Project Crane**") to accommodate, on a temporary basis (1) "weathervaning" of the Project Crane (i.e., the

Project Crane shall be free to spin in the wind); and (2) the aerial swing for the arm of the Project Crane during the term of this Agreement;

H. Construction Lots Owner, Adjacent Property Owners and Developer Owner have entered into this Agreement to evidence the consent of Adjacent Property Owners to the temporary use by Construction Lots Owner of the Project Swing Area in accordance with the terms and conditions hereinafter set forth.

## AGREEMENT

NOW THEREFORE, in consideration of the following mutual agreements and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, Construction Lots Owner, Developer Owner and Adjacent Property Owners hereby agree as follows:

1. Grant. Subject to the terms of this Agreement, Adjacent Property Owners and Developer Owner grants to Construction Lots Owner and Construction Lots Owner's agents, employees and contractors during the Term (defined below) a temporary non-exclusive license (the "License") to (a) allow the Project Crane to swing over the Adjacent Property solely within the Project Crane Swing Area provided that such License may only be utilized during the Term (defined below) of this Agreement in connection with the construction of the Project Improvements and solely to accommodate (1) "weathervaning" of the Project Crane; and (2) the aerial swing for the arm of the Project Crane during the actual operation of the Project Crane to swing over the Project Crane Swing Area (collectively, the "Permitted Uses" and the activities permitted thereunder being the "Craned Activities").

2. Term. The term of this Agreement shall be from the Effective Date (defined below) through the substantial completion of the Project Improvements (or, if earlier, the date on which the Craned Activities are concluded) (the "Term"), at which time all the rights and obligations of the parties hereunder shall terminate. The "Effective Date" shall occur upon the satisfaction of all of the following conditions (the "Effectiveness Conditions") in the reasonable discretion of Developer Owner: (i) Construction Lots Owner secures all Crane Permits (defined below); (ii) the issuance of the Crane Permits do not materially delay or interfere with the construction by Developer Owner on the Development Site of the project described in the Adjacent Property Owner Agreement, and (iii) Construction Lots Owner provides proof of Comprehensive General Liability or Commercial General Liability Insurance, with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) combined single limit per occurrence and not less than Two Million and 00/100 Dollars (\$2,000,000.00) on a general aggregate basis, for bodily injury, death and property damage, listing Developer Owner and the Adjacent Property Owners as additional insureds. This Agreement shall not be effective until the Effectiveness Conditions have been satisfied and the Effective Date has been established in writing between the parties.

3. Representations. Construction Lots Owner covenants, represents and warrants that it has obtained and, upon written request, will deliver to Adjacent Property Owners, or will obtain and, upon written request, will deliver to Adjacent Property Owners prior to commencing the installation, erection, use and operation of the Project Crane and the construction of the Project Improvements, all Crane Permits required by each governmental authority with jurisdiction over

the Construction Lots and the Adjacent Property for the proper installation, erection, operation and dismantling of the Project Crane.

4. Use of the Project Crane Swing Area. During the Term of this Agreement:

(a) Construction Lots Owner shall erect, operate and dismantle the Project Crane in compliance with all applicable statutes, codes, or regulations of governmental authorities with jurisdiction over the Project Crane and Construction Lots Owner;

(b) Construction Lots Owner shall obtain and pay for all Crane Permits required by all applicable agencies and authorities in connection with the installation and operation of the Project Crane;

(c) Construction Lots Owner agrees not to make any unlawful use of the Project Crane; and

(d) Construction Lots Owner will not permit any loads being lifted or carried by the Project Crane to swing over the Adjacent Property.

Construction Lots Owner shall be obligated to obtain and deliver to Adjacent Property Owners upon request, at Construction Lots Owner's sole cost and expense, all necessary licenses, permits and approvals in connection with the installation, erection, construction, operation and removal of the Project Crane (collectively, the "**Crane Permits**"). If necessary in connection with the issuance of the Crane Permit, Adjacent Property Owners and Developer Owner agree to execute or endorse any application for the Crane Permit.

5. Damage. Construction Lots Owner, jointly and severally, hereby indemnifies and holds harmless Developer Owner and Adjacent Property Owners from and against any and all claims, liabilities, demands, fines, suits, causes of action, judgments, damages, costs and expenses, including reasonable attorneys' fees and court costs arising from or in connection with loss of life, bodily or personal injury or property damage caused in whole or in part by Construction Lots Owner, or any contractors, subcontractor or their respective employees, agents, independent contractors and anyone under their supervision or control, caused by, resulting from, arising out of or attributable to the operation of the Project Crane. In the event of any such damage Construction Lots Owner shall immediately cease the use of the Project Crane, until such issue is finally resolved.

6. Crane Insurance. The contractor or operator of any Project Crane shall carry industry standard insurance policies and have sufficient experience to carry out the construction contemplated hereby.

7. Miscellaneous.

(a) This Agreement shall be governed by, construed and enforced according to the laws of the District of Columbia. This Agreement was negotiated between the parties and shall be construed without regard to any presumption or other rule requiring construction against the party causing the agreement to be drafted. With respect to any actions arising under this Agreement, each of Construction Lots Owner, Developer Owner and Adjacent Property Owners,

on behalf of itself and its successors and assigns, hereby mutually waives the right to request a trial by jury in any action or proceeding arising out of this Agreement or otherwise involving, arising out of or related to the Permitted Uses or the Project Improvements.

(b) All notices shall be given pursuant to the notice section of the Adjacent Property Owner Agreement.

(c) The recitals set forth at the beginning of this Agreement are incorporated herein by this reference and deemed a substantive part hereof.

(d) The terms, conditions and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns permitted or required hereunder, recognizing that this agreement shall be personal to and not assignable by any of the Construction Lots Owners, except to an affiliate or other person controlled by such parties, without the written consent of Developer Owner and the Adjacent Property Owners in their sole discretion.

(e) This Agreement and any Exhibits hereto constitute the entire contract between Construction Lots Owner, Developer Owner and Adjacent Property Owners with respect to the subject matter of this Agreement, and neither party is liable to the other or bound in any manner by express or implied warranties, guarantees, promises, statements or representations, whether oral or written, pertaining to the subject matter hereof unless such warranties, guarantees, promises, statements, or representations are expressly and specifically set forth in this Agreement. The provisions of this Agreement are severable and the invalidity of one or more of the provisions shall not affect the validity or enforceability of any other provisions. Modifications, waivers and consents regarding this Agreement shall only be binding if in writing and signed by the party against whom such modification, waiver or consent is sought to be enforced.

(f) This Agreement may be executed in one or more counterparts, by original, electronic or facsimile signature, and when executed by all parties shall constitute one and the same instrument.

(g) If any party materially breaches this Agreement, any other party may notify the breaching party in writing of such breach. The breaching party shall have five (5) days to cure such breach. If such breach is not cured as provided herein, the non-breaching party shall have the right, but not the obligation, upon written notice, to terminate this Agreement and pursue rights and remedies available under applicable law.

(h) If any dispute arises between the parties hereto concerning this Agreement or their respective rights, duties and obligations hereunder, the successful or prevailing party or parties shall be entitled to recover from the non-prevailing party, reasonable attorneys' fees and costs in addition to any other relief that may be granted.

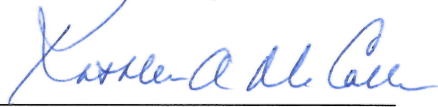
IN WITNESS WHEREOF, the Parties have executed this Agreement under seal the day and year first above written.

**DEVELOPER OWNER:**

**1319 SOUTH CAPITOL ASSOCIATES, LLC**, a District of Columbia Limited Liability Company

1319 South Capitol Investors, LLC, a Maryland Limited Liability Company

By: Potomac Investment Trust, an irrevocable trust established under Trust Agreement dated as of September 10, 2003, its Manager

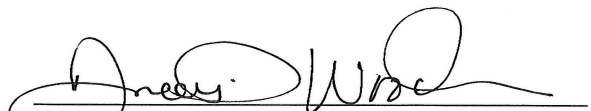
By:   
Kathleen A. McCallum, Trustee

Address: c/o Ronald D. Paul Companies  
4416 East West Highway, Suite 300  
Bethesda, MD 20814

*State of Maryland*  
~~DISTRICT OF COLUMBIA~~, to wit:

On September 22, 2017 before me, the undersigned, a Notary Public in and for the jurisdiction aforesaid, personally appeared Kathleen A. McCallum, in her capacity as Trustee of the Potomac Investment Trust, in its capacity as manager of 1319 South Capitol Investors, LLC, the manager of 1319 South Capitol Associates, LLC, a District of Columbia limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing and annexed Agreement, and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the Agreement, the person, or the entity upon behalf of which the person acted, executed the Agreement.

Witness my hand and official seal.

  
Notary Public

My commission expires: *March 21, 2018*



IN WITNESS WHEREOF, the Parties have executed this Agreement under seal the day and year first above written.

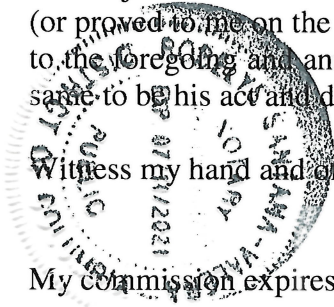
**CONSTRUCTION LOTS OWNER**

By: Chun Lam  
Name: Mr. Chun-Chau Lam, an individual  
Owner of Lot 65 and Lot 66

DISTRICT OF COLUMBIA, to wit:

On September 25<sup>th</sup>, 2017 before me, the undersigned, a Notary Public in and for the jurisdiction aforesaid, personally appeared Mr. Chun-Chau Lam, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing and annexed Agreement, personally appeared before me and acknowledged the same to be his act and deed.

Witness my hand and official seal.



[Signature]  
Notary Public

My commission expires: 07/14/2021)

**[Construction Lots Owner Signatures and Acknowledgments Continue on Following Page]**

By: Shing Wai Lam  
Name: Mr. Shing Wai Lam, an individual  
Owner of Lot 827

DISTRICT OF COLUMBIA, to wit:

On September 25<sup>th</sup>, 2017 before me, the undersigned, a Notary Public in and for the jurisdiction aforesaid, personally appeared Mr. Shing Wai Lam, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing and annexed Agreement, personally appeared before me and acknowledged the same to be his act and deed.



Witness my hand and official seal.

My commission expires: 07/14/2021

[Signature]  
Notary Public

**[Construction Lots Owner Signatures and Acknowledgments Continue on Following Page]**



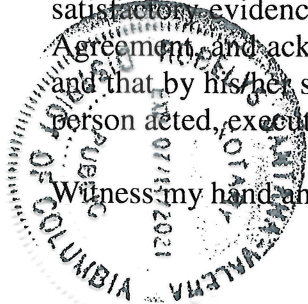
RS Liquors, Inc., a District of Columbia corporation

By: Shing Wai Lam  
Name: \_\_\_\_\_  
Its: SHING WAI LAM  
Owner of Lot 829 and Lot 830

DISTRICT OF COLUMBIA, to wit:

On September 25th, 2017 before me, the undersigned, a Notary Public in and for the jurisdiction aforesaid, personally appeared Shing Wai Lam, in his/her capacity as owner of RS Liquors, Inc., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing and annexed Agreement, and acknowledged to me that s/he executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.



[Signature]  
Notary Public

My commission expires: 07/14/2021



**ADJACENT PROPERTY OWNERS:**

By: *Greg O. Keagle*  
Name: Mr. Greg Keagle, an individual  
Owner of Lot 69

*State of Maryland*  
*County of Montgomery*  
DISTRICT OF COLUMBIA, to wit:

On *September 25*, *2017* before me, the undersigned, a Notary Public in and for the jurisdiction aforesaid, personally appeared Mr. Greg Keagle, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing and annexed Agreement, personally appeared before me and acknowledged the same to be his act and deed.

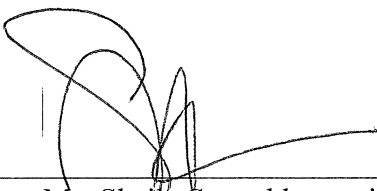
Witness my hand and official seal.

*Wendy D. Pullano*  
Notary Public

My commission expires: *9/3/20*)



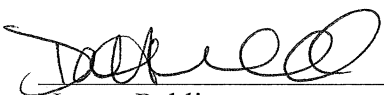
WENDY D. PULLANO  
Notary Public, State of Maryland  
County of Montgomery  
My Commission Expires Sept. 3, 2020

By:   
Name: Ms. Sheila Samaddar, an individual  
Owner of Lot 52

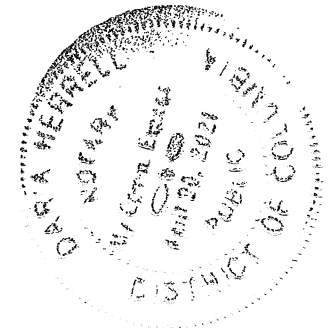
DISTRICT OF COLUMBIA, to wit:

On October 10<sup>th</sup>, 2017 before me, the undersigned, a Notary Public in and for the jurisdiction aforesaid, personally appeared Ms. Sheila Samaddar, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing and annexed Agreement, personally appeared before me and acknowledged the same to be her act and deed.

Witness my hand and official seal.

  
Notary Public

My commission expires: 04/30/2021)



State of Maryland  
County of Montgomery

By: Darin Weaver  
Name: Mr. Darin Weaver, an individual  
Owner of Lot 63

~~DISTRICT OF COLUMBIA~~, to wit:

On September 25, 2017 before me, the undersigned, a Notary Public in and for the jurisdiction aforesaid, personally appeared Mr. Darin Weaver, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing and annexed Agreement, personally appeared before me and acknowledged the same to be his act and deed.

Witness my hand and official seal.

Wendy D. Pullano  
Notary Public

My commission expires: 9/3/20)



WENDY D. PULLANO  
Notary Public, State of Maryland  
County of Montgomery  
My Commission Expires Sept. 3, 2020