

## FIRST AMENDMENT TO SOUTH CAPITOL DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO SOUTH CAPITOL DEVELOPMENT AGREEMENT (this "Amendment") is made and entered into as of the 29<sup>th</sup> day of April, 2020 (the "Effective Date"), by and between SOUTHWEST NEIGHBORHOOD ASSEMBLY INC. ("SWNA"), a District of Columbia nonprofit corporation, and 1319 SOUTH CAPITOL ASSOCIATES, LLC, a District of Columbia limited liability company ("Developer"). SWNA and the Developer are collectively referred to herein as the "Parties" or individually as a "Party."

WHEREAS, the Parties entered into that certain South Capitol Development Agreement dated as of October 4, 2019, and recorded among the Land Records of the Office of the Recorder of Deeds of the District of Columbia (the "Land Records") as Document No. 2019108176 (the "Agreement") relating to the property described on Exhibit A (the "Property");

WHEREAS, the Parties desire to modify the Agreement in accordance with this Amendment;

WHEREAS, the Parties have continued to work together on the Project's historic preservation elements such that SWNA can withdraw the Landmark Designation application according to the terms of this Amendment, with the understanding that the Developer intends to fully perform the terms of the Agreement, including this Amendment, and that the Agreement and this Amendment will remain legally binding upon all future partners of, or successors to, the Developer as owner of the Property, to include the Additional Properties (as defined below) if incorporated through purchase by the Developer at a later date.

NOW THEREFORE WITNESSETH in consideration of the terms and provisions hereof, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Section 1 of the Agreement is hereby deleted in its entirety and replaced with the following:

**Landmark Designation.** No later than two (2) business days following the Effective Date of the Amendment, SWNA shall submit to the Historic Preservation Office ("HPO") and HPRB, with copies delivered to Developer and to Advisory Neighborhood Commission ("ANC") 6D, a letter, along with any other information requested by HPO, withdrawing the amended Landmark Nomination application relating to the rowhouses in Square 653 (HPA Number 17-11) (the "Nomination Withdrawal"). SWNA shall request written confirmation from HPO that the Landmark Nomination has been withdrawn and shall provide such confirmation to Developer. SWNA shall not submit another landmark designation application or historic district nomination application for any properties within the Development Site, nor shall SWNA support in any manner, encourage, or participate in the submission of another landmark application or historic district nomination for any properties within the Development Site filed by another individual, organization, or entity. If SWNA fails to submit the Nomination Withdrawal in accordance with the terms of this Section and/or the Landmark Nomination withdrawal is not

accepted by HPO staff, the Amendment shall automatically terminate and Developer shall have no further obligations under this Amendment (the Agreement shall remain in force) and may unilaterally record a document in the Land Records indicating such. If SWNA or one of the individuals involved in the negotiation of the Agreement and the Amendment, files a landmark designation application or a historic district designation application for property incorporating any portion of the Development Site, the Agreement and the Amendment shall automatically terminate and Developer shall have no further obligations under this Agreement and may unilaterally record a document in the Land Records indicating such. Once the Landmark Designation is withdrawn by SWNA and such withdrawal is accepted by HPO staff, Lots 53 and 68 shall be subject to Section 5(c) of this Agreement.

2. Section 2 of the Agreement is hereby deleted in its entirety and replaced with the following:

**Timeline.** The Parties hereby agree to proceed in accordance with the timeline attached hereto as **Exhibit B**. Any substantial deviation from the timeline attached as **Exhibit B** that is related to an obligation or action of Developer will be discussed by Developer with the representative(s) of SWNA after such deviation becomes known to Developer. The timeline attached as **Exhibit B** is estimated and may be subject to delay by District agencies, the Zoning Commission, other D.C. review and permitting authorities, and financing considerations.

**Exhibit B** of the Agreement is hereby deleted in its entirety and replaced with **Exhibit B** to this Amendment.

3. Section 5.b.i of the Agreement is hereby deleted in its entirety and replaced with the following:

- i. Lot 61-64 (also known as the “**N Street Retained Buildings**”) shall retain the appearance of four (4) separate row dwellings and function as four (4) single-family housing units within the larger multi-family Project, and conform to the specifications shown on Page 16 of **Exhibit C**. For the avoidance of doubt, single-family housing units can include flats;

Page 16 of **Exhibit C** of the Agreement is hereby deleted and replaced with the page attached to this Amendment as **Exhibit C-1** (and labeled as “Updated Exhibit C, Page 16”).

4. Section 5.c of the Agreement is hereby deleted in its entirety and replaced with the following:

**South Capitol Rowhouse Lots.** Since the Landmark Designation is being withdrawn by SWNA, Developer shall design Lots 53 and 68, under the guiding principle of preserving a meaningful portion of the original rowhomes that captures their integrity and the reason for which they were initially developed – adjacent single units of sanitary worker housing for affordable respectable living. This will include retaining a visual sense from the sidewalk of “independent” houses and

retaining sufficient original interior components to allow for the spatial understanding of the separate units. This shall be accomplished through retention of original exterior walls and portions of original interior party walls among other efforts, according to the following provisions:

- i. Lot 53 and 68 (the “South Capitol Retained Buildings”) shall have the appearance of two (2) separate row dwellings and each shall function as residential use or commercial space and conform to the specifications shown on Page 16 of Exhibit C;
  - ii. the South Capitol Retained Buildings shall be stabilized and retained, including the existing exterior walls (for avoidance of doubt, meaning the front, rear and side walls of each such building, but the party walls between the South Capitol Retained Buildings and, if obtained by Developer, the rowhouses on Lots 52, 69, and/or 827 may be partially demolished to allow for the combination described in Section 5.f.v. of this Agreement) and the original interior fabric to the extent such elements are structurally sound and/or able to retained, to the maximum extent commercially reasonable, but in no cases less than a depth of fifteen (15) feet as measured from the front of each building along South Capitol Street, SW and new construction shall be permitted above the South Capitol Retained Buildings, but in no cases shall be permitted less than a depth of fifteen (15) feet as measured from the front of each building along South Capitol Street, SW (subject to projections that would typically be permitted over public space in accordance with the D.C. Construction Code); and
  - iii. the South Capitol Retained Buildings will remain intact, in accordance with Section 5(c)(ii), and on site, and structurally supported throughout site demolition and preparation and project construction, and will be integrated into the Project according to the specifications shown on Page 16 of Exhibit C. Developer shall retain the services of Beyer Blinder Belle Architects, specialists in historic preservation, to prepare a design and stabilization plan for the South Capitol retained Buildings in accordance with historic preservation industry best practices and subject to the approval of the HPO staff (which approval may be indicated via email or letter), provided that HPO staff is willing to provide an approval of such plan. Additionally, upon request a copy and explanation of this stabilization plan will be shared with SWNA prior to demolition or new construction. The structural support provided for the South Capitol Retained Buildings shall be in accordance with such stabilization plan.
5. A new Section 5.f of the Agreement is hereby added as the following:

**Potential Incorporation of Additional Properties.** If any of Lots 52, 65, 66, 69, 827, 829, and/or 830 in Square 653 are obtained or otherwise controlled by Developer (“Additional Properties”), the component of the Additional Properties so obtained shall be subject to the relevant portions of the following:

- i. the provisions of Section 5.b shall apply to Lots 65 and 66, to the extent that each property is obtained or otherwise controlled by Developer;
  - ii. the provisions of Section 5.c shall apply to Lots 52, 69, and 827, to the extent that each property is obtained or otherwise controlled by Developer;
  - iii. if Lots 829 and 830 are obtained or otherwise controlled by Developer, Developer will design any structure for such site to respect the adjacent rowhouses and the scale of the streetscape;
  - iv. if Lots 52 and 69 are obtained or otherwise controlled by Developer, Developer shall have the ability to move the relevant structures away from South Capitol Street in a uniform manner among Lots 52, 69, and the South Capitol Retained Buildings, provided that the provisions of Section 5.c are otherwise performed and the distance of such move of the South Capitol Retained Buildings and the buildings on the Additional Properties is no greater than eight (8) feet away from the properties' lot lines along South Capitol Street ("Pushback Area") and the Pushback Area is utilized primarily as a sidewalk and streetscape space and not as permanently installed restaurant or café outdoor seating. If Developer obtains or otherwise controls Lot 827, Developer shall have the ability to move the relevant structure only along with those in the prior sentence and according to the same terms. If Developer develops a design that requires the rowhouses described in this section to be moved a distance of greater than eight (8) feet away from the properties' lines along South Capitol Street, Developer shall present a plan and justification to SWNA and SWNA shall have the right to approve or deny the increase of such dimension beyond eight (8) feet; and
  - v. the Developer will study the viability of combining the interiors of the Additional Properties located on Lots 52, 69, and 827, that are either adjacent to each other or adjacent to one of the South Capitol Retained Buildings and, if such combination is feasible, design all or portions of the interior space to be utilized cohesively and across multiple properties while maintaining such properties' original floor layouts in a manner that will minimize impact on the existing party walls that are able to be retained yet allow for such combination of space to occur. In no case will more than 50 percent of existing party walls be removed. Developer will make commercially reasonable efforts to place small businesses or businesses serving the local neighborhood, such as but not limited to a Walk-In Urgent Care clinic, small pharmacy, hair salon or barber shop, flower shop, bank, electronics store, bakery, dry cleaner, or other neighborhood-serving businesses, in consultation with SWNA, in such combined commercial space.
6. A new Section 5.g of the Agreement is hereby added as the following:

**Signage/Public Art.** Developer shall design and install signage or public art, in partnership with SWNA and a group of community leaders and/or entities convened by SWNA, potentially including an entity with relevant experience such as Cultural Tourism DC, MuralsDC, or a similar entity, which will educate the public regarding the history of the rowhouses in Square 653 and their architecture, including their contributions to the development of Southwest.

7. Section 7.d of the Agreement is hereby deleted in its entirety and replaced with the following:

All notices and other communications hereunder shall be in writing and either personally delivered (which will be deemed given upon delivery or upon the first refusal to accept delivery) or mailed in both physical AND electronic copies to the following:

If to Developer: 1319 South Capitol Associates, LLC  
c/o Ronald D. Paul Companies  
4416 East West Hwy., Suite 300  
Bethesda, Maryland 20814  
Attn: Kathleen McCallum  
(301) 951-7222  
E-mail: [kmccallum@ronaldpaulcos.com](mailto:kmccallum@ronaldpaulcos.com)

With a copy to: 1319 South Capitol Associates, LLC  
c/o Ronald D. Paul Companies  
4416 East West Hwy., Suite 300  
Bethesda, Maryland 20814  
Attn: Stanley Marks  
(301) 951-7222  
E-mail: [SMarks@ronaldpaulcos.com](mailto:SMarks@ronaldpaulcos.com)

With a copy to: 1319 South Capitol Associates, LLC  
c/o The FORTIS Companies  
1300 19th Street, NW  
Suite 725  
Washington, DC 20036  
Attn: George Chopivsky  
(202) 417-7000  
E-mail: [george@fortiscompanies.com](mailto:george@fortiscompanies.com)

If to SWNA: Southwest Neighborhood Association  
P.O. Box 70131  
Washington, DC 20024  
(202) 320-4414  
Attn: President  
E-mail: [president@swana.org](mailto:president@swana.org) AND [history@swdc.org](mailto:history@swdc.org)

Either Party may from time to time by written notice to the other Party designate a different address or addresses for notices.

8. Recordation. The Parties agree that this Amendment will be recorded among the Land Records.

9. Authority. Each Party hereto represents and warrants that (i) it possesses all requisite power and authority, and has taken all actions required by its organizational documents and applicable law, to execute and deliver this Amendment and (ii) this Amendment has been duly authorized, executed and delivered by such Party.

10. Reliance. All acknowledgements, certifications and agreements are made hereunder with the intent that they will be relied upon by the other Parties hereto.

11. Ratification. As amended by this Amendment, the Agreement is hereby ratified and shall continue in full force and effect in accordance with its terms.

12. Successors and Assigns. This Amendment shall bind and inure to the benefit of the Parties named herein and their respective successors and assigns.

13. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one and the same Amendment. In order to expedite the transaction contemplated herein, signatures transmitted by an electronically reproduced image may be used in place of original signatures on this Amendment, and SWNA and Developer intend to be bound by the signatures on the electronic reproduction, are aware that the other Party will rely on such signatures, and hereby waive any defenses to the enforcement of the terms of this Amendment based on the form of signature.

14. Capitalized Terms. Any term capitalized but not defined herein shall mean as defined in the Agreement.

15. Governing Law. This Amendment shall be governed by and construed in accordance with Section 11 of the Agreement.


IN WITNESS WHEREOF, the Parties hereto have executed this Amendment on the dates indicated below.

**DEVELOPER:**

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

1319 South Capitol Investors, LLC, a Maryland Limited Liability Company, its Sole Member

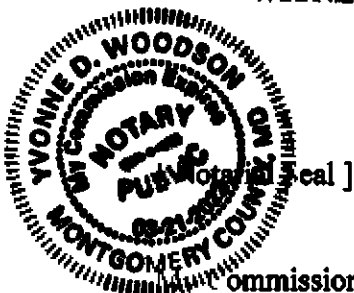
By: Potomac Investment Trust, an irrevocable trust established under Trust Agreement dated as of September 10, 2003, its Manager

By:   
Kathleen A. McCallum, Trustee  
c/o Ronald D. Paul Companies  
4416 East West Highway, Suite 300  
Bethesda, MD 20814

STATE OF Maryland )  
 )  
COUNTY OF Montgomery ) ss.

On this, the 29 day of April, 2020, before me, a notary public, personally appeared Kathleen A. McCallum known to me (or satisfactorily proven) to be the person who executed the within instrument as the Trustee of Potomac Investment Trust, the manager of 1319 South Capitol Investors, LLC, a Maryland limited liability company, the sole member of 1319 South Capitol Associates, LLC and this person thereupon acknowledged that the said instrument made by the company and delivered by him as such company officer, is the voluntary act and deed of the company.

WITNESS my hand and official seal this 29 day of April, 2020.



  
Notary Public

Commission Expires: March 21, 2020

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment on the dates indicated below.

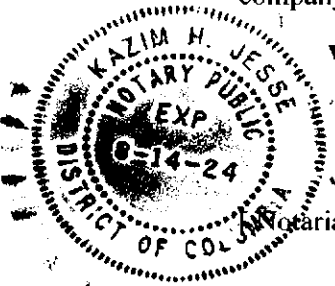
**SOUTHWEST NEIGHBORHOOD ASSEMBLY**

BY: Donna Purchase  
By: Donna Purchase  
Its: President

**DISTRICT OF COLUMBIA**, to wit:

On this, the 29 day of April, 2020, before me, a notary public, personally appeared DONNA PURCHASE known to me (or satisfactorily proven) to be the person who executed the within instrument as the President of Southwest Neighborhood Assembly Inc., and this person thereupon acknowledged that the said instrument made by the company and delivered by him as such company officer, is the voluntary act and deed of the company.

WITNESS my hand and official seal this 29 day of April, 2020.



KAZIM H. JESSE  
Notary Public DISTRICT OF COLUMBIA  
My Commission Expires August 14, 2024

Kazim H. Jesse  
Notary Public

My Commission Expires: 08/14/2024



## EXHIBIT A

### LEGAL DESCRIPTION OF LAND

All that certain lot or parcel of land together with all improvements thereon located and being in the City of Washington in the District of Columbia and being more particularly described as follows:

Lot numbered Sixty (60) in Square numbered Six Hundred Fifty-three (653) in the subdivision made by Harry Wardman and Thomas P. Bones, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 59 at folio 67.

The North half of Original Lot numbered Sixteen (16) in Square numbered Six Hundred Fifty-three (653).

NOTE: At the date hereof the above described property is designated on the Records of the Assessor for the District of Columbia for assessment and taxation purposes as Lot numbered Eight Hundred Eleven (811) in Square numbered Six Hundred Fifty-three (653).

All of Original Lot numbered Fourteen (14) in Square numbered Six Hundred Fifty-three (653).

All of Original Lot numbered Fifteen (15) in Square numbered Six Hundred Fifty-three (653).

Lot numbered Seventy (70) in Square numbered Six Hundred Fifty-three (653) in the subdivision made by Joseph M. Coleman, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 81 at folio 46.

Lot numbered Forty-five (45) in Square numbered Six Hundred Fifty-three (653) in the subdivision made by Joseph M. Coleman, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 32 at folio 190. SAVING AND EXCEPTING THEREFROM all that part of Lot 45 dedicated for use as a public alley on plat recorded in the Office of the Surveyor for the District of Columbia in Liber 37 at folio 113.

NOTE: At the date hereof the above described property is designated on the Records of the Assessor for the District of Columbia for assessment and taxation purposes as Lot numbered Eight Hundred Ten (810) in Square numbered Six Hundred Fifty-three (653).

Lot numbered Fifty-four (54) in Square numbered Six Hundred Fifty-three (653) in the subdivision made by William B. Miller, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 50 at folio 139.

Lot numbered Sixty-four (64) in Square numbered Six Hundred Fifty-three (653) in the subdivision made by Harry Wardman and Thomas P. Bones, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 59 at folio 67.

Lot numbered Fifty-Three (53) in Square numbered Six Hundred Fifty-three (653) in the subdivision made by William R. Miller, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 50 at folio 139.

Subject to the right of way over the rear ten (10) feet of Lot 53 in Square 653 described in Deed from Kathryn Cunningham to Jasper Lynch and Edna May Lynch, dated September 14, 1950 and recorded September 22, 1950 as Instrument No. 39893 in Liber 9301 at folio 529.

Lot numbered Sixty-one (61) in Square numbered Six Hundred Fifty-three (653) in the subdivision made by Harry Wardman and Thomas P. Bones, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 59 at folio 67.

Lot numbered Sixty-eight (68) in Square numbered Six Hundred Fifty-three (653) in the subdivision made by Joseph M. Coleman, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 81 at folio 46

Lot numbered Sixty-two (62) in Square numbered Six Hundred Fifty-three (653) in the subdivision made by Harry Wardman and Thomas P. Bones, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 59 at folio 67.

Lot numbered Sixty-three (63) in Square numbered Six Hundred Fifty-three (653) in the subdivision made by Harry Wardman and Thomas P. Bones, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 59 at folio 67.

**EXHIBIT B**  
**ESTIMATED TIMELINE**

- October 2019 – Agreement Signed/Effective; Recordation
- October 2019 – Amendment to Landmark Nomination submitted to DC HPO Office
- 4Q 2019 – Developer Files Raze Permits for Two (2) Rowhouses & Demo Permits for the Rears of the Four (4) Rowhouses on N Street, SW
- December 2019 – Developer Files Notice of Intent to File for Zoning Commission Review
- April 2020 – First Amendment to Agreement Signed/Effective; Recordation
- April 2020 – SWNA Withdraws Amended Landmark Application
- Q2-Q3 2020 – Developer Meets with ANC 6D and SWNA for introduction/overview of Design Review application
- Q2-Q3 2020 – Developer Files Application for Zoning Commission Review
- Q2-Q3 2020 – Two (2) Rowhouses are Razed and Four (4) Rowhouses are Demolished at the Rear with Necessary Support and Bracings Installed
- Q2-Q4 2020 – Developer Presents Zoning Commission Case to ANC 6D and SWNA; ANC 6D and SWNA Take Action and File Correspondence Accordingly in Zoning Commission Case
- Q3-Q4 2020 – Zoning Commission Hearing
- Q4 2020-Q2 2021 – Zoning Commission Order Issued
- Q3-Q4 2021 – Developer Files for Above Grade Building Permit(s)
- Q1-Q2 2022 – Above-grade Building Permit(s) Issued to Developer

**EXHIBIT C-1**  
**UPDATED PAGE 16 TO EXHIBIT C**

N STREET SW

PROPERTIES NOT CURRENTLY OWNED BY DEVELOPER

N STREET AND SOUTH CAPITOL RETAINED BUILDINGS-OWNED BY DEVELOPER



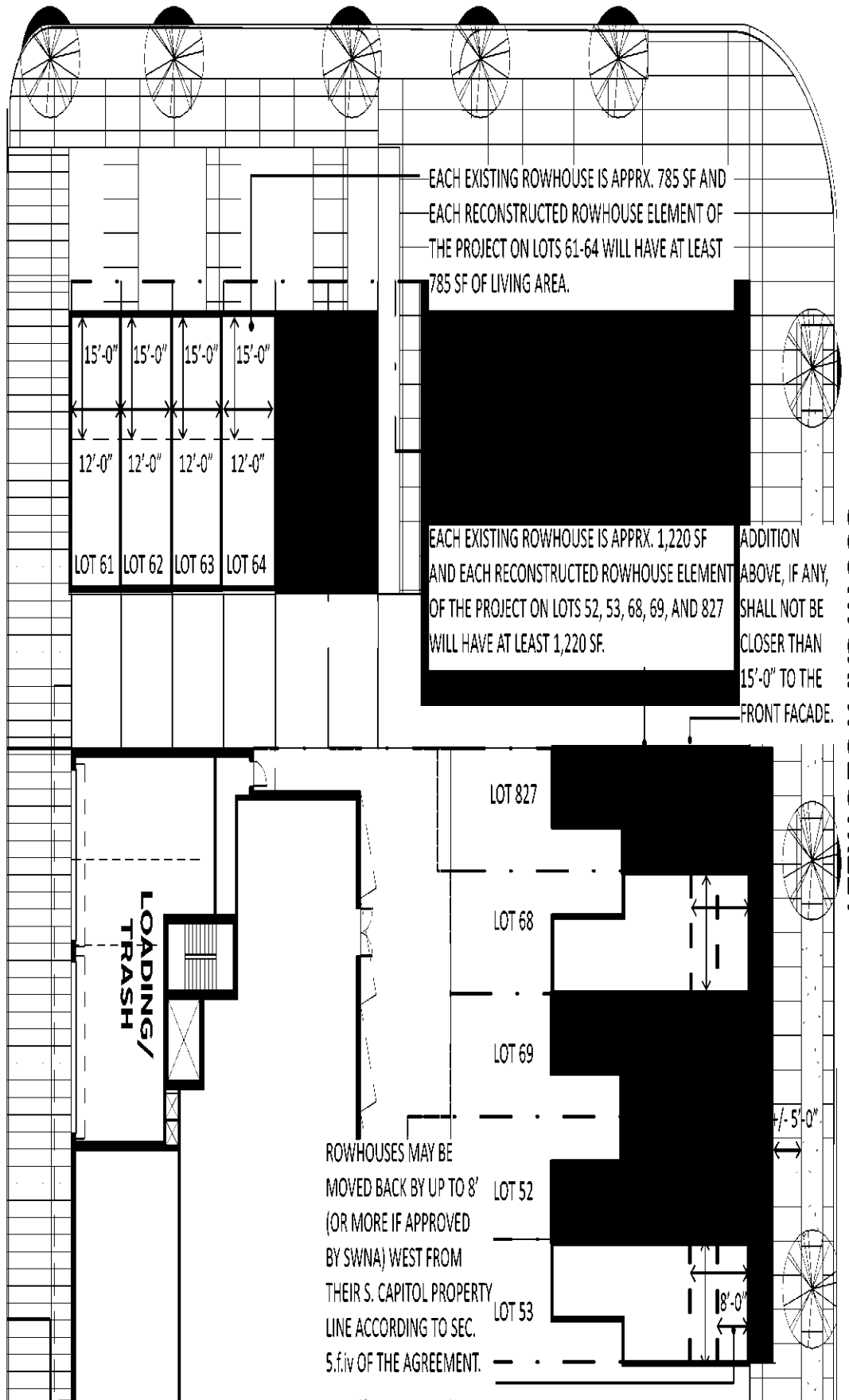
THE PORTION OF THE PROJECT DESIGNED FOR LOTS 61-64 IS INTENDED TO INTEGRATE THE APPEARANCE OF THE CURRENT STRUCTURES FOR THE 1ST AND 2ND LEVELS OF THE PROJECT FROM N STREET.

THE PORTION OF THE PROJECT DESIGNED FOR LOTS 52, 53, 68, 69, AND 827 IS INTENDED TO INTEGRATE THE APPEARANCE OF THE CURRENT STRUCTURES FOR THE 1ST AND 2ND LEVELS OF THE PROJECT FROM SOUTH CAPITOL STREET.

RED LINES INDICATE THE APPROXIMATE DIMENSIONS OF THE BUILDINGS TO BE RETAINED IN ACCORDANCE WITH THE AGREEMENT. ROOF AND FLOORS WITHIN SUCH AREA MAY BE REPLACED AS NECESSARY DURING THE CONSTRUCTION.

EXISTING ALLEY

SOUTH CAPITOL STREET



Doc #: 2020053639  
Filed & Recorded  
05/04/2020 01:23 PM  
IDA WILLIAMS  
RECORDER OF DEEDS  
WASH DC RECORDER OF DEEDS  
RECORDING FEES \$25.00  
SURCHARGE \$6.50  
TOTAL: \$31.50