

North-South Right of Way Agreement

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Grossberg, Yochelson, Fox & Beyda, L.L.P.
1200 New Hampshire Avenue, N.W.
Suite 555
Washington, D.C. 20036
Attention: Matthew S. Kirsch, Esquire

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Agreement") is made as of October 11, 2017, (the "Effective Date") by 1319 SOUTH CAPITOL ASSOCIATES, LLC, a District of Columbia limited liability company ("Developer Owner") and GREGORY KEAGLE, an individual, SHING WAI LAM, an individual, SHEILA SAMADDAR, an individual and RS LIQUORS, INC., a District of Columbia (each, jointly and severally, an "Adjacent Property Owner" and collectively the "Adjacent Property Owners").

RECITALS

A. Developer Owner is the owner in fee simple of certain real property lying and being in the District of Columbia, known as Square 653, Lots 14, 15, 53, 54, 60, 61, 62, 64, 68, 70, 810 and 811 (collectively, and inclusive of any real property located in Square 653 which is subsequently acquired by Developer Owner, including without limitation Lot 63, its successors, assigns or affiliates, the "Development Site").

B. Mr. Gregory Keagle is the owner in fee simple of certain real property lying and being in the District of Columbia, known as Square 653 Lot 69, having a street address of 1311 South Capitol Street SW ("Lot 69").

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 SW ("Lot 827").

D. Ms. Sheila Samaddar is the owner in fee simple of certain real property lying and being in the District of Columbia, known as Square 653, Lot 52, having an address of 1313 South Capitol Street SW ("Lot 52").

E. 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, Lot 830, having an address of 1301 South Capitol Street SW (“Lot 830”).

F. 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”).

G. Lots 52, 65, 66, 69, 827, 829 and Lot 830 in Square 653, are sometimes referred to herein, singularly and collectively, as the “Adjacent Property”.

H. Developer Owner desires to construct a mixed-use project, including residential and retail uses on a portion of the Development Site (the “Project”).

I. In connection with the construction of the Project on the Development Site, Developer Owner and Adjacent Property Owners have entered into an Adjacent Property Owner Agreement, setting forth certain terms and conditions concerning the closing of a portion of the east-west public alley located in Square 653, as more particularly described on the attached **Exhibit A**, which is incorporated herein by this reference. In connection with the entering into of such Adjacent Property Owner Agreement, Developer Owner and Adjacent Property Owners have agreed to enter into an easement agreement to provide for a perpetual, non-exclusive surface easement to provide certain pedestrian and vehicular access from the remaining portion of the east-west public alley that will not be closed (such remaining portion being the “Alley”) to and from Lots 52, 53, 54, 68, 69, 70, 827, 829 and 830 (collectively, the “Right of Way Lots”), as more particularly set forth herein, and the simultaneous release and termination of certain existing easements and rights of way, as further set forth below. Lot 65 and Lot 66, to the extent Lot 65 and Lot 66 have legal access to the beginning of the North-South Right of Way (recognizing that the North-South Right of Way will not extend all the way to Lot 65 and Lot 66), shall be granted access to such North-South Right of Way for the purposes set forth herein.

J. Developer Owner and Adjacent Property Owners are each sometimes referred to herein as a “Party” and collectively as the “Parties.” The owner(s) in fee simple of Lot 70 at any time are sometimes referred as the “Lot 70 Owner”.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, the Parties hereby agree, as follows:

1. Recitals Incorporated.

1.1 The foregoing recitals are hereby incorporated as a substantive portion of this Agreement.

2. Termination of Existing Easements and Rights-of-Way.

2.1 The “Existing Easements and Rights-of-Way” shall mean any existing access easements and rights-of-way reserved or otherwise referenced in any deed applicable to Lots 52, 53, 54, 68, 69 and/or 70 in Square 653, as such easements or rights-of-way may have been amended (including but not limited to (1) by those certain deeds for Lot 53 from James E. Horn and Alan Bruzer to A.C. Plitt recorded among the District of Columbia recorder of deeds on June 9, 1958 in Liber 11052 at folio 390, from A.C. Plitt and Clarence M. Plitt to Barney Menditch, Miriam R. Menditch, Norman Gitomer, Millicent Gitomer and Marvin Tievsky recorded among the District of Columbia recorder of deeds on November 27, 1959 in Liber 11346 at folio 269, from Great American Land Corporation to Lee E. Alston recorded among the District of Columbia recorder of deeds on November 3, 1971 in Liber 13279 at folio 208 and from Carol Oesch and Irvin Greenbaum to Vincent T. Warring and Eileen M. Warring, recorded among the District of Columbia recorder of deeds on November 9, 1977, (2) by that certain deed for Lot 54 from Tillman G. Robinson to Lualla A. Jones dated April 6, 1995, (3) by that certain deed for Lots 52, 53 and 54 from Lottie M. Suit and George M. Suit to Ethel V. Fielder recorded among the District of Columbia recorder of deeds on July 21, 1943 in Liber 11052 at folio 390 (4) by that certain deed for Lot 68 from Roger L. Roberts and Essie P. Roberts to John W. Thompson and Bessie Blair recorded among the District of Columbia recorder of deeds on February 20, 1948 in Liber 8687 at folio 150, (5) by that certain deed for Lot 69 from Michael Naizghi to Gregory A. Keagle recorded among the District of Columbia recorder of deeds on April 11, 2005, and (6) by those certain deeds for Lot 70 from Lottie M. Suit to James T. Warring and Martha L. Warring, recorded among the District of Columbia recorder of deeds on March 25, 1940, from Martha L. Warring to Marta Warring, Milton T. Warring, James B. Warring, Sr., Joseph L. Warring and Vincent T. Warring recorded among the District of Columbia recorder of deeds on November 6, 1975, from Vincent T. Warring to Patrick Joseph Warring, Vincent Charles Warring, Jr., Francis Edward Warring, Kevin Leo Warring, Martha Louise Warring, Colin Michael Warring and Sean Richard Warring recorded among the District of Columbia recorder of deeds on January 17, 1979, from Paul L. Pascal, Personal Representative of the Estate of Doris C. Warring to Paul D. Warring as to a ½ interest and Milton T. Warring, Jr as to a ½ interest recorded among the District of Columbia recorder of deeds on March 26, 1998, from Paul L. Pascal, Personal Representative of the Estate of Doris C. Warring to the Estate of Doris C. Warring as to a 1/5 interest, Paul D. Warring as to a 1/5 interest and Milton T. Warring Jr. as to a 1/5 interest recorded among the District of Columbia recorder of deeds on May 28, 2002 and from Mary Kathleen (nee Wells) Fuller and Carole Ann Soules, Personal Representative of the Estate of James B. Warring, Sr. and Mary Kathleen (nee Wells) Fuller, Successor Personal Representative of the Estate of James Bruce Warring, Jr. to Mary Kathleen Fuller, Carole Ann Soules and Audrey F. Hillard recorded among the District of Columbia recorder of deeds on October 26, 2006); including but not limited to: (i) a right of way over the rear 10 feet of Lots 52, 53, 54 and 68 as per plat recorded in Liber 50 at folio 139 in the Office of the Surveyor for the District of Columbia and (ii) a perpetual right of way for alley purposes over and across a certain portion of Lot 70, as recorded in the Office of the Surveyor for the District of Columbia on June 30, 1926 as Instrument No. 71 in Liber 5747 at folio 173.

2.2 The Parties hereby agree that the Existing Easements and Rights-of-Way shall terminate and have no further force or effect as of the Effective Date set forth above.

3. North-South Right of Way. The owners of the Right of Way Lots do hereby grant and convey for the benefit of the Right of Way Lots a perpetual non-exclusive easement (the

“North-South Right of Way”) with a width of twelve (12) feet running parallel to South Capitol Street for the sole purpose of vehicular and pedestrian ingress, egress, and access to and from the Alley to each of Lots 52, 53, 54, 68, 69, 70, 827, 829 and 830 in Square 653, such easement area being referred to herein as the “North-South Right of Way Area”, as more particularly described on the attached **Exhibit B**, which is incorporated herein by this reference, with such North-South Right of Way burdening the land of the Right of Way Lots to the extent the North-South Right of Way (as more particularly described on the attached **Exhibit B**) is located thereon. Lot 65 and Lot 66, to the extent Lot 65 and Lot 66 have legal access to the beginning of the North-South Right of Way (recognizing that the North-South Right of Way will not extend all the way to Lot 65 and Lot 66), shall be granted access to such North-South Right of Way for the purposes set forth herein.

4. Maintenance of North-South Right of Way Area; Naming Rights.

4.1 Lot 70 Owner, its successors and assigns, shall maintain in good order and repair the North-South Right of Way Area (including keeping the North-South Right of Way Area free and clear of ice, snow and loose trash, recognizing that each Adjacent Property Owner shall be responsible for the disposal of its own trash).

4.2 All maintenance shall be performed in a prompt, good and workmanlike manner, and the expenses of the maintenance shall be paid exclusively by Lot 70 Owner, its successors and assigns.

4.3 Developer Owner shall name the North-South Right of Way Area in honor of Leslie Jones, and shall commemorate such naming with a small plaque that shall be maintained in accordance with the other maintenance obligations set forth herein.

5. Easement Runs with Land. The easement, covenants and agreements contained in this Agreement are not personal but are appurtenant to and shall run with the land benefitted thereby, and shall be binding upon all parties hereto and their successors in title or interest and their permitted assigns.

6. No Obstructions. The North-South Right of Way Area shall be utilized only for the non-exclusive purpose of vehicular and pedestrian ingress, egress, and access to and from the Alley to the Right of Way Lots and not for the parking of vehicles, nor for storage space, dumpsters, trash, recycling, or any other activities. The Parties agree that neither Party shall construct or place fences, barriers, barricades, buildings or other obstacles that prevent or obstruct the passage of pedestrian or vehicular traffic over the North-South Right of Way Area. Developer Owner shall (i) replace any fence along the perimeter of the portion of Lot 69 and Lot 52 located in the North South Right of Way Area that it removes; and (ii) repair or replace the fence along the southern edge of Lot 830 to remediate damage caused to such fence by a downed tree. Developer Owner shall install such fencing within thirty (30) days after the North South Right of Way Area is paved in accordance with this Agreement and such fencing shall be constructed with Project standard materials, including without limitation gates. Notwithstanding anything to the contrary herein, the Adjacent Property Owners hereby acknowledge and agree that Developer Owner, or its successors and assigns, may temporarily store certain materials in the North-South Right of Way Area during the construction and paving of the North-South Right of Way Area, as well during any subsequent

construction, renovation and/or rehabilitation of the Project. The North-South Right of Way shall be paved and re-opened permanently, no later than forty-five (45) days following Substantial Completion of the Project, subject to the maintenance, repair and replacement as required hereunder.

7. Condemnation. In the event any portion of the North-South Right of Way Area shall be condemned or transferred in lieu thereof, the portion of the award allocable to the North-South Right of Way Area shall be used, if possible, to relocate, replace and/or restore the same to a useful condition as nearly as possible equivalent to that before such taking. Notwithstanding anything to the contrary herein, to the extent there is a first mortgage lien recorded against such affected tract, the terms of such mortgage loan regarding condemnation or casualty shall govern the disposition of any condemnation award or casualty proceeds and/or duty to restore such affected portion of the North-South Right of Way Area.

8. Insurance and Indemnity.

8.1 Lot 70 Owner shall maintain, at its sole cost and expense, a general hazard and liability insurance policy on the North-South Right of Way Area, naming the owners of the Right of Way Lots as additional insureds, to the extent any such owner of a Right of Way Lot requests to be named as an additional insured in writing delivered to the Developer Owner.

8.2 Lot 70 Owner agrees to indemnify, defend and hold harmless the owners of the Right of Way Lots (the "Indemnified Parties") from and against any and all claims, liabilities, demands, fines, suits, causes of action, judgments, damages, costs and expenses (collectively, "Losses"), including reasonable attorneys' fees and court costs arising from or in connection with loss of life, bodily or personal injury or property damage arising out of, or from the use of, the North-South Right of Way, or work performed by or on behalf of Lot 70 Owner, solely to the extent such Losses were caused by the gross negligence or willful misconduct of Lot 70 Owner and except to the extent such Losses arise from the negligence, act or omission of an Indemnified Party, or its agents, contractors or tenants. Nothing contained herein shall entitle Adjacent Property Owners to consequential or punitive damages or any other sums in excess of actual damages.

9. Remedies. The Parties shall have such remedies available at law or in equity, the Parties shall be entitled to pursue specific performance to enforce their respective rights granted under this Agreement.

10. Reasonable Variances. The depiction of the North-South Right of Way Area attached hereto has been prepared from one or more site plans, and the Parties anticipate and approve reasonable variances between the depicted and actual locations of the Alley and other improvements. The easement and interests created under this Agreement shall be deemed modified to the extent necessary to conform to such reasonable variances.

11. Reservation of Rights. Notwithstanding anything herein to the contrary, each Party shall retain the right to improve, maintain and otherwise utilize such Party's tract, so long as the granting Party's improvements, maintenance or other utilization of its tract does not unreasonably interfere with the exercise of the benefitted Party's easement or other rights hereunder.

12. Notices. Notices under this Agreement shall be in writing delivered by hand (effective upon delivery), mail (effective three (3) business days after proper delivery to the U.S. Postal Service), or overnight courier (effective one (1) business day after proper delivery to a national overnight courier) to the address(es) listed below:

If to Developer Owner: 1319 South Capitol Associates, LLC
c/o Ronald D. Paul Companies
4416 East West Highway, Suite 300
Bethesda, Maryland 20814

With a copy to: Grossberg, Yochelson, Fox & Beyda, L.L.P.
1200 New Hampshire Avenue, N.W.
Suite 555
Washington, D.C. 20036
Attention: Matthew S. Kirsch, Esquire
Kirsch@GYFB.com

If to any of Adjacent Property Owners: c/o Bregman, Berbert, Schwartz &
Gilday, LLC
7315 Wisconsin Avenue
Suite 800 West
Bethesda, Maryland 20814
Attention: Wendy D. Pullano, Esq.

Each party may change the notice addresses listed above in accordance with the terms of this Section 12.

13. Captions. The captions herein are inserted only as a matter of convenience and for references and neither define, limit, or describe the scope or intent of this Agreement nor in any way affect the terms and provisions hereof.

14. Governing Law. The laws of the District of Columbia shall govern the interpretation, validity, performance and enforcement of this Agreement.

15. Estoppel Certificate. Each Party agrees that within twenty (20) days following any written request (but in no event more frequently than two (2) times during any calendar year) of the other Party, it will issue to the requesting Party or its prospective mortgagee or successor an estoppel certificate stating to the best of the issuing Party's knowledge as of such date: (i) whether it knows of any default under this Agreement by the requesting Party and, if there are known defaults, specifying the nature thereof; (ii) whether this Agreement has been assigned, modified or amended in any way and, if so, the nature thereof and furnishing copies thereof if in the issuing Party's possession; and (iii) whether this Agreement is in full force and effect; and (iv) such other matters concerning this Agreement as may be reasonably requested by the requesting Party. The issuance of an estoppel certificate shall in no event subject the person furnishing it to any liability

for the negligent or inadvertent failure of such person to disclose correct and/or relevant information.

16. Existing Lienholders. The Parties hereby agree that this Agreement shall not be valid unless and until all of the lienholders of (i) the Development Site and (ii) the Adjacent Property, have subordinated their interests to the right of way and other interests granted by this Agreement. Developer Owner shall use its best efforts to cause the sole existing lienholder to execute of the Joinder of Lienholder set forth on Exhibit C. The Adjacent Property Owners shall use their best efforts to cause any existing lienholders to execute a consent substantially in the form of the Joinder of Lienholder set forth on Exhibit C.

17. Miscellaneous.

17.1 Failure of any Party to comply with any or all of the terms and conditions of this Agreement shall not, under any circumstances, entitle any other Party to terminate any easement, but shall give rise to such other remedies as may be provided in this Agreement or by law or equity. Except as expressly provided in this Agreement, all rights, powers and privileges conferred hereunder shall be cumulative and in addition to and not to the exclusion of those provided by law or equity. Any modification to this Agreement must be in recordable form and be executed by the Parties and shall not be effective until recorded in the public records of the District of Columbia.

17.2 This Agreement shall not create an association, partnership, joint venture or principal and agency relationship between any of the parties hereto. No waiver of any provision of this Agreement shall be deemed to imply or constitute a further waiver of that provision or any other provision. Should any provision be declared invalid by a legal authority of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. The Parties do not intend to merge the estates benefited and burdened by the easement and covenants hereby established.

17.3 In the event of litigation, mediation or arbitration concerning the interpretation or enforcement of this Agreement, the prevailing party is entitled to recover from the losing party its reasonable legal fees, court costs, and expenses, whether at trial or appellate level.

17.4 TIME IS OF THE ESSENCE with respect to each and every provision of this Agreement.

17.5 The easement created hereby is a private easement for the benefit of the parties to this Agreement only.

17.6 The singular or plural used herein shall be deemed to include the other; and any pronoun shall be deemed to include the masculine, feminine or neuter.

17.7 This Agreement contains the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements and understandings.

17.8 This Agreement may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

17.9 At least thirty (30) days prior to commencement of construction of the Project, Developer Owner (at its sole cost and expense) shall record this Agreement among the land records of the District of Columbia.

[Signatures on the following pages.]

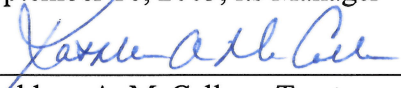
IN WITNESS WHEREOF, the Parties have each caused this Agreement to be duly executed as of the day and year first written above.

DEVELOPER OWNER:

1319 SOUTH CAPITOL ASSOCIATES, LLC,
a District of Columbia limited liability company

1319 South Capitol Investors, LLC,
a Maryland limited liability company

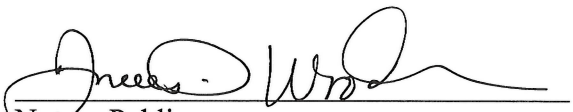
By: Potomac Investment Trust, an irrevocable trust
established under Trust Agreement dated as of
September 10, 2003, its Manager

By: 
Kathleen A. McCallum, Trustee

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.

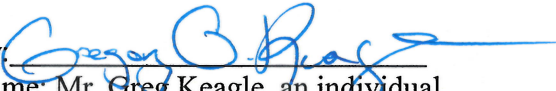
Witness my hand and official seal.


Notary Public

My commission expires: March 21, 2018



Adjacent Property Owners:

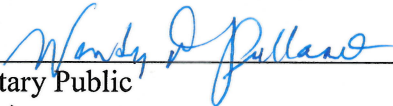
By: 
Name: Mr. Greg Keagle, an individual
Owner of Lot 69

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.


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

DISTRICT OF COLUMBIA, to wit:

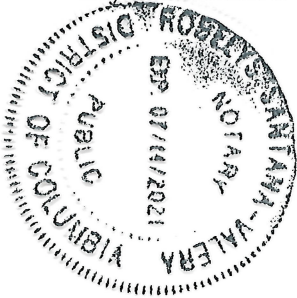
On September 25th, 2017 before me, the undersigned, a Notary Public in and for the jurisdiction aforesaid, personally appeared Mr. Shing Wai Lam, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing and annexed Agreement,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

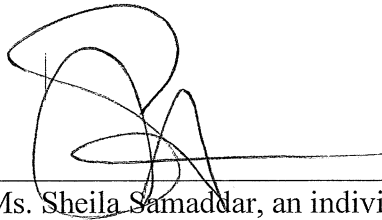
Witness my hand and official seal.

[Signature]

Notary Public

My commission expires: 07/14/2021)





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

DISTRICT OF COLUMBIA, to wit:

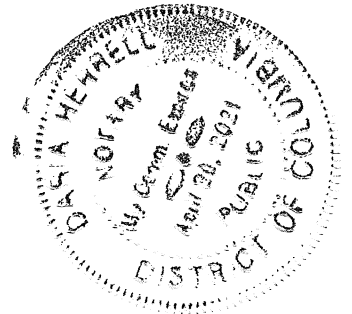
On October 10th, 2017 before me, the undersigned, a Notary Public in and for the jurisdiction aforesaid, personally appeared Ms. Sheila Samaddar, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing and annexed Agreement,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



RS Liquors, Inc., a District of Columbia corporation

By: Shing Wai Lam
Name: SHING WAI Lam
Its: 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

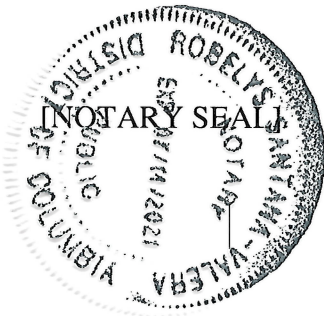
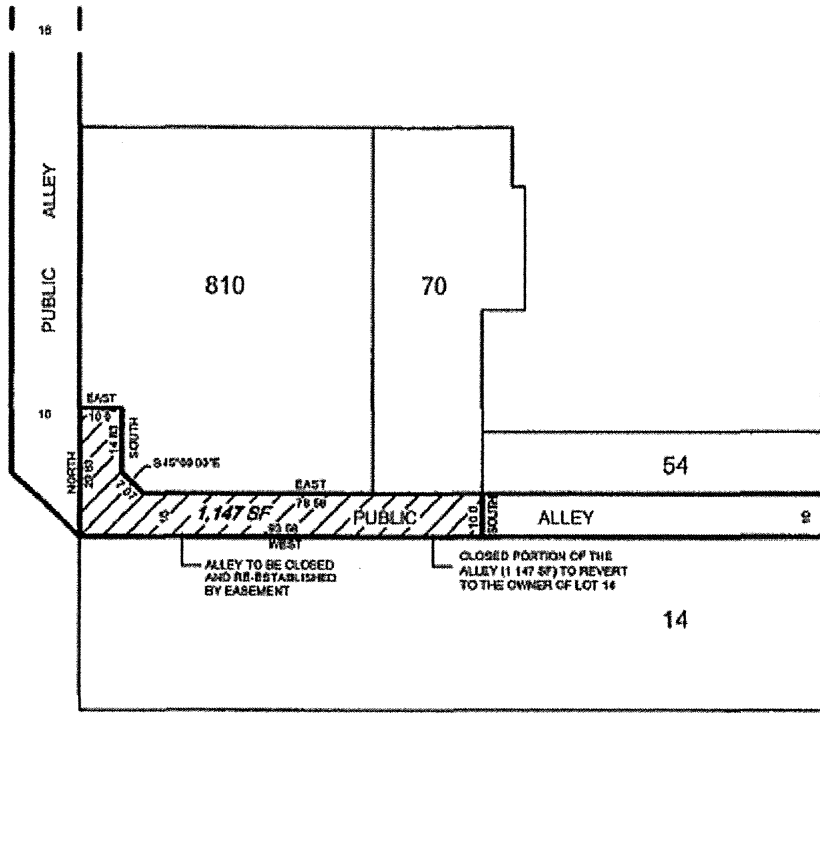


EXHIBIT A
TO
EASEMENT AGREEMENT

ALLEY CLOSING AND ALLEY EASEMENT AREA

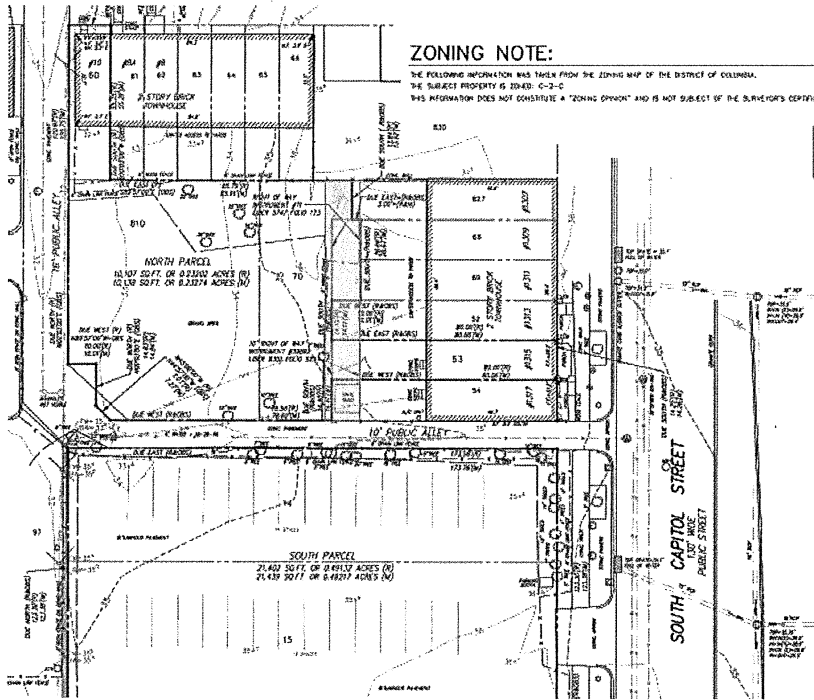
**PUBLIC ALLEY CLOSED
SQUARE 653**



SOUTH CAPITOL STREET, S.W.

EXHIBIT B
TO
EASEMENT AGREEMENT

PLAT OF NORTH SOUTH RIGHT OF WAY



ZONING NOTE:

THE FOLLOWING INFORMATION WAS TAKEN FROM THE ZONING MAP OF THE DISTRICT OF COLUMBIA.
THE SUBJECT PROPERTY IS ZONED: C-2-C
THIS INFORMATION DOES NOT CONSTITUTE A "ZONING OPINION" AND IS NOT SUBJECT OF THE SURVEYOR'S CERTIFIC.



Cross Access
Easement Area



Existing easement
to be replaced

EXHIBIT C
TO
EASEMENT AGREEMENT

JOINDER OF LIENHOLDER

The undersigned, the holder of that certain Deed of Trust Note, dated August 24, 2015, recorded on August 24, 2015, as Document Number 2015086851 in the Official Public Records of the District of Columbia, covering the Development Site (as modified, the "Deed of Trust"), hereby consents to the execution and recording of this Easement Agreement and agrees that said Deed of Trust is subject and subordinate thereto.

Notwithstanding anything to the contrary herein, the undersigned does not subordinate the lien of the Deed of Trust to any claims, damages, or indemnities against Owner Developer that arise from the terms of this Easement Agreement.

EagleBank, solely in its capacity as Lender related to a Loan to Developer Owner dated _____.

By: _____
Name: Matthew B. Leydig
Title: Senior Vice President

DISTRICT OF COLUMBIA)

On this ____ day of _____, 2017, personally appeared before me Matthew B. Leydig, as Senior Vice President of EAGLEBANK, acting in its authorized capacity as Lender, signer and sealer of the foregoing instrument and acknowledged the same to be his/her free act and deed and the free act and deed of said entities, before me. He/she is personally known to me or has produced a driver's license as identification.

Notary Public

My commission expires: _____

Exhibit C-2
to
Adjacent Property Owner Agreement

Plat of North-South Right of Way

