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**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Application of PT2SO, LLC

**APPLICANT'S PRE-HEARING STATEMENT
May, 2012**

This Pre-Hearing Statement ("Statement") outlines the existing and proposed use of the property and the manner in which the application ("Application") complies with the specific tests and burden of proof for the variances sought in this application before the Board of Zoning Adjustment (BZA)

NATURE OF RELIEF SOUGHT

This is an application pursuant to 11 DCMR § 3103.2 for variance from the maximum allowable percentage of lot occupancy for the underlying C-2-B zone district under § 772.1, the rear yard provision of § 774.7 (b) for that portion of the building above the twenty feet (20 ft.) horizontal plane, and special exception pursuant to § 3104.1 from the roof structure provisions which require that all penthouse structures be in one enclosure under § 411.3, to allow the new construction of a four-story mixed-use retail/residential building consisting of nine (9) residential dwelling units at the subject property of application.

SUMMARY OF APPLICATION

The applicant proposes to construct a new four-story building on the subject property which is currently vacant, to accommodate a mix of market rate dwelling units and artists living space on the upper floors and retail/service use, to occupy predominantly the cellar and first floor space of the building.

**BOARD OF ZONING ADJUSTMENT
District of Columbia**

CASE NO. 18415

EXHIBIT NO. 5

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The applicant seeks variance pursuant to 11 DCMR § 3103.2 and under § 772.6 and under § 774.7 (b) because the proposed building will exceed the maximum eighty percent (80%) lot occupancy allowed and the rear yard, because the building will not set back a minimum fifteen feet (15 ft.) above a twenty feet (20 ft.) horizontal plane, when measured from the rear property lot line as limited and as required by the underlying C-2-B zone district within which the Subject Property is located respectively, for cause that is dictated by a unique peculiarity of property that has existed prior to the adoption of the zoning regulations on May 12, 1958, as outlined below in this statement of burden of proof.

The application further seeks special exception pursuant to § 3104.1 and under § 411.3, the roof structure provision which makes it mandatory that all roof or penthouse structures be placed within one enclosure when located on the same roof level of a building.

The proposed project complies with all other provisions of the Zoning Regulations including the proposed use, required parking and loading, floor area ratio (FAR), minimum side yard setback, maximum height and open court, as applicable.

JURISDICTION OF THE BOARD

The application is properly before the BZA. The Board is authorized to grant the requested variances under § 8 of the Zoning Act, DC Official Code § 6-641.07 (g) (3) (2001), as further set forth in 11 DCMR § 3103.2

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PROPERTY DESCRIPTION AND BACKGROUND

The property is located in the Shaw neighborhood within the Greeter U Street Historic District on an interior lot, although the lot in all characteristics is akin to a through lot. An interior lot and a through lot are defined in § 199.1 respectively as follows:

“Lot, interior - a lot other than a corner lot or a triangular lot”

“Lot, through - an interior lot having frontage on two (2) or more streets where the streets differ in direction by forty-five degrees (45°) or less”

The Property is located in the Shaw Neighborhood and its address of official assignment is 1932 9th Street, N.W. and is located in Square 0361 Lot 0134 (the “Property” or “Subject Property”).

Square 0361 are bounded on the east by 9th Street, to the north by U Street, to the south by T Street and to the west by Vermont Avenue. 9½ Street, a 30 feet wide named public alley runs north-southerly, but does not dissect the square for its entire length. The Property is also served by a 15 feet wide alley which abuts a portion of its north property side lot line, and running east-west. The Property is a single lot of record and is located within the C-2-B zone district, with an Uptown Arts Overlay District; therefore is zoned C-2-B/Arts

On its side of the square facing 9th Street, the Subject Property is surrounded by row-type structures which typically have been converted for purposes of commercial retail/service type uses on property less than 2000 square feet in lot area. To its south west, the Subject Property is bounded by a series of even smaller lots under 1000 square feet with residential improvements fronting on 9½ Street; the named alley. These residentially improved lots have “street frontage” on 9½ Street ranging in addresses from 1901 through 1921 9½ Street NW. The fact of the street frontage-like characteristic of these

residential properties is significant and central to the Historic Preservation Review Board's (HPRB) condition for approval of the proposed construction at the Subject Property, as is further outlined below in the Statement, and as shall be further presented in the course of the public hearing.

The Property is currently vacant, but has been historically used for purposes of a parking lot. The lot is rectangular in shape and is 36 feet wide where it fronts on both 9th and 9½ Streets, and is 151 feet in depth. The Property is approximately 5,436 ft² in lot area.

The Subject Property is owned by PT2SO, LLC, a limited liability company whose managing member is Paul So. Paul So is the founder of Hamiltonian Artists ("Hamiltonian"), a non-profit arts organization with the vision of creating career development programs for emerging visual artists. Through the Hamiltonian Fellowship Program, Hamiltonian offers a "critical stepping stone for emerging artists who have finished their academic training and are looking to transition into professional art careers"

In furtherance of its mission Hamiltonian operates a contemporary art exhibition gallery at 1353 U Street, NW. As aforementioned, at least three dwelling units of the proposed nine at Subject Property are intended to serve as artists' living and work space units, as an extension of Hamiltonian's investment in the next generation of promising artists and as a part of a comprehensive and innovative approach to facilitating artists' transition into professional art careers.

STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

The Applicant seeks variance relief pursuant to the Zoning Regulations, 11 DCMR § 3103.2, under §772.1 and 774.7 (b), specifically to allow the proposed new building to be constructed to occupy 8% in excess of the allowable percentage of lot occupancy for the its underlying C-2-B zone district, and to allow the construction of the building face-on-line for its vertical height at the rear without setting back a minimum fifteen feet (15 ft.) above a twenty feet (20 ft.) horizontal plane, as measured from the rear property lot line.

At its rear, the new construction proposes approximately 35.58 feet of height therefore the noncompliant portion of the building above the twenty foot (20 ft.) horizontal plane is 15.58 feet. The applicant notes that the proposed building complies with the minimum rear yard setback requirement for its underlying C-2-B zone district below the twenty feet (20 ft.) horizontal plane, since the rear yard is measured to the centerline of the abutting 9½ Street (public alley), as specifically set forth in § 774.7 (a)

The Applicant, by preponderance of the materials submitted with this Application, facts to be presented in the course of the public hearing and further evidence to be submitted fourteen days prior to the hearing date, will prove compliance with the three prong test necessary for the granting of the area variances and special exception sought in this application as outlined below.

The Board is authorized to grant an area variance where a property demonstrates three characteristic elements:

1. The subject property must demonstrate a unique physical characteristic of shape or size, exceptional narrowness or shallowness which existed as of the time of the original adoption of the Zoning Regulations, or that there exists exceptional topographical conditions or other extraordinary or exceptional situation or condition of property;
2. That the physical characteristic(s), or extraordinary or exceptional situation or condition of the property makes the strict application of the Zoning Regulations result in peculiar and exceptional practical difficulties to the owner of the property;
3. That the Board is able to grant the variance without substantial detriment to the public good and without substantial impairment of the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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EXTRAORDINARY OR EXCEPTIONAL SITUATION OR CONDITION OF PROPERTY

The Applicant submits that the Subject Property demonstrates extraordinary or exceptional situation or condition of property by virtue of the fact that it is the largest unimproved lot in its square of location which is so diagonally placed between 9th Street and Vermont Avenue as to abut 9½ Street, a named alley which features residentially developed lots with frontages on that “street”

The Subject Property at 5436 ft² is near three times the size of other abutting lots southeast of it on the 9th Street front of the square of location, and near four times the similarly located lots that are residentially improved and which feature frontages on the 9½ Street.

The Subject Property is the only unimproved lot so uniquely placed within its square to project the appearance of a through lot with two street frontages. This condition predates the adoption of the Zoning Regulations as of May 12, 1958, having always being a single lot of record.

The Property is abutted by a row of ten (10) lots with row dwellings which solely front on the 9½ Street, which result in the appearance of a street frontage, a significant point in the context of location within the greater U Street Historic District and the review of the proposed project by the Historic Preservation Review Board (HPRB).

The applicant submits that this peculiarity, which is unique to the Subject Property alone within its square, combined with its location within the Greater U Street Historic District, is the singular reason for its extraordinary or exceptional situation or condition.

PECULIAR AND PRACTICAL DIFFICULTIES TO OWNER OF PROPERTY

The Subject Property's exceptional condition or situation by the fact of its appearance as a through lot fronting on two streets, and its location within the Greater U Street Historic District combine to result in peculiar and practical difficulties to the owner of the property.

The Subject Property's unique characteristic as the only through-like lot within the portion of its square of location lying within U Street to the North, T Street to the South, 9th Street to the East, and 9½ Street to the West results in the peculiar and practical difficulty of satisfying the Historic Preservation Review Board's (HPRB's) recommendation of constructing the proposed building such that it is face-on-line at both its 9th Street and 9½ Street property lot lines, to ensure the continuous uniformity of the street frontage effect created by the existing condition.

The Zoning Regulations set forth in § 3202.3 the requirement that only one building shall be located on a single lot of record. The proposed construction is therefore compelled to connect by a meaningful connection, what would otherwise be two disparate buildings in order to be deemed a single building on its lot of record.

The applicant also intends to provide evidence to the record that HPRB set forth a height limitation more restrictive than imposed by the Zoning Regulations for the Zone District, in order to achieve a scale of building that is not incompatible with the prevailing scale of the surrounding buildings.

Whereas the C-2-B/Arts zone district allows a height up to a maximum sixty five feet (65 ft.) and potentially a maximum floor area ratio (FAR) of 4.5 with earned bonus density as

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prescribed in relevant sections, the height to which HPRB restricts the proposed building is 48 feet, and the proposed FAR is 2.89. The only option presented to the project given HPRB's restriction on vertical construction in light of the two objectives outlined above, is the horizontal and elastic stretch of the instant design. The Applicant contends that reasonable economic use of the property is otherwise constrained as a result of the more restrictive height imposed by HPRB than imposed by the Zoning Regulations and its attendant limitation on achievable density or FAR.

The foregoing objectives imposed on the project by HPRB, the Applicant contends precipitate the necessity for the relief from the limitation on lot occupancy and rear yard for which relief is sought before the BZA.

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**SUBSTANTIAL DETRIMENT TO PUBLIC GOOD AND SUBSTANTIAL
IMPAIRMENT OF INTENT, PURPOSE AND INTEGRITY OF THE ZONE
PLAN**

The BZA can grant the requested relief without substantial detriment to public good and substantial impairment of the intent, purpose and integrity of the zone plan for the following reasons:

- (a) The proposed project seeks to establish uses permitted as a matter of right for the zone districts; hence no use variance is sought;
- (b) In providing housing/work space units for artists, as outlined in Hamiltonian Artists mission statement, the proposed project is consistent with the objectives and purposes of the Arts Overlay District as set forth in its General Provisions sections, §§ 1900.2 (a) through (h);
- (c) The proposed project complies with the minimum required number of parking spaces set forth in § 2101.1;

- (d) The proposed project complies with all other requirements or provisions of the Zoning Regulations, save that which results in practical and peculiar difficulty upon the owner from the unique characteristic of the Subject Property;
- (e) The HPRB has approved the project for compatibility within the Greater U² Street Historic District;
- (f) The proposed project will improve a property which has otherwise been vacant and unimproved since prior to May 12, 1958

Special Exception Pursuant to § 3104.1 under § 411.3

“The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (formerly codified at D.C. Code § 5-424(g)(2) (1994 Repl.)), to grant special exceptions where, in the judgment of the Board, the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps....”

The proposed stairway enclosures are intended to serve the top story units only and to allow access to the modest recreational roof decks provided on the roof for these two units. These two enclosures are approximately 8½ feet above the roof or parapet. The third structure is an elevator overrun that is approximately 5 feet above the roof or parapet.

In rejecting a proposal to assemble these three separate structures within one enclosure of equal height in compliance with the provision of § 411.3, HPRB, based on the recommendation of review staff, concluded that the resulting monolithic structure would be inconsistent with the character and scale of the existing buildings in the historic neighborhood.

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WITNESS

The following witness will testify in support of the Application:

1. Paul So
2. Gregory Kearley.

CONCLUSION

The Applicant believes that based on all the foregoing reasons, and shall be further presented in the course of the hearing, the application satisfies its burden of proof for the relief sought and respectfully requests that the Board grant or approve the proposed project for the requested relief.

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