Law Offices
HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801

202-955-3000
FAX 202-955-5564
www.hklaw.com

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December 3, 2002

MARY CAROLYN BROWN
202-862-5990
mcbrown@hklaw.com

VIA HAND DELIVERY

Board of Zoning Adjustment for the
District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

Re: BZA Application No. 16959
Square 456, Lots 880, 878 and 41

Dear Members of the Board:

On behalf of the owners of Lots 880, 878 and 41 in Square 456, we are submitting herewith an original and twenty copies of their pre-hearing statement in support of the application for area variance relief in the above-referenced case.

Thank you for your consideration of these materials. We look forward to our hearing in this matter on December 17, 2002.

Very truly yours,

Carolyn Brown

Enclosure

cc: ANC 2C
David McGettigan, Office of Planning

BZA
Case No. 16959
Exhibit No. 24

Board of Zoning Adjustment
District of Columbia
CASE NO.16959
EXHIBIT NO.24A1

BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPLICATION OF:	)	
	)	
GALAPAGOS 456, LLC (Owner of Lot 878)	)	**BZA CASE NO. 16959**
575 7TH STREET, LLC (Owner of Lot 880)	)	
675 E STREET, LLC (Owner of Lot 41)	)	**ANC 2C**
	)	
AREA VARIANCE FROM THE ARTS AND	)	**HEARING DATE:**
ENTERTAINMENT-RELATED USES OF	)	**DECEMBER 17, 2002**
THE DD/C-4 DISTRICT IN SQUARE 456	)	
AT LOTS 878, 880 AND 41	)	
	)	

STATEMENT OF THE APPLICANT

I.
NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of Galapagos 456, LLC; 575 7th Street, LLC; and 675 E Street, LLC ("Owners" or "Applicants") in support of their application to the Board of Zoning Adjustment for a variance from the area requirements for arts and entertainment-related uses under section 1704.3 as requested herein in order to assist the Shakespeare Theater in expanding to the only available site in the Downtown Arts Overlay that can accommodate its programmatic requirements. The property is located in the DD/C-4 District at Lots 878, 880 and 41 in Square 456, at premises 625-27 E Street, N.W, 620 and 626 F Street, N.W., and 501-07 and 511-17 7th Street, N.W. The three lots are being developed pursuant to a Combined Lot Development covenant that apportions the required arts and housing uses for the entire site among two of the three parcels. The requested relief is necessary in order to allow the Shakespeare Theater to construct its new theater on Lot 878 without burdening the entire site with three times the amount of arts space otherwise required under the Downtown Development Overlay District.

II.
JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the "Board" or "BZA") has jurisdiction to grant the variance relief requested pursuant to D.C. Code § 6- 641.07 (2001 ed.) and sections 3103 of the Zoning Regulations (11 DCMR).

III.
BACKGROUND

A. Description of the Subject Property and Surrounding Area

The Subject Property consists of Lots 878, 880 and 41 in Square 456, the city block bounded by E Street, N.W., on the south; F Street, N.W., on the north; 7th Street, N.W., on the west; and 6th Street, N.W., on the east. (*See* plats attached at Exhibits A and B). Lots 880 consists of 58,980 square feet of land area is currently under construction with a major new redevelopment project known at Terrell Place comprised of office, retail and arts-related uses. It is located at the former Hecht Company Department Store Building and the "Gang of Four" historic buildings on 7th Street, N.W. Lot 41 consists of 9,361 square feet of land area and is also under construction with a residential building that includes arts uses. It is comprised of the Murray Building and the former "Insect Club" building. Located within the Downtown Historic District, both projects incorporate historic facades into the new designs pursuant to an order by the Mayor's Agent for Historic Preservation. Lot 878, consisting of 21,259 square feet of land area, is currently vacant. Lots 878 and 880 are part of Record Lot 40, which, together with Lot 879 (the AARP Building), contains a total land area of 146,021 square feet.

The three lots are located in the C-4 District, a high density commercial district designed for the downtown core that comprises the retail and office centers for both the District and the metropolitan area. 11 DCMR § 750. The site is also overlaid by the

Downtown Development ("DD") Overlay District, which is designed to promote the development of certain preferred uses, including arts and housing, in areas often dominated by commercial office space. 11 DCMR 1700.3(b). It specifically targets the development of residential, arts and entertainment-related uses in the Downtown Core area, and Square 456 in particular, and offers development bonuses to encourage such development. 11 DCMR §§ 1706.1(d) and (e), 1706.8(c), and 1706.7.

B. Description of Surrounding Area

The Subject Property is located in the central portion of Washington's downtown core, an area characterized by a mixture of high density commercial, office, retail, arts and residential uses. The southeast corner of Square 456 is improved with the headquarters building for the American Association of Retired Persons, a ten-story office structure completed in 1991. The northeast corner of Square 456 is occupied by the OBA Federal Building, a small-scale structure.

Immediately to the north of the Subject Property across F Street, N.W., is the MCI Center, one of the principle catalysts for redevelopment in the downtown core. To the south across E Street, N.W., is the large parcel transferred from the Pennsylvania Avenue Development Corporation to the Government Services Administration for a high density residential development. To the west across 7th Street is the former U.S. Tariff Commission Building, an early nineteenth century landmark designed by the celebrated American architect, Robert Mills. The Lansburgh Building, located at the southwest corner of 7th and E Streets, N.W., consists of a mixture of residential, retail and arts uses, including the current home of the Shakespeare Theater.

C. Project Description

1. DD District Requirements.

a. Historic Preservation.

Pursuant to section 1707.4(w) of the DD Overlay, and in order to protect the character of the Downtown Historic District, the western portion of Square 456 may not be developed to its full 10.0 FAR, but instead is limited to a density of 6.0 FAR. The land area on Lots 41 and 880 subject to the density limitation is 35,136 square feet. They are comprised of the former Hecht Company Building, the "Gang of Four" historic buildings (part of Lot 880), the Murray Building, and the former "Insect Club" building (Lot 41). The remainder of Lot 880 and all of Lot 878 may be developed to their full density potential of 10.0 FAR. Based on the density restrictions, the Subject Property may be developed with a maximum of 743,454 square feet of gross floor area. (*See* Combined Lot Development Covenant Preferred Use Analysis attached as Exhibit C.)

b. Residential Requirements.

Pursuant to section 1706.20 of the Zoning Regulations, no residential use is required on Lot 41. Portions of Lots 880 and 878, however, are subject to the housing requirements of the DD District. Those portions must provide on-site or account for off-site in a combined lot development no less than 2.0 FAR of residential use. Based on the 51,464 square feet of land area at Lots 880 and 878 subject to the housing requirement, 102,928 square feet of residential space must be constructed. Under the terms of the Combined Lot Development Covenant, the housing requirement is satisfied as follows:

0.8 FAR of the residential use requirement provided off-site pursuant to 11 DCMR § 1706.6(c) and satisfied by means of a $500,000 contribution pursuant to BZA Order in Application No. 16387 (September 2, 1998)	41,171 square feet

Off-set generated by provision of Bonus Arts uses, pursuant to 11 DCMR §§ 1704.8, 1704.10 and 1706.12	5,454 square feet
Residential Uses accounted for off-site at Lot 41 as part of a combined lot development	56,303 square feet
RESIDENTIAL USE REQUIREMENT OF THE SENDING LOT (51,464 s.f. x 2.0 FAR) TOTAL	102,928 Square Feet

The housing computations are also set forth in the Combined Lot Development Preferred Use Analysis attached as Exhibit C. A copy of the Combined Lot Development Covenant is attached as Exhibit D.

c. Arts Requirements.

Under section 1704.3, any new or altered building in the DD must devote not less than 1.0 FAR to arts and retail uses. However, under section 1704.3(b), that amount may be reduced to 0.5 FAR if the arts and retail uses are limited to those preferred under section 1704.3(a). Lots 880, 878 and 41 contain a total land area of 89,600 square feet, which generates a requirement for 44,800 square feet of space devoted to preferred arts uses. Any space that has ceiling heights of twelve feet or greater may be counted at 1.5 times the normal rate of square footage.

Under the Combined Lot Development Covenant, the arts requirements for Lots 880, 878 and 41 are being satisfied as follows:

Areas in Lots 880, 878 and 41 devoted to Arts Uses with a ceiling height greater than 12 feet, Earning 1.5 bonus (19,209.3 s.f. on the Lots 880 and 878 + 8,979.3 s.f. on Lot 41 = 28,187 s.f. x 1.5)	42,280 s.f.
Areas devoted to Arts Uses on the Lots 880 and 878 with a ceiling height of 12 feet or less	2,520 s.f.

0.5 FAR of Arts Uses to be provided
on Lots 880, 878, and 41 under § 1704.3(b)
(89,600 s.f. of land area x 0.5) 44,800 s.f.

The arts space computations are also set forth in the Combined Lot Development Preferred Use Analysis attached as Exhibit C.

Under the terms of the covenant, all of the arts requirements shall be satisfied on Lots 880 and 41, and no arts space is to be located on Lot 878. As a result of the covenant, all DD Overlay restrictions have, in effect, been lifted from Lot 878 so that it may be developed as a matter-of-right commercial office building.

2. Proposed Shakespeare Theater Development on Site.

After plans were already underway for Terrell Place and its residential component, and construction on the project had commenced, the Owners were about the possibility of developing Lot 878 as the expansion site for the Shakespeare Theater, instead of a commercial office building. Currently located in the Lansburgh Building at 7th and E Streets, N.W., the Shakespeare Theater has outgrown its space and has been seeking a second location for a larger theater. Ideally, the site would be located in the same immediate neighborhood in order to maintain proximity to the existing theater, which would remain in operation for smaller productions, community outreach and educational programs. After a thorough search of the downtown area, the only site identified as large enough to accommodate the expanded theater was Lot 878 in Square 456. In order to assist the theater in locating at this site, the city awarded the Shakespeare Theater a $19.7 million grant in November 2002 that is tied to Lot 878. Six million of that grant may be spent on planning, with the remainder to be allocated for construction and development.

The Shakespeare Theater must raise approximately $45 million by March 2003, which will allow it to purchase the property and pay for the shell space in the new

commercial mixed-use office/theater building to be developed on Lot 878. To date, it has raised approximately $40 million of the required amount. Another $33 million will be required to finish the space for theater use.

Upon completion of the theater, the combined lot development in Square 456 would provide approximately 60,000 square feet of preferred theater space, in addition to the 30,708 square feet of gross floor area already being provided on Lots 880 and 41. (*See* Combined Lot Development Covenant Preferred Uses Analysis at Exhibit C.) Without the requested relief, the Owners would end up providing 90,708 square feet of preferred arts space, or almost three times the required amount, in addition to the $1.5 million payment.

Actual completion of the theater, however, is not expected until approximately 2006. In the meantime, however, Terrell Place and the residential building, which are presently under construction, are expected to be completed in September 2003. Certificates of Occupancy ("C of O") cannot be issued for either building, though, unless and until the owners can demonstrate compliance with the arts requirements. Consequently, the Owners seek relief from the arts space area requirements at Terrell Place and the residential building and proposed to satisfy the requirement in the interim through a $1.5 million contribution to help ensure its location at Lot 878. The zoning equivalent of 7,000 square feet of arts space would remain at Terrell Place. Upon completion of the theater space, the combined lot development with the requested relief would still exceed the 30,708 square feet requirement for arts space on the site by more than double that amount. Because much of the theater space will have ceiling heights of more than twelve feet, under section 1704.10, which allows this space to be counted at 1.5 times the normal rate, the amount of preferred arts space could be as high as 90,000 square feet.

V.
THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCES FROM THE FLOOR AREA RATIO, LOT OCCUPANCY, COURT WIDTH AND PARKING REQUIREMENTS.

A. Standard of Review

Under D.C. Code § 6-64107(g)(3) (2001 ed.) and 11 DCMR 3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

> (1) the property is unique because, *inter alia*, of its size, shape or topography; (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zoning plan.

French v. District of Columbia Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995), *quoting Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). *See, also, Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment,* 534 A.2d 939 (D.C. 1987).

The burden of proof for non-profit or public service organizations, however, such as the Shakespeare Theater, is not as great for other applicants of variance relief. The D.C. Court of Appeals has held that:

> [T]he BZA may be more flexible when it assesses a non-profit organization which is a well established element of our governmental system. As Professor Anderson has observed, public need for the use is an important factor in granting or denying a variance and "'the apparently objective standards of the enabling acts are applied differently to the several kinds of uses...."

Monaco v. District of Columbia Board of Zoning Adjustment, 407 A.2d 1091, 1098 (D.C. 1979) *quoting* R. ANDERSON, AMERICAN LAW OF ZONING § 14.78 (1968); *accord Draude v. District of Columbia Board of Zoning Adjustment*, 527 A.2d 1242, 1255-56 (D.C. 1987). Thus, the Office of Planning and the Board of Zoning Adjustment should review the variance application with increased flexibility under this lesser standard of review.

1. Extraordinary or Exceptional Situation or Condition Inherent in the Property.

As described by the Office of Planning in its 1998 report in BZA Application No. 16387, the Square 456 property is affected by the following exceptional circumstances:

> The exceptional conditions which affect this property come from a combination of the requirements of the Zoning Regulations, imposed on the site after development had already begun on the AARP building, and the constraints arising from the historic preservation requirements that derive from D.C. Law 2-144. The DD District is one of the most comprehensive and complicated districts in the current Zoning regulations. The separate subarea requirements must be read in conjunction with each other and the overlaps make compliance difficult. The applicant has advised the Office of Planning that the applicant has been working for almost ten years to understand the DD overlay; this property is the only privately owned site to be affected by the three previously mentioned overlays [historic preservation, housing and arts uses]. This situation is compounded by the design and preservation requirements that came out of the process under D.C. Law 2-144. The maximum FAR is less than the maximum permitted. The building has numerous features that would not be present if the site were not in a historic district, including floor levels that do not line up, more elevators including shuttle elevators, façade restoration costs and setbacks at upper floors which would otherwise not be included.

Memorandum from the Office of Planning to the Board of Zoning Adjustment in BZA Case No. 16387, August 25, 1998, at 6. These exceptional and extraordinary conditions continue to affect the site and create practical difficulties for the applicants, as described in greater detail below.

Extraordinary and exceptional conditions are also found at the property due to the unique relationship the proposed use has with the site and the surrounding area. The Shakespeare Theater proposal for Square 456 has a unique relationship with subject property by virtue of a $19.7 million grant from the District of Columbia to locate on this specific site. Additionally, the proposed Shakespeare Theater site is located within one block from its Lansburgh Building location, thereby allowing it to maintain both sites as a cohesive, critical mass in the theater spine of the downtown area. The proposed site is also closely tied to the

other developments in the block by virtue of a Combined Lot Development Covenant and a Development Agreement. The D.C. Court of Appeals has held that such unique relationships with the site, including close proximity to other related institutions, are factors that establish exceptional or extraordinary conditions under the first prong of the area variance test. In *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091 (D.C. 1979), the court found that Republican National Committee's connection with and need to be in close proximity to Congress constituted a unique circumstance supporting its area and use variance application to extend the RNC office located in an R-4 District bordering the Capitol grounds. *Monaco*, 407 A.2d at 1097-98.

The fact that other buildings have already been or are being constructed on the Square 456 site is another factor which may be considered in finding uniqueness. *Id.*, at 1099; *see also Clerics of Saint Viator, Inc. v. District of Columbia Board of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974) (existing structures are as important as topography in creating "other extraordinary or exceptional situation or condition of a specific piece of property"). Here, the site for the proposed Shakespeare Theater is located on Record Lot 40 in Square 456, which also includes the existing AARP building, and a second building under construction known as Terrell Place. It is also directly tied to the residential building under construction at Lot 41 in Square 456 through the Combined Lot Development covenant allocating the arts and housing requirements among the various buildings on the site. The layout and configuration of Terrell Place have unique features which affect development on the remainder of Lot 40. In particular, the north-south arcade that runs from F Street through the center of the square, aligning with the AARP Building arcade, is a unique element of the Combined Lot Development that creates greater flexibility in locating a theater on the site. By virtue of this existing condition, a new structure on the unbuilt

portion of Lot 40 can devote its entire F Street frontage to the theater lobby area, which is necessary for the successful functioning of the space, while the office lobby can be located off the arcade. The size and the shape of the existing improvements dictate the only location that the theater can occupy on this site, which does not provide an adequate office lobby without using space owned by the adjacent office building to the west. Such an arrangement, however, requires the cooperation of the adjacent property owner, which also creates an exceptional circumstance for this parcel. This extraordinary configuration uniquely ties the theater and its supporting office space to this site.

The zoning history of the site also contributes to the uniqueness of the property. In *Monaco,* the RNC, after discussions with the Zoning Commission and the Architect of the Capitol, determined to seek variance relief to locate its offices in a residential district. The Board of Zoning Adjustment granted variance relief for the contiguous RNC parcels, and one building was constructed under the granted relief. Thereafter, the variance relief for the second parcel expired and RNC returned to the Board to renew the variance. The court held that past acts of the zoning authorities may constitute an extraordinary circumstance inherent in the property. *Monaco*, 407 A.2d at 1100; *accord De Azcarate v. District of Columbia Board of Zoning Adjustment*, 388 A.2d 1233, 1238 (D.C. 1978); *see also Jayne Estates, Inc. v. Raynor*, 239 N.E.2d 713, 717 (N.Y. 1968). Additionally, private covenants may be properly considered in variance cases. *See Capitol Hill Restoration Society v. Zoning Commission*, 380 A.2d 174, 184-85 (D.C. 1977).

Here, Square 456 has been the subject of several complex overlays, zoning cases, development agreement and covenants that intertwine development activity on the site, including:

- The Downtown Arts District (11 DCMR § 1704.2), the Residential and Mixed Use Development (11 DCMR § 1706.6), and the Historic Preservation provisions (11 DCMR §1707.4(w)) of the Downtown Development District requirements of the Zoning Regulations, the only privately held property so encumbered by all three "subareas" of the DD District.

- Board of Zoning Adjustment for the District of Columbia Order No. 16387 dated December 3, 1998, and modified on November 16, 2000, approving certain special exceptions and variances for the Combined Lot Development.

- Board of Zoning Adjustment Order No. 16681 dated April 18, 2001, approving certain special exception and variance relief for the construction of a residential building with at-grade and below-grade level arts use on Lot 41 (former Lots 37 and 39).

- Order dated September 11, 1996, issued by the Mayor's Agent approving the partial and total demolition of certain buildings located on the Record Lot and on Lot 41 (former Lots 37 and 39), and conceptual designs for Terrell Place and other structures on Lot 41.

- Agreement Regarding Development Rights by and between Galapagos 456, LLC and Galapagos II, LLC, and Phase I 456 Associates dated July 26, 2000, and recorded among the Land Records of the District of Columbia as Instrument No. 2000067576, as amended by the First Amendment to Agreement Regarding Development Rights dated November 20, 2000, and recorded among the Land Records of the District of Columbia as Instrument No. 2000114770, and as further amended by the Second Amendment to the Agreement Regarding Development Rights dated March 29, 2001, and recorded among the Land Records of the District of Columbia as Instrument No. 2001030517.

- The Combined Lot Development Covenant by and among 575 7th Street, LLC, 675 E Street, LLC, Galapagos 456 LLC, and the District of Columbia, pursuant to section 1708 of the Zoning Regulations, to allow the transfer of required preferred uses from certain portions of Record Lot 40 to Record Lot 41 in Square 456 (the "Covenant").

In sum, the confluence of the zoning history including the three subareas of the DD, the existing structures on the site and their particular layouts, the unique relationship the proposed use has with the site, and development agreements and covenants affecting the site all create unusual and exceptional circumstances for the development of the unbuilt portion of Lot 40. All these factors must be carefully balanced by the Board in a way that does not

otherwise result in significantly stricter arts requirements on this site than any other site in the DD Arts Overlay, particularly when this is the only site with the size and location to meet the needs of the Shakespeare Theater.

2. Practical Difficulties Resulting from Uniqueness of Property

The confluence of these unique factors listed above create practical difficulties in locating the Shakespeare Theater on this site without some relief from the arts requirements under the provisions of the Downtown Development ("DD") Overlay District. The Square 456 site is virtually the only location large enough within the DD District that can support the programmatic requirements of the theater. By siting the Shakespeare Theater on the remaining unbuilt portion of Lot 40, absent variance relief, the Square 456 site will end up providing almost three times the amount of preferred arts space, thereby either forcing the property owners in Square 456 to support a disproportionate burden of preferred arts uses or have the Shakespeare Theater risk losing a $19.7 million grant from the city and the opportunity of relocate to this site.

The very creation of arts requirements under the DD recognizes that these uses are not economically viable on their own and must be supported by income-producing properties. Here, the theater use will only be possible because of the income-producing office space that will be located in the upper floors of the new building, and grants and other fundraising on behalf of the theater. The balancing of the restrictions under the three DD subareas that uniquely affect Square 456 – historic preservation, arts uses and housing – make it practically difficult for the site to support additional arts use without shifting the requirements from Terrell Place and the residential component to the Shakespeare Theater portion of the parcel.

Because funding needs will prevent the completion of the finished theater space until approximately the year 2006, and in order to allow a Certificate of Occupancy to be issued for Terrell Place and the Lot 41 residential component upon their completion in 2003, the applicants propose as part of this application to meet their on-site arts obligations through a $1.5 million payment to the Shakespeare Theater and the retention of the zoning equivalent of approximately 7,000 square feet of preferred arts space at Terrell Place. This payment will help ensure that the arts requirements for Lots 40 and 41 will be fulfilled on site.

In so doing, the Combined Lot Development would ultimately provide approximately 67,000 square feet of space devoted to preferred arts uses, or still more than 50% of the minimum required amount. Because the Shakespeare Theater space may potentially be comprised entirely of space with ceiling heights of more than twelve feet, it would provide the zoning equivalent of 90,000 square feet of space.

While such a reallocation of arts space could normally be accomplished through an amendment to the Combined Lot Development Covenant, the timing and sequence of construction on the site makes that option impossible. To date, the Shakespeare Theater has raised approximately $40 million, which is just $5 million shy of the $45 million needed to purchase the land and construct the shell space for the theater. Another $33 million is needed to finish the space for theater use. Actual completion of the theater is not expected until approximately 2006. In the meantime, however, Terrell Place and the residential building are expected to be completed in September 2003. Certificates of Occupancy ("C of O") cannot be issued for either building, though, unless and until the owners can demonstrate compliance with the arts requirements. If completion of the theater were required before any C of O could be issued, there would be an unreasonable delay of three years or more before the buildings could be occupied, resulting in a great financial burden to

the owners and the complete inability of Terrell Place to meet its lease obligations. Continued vacancy along this block of 7th Street would also undermine the purpose and intent of the DD District and the goals of the city for a vibrant, living Downtown. To avoid such unacceptable and impossible financial consequences, the Terrell Place owners would be forced to abandon their support of the Shakespeare Theater on this site. Thus, without the requested variance relief, the owners are left in the untenable position of being the only privately-held site in the DD District that must provide over three times the arts requirement, which is impracticable and unduly burdensome.

Accordingly, the owners are seeking an area variance from the arts requirements during this interim period. The owners of Terrell Place request relief to lease out space formerly identified for preferred arts uses to commercial (Section 1710 and 1711) uses and satisfy the arts requirement through conditions to the Board's order and a $1.5 million payment to the Shakespeare Theater, to be held in escrow, to help ensure its location at this site. Upon completion of the theater space, the property would be fully compliant with the arts requirements of the DD District by providing approximately twice the required space devoted to preferred arts uses.

Under the $19.7 million grant agreement with the District of Columbia, the Shakespeare Theater must begin construction on the theater space in Square 456 by November 15, 2008. In the event the theater does not locate in Square 456 because it is unable to raise the remaining necessary funds, the owners propose alternative means of complying with the arts requirements. The theater anticipates raising the additional $5 million needed to purchase and close on the property by March 2003. The theater would then need to have commitments by 2004 for the remaining $33 million to begin build-out of the space. If a building permit to commence work on the project is not issued by 2004, the

arts requirements for the property would revert to the Terrell Place development and the $1.5 million payment would be returned to the Terrell Place owners.

Any such reversion would be phased in over a period of time. Within the first twelve months after notification from the city that reversion is necessary, the applicants would restore 30% of the total required arts space, or the zoning equivalent of approximately 15,000 square feet, at Terrell Place. Thereafter, the owners would return the balance the basement and first floor space identified for arts space to required arts uses as the commercial leases expired. The owners agree to limit the initial lease terms for the commercial uses to ten years, with a maximum of two five-year options for renewal. These shorter lease terms would help ensure that preferred arts uses would return to the Terrell Place development within a reasonable time period.

Alternatively, the $1.5 million payment being held in escrow could be redirected to the Cultural Development Corporation for use in the development of different arts space in the downtown sector. This $1.5 million contribution would satisfy the arts requirements for Square 456 and the commercial leases at Terrell Place would not need to revert to arts space.

4. No Detriment to Public Good or Intent, Purpose and Integrity of Zone Plan

The proposed area variance will trigger significant public good without substantially impairing the intent or purpose of the zoning laws. By allowing the reallocation of arts space from Terrell Place to the Lot 878 development, in conjunction the proposed options for the use of arts space over time or with a $1.5 million contribution to the Shakespeare Theater, one of the most complex development sites in the Downtown Development District will remain economically viable while at same time providing more than the required amount of preferred arts uses downtown. It will ensure that one site within the DD District is not unfairly burdened with more than its required share of subsidized art space. It will also

promote the timely occupancy of buildings on 7th Street that have remained vacant for more than a decade. Similarly, it will help fulfill the goals of the Office of Planning and the Mayor to locate the Shakespeare Theater on this site, and satisfy the intent and purpose of the DD District. The reversion alternatives will further ensure that the purpose and integrity of the zone plan are not compromised.

VI.
COMMUNITY CONTACT

The Owners will meet with Advisory Neighborhood Commission 2C on Wednesday, December 4, 2002. It is anticipated that the ANC will be able to file its report to the Board of Zoning Adjustment seven days in advance of the hearing.

VII.
EXHIBITS IN SUPPORT OF THE APPLICATION

Exhibit A:	Portions of the Sanborn Atlas, Baist and Zoning Maps showing the Subject Property highlighted;
Exhibit B:	Diagram of Property Subject to the Combined Lot Development Covenant;
Exhibit C:	Combined Lot Development Covenant Preferred Use Analysis;
Exhibit D:	Combined Lot Development Covenant;
Exhibit E:	Outlines of Witness Testimony.

VIII.
WITNESSES

A. Robert O. Carr, CarrAmerica Urban Development, on behalf of the Owners;

B. Nicholas T. Goldsborough, Managing Director, Shakespeare Theater

C. Representative of Smith Group Architects;

D. Christopher Reutershan, Concord Partners;

E. Steven E. Sher, Director of Land Use and Zoning Services, Holland & Knight LLP.

IX.
CONCLUSION

Fore the reasons stated above, the requested relief meets the applicable standards for an area variance under the Zoning Regulations. Accordingly, the Owners respectfully requests the Board to grant the application.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: _____
Norman M. Glasgow, Jr.

By: _____
Mary Carolyn Brown

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006
(202) 955-3000

December 3, 2002

WAS1 #1141090 v1

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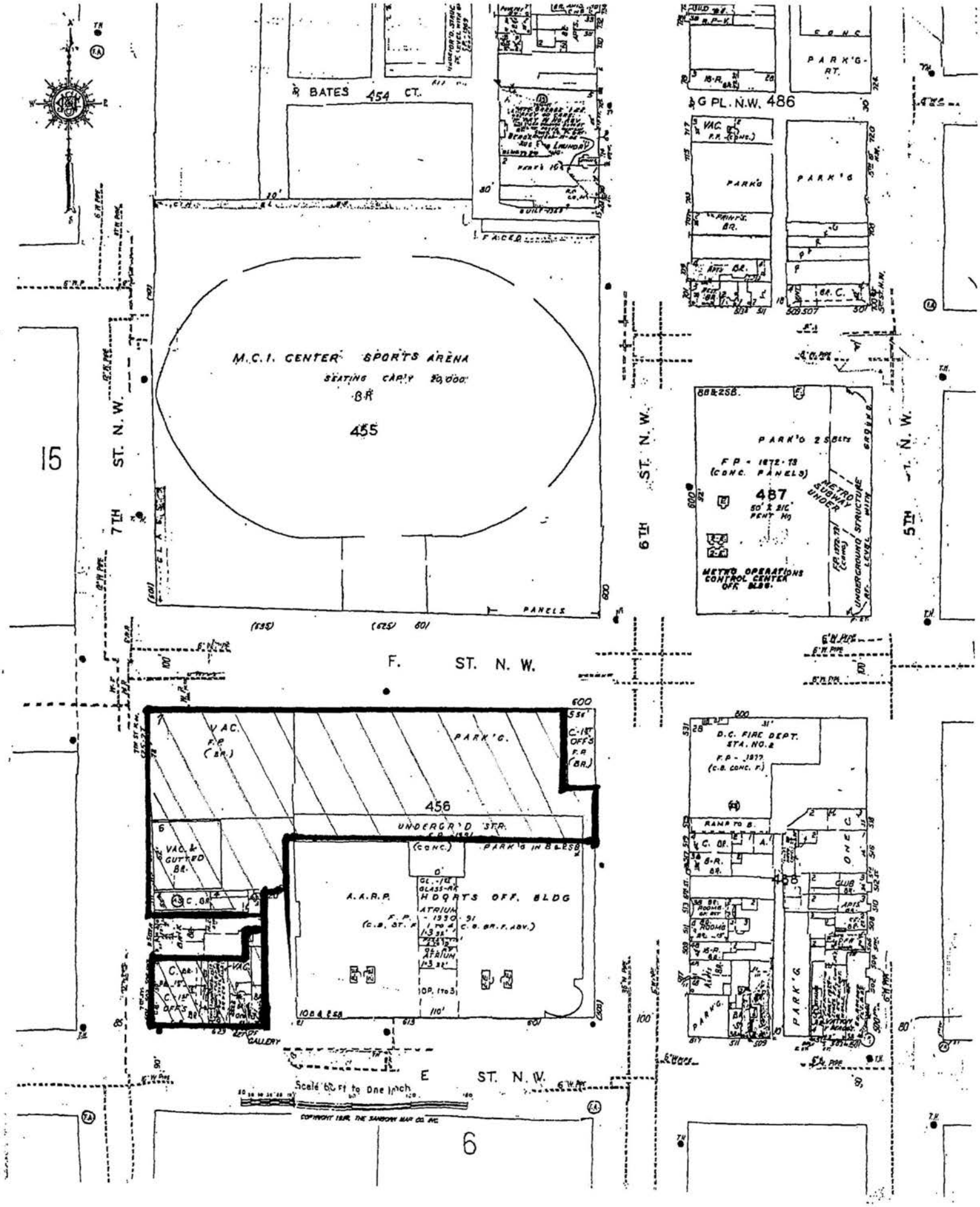
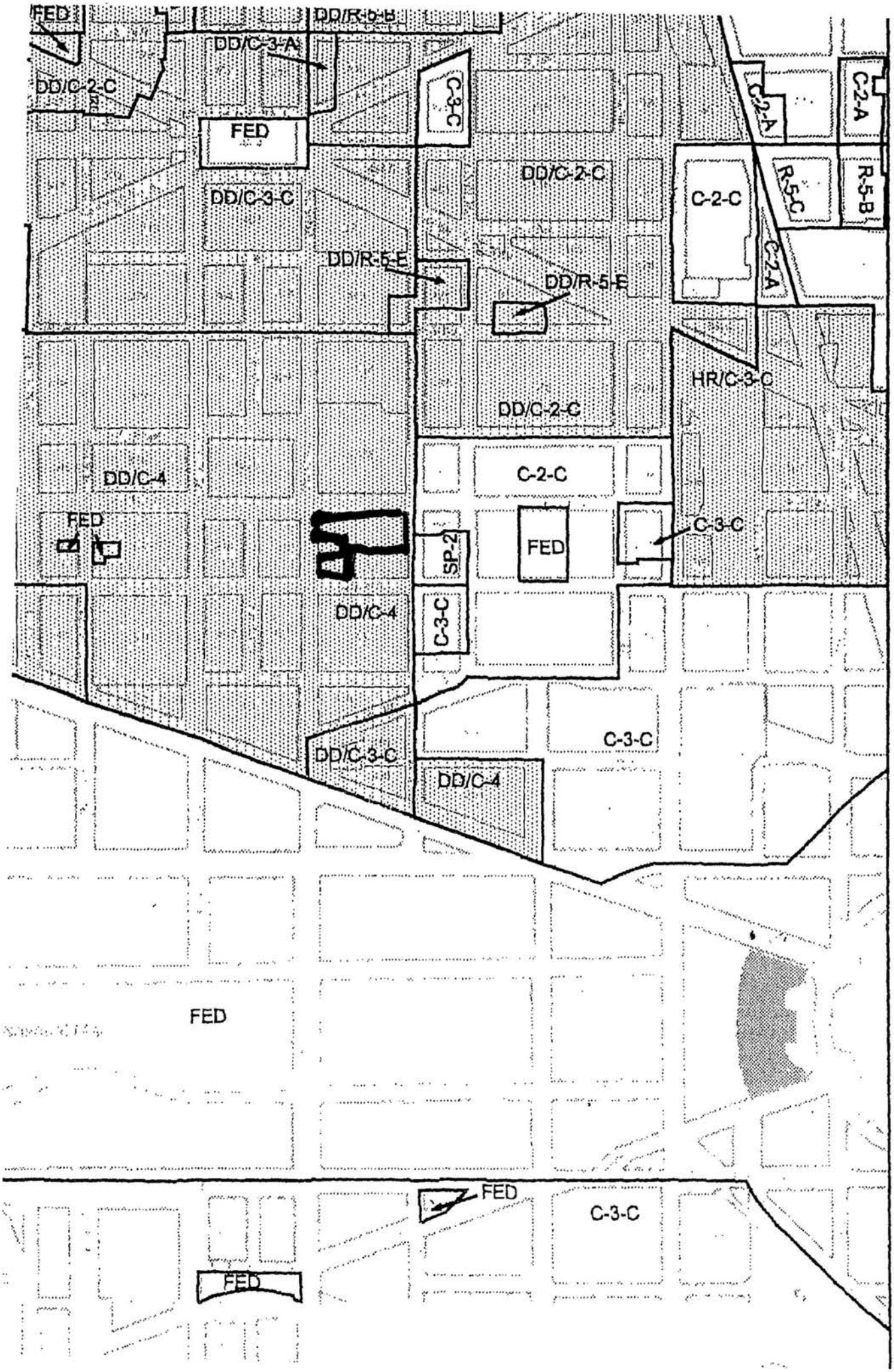
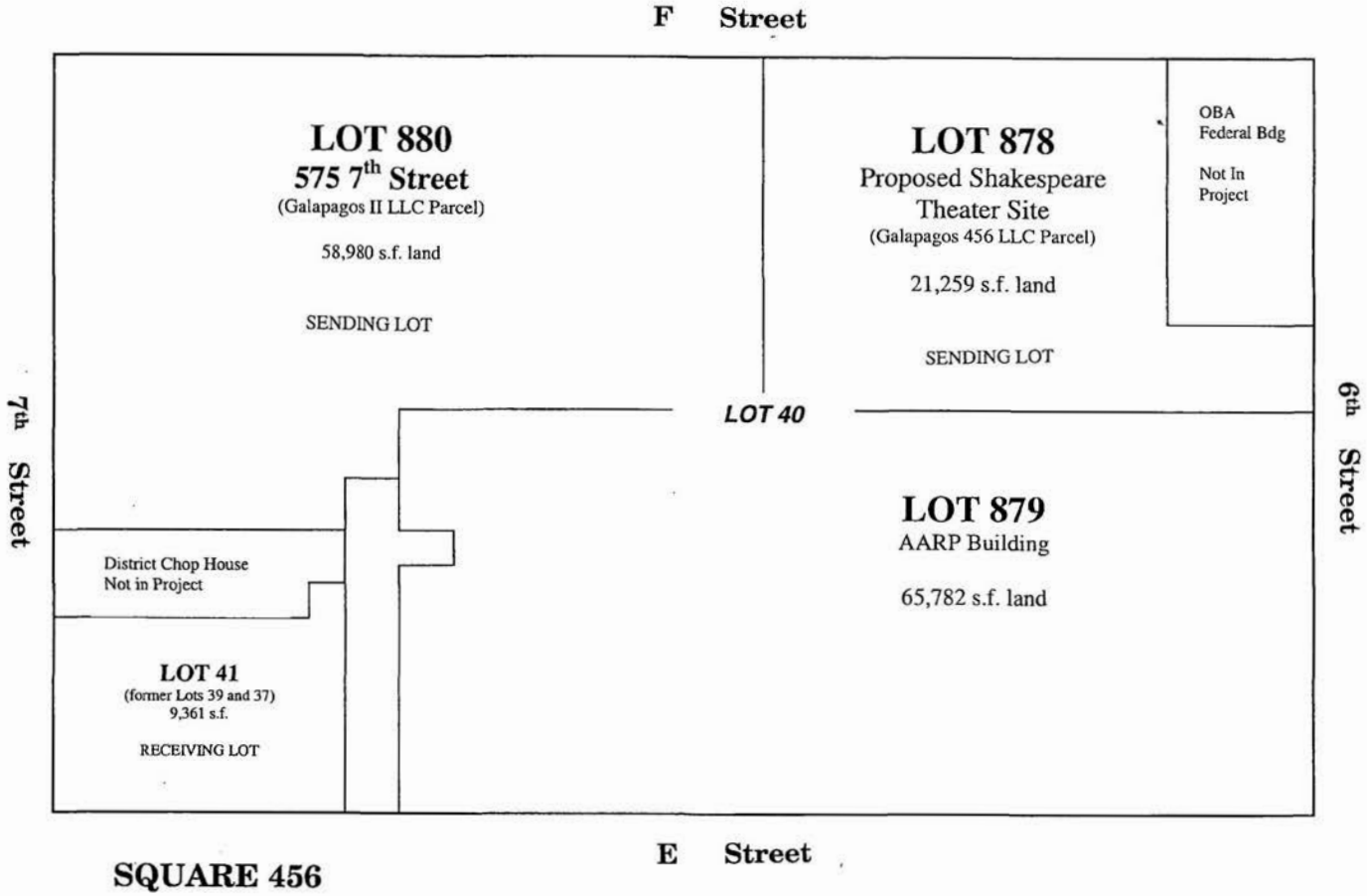

BATES 454 CT.
G PL. N.W. 486
M.C.I. CENTER SPORTS ARENA
SEATING CAP'Y 20,000
B.R.
455
15
7TH ST. N.W.
6TH ST. N.W.
5TH ST. N.W.
F. ST. N.W.
E ST. N.W.
PARK'G
VAC.
456
UNDERGR'D STR.
A.A.R.P.
HDQRTS OFF. BLDG
ATRIUM - 1990
METRO OPERATIONS CONTROL CENTER OFF. BLDG.
METRO SUBWAY UNDER
UNDERGROUND STRUCTURE
487
D.C. FIRE DEPT. STA. NO. 2
488
Scale 60 Ft to One Inch
6

Exhibit A


FED
DD/R-5-B
DD/C-3-A
DD/C-2-C
C-3-C
C-2-A
C-2-A
FED
DD/C-2-C
R-5-C
R-5-B
DD/C-3-C
C-2-C
C-2-A
DD/R-5-E
DD/R-5-E
HR/C-3-C
DD/C-2-C
C-2-C
DD/C-4
FED
C-3-C
FED
SP-2
DD/C-4
C-3-C
C-3-C
DD/C-3-C
DD/C-4
FED
FED
C-3-C
FED
See Map 11




F Street
LOT 880
575 7th Street
(Galapagos II LLC Parcel)
58,980 s.f. land
SENDING LOT
LOT 878
Proposed Shakespeare Theater Site
(Galapagos 456 LLC Parcel)
21,259 s.f. land
SENDING LOT
OBA
Federal Bdg
Not In Project
LOT 40
7th Street
6th Street
LOT 879
AARP Building
65,782 s.f. land
District Chop House
Not in Project
LOT 41
(former Lots 39 and 37)
9,361 s.f.
RECEIVING LOT
E Street

SQUARE 456



Combined Lot Development Covenant
Preferred Uses Analysis

Site Area/FAR			
Lot**	SF	FAR	FAR Feet
Lot 878 and part of Lot 880	51,464	10	514,638
Part of Lot 880	28,775	6	172,650
Lot 41	9,361	6	56,166
Total Available	**89,600**		**743,454**

** Lot 878 (21,259sf) is the eastern portion of former Lot 869 which had a 10.0 FAR.
Lot 880 (58,980sf) includes the western portion of former Lot 869 (30,205sf)
and all of former Lot 868 (28,775sf) which had a 6.0 FAR.
Lot 41 is the consolidation of former Lots 37 and 39 which each had a 6.0 FAR.

Project FAR	
Office/Retail	**GSF**
Hechts/GOF/New West (Carr - Lot 880)	459,501
New East (G&R - Lot 878)	222,500
Residential/Retail (Lot 41)	
Residential FAR	56,303
Arts Retail @ Murray and Insect Club	5,150
Total GSF/Project FAR	**743,454**

HOUSING	
Housing Requirement	
2 FAR (on Lot 878 + part of Lot 880 only, totaling 51,464sf;	102,928
6 FAR lots are exempt)	
Adjustments	
.8 FAR For Affordable Housing Contribution	(41,171)
.1 FAR from On-Site Bonus Density (Arts)	(5,454)
Total On-Site Housing Requirement	**56,303**

Achieved Housing	
Murray/Insect Club	**56,303**

ARTS	
Arts Requirement	
1 FAR or	89,600
.5 FAR with 1704.3(a) uses	44,800
Total Requirement	**44,800**
Preferred Arts Allocation w/ >12' ceilings (GSF)*	
Hechts/GOF(incl. B-1) (19,209.3 sf x 1.5 FAR)	28,814
Murray and Insect Club (incl. B-1) (8979 sf x 1.5 FAR)	13,469
Preferred Arts Allocation w/ <12' ceilings (GSF)	
New West	2,520
Total GSF provided	**44,802**

(Exhibit D to the Combined Lot Development Covenant prepared 12/21/01)

12/2/20026:54 PM



COMBINED LOT DEVELOPMENT COVENANT

THIS COMBINED LOT DEVELOPMENT COVENANT ("Covenant") is made as of the 25th day of February, 2002, by and between 575 7th STREET, LLC, a Delaware limited liability company ("575 Commercial") and 675 E STREET, LLC, a Delaware limited liability company ("675 Residential") and GALAPAGOS 456 LLC, a District of Columbia limited liability company ("Galapagos 456") (hereinafter collectively called the "Developers"); and the DISTRICT OF COLUMBIA, a municipal corporation acting in its own name, or by and through its agencies, departments or instrumentalities, whether or not such agencies, departments or instrumentalities are specifically identified herein ("District" or "District and its agencies, departments or instrumentalities"). Developers and the District hereby ratify, affirm and agree to the following terms, conditions, covenants, warranties and obligations, including but not limited to, all recitals.

DEFINITIONS

1. "Approved Project" – the development project approved by the District of Columbia Board of Zoning Adjustment ("BZA") by Orders in Application Nos. 16387 and 16681, copies of which are attached hereto as Exhibit C, and the District of Columbia Historic Preservation Review Board ("HPRB") for Lots 40 and 41 in Square 456.

2. "Receiving Lot" – Lot 41 (previously known as Lots 37 and 39) in Square 456, comprising an area of approximately 9,361 square feet of land. Pursuant to section 1706.20 of the District of Columbia Zoning Regulations (Title 11, D.C. Municipal Regulations ("DCMR")), no residential use is required on Lot 41. Pursuant to this covenant, however, Lot 41 will receive approximately 56,303 square feet of required residential space from the "Sending Lot," as herein defined. Approximately 5,858 square feet of "Arts Uses," as herein defined, will also be constructed on Lot 41.

AFTER RECORDING RETURN TO:
Holland & Knight LLP
2099 Pennsylvania Ave. N.W.
Washington, D.C. 20006
Attn: Norman M. Glasgow, Jr.

3. "Galapagos Parcel" – that Part of Lot 40 (being also known as Assessment & Taxation Lot 878) which will be retained by Galapagos 456 and containing approximately 21,259 square feet of land area and described in Exhibit A.

4. "575 Parcel" – that portion of the Sending Lot (being also known as Assessment & Taxation Lot 880) which, as of the date hereof, is owned by 575 Commercial and is described in Exhibit B.

5. "Off-Site Housing Receiving Lots" – The 0.8 floor area ratio ("FAR") of the housing requirement under 11 DCMR §§ 1706.6(b) and (c), and 1706.23, fulfilled by Developer pursuant to the provisions of BZA Orders in Application No. 16387 (Summary Order dated December 3, 1998, and Modification Order dated November 16, 2000), copies of which are attached as Exhibit C.

6. "Arts Uses" – those arts uses enumerated in section 1704.3(a) of the Zoning Regulations, to which the Developers will devote at least 0.5 FAR of gross floor area equivalent in the Approved Project to fulfill the requirements section 1704.3(b) and section 1704 generally.

7. "Residential Use" - the residential use required under 11 DCMR § 1700 et seq.

8. "Sending Lot" – Part of Lot 40 in Square 456 consisting of collectively the 575 Parcel and the Galapagos Parcel (see Exhibits A and B). The Sending Lot will not be improved with the residential apartment building but with commercial, arts and retail uses only. The Sending Lot is sending approximately 56,303 square feet of Residential Use and approximately 5,858 square feet of Arts Use to the Receiving Lot.

RECITALS

WHEREAS, Developers are the record owners of the Sending Lot and the Receiving Lot located in Square 456; and

WHEREAS, the Developers have provided to the District of Columbia Office of Planning ("Office of Planning") an up-to-date title report(s) evidencing that Developers have good and marketable title in fee simple to the Sending Lot and Receiving Lot as defined above; and

WHEREAS, the Zoning Commission for the District of Columbia, pursuant to its authority under the Zoning Act, D.C. Official Code §§ 6-641 et seq. (2001), on January 18, 1991, enacted amendments to the Zoning Regulations ("Zoning Regulations") in Zoning Commission Order No. 681, Case No. 89-25, as amended by Zoning Commission Order Nos. 681-A through 681-G, and Order No. 780, establishing and mapping a Downtown Development District ("DD District"), which DD District amendments were codified at 11 DCMR §§ 1700 to 1712, incorporated herein by reference and referred to as the "DD Regulations". References in this Covenant to the DD Regulations and to the Zoning Regulations shall be to the DD Regulations and Zoning Regulations in effect as of the date of this Covenant; and

WHEREAS, the purpose of the DD District is to help accomplish the land use and development policies of the District's Comprehensive Plan relating to the core of the Downtown area, which purpose was further elaborated at 11 DCMR § 1700.2; and

WHEREAS, the DD Regulations establish the ability through linkage to transfer uses required on a lot, the Sending Lot, to be provided on the Receiving Lot so that the entire housing requirement could be provided on a single lot pursuant to 11 DCMR § 1708, *et seq.*; and

WHEREAS, the Sending Lot and the Receiving Lot are located in the DD/C-4 Zoning District within the same square; and

WHEREAS, the District has stated a goal of facilitating the production of housing in the downtown area and is desirous of taking actions to facilitate that goal; and

WHEREAS, 575 Commercial and Galapagos 456, as a part of redevelopment of their sites, propose to construct a retail, arts and office building and it is this building and portions thereof which generate a housing and arts requirement on the Sending Lot; and

WHEREAS, Lot 40 includes a total of 51,464 square feet of land area subject to the residential use requirement pursuant to 11 DCMR §§ 1700.5, 1704.3, 1706.6(b), and 1706.12, as well as a portion not subject to a residential use requirement by operation of 11 DCMR §§ 1700.5, 1706.20, 1704, and Chapter 20; and

WHEREAS, pursuant to 11 DCMR § 1706.6(b), a building constructed on that part of Lot 40 subject to residential use requirements must provide on-site or account for off-site in a combined lot development no less than 2.0 FAR of residential use, so that the residential use requirement generated by Lot 40 constitutes 102,928 square feet of space (51,464 s.f. x 2.0 FAR); and

WHEREAS, the portion of the Sending Lot subject to the residential use requirement (51,464 square feet of land area) has been consolidated in a larger single record lot through the subdivision process and is to be improved with a single building containing retail, arts, office, and parking facilities, such that the residential use requirement of the Sending Lot shall be satisfied as follows:

0.8 FAR of the residential use requirement provided off-site pursuant to 11 DCMR § 1706.6(c) and satisfied by means of a $500,000 contribution pursuant to BZA Order in Application No. 16387 (September 2, 1998)	41,171 square feet
Off-set generated by provision of Bonus Arts uses, pursuant to 11 DCMR §§ 1704.8, 1704.10 and 1706.12	5,454 square feet
Residential Uses accounted for off-site at Lot 41 as part of a combined lot development	56,303 square feet
RESIDENTIAL USE REQUIREMENT OF THE SENDING LOT (51,464 s.f. x 2.0 FAR)	102,928 Square Feet TOTAL

The development computation for the Galapagos Parcel, the 575 Parcel and Lot 41 are shown on the attached Exhibit D.

WHEREAS, pursuant to 11 DCMR § 1704.3(b), the Sending Lot (80,239 square feet of land area) and the Receiving Lot (9,361 square feet of land area) may satisfy the provisions of § 1704.3 by providing 0.5 FAR devoted to Arts Uses listed in §1704.3(a), or 44,800 square feet of space devoted to Arts Uses ((80,239 + 9,361) x 0.5 FAR) ;

WHEREAS, development on the Sending Lot and Receiving Lot will devote areas for Arts Uses having a ceiling height of greater than twelve feet that may be counted at a rate of 1.5 times the actual square footage devoted to Arts Uses pursuant to 11 DCMR 1704.10, such that the requirements of 11 DCMR § 1704.3 shall be satisfied as follows:

Areas in the Sending and Receiving Lots devoted to Arts Uses with a ceiling height greater than 12 feet, Earning 1.5 bonus (19,209.3 s.f. on the Sending Lot + 8,979.3 s.f. on the Receiving Lot = 28,187 s.f. x 1.5)	42,280 s.f.
Areas devoted to Arts Uses on the Sending Lot with a ceiling height of 12 feet or less	2,520 s.f.
0.5 FAR of Arts Uses to be provided on Sending and Receiving Lots under § 1704.3(b) (89,600 s.f. of land area x 0.5)	44,800 s.f.

WHEREAS, the Developers shall devote at least 44,800 square feet of space, as computed under Chapter 17 of the Zoning Regulations, to Art Uses in satisfaction of the requirements of 11 DCMR § 1704.3. The Receiving Lot shall devote at least 8,979 square feet to Arts Uses, provided that the entire space shall have a ceiling height of greater than 12 feet, and the Sending Lot shall devote at least 21,729 square feet of space to Arts Uses, provided that at least 19,209 square feet of that space shall have a ceiling height of greater than 12 feet and shall therefore earn a 1.5 bonus; and

WHEREAS, the Developers shall devote 0.5 FAR to Arts Uses set forth in 11 DCMR § 1704.3(a), as permitted under 11 DCMR § 1704.3(b); and

WHEREAS, none of the aforementioned Arts or Residential Uses are required to be provided on the Galapagos Parcel under this Covenant, but such Uses shall be provided on the 575 Parcel and the Receiving Lot; and

WHEREAS, Developers have contributed into an escrow account funds in the amount of $500,000 (Five Hundred Thousand Dollars) for the benefit of Golden Rule Plaza, Inc. pursuant to BZA Orders in Application No. 16387 (Summary Order dated December 3, 1998, and Modification Order dated November 16, 2000) for the construction of the permitted off-site housing requirement of 41,171.2 square feet on the Off-Site Housing Receiving Lots; and

WHEREAS, 575 Commercial and Galapagos 456 have obtained and delivered to the Office of Planning, to the satisfaction of the Office of Planning, evidence that there is no person or entity with an interest in the Sending Lot, which interest was recorded prior to the effective date of this Covenant, whose consent is required in order for this Covenant to be fully effective other than those signatures which are a part of this Covenant; and

WHEREAS, 675 Residential represents to the District that the Receiving Lot shall be reserved in part for not less than 56,303 square feet of Residential Use pursuant to the provisions of BZA Orders in Application No. 16387 (Summary Order dated December 3, 1998, and Modification Order dated November 16, 2000), unless and until this Covenant is modified pursuant to Paragraph 12 *infra*.

WHEREAS, 575 Commercial and Galapagos 456 represent to the District, and the Office of Planning and the Zoning Administrator have so certified in writing in Exhibit E, that a portion of the required Residential Use shall be provided on the Receiving Lot, and a portion shall be sent, pursuant to 11 DCMR § 1708.1 et seq., from the Sending Lot to the Off Site Housing Receiving Lots; and

WHEREAS, the Sending Lot is located in the DD/C-4 District and construction of improvements thereon may occur in phases so long as the Developers comply with the phasing requirements of the DD Regulations, including 11 DCMR §§ 1706.13 and 1708.1(f); and

WHEREAS, 675 Residential will construct approximately 56,303 square feet of Residential Use on the Receiving Lot and Developers have contributed funds toward the construction of Residential Use on the Off Site Housing Receiving Lots and the DD Regulations require 102,928 square feet of Residential Use; in the event that the amount of Residential Use that is provided is in excess of the requirement of the DD Regulations, i.e., over 102,928 square feet, then the excess shall be eligible to be used in future combined lot development covenants to satisfy the housing requirements of other properties within the Downtown Development District; and

WHEREAS, 575 Commercial and 675 Residential hereby declare and agree that the 575 Parcel and the Receiving Lot shall be hereinafter held, sold, transferred, conveyed, used or occupied subject to the following covenants and obligations, pursuant to the requirements in the DD Regulations, which covenants and obligations shall run with the 575 Parcel, and the Receiving Lot and shall bind the Developer, its successors, mortgagees and assigns, subject to the terms thereof and it being recognized that the Galapagos Parcel shall not be required, by virtue of this covenant, to provide Arts Uses or Residential Use by the terms of this Covenant; and

WHEREAS, any trustees to any deeds of trust affecting the subject properties herein execute this Covenant for the purpose of acknowledging the interest of the District as set forth herein and to consent to and subordinate their interests to that of the District.

NOW, THEREFORE, in consideration of the foregoing Recitals which are a material part of this Covenant, and the mutual terms, conditions and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District, and the Developers agree to and do hereby covenant as follows:

1. Purpose. This Combined Lot Development Covenant constitutes (a) a declaration of covenants running with the land, as required by 11 DCMR §§ 1708.1, et seq., which shall be binding upon the Developers, all successors in interest, mortgagees and assigns of any interest in the Sending Lot, the Receiving Lot and upon the District; (b) an instrument confirming the zoning equivalent of the minimum required Residential Use of 102,928 square feet and that the zoning equivalent of 102,928 square feet of gross floor area shall be devoted to Residential Use in accordance with the Zoning Regulations; (c) an instrument confirming that at least 56,303 square feet of Residential Use will be developed on the Receiving Lot in combined lot development with the Sending Lot; and (d) an instrument confirming that the zoning equivalent of approximately 31,334 square feet of space devoted to Arts Uses shall be constructed on the Sending Lot (Arts Use Areas with >12 ft. ceiling heights = 19,209.3 s.f.x 1.5 FAR = 28,814 equivalent square feet; plus, Arts Use Areas with ≤12 ft. ceiling heights = 2520 s.f.), and the zoning equivalent of approximately 13,469 square feet of space devoted to Arts Uses shall be constructed on the Receiving Lot (Arts Use Areas with >12 ft. ceiling heights = 8,979.3 s.f. x 1.5 FAR = 13,469 s.f.).

2. Recitals. The Recitals hereinabove stated are incorporated by reference into the body of this Covenant as if fully set forth herein.

3. Effective Date. This Covenant shall become effective upon the date of its recordation among the Land Records of the Recorder of Deeds of the District of Columbia.

4. Developers Declarations.

4.1. Developers hereby subject the Sending Lot and the Receiving Lot to the following affirmative and negative conditions, covenants and restrictions, which together with all terms and conditions of this Covenant are covenants running with the Sending Lot and Receiving Lot, binding Developers, their successors and assigns (including but not limited to the purchaser at

any foreclosure sale and any mortgagee at such time as such mortgagee becomes an owner of the Sending Lot or the Receiving Lot, and their successors and assigns).

4.2. That the appropriate Developer(s) declares and covenants the following:

(a) that the new improvements to be constructed on the Receiving Lot constitute a new building or portion of a new building on the Receiving Lot within the meaning of 11 DCMR § 1700.5 and construction of space on the Receiving Lot shall meet the applicable requirements for Residential Use in 11 DCMR § 1700 *et seq.* and shall also include arts and retail uses.

(b) that through compliance with the provisions of BZA Orders in Application No. 16387 (Summary Order dated December 3, 1998, and Modification Order dated November 16, 2000), Developers have devoted the equivalent of 0.8 FAR of off-site affordable housing as permitted pursuant to 11 DCMR § 1706.6.

(c) that at least 30,708 square feet, which as computed herein, is the zoning equivalent of 44,800 square feet of the space, as computed under Chapter 17 of the Zoning Regulations, shall be constructed on the 575 Parcel and the Receiving Lot and shall be devoted to Arts Uses, and that none of said 44,800 square feet of Arts Uses, as may be computed pursuant to Chapter 17 of the Zoning Regulations, is required to be provided on the Galapagos Parcel , by virtue of this Covenant.

(d) the correctness of the computations of square feet of gross floor area to be sent to the Receiving Lot for Residential Use and for Arts Use, has been verified in writing by the Zoning Administrator and confirmed by the Office of Planning, as set forth in Exhibit E.

(e) nothing herein is intended to modify, alter or amend in any way whatsoever, the requirement of Developers to comply with 11 DCMR § 1706.13.

(f) 675 Residential shall design, construct and market the dwelling units in the residential building and shall maintain no other use in the space reserved for Residential Use. Said reserved residential space located on the Receiving Lot shall consist of a portion of the ground floor and cellar and the upper floors of the building, excluding other permitted nonresidential uses on the ground floor and other locations, so long as the area devoted to Residential Use is maintained at no less than the minimum floor area required for Residential Use.

(g) 575 Commercial and 675 Residential shall maintain for Arts Use an amount of floor area equal to no less than the zoning equivalent of 44,800 square feet, as computed under Chapter 17 of the Zoning Regulations, within the Approved Project to be constructed on the 575 Parcel and the Receiving Lot.

(h) The Developers shall maintain the Approved Project for development in a manner consistent with this Covenant and in compliance with all applicable District laws, rules and regulations.

(i) The District and Developers agree and recognize that Developers have made a payment of $500,000 in escrow for the benefit of Golden Rule Plaza, Inc., pursuant to the BZA Orders in Application No. 16387 (Summary Order dated December 3, 1998, and Modification Order dated November 16, 2000) for the purpose of providing Residential Use, and that Developers have fully satisfied the condition for 0.8 FAR of required Residential Use generated by the Sending Lot be provided, pursuant to 11 DCMR § 1706.6(c).

(j) No certificate of occupancy shall be issued for a building constructed by Developers on the Sending Lot until (i) a certificate of occupancy has been issued for the space devoted to Residential Use on the Receiving Lot; and (ii) letters of core completion have been issued for space devoted to Arts Uses on the Sending and Receiving Lots.

5. Developer Representations and Warranties.

5.1. Developers have the full, unencumbered legal capacity and authority under the laws of the District to enter into this Covenant.

5.2 575 Commercial and Galapagos 456, as to their individual respective lots, to the best of their knowledge, represent and warrant that there are no restrictions or adverse claims of record on the use of or otherwise relating to the Sending Lot or any other obligation or encumbrance of any kind, the requirements of which have not been waived or subordinated, which would impair, delay, prevent or preclude in any manner whatsoever, now or in the future, the imposition of the restrictions, covenants, obligations, warranties, limitations, and agreements contained herein upon the Sending Lot.

5.3 675 Residential represents that there are no restrictions or adverse claims of record on the use of or otherwise relating to the Receiving Lot that would prevent its use as contemplated herein.

6. Benefits and Burden/Enforcement. Developers and the District each acknowledge the respective benefits to and burdens upon them conferred and created by this Covenant. The District and Developers consent to enforcement solely by the District and/or Developer(s) administratively, at law or at equity, of the restrictions, covenants, obligations, easements and agreements contained herein, and nothing contained herein shall be deemed to vest any rights in a third party. Each party also represents and warrants to the other that the remedies set forth in this Covenant are not exclusive and that the District and Developer(s), and any agency, department or instrumentality of the District, may pursue other remedies not specifically set forth herein.

7. Liens. The Developers shall use best efforts not to permit any governmental or statutory liens (including tax and mechanics' and materialmen's liens that would take priority over this Covenant) to be filed against the Sending Lot or the Receiving Lot and the Residential Use to

be constructed on the Receiving Lot, except for real estate taxes and assessments not yet due and payable and liens approved by the District in writing. The Developers shall use best efforts not to default at any time under any liens that have legal priority over this Covenant and that have not been subordinated to this Covenant. If a Developer is in default under any liens that have legal priority over this Covenant and that have not been subordinated to this Covenant, the District may, but has no obligation to, cure such default and shall be entitled to repayment of reasonable expenditures. The use of a "best efforts" standard in this Paragraph 7 shall not modify or affect any obligation of any Developer to perform any obligation otherwise required to be performed under applicable law.

8. Real Covenants/Enforceability. The obligations of the Developers under this Covenant shall be considered covenants running with the Sending Lot and the Receiving Lot and shall be binding (including but not limited to the purchaser at any foreclosure sale and any mortgagees at such time as such mortgagee becomes an owner of the Sending Lot and/or Receiving Lot, and their successors and assigns). Notwithstanding the foregoing or anything else contained herein to the contrary, the parties hereto affirm that the Galapagos Parcel shall have no requirement by virtue of this Covenant to provide Arts or Residential Uses on said parcel but instead this Covenant provides that said uses shall be provided on the Receiving Lot and the 575 Parcel. References to the "Developers," "successor" or "assigns" in this Covenant shall be deemed to refer to the party then holding fee title to the Galapagos Parcel, the 575 Parcel, the Receiving Lot, and/or any improvements thereon. If a party no longer owns fee title to all or any portion of the Galapagos Parcel, 575 Parcel or the Receiving Lot and/or improvements thereon, it shall have no further obligation under this Covenant with respect to such property of which it no longer owns fee title, except as to any liability which shall have accrued during the time such party owned fee title to said portion of the Galapagos Parcel, the 575 Parcel, the Receiving Lot, and/or improvements thereon. References in this Covenant to agencies, departments or instrumentalities of the District shall be

deemed to include agencies, departments or instrumentalities succeeding to the jurisdiction thereof pursuant to the laws of the District.

9. District's Rights to Protect. The District may commence, appear in, and defend any action or proceeding which may affect the provision of or reservation for Residential Uses on the Receiving Lot and Arts Uses on the 575 Parcel and the Receiving Lot, or the rights or powers of the District with respect to the 575 Parcel and the Receiving Lot. If 575 Commercial or 675 Residential fails to do any act required under this Covenant, the District, without any obligation to do so, after demand upon 575 Commercial and 675 Residential and without releasing 575 Commercial and 675 Residential from any obligations under this Covenant, may cause the act to be performed in such manner and to such extent as the District may deem necessary to protect the provision of or reservation for Residential Uses on the Receiving Lot or for Arts Uses on the 575 Parcel and the Receiving Lot, and to put 575 Commercial and 675 Residential in compliance with this Covenant. The District is authorized to enter upon the 575 Parcel and/or the Receiving Lot for such purposes.

10. Several Liability. 675 Residential, 575 Commercial and Galapagos 456 liability shall be several and not joint and several for the performance of any obligations pursuant to the terms of this Covenant. If there is more than one owner of the Receiving Lot or of the residential units upon the Receiving Lot (such as in a condominium regime), the liability of each such owner of an individual unit for any obligations pursuant to the terms of this Covenant shall be several and not joint and several. 675 Residential shall include in its condominium documents the nature of uses that must be provided within the particular condominium units and state that such uses are subject to this Covenant. 575 Commercial shall provide in any leases of space devoted to Arts Uses that the use is subject to the requirements of this Covenant. Consistent with the foregoing, an owner of a parcel or a portion of a parcel (such as in a condominium regime) shall be liable for the obligations

pursuant to the terms of this Covenant only insofar as they relate to the parcel or portion of a parcel owned by such owner.

11. Nonwaiver of Terms and Conditions. Time is of the essence with respect to the performance of the obligations owed to the District under this Covenant. The District's failure to require prompt enforcement of any required obligation shall not constitute a waiver of the obligation owed or any subsequent required performance of the obligation. No term or condition of this Covenant may be waived or modified except in writing signed by the Developers or 575 Commercial, 675 Residential or Galapagos 456 individually if only one is affected by the proposed waiver or modification, and the District.

12. Modification, Amendments and Termination. Except as provided in the final three sentences of this paragraph, this Covenant shall not be modified, amended, or terminated except with the written permission of the Zoning Commission, after public hearing, in accordance with 11 DCMR § 1708. Any such modification or amendment shall be promptly recorded by 575 Commercial and Galapagos 456 on the title to their respective portions of the Sending Lot and by 675 Residential on the Receiving Lot in the Land Records of the Recorder of Deeds of the District, with copies of such recorded instruments to be sent to the Zoning Administrator of the District and the Office of Planning. Notwithstanding the foregoing, 575 Commercial and 675 Residential, as the affected parties, may, by way of an addendum, re-allocate required uses between the Receiving Lot and the 575 Parcel, provided that such re-allocation shall have no effect on the Galapagos Parcel and that the residential square footage provided on-site is not reduced below 56,240 square feet, consistent with Condition No. 2 in the BZA Order in Application 16387 dated December 3, 1998. Additionally, 575 Commercial, 675 Residential and/or Galapagos 456, as the affected parties, may, by way of an addendum, re-allocate required uses among the Receiving Lot, the 575 Parcel and the Galapagos Parcel, provided that the on-site residential square footage is not reduced below 56,240

square feet. Any such addendum is subject to the consent of the District and shall be recorded against the effected lots.

13. Effect of Repeal or Amendment of DD Regulations. Nothing herein shall restrict or impair the Zoning Commission of the District of Columbia from exercising its legal power to amend or repeal the DD Regulations or any Zoning Regulation of the District. Nothing contained herein shall prevent any of the Developers from challenging, contesting or supporting such repeal or amendment in the event any of the Developers determine, using reasonable business judgment, that such repeal or amendment has or would have a material adverse effect upon such Developer's rights hereunder that may result therefrom, and the foregoing sentence shall not be deemed to constitute consent by Developer to any such adverse effect.

14. Default; Remedies. In the event that 575 Commercial, 675 Residential or Galapagos 456 (individually) fail to comply with the provisions of this Covenant that are their obligations collectively or individually, the District may pursue all enforcement actions authorized by law.

15. Assignment. Any and all assigns or successors in interest of the Developers shall be bound by this Covenant and all other instruments of the Developers arising from or related to this Covenant.

16. Exhibits. The exhibits referred to in this Covenant, and listed below, are hereby incorporated herein and made an integral part of this Covenant.

Exhibit A	Galapagos Parcel Legal Description
Exhibit B	575 Parcel Legal Description
Exhibit C	BZA Orders in Application Nos. 16387 and 16681
Exhibit D	Use Analysis
Exhibit E	Certification of Allocation of Uses Per Combined Lot Development

17. Notices. All notices, demands, requests, consents, approvals and other communications which may be or are required to be given hereunder shall be in writing and shall be sent by mailing or delivery as follows:

If to Developers:	Galapagos 456, LLC c/o Greenebaum & Rose Associates, Inc. 5301 Wisconsin Avenue, N.W,. Suite 510 Washington, D.C. 20015 Attn: Samuel A. Rose
and	
	575 7th Street, LLC c/o CarrAmerica Urban Development, LLC 1850 K Street, N.W., Suite 500 Washington, D.C. 20006 Attn: Robert O. Carr
and	675 E Street, LLC c/o CarrAmerica Urban Development, LLC 1850 K Street, N.W., Suite 500 Washington, D.C. 20006 Attn: Robert O. Carr
with copy to:	Shapiro, Lifschitz and Schram, P.C. 1101 Pennsylvania Avenue, NW, Suite 1050 Washington, D.C. 20004 Attn: Ronald S. Shapiro
and	Holland & Knight, LLP 2099 Pennsylvania Avenue, N.W. Suite 100 Washington, D.C. 20006 Attn: Norman M. Glasgow, Jr., Esquire
and	Mayer, Brown & Platt 1909 K Street, N W. Washington, D.C. 20006 Attn: Keith J. Willner
If to the District:	Director, Office of Planning 801 N. Capitol Street, N.E. Fourth Floor Washington, D.C. 20002

with a copy to: Office of Corporation Counsel
Chief, Land Use Section
441 4th Street, N.W.
Sixth Floor
Washington, D.C. 20001

Any Party may change any address for the purposes of this Covenant by giving notice in accordance with this Paragraph 17 and without complying with Paragraph 12 "Modification, Amendment, and Termination," above.

Each notice, demand, request, consent, approval or other communication shall be either (i) sent by registered or certified mail, postage prepared, or (ii) delivered by hand, and shall be deemed sufficiently given for all purposes hereunder five (5) business days after it shall be mailed or, if delivered by hand, when actually received.

18. Rules of Construction. This Covenant shall be construed so that, whenever applicable, the use of the singular shall include the plural, the use of the plural shall include the singular, and the use of any gender shall be applicable to all genders and shall include corporations, partnerships and limited partnerships, as appropriate.

19. Section Headings. The headings to the various sections have been inserted for convenience of reference only and shall not be used to construe this Covenant.

20. Entire Covenant. This Covenant, including any exhibits and appendices referred to herein, as well as any orders, rules and regulations of the District relating to the subject matter hereof, together with the agreements referred to in the Recitals hereof, contain the entire agreement and understanding of the parties with respect to the subject matter of this Covenant, and any prior understandings, agreements, restrictions, promises, warranties, representations, covenants or other undertakings among the parties with respect to the subject matter of this Covenant are hereby revoked.

21. Choice of Law. This Covenant shall be construed and enforced in accordance with and shall be governed by the laws of the District of Columbia. Nothing in this paragraph shall be deemed a waiver of any right which Developers have to affect choice of law.

22. Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed an original and all counterparts together shall constitute one and the same Covenant.

23. Mortgagee Protection. In the event the holder of any mortgage, deed of trust or other security instrument encumbering the 575 Parcel, the Galapagos Parcel or the Receiving Lot notifies the District in writing of the existence of such security instrument, stating the recordation information relating thereto and providing an address to which notices should be sent, (i) the District shall use best efforts to provide such holder with a copy of any notice of default sent to defaulting Developer under this Covenant, (ii) such holder shall have the right, but not the obligation, to cure such default within the time periods set forth in this Covenant for the cure thereof by defaulting Developer, provided if possession of the 575 Parcel, the Galapagos Parcel or the Receiving Lot is necessary to cure such default, and such holder shall promptly undertake and diligently pursue measures to obtain possession, such cure period shall be extended for such period of time as shall be reasonably necessary to permit such holder to obtain possession of the applicable lot and cure such default, but in no event shall such cure period be extended for more than six (6) months without the express written authorization of the Office of Planning.

24. Payment of Taxes and Other Encumbrances. Each Developer shall use best efforts to pay real estate taxes, any assessments, and other public charges for the Sending Lot and Receiving Lot, as appropriate, and the improvements thereon, at any time prior to delinquency; provided, however, that nothing contained herein shall in any way lessen, modify, or otherwise affect in any manner whatsoever any current or future exemption that may be available under law to relieve either lot from such payment, in whole or in part, of real estate taxes, assessment, or other

public charges or the right of the respective lot owners or their respective successors or assign to pursue the application of any such exemption or appeal any taxes assessed against their respective lots. To the extent possible, and consistent with each Developer's legal rights, all other encumbrances, charges, and liens that have legal priority over this Covenant and that have not been subordinated to this Covenant, including prior mortgages and deeds of trust that have not been subordinated to this Covenant, shall be paid when due and shall not be in default. Upon reasonable written request by the District, the Developers, with respect to their respective lots, shall furnish to the District reasonable evidence of payment of these items. The use of "best efforts" in this Paragraph 24 shall not modify or affect any obligation otherwise required to be performed under applicable law.

25. Maintenance – No Waste. 675 Residential and its successors and assigns shall protect and preserve the Residential Use and maintain the same in good condition and repair, and shall not commit or permit any waste thereof or thereon. The Developers and their successors and assigns shall protect and preserve the Arts Uses and maintain the same in good condition and repair, and shall not commit or permit any waste thereof or thereon.

26. Insurance. 675 Residential (and the other Developers, in the event of a reallocation of Residential or Arts Uses to their respective lots on the Sending Lot) shall maintain hazard insurance on the Preferred Residential and Arts Uses, providing replacement cost coverage and insuring against loss by fire and such other risks as are customarily covered by extended coverage endorsement. All such insurance shall be for commercially reasonable limits with companies licensed to sell insurance in the District. If requested, 675 Residential (and other Developers, if applicable) shall deliver certificates of insurance or copies of all policies to the District.

27. Severability. If any provision of this Covenant or its application to any party or circumstances, other than any provision affecting the allocations of residential, arts, and commercial

gross floor area contained herein, shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Covenant or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law. If the allocations of residential, arts or commercial gross floor area contained herein are determined to be invalid or unenforceable, this Covenant shall terminate and the parties shall take such action as may be necessary to release this Covenant from the Land Records.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, Galapagos 456, LLC, a District of Columbia limited liability company, has caused this Combined Lot Development Covenant to be executed, acknowledged and delivered as of the day and year first above written.

Witness:

Carol Bernardes
[SEAL]

GALAPAGOS 456, LLC
a District of Columbia limited liability company

By: Samuel G Rose
Samuel G. Rose
Its Managing Member

DISTRICT OF COLUMBIA, ss:

I, PATRICIA HANSCOM, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Samuel G. Rose, Managing Member of Galapagos 456, LLC, a District of Columbia limited liability company, a party to the foregoing Combined Lot Development Covenant bearing date as of the ____ day of _____, 2002, personally appeared before me in said District and, being personally well known to me, acknowledged said instrument to be the act and deed of said limited liability company and that he delivered the same as such.

GIVEN under my hand and seal this 26th day of Feb., 2002.

Patricia Hanscom
Notary Public

My commission expires: 11/30/06

IN WITNESS WHEREOF, 575 7th Street, LLC, a limited liability company, has caused this Combined Lot Development Covenant to be executed, acknowledged and delivered as of the day and year first above written.

Witness:

Katherine Soose
[SEAL]

575 7th STREET, LLC,
a Delaware limited liability company
By: CarrAmerica Urban Development, LLC
a Delaware limited liability company

By: _____

DISTRICT OF COLUMBIA, ss:

I, Olivia M. Kerr, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Margaret C. Huckabee of CarrAmerica Urban Development, LLC, a Delaware limited liability company, a party to the foregoing Combined Lot Development Covenant bearing date as of the ____ day of _____, 2002, personally appeared before me in said District and, being personally well known to me, acknowledged said instrument to be the act and deed of said limited liability company and delivered the same as such.

GIVEN under my hand and seal this 25th day of February, 2002.

Olivia M. Kerr
Notary Public

MY COMMISSION EXPIRES
JANUARY 14, 2007

My commission expires: _____

IN WITNESS WHEREOF, 675 E Street, LLC, a limited liability company, has caused this Combined Lot Development Covenant to be executed, acknowledged and delivered as of the day and year first above written.

Witness:

[SEAL]

675 E STREET, LLC
a Delaware limited liability company
By: CarrAmerica Urban Development, LLC
a Delaware limited liability company

By:

DISTRICT OF COLUMBIA, ss:

I, **Olivia M. Kerr**, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Margaret C.H. Huckabee of CarrAmerica Urban Development, LLC, a Delaware limited liability company, a party to the foregoing Combined Lot Development Covenant bearing date as of the ____ day of _____, 2002, personally appeared before me in said District and, being personally well known to me, acknowledged said instrument to be the act and deed of said limited liability company and delivered the same as such.

GIVEN under my hand and seal this 25th day of February, 2002.

Notary Public

MY COMMISSION EXPIRES
My commission expires: JANUARY 14, 2007

TRUSTEES:

Pursuant to the terms of the Purchase Money Deed of Trust, Assignment of Leases and Rents, and Security Agreement dated July 26, 2000, and recorded July 27, 2000 as Instrument No. 2000067577, either Stephen A. Hall or Barry C. Greenberg, Trustees for Mercantile Safe Deposit Trust Company, a Maryland banking corporation, has executed this document for purposes of affirming the last recital and paragraph 7 of the Covenant.

Stephen A. Hall

STATE OF MARYLAND
CITY OF BALTIMORE
~~DISTRICT OF COLUMBIA~~, ss:

I, Sharon M. John, a notary public in and for the State of Maryland ~~District of Columbia~~, do hereby certify that Stephen A. Hall personally appeared before me and acknowledged this Covenant to be his act and deed.

GIVEN under my hand and seal this 28th day of February, 2002.

SHARON M. JOHN NOTARY PUBLIC BALTIMORE CITY, MD

Notary Public

My commission expires: 1/13/2004

TRUSTEES:

Pursuant to the terms of the Amended and Restated Purchase Money Deed of Trust and Security Agreement dated December 10, 2001, and recorded December 13, 2001 as Instrument No. 2001120449, either Connie Bond Stuart or William Lynch, III, individually and collectively Trustee for the benefit of PNC Bank, National Association, a national banking association, individually and as Agent for the Banks and as collateral agent for the Swap Party, has executed this document for purposes of affirming the last recital and paragraph 7 of the Covenant.

W R Lynch III

State of Maryland)
County of Montgomery)

Personally appeared before me, the undersigned authority in and for the said county and state, on this 27th day of February, 2002, within my jurisdiction, the within named William Lynch, who acknowledged that he is Trustee for the benefit of PNC Bank, National Association, and that in said representative capacity he executed the above and foregoing Covenant, after first having been duly authorized so to do.

Notary Public

My commission expires: 08/01/03

IN WITNESS WHEREOF, the Mayor of the District of Columbia,

having first considered and approved the foregoing Combined Lot Development Covenant, has directed the execution thereof in the name of said District of Columbia, by the Secretary of the District of Columbia, who has hereunto set her hand and affixed the seal of the District of Columbia hereto under authority of the Act of Congress entitled "An Act to Relieve the Commissioners of District of Columbia of Certain Ministerial Duties' approved February 11, 1932.

WITNESS:

Tabatha Braxton

DISTRICT OF COLUMBIA WITNESS:
(a municipal corporation)

By: Beverly A. Rives
Secretary of the District of Columbia

(CORPORATE SEAL)

DISTRICT OF COLUMBIA, ss:

I, Tabatha Braxton, a Notary Public in and for the District of Columbia, do hereby certify that Beverly Rives who is personally known to me as the person named as Secretary of the District of Columbia in the foregoing Combined Lot Development Covenant bearing date on the 14th day of August, 2002, and hereunto annexed, personally appeared before me in said District and, as Secretary aforesaid, and by virtue of the authority in her vested, acknowledged the same to be the act and deed of the Mayor of the District of Columbia and delivered the same as such.

GIVEN under my hand and seal this 14th day of August, 2002.

Tabatha Braxton
Notary Public, D.C.

My commission expires: April 14, 2007

APPROVED AS TO CONTENT:

D.C. Zoning Administrator

Andrew Altman
Director, Office of Planning

WITNESS:

APPROVED FOR LEGAL SUFFICIENCY:

Assistant Corporation Counsel

WAS1 #914807 v19

EXHIBIT A

MENG TE CHANG
GERALD S. MCKENNA

BERNARD F. LOCRAFT
CIVIL ENGINEERS
1249 CONGRESS COURT, N.W.
WASHINGTON, D.C. 20007-3408

TELEPHONE
(202) 337-4040
FACSIMILE
(202) 337-9478

March 28, 2001

Metes & Bounds Description - Part of Lot 40, Square 456

Part of Lot 40, Square 456, per plat recorded in Book 194, page 14, among the records of the Office of the Surveyor for the District of Columbia, more particularly described, agreeably with Plat of Computation recorded in Survey Book 203, page 103, among said Surveyor's Office records, as follows:

Beginning on the south line of F Street, 100 feet wide, at a point removed West, 25.00 feet, from the west line of 6th Street, 100 feet wide, said beginning also being the northeast corner on F Street of said Lot 40, Square 456, and leaving said beginning and running with the boundary of said Lot 40, Square 456, the three following courses and distances:

1. South, 99.69 feet
2. East, 25.00 feet, to the west line of 6th Street, aforesaid
3. With said west line of 6th Street, South, 52.94 feet

thence leaving said west line of 6th Street and running along the north face of slab of the now existing AARP Headquarters building, through said Lot 40, Square 456, parallel with the south line of Lot 40, Square 456, N 89° 55' 30" W, 134.78 feet; thence continuing through said Lot 40, Square 456, the three following courses and distances:

4. Perpendicular to the south line of Lot 40, Square 456, S 0° 04' 30" W, 2.94 feet
5. Parallel to the south line of Lot 40, Square 456, N 89° 55' 30" W, 20.54 feet, to the east line of a 25 foot wide arcade easement, as amended
6. Along said east line of a 25 foot wide arcade easement, as amended, North, 155.37 feet, to the south line of F Street, aforesaid

thence with said south line of F Street, East, 130.32 feet, to the place of beginning, containing 21,259 square feet.

Said property is now known for purposes of assessment and taxation as Lot 878, Square 456.

EXHIBIT B

BERNARD F. LOCRAFT
CIVIL ENGINEERS
1249 CONGRESS COURT, N.W.
WASHINGTON, D.C. 20007-3408

MENG TE CHANG
GERALD E. MCKENNA

TELEPHONE
(202) 337-4040
FACSIMILE
(202) 337-9478

March 27, 2001

Metes & Bounds Description - Part of Lot 40, Square 456

Part of Lot 40, Square 456, per plat recorded in Book 194, page 14 among the records of the Office of the Surveyor for the District of Columbia, more particularly described, agreeably with Plat of Computation recorded in Survey Book 203, page 103, among said Surveyor's Office records, as follows:

Beginning at the intersection of the south line of F Street, 100 feet wide, and the east line of 7th Street, 85 feet wide, and leaving said beginning and running along said south line of F Street, East, 324.01 feet, to the east line of a 25 foot wide arcade easement, as amended; thence leaving said south line of F Street and running through said Lot 40, Square 456, the five following courses and distances:

1. Along the east line of a 25 foot wide arcade easement, as amended, South, 155.37 feet
2. Parallel to the south line of Lot 40, Square 456, N 89° 55' 30" W, 45.42 feet
3. Perpendicular to the south line of Lot 40, Square 456, N 0° 04' 30" E, 2.85 feet.
4. Parallel to the south line of Lot 40, Square 456, N 89° 55' 30" W, 138.76 feet, to the northerly extension of an east line of a 20 foot wide public alley in Square 456
5. thence with said northerly extension of an east line of public alley, South, 46.63 feet, to the northeast corner of a 20 foot wide public alley; thence running along said north line of 20 foot wide public alley, West, 20.0 feet; thence running along the west line of said 20 foot wide public alley, South, 24.77 feet, to a south line of Lot 40 and the north line of Lot 34, Square 456, per plat recorded in Book 28, page 61, among said Surveyor's Office records; thence with a south line of Lot 40 and said north line of Lot 34, Square 456, West, 119.83 feet, to the east line of 7th Street, aforesaid; thence with said east line of 7th Street, North, 223.68 feet, to the place of beginning, containing 58,980 square feet.

Said property is now known for purposes of assessment and taxation as Lot 880, Square 456.

vatbold

EXHIBIT C

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

Application No. 16387 of Square 456 Associates, pursuant to 11 DCMR 3108.1 and 3107.2 for a special exception under Section 411.11 to allow roof structures not meeting the normal setback requirements and for a variance from Subsection 1706.22(g) to permit commercial development to proceed, prior to the issuance of the certificate of occupancy for permitted off-site affordable housing, for the construction of an office, arts, retail and housing development in a DD/C-4 District at premises 625-627 E Street, NW., 620 and 626 F Street, N.W. and 501-507 and 511-517 7th Street, N.W. (Square 456, Lots 37, 39, 868, and 869).

HEARING DATE:	September 2, 1998
DECISION DATE:	September 2, 1998
DISPOSITION:	By Order dated December 3, 1998, the Board granted the application with conditions by a vote of 3-0 (Sheila Cross Reid, Betty King and Anthony J. Hood to grant)

MODIFICATION ORDER

By letter dated November 3, 2000, Galapagos II, LLC and Galapagos 456 LLC, the owners of the property which is the subject of this application before the Board and successors in interest to Square 456 Associates, the original applicant, submitted a request for the Board to modify the previously approved plans consistent with Paragraph 2 of BZA Order No. 16387.

THE WAIVER REQUEST

The Applicant, as part of its filing, requested a waiver from the six month limitation for filing requests for modification of plans with the Board, set forth at §3129.3 of the Zoning Regulations. The Applicant has been in continuing consultation with the Historic Preservation Review Board concerning significant design issues related to the historic buildings. This consultation and design refinement involved certain minor modifications to the project as proposed, including revisions to the roof structures.

The design review process took well longer than the six month period provided in Title 11 to seek a modification of plans. The six month period for seeking a modification is also out of consonance with the two year period provided in §3130 for filing an application for a building permit. The Applicant therefore requested a waiver from §3129.3 for the Board to consider the requested modifications.

The Board granted the waiver of the six month filing requirement to consider the requested modification.

The motion for modification of the approved plans regarding the roof structures must meet the requirements of §3129 of Title 11. Specifically, the test for review under §3129.7 states "Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon in approving the application."

The applicant stated that the project plans have been refined and the roof structures on both the office portion of the project and the residential building have been revised along with the infill of a minor court in the interior of the site which is not visible from 7th or F Streets, N.W. The modifications, depicted on the plans submitted to the Board, are described as follows:

1. A minor interior court, not visible from either 7th or F Streets, has been filled in to accommodate an interior connection between Hecht's and the new mid-block building on F Street. This connection is made at the elevator core of the Hecht's building and provides a direct link to the elevator core of the new building, resolving the difficulty created because the floors of the new building do not align with the floors of the historic Hecht's building.

2. The further development of mechanical, electrical, plumbing, elevator and stair design has caused the location of passenger elevators in the Hecht's building to be shifted slightly to the north, changing and reducing the size of the elevator overrun at the eighth floor from the originally approved plans.

3. As noted above, the further development of mechanical, electrical, plumbing, elevator and stair design has caused the location of passenger elevators in the Hecht's building to be shifted. The extent of mechanical, electrical and plumbing equipment in the penthouse requires a freight elevator to travel to the penthouse and its location is dictated by the intent to reduce the amount of demolition of the Hecht's building.

4. The limitation of the size of the penthouse on the Hecht's building, for historic considerations, has resulted in the increase in the size of the penthouse over the new addition to the south, to accommodate HVAC equipment for both buildings. The larger penthouse to the south still meets the required setbacks from the street.

5. The penthouse on the Murray Building addition has been extended slightly to the east, to accommodate the revised location for an elevator overrun for the apartment building.

EXTENSION OF TIME FOR GOLDEN RULE PLAZA

The application originally requested relief from the requirement that the commercial development on Square 456 not be allowed to obtain a certificate of occupancy until a certificate of occupancy was issued for the off-site affordable housing development to occur on the site to be developed by Golden Rule Plaza, Inc., (hereinafter, "Golden Rule") at New Jersey Avenue

and K Streets, N.W. In approving that variance relief, the Board imposed the following condition:

> Within thirty days after the issuance of the Board's order, the Applicant shall place $500,000 in an escrow account for the benefit of Golden Rule Plaza, Inc., to be made available to Golden Rule Plaza, Inc., at the time of settlement on the financing for the low and moderate income housing project to be constructed on the west side of New Jersey Avenue between New York Avenue and K Street. After placing the $500,000 in escrow, the Applicant may proceed to construct and occupy the development in Square 456. In the event that the Golden Rule Plaza project has not settled on its financing and drawn down the funds in the escrow account within two years of the date of the Board's order, the Applicant shall consult with the Office of Planning to determine an appropriate alternative plan as to how the funds will be used for affordable housing, and shall submit that plan to the Board in an appropriate motion. The submission of such an alternative plan in no manner affects the rights granted by this order enabling the Applicant to proceed with the mixed-use development on the subject site.

Golden Rule has been in negotiations with the Department of Housing and Community Development and with its proposed financing providers regarding the low and moderate-income residential project it is developing. Those negotiations will require additional time, not to exceed six months, to reach settlement on the project financing. While such an extension of time is needed by Golden Rule to finalize the project financing, it will exceed the two-year limitation on the escrow established in the Order. Golden Rule and the agencies with which it is working are confident that a satisfactory financing package will be arranged within the next six months by Golden Rule that will allow it to proceed with its significant housing project. Golden Rule does not believe that an alternative plan for use of the funds toward affordable housing objectives is needed. Working drawings for the project have been completed and an application for a building permit is in the process of being finalized for filing.

The Board received letters from Golden Rule, the Department of Housing and Community Development, the D.C. Housing Finance Agency and Councilmember Jack Evans, Councilmember from Ward 2 which contains the site of the subject development and the Golden Rule site, all explaining the basis for the need for additional time and supporting the proposed extension. Advisory Neighborhood Commission 2C, by letter dated November 3, 2000, also supported the proposed extension.

DECISION

The Board finds that the minor exterior modifications to the penthouse continue to exceed the setback required along 7th and F Streets and do not diminish the roof structure setbacks for which relief was required. The changes do not materially affect the view of the project from the

adjacent public streets and the proposed infill of the court has no negative consequences. In all other respects, the provision of preferred uses continues to be met and the 56,240 square feet of on-site housing has not been reduced.

The Board further finds that the proposed extension of time should be granted. The additional time will allow a significant housing project for low and moderate-income persons to be built within the Downtown housing priority areas. The Board further finds that there is no good reason to look for an alternative use of the funds at this time when a short extension of time will likely enable the Golden Rule project to move forward.

In light of the foregoing, it is therefore hereby ORDERED that the motion for waiver of the rules to consider the request is granted, the modification of plans for the roof structure is approved and the time for Golden Rule to settle on its construction financing and draw down the funds held in escrow is extended for an additional six months beyond December 3, 2000.

VOTE: 3-0 (Robert Sockwell, Anne Renshaw and Sheila Cross Reid to approve, Rodney Moulden not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____
Jerrily R. Kress, FAIA
Director

FINAL DATE OF ORDER: NOV 16 2000

PURSUANT TO D.C. CODE § 1-2531 (1999), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2038, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6 OF THE DISTRICT

OF COLUMBIA BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE AND UPON ITS FILING IN THE RECORD AND SERVICE ON THE PARTIES.

PURSUANT TO 11 DCMR § 3130, THIS ORDER OF THE BOARD SHALL NOT BE VALID FOR A PERIOD IN EXCESS OF TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

Ord 16387 SMP

BZA APPEAL NO. 16387

As Director of the Office of Zoning, I hereby certify and attest that on NOV 16 2000 a copy of the order entered on that date in this matter was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning the matter, and who is listed below:

Norman Glasglow , Jr. Esquire
Wilks Artist
1666 K Street N.W. Suite 300
Washington, D.C. 20006

Lawrence L. Thomas
Advisory Neighborhood Commission 2C
First and Pierce Streets, N.W.
Terrell Junior High School
Washington D.C. 20001

Councilmember Jack Evens
441 4th Street N.W. Suite 703
Washington, D.C. 20005

Michael Johnson, Zoning Administrator
Building & Land Regulation Administration
941 North Capitol Street, N.E., Suite 200
Washington, DC 20009

