PRELIMINARILY STATEMENT OUTLINING HOW THE APPLICANTS MEET THE REQUIRED BURDEN OF PROOF

I. Introduction

This application is filed on behalf of the following property owners in Square 456: (i) 675 E Street LLC (Lot 41); (ii) 575 7th Street LLC (Lot 880); and (iii) Galapagos 456 LLC (Lot 878).[1] The owners are developing their properties in accordance with a Combined Lot Development Covenant, pursuant to section 1708 of the Zoning Regulations, and recorded among the District of Columbia Land Records on August 27, 2002. Under the terms of the covenant, the zoning equivalent of approximately 31,334 square feet of space devoted to arts uses shall be constructed on the Lots 880 and 878, and the zoning equivalent of approximately 13,469 square feet of arts space shall be constructed on Lot 41. Under the current plans for the development on Lot 880 known as Terrell Place in the former Hecht's Department Store, which is under construction, all the required art space to be constructed on Lots 880 and 878 is accommodated in Terrell Place; none is allotted to Lot 878.

After plans were already underway for Terrell Place, a new proposal was developed wherein Lot 878 would be used to house a new Shakespeare Theater. Comprised of over 65,000 gross square feet of space devoted to preferred arts uses under section 1704.3(a), the combined lot development would potentially develop one block in the Downtown Development District with almost two and a half times the required amount of space devoted to preferred arts uses. Consequently, the Applicants seek provisional variance relief from the art use requirements in order to make a $1.5 million contribution to the Shakespeare Theater to assist in its relocation to the proposed new building in Square 456. This payment would be made in lieu of continuing to provide the required arts space in the Terrell Place development, as set forth in the Combined Lot Development Covenant.

II. Nature of Relief Requested

In order to obtain approval of the requested area variance, the Applicants must show that: 1) the subject property suffers from an extraordinary or exceptional condition; 2) strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulty to the Applicants; and 3) relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Applicants intend to meet their burden as follows:

[1] Letters from each owner are included with this application that authorize the law firm of Holland & Knight LLP to represent them in this application before the Board.

Board of Zoning Adjustment
District of Columbia
CASE NO.16959
EXHIBIT NO.5

BZA
Case No. 16959
Exhibit No. 5

A. Extraordinary or Exceptional Condition

Consistent with the Board's previous findings in BZA Order Nos. 16681, 16387, and 15361, the Applicants will demonstrate that the property that comprises Lots 41, 878 and 880 is encumbered by extraordinary and exception conditions.

B. Strict Application Would Result in a Practical Difficulty to the Owner

The Applicants will show that the extraordinary and exceptional conditions at the site would make it unreasonably burdensome for the Applicants to provide almost two and a half times the required art space on-site.

C. No Detriment to the Public Good Nor Impairment to the Intent, Purpose and Integrity of the Zone Plan

The Applicants also will show that the alternative method for compliance with the required arts space will in no way harm or impair the intent, purpose and integrity of the Zone Plan. Lots 41, 880 and 878 in Square 456 will in some fashion comply with the minimum requirements for the provision of arts space as contemplated under the Downtown Development District regulations.