STATEMENT OF BURDEN OF PROOF FOR VARIANCE RELIEF

Rainbow Lofts, LLC (the "Applicant" or "Rainbow Lofts") requests area variance relief from the residential recreation space requirements for the development of a residential project located at 1445 Church Street, N.W. Lot 106 in Square 209, (the "Property"). The granting of such relief will allow the Applicant to create nine parking spaces on the Property rather than seven. Rainbow Lofts is entitled to variance relief pursuant to 11 DCMR §3103.2, because it can demonstrate: (1) an extraordinary or exceptional situation or condition of the Property; (2) practical difficulty in satisfying the strict application of the Zoning Regulations; and (3) no harm to the public or to the zone plan will occur as a result of the approval of this variance application.

Extraordinary or Exceptional Situation or Condition

The D.C. Court of Appeals held in *Clerics of St. Viator v. D.C. Board of Zoning Adjustment,* 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the "property", not just the "land"; and that "property generally includes the permanent structures existing on the land." *Id.* at 293-294. Indeed, the Court repeatedly has rejected the idea that the exceptional situation and practical difficulty justifying a use variance must arise from the physical aspects of the land. *See National Black Child Development*, 483 A.2d at 690; *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979).

The Property is located in the Greater 14th Street Historic District and includes an existing building (the former Rainbow Auto Body Painting Company) that has been deemed to be a contributing building to the historic district. The renovation of this former industrial

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building on the site into residential use provides an exceptional and extraordinary condition on the property.

Practical Difficulty

The D.C. Court of Appeals has established a two part test for determining whether an applicant has met its burden of proof. The applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property." *Gilmartin,* 579 A.2d at 1170. The Court of Appeals has held that the "nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." *Id.* at 1171. Some factors that the BZA may consider are "the weight of the burden of strict compliance," "the severity of the variance(s) requested," and "the effect the proposed variance(s) would have on the overall zone plan." *Id.*

Due to the layout of the historical building on the Property, the only way that the Applicant can satisfy the strict residential recreation space requirements is to locate a portion of the residential creation space at grade adjacent to an alley and the existing parking spaces. In all likelihood, this space would seldom, if ever, be utilized for the recreation of the residents. If allowed to convert this area to parking spaces, the project will still have provide residential creation space of 10.6%, as opposed to the required 15%. Thus, Rainbow Lofts faces a practical difficulty in satisfying the residential recreational requirements established by the Zoning Regulations.

No Harm to the Public or to the Zone Plan

Granting the residential recreational space variance will not cause harm to the public or to the zone plan because the proposed project will still provide a significant residential recreation space area on the roof of the project. The rooftop recreation space helps achieve the goal of the residential recreation space requirement of the Zoning Regulations in providing inviting and attractive recreation space for the residents of the building. In addition, the creation of two new parking spaces will take two more cars off the neighboring streets and will help increase the availability of on-street parking in the neighborhood.