**Preliminarily Statement Outlining How The Application Meets The Required Burden of Proof**

The Applicant is seeking the following relief from the Board of Zoning Adjustment:

- A special exception from the roof structure requirements (§411);
- A special exception to extend the DD/C-2-C District requirements onto the C-2-A District portion of the split-zoned lot, and a variance to extend the zone boundary line by forty feet, as opposed to thirty five feet (§2514.2);
- A variance from the lot occupancy requirements (§772.1);
- A variance from the rear yard requirements (§774.1);
- A variance from the width of court requirements (§776.3); and
- A variance from the building setback requirements of the Downtown Development District (§1706.15).

The Applicant will establish through its Statement of the Applicant to be filed no fewer than fourteen days prior to the hearing on the subject application, as well as at the public hearing, that the subject application meets the burden of proof for the granting of the requested relief. A preliminary summary of how the application meets the required burden of proof follows.

I.
Background

The subject property is located on the south side of M Street, N.W., between 10th and 9th Streets. The subject property consists of Lots 834, 861, 862, 865, 866, 872, 873 and 876 of Square 369, which combine to form an "L" shape. The wider or "base" portion of the "L" fronts on M Street, measuring approximately 285 feet, whereas the narrow or "arm" portion of the "L" runs parallel between 10th and 9th Streets and forms a narrow lot in the rear portion of the subject property.

To the immediate west of the property is a 20 foot access easement and the Mount Vernon Plaza Apartments. A commercial building is currently to the east of the subject property. The Convention Center is located to the east of the subject property, across 9th Street, and the Convention Center hotel is potentially proposed to be constructed to the south of the subject property. Residential dwellings are on the north side of M Street. The property is currently used as a temporary surface parking lot pending the commencement of construction.

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The proposed development will be an eleven story apartment house with approximately 212 units.

## II.
## Special Exceptions

In order to meet the criteria for approval of the requested special exceptions, the Applicant will be required to show the following: (1) compliance is impractical because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable and (2) the intent and purpose of Chapter 400 and the Zoning Regulations are not materially impaired by the structure and the light and air of adjacent buildings are not adversely affected.

### A.
### Roof Structures

Special exception approval is required because there will be multiple roof structures (§411.3), one of the roof structures is not setback from all exterior walls a distance equal to its height above the roof on which it is located (§411.2 and 770.6), and the roof structures are not all of the same height, although each roof structure has walls of equal height (§411.5).

This site suffers from a combination of factors that render compliance with the roof structure requirements both impractical and prohibitively costly/unduly restrictive. First, the Applicant cannot expand its building to the west to accomplish its permitted FAR because of an existing 20 foot access easement that cannot be built upon. Moreover, the proposed building is located in the Downtown Development District, and is thus subject to Section 1706.15 of the Zoning Regulations, which limits buildings constructed on lots fronting M Street to a maximum height of sixty feet to a depth of forty feet from the lot line on M Street. Hence, the first forty feet of the proposed building has a height of sixty feet, but the remaining portion of the building has a height of 110 feet, creating a step-like structure. The roof structure relief is necessitated in order to minimize the impact of the roof structures and maximize the provision of residential recreation space on the roof.

The Applicant intends to provide residential recreation space on the roof, which triggers the building code requirement that a separate stairwell leading to the bottom floor of the building be located on the roof. The Applicant desires to minimize the size of this structure. The mechanical penthouse for elevator overrides and mechanical equipment meets the height and setback requirements, but the stair tower does not meet the setback requirements. Each of these structures are necessary features, however the Applicant cannot comply with each

of the roof structure Zoning Regulations due to the Applicant's compliance with Section 1706.15, the easement requirements, the different purposes of the enclosures, and the desire to break up massing on the roof. Therefore, full compliance with the roof structure requirements would be both unduly restrictive and prohibitively costly, and the Applicant seeks relief from these provisions. The granting of the requested relief and the provision of separate roof structures will be beneficial to the public good in that the overall building massing will be broken up, which in turn will create a more attractive view of the roof from the street level.

B.

Extension of DD/C-2-C District Requirements onto C-2-A District Portion of Lot

Section 2514.2 of the Zoning Regulations provides that for split-zoned lots, the requirements of the least restrictive portion of such lot may be extended to that portion of the lot in a more restrictive use zone district for up to thirty-five feet. In this case, the Applicant is requesting a forty foot extension to avoid a situation of having a five foot recess on the east side of the building. The subject property is currently zoned DD/C-2-C and C-2-A. The western-most portion of the lot is zoned DD/C-2-C, consisting of approximately 25,928 square feet. The remaining 4,011 square feet is zoned C-2-A. Thus, approximately 86.6 percent of the subject property is zoned DD/C-2-C, and the remaining 13.4 percent is zoned C-2-A.

The Applicant proposes to construct an apartment house on the subject property in accordance with the zoning provisions of the DD/C-2-C District, since 86.6 percent of the subject property is located within such zoning district. Extending the DD/C-2-C boundary line will help ensure that the Applicant's proposed building is subject to a consistent set of zoning requirements throughout the entire site, and also make the construction and functioning of the building much more practical than it otherwise would be if a small portion of the building was subject to more restrictive zoning requirements. In contrast, not extending the DD/C-2-C boundary line by the requested forty feet, and leaving a mere five feet of the subject property subject to the C-2-A zoning requirements, will be impractical and create severe operating difficulties and structural configuration problems. This is exactly the type of situation Section 2514.2 was created to avoid.

The extension of the DD/C-2-C boundary line will have no adverse effect upon the present character and future development of neighborhood since there are numerous existing and proposed buildings in the area that are already subject to the DD/C-2-C zoning requirements, and neither the light nor air rights of the property owners immediately to the east of the site will be harmed by the extension.

## III.
## Variances

In order to obtain approval of the requested variances, the Applicant 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 Applicant; 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.

### A.
### Court Width

Section 776.3 provides that where a court is provided for a building devoted to residential uses, at any elevation in the court, the width of the court must be a minimum of four inches per foot (4 in./ft.) of height, measured from the lowest level of the court to that elevation, provided that in no case can a court measure less that fifteen feet (15 ft.). Thus, the Applicant is required to provide a court measuring 108.76' x 36.67'. However, the Applicant proposes to provide a court measuring 108.76' x 15'. Accordingly, the Applicant seeks relief from this requirement.

As already discussed, the subject property suffers from numerous exceptional conditions based upon its location, including a unique "L" shape which forms a narrow lot along the eastern portion of the subject property, a pre-existing 20 foot access easement that cannot be built upon along the western frontage and hence limits the amount of space the Applicant can utilize, and the Downtown Development District setback requirements that limit the proposed building to a high of 60 feet to a depth of forty feet from the lot line on M Street and hence creates a step-like structure.

The Applicant has designed its proposed apartment house to comply with as many of the Zoning Regulations as possible. However, the design constraints imposed because of the subject property's location coalesce to make strict compliance with Section 776.3 difficult because it would force the Applicant to redesign the interior of the building in an impractical manner. Specifically, as a result of the 40 foot setback requirement of Section 1706.15, the corridor for levels one through six is located in the center of those levels, whereas the corridor for levels seven through eleven is located closer to the rear of the building. In order to comply with both Sections 776.3 and 1706.15, the Applicant would have to shift its corridor on the first six levels, which currently are proposed to have views facing M Street, to a location in the building that would result in the units on those levels having views facing the rear alley while the access corridor faces M Street. Further, forcing strict compliance with the court width requirements would result in the

proposed building having six unique floors having a low efficiency of net to gross area and many awkward and unmarketable units. Moreover, providing the required court width would also render the mechanical and structural systems very difficult to construct, and result in an even narrower roof area that would render the required additional means of egress from the roof extremely difficult to locate.

Finally, relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone since the court that will be provided complies with the required width requirement for a significant portion of the proposed building's height.

B.
Lot Occupancy

The Applicant requests a variance from the lot occupancy percentage requirements set forth in Section 772.1 of the Zoning Regulations, which provides that a building in the C-2-C District cannot occupy more than eighty percent of the lot upon which it its located. The Applicant seeks relief from this requirement, since it proposes to construct a building that will occupy eighty-five percent of the lot on the lowest floors but far less than eighty percent on the upper floors.

As already discussed, the subject property suffers from a number of extraordinary conditions. These conditions combine and render strict compliance with Section 772.1 exceptionally and practically difficult. For example, compliance with the setback requirements of Section 1706.15 broadens the overall footprint of the site, thus increasing the total lot occupancy. Moreover, the requirements of Section 1701.3, which mandates that not less than seventy-five (75%) of each streetwall of new construction to a height of not less than fifteen feet (15 ft.) must be constructed to, or within four feet (4 ft.) of, the property line also makes strict compliance with the lot occupancy provision impractical. Finally, relief can be granted without harming the public good or impairing the purpose of this section since the subject property will have plenty of open space provided by the 20 foot access easement and the two 30 foot alleys located at the rear of the subject property.

C.
Rear Yard

The Applicant requests a variance from the rear yard requirements set forth in Section 774.1 of the Zoning Regulations. This section provides that structures in commercial districts must provide rear yards with a minimum depth of 15 feet. However, due to the site's characteristics, the Applicant has proposed not to provide a rear yard, and thus seeks relief from this requirement.

As a result of complying with Section 1706.15, the Applicant proposes to relocate a portion of the mass of the building south in an effort to achieve its permitted FAR, and design its proposed apartment house with a practical number of units. The Applicant cannot expand its proposed building west because of the pre-existing 20 foot access easement that cannot be built upon. The eastern potion of the site is already narrow and impacted by the court requirements. Thus, south is the only direction the Applicant can utilize to attempt to reach its permitted FAR and design the proposed apartment house. However, due to the combination of the restraints imposed upon the subject property, compliance with the rear yard requirements would render the overall project practically difficult. Granting the requested relief will not harm the public good, nor impair intent of Section 774.1 because there will be sufficient open space at the rear of the proposed building, including the proposed open court area and the two 30' alleys.

D.

Setback Requirements of the Downtown Development District

Section 1706.15 of the Zoning Regulations provides that buildings constructed on lots within the Downtown Development District fronting on M Street can only be built to a maximum height of sixty feet to a depth of forty feet from the lot line on M Street. The Applicant meets this overall requirement. However, the Applicant seeks relief to permit the construction of small bay windows on certain units of the building fronting on M Street, which will thus create minor, four foot projections into the setback area.

The subject property is subject to a number of exceptional factors that impose significant design constraints on the proposed apartment house. The Applicant has worked diligently to design its proposed building within such constraints. In fact, the Applicant is seeking most of its relief due to its compliance with the M Street setback requirements. However, permitting the Applicant to construct the proposed bay windows will not be harmful since they will be very minor projections along M Street; the building's overall façade meets setback requirements, and the proposed windows will not be easily noticeable because of the building's 40 foot setback.