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VIA IZIS

Zoning Commission for the
District of Columbia
441 4th Street, N.W., Suite 200S
Washington, D.C. 20001

Re: Z.C. Case No. 13-14 – McMillan Sand Filtration Site
Applicant's Response to Issues Identified in Notice of Limited Scope Public Hearing

Dear Commissioners:

On behalf of the Applicant, Vision McMillan Partners, LLC and the District of Columbia, through the Office of the Deputy Mayor for Planning and Economic Development ("DMPED"), in the above referenced case, we submit the following information and supporting documents in response to the information requested by the Zoning Commission (the "Commission") in its Notice of Limited Scope Public Hearing ("the "Notice") for the above referenced case which was published in the *DC Register* on February 10, 2017. At its public meeting on January 30, 2017, the Commission voted to hold a limited scope public hearing on the case that would focus on the five specific issues identified in the Notice (the "Limited Issues"). The specific issues identified in the Notice are in direct response to the issues identified as being in need of further explanation in the District of Columbia Court of Appeals (the "DCCA") opinion to "vacate" the Commission's order and remand the case back to the Commission for further proceedings. *Friends of McMillan Park v. D.C. Zoning Comm'n*, 149 A.3d 1027, 1035 (D.C. 2016). The Commission scheduled the limited scope public hearing for March 23, 2017. The information below, along with the attached supporting documentation, contains the Applicant's prehearing response to each of the Limited Issues. In addition to the information contained herein, the Applicant, through its own testimony and the testimony of its expert witnesses, will thoroughly address each of the Limited Issues at the March 23, 2017, limited scope public hearing, and demonstrate that the Applicant's request continues to overwhelmingly satisfy the evaluation standards upon which the Commission must base its decision under the Planned Unit Development ("PUD") regulations of Chapter 24 of the 1958 Zoning Regulations of the District of Columbia ("ZR58").

A. Background

On November 22, 2013, the Applicant submitted an application to the Commission for a First-Stage Planned Unit Development (“PUD”), Consolidated PUD, and related map amendment at the McMillan Reservoir Slow Sand Filtration Site (the “Project”). On November 10, 2014, the Commission voted 4-0-1 to approve Z.C. Case No 13-14, and on April 17, 2015, the Commission published Z.C. Order No. 13-14(1) to the *DC Register* (the “Order”).^{1,2} Subsequent to issuance of the Order, Friends of McMillan Park (“FOMP”), a party to the Zoning Commission’s proceedings, filed a petition with DCCA requesting review of the Order.³ On September 20, 2016, the DCCA heard for review oral arguments from the Applicant and FOMP, and subsequently issued its opinion on December 8, 2016 (the “Opinion”). A summary of the principal issues raised and discussed in the Opinion is set forth below.

In the Opinion, DCCA disagreed with FOMP that the Comprehensive Plan forecloses any high-density development on the PUD Site. In fact, in addressing the PUD Site’s Future Land Use Map (“FLUM”) designation of mixed-use (moderate-density commercial, medium-density residential, and parks, recreation, and open space), DCCA agreed with the Commission that “permitting some high-density development on the site does not necessarily make the PUD inconsistent with the FLUM. The FLUM explicitly contemplates two ways in which more intensive development than is otherwise reflected in the FLUM may be permissible. (1) a larger development that as a whole is consistent with the FLUM designation may contain individual buildings with greater height or density; and (2) the PUD process may permit greater height or density. 10-A DCMR § 226.1(c)(2016).” On that basis, the DCCA thus found that the Commission reasonably concluded that the PUD as a whole was not inconsistent with the FLUM since, when taking into account the entire PUD Site, the overall density of the Project is consistent with that permitted in the moderate-density commercial zones.

DCCA also disagreed with FOMP that the language of the Mid-City Area Element of the Comprehensive Plan prohibited high-density development on the PUD Site. Specifically, FOMP claimed that the Mid-City Area Element required that “[w]here development takes place [on the

¹ Z.C. Order No. 13-14(1) is a corrected version of the initial final order that was published previously in the *DC Register*. The initial final order was subsequently corrected to: (i) revise the Findings of Fact to reflect changes to the proffers made by the Applicant; (ii) to correct a reference to the “project association” that will be established by the Applicant as part of the Project; (iii) to clarify that the project association is the recipient of certain funds that will be contributed by the Applicant; and (iv) revise the Findings of Fact to reflect changes to the proffers made by the Applicant in response to comments from the Office of the Attorney General.

² Subsequent to the approval of Z.C. Case No. 13-14, the Commission approved a Second-Stage PUD for Parcel 2 (Z.C. Case No. 13-14A), and a modification to the Consolidated PUD for Parcel 4 (Z.C. Case No. 13-14B).

³ The petition filed by FOMP also requested DCCA review of the two decisions and orders of the Mayor’s Agent for Historic Preservation, District of Columbia Office of Planning (the Mayor’s Agent”), that are related to the Applicant’s proposed redevelopment of the PUD Site (HPA No. 14-393, and HPA No. 15-133). This submission only applies to the Commission’s review of the Project in Z.C. Case No. 13-14, and does not address the decision and order issued by the Mayor’s Agent.

PUD Site], it should consist of moderate- to medium-density housing, retail, and other compatible uses...” (10-A DCMR § 2016.9). While DCCA agreed with FOMP that this policy did not appear to support high-density development on the PUD Site, it emphasized that “even if a proposal conflicts with one of more individual policies associate with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.” *Id.* (citing *Durant v. District of Columbia Zoning Comm’n (Durant I)*, 65 A.3d 1161, 1168 (D.C. 2013)). In addition, DCCA also disagreed with FOMP that the language of the Mid-City Area Element is mandatory and prevails over other more general polices reflected in the Comprehensive Plan on the basis that the Mid-City Area Element’s policy favoring moderate- to medium-density development on the PUD Site, and the set of objectives to which that policy is a part of, are *not* expressed in mandatory terms.

In Z.C. Order No. 13-14(1), the Commission found “that permitting high-density development on the northern portion of the PUD Site was a critical and essential part of fulfilling the parks, recreation, and open space designation of the [FLUM], while at the same time achieving other elements of the Comprehensive Plan and the city’s strategic economic plan.” FOMP argued otherwise, stating that the other policies reflected in the Comprehensive Plan could be advanced even if development on the site were limited to medium- and moderate-density uses. While DCCA found that the Commission reasonably concluded that the Comprehensive Plan does not flatly prohibit any high-density development on the PUD Site, it found that the Commission failed to adequately address this area of FOMP’s argument, stating “[t]he Commission neither provided a specific basis for concluding to the contrary nor stating reasons for giving greater weight to some policies than to other.” *Id.* at 1035. It was upon this finding that the DCCA primarily based its decision to remand the case back to the Commission for further proceedings as “the Commission failed to adequately explain why it was necessary to disregard the policy favoring medium- and moderate-density development on the site in order to advance other competing policies reflected in the Comprehensive Plan.” *Id.*

In addition to the above, DCCA also identified other issues for the Commission to address on remand. These issues pertain to the preservation of open space, environmental impacts, destabilization of land values and displacement of neighboring residents, distribution of health care facilities, and increased demand for essential public services. These issues, along with the issue discussed above relating to the Project’s consistency with the Comprehensive Plan, are addressed below in the order set forth in the Commission’s Notice of Limited Scope Public Hearing.

B. Consistency with the Comprehensive Plan

Issue 1A: Could the other policies cited in the Order be advanced even if development on the PUD Site were limited to medium- and moderate-density use?

In addition to addressing the specific Comprehensive Plan policies cited in the Order, the Applicant conducted yet another exhaustive review of the Project's consistency with each of the District Elements of the Comprehensive Plan. The results of this thorough analysis are attached as Exhibit A. The rationale for this analysis is twofold. First, the Applicant sees substantial importance in demonstrating to the Commission the overwhelming number of Comprehensive Plan policies that apply to Project. The number of policies that apply to the Project, and that will be advanced by the Project, is extensive. Second, the Applicant wanted to identify exactly how many of this extensive set of policies actually reflect competing priorities when applied to the Project. Upon completion of its exhaustive review of the Project's consistency with the Comprehensive Plan, the Applicant identified very few competing policies, of which none would prevent the Commission from concluding that the Project as a whole is not inconsistent with the Comprehensive Plan. This includes the Mid-City Area Element that recommends development on the PUD Site consist of moderate- to medium-density housing, retail, and other compatible uses" (10-A DCMR § 2016.9). Thus, as discussed below, and as shown in Exhibit A, the Applicant not only believes there is a lack of competing priorities in the Comprehensive Plan relative to the Project, but that limiting development on the entirety of the PUD Site to medium- and moderate-density, and more specifically limiting the height of the healthcare facilities on Parcel 1 while not recognizing the significant amount of open space being provided would significantly jeopardize the viability of the Project and/or increase adverse impacts on the surrounding context.

As previously established by the Applicant, determined by the Commission, and upheld by the DCCA, the Project as a whole is not inconsistent with the FLUM on the basis that when the entire site is taken into account the Project's overall density is consistent with that permitted in moderate-density commercial zones, even if development on a portion of the PUD Site (approximately 10%) is high-density. The FLUM, which is adopted as part of the Land Use Element, designates the PUD Site as mixed-use (moderate-density commercial, medium-density residential, and parks, recreation and open space). Under ZR58, the zones that generally fall into the medium-density residential land use designation on the FLUM include R-5-B and R-5-C, although other districts may apply (10-A DCMR § 225.5). The ZR58 zones that generally fall into the moderate-density commercial land use designation on the FLUM include C-2-A, C-2-B, and C-3-A, although other districts may apply (10-A DCMR § 225.9).

The Project proposes to construct a total of approximately 2,070,753 square feet of gross floor area ("GFA"), on an overall land area of approximately 1,075,356 square feet (approximately 878,330 excluding private rights-of-way). This results in an overall Project density of approximately 1.92 FAR (2.36 FAR excluding private rights-of-way), of which approximately 1.07 FAR (1.31 FAR excluding private rights-of-way) will be devoted to nonresidential uses (office, retail, community center). The overall FAR and nonresidential FAR of the Project is well within the density permitted as a matter-of-right in the C-2-A zone, the most restrictive of the three stated moderate-density commercial zones, and below the overall

density permitted in the R-5-B zone under a PUD, the more restrictive of the two stated medium-density residential zones.

It is clear under the Zoning Regulations that density for a PUD is calculated as an aggregate across an entire project area, including portions of a project area improved with parks and open space, which is exactly the way the Applicant has calculated density for the Project.⁴ Notwithstanding, the Applicant submits to the Commission that the Project would still be consistent with the FLUM even if calculated according to the language of the Mid-City Area policy supporting moderate- to medium-density development on the PUD Site which states:

“Recognize that development on portions of the McMillan Sand Filtration site may be necessary to stabilize the site and provide the desired open space and amenities. Where development takes place, it should consist of moderate- to medium-density housing, retail, and other compatible uses. Any development on the site should maintain viewsheds and vistas and be situated in a way that minimizes impacts on historic resources and adjacent development” (10-A DCMR § 2016.9) (emphasis added).

The density of the Project continues to be consistent with the FLUM even if calculated in accordance with the language of this policy. Specifically, the net land area (not including private rights-of-way) of Parcels 1 – 5, the parcels where development will take place, is approximately 465,997 square feet (approximately 10.7 acres), and the total GFA proposed on those same parcels is approximately 2,048,753 GFA, of which approximately 1,112,170 will be devoted to nonresidential uses. Excluding private rights-of-way, this equates to an overall density of 4.4 FAR, of which 2.4 FAR will be devoted to nonresidential uses (office and retail). These densities are consistent with what is permitted under a C-3-A PUD. Thus, the Project is fully consistent with the FLUM designation as to density, and consistent with this particular Mid-City Area policy.

This analysis firmly establishes again that the Project is in fact a medium- to moderate-density project, and thus the remaining question related to the development on Parcel 1 is whether the additional height that is required to accommodate the healthcare facility building is consistent with the Comprehensive Plan. As discussed below, not only is the additional height consistent with the Comprehensive Plan, it is critical to the viability of the Project and the Applicant’s ability to advance the other policies cited in the Order.

As thoroughly discussed in the Applicant’s memorandum included in the case record as Exhibit 832C, the Applicant carefully and appropriately distributed density across the site by concentrating development on the northern end of the site while leaving other portions, particularly at the south end of the site, as parks, recreation, and open space. This "cluster development" approach to the Project is commonly used in a PUD to develop a site plan that

⁴ Section 2405.2 of the ZR58 PUD Standards states “The floor area ratio of all buildings shall not exceed the aggregate of the floor area ratios as permitted in the several zone districts included in the project area; provided, that the Zoning Commission may authorize minor deviations for good cause pursuant § 2405.3”

meets project objectives while also relating to the existing context, which is exactly the approach taken by the Applicant in this case in order to fulfill the parks, recreation, and open space designation of the FLUM and advance several other Comprehensive Plan policies while maintaining compatibility with the surrounding context. It is also part of the flexibility specifically afforded to Applicants through the PUD process. It was undertaken in direct response to input provided throughout the design process by District agencies, including the Historic Preservation Office (“HPO”) and the Historic Preservation Review Board (“HPRB”), as well as the community,

The Project will provide approximately 9.38 acres of new parks and open space including the large park at the south end of the PUD Site, Cell 14, the Healing Gardens, and Olmsted Walk. Including the area of the North and South Service Courts, the total area of open space increases to approximately 12 acres. This amounts to approximately 49% of the PUD Site devoted to open space. In order to provide the large contiguous open space at the southern end of the site, as called for in the Comprehensive Plan, and overcome the significant predevelopment and infrastructure costs required to simply prepare the PUD Site for development, the Applicant shifted the concentration of height and density to the northern portion of the PUD Site, adjacent to the higher height and density buildings of the Washington Hospital Center (“WHC”) and Children’s National Medical Center (“CNMC”). As a result, the proposed health care facilities at the northern end of the site will have a maximum height of 115 feet.

Significantly, the higher building height proposed on Parcel 1 is solely a result of the requirement to accommodate the specialized floor-to-ceiling requirements of the healthcare facility building, and not a desire by the Applicant to maximum density. To illustrate this, as shown in the section drawing attached as Exhibit B, if the building on Parcel 1 were proposed for typical office uses, rather than health care facilities, the proposed eight-story building would likely be consistent with the 90 foot maximum height permitted under a PUD in the C-2-B and C-3-A zones, two of the zones that are specifically identified as falling within the moderate-density commercial land use category. Yet the building would maintain the same density as is proposed. Thus, the additional building height on Parcel 1 is exclusively a result of the specialized design requirements of the proposed health care facilities, a critical component to the viability of the Project, and to the Applicant’s ability to advance many other Comprehensive Plan policies relating to parks and open space, recreation, housing, and economic development. As described below, the flexibility required to accommodate the additional height for the proposed healthcare facilities on Parcel 1 is permissible under the Comprehensive Plan, and is appropriate given the surrounding context and the manner in which the Applicant has sited and designed the building.

The Applicant would be unable to advance the Comprehensive Plan policies cited in the Order if development on the PUD Site were limited to both medium- and moderate-density and height. First, not only would this significantly increase the overall impacts of the Project on the PUD Site and the surrounding context, and limit the Applicant’s ability to advance other

housing, parks and open space, and economic development objectives, as discussed below. More importantly, it could potentially jeopardize the viability of the entire project. The proposed healthcare facilities building on Parcel 1 is a critical component to the viability of the Project. As is the case with most large-scale mixed-use development projects, the key to maintaining viability is to establish a critical mass of high-value uses that can support lower-return uses. In this instance, the proposed healthcare facilities on Parcel 1 make up a significant portion of the critical mass necessary to overcome the substantial horizontal and predevelopment investment that is required to prepare the PUD Site for development, and support the highly desirable retail component of the Project, and in particular the proposed full-service grocery store.

If Parcel 1 were forced to meet moderate-density requirements as to FAR and height, it would require the removal of two floors from the proposed healthcare facilities building, amounting to a reduction of approximately 190,000 square feet of GFA and a building height of 90 feet. However, development on Parcel 1 was already reduced in the initial proceedings in response to comments by the Commission and the National Capital Planning Commission ("NCPC") regarding the height of the healthcare facilities building. The Applicant reduced the building height from 130 feet to 115 feet and shifted the west façade approximately 15 feet eastward to preserve the view from the Scott Statue at the Armed Forces Retirement Home ("AFRH"). These modifications resulted in a reduction of approximately 37,000 square feet of GFA, which, while not insignificant to the building program, certainly pales in comparison to a reduction of 190,000 square feet of GFA that would be required if the building height had to be reduced to 90 feet. Given the critical role the healthcare facilities on Parcel 1 play with respect to the viability of the Project, such a drastic reduction in the overall GFA of the building could not be made without compromising the entire Project.

Elimination of two floors from the healthcare facilities building, while keeping everything else in the proposed master plan static, would jeopardize the Applicant's ability to secure an anchor tenant for the healthcare facilities building and, without an anchor healthcare tenant, the Applicant is unlikely to proceed with the project since, as will be testified to at the limited scope public hearing, there is currently no market for typical / non-healthcare office space at the PUD Site. Therefore, in order for Parcel 1 to meet moderate-density requirements as to FAR and height, and maintain the viability of the Project, the Applicant would need to recapture the healthcare facility GFA lost as a result of the substantial height reduction by either increasing the lot coverage on Parcel 1 or reallocating the lost healthcare GFA elsewhere on the PUD Site. Both of these scenarios would require a substantial redesign of the master plan; would reduce the extent to which the Project advances the policies of the Comprehensive Plan, including those specifically cited in the Order, and would increase adverse impacts on the surrounding neighborhood. For example, currently the proposed healthcare facilities building occupies approximately 74% of Parcel 1, which is consistent with the lot occupancy permitted in the C-3-A zone, one of the zones specifically identified as falling within the moderate density commercial land use category. The Applicant could increase the lot coverage on Parcel 1 to recapture some of the lost GFA; however, this would result in a loss of the one acre park

proposed on Cell 14, not to mention historic preservation impacts, as well as the loss of the proposed Healing Gardens. This would also significantly reduce the substantial setback proposed between the healthcare facility building and the rowhouses along the east side of North Capitol Street, currently 260 feet as shown in Exhibit C, and adversely impact the viewshed from the AFRH Scott Statue, which NCPC specifically objected to in the previous proceedings.

Other alternatives to recapturing the healthcare facility's lost GFA include relocating this GFA to Parcels 2 – 4, relocating this GFA to the southwest portion of the PUD Site, or shifting the townhouses proposed on Parcel 5 to the southern end of the PUD Site. All of these alternatives would likely be looked upon unfavorably by the HPRB, have substantially more impact on the surrounding neighborhood, and would significantly limit the extent to which the Applicant can leverage the potential of this publicly owned site to advance multiple Comprehensive Plan policies, including:

- Increasing the District's overall housing supply and range of housing types, and in particular protecting and increasing the inventory of affordable housing and housing for senior citizens (10-A DCMR §§ 503.8, 504.11, 505.6, 509.9, 515.3, and 516.8) ;
- Expanding the District's system of parks and open space, particularly in underserved areas (10-A DCMR §§ 805.5, 807.6, 814.5, and 2009.4);
- Providing new community facilities and recreation centers in underserved areas (10-A DCMR §§ 804.10, 809.5, 1103.12, and 2009.9;
- Growing the District's core industries, and in particular the expanding healthcare sector (10-A DCMR § 703.9); and
- Expanding the District's retail sector, including neighborhood shopping and grocery stores in underserved areas of the city (10-A DCMR §§ 708.4, 708.7, and 708.10);

Issue 1B: If not, which of the competing policies should be given greater weight and why?

Based upon an extensive reevaluation of the Project against the policies of the Comprehensive Plan, the Applicant continues to believe that the Project is fully consistent with the Comprehensive Plan, including the policies of the Mid-City Area Element that are specific to the PUD Site. To the extent that there is a conflict between the policies cited in the Order in favor of the Project and the one policy of the Mid-City Area Element that encourages moderate- to medium-density development where such development occurs on the PUD Site, there is substantial guidance provided in the Comprehensive Plan and related legislative history, both past and present, that addresses how the Commission shall address overlap and competing priorities among and between the District Elements. As discussed below, based upon the guidance provide by the Comprehensive Plan there is strong support for the Commission to temper the policy of the Mid-City Area Element recommending moderate- to medium-density

development in favor of the flexibility provided by the Land Use Element, which includes the FLUM, and find that the Project as a whole is not inconsistent with the Comprehensive Plan.

The Implementation Element provides guidance on how to resolve questions on the application and interpretation of the Comprehensive Plan. *See* 10-A DCMR § 2500. It describes how the policies and actions of the Comprehensive Plan should be carried out, and addresses the manner in which land use planning policies are interpreted and applied on a day-to-day basis. 10-A DCMR §§ 2500.1 & 2501.1. The potential for overlap and competing priorities within the Comprehensive Plan is specifically acknowledged in the Implementation Element. It directs users to “[r]ecognize the overlapping nature of the Comprehensive Plan elements as they are interpreted and applied. An element may be tempered by one or more of the other elements. As noted at Section 300.2, since the Land Use Element integrates the policies of all the other District Elements, it should be given greater weight than the other elements.” 10-A DCMR § 2504.6 (Policy IM-1.3.4: Interpretation of the District Elements). The Land Use Element expands upon this language of the Implementation Element by stating that “[m]ore than any other part of the Comprehensive Plan, this Element lays out the policies through which the city will accommodate growth and change while conserving and enhancing its neighborhoods, commercial districts, and other areas. Because the Land Use Element integrates the policies and objectives of all the other District Elements, it should be given greater weight than the other elements as competing policies in different elements are balanced.” 10-A DCMR § 300.3 (emphasis added).

It is clear based on the language of the Implementation Element and the Land Use Element that in situations where there is overlap or competing priorities within the Comprehensive Plan, the policies within the Land Use Element should be given greater weight as competing policies are balanced. As this relates to the Project, to the extent that the policies cited in the Order may compete with the Mid-City Area Element policy supporting moderate- to medium-density where development takes place on the PUD Site, the Applicant submits that this simply means these policies should be balanced along with any other competing policies, with greater weight given to the guidance and policies of the Land Use Element. Given the enormous potential for the PUD Site to advance multiple planning objectives, it is no surprise that numerous Comprehensive Plan policies apply to the site, and that a few of these policies may promote competing interests. For example, the Parks, Recreation, and Open Space Element promotes protection of open space at the PUD Site (Policy PROS-3.3.1: North-Central Open Space Network), the Economic Development Element promotes use of the District’s remaining large development sites to ensure that their economic development is fully realized (Policy ED-1.1.5: Use of Large Sites), the Housing Element promotes accommodation of a significant share of the District projected housing demand in “new neighborhoods” developed on large sites (Policy H-1.1.7: New Neighborhoods), and the Historic Preservation Element refers to the PUD Site in addressing the natural escarpment around central Washington (Action HP-2.5.b: Protecting the Natural Escarpment). Thus, in light of these potential competing priorities, the following policies of the Land Use Element should be relied upon to properly balance the

interests of these elements and policies. As demonstrated in Exhibit A, the Project is consistent with each of these policies.

- Policy LU-1.2.1: Reuse of Large Publicly-Owned Sites - Recognize the potential for large, government-owned properties to supply needed community services, create local housing and employment opportunities, remove barriers between neighborhoods, provide large and significant new parks, enhance waterfront access, and improve and stabilize the city's neighborhoods (10-A DCMR § 305.5)
- Policy LU-1.2.2: Mix of Uses on Large Sites - Ensure that the mix of new uses on large redeveloped sites is compatible with adjacent uses and provides benefits to surrounding neighborhoods and to the city as a whole. The particular mix of uses on any given site should be generally indicated on the Comprehensive Plan Future Land Use Map and more fully described in the Comprehensive Plan Area Elements. Zoning on such sites should be compatible with adjacent uses (10-A DCMR § 305.7).
- Policy LU-1.2.5: Public Benefit Uses on Large Sites - Given the significant leverage the District has in redeveloping properties which it owns, include appropriate public benefit uses on such sites if and when they are reused. Examples of such uses are affordable housing, new parks and open spaces, health care and civic facilities, public educational facilities, and other public facilities (10-A DCMR § 305.10).
- Policy LU-1.2.6: New Neighborhoods and the Urban Fabric - On those large sites that are redeveloped as new neighborhoods (such as Reservation 13), integrate new development into the fabric of the city to the greatest extent feasible. Incorporate extensions of the city street grid, public access and circulation improvements, new public open spaces, and building intensities and massing that complement adjacent developed areas. Such sites should not be developed as self-contained communities, isolated or gated from their surroundings (10-A DCMR § 305.11).
- Policy LU-1.2.7: Protecting Existing Assets on Large Sites - Identify and protect existing assets such as historic buildings, historic site plan elements, important vistas, and major landscape elements as large sites are redeveloped. (10-A DCMR § 305.12).

In addition to the Project's overall density being consistent with the FLUM, the taller building height on Parcel 1 is likewise consistent with the FLUM. The FLUM was originally adopted by the D.C. Council in 1984 as part of the first Land Use Element pursuant to the District of Columbia Comprehensive Plan Act of 1984 Land Use Element Amendment Act of 1984 (D.C. Law 5-187)(the "Act")(Exhibit D). From its initial adoption, the Land Use Element, including the FLUM, have always been viewed as providing general guidance that is to be read

in conjunction with the text of the Comprehensive Plan, and not interpreted as being a supplement or replacement of the Zoning Regulations. Indeed, as stated in Section 1101(k) of the Act, “[t]he Land Use Element does not identify or fix every use, height, and density on every block in the District. The text and the maps construct a guiding framework within which public and private land use and zoning decisions are to be made.” (Emphasis added)(Exhibit E). The Committee of the Whole Report on the Act dated December 4, 1984, (the “Committee Report”) emphasized this point:

[t]he feature that distinguishes the Land Use Element from the other District Elements is the inclusion of four generalized land use maps. The maps provide a graphic depiction of the land use policies of the [Comprehensive] Plan and complement the text of the Land Use Element. The maps depict land use policies in a generalized manner. They do not identify specific parcels or properties. This “soft-edged” character is intended to provide policy guidance while affording needed flexibility.”

Committee Report (emphasis added).

The Committee Report further clarifies the relationship of the FLUM to the District’s Zoning Regulations by stating “[t]he generalized land use maps should not be confused with the District’s zoning maps.... The categories and classifications of the generalized land use maps are not directly comparable to zoning districts. The generalized land use maps identify desired objectives but do not suggest the techniques for achieving these objectives. The Zoning Commission, which has established a reputation for conducting thorough and fair proceedings, has the statutory responsibility to adopt the District’s zoning maps.” (Emphasis added).

The general, “soft edged” manner in which the FLUM is intended to be interpreted and applied relative to the Zoning Regulations has remained consistent. For example, the Framework Element’s “Guidelines for Using the Generalized Policy Map and Future Land Use Map” (the “FLUM Guidelines”) state the following “[t]he [FLUM] is not a zoning map. Whereas zoning maps are parcel-specific, and establish detailed requirements for setbacks, height, use, parking, and other attributes, the [FLUM] does not follow parcel boundaries and its categories do not specify allowable uses or dimensional standards. By definition, the [FLUM] is to be interpreted broadly” (10-A DCMR § 226). Furthermore, the FLUM Guidelines state that “[t]he densities within any given area on the [FLUM] reflect all contiguous properties on a block—there may be individual buildings that are higher or lower than these ranges within each area” *Id.*

Based on the legislative history of the D.C. Council’s initial adoption of the FLUM through its action to adopt the first Land Use Element, and the current interpretive guidelines contained within the Framework Element, the land use designations contained in the FLUM, including the description of those designations, are clearly intended only to provide broad guidance to the Commission in making zoning decisions, and need not be strictly interpreted.

The Applicant submits that the additional height required to accommodate the proposed healthcare facilities on Parcel 1 is consistent with the FLUM and is compatible with the surrounding context. The need for flexibility in building height is not uncommon in large-scale PUDs where there is a need to make adjustments to a development in response to site conditions and the surrounding context. The Comprehensive Plan contemplates the occasional need for this kind of flexibility and considers it appropriate and not inconsistent with the FLUM. Specifically, the FLUM Guidelines state "...[i]t should be noted that the granting of density bonuses (for example, through Planned Unit Developments) may result in heights that exceed the typical ranges cited." As described above, the proposed density of the Project is clearly consistent with the FLUM. In addition, the proposed building heights on Parcels 2 – 6 are well within the maximum height permitted under a PUD in the C-2-B and C-3-A zones. Thus, the only building throughout the entire Project that requires flexibility from the permitted height of the zones that typically fall into the moderate density commercial FLUM category is the healthcare facility building on Parcel 1. As a result, use of the C-3-C zone for Parcel 1 for purposes of accommodating the height required for the healthcare facilities building is appropriate since only a small portion of the site is proposed for this height, and the flexibility will allow the Applicant to devote a substantial portion of the southern end of the PUD Site to open space.

As stated above, in order to devote as much of the southern portion of the site to contiguous open space the Applicant clustered the density and taller buildings of the Project at the north end of the PUD Site closer to the more intense development on the WHC and CNMC campuses, which reach a maximum height of approximately 127.5 feet. Therefore, the 115-foot healthcare facilities relate well to the context to the north. To the west, across First Street, is the large open space and waterbody of the McMillan Reservoir. With respect to adjacent residential uses, the location of the healthcare facilities is the farthest removed from the adjacent rowhouse neighborhoods to the south and east along Channing Street and North Capitol Street, respectively. The healthcare facilities building is located more than 1,000 feet from the rowhouses on the south side of Channing Street and, as shown on the site section drawings included in Exhibit C, approximately 260 feet from the rowhouses on the east side of North Capitol Street. Furthermore, in addition to the considerable distance between the healthcare facilities and the rowhouses along North Capitol Street, additional buffering will be provided by the park space on Cell 14 and the large number of trees that will be planted along Olmsted Walk and North Capitol Street. Finally, the massing of the health care building is further reduced through façade articulation that incorporates several recesses, niches, carve outs, and a variety of materials.

Issue 2: Do these or other Comprehensive Plan policies cited by FOMP in the record of this case weight against approval of the Project?

Based upon the clear guidance provided by the Comprehensive Plan, and its related legislative history, the Applicant does not believe that the Comprehensive Plan policies cited by FOMP in the record of this case weigh against approval of the Project. The purpose of the

Comprehensive Plan is to, among other things, provide guidance on executive and legislative decisions on matters affecting the District and its citizens (10-A DCMR § 102.6). The Comprehensive Plan, including the FLUM, is intended to be interpreted broadly, and permits flexibility in its interpretation and application depending upon the manner in which it is being used, and the District agency that is using it. This flexibility is important given the potential for overlap and competing priorities among and between the District Elements.

As previously stated, given the enormous potential for the PUD Site to advance multiple planning objectives, it is no surprise that numerous Comprehensive Plan policies apply to the site, and that a few of these policies may promote competing interests. However, as stated by the DCCA in *Durant*, “even if a proposal conflicts with one of more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.” As this relates to the Project, to the extent that the policies cited in the Order may compete with the policies cited by FOMP, including the Mid-City Area Element policy supporting moderate- to medium-density where development takes place on the PUD Site, the Applicant submits that this simply means the Commission must balance these policies, along with any other competing policies, with the Commission giving greater weight to the policies and guidance of the Land Use Element.

With respect to the Project, while the policies cited by FOMP may give rise to the need for flexibility, and reliance upon the policies of the Land Use Element to assist in balancing whatever competing priorities may exist, these cited policies do not, however, weigh against approval of the Project. Through several years of working closely with the Office of Planning (“OP”), HPO, HPRB, the District’s Department of Transportation (“DDOT”), and the District’s Department of Energy and the Environment (“DOEE”), and after attending hundreds of community meetings, the Applicant developed a Project that exhibits exemplary site planning and architectural design that is coordinated internally, successfully relates with the surrounding context, and, as shown in Exhibit A, is overwhelming not inconsistent with the Comprehensive Plan.

C. Other Objections to the Commission’s Order

1. Preservation of Open Space

Issue 3: Is the high-density development proposed for the site the only feasible way to retain a substantial part of the PUD Site as open space and make the site usable for recreational purposes?

The Project, as currently designed, represents the only feasible alternative that can retain a substantial part of the PUD Site as open space and make the site usable for recreational purposes, while at the same time balancing the interest in leveraging this site to advance

objectives for housing, economic development, and community facilities; improving tree canopy and reducing urban runoff; and promoting high-quality design.

First, the development proposed for the PUD Site is not high-density. Rather, as discussed above, when calculated as a whole across the entire PUD Site the proposed overall density of the Project is well within the density permitted as a matter-of-right in the C-2-A zone, the most restrictive of the three stated moderate-density commercial zones. It also falls below the overall density permitted in the R-5-B zone under a PUD, the more restrictive of the two stated medium-density residential zones. As discussed above, in order to devote as much of the southern portion of the site to contiguous open space the Applicant clustered the density and taller buildings of the Project at the north end of the PUD Site. As the Applicant will show at the limited scope public hearing, earlier iterations of the master plan included much bulkier buildings on Parcel 1. However, in response to the community's preference for more open space around the health care facilities building, and as a result of the specialized medical and mechanical equipment requirements associated with medical office buildings, which require higher than normal floor to ceiling heights, the development on Parcel 1 requires a building height that is above the typical moderate-density zone building height.

To require Parcel 1 to meet moderate-density requirements as to FAR and height, would require the removal of two floors from the proposed healthcare facilities building, amounting to a reduction of approximately 190,000 GFA and a building height of 90 feet. Given the critical role the healthcare facilities on Parcel 1 play with respect to the viability of the Project, such a drastic reduction in the overall GFA of the building could not be made without compromising the entire Project, or requiring a substantial redesign of the master plan that would likely result in considerable reductions in open space, housing, residential, and/or increase impacts on the surrounding neighborhoods.

Elimination of two floors from the healthcare facilities building, while keeping everything else in the proposed master plan static, would jeopardize the Applicant's ability to secure an anchor tenant for the healthcare facilities building and, without an anchor healthcare tenant the Applicant is unlikely to proceed with the project. Furthermore, the elimination of two floors would compromise the ability to provide the critical mass that is necessary to support the Project's retail program. As is common in many large-scale development projects, without critical mass the retail program suffers which in turn impacts the success of residential.

Alternatives to making Parcel 1 conform to moderate-density FAR and height, while maintaining a viable project, would require a substantial reworking of the master plan that would reduce the Project's open space, housing, and retail, and increase impacts on the existing historic structures by either distributing development across a larger portion of the PUD Site and/or increasing building heights where lower heights are currently proposed. As stated above, all of these alternatives would have substantially more impact on the surrounding neighborhood, and would significantly limit the extent to which the Applicant can leverage the potential of this opportunity-rich, publicly-owned site to advance multiple Comprehensive Plan policies.

2. Adverse Impacts

Issue 4A: Will the Project result in environmental problems, destabilization of land values, or displacement of neighboring residents or have the potential to cause any other adverse impacts identified by the FOMP in the record for this case?

Environmental Impacts

It is understood that any development has potential to result in beneficial or adverse environmental impacts that could range in intensity and duration. Therefore, as required under the PUD evaluation standards in Section 2403.3 of the ZR58, in evaluating environmental impacts the Commission must determine whether the impacts of the Project “will be favorable, capable of being mitigated, or acceptable given the quality of public benefits.”

As discussed under the Land Use Element and Environmental Protection Element sections of Exhibit A, the Project will include numerous low impact development (“LID”) strategies that will successfully mitigate any potential for adverse impacts and, compared to the baseline existing conditions of the PUD Site, result in substantial environmental benefits to areas such as storm water management and urban tree canopy. For example, the overall design of the master plan and each individual building will minimize impacts on the environment through the utilization of LID and green building methods. The master plan for the overall development for the PUD Site will be evaluated for LEED-Neighborhood Development (ND) and will be certified at least LEED-Gold or its equivalent. Individual buildings within the PUD Site will be certified at least LEED-Silver or its equivalent.

In addition, the Project will also satisfy the District’s Green Area Ratio (“GAR”) requirements under the Zoning Regulations. Currently the site is devoid of any meaningful tree canopy and landscaping, and what does exist is in an unhealthy state and provides poor storm water retention capacity. As shown on the GAR scoresheet included in Exhibit 32A1A13, Sheet 44, the Project will contain, among other notable elements, approximately 288,645 square feet (sf) of landscaped areas, approximately 12,822 sf of bioretention facilities, approximately 690 - 750 new trees, approximately 11,000 sf of green roof, and approximately 58,724 sf of permeable paving.

With respect to storm water management, despite FOMP’s opinion that the Project will exacerbate downstream flooding experienced by residents in the neighborhoods located to the south of the PUD Site, the evidence in the record clearly demonstrates otherwise. Currently, the PUD Site, does not currently contain any storm water management, and runoff from the entire 24 acre site enters the District’s Combined Sewer System (“CSS”) without any form of treatment. As part of the Project, a new storm water management system will be implemented on the site that will meet or exceed the District’s current storm water regulations through the use of LID strategies such as bio-retention, pervious pavers, storm water pond, green roofs, and underground

cisterns. This is consistent with the Environmental Protection Element policy promoting the control of urban runoff through sustainable best management practices (10-A DCMR § 619.8). As shown in the conceptual storm water management calculations included on Exhibit 32A1A24, Sheet 116, the estimated required storm water retention volume for the Project is approximately 87,379 cubic feet, and the estimated storage/retention volume that will be provided onsite is approximately 88,171 cubic feet. The retention of this substantial amount of storm water will have a beneficial impact on the CSS infrastructure and on water quality by reducing the volume of untreated water entering the CSS, thus reducing load on the District's infrastructure, and reducing the potential for CSS overflows into the Anacostia River.

The lack of substantial environmental impacts and potential for environmental benefits is supported by the Applicant's recent completion of the District's environmental impact screening process. As shown in Exhibit F, the Applicant submitted an Environmental Impact Screening form for the Project to the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") which was thoroughly analyzed by several District agencies. By letter dated August 29, 2016, DCRA informed the Applicant that "[b]ased on agencies' recommendations, it has been determined that the proposed action is not likely to have substantial negative impact on the environment." Most notably, the District of Columbia Department of Energy and Environment ("DOEE") conducted a detailed study of the Applicant's conceptual erosion/sediment control plan; conceptual storm water management plan; preliminary subsurface exploration and geotechnical engineering analysis; Phase I and II Environmental Site Assessments; and an air quality analysis report. As can be seen on Page 24 of the DOEE Environmental Assessment report included in Exhibit F, DDOE concluded that preparation of an environmental impact statement is not required "based on the fact that none of [DOEE's] reviews have identified any significant adverse impact or likelihood of a substantial negative impact to the environment as a result of the proposed project."

Destabilization of Land Values and Displacement of Neighboring Residents

The Applicant engaged RCLCO (Robert Charles Lesser & Co.) to conduct an analysis of whether the Project will cause gentrification, destabilization of land values, and/or displacement of neighboring residents in surrounding neighborhoods (the "RCLCO Report") (Exhibit G). Based upon the findings of the RCLCO Report, the Applicant believes that any impact caused by the Project on land values and/or displacement will be minimal relative to the current baseline existing conditions in the area surrounding the PUD Site, and that any potential impacts will be mitigated by the Project's substantial affordable housing component, the Applicant's proffered community benefits agreement, and the numerous District programs that exist to help residents manage increases in property values and housing costs.

The following is a summary of the findings contained in the RCLCO Report:

- Based upon a comparative analysis of home price and rent changes in the area surrounding the PUD Site and selected other neighborhoods in the District, the

neighborhoods surrounding the PUD Site have been experiencing home price and rent increases for years, and gentrification is already well underway.

- Condos purchased in the Bloomingdale/LeDroit Park neighborhoods between 2003 and 2007 and sold in 2016 appreciated at an average rate of 2.6% annually, as compared with 2.0% annually in Dupont Circle. The gap in appreciation widens for more recent purchases: those bought between 2008 and 2010 and sold in 2016 appreciated at an average rate of 4.1% for Bloomingdale/LeDroit Park compared to 2.9% in Dupont Circle.
- The median single-family home price in the area surrounding the PUD Site is above the District-wide median, and also higher than some of the District's most established neighborhoods.
- According to Census data, the median rent in North Bloomingdale is 70% higher than the median rent in Washington, D.C., and either higher or on par with some of the District's most affluent areas. The rents in North Bloomingdale are rising faster than in the District as a whole.
- Two independent studies found that gentrification occurred in the neighborhoods surrounding the PUD site between 2000 and 2013 according to one study and between 2001 and 2010 in the other.
- With gentrification so far underway in the surrounding neighborhoods because of continuing growth, change, and housing demand relative supply that have no relationship to McMillan, there is no reason to conclude that the Project will have a significant impact on this trend of home price and rent increases.
- The additional housing provided by the Project, both market-rate and affordable, can help to mitigate the effects of gentrification in the surrounding area, based upon scholarly studies and recent downward rent trends in the District related to increases in new apartment construction.
- The Project will not result in any direct displacement of neighborhood residents.
- The development of new affordable housing will help directly mitigate increasing property values and rents, decreases in affordable housing, and potential displacement of existing neighborhood residents.
- The Project will create a substantial number of jobs and provide amenities that will benefit neighborhood residents.

- Existing homeowners will benefit from potential increases in home values, and the District maintains several programs that are devoted to mitigating the impacts of rising housing costs that are available to District residents.
- The Project will not cause any direct displacement of commercial establishments, and will provide several benefits that will support local commercial businesses and help avoid/mitigate the potential for displacement of locally-owned commercial businesses.

Distribution of Health Care Facilities

The Project will not result in an overconcentration of health care facilities. Rather, consistent with the policies of the Community Services and Facilities Element, the Project will help ensure that high-quality, affordable primary health centers are available and accessible to all District residents, including those with special needs, by providing approximately 1,030,000 GFA of modern, state-of-the-art health care facility space that will address a number of District planning objectives. First, a large percentage of the proposed health care facility space is expected to be occupied by the systems currently operating in the adjacent WHC campus in order to help ease space constraints on their respective main campuses, modernize their facilities, continue to expand upon the range of services provided, and continue to grow and remain competitive in the health care sector. These healthcare systems' need for additional facility space is directly tied to the evolution and growth of the District as well as their collective need to replace aging spaces with newer facilities that meet modern design standards and better match the current needs of a health care provider. Thus having the proposed healthcare facilities located in close proximity to the operations on the main campus that the new space is supporting is critically important.

The proposed health care facilities will also help address a designated health care deficiency that exists in this area of the District. According to information published by the DC Department of Health's Primary Care Bureau (the "DCPCB"), the agency responsible for assessing and ensuring designation of areas within the District that have a shortage of health care providers, the McMillan site is located in one of nine designated Health Professional Shortage Areas (HPSAs) in the District. According to DCPCB's website, HPSAs are used by the federal government to recognize shortages of health care providers for geographic areas, populations or facilities, and to prioritize the allocation of federal and local resources to address these shortages. HPSA's are designated by the Health Resources and Services Administration (HRSA), an agency of the U.S. Department of Health and Human Services, and once designated are rated on a scale of 0 – 25, with higher scores indicating greater need. According to the HPSA maps available on DCPCB, the PUD Site is located within the Low Income (LI) Columbia Heights/Ft. Totten/Takoma [primary care] HPSA which has a score of 18 (Exhibit X). The Project has the potential to help address this issue and reduce the shortage of low income primary care facilities that are available within this portion of the District.

Finally, the proposed health care facilities will help implement one of the six strategic initiatives set forth in “The Five-Year Economic Development Strategy for the District of Columbia (the “Economic Strategy”), a portion of which is attached as Exhibit X, which recommends development of a medical hub at the McMillan Reservoir site as part of a strategy to development a best in class global medical center within the District. According to the Economic Strategy, development of a medical hub at the McMillan Reservoir site will create a focal point for the District’s medical institutions, deliver much needed expansion space for area health care facilities, and has the potential to add approximately 5,000 new jobs to the higher education and health care sectors.

Issue 4B: If so, how should the Commission judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requires, and the potential adverse effects?

Issue 5A: Will the Project have a favorable impact on the operation of city services and facilities?

Consistent with the Community Services and Facilities Element of the Comprehensive Plan, the Project will not adversely affect the facilities necessary for the efficient delivery of public services (10-A DCMR § 1103.6). The Project will have a favorable impact on the District’s CSS as a result of the substantial upgrade of the PUD Site’s storm water management system. Currently, the PUD Site does not contain any storm water management, and runoff from the entire 24 acre site enters the CSS without any form of treatment. As part of the Project, a new storm water management system will be implemented on the site that will meet or exceed the District’s current storm water regulations through the use of sustainable low impact development (“LID”) strategies such as bio-retention, pervious pavers, storm water pond, green roofs, and underground cisterns. As shown in the conceptual storm water management calculations included on Exhibit 32A1A24, Sheet 116, the estimated required storm water retention volume for the Project is approximately 87,379 cubic feet, and the estimated storage/retention volume that will be provided onsite is approximately 88,171 cubic feet. The retention of this substantial amount of storm water will have a beneficial impact on the CSS infrastructure and on water quality by reducing the volume of untreated water entering the CSS, thus reducing load on the District’s infrastructure, and reducing the potential for CSS overflows into the Anacostia River. As part of the Environmental Impact Screening process (the “environmental screening”) conducted by the District of Columbia Department of Consumer and Regulatory Affairs (“DCRA”), the DOEE Watershed Protection Division reviewed the Applicant’s conceptual storm water management plan and stated that no significant adverse impacts are anticipated “provided the proposed erosion and sediment control and storm water management measures are implemented” (Exhibit F).

The District of Columbia Department of Public Works (“DPW”) and DC Water also reviewed the Project during the environmental screening process. By letter dated August 20,

2015, DPW stated that the Project will not cause negative environmental impacts, provided that the Applicant is in compliance with applicable laws and regulations governing solid waste management during all phases of the Project. The Applicant will comply with all applicable laws and regulations in this regard. Similarly, by letter dated November 6, 2015, DC Water reviewed the Project and indicated that no long term environmental impacts are anticipated beyond the period of construction. Copies of the letters from DPW and DC Water are included in Exhibit F.

Finally, attached as Exhibit G are letters from Washington Gas, Verizon, and Comcast, which each indicate that adequate capacity exists to be able to provide service to the PUD Site.

Issue 5B If not, is the impact capable of being mitigated, or acceptable given the quality of the public benefits in the project?

Based upon the Project design, and the favorable responses received from District agencies during the environmental screening process and other private service providers, the Project will not adversely impact the operation of city services and facilities.

D. Witnesses

The Applicant intends to call the following witnesses at the March 23, 2017, limited scope public hearing⁵:

- Gilles Stucker, Office of the Deputy Mayor for Planning and Economic Development
- Adam Weers, Vision McMillan Partners
- Matthew Bell, FAIA, Perkins Eastman (previously accepted as an expert in architecture (Exhibit 17G))
- Shane L. Dettman, Holland & Knight (expert in zoning and land use planning)

E. Conclusion

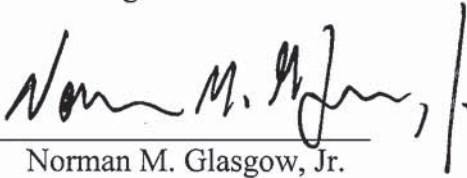
Based on the foregoing, and as will be further supported by the Applicant's testimony at the limited scope public hearing on March 23rd, the Applicant believes it has thoroughly and successfully addressed each of the outstanding issues raised in the DCCA Opinion, as stated in the Commission's Notice of Limited Scope Public Hearing. The Applicant also believes it has met its burden of proof as required under the PUD Evaluation Standards of Section 2403 of the

⁵ The Applicant may call additional rebuttal witnesses at the March 23, 2017, limited scope public hearing, as necessary. In the event a particular rebuttal witness has not already been accepted by the Commission as an expert in their respective field, the Applicant will submit the witnesses' resume for the Commission's consideration prior to the witnesses testimony.

1958 Zoning Regulations. As clearly demonstrated in the Comprehensive Plan analysis attached as Exhibit A, the Project is overwhelmingly not inconsistent with the Comprehensive Plan. Furthermore, as a result of the Applicant's very careful site planning and distribution of density and height across the PUD Site, and the high-quality architectural design of the Project, the impact of the Project on the surrounding area will not be unacceptable, but rather will be favorable given the extensive number and quality of the Project's benefits and amenities. Finally, as demonstrated by the sustainable design of the Project, the District agency reports prepared as part of the environmental screening process (Exhibit F), and the letters provided by District and private service providers, the Project will not result in adverse environmental impacts nor will it adversely impact the operation of city services and facilities. As such, the Applicant respectfully requests the Commission to approve the Project.

Respectfully submitted,

Holland & Knight LLP

By: 
Norman M. Glasgow, Jr.

cc: Jennifer Steingasser, D.C. Office of Planning (via hand delivery and email)
Maxine Brown-Roberts, D.C. Office of Planning (via hand delivery and email)
Anna Chamberlin, DDOT (via email)
Jonathan Rogers, DDOT (via hand-delivery)
Advisory Neighborhood Commission 1B (via hand delivery and email)
Advisory Neighborhood Commission 5A (via hand delivery and email)
Advisory Neighborhood Commission 5E (via hand delivery and email)
Andrea Ferster, Esq, Friends of McMillan Park (via first class mail and email)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Applicant's Response to Issues Identified in Notice of Limited Scope Public Hearing was sent on March 13, 2017, electronically to the parties below and will be hand-delivered to those parties on March 14, 2017:

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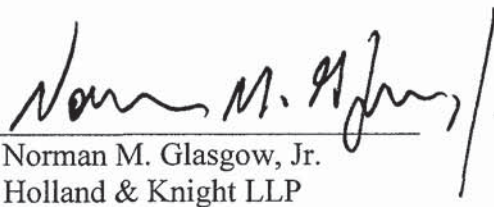
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