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## VIA EMAIL

Zoning Commission of the District of Columbia  
441 4th Street, N.W.  
Suite 210  
Washington, DC 20001

Re: Z.C. Case No. 13-14 – McMillan Sand Filtration Site  
Applicant’s Supplemental Post-hearing Submission

Dear Members of the Commission:

On behalf of the Applicant, Vision McMillan Partners, LLC (“VMP”) and the District of Columbia, through the Office of the Deputy Mayor for Planning and Economic Development (“DMPED”), we hereby submit the following supplemental information requested by the Zoning Commission (the “Commission”) at its June 29, 2017, public meeting. The information contained herein has been reviewed and concurred upon by both VMP and DMPED, which remains firmly committed to the approval of this project. At the June 29, 2017, meeting, the Commission deliberated on the five remand issues that were identified in its Notice of Limited Scope Public Hearing that was published in the *DC Register* on February 10, 2017 (the “Limited Issues”) and determined that additional information was needed in order to fully evaluate the proposed redevelopment of the McMillan Reservoir site, and specifically the healthcare facility building proposed on Parcel 1, relative to remand Issue No. 1. The Limited Issues were in direct response to the remand issues identified by the District of Columbia Court of Appeals (the “DCCA”) in *Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016).

As detailed in Exhibits A - C, after an exhaustive review there are no reasonable alternative building configurations that allow the Applicant to preserve the critical density on Parcel 1 and create a successful project with the proffered public benefits and amenities. However, as shown in Exhibit D, the Applicant has been able to further reduce the height of the healthcare facility building to 113 feet, a reduction of an additional two feet, while still producing a viable project with the quantity and quality of benefits associated with the planned unit development (“PUD”). This reduction has been achieved by reducing the floor-to-floor

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EXHIBIT NO.952

height of the retail level along North Service Court, as well as the floor-to-floor heights of Levels 7 and 8.

### Background

The Applicant filed its initial response to the Limited Issues on March 13, 2017, which is included as Exhibits 895- 896P of the case record (the “Applicant’s Response”). The Applicant’s Response included detailed information regarding the project’s consistency with the policies of the District Elements of the Comprehensive Plan, including the policies contained within the Mid-City Area Element that are specific to the McMillan Reservoir Site. In addition, the Applicant’s Response included substantial information that specifically addressed the consistency of the project’s overall density and additional building height on Parcel 1 with the Medium Density Residential / Moderate Density Commercial / Parks, Recreation, and Open Space designation assigned to the McMillan Reservoir Site on the Comprehensive Plan Future Land Use Map (“FLUM”), the language of the Mid-City Area Element policy that recommends moderate- to medium-density housing, retail, and other compatible uses where development takes place on the McMillan Reservoir Site, and the Planned Unit Development (“PUD”) standards under the 1958 Zoning Regulations of the District of Columbia (“ZR58”).

The Applicant expanded upon its responses to the Limited Issues in detailed testimony provided at the public hearings held on April 19 and May 1, 2017. In that testimony, the Applicant established that the overall project density is critical to the viability of the entire project, and is absolutely necessary to advance the Comprehensive Plan policies cited in Z.C. Order No. 13-14(1) (the “Order”), and the significant number of other Comprehensive Plan policies contained within the Economic Development; Housing; Parks, Recreation, and Open Space; Environmental Protection; and Community Services and Facilities Elements of the Comprehensive Plan. In addition, the Applicant testified that the proposed density is necessary for the Applicant to fulfill its community benefit commitments related to job creation and job training opportunities; generation of tax revenue; contributions to education, public programming, and neighborhood beautification; and improvements to transportation services, all of which were carefully negotiated through a community-driven process and approved by the D.C. Council commensurate with the proposed density.

The Applicant’s witness, Mr. Adam Weers from the Trammell Crow Company, a member of Vision McMillan Partners and an industry leader in developing healthcare facilities nationwide, testified that the proposed healthcare facility on Parcel 1 is what makes the entire McMillan project economically viable. He explained that the density of the healthcare facility on Parcel 1 is required to attract the types and range of healthcare tenants that will create the critical mass necessary to support the retail and residential components of the project and allow the Applicant to fulfill its community benefit commitments. He also testified that it is the only

feasible way to retain a substantial part of the McMillan Sand Filtration site as open space and make the site useable for recreational purposes. Mr. Weers further stated that reducing the height of the healthcare facility from 115 feet to 90 feet - the equivalent of two full stories and approximately 190,000 square feet of gross floor area - would effectively eliminate the healthcare facility component of the project and render the entire project infeasible: there would be no funds for the Applicant's community benefits program and the contribution required to construct the proposed parks and community center would be substantially reduced. Finally, Mr. Weers testified that given the location, access characteristics, and adjacencies of the McMillan Sand Filtration site, there is no other office market that could replace the proposed healthcare facility and maintain the viability of the project.

The Applicant also demonstrated that the proposed project is not high density, but is clearly moderate to medium density regardless of whether the density is calculated in accordance with the Section 2405.2 of the PUD regulations (i.e. as an aggregate across the entire project site area), or strictly in accordance with the language of the aforementioned Mid-City Area Element policy that recommends moderate- to medium-density on the McMillan Sand Filtration site "where development takes place." The Applicant's expert witness in zoning and land use planning, Mr. Shane Dettman from Holland & Knight LLP, testified that the overall project density, when calculated as an aggregate across the entire land area of the site, is well within the density permitted as a matter of right in the C-2-A zone. Mr. Dettman further testified that when calculated using only the combined land area of Parcels 1 – 5, the parcels upon which development is proposed to take place on the McMillan Reservoir site, the resulting density is consistent with what is permitted under a C-3-A PUD. Thus, the overall project density is clearly not inconsistent with the Comprehensive Plan, and is in full compliance with the Zoning Regulations (ZR58).

Regarding the proposed building height on Parcel 1, the Applicant demonstrated that the higher building height is necessary as a result of the many programmatic requirements and site constraints that must be balanced to allow the Applicant to devote a substantial portion of the McMillan Sand Filtration site to parks, open space, and other recreational uses. The testimony showed that included within these programmatic requirements is the need to accommodate the specialized floor-to-ceiling heights of the healthcare facility uses that will be located on Parcel 1. Similar to the discussion regarding the proposed density of the healthcare facility on Parcel 1, the Applicant also demonstrated that the ability to accommodate the minimum floor-to-ceiling heights for these specialized healthcare uses is also critical to the viability of the entire project, and the Applicant's ability to advance numerous Comprehensive Plan policies, including those cited in the Order.

As demonstrated by evidence and testimony at the limited scope hearings, the additional building height on Parcel 1 is consistent with the FLUM, which is adopted as part of the Land

Use Element, and, as discussed further below, can be granted by the Commission pursuant to its authority under the PUD Regulations. The legislative history of the Land Use Element makes clear that the Land Use Element does not identify or fix every use, height, and density on every block in the District, and that the categories and classifications of the FLUM are intended to identify desired objectives, and are not directly comparable to zoning districts. This “soft-edged” manner in which the FLUM is intended to be interpreted and applied relative to the Zoning Regulations is reflected in the current Comprehensive Plan “Guidelines for Using the Generalized Policy Map and Future Land Use Map,” which state “[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.”

#### Request for Additional Information Regarding the Parcel 1 Healthcare Facility Building

During its deliberation held on June 29, 2017, the Commission requested additional examination of the Parcel 1 healthcare facility building height. The Commission acknowledged the numerous changes that have already been made to the design, massing, density, and height of the healthcare facility building on Parcel 1 that were made in response to comments from the community, the Commission, the Historic Preservation Review Board (“HPRB”), and the National Capital Planning Commission (“NCPC”), including the reduction in building height from 130 feet to 115 feet made during earlier Commission proceedings and the resulting reduction in density by approximately 34,000 square feet of gross floor area (“GFA”). The Commission also acknowledged the significant impact that removing two full floors from the healthcare facility building (a reduction in height from 115 feet to 90 feet would have on the viability of the entire project, and on the Applicant’s ability to fully advance many land use; housing; parks, recreation, and open space; historic preservation; and other Comprehensive Plan policies.

The Commission agreed with the Applicant’s assessment of the project’s overall density relative to its consistency with the Comprehensive Plan, including the FLUM and the Mid-City Area Element policy that recommends moderate- to medium-density where development takes place on the McMillan Reservoir Site, and its compliance with the Zoning Regulations. However, in addressing the first remand issue the Commission expressed that additional examination of the Parcel 1 healthcare facility building height was necessary in order to conclusively determine whether the only way to advance the Comprehensive Plan policies cited in the Order is to have a building on Parcel 1 that is taller than would be allowed within a medium density zone. While noting the impossibility of considering every conceivable scenario for redeveloping the site, that the current plan is a direct result of a lengthy public planning process and has the support of Advisory Neighborhood Commission 5E and other District elected officials, the Commission nonetheless still felt that the height of the healthcare facility on Parcel 1 deserved further examination as to whether the height could be reduced by one story and

the approximately 95,000 square feet of density that would be lost could be regained through manipulation of the building footprint. The Commission also requested the Applicant to revisit the specific floor to ceiling heights proposed for the healthcare facility to determine whether any further height reductions can be made without compromising the ability to meet the program needs of the anticipated healthcare tenants.

The information contained within Exhibits A – D responds to the Commission’s request for further evaluation of the healthcare facility building on Parcel 1. In response to the Commission’s question regarding the feasibility of reducing the height of the building by one story, the Applicant has conducted a detailed analysis of three options that each entail removing one full story from the healthcare facility building which would reduce the overall density of the healthcare component of the project by approximately 95,000 square feet of GFA. As discussed above and through testimony provided during the public hearings, the Applicant has already thoroughly addressed how the density of the healthcare facility component of the project, as proposed, is critical to the viability of the entire project, and that alternatives to regain two floors of density – approximately 190,000 square feet of GFA - elsewhere on the McMillan Filtration site would jeopardize the cohesiveness and success of the healthcare component, and adversely impact the residential, retail, and parks and open space components of the project, as well as the project as a whole. For the same reasons, attempting to regain even one floor of density - approximately 95,000 square feet of GFA - elsewhere on the site would have similar significant impacts.

Given the inability to reduce the height of the healthcare facility building on Parcel 1 by one full story and regain the density lost in another location on the McMillan Reservoir site, per the Commission’s request, the Applicant conducted a detailed analysis of whether the approximately 95,000 square feet of GFA could be regained through various manipulations in the building footprint within the constraints of Parcel 1. As shown in Exhibit A, there are numerous development considerations/constraints that relate to important community interests, historic preservation, public benefits and amenities, and building design and leasing that impact the massing and design of the healthcare facility building. The impact of these considerations/constraints affects the building on all sides, and makes it impossible to gain back the density lost from removing one full story without causing significant impacts, reductions, and/or losses to: (i) the success of the proposed master plan and its relationship to the surroundings; (ii) the Applicant’s historic preservation strategy; (iii) the efficiency and ability to lease the healthcare facility building, (iv) the extent of the Applicant’s ability to advance many Comprehensive Plan policies; and (v) the Commission’s ability to successfully balance the public benefits, degree of development incentives requested, and any adverse effects. A detailed discussion of the massing options considered by the Applicant, and the rationale for why none of these options are viable solutions to reducing the height of the healthcare facility building is included in Exhibits B and C.

During its deliberations, the Commission also requested the Applicant to reevaluate the specific floor to floor heights within the Parcel 1 healthcare facility building to determine whether any additional height reductions could be made without compromising the ability to meet the program needs of the anticipated healthcare tenants. Upon further review, the Applicant has determined that it is possible to reduce the overall height of the healthcare facility on Parcel 1 to a maximum height of 113 feet, a reduction of 2 feet, through reductions in the floor to floor heights on the top two floors and the retail floor at the North Service Court level.

As thoroughly discussed during the public hearings, the floor-to-floor height requirements of a healthcare facility significantly exceed those of a typical office building that is constructed for conventional office tenants. Indeed, based on the data from a 2015 Advisory Board study submitted by the Applicant, the vast majority of healthcare uses that may occupy the building on Parcel 1 prefer minimum floor to floor heights that range between 13'-6" – 21'-0" to accommodate the specialized MEP requirements and medical equipment that accompany these types of uses (Exhibit 951B). As shown in Exhibit D, the Applicant had already constrained the floor to floor heights of several levels of the Parcel 1 healthcare facility in order to minimize building height and respond to the surrounding context. Specifically, Levels 3 – 6 are designed with floor-to-floor heights of approximately 13'-0", already slightly less than the recommended minimum provided in the Advisory Board study mentioned above; and therefore, these levels cannot be further reduced without severely jeopardizing the economic feasibility of the building and/or the ability to meet the program needs of the anticipated healthcare tenants on these floors. Furthermore, as described further below, the larger floor-to-floor heights on levels 1 and 2 must be maintained as these levels are anticipated to be the most likely to contain the types of large medical equipment and operating rooms that, as demonstrated in the Advisory Board study data provided in Exhibit 951B, require the highest floor to floor heights

After further study, the Applicant has reduced the floor to floor height of Levels 7 and 8 of the healthcare facility building by six inches each, resulting in a one foot reduction in the height of the building. Previously, these two floor were designed to have a floor to floor height of 14'-0" (Exhibit 896C). As shown in Exhibit D, the floor to floor height of Levels 7 and 8 are now proposed to be 13'-6". This is only slightly higher than the lower levels of the building which, in addition to accommodating the MEP and equipment needs of healthcare tenants, is also necessary to accommodate roof/terrace insulation and drainage requirements. The Applicant has also been able to reduce the floor to floor height of the retail level (LR) of the building that fronts along the North Service Court from 16'-0" to 15'-0", or by one foot. While not optimal, the 15'-0" floor to floor height at the retail level will still allow the Applicant to achieve a clear ceiling height of 14'-0", which is widely considered a minimum acceptable ceiling height for retail space and is a minimum requirement in certain areas under the Zoning Regulations. Although the retail level is technically below the building measuring point along Michigan Avenue, the one foot reduction results in the

entire building being lowered by one foot since the retail level serves as the podium upon which the building sits. This is possible due to the difference in elevation between Michigan Avenue and the North Service Court, and can be successfully done while still achieving the required grades around the building.

As a result of the floor to floor height reductions described above, the Applicant has been able to reduce the overall height of the Parcel 1 healthcare facility building by another two feet, thus resulting in a maximum building height of 113 feet. As shown in Exhibit D, the Applicant has compressed the floor to floor heights of each level within the healthcare facility building to the greatest extent possible. As stated above, Levels 1 and 2 of the building are anticipated to be the most likely to contain the types of large medical equipment and operating rooms that require the highest floor to floor heights, such as for oncology and imaging; and therefore, the proposed 15'-6" and 18'-6" floor-to-floor heights cannot be reduced. The floor to floor heights for Levels 1 - 8 of the building are now at the absolute minimum height they can be while still being able to meet the MEP and equipment needs of healthcare tenants and accommodate building roof drainage. Similarly, the floor to floor height of the retail level along North Service Court has been reduced to the minimum height possible while still maintaining the quality of the retail space. Thus, any further reduction of the floor-to-floor height on any level would eliminate the ability of that space to accommodate the program needs of the anticipated healthcare tenants, and require the Applicant to remove a level in order to maintain the floor heights that are required. As thoroughly detailed in Exhibits B and C, the removal of a story from the healthcare facility building cannot be done without causing significant impacts to the viability of the healthcare component of the project, and the entire project overall.

#### Parcel 1 Healthcare Facility Building Height is Consistent with Medium Density Zoning

During its June 29, 2017, deliberation, the Commission disagreed that the proposed development on Parcel 1, in itself, constitutes high density development. The Commission stated that while the height of the healthcare facility building on Parcel 1 "is consistent with what you would find in a high density zone...every other aspect of it is consistent with a medium density zone...if it weren't for the fact that it were a medical office building and it needs additional floor to floor heights for the equipment, it would be consistent with the medium zone." However, as discussed below, the Applicant submits that the height of the healthcare facility building on Parcel 1, is also consistent with the height permitted in the medium-density CR zone for a PUD that is granted up to 5% additional height pursuant to the Commission's authority under Section 2405.3 of ZR58.

When originally submitted by the Applicant, the healthcare facility building on Parcel 1 had a proposed height of 130 feet. To accommodate this height, the Applicant requested a C-3-C zone designation on Parcel 1, while requesting a CR zone designation for the remainder of the

McMillan Reservoir site (Parcels 2 – 7).<sup>1</sup> As confirmed by multiple PUDs that have recently been approved and constructed, the CR zone permits medium-density development with a maximum height of 110 feet. *See* Z.C. Order Nos. 11-13, 14-08, and 15-15.<sup>2</sup> During the course of initial proceedings on the project, the height of the healthcare facility building was reduced to 115 feet in response to comments by the Commission and NCPC, and, as discussed above, is now proposed to be 113 feet.

As discussed below, the proposed 113 foot height of the healthcare facility building is more consistent with a medium-density zone than it is a high-density zone. While based upon the substantial evidence in the record and provided in testimony, the Applicant continues to believe its request to rezone Parcel 1 to C-3-C is consistent with the McMillan Reservoir site's Medium Density Residential / Moderate Density Commercial / Parks, Recreation, and Open Space designation on the FLUM, as read in conjunction with the text of the Citywide and Area Elements of the Comprehensive Plan. However, as a result of the aforementioned height reductions made to the healthcare facility building during the PUD process, the Commission could also decide to approve medium-density CR zoning for the entire McMillan Reservoir site and exercise its authority under Section 2405.3 of ZR58 to slightly increase the permitted height on Parcel 1 to accommodate the slightly taller healthcare facility building on Parcel 1.

Pursuant to Section 2405.3 of ZR58, the Commission may authorize a 5% increase in the maximum building height permitted under a PUD provided that the increase “is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of the PUD regulations.” As stated above, the maximum height permitted for PUD in the CR zone is 110 feet, which the Commission can increase to 115.5 feet at its discretion. As thoroughly discussed at the public hearing, and described above, the slightly taller building height on Parcel 1 is absolutely necessary to accommodate the specialized floor to floor requirements for the intended healthcare facility uses, and is critical to the viability of the healthcare component of the project and the project as a whole. As such, pursuant to Section 2405.3 of ZR58, the 113 foot building height proposed for the healthcare facility building, which is only three feet (or 2.7%) above the permitted PUD height of 110 feet in the CR zone, is essential to the successful functioning of the project. Furthermore, as presented at the public hearing, the additional three feet of building height will not create any unacceptable impacts on the surroundings due to very

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<sup>1</sup> When calculated as an as an aggregate across the entire land area of the McMillan Reservoir site the density of the project is consistent with that permitted as a matter of right in the C-2-A zone, one of three stated moderate-density commercial zones. When calculated using only the land area of Parcels 1 – 5, the parcels upon which development is proposed to take place on the McMillan Reservoir site, the resulting density is consistent with that permitted in a C-3-A PUD, which is also considered a moderate-density commercial zone.

<sup>2</sup> All three of these cases involved sites that were fully or partially designated Medium Density Residential on the Comprehensive Plan Future Land Use Map and the Commission approved CR zone map amendments. In Z.C. Order No. 14-08, Portner Place, LLC, which involved a mixed-use project, the Commission explicitly found that “although the R-5-D and CR Zone Districts are not specifically listed among the corresponding land use categories for Medium-Density Residential, these districts are not inconsistent with the Future Land Use Map.

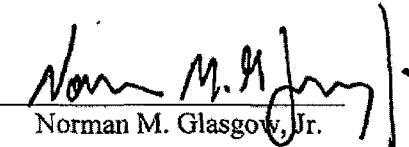


effective site planning and design, and will allow the Applicant to fully satisfy its community benefit commitments and advance a significant number of Comprehensive Plan policies, including those cited in the Order. Therefore, providing the additional height incentive on Parcel 1 is consistent with the purpose and evaluation standards of the PUD regulations.

The Commission has in the past decided, on its own, to modify an Applicant's requested map amendment when modifications to a project were made; and therefore, the Commission is well within its authority to modify the Applicant's requested zoning for Parcel 1. *See* Z.C. Case Nos. 05-23 and 05-23A.<sup>3</sup> The Commission has also used its authority under 2405.3 of ZR58 to grant additional building height. *See* Z.C. Order No. 08-33. Accordingly, in light of the changes made to the height of the healthcare facility building, should the Commission consider the CR zone to be more appropriate for Parcel 1 rather than the requested C-3-C zone the Applicant would not object to such a change, and would respectfully request flexibility pursuant to Section 2405.3 of ZR58 to allow the healthcare facility building to have a maximum height of 113 feet.

Respectfully submitted,

Holland & Knight LLP

By:   
Norman M. Glasgow, Jr.

Enclosures

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<sup>3</sup> In Z.C. Case No. 05-23A, the Commission approved a PUD and related map amendment to the C-3-C zone for a project that had a maximum building height of 130 feet. Subsequent to the Commission's approval, the Applicant submitted an application to modify the project, including reducing the maximum building height to 110 feet. Noting that the C-3-C zone was no longer necessary due to the reduction in building height, the Commission decided to modify the map amendment related to the project and approved C-3-A zoning instead of the previous C-3-C zoning (Z.C. Order No. 05-23A).

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Andrea Ferster, Esq, Friends of McMillan Park (via hand delivery and email)

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Applicant's Supplemental Post-hearing Submission was sent electronically on August 21, 2017, to the parties below, and will be hand-delivered to those parties on August 22, 2017:

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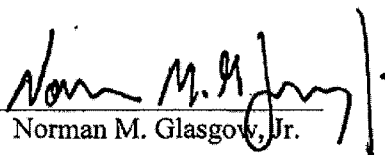
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