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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 Post-Hearing Submissions

Dear Commissioners:

On behalf of Vision McMillan Partners ("Applicant"), we submit this letter and the attached documents in response to information requested by the Commission during the hearing on the above-referenced application. Supplemental drawings are attached as Exhibit A. A chart summarizing the Commission's comments and the Applicant's response, with references to the exhibit providing the detailed response, is attached as Exhibit B. The more significant topics are discussed below.

1. Comprehensive Plan.

The Commission requested additional information demonstrating that the proposed C-3-C zoning for the north portion of the site (Cell 14 and the Healthcare Facility), and the remainder to the CR District, is not inconsistent with the Comprehensive Plan, the legal standard for the zoning of property in the District of Columbia. D.C. Code § 6-641.02 (2012 Repl.). Attached as Exhibit C is a memorandum from the Applicant's land use and zoning expert, Steven E. Sher, that describes in greater detail how the proposed zone district for Parcel 1 is not inconsistent with the Comprehensive Plan. Mr. Sher notes that Comprehensive Plan Future Land Use Map ("FLUM") places the McMillan Sand Filtration site in *three* land use categories: (i) Medium Density Residential, (ii) Moderate Density Commercial, and (iii) Parks, Recreation and Open Space. The total density of the entire planned unit development ("PUD") on the net land area is 2.36 FAR, of which 1.29 FAR is office and retail. Those numbers are well within and below the density permitted as a matter-of-right under C-2-A, which is the lowest of the three zones indicated as "corresponding" to Moderate Density Commercial. Thus, the 2.36 FAR proposed under the McMillan PUD is fully consistent with the FLUM designation.

Through the flexibility afforded by the PUD process, the proposed density can be appropriately distributed across the site by concentrating development on the northern parcel while leaving other portions, particularly at the south end of the site, as parks, recreation, and open space, consistent with the Comprehensive Plan designation. In classic planning terminology, this concentration of density on a portion of a site is referred to as "cluster development," and the term is frequently used interchangeably with "planned unit development."¹ This "cluster development" approach to the McMillan site is a critical and essential part of fulfilling the parks, recreation and open space designation of the FLUM, while at the same time achieving the other elements of the Comprehensive Plan and the city's strategic economic plan. These policies and goals are applied using the interpretive guidelines of the Comprehensive Plan. The guidelines state that the FLUM is to be "interpreted broadly" and recognize that the 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." 10A DCMR § 226(c)(emphasis added). The guidelines further advise that "the land use category definitions described the general character of development in each area, citing typical building heights (in stories) as appropriate. It 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 here." *Id.*

Significantly, the proposed zoning of the property to C-3-C and CR is part of a PUD process, which allows the Commission to review the design, site planning, and provision of public spaces and amenities against the requested zoning relief. The proposed C-3-C zoning on Parcel 1 is sought only to achieve the nine-story height for the medical office building. This can only be accomplished by constructing the building to a height of 130 feet due to the higher floor to ceiling heights a medical facility requires for its particular mechanical, electrical and air-handling needs. A typical nine-story office building would only require a height of 110 feet. As articulated in the Mayor's Five-year Economic Development Strategy dated November 4, 2012, the District of Columbia (owner of the McMillan site) has expressed a specific desire to develop a significant healthcare center at McMillan given the other medical centers immediately to the north across Michigan Avenue. A map amendment request, in conjunction with a PUD, is

¹Michael Murphy and Joseph Stinson, "Cluster Development," available at www.landuse.law.pace.edu; *see also* Cluster Development in Plain English, Municipal Research and Services Center, <http://www.mrsc.org/subjects/planning/lu/cluster.aspx> ("Cluster development is a development arrangement in which all buildings allowable on a site are concentrated on a portion of the site, leaving the remainder of the site undeveloped. This contrasts with the conventional land development and subdivision approach, which is to divide an entire site into lots, each of which meets minimum zoning lot size requirements and may be used for building construction."). Numerous jurisdictions across the country have adopted cluster development regulations specifically to encourage the type of development proposed for the McMillan site, where density is concentrated on one part of a parcel to protect open space or natural preserves on another. *See, for example*, "Cluster/Conservation Development," <http://urbanext.illinois.edu/lcr/cluster.cfm> (last visited June 19, 2014); "Cluster/Open Space Development," Chester County Planning Commission (PA), <http://www.landscapes2.org/ToolsElement/Pages/Cluster.cfm> (last visited Jun3 19, 2014); "Noncontiguous Cluster Development," <http://www.njfuture.org/wp-content/uploads/2013/02/How-Clustering-Works.pdf>.

precisely the process that allows a city to accomplish its important goals while at the same time assuring that appropriate height and density controls are in place, through covenants, that would not occur through a straight map amendment case.

The Commission has held that

[a] PUD map amendment is thus a temporary change to existing zoning that does not begin until a PUD covenant is recorded, ceases if the PUD is not built, and ends once the PUD use terminates. This being the case, the Commission may grant PUD-related map amendments in circumstances where it might reject permanent rezoning."

Z.C. Order No. 921, at 5; *see also* Z.C. Case No. 05-42, at 8.

The Commission has further concluded that because a PUD map amendment is tied to a PUD use, and the PUD use is constrained by covenant, the merits of the map amendment are usually analyzed in the narrow context of the PUD use requested. *Id.* Thus, the proposed rezoning to C-3-C and CR on the McMillan site must also be viewed in the narrow context of the PUD use requested.

2. Transportation

In its April 17 2014, report to the Commission, the District's Department of Transportation ("DDOT") made several recommendations on transportation demand mitigation measures, circulation patterns and other traffic management methods for the proposed PUD. The Applicant has continued to meet with DDOT during the last two months and has now resolved all outstanding issues. Several enhancements have been made to the transportation plan, including the provision of an interim shuttle service at a cost of \$1.25 million, and additional bicycle accommodations by increasing sidewalk widths on North Capitol Street and adding a climbing bicycle lane on First Street. The Applicant has also refined the street level plan surrounding the Multi-family Building to improve the senior-resident and overall pedestrian experience. Finally, the city has advised the Applicant that it will implement recommended improvements to mass transit, including funding a Tenleytown to Brookland Circulator bus route to Metro stations in time for the completion of the Parcel 1 Healthcare Facility. Ward 5 Councilmember Kenyan McDuffie has also expressed his willingness to help ensure the District's commitment is met and his letter expressing that commitment is attached as Exhibit D.

Attached as Exhibit E is a memorandum from Gorove/Slade Associates, the Applicant's transportation consultant, responding to each DDOT recommendation and describing the revised transportation demand and monitoring plan to be included as conditions of any PUD approval. In general, the Applicant agreed to all of DDOT's recommendations with refinements to the monitoring methodology and trip caps that would warrant further action. The Applicant understands that DDOT will be filing a separate memorandum confirming the Applicant's proposals. Gorove/Slade has also prepared separate memoranda responding to the party-

opponent's traffic analysis, addressing curbside management within the site, and outlining a loading dock management at the multi-family building, which is attached as Exhibit F.

The loading management plan specifies strategies to coordinate deliveries to the grocery store, move-ins/move-outs at the residential building, and trash removal. See Exhibit F. The plan includes restrictions on delivery times and duration, ingress/egress routes, and a loading dock manager to coordinate deliveries. As noted in the recommended plan, communication and scheduling are key elements to the success of a loading management plan.

This plan is consistent with other shared loading facilities now in operation. At the request of the Commission, the Applicant consulted with several other building operations with coordinated loading facilities for residential buildings with grocery stores. The PUD at 2200 Pennsylvania Avenue, N.W., completed approximately three years ago, was particularly instructive. It has a shared loading area for a residential component, an office component and a Whole Foods grocery store.² All loading activities are scheduled through the property manager using a computer application designed specifically for that purpose. The schedule is easily accessible to the loading dock manager and the building security personnel who physically monitors the loading operations. If trucks arrive at an unscheduled time and the docks are not available, they are turned away and are not permitted to idle on the streets. The loading dock manager informed the Applicant that after some initial adjustments, the coordination works seamlessly at the present time. He emphasized the need for good communication between tenants and the building manager, and good technology to facilitate that communication. The tenant handbook, which provides details of the loading hours, restrictions and location on a map, is posted on the building website and is accessible to the public. The loading dock manager also has a dedicated email address and phone number, which are also posted on the website. The Applicant will use these and other similar successful practices in implementing its loading management plan once the specific tenant is identified.

3. Community Benefits; ANC

The Applicant is pleased to report that it was able to reach an agreement with Advisory Neighborhood Commission (ANC) 5E on the scope of additional PUD benefits for the community. At a meeting on June 17, the ANC voted to approve the Applicant's proffer and reaffirmed its continuing support for the project before the Zoning Commission the Mayor's Agent for Historic Preservation, and proceedings before the Council on the land disposition agreement. The value of the additional benefits, which include the interim shuttle service, totals just over \$5 million, and is a significant increase over the Applicant's previous offer of \$3.9 million. Among other things, the Applicant will add four more townhouses to the pool of inclusionary zoning units affordable to households earning up to 80% of AMI. The agreed upon benefits are set forth in Exhibit G.

² See Z.C. Case No. 06-27 (GWU/Boston Properties/KSI).

4. Historic Views and Viewsheds; Armed Forces Retirement Home

The Commission requested the Applicant to provide studies on the impact of the proposed PUD on the views and viewsheds from the Armed Forces Retirement Home (“AFRH”) located north of the site beyond the Veteran’s Administration Hospital, the Washington Hospital Center and Children’s National Medical Center. Separately, the National Capital Planning Commission (“NCPC”) submitted a letter to the record expressing an interest in studying what views might exist from the AFRH across the McMillan site and whether they warranted protection. The AFRH is an independent federal agency whose Washington campus is listed on the National Register of Historic Places. In 2008, AFRH completed a Master Plan to help direct new development on the site, which was reviewed by NCPC as part of an environmental assessment and Section 106 review under the National Historic Preservation Act. The plan analyzed views and viewsheds from various vantage points, including a sightline from Scott Statue south to the Capitol. The proposed PUD falls within that sightline.

On June 18, 2014, the Applicant met with NCPC to discuss the views from AFRH to the Capitol and to gain a better understanding of the precise sightlines NCPC felt warranted protection. NCPC clarified that it was concerned with the easily accessible public views from Scott Statue. It recognized that the views to the Capitol may already be affected by other buildings, including Children’s Hospital. The Applicant conducted field research and prepared the sightline studies included as part of the supplemental drawings with this letter. They show that trees obscure the view of the Capitol for much of the year from Scott Statue, and that the proposed Healthcare Facility on the PUD site does not block the view to the Capitol.

During the course of the hearing, the Zoning Commission chairman correctly noted that views and viewsheds are not protected under the Zoning Regulations, unless specifically provided for through easements or other provisions of law.³ Here, there are no easements that protect views or viewsheds across the McMillan PUD site, nor are there any provisions in federal elements of the Comprehensive Plan, developed by NCPC, that protect such views. However, the Mid-City Area Element of the District Comprehensive Plan for the McMillan site does provide that any development on the site should maintain viewsheds and vistas.⁴ The

³ See *Hefazi v. Stiglitz*, 862 A.2d 901, 911 (D.C. 2004) (“American courts have wisely refused to allow the acquisition by prescription of easements of light and air;” “[o]ne may obstruct his neighbor’s windows at any time” and “[n]o action can be maintained for obstructing a view”); *Ash v. Tate*, 73 F.2d 518, 519 (Ct. App. D.C. 1934); see also Z.C. Order No. 11-03 (December 20, 2011) at 29, 32; Z.C. Order No. 12-02 (November 29, 2013) at 20; Z.C. Order No. 12-14/12-14A (March 14, 2014), at 28; Z.C. Case No. 11-13 (July 5, 2012), at 28.

⁴ “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.” 10A DCMR 2016.9 (Policy MC-2.6.5).

Applicant's proposal satisfies that objective. As noted in the study prepared by EHT Tracerics attached as Exhibit H, the new construction proposed for the McMillan site will not significantly affect historic internal or external sight lines. The proposed plan maintains the openness of the southern third of the site where one's experience of the plain is most distinct. Southern, eastern, and western site lines across that portion of the site will remain intact, maintaining visual connections between the plain and the reservoir to the west, as well as connections between the plain and the South Service Court. Half Street, as proposed, will also allow a continued visual connection between the North and South Service Courts. The reconstruction of the historic Olmsted Walk will also preserve historic views throughout the site and allow the public to experience the site as intended.

5. Workforce Development; Healthcare Tenant Commitments

The Commission requested the Applicant to provide additional information on workforce development and jobs training, particularly as they relate to the healthcare facility. As presented during the hearing on May 8, 2014, the Applicant plans to develop Parcel 1 and 3 as a healthcare campus that can accommodate several different types of uses, including outpatient facilities and medical offices, research or bio-technical facilities, and related uses. The Applicant has worked diligently over the past six years pursuing lease commitments from a number of healthcare systems and other potential tenants. During this time, the Applicant has made numerous presentations to and, in some cases, commenced preliminary negotiations with, the respective senior leadership teams of MedStar (Washington Hospital Center), the Children's National Medical Center, the Veterans Administration Medical Center, Providence Hospital, and Johns Hopkins, among others. The feedback received from all prospective tenants has been incredibly positive, as exemplified by the letter from Children's National Medical Center attached as Exhibit H. The Applicant expects the combined demand from healthcare users to outpace significantly the total density available.

The Commission also requested certain details and information from the Applicant about the current operations of the adjacent Washington Hospital Center campus with regard to parking, circulation and transportation mode splits. The Applicant has requested this information from multiple occupants of the WHC campus, but has not yet received any responses.

With respect to workforce development, the Applicant has been working with the Community Foundation for the National Capital Region on a strategy to fully leverage the potential of the PUD project. The attached Exhibit I, entitled Opportunity McMillan, depicts this collaborative implementation plan, including tactics to achieve workforce development goals, a timeline and draft budget.

The Applicant is also providing for the record a signed copy of its First Source Employment Agreement with the D.C. Department of Employment Services, with an updated "page 11" describing the Applicant's employment strategies for District residents. See Exhibit J.

6. Multi-Family/Grocery Store (Parcel 4)

The multi-family building on Parcel 4 includes an 85-unit affordable senior apartment component and 196-unit market-rate component. The senior component comprises a single “bar” of the E-shaped multifamily building. In conformance with the senior housing exemptions that allow for discrimination based on familial status under the Fair Housing Act, the senior housing component must function independent of the market-rate apartments. Thus a separate lobby, common and core areas, and amenities have been provided for the senior component. Relevant sections of the Fair Housing Act are attached as Exhibit K. The senior and market-rate lobbies have been located next to each other on Quarter Street, close to the intersection with Evarts Street, which offers centralized proximity to all the McMillan amenities. The location of the lobbies adjacent to one another allows for the optimal grocery floor plate; a strong, active retail frontage on the North Service Court; an active Quarter Street frontage with residential lobbies; and allows the senior component to be located in the southernmost “bar” of the multifamily building.

Locating the senior building to the south affords the senior residents the project's best views and natural light. They will have close proximity to key amenities in the McMillan neighborhood including the grocery store (approximately 260 feet to the north); the medical office (approximately 350 feet to the north); and the park and community center (approximately 320 feet to the south). Loading, parking, and services to the Parcel 4 building have been relocated to Evarts Street, thus maintaining a pleasant and safe pedestrian environment on Quarter Street for senior residents to easily access these neighborhood amenities.

Amenities within the senior building, designed to accommodate senior residents, are likely to include a lobby with concierge desk, fitness center, library and computer lab, and a resident lounge that can accommodate optional meal service. Additionally, at the 2nd floor (above the grocery store podium), a private landscaped courtyard and garden area will be provided. With the exception of a small row of private terraces for the market rate building, the entire south courtyard will be dedicated for exclusive use by the senior residents. Other design considerations for the senior residents include accommodating the characteristics of aging that impact the seniors' relationship with their environment, including hearing and vision impairment, increased sensitivity to temperature, loss of balance and cognitive impairment.

Additional renderings and updated drawings of the multi-family building, including ground floor plans that improve the pedestrian experience on Quarter Street and the corner, concentrating curb cuts on Evarts Street, and depict the alternative grocery store layout, are included with the supplemental drawings submitted with this letter. The renderings include depictions of the views from the rowhouses across North Capitol Street both before and after completion of the project.

7. Conclusion

The public review process for redevelopment of the McMillan site has significantly strengthened the Applicant's project. The thorough and thoughtful review by HPRB resulted in a dramatically reconfigured development that retained the historic plinth, reoriented the townhouse development to create north-south view corridors through the site, and relocation of the park to the south. This orientation provides an appropriate lessening of height from the taller buildings along Michigan Avenue, to the lower heights of the townhouses in the mid-section of the site, to the vast open space of the park in the south parcel along Channing Street. The affordable housing component has also been greatly enhanced. As originally proposed, the Applicant offered to provide ten percent of the gross square footage of the townhouse development (where only eight percent is required under the inclusionary zoning ("IZ") provisions), which would be affordable to households earning 80 percent of AMI. That equated to 18 townhouses. At the suggestion of the Commission, that component was changed to provide half of those 18 townhouses to households earning no more than 50 percent of AMI. Most recently, at the request of ANC 5E, the Applicant has added four more townhouses to the IZ pool to be affordable at 80 percent of AMI. With respect to transportation, the Applicant has made significant enhancements its transportation demand mitigation measures over the past month, as described above. The Applicant has refined material choices for the rowhouse facades to ensure the design translates into an outstanding finished product. Lastly, the Applicant has further developed concept designs for the restoration and adaptation of landmark and its historic resources into a dynamic and distinctive cultural and recreational resource that will serve surrounding communities as well as distinguish McMillan as a special place.

These enhancements greatly improve an already extraordinary project that redevelops underutilized vacant land; preserves above- and below-ground historic resources consistent with the Comprehensive Plan's specific provisions for the site; provides new affordable and market-rate housing; develops new medical facilities to create a multi-faceted healthcare campus to rival other cities; provides thousands of new jobs, particularly in the medical field, to support District residents at all skill levels; and generates substantial new revenue for the city. The requested zoning is not inconsistent with the Comprehensive Plan and the PUD provides exceptional project amenities and community benefits to mitigate any potential adverse impacts. We respectfully request the Commission to approve the application.

Respectfully submitted,

Holland & Knight LLP

By: 

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June 23, 2014

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cc: Jennifer Steingasser, D.C. Office of Planning (via hand-delivery 6/24)
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Applicant's Post-Hearing Submission was sent on June 23, 2014, electronically to the parties below and will be hand-delivery to those parties on June 24, 2014:

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