

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

Jimmie Boykin, *Pro se*
2406 North Capitol St. N.W.
Washington, D.C. 20002
Plaintiff,

Linwood Norman, Jr., *Pro se*
135 T Street, N.W.
Washington, D.C. 20001
Plaintiff,

Civil Action No. _____

Jerome Peloquin, *Pro se*
4001 9th Street, N.E.
Washington, D.C. 20017
Plaintiff,

Daniel G. Wolkoff, *Pro se*
1231 Randolph Street, N.E.
Washington, D.C. 20017
Plaintiff,

v.

District of Columbia,
c/o The Honorable Muriel E. Bowser
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Defendant,

John Falcicchio
Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Ave., N.W. Suite 317
Washington, D.C. 20004
Defendant,

Andrew Trueblood
Director, D.C. Office of Planning/Mayor's Agent for Historic Preservation
1100 4th St., S.W. Suite 650
Washington, D.C. 20024
Defendant,

Ernest Chrappah
Director, D.C. Department of Consumer and Regulatory Affairs
1100 4th St., S.W.
Washington, D.C. 20024
Defendant,

and

Keith A. Anderson
Director, D.C. Department of General Services Administration
2000 14th St., N.W.
Washington, D.C. 20001
Defendant,

COMPLAINT

Plaintiffs bring this civil action and file this Complaint *pro se*, alleging and averring as follows:

STATEMENT OF THE CASE

- 1 This is a civil action brought against The District of Columbia, and Mayor Muriel Bowser, John Falchicchio, Andrew Trueblood, Ernest Chrappah, and Keith A. Anderson, in their official capacities as officers or employees of the District of Columbia. This action seeks:
 - A. Preliminary and permanent injunctive relief and declaratory relief to enforce and enjoin Defendants and their successors in office from violating restrictive covenants in the September 25, 1987 Quitclaim Deed (hereafter, the 'Deed') that conveys title to the former McMillan Slow Sand Filtration Plant ('Plant' or 'Site') located at 2501 North Capitol St., N.W. 2501 First St., N.W., Washington, D.C., transferring ownership from the United States of America to the Defendant, the District of Columbia;
 - B. Preliminary and permanent injunctive relief to enjoin:

- i. All authorizations, determinations, approvals, and permits, issued by any of the Defendant(s), that individually or collectively allow, authorize, or permit any activity implementing the Vision McMillan Partners ('VMP') Planned Unit Development Project ('VMP PUD Project'), including any of its Master Concept Plan(s), Phase or Stage Plans, at the location of the historic McMillan Slow Sand Filtration Plant;
- ii. Any work or other physical action, such as demolition or alteration, at the Site that implements or is related to the VMP PUD Project; and
- iii. Conveyance of title to any portion of the Site, including any interest therein, to any private entity for the purpose of implementing any portion or phase of the VMP PUD Project at the Site, or pursuant to any agreement related to implementation of the VMP PUD Project at the Site; and

C. A declaratory judgment providing:

- i. Section 5(e) of the District's Historic Landmark and Historic Protection Act ('DC Protection Act'), D.C. Code Title 6- 1104(e), does not provide legal authority to any Defendant to allow, or approve 'demolition' of any portion of an historic building, structure, quality or resource at the Site, including demolition that destroys or adversely affects historic character-defining qualities or values at the Site, as "necessary in the public interest for construction of a Project of Special Merit"; and
- ii. That the 1987 Deed to the Site explicitly includes a deed covenant(s), *inter alia*, that requires that [a]ny and all rehabilitation and renovation work at the parcel will be undertaken in accordance with The Secretary of the Interior's Standards for Rehabilitation' and Guidelines for Rehabilitating Buildings ("Secretary's Standards"), 36 CFR 67 and 68, that this covenant, and others contained in the Deed "runs with the land" at the Site, and is binding upon all successors or assigns of any real property interest in or at the Site.

JURISDICTION AND VENUE

2 The Court has jurisdiction over the subject matter of this action that presents federal

questions, under 28 U.S.C. 1332, supplemental jurisdiction of issues related to and necessary to adjudicate any federal question(s) and issue(s), pursuant to 28 U.S.C 1347, and personal jurisdiction over the parties hereto, pursuant to 28 U.S.C. 1391(b).

- 3 Venue is proper pursuant to 28 U.S.C. 1391 (b) and (c) because the claims herein arose in this District, violation(s) of law occurred and will continue to occur in this District, and the subject real property and historic resources are located in this District.

PARTIES TO AND RELEVANT BACKGROUND OF THIS ACTION

- 4 The controversy from which the federal claims in this action arise involve the District of Columbia's purchase of the Site from the federal government of the United States of America in September 1987 for \$9.3 million, during which transaction the United States as seller, acting through its General Services Administration's Acting Director, Patricia E. Bailey, imposed severe restrictions on the purchaser's (Defendant and present owner of the Site, the District of Columbia) ability to alter, destroy or modify the historic features located on the Site, by virtue of historic-preservation covenants that run with the historic property in perpetuity and which inure to the benefit of the public at-large, including Plaintiffs, to this day.
- 5 Defendants' attempts over the past several years to redevelop the Site, in conjunction with private real-estate development conglomerates, including eliminating most of its designated public parkland and extensive green space areas, directly contravene and violate said restrictive covenants. The controversial redevelopment efforts have also engendered multiple lawsuits before the D.C. state courts and parallel proceedings before D.C. administrative agencies, such as the Office of Administrative Hearings, which are either resolved or still pending at the time of the filing of the present lawsuit, and an injunction against any physical demolition or development of the Site is currently in effect by virtue of the ruling by the D.C. Court of Appeals dated February 19, 2020 in the matter of *Friends of McMillan Park v. D.C. Dept. of Consumer and Regulatory Affairs*, D.C. Court of Appeals, Case No. 20-AA-25, but none of said parallel judicial or quasi-judicial proceedings adjudicate claims regarding the federal U.S. government's imposition of said restrictive covenants in its Quitclaim Deed.
- 6 The 1987 Deed to the Site contains restrictive preservation covenants specifically requiring that any work at the Site, *inter alia*, renovation, rehabilitation, construction or demolition activities, will be in accordance with the federal Secretary of Interior's Standards. Defendant, District of Columbia, by and through its officers, has previously admitted that the plans for and on-site work implementing the VMP PUD Project at the Site are not in accordance with the Secretary Interior's Standards because of the proposed demolition and destruction of historic resources at the Site and subsequent redevelopment

plans that shroud existing cultural resources at the site with several very large commercial and residential buildings.

- 7 Nonetheless, the District ignores that admission and applies Section 5 (e) of the District's Historic Landmark and Historic Protection Act, D.C. Code Title 6-1101, *et seq.*, to authorize 'demolition' of historic structures and other resources at the Site as "necessary in the public interest for the construction of a Project of Special Merit". D.C. Code Title *supra*, at 6-1104(e). Without considering the 1987 Deed's restrictive covenants, The Mayor's Agent for Historic Preservation ('MA'), an official appointed by the Mayor for the District, ignored the Deed's covenants and determined that "demolition" is "necessary in the public interest for construction of a Project of Special Merit", as provided by the Act, *Id.* Based upon that and other determinations by the MA and the District's Office of Planning concerning effects upon historic resources at the Site by the work proposed by co-partners VMP and the District of Columbia, the D.C. Zoning Commission, whose member Commissioners are also appointed by the District's Mayor and whose interests are therefore likewise aligned, similarly approved the VMP PUD Project application *in violation of the Deed's restrictive covenants and without any consideration* whether the restrictive covenants in the 1987 Deed – which require, *inter alia*, that all work at the Site be in accordance with the federal Secretary of the Interior's Standards and preclude the proposed construction and demolition of by the VMP PUD Project – were met.
- 8 Construction of the VMP PUD Project at the Site requires the demolition and/or destruction of at least 18 ½ of the 20 existing historic subterranean filtration cells now at the Site, and other historic resources, structures, qualities or features at the Site, and, in addition, will also adversely affect historic resources thereon and adjacent to the Site in a manner not in accordance with the Secretary Interior's Standards.
- 9 The cumulative effects of all proposed construction and construction-related activities at the Site, including whether they are in accordance with the Secretary's Standards, have never been expertly analyzed as required by the Deed. In fact, one of Defendant District of Columbia's own agencies determined *negatively* in 2013 that:

“[T]he project will result in ***substantial demolition of character-defining features*** and the redevelopment will compromise the open-space quality of the site, the SHPO concludes that the *project does not meet the Secretary of the Interior's Standards* for Rehabilitation and Guidelines for Rehabilitating Historic Buildings and advises the District to forward the plans to the Advisory Council for comment.” (D.C. Historic Preservation Review Board Master Plan Review, October 31, 2013, emphasis added).

- 10 Likewise, other individuals and entities with authoritative positions on the issue of historic preservation in the District of Columbia have voiced concern that the Defendants' planned development and concomitant demolition of the historic elements of the Site does not conform with either the law or the intent of the original Deed. By way of example, D.C. Council Chairman, Phil Mendelson, in a letter dated May 16, 2012, submitted to the Historic Preservation Review Board, cautioned that "enthusiasm for development must be tempered against the qualities of this unique site," describing the threatened qualities of the Site as the "structural resources, landscape resources, and historic vistas," enjoyed by residents such as Plaintiffs, and which would be permanently and irrevocably destroyed if development according to Defendants' current plans were to be permitted.
- 11 Similarly, the National Association for Olmsted Parks stated in a July 3, 2012 letter to the D.C. HPRB: "The proposed development plans would also destroy the character-defining visual and spatial relationships that are central to the original design intent for the site," beseeching the Defendant District of Columbia, in vain, to "reject the misguided master plan that will destroy the irreplaceable historic resources of this significant cultural site."
- 12 Analogously, two years later, in its November 7, 2014, missive to the National Capital Planning Commission, the Executive Director of the historic Lincoln's Cottage site warns ominously that "our visitors not only see the views of downtown Washington, ... but these views are central to our interpretation of President Lincoln's Cottage and the surrounding landscape. ... The night-time views of the illuminated Capital Dome currently available to our visitors are especially impressive and impactful... [views] which would be negatively impacted by the proposed development. ... Destruction of that connection to Lincoln's view of the symbol of democracy he worked to maintain would be a significant loss" suffered by the visiting public.
- 13 Defendants have simply ignored these authoritative voices' concerns, including their own Historic Preservation Review Board's contrary assessment, and have instead attempted to proceed full-steam ahead with the planned development, which "does not meet the Secretary of the Interiors Standards" according to their own experts. In so doing, Defendants have tried to rely on all manner of self-interested and unsupported "supplemental reports" and pretextual state-law provisions carved out and enacted by Defendants themselves in conjunction with the City Council, including the purported designation of the planned development as a "Project of Special Merit." However, as a matter of federal law and pursuant to the 1987 Deed, its covenants, and indeed the Supremacy Clause of the U.S. Constitution, Article VI, Cl. 2, any violation by the development plans of the Secretary's Standards preclude demolition and/or destruction of historic resources at the Site as a matter of federal law, irrespective of subordinate D.C. regulations and regardless of whether a state law, lobbied-for by special interests such as

the commercial real-estate industry, establishes ill-defined “Special Merit” carve-outs to state protections or not, *see* Section 5(e) of the D.C. Protection Act, *supra*.

- 14 In addition, the Secretary’s Standards have not been applied to identify all effects upon other historic resources by the proposed VMP PUD Project. The proposed VMP PUD Project cannot proceed, as a matter of law, because of the demolition and destruction of historic resources that will result in approving the construction of the Project. This present action before this Court does not seek the review of any administrative action by the District pursuant to D.C. state law by any of its officials, agents, offices, boards, agencies, or commissions. Rather, it seeks the determination that, as a matter of law, because of the VMP PUD Project’s required demolition and/or anticipated destruction of historic resources at the Site in violation of the Deed and the Secretary’s Standards – which protect all historic features, and not just a few select historic elements, to be chosen conveniently at-will by Defendants or the developers and graciously incorporated into their PUD plans– any and all work causing such effects may not be implemented at the Site as they would violate the federal government’s restrictive covenants imposed upon the current landowner, the District of Columbia. Historic preservation is not a buffet – that is historic preservation under the Standards is not a discretionary exercise in which developers are permitted a game of picking-and-choosing *which* historic elements are convenient for them to incorporate into their redevelopment design plans. Rather, it is a take-it-or-leave-it exercise in protecting the whole of the historic artifacts, in compliance with the mandates of the Secretary’s Standards.
- 15 **Plaintiffs are:** Jimmie Boykin, Linwood Norman, Jerome Peloquin, Peter Stebbins, and Daniel G. Wolkoff. Each Plaintiff is a resident of the District of Columbia and brings the claims herein as an individual. The address for each Plaintiff is listed in the caption of this Complaint, as required by the Local Rules of the U.S. District Court for the District of Columbia, and are incorporated by reference herein. All of the above-identified Plaintiffs have interests in the preservation and rehabilitation of the historic buildings, structures, and resources of the former McMillan Slow Sand Filtration Plant and will be injured and/or suffer injury to their interests by the construction and demolition activities associated with implementation of the VMP PUD Project at the Site.
- 16 **Defendants are:** District of Columbia: The Mayor of the District of Columbia and the District of Columbia (‘The District’) as a territorial enclave of the United States with a government established and authorized by Congress. Since 1987 when the United States conveyed the McMillan Plant/Site to the District of Columbia, the District has been the sole owner of the Site. By and through the exercise of official government responsibilities on behalf of the District, the individual Defendants are authorizing, allowing, or causing the ‘demolition’ of historical structures and resources at the Site,

the destruction of its historic character-defining open-space quality, and adversely affecting historic resources at and adjacent to the Site in a manner that is and will not be “in accordance with the Secretary’s Standards.” In 1987 the District of Columbia acquired title to the Site from the United States through a Deed containing a restrictive covenant that require all rehabilitation, renovation, construction, and demolition activities at the Site in accordance with the Secretary’s Standards.

- 17 **Defendant, John Falcicchio:** John Falcicchio is sued in his official capacity as Interim Deputy Mayor for Planning and Economic Development (DMPED) of the District of Columbia. In that capacity Mr. Falchiccio supervises and directs the activities of the Office of the Deputy Mayor for Planning and Economic Development, and assists the Mayor in the coordination, supervision, and execution of programs, policies, proposals, and functions related to economic development in the District of Columbia. The Office of Planning and Economic Development is the governmental office for the District of Columbia that is acting on behalf of the District as co-developer of the VMP Project at the Site, represents the District concerning the Project’s structure and design, plans and work, and applies for approvals, authorizations, and permits, on behalf of the District of Columbia, to implement the VMP PUD Project. Mr. Falchiccio is the successor to Brian Kenner and his predecessors, who previously supervised, directed, and exercised the duties and responsibilities of the D.C. Office of the Deputy Mayor for Planning and Economic Development (DMPED) concerning the VMP PUD Project, and now represents the District of Columbia, as Site owner and co-partner in the VMP Project. His office is located at 1350 Pennsylvania Avenue, N.W., Suite 317, Washington, D.C. 20004 (telephone number for his office is 202-727-6355)
- 18 **Defendant, Andrew Trueblood:** Andrew Trueblood is sued in his official capacity as Director of the Office of Planning (‘OP’) for the District of Columbia, and as the successor- in- interest to predecessors in that capacity. The Director of the Office of Planning for the District of Columbia (‘OP’) is the official who is legally responsible for OP actions. OP conducts the District’s governmental planning for neighborhoods, corridors, districts, historic preservation, and public facilities. The mission of OP is to guide business and real property development within the District of Columbia, including the preservation and revitalization of D.C. distinctive neighborhoods, by informing decisions, advancing strategic goals, encouraging the highest quality outcomes, and engaging all communities. The Director of OP is the head supervisor of OP and is assisted by Deputy Directors, who also supervise the work of OP’s administrative divisions and offices. One of those offices is the Historic Preservation Office (‘HPO’), which also acts as staff to the Historic Preservation Review Board (‘HPRB’), and identifies and evaluates the effects of proposed action upon historic resources. The Director of OP, Andrew Trueblood, is also the designated District official that is the Mayor’s Agent for Historic Preservation (‘Mayor’s Agent’), and in that position

exercises the responsibilities of the Mayor of the District of Columbia, as required by the District's Historic Landmark and Historic Protection Act, *supra*. Mr. Trueblood is the successor to prior Mayor's Agents.

- 19 **Defendant**, Ernest Chrappah: Ernest Chrappah is sued in his official capacity as the Director of the D.C. Department of Consumer and Regulatory Affairs ('DCRA'). Mr. Chrappah is the successor to Melinda Bolling, the prior DCRA Director. Ernest Chrappah is responsible for the actions of his predecessor Directors of DCRA and prior and current actions of DCRA. One of DCRA's responsibilities is to approve the issuance of construction and 'raze' permits, including for or relating to implementation of the VMP PUD Project. DCRA issues the building permit(s), raze permits, and foundation and earthwork work permits that are required by law for construction and demolition activities, and other on-site physical work required for the VMP PUD Project at the Site.
- 20 **Defendant**, Keith A. Anderson: Defendant Keith A. Anderson is sued in his official capacity as the current Director of the D.C. Department of General Services (DGS). Mr. Anderson is responsible for (a) prior and current actions by the DGS pursuant to any agreement between the District of Columbia or its agencies and Vision McMillan Partners relating to access or possession to the Site for construction of the VMP PUD Project, and (b) conveying title, or any interest therein, to any portion of the Site. The DGS is responsible for the administration and services of property that is either owned by, leased to, or leased by the District of Columbia.

STATEMENT OF FACTS

- 21 The historic character of virtually the entirety of the Site cannot be disputed. The circa 92-acre McMillan Reservoir Historic District ('Historic District') includes the areas of the McMillan Reservoir ('Reservoir'), constructed by the U.S. Army Corps of Engineers in the late 1800's, named after U.S. Senator James McMillan from Michigan, with the Sand Filtration Plant completed circa 1905 and served as the District's first water treatment facility.
- 22 McMillan Park was constructed as a public park and memorial to Senator James McMillan who was an ardent advocate for clean water and the City Beautiful Movement that sought to adorn the capital city with an "Emerald Necklace" as an extension of parks born of the L'Enfant plan. McMillan Park was constructed within the boundaries of the McMillan Reservoir Historic District during 1908-1913.
- 23 In recognition of the numerous individual historic resources that exist at the Site and at the adjacent portions of the existing chemical water treatment facilities, the area encompassing them was nominated in 1991 to the District's Inventory of Historic Sites

and in 2011 to the federal National Register of Historic Places by the District of Columbia, and is presently listed on both the federal National Register of Historic Places and District Inventory of Historic Sites.

- 24 The landscape design of the McMillan Park historic district, Park, and Plant, was provided by acclaimed landscape architect, *Frederick Law Olmsted, Jr.*, of the family-firm that designed the landscapes of many other notable parks, such as Central Park in New York City. The landscape design of the green “plinth” above the Filtration Plant is an especially key-defining quality of the Site that is referenced in the nomination of the Site to the National Register of Historic Places. Upon information and belief, the District of Columbia has, without notice, removed trees and other landscape features at the Site subsequent to acquisition of title to the Site.
- 25 Also of great historic significance, the historic area, including McMillan Park and green escarpment above the Sand Filtration Plant became one of the *first racially integrated public spaces in the District of Columbia*.
- 26 The McMillan Reservoir, created in the late 19th Century, serves as an extension to the Washington Aqueduct, which supplies water from Great Falls on the Potomac River via a gravity-fed aqueduct and tunnel to the Reservoir. The McMillan Reservoir and related construction extended the District’s municipal water from the Washington Aqueduct to the population in eastern sections of the District of Columbia. After construction of the Reservoir, Congress approved the establishment of a water filtration system to treat the District’s water prior to its distribution. This water filtration system notably abated the incidence of typhus and other illnesses.
- 27 Upon completion of the filtration system, known as the McMillan Slow Sand Filtration Plant, water was pumped from the Reservoir to subterranean sand filtration cells/bed(s), i.e. vaulted and arched, sand-filled, 1-acre subterranean structures built of unreinforced concrete, where water was cleansed, and thereafter piped to an underground clear reservoir before being distributed within the District. Also during this period, The Taft Bridge along Connecticut Avenue was also constructed with unreinforced concrete and is still in use today.
- 28 In 1966 Congress enacted the National Historic Preservation Act (NHPA), 16 U.S.C 470, *et seq.* The National Register of Historic Places (‘National Register’) was created and expanded by the NHPA, 16 U.S.C. 470a(a)(1)(A) and (B). Section 106 of the NHPA, 16 U.S.C. 470f, was established as a mandatory administrative screening process by federal agencies to identify whether any action that they ‘undertake’ could adversely affect federal properties with historic resources eligible for listing on the National Register of Historic Places (‘NHPA Section 106 Review Process’).

29 In 1986 construction of a water treatment facility using chemicals was completed on the Reservoir side of the McMillan historic district by the U.S. Army Corps of Engineers, ceasing operation of the Slow Sand Filtration Plant by the U.S. Army Corps of Engineers. When it ceased operations, the McMillan Slow Sand Filtration Plant was one of the last working examples of the slow sand filtration method in the United States. The remainder of the McMillan Reservoir Historic District has been continually operated by the Army Corps of Engineers as a water filtration facility since construction of chemical facilities was completed. The area of this federally-operated water treatment facility is immediately adjacent to the Site and within the area known as the McMillan Reservoir Historic District.

The District of Columbia's Acquisition and Use of the Site

30 After the chemical treatment facility became operational in circa 1986, the approximately 25-acre parcel of land where the Plant is located was declared as 'surplus' to the needs of the United States by its General Services Administration (GSA).

31 The District's Historic Landmark and Historic Protection Act ('DC Protection Act'), D.C. Code Title 6-1101 et seq., including its Section 5 (e), supra. at 6-1104 (e), was enacted in 1978.

32 In 1987 title to the 'Plant Site' was conveyed by the aforementioned Quitclaim Deed that contains restrictive covenants from the United States (by and through its GSA) to the District of Columbia.

33 A true and accurate copy of the 1987 Deed is attached hereto as Exhibit A, a document that is key to the claims alleged in this action.

34 Prior to the sale and conveyance of the Site in 1987 to the District through a proposed deed, the federal Advisory Council on Historic Preservation ('ACHP'), created by Section 201(a) of the National Historic Preservation Act of 1968, 16 U.S.C. 470i(a), coordinated and consulted with GSA as part of the mandatory NHPA Section 106 Review Process, USC 470(f), for the proposed sale and conveyance of title to the Site to the District.

35 The NHPA Section 106 Review Process seeks to identify whether federal actions could affect historic resources on federal property that are eligible for listing on the National Register in order to become aware of and avoid any possible adverse effects thereto by federal agency action. *Id.*

36 In a lengthy back-and-forth between the Advisory Council and GSA staff, documented in several letters between these stewards of this venerable federal plot of land, the Advisory

Council expressly insisted, *first*, the identification of historic resources at the Site, *second*, on the inclusion of comprehensive restrictive covenants that would protect the historic features of the Site, and *third*, the strengthening of the initially proposed covenants proffered thereafter by GSA's staff, which were insufficient to protect the historic-preservation goals according to the expert assessment of the Advisory Council. GSA eventually relented and included the Advisory Council's strengthened historic-preservation covenants in its final Quitclaim Deed, conveying ownership of the Site to the D.C. government under the lasting conditions imposed by said covenants.

- 37 Restrictive covenants in the 1987 Deed established processes and requirements to determine the existence and nature of any historic resources at the Site. If historic resources were determined to exist at the Site, a separate restrictive covenant in the 1987 Deed requires another process for review of plans by the D.C. Historic Preservation Officer ('HPO') and that prior to any Work at the Site that the HPO determine that any and all 'Plans and Work' at the Site be "in accordance with the Secretary of the Interior's Standards For Rehabilitation and Guidelines for Rehabilitating Historic Buildings" (Secretary's Standards). Another separate restrictive covenant firmly in the series on the Deed also establishes that any and all rehabilitation and renovation at the Site will be in accordance with the Secretary's Standards.
- 38 The restrictive covenants in the 1987 Deed concerning historic resources were recommended by the Advisory Council on Historic Preservation ('ACHP') in order that the proposed sale and conveyance would not be the type of federal action, or "undertaking" that would require additional scrutiny under that Section of the Act.
- 39 The recommendation to include restrictive covenants, as described by ACHP in its 1987 letter(s) to GSA, was made to protect the Site's historic resources for the general benefit of the American public, consistent with the express preservation goals of the National Historic Preservation Act, and also to allow the sale and transfer of the Site to the District to proceed without any adverse effects upon historic resources.
- 40 Following the conduct of an investigation and study of the Site to determine the presence of historic resources at the Site and preparation of an Historic Resources Report for the Site, in 1991 the District of Columbia finally, through its Historic Preservation Officer, nominated and thereafter listed the circa 25-acre 'Plant' and adjacent McMillan Reservoir parcel(s), together totaling the 92-acre 'McMillan Reservoir Historic District', on the D.C. Inventory of Historic Sites.
- 41 In November 2011 the District, through its State Historic Preservation Officer ('D.C. SHPO') nominated the same McMillan Reservoir Historic District, including the 'Plant Site', for listing on the National Register of Historic Places. In February 2012 the Site

and other McMillan Reservoir parcel(s) were listed on the National Register of Historic Places as the ‘McMillan Reservoir Historic District’.

- 42 Upon information and belief, all the relevant information and facts cited in the nomination of the McMillan Reservoir Historic District for listing on the National Register of Historic Places in 2011 were available to the D.C. HPO when the D.C. HPO nominated and listed the McMillan Reservoir Historic District on the D.C. Inventory of Historic Sites in 1991, approximately 20 years earlier. D.C. has offered as an explanation for that 20-year delay that it lacked human resources to write the nomination of the Site and McMillan Reservoir Historic District for listing on the federal National Register of Historic Places.
- 43 At all times since the Site was acquired by the District of Columbia in 1987, including after the Site was listed on the D.C. Inventory of Historic Sites in 1991, and after it was listed on the National Register of Historic Places in 2012, there has been a fence surrounding the Site that has continuously barred the public from general access to the Site.
- 44 The 1987 Deed includes as one of the restrictive covenants that the Army Corps of Engineers may enter and operate the Plant for filtration if the need arises during a specified period of time following conveyance of title to the District. And in 2014, under the auspices of the District of Columbia Water Authority, now DC Water, a one acre filtration cell was repurposed and still being used to catch diverted rain water to mitigate flooding in the residential areas around the Site.
- 45 In 2007, the District’s Deputy Mayor for Planning and Economic Development (‘DMPED’) selected Vision McMillan Partners (VMP) to be lead developer, in partnership with the District of Columbia, to plan and develop the former McMillan Slow Sand Filtration Plant site.
- 46 In April 2010, VMP in partnership with the District, was further selected by the Office of the DMPED, to develop a proposal to develop the McMillan Site, to include residential townhomes, apartment and/or condominium buildings, medical office buildings with ground floor retail, a hotel, and a grocery store. A hotel is no longer to be constructed as part of the current VMP PUD Project.
- 47 As part of the District’s partnership with VMP, the District reimburses VMP for land development costs (which includes the costs of attorneys seeking all administrative approvals and permits) and for its costs incurred to obtain approvals to demolish or alter historic resources at the Site. D.C. is also bearing the costs for site stabilization and stormwater management required for the VMP PUD Project.

48 In November 2013, VMP and the District filed an application seeking approval from the D.C. Zoning Commission for a Planned Unit Development (“VMP PUD Project”) for the Site and rezoning of the Site in order to construct the VMP PUD Project. The plans for the VMP PUD Project indicate that the Project will provide over two million square feet of high-density mixed-use residential and commercial development, with ‘healthcare buildings’, i.e., office buildings to be devoted to housing “healthcare facilities”, reaching 110-115 feet in height, apartment/condominium buildings reaching 78 feet in height, and a 4-story group of townhomes, and underground garage parking below each of these types of structures. Cumulatively, the underground parking facilities will provide space for approximately 2,000 vehicles below the healthcare and residential buildings. When fully developed, it is estimated that 20,000 additional vehicular trips will be generated in and around the VMP PUD Project at the Site.

FIRST CLAIM

49 The allegations in Paragraphs 1—48 herein before are repeated and incorporated by reference.

50 Sections 1(b) and 2 of the National Historic Preservation Act, 16 U.S.C. 470(b)(1)-(7) and 16 U.S.C. 470-1(1)-(6) establish that Plaintiffs are the intended or third-party beneficiaries of that Act.

51 As a result of the NHPA Section 106 Review Process for the proposed sale of the Site to the District, restrictive covenants were included in the 1987 Deed. One of the restrictive covenants provides that “any and all rehabilitation and renovation at the Site will be in accordance with the Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.” The Secretary of the Interior’s Standards for Rehabilitation are codified and published at 36 CFR 67.6 and 68.3. The plans and work at the Site to construct the VMP PUD Project are within the meaning of ‘rehabilitation and renovation’ activities at the Site, as provided in the Secretary’s Standards, *supra*.

52 The Master Concept Plan for the VMP PUD Project at the Site, and its specific Phase/Stage Plans for the separate parcels at the Site propose plans and work, including construction, demolition, renovation and rehabilitation at the Site that will ‘demolish’ and destroy historic resources at the Site, and adversely affect historic resources, all contrary to and not in accordance with the Secretary’s Standards, *supra*. The proposed work for the project is clearly not in accordance with Standards for Rehabilitation.

53 There are ‘historic resources’ at the Site, and adjacent to it within the McMillan Reservoir Historic District within the meaning of ‘historic resources’ and ‘historic conservation district’ provided at Section 301 of the NHPA, 16 USC 470(w), and within

the meaning of the term ‘property’ as used in the Secretary’s Standards, *supra*, Listings on the National Register of Historic Places include districts, sites, buildings, structures and objects significant in American history, architecture, archaeology, engineering, and culture. An ‘historic district’ means an area which contains historic properties, buildings having similar or related architectural characteristics, cultural cohesiveness, or any combination thereof, Section 301(10) of the NHPA, 16 USC 470(w).

- 54 The Site and the McMillan Reservoir Historic District are both a “property” within the term “property” in the Secretary’s Standards, *supra*. The historic resources at the Site include, *inter alia*, the underground filtration cells and above-ground portals to access the cells, the North and South Service Courts at which there are Sand Storage Towers/Bins, Regulator Houses, and Sand Washers, and the unique character-defining open space quality of the Site.
- 55 The construction of VMP PUD Project at the Site provides for ‘demolition’ of at least 18½ subterranean sand filtration cells, and some Portals thereto. Each cell is approximately one acre in area, and its roofs support the unique character -defining open-space quality of the Site.
- 56 The demolition of the filtration cells and some Portals thereto, and destruction of the unique character-defining open-space above them, are not in accordance with the federal Secretary’s Standards and will injure the public interest. In addition, the adverse impacts upon the North and South Service Courts, Sand Storage Towers/Bins, Regulator Houses, and Sand Washers are not in accordance with the Secretary’s Standards.
- 57 DCRA has issued construction and raze permits (currently prevented from being implemented by court order of the D.C. Court of Appeals, *see supra*) that are required by law for any construction of the VMP PUD Project at the Site, including specific ‘demolition’ activities. These permits allow for the demolition and destruction of historic resources and adverse effects upon historic resources, all contrary to and not in accordance with the Secretary’s Standards.
- 58 If the VMP PUD Project is implemented at the Site, historic resources thereon and adjacent to it will be irreparably harmed, and contrary to the restrictive covenant requiring that any and all rehabilitation and renovation work at the Site be in accordance with the Secretary’s Standards. Rehabilitation and renovation include construction and demolition activities that will occur to implement the VMP PUD Project at the Site.
- 59 The federal Secretary of the Interior’s Standards for Rehabilitation are conditions imposed by the United States, for the benefit of the Nation and its citizens, including Plaintiffs, to protect and preserve the historic resources at the Site and adjacent areas thereto.

60 Unless enjoined by this Court, the District and its co-developer VMP will conduct activities at the Site that will irreparably harm and adversely affect historic resources in a manner that harms the public interest, is irreversible, and not in accordance with the federal Secretary's Standards. As D.C. courts have noted, the act of demolition is irrevocable, especially in the case of a historically-designated property. Once the historic elements have begun to be demolished or are entirely razed, consideration of alternative plans that may further the public interest more and which may include the preservation and rehabilitation of all historic structures is permanently foreclosed, which is why the injunctive relief presently sought by Plaintiffs is necessary to prevent such irrevocable harm: the threatened injury-in-fact to Plaintiffs' current and prospective enjoyment of the historic resources is actual, concrete and particularized, and its causation is delineated clearly above, namely as the imminently anticipated development and demolition activity approved by Defendants and their commercial partners as soon as the D.C. Court of Appeals' stay order is lifted.

61 Plaintiffs request that the Court:

- a. Enjoin Defendants from taking or allowing any physical activity that is related to construction of the VMP PUD Project at the Site that will cause any demolition or destruction of historic resources or otherwise adversely affect the designated historic resources not in accordance with the federal 'Secretary of the Interior's Standards for Rehabilitation', *supra*; and
- b. Issue a declaratory judgment providing that any demolition at the Site upon the basis that it "is necessary in the public interest for construction of a Project of Special Merit, pursuant to Section 5(e) of the District Historic landmark and Historic Protection Act is contrary to the Secretary's Standards and may not occur at the Site.

SECOND CLAIM

62 The allegations contained in Paragraphs 1—61 herein before are repeated and incorporated by reference herein.

63 The 1987 Deed and the restrictive covenants provided therein, including, *inter alia*, that "any and all rehabilitation and renovation work at the Parcel will be undertaken in accordance with The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings' (Standards)", *supra* at page 9, is a contract regarding real property between the United States and the District that includes

‘conditions subsequent’ that the District is obligated by contract to satisfy. The 1987 Deed states that the Historic Resources covenant runs with the land. Therefore, Defendants, including the development team, must consult with and receive review and approval by D.C. HPO for all plans and specifications associated with the redevelopment regardless of whether the property is sold to the developer or remains under D.C. ownership. Further, all plans and specifications must comply with the Secretary of the Interior’s Standards.

- 64 The implementation of the VMP PUD Project at the Site does not satisfy the contractual ‘condition subsequent’ in the 1987 Deed that is consideration for and a primary condition upon the conveyance of title to the Site in the 1987 Deed.
- 65 The implementation of the VMP PUD at the Site will be a breach of the District’s contractual obligations for any work it performs or allows to be performed at the Site.
- 66 The 1987 Deed and foregoing restrictive covenant is a contract with a condition subsequent for the benefit of all citizens of the United States, including Plaintiffs who reside in the District of Columbia and have enjoyed, plan to enjoy in the future, and have expended resources on conservation efforts related to the historic structures and their benefits at the Site within the designated McMillan Reservoir Historic District.
- 67 Plaintiffs seek enforcement of the third-party benefits and contractual obligations created by the 1987 Deed’s restrictive covenant(s) requiring that any rehabilitation work at the Site will be in accordance with the Interior Secretary’s Standards.
- 68 Unless enjoined by the Court, co-developers District of Columbia and VMP will irreparably and adversely affect historic resources contrary to the provisions of the 1987 Deed and the incorporated Secretary’s Standards, *supra*.
- 69 Plaintiffs request that the Court enjoin Defendants from conducting or allowing any person or entity to take any physical activity at the Site or any adjacent areas that is related to implementation of the VMP PUD Project at the Site and in violation of the Deed’s restrictive covenants or the Secretary’s Standards.

Wherefore, for good cause, on this the 5th day of May, 2021, *Pro se* Plaintiffs jointly request that the Court grant the relief requested herein.

Respectfully submitted,

Pro se Plaintiffs as captioned above:

/s/n

Jimmie Boykin
2406 N Capitol St. NW
Washington, D.C. 20002

/s/n

Linwood Norman, Jr.
135 T Street, N.W.
Washington, D.C. 20001

/s/n

Jerome Peloquin,
4001 9th St., N.E.
Washington, D.C. 20017

/s/n

Daniel G. Wolkoff,
1231 Randolph Street, N.E.
Washington, D.C. 20017

EXHIBIT A

MCMILLAN QUIT CLAIM DEED & COVENANTS

A certain parcel of land situate in Washington, District of Columbia, NW, being all of Tract Number 133 and a portion of Tract Numbers 134 and 135 known as the "McMillan Filter Plant" parcel of the Washington Aqueduct McMillan Reservoir and Filter Plant, owned by the United States of America, here-in-after referred to by the Tract Number, and more particularly bounded and described around the filter plant boundary line as follows:

Beginning at the northeast corner common to Tract Number 133, at a point of intersection of the southerly line of Michigan Avenue with the westerly line of North Capitol Street, said point being further located South 48° 54' 36" West 86.24 feet, more or less, from the intersection of the centerline of Michigan Avenue with the centerline of North Capitol Street; thence, leaving the southerly line of Michigan Avenue, and with the westerly line of North Capitol Street and the line of Tract Number 133;

Due South; passing a corner common to Tract Number 133 and Tract Number 135 and formerly the north line of Frankfort Street at 284.49 feet; passing a corner common to Tract Number 135 and Tract Number 134 and formerly the southline of Frankfort Street at 374.49 feet; passing a corner common to Tract Number 134 and Tract Number 135 and formerly the north line of Emporia Street at 674.49 feet; passing another corner common to Tract Number 135 and Tract Number 134 and formerly the south line of Emporia Street at 764.49 feet; passing another corner common to Tract Number 134 and Tract Number 135 and formerly the north line of Douglas Street at 1064.49 feet; passing another corner common to Tract Number 135 and Tract Number 134 and formerly the south line of Douglas Street at 1154.49 feet, in all 1454.49 feet to a corner common to Tract Number 134, at a point of intersection of the westerly line of North Capitol Street

with the north line of Channing Street, thence, leaving the westerly line of North Capitol Street, and with the north line of Channing Street and the line of Tract Number 134;

Due West 774.33 feet to another corner common to Tract Number 134, at a point of intersection of the north line of Channing Street, with the east line of First Street; thence, leaving the north line of Channing Street, and with the east line of First Street, continuing with the line of Tract Number 134;

Due North; passing a corner common to Tract Number 134 and Tract Number 135 and formerly the south line of Douglas Street at 300.00 feet; passing another corner common to Tract Number 135 and Tract Number 134 and formerly the north line of Douglas Street at 390.00 feet; passing another corner common to Tract Number 134 and Tract Number 135 and formerly the south line of Emporia Street at 690.00 feet; passing another corner common to Tract Number 135 and Tract Number 134 and formerly the north line of Emporia Street at 780.00 feet; passing another corner common to Tract Number 134 and Tract Number 135 and formerly the south line of Frankfort Street at 1080.00 feet; passing another corner common to Tract Number 135 and Tract Number 133 and formerly the north line of Frankfort Street at 1170.00 feet, in all 1323.01 feet to the northwest corner common to Tract Number 133, at a point of intersection of the east line of First Street, with the southerly line of Michigan Avenue; thence, leaving the east line of First Street, and with the southerly line of Michigan Avenue and the line of Tract Number 133;

North 80° 21' 47" East 785.41 feet to the place of beginning, containing 24.69 acres, more or less and except 4.80 acres of previously dedicated public rights-of-way.

The bearings and distances used herein are based on the Maryland Coordinate Grid System, 1927 N.A. Datum, as well as reflecting subdivision survey data depicted on sheet no. 8 of a map entitled "Washington Aqueduct Property Map McMillan Property", prepared by U.S. Engineer Office, Washington, D.C., Revised by C.P.H., October 1937.

It is the intent of the foregoing description to include all of the same land as that acquired by the United States of America by the following deed:

<u>Tract No.</u>	<u>Grantor</u>	<u>Deed Dated</u>	<u>Liber</u>	<u>Folio</u>
133	Joseph Paul & Wife	18 Mar 1901	853	775

Also, a portion of the same land as that acquired by the United States of America by the following instrument:

<u>Tract No.</u>	<u>Grantor</u>	<u>Deed Dated</u>	<u>Liber</u>	<u>Folio</u>
134	Joseph Paul & Wife	29 Apr 1901	853	771
135	District of Columbia Streets	Turned Over		

SUBJECT TO all existing easements or rights-of-way for public roads and highways, public utilities, railroads and pipelines as of May 8, 1987.

The Government of the District of Columbia hereby acknowledges and agrees that upon acceptance of conveyance of the property that no construction or disturbances of any kind will be allowed to take place prior to January 1988. Therefore, allowing the Washington Aqueduct Division to continue the maintenance and use of the property for the purpose of a water filter facility, to be used as needed, on a non-reimbursable basis.

The following are covenants running with the land at law as well as in equity, and are binding upon and inure to the benefit of the successors and assigns of the District of Columbia, and all present and future persons or entities owning or having an interest in said portion of the McMillan Reservoir, District of Columbia, or part thereof.

NON-DISCRIMINATION

The purchaser covenants for itself, its successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that the said purchaser and such heirs, successors and assigns shall not discriminate upon the basis of race, color, religion, national origin, or sex in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have sole right to enforce this covenant in any court of competent jurisdiction.

EXCESS PROFITS

This covenant shall run with the land for a period of 3 years from the date of conveyance. With respect to the property described in this deed, if at any time within a 3-year period

from the date of transfer of title by the Grantor, the Grantee, or its successors or assigns, shall sell or enter into agreements to sell the property, either in a single transaction or in a series of transactions, it is covenanted and agreed that all proceeds received or to be received in excess of the Grantee's or a subsequent seller's actual allowable costs will be remitted to the Grantor. In the event of a sale of less than the entire property, actual allowable costs will be apportioned to the property based on a fair and reasonable determination by the Grantor.

(a) For purposes of this covenant, the Grantee's or a subsequent seller's allowable costs shall include the following:

- (1) The purchase price of the real property;
- (2) The direct costs actually incurred and paid for improvements which serve only the property, including road construction, storm and sanitary sewer construction, other public facilities or utility construction, building rehabilitation and demolition, landscaping, grading, and other site or public improvements;
- (3) The direct costs actually incurred and paid for design and engineering services with respect to the improvements described in (a)(2) of this section; and
- (4) The finance charges actually incurred and paid in conjunction with loans obtained to meet any of the allowable costs enumerated above.

(b) None of the allowable costs described in paragraph (a) of this section will be deductible if defrayed by Federal grants or if used as matching funds to secure Federal grants.

(c) In order to verify compliance with the terms and conditions of this covenant, the Grantee, or its successors or assigns, shall submit an annual report for each of the subsequent 3 years to the Grantor on the anniversary date of this deed. Each report will identify the property involved in this transaction and will contain such of the following items of information as are applicable at the time of submission:

- (1) A description of each portion of the property that has been resold;
- (2) The sale price of each such resold portion;
- (3) The identity of each purchaser;
- (4) The proposed land use; and
- (5) An enumeration of any allowable costs incurred and paid that would offset any realized profit.

If no resale has been made, the report shall so state.

(d) The Grantor may monitor the property and inspect records related thereto to ensure compliance with the terms and conditions of this covenant and may take any actions which it deems reasonable and prudent to recover any excess profits realized through the resale of the property.

FAA CLAUSE

Based on coordination between the General Services Administration and the Federal Aviation Administration (FAA) as recommended in House Report No. 95-1053, entitled "FAA

Determination of 'No Hazard' for Structures Near Airports," it has been determined that the only public airport within six nautical air miles of this property is the Washington National Airport. FAA has been apprised of the proposed disposal of the property, and that the Government's conveyance document (this document) will contain a provision that the Grantee, its successors and assigns and every successor in interest to the property herein described, or any part thereof, must prohibit any construction or alteration on the property unless a determination of no hazard to air navigation is issued by FAA in accordance with 14 CFR Part 77. "Objects Affecting Navigable Airspace," or under the authority of the Federal Aviation Act of 1958, as amended.

HISTORIC RESOURCES

An Historic Resources Report for the 19.89 acre parcel of McMillan Reservoir (hereafter "Parcel") that includes an inventory of resources considered to be eligible for the National Register of Historic Places will be undertaken by the District of Columbia. This report will be prepared in consultation with, and submitted to, the District of Columbia Historic Preservation Officer (HPO) for review and comment prior to the initiation of any work at the Parcel. The District of Columbia HPO and the Council shall have 30 working days to review the report. *Carol Thompson*

The Historic Resources Report will be prepared in accordance with the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (National

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Park Service, 1983), by an engineering or architectural historian approved by the District of Columbia HPO and who meets, at minimum, the professional qualifications standards described in the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation."

The report will identify and evaluate historic resources in the Parcel in relation to the whole of McMillan Reservoir. The report will also describe and discuss the potential significance of any prehistoric and pre-reservoir historic resources, and those associated with the development of McMillan Reservoir as a municipal reservoir for the District of Columbia. If necessary to present a complete picture of the significance of the resources, the report will discuss them in relation to the whole of McMillan Reservoir.

If no part of the Parcel is found to be eligible, then the Grantee is relieved of further preservation responsibilities. If a part of the Parcel is found to be eligible, prior to the initiation of any work at the Parcel, the DC HPO will be consulted during the development of any and all plans and specifications for the renovation, rehabilitation, demolition, or new construction planned for the Parcel, and any and all final plans and specifications for work will be submitted to the District of Columbia HPO for review and approval prior to implementation. If the District of Columbia HPO does not agree with the preliminary or final plans and specifications for work at the Parcel, and the disagreement cannot be resolved, the

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District of Columbia shall immediately request the comments of the Council in accordance with 36 CFR Part 800.

Any and all rehabilitation and renovation work at the parcel will be undertaken in accordance with "The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" (Standards).

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest or claim whatsoever of the said Grantor, either in law or in equity.

The property hereby conveyed is presently under the jurisdiction of the General Services Administration, is available for disposal and its disposal has been heretofore authorized by the Administrator of General Services acting pursuant to the above referred to laws, regulations and orders.

IN WITNESS WHEREOF, the UNITED STATES OF AMERICA has caused these presents to be executed in its name and on its behalf the day and year first above written.

UNITED STATES OF AMERICA
Acting by and through
Administrator of General Services

WITNESSES:

William N. Adams Jr.
Kim J. Brown

By: Patricia E. Bailey
PATRICIA E. BAILEY
Acting Director
Office of Real Estate Sales
General Services Administration
Region IV, Atlanta, Georgia

CERTIFICATE OF SERVICE

Pursuant to the Court's rules I, Plaintiff, Daniel Wolkoff, with the help of Mr. Peter Stebbins, attest that the Joint *Pro se* Complaint attached herein has been hand delivered to the Court with required filing fees, and also to all parties and Defendants, on May 5, 2021, as follows:

DEFENDANTS

District of Columbia,
c/o The Honorable Muriel E. Bowser
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Defendant,

John Falcicchio
Deputy Mayor for Planning and Economic
Development
1350 Pennsylvania Ave., N.W. Suite 317
Washington, D.C. 20004
Defendant,

Andrew Trueblood
Director, D.C. Office of Planning/Mayor's
Agent for Historic Preservation
1100 4th St., S.W. Suite 650
Washington, D.C. 20024
Defendant,

Ernest Chrappah
Director, D.C. Department of Consumer and
Regulatory Affairs
1100 4th St., S.W.
Washington, D.C. 20024
Defendant,

and

Keith A. Anderson
Director, D.C. Department of General Services
Administration
2000 14th St., N.W.
Washington, D.C. 20001
Defendant,

**DISTRICT OF COLUMBIA OFFICE OF
THE ATTORNEY GENERAL**

Karl Racine, Esquire
400 6th Street, NW
Washington, DC 20001

Signed,

Peter Stebbins
3229 Walbridge PL NW
Washington, DC 20010

Daniel G. Wolkoff,
12321 Randolph Street, N.W.
Washington, D.C. 20017