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November 22, 2017

VIA IZIS AND HAND DELIVERY

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

Re: Z.C. Case No. 11-03J
Applicant's Rebuttal and Posthearing Submission

Dear Members of the Commission:

On behalf of the Applicant, Wharf Phase 3 REIT Leaseholder LLC, on behalf of the District of Columbia Office of the Deputy Mayor for Planning and Economic Development, we hereby submit the following rebuttal and posthearing submission in support of the second-stage planned unit development and first-stage planned unit development modification for Phase 2 at the Southwest Waterfront / The Wharf (Z.C. 11-03J). For the Commission's convenience, the information contained herein is generally organized according to the structure of public hearings used to review the case. For example, information regarding design changes made by the Applicant to the Parcel 10 Building in response to comments from the 525 Water Street Condominium party is included under the section entitled "Hearing #1 (Overall Plan Elements / Volume C (Master Plan, Parcel 10, Water Building 3, M Street Landing, The Terrace, and Wharf Marina)" since this is when the Commission initially reviewed the proposed plans for this particular building. Further, information not related to any one specific component of the application (such as the Applicant's rebuttal to comments regarding gentrification, environmental impacts, and flooding) is also included under Hearing #1 since this is when these issues were first raised during the course of proceedings and is also when the Commission reviewed the overall master plan components of the application.

Finally, in addition to the information provided in response to specific comments or requests from the Commission, Advisory Neighborhood Commission 6D (the "ANC"), and parties and individuals (both in support and opposition), the Applicant hereby submits its final list of requested technical zoning and minor design flexibility. As described further below, this final list of requested flexibility was prepared in coordination with the Office of Planning ("OP") which, as part of its hearing report (Exhibit 33), offered several recommended changes to the

areas of design flexibility requested by the Applicant and conditions related to the design of certain Parcel 6/7 Building components.

**Hearing #1 (November 2, 2017): Overall Plan Elements / Volume C
(Master Plan, Parcel 10, Water Building 3, M Street Landing, The Terrace, Wharf Marina)**

Status of negotiations with Gangplank Slipholders Association (“GPSA”)

During the course of proceedings, the Commission made several comments regarding the need to address the potential impact of the Wharf project on existing liveboard slipholders (“existing liveboards”) and specifically the possible impacts that future slip and liveboard fee increases could have on the ability of lower income existing liveboards that use their boats as their primary residence to remain within Wharf Marina following the construction transition period. Despite the fact that there are no requirements from the LDA or first-stage PUD to address affordability for the marina license holders (slipholders have commercial license agreements and are not tenants or owners of real estate), the Applicant clearly understood that the Commission was moved by the testimony of liveboards as to the possibility of no longer being able to remain in the marina as a result of the redevelopment. Accordingly, in response to the Commission’s request, the Applicant has continued to work since the last public hearing to provide GPSA and the ANC with an option that would equitably address concerns regarding the continued affordability of slip and liveboard fees for existing liveboards who are District residents, use their boats as their primary residence, and would have qualifying household incomes. The Applicant’s proposed revised Letter Agreement to address this principal issue and to update the existing 2012 Letter Agreement while incorporating a significant discount from market rate slipholder fees will be referred to as “Option B”, or the Subsidized Option.

A copy of “Option B” is attached hereto as Exhibit A. It is noteworthy that Option B still provides for new state of the art docks and improved shower, locker, mail and laundry facilities from what exists today, while providing discounted slip and liveboard fees of up to a potential 75% off of market rate to income qualifying existing slipholders.

Also, consistent with the Land Disposition Agreement (“LDA”) between the Applicant and the District, the existing 2012 Letter Agreement between the Applicant and GPSA (Exhibit 57), and the requirements of the first-stage PUD for the Wharf project, the Applicant remains fully committed to maintaining a vibrant liveboard community of 94 licensed slipholders at Wharf Marina and to carrying out a transition plan that allows the existing liveboards to remain in the marina during construction of the Wharf project. To that end, the Applicant and GPSA have been discussing for over a year the details of a revised Letter Agreement, which will supersede the 2012 Letter Agreement and which addresses issues such as transition period parking, permanent parking, and transition period fee increases. The Applicant believed that the negotiations on this agreement had concluded successfully with the GPSA leadership group on the morning of November 9th. That final agreed upon Letter Agreement was to be recommended

to the GPSA general membership for approval through a vote. That revised updated and enhanced Letter Agreement, "Option A," is attached as Exhibit B.

The Applicant is agreeable to either of these proposals; however, out of necessity providing a subsidized marina program (Option B) results in a different level of amenity that can be provided. The amenities in both Option A and Option B will exceed the requirements of the 2012 Agreement and are a distinct upgrade over existing facilities available to liveaboard slipholders. Currently, the existing facilities, which include restrooms, showers, laundry and security, are in small pier building that is aging and has several deficiencies in terms of accessibility and level of service. The existing mail facilities are located in an exposed location in an at grade surface lot. Option B will provide new upgraded facilities for these uses that either meet or exceed the fixture count for the restrooms, showers, and laundry, while providing contemporary fixtures, finishes, and levels of quantities in a modern and accessible facility. These Option B amenities would be located in Waterbuilding 2, roughly in the same location as the current pier building. Option A has all of the same amenities that are equivalent to or exceed what is in the marina today but includes significant additional luxury interior amenities including a multi-purpose club room, a shared kitchen and dining room, co-work or work-from-home facilities, and improved common exterior gathering areas and balconies. These enhanced amenities are only supportable in market rate marina provided for in Option A. In both Option A and Option B, the dock and gangway facilities would be significantly upgraded in terms of dock quality and material, dock width, level of utility and pump out service, availability of dock boxes and storage, enhanced lighting and safety features, and wider more accessible gangway facilities.

As discussed above, in response to the Commission's comments regarding the need to address the issue of affordability and the request for an approach that would more directly satisfy and preserve affordability for income qualifying existing liveaboards that are District residents, the Applicant developed an alternative Letter Agreement (Option B). The Option B subsidized alternative was specifically developed in response to the concerns raised by the Commission and with consideration given to maintaining the current socioeconomic diversity of the existing liveaboards. The full versions of Option A and Option B are, as previously stated, attached. In summary, Option B, the subsidized option, is identical to the terms negotiated GPSA leadership for Option A, the negotiated baseline option, with the following key differences that are clearly illustrated in the attached Letter Agreements:

1. Slip and Liveaboard Fee increases during the transition period (i.e. construction of Phase 2) would be limited to increases based on CPI. This is consistent with the manner in which interim slip and liveaboard fees were treated during the Phase 1 transition period. These increases will be lower than the negotiated increases provided in Option A.
2. Upon completion of the new marina and the end of the transition period, the slip and liveaboard fees adjust to market, the Applicant will offer discounted fees ("MFI Adjusted Fee program") to any of the now current existing liveaboards that are District residents

and income qualify for as long as the marina remains as their primary residence and they continue to income qualify.

3. The discounted fee schedule is calibrated to offer sliding scale discounts to existing Slipholders that qualify at any of the following Median Family Income (“MFI”) levels: 30%, 50%, 60%, 80%, 100%, and 120% which will provide discounted slip and liveaboard fees of up to a potential 75% off of market rate to qualifying households.
4. The Applicant established these discounted fees as a discount from market rate using a methodology that is analogous to the program used by the District of Columbia Department of Housing and Community Development (“DHCD”) to establish the difference between maximum rents for a typical affordable dwelling unit at various MFI levels compared to existing market rate apartments at Phase 1 of the Wharf.
5. The income test under Option B would be based on the IRS Form 1040 calculation of Adjusted Gross Income instead of the more arduous and burdensome verification requirements used by DHCD for actual affordable housing programs (i.e. Inclusionary Zoning). This methodology was selected in order to make the income verification process easier to administer and to help ensure that any existing Slipholder assets, such as their boats, second homes, or personal automobiles (provided that they are not used for income producing purposes), would not be put into the equation to determine participation in the MFI Adjusted Fee program. Also, this methodology ensures that applicants for the program are indeed District residents that use the marina as their primary residence.
6. The Applicant proposed to open the MFI Adjusted Fee program to all existing 88 liveaboard Slipholders in good standing instead of using a smaller subset of Slipholders. This was done so as to not exclude from potential participation in the program the approximately 74 slipholders that entered the marina after the District began the redevelopment process, or the approximately 46 slipholders that entered the marina after the existing 2012 Letter Agreement was signed, or the approximately 36 slipholders that entered the marina after the start of Wharf Phase 1 construction in order to make the opportunity to participate in the program as open and as equitable as possible.
7. In order to offer the reduced transition period fee increases and the MFI Adjusted Fee program, the Applicant would not construct Water Building 3 at this time and would provide additional services and amenities within Water Building 2. The new, modern, and code compliant (including ADA) services and amenities provided within Water Building 2 would include security, mail boxes, package delivery/receipt, laundry, showers, and restrooms that are comparable in count and quantity to those utilized by the existing liveaboards in the marina today meeting the requirement under the Stage 1 PUD and the 2012 Letter Agreement.

As noted above, if Option B is selected by GPSA as its preferred option, due to the deep and ongoing subsidies that would be provided to income qualifying existing liveaboards through the MFI Adjusted Fee program described above, the liveaboard amenities (security, mail boxes,

package delivery/receipt, laundry, showers, and restrooms) currently are proposed to be located in Water Building 3 (“WB3”) would need to instead be located in the ground floor of Water Building 2 (“WB2”). WB2 is located a similar distance to the furthest slips as the current security/bathhouse is today. These functions can be accommodated within the footprint of WB2 as proposed. During construction, interim facilities would be provided in a secure compound adjacent to Parcel 10 with similar quality amenities to those existing on site today.

On the morning of November 15th, the Applicant met with GPSA leadership and ANC Commissioner Andy Litsky to discuss Option B of the revised Letter Agreement, and specifically the MFI Adjusted Fee program and related adjustments to the liveaboard services and transition plan. Later that same day, the Applicant formally transmitted Options A and B of the revised Letter Agreements, including full sets of exhibits, to GPSA leadership.

The Applicant believes the options put forth, and in particular Option B of the revised Letter Agreement, not only fulfill the requirements of the first-stage PUD, but exceed these requirements by establishing a fair and equitable transition period fee schedule that is sensitive to the socioeconomic diversity of the existing liveaboard slipholders, while allowing necessary cost adjustments to be made to accommodate slip and liveaboard fee subsidies while still providing an enhancement in the quality of amenities available to the liveaboards. As previously noted, Option B provides for new docks and new restroom, showers, laundry, and mail/package facilities which are far superior to what exists today. The Applicant looks forward to its continued work with GPSA and to its November 30th submission to the Commission regarding the results of its vote on the two revised Letter Agreement options.

In summary, should GPSA prefer Option B, the Applicant is ready, willing and able to assist those that are economically unable to pay market rate for slip fees and who need assistance and subsidy to maintain their live-aboard status at the new marina and use their boats as their primary residence. The subsidy on slip rates comes at a considerable cost to the developer and is not required under the Stage 1 PUD, the LDA or any previous agreements. It is being offered as an accommodation at the urging of the Commission. A reduction in enhanced amenity offerings that exceed what is currently provided in the marina is the most logical path to afford the subsidy while maintaining the dramatically increased quality of docks and improving on the quality the core equivalent amenities. In providing those subsidies to those that are economically challenged, the applicant is not willing and nor does it believe that it has any obligation of any nature whatsoever to economically subsidize those persons who have the economic capacity to pay market rates to continue living at the marina. The Applicant believes in fairness, no less should be expected of those who have live-aboard status.

Consistency with the Comprehensive Plan

During the course of the hearings on the subject application, several witnesses testified that the requested second-stage PUD and first-stage PUD modification to permit a hotel use on Parcel 8 are inconsistent with the Comprehensive Plan. Specifically, in its testimony UNITE HERE Local 25 stated that the project “cannot be lawfully approved if it is found to be inconsistent with the Comprehensive Plan...On its face, this proposal likely conflicts with Policy ED-4.2.7: Living Wage Jobs.” That particular policy of the Comprehensive Plan states “Promote the attraction and retention of living wage jobs that provide employment opportunities for unskilled and semi-skilled workers. Use marketing strategies and incentives to encourage the relocation of firms with such positions to the District” (10-A DCMR 717.15). Further, the representative testifying on behalf of the Laborers International Union of North America (LiUNA) Local 11 similarly stated that the proposal in front of the Commission contradicts numerous Comprehensive Plan policies, including ED 2.5, The Production, Distribution, and Repair Economy; ED-4 Increasing Access to Employment; and ED 4.2.7: Living Wage Jobs. The LiUNA representative stated that “[w]e are aware that a [Peace Labor Agreement] cannot be mandated on this project, but the Zoning Commission must ensure that the project complies with the Comprehensive Plan.” Finally, the testimony provided by the D.C. Fiscal Policy Institute notes that the Comprehensive Plan’s economic development component stresses the importance of bringing living wage jobs to the District.

The Applicant is in full agreement that the Wharf project cannot be lawfully approved if it is found to be inconsistent with the Comprehensive Plan. Indeed, as clearly stated in the Zoning Regulations, a determination that a PUD is not inconsistent with the Comprehensive Plan is a critical requirement to the Commission’s processing of a first-stage PUD. Pursuant to 11-X DCMR § 302.2(a) of the 2016 Zoning Regulations (“ZR16”)¹ states “[t]he first-stage application involves a general review of the site’s suitability as a PUD and any related map amendment; the appropriateness, character, scale, height, mixture of uses, and design of the uses proposed; and the compatibility of the proposed development with the Comprehensive Plan, and city-wide, ward, and area plans of the District of Columbia, and the other goals of the project;” (emphasis added). Further, 11-X DCMR § 302.2(b) of ZR16 states “[t]he second-stage application is a detailed site plan review to determine transportation management and mitigation, final building and landscape materials and compliance with the intent and purposes of the first-stage approval, and this title. Finally, Section 309.2 of the “Planned Unit Development Approvals” section of ZR16 states “[i]f the Zoning Commission finds the application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, the Zoning Commission shall grant approval to the second-stage application, including any

¹ While the Wharf project is a vested project under the 1958 Zoning Regulations as to permitted development standards and use permissions, vested projects are processed by the Commission and Office of Zoning in accordance with the procedural requirements of the 2016 Zoning Regulations. See Notice of Intent at Exhibit 2G and Notice of Public Hearing at Exhibit 17.

guidelines, conditions, and standards that are necessary to carry out the Zoning Commission's decision" (emphasis added).

As required under the Zoning Regulations, the Commission has already determined that the Wharf project is not inconsistent with the Comprehensive Plan as part of its approval of the first-stage PUD in October 2011 (Z.C. Order No 11-03). In making its determination, the Commission clearly, and in great detail, addressed the project's consistency with the Comprehensive Plan, including the Future Land Use Map, Generalized Policy Map, the Guiding Principles of the Comprehensive Plan, Land Use Element, Housing Element, Environmental Protection Element, Economic Development Element, Urban Design Element, and the Lower Anacostia Waterfront/Near Southwest Area Element (*See* Z.C. Order No. 11-03, Findings of Fact 51 – 79). Based upon these findings, the Commission concluded that "[a]pproval of this PUD and map amendment is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan," (emphasis added). To the extent that it is necessary, the Applicant wishes to incorporate by reference the Commission's prior findings and conclusions regarding the entire Wharf project's consistency with the Comprehensive Plan into the record for the subject application. As such, the Commission has already done what it is required to do with respect to its review of the Wharf project relative to its consistency with the Comprehensive Plan. Furthermore, as discussed in the Applicant's initial application statement ("Exhibit 2") and in the rebuttal testimony provided by Shane Dettman, the Applicant's expert in zoning and land use, and as stated in OP's hearing report, the requested first-stage PUD modification to allow a hotel use on Parcel 8 is not inconsistent with the approved first-stage PUD.

Notwithstanding the fact that the Commission has already determined the entire Wharf project to be not inconsistent with the Comprehensive Plan, out of an abundance of caution the Applicant feels that it is necessary to address the specific Comprehensive Plan policies referred to by the representatives from UNITE HERE Local 25 and LiUNA, as well as the policies attached to the testimony submitted by DC4RD. As is clearly demonstrated below, the subject application (second-stage PUD for Phase 2 of the Wharf and first-stage PUD modification to allow a hotel use on Parcel 8) is not inconsistent with those policies that actually apply.

ED 2.5 - The Production, Distribution, and Repair ("PDR") Economy: The subject application is not inconsistent with this section of the Comprehensive Plan as it discusses the importance of PDR jobs, such as those in the construction trades, to the District economy and the need to retain PDR jobs. In fact, this section specifically states that "PDR employment in the District has been stable over the past several years. Declines in some sectors, such as manufacturing, have been offset by growth in other sectors, such as construction and warehousing" (emphasis added). Undoubtedly, the Wharf project has, and the subject application for Phase 2 of the Wharf will, been a major contributor to this offset. The remainder of this section, including the two policies contained within this

section, pertain to retention of industrial land and heavy industry; and therefore, are not applicable to the subject application.

- Policy ED-3.2.6: Commercial Displacement: The Wharf project is not inconsistent with this policy as it has not, and will not, displace any small and local businesses. In fact, the Wharf project will have positive impacts on small and local businesses. As stated in the first-stage PUD order, “the Applicant will work collaboratively with business and community organizations throughout the District to identify and, where possible, mentor potential small restaurateurs and retailers to help them lease and successfully operate these designated retail spaces. The Applicant also plans to have kiosks along the promenades, and in parks and other public spaces, where even smaller local businesses can try out their retail concepts on a low-risk basis; those kiosk operators who are successful will have the opportunity to move indoors, into one of the spaces reserved for unique and local business enterprises, thereby growing their business” (Z.C. Order No. 11-03, Finding of Fact 74)
- Action ED-3.2.A: Anti-Displacement Strategies: This policy is clearly not applicable to the subject application as it clearly pertains to an action recommended for the District government to “complete an analysis of alternative regulatory and financial measures to mitigate the impacts of “commercial gentrification” on small and local businesses.”
- ED-4 – Increasing Access to Employment: The subject application is not inconsistent with this section of the Comprehensive Plan, and the policies contained therein. This section states that “[a]t the heart of an economic development agenda for the District is the need to create good quality jobs and wages for District residents. “Quality” jobs should offer stable employment with opportunities to advance. As clearly demonstrated by the jobs and workforce development information provided below and attached as Exhibit C, the Wharf project has and will continue to create good quality jobs for District residents.
- ED 4.2.7: Living Wage Jobs: As thoroughly testified by Shane Dettman at the November 9, 2017, public hearing, the subject application is not inconsistent with this policy. Certainly, Comprehensive Plan policies can mean different things depending upon which District agency is applying the policy to its decision making. As it relates to the Commission’s review, the focus of this policy is on attracting “living wage jobs that provide employment opportunities for unskilled and semi-skilled workers.” Approval of the subject application will do exactly that through the construction of Phase 2 of the Wharf project and the numerous job opportunities created upon completion of Phase 2 construction, including the additional hospitality employment opportunities that would be created through approval of the requested first-stage PUD modification to allow a hotel use on Parcel 8.

- Guiding Principles: Managing Growth and Change: The subject application is not inconsistent with the approved first-stage PUD in which the Commission thoroughly addressed the consistency of the entire Wharf project with the guiding principles contained in the Comprehensive Plan (Z.C. Order No. 11-03, Findings of Fact 56)
- Action PROS-2.1.B: Needs Assessments and Demographic Analysis: This recommended Comprehensive Plan action is not applicable to the subject application as it clearly pertains to an action that should be taken by the District in order to “better understand the current preferences and future needs of District residents with respect to parks and recreation.
- Policy HP-1.1.3: Cultural Inclusiveness: This policy promotes celebration of a diversity of histories by tracing the many roots of the District and the many cultures that have shaped its development. The Wharf project is not inconsistent with this policy. As part of the first-stage PUD plan, a system of interpretive signage was approved that conveys the diverse history of Washington’s working waterfront. These signs can be found throughout the recently unveiled Phase 2 of the Wharf. As shown in the proposed plans for Phase 2 of the Wharf project, this system of interpretive signs will be consistency extended throughout the rest of the site. Further, the industrial working wharf history of the site is a major design influence that can be found throughout the design of several building and the pedestrian realm throughout the project.
- Policy HP-2.4.3: Compatible Development: This policy is not applicable to the subject application as the entire Wharf project is not located within a historic district, nor were any structures located within the Wharf project site deemed to individual landmarks or contributing structures.
- Policy LU-1.4.1: Infill Development: The subject application is not inconsistent with this Land Use Element policy. The Wharf project has been designed to relate to the surrounding context in massing, articulation, and materials. The height and density is not inconsistent with that which exists to the north in the area commonly referred to as the Southwest Federal Center. Furthermore, the site plan of the Wharf project responds to the scale of the residential uses located at the east end of the Wharf site. Specifically, per the first-stage PUD and related map amendment, the W-1 zoning for Parcel 10 was retained and Parcel 11 was rezoned to R-5-B in order to relate to the residential uses to the east. In addition, the height of the building on Pier 4 was restricted to 45 feet. Finally, the east end of the Wharf site is where most of the major parks and open spaces are located such as Waterfront Park and M Street Landing.
- Policy LU-2.3.2: Mitigation of Commercial Development Impacts: The subject application is not inconsistent with this Comprehensive Plan policy. The new commercial development contained within the subject application, and in the overall Wharf project, has been thoroughly analyzed in the transportation analyses prepared by the Applicant

during the first-stage PUD and second-stage PUDs for Phase 1 and Phase 2. Further, as conditions to the approvals granted by the Commission, the Wharf project is subject to numerous Transportation Demand Management strategies and a rigorous Transportation Demand Management Monitoring Plan in order to mitigate any impacts to traffic, congestion, and parking. The project is also subject to several loading management plans that have been a made conditions in the Commission's final orders. Any other impacts that may result from the project, such as impacts to litter, odor, noise, and vibration impacts are mitigated through existing regulations including, but not limited to, the District noise control and environmental regulations, and ABRA regulations.

- Policy LU-2.3.1: Managing Non-Residential Uses in Residential Areas: This policy is not applicable to the project as it clearly relates to the District's responsibility to "[m]aintain zoning regulations and development review procedures that: (a) prevent the encroachment of inappropriate commercial uses in residential areas; and (b) limit the scale and extent of non-residential uses that are generally compatible with residential uses, but present the potential for conflicts when they are excessively concentrated or out of scale with the neighborhood." The District, and specifically the Commission, has done so in this project. Specifically, in approving the first-stage PUD the Commission specifically concluded that "...the proposed development will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia" (Z.C. 11-03, Conclusion of Law #8).
- Policy UD-2.2.7: Infill Development: *See* response to Policy LU-1.4.1: Infill Development
- Policy UD-2.2.9: Protection of Neighborhood Open Space: The Wharf project is not inconsistent with this policy. First, the Wharf project did not adversely impact any neighborhood open spaces and public areas. Rather, it has, and will continue to significantly add to the inventory of parks, open space, and recreational facilities in the Southwest area through the construction of amenities such as, but not limited to, Waterfront Park, 7th Street Park and Recreation Pier, District Pier, and M Street Landing. Indeed, the Comprehensive Plan section of the first-stage PUD order states, "[t]he proposed PUD will provide over 12 acres of open space and parks that will be part of a larger connected network of waterfront parks from Haines Point to the Sousa Bridge, and continuing through adjacent upriver Planning Areas to the Maryland border. The parks will be easily accessible to surrounding neighborhoods and accommodate the need for more local and regional serving recreational activities in the city. The parks will include a variety of active and passive recreational settings" (Z.C. Order No. 11-03, Finding of Fact 79(h)). The first-stage PUD order further states that "[t]he PUD will create numerous new dynamic public spaces and plazas at the waterfront, including the Wharf, an exceptional and expanded public promenade at the water's edge. Public piers will

extend from each of the major terminating streets, providing views and public access to the water” (Z.C. Order No. 11-03, Finding of Fact 79(j)).

- Policy UD-2.3.3: Design Context for Planning Large Sites: *See* response to Policy LU-1.4.1: Infill Development
- Policy UD-2.3.4: Design Trade-offs on Large Sites: *See* response to Policy LU-1.4.1: Infill Development
- Policy H-1.2.4: Housing Affordability on Publicly Owned Sites: The Wharf project, and the subject application, are not inconsistent with this policy. As discussed below, pursuant to the LDA and the approved first-stage PUD, the project will devote a substantial percentage of the total housing units within the project to affordable housing at a wide range of income levels (30%, 50%, 60%, and 80%). In fact, the amount of affordable housing and level of affordability provided within the Wharf project are well in excess of what would otherwise be required under the District’s inclusionary zoning regulations.
- Policy H-1.3.1: Housing for Families: The Wharf project is not inconsistent with this Comprehensive Plan policy. As shown in the “Affordable and Workforce Housing Summary” chart included in the proposed plans, the Wharf project will contain approximately 419 two-bedroom dwelling units which will be available to families.
- Policy E-4.1.3: Evaluating Development Impacts On Air Quality – As discussed under the environmental impacts section below, the Applicant completed a thorough air quality analysis for the entire Wharf project which was reviewed by DDOE, which determined that the Wharf project would not have substantial impacts to air quality.
- Policy E-4.3.5: Noise and Land Use Compatibility: The Wharf project is not inconsistent with this policy as it will not locate any new land uses that generate excessive noise adjacent to sensitive uses such as housing, hospitals, and schools. Rather, the land uses contained within the Wharf project are uses that can be found throughout the Southwest area, and constructed throughout the District with causing adverse impacts to sensitive uses. Finally, any land use established within the Wharf project will be required to comply with the District’s existing noise control regulations at all times
- Policy E-3.4.1: Mitigating Development Impacts – As discussed under the environmental impacts section below, the entire Wharf project (landside and waterside) have been thoroughly analyzed for its potential to cause environmental impacts. As discussed below, and as shown in the environmental reports prepared by the District and the U.S. Army Corps of Engineers, the project will not cause substantial adverse environmental impacts, but rather will result in numerous positive impacts.

- Policy MC-1.1.7: Protection of Affordable Housing” This policy is not applicable to the subject application as it is contained within the Mid-City Area Element of the Comprehensive Plan while the Wharf project site is located within the defined boundary of the Lower Anacostia Waterfront/Near Southwest Area Element.
- Policy IN-1.1.1: Adequate Water Supply: This policy is not applicable to the subject application as it clearly relates to an action that is to be taken by the District government.
- Policy IN-5.1.1: Adequate Electricity: This policy is not applicable to the subject application as it clearly relates to an action that is to be taken by the District government.
- Policy IN-6.1.3: Developer Contributions: The Wharf project is not inconsistent with this policy. The Applicant is carrying out the necessary upgrades to existing infrastructure to accommodate the Wharf project. As discussed below, the infrastructure upgrades are being constructed through the Southwest TIF/PILOT that was approved by the D.C. Council, which will be repaid through the extensive increments in property and sales taxes generated by the project that would not otherwise be generated if the Wharf project was not constructed.
- Policy IN-6.1.1: Coordination of Infrastructure Improvements: The Wharf project is not inconsistent with this policy. The infrastructure upgrades that are necessary to accommodate the Wharf project, such as those upgrades to utilities and services below Maine Avenue, SW have been, and will continue to be coordinated to minimize disruption.
- Policy T-1.1.1: Transportation Impact Assessment: This policy is not applicable to the Wharf project as it pertains to major transportation projects.
- Action T-4.1.C: Emergency Evacuation Plan: This Comprehensive Plan action is not applicable to the Wharf project as it clearly pertains to an action that is to be taken by the District government.
- CSF-4.1 Police Facilities and Services: This section of the Comprehensive Plan pertains to the importance of maintaining updated and modern police facilities to meet the public safety needs of current and future District residents, businesses, workers, and visitors. As such, this section of the Comprehensive Plan is not applicable to the Wharf project as it clearly pertains to actions of the District government.
- Policy CSF-4.2.1: Adequate Fire Stations: This Comprehensive Plan policy is not applicable to the Wharf project as it clearly pertains to actions of the District government.

Nonetheless, as discussed below the Southwest area, including the Wharf project, are adequately serviced by the newly constructed fire station for Engine Company 13.

- Action CSF-4.2.A: Level of Service Monitoring: This Comprehensive Plan action is not applicable to the Wharf project as it clearly pertains to an action that is to be taken by the District government.
- Policy CSF-4.2.3: Responsiveness to Demographic Change: This Comprehensive Plan policy is not applicable to the Wharf project as it clearly pertains to actions of the District government.
- Policy CSF-2.1.1: Primary and Emergency Care: This Comprehensive Plan policy is not applicable to the Wharf project as it clearly pertains to actions of the District government, or other entities.
- Policy CSF-2.1.6: Health Care Planning: This Comprehensive Plan policy is not applicable to the Wharf project as it clearly pertains to actions of the District government, or other entities.
- Policy CSF-1.1.1: Adequate Facilities: This Comprehensive Plan policy is not applicable to the Wharf project as it clearly pertains to actions of the District government, or other entities.
- Policy CSF-1.1.2: Adequate Land: This Comprehensive Plan policy is not applicable to the Wharf project as it clearly pertains to actions of the District government.
- Relating Development to Infrastructure Capacity: This Comprehensive Plan policy is not applicable to the Wharf project as it clearly pertains to actions of the District government. Nonetheless, as already stated, the Applicant and the District have made, and will continue to make, the necessary upgrades to public infrastructure (roads, water, sewer, drainage, etc.) in order to accommodate the Wharf project while maintaining or improvement services to existing residents.
- Policy IM-1.1.6: Studies Preceding Zoning Case Approvals: The Wharf project is not inconsistent with this Comprehensive Plan policy. In approving the first-stage PUD, the Commission relied upon a robust transportation study that contains several mitigation measures that were included as conditions to the Commission's approval. Further, all subsequent second-stage PUD approvals granted by the Commission have relied upon required updates to the first-stage PUD transportation study. In addition, at the very beginning of the Wharf project, the Applicant conducted several preliminary environmental assessments to gauge, among other things, the condition of existing infrastructure and conditions on the Wharf site and immediate context. Finally, under the

first-stage PUD approval the Applicant is required to comply with “first source employment” requirements and many other regulations and conditions that ensure public benefits to District residents.

Gentrification, displacement, and destabilization of land values

At the public hearing on November 2, 2017, DC for Reasonable Development (“DC4RD”) made several unsubstantiated claims that the Wharf project will cause displacement, gentrification, and destabilize land values in the surrounding area, and that Phase 2 of the Wharf will only make things worse. Not only does DC4RD fail to provide any information or analysis of its own to verify these claims, as it has done in several recent cases before the Commission, DC4RD continues to approach the issue of affordable housing in the District rather myopically by applying a one size fits all solution to an issue that requires a range of strategies and programs spanning several District agencies that focus on, among other things: (i) preserving existing affordable housing; (ii) controlling housing costs for existing residents through programs that provide rental assistance and limit assessment value increases; (iii) increasing market rate and affordable housing supply (for various income levels); and (iv) creating workforce training and employment opportunities.

While DC4RD suggests that the District is failing to address the issue of affordable housing, it is clear based on consistent statements and actions by the Mayor, the D.C. Council, and several District agencies, that affordable housing is at the forefront of issues being addressed by the District. An example of one such action is Mayor Muriel Bowser, in her first budget as Mayor, devoting an historic \$100 million to the Housing Production Trust Fund (“HPTF”) thereby putting an unprecedented number of affordable housing units into the pipeline. Regarding the preservation of existing affordable housing, in June 2015, Mayor Bowser established the 18-member District of Columbia Housing Preservation Strike Force (“Strike Force”), which was charged with developing an action plan to preserve the District existing affordable housing. In November 2016, the Strike Force released its final report entitled “Six Recommendations for Addressing Affordable Housing Preservation, 2016.” Regarding efforts to control housing costs through assistance programs, the District currently offers numerous programs that are specifically aimed at addressing destabilization of land values and displacement of existing residents by providing rental assistance and limiting assessment value increases. The following chart provides several examples of these programs, followed by the District agency or entity that is in charge of administering the program:

Program	Agency
Housing linkage	DC Council
Affordable housing requirements for public land disposal (D.C. Code 10-801)	DC Council
Homestead and Senior Citizen Deduction	OTR
Senior Citizen or Disabled Tax Relief Program	OTR
Property Assessment Cap Credits	OTR
Lower Income Homeownership Tax Abatements	OTR

Lower Income, Long-term Homeowners Tax Credits	OTR
Low-income or Low-income Senior Citizen Property Tax Deferral	OTR
Local Rent Supplement Program	DHCD
Housing Production Trust Fund	DHCD
Tenant Opportunity to Purchase Act (TOPA)	DHCD
Home Purchase Assistance Program (HPAP)	DHCD
Housing Choice Voucher Program	DCHA

Recent studies show that developments such as the Wharf help mitigate the effects of gentrification, displacement, and destabilization of land values by making contributions to multiple areas of the aforementioned multi-faceted strategy that is necessary to address the issue of affordable housing. Beginning with jobs and income growth, the Wharf project has, and will continue to create numerous new jobs (short-term and long-term) that provide employment opportunities to District residents, including residents of Southwest. These new opportunities create sources of new or increased income for District residents thereby increasing existing residents' ability to remain in the surrounding area, an area that is experiencing the same price and rent increases occurring throughout the District. Furthermore, as detailed in the information provided below and in Exhibit C, the Applicant's extensive jobs, workforce development, and outreach efforts are making it easier for District residents, and specifically residents living in Wards 7 and 8, to take advantage of the new employment opportunities created by the Wharf project.

With regard to the housing supply, the Wharf project will not eliminate any existing District affordable housing. Rather, construction of the project will only result in a substantial increase in the amount of market-rate and affordable housing in the surrounding area and the District. DC4RD incorrectly states that the project will destabilize property values and cause displacement. In contrast to this unsubstantiated claim, actual analysis conducted by the District has shown that increases in market rate housing has not impacted lower income residents. Specifically, according to a report entitled Bridges to Opportunity, A New Housing Strategy for D.C. (March 2013), prepared by the 2013 Comprehensive Housing Strategy Task Force, "the recent increase in market rate housing does not appear to have led to significant gentrification, by which we mean the displacement of lower income residents. In fact, over the past two years of the city's population growth, the number of people filing income taxes has increased across all income levels citywide. Market rate housing starts are essential to improving the city's continuum of housing as are public-private investments in affordable housing development." (Bridges to Opportunity, A New Housing Strategy for D.C. (2013), Pages 7 and 41).

Contrary to DC4RD's unsubstantiated claims, the Wharf project (including Phase 2) will have significant positive impacts on affordable housing in the District through the significant number of new residential dwelling units contained in the project, including the substantial number of affordable dwelling units that significantly exceed what would otherwise be required under Inclusionary Zoning ("IZ") regulations both in quantity and level of affordability. As noted in the

Comprehensive Plan, the development of new housing – both market rate and affordable - is very important to addressing the issue of affordable housing in the District. Academic studies and articles written from a wide range of political perspectives are increasingly finding that addition of new housing of all types and price ranges is one of the key steps that can be taken to mitigate rising prices and rents. As stated by Richard Florida in a recent article “We’ve long known...that restrictive land use and building codes in cities limit housing construction (and therefore housing supply), leading to increased costs, worse affordability problems, and deepened inequality in urban centers.”²

Consistent with the above statement, many academic studies and articles have found that construction of new housing in all price ranges, and specifically new affordable housing, is one of the best ways to mitigate increasing prices and rents as it helps address the imbalance between housing demand and housing supply. One such example is research conducted by the Legislative Analyst’s Office of the California Legislature which concluded that “[a]s market-rate housing construction tends to slow the growth in prices and rents, it can make it easier for low-income households to afford their existing homes. This can help to lessen the displacement of low-income households.”³ This approach to addressing the issue of affordable housing through increasing the supply of new market-rate and affordable housing is also consistent with the priorities recently adopted by a diverse group of D.C. business groups, tenants’ groups, developers, affordable housing advocates, faith groups, and over 250 residents regarding revisions to the Comprehensive Plan.⁴ Specifically, the first of these adopted priorities states that the District should meet housing demand by forecasting, planning for, and encouraging the creation and preservation of a supply of housing (market-rate and subsidized affordable) to meet the demand at all income levels. The supply of housing should be sufficient to slow rising costs of rental and for-sale housing.

To that end, the Wharf project will not cause or exacerbate gentrification or displacement of existing residents in the surrounding area. Rather, the project is a perfect example of the type of development that can help mitigate the negative effects of gentrification and increasing housing costs as it will introduce approximately 1,186 new dwelling units into the District’s supply of housing, of which approximately 192, or approximately 16.2%, will be devoted to affordable housing at the 30%, 50%, 60%, and 80% MFI levels, with the overwhelming majority of the affordable units at the 30% or 60% MFI brackets. Further, an additional 134 dwelling units are subsidized down to workforce housing at the 100% and 120% MFI levels. As previously stated, upon completion the amount of affordable housing and levels of affordability within the Wharf project will greatly exceed the IZ regulations, both those in effect at the time the Commission approved the first-stage PUD and the recently amended IZ regulations that are now in effect,⁵ as well as meet or exceed the requirements for subsidized housing under the approved first-stage PUD and the LDA.

² Florida, R. (2016). How Zoning Restrictions Make Segregation Worse. *The Atlantic Citylab*

³ Legislative Analyst’s Office (2016). Perspectives on Helping Low-Income Californians Afford Housing

⁴ <https://ggwash.org/view/62320/meet-the-housing-demand>

⁵ Z.C. Order No. 04-33G

Environmental impacts and flooding

At the public hearing held on November 2, 2017, Mr. William Shickler testified that “an actual real environmental impact study has not been conducted” for the Wharf project at both the District and federal levels. This same claim was also made by DC4RD and a number of persons who have submitted comments to the record. Further, these persons and organizations have also claimed that the Wharf project will cause adverse flooding impacts and that the first-floor of Phase 1 of the Wharf project will flood and as a result cause additional impacts on the community. As testified at the public hearing on November 9, 2017, by the Applicant’s witness, Mr. Shane Dettman, and as further explained below, these claims are simply incorrect as the potential environmental impacts of the entire Wharf project – landside and waterside – have been thoroughly analyzed in accordance with all applicable District and federal environmental protection laws and regulations; the entire project has been review by the Federal Emergency Management Agency (“FEMA”) for impacts to existing floodplains and all major landside buildings within the project are not only located outside of the FEMA defined Base Flood Elevation (“BFE”) but are also designed such that the first floor of these buildings is located a minimum of 18 inches above the BFE.

It is understood that any development has potential to result in beneficial or adverse environmental impacts that could range in intensity and duration. Therefore, as required under the PUD evaluation standards in Section 2403.3 of the ZR58, in evaluating environmental impacts the Commission must determine whether the impacts of the Project “will be favorable, capable of being mitigated, or acceptable given the quality of public benefits.” The Commission made this determination for the Wharf project when it approved the first-stage PUD in October 2011, in part on the basis that the project is not inconsistent with the Comprehensive Plan, including the principles and policies relating to environmental protection. Indeed, in approving the first-stage PUD the Commission specifically found that the Wharf project would create numerous environmental benefits and amenities and specifically found the project to be fully consistent with the Comprehensive Plan policies contained within the Environmental Protection Element. *See* Z.C. Order No. 11-03, Finding of Fact 50(e) and 72. Further, upon finding the project to be fully consistent with the Comprehensive Plan’s guiding principles relating to “Building Green and Healthy Communities,” the Commission stated the following:

“The project is intended to achieve a Gold LEED-ND [Neighborhood Development] certification, and the extensive open space, parks, and landscaping will contribute significantly to the "greening" of the District. The proposed development will also minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. (§ 221.2 and 221.3.) In addition, the project will facilitate pedestrian and bicycle travel. The existing site consists of significant areas of surface parking lots the removal of which will be of significant benefit from an environmental standpoint.” *See* Z.C. Order No. 11-03, Finding of Fact 56(e)

To ensure that the Wharf project provides these environmental benefits, and that the impacts of the project are minimized and/or mitigated, the Commission conditioned its approval of the first-stage PUD, in part, upon the Applicant obtaining a certification level of LEED-ND Gold for the overall Wharf project upon completion of construction. In addition, with the exception of the church on Parcel 11, the Applicant is also required to design each building to a certification level of LEED Silver or higher to meet LEED storm water requirements for both quality and quantity. The Applicant is not only on track to meet these conditions, but in certain instances may be able to exceed these requirements by targeting LEED Gold for the office buildings on Parcel 1, Parcel 6/7, and Parcel 10.

Regarding the landside component of the Wharf project, as was stated by Mr. Dettman on November 9, 2017, the lack of substantial environmental impacts and potential for environmental benefits of this portion of the project is supported by the results of the comprehensive environmental impact screening conducted by the District of Columbia Department of Consumer and Regulatory Affairs (“DCRA”), in coordination with several District agencies, which thoroughly analyzed the entire Wharf project in accordance with the District’s Environmental Policy Act regulations (20 DCMR, Chapter 72). By letter dated August 7, 2013, DCRA informed the Applicant that “[b]ased on agencies’ recommendations, it has been determined that the proposed action is not likely to have substantial negative impact on the environment, and submission of an Environmental Impact Statement (EIS) is not required.” A copy of DCRA’s letter is attached as Exhibit D, which also includes the environmental assessment prepared by DOEE, and reports from the District Department of Transportation, the Office of Planning, DC Water, and the Department of Public Works.

Most notably, the environmental assessment prepared by DDOE included a review of the Applicant’s conceptual erosion/sediment control plan; conceptual storm water management plan; proposed floodproofing background and methods, FEMA issued conditional letter of map revision (“CLOMR”), preliminary subsurface exploration and geotechnical engineering analysis; Phase I and II Environmental Site Assessments; an air quality impact assessment that incorporated traffic estimates from the Applicant’s transportation analysis, and the permit issued by the U.S. Army Corps of Engineers (“USACE”) for construction of the waterside components of the project. In reliance upon these documents, and others, DOEE evaluated the potential for impacts to: water quality, sedimentation, stormwater, watersheds, air quality, vegetation and wildlife, underground storage tanks, toxic substances, hazardous wastes, and environmental justice. As can be seen on Page 19 of the DOEE environmental assessment, DDOE concluded that preparation of an environmental impact statement is not required “based on the fact that none of [DOEE’s] reviews have identified any significant adverse impact or likelihood of a substantial negative impact to the environment as a result of the proposed project.”

Regarding the waterside component of the Wharf project, as was testified at the November 9, 2017, public hearing, pursuant to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, USACE issued a permit for construction of the waterside component of the Wharf project. Prior to issuing the permit, USACE, in accordance with the requirements of the National Environmental Policy Act (“NEPA”), completed an environmental assessment (dated July 2012) that analyzed the potential environmental impacts of the entire waterside component of the Wharf project, including the potential for impacts on floodplains (Exhibit E). As stated on Page 137 of the USACE environmental assessment, after completing a detailed analysis of the project, USACE concluded its analysis with a Finding of No Significant Impact (“FONSI”) stating that “having reviewed the information provided by the Applicant and all interested parties and an assessment of the environmental impacts, the permit action will not have a significant impact on the quality of the human environment. Therefore, an Environmental Impact Statement will not be required.” Finally, in addition to the above described environmental assessment, USACE completed an Essential Fish Habitat (“EFH”) assessment pursuant to Section 305 (b)(2) of the Magnusson-Stevens Fishery Conservation and Management Act. As stated on Page 9 of the EFH assessment, “USACE has determined, after reviewing relevant fisheries information and analyzing potential project impacts, that the proposed project would not adversely affect EFH or EFH species and would have negligible impacts to EFH prey species” (Exhibit F).

Contrary to the statement by DC4RD that the first floor of Phase 1 of the Wharf project will flood in the next several years, as shown in the attached CLOMR issued by FEMA, the Wharf project is not in jeopardy of flooding, and does not create conditions that increase flooding risk to the surrounding community. Rather, the major buildings throughout the entire Wharf project have been designed so that the first floor is above the established BFE, which is defined by FEMA as the computed elevation to which floodwater is anticipated to rise during the base flood and is the regulatory requirement for the elevation or floodproofing of structures.⁶ As can readily be seen on the Proposed Conditions Maps included in the CLOMR, while the elevation of the majority of the reconstructed seawall (“retaining wall”) ranges between 11.4 – 12.12 feet, the design elevation of the first floor of the major buildings is 13 feet. Thus, the first floors of the buildings are located above the BFE. The lack of substantial impact on flooding and floodplains is further supported on page 10 of the environmental assessment prepared by DDOE which states “[b]ased on review of the submitted EISF package and a site visit on April 03, 2013, WPD does not anticipate any significant adverse impact or the likelihood of substantial impact to the environment, provided that the proposed... floodplain management measures are implemented” (Exhibit G).

⁶ <https://www.fema.gov/base-flood-elevation>

Impacts on local public facilities (schools, libraries, recreation centers, fire stations)

In its testimony, DC4RD again makes unsubstantiated claims that the capacity of community facilities such as local schools, libraries, recreation centers, senior centers, fire/police stations and associated emergency response time, hospitals, and refuse removal “will be burdened by the new residents being brought into the community by these PUD and project approvals.” Similar comments were submitted to the record by several individuals. As the information below clearly shows, the capacity of community facilities in the surrounding area is more than adequate to accommodate Phase 2 of the Wharf project and the Wharf project as a whole.

Considering its claim that the Wharf project does not provide any housing for families, it is rather ironic that DC4RD would argue that the capacity of local schools will be burdened by the Wharf project. Nonetheless, as shown in the attached report entitled “Public Education Supply and Demand for the District of Columbia Citywide Fact Sheet, SY2016-17 (“Fact Sheet”),” which was released by D.C. Public Schools (“DCPS”) on October 6, 2017, there is sufficient capacity within the DCPS and D.C. Public Charter School systems to accommodate expected growth through 2025 (Exhibit H). Specifically, as stated on page 12 of the Fact Sheet, “...there may be between 93,687 and 95,502 3-17 year old public school students in 2025. If the District grows by this amount, and if the city keeps the same supply of schools with the same grade spans and facilities as they have in SY2016-17, then there may be a surplus of 6,182 to 7,996 seats in our current facility inventory.”

Specific to the Wharf site, according to data provided by DCPS the local schools that currently serve the project site all have additional capacity to accommodate demand, and all have either recently been fully modernized or are in the process of being modernized. According to the DCPS website, the three public schools that serve the Wharf site include Amidon-Bowen Elementary School, Jefferson Middle School Academy, and Eastern High School. According to the DCPS online profile for Amidon-Bowen Elementary School, which was fully modernized in 2012, this school has a current enrollment of 350 students (<http://profiles.dcps.dc.gov/Amidon-Bowen+Elementary+School>) and a building capacity of approximately 400 students, equating to approximately 88% utilization (Exhibit I). The online profile for Jefferson Middle School Academy indicates a current enrollment of 305 students (<http://profiles.dcps.dc.gov/Jefferson+Middle+School+Academy>) and an existing building capacity of approximately 567 students (approx. 54% utilization) (Exhibit I). Of note, on May 31, 2017, the D.C. Council voted to accelerate the complete modernization of Jefferson Middle School. The modernization process was recently initiated with a community kick-off meeting held on October 25, 2017, with construction estimated to complete in August 2020. Finally, the online profile for Eastern High School, which was fully modernized in 2010, indicates a current enrollment of 818 students (<http://profiles.dcps.dc.gov/Eastern+High+School>) and a building capacity of approximately 1100 students (approx. 74% utilization) (Exhibit I). Based on the foregoing, the subject

application for Phase 2 of the Wharf, and the Wharf project overall, will not burden local schools.

Regarding impacts to public libraries, as the Commission knows D.C. Public Libraries (“DCPL”) continues to advance its efforts to transform the District’s library system for the 21st Century through major renovation or reconstruction of public libraries throughout the city. Some of the standard programmatic requirements DCPL is incorporating in all of its library projects include an average size approximately 20,000 – 22,000 gross square feet, flexible space to accommodate future change, LEED certification, ADA accessibility, separate age-related reading area, and community meeting space and study rooms. With regard to capacity, according to a December 2010 analysis conducted by OP, the Southwest Library was one of the least active libraries in terms of computer usage, circulation, and patronage.⁷ Thus, although this study is seven years old, it is reasonable to believe the Southwest Library has enough capacity to accommodate any additional demand that may be generated by the Wharf project, especially given DCPL’s ongoing efforts to modernize the District’s library system. In fact, the process to modernize the Southwest Library is currently underway, with DCPL hosting the first community meetings thus far with a third meeting scheduled for December 14, 2017.⁸ According to the presentation given by DCPL at a community meeting held on September 26, 2017, the funded \$18 million modernization project will increase the net square footage of the library devoted to public areas (entrance/marketplace; adult, teen, and children services; and meeting spaces) by approximately 3,421 square feet, thus further increasing capacity of the Southwest Library.⁹

The Wharf project will also not adversely impact recreation centers and facilities. The surrounding area has more than sufficient recreational facilities. First, the King Green Leaf Recreation Center, located at 201 N Street, SW, is a 16,500 square foot facility that was substantially renovated in 2005. Indoor facilities at this recreation center provide a computer lab, fitness center, gymnasium, and a multi-purpose room. Outdoor facilities include a playground, spray park, ballfields, tennis courts, pavilion, and a large multi-purpose field. In addition, the Southwest area is also serviced by Randall Recreation Center, located at 820 South Capitol Street, SW, which provides an indoor multi-purpose room and several outdoor facilities including a pool, basketball courts, soccer field, and tennis courts. Finally, the area is located in close proximity to other significant parks and recreation facilities including East Potomac Park and the National Mall.

As demonstrated above, the Wharf project will not adversely impact existing recreation centers and facilities. Rather, as acknowledged by the Commission in its approval of the first-stage PUD, the project will have a significant positive impact on parks and recreational facilities. Specifically, the Commission stated, “the proposed PUD will provide over 12 acres of open

⁷ <https://www.scribd.com/document/49490030/Appendix-a-DCPL-Presentation-October-2010-Revised-01-31-11#fullscreen>

⁸ <https://www.dclibrary.org/newsouthwestlibrary>

⁹ <https://www.slideshare.net/DCPublicLibrary/sow-slide-show-9-2617>

space and parks that will be part of a larger, connected network of waterfront parks from Haines Point to the Sousa Bridge, and continuing through adjacent upriver Planning Areas to the Maryland border. The parks will be easily accessible to surrounding neighborhoods and accommodate the need for more local and regional serving recreational activities in the city. The parks will include a variety of active and passive recreational settings” (Z.C. Order No. 11-03, Finding of Fact 79(h)). In fact, Phase 1 of the project has already had a positive impact through construction of Waterfront Park, 7th Street Park and Recreation Pier, District Pier, and several other plazas and mews. Phase 2 of the project will provide additional positive impacts through construction of M Street Landing, The Terrace, and The Grove. Finally, as part of the set of public benefits required under the first-stage PUD, the Applicant is substantially improving the accessibility and aesthetic quality of Banneker Park/Overlook through construction of a stairs and accessible pathways that will greatly improve connectivity between the Wharf and the National Mall.

The Wharf project will not adversely impact fire stations or emergency response times. In fact, the Southwest area is home to the newly constructed Engine Company 13 (“EC13”), which was completed in November 2015 and is the first new fire station to be built in the District in more than 20 years. Located at 400 E Street, SW, only approximately 0.4 miles from the Wharf project site, EC13 is a \$10 million state-of-the-art facility for D.C. Fire and Emergency Management Service (“FEMS”) units that serves the population of Southwest. At a November 24, 2015, grand opening event, Mayor Muriel Bowser commented on the positive impact the new fire station would have by stating “[a] new DCFEMS Engine 13 means better services for Ward 6 residents and businesses... This complex will play a major role in our efforts to improve public safety, ...” (<https://dmped.dc.gov/release/mayor-bowser-opens-new-fire-station-and-hotel-sw>).

Finally, the Wharf project will not have an adverse impact on emergency response times which, as discussed below, continue to improve citywide as a result of a recent program to use a third-party emergency response service. According to FEMS website, “on March 28, 2016, FEMS began using American Medical Response (“AMR”) as a third party provider to supplement the number of ambulances available for responding to EMS calls. The initiative was implemented to improve the availability of FEMS ambulances for responding to high priority emergent calls and to reduce the time FEMS ambulances and crews are continuously operating.” According to a May 26, 2017, report from FEMS to the D.C. Council regarding the status of the AMR program, FEMS reported notable decreases in the average response time of the first arriving FEMS transport unit to higher priority calls. In addition, the report notes that FEMS acquired 18 new ambulances to expand the number of operational and reserve transport units available.¹⁰ Specifically regarding response times after the first year of implementing the AMR program, the FEMS report states “[i]mplementation of the AMR contract substantially affected

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<https://fems.dc.gov/sites/default/files/dc/sites/fems/publication/attachments/Third%20Party%20FEMS%20Annual%20Report%20-%20May%202017.pdf>

the response time of the Department's ambulances. Prior to implementation, average response of the first arriving FEMS transport unit to higher priority (ALS) EMS calls exceeded seven minutes. After implementation, average response times for FEMS transport units were reduced by almost one minute. Other response times to higher priority EMS calls, including first response and first paramedic response have either shown slight reductions or remained consistent following implementation."

Source of funding for project-related infrastructure costs

In testimony, and in comments submitted to the record, several individuals and organizations claimed that the costs of public infrastructure upgrades that have, and will be, completed to support the Wharf project have been borne by District residents. According to the testimony of DC4RD, "[t]here is no equitable sharing of the costs...the developers get very cheap money from corporate banks to build their highly profitable condos and retail space after being granted valuable air rights entitlements by the Commission without little by way of strings attached." DC4RD further states that "...externalized costs get passed through to rate payers in their bills and is put on taxpayers through TIFs and other gifts." These comments clearly show that DC4RD has chosen to completely ignore the extensive benefits and amenities the Applicant is required to provide, the "strings attached" if you will, under the LDA and the first-stage PUD approved by the Commission, with the most significant benefit being the Wharf project's affordable housing program which is one of the most aggressive in the District. DC4RD's comments also demonstrate a lack of knowledge regarding the basics of Tax Increment Financing ("TIF") and Payment in Lieu of Taxes ("PILOT") area funding mechanisms, and more importantly the structure of the TIF/PILOT area that was approved by the D.C. Council specifically for the redevelopment of the Southwest Waterfront ("Southwest TIF/PILOT").

On October 22, 2008, the D.C. Council approved the Southwest Waterfront Bond Financing Act of 2008 ("Act"), which approved up to \$198 million in bond financing for public infrastructure improvements associated with the Wharf project (D.C. Law 17-252, D.C. Code § 2-1217.131 & D.C. Code § 47-4616). As required by the Act, the bond financing can only be used to construct the publicly owned infrastructure located within the area, including streets, parking facilities, sidewalks, walkways, streetscapes, parks, bulkheads, piers, curbs, gutters, and gas, electric, and water utility lines, and the acquisition, equipping, relocation, construction, and redevelopment of certain public facilities, including parks (*See* D.C. Law 17-252, Definition of "Project"). For the Commission's convenience, the following are some the public infrastructure improvements that have been constructed using the Southwest TIF/PILOT to date: Waterfront Park

- Waterfront promenade
- Market Pier & Square
- District Pier & Square
- Transit Pier

- 7th Street Park & Recreation Pier
- Banneker Overlook pedestrian / accessibility improvements
- Maine Avenue cycle track, streetscape, and roadway reconstruction
- Bulkhead repair and replacement
- 3,800 feet of public water main
- 9 fire hydrants
- 1,650 feet of public storm sewer
- 700 feet of public sanitary sewer
- 6 public water quality storm curb inlets
- 3,550 feet of communication main duct bank
- 3,400 feet of electric main duct bank
- 30+ street lights
- 3 traffic signals

Even a basic understanding of the Southwest TIF/PILOT would clearly show that it is not a “gift” from the District to the Applicant, but rather is a mechanism whereby the upfront public funding provided by the District solely for public infrastructure upgrades and improvements as required by the Act and restricted by federal tax law, will be fully repaid through increases in property and sales taxes that would otherwise not be generated without the Wharf project, without increasing the tax burden on District residents in general. In fact, to protect the District and District residents from having to shoulder any burden, the Act also authorized the creation of the Southwest Waterfront Special Assessment District. Under the terms of the Special Assessment District, the Applicant has agreed to have a levy of a special assessment to be placed on properties within the designated district that must be sufficient to cover any shortfall in expected tax revenues needed to meet the debt service payment obligation for the Southwest TIF/PILOT. Thus, as a result of the Act’s inclusion of an absolute cap on the amount of bond financing, and the creation of the Special Assessment District, the District is protected against any cost overruns during construction, and any revenue short-falls after the project is completed.

Finally, the requirements and restrictions of the Act discussed above are carried forward in the Public Infrastructure Development and Funding Agreement between the District and the Applicant, which stipulates that: (i) the bond financing can only be used for public infrastructure and parks, (ii) the District’s requirement that the Applicant invest hundreds of millions of dollars in the Wharf project, (iii) the District’s imposed rigorous requirements to assure a substantial public benefit valued at multiple times above the amount of bond financing, and (iv) the requirement that the bond financing is repaid by the Wharf project from sales and property taxes (or payments in lieu of taxes) and, if necessary, the special assessment on properties within the Wharf project.

Parcel 10 Building revised plans and drawings

As presented to the Commission at the November 9, 2017, public hearing, in response to concerns raised by the 525 Water Street Condominium party, the Applicant substantially modified the massing of the 3rd and 4th floors of the Parcel 10 Building to increase the distance between the Parcel 10 Building and the 525 Water Street condominium building (Parcel 11). As was presented at the hearing on November 2, 2017, as a way to open up views of Maine Avenue, M Street Landing, and the Washington Channel from the 525 Water Street condominium building, the upper floors of the Parcel 10 Building were rotated. While achieving the goal of providing views, this also resulted in the upper floors of the Parcel 10 Building cantilevering over Water Street, SW such that the building was close to the face of the 525 Water Street building.

To address the concerns raised by the 525 Water Street Condominium party, as well as Ms. Judy Yang, a resident of 525 Water Street, the Applicant modified the massing of the Parcel 10 Building along Water Street to increase the distance from the 525 Water Street building. Specifically, the Applicant cut off the corner of the upper floors that cantilevered over Water Street which substantially increased the distance between the Parcel 10 Building and the 525 Water Street building, while maintaining the views of Maine Avenue, M Street Landing, and the Washington Channel that were created by the initial rotation of the Parcel 10 Building upper floors. The Applicant provided information to the 525 Water Street Condominium party regarding questions related to the placement of the garage and loading facilities. The Applicant explained why the suggested changes, placing the loading and garage entry off of M Street Landing, would be inconsistent with the first-stage PUD and would cause significant impacts on the public environment. At the public hearing on November 9, 2017, Mr. Brad Neilley, testifying on behalf of the 525 Water Street Condominium party, stated that he was in support of the changes made to the Parcel 10 Building design as well as the rest of Phase 2 of the Wharf project.

Attached hereto as Exhibit J, are revised plans, drawings, and renderings for the Parcel 10 Building reflecting the design modification discussed above. These plans, drawings, and renderings represent the Applicant's proposed design of the Parcel 10 Building; and therefore, supplant the previously submitting plans, drawings, and renderings contained in Exhibits 21AC1 – 21AC2.

Additional information regarding Applicant's jobs and workforce development efforts

Attached hereto as Exhibit C, is information requested by the Commission on the Applicant's efforts, to date, on achieving the requirements under the first-stage PUD approval regarding District resident hiring and workforce development. For the Commission's convenience, a high-level summary of this information is provided below. In addition to the information on jobs and workforce development, the attached also includes additional jobs,

hiring, and community benefit information that was requested by the Commission during the course of the proceedings, including: (i) data on the individuals and organizations in Wards 7 and 8 with which the Applicant has worked with over the years; (ii) data on efforts put forth by Concord Hospitality Enterprises Company, one of the current hotel operators within Phase 1 of the Wharf project, to identify and employ DC residents; (iii) information on hiring and individual graduates of the apprenticeship program, Building Futures; (iv) a list of current operators and managers at the Wharf; and (v) an example of a form used to report employee residence and Ward.

**SUMMARY OF JOBS AND WORKFORCE DEVELOPMENT RELATED
 COMMUNITY BENEFITS ACHIEVEMENTS TO DATE**

Certified Business Enterprise (“CBE”) participation (Q3 2017)	<ul style="list-style-type: none"> · 48.55% CBE participation (35% required) · \$347 million paid to DC Certified businesses.
First Source construction (as of September 2017)	<ul style="list-style-type: none"> · Exceeding goal in three categories · On target to meet 51% DC hiring goal by end of Phase 2
First Source operation	<ul style="list-style-type: none"> · Applicant is working with Phase 1 operators and managers on their First Source programs and with retailers to assist them with hiring DC residents · Wharf Operations Career Fair (August 10, 2017). Sponsored by CM Charles Allen and Elissa Silverman, more than 1,000 pre-screened participants, and more than 25 Wharf businesses attended this event. As a result of the Career Fair, and other outreach efforts, Canopy by Hilton and Hyatt House together hired 73 new DC employees, which equates to 55% of total hires.
DC resident hires (as of September 2017)	<ul style="list-style-type: none"> · District Hires: 605 (48.48% / Goal is 51%) · Ward 8 Hires: 187 (30.91% / Goal is 20%) · District Apprentices: 190 (53.52% / Goal is 51%) · East of the River Apprentices: 67 (35.26% / Goal is 30%)
Building Futures	<ul style="list-style-type: none"> · Training organization of the Community Services Agency of the Metropolitan Washington Regional Council, AFL-CIO): · 31 graduates awarded jobs with the Applicant and/or Wharf contractors

The information below shows data on the combined hiring for two of the existing hotels operating in Phase 1 of the Wharf project, Canopy by Hilton and Hyatt House. As requested by the Commission, this data is broken down by total hires by jurisdiction (District, Maryland, and

Virginia) and by each Ward. In addition, for District hires, the data is also broken down by job level (line, supervisor, manager).

HIRES BY JURISDICTION (% TOTAL)	
DC	55.30%
MD	30.30%
VA	14.39%

DC HIRES BY WARD		
Ward	% (DC HIRES ONLY)	% (ALL HIRES)
1	15.07%	8.33%
2	1.37%	0.76%
3	4.11%	2.27%
4	6.85%	3.79%
5	9.59%	5.30%
6	17.81%	9.85%
7	24.66%	13.64%
8	20.55%	11.36%

JOB LEVEL RESULTS (DC HIRES)		
JOB LEVEL	% (DC HIRES)	% (ALL HIRES)
Line	90.41%	81.06%
Supervisor	2.74%	4.55%
Manager	6.85%	15.15%

Curbside management along Maine Avenue, Water Street, M Place, and 6th Street, SW

At the public hearing on November 2, 2017, the Commission requested additional detail regarding curbside management, both during and after construction, for the roadways adjacent to the Parcel 10 and 11 Buildings. The requested information is attached hereto as Exhibit K, which shall be made part of the Overall Plan Elements volume of the proposed plans found in the case record at Exhibits 21A1 – 21A4.

Additional information on upper-level building signage

At the request of the Commission, the Applicant has conducted a detailed evaluation of its upper level (above 20 feet) building signage needs and has developed a comprehensive set of location and design guidelines that would apply to all upper-level building signage throughout Phase 2 of the Wharf project (Exhibit L). The Applicant has also provided several precedent

images that demonstrate the types of upper-level signage that are most likely to be used by the Applicant. The attached guidelines were developed using upper-level signage guidelines that have recently been approved by the Commission for projects with similarly prominent and visible locations.¹¹

The attached upper-level building signage guidelines and precedent images shall be made part of the Overall Plan Elements volume of the proposed plans found in the case record at Exhibits 21A1 – 21A4.

M Street Landing shade at Parcel 10 Building seat steps and hardscape along water

In its report, OP commented that the Applicant should examine ways to provide more shade to the stepped seating area and the area next to the water and should reduce the amount of uninterrupted hardscape next to the water. As shown in Exhibit M, in response to OP's comment the Applicant has added five additional trees to the M Street Landing site plan, some of which are integrated into the stepped seating area. These additional trees will provide additional shade and further integrate the seating area into the fabric of M Street Landing, while maintaining an open area at the base of the seating area for small gatherings and programming. The Applicant has also included a planted wall at the top of the seat steps which will soften the backdrop of the area, and, together with the additional trees and the adjacent low planted berm, will help mitigate noise impacts.

The Applicant appreciates the comment from OP regarding the open plaza area near the water; however, due to emergency access requirements, an interest in creating variety in the waterfront edge condition compared to the heavily treed Wharf promenade, and to allow for flexibility in programming, the Applicant believe the proposed treatment of this area is the most appropriate.

The revised site plan attached as Exhibit M, shall replace the previously submitted site plan for M Street Landing contained at Exhibit 21AC4, Sheet 3.2 of the case record.

Information regarding café / restaurant seating along Wharf Street

During the public hearing on November 6, 2017, there was discussion regarding the extent and locations of café / restaurant seating along Wharf Street relative to planned pedestrian walkways and Water Buildings. Specifically, the Commission inquired whether café / restaurant seating areas have been expressly delineated in the plans submitted to the record, and what the Applicant is proposing to do to prevent these seating areas from encroaching into the areas defined for pedestrian circulation.

¹¹ Z.C. 15-27 – KF Morse, LLC and Z.C. 80-07A – Jemal's Darth Vader LLC

With respect to the general cross-section of Wharf Street, as shown in the open space sections of Volumes A and B of the proposed plans and consistent with Phase 1 of the Wharf project, Wharf Street is a 60-foot promenade that is generally divided into a 20-foot café zone that is paved with a smooth, thermal-face granite paver, a 20-foot mixed vehicular/pedestrian zone that is paved with a tactile, split-face granite cobble, and a 20-foot pedestrian only zone along the water that is paved with a smooth, thermal-face granite paver consistent with the café zone. As testified by the Applicant's expert in landscape architecture, Mr. Paul Josey, one of the differences between Phase 1 and Phase 2 is that the Water Buildings do not extend into the pedestrian zone so that a more continuous 20-foot pedestrian fabric can be maintained.

With respect to café/restaurant seating, the Site Furnishings: Seating diagram included in Exhibit 21A3, Sheet 2.5 shows the location and extents of fixed, flexible, and café seating proposed along Wharf Street ("Seating Diagram"). Consistent with the Applicant's testimony, the Seating Diagram shows a 16-foot café seating area within the café zone. The remaining 4 feet of the inner 20-foot zone is kept clear for pedestrian circulation. As was stated on November 6th, based on lessons learned from Phase 1 of the Wharf project the Applicant will be incorporating a visual or tactile measure at the edge of the 16-foot café seating area to prevent the seating area from encroaching on the pedestrian circulation area. Along the 20-foot pedestrian only zone, the Seating Diagram identifies two areas for café seating that could be leased by an eating and drinking establishment, one adjacent to WB1 and another along the water near the Parcel 9 Building. As shown on the Seating Diagram, these two areas of café seating have been carefully placed in order to provide continuous 10-foot wide clear pedestrian walkway along the Wharf Street pedestrian only zone. Note that the areas identified as "flexible seating" in the diagram are intended for moveable tables and seating that are open and available for public use, not associated with a particular restaurant or retailer.

Response to ANC questions regarding use and programming of the Terrace

At the hearing on November 2, 2017, the ANC commented on the Terrace, and requested a more clearly articulated plan as to which portion of the Terrace would potentially be used for seating associated with adjacent ground floor tenants of the Parcel 10 Building. The ANC correctly commented that the area of the Terrace, or Café Terrace as it is termed in prior approvals, is a part of the larger Waterfront Park, a project amenity under in the first-stage PUD that the community activity participated in establishing the program and design. Consequently, the ANC stated that use of Waterfront Park should be restricted from commercial use that removes any portion of that amenity from public use and enjoyment. As such, the ANC stated that at this time it does not support the notion that the Terrace should be used for special events, let alone events that include music, even unamplified music, at any time. However, the ANC also stated that should the Commission approve the Terrace, questions related to hours, occupancy, and music fall under the Alcoholic Beverage Control ("ABC") Board and do not deserve to be in the Commission proceeding. The Applicant agrees that use of The Terrace should not remove any portion of this important community amenity from broader public use and enjoyment.

However, as discussed below the final plan for Waterfront Park, as approved by the Commission and constructed by the Applicant, has always included an area that would be devoted to café use. Furthermore, consistent with the final approved plan and the recorded Declaration of Covenants between the Applicant and the District use of Waterfront Park has always included the potential for occasional special events hosted either by the District or the Applicant.

As noted during the Commission proceedings, the area of the Terrace has included a café use since the first-stage PUD. While initially not within the Wharf PUD boundary as it was the site of the Maine Lobersterman Memorial, as can be seen in the attached excerpt of the approved first-stage PUD plans, when the area of The Terrace was eventually included in the project boundary its design always included a hardscaped area for seating and café use (Exhibit N, Sheet 4.2). Furthermore, the central lawn area of Waterfront Park also previously included a 20-foot retail pavilion with adjacent café seating (Exhibit N, Sheet 5.20).

The final design of Waterfront Park was approved by the Commission pursuant to Z.C. 11-03A(4), second-stage PUD for Parcel 11A, Parcel 11B, Waterfront Park, and Adjacent Space. While the retail pavilion was removed from the central lawn area, the final approved plan for Waterfront Park still included a “Café Terrace” and adjacent open lawn area next to the Parcel 10 Building (Exhibit N, Sheet 3.1). In addition, the conceptual “spaces” diagram included in the final approved plans clearly shows that Waterfront Park, or at least a portion of the park, has always been contemplated for occasional events (Exhibit N, Sheets 3.3 and 3.4).

Consistent with the comments of the ANC, the design and use of the Terrace proposed in the subject application does not in any way remove this area from the larger Waterfront Park, nor does it make the area any less accessible for public use and enjoyment. As shown in the Site Furnishings: Seating diagram included in Exhibit 21A3, Sheet 2.5, consistent with the approved first-stage PUD the area of The Terrace immediately adjacent to the Parcel 10 Building is identified for café seating in order to maintain convenient access to the garage elevator entrance, stairs, and accessible pathways in this area. The extent of this café seating area is further shown in Exhibit N, Sheets 3.17 – 3.18 of the case record. For the Commission’s convenience, attached as Exhibit O is a version of existing Sheet 3.18 that clearly delineates the extent of the café seating area within The Terrace which shall supplement the proposed plans for the Terrace that are currently in the case record. Occupancy for the café seating area identified is approximately 100 people based on the code maximum of 15 sf/person, actual occupancy will likely be lower due to the unique shape of the identified café zone, the presence of trees, and other features.

Summary of affordable housing unit distribution

At the November 6, 2017, public hearing, the Commission requested a summary of the affordable housing that will be provided within the entire Wharf PUD upon completion, broken down by number of units at the 30%, 50%, 60%, and 80% MFI levels.

A complete breakdown of the affordable and workforce housing that will be provided within the entire Wharf PUD is included in the case record at Exhibit 21A3, Sheet 3.1 (the “Housing Summary”). This summary clearly demonstrates that, with the completion of Phase 2, the Applicant will fully satisfy all affordable housing requirements under the LDA and the approved first-stage PUD, which substantially exceeds what would otherwise be required under IZ in both the quantity of gross floor area devoted to affordable housing, and in level of affordability. Under the LDA and the approved first-stage PUD, the Applicant is required to provide a minimum 160,000 GFA of affordable housing, with a minimum 80,000 GFA devoted to households earning no more than 60% MFI, and a minimum 80,000 GFA devoted to households earning no more than 30% MFI. As shown in the Housing Summary, the Applicant will construct approximately 160,665 GFA of affordable housing, slightly exceeding the minimum required under the LDA and first-stage PUD. Of this total amount, approximately 80,449 GFA will be devoted to households earning no more than 30% MFI households, and approximately 80,216 GFA will be devoted to households earning no more than 60% MFI. Notably, the Applicant has already constructed approximately 104,223 GFA of affordable housing as part of the recently opened Phase 1 of the Wharf project, which exceeds the minimum amount of affordable housing required to be constructed in Phase 1 under the LDA and the first-stage PUD. In addition to the above, the Parcel 11 Building contains approximately 8,953 GFA of affordable housing, with approximately 4,351 GFA devoted to 50% MFI households, and approximately 4,601 GFA devoted to 80% MFI households.

Upon completion the entire Wharf PUD will contain approximately 169,618 GFA of affordable housing at the 30%, 50%, 60%, and 80% MFI levels, which equates to approximately 13% of the total residential GFA, or approximately 16.2% of the total number of dwelling units, within the entire Wharf PUD. As requested by the Commission, the following is a breakdown of the affordable dwelling units by MFI level within the entire Wharf PUD.

MFI Level	Number of Units	% (Affordable Units)	% (All Units)
30%	90	46.9%	7.6%
50%	5	2.6%	0.4
60%	91	47.4%	7.7%
80%	6	3.1%	0.5%
Total	192	100%	16.2%

Hearing #2 (November 6, 2017): Volume B
(Parcel 8, Parcel 9, Water Building 2, The Grove, Marina Way)

Wharf site integrated audio and announcement system

At the hearing held on November 6, 2017, the ANC commented unfavorably on the recent perceived regular use of the Wharf site integrated audio and announcement system to provide general background music throughout the site. The ANC stated that it understood the plan for the integrated audio and announcement system to be only employed during special events and emergencies, and not to provide continual background music throughout the site.

The Applicant understands the comments of the ANC, and agrees that while the Wharf is to be a vibrant, mixed use development, there is also a need to maintain the ability to enjoy the quiet and calm of the waterfront. As such, while the existing integrated audio and announcement system will be extended to Phase 2 of the Wharf project, its use going forward shall be limited to its intended purpose of sharing critical information with the public and to provide music and entertainment at select times. Thus, use of the integrated audio system for music and entertainment purposes will be limited to holidays, events, and special weekends. Further, the system will, at all times, comply with District of Columbia noise regulations and shall not be used for music or entertainment after 10:00 pm on weekdays and midnight on weekends.

Water Building 2 terrace windscreens

As part of its hearing report, OP recommended that the Applicant should clarify whether it intended to enclose the upper terrace of WB2 in the cooler months as that could impact visual porosity from the Wharf to the river. As stated in its response to OP's comments, the Applicant does not anticipate fully enclosing the WB2 upper terrace in cooler weather with any kind of constructed enclosure that would block views from the Wharf. The WB2 upper terrace is primarily intended to be an unenclosed, unconditioned outdoor amenity to the WB2 indoor retail space. However, while full enclosure is not proposed, it is possible that a future tenant may wish to install temporary wind screens and/or sun shading to extend the usability of the space during warmer and cooler months.

To provide a degree of clarity to the Commission and OP, the Applicant has prepared a diagram showing the extent of potential windscreens and sun shading that could be installed and the types of materials that would be used (Exhibit P). As shown in the diagram, the seasonal windscreens, if utilized, would be approximately seven feet high and installed around the perimeter of the upper terrace. The material of the windscreens would be consistent with the precedents provided on the diagram. If utilized, the material of the seasonal sun shading would be consistent with the precedents provided on the diagram, and would be attached in some fashion to the overhead trellis structure of the terrace. The diagram attached as Exhibit P shall supplement the proposed plans for WB2 that are currently in the case record.

Parcel 8 Building penthouse restaurant / bar plans, renderings, and operational information

In its report on the subject application, OP recommended that the Applicant submit a floorplan for the Parcel 8 Building penthouse restaurant/bar and information regarding its operation. As requested, attached as Exhibit Q is a schematic interior floorplan, exterior terrace materials and lighting plan, and a nighttime rendering for the hotel rooftop restaurant/bar use. As stated in the Applicant's response to the comments in OP's report, the configuration, design, and operating provisions of the proposed restaurant/bar use cannot be fully determined at this time as a hotel operator has not been identified. The Applicant is working with potential hotel flags/operators and, once selected, the configuration, design, and operation of the proposed penthouse restaurant/bar will be refined and established. As such, the interior and exterior furnishings shown in the attached drawings is for illustrative purposes only, and are subject to change based upon hotel operator specific needs and requirements.

With respect to lighting of the terrace areas, as shown in Exhibit Q, Sheet 1.42B the light fixtures and illumination levels will be kept low and the fixtures shielded downward to minimize the amount of light that emanates upward and away from the building. Given the subtle illumination levels proposed for the outdoor terrace areas, it is unlikely that the terrace lighting plan will impact adjacent properties or the surrounding area.

Regarding operation of the proposed penthouse restaurant/bar, since the Applicant has not yet identified a hotel operator it is unable to provide actual programmatic information and hours of operation at this time. However, given the surrounding context; modest size and location of the proposed penthouse restaurant/bar; and the need to complete the Alcoholic Beverage Regulation Administration (ABRA) process, which involves review by Advisory Neighborhood Commission ("ANC") 6D, it is very unlikely the use will cause any adverse impacts. Regarding the surrounding context, Parcel 8 is surrounded by office to the west (Parcel 6/7), institutional (Arena Stage) and residential to the north, residential to the east (Parcel 8 and 9), and retail (WB2) and maritime-related uses to the south. Simply considering the location of the proposed restaurant/bar within the Parcel 8 Building penthouse, the screening provided by the rest of the penthouse structure, and the fact that it will be elevated 130 feet, impacts to surrounding uses, if any, will be negligible.

As for the residential portion of the Parcel 8 Building and the residential Parcel 9 Building, as the owner and developer of these buildings the Applicant is particularly sensitive to ensuring that the design and operation of the proposed penthouse hotel restaurant/bar use is compatible with adjacent uses in all aspects and does not cause issues or disruptions for guests staying within the same building. Therefore, the Applicant will ensure that all applicable District noise control regulations are adhered to. Regardless of which hotel operator is selected, the Applicant will be required to comply with the District's regulations pertaining to the control of ambient noise levels found in Title 20 of the District of Columbia Municipal Regulations (DCMR), which establish general daytime and nighttime decibel limitations that are intended to

“promote public health, safety, welfare, and the peace and quiet of the inhabitants of the District, and to facilitate the enjoyment of the natural attraction of the District” (20 DCMR 2700.1). Moreover, these regulations further limit certain noise-producing activities, such as musical instruments, loud speakers, and amplified sound, beyond the general decibel limits noted above. Finally, in addition to the aforesaid noise control regulations, the establishment of a restaurant and/or bar use within the Parcel 8 penthouse will be subject to ABRA, which specifically addresses issues related to noise, operating hours, and impacts to surroundings. As stated above, the ABRA process will involve review by ANC 6D, and similar to the existing penthouse bar on Parcel 5, may require establishment of a Cooperative Agreement that establishes conditions related to, among other things, hours of operation, noise and privacy, parking, and trash.

Parcel 8 Building revised penthouse sections and mezzanine areas

At the public hearing on November 6, 2017, the Commission commented that the Parcel 8 Building penthouse mezzanines needed adjustment so that the floor area of each mezzanine is not more than one-third of the floor area immediately below and which shares a common ceiling. As shown in Exhibit R, the Applicant has made the necessary adjustments to the penthouse mezzanines so that the floor area of each mezzanine is less than or equal to one-third of the “shared ceiling area.” Additionally, in its report OP identified minor inconsistencies between the Parcel 8 Building penthouse plans and sections and requested that these be corrected. The minor inconsistencies were in the section drawings only and included a mislabeling of penthouse mechanical areas and a missing corridor and small mechanical room. The corrected section drawings are also included in Exhibit R. The revised penthouse mezzanine and section drawings shall replace the previously submitted drawings contained at Exhibit 21AB3, Sheets 1.33, 1.37, and 1.38

Parcel 8 Building revised renderings

During the public hearing on November 6, 2017, the Commission noted that certain renderings of the Parcel 8 Building included in the proposed plans appear to show penthouse-level railings that do not meet the required 1:1 setback. In response, the Applicant stated that this was merely a rendering error and, as shown in the Parcel 8 Building plans and section drawings, the guardrails are set back the required distance from the edge of the roof. Attached as Exhibit S are corrected renderings of the Parcel 8 Building which shall replace the previously submitted renderings contained at Exhibit 21AB1, Sheets 1.5, 1.6, and 1.8.

Parcel 9 Building revised signage drawings

In its report, OP commented that the “Tenant Information” drawings for the Parcel 9 Building indicate areas labelled as “Potential Tenant Enclosures” at the base of the building but provide no description of what these enclosures are intended to indicate. In response, the Applicant stated that the labelling on these two sheets is not intended to reflect additional enclosures or expansion of the ground floor of any kind. Rather, the areas identified as “Potential

Tenant Enclosure” are only intended to demarcate the area of ground floor retail frontage for storefront infill and tenant signage, consistent with the approach used in Phase 1 of the Wharf and on other Parcels in Phase 2. The Applicant has revised the labelling on these drawings to be more clear. The revised drawings are attached as Exhibit T, and shall replace the previously submitted drawings contained at Exhibit 21AB5, Sheets 2.26 and 2.27.

Hearing #3 (November 9, 2017): Volume A
(Parcel 6, Parcel 7, Water Building 1, and The Oculus)

Parcel 6/7 Building revised renderings

As stated above, during the public hearing on November 6, 2017, the Commission noted that some of the building renderings included in the proposed plans appear to show penthouse-level railings that do not meet the required 1:1 setback. Similar to the Parcel 8 Building, the penthouse-level railings shown for the Parcel 6/7 Building were incorrectly rendered. As such, attached as Exhibit U are corrected renderings of the Parcel 6/7 Building which shall replace the previously submitted renderings contained at Exhibit 21AA1, Sheets 1.2 and 1.3.

Water Building #1 penthouse rendering

At the public hearing on November 9, 2017, the Commission inquired about the material of the Water Building 1 (“WB1”) penthouse roof, to which the Applicant responded will contain exhaust fans and other required mechanical equipment that is screened behind the penthouse parapet. As requested by the Commission, attached hereto as Exhibit V, is a rendering of an elevated view of WB1 from the Parcel 6/7 Building showing the top of the WB1 penthouse. As shown, any mechanical equipment located on the WB1 penthouse roof will be screened by the penthouse parapet and below the maximum permitted penthouse height. The remaining portion of the penthouse roof area will be covered with a ballasted roof system, with a possibility that portions of this area could contain a green room system.

Water Building #1 revised material sheet

In its report dated October 27, 2017, OP requested clarification on the materials and treatment of the WB1 piers / piles. The Applicant provided this additional information in its response to comments contained in the OP report (Exhibit 55A), stating that the WB1 pier edge is recessed from the edge of the building truss, and the piers and pier edge will be treated in a dark painted finish to allow them to further recess visually, which was depicted graphically during the Applicant’s presentation at the November 9, 2017, public hearing. Attached hereto as Exhibit W, is a revised material sheet for WB1 which shall replace the previously submitted material sheet contained at Exhibit 21AA5, Sheet 2.16.

Nonresidential penthouse habitable space affordable housing trust fund contribution

At the public hearing on November 9, 2017, the Commission inquired whether any of the residential or nonresidential penthouse habitable space included in Phase 2 of the Wharf project was subject to Inclusionary Zoning (residential) or a required contribution to the Housing Production Trust Fund (nonresidential). This information is included in the Applicant’s initial prehearing statement (Exhibit 13A), and supplemental prehearing statement (Exhibit 21). As stated in those submissions, consistent with the exemption previously granted to the residential buildings on Parcels 2 and 4 of the Wharf project, it is expected that any non-communal residential penthouse habitable space that would typically be subject to IZ will be included in the IZ exemption that the Applicant is currently working on to document for Phase 2 of the Wharf project through the District of Columbia Department of Housing and Community Development (“DHCD”). Pursuant to § 2602.3(f) of ZR58, the Wharf project qualifies for this exemption as a result of the substantial mandatory affordable housing mandate that the Applicant must satisfy under its LDA with the District.

Regarding the nonresidential buildings within Phase 2 of the Wharf project that contain penthouse habitable space, which includes the Parcel 6/7 Building, the Parcel 10 Building, and the hotel portion of the Parcel 8 Building, the Applicant intends to satisfy any penthouse generated IZ requirements through a contribution to an affordable housing trust fund which will be computed in accordance with the provisions §§ 414.13 through 414.16 of ZR58. As noted by the Applicant during the public hearing, and as stated in the Applicant’s supplemental prehearing statement, at this time it is not possible to provide a precise estimate of what the individual affordable housing trust fund contributions may be for the nonresidential buildings within Phase 2 of the Wharf project since the individual tax lots for these buildings have not yet been created and recorded with the Office of Tax and Revenue (“OTR”), thus there are no precise land areas and assessment values to use. However, to gain a rough order of magnitude understanding for what the affordable housing trust fund contributions may be for the proposed office buildings on Parcels 6/7 and 10, and the hotel portion of the Parcel 8 Building, the Applicant provided the following information from recently paid nonresidential penthouse affordable housing trust fund contributions for Parcels 1, 3A, and 5 of the Wharf project.

	Parcel Land Area (sf)	Assessed Value	Penthouse Habitable Space (sf)*	Total Affordable Housing Trust Fund Contribution
Parcel 1	33,554	\$6,612,952	7,711.1	\$94,983.34
Parcel 3A	20,494	\$5,878,943	4,314.8	\$77,359.42
Parcel 5	60,182	\$13,962,220	1,840.7	\$26,690.14
* Calculations based upon maximum permitted nonresidential density of 8.0 FAR per map amendment approved as part of first-stage PUD (Z.C. Order No. 11-03) which rezoned these parcels to C-3-C (ZR58)				

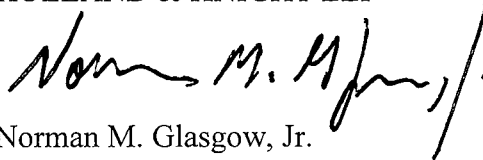
Final requested technical zoning and minor design flexibility

Attached hereto as Exhibit X, is the Applicant's final list of minor design and technical zoning flexibility. For the Commission's convenience, the Applicant has included clean and redline versions of the requested flexibility to show the differences between OP's suggested language and the Applicant's final language. Of note, the Applicant attempted to capture OP's recommended conditions regarding the design of the Parcel 6/7 Building design (Oculus soffit and façade glass) into its final list of flexibility. The Applicant believes this language captures what OP wants to achieve with its recommended conditions while providing a reasonable degree of flexibility to accommodate refinements that may be required during the design and fabrication processes. Regarding technical zoning flexibility, as previously noted by the Applicant, flexibility from the requirements of Section 2517 of ZR58 has been added to allow the construction of two or more principal buildings or structures on a single subdivided lot. The Commission granted similar flexibility in previous Wharf-related approvals. Finally, the Applicant has added language relating to its request for technical flexibility to construct Phase 2 of the Wharf project in phases (i.e. flexibility from the requirements of Section 2408.8 and 2408.9 of ZR58 to extend the validity of the Commission's final approval and time within which an application for a building permit shall be filed). The proposed language for this particular area of technical flexibility is similar to what was previously granted by the Commission for the Center Leg Freeway project.

We look forward to the Commission's consideration of this application at its December 7, 2017, public meeting.

Sincerely,

HOLLAND & KNIGHT LLP



Norman M. Glasgow, Jr.

Enclosures

cc: Joe Lapan, District of Columbia Office of the Deputy Mayor for Planning and Economic Development (w/encl., via email)
Jennifer Steingasser, Office of Planning (w/encl., via email)
Joel Lawson, Office of Planning (w/encl., via email and hand delivery)
Matthew Jesick, Office of Planning (w/encl., via email and hand delivery)
Anna Chamberlin, DDOT (w/encl., via email)
Aaron Zimmerman, DDOT (w/encl., via email)
Advisory Neighborhood Commission 6D (w/encl., via email and hand delivery)
Gail Fast, ANC 6D01 (w/encl., via email and hand delivery)
Cara Shockley, ANC 6D02 (w/encl., via email and hand delivery)
Ronald Collins, ANC 6D03 (w/encl., via email and hand delivery)
Andy Litsky, ANC 6D04 (w/encl., via email and hand delivery)
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Meredith Fascett, ANC 6D07 (w/encl., via email and hand delivery)
Southwest Library (w/encl., via email and hand delivery)