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December 4, 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 Response to November 30<sup>th</sup> Submission from  
Gangplank Slipholder's Association ("GPSA")**

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 response to the November 30, 2017, submission from the Gangplank Slipholder's Association ("GPSA") regarding "Z.C. Case No. 11-03J, GPSA Statement on Status of Negotiations" ("GPSA Submission") ([Exhibit 91](#)). As noted in the GPSA Submission, the Applicant has attempted to meet tirelessly with the GPSA to create a variety of offerings and options to meet the evolving requests and inputs provided by GPSA leadership and membership. Since the last public hearing on November 9<sup>th</sup>, the Applicant has made significant modifications described further below that directly address the items raised by GPSA in its testimony, as well as specific items relating to parking and affordability raised in the testimonies of Mr. John McLaughlin and Mrs. Laura Cox, two existing individual slipholders. To that end, the Applicant has agreed to provide 10% of the interim parking within the Wharf Phase 1 Garage. This accommodation will meet the needs of slipholders with families, disabilities, or other restrictions that necessitate access to parking in very close proximity. Additionally, the Applicant has agreed to increase the number of loading and delivery spaces directly adjacent to the marina from three to five, which is greater than the four spaces previously requested by GPSA, and to look for other opportunities to increase the number of loading and delivery spaces during construction. These changes to parking and loading directly address the concerns raised by Mr. McLaughlin.

Further, the Applicant has incorporated significant fee subsidy elements to both of the Letter Agreement options, Option B and Option C, that are currently pending with GPSA. Each of these options are discussed in more detail below. However, in Option B the Applicant limits fee increases during the transition period to the Consumer Price Index ("CPI"), provides an MFI Fee program for all existing liveboards that make between 30% and 120% of MFI and remain in good standing for

as long as they income qualify and remain in the marina, and provides a five-year phase in to market rates for all existing liveboards that have incomes in excess of 120% MFI. In Option C. the Applicant provides a modified MFI Fee program for up to nine existing slipholders that have incomes at or below 80% MFI, and a phased in, pre-set fee schedule for all other existing slipholders during the transition period.

The GPSA Submission provides a timeline and summary of the substance of negotiations that have occurred between GPSA and the Applicant since the public hearing on November 9<sup>th</sup>, which is generally consistent with the timeline and summary provided by the Applicant as part of its November 27, 2017, posthearing submission (Exhibit 82). Most notably, consistent with the Applicant's posthearing submission, the GPSA Submission correctly describes the extensive efforts undertaken by the Applicant to develop the "Option B" alternative to the revised Letter Agreement which directly and comprehensively addresses the comments and concerns expressed by GPSA, Advisory Neighborhood Commission 6D ("ANC"), and the Commission regarding affordability through offering a slip and liveboard fee subsidy to all income qualifying existing liveboards that are District residents according to a schedule based upon the specified Median Family Income ("MFI") levels of 30%, 60%, 80%, 100%, and 120%. As more thoroughly described in the Applicant's posthearing submission, Option B, which was offered in the alternative to the originally proposed Option A alternative that the Applicant had previously reached agreement on with GPSA leadership, would provide opportunities for discounted slip and liveboard fees of up to 75% off of market rate to income-qualifying existing District resident slipholders, while still providing new state of the art docks and improved shower, locker, mail and laundry facilities within Water Building 2 ("WB2"). As stated in the Applicant's posthearing submission the new amenities provided would be far superior to the marina's current facilities that the liveboards have access to, would exceed the requirements of the 2012 Letter Agreement<sup>1</sup>, and, perhaps most importantly, allows the Applicant to offer the depth and breadth of the above-mentioned MFI-based fee subsidies to increase affordability.

As reflected in the GPSA Submission, and as more thoroughly discussed below, on November 20, 2017, GPSA informed the Applicant that it rejected Option B, which was disappointing to the Applicant given the countless concessions it has made during more than a year of negotiations that go well above and beyond what the Applicant is required to provide under the Land Disposition Agreement ("LDA") with the District, the 2012 Letter Agreement with GPSA, and the approved first-stage Planned Unit Development ("PUD") approval which requires the Applicant to provide for a liveboard community within Wharf Marina for approximately 94 slips with provisions for retention of existing liveboard slipholders and reasonable continuity of existing services, utilities, and amenities during construction (Z.C. Order No. 11-03, Condition B.8). Further, Option B directly addressed the specific concern regarding affordability that GPSA broadly represented in its testimony to the Commission.

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<sup>1</sup> For reference, the Applicant submitted the 2012 Letter Agreement at the November X public hearing. It is included in the case record as Exhibit 57.

Indeed, as has occurred repeatedly during the course of its negotiations with GPSA, each time the Applicant has met a list of demands provided by GPSA with a reasonable, balanced, and equitable solution, GPSA has consistently responded in kind with yet another list of demands, at times backtracking by seeking to renegotiate terms that had previously been agreed to. This is not consensus building, and GPSA's response regarding Option B proves no different. As stated in its submission, on November 26, 2017, GPSA submitted to the Applicant a list of "ten key points" that required additional discussion with, or clarification by the Applicant in order to move forward to reaching an agreement." However, what was conveniently excluded from GPSA's submission is the fact that some of these ten key points are actually requests for new concessions, or changes to items where the Applicant and GPSA leadership had already agreed to or negotiated based on a previous GPSA request.

Despite the disappointing response from GPSA, and the continued uncertainty as to the exact items that remain unresolved, the Applicant nonetheless continued to work quickly and diligently toward reaching an agreement by providing a detailed response to each of GPSA's ten key points, subsequently meeting with GPSA leadership on November 29, 2017, and then providing GPSA an enhanced and revised Option B alternative that included additional concessions made in direct response to GPSA's newest set of demands. The revised Option B alternative maintains the MFI-based fee discounts described above and includes substantial additional concessions made in response to GPSA's ten key points including changes to parking (beyond those previously negotiated) and inclusion of a five year phased slip fee increase available to all existing slipholders not participating in the MFI-based fee discount program. More significantly, the Applicant also submitted to GPSA a revised Letter Agreement alternative ("Option C") which is the "hybrid" option that GPSA leadership explicitly requested in discussions with the Applicant that directly responds to GPSA's request to allow:

"specific compromise elements of the Option B plan related to affordability be adapted to the Option A plan in the hope of arriving at a whole and mutually acceptable agreement that retained the construction of [Water Building 3 ("WB3")]"  
(GPSA Submission at p. 3).

This statement from the GPSA Submission is consistent with statements made to the Applicant by GPSA leadership that a primary reason why the initial Option B alternative was rejected is because many of the existing slipholders wished to retain WB3, and particularly the new year-round meeting and community room amenity – a new luxury amenity that is above the terms of the 2012 Letter Agreement. With this in mind, the Applicant developed the Option C alternative, which is a hybrid between Option A and Option B that retains WB3 with a single story, simplified design to accommodate the deep and ongoing slip and liveboard fee subsidies that would continue to be provided to a finite number of income qualified liveboards based on GPSA feedback. Specifically, the Option C alternative continues to address the issue of affordability by extending the above-described MFI-based fee discount program to up to nine income-qualifying existing slipholders, which is more than the eight existing liveboards self-



reported by GPSA based upon a survey of existing marina membership as making at or below 80% MFI (the standard threshold in the District for requiring an affordable housing subsidy). As to WB3, as shown in the attached set of revised plans and drawings under the Option C alternative the majority of marina amenities would continue to be provided in WB3, including the year-round meeting and community room that is highly desired by GPSA. As can be seen, despite its revised design, WB3 would maintain the same high-quality aesthetic, and high-quality materials, as what would be constructed under Option A.<sup>2</sup> For the Commission's convenience, a summary comparison chart of the major components of the Option B (revised) and Option C Letter Agreement alternatives is attached as Exhibit A, with full versions (including all relevant exhibits) attached as Exhibits B and C, respectively. Furthermore, the revised plans and drawings for WB3 that would be constructed under Option C are attached as Exhibit D.

Since providing GPSA with the Option B (revised) and Option C alternatives to the Letter Agreement on November 30, 2017, approximately four days ago, the Applicant has not received a decision from GPSA, despite requesting a response by 5:00 pm on December 3, 2017. Just before noon on December 4, 2017, GPSA leadership advised the Applicant that a decision would be made but did not provide any indication as to when this vote will take place, stating only that "we have provided all new documents (Options) to the membership and we are discussing. There will be a vote."

During the second-stage PUD hearing for Parcel 2 ("Parcel 2 PUD"), the Applicant testified, under oath, that it is resolute in its commitment made during the first-stage PUD "to maintain a liveaboard community of no fewer 94 slips in the new marina (Z.C. Case No. 11-03A, June 28, 2012 hearing transcript, p. 49). Since then, the Applicant has maintained this commitment and has abided by all requirements relating to the Gangplank Marina and GPSA under the LDA and first-stage PUD. Further, the Applicant notes that during the Parcel 2 PUD proceedings the Commission was similarly faced with having to assess concerns raised by GPSA regarding affordability, accessibility, livability and sustainability (Z.C. Order No. 11-03A(1), Findings of Fact 97 - 103)(Exhibit E). GPSA also expressed concern regarding the status of liveaboards and mechanisms to assure their protection, transfer of liveaboard status, a transition plan that addresses boat movement as well as livability and affordability, increases in fees and changes in marina slipholder requirements, and continuity of services. In the end, the Commission found that it was left to balance the clear rights of the Applicant to cancel the slipholders license in order to proceed with development against the first-stage PUD requirement that the Applicant provide for a liveaboard community during construction with approximately 94 boat slips, with provisions for reasonable continuity of services, utilities, and amenities during construction for the existing live-aboard slipholders. The Applicant remains fully committed to maintaining a vibrant liveaboard presence within the new Wharf Marina with 94 liveaboards, and believes that both Option B (revised) and Option C meet all applicable requirements under the LDA and first-stage PUD, and fully address the specific concerns raised by GPSA during the

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<sup>2</sup> The Option A alternative of the revised Letter Agreement is included in the case record as Exhibit 82B2.

proceedings for the subject application regarding parking, loading, access, and provisions for families and those with disabilities. Most notably, the Applicant strongly believes both Option B (revised) and Option C address the issue of affordability through the MFI-based fee discounts that would be provided to existing liveaboards that have an actual proven income based need for a fee subsidy, with Option C even going so far as to retain WB3 in a revised form despite the deep and ongoing subsidies that would be provided.

The Applicant appreciates the suggestion contained in the GPSA Submission regarding allowing elements of the application not related to the marina to proceed should GPSA membership fail to select a final Option prior to the Commission's decision on December 7<sup>th</sup>. Such a suggestion is consistent with the Commission's decision to separate the application into three separate actions according to the structure of the public hearings held on the project (referred to in the Applicant's draft finding of fact and conclusions of law as the "Parcel 6/7 PUD", "Parcel 8/9 PUD", and "Parcel 10 PUD"). Thus, should the Commission decide not to take action on the Parcel 10 PUD then the Applicant requests the Commission to still proceed with its decisions on the Parcel 6/7 PUD and Parcel 8/9 PUD at its December 7<sup>th</sup> meeting.

Notwithstanding the above, the Applicant strongly submits that the Commission now has everything it needs to make a determination that the application is consistent with the requirements of the first-stage PUD and approve the subject application in its entirety, including the Parcel 10 PUD. As such, should no decision be received by GPSA prior to the Commission's decision on December 7<sup>th</sup>, the Applicant respectfully requests the Commission to take actions to approve all three components of the application (referred to in the Applicant's draft finding of fact and conclusions of law as the "Parcel 6/7 PUD", "Parcel 8/9 PUD", and "Parcel 10 PUD"), with a condition on the Parcel 10 PUD that the Applicant construct/implement the Option C alternative to the Letter Agreement with GPSA, attached hereto as Exhibit C, as this option:

- Satisfies the first-stage PUD requirement to provide for a liveaboard community during the transition period with approximately 94 boat slips, with provisions for reasonable continuity of services, utilities, and amenities during construction for the existing liveaboard slipholders; and
- Carries forward the intent of all terms previously agreed to with GPSA that are contained in Option A, with some further refined in response to subsequent requests by GPSA (such as additional parking accommodations, additional loading accommodations, and an expanded vessel purchase program that offers \$15,000 above the appraised value of the vessel throughout the transition period); and
- Directly addresses the concerns expressed by GPSA, the ANC, and the Commission over affordability by offering opportunity for the MFI-based fee discounts (up to 80% MFI) included in Option B to a finite number of existing liveaboards that is actually higher than the number of liveaboards suggested by GPSA; and

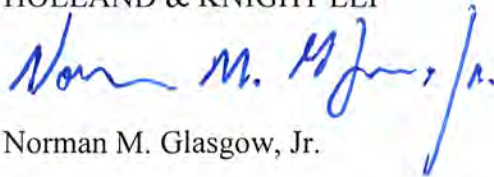
- Provides new state-of-the-art docks, piers, and utility infrastructure; and
- Continues to provide significantly upgraded amenities (security, mail boxes, package delivery/receipt, laundry, showers, and restrooms), and new amenities such as a highly-desired year-round meeting and community room, within a revised WB3 that contains the same high-quality aesthetic, and high-quality materials, as what was initially proposed by the Applicant for WB3.

Should the Commission approve the Parcel 10 PUD at the December 7<sup>th</sup> meeting, with the Option C condition, then the revised plans for WB3 attached as Exhibit D would constitute the approved plans for WB3. While, as stated above, the revised design maintains the same high-quality aesthetic and high-quality materials as the initial WB3 design, the extent of changes made to the design may require a revised concept review by the U.S. Commission of Fine Arts (“CFA”) since it has already granted concept approval for this building. As such, out of an abundance of caution to avoid a potential issue at permitting, the Applicant respectfully requests flexibility to make refinements to the exterior materials, details, and dimensions of WB3 in response to further recommendations by CFA.

We look forward to the Commission’s consideration of the subject application on December 7<sup>th</sup>.

Sincerely,

HOLLAND & KNIGHT LLP

A handwritten signature in blue ink that reads "Norman M. Glasgow, Jr." with a stylized flourish at the end.

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)  
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Meredith Fascett, ANC 6D07 (w/encl., via email and hand delivery)  
Southwest Library (w/encl., via email and hand delivery)



**CERTIFICATE OF SERVICE**  
**Z.C. Case No. 11-03J**

**I HEREBY CERTIFY** that on December 4, 2017, a copy of the Applicant's Response to November 30<sup>th</sup> Submission from Gangplank Slipholder's Association ("GPSA") (the "Response") was served by email on the following, with hardcopies hand delivered to the same on December 5, 2017.

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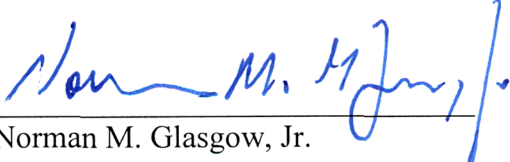
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