

Good afternoon, President Potter, and members of this Senate. My name is Isaac Northup and I have had a house on Water Island for 25 years. I appreciate the opportunity to speak to you again today about the proposed lease to Water Island development company for its project on Water Island. My testimony will focus on two things: the disrespect shown by the developers in formulating this plan and the illusory nature of the bond which developers propose to post to secure their performance.

I should also advise that I am an attorney and have 45 years experience looking at leases and contracts among various parties and government agencies. Through that lens, I am absolutely shocked at the disrespect shown by the developers in this proposal. It is clearly disrespectful to Water Island residents in that the developers have refused to engage in dialogue with us. But more importantly, it is disrespectful to veterans, to the housing Authority and to this legislative body. I say that because in proposing this lease, the developers initially ignored the fact that 60 acres of land has been given to the housing authority with 15% of that reserved for veterans. The developers apparently had done such a slip shod job in preparing a proposal that they were unaware of those two prior actions of this legislature dedicating that property. Now that the developers have realized the mistake they made, they offer 20 small condominiums to be available for purchase in return for this government ignoring the fact that 60 acres has already been promised to Virgin Islands residents. In other words, the developers have now tried to patch their proposal by offering 20 condominiums for sale for two years at a price of \$250,000 each in exchange for this government granting them control over 60 acres of Water Island real estate. Under any analysis, is that a fair swap: 60 acres for 20 condominiums each expected to be 763 ft.<sup>2</sup> in area? That proposal continues the disrespect shown by these developers towards everyone, and in this instance towards veterans and Virgin Islands residents. >>> I say this proposal is disrespectful to this legislature because it was apparently so quickly and poorly prepared that it really does not deserve the attention paid to it to date by this Senate. The initial map of the project shown by the developers showed a proposed dock in an area of restricted development, which is privately owned and historically restricted from development. So the developers moved their dock. The second iteration of their map showed a dock taking the place of the current dock in Sprat Bay, but that dock and the surrounding property is privately owned. Again, No effort has been made by the developers to see if they could purchase that dock or property. It seems the developers just assume they can build wherever they want, regardless of who owns the property. Lastly, their third proposed map now shows no dock on the north side of the island although one of their illustrations in their brochure still shows traffic coming from Crown Bay to a dock in the area where the Sprat Bay dock is currently located. Where do the developers intend to place their dock? That question is a moving target based on the submissions to this body to date. Lastly, as Mr. Nestrud has pointed out, this proposal is disrespectful to this Legislature, not only because it is so poorly done, but also because it seeks to take away authority given to this Legislature to approve any sale of fee simple property. In short, the conduct of the developers to date, and the plans they have submitted, show a total disrespect for everyone affected, but especially for this legislative body. My mother taught me that first impressions are lasting impressions, and the impression I have of WIDC so far shows poor thinking and poor execution. Everyone tries to look their best for that first date: is this the best WIDC can do? Why should there be any expectation that their execution will be any better than their planning?

Unless there are questions from any of the senators, I would like to move onto the second part of my remarks today. This section of my remarks concerns the performance bond. At our earlier hearing before this body, there was some mention that there is a \$3 million bond securing

this project and that that should provide adequate safeguards for the Virgin Islands government should the developers default. That bond promise is illusory. There is in the lease a requirement that a \$3 million bond be immediately posted. However, that bond may be reduced to \$2 million the moment mobilization and any construction starts. Further, the bond can be reduced to \$1 million upon substantial completion of the improvements. But the difficulty with the bond section of this lease comes in the last paragraph of the discussion about the bond where it says “the performance bond shall remain in effect and may not be reduced below \$1 million until approval of the plans in accordance with the terms and conditions of the lease.” That language is in direct conflict with the other paragraphs about the bond obligation. That language means that the bond may be reduced to under \$1 million when the plans are approved, before any construction begins. Reduction of the bond is apparently left to the discretion of the DPP. So it should be clear that there is in fact not a \$3 million bond securing this project; there is a \$3 million bond that is in place until permits are approved and some mobilization begins. After that the amount of the bond drops and may even fall below \$1 million when the plans for the development are approved, again by DPP. Plans will be approved before any construction begins. There is no bond, and I need to emphasize, there is no bond guaranteeing completion of any aspect of this project. If the developers begin construction, and then default, the bond at that point will at most be \$1 million, far less money than will be needed potentially to remediate the damage done to Water Island and the submerged lands around it.

I want to again thank the Senate for listening carefully to our concerns and for the careful consideration you have given to all of the issues we have raised.