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November 16, 2016

#### VIA IZIS

Chairman Anthony Hood District of Columbia Zoning Commission 441 4th Street NW, Suite 210S Washington, DC 20001

Re: ZC Case No. 11-07F – Post-Hearing Submission of The American University (the "Applicant", the "University", or "AU")

Dear Chairman Hood and Members of the Commission:

On July 14, 2016, the Zoning Commission held a public hearing on the above-referenced application. At the conclusion of that hearing, the Zoning Commission requested that the Applicant provide additional information in a post-hearing submission. The Zoning Commission granted the Applicant two time extensions in order to continue its dialogue with representatives of the Spring Valley-Wesley Heights Citizens Association ("SVWHCA") and Advisory Neighborhood Commission ("ANC") 3D.

This post-hearing submission addresses the issues noted in the public hearing regarding American University's undergraduate enrollment and housing requirement and the effectiveness of the Community Liaison Committee ("CLC"). This post-hearing submission also provides revised language for Condition No. 38 of the Campus Plan Order addressing the sequencing of the construction of the "buffer buildings" on the East Campus and the ability to occupy the residential buildings on the East Campus. In addition, this post-hearing submission provides information regarding the Applicant's satisfaction of the Conditions of ZC Order No. 11-07 (the "Campus Plan Order") regarding the Applicant's use of Jacobs Field.

Since the public hearing, the Applicant and representatives of SVWHCA and ANC 3D have spent dozens of hours meeting to discuss the issues raised at the public hearing in this case and in preparing and circulating drafts of an agreement between the parties which adequately address the relevant issues before the Zoning Commission. The Applicant, SVWHCA, and ANC 3D (the "Signatory Parties") are pleased to inform the Zoning Commission that they have agreed on a number of issues related to American University's undergraduate enrollment and housing requirements, and the operations of the CLC. The Agreement of the Signatory Parties is attached to this post-hearing submission as <a href="Exhibit A">Exhibit A</a>. The terms of the Agreement are incorporated into the proposed revisions to Condition Nos. 5 and 16 addressed in detail below.

# Undergraduate Enrollment and Housing Requirement

In 2011, when the Zoning Commission was reviewing American University's student enrollment projections for the period from 2011 – 2021, American University anticipated minimal growth in the undergraduate population and robust growth in both graduate and law programs. However, American University has not seen the projected increases in graduate programs, and, in some cases has experienced significant declines. While not unique to AU, the forecasted demand for a number of specific programs of study did not materialize.

American University is highly tuition dependent and in order to maintain financial stability must manage its enrollment accordingly. While AU is comfortable with and is well under its aggregate enrollment cap, fluctuations in the demand for specific education programs and in the job market make it highly risky to impose specific graduate and undergraduate caps. Higher education is dynamic and educational programs, technology, and teaching delivery methods continue to evolve. The University must be in a position to be responsive to changes – both those that can be anticipated and those that can't. Flexibility is essential for the University to be able to serve the educational needs of local, regional and national populations, to meet job market demands for new and relevant academic programs, and to sustain financial stability. In order to maintain AU's financial stability, AU has had to increase the undergraduate enrollment to account for the decreases in graduate and law programs.

Based on the shared goals of the Signatory Parties to help assure that American University's use of its campus does not create objectionable impacts on neighboring properties and American University is able to respond to and manage the demands of the higher education marketplace, the Signatory Parties agree to the following:

- American University will be able to continue to count up to 200 off-campus master-leased beds (such as the Berkshire apartments) towards the number of beds that it is required to make available to undergraduate students for the remainder of the 2011 Campus Plan.
- American University will be able to continue to use up to 330 on-campus triples in the calculation of the number of beds that it is required to make available to undergraduate students for the remainder of the 2011 Campus Plan.
- American University will not pursue a Further Processing application for development of the South Hall residential building during the remainder of the 2011 Campus Plan.

<sup>&</sup>lt;sup>1</sup> 18% growth in Master's programs; 9% growth in Doctoral programs; 9% growth in the Law School; and 3% growth in undergraduate admissions.

- The University, through the Neighborhood Collaborative, will discuss and explore sites for possible future housing development prior to the next campus plan, and/or before submitting any amendment for additional housing to the existing 2011 Campus Plan.
- The University, through the Neighborhood Collaborative, will monitor and address any objectionable impacts attributable to student enrollment, staff, and/or faculty.
- The Signatory Parties recognize that there may be a need to discuss the issue of an undergraduate enrollment cap further. Nothing in the Agreement precludes the Signatory Parties from advocating for or opposing such a cap in the future.

Therefore, the Applicant requests that the Zoning Commission approve the following modification to Condition No. 5 of the Campus Plan Order:

- 5. a. Until the start of the fall 2017 semester, the University shall maintain a supply of housing sufficient to make housing available for 85% of its full-time freshman and sophomore students and for 61% of all full-time undergraduates. All of the freshman and sophomore housing and 58% of the housing for full-time undergraduates shall be located entirely on campus. By the start of the fall 2017 Semester, the University shall maintain a supply of on campus housing sufficient to make housing available for 100% of its fulltime freshman and sophomore students and for 67% of all full-time undergraduates. Housing provided by the University through a master lease (such as the Berkshire apartments), and that is subject to AU residence hall regulations, may be considered to be "on campus" housing for the purpose of calculating the housing percentages noted above through the end of this Campus Plan (2022). American University will be able to continue to use on-campus triples (up to 330) in the calculation of the number of beds that it is required to make available to undergraduate students for the remainder of the 2011 Campus Plan. Nothing in this condition is intended to preclude the University from continuing to house undergraduate students who are not freshmen or sophomores in off-campus housing after the fall 2017 semester begins; provided that the University maintains the minimum percentage of on-campus housing required.
- 5. b. American University will not pursue a Further Processing application for development of the South Hall residential building during the remainder of the 2011 Campus Plan. The University, through the newly formed Neighborhood Collaborative, will discuss and explore sites for possible future housing development prior to the next campus plan, and/or before submitting any amendment for additional housing to the existing 2011 Campus Plan. The University, through the Neighborhood Collaborative, will monitor and address any objectionable impacts attributable to student enrollment, staff, and/or faculty. (Proposed additions in bold and italics.)

Attached to this post-hearing submission (as <u>Exhibit B</u>) is an updated version of the 2011 Campus Plan Housing Summary and Projections chart (earlier versions of this chart were

presented to the Zoning Commission during the Campus Plan hearing process (ZC Case No. 11-07) and the current modification application (ZC Case No. 11-07F)). The highlighted portions of the attached chart identify the issues noted in the bullet points above and the revised Condition No. 5.

# Enhancements to the Community Liaison Committee (CLC)

The Signatory Parties believe it is necessary to undertake a re-working of the CLC, as it was constituted under the 2011 Campus Plan. The intent of the proposed modifications is to provide for a more functional, responsive and consensus-based approach to enable AU to resolve issues of concern that impact the community. The Signatory Parties also agree that the operations of the CLC will be enhanced if it is co-led by a representative of American University and a representative of the neighboring community organizations.

The Signatory Parties agree that it will be beneficial to create a Neighborhood Collaborative. The Neighborhood Collaborative will be composed of the following community organizations: Spring Valley and Wesley Heights Citizens Association, Neighbors for a Livable Community, Fort Gaines Citizens Association, Tenley Campus Neighbors Association, Tenley Neighbors Association, and Westover Place Homes Corporation. Representatives of ANC 3D and ANC 3E who represent neighborhoods immediately adjacent to the main campus also will be invited to participate. The Neighborhood Collaborative will be expected to address at a minimum the issues that directly impact neighbors immediately adjacent to the main campus related to enrollment, student housing, facilities planning, parking, transportation and student conduct. The work of the Neighborhood Collaborative will be shared with the CLC at its regularly scheduled quarterly meetings and/or the CLC list serve. CLC participants will have an opportunity to comment and provide feedback on the work of the Neighborhood Collaborative.

Based on the recommended modifications described above, the Signatory Parties agree to the following regarding the CLC:

- The CLC will now be co-led by a representative of American University and a representative from one of the following community association organizations: Spring Valley and Wesley Heights Citizens Association, Neighbors for a Livable Community, Fort Gaines Citizens Association, Westover Place Homes Corporation, Tenley Campus Neighbors Association, and Tenley Neighbors Association. The co-leaders will work together to create mutually acceptable agendas before each meeting of the CLC, and will alternate as to which co-leader will be responsible for leading each of the quarterly CLC meetings.
- The Neighborhood Collaborative will be composed of representatives of Spring Valley and Wesley Heights Citizens Association, Neighbors for a Livable Community, Fort Gaines Citizens Association, Tenley Neighbors Association, Tenley Campus Neighbors Association, and Westover Place Homes Corporation. Representatives of ANC 3D and ANC 3E who represent neighborhoods immediately adjacent to the main campus also will be invited to

participate. The Neighborhood Collaborative will be expected to address at a minimum the issues that directly impact neighbors immediately adjacent to the main campus related to enrollment, student housing, facilities planning, parking, transportation and student conduct. The Neighborhood Collaborative will be organized and led by a representative of American University.

Therefore, the Applicant requests that the Zoning Commission approve the following modification to Condition No. 16 of the Campus Plan Order:

16. The University shall continue to work with community representatives to maintain the Community Liaison Committee created in the 2001 and 2011 Campus Plans, with the enhancements to the composition, structure, purpose and leadership proposed by the Applicant for the 2011 Plan (see Findings of Fact 207-208.) for the purpose of fostering consistent communication between the University and the surrounding neighborhoods, discussing issues of mutual interest, and proposing solutions to problems that exist or arise in implementing the approved campus plan. The CLC will be co-led by a representative of American University and a representative from one of the following community association organizations: Spring Valley and Wesley Heights Citizens Association, Neighbors for a Livable Community, Fort Gaines Citizens Association, Westover Place Homes Corporation, Tenley Campus Neighbors Association, and Tenley Neighbors Association, The co-leaders will work together to create mutually acceptable agendas before each meeting of the CLC, and will alternate as to which co-leader will be responsible for leading each of the quarterly CLC meetings. It is recommended that the Community Liaison Committee be composed of an equal number of representatives of the University and the community and meet as necessary, but at least quarterly; separate meetings may be held to discuss matters of particular interest to the Main or Tenley Campus, if desired. Upon request, the University shall provide timely data relevant to campus plan issues to the Community Liaison Committee, provided that the data is not confidential or overly burdensome to produce. The University shall convene the first meeting of the Community Liaison Committee within three months of the effective date of this Order. A Neighborhood Collaborative will be created which will be composed of representatives of Spring Valley and Wesley Heights Citizens Association, Neighbors for a Livable Community, Fort Gaines Citizens Association, Tenley Neighbors Association, Tenley Campus Neighbors Association, and Westover Place Homes Corporation. Representatives of ANC 3D and ANC 3E who represent neighborhoods immediately adjacent to the main campus also will be invited to participate. The Neighborhood Collaborative will be expected to address at a minimum the issues that directly impact neighbors immediately adjacent to the main campus related to enrollment, student housing, facilities planning, parking, transportation and student The Neighborhood Collaborative will be organized and led by a conduct. representative of American University. (Proposed additions in bold and italics. Proposed deletions are struck-through)

### Modification to Condition No. 38 and Clarification of Finding of Fact No. 133

Finding of Fact No. 133 of the Campus Plan Order addressed the "buffer buildings" that were approved on the East Campus. Finding of Fact No. 133 stated:

The "buffer buildings" (Buildings 4 and 6) will be located between the student residences and the adjoining townhouses in Westover Place, and sited to block noise from activities occurring on two courtyards located at the center of the East Campus. To minimize noise impacts, the buildings will not have direct entrances on the ground floor, or balconies or terraces, on their eastern elevations. The buildings will be 34 feet in height, equivalent to the height of the abutting Westover townhouses. To minimize the appearance of height, the buffer buildings will have flat roofs, without penthouse structure. The construction of Buildings 4 and 6 will be sequenced so that those buildings will be completed no later than the opening of the student housing buildings on the East Campus.

At the public hearing, representatives of the Applicant stated that the exterior of the buffer buildings will be completed prior to the occupation of any of the student housing buildings on the East Campus. This means that all windows and doors for the buffer buildings will be installed and only interior fit out and construction will need to occur in these building prior to their use and occupancy. However, the interior of the buffer buildings will not be complete. The Applicant believes that providing this level of completion of these buildings is consistent with the intent of the buffer buildings to act as a visual and acoustical barrier between the student housing buildings on the East Campus and the adjacent Westover townhomes.

Therefore, the Applicant requests that the Zoning Commission approve the following modification to Condition No. 38 of the Campus Plan Order:

38. Buildings 1 through 6 shall be sited as shown in Exhibits 589 and 602 of the record. The East Campus shall contain a maximum of 590 beds for undergraduate students, and a maximum of 3,000 square feet (located in Building 1) devoted to retail use. The Applicant will be able to utilize the 590 beds for undergraduate students after the exterior construction of the buffer buildings is complete (all windows and doors have been installed and only interior fit out and construction will need to occur in these buildings prior to their use and occupancy). (Proposed additions in bold and italics.)

### Satisfaction of Conditions Regarding the Use of Jacobs Field

Condition No. 24 of the Campus Plan Order required the Applicant to "implement measures to limit the noise impacts of activity on Jacobs Field on neighboring properties". Since the issuance of the Campus Plan Order on May 12, 2012, representatives of the Applicant have consistently engaged with Robert Herzstein and representatives of his Estate, and other neighboring property owners to provide the required information regarding the Applicant's use

of Jacobs Field and to discuss the measures that the Applicant has undertaken to limit the noise impacts from the use of Jacobs Field.

Representatives of the Applicant and Miller, Beam and Paganelli ("Miller Beam", the Applicant's acoustical engineering firm) met with Mr. Herzstein on June 19, 2012 at Jacobs Field and Mr. Herzstein's property to address sound management issues. After that meeting, Miller Beam undertook further studies of the noise impacts of the use of Jacobs Field and proposed a series of modifications to the sound system that was previously used by the Applicant. The sound system modifications included the purchase of new speakers, placement of speakers on ground level, the additional of a microphone attachment that prevents noise "spikes," and the removal of the scoreboard horn.

Thereafter, the CLC was updated on AU efforts and progress on Jacobs Field on September 18, 2012; March 19, 2013; May 30, 2013; and September 24, 2013. It was announced at the September 24, 2013 meeting by David Taylor, Chief of Staff to the President of American University, that a recent test of a newly installed microphone compressor was performed for Mr. Herzstein by members of the AU Athletics Department and that the new system was successful in satisfying Mr. Herzstein's concerns about amplified sound on the field during athletic competitions. Importantly, Miller Beam remains under contract with American University and continues to assist with noise monitoring and advancing practical solutions that will further lessen the impact of the playing field on adjacent properties.

Subsequent to Mr. Herzstein's passing, American University representatives were contacted by Dr. Jessica Herzstein who identified herself as the daughter of Mr. Herzstein and the trustee of the trust that owns the property at 4710 Woodway Lane. Thereafter, representatives of American University held meetings with Dr. Herzstein and her husband (Elliot Gerson) on May 13, 2015; June 7, 2015; July 23, 2015; August 20, 2015, June 7, 2016 and June 15, 2016. In those meetings the parties discussed the use of Jacobs Field and possible additional measures that could be taken to lessen the noise impacts of the use of Jacobs Field. American University representatives provided Dr. Herzstein and Mr. Gerson with the Jacobs Field calendar and contact information for appropriate University personnel should they encounter any issues. Included in several of these meetings were representatives of Advisory Neighborhood Commission 3D and Neighbors for a Livable Community. Additionally, neighbors were advised to contact the University should there be a date on which they have planned an event at their residence that could be impacted by activity on the field. Representatives of American University continue to engage in dialogue with Dr. Herzstein and Mr. Gerson regarding the use of Jacobs Field and held meetings with Dr. Herzstein and Mr. Gerson on September 2, 2016 and September 9, 2016. The Applicant has offered and expects that it will be having an additional meeting with Dr. Herzstein and Mr. Gerson prior to the upcoming Holidays.

As required by Condition No. 18 of the Campus Plan Order, American University has provided 154 residential households with key fobs which allow access to and from Jacobs Field and University Avenue. Consistent with Condition No. 19, American University has not

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installed any roads or parking lots in the area between Jacobs Field and the properties to the west.

As required by Condition No. 20 of the Campus Plan Order, extensive landscaping has been provided by AU on both private and University property to help ensure a healthy buffer exists between the playing field and adjacent properties. In October 2016, the Applicant planted seven mature trees on the Herzstein property with their input and approval. American University continues to maintain the existing fence between Jacobs Field and the properties to the west as required by Condition No. 21.

As required by Condition Nos. 22, 24, and 25 of the Campus Plan Order, AU's Athletic Department continues to enforce the no amplified sound policy outside of NCAA events and monitors games and activities to ensure no bullhorns, cowbells, or similar devices are used. Additionally, activities are only permitted on the field between 8 a.m. and dusk. If violations occur, sanctions are issued to the respective party.

As required by Condition No. 23 of the Campus Plan Order, field usage calendars are emailed to the adjacent property owner, Neighbors for a Livable Community, Spring Valley/Wesley Heights Citizens Association, and ANC 3D over 30 days in advance and more often than not months ahead of time. Additionally, athletic schedules are publicly available on the AU Athletics website.

## Conclusion

If there are any questions regarding this post-hearing submission, please feel free to contact the undersigned.

Sincerely,

Paul A. Tummonds, Jr.

#### **CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2016, a copy of the attached letter was delivered via e-mail or U.S. Mail to the following:

Joel Lawson\*
D.C. Office of Planning
1100 4th Street SW, Suite E650
Washington, DC 20024

ANC 3D\* c/o Thomas Smith, Chair 4601 Tilden Street NW Washington, DC 20016

Dr. Jessica Herzstein 4710 Woodway Lane, NW Washington, DC 20016

Spring Valley-Wesley Heights Citizens Association c/o Dr. Jeffrey Kraskin, President 4600 Massachusetts Avenue NW Washington, DC 20016

Paul Tummonds

\*Delivered by E-Mail

# AGREEMENT

The undersigned parties have agreed to the following modifications to the conditions of approval of American University's 2011 Campus Plan (effective May 17, 2012 – May 16, 2022). The undersigned parties request that the Zoning Commission incorporate these recommendations into the conditions of approval of Zoning Commission Case No. 11-07F.

## American University Undergraduate Enrollment and Housing Requirements

The parties acknowledge that in 2011, when the Zoning Commission was reviewing American University's student enrollment projections for the period from 2011 – 2021, American University anticipated minimal growth in the undergraduate population and strong growth in both graduate and law programs. However, the university now acknowledges that projected increases in graduate programs has not occurred, and, in some cases has experienced significant declines. While not unique to AU, the forecasted demand for a number of specific programs of study did not materialize.

American University indicates it is highly tuition dependent and in order to maintain financial stability must manage its enrollment accordingly. In order to maintain AU's financial stability, according to administrators AU increased the undergraduate enrollment to account for the decreases in graduate and law programs.

Based on this information, the undersigned parties agree to the following:

- American University will continue to count up to 200 off-campus master-leased beds (such as the Berkshire apartments) towards the number of beds that it is required to make available to undergraduate students for the remainder of the 2011 Campus Plan.
- American University will continue to use up to 330 on-campus triples in the calculation of the number of beds that it is required to make available to undergraduate students for the remainder of the 2011 Campus Plan.
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- The undersigned parties recognize that there may be a need to discuss the issue of an undergraduate enrollment cap further. Nothing in this Agreement precludes the parties from advocating for or opposing such a cap in the future.

Attached to this Agreement is an updated version of the 2011 Campus Plan Housing Summary and Projections chart (earlier versions of this chart were presented to the Zoning Commission during the Campus Plan hearing process (ZC Case No. 11-07) and the current modification application (ZC Case No. 11-07F)). The highlighted portions of the attached chart identify the issues noted in the bullet points above.

## Modifications to the Community Liaison Committee ("CLC")

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Encl.

#### SIGNATURES OF PARTIES TO THE AGREEMENT

Assistant Vice President,

External Relations and Auxiliary Services

American University

Frey L. Kraskin

Spring Valley Wesley Heights Citizens Association

Tom Smith Chairperson,

ANC 3D

reviou by ANC 3D at its 12/7/10 regularly schelold meeting.)

2011 Campus Plan - Housing Summary and Projections

	Foll 2011	C100 1010	0.00	100 101	2004	0.00	1 0047	20040	0000	0000
Evieting Capacity	3 5.40	3 540	2 5/10	2 5.40	2 540	2540	2540	2 540	2 540	
Changes	25.5	2000	200	St Circ	Pt 5	7	Pro S	St.	St.	25.0
Discontinue Tenley			(497)	(497)	(497)	(497)	(497)	(497)	(497)	(497)
Nebraska Hall Addition			150	150	150	150	150		150	150
North Hall			360	360	360	360	360	360	360	360
East Campus						290	290	290	290	290
South Hall								200	200	200
Net New On-Campus			13	13	13	603	603	803	803	803
Triples	130	200	200	200	200	150	150	20	20	20
University Provided Off-Campus	200	200	200	200	200					
New Capacity	3,879	3,949	3,962	3,962	3,962	4,302	4,302	4,402	4,402	4,402
F/T Undergraduate Enrollment	6,343	6,400	6,400	6,400	6,400	6,400	6,400	6,400	6,400	6,400
F/T Percent UG Housed On-Campus	28%	29%	29%	26%	26%	%29	%19	%69	%69	%69
F/T Percent UG Housed AU-Provided	61%	62%	62%	92%	62%	%29	%29	%69	%69	%69
			Current	- Housing	Summary	and Projections - Updated 11/16/16	ctions - Up	odated 11	/16/16	
	Fall 2011	Fall 2012	Fall 2013	Fall 2014	Fall 2015	Fall 2016	Fall 2017	Fall 2018	Fall 2019	Fall 2020
Existing Capacity	3,549	3,549	3,549	3,549	3,549	3,549	3,549	3,549	3,549	3,549
Changes										
Discontinue Tenley			(497)	(497)	(497)	(497)	(497)	(482)	(497)	(497)
Nebraska Hall Addition			150	150	150	150	150	150	150	150
Cassell (North) Hall			360	360	360	360	360	360	360	360
East Campus							290	290	290	290
South Hall										
Net New On-Campus			13	13	13	13	603	603	603	603
Triples	130	176	215	325	330	330	330	330	330	330
University Provided Off-Campus	200	200	200	200	200	240	200	200	200	200
New Capacity	3,879	3,925	3,977	4,087	4,092	4,132	4,682	4,682	4,682	4,682
F/T Undergraduate Enrollment	6,116	6,133	6,291	6,509	6,727	6,730	6,720	6,680	6,710	6,710
F/T Percent UG Housed On-Campus	%09	61%	%09	%09	28%	28%	%29	%29	%29	%29
F/T Percent UG Housed AU-Provided	%89	64%	63%	63%	61%	61%	%02	%02	%02	%02
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