

SETTLEMENT AGREEMENT

The George Washington University (“University”) is currently seeking approval from the D.C. Zoning Commission (“Commission”) for approval of modification of a First-Stage Planned Unit Development (“PUD”) and approval of a second-stage PUD to permit the construction of a new commercial office building with ground-floor retail (“Project”) on property located along Pennsylvania Avenue NW in Square 75 (“Site 75A”). The University is also seeking approval from the Office of the Surveyor and the D.C. Council (“Council”) for review and approval of the closing and dedication of portions of the public alley system in Square 75 (“Alley Closing”). Finally, pursuant to the First-Stage PUD, the University has received preliminary approval for the construction of a new academic/administrative/medical building on property located along I Street in Square 75 (“Site 75B”).

The President Condominium Association (“Association”) is comprised of the owners of property located at 2141 I Street NW (“Condominium”). The Association has raised issues regarding the potential adverse impacts of the Project and Alley Closing including, in particular, the proposed relocation of the north-south portion of the public alley, and has filed a request for party status with the Commission in opposition to the Project. In consideration for the Association’s agreement to file with the Commission a letter withdrawing opposition to the Project in a form similar to the attached Exhibit A, and for the Association’s agreement to file with the D.C. Council a letter indicating no opposition to the Alley Closing in a form similar to the attached Exhibit B, the University agrees to the following:

1. The University will revise the plans for the Project and Alley Closing to withdraw the proposed relocation of the north-south portion of the public alley. The Project plans shall be revised prior to the Zoning Commission hearing scheduled for November 15, 2012.
 - a. The University will widen the north-south portion of the alley in the existing location, as shown on the attached Exhibit C. To the extent that additional width is required to accommodate construction traffic during the construction of the Project, such additional width shall be located adjacent to the alley.
 - b. The University shall establish the visual landscaping buffer shown on the attached Exhibit C and maintain the landscaping on University property. At the President’s election, the University will install yew hedges (approximately 3-4 feet in height) instead of the plantings shown on Exhibit C along the western boundary of the Interim Area (defined below). The University shall also install either opaque fencing or landscaping elements that provide a visual buffer along the eastern boundary of the Interim Area following the completion of construction of the Project, provided that the University has flexibility to modify the fencing or landscaping to accommodate permitted temporary uses in the Interim Area.

- c. The University and the Association share a mutual interest in ensuring that, as an interim condition, the area located between the Condominium and the public alley (the "Interim Area") is maintained in an attractive and unobjectionable manner. The University will utilize the Interim Area in a manner consistent with an urban college campus that is compatible with the surrounding university, residential, and office uses. At least 30 days prior to seeking any required permit or approval to establish any use or structure on the Interim Area, the University will consult with the Association regarding the proposed use or structure with the goal of addressing reasonable concerns.
 - d. The University has developed no plans to move forward with Site 75B at this time. Given other projects and priorities, and the goal of ensuring limited impacts of construction overall, the University agrees that construction of Site 75B will not commence any sooner than January 1, 2017.
 - e. At the time that the University seeks to develop Site 75B, the University will explore alternative alley locations and present the analysis of alternatives to the President for discussion at least 60 days prior to filing of any alley closing or zoning application. The University will also explore alternative locations for the future building on Site 75B that are not immediately adjacent to the Condominium, provided that this restriction provides enough space for the University to realize the gross floor area for Site 75B that was approved in the First-Stage PUD. Should the University choose to pursue an alley location which is materially closer to the Condominium than the location currently proposed in this Agreement, or should the University choose to pursue locating the future building on Site 75B less than 3'6" from the Condominium's property line, then the Association reserves the right to object to such a proposal both before the Zoning Commission and the D.C. Council.
2. The University will abide by, and require the Developer of the Project to abide by, through contract provision(s), the terms and conditions of the Construction Management Plan attached as Exhibit D.
 3. The University will abide by, and require the Developer of the Project to abide by, through contract provision(s), the terms and conditions of the Loading Management Plan attached as Exhibit E.
 4. In response to concerns about loading activity in other University-owned properties in Square 75, the University will:
 - a. Identify and provide the Association Manager with the name and contact information for a University liaison to contact in case of concerns or complaints regarding loading activity in Square 75. The University liaison will act promptly to investigate complaints and require compliance with applicable laws and regulations.

- b. Following the issuance of the zoning order and recordation of the alley closing plat, the University will, going forward, write in prohibitions on regular deliveries between 10:00 PM and 7:00 AM into future lease agreements on other properties in Square 75. The University shall provide evidence of compliance with this requirement by providing the Association Manager with a yearly report containing representations that the University included the above prohibition in each lease amended during the preceding year.
5. The University agrees not to oppose any attempt by the Association in the future, for purposes of parking vehicles, to rent surface space in a portion of the public alley in the area comprising the 28' x 33' "court" adjacent to the northwest corner of the Condominium (that is, south of the east-west component of the public alley between the President and GW's Ambulatory Care Center), to the extent that such rental does not impede service and delivery access to the University's properties in the square.

Provided the University complies with the terms of this Agreement through revisions to the Project before the Zoning Commission hearing on November 15, 2012, and provided the Zoning Commission accepts these revisions to the Project, the Association agrees to take no action to file, or further any filing of, an appeal of the Commission's approval of the Project to the D.C. Court of Appeals, nor shall the Association oppose any application, administrative proceeding, or agency action related to the Project or Alley Closing, including any challenge to a building permit, certificate of occupancy, or other entitlement issued by a D.C. agency; provided, that the plans and/or application are consistent with the terms and conditions of this Agreement. Notwithstanding the foregoing, the Association reserves the right to object to any future alley closing or Zoning Commission proceeding which involves locating the north-south alley materially closer to the Condominium than is currently proposed under this Agreement.

Modifications, waivers, and consents regarding this Agreement shall only be binding if in writing and signed by the parties.

This Agreement constitutes the entire agreement between the parties hereto and no party is liable to the other or bound in any other manner by express or implied warranties, guarantees, promises, statements, or representations pertaining to the subject matter hereof unless such warranties, guarantees, promises, statements, or representations are expressly and specifically set forth herein.

This Agreement shall be binding on and shall inure to the benefit of the University and the Association, and their respective successors and assigns, including the owner or owners, at any particular time, of Site 75A, Site 75B, and the Condominium.

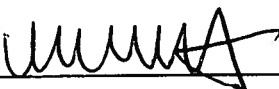
This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person or entity as a third party beneficiary, decree, or otherwise.

[Signatures on following page]

FINAL: November 15, 2012

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

The George Washington University

By: 

Name: _____

Louis H. Katz

Title: Executive Vice President & Treasurer

President Condominium Association, Inc.

By: 

Name: Johanna Shreve

Title: Chairperson

President Condominium Association, Inc.
2141 I Street, NW
Washington, DC 20037

November __, 2012

Mr. Roland F. Dreist, Jr.
Office of the Surveyor
1100 4th Street, SW
3rd Floor
Washington, D.C. 20024

Re: S.O. 12-03806 (proposed alley closing and dedication in Square 75)

Dear Chairman Hood and Members of the Commission:

The President Condominium Association, Inc. (the "Association"), on behalf of the owners of property located at 2141 I Street NW ("Condominium"), supports the above-referenced application. The Association reserves the right to object to any future alley closing proceeding that involves locating the north-south alley materially closer to the President Condominium than is currently proposed in the applicant's revised alley closing application.

Sincerely,

President Condominium Association, Inc.

By: _____

Name: _____

Title: _____

President Condominium Association, Inc.
2141 I Street, NW
Washington, DC 20037

November __, 2012

Anthony Hood, Chairman
D.C. Zoning Commission
Office of Zoning
441 4th Street, N.W., Suite 210
Washington, DC 20001

Re: Z.C. Case No. 06-11G/06-12G (“Project”)

Dear Chairman Hood and Members of the Commission:

The President Condominium Association, Inc. (the “Association”) hereby withdraws its request for party status in opposition to the above-referenced Project. The Association has no objection to the Project at this time, provided that the Zoning Commission accepts the Applicant’s revised alley proposal and incorporates that certain Settlement Agreement and Construction Management Plan between the Applicant and the President Condominium Association as a condition of any approval of the Application. The Association reserves the right to object to any future Zoning Commission proceeding that involves locating the north-south alley materially closer to the President Condominium

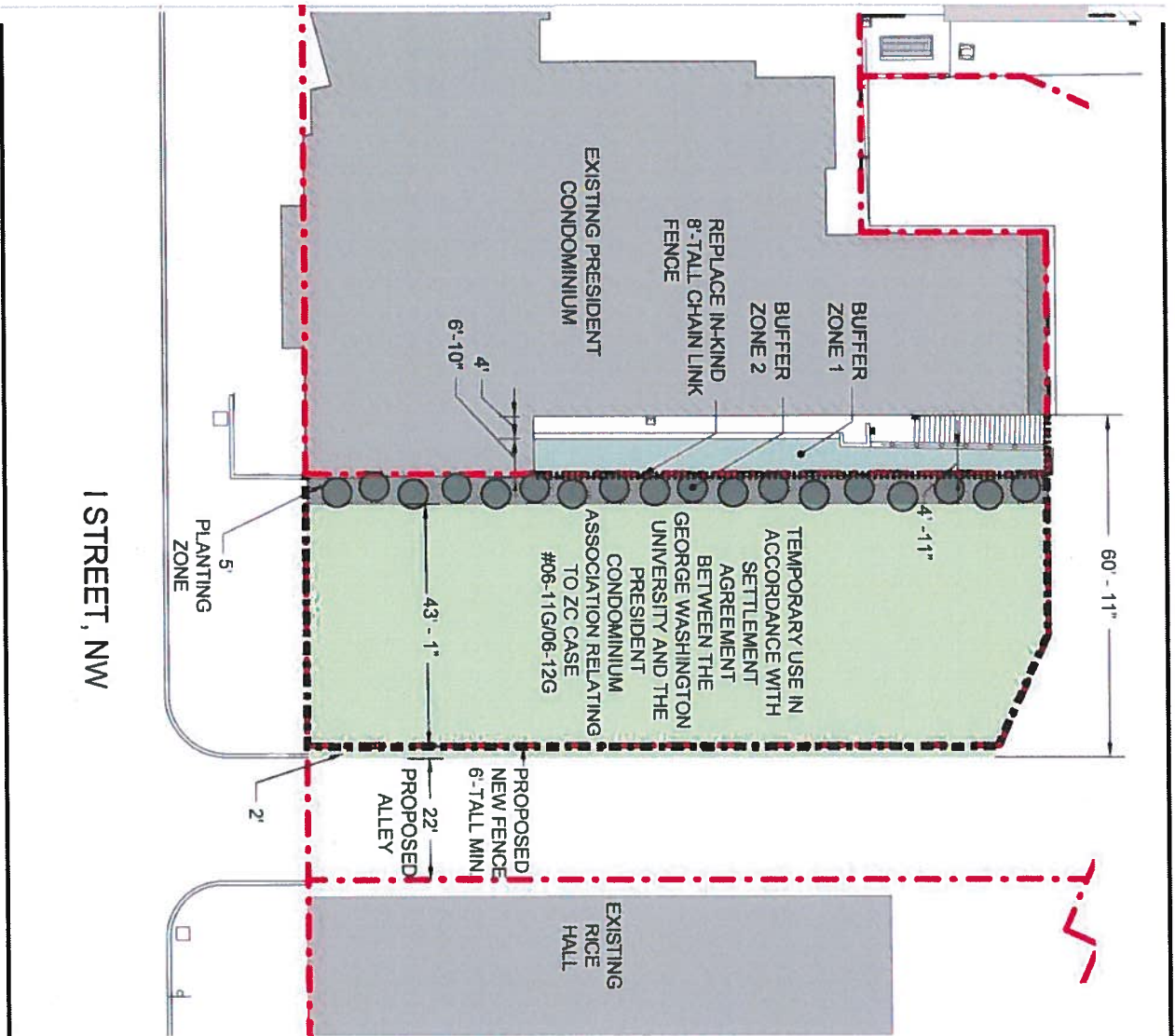
Sincerely,

President Condominium Association, Inc.

By: _____

Name: _____

Title: _____



I STREET, NW



BUFFER ZONE 1 PLANTS



BUFFER ZONE 2 PLANTS



FENCING



- NOTES**
1. PRESIDENT CONDOMINIUM COULD ADD BEARDYAL, AUCUBA, BUFFER AREAS
 2. OPENINGS TO FENCE MAY BE ADDED TO ACCOMMODATE PERMITTED TEMPORARY USERS
 3. TREE DIAMETER INDICATES FULL GROWN

SITE 75A
Washington, DC

THE GEORGE WASHINGTON UNIVERSITY
WASHINGTON, DC

Gensler
2020 K Street, Northwest
Suite 200
Washington, DC 20006
Telephone: 202.775.1111
Facsimile: 202.372.8187
Seal/Signature

Date
10/01/2012

Project Name
SITE 75A

Project Number
09.7075.000

Description
INTERIM I STREET, NW ALLEY SITE PLAN

Scale
1"=20'

L-01
© 2011 Gensler

NOVEMBER 14, 2012

THE GEORGE WASHINGTON UNIVERSITY – Z.C. CASE NO. 06-11G/06-12G

CONSTRUCTION MANAGEMENT PLAN

The George Washington University (“the University”) proposes the redevelopment of certain property in Square 75 (the “Property”) into a commercial office building (the “Project”). Actual construction of the Project is anticipated to be undertaken by a third-party developer (the “Developer”).¹ The Project is located to the north of the President Condominium (the “Condominium”). This document outlines the actions and steps that the University shall undertake, and cause the Developer of the Project to undertake, to mitigate impacts on the President Condominium Association (the “Association”) from noise, traffic, vibration, air pollution, or other adverse effects resulting from construction activity related to the development of the Property.

The Developer shall require that all contractors and subcontractors, and their agents and employees, be contractually required to follow the terms of and comply with this Construction Management Plan. The Developer shall also require that all contractors and subcontractors use only licensed vehicles and drivers and that they comply with all D.C. traffic laws and regulations.

The Developer shall require that all their personnel and vendors, including supply and service vendors, will comply with all applicable District of Columbia Municipal Regulations applicable to hours of work, noise, dirt, trash, and public health and safety.

I. Communication.

- A. **Developer’s Representative.** The Developer shall designate a representative to be the key contact during the period of construction on the Property. The Developer’s Representative (the “Representative”) shall have a local office and shall be accessible during all business hours (including hours during which construction activity is occurring on the Property). At any time construction activity is occurring on the Property, the Representative or his/her designee shall be available on-site, by telephone, or by e-mail to receive complaints or other communications from members of the Association.
- B. **Emergency Contact.** In addition, the Developer shall also provide the Association with the name, e-mail address, and telephone number of two persons to contact in case of emergency during hours in which no construction activity is occurring (the “Emergency Contact”).
- C. **Duties of the Representative and Emergency Contact.** The Representative and his/her designee will be able to answer questions and receive comments about the site activities and address any concerns the Association might have throughout the construction process, and shall have the authority to remedy promptly violations

¹ In the event that a Developer is not selected and GW constructs the Project itself, GW shall abide by all the terms of this Plan.

of this Construction Management Plan. Specifically, the Representative, designee, and Emergency Contact shall:

1. Receive notice of violations of this Construction Management Plan;
 2. Respond as soon as possible to the person who reported the violation and to the Association Manager (described below);
 3. Act to remedy the violation as soon as possible; and
 4. Contact the Association Manager and University Liaison (each as defined below) and relate, in writing, the complaint, remedy, and time frame for resolution of the problem.
- D. University Liaison. The University shall provide the Association with the name, e-mail address, and telephone number of two University employees to contact in case of concerns or complaints regarding the Developer's compliance with this Construction Management Plan (the "University Liaison"). The University Liaison shall act promptly to investigate the complaint and direct compliance with the terms and conditions of this Construction Management Plan.
- E. Association Manager. The University and the Developer shall direct all communications regarding the Project to the property manager of the President Condominium (the "Association Manager"). It is assumed that the Association Manager shall serve as the contact person to represent the Association and its members; receive and disseminate information from the University and the Developer to the Association. The Developer shall provide to the Association Manager the names and pertinent information about the Representative and or the designee (i.e. cell phone number and email address) as well as the name and telephone number of the Emergency Contact and the University Liaison. The Association shall have the right to designate a contact person other than the Association Manager to represent the Association.
- F. Communications.
1. Pre-Construction Meeting. The University and the Developer shall hold a pre-construction community meeting to discuss planned construction activities on the Property at least 60 days before construction activity starts. Attendees of that meeting will include the Representative, Emergency Contact, University Liaison, and representatives of the Developer's general contractor and will be open to the Association and its members, owners, and tenants. The Minutes of the meeting will be shared with the Association Manager within five (5) business days of the conclusion of the meeting.
 2. Electronic Communication. The University and the Developer (through its Representative) shall work with the Association Manager to set up an

electronic communication system (i.e. an email listserv or other form of communication) in order to provide construction updates and notices.

3. Monthly Reports. The Developer and/or the Representative shall provide periodic construction progress reports and updates, and other regular communication not less than once a month in writing to the Association Manager.

II. Construction.

- A. Permits. The Developer shall secure all permits that are required to complete the Project. All plans and permits shall be on-site as required under the D.C. Construction Code.
- B. Site Management.
 1. The Developer shall erect and maintain construction fencing and barricades in order to screen and secure the site during the construction process.
 2. The Developer shall avoid the use of the area located between the Condominium and the public alley (the "Interim Area") as a construction staging area. As required, the Developer may use the north portion of the Interim Area adjacent to the east-west portion of the public alley to maintain continued vehicular access to the Condominium and GW's Burns Building during construction of the Project. Notwithstanding the foregoing, the Developer shall use best efforts to utilize locations other than the Interim Area for construction staging.
- C. Lighting. A minimum amount of lighting, directed away from the Condominium, shall be provided at the Property at night. Such lighting will be sufficient to provide necessary security and to comply with federal and municipal safety standards.
- D. Cleanliness. The Developer shall remove construction-related rubbish and debris as reasonably necessary during the construction period during the normal construction workday and during periods of weekend construction work. The Developer shall monitor and police the construction site daily or more often as required to ensure cleanliness.
- E. Dust. Dust and debris shall be removed from the Property on an as-needed basis. All excavation or back fill trucks shall be covered before proceeding from the Property. The Developer shall use commercially reasonable efforts to minimize dust on the President by watering down surfaces prior to the commencement of construction activity that is likely to generate dust. Furthermore, the Developer shall wash the exterior facades of the Condominium units that face the Project both within 30 days after the completion of demolition work and within 30 days after the completion of all construction related to the Project. Additionally, the

Developer shall change the filters of the HVAC units in the Condominium units that face the Project both within 30 days after the completion of demolition work and within 30 days after the completion of all construction related to the Project.

- F. Pest Control. The Developer shall work with the Association to implement an effective program of pest control if such program becomes necessary during the course of construction of the Project at the sole cost of the Developer. A plan to remedy pest control issues shall be put in place within five (5) business days from the date the issue was identified.
- G. Noise and Vibration. The Developer shall direct its licensed engineer to prepare a noise and vibration mitigation plan that shall include all appropriate commercially reasonable measures to avoid substantial adverse noise and vibration impacts on the Condominium. Such plan may include provisions for pile driving, vibratory hammers, acoustic insulation for fences, and temporary sound barrier curtains as well as provisions for ongoing monitoring throughout construction. The Developer shall provide such plan to the Association's engineer for review and comment and shall use commercially reasonable efforts to incorporate provisions recommended by the Association's engineer.

III. Hours of Construction.

- A. Regular Construction Hours. The Developer shall limit construction hours to Monday – Friday 7:00 AM to 7:00 PM and on Saturdays from 8:00 AM to 4:00 PM. However, interior work not creating an impact on adjacent properties may take place outside of these hours.
- B. Construction Workers. Construction workers shall not be permitted to enter the Project site before 6:30 AM, and shall not be permitted to commence construction work until the times set forth above. The Developer shall direct its contractors and subcontractors and their employees to avoid congregating in the alley between the Condominium and the Property or on the southern portion of the Property adjacent to the alley prior to the start of construction work. Construction workers shall be permitted to congregate on the Pennsylvania Avenue frontage of the Property prior to the start of construction work.
- C. Saturday Construction Work. Construction work on Saturdays shall be limited to the times set forth above. Notwithstanding the foregoing, the Developer shall be permitted to conduct construction work between 8:00 AM and 7:00 PM on Saturdays; provided, that the Developer has notified the Association of its intent to conduct such work at least 48 hours in advance of such work and the Association has consented to such work, which consent shall not be unreasonably withheld. Such additional hours of work may be necessary over the duration of the Project on a limited number of Saturdays in order to complete construction in a timely manner.

- D. After-Hours Work. The Developer shall not seek any after-hours permit for construction work, unless such permit is necessary to public safety, health or welfare. The Representative shall notify the Manager of the time and date for all after-hours work at least 48 hours in advance of such work unless such notice cannot be given for good cause.
- E. Deliveries and Trash. Deliveries or pickup related to the construction of the Project, including trash, shall not be conducted before 7:00 AM or after 7:00 PM.
- F. Other Vehicle Traffic. The Developer shall not permit activity on the Property that requires the movement of heavy vehicle traffic prior to 7:00 AM or after 7:00 PM on weekdays and prior to 8:00 AM or after 4:00 PM on Saturdays, unless consent has been given as set forth above or such activity is conducted pursuant to an after-hours permit.

IV. Traffic, Loading, and Parking.

- A. Truck Traffic. Truck queuing and routing shall be coordinated with the District Department of Transportation.
- B. Site Access. Vehicular access to the Property from I Street shall be limited to an alley located adjacent to Rice Hall.
- C. Street Closures. The Developer shall notify the Association Manager at least 48 hours in advance of any street closures related to the Project.
- D. Alley Access. The Developer shall work with the Association Manager to ensure that its contractors and subcontractors do not restrict access to the Condominium's trash and loading facilities during the construction of the Project. The Developer shall also work with the University to ensure that its contractors and subcontractors do not unreasonably restrict access to the University's other properties within Square 75 during the construction of the Project. The Representative shall act promptly to address any violations of this subsection.

V. Protection of the Condominium.

- A. Video Surveys. Prior to the commencement of the construction work on the Project, the Developer will undertake at its own expense and at the request of the individual members of the Association and/or through the Association Manager, a video survey of any individual unit or common element in the Condominium that might reasonably be affected by the construction to document the state of the those units and common elements of the Condominium prior to construction. Such request shall be made at least ten business days prior to the commencement of the construction work. The Developer will undertake at its own expense a subsequent video survey of the same units or common elements of the Condominium upon completion of construction to document any impact the construction of the Project had on the Condominium or its component units and elements. The pre- and post- construction surveys shall be prepared by an

independent professional, with the same independent professional conducting both surveys. If the Developer is not permitted access to the common areas of the Condominium or to an individual condominium unit, the Developer is not required to perform the above-noted surveys for that particular portion of the President.

- B. **Insurance.** The Developer, its agent(s) or its general contractor, shall procure, or cause to be procured, and maintain, at its own cost, commercial general liability insurance covering the construction work on the Property for the duration of the Project and for three years after the issuance of a certificate of occupancy for the Project. Such insurance shall have a limit of not less than \$2,000,000 per occurrence for any property damage to the Condominium (including any individual condominium unit or common element). The Developer and its agent(s) or general contractor shall name the Association and its members as additional insureds. On or before the commencement of the Project, the Developer shall deliver to the Manager a certificate of such insurance.

VI. **Complaint Procedure.** The following procedure is provided to facilitate resolution of complaints by members of the Association.

- A. **Representative or Emergency Contact.** All initial complaints of a violation of this Construction Management Plan shall be made by the affected member(s) of the Association and/or the Association Manager to the Representative or Emergency Contact for resolution pursuant to Section I.C. above. The Representative or Emergency Contact shall use good faith efforts to respond to the affected member(s) of the Association and/or the Association Manager and address the complaint in a prompt and commercially reasonable manner.
- B. **University Liaison.** If a complaint is not resolved by the Representative or Emergency Contact within five business days from the time of the complaint, then the complaint shall be presented to the University Liaison by the Association Manager for resolution. The University Liaison shall act promptly to investigate the complaint and require compliance with the terms and conditions of this Construction Management Plan.

NOVEMBER 5, 2012

THE GEORGE WASHINGTON UNIVERSITY – Z.C. CASE NO. 06-11G/06-12G

LOADING MANAGEMENT PLAN

The University proffers the following management plan for the proposed commercial office building in the above-referenced case.

- Dock Manager – a member of the on-site property management staff will be designated to serve as dock manager for the new office building. The dock manager also will be responsible for disseminating information to tenants, vendors, suppliers, and service providers of the new office building regarding rules and regulations, preferred truck routes, and hours of operation. Dock management duties may be part of other duties assigned to the individual.
- Truck Route Designation – Preferred truck routes will be established in consultation with DDOT. The dock manager for the new building will direct all deliveries and trash disposal services to use the preferred truck routes established in consultation with DDOT.
- Operation of Trucks – All trucks on the square must obey all traffic control devices including signs, markings, and signals. Trucks must yield to pedestrians upon entering and exiting the loading area. Truck idling will not be permitted on the premises.
- Hours of operation – Regular deliveries will not be allowed between 10:00 PM and 7:00 AM. Special deliveries may be allowed from time-to-time after 10:00 PM, but are subject to applicable laws regarding noise level restrictions.

The Dock Manager will instruct all tenants, vendors, suppliers, and service providers that trucks 40 feet or longer will not be permitted between 8:00 and 10:00 AM and between 5:00 and 7:00 PM, Monday through Friday.

The Dock Manager will notify the trash service provider(s) for the new building that District of Columbia Municipal Regulations (2806.1 and 2806.2) prohibit trash collection by private haulers between the hours of 9:00 PM and 7:00 AM at this site.