

DRAFT – FOR DISCUSSION ONLY

MEMORANDUM OF UNDERSTANDING
BETWEEN ANC 3E AND GEORGETOWN DAY SCHOOL, INC.
FOR DEVELOPMENT AT THE GEORGETOWN DAY SCHOOL CAMPUS

This Memorandum of Understanding (the “**MOU**” or “**Agreement**”) is made this ____ day of _____, 2017 by and between GEORGETOWN DAY SCHOOL, INC., a District of Columbia corporation (the “**School**”) or its successors and assigns, and Advisory Neighborhood Commission 3E (“**ANC 3E**” or the “**ANC**”). The School and the ANC are collectively referred to herein as the “**Parties.**”

UNDERSTANDING OF THE PARTIES

WHEREAS, the School is the owner of certain real property consisting of the campus located at the address of 4200 Davenport Street NW, Washington, DC (Lots 4, 14, 803, 804, 812, 815, and 817 in Square 1672 and Lots 822 and 824 in Square 1673) (collectively, the “**Campus**”);

WHEREAS, the Campus is within the boundaries of ANC 3E, and the District of Columbia Zoning Regulations authorizes the ANC to appear as a party in proceedings before the District of Columbia Board of Zoning Adjustment (“**BZA**”);

WHEREAS, the School has filed an application (the “**Application**”) to the BZA for special exception relief to allow construction of a private school under Subtitle U, Section 203 and Subtitle X, Section 104 in BZA Case No. 19599 (the “**BZA Case**”);

WHEREAS, the School intends to develop a portion of the Campus with a new school and an associated parking garage, play areas, landscaping, and related improvements (the “**Project**”), all as shown on the plans included in Exhibit __ of the record of the BZA Case (the “**Proposed Plans**”); and

WHEREAS, the School has agreed to certain restrictions, community benefits and mitigation measures in exchange for support by the ANC of the Application;

NOW THEREFORE, provided that ANC 3E supports the Project and the BZA Case (“support” shall be indicated by a majority vote of the ANC on a resolution or motion recommending approval of the BZA Case), the School and the ANC agree to the following:

CONSTRUCTION OF THE PROJECT

1. The School shall construct the Project in accordance with the Proposed Plans, including without limitation, all landscaping and buffers between the Campus improvements and recreational facilities and surrounding residential areas, all as shown on the Proposed Plans.

COMMUNITY BENEFITS

2. Playground Use. The Project includes a play area. The School shall make the play area available to residents of the community surrounding the Campus play area during those daylight hours when the playground is not being used by the School. The School shall have the right from time to time to establish and post reasonable and customary rules and regulations

DRAFT – FOR DISCUSSION ONLY

governing community use of the play area and to close the play area on a temporary basis from time to time for maintenance, cleaning, or repairs.

3. Athletic Field Use. The Project includes a playing field and the Campus also contains an existing playing field. The School will allow use of the fields when they are not being used by the School subject to the following limitations: any such use of the athletic fields must be arranged in advance with the School’s space-use coordinator and shall be subject to such reasonable requirements as the School may impose, including, without limitation: charging a reasonable fee (reasonableness to be determined by reference to fees charged for field use by DC Department of Parks and Recreation (DPR) and other private schools in DC). for administrative, security and maintenance costs associated with such use, requiring provision of a certificate of insurance, requiring liability waivers, and setting parameters on the types of uses allowed on the fields (e.g., no dogs or wheeled toys, etc.), provided such parameters shall not prohibit any sport permitted on fields maintained and/or programmed by DPR.
4. Classroom Use. The School shall make available to community groups, the use of indoor classroom space on the Campus during those periods when the space is not required by the School. Any such use of the classrooms must be arranged in advance with the School’s space-use coordinator and shall be subject to such reasonable requirements as the School may impose, including, without limitation: charging a reasonable fee for a security guard as well as any administrative and maintenance costs associated with such use, requiring provision of a certificate of insurance, requiring liability waivers and setting parameters on the types of uses allowed in the classrooms.

TRAFFIC MITIGATION, MONITORING, AND REPORTING

Monitoring and Reporting

5. At the beginning of each school year, but in no event later than November 15th of any calendar year that the monitoring and reporting requirements herein are in effect, the School shall provide to the ANC and to the District Department of Transportation (“**DDOT**”) documentary evidence sufficient to demonstrate the total enrollment of students in Pre-K through Grade 12 at the Campus and compliance with the terms of this Agreement, including the Transportation Management Plan (“**TMP**”) referenced herein. For avoidance of doubt, “documentary evidence sufficient to demonstrate its enrollment figures” does not mean a mere report or declaration, but a copy of the student phonebook for the year, access to the same online databases of student phone numbers and addresses that students are provided access to, or evidence of similar strength and scope. The annual reporting on the TMP shall provide, among other things, (1) the number of carpool exceptions that were granted and for what reason, (2) the number of students and staff who paid the parking personally and (3) the modal split among students and staff.
6. The School shall in any year that the monitoring and reporting requirements herein are in effect and in accordance with and subject to the terms of the TMP, hold quarterly meetings with the ANC and other community members to garner feedback on traffic and parking related issues.

7. The School shall engage a transportation engineer to undertake monitoring of vehicular access to the Campus to ensure compliance with the AM Peak Hour and PM School Peak Hour Trip Thresholds. The established AM and PM peak hour trip thresholds shall be a goal for years 1-4 and a cap thereafter (Year 1 is defined as the first year the new Lower/Middle School is open). Commencing Year 1 and continuing through Year 4, the School shall arrange to monitor compliance with the AM and PM School Peak Hour Trip Thresholds one (1) time each school year, during the fall semester of each school year, provided that in the event the School fails to stay below the applicable Trip Thresholds, the School shall arrange to monitor compliance with the Trip Thresholds again in the spring semester. If the School fails to meet its Trip Thresholds during this period, it shall work with DDOT and the ANC to identify remedial revisions to the TMP necessary to promote compliance and shall implement such measures. Commencing in Year 5 through Year 17, the School shall arrange to monitor compliance with the Trip Thresholds triennially in the fall semester (i.e., four times between Year 5 and Year 17) provided that in the event the School fails to stay below the applicable Trip Thresholds, the School shall arrange to monitor compliance with the Trip Thresholds again in the spring semester of such year. The School shall resume annual monitoring until such time as the annual monitoring study demonstrates that the School has met the Trip Thresholds for two consecutive years. At such time, triennial monitoring shall resume until Year 17 or until such time as two consecutive triennial studies demonstrate compliance, whichever is later.
8. Beginning in Year 5, in the event the School fails to comply with the applicable Trip Caps, the School shall require the requisite number of students to comply with the Trip Cap to take three-person carpools and/or ride the bus to School, adding such buses and/or bus routes as necessary to comply with the Trip Cap. The School shall work with DDOT and the ANC to identify which of the foregoing remedial revisions to the TMP will be used to ensure compliance. Students and parents who fail to comply with the carpooling, parking, busing (if mandated) and/or pick-up and drop-off requirements of the TMP shall be subject to an escalating set of penalties (leading ultimately to student expulsion after the sixth offense). The School agrees that violation of the Trip Cap constitutes a material violation of this Memorandum of Understanding and the applicable zoning order, assuming BZA incorporates the Trip Cap into its order regarding the Application as GDS and the ANC desire. As such, the School expects that if it violates its Trip Cap, the Department of Consumer and Regulatory Affairs (“DCRA”) will institute enforcement proceedings using any or all of the enforcement measures that are legally available.

Access to the Campus

9. All vehicular traffic entering the Campus shall be limited to the Davenport Street and River Road entrances (with the exception of deliveries to the Lower/Middle School, which will enter via the Public Alley on Ellicott Street). All vehicular traffic exiting the Campus shall be limited to the River Road, Davenport Street, and Ellicott Street egress points. Pedestrian and bicycle access to and egress from the Campus shall be on 42nd Street, 43rd Street, and Davenport Street only.
10. Vehicular traffic exiting the Campus from the alley onto Ellicott Street shall be permitted to make a right turn only during morning drop-off and afternoon pick-up periods.

11. No passenger vehicle pick-up and drop-off of students shall occur on the streets immediately adjacent to the Campus (i.e., Ellicott Street, NW, 42nd Street, NW, Chesapeake Street, NW, River Road, NW, 43rd Place, NW, and 43rd Street, NW). During drop-off and pick-up, caregivers shall not park in the neighborhood to wait or walk their student(s) to the Campus. Pick-up and drop-off of students by School-chartered bus(es) shall be permitted on 42nd Street.
12. The Campus shall continue to provide one vehicular emergency access point along 43rd Street, which access point shall be at all times secured by a locked 6.5-foot gate (the “**Vehicular 43rd Street Gate**”), provided such gate shall be operable and open for use only by emergency vehicles.
13. A new sidewalk shall be constructed as shown on the Proposed Plans to allow for a gated pedestrian connection (the “**Pedestrian 43rd Street Gate**”) to the Campus at the southern end of 43rd Street, which has no outlet. The Pedestrian 43rd Street Gate shall not be used for vehicular drop-offs of students or staff on 43rd Street or Ellicott Street (any such drop-off being a “**Prohibited Drop-Off**”). In the event that there are more than three Prohibited Drop-Offs during the first year of the operation of the consolidated Campus, the School shall notify DDOT with information regarding the date and time of such Prohibited Drop-Offs. Upon such notification, the School shall secure the Pedestrian 43rd Street Gate at all times. GDS agrees to advise the ANC of proposed changes in the opening hours of any pedestrian gate 60 days in advance.
14. The School agrees that it will instruct parents, caregivers, and staff who drive to use the entrance and exit that requires the least driving through the neighborhood around the School. Additionally, the School will, as part of its enrollment contract, instruct parents, caregivers, or staff not to use 43rd Place NW, Ellicott Street, NW, or Fessenden Street, NW, between River Road and Wisconsin Avenue, to reach the School for pick-up or drop-off, whether on the way to or returning from the school, and will similarly instruct parents, caregivers, or staff not to use of Chesapeake Street when traveling between River Road and 42nd Street. In addition to incorporating this restriction into its enrollment contract in writing, this instruction will be given orally at School orientation. The parties acknowledge that the School, unlike some universities but like most secondary schools, does not have its own police force and cannot independently enforce this restriction. Nevertheless, School personnel who become aware of such use shall advise the offending driver of the School’s policy, and if the School becomes aware of repeat violations by offending drivers, said drivers shall be subject to disciplinary action.

AM Trip Cap

15. The AM peak hour Trip Threshold shall be 595 vehicle trips; the PM peak hour Trip Threshold shall be 465 vehicle trips; and the PM peak Trip Threshold shall be 265. The number of trips generated by the School shall be determined by selecting the single highest hourly inbound plus outbound volume (for all driveways combined between 7:00 AM and 9:00 AM for the AM peak hour between 2:30 PM and 4:30 PM for the PM peak hour, and between 4:30pm and 7:00pm for the PM peak).

TMP

16. The Applicant shall be responsible for implementing the full TMP including, without limitation, the following provisions. The School shall:

- a. Permit no more 595 AM peak hour vehicle trips during the AM peak hour (as defined in #115), no more than 465 PM peak hour vehicle trips during the PM school peak hour (as defined in #15), and no more than 265 for the PM Peak (as defined in #15), as verified by traffic monitoring at the Applicant's expense, as outlined in #5-8 above and outlined more fully in the TMP. In Years 1 through 4, the AM and PM Peak Hour Trip Thresholds shall be a goal, which the School shall strive to achieve. Beginning in Year 5, the Trip Thresholds shall serve as a cap.
- b. Meet no less than quarterly with the ANC to ensure any traffic concerns by either party can be addressed in a timely manner;
- c. Hire a Metropolitan Police Officer to control traffic at the intersection of Ellicott Street and the Public Alley, consistent with the Metropolitan Police Department and/or DDOT regulations, during the Lower School's pick-up and drop-off periods. At the time the School hires a Traffic Control Officer (TCO), the School will convey that the intent of the TCO is to require that all traffic exiting the Campus via the Public Alley during drop-off/pick-up turns right onto Ellicott Street, not to stop traffic on Ellicott Street for long periods of time to facilitate egress from the school.
- d. Deploy School staff along the perimeter of the Campus to ensure that Ellicott Street, 42nd Street, 43rd Street, 43rd Place, River Road, and Chesapeake Street are not used for vehicular drop-off/pick-up and to otherwise enforce the TMP;
- e. Encourage the use of public transportation by the faculty, staff, and students who are old enough to use public transit and instruct eligible students to obtain a DC One Car (and shall and assist with sign-ups for the DC One Card) and establish a "transit buddy" program to match older students with younger students taking transit;
- f. Provide up to \$100.00 monthly in SmarTrip subsidies to Virginia and Maryland financial aid students;
- g. Provide \$135 monthly SmarTrip Cards for faculty/staff who take transit to School;
- h. Operate a minimum of three full-sized (3) buses or a larger number of smaller buses capable of accommodating the same or more students than three full-sized buses to pick-up students at off-site locations in the morning, which buses shall also be available to faculty and staff;
- i. Cars dropping-off students in the morning shall be required to drop-off at least two students per vehicle, with the following exceptions:
 - i. Students in Pre-K through 1st grade and in the "Early Grasshopper" classes are not subject to the carpooling requirement,
 - ii. Student drivers who may not lawfully carry passengers are not subject to carpooling requirements, and
 - iii. Students who demonstrate a hardship, to be evaluated by the School on a case-by-case basis and at all times subject to the Trip Caps, which evaluation may consider, without limitation, special transportation needs, lack of access to other transportation facilities, or distance from the Campus are not subject to carpooling requirements;

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- j. Not permit any students to drive a vehicle to the Campus unless there is an on-Campus parking space for that vehicle;
- k. Ensure that at the beginning of each school year, all students have registered their vehicle(s) with the School;
- l. Strictly prohibit students from parking on the residential streets surrounding the Campus;
- m. Provide discounted parking pricing for student drivers and faculty/staff who carpool. The parking fee will be reduced by $\frac{1}{3}$ for each additional student beyond the driver (drivers with three additional student passengers will park for free).
- n. Price parking on Campus at substantially increased rates for students who drive to Campus from a residence within one (1) mile of Campus or within one (1) mile of a Red Line Metrorail station, subject to a discounted parking rates of one third the premium amount for student drivers who carpool;
- o. Train school employees at the beginning of each year to implement and enforce the TMP;
- p. Instruct parents not to park on, or queue on, adjacent public streets, including Chesapeake Street, 42nd Street, Ellicott Street, 43rd Street, 43rd Place, and River Road, to wait for their children at school drop-off or pick-up times;
- q. Continue to provide traffic control personnel on Campus during drop-off and pick-up times to facilitate on-Campus traffic flow and enforce drop-off and pick-up procedures;
- r. Facilitate the foregoing carpooling requirements by establishing an online system to help parents identify other families along their travel route by distributing information regarding the location of other families in the area to parents at the start of each academic year;
Distribute a policy manual to all families prior to the start of the academic year that explains all relevant policies and procedures regarding parking, pick-up, drop-off and penalties for non-compliance, which information shall also be posted on the School's website; and
- s. Incorporate the relevant provisions of the TMP into the enrollment contract between the School and parents, by which the parents shall agree to be bound by its fines and punishments.

Campus Parking Facilities

- 17. The surface parking areas on the Campus shall be secured by a chain gate, cable, or similar device during all hours that such area is not in use. The School shall provide security to prevent unauthorized parking in any parking area open during non-school hours.
- 18. The parking garages shall be available for School use at all hours that the School is open. The School shall have security personnel on duty at the School and monitoring the garages at all hours that the garages are open. The garages shall be secured during all hours that it is not in use.
- 19. Students parking cars on either the surface lots or in the garages shall be required to stay on Campus during the hours that classes are in session except for trips off-Campus for the

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following purposes: (a) work or internship related activities; (b) community service events; (c) school or extracurricular-related activities; or (d) approved leave.

20. During any period of time when the existing Campus parking spaces are reduced (e.g., during construction), the School shall provide the same number of parking spaces elsewhere and shall fully enforce the School's existing parking restrictions.

Off-Campus Transportation Improvements

21. The School shall use all reasonable and diligent efforts to cause DDOT and the Public Space Committee (PSC) to permit the closure to vehicular traffic of the 42nd Street, NW "slip lane" and to allow such slip lane to be returned to a sodded state or to such other finished material as is mutually agreeable to the School and the ANC, in the reasonable determination of each. In the event that the ANC does not support an alternative surface treatment, grass shall be required, subject to DDOT and PSC approval. The final surface treatment of such slip lane post-closure shall be subject to DDOT and PSC approval and DDOT's or the PSC's failure to consent to a landscaped or sodded condition shall not constitute a default of the School hereunder. The Parties agree that closure of the slip lane must occur prior to issuance of the certificate of occupancy for the Project. Determination of the final surface material, and the installation of the final surface material in the closed slip lane must be completed within one year of the issuance of the certificate of occupancy for the Project.
22. Prior to issuance of the certificate of occupancy for the Project, the School, at its expense, shall install or cause to be installed a traffic signal at the intersection of Chesapeake Street, NW and Wisconsin Avenue, NW, subject to DDOT review and approval.

ENROLLMENT INCREASES AND SUMMER USAGE OF CAMPUS FACILITIES

23. Provided the School has achieved an AM Trip Cap of 595, the PM peak hour Trip Threshold of 465, and the PM peak Threshold of 265, and satisfied all monitoring and reporting requirements with respect thereto for two consecutive school years, then the student enrollment limit shall automatically increase from 1075 to 1125 students and the limit on the number full-time equivalent faculty/staff shall automatically increase from 220 to 240 faculty/staff. Thereafter, provided the School has achieved the AM Trip Cap of 595, the PM peak hour Trip Threshold of 465, and the PM peak Threshold of 265, and satisfied all monitoring and reporting requirements with respect thereto for two additional consecutive school years, then the student enrollment limit shall automatically further increase to 1200 students and the limit on the number full-time equivalent faculty/staff shall automatically further increase to 260 faculty/staff. If the School does not satisfy the Trip Cap conditions in this paragraph, it shall not be entitled to and shall not seek any increase in its enrollment.
24. The School shall not be restricted from offering or authorizing use of the Campus for summer programs outside of the regular school year, provided that it meets the same Trip Thresholds that apply during the school year. To ensure same, the School agrees to the following: 1) that except as provided herein, the School shall allow no more than five hundred (500) students and staff (the term "students" shall encompass all participants in summer programming of any kind, including camps), cumulatively, to be on Campus on any day during such summer

programs; 2) the School shall conduct monitoring for two years on the day during the summer when the maximum number of students and staff that summer are expected to be present; such monitoring shall of the same scope and thoroughness as monitoring conducted during the school year, and the peak hours selected for monitoring shall be the actual peak summer hours. If the School does not exceed the Trip Thresholds for two consecutive summers of monitoring, it may cease monitoring. In the event the School fails to stay below the applicable Trip Thresholds, the School shall arrange to monitor compliance with the Trip Thresholds again during the summer of the following year. The School shall continue annual monitoring until such time as the annual monitoring study demonstrates that the School has met the Trip Thresholds for two consecutive years. Once the School has two successful consecutive years of satisfying the trip threshold, up to 50 students, resulting in a total of 550 students and staff, may be added if the additional students are required to arrive by bus or public transit. If at any time that traffic is not subject to monitoring, there is a shift or change in programming that is likely to substantially increase traffic demand during any peak hour, the School shall consult with the ANC and DDOT before implementing such change to determine whether additional monitoring is required. If both the ANC and DDOT concur that additional monitoring is desirable, GDS shall institute said monitoring. If the School seeks to increase enrollment beyond 550 (500 plus 50 additional by bus or transit), the School shall consult with the ANC before implementing that change to determine whether the ANC will require additional monitoring, and shall abide by the ANC's decision.

25. If the School does not meet its summer Trip Thresholds, it shall work with DDOT and the ANC to identify remedial revisions to the TMP necessary to promote compliance and shall implement such measures. If the School cannot meet its Trip Thresholds for two consecutive years during the first four years after it opens its new campus, the School shall reduce the total number of students and staff permitted on campus during all days during the summer by a number sufficient to ensure it meets its Trip Thresholds.

BUILDING PLANS

26. LEED. The School commits to design the Project to meet the certification requirements at the Gold level under the LEED 2009 rating system. In connection with that commitment, the Lower/Middle School building will contain motion-sensitive lighting in the classrooms and function rooms which will reduce the potential for light pollution. Some emergency lighting still will be required.

EFFECT OF AGREEMENT

27. Conditions. The School shall propose each of the above terms as specific, enforceable conditions of approval of the Application. If the BZA does not for any reason include a term as a specific, enforceable condition of approval of the Application, the School shall nonetheless comply with the term unless it is impossible to comply with both the BZA term and the term in this MOU. The obligations of the School under this Agreement shall commence concurrently with the commencement of its obligations under the BZA order approving the Application.

28. No Approval. If the BZA does not approve the BZA Case, or the School elects in its sole discretion for any reason or no reason at all not to move forward to construct the Project, then this Agreement shall be null and void and shall have no further force or effect.
29. Effective Date. The obligations under this agreement (except for Paragraph 29 – Construction Hours) shall become effective when the Lower/Middle School begins operation on the campus.

MISCELLANEOUS

30. Construction Hours. The School shall not engage in any exterior construction activities, other than emergency repairs, before 7:00 a.m. and after 8 p.m. Monday-Saturday except as required or permitted by applicable District agencies. The School and its contractors shall not engage in any construction work, other than repairs, on Sunday unless the work is interior to the closed-in construction.
31. Headings. Section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
32. Enforcement. If a majority vote of the ANC determines that the School has not fulfilled its obligations under this Agreement, then the ANC shall be permitted to take all necessary legal action to enforce this Agreement. The Parties agree to work in good faith prior to taking any legal action to enforce the Agreement. The Parties further agree that any legal action taken to enforce this Agreement shall be pursuant to the Zoning Regulations (i.e., to the Zoning Administrator with appeals to the BZA, or as otherwise provided by law). Notwithstanding the School's obligations contained herein, this Agreement shall be unenforceable by or against any third party or other person not expressly a Party hereto.
33. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties hereto, and no party shall be liable to the other or bound in any 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. No Party shall record this Agreement or any memorandum of this Agreement in any public records.
34. Choice of Law. All parts of this Agreement shall be governed by and construed in accordance with the laws of the District of Columbia.
35. Modifications. Modifications, waivers, and consents regarding this Agreement shall be binding only if in writing and signed by both Parties.
36. Succession. This Agreement shall be binding upon and shall inure to the benefit of the School and ANC 3E, and their respective heirs, successors, and assigns.
37. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile or scanned signatures shall constitute originals.

38. Inconsistencies. To the extent anything in this Agreement is inconsistent with anything in other portions of the Application, the provision likely to provide maximum trip reduction shall control if applicable or, if not, the provision of this Agreement shall control.

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGES FOLLOW]

GEORGETOWN DAY SCHOOL INC.,
a District of Columbia corporation

Name:

Title:

GS DRAFT 11/17

ADVISORY NEIGHBORHOOD COMMISSION 3E

By:_____