

AGREEMENT

This AGREEMENT (the Agreement) by and among the Duke Ellington School of the Arts, by and through its Board of Directors (DESA); Advisory Neighborhood Commission 2E (ANC 2E); the Citizens Association of Georgetown (CAG); the Burleith Citizens Association (BCA); the Cloisters West Homeowners Association (CWHOA); the Cloisters of Georgetown (COG); and the District of Columbia Department of General Services on behalf of the District of Columbia government (together, the Parties), made this 1st day of August, 2014.

1. Rooftop Use and Configuration. The DESA agrees that the rooftop (the Rooftop) of the Duke Ellington School of the Arts building located at 3500 R Street, Washington, D.C., 20007 (the Building) will be used and configured only as follows:
 - (A) Teaching activities that meet the following conditions and are not of a nature described in subsection (C) (herein Teaching Activities) may take place on a designated section (the Rooftop Classroom) of the Rooftop:
 - i. For classroom-size teaching activities consisting of 45 or fewer students who are accompanied and actively being taught and supervised by up to 3 teachers.
 - ii. During the school day on weekdays while school is in regular (not summer) session during daylight and not past 5:30 p.m.
 - iii. The total number of students on the Rooftop at any time will not exceed 45.
 - iv. Sound from any of these activities shall not be audible at any time beyond the DESA Building property line. *[Reference: Exhibit 1, Term Sheet, Section 2; The Term Sheet is attached as a reference for convenience; the governing provisions of this Agreement are contained in this Agreement.]*
 - v. The teaching activities relate to a substantive, academic connection with the Rooftop. *[Reference: Exhibit 1, Term Sheet, Section 2]* Guidelines for specific types of academic activities will be as agreed to by the Ellington Community Partnership. *[Reference: Exhibit 1, Term Sheet, Section 2]* The Ellington Community Partnership may also consider and agree upon possible non-educational activities for the Rooftop that otherwise meet the conditions of this section and this Agreement, including Section 3. *[Reference: Exhibit 1, Term Sheet]*
 - (B) The permitted activities on the roof may take place only in the Rooftop Classroom, a space that will not exceed 1,560 square feet and will be substantially as shown on the drawing attached as Exhibit 2. The walkways to and from the Rooftop Classroom will occupy space not to exceed another 298 square feet, and the walkway parallel to the east façade of the Building between the elevator and the stairs will not exceed another 1,917 square feet. *[Please reference Exhibit 2 – Rooftop Plan]* The Rooftop will be served by one passenger elevator at most. *[Reference: Exhibit 1, Term Sheet, Section 2]* Access to the Rooftop will be kept locked except as needed for fire safety and, except for maintenance, can be opened

only for these allowable activities. *[Reference: Exhibit 1, Term Sheet Section 2]* The DESA shall use reasonable efforts to limit access to the roof by passenger elevator and implement such access and security measures so as to ensure compliance with this Agreement and all applicable laws, including but not limited to, any fire safety and building code requirements. The freight elevator will not be used for moving students to or from the Rooftop Classroom and shall normally be used for maintenance purposes only.

(C) The DESA shall not authorize or permit any activity or presence on the Rooftop not specified in this Agreement. *[Reference: Exhibit 1, Term Sheet, Sections 2 and 3]* This includes but is not limited to any of the following activities on the Rooftop:

- i. rental activities;
- ii. fundraising activities;
- iii. performances;
- iv. assemblies; or
- v. receptions or other social or entertainment activities.

Nothing in this Agreement specifying permitted activities shall be read as permitting any of the foregoing activities, whether or not they are connected with an academic, curriculum or classroom activity. There shall be no lights, video, projected images, or amplified sound on the Rooftop.

(D) Nothing in this Agreement shall restrict or prohibit normal maintenance activities by maintenance personnel on the Rooftop.

(E) Teaching activities for a science class studying the green roof may take place on maintenance walkways abutting green roof areas. All other permitted activities except as specified in this subsection (E) and in subsection (D) shall take place only in the area designated as the Rooftop Classroom. *[Reference: Exhibit 1, Term Sheet Section 2]*

2. Mitigating Community Impacts from Performances and Providing Performance-related Parking. The Parties will work together diligently and promptly through the Ellington Community Partnership, described below, to reach consensus and resolve issues related to mitigating community impacts from indoor performances and from events on the front lawn, e.g., frequency of events and effective parking arrangements. The Parties will work in good faith to resolve issues resulting from performances and events.
3. DESA-Community Partnership. The Ellington Community Partnership (ECP) is hereby established and shall consist of representatives of the DESA, ANC 2E, CAG, BCA, CWHOA, COG, and designated nearby neighbors. The co-chairs shall be the DESA Head of School and a community member designated by ANC 2E. The ECP is intended to be a consensus-based framework for ongoing communication and collegial decision-making, addressing issues of mutual interest in an effective, creative and lasting way. A consensus shall mean agreement of the DESA, ANC 2E, and at least three of the four community-organization members (with any member serving as an individual rather than on behalf of an organization not counting in determining a consensus). The ECP shall meet at least quarterly or more frequently at the call of

a co-chair and may designate any subgroup reporting to the ECP as the ECP finds appropriate. The work of the ECP may be facilitated as appropriate by a professional facilitator. The ECP shall consider and work toward agreement on the guidelines for the activities that meet the requirements of Section 1(A). After renovation of the DESA Building is complete and DESA is in session, the ECP may also consider modifying the types of activities permitted on the Rooftop [Reference: Exhibit 1, Term Sheet, Section 3].

4. Other Provisions.

(A) If Rooftop Classroom Activities Are Audible.

The DESA will ensure that permitted Rooftop Classroom activities are not audible or disruptive to the surrounding community and promptly resolve issues related to sound or disturbance resulting from use of the Rooftop so as to ensure future compliance with this Agreement. The ECP will develop tracking and enforcement mechanisms for ensuring compliance with this Agreement.

(B) Legal Agreement, Jurisdiction and Remedies. This Agreement is a binding legal agreement and each person executing the Agreement is authorized to execute the Agreement on behalf of the party he or she represents. In consideration for the DESA entering into this Agreement, ANC 2E and the community-organization parties agree (1) to withdraw their opposition to the proposed demolition of portions of the Building and construction of the rooftop terrace as set forth in this Agreement, and (2) to not oppose before any District agency or instrumentality, including the Mayor's Agent, the proposal by the District to demolish portions of the current Building and to construct a rooftop space consistent with the space described in this Agreement. This Agreement is governed by District of Columbia law and is enforceable by and the parties submit to the jurisdiction of the District of Columbia Superior Court and any appellate court of competent jurisdiction. The District will not assert, pursue or take advantage of any defense based on its status as a District of Columbia entity or instrumentality. The parties agree that money damages are not sufficient in the case of a violation of this Agreement and that specific performance or other injunctive relief is appropriate for redressing a failure by the DESA to comply with the terms of this Agreement.

(C) Assignment. The parties may not transfer or assign this Agreement nor any of its rights, interests or obligations hereunder, to any person, firm, government agency or corporation, without obtaining the prior written consent of the other parties. This Agreement is binding on and inures to the benefit of the parties' respective successors and permitted assigns.

(D) Headings. All headings are inserted for convenience only, and shall not affect any construction or interpretation of the Agreement.

(E) Entire Agreement. The Agreement contains the entire agreement of the parties hereto and supersedes any and all oral understandings between the parties.

- (F) Amendments to this Agreement. No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing signed by the parties to this Agreement. Issues delegated to the Ellington Community Partnership and decided in accordance with procedures governing that partnership, as set forth in Section 3, may be decided if memorialized in writing without creating an amendment to this Agreement. No waiver of any of the provisions of this Agreement shall be valid unless it is in writing and signed by the party against whom it is sought to be enforced. Any waiver or breach of this Agreement shall not be considered to be a continuing waiver or consent to any subsequent breach on the part of any party.
- (G) Interpretation and Severability. The provisions of this Agreement shall, where possible, be interpreted in a manner necessary to sustain their legality and enforceability, and for that purpose the provision of this Agreement shall be read as if it covers the specific situation to which it is being applied. In the event that any portion of the Agreement is determined for any reason to be invalid, such determination shall not affect the validity or enforceability of any other provision of this Agreement. Upon receipt of notification of the invalidity of any provision hereof, DESA and the other parties to this Agreement agree to negotiate in good faith an additional term to replace that which has been declared invalid.
- (H) Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original.
- (I) The Department of General Services (DGS) signs this Agreement on behalf of the District of Columbia which agrees to be bound by this Agreement.

AGREED AND ACKNOWLEDGED:

The Duke Ellington School of the Arts

by and through its _____

By: CT. Labe

Title: Chair, DESA Board

**Advisory Neighborhood
Commission 2E**

By: Ron Davis

Title: Chair, ANC 2E

The District of Columbia Department of General Services on behalf of the District of Columbia Government.

By: _____

Title: DIRECTOR, DGS

Ellington Community Partnership
8/1/14

The Citizens Association of Georgetown

By:

Robert J. van Eyi

Title:

Vice President

The Burleith Citizens Association

By:

Nan Belle

Title:

President BCA

Cloisters West Homeowners Association

By:

Ann F. Cron

Title:

Authorized
Representative

Cloisters of Georgetown

By:

111 Angel

Title:

HOA Board member
V.P.

Exhibit 1:

**Duke Ellington School of the Arts (DESA) / ECP Term Sheet Re: the Rooftop
FINAL VERSION as Agreed to on June 30, 2014**

Duke Ellington School of the Arts – Term Sheet re the Rooftop

1. Modify the size, scale and configuration of the rooftop oval element based on agreed-upon classroom uses for the number of agreed-upon classroom users.

The proposed classroom space will accommodate a maximum of 45.

The maximum square footage for the classroom space will be 1,560. The walkways, used for access and not classroom activities, will occupy another 298 square feet (plus 1,917 square feet for the walkway parallel to the east façade between the elevator and the stairs).

The green roof surrounding the classroom space will be raised and not useable except for a green roof.

2. The only allowable activities will be inside the classroom space and will meet the following criteria:
 - Curriculum activities for classroom-size or smaller numbers of students, with a total maximum of 45 people on the roof at any time.
 - During the school day in the academic year (not summer) – daylight only, and not past 5:30 pm.
 - With one or more teachers present and actively teaching and supervising.
 - Sound from the rooftop classroom activities not audible beyond the DESA property line.
 - Activities relate to a substantive, academic connection to the rooftop.
 - Guidelines for specific activities, including possible non-educational activities, to be agreed upon by the Ellington Community Partnership.
 - One passenger elevator at most. Access to the roof is locked and, except for maintenance, can be opened only for these allowable activities.
3. This means, among other things, the rooftop will not have:
 - Rental activities
 - Fundraising activities
 - Performances, assemblies, receptions or other social or entertainment activities, lights, video, or amplified sound
 - Rooftop uses may be modified by agreement of the Ellington Community Partnership once construction is finished and school begins
4. When an agreement on the rooftop per this term sheet is reached, the Ellington Community Partnership (ECP) will be formed consisting of DESA and community representatives, to address issues in a collegial and productive way. A key issue, along with strengthening communications, will be reaching consensus on mitigating community impacts from indoor performances and from events on the front lawn, e.g., frequency of events and effective parking arrangements, with the assistance of one or more mutually acceptable third parties as appropriate.



DUKE ELLINGTON
SCHOOL OF THE ARTS
MODERNIZATION

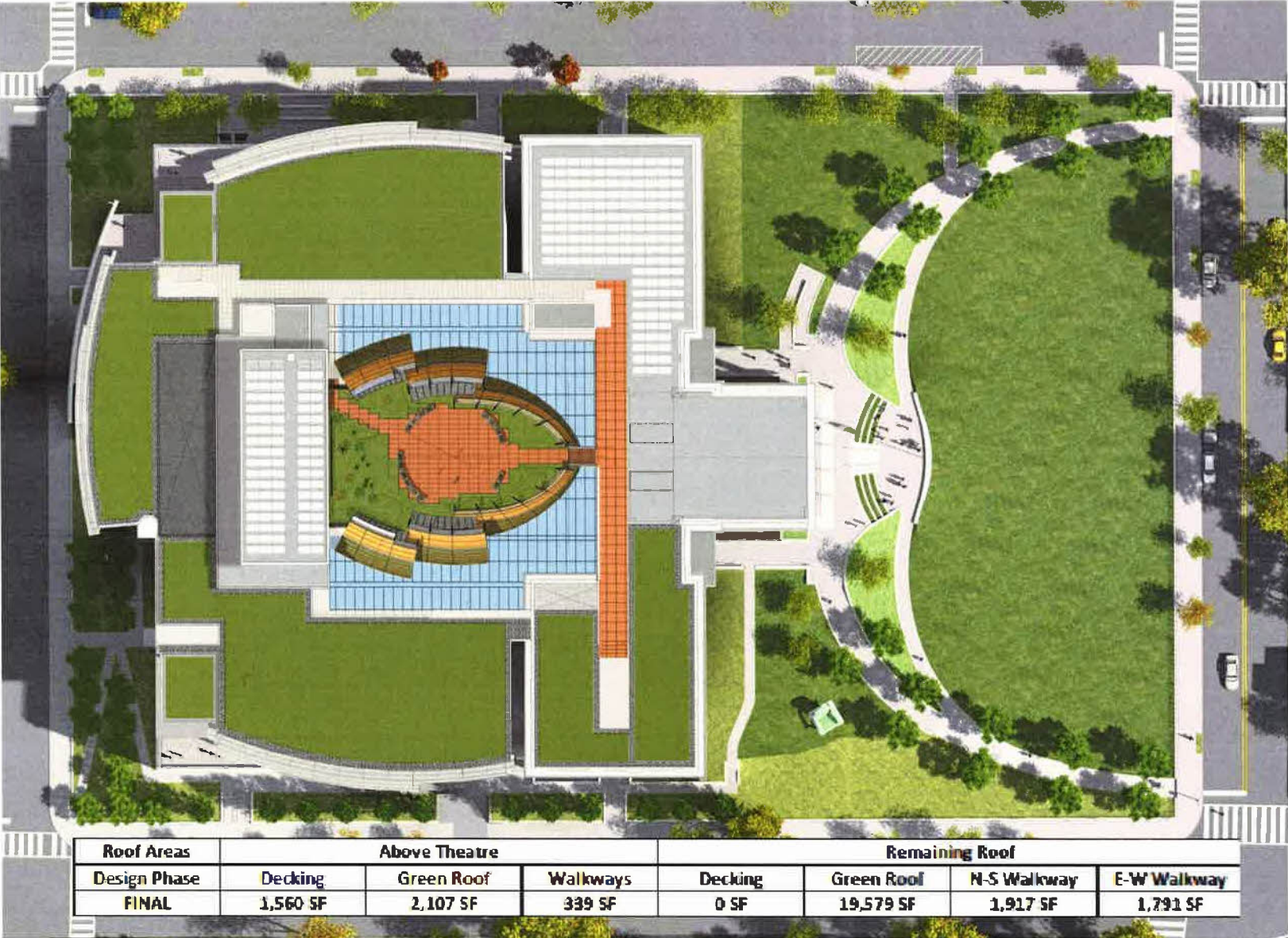


EXHIBIT 2 - DESA ROOF TOP
PROPOSED ROOF PLAN