

USE AGREEMENT

BETWEEN

CHARTER SCHOOL INCUBATOR INITIATIVE
GRANTOR

and

ELSIE WHITLOW STOKES COMMUNITY FREEDOM PUBLIC CHARTER SCHOOL
GRANTEE

Dated: ^{APRIL} ~~January~~ 4, 2018

USE AGREEMENT

This Use Agreement (this "Agreement") is entered into as of APRIL 4, 2018 (the "Effective Date"), by and between Charter School Incubator Initiative, a District of Columbia not for profit corporation, with offices at 910 17th Street, N.W., Suite 1100, Washington, DC 20006, Attn: Thomas Porter, Facsimile Number (202) 457-1990 (hereinafter "Grantor"), and Elsie Whitlow Stokes Community Freedom Public Charter School, a District of Columbia not for profit corporation and Public Charter School, with offices at 3700 Oakview Terrace Washington, DC 20017, Facsimile Number (202) 265-4656 (hereinafter "Grantee").

INTRODUCTORY STATEMENTS

- A. In accordance with that certain Ground Lease Agreement dated October 20, 2016, by and between the District of Columbia, a municipal corporation by and through the Department of General Services, as landlord ("Prime Landlord"), and the Maya Angelou Public Charter School, a District of Columbia not for profit corporation (the "Sublandlord"), as tenant, Prime Landlord leased to Sublandlord (the "Prime Lease") that certain building located at 5600 East Capital Street SE, Washington, DC. (the "Property"), a copy of which is attached to this Agreement as Exhibit A.
- B. This Agreement is based on a Lease Agreement dated March 16, 2018 (the "Lease") by and between Sublandlord and Grantor, a copy of which is attached to this Agreement as Exhibit E, pursuant to which, Sublandlord leases to Grantor a portion of the Property consisting of approximately 33,000 square feet over two floors, as more particularly described on Exhibit B (the "CSII Premises")
- C. Grantor hereby grants the CSII Premises to Grantee and Grantee agrees to accept the CSII Premises from Grantor.
- D. The parties desire to enter into this Agreement defining their respective rights, duties and liabilities relating to the CSII Premises.

WITNESSETH

NOW THEREFORE, Grantor and Grantee, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and each with intent to be legally bound, for themselves and their respective successors and permitted assigns, agree as follows:

1. **AGREEMENT**

Grantor, for and in consideration of the Grantee's payment of the Usage Fee (defined in Section 5 below) and performance of the covenants contained in this Agreement, does hereby grant to Grantee the right to use the CSII Premises, subject to the terms of this Agreement. Grantor shall deliver the CSII Premises "as is". Grantee shall use the CSII Premises solely for the operation of a District of Columbia public charter school.

2. **SECURITY DEPOSIT**

Upon execution of this Agreement, Grantee shall deliver to Grantor the sum of Five Thousand Dollars (\$5,000) as a security deposit hereunder ("Security Deposit"). Grantor shall not be obligated to keep the Security Deposit separate from other funds or accounts of Grantor or in an interest bearing account. During the term of this Agreement, if Grantee defaults under any of its obligations under this Agreement, Grantor shall have the right to apply all or any portion of the Security Deposit against any liabilities or expenses incurred by Grantor in connection with such default. If Grantor shall use or apply all or any part of the Security Deposit, Grantee shall, immediately upon notice from Grantor, deliver to Grantor additional funds so as to restore the Security Deposit to the amount specified above. Upon expiration of this Agreement at Term or earlier termination of this Agreement, the Security Deposit (or any portion of the Security Deposit that has not been previously been applied pursuant to the provisions of this Section 2) together with interest earned thereon (if any) shall be returned to Grantee; provided, however, that if any default exists at the time of such termination, the Security Deposit will be applied against any such default, and any excess proceeds thereafter remaining from the Security Deposit will be returned to the Grantee; provided, further, that in the event that this Agreement is terminated by the Grantee during the Term, the entire Security Deposit will be forfeited to the Grantor.

3. **PRIME LEASE**

This Agreement shall be subject and subordinate to the terms and conditions contained in the Prime Lease and the Lease; and all of the terms and conditions of the Prime Lease and the Lease, except as otherwise set forth herein, are hereby incorporated into this Agreement and shall be binding upon Grantee (and Grantor) to the extent applicable with respect to the CSII Premises. If a term or provision of this Agreement is inconsistent or in conflict with a term or provision of the Prime Lease and the Lease, the term or provision of this Agreement shall control but only as between Grantor and Grantee (including, by way of example, the Grantee's obligation to pay the Usage Fee shall be as explicitly provided herein and Grantee shall not be obligated to pay any operating expenses with respect to the CSII Premises except as expressly set forth in Section 5 below). Grantee shall not do or omit to do anything which would result in a default under the Prime Lease or the Lease, and Grantee hereby agrees to indemnify and hold Grantor harmless from and

against all claims, demands or liabilities resulting from Grantee's breach, violation or nonperformance of any of its obligations under the Prime Lease or the Lease, as incorporated herein. Subject to the terms of this Agreement, Grantee shall be entitled to all of the rights and privileges of Grantor with respect to the CSII Premises. In addition, this Agreement shall be subject and subordinate to all mortgages, deeds of trust and other rights or encumbrances to which the Prime Lease and the Lease are now or hereafter may be subject or subordinate. Wherever Grantee desires to take any action that would require the consent of the Prime Landlord under the Prime Lease, or the Sublandlord under the Lease, Grantee shall not take such action unless the consent of Prime Landlord, Sublandlord, and Grantor to such action is obtained. A copy of the Prime Lease is attached hereto as Exhibit I.

4. **TERM**

a. The term of this Agreement shall commence on July 1, 2018 and shall continue until June 30, 2023 (as may be extended pursuant to the terms of this Section 4, the "Term").

b. Provided that all of the Extension Conditions (as defined below) are satisfied at the time of delivery of each Extension Notice (as defined below) and on the first day of each Extension Term (as defined below), Grantee shall have the right to extend the term of this Agreement for two (2) additional terms of five (5) year each and one (1) additional term of six (6) years (each, an "Extension Term") by delivering each Extension Notice pursuant to Section 4(c) below. The first Extension Term shall begin on the day immediately following the expiration of the initial Term identified in Section 4(a). The second Extension Term shall begin on the day immediately following the expiration of the first Extension Term. The third Extension Term shall begin on the day immediately following the expiration of the second Extension Term. Except as otherwise provided herein, the same terms and conditions applicable to the initial term of this Agreement shall apply to the parties during such Extension Terms. For purposes of clarity, the parties agree that the Usage Fee for each Extension Term shall be calculated in the same manner as provided in Section 5 below.

c. If Grantee desires to exercise any option to extend the Term of this Agreement as described in Section 4(b), Grantee shall give Grantor written notice thereof (each, an "Extension Notice") no earlier than nine (9) months, and no later than six (6) months, prior to the commencement of the Extension Term for which Grantee desires to exercise its rights hereunder. In no event shall Grantee have any further right to extend the term of this Agreement beyond the third Extension Term, and in the event of any default by Grantee beyond any applicable grace or cure period, any earlier termination of this Agreement, or any failure of Tenant to give an Extension Notice when required to do so, all rights of Tenant to any remaining Extension Terms shall automatically be of no further

force or effect. The extension rights set forth in this Section 4 are personal to Grantee and shall automatically terminate if the Agreement is assigned, or if any portion of the CSII Premises is otherwise transferred by Grantee, to any person or entity.

d. For the purposes of this Section 4, the term “Extension Conditions” means: (i) Grantee is not in default with respect to any of its duties or obligations under this Agreement; (ii) Grantee shall have a minimum student enrollment at the CSII Premises of at least three hundred and sixty (360), (iii) Grantee shall be in good standing in the District of Columbia, (iv) Grantee’s charter to operate as a public charter school in the District of Columbia shall be in full force and effect and no proceedings shall be in effect to revoke such charter, and (v) the District of Columbia Public Charter School Board shall not have declared (A) a ban on enrollment of students by Grantee, (B) the ineligibility of Grantee to participate in any charter school programs, or (C) or any limitation or termination of the right of Grantee to receive the Facilities Allowance (as defined in Section 5(a) below) or any other Governmental Payments (as defined in Section 5(e) below).

5. **USAGE FEE; SECURITY; CREDIT**

a. Grantee promises and agrees to pay Grantor, without prior notice or demand and without offset, deduction or counterclaim whatsoever, a usage fee (the “Usage Fee”) in an amount equal to (i) the number students enrolled with Grantee at the CSII Premises, as funded by the District of Columbia, and confirmed by the Payment Receipt received from the District of Columbia, multiplied by (ii) the per pupil facilities allowance received by Grantee from the District of Columbia (the “Facilities Allowance”) for each such students. The total Usage Fee for each twelve-month period throughout the term commencing on July 1, 2018 (each such twelve month period a “Usage Year” regardless of whether the school occupies the space for the full Usage Year), shall be paid in advance in quarterly installments equal to $\frac{1}{4}$ of the annual Usage Fee for each Usage Year on August 1, November 1, February 1 and May 1. The Usage Fee for each Usage Year shall be based upon the certified enrollment as of the census date (i.e., the October 2018 census date for the first Usage Year, the October 2019 census date for the second Usage Year, etc.) for such Usage Year as funded by the District of Columbia (e.g., if the certified enrollment is higher than the enrollment on which the District calculates the funding because it is above the Grantee’s enrollment ceiling for the CSII Premises, then the Usage Fee is based on the lower amount – the intent is that the rent is based on the enrollment on which the school actually receives funding from the District of Columbia). Since the certified enrollment is not available until later in the Usage Year, the Usage Fee shall be based on the estimated enrollment on which the funding from the District of Columbia is based and confirmed by the LEGISLATION AND PAYMENT RECEIPT (CONFIRM THE NAMES). Once the certified enrollment is available and the Grantee receives confirmation from the District of Columbia on the actual number of students on which their funding is based as confirmed by XX, and such enrollment is higher than what was initially estimated, then Grantor will “true up” the

Usage Fee to the actual number of students enrolled with Grantee at the CSII Premises as funded by the District of Columbia multiplied by the Facilities Allowance.

The Grantee is required to provide Grantor with the Payment Receipt received from the District of Columbia with its funding immediately upon receipt so that the Grantor can calculate the Usage Fee accordingly. The August 1 payments will be based on the enrollment as approved by the District of Columbia City Council annual budget and confirmed by the Payment Receipt. Since the Grantee operates a second location from the CSII Premises, the Grantee must provide a certification (see attached Exhibit XX) of Grantee's enrollment between the two locations certifying the enrollment on which the Grantee's funding from the District of Columbia is based. This certification must be provided to Grantor in advance of the August 1 payment and the true up payment. The parties acknowledge and agree that Grantee's obligation to pay the Usage Fee shall not be reduced or otherwise affected by any Rent Abatement or Additional Rent Abatement (as those terms are defined in the Prime Lease), or any other rent credits or abatements, that Grantor receives under the Prime Lease. Since the Usage Fee is not based on standard commercial, market methods, but rather based on the facilities funding received from the District of Columbia, the Usage Fee will be paid as if the Grantee occupied the space for the entire twelve-month period (i.e. the full school fiscal year) regardless of when the Grantee actually takes occupancy or vacates the CSII Premises.

b. This is a full service use agreement. The Usage Fee covers rent, utilities (gas, water, electricity, and trash removal), building engineering, maintenance and repairs, annual maintenance (including stripping and waxing of floors and repainting, if determined to be necessary by Grantor in its sole discretion), landscape maintenance, snow removal, monthly security system monitoring and pest control. Grantor will provide nightly cleaning and day porter, telephone, internet, and security equipment. Notwithstanding the preceding sentence, the Usage Fee does not include security service (e.g., security guard), food service or warming oven, computers and related hardware and software, furniture, fixtures and equipment in and to the CSII Premises, sports equipment and other program related equipment, or internet and telephone service or usage. These items will be at the Grantee's sole expense.

c. It is anticipated that on or about the date of execution of this Agreement, Grantor will obtain a loan(s) to finance the anticipated Nine Million Five Hundred Twenty-Eight Thousand One Hundred Seventeen Dollars (\$9,528,117) in renovations to the property. Grantee shall cooperate with Grantor and any of its lenders, to provide all information and documentation, and to execute all documents, reasonably requested by same to ensure Grantor can obtain such loan(s).

d. To secure payment of any and all amounts due by Grantee to Grantor under or in connection with this Agreement, including, without limitation, payment of the Usage Fee (collectively, the "Secured Obligations"), Grantee hereby grants to Grantor a first priority lien on, and security interest in, to the extent legally

permissible, all of Grantee's rights, title and interest in, to, and under, any and all subsidy payments, operating funds, financial assistance, benefits, grants, awards and other payments and funds now or at any time hereafter provided by any federal, state or local governmental or quasi-governmental authority, entity, agency or instrumentality, which fund, in whole or in part, any or all of the operating costs of the Grantee's operations at the CSII Premises only (collectively, the "Governmental Payments"), which lien and security interest may be enforced in equity or at law, and Grantor shall be entitled as a matter of right to have a receiver appointed for the Grantee in order to receive or take possession of the Governmental Payments under order of court. Grantee agrees that this Agreement shall be deemed a security agreement, and Grantor shall have, in respect of the Governmental Payments, all of the rights and remedies of a secured party under the applicable Uniform Commercial Code. The Grantee will defend the title to the Governmental Payments (or any part thereof) and will promptly upon request of the Grantor execute, acknowledge, deliver or obtain any financing statement, continuation statement, security agreement, assignment, instruments, acknowledgments, bailee and other third party waivers, filings or other documents as may be necessary or desirable, in the opinion of the Grantor, to create, perfect (by control or otherwise), preserve, provide notice of, maintain, continue, realize upon, protect and/or extend the assignment, lien or security interest granted to the Grantor under this Agreement and its priority. In particular, Grantee hereby authorizes and empowers Grantor to file any financing statement, continuation statement or amendment in furtherance of the foregoing. Grantor agrees that its security interest granted hereunder only applies to Grantee's funds (and any security instrument securing such funds) that are applicable to the CSII Premises, not any other campus. Grantor and its lender(s) will agree to enter into an intercreditor agreement with any other lenders that may have an interest in such funds as they apply to other campuses.

6. **ASSIGNMENT AND SUBLEASING**

Grantee shall not have the right to assign this Agreement or sublet the CSII Premises, in whole or in part, without the prior written consent of Grantor, which may be granted or withheld in Grantor's sole discretion.

7. **DEFAULT**

a. If Grantee defaults in the performance of any of the covenants, conditions or agreements contained in this Agreement, the Prime Lease, or the Lease and fails to cure the same within ten (10) days after receipt of written notice from Grantor for monetary defaults and within twenty (20) days after receipt of written notice from Grantor for non-monetary defaults, Grantor shall be entitled to invoke against Grantee the remedies which are available to Prime Landlord under the Prime Lease, available to the Sublandlord under the Lease, and any other remedy available at law or equity.

b. Notwithstanding the foregoing subparagraph, Grantee acknowledges and agrees that (i) pursuant to the provisions of the Lease, in the event that Grantee's charter to operate a public charter school is terminated or revoked for any reason, it shall be an automatic event of default under this Agreement without any notice or cure period and shall result in the automatic termination of this Agreement without further notice to Grantee, and (ii) the filing of a petition by or against Grantee (A) in any bankruptcy or other insolvency proceeding; (B) seeking any relief under any state or federal debtor relief law; or (C) for the appointment of a liquidator or receiver for all or substantially all of Grantee's property or for Grantee's interest in this Agreement, shall result in an automatic termination of this Agreement without further notice to Grantee; provided, however, if such a petition is filed against Grantee, then such filing shall not result in a termination of this Agreement unless Grantee fails to have the proceedings initiated by such petition dismissed within ninety (90) days after the filing thereof.

c. The failure of Grantor to insist at any time upon the strict performance of any covenant or agreement herein, or to exercise any option, right, power or remedy contained in this Agreement shall not be construed as a waiver or a relinquishment thereof for the future. No act or thing done by Grantor or its agents during the term hereof (other than a written agreement signed by Grantor) shall be deemed an acceptance or surrender of the CSII Premises, and no agreement to accept a surrender of the CSII Premises shall be valid unless in writing and signed by Grantor. No payment by Grantee or receipt by Grantor of a lesser amount than the monthly installment of Usage Fee due under this Agreement shall be deemed to be other than on account of the earliest payment of the Usage Fee due hereunder, or portion thereof, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of the Usage Fee be deemed an accord and satisfaction, and Grantor may accept such check or payment without prejudice to Grantor's right to recover the balance of such Usage Fee or pursue any other remedy in this Agreement or available to Grantor at law or in equity

d. The failure of Grantee to insist at any time upon the strict performance of any covenant or agreement herein, or to exercise any option, right, power or remedy contained in this Agreement shall not be construed as a waiver or relinquishment thereof in the future.

e. In the event either party hereto brings or commences legal proceedings to enforce any of the terms of this Agreement, the successful party in such action shall then be entitled to receive and shall receive from the other of said parties, in every such action commenced, the reasonable, out of pocket legal fees incurred by the successful party in connection with such action, to be fixed by the court in the same action.

8. **SHARED AREAS**

The parties acknowledge that the CSII Premises does not constitute all of the Property and that the Landlord shall have the right, in Landlord's sole and absolute discretion, to grant access\with respect to any portion of the Property that is not part of the CSII Premises (the "Remainder of the Property"). Grantee shall cooperate and comply with Landlord's requirements in connection with the Remainder of the Property including, but not limited to, (a) complying with Rules and Regulations promulgated by Grantor regarding the use of the Property by Grantee and any Other User; (b) entering into a shared use plan with the Landlord; and (c) if Landlord deems necessary, entering into an amendment to this Agreement to reflect the Landlord's use of any portion of the Remainder of the Property. Grantee shall have access, at a minimum, to the loading dock, gymnasium, auditorium/event space for community meetings, and kitchen on a shard basis. Grantee shall be provided with a least the number of parking spaces required to meet code. Additional provisions for shared use of the common and other areas are attached hereto as Exhibit F.A map showing the CSII Premises, common areas, and the rest of the building is attached hereto as Exhibit H.

9. **ALTERATIONS**

a. Grantee shall not make any improvements, alterations or installations (collectively, "Alterations") to the CSII Premises without Grantor's prior written consent, which may be granted or withheld in Grantor's sole discretion. It is acknowledged that, among other things, the Prime Landlord's consent may be required as a precondition in connection with any Alterations pursuant to the terms of the Prime Lease.

b. Grantor and Grantee agree that Grantor will perform the scope of work attached hereto as Exhibit G (the "Planned Improvements"). Grantee has received a SOAR Grant in the amount of \$571,000, which shall be used to reduce the amount of money that Grantor will need to borrow to finance the Planned Improvements, which are budgeted to cost \$9,528,117, which includes \$71,000 allocated for furniture, fixtures, and equipment. If the actual costs are less than \$9,528,117, Grantor will reduce rent by the amount of money that such reduction saves Grantor in financing costs each year. For clarity, if Grantor realizes actual finance savings of \$50,000 in the first year of its loan, based on such reduction in the budget, then Grantee's rent will be reduced by \$50,000 for the first year. Such rent reduction will continue for each year that Grantor actually realizes savings in its financing based on the reduced budget.

10. **COMPLIANCE WITH LAWS**

In addition to any obligations under the Prime Lease and the Lease, Grantee, at its sole expense, shall promptly comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and municipal governments and of any and all their Departments and Bureaus ("Applicable Laws") applicable to the use and occupancy of the CSII Premises by Grantee. Notwithstanding the foregoing, Grantee shall not be responsible for the compliance of the structural elements constituting the CSII Premises itself, with any Applicable Laws. Grantee shall maintain or cause the CSII Premises to be maintained in good condition and repair throughout the Term.

11. **LIMITATIONS ON GRANTOR'S LIABILITY**

Grantee acknowledges that Grantor has made no representations or warranties with respect to the CSII Premises or the Property or any fixtures, equipment or other personal property of Grantor included with the CSII Premises. Grantee accepts the CSII Premises, the Property and any such fixtures, equipment and other personal property in AS IS condition; provided, however, that Grantor shall renovate the CSII Premises at Grantor's sole option, and Grantee shall accept such space as renovated, it being understood and agreed that Grantee shall have no right to review or approve the plans for such renovation. Grantor shall have no liability whatsoever to Grantee if the Prime Landlord or Sublandlord fails to perform or fails to properly perform any services, maintenance, repairs, or other matters, obligations or actions to be performed by the Prime Landlord or Sublandlord under the terms of the Prime Lease or the Lease; provided, however, Grantor will take all reasonable actions necessary to attempt to enforce the Grantor's rights as tenant under the Prime Lease or the Lease for the benefit of both Grantor under the Lease and Grantee with respect to this Agreement.

12. **CASUALTY AND CONDEMNATION**

In the event of casualty or condemnation, if the Prime Lease or the Lease is terminated with respect to the all or a substantial portion of the CSII Premises pursuant to the provisions of the Prime Lease or the Lease, this Agreement shall automatically terminate at the same time and Grantee shall have no claim against Grantor, Prime Landlord, or Sublandlord for the loss of its interest or any of Grantee's property; provided, however, Grantee, subject to the rights granted to the Lender in any of its loan documents may pursue its claim against the appropriate governmental body. If the Prime Lease or the Lease is not terminated but, nevertheless, the CSII Premises is not useable for Grantee's business as a result of a casualty or condemnation and will continue to be so unusable for at least another forty-five (45) days after the same, Grantee, upon the prior written consent of Lender, shall have the right to terminate this Agreement in which event the parties shall have no further liabilities or obligations to each other hereunder, other than Grantor's obligation to return the Security Deposit to the extent required under Section 2. As used herein, the term "Lender" shall mean _____.

13. **NOTICES**

All notices given pursuant to the provisions of this Agreement shall be in writing, addressed to the party to whom notice is given and hand delivered or sent registered or certified mail, return receipt requested, in a postage paid envelope, or by nationally recognized overnight delivery service to the addresses set forth below, or by facsimile to the facsimile number set forth below.

All notices shall be deemed given upon receipt or rejection.

Either party by notice to the other may change or add persons and places where notices are to be sent or delivered. In no event shall either party to this Agreement designate more than three (3) persons to whom it shall request notices be sent in addition to any notice requirements of Prime Landlord.

Notices shall be sent to the following addresses:

If to Grantor:

Charter School Incubator Initiative
910 17th Street, N.W., Suite 1100
Washington, DC 20006
Attention: Thomas Porter
Facsimile Number (202) 457-1980

With a copy to:

Building Hope
910 17th Street, N.W., Suite 1100
Washington, DC 20006
Attention: Michael D'Alessandro
Facsimile Number (202) 457-1980

If to Grantee:

Elsie Whitlow Stokes Community Freedom Public Charter School
3700 Oakview Terrace
Washington, D.C. 20017
Attention: Erika Bryant
Facsimile Number (202) 265-4656

With a copy to:

Greenspan DeLorme and Luchs
1620 L Street NW #900
Washington, D.C. 20036
Attention: Gil DeLorme
Facsimile Number (202) 452-1410

14. **RULES AND REGULATIONS**

Grantee shall observe faithfully and comply with any rules and regulations regarding the Property promulgated by Grantor at any time and from time to time during the term (the "Rules and Regulations"). The Rules and Regulations may address, but are not limited to, the use of the Property and the shared use of the Property by Grantee and any other users. Grantor shall at all times have the right to make changes in and additions to the Rules and Regulations. Any failure by Grantor to enforce any of the Rules and Regulations now or hereafter in effect, either against Grantee or any other users, shall not constitute a waiver of any such Rules and Regulations. Grantor shall not be liable to Grantee for the failure or refusal by any other users, guest, invitee, visitor, or occupant of the Property to comply with any of the Rules and Regulations.

15. **BROKERS**

Grantor and Grantee each warrants to the other that in connection with this Agreement it has not employed or dealt with any broker, agent or finder. Each party shall indemnify and hold the other party harmless from and against any claim for brokerage or other commissions asserted by any broker, agent or finder.

16. **COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which, when taken together, shall constitute one and the same instrument.

17. **GOVERNING LAW**

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the District of Columbia (without reference to choice of laws principles thereof).

18. **NO RECORDING**

Grantor and Grantee agree not to record this Agreement or any memorandum of this Agreement.

19. PUBLIC CHARTER SCHOOL ASSURANCE

Grantee represents and warrants to Grantor that Grantee is a “public charter school” as defined in the Office of Public Charter School Financing and Support Credit Enhancement for Charter Schools Facilities Federal Grant Program Assurances Statement, as attached as Exhibit E hereto, and meets all of the requirements as set forth therein.

20. SUBORDINATION AND ATTORNMENT; ESTOPPEL

a. This Agreement shall be subject and subordinate in all respects to the lien and terms of any mortgage or deed of trust which encumbers the Grantor’s interest in the Lease and/or the Property (each, as amended, restated, supplemented or otherwise modified, a “Superior Instrument”); provided that this subordination will be subject to any holder of such Superior Instrument (together with its or their successors and assigns, a “Lender”) agreeing not to disturb the Grantee’s possession under this Agreement if Grantee attorns to such Lender in all of Grantee’s obligations under this Agreement. So long as (i) the Grantee pays all amounts as may be specified in this Agreement as and when specified by this Agreement and is not otherwise in breach of any of its obligations and covenants pursuant to this Agreement, (ii) the Term of this Agreement has commenced and Grantee is in possession of the CSII Premises, (iii) this Agreement shall be in full force and effect and shall not have been otherwise modified or supplemented in any way without Lender’s prior written consent, (iv) Grantee attorns to Lender in accordance with this Section 20 and (v) neither Lender nor any person acquiring title to the Grantor’s interest in the Property through a foreclosure or a deed in lieu of foreclosure (each an “Acquiring Party”) shall be liable under any actual or implied warranty of construction, any Lender agrees for itself and its successors and assigns and for any Acquiring Party, (i) to recognize Grantee’s rights under this Agreement and (ii) Grantee’s possession of the CSII Premises pursuant to the terms of this Agreement and will not be disturbed during the term of this Agreement by reason of foreclosure. Grantee agrees to attorn to, accept and recognize any Acquiring Party pursuant to the provisions expressly set forth herein for the then remaining balance of the Term. Grantee agrees to execute and deliver, at any time and from time to time, upon request of a Lender or an Acquiring Party, a new agreement with Lender or Acquiring Party upon the same terms and conditions of this Agreement and any reasonable instrument which may be necessary or appropriate to evidence such attornment. Grantor shall also ensure that a new agreement will also provide that any Lender or Acquiring Party shall honor Grantee’s rights under this Agreement and shall not disturb Grantee’s quiet use and enjoyment of the CSII Premises.

b. Grantee shall at the time of closing on any loan by Grantor, execute a Subordination, Non-Disturbance and Attornment Agreement (“SNDA”) in the form

attached hereto as Exhibit C and an Estoppel Certificate in the form attached as Exhibit D, or in any form as reasonably required by any of Grantor's lenders.

21. **FINANCIAL STATEMENTS**

Grantee shall furnish annual financial statements, including balance sheets and income statements within 120 days after each fiscal year end. In addition, Grantee shall furnish interim financial statements as Grantor may from time to time request. All financial statements of Grantee must be in the form and detail acceptable to Grantor, must be certified as to accuracy by the chief financial officer (or equivalent thereof) and in the case of the annual financial statements delivered, must be audited by an independent certified public accountant reasonably satisfactory to Grantor.

22. **LIABILITY FOR DAMAGE OR INJURY AND INDEMNIFICATION.**

To the fullest extent allowed by law, Grantor shall not be liable for any damage to the CSII Premises or any injury to persons sustained by Grantee or its employees, agents, invitees, guests, or other persons caused by conditions or activities on the CSII Premises or the Property, or activities of Grantee in or upon the Property (except to the extent any loss, cost, damage or expense is attributable to the gross negligence or intentional misconduct of Grantor or its agents or employees, and subject to the waiver of subrogation provisions hereof and in the Lease). To the fullest extent allowed by law, Grantee hereby indemnifies and saves harmless Grantor from any liability, loss, cost or expense (including, without limitation, reasonable attorneys' fees) arising out of or in any way relating to the CSII Premises or Grantee's use and occupation thereof (other than any loss, cost, damage or expense attributable to the gross negligence or intentional misconduct of Grantor or its agents or employees). Grantee's obligation hereunder shall survive the termination of this Agreement. Grantee shall carry liability insurance as required of Grantor under the Prime Lease or the Lease, including naming as additional insureds, Grantor, Prime Landlord, Sublandlord, and any of Grantor's lenders. Grantee shall provide Grantor with all certificates of insurance required under the Prime Lease or the Lease, and shall comply with all insurance requirements imposed upon Grantor under the Prime Lease or the Lease.

Notwithstanding anything to the contrary in this Agreement, whether the loss or damage is due to the negligence of Grantor or its agents or employees, or any other cause, Grantee hereby releases Grantor and its agents and employees from responsibility for and waives its entire claim of recovery for (i) any and all loss or damage to the personal property of Grantee located in the CSII Premises arising out of any of the perils which are covered by Grantee's property insurance policy or which would be covered by an all-risk property insurance policy if such policy was obtained by Grantee, or (ii) loss resulting from business interruption at the CSII Premises, arising out of any of the perils which may be covered by the business interruption insurance policy carried by Grantee or which would

be covered by a business interruption insurance policy with twenty-four (24) months coverage if such policy was obtained by Grantee. Similarly, notwithstanding anything to the contrary in this Agreement, whether the loss or damage is due to the negligence of Grantee or its agents or employees, or any other cause, Grantor hereby releases Grantee and its agents and employees from responsibility for and waives its entire claim of recovery for any and all loss or damage to personal property of Grantor located in the CSII Premises, arising out of any of the perils which are covered by any such property insurance or business interruption insurance which Grantor obtains or would be covered if any such policy was obtained by Grantor. Grantor and Grantee shall each cause its respective insurance carrier(s) to consent to such waiver of all rights of subrogation against the other, and to issue an endorsement to all policies of insurance obtained by such party confirming that the foregoing release and waiver will not invalidate such policies.

23. SURRENDER OF CSII PREMISES; HOLDOVER.

Upon the expiration or other termination of the term of this Agreement, Grantee shall quit and surrender to Grantor the CSII Premises, broom clean, in good order and condition, ordinary wear and tear excepted, and Grantee shall remove all of its personal property as provided in the Prime Lease or the Lease. Grantee's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Agreement. In the event of holding over by Grantee or any person or entity claiming under Grantee after expiration or other termination of this Agreement, or in the event Grantee continues to occupy the CSII Premises after the termination of Grantee's right of possession due to a default by Grantee, such holding over or possession shall constitute a tenancy at sufferance, subject to all of the terms and provisions of this Agreement, the Prime Lease, or the Lease. In the event of any such holding over, in addition to any other remedies available to Grantor under this Agreement, at law or in equity, Grantor shall have the right, in accordance with applicable law, to enter upon and take possession of the CSII Premises. Grantee shall, throughout the entire holdover period, pay a fee at the times and in the manner required by this Agreement but at a rate equal to 200% of the Usage Fee payable during the last month of the term of this Agreement preceding the commencement of the holdover period. Grantee shall also be obligated to pay its pro rata share of all operating expenses, utilities and other such costs associated with the CSII Premises during such holdover period. No holding over by Grantee after the expiration of the term of this Agreement and no acceptance of the Usage Fee by Grantor during a holdover period, whether with or without the consent of Grantor, shall be construed to extend the term of this Agreement or prevent Grantor from recovering immediate possession of the CSII Premises by summary proceedings or otherwise. In addition, in the event of any unauthorized holding over, Grantee will protect, defend, indemnify and hold Grantor harmless from and against any claims, demands, liability, costs, expenses or damages (including reasonable attorneys' fees) for which Grantor may become liable to Prime Landlord or Sublandlord under the Prime Lease or the Lease, respectively, due to such holding over.

24. PURCHASE OPTION

Grantee shall have the right to purchase Grantor's leasehold interest in the Property (such right, the "Purchase Right"), subject to the following terms and conditions:

a. Grantee shall exercise the Purchase Right by delivering a written notice to Grantor (the "Notice to Purchase"). Notwithstanding anything to the contrary in this Section 24, Grantor's obligation to sell Grantor's leasehold interest in the Property to Grantee pursuant to this Section 24 shall be conditioned upon the following being true at the time Grantee delivers the Notice to Purchase to Grantor and also on the Closing Date: (i) Grantee must not be in default under any provision of this Agreement; (ii) Grantee must be in good standing in the District of Columbia, (iii) Grantee's charter to operate as a public charter school in the District of Columbia shall be in full force and effect and no proceedings shall be in effect to revoke such charter; and (iv) Grantee must be maintaining a Tier 1 or Tier 2 status per the District of Columbia Public Charter School Board's Performance Management Framework (or comparable status under any future framework used by the District of Columbia Public Charter School Board). Grantee may not, without Grantor's prior written consent, revoke the Notice to Purchase once Grantee has delivered such Notice to Purchase to Grantor.

b. The purchase price payable by Grantee to Grantor in connection with the Purchase Right (the "Purchase Price") shall be an amount equal to the sum of: (i) the principal balance under any loan made by any lender to Grantor that is secured by the Property or any portion thereof (each, a "Renovation Loan") that remains outstanding on the Closing Date (as defined in subsection (c) below), plus (ii) any amounts paid by Grantor or any of Grantor's affiliates in connection with the acquisition, renovation or operation of the Property (including, but not limited to: (x) hard and soft costs paid in connection with the acquisition and renovation of the Property, and (y) operating costs incurred in connection with the operation and maintenance of the Property, in each case regardless of whether or not paid prior to, on or after the date hereof) to the extent not paid with funds from the Renovation Loans. Grantee shall pay the Purchase Price in immediately available funds to Grantor on the Closing Date. In addition, Grantee must cause all Grantor Loans to be repaid in full on or before the Closing Date. In no event will the Purchase Price be offset by any Usage Fee paid in excess of the Purchase Price. Notwithstanding the foregoing, if the Closing Date does not occur on or prior to December 31, 2023, then the Purchase Price shall be increased by one-half of one percent (0.5%) per annum based on the period of time between December 31, 2023 and the actual Closing Date. *For example*, if the Purchase Price, as calculated pursuant to the provisions of this subsection (b) set forth above, would be approximately \$7,200,000 based solely on the initial cost of the renovation (without taking into account any additional renovation costs and operating costs): (i) if the Closing Date occurs prior to December 31, 2023, then the total Purchase Price, including the increase pursuant to the

preceding sentence, will be \$7,200,000; and (ii) if the Closing Date occurs after December 31, 2023, then the total Purchase Price, including the increase pursuant to the preceding sentence, will be \$7,236,000.

c. The closing date of the purchase by Grantee of Grantor's leasehold interest in the Property (the "Closing Date") shall be a date chosen by Grantee, not to exceed ninety (90) days after delivery of the Notice to Purchase. On the Closing Date, Grantor and Grantee shall execute and deliver (i) an Assignment and Assumption of Lease, in form and substance reasonably acceptable to Grantor, conveying to Grantee all of Grantor's right, title and interest in and to the Lease and Grantor's leasehold interest in the Property (which Assignment and Assumption of Lease shall be subject to obtaining all necessary consents and approvals from Prime Landlord and Sublandlord required under the Prime Lease and the Lease, respectively); (ii) a bill of sale, in form and substance reasonably acceptable to Grantor, conveying to Grantee all of Grantor's right, title and interest in and to Grantor's personal property located at the Property, and any warranties, licenses and permits with respect to the Property, in each case that are transferrable by Grantor; (iii) an assignment of leases and contracts, in form and substance reasonably acceptable to Grantor, conveying to Grantee all of Grantor's right, title and interest in and to any leases then in effect with respect to the Property (the "Leases") and any service contracts then in effect which Grantee elects to assume (it being agreed that Grantee will assume any such contract which, by its terms, cannot be terminated as of the Closing Date); (iv) a termination of this Agreement, in form and substance reasonably acceptable to Grantor; (v) the Settlement Statement (as defined below); and (vi) such other documents, agreements, affidavits and instruments which are reasonably required to consummate the conveyance of Grantor's leasehold interest in the Property to Grantee pursuant to this Section 24, in each case in form and substance reasonably acceptable to Grantor.

d. On the Closing Date, Grantor shall convey its leasehold interest to Grantee free and clear of all liens, except for the following (the "Permitted Encumbrances"): (i) liens for taxes not yet due and payable, (ii) any leases and contracts affecting the CSII Premises, (iii) any matters or encumbrances set forth in Grantor's title insurance policy in effect as of the Closing Date; and (iv) such other recorded easements, rights of way, building and use restrictions, exceptions, reservations and limitations that do materially and adversely affect the value of the CSII Premises or the use of the Property as a charter school (except that the term "Permitted Encumbrances" shall not include liens with respect to the Renovation Loans or other monetary liens caused by Grantor that may be satisfied through a fixed payment ("Mandatory Release Items", and Grantor shall pay or satisfy all Mandatory Release Items on or prior to the Closing Date). Except as set forth in the preceding sentence, Grantor will convey the Property to the Grantee "AS IS, WHERE IS" without representation or warranty. Grantor agree, upon conveyance, to assign any building warranties, to the extent that they are still in effect and assignable.

e. Grantee shall arrange its own financing to consummate the purchase of Grantor's leasehold interest in the CSII Premises. Grantee will pay all escrow, closing, documentary, transfer and recording fees and charges with respect to the Closing, and Grantee shall also pay any and all other charges, costs and expenses of closing, including the reasonable fee for Grantor's attorney. In connection with the foregoing, Grantor and Grantee shall execute and deliver a settlement statement setting forth the Purchase Price and all adjustments thereto (the "Settlement Statement").

f. If Grantor shall default under its obligation to convey the Property to Grantee pursuant to this Section 24 as and when required to do so under this Section 24, then Grantee may, in addition to any other rights at law or in equity, bring a claim for specific performance. If Grantee shall default under its obligation to purchase the Property pursuant to this Section 24 as and when required to do so under this Section 24, then, in addition to any other right at law or in equity, Grantor may immediately declare an event of default under Section 7 without any obligation to provide any notice or cure period identified in Section 7.

25. **MISCELLANEOUS**

a. **Waiver of Jury Trial. THE PARTIES HERETO EACH HEREBY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY CLAIM, ACTION, PROCEEDING OR COUNTERCLAIM BY EITHER PARTY AGAINST THE OTHER ON ANY MATTERS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE RELATIONSHIP OF THE PARTIES HERETO OR GRANTEE'S USE OR OCCUPANCY OF THE CSII PREMISES.**

b. **Estoppel Certificates.** Grantee shall, from time to time, within ten (10) business days following request by Grantor, execute and deliver to such persons as the requesting party may request, a statement in recordable form certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which the Usage Fee and other charges payable under this Agreement have been paid, stating that, to Grantee's knowledge, the Grantor is not in default hereunder (or if a default is alleged to exist, stating the nature of such alleged default) and further stating such other matters as Grantor shall reasonably request (to the extent accurate).

c. **Consent of Prime Landlord and Sublandlord.** If execution and delivery of this Agreement requires Prime Landlord's or Sublandlord's consent pursuant to the terms of the Prime Lease or the Lease, respectively, then (i) promptly following the execution and delivery of this Agreement, Grantor shall request such consent; and (ii) if Prime Landlord's or Sublandlord's consent is not received within thirty (30) days of the full execution and delivery hereof, Grantor, by notice to Grantee given prior the receipt of

Prime Landlord's or Sublandlord's consent, may cancel this Agreement, in which case Grantor shall promptly return to Grantee all sums theretofore paid by Grantee hereunder.

d. **Time of the Essence.** Time is of the essence in the performance by Grantee of its obligations hereunder.

e. **Severability.** In the event any part of this Agreement is held to be unenforceable or invalid for any reason, the balance of this Agreement shall not be affected and shall remain in full force and effect during the term of this Agreement.

f. **Binding Effect.** The covenants, conditions, agreements, terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereof and each of their respective successors and assigns, subject to the restrictions and limitations set forth herein.

g. **Entirety.** It is understood and agreed by and between the parties hereto that this Agreement (along with the exhibits attached hereto) contains the final and entire agreement between the parties relative to the subject matter hereof, and that they shall not be bound by any terms, statements, conditions or representations relative to the subject matter hereof, oral or written, express or implied, not herein contained. This Agreement may not be changed or terminated orally or in any manner other than by an agreement in writing and signed by all parties hereto.

h. **Submission Not an Offer.** The submission of this Agreement by Grantor to Grantee shall not constitute an offer by Grantor and Grantor shall not be bound in any way unless and until this Agreement is executed and delivered by both parties.

i. **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

j. **Exhibits.** The exhibits attached hereto are made a substantive part of this Agreement.

[The Remainder of this Page is Intentionally Left Blank]

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

GRANTOR:

CHARTER SCHOOL INCUBATOR
INITIATIVE

By: 

Name: ANA HARVEY

Title: PRESIDENT

GRANTEE:

ELSIE WHITLOW STOKES
COMMUNITY FREEDOM PUBLIC
CHARTER SCHOOL

By: 

Name: Erika Bryant

Title: Executive Director

EXHIBIT A
Copy of Prime Lease

EXHIBIT B
CSII Premises

EXHIBIT C
FORM OF SNDA

EXHIBIT D
FORM OF ESTOPPEL

EXHIBIT E

ASSURANCES STATEMENT

Grantee will operate as a public charter school that:

- A. Operates in accordance with the District of Columbia School Reform Act of 1995," effective April 26, 1996 (Pub. L. No. 104-134; 110 Stat 1321-107; D.C. Official Code 38-188.01 et seq., is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph;
- B. Is created by as a public school, or is adapted from an existing public school, and is operated under public supervision and direction;
- C. Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;
- D. Provides a program of elementary or secondary education, or both;
- E. Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;
- F. Does not charge tuition;
- G. Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and part B of the Individuals with Disabilities Education Act;
- H. Is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;
- I. Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such requirements are specifically waived for the purposed of this program;
- J. Meets all applicable Federal, State, and local health and safety requirements;
- K. Operates in accordance with State law; and
- L. Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

EXHIBIT F
SHARED USE AGREEMENT

EXHIBIT G
SCOPE OF WORK

EXHIBIT H
BUILDING MAP

EXHIBIT I
COPY OF PRIME LEASE