

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
	:	
Old School, Inc., ¹	:	Case No. 25-11016 (CTG)
	:	
Debtor.	:	
	:	
-----	X	Hearing Date: November 24, 2025 at 10:00 a.m. (ET) Obj. Deadline: November 14, 2025 at 4:00 p.m. (ET)

**FIRST OMNIBUS OBJECTION
(SUBSTANTIVE) OF THE DEBTOR TO (A) RECLASSIFY
AND SUBORDINATE CERTAIN CLAIMS PURSUANT TO
BANKRUPTCY CODE SECTION 510(B); AND (B) DISALLOW AND EXPUNGE
CERTAIN CLAIMS PURSUANT TO BANKRUPTCY CODE SECTION 502(E)(1)**

THIS OBJECTION SEEKS TO RECLASSIFY AND SUBORDINATE, AND DISALLOW AND EXPUNGE CERTAIN FILED PROOFS OF CLAIM. CLAIMANTS RECEIVING THIS OBJECTION SHOULD REVIEW THIS OBJECTION AND THE ATTACHMENTS HERETO TO DETERMINE WHETHER THIS OBJECTION AFFECTS THEIR CLAIMS AND LOCATE THEIR NAMES AND CLAIMS ON THE SCHEDULE ATTACHED TO THE PROPOSED ORDER ATTACHED TO THIS OBJECTION.

The above-captioned debtor and debtor-in-possession (the “Debtor”) hereby files this objection (the “Objection”)² and seeks entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to Sections 502 and 510(b) of title 11 of the United States Code (the “Bankruptcy Code”), rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 3007-1 of the Local Rules of the United States Bankruptcy

¹ The Debtor’s (f/k/a Charter School Capital, Inc.) mailing address is Verdolino & Lowey, P.C., 124 Washington Street, Suite 101, Foxboro, MA 02035, and the last four digits of the Debtor’s federal tax identification number are 4278.

² The Debtor acknowledges that this Objection contains both substantive and non-substantive objections; however, due to substantial overlap between the issues raised by Bankruptcy Code Sections 510(b) and 502(e)(1) in this Objection and the lack of prejudice to any claimant, the Debtor submits that efficiency and judicial economy justify a deviation from Local Rule 3007-1(d)(i)(A).

Court for the District of Delaware (the “Local Rules”) (a) reclassifying and subordinating the claims identified on Schedule 1 attached to the Proposed Order (the “Reclassification Claims”);³ and (b) disallowing and expunging the contingent and unliquidated claims for reimbursement or indemnification identified on Schedule 2 of the Proposed Order.

In support of this Objection, the Debtor submits the *Declaration of Brian Ayers in Support of the First Omnibus Objection (Substantive) of the Debtor to (A) Reclassify and Subordinate Certain Claims Pursuant to Bankruptcy Code Section 510(b); and (B) Disallow and Expunge Certain Claims Pursuant to Bankruptcy Code Section 502(e)(1)(B)*, attached hereto as **Exhibit B** (the “Ayers Declaration”) and respectfully represents as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). The Debtor consents under Local Rule 9013-1(f) to the entry of a final order by the Court in connection with this Objection to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgment in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory and legal predicates for the relief sought herein are Bankruptcy Code Sections 502 and 510(b), Bankruptcy Rule 3007, and Local Rule 3007-1.

³ The “Reclassification Claims” are, collectively, the Orthogon Claim (as defined below) and the Indemnification Claims (as defined below). Only the Indemnification Claims are being objected to pursuant to Bankruptcy Code Section 502(e)(1)(B).

BACKGROUND

A. Chapter 11 Case.

4. On June 8, 2025 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”).

5. The Debtor is operating its business and managing its properties as a debtor-in-possession pursuant to Bankruptcy Code Sections 1107 and 1108. No request for the appointment of a trustee or examiner has been made, and no official committees have been appointed in this Chapter 11 Case.

6. Additional factual background regarding the Debtor, including its business operations and corporate and capital structure as of the Petition Date, and the events leading to the filing of this Chapter 11 Case, is set forth in detail in the *Declaration of Stuart Ellis in Support of Charter School Capital, Inc.’s Chapter 11 Petition and First Day Motions* [Docket No. 13] (the “First Day Declaration”).

7. On July 2, 2025, the Court entered an order approving procedures for conducting a sale of substantially all of the Debtor’s assets (the “Bidding Procedures Order”). See Docket No. 91.

8. On July 26, 2025, the Court entered an order approving the sale of substantially all of the Debtor’s assets to New GS, LLC (the “Sale”). See Docket No. 171.

9. On July 29, 2025, the Sale closed. See Docket No. 183.

10. On August 11, 2025, the Debtor filed the Bar Date Motion [Docket No. 189].

11. On August 27, 2025, the Court entered the Bar Date Order [Docket No. 212], setting each of the General Bar Date, Interest Bar Date, and Initial Administrative Claim Bar Date as September 29, 2025 at 5:00 p.m. (prevailing Eastern Time) and the Governmental Bar Date as December 5, 2025 at 5:00 p.m. (prevailing Eastern Time).

B. The Chapter 11 Plan and Treatment of Class 5 510(b) Claims.

12. On October 9, 2025, the Court entered the *Order (I) Granting Interim Approval of the Adequacy of Disclosures in the Combined Disclosure Statement and Plan; (II) Scheduling a Combined Confirmation Hearing and Setting Deadlines Related Thereto; (III) Approving Solicitation Packages and Procedures; (IV) Approving the Form of Ballot; and (V) Granting Related Relief* [Docket No. 266] (the “Solicitation Order”).

13. Pursuant to the Solicitation Order, the Debtor is currently soliciting the *Second Amended Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Old School, Inc.* (the “Plan”) [Docket No. 267].⁴

14. The Plan provides for the post-Sale liquidation of the Debtor’s remaining assets and contemplates distributions as set forth in the Plan.

15. The Plan classifies General Unsecured Claims in Class 3. Holders of Claims in Class 3 (General Unsecured Claims) are entitled to vote on the Plan. Plan, §§ 2.1, 7.3.

16. The Plan classifies claims subject to Bankruptcy Code Section 510(b) in Class 5. Holders of Claims in Class 5 are deemed to reject the Plan and will receive no recovery on account of their Class 5 Claims. *Id.*, §§ 2.1, 7.5.

C. Orthogon Proof Of Claim.

17. On September 29, 2025, Orthogon CSC SPV, LLC (“Orthogon SPV”) filed Proof of Claim No. 10 in the amount of \$3,145,476.80 (the “Orthogon Claim”) based on damages awarded to Orthogon⁵ in pre-petition arbitration proceedings in *Orthogon Charter School Special*

⁴ Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Plan.

⁵ “Orthogon” refers to Orthogon Charter Special Opportunities, LLP, Orthogon Charter Special Opportunities II, LP, and Orthogon Charter Special Opportunities III, LLC. The relationship between Orthogon SPV and Orthogon is unknown.

Opportunities LLP, Orthogon Charter School Special Opportunities II, LP, and Orthogon Charter School Special Opportunities III, LLC v. Charter School Capital, Inc., AAA Case No. 01-24-0009-2550 (the “Arbitration Proceeding”).⁶

18. As outlined in the Arbitration Proceeding, Orthogon and the Debtor were party to various agreements setting forth the terms and conditions upon which Orthogon agreed to purchase the Preferred Equity⁷ of the Debtor—including a condition that the Debtor satisfy a so-called “asset coverage test” that analyzed the ratio of the Debtor’s total assets and liabilities. See Statement of Claim⁸ ¶¶ 12-32.

19. Orthogon alleged that Orthogon Charter Special Opportunities III, LLC purchased \$11.6 million of the Debtor’s Preferred Equity in March and June 2023, based on an asset coverage test that omitted a \$15 million liability; and therefore, “had the correct values been presented, CSC would have failed the Asset Coverage tests, and Orthogon would not have bought Preferred [Equity].” *Id.* ¶ 41.

20. According to Orthogon, Orthogon and the Debtor entered into the CSC Preferred Stock Framework (the “Term Sheet”) to map out the process, governance rights, and waterfall of distributions in connection with a strategy of selling the Debtor’s assets. *Id.* ¶¶ 47-51. Orthogon alleged that the Debtor breached the Term Sheet by entering into a transaction (defined in the Statement of Claim as the “November Transaction”) and failing to distribute the proceeds in accordance with the Term Sheet. *Id.*

⁶ The Debtor’s summary of Orthogon’s Statement of Claim is not an admission that any allegations therein are true.

⁷ The Plan defines Preferred Equity Interest as “that certain series of preferred stock in the Debtor designated as the ‘Series P15 Preferred Stock.’” References to “Preferred Equity” shall mean the Series P15 Preferred Stock.

⁸ A copy of the Statement of Claim is annexed to the Ayers Declaration as Exhibit 1.

21. The Debtor vigorously disputed Orthogon’s allegations. Specifically, the Debtor challenged whether the Term Sheet was a binding, enforceable agreement; whether there was any showing that the Debtor engaged in any wrongdoing (whether intentional or otherwise) in connection with the Asset Coverage Test; and whether the November Transaction ever required Orthogon’s consent. *See Answer & Counterclaim*, pg. 3.

22. Despite the parties’ efforts to resolve the Arbitration Proceeding consensually, they were unable to reach agreement. Thus, the arbitrator held a multi-day evidentiary hearing on Orthogon’s claims in April 2025.

23. On May 22, 2025, the arbitrator issued its decision. *See Final Award of Arbitrator at 10* (the “Arbitration Award”).⁹ In sum, the Arbitrator found that the Term Sheet was enforceable because it was a “process to return to Orthogon the funds it had invested” and that the process “was incorporated into the [Term Sheet].” *Id.* at 4. The Arbitrator also found that the November Transaction required Orthogon’s consent and that Orthogon was damaged by the Debtor’s failure to distribute the proceeds of the November Transaction to Orthogon. *Id.* at 16 – 17.

24. The arbitrator awarded Orthogon \$2,840,666.97 in damages, plus \$213,975 for fees and \$7,234.39 for costs, plus pre- and post- judgment interest. *Id.* at 10.

25. On May 23, 2025, Orthogon filed a motion to confirm the Arbitration Award in New York State court.¹⁰ *See Orthogon Charter School Special Opportunities LLP, Orthogon Charter School Special Opportunities II, LP, Orthogon Charter School Special Opportunities III, LLC v. Charter School Capital, Inc.*, Index No. 653206/2025 (N.Y. Sup. Ct., N.Y. Co. 2025) (the

⁹ A copy of the Arbitration Award is annexed to the Ayers Declaration as Exhibit 2.

¹⁰ Due to procedural deficiencies, Orthogon re-filed its motion to confirm on June 4, 2025.

“NYS Proceeding”). The initial return date on Orthogon’s motion was June 5, 2025, which was later extended to June 12, 2025 due to a procedural deficiency.

26. The Debtor filed its voluntary petition for relief in this Court on June 8, 2025, which stayed the NYS Proceeding. Thus, the Arbitration Award has not been confirmed.

D. The Orthogon SDNY Litigation.

27. On August 29, 2025, Orthogon filed a complaint in the United States District Court for the Southern District of New York against Stuart Ellis and Brad Coburn (the “Orthogon SDNY Complaint”)¹¹ in an action entitled *Orthogon Charter School Special Opportunities LLP, et. al. v. Stuart Ellis and Brad Coburn*, Case No. 25-cv-7193 (the “Orthogon SDNY Litigation”).

28. The factual underpinnings of the Orthogon SDNY Litigation are similar to the facts giving rise to the Arbitration Award.

29. Orthogon alleges that Messrs. Ellis and Coburn, in their respective capacities as the chief executive officer and the chief investment officer of the Debtor, fraudulently induced Orthogon to purchase more than \$11.6 million in Preferred Equity based on materially false financial information, including falsification of an Asset Coverage Test that was a precondition to any sale of Preferred Equity. *Id.* ¶¶ 3-9.

30. For example, the Complaint alleges that Coburn signed the officer certificate that the Debtor was in compliance with the Asset Coverage Test. *Id.* ¶ 4.

31. The Complaint also alleges that “the officers of CSC ignored their obligations under the [Term Sheet]” in approving the November Transactions. *Id.* ¶ 7.

32. The Orthogon SDNY Complaint asserts eight causes of action against Ellis and Coburn, including violations of Sections 10(b) and 20 of the Securities Exchange Act of 1934,

¹¹ A copy of the Orthogon SDNY Complaint is annexed hereto as Exhibit 3 to the Ayers Declaration.

violations of Delaware’s Securities Act, fraud, negligent misrepresentation, breach of contract, breach of fiduciary duty, and unjust enrichment. *Id.* ¶¶ 56-100.

33. Orthogon seeks damages of at least \$11.6 million plus costs and expenses. *Id.* at 22, Prayer for Relief.

E. The Indemnification Claims.

34. On September 17, 2025, Ellis and Coburn (the “Indemnity Claimants”) filed unsecured claims against the Debtor (collectively, the “Indemnification Claims”),¹² based on asserted rights to “indemnification of claims asserted against [each individual] in connection with actions taken by [each individual] on behalf of the Debtor in connection with the Debtor’s business affairs, including without limitation the advancement and payment of all defense costs relating to any such claim,” and—more specifically—for all “claims and costs of defense relating to” the Orthogon SDNY Litigation. Ellis Claim Addendum at 1; Coburn Claim Addendum at 1.

35. The Indemnity Claimants’ asserted indemnification rights are based on the Debtor’s Charter¹³ and Bylaws.¹⁴

36. Article IX of the Charter provides that the Debtor shall, “to the fullest extent permitted by Section 145 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the expenses, liabilities or other matters referred to in or covered by said section. . . .”

¹² See Claim No. 10014 (Ellis) and Claim No. 10015 (Coburn).

¹³ A copy of the Debtor’s Ninth Amended and Restated Certificate of Incorporation (the “Charter”) is annexed hereto as Exhibit 4 to the Ayers Declaration.

¹⁴ A copy of the Bylaws is annexed hereto as Exhibit 5 to the Ayers Declaration.

37. Section 3.13(a) of the Bylaws provides that the corporation shall indemnify to the fullest extent permitted by the Delaware General Corporation Law (DGCL) any and all persons whom it has power to indemnify under the DGCL from and against any and all expenses, liabilities or other matters referred to in or covered by the DGCL.

38. The Indemnification Claimants have not made any formal request or submitted any undertaking to the Debtor for indemnification or reimbursement related to the Indemnification Claims.

RELIEF REQUESTED

39. By this Objection, the Debtor requests entry of the Proposed Order, substantially in the form attached hereto as **Exhibit A**: (A) reclassifying and subordinating the Reclassification Claims identified on Schedule 1 to the Proposed Order as Class 5 Claims; and (B) disallowing and expunging the Indemnification Claims identified on Schedule 2 to the Proposed Order pursuant to Bankruptcy Code Section 502(e)(1)(B).

ARGUMENT

40. Bankruptcy Code Section 502(a) provides that a filed proof of claim is “deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). When asserting a proof of claim against a bankrupt estate, a claimant must allege facts that, if true, would support a finding that the debtor is legally liable to the claimant. *In re Allegheny Int’l, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992); *see also In re F-Squared Inv. Mgmt., LLC*, 546 B.R. 538, 542 n.21 (Bankr. D. Del. 2016) (noting that *Allegheny* provides the standards for reviewing claims objections) (citing *In re Nortel Networks, Inc.*, 469 B.R. 478, 497 (Bankr. D. Del. 2012)). Where the claimant alleges sufficient facts to support its claim, its claim is afforded *prima facie* validity. *Allegheny*, 954 F.2d at 173.

41. A party wishing to dispute a claim’s validity must produce evidence sufficient to negate the claim’s *prima facie* validity. *Id.* at 173-74. Once an objecting party produces such

evidence, the burden shifts back to the claimant to prove the validity of his or her claim by a preponderance of the evidence. *Id.* at 174.

I. The Reclassification Claims Should Be Subordinated And Reclassified Because They Arise From The Purchase Of The Debtor’s Securities

A. Legal Standard

42. Bankruptcy Code Section 510(b) provides:

[A] claim . . . for damages arising from the purchase or sale of [a security of the debtor or an affiliate of the debtor] or for reimbursement or contribution allowed under section 502 on account of such a claim . . . shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock.

11. U.S.C. § 510(b).

43. The Third Circuit holds that Bankruptcy Code Section 510(b) applies to Claims with “some nexus or causal relationship between the claim and the sale of a security.” *See Baroda Hill Invs. Inc. v. Telegroup, Inc. (In re Telegroup, Inc.)*, 281 F.3d 133, 138 (3d Cir. 2002).”).

44. Congress intended Bankruptcy Code Section 510(b) to cover not only claims asserted by equity holders arising from the purchase or sale of securities but also claims asserted by “persons and entities involved with the securities transactions” that gave rise to such claims. *In re Mid-American Waste Sys., Inc.*, 228 B.R. 823, 826 (Bankr. D. Del. 1999) (concluding that Bankruptcy Code Section 510(b) applies to directors, officers and underwriters).

45. Congress decided to amend Bankruptcy Code Section 510(b) in 1984 to add, in relevant part, “reimbursement or contribution” claims “arising from the purchase or sale of such a security” based on policy concerns related to “risk allocation.” *Id.* at 824, 826. “[A] bankruptcy case is a zero-sum situation,” which means that assets should be allocated in bankruptcy based on risk. *Id.* at 825 (quoting H.R. Rep. No. 595, at 195 (1977)). Simply put, the claims arising from

securities transactions should not have the same priority as claims of general creditors because equity holders and general creditors bear different risks with respect to the company, its solvency and the issuance of its securities. *Id.* at 826.

46. More recent case law in Delaware continues to adopt this approach. *See e.g. In re Charge Enters., Inc.*, No. 24-10349 (TMH), 2024 WL 5131141, at *11 (Bankr. D. Del. Dec. 16, 2024) (subordinating director indemnification claims for violations of securities laws, fraudulent inducement/misrepresentation, negligent misrepresentation, and breach of fiduciary duties because the claims could not have arisen “but for” the plaintiffs’ purchase of the debtor’s stock).

B. The Indemnification Claims Should Be Subordinated And Reclassified Pursuant to Bankruptcy Code Section 510(b)

47. Bankruptcy Code Section 510(b) is “broad enough to include indemnification claims for both liabilities and expenses incurred on account of a claim for ‘damages arising from the purchase or sale’ of the debtor’s or its affiliate’s securities.” *In re Touch Am. Holdings, Inc.*, 381 B.R. 95, 103 (Bankr. D. Del. 2008) (citation omitted); *Charge*, 2024 WL 5131141, at *9 (Bankr. D. Del. Dec. 16, 2024); *Mid-American Waste*, 228 B.R. at 824 (“[T]he plain language of § 510(b), its legislative history, and applicable case law clearly show that § 510(b) intends to subordinate the indemnification claims of officers, directors, and underwriters for both liability and expenses incurred in connection with the pursuit of claims for rescission or damages by purchasers or sellers of the debtor’s securities.”).

48. Because the Indemnification Claims seek indemnification from the Debtor in connection with the Orthogon SDNY Litigation, they must be subordinated. *Charge* is instructive in this regard. There, former officers and directors of the debtor filed indemnification claims seeking reimbursement for costs, liability and expenses incurred in connection with two litigations, one alleging violations of Sections 10(b) and 20(a) of the Securities Exchange Act; and one

alleging fraudulent inducement, negligent misrepresentation, and breach of fiduciary duty. *Charge*, 2024 WL 5131141, at *2.

49. The officers and directors in *Charge* contended that their indemnification claims should not be subordinated under Bankruptcy Code Section 510(b) because such right is contractual, rather than statutory. *Id.* at *4. Applying *Telegroup*’s “nexus test,” the *Charge* court rejected this argument, finding that a nexus was present between the purchase of stock and both of the pending litigations. *Id.* at *10 (“such nexus exists” because for “both sets of claims, a purchase or sale of securities caused the litigation, which caused the indemnification claims”).

50. Judge Horan reasoned that the alleged securities law violations were premised on laws which impose restrictions on the purchase and sale of securities, and thus the litigation arose from the purchase or sale of securities on its face. *Charge*, 2024 WL 5131141, at *10. The Court also found the second litigation was based on alleged misconduct during the potential indemnitee’s sale of securities, and should also be subordinated because the claims “could not have arisen but for the plaintiffs’ purchase of [the debtor’s] stock.” *Charge*, 2024 WL 5131141, at *11 (emphasis added).

51. Likewise here, the essence of the Orthogon SDNY Litigation is that the Indemnity Claimants caused Orthogon to purchase more than \$11 million in the Debtor’s Preferred Equity based on allegedly materially false financial information. Orthogon SDNY Compl, ¶¶ 181-184.

52. The first, second, and third counts in the Orthogon SDNY Litigation allege the Indemnity Claimants violated federal and state securities laws, based on allegations that the Indemnity Claimants made misstatements, or were responsible for the dissemination of misinformation related to Orthogon’s acquisition of the Debtor’s Preferred Equity. *See* Orthogon SDNY Compl, ¶¶ 56 – 72. Thus, each of these causes of action would not exist “but for”

Orthogon's purchase of the Debtor's Preferred Equity, and therefore fall squarely within Bankruptcy Code Section 510(b). *See Charge*, 2024 WL 5131141, at *11

53. The fourth, fifth, sixth, seventh and eighth causes of action in the Orthogon SDNY Litigation also would not have arisen but for Orthogon's purchase of stock. Orthogon SDNY Compl, ¶¶ 73–100. Each Claim is predicated on the same factual basis: that the Indemnity Claimants purportedly misrepresented information in connection with Orthogon's purchase of the Debtor's Preferred Equity. *Id.*

54. Therefore, the Court should subordinate the Indemnification Claims pursuant to Bankruptcy Code Section 510(b) and reclassify them as Class 5 Claims.

**C. The Orthogon Claim Should Be Subordinated
And Reclassified Pursuant to Bankruptcy Code Section 510(b).**

55. The Orthogon Claim is also subject to subordination pursuant to Bankruptcy Code Section 510(b) and must be reclassified because the requisite “nexus” exists between the Orthogon Claim and Orthogon's purchase of Preferred Equity of the Debtor. *Telegroup*, 281 F.3d at 138.

56. As discussed above, the Arbitration Proceeding was about Orthogon's efforts to recover the funds it used to purchase the Preferred Equity. *See supra* ¶ 24. The arbitrator agreed, explaining that the Term Sheet was intended to “return to Orthogon the funds it had invested,” and the damages awarded were the result of a breach of that Term Sheet. Arbitration Award at 4. The Orthogon Claim seeks recovery against the estate based on the Arbitration Award. *See* Orthogon Proof of Claim, Attachment, Sect. II. Therefore, the requirements to return the funds set out under the Term Sheet would never have arisen “but for” Orthogon's purchase of the Preferred Equity, and the purpose of the Term Sheet was to return such investment. *Charge*, 2024 WL 5131141 at *11.

57. The fact that the Arbitration Award was granted, and purports to liquidate Orthogon's claim against the debtor based on a purported contract, does not change the analysis. Rather, the Court must conduct its 510(b) analysis based on the underlying allegations in the complaint that gave rise to the liquidated claim. *See Liquidating Tr. of U.S. Wireless Corp. v. Wax (In re U.S. Wireless Corp.)* 384 B.R. 713, 716 (Bankr. D. Del. 2008) (subordinating claim that was based on an arbitration award against the debtor for breach of contract and other related claims because that litigation was a claim for "damages arising from the purchase or sale of a security").¹⁵

58. Here, similar to *Wireless*, the Arbitration Proceeding was predicated on the purchase and sale of equity securities of the Debtor, and thus the Orthogon Claim is subject to subordination under Bankruptcy Code Section 510(b).

59. Therefore, the Court should subordinate the Orthogon Claim pursuant to Bankruptcy Code Section 510(b) and reclassify it as a Class 5 Claim.

II. The Indemnification Claims Must Be Disallowed And Expunged Pursuant To Bankruptcy Code Section 502(e)(1)(B).

60. The Indemnification Claims are also disallowable pursuant to Bankruptcy Code Section 502(e)(1)(B), which provides:

[T]he court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that . . . such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution . . .

¹⁵ The Court in *Wireless* explained that:

This finding required the arbitrator to determine the value of the stock and various other equity interests Wax would have received if U.S. Wireless had not breached the employment agreement. The damages Wax received were based on this determination. . . . Based on the claims asserted by Wax at state court and upon which the arbitrator based Wax's recovery, it is clear that Wax's claim is for damages arising from the purchase or sale of the Equity Package. Accordingly, the Court is required to subordinate Wax's claim . . . under section 510(b) of the Bankruptcy Code.

384 B.R. 713, 727-28 (Bankr. D. Del. 2008).

11 U.S.C. § 502(e)(1)(B); *see also Touch Am. Holdings, Inc.*, 381 B.R. 95, 107-110 (Bankr. D. Del. 2008) (“Touch. Am. I”); *In re Touch Am. Holdings, Inc.*, 409 B.R. 712, 719-20 (Bankr. D. Del. 2009) (“Touch Am. II”). Put simply, a claim is subject to disallowance when (a) it is contingent, (b) it is for reimbursement or contribution, and (c) the debtor and claimant are co-liable on the claim. 11 U.S.C. § 502(e)(1)(B); *see In re RNI Wind Down Corp.*, 369 B.R. 174, 181 (Bankr. D. Del. 2007).

61. The Indemnification Claims meet all three requirements.

62. **First**, the Indemnification Claims are contingent. A claim is “contingent” unless and until the claimant obtains (a) a determination of liability against the debtor and (b) makes payment on that liability. *RNI Wind Down*, at 182-83 (finding that a contingent claim under Bankruptcy Code Section 502(e)(1)(B) is one that “has not yet accrued and . . . is dependent upon some future event that may never happen”). The determination of whether a claim is “contingent” is made at the time of the allowance or disallowance of the claim, which is the date of ruling on the contested claim. *See In re APCO Liquidating Tr.*, 370 B.R. 625, 631 (Bankr. D. Del. 2007); *In re Drexel Burnham Lambert Grp. Inc.*, 148 B.R. 982, 986 (Bankr. S.D.N.Y. 1992). Here, the Indemnity Claimants have failed to provide any basis to support that they have an actual right to payment:

- the proofs of claim state that they are “unliquidated” claims on the face of the form. Coburn Claim, Part 2, Sect. 7; Ellis Claim, Part 2, Sect. 7.
- the proofs of claim do not assert that the Indemnity Claimants have obtained a determination that they are liable for amounts that would give rise to a mandatory indemnification obligation. *See Generally* Coburn Claim, Addendum; Ellis Claim, Addendum.
- the proofs of claim state that the Indemnification Claims were filed “to protect [Indemnity Claimant] from forfeiture of its rights and remedies.” *See* Coburn Claim, Addendum; Ellis Claim, Addendum.

- the proofs of claim do not establish that the Indemnity Claimants have actually paid any third party for any amount that would be indemnifiable. *See* Coburn Claim Addendum; Ellis Claim, Addendum.

63. The Indemnification Claims are dependent on the mere possibility that the Indemnity Claimants might be obligated to remit amounts at some point in the future, including as a result of the Orthogon SDNY Litigation or some other future litigation, and that the Debtor might be required to indemnify them thereafter. However, such liabilities may never arise. Thus, the Indemnification Claims fit squarely in the category of “contingent” claims.

64. **Second**, the Indemnification Claims are claims for reimbursement. Delaware bankruptcy courts have repeatedly found that claims by directors and officers for defense costs and other indemnification obligations constitute a Claim for reimbursement under Bankruptcy Code Section 502(e)(1)(B). *See, e.g., Touch Am. I*, 381 B.R. at 107-110; *Touch Am. II*, 409 B.R. at 715-16 (citing *RNI Wind Down*, 369 B.R. at 181); *see also Charge*, 2024 WL 5131141, at *8. Here, the Indemnity Claimants are seeking recovery for “indemnification of claims asserted against [Claimants]” and “advancement and payment of all defense costs” related thereto, both of which Delaware courts have found fit squarely as claims for “reimbursement.” Ellis Claim Addendum at 1; Coburn Claim Addendum at 1.

65. **Third**, the Debtor could have been co-liable with respect to the underlying liability. The concept of co-liability is “broad enough to encompass any type of liability shared with the debtor, whatever its basis.” *See Norpak Corp. v. Eagle-Picher Indus., Inc. (In re Eagle-Picher Indus., Inc.)*, 131 F.3d 1185, 1190 (6th Cir. 1997) (citation omitted); *see also In re Chemtura Corp.*, 436 B.R. 286, 295 (Bankr. S.D.N.Y. 2010) (citation omitted) (indicating that courts have found

that co-liability under Bankruptcy Code Section 502(e)(1)(B) includes “all situations wherein indemnitors or contributors could be liable with the debtor”).¹⁶

66. The fact that the Debtor is not an actual defendant in the Orthogon SDNY Litigation does not negate a finding of co-liability under Bankruptcy Code Section 502(e)(1). *See, e.g., RNI Wind Down*, 369 B.R. at 188 (“The failure of the SEC or the DOJ to file a claim against the Debtors does not, in itself, alter the co-liability to the government of the Debtors and [the claimant]”); *APCO Liquidating Tr.*, 370 B.R. at 635 (“[S]ection 502(e) does not require that a proof of claim be filed in the proceeding to be liable with the debtor...”); *Sorenson v. Drexel Burnham Lambert Grp. Inc. (In re Drexel Burnham Lambert Grp. Inc.)*, 146 B.R. 92, 95-96 (S.D.N.Y. 1992) (“[T]he co-liability requirement is to be interpreted to require a finding that the causes of action in the underlying lawsuit assert claims upon which, if proven, the debtor could be liable but for the automatic stay” and finding co-liability satisfied because “most of the civil charges” were “claims on which [the debtor] could be held jointly liable with the former officers or vicariously liable through them.”).

67. Here, while the Debtor is not named in the Orthogon SDNY Complaint, Orthogon could have made the same allegations against the Debtor in the Orthogon SDNY Litigation, but it elected not to seek to lift the automatic stay to pursue such claims.¹⁷ And indeed, Orthogon *has* asserted liability against the Debtor on account of its Preferred Equity, at least twice: first, on

¹⁶ The Indemnification Claims should be barred as to both legal expenses incurred by the Indemnity Claimants, as well as any underlying liability for an action. In *Touch Am. II* the court found co-liability met, both for reimbursement of legal costs incurred by a indemnified director and for any judgment of liability entered into against such director in a civil action, reasoning that the “interdependence between [the claimant's] defense costs and the underlying action for indemnification costs places all of [the claimant's] claims under the umbrella.” 409 B.R. at 719. The Debtor acknowledges courts in Delaware do not take a uniform approach regarding co-liability as it relates to fee advancement.

¹⁷ In fact—the allegations in the Orthogon SDNY Complaint substantially overlap with the allegations in the Arbitration Proceeding.

account of the Orthogon Claim pursuant to which Orthogon has asserted entitlement to over \$3 million of the \$11.6 million of Preferred Equity Orthogon purchased; and second, on account of the same equity securities, in the various proofs of interest Orthogon filed against the estate.¹⁸

68. Accordingly, the Court should disallow the Indemnification Claims under Bankruptcy Code Section 502(e)(1)(B) because the Indemnification Claims are: (a) contingent on the resolution of the underlying litigation; (b) for reimbursement; and (c) claims in which the Debtor and the Indemnity Claimants are co-liaible.

RESPONSES TO THIS OBJECTION

69. To contest the determinations made as to the disputed Claims included in this Objection, a claimant must file with the Office of the Clerk of the Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801, a written response to this Objection (a “Response”) no later than November 14, 2025 at 4:00 p.m. (prevailing Eastern Time) (the “Response Deadline”) and serve the Response upon counsel to the Debtor, (A) Goodwin Procter LLP, 620 Eighth Avenue, New York, New York 10018 (Attn: Stacy Dasaro (sdasaro@goodwinlaw.com) and Kizzy Jarashow (kjarashow@goodwinlaw.com)) and (B) Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: Aaron H. Stulman (astulman@potteranderson.com) and Brett M. Haywood (bhaywood@potteranderson.com)).

70. Each Response to this Objection must, at a minimum, contain the following information:

- A. a caption setting forth the name of the Court, the name of the Debtor, the case number, and the title of the Objection to which the Response is directed;
- B. the name of the claimant, the claim number, and a description of the basis for the amount of the claim;

¹⁸ Claim Nos. 40002, 40003, and 40004.

- C. the specific factual basis and supporting legal argument upon which the party will rely in opposing this Objection;
- D. all documentation and other evidence in support of the Claim not previously filed with the Court or Epiq, upon which the claimant will rely in opposing this Objection; and
- E. the name, address, telephone number, and/or email address of the person(s) which may be the claimant or the claimant's legal representative with whom counsel for the Debtor should communicate with respect to the claim subject to the Objection or the Response and who possesses authority to reconcile, settle, or otherwise resolve the objection to the claim on behalf of the claimant.

71. If a claimant fails to timely file and serve a Response by the Response Deadline, the Debtor may present to the Court an appropriate order without further notice to the claimant or a hearing.

72. The Debtor may file and serve a reply to any Response in accordance with the Local Rules. The Debtor reserves the right to adjourn the hearing on any Response to this Objection, which adjournment will be noted on the notice of agenda for the hearing.

SEPARATE CONTESTED MATTERS

73. To the extent a Response is filed regarding any claim listed in this Objection and the Debtor are unable to resolve the Response, the objection by the Debtor to such claim shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. Any order entered by the Court regarding an objection asserted in this Objection shall be deemed a separate order with respect to each claim subject hereto.

RESERVATION OF RIGHTS

74. The Debtor reserves the right to amend, modify, and/or supplement this Objection, and to object further to each of the disputed Claims on any and all additional factual and legal grounds, including on any substantive grounds upon the submission by the Indemnity Claimants of an undertaking or other formal request for indemnification. Nothing in this Objection and/or

the exhibits hereto shall be construed as an admission of the amount, priority, and/or status of any claim.

COMPLIANCE WITH LOCAL RULE 3007-1

75. To the best of the Debtor's knowledge and belief, this Objection complies with Local Rule 3007-1. To the extent this Objection does not comply in all respects with the requirements of Local Rule 3007-1, the undersigned believes such deviations are not material and respectfully requests that any such requirement be waived.

NOTICE

76. Notice of this Objection has been provided to: (a) the U.S. Trustee; (b) the DIP Lender; (c) the holders of the twenty (20) largest unsecured claims against the Debtor; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the District of Delaware; (f) the Delaware Secretary of State; (g) the Delaware State Treasury; (h) the state attorneys general for all states in which the Debtor conducts business; (i) the claimants listed on Schedule 1 and Schedule 2 to the Proposed Order; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is necessary. No prior motion for the relief requested herein has been made to this or any other court.

[Signature Page Follows]

Dated: October 24, 2025
Wilmington, Delaware

POTTER ANDERSON & CORROON LLP

/s/ James R. Risener

Aaron H. Stulman (No. 5807)
Brett M. Haywood (No. 6166)
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- and -

GOODWIN PROCTER LLP

Howard S. Steel (admitted *pro hac vice*)
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jlathrop@goodwinlaw.com

Counsel for Debtor and Debtor in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

-----	x	
	:	
In re:	:	Chapter 11
	:	
Old School, Inc., ¹	:	Case No. 25-11016 (CTG)
	:	
Debtor.	:	
	:	
-----	x	Hearing Date: November 24, 2025 at 10:00 a.m. (ET)
		Obj. Deadline: November 14, 2025 at 4:00 p.m. (ET)

**NOTICE OF DEBTOR’S FIRST OMNIBUS OBJECTION
(SUBSTANTIVE) OF THE DEBTOR TO (A) RECLASSIFY
AND SUBORDINATE CERTAIN CLAIMS PURSUANT TO
BANKRUPTCY CODE SECTION 510(B); AND (B) DISALLOW AND EXPUNGE
CERTAIN CLAIMS PURSUANT TO BANKRUPTCY CODE SECTION 502(E)(1)**

PLEASE TAKE NOTICE that the above-captioned debtor and debtor in possession (the “Debtor”), filed the *Debtor’s First Omnibus Objection (Substantive) of the Debtor to (A) Reclassify and Subordinate Certain Claims Pursuant to Bankruptcy Code Section 510(b); and (B) Disallow and Expunge Certain Claims Pursuant to Bankruptcy Code Section 502(e)(1)* (the “Objection”) with the United States Bankruptcy Court for the District of Delaware (the “Court”). **Your claim(s) may be modified and/or disallowed as a result of the Objection. Therefore, you should read the attached Objection carefully.**

PLEASE TAKE FURTHER NOTICE THAT YOUR RIGHTS MAY BE AFFECTED BY THE OBJECTION AND BY ANY FURTHER CLAIM OBJECTION THAT MAY BE FILED BY THE DEBTOR OR OTHERWISE. THE RELIEF SOUGHT HEREIN IS WITHOUT PREJUDICE TO THE DEBTORS’ RIGHT TO PURSUE FURTHER OBJECTIONS AGAINST YOUR CLAIM(S) SUBJECT TO THE OBJECTION

¹ The Debtor’s (f/k/a Charter School Capital, Inc.) mailing address is Verdolino & Lowey, P.C., 124 Washington Street, Suite 101, Foxboro, MA 02035, and the last four digits of the Debtor’s federal tax identification number are 4278.

IN ACCORDANCE WITH APPLICABLE LAW AND APPLICABLE ORDERS OF THE COURT.

PLEASE TAKE FURTHER NOTICE that, if the holder of a claim that is the subject of the Objection wishes to respond to the Objection, the holder must file a written response with the Court and serve it on the undersigned counsel so as to be received on or before on or before **November 14, 2025 at 4:00 p.m. (ET).**

PLEASE TAKE FURTHER NOTICE that, responses to the Objection must contain, at a minimum, the following: (a) a caption setting forth the name of the Court, the above-referenced case number and the title of the Objection to which the response is directed; (b) the name of the claimant, his/her/its claim number, and a description of the basis for the amount of the claim; (c) the specific factual basis and supporting legal argument upon which the claimant will rely in opposing this Objection; (d) any supporting documentation, to the extent it was not included with the proof of claim previously filed with the clerk or claims agent, upon which the claimant will rely to support the basis for and amounts asserted in the proof of claim; and (e) the name, address, telephone number, and/or email address of the person(s) (which may be the claimant or the claimant's legal representative) with whom counsel for the Debtor should communicate with respect to the claim or the Objection and who possesses authority to reconcile, settle, or otherwise resolve the Objection to the disputed claim on behalf of the claimant.

PLEASE TAKE FURTHER NOTICE that, if no response to the Objection is timely filed and received in accordance with the above procedures, an order may be entered sustaining the Objection without further notice or hearing. If a response is properly filed, served and received in accordance with the above procedures and such response is not resolved, a hearing to consider such response and the Objection will be held before the Honorable Craig T. Goldblatt, United

States Bankruptcy Court, 824 North Market Street, 3rd Floor, Courtroom No. 7, Wilmington, Delaware 19801 on **November 24, 2025 at 10:00 a.m. (ET)** (the “Hearing”). Only a response made in writing and timely filed and received will be considered by the Court at the Hearing.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: October 24, 2025
Wilmington, Delaware

POTTER ANDERSON & CORROON LLP

/s/ James R. Risener III

Aaron H. Stulman (No. 5807)
Brett M. Haywood (No. 6166)
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- and -

GOODWIN PROCTER LLP
Howard S. Steel (admitted *pro hac vice*)
Stacy Dasaro (admitted *pro hac vice*)
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Counsel for Debtor and Debtor in Possession

Exhibit A
Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	X	
	:	
In re:	:	Chapter 11
	:	
Old School, Inc., ¹	:	Case No. 25-11016 (CTG)
	:	
Debtor.	:	
	:	
	X	

**ORDER GRANTING FIRST OMNIBUS OBJECTION
(SUBSTANTIVE) OF THE DEBTOR TO (A) RECLASSIFY AND
SUBORDINATE CERTAIN CLAIMS PURSUANT TO BANKRUPTCY
CODE SECTION 510(B); AND (B) DISALLOW AND EXPUNGE CERTAIN
CLAIMS PURSUANT TO BANKRUPTCY CODE SECTION 502(E)(1)**

Upon consideration of the omnibus objection (the “Objection”)² of the above captioned debtor and debtor in possession (the “Debtor”) for entry of an order (this “Order”), pursuant to Bankruptcy Code Sections 502 and 510(b), Bankruptcy Rule 3007, and Local Rule 3007-1, (a) reclassifying the Claims identified on **Schedule 1** attached hereto as Class 5 Claims under the Plan, and subordinating such Claims pursuant to Bankruptcy Code Section 510(b); and (b) disallowing and expunging the Claims identified on **Schedule 2** pursuant to Bankruptcy Code Section 502(e)(1)(B), all as more fully described in the Objection; and the Court having determined that the Court has jurisdiction to consider the Objection in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012; and the Court having determined that this is

¹ The Debtor’s (f/k/a Charter School Capital, Inc.) mailing address is Verdolino & Lowey, P.C., 124 Washington Street, Suite 101, Foxboro, MA 02035, and the last four digits of the Debtor’s federal tax identification number are 4278.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Objection.

a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having determined that venue of this proceeding and the Objection is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the Debtor's notice of the Objection and opportunity for a hearing were appropriate under the circumstances and no other notice need be provided; and the Court having reviewed the Objection and the Ayers Declaration and having heard the statements in support of the relief requested therein at a hearing, if any (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Objection, the Ayers Declaration, and at the Hearing, if any, establish just cause for the relief granted herein; and the Court having determined that the relief requested in the Objection is in the best interests of the Debtor, its estate, its creditors, and other parties in interest; and upon all of the proceedings had before this Court, and after due deliberation and sufficient cause appearing therefor

JURISDICTION AND VENUE

1. The Objection is SUSTAINED as set forth herein.
2. Any Response to the Objection not otherwise withdrawn, resolved, or adjourned is hereby overruled on the merits.
3. The disputed Claims listed on **Schedule 1** annexed hereto are subordinated pursuant to Bankruptcy Code Section 510(b) and reclassified, as Class 5 Claims.
4. The disputed Claims listed on **Schedule 2** are hereby disallowed and expunged in their entirety.
5. The claims and noticing agent is authorized and directed to modify the claims register for this Chapter 11 Case in accordance with this Order.
6. The objection by the Debtor to each of the disputed Claims constitutes a separate contested matter as contemplated under Bankruptcy Rule 9014. Any stay of this Order shall apply

only to the contested matter that involves such creditor and shall not act to stay the applicability or finality of this Order with respect to the other contested matters covered hereby.

7. This Order is without prejudice to the rights of the Debtor, or any other party in interest, as applicable, to (a) file subsequent objections to any claim on any ground, (b) amend, modify, and/or supplement the Objection, including, without limitation, the filing of objections to further amended or newly filed claims, (c) seek expungement or reduction of any claim to the extent all or a portion of such claim has been paid, and (d) settle any claim for less than the asserted amount are preserved.

8. The Debtor and Epiq are authorized to modify the claims register to comport with the entry of this Order.

9. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Objection.

10. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Schedule 1**Reclassified Class 5 510(B) Claims**

No.	Name of Claimant	Claim Number	Claim Amount	Classification Status	Modified Classification Status	Reason for Reclassification
1	Coburn, Brad	10015	\$11,600,000.00	Class 3 General Unsecured Claim	Class 5: 510(b) Claim	This is a claim for damages arising from this claimant's purchase or sale of equity securities.
2	Ellis, Stuart	10014	\$11,600,000.00	Class 3 General Unsecured Claim	Class 5: 510(b) Claim	This is a claim for damages arising from this claimant's purchase or sale of equity securities.
3	Orthogon CSC SPV, LLC	10	\$3,145,476.80	Class 3 General Unsecured Claim	Class 5: 510(b) Claim	This is a claim for damages arising from this claimant's purchase or sale of equity securities.

Schedule 2**Expunged and Disallowed Claims**

No.	Name of Claimant	Claim Number	Claim Amount	Reason for Reclassification
1	Coburn, Brad	10015	\$11,600,000.00	This is a contingent indemnification claim that should be disallowed under Bankruptcy Code Section 502(e)(1).
2	Ellis, Stuart	10014	\$11,600,000.00	This is a contingent indemnification claim that should be disallowed under Bankruptcy Code Section 502(e)(1).

Exhibit B

Ayers Declaration

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	X	
	:	
In re:	:	Chapter 11
	:	
Old School, Inc., ¹	:	Case No. 25-11016 (CTG)
	:	
Debtor.	:	
	:	
	X	Hearing Date: November 24, 2025 at 10:00 a.m. (ET) Obj. Deadline: November 14, 2025 at 4:00 p.m. (ET)

**DECLARATION OF BRIAN AYERS IN
SUPPORT OF THE FIRST OMNIBUS OBJECTION
(SUBSTANTIVE) OF THE DEBTOR TO (A) RECLASSIFY
AND SUBORDINATE CERTAIN CLAIMS PURSUANT TO
BANKRUPTCY CODE SECTION 510(B); AND (B) DISALLOW AND EXPUNGE
CERTAIN CLAIMS PURSUANT TO BANKRUPTCY CODE SECTION 502(E)(1)**

Brian Ayers, hereby declare that the following is true and correct to the best of my knowledge, information, and belief:

1. I am a Managing Director of Rock Creek Advisors, LLC (“Rock Creek”), which has an office at 1738 Belmar Blvd., Belmar, New Jersey 07719. Rock Creek was retained effective as of the Petition Date to serve as the Debtor’s financial advisor. [Docket No. 138].

2. I submit this declaration (the “Declaration”) in support of the *First Omnibus Objection (Substantive) of the Debtor to (A) Reclassify and Subordinate Certain Claims Pursuant to Bankruptcy Code Section 510(b); and (B) Disallow and Expunge Certain Claims Pursuant to Bankruptcy Code Section 502(e)(1)(B)* (the “Objection”).²

¹ The Debtor’s (f/k/a Charter School Capital, Inc.) mailing address is Verdolino & Lowey, P.C., 124 Washington Street, Suite 101, Foxboro, MA 02035, and the last four digits of the Debtor’s federal tax identification number are 4278.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Objection.

3. All facts set forth in this Declaration are based on my personal knowledge, my communications with current and former members of the Debtor's senior management, my discussions with the Debtor's retained professionals, my review of relevant documents, or my opinion, based on my overall professional experience, in light of my personal knowledge of the Debtor's operations, business affairs, and financial conditions. I am over the age of 18 and authorized to submit this Declaration on behalf of the Debtor as the financial advisor to the Debtor. If called upon to testify, I would testify to the facts set forth herein.

4. The Debtor, in consultation with their advisors, has determined that the claims listed on Schedules 1 and 2 should be reclassified and subordinated and/or expunged and disallowed after performing an extensive review of its books and records, the Proofs of Claim and related supporting documentation, and the following documents that are attached hereto:

Exhibit 1: is a true and correct copy of the Statement of Claim in the Arbitration Proceeding.

Exhibit 2: is a true and correct copy of the Arbitration Award.

Exhibit 3: is a true and correct copy of the Orthogon SDNY Complaint.

Exhibit 4: is a true and correct copy of the Ninth Amended and Restated Certificate of Incorporation.

Exhibit 5: is a true and correct copy of the Debtor's Amended and Restated Bylaws effective as of January 1, 2022.

5. Based on my review and analysis, the information on Schedule 1 and Schedule 2 to the Proposed Order in support of reclassifying and subordinating and/or disallowing and expunging the disputed Claims is true and correct to the best of my knowledge and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: October 24, 2025

/s/ Brian Ayers

Brian Ayers

Exhibit 1

IN ARBITRATION BEFORE THE
AMERICAN ARBITRATION ASSOCIATION

ORTHOOGON CHARTER SCHOOL SPECIAL
OPPORTUNITIES LLP, ORTHOOGON CHARTER
SCHOOL SPECIAL OPPORTUNITIES II, LP, and
ORTHOOGON CHARTER SCHOOL SPECIAL
OPPORTUNITIES III, LLC,

Claimants,

v.

CHARTER SCHOOL CAPITAL, INC.,

Respondent.

Case No.

STATEMENT OF CLAIM

Claimants Orthogon Charter School Special Opportunities LLP, Orthogon Charter School Special Opportunities II, LP, and Orthogon Charter School Special Opportunities III, LLC (collectively, “Orthogon” or “Claimant”) by their attorneys, Beys Liston & Mobargha LLP, as and for their Statement of Claim against Respondent Charter School Capital, Inc. (“CSC” or “Respondent”), allege as follows:

NATURE OF THE ACTION

1. Orthogon brings this action against CSC for breach of contract. The contract at issue, dated June 24, 2024, is entitled “CSC Preferred Stock Framework” (the “Contract”). Exhibit A. The parties entered into the Contract in contemplation of a full settlement of Orthogon’s claims against CSC and two of its officers, Stuart Ellis (“Ellis”) and Brad Coburn (“Coburn”) (the “CSC Officers”), for, *inter alia*, earlier violations of the federal and state securities laws, fraud, negligent misrepresentation, breaches of contract, and breaches of fiduciary duty. CSC and its officers, however, subsequently breached the Contract, thus, *inter alia*, imperiling the settlement of other claims against it and the CSC Officers.

2. This action is intended to compensate Orthogon for CSC's breach of the Contract and to require CSC to negotiate in good faith to a final settlement.

THE PARTIES

3. Claimant Orthogon Charter School Special Opportunities LLP is a Delaware limited liability partnership.

4. Claimant Orthogon Charter School Special Opportunities, II, LP is a Delaware limited partnership.

5. Claimant Orthogon Charter School Special Opportunities, III, LLC is a Delaware limited liability company.

6. Respondent Charter School Capital, Inc. is a Delaware corporation with its principal place of business in Portland, Oregon.

7. Ellis is the Chief Executive Officer and Co-Founder of CSC.

8. Coburn is the Chief Investment Officer and Co-Founder of CSC.

JURISDICTION AND VENUE

9. The Contract provides that it "shall be governed by the laws of Delaware, disregarding any conflict of law provisions that would apply the laws of any other jurisdiction. Any dispute between the parties shall be settled by binding arbitration in New York City pursuant to the expedited rules of the American Arbitration Association. Each party irrevocably waives any objection it may have to such arbitration, including any rights to trial by jury." Exhibit A at 3 ("Choice of Law").

FACTUAL BACKGROUND

10. Respondent CSC is a specialty finance company which provides short-term and

long-term financing solutions primarily to charter schools across the United States. CSC began operations in 2006 and, as of 2023, had approximately 50 employees. CSC has two primary business lines: (i) Receivables where CSC finances schools by purchasing receivables owed by state and municipal governments to provide schools with immediate liquidity and (ii) Real Estate where CSC acquires school buildings rented by charter schools which are then bundled into a portfolio and sold, *e.g.*, via a municipal bond issuance.

A. Orthogon's Initial Investment in CSC

11. In May 2017, Orthogon Charter School Special Opportunities LLP (“OCSSO”) purchased 40% of the common stock of CSC from a former financial sponsor. Following OCSSO’s purchase of the stock, OCSSO appointed a director of CSC. As part of the transaction, OCSSO purchased \$10,000,000 of preferred stock (“Series P3 Preferred Stock”).

B. CSC and OCSSO Enter the Forward Purchase Agreement and Shareholders Agreement

12. In the Spring of 2018, CSC and OCSSO entered into a series of agreements pursuant to which OCSSO committed to making additional purchases of three classes of CSC’s preferred stock, referred to as the Series P3 Preferred Stock, the Series P8 Preferred Stock and the Series P15 Preferred Stock (each series of Preferred Stock as defined below).

13. In March 2018, CSC adopted and filed with the Secretary of State of Delaware a restated Certificate of Incorporation (the “Restated Certificate”) describing the rights, preferences, privileges and restrictions of 5000 shares of the Series P3 Preferred Stock, 15,000 shares of Series P8 Preferred Stock (the “Series P8 Preferred Stock”) and 15,000 shares of Series P15 Preferred Stock (the “Series P15 Preferred Stock”), collectively, the “Preferred Stock.”

14. Concurrently with CSC’s adoption of the Restated Certificate, on March 21, 2018, CSC and OCSSO entered into a Shareholders Agreement and a Forward Purchase Agreement. In

connection with its entry into these agreements, CSC redeemed 5,000 of the shares of Series P3 Preferred Stock issued to OCSSO in May 2017 for an aggregate purchase price of \$5,000,000 (the “August P3 Preferred Stock”) and provided a warrant to OCSSO. In consideration of the warrant and the rights granted pursuant to the Shareholders Agreement and the Forward Purchase Agreement, OCSSO paid to CSC \$7,000,000 less the \$5,000,000 redemption amount for the P3 Preferred Stock and all accrued and unpaid dividends as of the date of the Forward Purchase Agreement on the 5000 shares of P3 Preferred issued to OCSSO on May 3, 2017 for an aggregate purchase price of \$5,000,000 (the “May P3 Preferred Stock”).

15. Under the Forward Purchase Agreement, OCSSO committed, subject to various conditions, to purchase from CSC at a purchase price of \$1,000 per share (i) up to 5,000 shares of Series P3 Preferred Stock for an aggregate purchase price of up to \$5,000,000, (ii) up to ten thousand (10,000) shares of Series P8 Preferred Stock for an aggregate purchase price of up to ten million (\$10,000,000) which maximum amount would increase to \$15,000,000 either with (A) the prior written consent of OCSSO in its sole discretion or (B) if funds under common control with OCSSO completed a capital raise of at least \$100,000,000 of fee earning capital to such funds’ committed capital and (iii) up to 15,000 shares of Series P15 Preferred Stock for an aggregate purchase price of up to \$15,000,000.

16. Section 1(b)(iii) of the Forward Purchase Agreement describes the conditions governing OCSSO’s purchase of Preferred Stock. Under that provision, OCSSO had no obligation to purchase Preferred Stock from CSC if, among other conditions, (i) there were any dividends due and payable, but not paid, (ii) the Company was in breach in any material respect of the Forward Purchase Agreement, the Restated Certificate or the Shareholders’ Agreement or the Warrant, or (iii) the Asset Coverage Test (as described below) was not satisfied as of the proposed additional closing of any Preferred Stock sales.

17. Section 1(b)(iv) of the Forward Purchase Agreement provides that at each Additional Closing, CSC shall deliver to OCSSO an Officer's Certificate executed by CSC's Chief Financial Officer stating that "(A) the representations and warranties of the Company in Section 4 [of the Forward Purchase Agreement] are true and correct in all material respects, (B) the Company is in and has at all times been in compliance with the covenants in Section 2 of the Forward Purchase Agreement in all material respects and (C) the Company is not in breach in any material respect of this Agreement, the Restated Certificate, the Shareholders Agreement or the Warrant in each case as of such Additional Closing."

C. The Asset Coverage Test Under the Forward Purchase Agreement

18. In Section 2 of the Forward Purchase Agreement, CSC did covenant that for each class of Preferred Stock measured as of the Effective Date and each Additional Closing, the Company must have assets in excess of liabilities secured by qualifying assets ("Net Assets") meeting the following conditions (the "Asset Coverage Test"), in each case evaluated on a "*lower of cost or market*" basis.

19. For the Series P3 Preferred Stock, the Asset Coverage Test provided that the aggregate amount of Series P3 Preferred Stock outstanding (including any accrued but unpaid dividends) may not exceed the Company's Net Assets. For purposes of that calculation, the only assets that qualified as Net Assets were cash on hand and any investment assets listed on Annex A to the Forward Purchase Agreement that (1) are purchased or financed in the ordinary course of business, (2) have a duration of less than 18 months, (3) are liquidating via direct payment from a sovereign entity and (4) in the reasonable judgment of CSC, if rated, would be rated A1P1 or AA- or better (collectively, the "P3 Assets").

20. For the Series P8 Preferred Stock, the Asset Coverage Test provided that the aggregate amount of Series P8 Preferred Stock outstanding (including any accrued but unpaid

dividends) may not exceed the Company's Net Assets. Net Assets are (A) the aggregate amount of Series P3 Assets less the aggregate amount of Series P3 Preferred Outstanding and (B) any investment assets listed on Annex A that are purchased or financed in the ordinary course of CSC's business (collectively, the "P8 Assets").

21. For the Series P15 Preferred Stock, the Asset Coverage Test provided that the aggregate amount of Series P15 Preferred Stock outstanding (including any accrued but unpaid dividends) may not exceed 80% of CSC's Net Assets. Net Assets for purposes of that calculation are (A) the aggregate amount of P8 Assets less the aggregate amount of Series P8 Preferred Outstanding and (B) any investment assets listed on Annex A that are purchased or financed in the ordinary course of CSC's business (collectively, the "P15 Assets").

22. Section 2(e) of the Forward Purchase Agreement provides that OCSSO shall serve as the calculation agent with respect to all calculations under the Forward Purchase Agreement, including, without limitation, those calculations regarding EBITDA, Net Assets (including, without limitation, the P3 Assets, P8 Assets, and P15 Assets) and OCSSO's calculations shall be binding unless shown to be wrong to a "clear and convincing" standard under the evidentiary principles of Delaware law.

23. The term of the Forward Purchase Agreement terminated on January 1, 2020.

D. The Shareholders' Agreement between CSC and OCSSO

24. Also on March 21, 2018, CSC, OCSSO, Ellis, Coburn, and the other equity holders of CSC entered into a shareholders agreement (the "Shareholders Agreement").

25. Section 5.1 of the Shareholders Agreement provides that CSC's board of directors would consist of four members, with three members designated by Ellis (the "Ellis Directors"), two of whom would be Stuart Ellis and Brad Coburn, and one member designated by OCSSO, who would

be Rishi Ganti. The fourth member of the board has never been designated.

26. Section 5.2 of the Shareholders Agreement requires approval of certain actions of CSC. It provides that “[w]ithout the prior written approval of the Board, Ellis, and OCSSO... the Company will not, and will not permit, any of its Subsidiaries to, directly or indirectly (a) Engage in a Sale Transaction... (c) Sell, lease or otherwise dispose of material assets outside of the ordinary course of business.”

27. “Sale Transaction” under the Shareholders Agreements means “a transaction or a series of transactions involving either: (a) the sale, lease, transfer, exclusive license, conveyance or other disposition, in one transaction or a series of relating transactions (including by way of merger, consolidation, recapitalization, reorganization or transfer of securities of one or more of the Company’s subsidiaries) of all, substantially all, or any material assets, of the Company and its subsidiaries other than in the ordinary course of business.”

E. Orthogon’s Purchases of Preferred Stock and Amendments to the Forward Purchase Agreement

28. In connection with OCSSO’s purchase of preferred stock from CSC, the parties amended the Forward Purchase Agreement to extend the term of the agreement and to provide for additional Series P15 Preferred Stock closings. Thus, CSC and OCSSO executed a First Amendment to the Forward Purchase Agreement on March 31, 2020, which reinstated the Purchase Agreement and extended the term of the agreement until September 30, 2020 and further provided for OCSSO to purchase up to 10,000 shares of Series P15 Preferred Stock for an aggregate purchase price of up to \$10,000,000.

29. On November 23, 2020, CSC, OCSSO and Orthogon Charter School Special Opportunities, II, LP (“OCSSO II”) executed a Second Amendment to the Forward Purchase Agreement which made OCSSO II a signatory and party to the Forward Purchase Agreement,

extended the term of the Forward Purchase Agreement until September 30, 2022, and provided for OCSSO and OCSSO II to purchase up to 30,000 shares of Series P15 Preferred Stock. In addition, pursuant to the Second Amendment to the Forward Purchase Agreement, CSC consented to the designation of OCSSO II as a Designated Purchaser and Investor under the Forward Purchase Agreement.

30. On April 30, 2021, CSC, OCSSO, and OCSSO II executed a Third Amendment to the Forward Purchase Agreement which provided for OCSSO and OCSSO II to purchase up to 35,000 shares of Series P15 Preferred Stock for an aggregate purchase price of up to \$35,000,000.

31. On December 3, 2021, CSC, OCSSO and OCSSO II executed a Fourth Amendment to the Forward Purchase Agreement which provided for OCSSO and OCSSO II to purchase up to 50,000 shares of Series P15 Preferred Stock for an aggregate purchase price of up to \$50,000,000.

32. On March 15, 2023, CSC, OCSSO, OCSSO II and Orthogon Charter School Special Opportunities, III, LLC (“OCSSO III”) executed a Fifth Amendment to the Forward Purchase Agreement which made OCSSO III a signatory and party to the Forward Purchase Agreement, reinstated the Forward Purchase Agreement, and provided for OCSSO, OCSSO II and OCSSO III to purchase up to 50,000 shares of Series P15 Preferred Stock up to an aggregate purchase price of \$50,000,000. In addition, pursuant to the Fifth Amendment to the Forward Purchase Agreement, CSC consented to the designation of OCSSO III as a Designated Purchaser under the agreement.

F. Purchase of \$7.6 million of Series P15 Preferred Stock and Deferral of Preferred Dividends in March 2023

33. On March 14, 2023, OCSSO III purchased \$7.6 million of Series P15 Preferred Stock from CSC.

34. In connection with OCSSO III's purchase of the Preferred Stock, CSC provided Orthogon with a coverage metric for the Asset Coverage Test showing \$37.2MM of preferred stock plus accrued dividends outstanding against \$49.7MM of assets (cost basis). The ratio of those two figures is 75%. Therefore, based on the information that CSC provided OCSSO III, CSC satisfied the 80% Asset Coverage Test. An excerpt from the Asset Coverage Test provided by CSC to Orthogon on March 10, 2023, shows the following:

P15 Test	
Net Assets	
(A) Aggregate P8 Assets less P8 Preferred Outstanding	\$19,593,078
(B) Other assets approved by Investor	\$30,085,545
Total Net Assets	\$49,678,623
P15 Preferred Outstanding plus Accrued Dividends	\$37,153,728
80% Test	75%
Test	True

CSC also provided Claimants with an Officer's Certificate executed by Brad Coburn which falsely stated, among other things, that (a) the representations and warranties of the Company in Section 4 of the Forward Purchase Agreement were true and correct in all material respects; (b) that the Company was in and had at all times been in compliance with the covenants in section 2 of the Forward Purchase Agreements in all material respects (including, *inter alia*, the Asset Coverage Test); and (c) the Company was not in breach in any material respect of the Forward Purchase Agreement, the Restated Certificate (as amended through and including the date hereof), the Shareholders Agreement or the Warrant, in each case as of the date of the Officer's Certificate.

35. In reliance on the information provided by CSC to OCSSO II and representations made in the Officer's Certificate, OCSSO III agreed to fund \$7.6 million to CSC to purchase 7600 shares of Series P15 Preferred Stock.

36. In reliance on the information provided by CSC to OCSSO II and OCSSO III and representations made in the Officer's Certificate, OCSSO II and OCSSO III further agreed to defer

payment of preferred dividends due in June 2023 and December 2023, allowing such preferred dividends to compound on such dates in accordance with the Restated Certificate.

G. Purchase of \$4,000,000 of Series P15 Preferred Stock on June 1, 2023

37. On June 1, 2023, OCSSO III purchased 4000 shares of Series P15 Preferred Stock from CSC for \$4,000,000.

38. In connection with OCSSO III's purchase of Preferred Stock, CSC provided OCSSO III with a coverage metric for the Asset Coverage Test showing \$42.7MM of preferred stock plus accrued dividends outstanding against \$53.6MM of assets (cost basis). The ratio of those two figures is 79%. Therefore, based on the information that CSC provided OCSSO III, CSC again claimed it satisfied the 80% Asset Coverage Test. An excerpt from the Asset Coverage Test provided by CSC to Orthogon on June 1, 2023 shows the following:

P15 Test	
Net Assets	
(A) Aggregate P8 Assets less P8 Preferred Outstanding	\$14,119,113
(B) Other assets approved by Investor	\$39,472,783
Total Net Assets	\$53,591,896
 P15 Preferred Outstanding plus Accrued Dividends	 \$42,563,801
 80% Test	 79%
Test	True

39. CSC also provided Claimants with an Officer's Certificate executed by Brad Coburn which falsely stated, among other things, that (a) the representations and warranties of the Company in Section 4 of the Forward Purchase Agreement were true and correct in all material respects; (b) that the Company was in and had at all times been in compliance with the covenants in section 2 of the Forward Purchase Agreements in all material respects (*i.e.*, including the Asset Coverage Test); and (c) the Company was not in breach in any material respect of the Forward Purchase Agreement,

the Restated Certificate (as amended through and including the date hereof), the Shareholders Agreement or the Warrant, in each case as of the date of the Officer's Certificate.

40. In reliance on the information provided by CSC to OCSSO III and the representations made in the Officer's Certificate, OCSSO III agreed fund \$4 million to CSC to purchase 4000 shares of Series P15 Preferred Stock.

H. Orthogon Discovers That CSC Did Not Include a \$15,000,000 Liability In Its Calculation.

41. On August 30, 2023, Orthogon held a call with Brad Coburn of CSC to discuss a failed attempt at a bond issuance intended to sell a portion of its real estate portfolio. During this call, CSC presented values of certain assets of CSC's real estate portfolio. Orthogon pointed out a major discrepancy between the asset values presented on that call with values that CSC previously provided Orthogon in connection with the issuance of the Series P15 Preferred Stock. In particular, Orthogon pointed out that a large, approximately \$15 million "tenant improvement liability" related to one of its largest properties (DuBois) mentioned on the call by CSC was not contained in prior Asset Coverage Tests. Therefore, the value of the entire real estate portfolio appeared to be overstated by \$15 million, an enormous misstatement on a real estate portfolio valued at less than \$50 million. In essence, CSC overstated the value of the real estate portfolio by over 30% towards satisfying the Asset Coverage Tests. Had the correct values been presented, CSC would have failed the Asset Coverage Tests, and Orthogon would not have bought Preferred Stock.

42. Regarding the magnitude of the misstatement, \$15 million represented approximately *a third of its total investment portfolio* at that time, resulting in an enormous overstatement of net asset value. Hence, CSC either knowingly excluded this liability or recklessly disregarded it in preparation of the Asset Coverage Tests.

I. CSC Has Been Using the Proceeds of the Preferred Stock Issuances to Enrich Itself and Is Financing or Selling Assets in Violation of the Shareholders Agreement

43. Instead of monetizing its real estate portfolio to return this money that it fraudulently obtained from Orthogon and otherwise pay back the Preferred Stock and associated accrued dividends, CSC instead has been monetizing these assets to pay its own operational expenses, including salaries and bonuses. In other words, CSC has been monetizing assets (through sale, recapitalization, etc.) bought with Orthogon investor capital to pull out money to pay itself, not to return proceeds back to Orthogon. For example, CSC has been pulling cash from the assets (*e.g.*, by increasing its borrowings against them) and then using this borrowed cash for CSC salaries and expenses. In this way, CSC has rapidly eroded the equity value of the real estate assets that should have been used to pay back Orthogon investors.

44. CSC's cash drain at this point totals tens of millions of dollars and shows no signs of stopping. CSC in fact continues to take actions outside the ordinary course of business — extraordinary actions in violation of the Shareholders Agreement — to sell or refinance portions of the real estate subsidiaries that hold the assets. These are assets Orthogon investors have effectively purchased, and CSC has continually diverted cash and asset value away from repaying Orthogon investors and to itself. Further, CSC has been taking these actions in violation of the Shareholders' Agreement, as detailed below.

45. In early 2024, Ellis and Coburn loaned \$700,000 to a real estate subsidiary of CSC. The loan had a very high annual interest rate of 16%. Any subsequent sales of underlying real estate assets must now repay this loan plus 16% per annum interest to Ellis and Coburn. This extraordinary, related-party, self-dealing transaction was carried out despite Orthogon's objection and in violation of Section 5.2(f) of the Shareholder's Agreement and Delaware law.

46. Note that Orthogon has supported monetization (refinancing or sale of assets) where such proceeds were used to pay back Orthogon investors. But such repayment has not occurred

for years. Instead, CSC has monetized tens of millions of dollars of assets simply in order to pay itself, including such items as bonuses and salaries, leaving the Orthogon investors, who are preferred shareholders in CSC, without recovery. The foregoing represents an improper purpose and a clear breach of the Shareholders' Agreement, Delaware law, and a breach of its fiduciary duties to Orthogon.

J. CSC Has Now Breached the Contract the Parties Entered Into To Resolve These Issues

47. In order to resolve these issues without litigation, Orthogon and CSC agreed to the Contract in June 2024. *See* Exhibit A. The crux of the Contract is that CSC would and should pursue a strategy of selling off its real estate assets in order to return funds to Orthogon, *i.e.*, the Restructuring Plan. Because of CSC's past conduct, Orthogon received strong protections in the Contract giving it enforceable oversight into the sales process. For example, CSC may not sell any real estate assets without Orthogon's approval, *id.* at 1, and CSC provided Orthogon with second liens on all the real estate assets, *id.* The Contract also "require[es] CSC to agree with Orthogon on the use of asset monetization proceeds." *Id.* at 3. The Restructuring Plan would continue until the earlier of (i) the date Orthogon was returned \$15 million and (ii) all real estate assets were sold. *Id.* at 1. Other terms of the Contract would continue past the end of the Restructuring Plan.

48. Since entering into the Contract, CSC has breached it in at least three ways. First, CSC failed to obtain Orthogon's approval before disposing real estate assets in the November Transaction. The Contract provides: "During the Restructuring Plan, Orthogon has approval rights over Major Transactions. Major Transactions are to be defined, but for the avoidance of doubt, *all* real estate disposals (refinancings, etc.) and monetizations or financings of other fee streams are major actions, others to be added." *See* Exhibit A at 2. Despite this, CSC did not obtain Orthogon's approval of the November Transaction, in clear breach of the Contract.

49. Second, CSC has failed "to agree with Orthogon on the use of asset monetization

proceeds.” In November, 2024, CSC closed the first disposition of real estate assets pursuant to the Contract (the “November Transaction”). The November Transaction resulted in approximately \$4 million in proceeds. Orthogon does not know the exact amount of the proceeds because CSC has never provided a full accounting. Again, per the Contract, *all* of those proceeds are subject to Orthogon’s specific right to direct the use of asset monetization proceeds. Despite this, CSC has proposed that (a) \$1.2 million of proceeds be used to pay previously incurred CSC expenses; and (b) \$1.8 million of proceeds be reserved to pay future amounts. CSC has indicated that it intends to distribute an unspecified amount of the remaining \$1 million “in the ordinary course,” but CSC has committed neither to an amount of a distribution to Orthogon nor to a date for the distribution. In sum, CSC has not yet distributed any of the approximately \$4 million towards the Preferred Shares.

50. In other words, although CSC is “require[ed]” to “agree with Orthogon on the use of asset monetization proceeds,” CSC has not distributed one penny to Orthogon or otherwise followed Orthogon’s reasonable directives with respect to the proceeds. This is in contravention of Orthogon’s direction to CSC to (a) distribute immediately \$1 million to Orthogon; (b) to provide sufficient backup for the \$1.2 million in expense, and (c) to deposit any of the \$1.2 million not yet spent with its counsel, while the parties discuss whether a time-limited approval Orthogon previously provided for CSC to use certain funds for expenses is still valid, given CSC failed to dispose of the assets within that time limit. In addition, Orthogon has directed CSC (d) to deposit the \$1.8 million in proposed reserve funds with its counsel so that the parties can discuss the proposed reserve. In short, CSC has refused every directive, in breach of the Contract.

51. Finally, CSC has breached the Contract because CSC has failed to negotiate in good faith toward completion of final documents effecting the Contract. As shown above, while Orthogon was working in good faith, CSC was breaching the Contract. In addition, CSC slowed the pace of the negotiations over final documents. For example, CSC took nearly two months to return

comments on a draft of the agreements. Specifically, Orthogon sent a draft to CSC on September 11, 2024 but CSC did not return a marked-up draft until November 8, 2024. During that time, as Orthogon subsequently learned, CSC was working on the November Transaction – for which it later would fail to abide by Orthogon’s directives regarding the use of asset monetization proceeds – and on the use of Pathway, an entity whose only shareholders are Ellis and Coburn, to direct CSC’s funds to themselves and away from Orthogon’s investors.

FIRST CAUSE OF ACTION

Breach of Contract — Failure to Obtain Approval

52. Claimants repeat and reallege each of the allegations set forth in the foregoing paragraphs.

53. The Contract is a valid and binding agreement between Orthogon and CSC.

54. The Contract required CSC to seek and obtain Orthogon’s approval before engaging in the November Transaction. *See* Exhibit A at 2.

55. CSC did not obtain Orthogon’s approval of the November Transaction, in clear breach of the Contract.

56. As a result of CSC’s breaches of the Contract, Orthogon suffered damages in an amount to be proven at hearing, but no less than the full proceeds of the November Transaction.

SECOND CAUSE OF ACTION

Breach of Contract — Failure to Agree with Orthogon on Use of Proceeds

57. Claimants repeat and reallege each of the allegations set forth in the foregoing paragraphs.

58. The Contract is a valid and binding agreement between Orthogon and CSC.

59. The Contract “require[s] CSC to agree with Orthogon on the use of asset monetization

proceeds.” *See* Exhibit A at 3.

60. CSC has failed to follow Orthogon’s directives with respect to the \$4 million in proceeds from the November Transaction, thus breaching the Contract.

61. As a result of CSC’s breaches of the Contract, Orthogon suffered damages in an amount to be proven at hearing, but no less than the full proceeds of the November Transaction.

THIRD CAUSE OF ACTION

Breach of Contract — Failure to Negotiate in Good Faith with Orthogon

62. Claimants repeat and reallege each of the allegations set forth in the foregoing paragraphs.

63. The Contract is a valid and binding agreement between Orthogon and CSC.

64. The Contract requires the parties to negotiate in good faith toward final documents. *See* Exhibit A at 3.

65. During the time it was required to abide by the Contract and negotiate in good faith, CSC did anything but. CSC repeatedly breached the Contract by failing to obtain Orthogon’s approval of the November Transaction and then by refusing Orthogon’s directives with respect to the asset monetization proceeds. In addition, CSC slowed the pace of the negotiations over final documents, while it engaged in these other breaches. CSC’s failure to negotiate in good faith is itself an independent breach of the Contract.

66. As a result of CSC’s breaches of the Contract, Orthogon suffered damages in an amount to be proven at hearing.

PRAYER FOR RELIEF

WHEREFORE, Claimants respectfully request that the arbitrator issue an award in favor of Claimants as follows:

- a) Awarding Claimants such damages as are allowed by law and determined to have been sustained by it as a result of CSC's wrongful conduct, in the amount of \$4 million, or an amount to be proven at trial;
- b) Requiring CSC to negotiate in good faith toward final settlement agreements;
- c) Awarding Claimants their costs, expenses, disbursements, and attorneys' fees incurred in connection with this action, as well as pre- and post-judgment interest; and
- d) Granting Claimants such other, further, and different relief as it finds just, necessary, and proper under the circumstances.

Dated: New York, New York
December 20, 2024

BEYS LISTON & MOBARGHA LLP

By: /s/ Joshua D. Liston

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Attorneys for Claimants

EXHIBIT A



CONFIDENTIAL DOCUMENT PURSUANT TO SETTLEMENT NEGOTIATIONS

CSC PREFERRED STOCK FRAMEWORK

TO CHARTER SCHOOL CAPITAL, INC ("CSC")
 FROM ORTHOGON CHARTER SPECIAL OPPORTUNITIES, LLP ("CSSO I");
 ORTHOGON CHARTER SPECIAL OPPORTUNITIES II, LP ("CSSO II");
 ORTHOGON CHARTER SPECIAL OPPORTUNITIES III, LLC ("CSSO III"),
 AND TOGETHER WITH CSSO I AND CSSO II, "ORTHOGON")

DATE 24 JUNE 2024
 SUBJECT CSC PREFERRED STOCK FRAMEWORK

ISSUE	TERMS
TIMING	- MOU Signing: 24 June 2024 - Final Documentation: 19 July 2024
SECURITY	CSC provides Orthogon with second liens on real estate assets. Where such is not permitted, the "next best" security in the asset. Existing agreements remain in place where possible.¹
BUDGET APPROVAL	- CSC provides Orthogon a budget for approval at entry into final documentation. - Prior to September 30, 2024, sales of assets to be discussed with Orthogon for reinvestment on a case-by-case basis. To the extent Orthogon provides such approval, Orthogon will also receive a lien (or "next best" security) on such new asset.
WAIVER OF CLAIMS	- CSC and Orthogon [enter settlement agreement to waive prior claims. New claims if settlement agreement is breached]. - If CSC complies with the Restructuring Plan through the earlier of (i) distribution to Orthogon of \$[15]MM and (ii) the sale of [substantially all]² of the remaining real estate assets (such earliest date the "Restructuring Plan End Date") liens and budget approval are released (subject to the lien provision below). - Once the Restructuring Plan End Date has been achieved (as per the above qualifications), while \$15MM but before \$20MM has been distributed to Orthogon, the liens (or "next best" security) on all real estate assets remain in place. During this period CSC can reinvest monetization of the real estate asset proceeds into new real estate assets so long as Orthogon receives a lien (or "next best" security) on such new assets. CSC has one year from the purchase of each new asset to

¹ NTD: For example, CSC Management retains existing promissory note (\$700,000 at CSREH Series A, LLC invested in February 2024) and profit participations for real estate assets sold at gains.

² NTD: "Substantially all" to be clarified. There are certain assets that CSC management has indicated will be harder to sell than others (e.g. ACE, LISA) given the remaining lease or charter terms. There are 14 properties currently remaining. Consider the following: Once there are two properties remaining, if despite best efforts from CSC management and the Approved Broker either (i) there are no buyers for the remaining properties or (ii) bids from potential buyers are not accepted by Orthogon, then substantially all of the properties will be deemed to be sold. Notwithstanding the Restructuring Plan End Date, liens will continue on those remaining assets.

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	return the reinvested sales proceeds to Orthogon, or else Orthogon can force a sale of such assets (subject to senior lender approval). Once \$20MM has been distributed to Orthogon, the liens on the real estate assets are released. All parties agree that so long as the actions taken by CSC are in accordance with the Restructuring Plan, such actions will not be deemed a violation of fiduciary (or similar) duty to any stakeholder.³
RESTRUCTURING PLAN	- Until September 30, 2024, CSC will pursue a sale of the remaining real estate assets to the [Schools Fund] and other comparable exit strategies. - After September 30, 2024, CSC will engage an Approved Broker from [list] (subject to Orthogon approval) to sell the remaining real estate assets. - CSC must provide best efforts to sell the properties. Stuart and Brad agree to remain employed at CSC through the earlier of (i) the Restructuring Plan End Date and (ii) September 30, 2025 and not to engage in competitive activities. Schools Fund and ESJ Capital Partners-related "competitive activities" to be scheduled and pre-approved. - During the Restructuring Plan new asset servicing relationships (e.g. for a new Wonderful bond or similar) can be done with a newly created entity under CSC management control so long as CSC (or a comparable servicing subsidiary to that of the existing Wonderful bond relationships) continues to receive the servicing proceeds.⁴ - During the Restructuring Plan, Orthogon has approval rights over Major Actions. Major Actions are to be defined, but for the avoidance of doubt, all real estate disposals (refinancings, etc.) and monetizations or financings of other fee streams are major actions, others to be added. For clarity, a dollar threshold automatically deeming an action a Major Action to be decided.
PREFERRED EQUITY DIVIDEND ACCRUAL STOP	- Preferred dividends on the \$11.6MM of preferred equity from CSSO III are restated based on the applicable IRS AFR rate [approximately 5% per annum] from the time of issuance (the "Adjusted Preferred Dividends"). [Reduction from \$3.1MM to \$0.7MM] - Preferred dividends stop accruing as of entry into final documentation [June 30, 2024] and any accrued and unpaid accrued dividends shall be capitalized into preferred equity principal.
CONVERSION TO PARTICIPATING PREFERRED	- At the Restructuring Plan End Date, any outstanding Orthogon-held preferred equity ("X") remains outstanding with \$X of preferred value. 55% common equity participation retained by CSSO I (CSC Management holds the other 45%). Voting control remains with CSC Management, with Orthogon retaining minority investor protections. For the avoidance of doubt, there is no preferred dividend accrual on this preferred equity instrument. Preferred Put Right: This preferred equity can be put back to CSC at a \$X price any time after 5 years [June 30, 2029]. If the put is exercised and unable to be satisfied, Orthogon takes control of the business and the remaining equity of CSC. Preferred Call Right: CSC can call, in whole or in part, the preferred equity on the following schedule: - Before June 30, 2027 → 65% of (\$X) - Before June 30, 2028 → 100% of (\$X) - After June 30, 2028, the preferred equity is no longer callable. Call Right Reduction of Common Equity: In case the Preferred Call Right above is exercised in whole the CSSO I common equity is reduced as follows: - Before June 30, 2027 – 55% goes down to 35% (with CSC Management retaining the other 65%)

³ NTD: All shareholders (common and preferred) should be signatories to this plan. To be discussed how to address in case where that is not possible or practical (e.g. two former employees that hold a small percentage of shares).

⁴ NTD: This is meant to address the fact that bondholders will require a servicer that is a going concern and this Restructuring Plan could make that difficult.



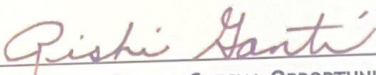
CONFIDENTIAL DOCUMENT PURSUANT TO SETTLEMENT NEGOTIATIONS

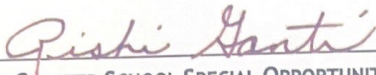
	2. Before June 30, 2028 – 55% goes down to 25% (with CSC management retaining the other 75%) 3. After June 30, 2028, the preferred equity is no longer callable and there is no reduction in common equity. In case the call right is exercised in part, <i>pro rata</i> reductions in the common equity amounts above will be calculated. (Example, if three quarters of the preferred equity is called prior to June 30, 2027, the 55% goes down to 40%)
ORTHOOGON FUND DISTRIBUTION WATERFALL	- At entry into final documentation [June 30, 2024], CSSO II and CSSO III to contribute all outstanding CSC-related preferred equity investment instruments to a new SPV, [Orthogon CSC SPV, LLC] ("New SPV"). The existing CSC common stock owned by Orthogon (~55% by value, ~40% by vote) retained by CSSO I. - CSC makes all Orthogon-related preferred equity distributions to New SPV. Distributions to the common stock made directly to CSSO I. - All future Orthogon preferred equity distributions to go through New SPV with distributions of available cash made according to the following waterfall: - CSSO III until repayment of outstanding preferred principal (\$11.6MM) - CSSO III and CSSO II <i>pro rata</i> based on the following amounts (the Adjusted Preferred Dividends (\$[0.7]MM) for CSSO III and (\$[8.5]MM of accrued preferred dividends + \$27MM of outstanding preferred principal) for CSSO II) - For the avoidance of doubt the waterfall above does not impact the obligations of CSC or its subsidiaries. The waterfall is intended only to describe the order of proceeds among the Orthogon investment funds.
TAX	No ECI: Transaction must be structured to avoid US Effectively Connected Income (ECI).
CHOICE OF LAW	Same as the Forward Purchase Agreement documents (reproduced below): <i>This Agreement shall be governed by the laws of Delaware, disregarding any conflict of law provisions that would apply the laws of any other jurisdiction. Any disputes between the parties shall be settled in binding arbitration in New York City pursuant to the expedited rules of the American Arbitration Association. Each party irrevocably waives any objection it may have to such arbitration, including any rights to trial by jury.</i>
CONFIDENTIALITY	This Termsheet is a confidential settlement document pursuant to FRE 408 and similar state law statutes.
BINDING TERMSHEET, SUBJECT TO FINAL DOCUMENTATION	- While CSC and Orthogon are working together in good faith toward final documentation, each side agrees to abide by the terms set forth in this document. This includes Orthogon entering into a tolling agreement to refrain from filing claims and requiring CSC to agree with Orthogon on the use of asset monetization proceeds. - Either party may terminate this agreement with written notice to the other party pending negotiation of final documentation.

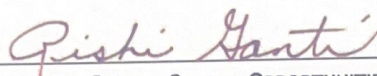
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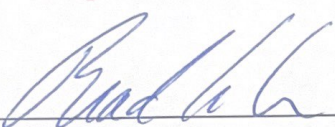


CONFIDENTIAL DOCUMENT PURSUANT TO SETTLEMENT NEGOTIATIONS


ORTHOGON CHARTER SCHOOL SPECIAL OPPORTUNITIES, LLP


ORTHOGON CHARTER SCHOOL SPECIAL OPPORTUNITIES II, LP


ORTHOGON CHARTER SCHOOL SPECIAL OPPORTUNITIES III, LLC


CHARTER SCHOOL CAPITAL, INC.

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Exhibit 2

**AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal**

In the Matter of the Arbitration between

Case Number: 01-24-0009-2550

Orthogon Charter School Special Opportunities
LLP, Orthogon Charter School Special Opportunities
II, LP, and Orthogon Charter School Special
Opportunities III, LLC

Claimants/Orthogon

-vs-

Charter School Capital, Inc.

Respondent/CSC

FINAL AWARD OF ARBITAOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated June 24, 2024, and having been duly sworn, and having duly heard the proofs and allegations of the Parties as presented by Joshua Liston Esq., on behalf of Claimants and Hayes Hyde Esq., on behalf of Respondent, hereby AWARD as follows:

OPINION

This dispute is over the interpretation of an agreement the parties made to avoid litigation, whether it contained binding obligations on them, and whether either party breached those obligations. The Parties executed the CSC Preferred Stock Framework (“Framework”) on June 24, 2024. The jurisdiction of the American Arbitration Association (“AAA”) was set forth on the third page of the Framework when the parties agreed that “[a]ny disputes shall be settled in binding arbitration in New York City pursuant to the expedited rules of the American Arbitration Association.” The expedited rules provide for a standard award that would briefly determine

without much reasoning the decision of the arbitrator. However, the parties requested the brief reasoned award that follows.

The resolution of the claims and counterclaims depend on determining the meaning of the Framework and whether it creates binding obligations on the parties. Clais exercised bad faith by interfering with its operations and failing to move quickly enough to document a final agreement.

The underlying facts are well known to the Parties and need not be extensively repeated. It is sufficient to recognize the predicate facts that led the Parties to draft the Framework. Respondent Charter School Capital, Inc. (“CSC”) sought funds from Claimant, Orthogon School Special Opportunities, LLP (“Orthogon”).¹ Claimant was willing to purchase stock in CSC provided a key condition was met that would provide some security for its investment. The Asset Coverage Test was agreed upon as a mechanism to ensure that the CSC’s working capital as measured by net assets was at least twenty percent greater than Orthogon’s investment. In separate transactions, Orthogon made two purchases of “P15 Preferred Stock plus Accrued Dividends” believing that the purchases met the Asset Coverage Test as provided by CSC. But a correct Asset Coverage Test would have failed because a fifteen-million-dollar liability had been omitted from the balance sheet. Including this liability, not only would there not have been a surplus of assets to provide security against the funds invested, but the correct balance sheet would have shown the company was already underwater. For the purposes of this final award, there is no need to determine intent. It is sufficient to observe that had Orthogon been provided an accurate test result, it would not have invested in CSC. Orthogon wanted its money back. To

¹ For convenience “Orthogon” shall represent all three Claimants, Orthogon Charter School Special Opportunities LLP, Orthogon Charter School Special Opportunities LLP II, Orthogon Charter School Special Opportunities LLP III.

forestall litigation and to provide for an orderly liquidation of assets to avoid litigation and bankruptcy, the Parties entered into the Framework on June 24, 2024.

The subsequent facts after the signing of the Framework are also not in dispute, although the interpretations of them are. Either Party can find support for its position that the Framework is or is not a fully formed binding contract. Respondent points out the numerous examples of material terms that have not been defined, notes to drafters, and the precatory language that “the parties are working together in good faith toward a final documentation” Framework at 3. This language alone makes clear that the Framework is an “agreement to agree.” Examples of undefined material terms include terms related to security, waiver of claims, and other capitalized words that have no definitions. Also, the Framework required Orthogon to enter into a tolling agreement. There are many holes in the Framework denoted by empty brackets, presumably being placeholders for future more definite language. There are also “Notes to Drafters” in several places in the document. These are only a few examples Respondent presents.

Claimant argues that other sections of the Framework are complete and binding. The Restructuring Plan sets a clear path forward of conduct for CSC and creates approval rights for Orthogon. Preferred stock stopped accruing dividends as of the signing of the Framework. The Waterfall provision detailed the order of how proceeds from equity were to be paid out to Orthogon. And, for Claimants, most significantly, language at the bottom of the third page of the Framework stating that the terms were intended to be binding as the Parties worked toward finalization of their agreement. Also, and importantly, either Party could terminate the agreement with written notice to the other party pending negotiation of final determination. Neither party did.

Any analysis of a contract begins with assessing the intent of the signatories. Where the document is clear, no further evidence is needed. If there is ambiguity, other facts outside the document can be considered. Because the Framework could be interpreted in different ways, it is appropriate to consider evidence outside of the four corners of the agreement.

For the reasons below, although the Framework was not a final agreement, the Parties did undertake certain obligations for valuable consideration when they executed the Framework and Respondent breached its obligations. The Framework is an agreement to agree, as CSC contends, and that Delaware recognizes is a binding contract. *SIGA Technologies, Inc. v. PharmAthene, Inc.*, 67 A.3d 330, 349 (2013). Like the license agreement that had been previously negotiated in *SIGA*, the Parties had negotiated the basic terms of the agreement they intended to incorporate into a final agreement.

But context is important. CSC sold stock in violation of the key condition that Orthogon required. The assets were insufficient to protect the investment. Indeed, liabilities exceeded assets at the time of the stock purchase. Orthogon wanted its money back and was prepared to sue to get it. Both parties recognized that to avoid a lawsuit they would have to work out a process to return to Orthogon the funds it had invested. That process was incorporated into the Framework.

Both Parties signed the agreement on June 24, 2024, and it is possible to infer the intent of the Parties at signing. CSC had a reasonable expectation that Orthogon would not sue CSC while the tolling agreement was being drafted. Orthogon had a reasonable expectation that CSC would meet its obligations to follow the restructuring plans and distribution waterfall during the time it took to finalize their agreement. Orthogon did not sue, but CSC ignored its obligations to give

Orthogon approval rights over “Major Actions” or to follow other key obligations that would protect Orthogon. In the Framework, while Major Actions was not fully defined there could be no mistake that sale of real estate, monetization of assets and the fee streams fell within the definition. Furthermore, despite the lack of a precise definition, the Framework drafters included the following direction: “Major Actions are to be defined, but for the avoidance of doubt, all real estate disposals (refinancings, etc.) and monetization, or financing of other fee streams are major actions, others to be added.” Framework at 3. The uncontested facts are that Orthogon did not give its approval to the real estate transaction that netted \$4 million and had no control of the disbursement of those proceeds. CSC acted unilaterally in violation of the express terms of the Framework.

Respondent, Stuart Ellis, CEO of CSC, testified that it was his belief that the Framework was an agreement to agree, and its terms would not become binding until there had been final documentation, including the tolling agreement. This understanding led him to believe that CSC was not obligated to follow the terms of the Framework because final documentation had not been completed. Mr. Ellis’ testimony conflicts with the language in the Framework.

While CSC and Orthogon are working together in good faith toward final documentation, each side agrees to abide by the terms set forth in this document. This includes Orthogon entering into a tolling agreement to refrain from filing claims and requiring CSC to agree with Orthogon on the use of asset monetization proceeds.

Framework at 3.

Respondent’s counsel argues that the Framework is a Type II Agreement to Agree. *See Siga*, at 349 (describing differences between Type I and Type II Agreements). A Type II Agreement is unenforceable if material terms are omitted. Respondent lists several items in its post-hearing brief that it considers material. However, the Delaware Court takes a more nuanced

view of what might make a Type II Agreement enforceable. In *SIGA*, the trial court found that the parties had “memorialized the basic terms of a transaction . . . and that they would negotiate in good faith a final transaction.” The court also found that but for the bad faith of the defendant, the parties would have consummated their agreement in a final document. *Id.*, at 351. Under those factual circumstances, Delaware recognizes expectation damages. *Id.*

Given the context that led to the drafting and signing of the Framework, CSC’s obligations were sufficiently clear to establish a right of Orthogon to expect that CSC would live up to the language in the agreement immediately. CSC got the benefit of its bargain because it forestalled Orthogon from filing suit. CSC then ignored those obligations and breached the agreement. The record shows that CSC breached the Framework when it ignored Orthogon’s approval rights for the Kiddinu and Building Hope transactions in November 2024 (the “November Transactions”) which the Framework defined as a Major Action and then unilaterally determined the disposition of assets from that transaction. These were material and defined obligations that do not fail for lack of dates for the restructuring. In assessing the intentions of the parties, it is difficult to construe the Framework such that it would allow CSC to continue business as usual while Orthogon withheld legal action while waiting indefinitely for final documentation.

But for its breach, there is no evidence in the record nor reason to believe that the Parties would not have completed documenting the open terms and concluding a final agreement at some time in the future. The passage of time alone is not a sufficient marker of bad faith. Consequently, Orthogon is entitled to damages.

Orthogon claims that it is entitled to the entire \$4,000,000.00 of proceeds from the November Transactions. CSC submitted an exhibit on April 15th, after the conclusion of the hearing, that calculated the proceeds from the November Transactions. Page five of the exhibit

detailed that the expected available proceeds were \$3,787,941.54. This number was further reduced by \$460,000 for a reserve for a tax distribution, by \$1,200,000.00 for the “approved amount” (presumably for operating expenses), and an additional \$1,773,000.00 “projected cash burn next Nov-Feb”. Because this exhibit was never introduced as an exhibit during the hearing, and Orthogon had no opportunity to cross examine CSC on its contents, it will not be considered part of the record. As Orthogon points out in its post-hearing brief, the Parties had previously stipulated that “CSC has represented that the November Transactions resulted in approximately \$4 million in proceeds.” Joint Stipulation of Undisputed Facts, ¶ 31. This statement represents an admission by CSC of the value of transaction was \$4 million. The fact that CSC used a modifier “approximately” does not make its estimate too speculative to be of use. *See Del. Express Shuttle, Inc. v. Older*, 2002 WL 31458243, at *15 (Del. Ch. Oct. 23, 2003)(certainty not required when a wrong has been committed and injury is established); *Great Am. Opportunities, Inc. v. Cherrydale Fundraising, LLC*, 2010 WL 338219, at *23 (Del. Ch. Jan. 29, 2010)(Delaware public policy favors making a wrongdoer “bear the risk of uncertainty of a damages calculation where the calculation cannot be mathematically proven.”). CSC’s estimate shall be used to fix the value for the November Transaction’s proceeds.

CSC also submitted a table titled “Grow Schools: Charter Schools Services: CSC (Consolidated) A/P Aging Summary, As of November 21, 2024.” This presents a more challenging issue. The minutes of the September 10, 2024 Board meeting report the approval of the July 1, 2024 to October 31, 2024 budget and establish that “the Company is entitled to the release of up to \$300,000.00 per month from the sale of real property assets as such sales occur.” Ex. 18, Item 4. (Mr. Ganti voted against the approval of the budget.) There is nothing in the Framework that would override the action the Board took at the September meeting. CSC’s post

hearing financial schedule submitted on April 15th (and resubmitted on May 12th with readable column headings) provides amplification that CSC did indeed have accounts payable of \$1,159,333.03 during the period in question. While Orthogon had repeatedly requested more detail and did not have an opportunity to cross-examine CSC on this post-hearing document, in the interest of time and efficiency and the likelihood that it accurately records operating expenses, this amount will be accepted as a deduction from the proceeds of the November Transactions. Because there was no prior approval for future operating expenses, and because CSC breached its obligations in the Framework in November, no additional deduction for future operating expenses will be taken. Orthogon has not received any of the proceeds from the November Transactions. It is entitled to receive \$2,840,666.97.

In its prayer for relief Orthogon seeks an award of its costs, expenses, disbursement, attorneys' fees, and pre- and post-judgment interest. The Parties jointly requested that there be an award of attorneys' fees and interest as provided under Rule 49(d)(i-ii). Fees and interest are discretionary under Rule 49, and not mandatory. An award of attorneys' fees is appropriate in this matter because the officers of CSC ignored their obligations under the Framework. The testimony of Stuart Ellis that he owed Orthogon no duties until there was a signed tolling agreement and/or final documentation is unreasonable. CSC and its officers benefited from the forbearance of Orthogon not to pursue legal action that could have forced CSC into bankruptcy. In return, CSC should have known that Orthogon expected to receive the benefit of the terms of the Framework, as its express terms make clear, during the period of finalizing and documenting their agreement. This was not an agreement that CSC could have abandoned, thus the terms of their Framework should have been binding. For these reasons, attorneys' fees shall be awarded to Orthogon in the amount submitted by Claimant of \$213,975.00 and costs of \$7,234.49. Pre- and

post-judgment interest is also discretionary under Rule 49(d)(i). These rates are to compensate a party for the lost time-value of money and are not intended to be pecuniary. Thus, pre-judgment interest shall be set at 5%, to reflect the higher rate in 2024 and shall run from November 13, 2024, until the date of this award. The post-judgment interest rate shall be 4.5%. The Parties shall bear their own costs for the arbitration.

AWARD AND ORDER

Upon review of Claimants', Orthogon School Special Opportunities LLP, Orthogon School Special Opportunities LLP II, and Orthogon School Special Opportunities LLP III (collectively "Orthogon"), and Respondent's, Charter School Capital, Inc. ("CSC"), pleadings, pre-hearing briefs, evidence and oral arguments presented at hearings on April 10, 2025 and April 15, 2025, and post-hearing briefs and for good cause shown, it is hereby AWARDED and,

ORDERED Respondent, CSC shall pay Claimant, Orthogon damages in the amount of \$2,840,666.97; and it is further,

ORDERED CSC shall pay Orthogon attorneys' fees and costs in the amount of \$213,975.00 for fees and \$7,234.49 for costs; and it is further,

ORDERED CSC shall pay Orthogon pre-judgment interest at the rate of 5%, per annum, from November 13, 2024, until the date of this award; and it is further,

ORDERED CSC shall pay Orthogon post-judgment interest at the rate of 4.5% per annum from the date of this award until all moneys due have been paid; and it is further,

ORDERED the administrative fees of the American Arbitration Association totaling \$34,775.00, and the compensation of the arbitrator totaling \$31,350.00, shall be borne as incurred by the Parties.

THIS AWARD IS IN FINAL SETTLEMENT OF ALL CLAIMS AND AFFIRMATIVE DEFENSES SUBMITTED IN THIS MATTER BY THE PARTIES AND ANY ISSUE NOT

EXPRESSLY DISCUSSED ABOVE IS DENIED.

May 22, 2025


John Bickerman, Arbitrator

I, John Bickerman do hereby affirm upon my oath as arbitrator that I am the individual who executed this instrument, which is my Final Award.

May 22, 2025


John Bickerman, Arbitrator

Exhibit 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ORTHOGON CHARTER SCHOOL SPECIAL
OPPORTUNITIES LLP, ORTHOGON CHARTER
SCHOOL SPECIAL OPPORTUNITIES II, LP and
ORTHOGON CHARTER SCHOOL SPECIAL
OPPORTUNITIES III, LLC,

Plaintiffs,

v.

STUART ELLIS and BRAD COBURN,

Defendants.

Civ. Action No. 25-cv-7193

COMPLAINT

Plaintiffs Orthogon Charter School Special Opportunities LLP, Orthogon Charter School Special Opportunities II, LP and Orthogon Charter School Special Opportunities III, LLC (collectively, “Orthogon” or “Plaintiffs”) by their attorneys, Beys Liston & Mobargha LLP, as and for their Complaint against Defendants Stuart Ellis (“Ellis”) and Brad Coburn (“Coburn” and, together with Ellis, the “Defendants”) allege as follows:

NATURE OF THE ACTION

1. Defendants Ellis and Coburn – the two co-founders of non-party Charter School Capital, Inc. (“CSC”), who serve as CSC’s Chief Executive Officer and Chief Investment Officer, respectively – drove the once profitable CSC into bankruptcy. CSC filed a Chapter 11 Petition on June 8, 2025 in the United States Bankruptcy Court for the District of Delaware. Plaintiffs have invested tens of millions of dollars into CSC and are the holders of a majority of CSC common stock and all of CSC’s preferred stock. Plaintiffs are owed more than \$15 million in accrued, unpaid dividends, and approximately \$3.2 million resulting from an arbitration award

they obtained against CSC in May 2025.

2. For at least the last several years, Ellis and Coburn have engaged in a destructive course of conduct that bankrupted CSC. Throughout, Ellis and Coburn have been focused on enriching themselves no matter their duties to others.

3. In 2023, Ellis and Coburn committed fraud by inducing Plaintiffs to purchase more than \$11 million in CSC preferred shares based on materially false financial information Defendants provided to Plaintiffs. As detailed herein, among other things, non-party Charter School Capital, Inc. (“CSC”), and the Defendants falsified satisfaction of an asset coverage test that was a precondition to any sale of preferred stock by CSC to Plaintiffs.

4. Plaintiffs relied upon a CSC Officer’s Certificate signed by Coburn that CSC was in compliance with the terms of its agreements, including an Asset Coverage Test – to purchase more than \$11 million dollars of preferred stock from CSC. CSC later acknowledged that, in determining whether the Asset Coverage Test had been satisfied for these sales of preferred stock, it did not include an approximately \$15,000,000 liability in the calculation. Therefore, the value of the entire real estate portfolio was overstated by \$15 million, an enormous misstatement on a real estate portfolio valued at less than \$50 million. Had CSC included that liability in the calculation, CSC would have failed the Asset Coverage Test for the sale of preferred stock to Plaintiffs.

5. In a recent arbitration between CSC and Orthogon, an arbitrator found that CSC provided false information to Orthogon in connection with these 2023 purchases. In his Award dated May 22, 2025, the Arbitrator found, in connection with Orthogon’s investment in CSC, that CSC had provided information to Orthogon stating that “CSC’s working capital as measured by net assets was at least twenty percent greater than Orthogon's investment.” However, this

information was false. In reality, “a fifteen-million-dollar liability had been omitted from [CSC’s] balance sheet. Including this liability, not only would there not have been a surplus of assets to provide security against the funds invested, but the correct balance sheet would have shown the company was already underwater. . . . It is sufficient to observe that had Orthogon been provided an accurate [Asset Coverage Test] result, it would not have invested in CSC.”

6. After Plaintiffs learned of Defendants’ deception, Plaintiffs and Defendants entered into discussions. As the arbitrator observed in his Award: “Orthogon wanted its money back. To forestall litigation and to provide for an orderly liquidation of assets to avoid litigation and bankruptcy, the Parties entered into the Framework on June 24, 2024.”

7. The Framework was a separate agreement between Orthogon and CSC to try to resolve the issue of CSC and the Defendants’ misstatements in a manner less disruptive to the company than litigation or other alternatives. In general, the Framework obligated CSC and Defendants to sell assets and then take direction from Orthogon about how to use the proceeds from those monetizations. But Defendants then caused CSC to breach the Framework by failing to abide by Orthogon’s directives regarding asset monetization proceeds. As the Arbitrator found, “the officers of CSC ignored their obligations under the Framework. The testimony of [CSC CEO] Stuart Ellis that he owed Orthogon no duties until there was a signed tolling agreement and/or final documentation is unreasonable. CSC and its officers benefited from the forbearance of Orthogon not to pursue legal action that could have forced CSC into bankruptcy. In return, CSC should have known that Orthogon expected to receive the benefit of the terms of the Framework, as its express terms make clear, during the period of finalizing and documenting their agreement. This was not an agreement that CSC could have abandoned, thus the terms of their Framework should have been binding.” Because of the breaches of the Framework,

Orthogon was awarded approximately \$3.2 million against CSC.

8. Defendants caused CSC to use the proceeds from its sales of preferred stock to Orthogon to enrich itself and Defendants and drain money from CSC that should have been returned to Orthogon.

9. Defendants breached a Shareholders Agreement they signed as individuals. Under that agreement, CSC may not sell certain properties without Orthogon's consent. But not only did Defendants sell properties without Orthogon's consent, they did so even over Orthogon votes against such transactions.

THE PARTIES

10. Plaintiff Orthogon Charter School Special Opportunities LLP is a Delaware limited liability partnership.

11. Plaintiff Orthogon Charter School Special Opportunities, II, LP is a Delaware limited partnership.

12. Plaintiff Orthogon Charter School Special Opportunities, III, LLC is a Delaware limited liability company.

13. Defendant Stuart Ellis is the Chief Executive Officer and Co-Founder of CSC. Ellis resides in Portland, OR.

14. Defendant Brad Coburn is the Chief Investment Officer and Co-Founder of CSC, and signed the Officer's Certificates that represented that CSC was in compliance with its covenants under the Forward Purchase Agreement, including satisfaction of the Asset Coverage Test. Coburn resides in Orinda, CA.

JURISDICTION AND VENUE

15. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1367, and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27 of the Securities Exchange Act

of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e) & 78aa. Defendants have, directly or indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, in connection with the transactions, acts, practices and courses of business alleged in this Complaint. This court has supplemental jurisdiction over the state law causes of action.

16. Venue is proper in this district pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because certain of the transactions, acts, practices and courses of conduct constituting violations of the federal securities laws occurred within this district.

FACTUAL BACKGROUND

17. CSC is a specialty finance company focused on providing short-term and long-term financing solutions to charter schools across the United States. CSC began operations in 2006 and, as of 2023, had over 55 employees. CSC has two primary business lines: Receivables where CSC finances schools by purchasing receivables owed by state and municipal governments to provide schools with immediate liquidity and Real Estate where CSC acquires school buildings rented by charter schools which are then bundled into a portfolio and sold or securitized, e.g., via a municipal bond issuance.

A. Orthogon's Initial Investment in CSC

18. In May 2017, Orthogon Charter School Special Opportunities LLP ("OCSS") purchased 40% of the common stock of CSC from a former financial sponsor. Following OCSS's purchase of the stock, OCSS appointed a director of CSC. As part of the transaction, OCSS purchased \$10,000,000 of preferred stock ("Series P3 Preferred Stock").

B. CSC and OCSS Enter the Forward Purchase Agreement and Shareholders Agreement

19. In the Spring of 2018, CSC and OCSS entered into a series of agreements pursuant to which OCSS committed to making additional purchases of three classes of CSC's

preferred stock, referred to as the Series P3 Preferred Stock, the Series P8 Preferred Stock and the Series P15 Preferred Stock (defined below).

20. In March 2018, CSC adopted and filed with the Secretary of State of Delaware a restated Certificate of Incorporation (the “Restated Certificate”) describing the rights, preferences, privileges and restrictions of 5000 shares of the Series P3 Preferred Stock, 15,000 shares of Series P8 Preferred Stock (the “Series P8 Preferred Stock”) and 15,000 shares of Series P15 Preferred Stock (the Series P15 Preferred Stock), collectively, the “Preferred Stock.”

21. Concurrently with CSC adoption of the Restated Certificate, on March 21, 2018, CSC and OCSS entered into a Shareholders Agreement and a Forward Purchase Agreement. In connection with entry into these agreements, CSC redeemed 5,000 of the shares of Series P3 Preferred Stock issued to OCSS in May 2017 for an aggregate purchase price of \$5,000,000 (the “August P3”) and provided a warrant to OCSS. In consideration of the warrant and the rights granted pursuant to the Shareholders Agreement and the Forward Purchase Agreement, OCSS paid to CSC \$7,000,000 less the \$5,000,000 redemption amount for the P3 Preferred Stock and all accrued and unpaid dividends as of the date of the Forward Purchase Agreement on the 5000 shares of P3 Preferred issued to OCSS on May 3, 2017 for an aggregate purchase price of \$5,000,000 (the “May P3”).

22. Under the Forward Purchase Agreement, OCSS committed, subject to various conditions, to purchase from CSC at a purchase price of \$1,000 per share (i) up to 5,000 shares of Series P3 Preferred Stock for an aggregate purchase price of up to \$5,000,000, (ii) up to ten thousand (10,000) shares of Series P8 Preferred Stock for an aggregate purchase price of up to ten million (\$10,000,000) which maximum amount would increase to \$15,000,000 either with (A) the prior written consent of OCSS in its sole discretion or (B) if funds under common control with OCSS completed a capital raise of at least \$100,000,000 of fee earning capital to such

funds' committed capital and (iii) up to 15,000 shares of Series P15 Preferred Stock for an aggregate purchase price of up to \$15,000,000.

23. Section 1(b)(iii) of the Forward Purchase Agreement describes the conditions governing OCSS's purchase of Preferred Stock. Under that provision, OCSS had no obligation to purchase Preferred Stock from CSC if, among other conditions, (i) there were any dividends due and payable, but not paid, (ii) the Company was in breach in any material respect of the Forward Purchase Agreement, the Restated Certificate or the Shareholders' Agreement or the Warrant, or (iii) the Asset Coverage Test (as described below) was not satisfied as of the proposed additional closing of any Preferred Stock sales.

24. Section 1(b)(iv) of the Forward Purchase Agreement provides that at each Additional Closing, CSC shall deliver to OCSS an Officer's Certificate executed by CSC's Chief Financial Officer stating that "(A) the representations and warranties of the Company in Section 4 [of the Forward Purchase Agreement] are true and correct in all material respects, (B) the Company is in and has at all times been in compliance with the covenants in Section 2 of the Forward Purchase Agreement in all material respects and (C) the Company is not in breach in any material respect of this Agreement, the Restated Certificate, the Shareholders Agreement or the Warrant in each case as of such Additional Closing."

C. **The Asset Coverage Test Under the Forward Purchase Agreement**

25. In Section 2 of the Forward Purchase Agreement, CSC covenanted that for each class of Preferred Stock measured as of the Effective Date and each Additional Closing, the Company must have assets in excess of liabilities secured by qualifying assets ("Net Assets") meeting the following conditions (the "Asset Coverage Test"), in each case evaluated on a "lower of cost or market" basis.

26. For the Series P3 Preferred Stock, the Asset Coverage Test provided that the

aggregate amount of Series P3 Preferred Stock outstanding (including any accrued but unpaid dividends) may not exceed the Company's Net Assets. For purposes of that calculation, the only assets that qualified as Net Assets were cash on hand and any investment assets listed on Annex A to the Forward Purchase Agreement that (1) are purchased or financed in the ordinary course of business, (2) have a duration of less than 18 months, (3) are liquidating via direct payment from a sovereign entity, and (4) in the reasonable judgment of CSC, if rated, would be rated A1P1 or AA- or better (collectively, the ("Series P3 Assets").

27. For the Series P8 Preferred Stock, the Asset Coverage Test provided that the aggregate amount of Series P8 Preferred Stock outstanding (including any accrued but unpaid dividends) may not exceed the Company's Net Assets. Net Assets are (A) the aggregate amount of Series P3 Assets less the aggregate amount of Series P3 Preferred Outstanding and (B) any investment assets listed on Annex A that are purchased or financed in the ordinary course of CSC's business (collectively, the "Series P8 Assets").

28. For the Series P15 Preferred Stock, the Asset Coverage Test provided that the aggregate amount of Series P15 Preferred Stock outstanding (including any accrued but unpaid dividends) may not exceed 80% of CSC's Net Assets. Net Assets for purposes of that calculation are (A) the aggregate amount of P8 Assets less aggregate amount of Series P8 Preferred Outstanding and (B) any investment assets listed on Annex A that are purchased or financed in the ordinary course of CSC's business (collectively, the "Series P15 Assets").

29. Section 2(e) of the Forward Purchase Agreement provides that OCSS shall serve as the calculation agent with respect to all calculations under the Forward Purchase Agreement, including, without limitation, regarding EBITDA, Net Assets (including without limitation, P3 Assets, P8 Assets and P15 Assets) ... and OCSS's calculations shall be binding unless shown to be wrong to a "clear and convincing" standard under the evidentiary principles

of Delaware law.

30. The term of the Forward Purchase Agreement terminated on January 1, 2020.

D. **The Shareholders' Agreement between CSC and OCSS**

31. Also on March 21, 2018, CSC, OCSS, Stuart Ellis and the other equity holders of CSC entered into a shareholders agreement (the "Shareholders Agreement").

32. Section 5.1 of the Shareholders Agreement provides that CSC's board of directors would consist of four members, with three members designated by Ellis (the "Ellis Directors"), two of whom would initially be Stuart Ellis and Brad Coburn and one member designated by OCSS, who initially would be Rishi Ganti. A fourth member of the board was never designated.

33. Section 5.2 of the Shareholders Agreement requires approval of certain actions of CSC. It provides that "[w]ithout the prior written approval of the Board, Ellis and OCSS . . . the Company will not, and will not permit any of its Subsidiaries to, directly or indirectly (a) Engage in a Sale Transaction . . . (c) Sell, lease or otherwise dispose of material assets outside of the ordinary course of business.

34. "Sale Transaction" under the Shareholders Agreements means "a transaction or a series of transactions involving either: (a) the sale, lease, transfer, exclusive license, conveyance or other disposition, in one transaction or a series of relating transactions (including by way of merger, consolidation, recapitalization, reorganization or transfer of securities of one or more of the Company's subsidiaries) of all, substantially all, or any material assets, of the Company and its subsidiaries other than in the ordinary course of business"

E. **Orthogon's Purchases of Preferred Stock and Amendments to the Forward Purchase Agreement**

35. In connection with OCSS's purchase of preferred stock from CSC, the parties amended the Forward Purchase Agreement to extend the term of the agreement and to provide

for additional Series P15 Preferred Stock closings. Thus, CSC and OCSS executed a First Amendment to the Forward Purchase Agreement on March 31, 2020, which reinstated the Purchase Agreement and extended the term of the agreement until September 30, 2020 and provided for OCSS to purchase up to 10,000 shares of Series P15 Preferred Stock for an aggregate purchase price of up to \$10,000,000.

36. On November 23, 2020, CSC, OCSS and Orthogon Charter School Special Opportunities, II, LP ("OCSS II") executed a Second Amendment to the Forward Purchase Agreement which made OCSS II a signatory and party to the Forward Purchase Agreement, extended the term of the Forward Purchase Agreement until September 30, 2022, and provided for OCSS and OCSS II to purchase up to 30,000 shares of Series P15 Preferred Stock. In addition, pursuant to the Second Amendment to the Forward Purchase Agreement, CSC consented to the designation of OCSS II as a Designated Purchaser and Investor under the agreement.

37. On April 30, 2021, CSC, OCSS, and OCSS II executed a Third Amendment to the Forward Purchase Agreement which provided for OCSS and OCSS II to purchase up to 35,000 shares of Series P15 Preferred Stock for an aggregate purchase price of up to \$35,000,000.

38. On December 3, 2021, CSC, OCSS and OCSS II executed a Fourth Amendment to the Forward Purchase Agreement which provided for OCSS and OCSS II to purchase up to 50,000 shares of Series P15 Preferred Stock for an aggregate purchase price of up to \$50,000,000.

39. On March 15, 2023, CSC, OCSS, OCSS II and Orthogon Chatter School Special Opportunities, III, LLC ("OCSS III") executed a Fifth Amendment to the Forward Purchase Agreement which made OCSS III a signatory and party to the Forward Purchase

Agreement, reinstated the Forward Purchase Agreement, and provided for OCSS, OCSS II and OCSS III to purchase up to 50,000 shares of Series P15 Preferred Stock up to an aggregate purchase price of \$50,000,000. In addition, pursuant to the Fifth Amendment to the Forward Purchase Agreement, CSC consented to the designation of OCSS III as a Designated Purchaser under the agreement.

F. **Purchase of \$7.6 million of Series P15 Preferred Stock and Deferral of Preferred Dividends in March 2023**

40. On March 14, 2023, OCSS III purchased \$7.6 million of Series P15 Preferred Stock from CSC.

41. In connection with OCSS III's purchase of the Preferred Stock, CSC provided Orthogon with a coverage metric for the Asset Coverage Test showing \$37.2MM of preferred stock plus accrued dividends outstanding against \$49.7MM of assets (cost basis). The ratio of those two figures is 75%. Therefore, based on the information that CSC provided OCSS III, CSC claimed it had satisfied the 80% Asset Coverage Test. An excerpt from the Asset Coverage Test provided by CSC to Orthogon on shows the following:

P15 Test	
Net Assets	
(A) Aggregate P8 Assets less P8 Preferred Outstanding	\$19,593,078
(B) Other assets approved by Investor	\$30,085,545
Total Net Assets	\$49,678,623
 P15 Preferred Outstanding plus Accrued Dividends	 \$37,153,728
 80% Test	 75%
Test	True

42. CSC also provided Plaintiffs with an Officer's Certificate executed by Brad Coburn which falsely stated, among other things, that (a) the representations and warranties of the Company in Section 4 of the Forward Purchase Agreement were true and correct in all material respects; (b) that the Company was in and had at all times been in compliance with the covenants

in section 2 of the Forward Purchase Agreements in all material respects (i.e., including the Asset Coverage Test); and (c) the Company was not in breach in any material respect of the Forward Purchase Agreement, the Restated Certificate (as amended through and including the date hereof), the Shareholders Agreement or the Warrant, in each case as of the date of the Officer's Certificate.

43. In reliance on the information provided by CSC to OCSS II and representations made in the Officer's Certificate, OCSS III agreed to fund \$7.6 million to CSC to purchase 7600 shares of Series P15 Preferred Stock.

44. Also in reliance upon the information provided by CSC to OCSS II and OCSS III and representations made in the Officer's Certificate, OCSS II and OCSS III further agreed to defer payment of preferred dividends due in June 2023 and December 2023, instead allowing such preferred dividends to compound on such dates in accordance with the Restated Certificate.

G. Purchase of \$4,000,000 of Series P15 Preferred Stock on June 1, 2023

45. On June 1, 2023, OCSS III purchased 4000 shares of Series P15 Preferred Stock from CSC for \$4,000,000.

46. In connection with OCSS III's purchase of the Preferred Stock, CSC provided OCSS III with a coverage metric for the Asset Coverage Test showing \$42.7MM of preferred stock plus accrued dividends outstanding against \$53.6MM of assets (cost basis). The ratio of those two figures is 79%. Therefore, based on the information that CSC provided OCSS III, CSC claimed it once again satisfied the 80% Asset Coverage Test. An excerpt from the Asset Coverage Test provided by CSC to Orthogon on June 1, 2023 shows the following:

P15 Test

Net Assets

(A) Aggregate P8 Assets less P8 Preferred Outstanding	\$14,119,113
(B) Other assets approved by Investor	\$39,472,783
Total Net Assets	\$53,591,896

P15 Preferred Outstanding plus Accrued Dividends	\$42,563,801
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80% Test	79%
Test	True

47. CSC also provided Plaintiffs with an Officer's Certificate executed by Brad Coburn which falsely stated, among other things, that (a) the representations and warranties of the Company in Section 4 of the Forward Purchase Agreement were true and correct in all material respects; (b) that the Company was in and had at all times been in compliance with the covenants in section 2 of the Forward Purchase Agreements in all material respects (i.e., including the Asset Coverage Test); and (c) the Company was not in breach in any material respect of the Forward Purchase Agreement, the Restated Certificate (as amended through and including the date hereof), the Shareholders Agreement or the Warrant, in each case as of the date of the Officer's Certificate.

48. In reliance on the information provided by CSC to OCSS III and the representations made in the Officer's Certificate, OCSS III agreed to fund \$4 million to CSC to purchase 4000 shares of Series P15 Preferred Stock.

H. Orthogon Discovers that CSC Did Not Include a \$15,000,000 Liability in its Calculations

49. On August 30, 2023, Orthogon separately held a call with Brad Coburn of CSC regarding a failed bond issuance intended to securitize a portion of its real estate portfolio. During this call, CSC presented values of CSC's real estate portfolio. Orthogon

pointed out a discrepancy between CSC's discussions of asset values during that call with values that CSC had previously provided Orthogon towards the issuance of the Series P15 Preferred Stock. In particular, the discrepancy was that in the Asset Coverage Tests, CSC did not disclose to Orthogon that it had a large, approximately \$15 million "tenant improvement liability" related to one of its largest properties (DuBois). Therefore, the value of the entire real estate portfolio was overstated by \$15 million, an enormous misstatement on a real estate portfolio valued at less than \$50 million. In essence, CSC overstated the value of the portfolio by over 30%, affecting, *inter alia*, the Asset Coverage Tests.

50. CSC either knowingly excluded this liability or recklessly disregarded it in preparation of the Asset Coverage Tests: \$15 million represented approximately a third of its total investment portfolio. It is an enormous misstatement.

I. CSC Has Been Using the Proceeds of the Preferred Stock Issuances to Enrich Itself and Is Financing or Selling Assets in Violation of the Shareholders Agreement

51. Instead of working to return this money that it fraudulently obtained from Orthogon, for years CSC has effectively been using available cash to pay salaries and other operational expenses. In particular, CSC has been monetizing assets bought with Orthogon investor capital (through sale, recapitalization, etc.) to pull out money to pay itself, not to return the wrongly obtained proceeds back to Orthogon. In other words, CSC has been pulling cash from the assets (e.g., by increasing borrowings against them) and using this cash for CSC salaries and expenses. CSC has therefore rapidly eroded the equity value of the real estate assets that should have been used to pay back Orthogon investors.

52. CSC shows no signs of stopping the cash drain and is in fact is now taking extraordinary actions outside the ordinary course of business and in violation of the Shareholders Agreement, to attempt to sell or refinance portions of the real estate subsidiaries

that hold the assets Orthogon investors have effectively purchased, further diverting cash and asset value away from repaying Orthogon investors. CSC has been taking these actions in violation of the Shareholders' Agreement, as detailed below.

53. CSC sold assets over the repeated objections of Orthogon to sell or refinance equity in its real estate subsidiaries. Of course, it is these very subsidiaries that are needed to pay back Orthogon investors. And, of course, CSC will and did take any cash it can obtain from these sales to pay salaries and other expenses.

54. When cash was not available to CSC to fund operations in early 2024, the Individual Defendants invested \$700,000 in the form of an unsecured loan to a real estate subsidiary of CSC. Any subsequent sales of underlying real estate assets would have to repay this loan plus 16% per annum interest to the Individual Defendants. This related-party transaction outside the ordinary course of business was carried out despite Orthogon's objections regarding self-dealing and in violation of Section 5.2(f) of the Shareholder's Agreement.

55. Orthogon has supported monetization (refinancing or sale of assets) where such proceeds would be used to pay back Orthogon investors. However, CSC has been monetizing assets in order to pay itself, leaving the Orthogon investors, who are preferred shareholders in CSC, without recovery. CSC should not have been monetizing assets to pay itself instead of returning capital to Orthogon investors. This is an improper purpose and a clear breach of the Shareholders' Agreement and a breach of its fiduciary duties to Orthogon.

AS AND FOR A FIRST CAUSE OF ACTION
VIOLATIONS OF SECTION 10(b) OF THE 1934 ACT

56. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs. a continuous course of conduct to conceal, either knowingly or but for their reckless disregard of the truth, adverse material information about the Company.

57. Defendants employed devices, schemes, and artifices to defraud while in possession of material adverse nonpublic information and engaged in acts, practices, and a course of conduct that included the making of, or participation in the making of, untrue and misleading statements of material facts about CSC. Specifically, Defendants knew or, but for their reckless disregard of the truth, should have known that, at the time it sold the preferred stock to Orthogon, that CSC did not meet the Asset Coverage Test in the Forward Purchase Agreement because of an undisclosed \$15 million tenant improvement liability.

58. Defendants, as the top executive officers of the Company, are liable as direct participants in the wrongs complained of herein. Through their positions of control and authority as officers or directors, or through their extensive stock ownership, Defendants were able to and did control the content of the information disseminated to Plaintiffs in connection with the preferred stock purchases. With knowledge of, or reckless disregard for, the falsity and misleading nature of the statements contained therein, Defendants caused the information disseminated to Plaintiffs to contain misstatements and omissions of material facts as alleged herein.

59. Defendants misrepresented the state of the CSC real estate portfolio to Orthogon, acting with scienter in making the false or materially misleading statements to Plaintiffs in that they either had actual knowledge of the misrepresentations and/or omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose the true facts, even though such facts were available to them. Given the enormous size of the tenant improvement liability, \$15 million, which represents nearly one-third of CSC's real estate portfolio, it would strain credulity for Defendants not to have known about that liability when they induced Plaintiffs to purchase the preferred stock from CSC.

60. The Defendants constituted the senior management of the Company and were

therefore directly responsible for the false and misleading statements and omissions disseminated to Plaintiffs.

61. Defendants' misrepresentations were intentional or reckless and done for the purpose of enriching themselves at the expense of Plaintiffs and to conceal the Company's true operating condition.

62. As a result of these deceptive practices and false and misleading statements, Defendants were able to sell Preferred Stock to Plaintiffs. In ignorance of the false and misleading nature of the representations and omissions described above and the deceptive and manipulative devices employed by Defendants, Plaintiff relied upon the false statements and reports of defendants, purchased CSC preferred stock and were damaged thereby. Had Plaintiffs known of the material adverse information not disclosed by Defendants, particularly that the Asset Coverage Test supplied by defendants was materially misstated, they would not have purchased these issuances of CSC's Preferred Stock.

63. By virtue of the foregoing, Defendants violated § 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder and damaged Plaintiffs. Plaintiffs are entitled to damages in an amount to be proven at trial.

AS AND FOR A SECOND CAUSE OF ACTION
VIOLATIONS OF SECTION 20 OF THE 1934 ACT

64. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

65. Each of the Defendants acted as a "controlling person" of CSC within the meaning of Section 20 of the 1934 Act. Specifically, Ellis had the power and authority to cause CSC to engage in the wrongful conduct complained of herein by virtue of his positions as CEO and Co-Founder of CSC. Coburn, as Chief Investment Officer and Co-Founder of CSC, was also in a position of power and authority to cause CSC to engage in the wrongful acts complained of

herein.

66. As set forth above, Coburn signed the Officer's Certificates that were provided to Plaintiffs to induce them to purchase the preferred stock.

67. By reason of the wrongful conduct alleged herein, the Individual Defendants are liable pursuant to Section 20(a) of the 1934 Act.

68. As a direct and proximate result of their wrongful conduct, Plaintiffs suffered damages in an amount to be proven at trial.

AS AND FOR A THIRD CUASE OF ACTION
VIOLATION OF DELAWARE'S SECURITIES ACT § 73-201 ET SEQ.

69. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

70. In connection with Plaintiffs' purchases of CSC Preferred Stock, Defendants made untrue statements of material fact and omitted statements of material fact regarding CSC's financial condition in order to obtain Plaintiff's investments despite Defendants' precarious financial situation. Specifically, Defendants knew or should have known that, at the time they sold the Preferred Stock to Plaintiffs, CSC did not meet the Asset Coverage Test in the Forward Purchase Agreement because Defendant had not disclosed a \$15 million tenant improvement liability.

71. Defendants knowingly, or but for their reckless disregard of the truth, provided the materially misstated Asset Coverage Test to the Plaintiffs to induce the purchase CSC Preferred Stock.

72. Plaintiffs have suffered monetary damages as a result of Defendants' false statements and omissions of material fact and fraudulent conduct regarding the validity of the Asset Coverage Test when agreeing to waive payments on dividends of Preferred Stock

for 2023 and when agreeing to purchase shares of the Series P15 Series Preferred Stock in March and June 2023.

AS AND FOR A FOURTH CAUSE OF ACTION
FRAUD

73. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

74. In connection with Plaintiffs' purchases of CSC preferred stock, Defendants made material misrepresentations of fact regarding CSC's financial condition in order to obtain Plaintiff's investments despite Defendants' precarious financial situation. Specifically, Defendants knew or, but for their reckless disregard of the truth, should have known that, at the time they sold Preferred Stock to Plaintiffs, that CSC did not meet the Asset Coverage Test in the Forward Purchase Agreement because of an undisclosed \$15 million tenant improvement liability.

75. Defendants knowingly, or but for their reckless disregard of the truth, misrepresented to Plaintiffs in the March 2023 Officer's Certificate and in the June 2023 Officer's Certificate that the representations and warranties of CSC in Section 4 of the Forward Purchase Agreement were true and correct in all material respects, that Defendants were in compliance with the covenants of Section 2 of the Forward Purchase Agreement, and that Defendants were not in breach in any material respect of the Forward Purchase Agreement or the Shareholders Agreement.

76. Defendants knowingly, or but for their reckless disregard of the truth, omitted a \$15 million tenant improvement liability for one of its largest properties, which liability should have been included in the Asset Coverage Test.

77. Plaintiffs relied on Defendants' representation that CSC satisfied the Asset Coverage Test when agreeing to enter the Fifth Amended and Restated Forward Purchasing Agreement in March, 2023.

78. Plaintiffs relied on Defendants' representation that CSC satisfied the Asset Coverage Test when agreeing to defer payments on dividends of Preferred Stock for 2023 and when agreeing to purchase shares of the Series P15 Series Preferred Stock in March and June 2023.

79. As a direct and proximate result of their wrongful conduct, Plaintiffs suffered damages in an amount to be proven at trial.

AS AND FOR A FIFTH CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION

80. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

81. By reason of their superior knowledge and position as officers of CSC, Defendants had a duty to provide accurate information to Plaintiffs in connection with CSC's sale of Preferred Stock to Plaintiffs

82. In connection with Plaintiffs' purchases of CSC preferred stock, Defendants supplied false information to Plaintiff. Specifically, Defendants knew, or were negligent in not knowing that, at the time they sold Preferred Stock to Plaintiffs, CSC did not meet the Asset Coverage Test in the Forward Purchase Agreement because of an undisclosed \$15 million tenant improvement liability.

83. Defendants failed to exercise reasonable care in determining whether CSC met the Asset Coverage Test in connection with Plaintiffs' purchases of CSC Preferred Stock.

84. Plaintiffs relied on the grossly miscalculated results of the Asset Coverage Test in agreeing to defer payments on dividends on Preferred Stock for 2023 and to purchases shares of the Series P15 Preferred Stock in March and June 2023.

85. As a direct and proximate result of Defendants' negligent conduct, Plaintiffs suffered damages in an amount to be proven at trial.

AS AND FOR A SIXTH CAUSE OF ACTION
BREACH OF CONTRACT

86. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

87. The Shareholders Agreement a contract between Plaintiffs and Defendants, among others.

88. Section 5 of the Shareholders Agreement describes certain actions that may not be taken absent Orthogon approval, including the sale of material assets outside the ordinary course of business. Defendants caused CSC to sell material assets outside the ordinary course of business, over Orthogon's objection.

89. As a result of Defendants' breach, Plaintiffs suffered damages in an amount to be proven at trial.

AS AND FOR A SEVENTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY

90. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

91. Defendants owed a fiduciary duty to Plaintiffs.

92. Defendants breached their fiduciary duties to Plaintiffs by providing materially misstated information knowingly, or but for their reckless disregard of the trust, in connection with the issuance of CSC Preferred Stock and deferral of preferred dividends.

93. Plaintiffs relied on the representations of the Defendants in purchasing the CSC Preferred Stock and deferring preferred dividends.

94. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs suffered damages in an amount to be proven at trial.

AS AND FOR AN EIGHTH CAUSE OF ACTION
UNJUST ENRICHMENT

95. Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs.

96. Plaintiffs conferred a benefit on Defendants when they purchased preferred stock from CSC and deferred preferred dividends.

97. Defendants knew of the benefit.

98. Defendants accepted and retained the benefit despite knowing that Plaintiffs purchased CSC's preferred stock based on materially misstated information supplied by Defendants.

99. Defendants' acceptance and retention of the benefit is inequitable.

100. Defendants should be required to disgorge any and all benefits they obtained for themselves in selling the preferred stock to Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court issue judgment for Plaintiffs and against Defendants as follows:

a) On all claims, awarding Plaintiffs such damages as are allowed by law and determined to have been sustained by it as a result of Defendants' wrongful conduct, in an amount to be proven at trial, but no less than \$11.6 million;

b) Awarding Plaintiffs their costs, expenses, disbursements, and attorneys' fees incurred in connection with this action, as well as pre- and post-judgment interest; and

c) Granting Plaintiffs such other, further, and different relief as it finds just, necessary, and proper under the circumstances.

Dated: August 29, 2025
New York, NY

Respectfully submitted,

Joshua D. Liston
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New York, NY 10022
(646) 755-3601
jliston@blmlp.com
Attorneys for Plaintiffs

Exhibit 4

Delaware

The First State

Page 1

*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF
DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT
COPY OF THE RESTATED CERTIFICATE OF "CHARTER SCHOOL CAPITAL,
INC.", FILED IN THIS OFFICE ON THE FIFTH DAY OF JUNE, A.D.
2023, AT 6:38 O`CLOCK P.M.*


Jeffrey W. Bullock, Secretary of State

4226878 8100
SR# 20232671510

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 203496315
Date: 06-06-23

State of Delaware
Secretary of State
Division of Corporations
Delivered 06:38 PM 06/05/2023
FILED 06:38 PM 06/05/2023
SR 20232671510 - File Number 4226878

**NINTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
CHARTER SCHOOL CAPITAL, INC.**

Charter School Capital, Inc. (the “Corporation”), a corporation organized and existing under and by virtue of the Law of the State of Delaware, does hereby certify that:

- A. The name of the corporation is Charter School Capital, Inc. The Corporation’s original Certificate of Incorporation was filed with the Secretary of the State of Delaware on September 27, 2006.
- B. This Ninth Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware (the “DGCL”), and has been duly approved by the written consent of the stockholders of the Corporation in accordance with Section 228 of the DGCL, and restates, integrates and further amends the provisions of the Corporation’s Certificate of Incorporation.
- C. The text of the Certificate of Incorporation of this Corporation is hereby amended and restated in its entirety to read as follows:

ARTICLE I: The name of the corporation is Charter School Capital, Inc.

ARTICLE II: The name and address, including street, number, city and county, of the registered agent of the Corporation in the State of Delaware are:

Cogency Global Inc.
850 New Burton Road, Suite 201
Dover, DE 19904 County of Kent

ARTICLE III: The nature of the business and the purposes to be conducted and promoted by the Corporation shall be to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

ARTICLE IV: The total number of shares of stock which the Corporation shall have authority to issue is Six Hundred Five Thousand (605,000) shares consisting of (i) One Hundred Five Thousand (105,000) shares of preferred stock, par value \$0.001 per share (the “Preferred Stock”), (ii) One Hundred Fifty Thousand (150,000) shares of Class A Common Stock, par value \$0.001 per share (the “Class A Common Stock”) and (iii) Three Hundred Fifty Thousand (350,000) shares of Class B Common Stock, par value \$0.001 per share (the “Class B Common Stock,” and together with the Class A Common Stock, the “Common Stock”).

ARTICLE V: Except as otherwise provided herein, all shares of Common Stock shall be identical in all respects and will entitle the holders thereof to the same rights, privileges and

NINTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF CHARTER SCHOOL CAPITAL, INC.

restrictions, including without limitation, stock dividends, subdivisions, combinations, consolidations, distributions, reclassifications, exchanges and substitutions.

(a) Voting. The holder of each share of Class A Common Stock shall be entitled to notice of any and all stockholders' meeting in accordance with the Bylaws of the Corporation and shall have the right to one (1) vote for each share of Class A Common Stock held and shall be entitled to vote upon such matters and in such manner as may be provided by law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b) of the DGCL, as the same may be amended and supplemented. Except as otherwise provided by the DGCL, as the same may be amended and supplemented, the holders of Class B Common Stock shall have no voting power whatsoever and shall not be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation or otherwise participate in any proceeding in which actions shall be taken by the Corporation or the stockholders thereof.

(b) Board of Directors. The Board of Directors of the Corporation (the "Board") shall be comprised of four (4) directors, who shall be elected and have voting rights as provided herein. The holders of a majority of the shares of Class A Common Stock issued and outstanding shall have the right to elect one (1) director who shall have the right to cast four (4) votes on all matters submitted to a vote of the Board and three (3) other directors who shall each have the right to cast one (1) vote on all matters submitted to a vote of the Board.

(c) Dividends. When and as dividends are declared thereon, whether payable in cash, property or securities of the Corporation, the holders of Common Stock will be entitled to share ratably according to the number of shares of Common Stock held by them, in such dividends; provided, that if dividends are declared which are payable in shares of any Common Stock, dividends will be declared which are payable at the same rate on all classes of Common Stock, and dividends payable in shares of Class A Common Stock will be payable only to holders of Class A Common Stock and dividends payable in shares of Class B Common Stock will be payable only to the holders of Class B Common Stock.

(d) Liquidation Rights. In the event of any Liquidation Event (as defined below), either voluntary or involuntary, after payment of the Preferred Liquidation Preference (as defined below) to the holders of the Preferred Stock, the holders of Common Stock shall be entitled to share ratably according to the number of shares of Common Stock held by them in the remaining assets of the Corporation available for distribution to holders of Common Stock.

(e) Splits or Combinations. If the Corporation in any manner subdivides or combines the outstanding shares of any class of Common Stock, the outstanding shares of the other classes of Common Stock will be proportionately subdivided or combined.

ARTICLE VI: The terms, provisions and preferences of the Preferred Stock are as follows:

Section 1. Number: Designation.

(a) A series of preferred stock is designated as the “Series P3 Preferred Stock” (the “Series P3 Preferred Stock”). The number of shares constituting the Series P3 Preferred Stock is Five Thousand (5,000) shares, par value \$0.001 per share.

(b) A series of preferred stock is designated as the “Series P15 Preferred Stock” (the “Series P15 Preferred Stock”). The number of shares constituting the Series P15 Preferred Stock is One Hundred Thousand (100,000) shares, par value \$0.001 per share.

(c) Fractional Shares. Preferred Stock may be issued in fractions of a share which shall entitle the holder, in proportion to such holder’s fractional shares, to exercise voting rights (if any), receive dividends and redemption payments, participate in distributions and to have the benefit of all other rights of holders of Preferred Stock.

Section 2. Dividends.

(a) Accruing Dividends. Commencing from and including the Original Issue Date (as defined below) for each outstanding share (or fraction thereof) of Preferred Stock, the Board shall (except as otherwise required by law) declare dividends, which shall accrue and shall be due and payable (subject to Section 2(c) and unless such due date and payment are waived pursuant to Section 7(h)), in cash only out of funds legally available for the payment of dividends to the Corporation’s stockholders under the DGCL, semi-annually in arrears on June 30 and December 30 of each year or, if any such day is not a Business Day, the immediately succeeding Business Day (each such date, a “Dividend Due Date”). The dividends described in this Section 2 shall accrue, subject to the other provisions of this Certificate of Incorporation, at an amount per annum per outstanding share (or fraction thereof) of Preferred Stock equal to the Dividend Rate multiplied by the applicable Preferred Liquidation Preference (as defined below) (each such dividend, an “Accruing Dividend”). Accruing Dividends shall, whether or not declared by the Board and whether or not there are funds legally available for the payment of dividends, (i) be cumulative, (ii) begin to accrue and accumulate from the Original Issue Date and (iii) compound semi-annually on each Dividend Due Date (or, if any such day is not a Business Day, the immediately succeeding Business Day) if not paid on such date. Accruing Dividends shall be due and payable (unless such payment is waived pursuant to Section 7(h)) semi-annually in arrears on each Dividend Due Date (or, if any such day is not a Business Day, the immediately succeeding Business Day), commencing with the first such Dividend Due Date. The period from the Original Issue Date to and including the first Dividend Due Date, and each period from but excluding the most recently completed Dividend Due Date to and including the following Dividend Due Date is herein referred to as a “Dividend Period”. Accruing Dividends will be computed on the basis of a 360-day year and, for any Dividend Period greater or less than a full Dividend Period, will be computed on the basis of the actual number of days elapsed in the period divided by 180.

(b) Payment Priority. The Corporation shall not declare, pay or set aside any dividends on shares of Series P15 Preferred Stock or Common Stock, or make or pay any

distributions, redemptions or other payments on shares of Series P15 Preferred Stock or Common Stock, unless (in addition to the obtaining of any consents required elsewhere in this Certificate of Incorporation) all Accruing Dividends which are then due and payable for shares of Series P3 Preferred Stock have been paid. All shares of Series P15 Preferred Stock shall rank pari passu in priority with respect to dividends. The Corporation shall not declare, pay or set aside any dividends on shares of Common Stock, or make or pay any distributions, redemptions or other payments on shares of Common Stock, unless (in addition to the obtaining of any consents required elsewhere in this Certificate of Incorporation) all Accruing Dividends which are then due and payable for shares of Series P3 Preferred Stock and Series P15 Preferred Stock have been paid.

(c) Dividend Record Date. Accruing Dividends that are payable on the Preferred Stock on any Dividend Due Date will be payable to Holders of record on the applicable record date, which shall be the fifteenth (15th) calendar day before the applicable Dividend Due Date (each such record date, a “Dividend Record Date”). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

(d) Dividend Restriction. Notwithstanding anything to the contrary in this Section 2, if, on any Dividend Due Date, a Dividend Restriction (as defined below) exists, then, solely to the extent payment cannot be made, such Accruing Dividends shall not be due and payable, but shall continue to accrue in accordance with Section 2(a), until such time as no Dividend Restriction exists and such Accruing Dividends are paid in full. A “Dividend Restriction” shall exist on any Dividend Due Date if, at that time, the payment of such Accruing Dividends is prohibited or restricted under the terms of that certain Amended and Restated Credit Agreement dated on or about May 26, 2021 by and among the Corporation and Texas Capital Bank, N.A., as administrative agent, and the other parties signatory thereto from time to time (as the same may be amended, restated, supplemented, refinanced, replaced or otherwise modified from time to time, the “Credit Agreement”).

(e) Default Rate. Notwithstanding anything in this Certificate of Incorporation to the contrary, if the Corporation (i) fails to pay to the Holders any Accruing Dividends which are due and payable, (ii) defaults in any of its obligations pursuant to this Certificate of Incorporation with respect to the Preferred Stock (including, without limitation, payment as required in respect of redemption of any shares (or fraction thereof) of Preferred Stock) or (iii) breaches any rights, preferences, powers, restrictions or limitations of the Preferred Stock contained in this Certificate of Incorporation, then such Accruing Dividends shall continue to accrue from the applicable Dividend Due Date or date of default or breach, as applicable, at the Default Rate through and including the date of actual payment in full of such Accruing Dividends or cure of any such default or breach, as applicable.

Section 3. Liquidation Preference.

(a) Upon any Liquidation Event, each share (or fraction thereof) of Series P3 Preferred Stock entitles the Holder thereof to receive and to be paid out of the assets of the Corporation legally available for distribution to the Corporation’s stockholders, before any distribution or payment may be made to a holder of any shares of Series P15 Preferred Stock or

Common Stock, an amount in cash per share equal to the sum of (A) the Series P3 Original Issue Price, plus (B) all accrued and unpaid Accruing Dividends, if any, on such share (such amount, the “Series P3 Liquidation Preference”). If upon any such Liquidation Event, the assets of the Corporation legally available for distribution to the Corporation’s stockholders are insufficient to pay the holders of Series P3 Preferred Stock the full liquidation preferences to which they are entitled pursuant to this Section 3(a), then (i) the holders of Series P3 Preferred Stock will share ratably in any such distribution of the assets of the Corporation in proportion to the full respective amounts to which they are entitled and (ii) the Corporation shall not make or agree to make any dividends or payments to the holders of Series P15 Preferred Stock or Common Stock until the holders of Series P3 Preferred Stock receive such full respective amounts.

(b) Upon any Liquidation Event, each share (or fraction thereof) of Series P15 Preferred Stock entitles the Holder thereof to receive and to be paid out of the assets of the Corporation legally available for distribution to the Corporation’s stockholders, before any distribution or payment may be made to a holder of any shares of Common Stock, an amount in cash per share equal to the greater of (i) the sum of (A) the Series P15 Original Issue Price, plus (B) all accrued and unpaid Accruing Dividends, if any, of such share, or (ii) the difference between (A) 104% of the Series P15 Original Issue Price less (B) dividends previously paid, if any, on such share (such amount, the “Series P15 Liquidation Preference” and together with the Series P3 Liquidation Preference, the “Preferred Liquidation Preference”). If upon any such Liquidation Event, the assets of the Corporation legally available for distribution to the Corporation’s stockholders are insufficient to pay the holders of Series P15 Preferred Stock the full liquidation preferences to which they are entitled pursuant to this Section 3(b), then (i) the holders of Series P15 Preferred Stock will share ratably in any such distribution of the assets of the Corporation in proportion to the full respective amounts to which they are entitled and (ii) the Corporation shall not make or agree to make any dividends or payments to the holders of Common Stock until the holders of Series P15 Preferred Stock receive such full respective amounts.

(c) After payment to the Holders of the full Preferred Liquidation Preference to which they are entitled, the Holders as such will have no right or claim to any of the assets of the Corporation.

(d) The value of any property not consisting of cash that is distributed by the Corporation to the Holders will equal the fair market value thereof on the date of distribution, as determined by the Board, provided that no such distribution shall be deemed to limit, reduce or modify the rights of the Holders as set forth in this Section 3.

(e) Definitions. Each of the following events shall be considered a “Liquidation Event”:

(i) the voluntary or involuntary liquidation, dissolution or winding-up of the Corporation;

(ii) the commencement by the Corporation of any case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including, without limitation, pursuant to Chapter 11 of the U.S. Bankruptcy Code;

(iii) the consent to entry of an order for relief in an involuntary case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including, without limitation, pursuant to Chapter 11 of the U.S. Bankruptcy Code;

(iv) the consent to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee or similar official of the Corporation, or any general assignment for the benefit of creditors;

(v) unless the Requisite Holders elect otherwise by written notice sent to the Corporation, a merger, consolidation, recapitalization or reorganization in which

(A) the Corporation is a constituent party or

(B) a subsidiary of the Corporation is a constituent party,

except any such merger, consolidation, recapitalization or reorganization involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger, consolidation, recapitalization or reorganization continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger, consolidation recapitalization or reorganization, a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger, consolidation, recapitalization or reorganization the parent corporation of such surviving or resulting corporation; or

(vi) unless the Requisite Holders elect otherwise by written notice sent to the Corporation, the sale, lease, transfer, irrevocable exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or the sale or disposition (whether by merger, consolidation or otherwise) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

(f) In the event of any Liquidation Event, the Corporation shall, within ten (10) days of the date the Board approves such action, or no later than ten (10) days of any stockholders' meeting called to approve such action, or within ten (10) days of the commencement of any involuntary proceeding, whichever is earlier, give each Holder written notice of the proposed action. Such written notice shall describe the material terms and conditions of such proposed action, including a description of the stock, cash and property to be received by the Holders upon consummation of the proposed action and the date of delivery thereof. If any material change in

the facts set forth in the initial notice shall occur, the Corporation shall promptly give written notice to each Holder of such material change. The Corporation shall not consummate any voluntary Liquidation Event of the Corporation before the expiration of thirty (30) days after the mailing of the initial notice or ten (10) days after the mailing of any subsequent written notice, whichever is later; provided, that any such period may be shortened upon the prior written consent of the Requisite Holders.

Section 4. Voting Rights.

(a) Except as otherwise provided herein or as otherwise required by law, the Preferred Stock shall have no voting rights. However, as long as any shares of Preferred Stock are outstanding, the Corporation shall not, without the prior affirmative vote or consent of the Requisite Holders (any such action or transaction without such prior vote or consent null and void *ab initio* and of no force or effect), (a) alter or change adversely the powers, preferences or rights given to the Preferred Stock, (b) authorize or create any class or series of stock (or any security convertible into or exercisable for any class or series of capital stock of the Corporation), or issue or sell, or obligate itself to issue or sell, any securities of the Corporation or any subsidiary (or any security convertible into or exercisable for any class or series of capital stock of the Corporation or any subsidiary), ranking senior to, or otherwise *pari passu* with, the Preferred Stock in rights, preferences or privileges (including, without limitation, as to dividends, redemption or distribution of assets upon a Liquidation Event), (c) amend or repeal its certificate of incorporation, bylaws or other organizational documents, including, without limitation, this Certificate of Incorporation, in any manner that adversely affects any powers, preferences or rights of the Holders, (d) increase or decrease the number of authorized shares of Preferred Stock, or (e) enter into any agreement which aims, or otherwise agree or commit, to accomplish any of the foregoing.

Section 5. Redemption.

(a) Optional Redemption by the Corporation. At any time after the Original Issue Date of a share of Preferred Stock, the Corporation may, at its option, redeem each and any share (or fraction thereof) of any series of the outstanding Preferred Stock for cash in an amount equal to the Preferred Liquidation Preference on such share (or fraction thereof) (such amount, the “Redemption Price”); provided that the aggregate Redemption Price for the shares selected for redemption by the Corporation on each Redemption Date shall equal at least \$100,000, unless such requirement is waived by the Requisite Holders; provided, further, that, subject to and except as otherwise provided in the following proviso, each redemption shall apply ratably to all Holders of each series of Preferred Stock to be redeemed if less than all of the outstanding shares of Preferred Stock are redeemed; provided, further, that the Corporation may not redeem (in part or in whole) any shares of Series P15 Preferred Stock issued on or after March 14, 2023 (“Group 3 Series P15 Preferred Stock”) unless all holders of all other shares of Preferred Stock shall have first received the full Redemption Price in respect of such shares of Preferred Stock to which they are entitled pursuant to this Section 5(a). If the Corporation elects to redeem the Preferred Stock pursuant to this Section 5(a), the Corporation shall deliver a notice of redemption to the Holders of each series or shares of Preferred Stock to be redeemed not less than ten (10) or more than sixty (60) calendar days prior to the date specified for redemption (the “Redemption Date”), which notice (the

“Redemption Notice”) shall include: (A) the Redemption Date; (B) the Redemption Price and number of shares of and the series of Preferred Stock held by the Holder being redeemed; (C) that on the Redemption Date, each share of Preferred Stock subject to redemption shall automatically and without further action by the Holder thereof (and whether or not the certificates representing such share of Preferred Stock are surrendered) be redeemed for the Redemption Price; (D) that payment of the Redemption Price will be made to the Holder on the Redemption Date to the account specified by such Holder to the Corporation in writing; and (E) the manner and place designated for surrender by the Holder to the Corporation of his, her or its certificate or certificates representing the shares of Preferred Stock to be redeemed.

(b) Redemption Restriction. Notwithstanding anything to the contrary in this Section 6, if, on any Redemption Date, a Redemption Restriction (as defined below) exists, then such redemption shall not be made until such time as no Redemption Restriction exists and the Corporation has provided an updated Redemption Notice. A “Redemption Restriction” shall exist on any Redemption Date if, at that time, the intended redemption of Preferred Stock is prohibited under the terms of the Credit Agreement.

(c) Mechanics of Redemption.

(i) The Corporation (or a redemption agent on behalf of the Corporation, as applicable) shall pay the applicable Redemption Price on the Redemption Date or within 5 Business Days thereafter upon surrender of the certificates representing the shares of Preferred Stock to be redeemed and receipt of any written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the redemption agent or the Corporation, as applicable; provided that, if such certificates are lost, stolen, mutilated, or destroyed, the Corporation may require an affidavit certifying to such effect and, if requested, an agreement indemnifying the Corporation from any losses incurred in connection therewith, in each case, in form and substance reasonably satisfactory to the Corporation, from such Holder prior to paying such amounts.

(ii) Following any redemption of shares of Preferred Stock on any Redemption Date, the shares of Preferred Stock so redeemed will no longer be deemed to be outstanding and all rights of the Holder thereof shall cease, including the right to receive Accruing Dividends; provided, however, that any rights of Holders pursuant to this Certificate of Incorporation that by their terms survive redemption of the shares of Preferred Stock shall survive in accordance with their terms. The foregoing notwithstanding, in the event that a share (or fraction thereof) of Preferred Stock is not redeemed by the Corporation when required, or if payment of the Redemption Price is not made in respect of a share (or fraction thereof) of Preferred Stock on the Redemption Date, such share (or fraction thereof) of Preferred Stock will remain outstanding and will continue to be entitled to all of the powers, designations, preferences, privileges and other rights (including but not limited to the accrual and payment of dividends) as provided herein until such share (or fraction thereof) is redeemed and the Redemption Price paid in full.

(iii) On or before the Redemption Date, each Holder subject to the applicable redemption shall surrender the certificate or certificates representing such shares of

Preferred Stock subject to redemption to the Corporation, in the manner and place designated in the Redemption Notice, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), or, in the event the certificate or certificates are lost, stolen or missing, shall deliver an affidavit of loss, in the manner and place designated in the Redemption Notice. Each surrendered certificate shall be canceled and retired and the Corporation shall thereafter make payment of the Redemption Price by wire transfer to the Holder of record of such certificate to the account specified by such Holder to the Corporation in writing; provided, that if less than all the shares represented by a surrendered certificate are redeemed, then a new stock certificate representing the unredeemed shares shall be issued in the name of, and to, the applicable Holder of record of the canceled stock certificate.

Section 6. Additional Definitions. For purposes of these resolutions, the following terms shall have the following meanings:

(a) “Business Day” means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or obligated to close.

(b) “Capital Stock” means, with respect to any Person, any and all shares, interests, rights to purchase equity, equity participation rights or other equivalent equity interests (however designated, whether voting or non-voting) in such Person’s equity, including, without limitation preferred stock.

(c) “Certificate of Incorporation” means this certificate of incorporation of the Corporation, as such shall be amended from time to time.

(d) “Default Rate” means (i) the Dividend Rate plus (ii) two percent (2%).

(e) “Dividend Rate” means, subject to any applicable Dividend Rate Adjustment (as defined below), (A) for each outstanding share of Series P3 Preferred Stock, a per annum rate equal to (i) the one-year Treasury yield at constant maturities as reported by the U.S. Department of the Treasury on the Original Issue Date for such share plus (ii) three percent (3%); provided, however, if all Series P3 Preferred Stock is not redeemed prior to June 30, 2022 (the “Escalator Date”) the Dividend Rate on Series P3 Preferred Stock shall increase to a per annum rate equal to fifteen percent (15%) beginning on the Escalator Date; (B) for each outstanding share of Series P15 Preferred Stock issued on or before April 10, 2020 (“Group 1 Series P15 Preferred Stock”), a per annum rate equal to (i) the seven-year Treasury yield at constant maturities as reported by the U.S. Department of the Treasury on the Original Issue Date for such share plus (ii) thirteen percent (13%); provided, however, if all Series P15 Preferred Stock is redeemed prior to the Escalator Date, the Dividend Rate for Group 1 Series P15 Preferred Stock shall be equal to a per annum rate equal to (i) the seven-year Treasury yield at constant maturities as reported by the U.S. Department of the Treasury on the Original Issue Date for such share plus (ii) eleven percent (11%); (C) for each outstanding share of Series P15 Preferred Stock issued after April 10, 2020 but before March 14, 2023 (“Group 2 Series P15 Preferred Stock”), a per annum rate equal to (i) the seven-year Treasury yield at constant maturities as reported by the U.S. Department of the Treasury on the Original Issue Date for such share plus (ii) thirteen percent (13%); and (D) for

each outstanding share of Group 3 Series P15 Preferred Stock, a per annum rate equal to nineteen and three quarters percent (19.75%). Notwithstanding the foregoing, if any holder of shares of a Preferred Stock Group (as defined below) is an investment fund or other vehicle (an “Investment Holder”), and all holders of shares of such Preferred Stock Group shall not have received the full Redemption Price in respect of all shares of such Preferred Stock Group prior to one (1) year prior to the first initial end of term to occur of any such Investment Holder of shares of such Preferred Stock Group (the date of such initial end of term being determined as provided in such Investment Holder’s organizational documents, but without giving effect to any extension period under such organizational documents to extend such term and in no event being earlier than August 31, 2025) (the date which is one (1) year prior to such first initial end of term to occur of any such Investment Holder of shares of such Preferred Stock Group, with respect to such Preferred Stock Group, a “Dividend Rate Adjustment Date”), then as of such Dividend Rate Adjustment Date, the Dividend Rate for such Preferred Stock Group shall be increased (any such increase, a “Dividend Rate Adjustment”) to equal a per annum rate equal to the sum of (x) the Dividend Rate for such Preferred Stock Group in effect on the day immediately preceding such Dividend Rate Adjustment Date plus (y) the sum of (1) the seven-year Treasury yield at constant maturities as reported by the U.S. Department of the Treasury on such Dividend Rate Adjustment Date plus (2) ten percent (10%). For clarity, the Dividend Rate may vary between different shares of Preferred Stock within the same series to the extent that the Treasury yield is different on the Original Issue Date for such shares or as otherwise provided herein. A “Preferred Stock Group” shall mean any of the Series P3 Preferred Stock, Group 1 Series P15 Preferred Stock, Group 2 Series P15 Preferred Stock or Group 3 Series P15 Preferred Stock.

(f) “hereof,” “herein” and “hereunder” and words of similar import refer to this Certificate of Incorporation as a whole and not merely to any particular clause, provision, section or subsection.

(g) “Holders” means the holders of outstanding shares (or fractions thereof) of Preferred Stock as they appear in the records of the Corporation.

(h) “Original Issue Date” means, with respect to a share of Preferred Stock, the date on which such share is first issued by the Corporation.

(i) “Person” means any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government, any agency or political subdivisions thereof or other “Person” as contemplated by Section 13(d) of the Exchange Act.

(j) “Requisite Holders” means Holders owning a majority of the then outstanding shares of Preferred Stock.

(k) “Series P3 Original Issue Price” means \$1,000.00 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series P3 Preferred Stock.

(l) “Series P15 Original Issue Price” means \$1,000.00 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series P15 Preferred Stock.

Section 7. Miscellaneous. For purposes of this Certificate of Incorporation, the following provisions shall apply:

(a) Share Certificates. If any certificates representing shares of Preferred Stock shall be mutilated, lost, stolen or destroyed, the Corporation shall issue, in exchange and in substitution for and upon cancellation of the mutilated certificate, or in lieu of and substitution for the lost, stolen or destroyed certificate, a new Preferred Stock certificate of like tenor and representing an equivalent number of shares of Preferred Stock, but only upon receipt of evidence of such loss, theft or destruction of such certificate (or affidavit certifying to such effect) and indemnity by the holder thereof, if requested, reasonably satisfactory to the Corporation.

(b) Status of Cancelled Shares. Shares of Preferred Stock which have been redeemed, repurchased or otherwise cancelled shall be retired and, following the filing of any certificate required by the DGCL, have the status of authorized and unissued shares of Preferred Stock, without designation as to series, until such shares are once more designated by the Board as part of a particular series of Preferred Stock of the Corporation.

(c) Severability. If any right, preference or limitation of the Preferred Stock set forth in this Certificate of Incorporation is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this Certificate of Incorporation which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

(d) Remedies. The Corporation acknowledges that the obligations imposed on it in this Certificate of Incorporation are special, unique and of an extraordinary character, and irreparable damages, for which money damages, even if available, would be an inadequate remedy, would occur in the event that the Corporation does not perform the provisions of this Certificate of Incorporation in accordance with its specified terms or otherwise breaches such provisions. The Holders shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Certificate of Incorporation and to seek to enforce specifically the terms and provisions hereof, this being in addition to any other rights and remedies to which they are entitled, at law or in equity or under this Certificate of Incorporation, including without limitation money damages.

(e) Headings. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(f) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder shall be in writing and delivered personally or sent by a U.S. nationally recognized overnight courier service, addressed to the Corporation, at 1000 SW

Broadway, Suite 1800, Portland, Oregon 97205 Attention: Legal Department, e-mail address: legal@charterschoolcapital.com, or such other address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 7(f). Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally or sent by a nationally recognized overnight courier service addressed to each Holder at the address of such Holder appearing on the books of the Corporation, or if no such address appears on the books of the Corporation, at the principal place of business of such Holder. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the second Business Day following the date of mailing, if sent by a U.S. nationally recognized overnight courier service or (ii) upon actual receipt by the party to whom such notice is required to be given. A copy of any notice or other communication or deliveries hereunder may also be sent by e-mail, which shall not constitute notice pursuant to this Section 7(f).

(g) Other Rights. The shares of Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or as provided by applicable law and regulation; provided that the foregoing shall not limit any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, that may be separately agreed by the Corporation and all or some of the Holders in respect of Preferred Stock.

(h) Requisite Holders. Notwithstanding anything to the contrary contained herein, any consent, waiver, vote, decision, election or action required or permitted to be taken hereunder by the Holders as a group (i.e., as opposed to by a specified Holder or specified subset of Holders) shall require the approval or action, as applicable, of the Requisite Holders and, after such approval or action, shall be binding on all of the Holders.

ARTICLE VII: The Corporation is to have perpetual existence.

ARTICLE VIII: The personal liability of the directors of the Corporation is hereby eliminated to the fullest extent permitted by paragraph (7) of subsection (b) of Section 102 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented.

ARTICLE IX: The Corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the expenses, liabilities or other matters referred to in or covered by said section, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any Bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

ARTICLE X: From time to time any of the provisions of this Certificate of Incorporation may be amended, altered or repealed, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted in the manner and at the time prescribed by said laws, and all rights at any time conferred upon the stockholders of the Corporation by this Certificate of Incorporation are granted subject to the provisions of this Article X. In addition to the other powers expressly granted by statute, the Board of Directors shall have the power to adopt, repeal, alter, amend and rescind the Bylaws of the Corporation.

EXECUTED on June 5, 2023, 2023.

DocuSigned by:

Brad Coburn

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Brad Coburn, Chief Investment Officer

Signature Page to
Ninth Amended and Restated Certificate of Incorporation
(Charter School Capital, Inc.)

Exhibit 5

AMENDED AND RESTATED BYLAWS
OF
CHARTER SCHOOL CAPITAL, INC.
(a Delaware corporation)

Effective as of January 1, 2022

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AMENDED AND RESTATED BYLAWS
OF
CHARTER SCHOOL CAPITAL, INC.,
a Delaware corporation

ARTICLE I.
OFFICES

Section 1.1. **Registered Office.** The registered office shall be in the City of Dover, County of Kent, State of Delaware.

Section 1.2. **Other Offices.** The corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II.
MEETINGS OF STOCKHOLDERS

Section 2.1. **Place of Meetings.** Meetings of stockholders shall be held at any place within or without the State of Delaware designated by the Board of Directors. In the absence of any such designation, stockholders' meetings shall be held at the principal executive office of the corporation.

Section 2.2. **Annual Meeting of Stockholders.** The annual meeting of stockholders shall be held each year on a date and a time designated by the Board of Directors. At each annual meeting directors shall be elected and any other proper business may be transacted.

Section 2.3. **Quorum; Adjourned Meetings and Notice Thereof.** A majority of the stock issued and outstanding and entitled to vote at any meeting of stockholders, the holders of which are present in person or represented by proxy, shall constitute a quorum for the transaction of business except as otherwise provided by law, by the Certificate of Incorporation, or by these Bylaws. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum and the votes present may continue to transact business until adjournment. If, however, such quorum shall not be present or represented at any meeting of the stockholders, a majority of the voting stock represented in person or by proxy may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote thereat.

Section 2.4. **Voting.** When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express

provision of the statutes, or the Certificate of Incorporation, or these Amended and Restated Bylaws, a different vote is required in which case such express provision shall govern and control the decision of such question.

Section 2.5. **Proxies.** At each meeting of the stockholders, each stockholder having the right to vote may vote in person or may authorize another person or persons to act for him or her by proxy appointed by an instrument in writing subscribed by such stockholder and bearing a date not more than three years prior to said meeting, unless said instrument provides for a longer period. All proxies must be filed with the Secretary of the corporation at the beginning of each meeting in order to be counted in any vote at the meeting. Each stockholder shall have one vote for each share of stock having voting power, registered in his name on the books of the corporation on the record date set by the Board of Directors as provided in Article V, Section 5.6 hereof. All elections shall be had and all questions decided by a plurality vote.

Section 2.6. **Special Meetings.** Special meetings of the stockholders, for any purpose, or purposes, unless otherwise prescribed by statute or by the Certificate of Incorporation, may be called by the Chair of the Board or the Chief Executive Officer and shall be called by the Chief Executive Officer or the Secretary at the request in writing of a majority of the Board of Directors, or at the request in writing of stockholders owning a majority in amount of the entire capital stock of the corporation issued and outstanding, and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 2.7. **Notice of Stockholder's Meetings.** Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which notice shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. The written notice of any meeting shall be given to each stockholder entitled to vote at such meeting not less than ten nor more than sixty days before the date of the meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the corporation.

Section 2.8. **Maintenance and Inspection of Stockholder List.** The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present.

Section 2.9. **Stockholder Action by Written Consent Without a Meeting.** Unless otherwise provided in the Certificate of Incorporation, any action required to be taken at any annual or special meeting of stockholders of the corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be

signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

ARTICLE III. **DIRECTORS**

Section 3.1. **Number, Election and Tenure.** The Board shall consist of one or more members. The exact number shall be determined from time to time by resolution of the Board. Until otherwise determined by such resolution, the Board shall consist of one (1) person. Directors shall be elected at the annual meeting of stockholders and each director shall serve until such person's successor is elected and qualified or until such person's death, retirement, resignation or removal.

Section 3.2. **Vacancies.** Vacancies on the Board of Directors by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. The directors so chosen shall hold office until the next annual election of directors and until their successors are duly elected and shall qualify, unless sooner displaced. If there are no directors in office, then an election of directors may be held in the manner provided by statute. If, at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole Board (as constituted immediately prior to any such increase), the Court of Chancery of the State of Delaware (the "Court of Chancery") may, upon application of any stockholder or stockholders holding at least ten percent of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office.

Section 3.3. **Powers.** The property and business of the corporation shall be managed by or under the direction of its Board of Directors. In addition to the powers and authorities by these Amended and Restated Bylaws expressly conferred upon them, the Board may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Amended and Restated Bylaws directed or required to be exercised or done by the stockholders.

Section 3.4. **Directors' Meetings.** The directors may hold their meetings and have one or more offices and keep the books of the corporation outside of the State of Delaware.

Section 3.5. **Regular Meetings.** Regular meetings of the Board of Directors may be held without notice at such time and place as shall from time to time be determined by the Board.

Section 3.6. **Special Meetings.** Special meetings of the Board of Directors may be called by the Chair of the Board or the Chief Executive Officer on forty-eight hours' notice to each director, either personally or by mail, by facsimile or by telegram; special meetings shall be called by the Chief Executive Officer or the Secretary in like manner and on like notice on the written request of two directors unless the Board consists of only one director; in which case special meetings shall be called by the Chief Executive Officer or the Secretary in like manner or on like notice on the written request of the sole director.

Section 3.7. **Quorum.** At all meetings of the Board of Directors a majority of the authorized number of directors shall be necessary and sufficient to constitute a quorum for the transaction of business, and the vote of a majority of the directors present at any meeting at which there is a quorum, shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute, by the Certificate of Incorporation or by these Amended and Restated Bylaws. If a quorum shall not be present at any meeting of the Board of Directors the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. If only one director is authorized, such sole director shall constitute a quorum.

Section 3.8. **Action Without Meeting.** Unless otherwise restricted by the Certificate of Incorporation or these Amended and Restated Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

Section 3.9. **Telephonic Meetings.** Unless otherwise restricted by the Certificate of Incorporation or these Amended and Restated Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting.

Section 3.10. **Committees of Directors.** The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more committees, each such committee to consist of one or more of the directors of the corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or a quorum is present, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the Certificate of Incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the

stockholders a dissolution of the corporation or a revocation of a dissolution, or amending the Amended and Restated Bylaws of the corporation; and, unless the resolution or the Certificate of Incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock.

Section 3.11. **Minutes of Committee Meetings.** Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 3.12. **Compensation of Directors.** Unless otherwise restricted by the Certificate of Incorporation or these Amended and Restated Bylaws, the Board of Directors shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

Section 3.13. **Indemnification.**

(a) The corporation shall, to the fullest extent permitted by the Delaware General Corporation Law (the "DGCL"), as the same exists or may hereafter be amended (but in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than said law permitted the corporation to provide prior to such amendment), indemnify any and all persons whom it shall have power to indemnify under the DGCL from and against any and all of the expenses, liabilities or other matters referred to in or covered by the DGCL, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

(b) The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that s/he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if s/he acted in good faith and in a manner s/he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which s/he reasonably believed to be in or not opposed to the best interests of the corporation, and, with

respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(c) The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that s/he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if s/he acted in good faith and in a manner s/he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such Court of Chancery or such other court shall deem proper.

(d) To the extent that a director, officer, employee or agent of the corporation shall be successful on the merits or otherwise in defense of any action, suit or proceeding referred to in paragraphs (a) and (b) of this Section 3.13, or in defense of any claim, issue or matter therein, s/he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

(e) Any indemnification under paragraphs (a) and (b) of this Section 3.13 (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because s/he has met the applicable standard of conduct set forth in paragraphs (a) and (b) of this Section 3.13. Such determination shall be made (1) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (2) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (3) by the stockholders.

(f) Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that s/he is not entitled to be indemnified by the corporation as authorized in this section. Such expenses (including attorneys' fees) incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the board of directors deems appropriate.

(g) The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to

action in his official capacity and as to action in another capacity while holding such office.

(h) The Board of Directors may authorize, by a vote of a majority of a quorum of the Board of Directors, the corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify such person against such liability under this Section 3.13.

(i) For purposes of this Section 3.13, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Section 3.13 with respect to the resulting or surviving corporation as s/he would have with respect to such constituent corporation if its separate existence had continued.

(j) For purposes of this Section 3.13, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner s/he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Section 3.13.

(k) The indemnification and advancement of expenses provided by, or granted pursuant to, this Section 3.13 shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(l) The Court of Chancery is hereby vested with exclusive jurisdiction to hear and determine all actions for advancement of expenses or indemnification brought under this Section 3.13 or under any bylaw, agreement, vote of stockholders or disinterested directors, or otherwise. The Court of Chancery may summarily determine a corporation's obligation to advance expenses (including attorneys' fees).

ARTICLE IV. **OFFICERS**

Section 4.1. **Officers.** The officers of this corporation shall be chosen by the Board of Directors and shall include a Chief Executive Officer, a President, a Secretary, a Chief Investment Officer, and a Chief Financial Officer. The corporation may also have at the discretion of the Board of Directors such other officers as are desired, including a Chair of the Board, a Treasurer, one or more Vice Presidents, one or more Assistant Secretaries and Assistant Treasurers, and such other officers as may be appointed in accordance with the provisions of Section 4.3 hereof. In the event there are two or more Vice Presidents, then one or more may be designated as Executive Vice President, Senior Vice President, or other similar or dissimilar title. At the time of the election of officers, the directors may by resolution determine the order of their rank. Any number of offices may be held by the same person, unless the Certificate of Incorporation or these Amended and Restated Bylaws otherwise provide.

Section 4.2. **Election of Officers.** The Board of Directors, at its first meeting after each annual meeting of stockholders, shall choose the officers of the corporation.

Section 4.3. **Subordinate Officers.** The Board of Directors may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

Section 4.4. **Compensation of Officers.** The salaries of all officers and agents of the corporation shall be fixed by the Board of Directors.

Section 4.5. **Term of Office; Removal and Vacancies.** The officers of the corporation shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the Board of Directors. If the office of any officer or officers becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.

Section 4.6. **Chair of the Board.** The Chair of the Board, if such an officer be elected, shall, if present, preside at all meetings of the Board of Directors and exercise and perform such other powers and duties as may be from time to time assigned by the Board of Directors or prescribed by these Amended and Restated Bylaws.

Section 4.7. **Chief Executive Officer.** The Chief Executive Officer shall be a member of the Board of Directors and shall be an officer of the corporation. Subject to the oversight of the Board of Directors, the Chief Executive Officer shall have general supervision, direction and control of the business and affairs of the corporation. The Chief Executive Officer shall preside at all meetings of the stockholders and, in the absence of the Chair of the Board, at all meetings of the Board of Directors. The Chief Executive Officer shall be an ex-officio member of all committees and shall have the general powers and duties of management usually vested in the office of Chief Executive Officer of corporations, and shall have such other powers

and duties as may be prescribed by the Board of Directors or these Amended and Restated Bylaws. If there is no President, the Chief Executive Officer shall in addition be the President of the corporation and shall have the powers and duties prescribed in Section 4.8 of this Article IV. In the absence or disability of the President, the Chief Executive Officer shall perform all the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President when acting in such capacity.

Section 4.8. **President.** The President shall have general authority to exercise all the general power and duties of management as determined by the Chief Executive Officer from time to time and shall have such other powers as may be prescribed by the Board of Directors or these Amended and Restated Bylaws, all in accordance with basic policies as established by and subject to the oversight of the Board of Directors and the Chief Executive Officer.

Section 4.9. **Vice President.** In the absence or disability of the Chief Executive Officer and the President, the Vice Presidents in order of their rank as fixed by the Board of Directors, or if not ranked, the Vice President designated by the Board of Directors, shall perform all the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The Vice Presidents shall have such other duties as from time to time may be prescribed for them, respectively, by the Board of Directors.

Section 4.10. **Secretary.** The Secretary shall attend all sessions of the Board of Directors and all meetings of the stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose; and shall perform like duties for the standing committees when required by the Board of Directors. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or these Amended and Restated Bylaws. The Secretary shall keep in safe custody the seal of the corporation, and when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by his or her signature or by the signature of an Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by such officer's signature.

Section 4.11. **Assistant Secretaries.** The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors, or if there be no such determination, the Assistant Secretary designated by the Board of Directors, shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

Section 4.12. **Chief Investment Officer.** The Chief Investment Officer shall have responsibility for the company's capital sourcing and capital allocations, managing the company's portfolio strategy and investments, and managing interest rate and credit risks, as determined by the Chief Executive Officer from time to time, and shall perform such other duties and have such other powers as may be prescribed by the Board of Directors or these Amended and Restated Bylaws, subject to the oversight of the Board of Directors and the Chief Executive Officer.

Section 4.13. **Chief Financial Officer.** The Chief Financial Officer shall have responsibility for managing the financial affairs of the corporation, as determined by the Chief Executive Officer time to time and shall perform such other duties and have such other powers as

may be prescribed by the Board of Directors, or these Amended and Restated Bylaws, subject to the oversight of the Board of Directors and the Chief Executive Officer. The Chief Financial Officer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys, and other valuable effects in the name and to the credit of the corporation, in such depositories as may be designated by the Board of Directors. The Chief Financial Officer shall disburse the funds of the corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his or her transactions as Chief Financial Officer and of the financial condition of the corporation. If required by the Board of Directors, the Chief Financial Officer shall give the corporation a bond, in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors, for the faithful performance of the duties of such office and for the restoration to the corporation, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his control belonging to the corporation.

Section 4.14. **Treasurer.** The Treasurer shall, in the absence or disability of the Chief Financial Officer, perform the duties and exercise the powers of the Chief Financial Officer and shall perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer may from time to time prescribe, subject to the oversight of the Board of Directors and the Chief Executive Officer.

Section 4.15 **Assistant Treasurer.** The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors, or if there be no such determination, the Assistant Treasurer designated by the Board of Directors, shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

ARTICLE V. CERTIFICATES OF STOCK

Section 5.1. **Certificates.** Every holder of stock of the corporation shall be entitled to have a certificate signed by, or in the name of the corporation by, the Chair or Vice Chair of the Board of Directors, or the Chief Executive Officer, President, or a Vice President, and by the Secretary or an Assistant Secretary, or the Chief Investment Officer, the Chief Financial Officer, Treasurer, or an Assistant Treasurer of the corporation, certifying the number of shares represented by the certificate owned by such stockholder in the corporation.

Section 5.2. **Signatures on Certificates.** Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if s/he were such officer, transfer agent, or registrar at the date of issue.

Section 5.3. **Statement of Stock Rights, Preferences, Privileges.** If the corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualification, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 5.4. **Lost Certificates.** The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 5.5. **Transfers of Stock.** Upon surrender to the corporation, or the transfer agent of the corporation, of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 5.6. **Fixing Record Date.** In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of the stockholders, or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date which shall not be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 5.7. **Registered Stockholders.** The corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim or interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the laws of the State of Delaware.

ARTICLE VI.

GENERAL PROVISIONS

Section 6.1. **Dividends.** Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

Section 6.2. **Payment of Dividends.** Before payment of any dividend there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the directors shall think conducive to the interests of the corporation, and the directors may abolish any such reserve.

Section 6.3. **Checks.** All checks or demands for money and notes of the corporation shall be signed by such officer or officers as the Board of Directors may from time to time designate.

Section 6.4. **Fiscal Year.** The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

Section 6.5. **Corporate Seal.** The corporate seal, if any, shall have inscribed thereon the name of the corporation, the year of its organization and the words "Corporate Seal, Delaware". Said seal, if any, may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 6.6. **Manner of Giving Notice.** Whenever, under the provisions of the statutes or of the Certificate of Incorporation or of these Amended and Restated Bylaws, notice is required to be given to any director or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such director or stockholder, at his address as it appears on the records of the corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to directors may also be given by facsimile or by telegram.

Section 6.7. **Waiver of Notice.** Whenever any notice is required to be given under the provisions of the statutes or of the Certificate of Incorporation or of these Amended and Restated Bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed to be equivalent to notice. Except as otherwise provided in Section 222 of the DGCL, attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 6.8. **Annual Statement.** The Board of Directors shall present at each annual meeting, and at any special meeting of the stockholders when called for by vote of the stockholders, a full and clear statement of the business and condition of the corporation.

Section 6.9. **Forum Selection.** Unless the corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another state court or a federal court located within the State of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (1) any derivative action or proceeding brought on behalf of the corporation, (2) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, other employee or stockholder of the corporation to the corporation or the corporation's stockholders, (3) any action asserting a claim arising pursuant to any provision of the General Corporation Law of the State of Delaware, the Certificate of Incorporation or these Amended and Restated Bylaws (as either may be amended, restated or otherwise modified from time to time) or as to which the General Corporation Law of the State of Delaware confers jurisdiction on the Court of Chancery of the State of Delaware, or (4) any action asserting a claim governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the corporation shall be deemed to have notice of and consented to the provisions of this Section 6.9.

ARTICLE VII.

AMENDMENTS

Section 7.1. **Amendment by Directors or Stockholders.** These Amended and Restated Bylaws may be altered, amended or repealed or new bylaws may be adopted by the stockholders or by the Board of Directors, when such power is conferred upon the Board of Directors by the Certificate of Incorporation, at any regular meeting of the stockholders or of the Board of Directors or at any special meeting of the stockholders or of the Board of Directors if notice of such alteration, amendment, repeal or adoption of new bylaws be contained in the notice of such special meeting. If the power to adopt, amend or repeal bylaws is conferred upon the Board of Directors by the Certificate of Incorporation it shall not divest or limit the power of the stockholders to adopt, amend or repeal bylaws.

**CERTIFICATE OF
SECRETARY OF
CHARTER SCHOOL CAPITAL, INC.,
a Delaware corporation**

I, the undersigned, do hereby certify that:

(1) I am the duly elected and acting Secretary of Charter School Capital, Inc., a Delaware corporation; and

(2) the foregoing Amended and Restated Bylaws, comprising thirteen (13) pages, constitute the Amended and Restated Bylaws of said corporation as duly adopted by Action by Written Consent of the Board of Directors of said corporation as of December 20, 2021 and taking effect on and as of January 1, 2022.

IN WITNESS WHEREOF. I have hereunto subscribed my name as of the 20th day of December, 2021.

DocuSigned by:

Brad Coburn

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Name: Brad Coburn

Title: Secretary