—Grant AgreemenT—

On this 15th day of January, 2015,

The Saxifrage School (“Saxifrage”),

a 501(c)(3) Non Profit Organization having a   
Federal Employer Identification Number of 27-2661370 and an   
address at 5800 Wellesley Avenue, Floor 3, Pittsburgh, PA 15206,

and

The Sprout Fund (“Sprout”),

a Pennsylvania nonprofit corporation and public charity having a   
Federal Employer Identification Number of 20-4077513 and an   
address at 5423 Penn Avenue, Pittsburgh, PA 15206-3423,

entered into this agreement for funding (the “Agreement”) to govern the project known as

Learn.Pgh (the “Project”).

Saxifrage and Sprout (individually referred to as “Party”; collectively, the “Parties”) agree that the period of time covered by the Agreement shall begin on and be retroactively **effective as of January 1, 2015** (the “Agreement Effective Date”) and shall **expire and conclude on November 30, 2015** (the “Agreement Expiration Date”).

# PREAMBLE.

On January 15th, 2015, the Board of Directors of Saxifrage approved **support in the amount of $41,500** (the “Grant”) for the purpose of the Project. In consideration of this Grant, Sprout agrees to execute the Project described in Article I of the Agreement.

The Parties will ensure that the Project is carried out following established procedures and conventions for nonprofit funding to the extent described in the Agreement. To that end, the Parties extend certain rights and roles to Saxifrage and to Sprout, as described below.

Therefore, in order to ensure the mutual satisfaction of the Parties in the execution of the Project, and intending to be legally bound, the Parties agree as follows:

# Article I Description and Execution of the Project.

**1.1 Project Description.** See Appendix A.

**1.2 Grant Payment.**

1. **Disbursement.** The Parties agree that the Grant will be distributed to Sprout within fifteen business days of the last signature to the Agreement.
2. **No Reimbursement.** Saxifrage shall not reimburse Sprout for any expenses or costs incurred by Sprout.

**1.3 Principal Point-of-contact.** Matt Hannigan, The Sprout Fund, Deputy Director, 5423 Penn Avenue, Pittsburgh, PA 15206, matt@sproutfund.org,

**1.4 Organizational Affiliations.** The Project is affiliated with Pittsburgh City of Learning and the Pittsburgh Kids+Creativity Network.

**1.5 Project Completion Date and Last Use of Saxifrage Funding.** The Project will cease using the Grant to execute the Project 30 days prior to the Agreement Expiration Date. Any funds not expended or committed by Sprout for the purpose of the Project by the Expiration Date must be returned to Saxifrage. Sprout specifically acknowledges that the Saxifrage has standing and the right to enforce the return of funds not expended for the specific purposes of the Project.

**1.6 Reporting Requirements.** Sprout will provide Saxifrage with a Final Report on the Project no later than the Agreement Expiration Date using the Grantmakers of Western Pennsylvania Common Grant Report Template.

**1.7 Method of Performance.**

1. Sprout shall determine the means and methods of performing the Project described herein and shall determine the time, place, and manner by which it will accomplish the Project.
2. Sprout may, at its discretion, hire other individuals, firms, or agencies to perform under its direction aspects of the Project described above.
3. Sprout shall be responsible for obtaining such facilities and services, including, but not limited to, office space or other support, as may be required to complete the Agreement.

**1.8 Diligent Progress and Satisfaction of Agreement Terms and Conditions.** Sprout agrees to use reasonable efforts to complete the Project and to satisfy all terms and conditions of the Agreement on or before the Project Completion Date.

1. **Change of Project Completion Date.** If either Party determines that the Project will not be completed by the Project Completion Date, that Party shall promptly notify the other in writing, and the Parties will attempt to negotiate in good faith a remedy for timely completion of the Project, including, but not limited to, a no-cost extension to the term of the Agreement.
2. **Change of Agreement Terms.** If either Party determines that the Project will not satisfy the terms and conditions of the Agreement, that Party shall promptly notify the other in writing, and the Parties will attempt to negotiate in good faith a remedy including, but not limited to, modifications or amendments to the Agreement.
3. **Early Termination.**
   1. If Sprout determines that the Project cannot be completed, or has defaulted on or otherwise breached the terms and conditions of the Agreement, Sprout will make a written request to Saxifrage for early termination of the Agreement and initiate the return of all unused funds.
   2. If Saxifrage determines that Sprout has failed to make diligent progress on the Project, or has defaulted on or otherwise breached the terms and conditions of the Agreement, Saxifrage will notify Sprout in writing of imminent action including, but not limited to, termination of the Grant and request for the return of unused funds.

# Article II Conditions of Acceptance.

Sprout agrees to the following conditions of acceptance:

**2.1 Limitations on Use of Funds.** Sprout agrees that no portion of the Grant shall be used to:

1. Pay expenses incurred prior to the Agreement Effective Date.
2. Make grants to individuals on a non-objective basis.
3. Participate in or intervene in (including the publishing or distribution of statements) any campaign on behalf of (or in opposition to) any candidate for public office.
4. Fund any specific voter registration drive that is conducted in a manner that favors a particular candidate, slate of candidates or political party.
5. Pay legal and other fees associated with business planning, incorporation, and/or seeking nonprofit designation.
6. Pay indirect administrative costs charged by any organization providing fiscal agency (variously termed overhead, facilities, administrative, handling, contract fees, etc.) in excess of 15% of the Grant.

**2.2 Reporting Requirements.** Sprout will submit reports in accordance with the schedule and detailed instructions specified in Paragraph 1.6 of the Agreement no later than the Agreement Expiration Date.

**2.3 Organizational Status.** Sprout agrees to notify Saxifrage immediately, in writing of any change in its tax status, its executive staff or key staff, or any other major changes in its strategic plan, mission, vision, or values.

**2.4 Project Personnel.** Sprout agrees to notify Saxifrage immediately, in writing of any change in the Principal point-of-contact described in Paragraph 1.4 of the Agreement.

**2.5 Acknowledgement of Saxifrage Support.** Sprout agrees to acknowledge Saxifrage support in all printed and electronic publications that reference or promote the Project.

**2.6 Promotional Materials.** Sprout agrees that any printed or electronic publicity, including printed advertisements, posters, flyers, email blasts, and website acknowledgements that promote the Project and that are owned and issued by Sprout and on which Saxifrage’s acknowledgement, name, or logo will appear will be approved by Saxifrage prior to release and final copies will be provided to Saxifrage.

**2.7 Event Access.** Saxifrage staff and/or designees may attend the Project activities at no cost in their capacity as representatives of Saxifrage to help promote related people, projects, and organizations supported by Saxifrage if such arrangements have been made by Saxifrage with any third party involved in such activities and the venue for such activities. If Project activities include ticketed events, the number of complementary admissions is negotiable by Saxifrage with the ticketing entity.

**2.8 Use of Project Media.** Multimedia content of or from the Project (images, photos, videos, audio recordings, etc., “Project Media”) produced by Sprout in the conduct of the Project may be included in the Project Deliverables and used, in appropriate circumstances, in order to help publicize its programs, enhance the public’s awareness and appreciation of its programs, and/or raise money to further its mission consistent with its 501(c)(3) status.

**2.9 Grant Close-Out.** After the receipt and review of the Final Report, Saxifrage will notify Sprout when the Grant is considered closed. If all terms and conditions of the Agreement have been satisfied, then Sprout will be considered in good standing with Saxifrage and eligible to apply in the future for other Saxifrage programs and activities.

**2.10 Security.** A material condition of the Grant is the representation that Sprout and affiliated organizations do not and shall not provide material support or resources to any person or entity engaged in activities in support of violence or acts of terrorism, nor shall Sprout knowingly transact business with any entity that promotes or in any manner supports such actions. Sprout represents and warrants that it will comply with any and all applicable laws and regulations, including, but not limited to, export control laws and any and all economic and trade sanctions and/or embargos administered by the U.S. Office of Foreign Assets Control.

# Article III Ownership of the Project & Confidentiality.

**3.1 Independent Contractor Status.** Saxifrage and Sprout are independent contractors under the Agreement and in respect of the Project contemplated herein, and none of the provisions of the Agreement shall be interpreted or deemed to create any relationship between the Parties other than that of independent contractors.

1. Nothing contained in the Agreement shall be construed to create a relationship of employer and employee, master and servant, principal and agent, partnership, or co-venturer between Sprout and Saxifrage.
2. Neither Party to the Agreement is authorized to assume or create any obligation or responsibility, express or implied, on behalf of, or in the name of, the other Party to the Agreement or to bind such other Party in any manner.
3. Sprout and affiliated organizations shall not be eligible for any of the benefits paid to employees of Saxifrage, including, but not limited to, workers’ compensation and health insurance.
4. Payments made under this Agreement shall not be subject to tax withholding, and Sprout will be responsible for all applicable tax obligations.

**3.2 Project Deliverables.** All documents, plans, and other materials developed or prepared by Sprout in connection with the Project (“Project Deliverables”) and the substance of the Project Media shall be the sole and absolute property of Sprout. So long as any of the Project Deliverables remain in the possession of Sprout, Sprout shall permit Saxifrage to display such items and the Project Media (to the extent it is permitted by any third parties involved) in any exhibition or other public forum, upon reasonable written notice and at no charge for a period of up to 180 days after the Agreement Expiration Date.

**3.3**. **Confidentiality.** All materials and information both tangible and intangible of Saxifrage and Sprout provided to the other for the conduct of the Project, that are disclosed orally, visually, in writing, electronic media or by any other means and that are marked as provided below, are considered confidential (“Confidential Information”).

1. **Tangible Information.** With respect to any tangible information which the disclosing Party would like to be treated as Confidential Information under the Agreement, the disclosing Party shall mark such information as “Confidential” prior to disclosing it to the receiving Party.
2. **Intangible Information.** With respect to any oral or visual communication or other intangible information which the disclosing Party would like to be treated as Confidential Information under the Agreement, the disclosing Party shall notify the receiving Party of such fact at the time of disclosure and within fifteen (15) days thereafter, the disclosing Party shall send the receiving Party a written memorandum outlining the information deemed to be Confidential Information. Such memorandum shall be marked “Confidential.”
3. **Exclusions.** “Confidential Information” shall not include information that: (i) was publicly known at the time of disclosing Party’s communication thereof; (ii) becomes publicly known through no fault of the receiving Party; (iii) was in the receiving Party’s possession free of any obligation of confidence at the time of disclosing Party’s communication thereof to the receiving Party; (iv) is developed by the receiving Party independently of the Agreement without use or reference to disclosing Party's Confidential Information; or (v) is rightfully obtained by the receiving Party from a third party, provided Sprout has no reason to believe that such third party was under an obligation of confidentiality to disclosing Party.
4. **Permissions.** Confidential Information may not be used by Sprout in any way or divulged to any third party without the written permission of Saxifrage, provided, however, that in the event Confidential Information is lawfully required to be disclosed by any governmental agency or otherwise required to be disclosed by law or to Sprout’s governing body, Sprout may do so and shall not be in violation of the Agreement. The Parties agree that either Party may disclose the terms, conditions, and existence of the Agreement to whomever it determines in good faith has a legitimate need to know this information.

# Article IV Limitation of Liability and Warranty.

**4.1 Indemnification.** Unless prohibited by law, Sprout shall release, indemnify, defend, and hold harmless Saxifrage, its officers, directors, employees, and agents from and against all claims, damages, or injuries to person or property of Sprout, or any third party arising out of (directly or indirectly) or related in any way to the Project, but only to the extent caused in whole or in part by the negligent acts or omissions of Sprout, its officers, directors, employees or agents. Sprout agrees desist from pressing any claim against Saxifrage in connection with the Project, except a claim arising from gross negligence or willful misconduct, or a claim for compensation due under Paragraph 1.2 above.

**4.2 No Warranty.** Any and all information, materials, services, intellectual property, Confidential Information, and other property and rights granted and/or provided by Sprout pursuant to this   
Agreement (including the Project Deliverables and Project Media), are granted and/or provided on an “as is” basis. Sprout makes no warranties of any kind, either express or implied, as to any matter, and all such warranties, including warranties of merchantability and· fitness for a particular purpose, are expressly disclaimed. Without limiting the generality of the foregoing, Sprout does not make any warranty of any kind relating to exclusivity, informational content, error-free operation, results to be obtained from use, freedom from patent, trademark and copyright infringement and/or freedom from theft of trade secrets. Saxifrage is prohibited from making any express or implied warranty to any third party on behalf of Sprout relating to any matter, including the application of or the results to be obtained from the information, materials, services, intellectual property or other property or rights (including the Project Deliverables and Project Media) granted and/or provided by Sprout pursuant to this Agreement.

# Article V Miscellaneous.

**5.1 Entire Agreement.** This Agreement, together with the attachments that, by prior reference, are made a part of the Agreement, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and shall insure to the benefit of and shall be binding upon the Parties, their respective successors and permitted assigns. Any previous description of Grant terms and conditions and any previous agreements or understandings between the Parties regarding the scope and subject matter of this Grant are superseded in their entirety by the Agreement.

**5.2 Assignment.** Neither Party shall assign, encumber, or otherwise transfer the Agreement or any rights granted hereunder without the prior written consent of the other Party, which shall not unreasonably be refused or delayed.

**5.3 Amendment.** This Agreement may not be altered or amended in whole or part unless such alteration or amendment is in writing and executed by the authorized representatives of Parties to the Agreement.

**5.4 Waiver Modification*.*** The failure of any Party to exercise any right or option given to it by the Agreement or to insist upon strict adherence to the terms of the Agreement shall not constitute a waiver of any terms or conditions of the Agreement with respect to any other or subsequent breach. No waiver or modification shall be valid or binding unless in writing and signed by authorized representatives of the Parties.

**5.5 Severability.** If any provision of the Agreement or the application thereof to any party or circumstance shall be declared invalid, illegal, or unenforceable, the remainder of the Agreement shall be valid and enforceable to the extent permitted by applicable law. In such event, either Party may petition any court of competent jurisdiction to replace the invalid or unenforceable provision with a provision that, to the extent permitted by applicable law, most closely achieves the purposes intended under the invalid or unenforceable provision, as determined by such court.

**5.6 Headings.** Section headings used herein are inserted for convenience only and are not part of the Agreement.

**5.7 Governing Law and Arbitration.** This Agreement shall be governed by, construed with, and enforced in accordance with the laws of the Commonwealth of Pennsylvania, exclusive of its conflict of laws provision. In any action on or relating to the Agreement or the Project evidenced by the Agreement, the Parties hereto consent to submit to arbitration in the City of Pittsburgh, Commonwealth of Pennsylvania, before and under the commercial rules of the American Arbitration Association with pre-arbitration discovery permitted or to the Pennsylvania Common Pleas Court sitting in Allegheny County, Pennsylvania. Judgment on any award rendered in favor of any Party shall be final and binding and may be entered in any court having jurisdiction thereof from which there shall be no appeal. The cost, expenses, interest, and reasonable attorneys’ fees of the successful Party incurred in connection with any such arbitration or litigation shall be included as part of any such award or judgment and shall be paid by the non-prevailing Party. If the arbitrator or trier of fact shall determine that, under the circumstances, it would be unfair or unreasonable for one Party to bear all such costs and expenses, the arbitrator or trier of fact may award a different allocation with respect to the responsibility for the payment of such costs, expenses, interest, and attorneys’ fees.

# EXECUTION.

The Sprout Fund and Sprout are executing the Agreement as of the date stated in the introductory clause above.

Each Party acknowledges that it has fully read, fully understands, and is in complete agreement with, the terms and conditions set forth in the Agreement.

IN WITNESS WHEREOF, the Parties have duly executed the Agreement the day and year first above written.

This Agreement shall be legally-binding as of the Agreement Effective Date as executed by an authorized representative of both Parties and shall expire on the Agreement Expiration Date unless otherwise amended.

*for* The Saxifrage School :

*by* *attested by*

Bryan Berry Witness *(can be waived by initialing)*

Board Chair

dated: dated: .

*for* The Sprout Fund :

*by* *attested by*

Matt Hannigan Dustin Stiver

Vice President & Deputy Director Program Officer

dated: dated: .