

FACILITY USE AGREEMENT

THIS FACILITY USE AGREEMENT ("**Agreement**") is made and entered into effective as of August 1, 2017 ("**Effective Date**"), by and between the Holyoke Community Charter School, a Massachusetts municipal corporation, with a principal office located at 2200 Northampton Street, Holyoke MA 01040 ("**District**"), and Durham School Services, LP, a Delaware limited partnership ("**Company**").

RECITALS

WHEREAS, District holds title to certain real property located at 2200 Northampton Street, Holyoke MA 01040 ("**Premises**"); and

WHEREAS, District desires to grant Company a license to utilize a portion of the Premises, defined in the attached Exhibit "A" (the "Parking Area"); and

WHEREAS, the parties desire to set forth the terms and conditions upon which District will make the Parking Area available to Company for the parking of its school buses, employee vehicles and fueling.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the above recitals and of the covenants and agreements contained herein, the parties hereto agree as follows:

1. Term. The term of this Agreement ("**Term**") shall commence on the Effective Date and terminate on June 30, 2019, unless earlier terminated pursuant to **Section 2.4** hereof.
2. Grant of License.
 - 2.1. Grant. District hereby grants to Company and to its agents, employees, guests and invitees an exclusive, irrevocable, license to enter and use the Parking Area solely for the purpose and at the times set forth in **Section 3.2** of this Agreement.
 - 2.2. Condition of Parking Area. District is not aware of any condition in, on, or about the Parking Area that constitutes a hazard to the safety of any occupant or that violates any governmental law or ordinance intended to protect human safety. Company accepts the Parking Area "AS IS".
 - 2.3. Fencing. District hereby authorizes Company to a) install fencing in the south east corner of the Parking Area; and b) add exterior lighting to the Parking Area.
 - 2.4. Termination. Should District relocate the Premises, then it may terminate this License with 60 days' prior written notice to Contractor
3. Use of Parking Area.

- 3.1. Company Uses. Company shall use the Parking Area solely as follows: parking of its school buses, employee vehicles and fueling.
- 3.2. Time of Use. Company shall use and have access to the Parking Area twenty-four (24) hours per day, seven (7) days a week.
4. Maintenance. Company shall be responsible for keeping the Parking Area free of rubbish and debris, and for snow and ice removal in the Parking Area. Contractor shall be responsible for all damage to the Parking Area to the extent caused by the negligence or willful acts of Contractor and Contractor's agents, representatives, employees, invitees and licensees. Company shall also be responsible for obtaining any and all environmental permits required as a result of Company's activities at the Parking Area.
5. Insurance.
 - 5.1. District. District shall, during the lease term, at District's own expense, and without any reimbursement from Tenant, maintain commercial general liability insurance with combined single limit coverage of not less than \$2,000,000.00 combined single limit per occurrence, as well as workers compensation and employer's liability in limits mandated by the state. Landlord's policies will be primary and non-contributory to any insurance available to tenant. This insurance shall name Company additional insured.
 - 5.2. Company. Company shall maintain, at Company's expense, during the Term coverage for its operations at the Parking Area under a commercial general liability insurance policy with limits of liabilities not less than Two Million (\$2,000,000.00) Dollars combined single limit per occurrence, and cause all improvements and all personal property of Company located at the Parking Area to be insured against such perils, as well as workers compensation and employer's liability in limits mandated by the state. All commercial general liability, automobile, or comparable policies maintained by Company shall name District and such other persons or firms as District specifies from time to time as additional insureds, entitling them to recover under such policies for any loss sustained by them, their agents, and employees as a result of the negligent acts or omissions of Company. All such policies maintained by Company shall provide that they may not be cancelled except after 30 days' prior written notice to District. Certificates of insurance shall be delivered to District prior to Company's use of the Parking Area.
6. Indemnity. Company agrees to defend, indemnify, save and hold harmless District (including its officers, employees, and independent contractors) from and against any and all demands, debts, liens, claims, losses, damages, liability, cost, expenses (including, but not by way of limitation, attorneys' fees and costs actually incurred, whether or not litigation has commenced), judgments or obligations, actions, or causes of action whatsoever, for or in connection with injury or damage (including, but not limited to death) to any person or property to the extent that such injury or damage results from or is connected with the use of the property by Company or Company's agents, employees,

contractors, representatives or officers. The provisions of this indemnification clause shall not be limited to the availability or collectability of insurance coverage.

To the extent allowed by law, District agrees to defend, indemnify, save and hold harmless Company (including its officers, employees, and independent contractors) from and against any and all demands, debts, liens, claims, losses, damages, liability, cost, expenses (including, but not by way of limitation, attorneys' fees and costs actually incurred, whether or not litigation has commenced), judgments or obligations, actions, or causes of action whatsoever, for or in connection with injury or damage (including, but not limited to death) to any person or property to the extent that such injury or damage results from the acts or omissions of District or District's agents, employees, contractors, representatives or officers. The provisions of this indemnification clause shall not be limited to the availability or collectability of insurance coverage.

7. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

COMPANY:

Durham School Services, LP
Attn: Legal Department – Real Estate
2601 Navistar Drive
Lisle, IL 60532

DISTRICT:

Such notice shall be deemed made when personally delivered, delivered via courier with proof of delivery, or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

8. Governing Law. This Agreement shall be governed by the laws of the State of Massachusetts without regard to principles of conflict of laws.
9. Integration. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. Neither of the parties has relied upon any oral or written representation or oral or written information given to the party by any representative of the other party.
10. Severability. If one or more of the provisions of this Agreement are hereafter declared invalid or unenforceable by judicial, legislative or administrative authority of competent jurisdiction, then the parties hereto agree that the invalidity or unenforceability of any of the provisions shall not in any way affect the validity or enforceability of any other

provisions of this Agreement.

11. Modification. No change or modification of the terms or provisions of this Agreement shall be deemed valid unless set forth in writing and signed by both parties.
12. Attorneys' Fees. In the event of any action or proceeding (including, without implied limitation, any bankruptcy proceeding) to enforce or construe any of the provisions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to attorneys' fees and costs.
13. Further Assurances. Each of the parties hereto shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent and agreements of the parties hereto.
14. Assignment. Company shall not assign this Agreement or any interests therein without the prior written approval of the District. Any such attempt to assign or sublet this Agreement without District approval shall be invalid.
15. No Third-Party Benefit. It is expressly understood and agreed that this Agreement is entered into solely for the mutual benefit of the parties hereto and that no benefits, rights, duties, or obligations are intended or created by this Agreement as to third parties not a signatory hereto.
16. Authority. Company has all requisite power and authority to conduct its business and to execute, deliver and perform the Agreement. Each party warrants that the persons who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective party.
17. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

DURHAM SCHOOL SERVICES, L.P.
a Delaware limited partnership

By: Durham Holding II, LLC,
its general partner

HOLYOKE COMMUNITY CHARTER
SCHOOL
a Massachusetts municipal corporation

Signature

Title

Title