

FACILITIES USE AGREEMENT

This Facilities Use Agreement ("Agreement") is made as of this _____ day of April, 2022, by and between DUNLAP COMMUNITY UNIT SCHOOL DISTRICT NO. 323 ("School District") and RIGHT AT SCHOOL, LLC, a Delaware limited liability company ("Right At School").

WITNESSETH:

WHEREAS, the School District is the owner and operator of a certain school building located in Dunlap, Illinois, commonly known as Hickory Grove Elementary School ("Building"); and

WHEREAS, Right At School operates a child day care service; and

WHEREAS, Right At School desires to use a portion of the Building to operate a summer program for child day care services and related activities; and

WHEREAS, the School District and Right At School desire to formalize Right At School's use of the School District's Building by reducing the conditions and restrictions of such use into a written Agreement;

NOW, THEREFORE, in consideration of the following mutual covenants and considerations, it is agreed by and between the parties as follows:

1. **Premises.** In consideration of the payments, covenants and other agreements of Right At School hereunder, the School District hereby grants to Right At School a License to Use the following portions of the Building and surrounding Premises: cafeteria, gymnasium, playground, and the related general spaces, such as hallways, restrooms, and parking.

2. **Term.** The Term of this Agreement shall commence on the 1st day of June, 2022, and shall continue through August 5th, 2022, at which time the Agreement shall be extinguished.

3. **Facility Fee.** Right At School agrees to pay School District a Facility Fee for the use of the Building, based on the revenue received by Right At School, in the amount of seven and one-half percent (7.5%) of revenue received by Right At School for all child day care services provided in the Building during the Term.

4. **Custodian Fees.** Right At School shall, in addition to the Facility Fee above, pay for custodial services during its use of the Building during any period of time when the School District does not have regular custodian hours. The School District generally employs a custodian during the summer on weekdays from 6:30 a.m. to 3:00 p.m. For

any period of time that Right At School uses the Building outside of those hours, then Right At School shall pay the School District an additional Facility Fee of \$25 per hour. In addition, for any day when the regular custodian is not working (such as vacation days or sick days), then Right At School shall pay to the School District an additional Facility Fee of \$25 per hour for every hour worked by the additional custodian. The School District and Right At School shall work together to insure that a custodian is on the premises during any hours that Right At School is present. Right At School shall pay the additional Facility Fee to the School District within thirty (30) days of receipt of a bill from the School District.

5. **Right At School's Use of Building.** Right At School shall be permitted to use the Building in order to provide child day care services and related activities on weekdays during the term of the Agreement, between the hours of 7:00 a.m. to 6:00 p.m. Right At School shall offer the child day care services only to students enrolled in the Dunlap Community Unit School District No. 323 District who have completed kindergarten and are 12 years old or younger. District No. 323 employees will be offered a discounted enrollment fee by Right At School.

In order for Right At School to offer the summer child day care services program, a minimum of 25 students must be enrolled, with the maximum number of enrolled students limited to 60 students. If the enrollment in the summer program does not meet the minimum number of students, then Right At School, at its option, will cancel the summer program and this Agreement shall be null and void.

During the term of this Agreement, Right At School shall neither do nor suffer anything to be done or kept in or about the Building or Premises which contravenes the School District's insurance policies or which may cause an increase in the premiums thereof. There shall be no smoking or alcoholic beverages permitted in or about the Building or Premises. Furthermore, Right At School covenants to:

- a) keep the Building in a neat and clean condition;
- b) give immediate notice to the School District in the event of a fire, casualty or accident in the Building or Premises;
- c) comply with all reasonable rules and regulations which the School District may from time to time establish; and
- d) provide constant security/supervision of all children, parents/guardians and employees while entering and exiting the Building and while participating in the activities described above.
- e) provide all materials necessary for the program; pay all taxes, employees' salaries or contracts, and other expenses associated with performing the program; direct and control the performance of the program on a day-to-day

basis and provide and supervise all personnel who perform the child day care services.

f) remain solely responsible for charging and collecting tuition from the parents of enrolled students.

6. **Insurance.**

a. **Liability Insurance.** During the term of this Agreement, Right At School shall, at Right At School's expense, procure and maintain, comprehensive public liability insurance covering the Building and surrounding Premises, from companies authorized to do business in the State of Illinois and rated A or better by Best's Insurance Rating System or its equivalent, with aggregate annual limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) on account of bodily injuries to or death of any one or more persons, and Five Hundred Thousand and 00/100 Dollars (\$500,000.00) coverage for property damage.

b. **Workers' Compensation and Employers' Liability Insurance.** Workers Compensation insurance affording workers' compensation benefits for all employees as required by law and Employers' Liability Insurance covering all employees who are to provide Services under this agreement with limits of not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence. The workers' compensation policy must contain a waiver of subrogation clause.

c. **Persons Insured.** All policies of insurance required to be maintained by Right At School under this Agreement shall be written to cover the School District, as an Additional Insured, and such policy or policies (and the appropriate additional insured endorsement) shall be deposited with the School District prior to the commencement date hereof. Such policies shall contain the consent of the insurer that the policies will not be terminated, cancelled or amended unless the insurer shall first have given ten (10) days prior written notice thereof to the School District.

d. **Release of the School District.** Right At School releases the School District and the School District's agents, officers and employees, from all claims for damage to persons or property sustained by Right At School or Right At School's agents, servants, employees, students or any occupant within or about the Building or Premises, except for injuries proximately caused by the willful and wanton conduct of the School District or its employees. All property in the Building or Premises belonging to Right At School shall be there at the risk of Right At School, and the School District shall not be liable for damage thereto or theft or misappropriation thereof, except for damage or loss proximately caused by the willful and wanton conduct of the School District or its employees.

e. **Indemnification of the School District.** Right At School shall protect, indemnify, save and keep harmless the School District and the School District's

agents, servants and employees against and from all damages, suits, liability, claims, loss, cost, or expense (including court costs and reasonable attorneys' fees) arising out of or from any of the following:

- 1) Any accident or other occurrence in the Building or Premises or arising in connection with the business of Right At School;
- 2) Right At School's occupancy or use of the Building or Premises;
- 3) Any act or omission of Right At School or Right At School's employees, agents, invitees, subtenants, Right At School's customers, students, suppliers, assignees or contractors;
- 4) Any violation by Right At School (or Right At School's agents, employees, invitees or subtenants) of any law or ordinance in, or at or in any way related to the Building or Premises; and
- 5) Any damage, liens or expenses arising as a result of Right At School's default in any of the terms of this Agreement.

7. **Damage and Destruction.** Any risk of damage or destruction to improvements located in or about the Building or Premises shall be borne by Right At School. Right At School agrees to leave the Building in the same condition as it was upon entering the Building, ordinary use and wear excepted. Right At School agrees that if any portion of the Building or contents thereof shall be damaged by the act, default, or negligence of Right At School or of Right At School's agents, employees, patrons, guests or any person admitted to the Building by Right At School, Right At School will pay to School District upon demand such sums as shall be necessary to restore the Building and equipment to their previous condition. Right At School hereby assumes full responsibility for the character, acts, and conduct of all persons admitted to any portion of the Building at the time of Right At School's use.

8. **Transferability.** Neither this Agreement nor any interest of Right At School hereunder in the Building or Premises, shall be subject to involuntary assignment, transfer, sale, or to assignment, transfer, or sale by operation of law, or to voluntary assignment, sub-license, or other transfer in any manner, without the prior written approval of the School District, and any such attempt at transfer shall be void and of no effect, nor shall Right At School encumber by mortgage, encumbrance, transfer, conveyance or other instrument, its interest in the Building or Premises and such sale, assignment, sub-license, transfer or encumbrance shall, at the option of the School District, terminate this Agreement.

9. **Bus Service.**

a. **Request for Transportation Services.** The School District shall provide transportation services, including a driver, to Right At School for field trips during the Term

on an as needed basis and upon request, when such field trip does not conflict with other transportation needs of the School District and when such request is feasible in terms of advance notice, distance, cost, length of time, number of buses needed, and other circumstances of the field trip request. Whether a field trip request is feasible is determined at the sole discretion of the School District.

b. **Fee.** In consideration of the above-described provision of services, Right At School shall pay to the School District a trip fee of \$28.25 per hour for each field trip for which the School District provides transportation services to Right At School. Such amounts will be billed by the School District and will be due from Right At School within thirty (30) days of receipt.

c. **Transportation Policies and Procedures.** Right At School shall reasonably apprise its eligible riders of the transportation policies and procedures of the School District and shall require its eligible riders to abide by the same. In the event of severe weather conditions, the School District and Right At School shall make a joint decision with respect to the transportation of students and scheduled field trips. Routing and scheduling shall be at the discretion of the School District after receiving the request and input from Right At School. The School District shall not be held responsible for being late or for being unable to provide a bus and a driver due to unforeseen circumstances.

10. **Default.**

a. **School District's Remedies.** If Right At School defaults in the payment of the Facility Fee or other monetary charges due hereunder and fails to remedy such default within seven (7) days after written notice from the School District, or defaults in the performance of any other obligations hereunder, and fails to remedy such default within fifteen (15) days after written notice from the School District, School District, in addition to all of the School District's other rights and remedies at law and equity, shall have the right to recover from Right At School any sums due the School District and to terminate this Agreement.

b. **Right At School's Remedies.** If the School District defaults in the performance of any obligations hereunder, and fails to remedy such defaults within fifteen (15) days of written notice from Right At School, Right At School, in addition to all of Right At School's other rights at law and equity, shall have the right to seek specific performance from the School District.

c. **Non-Waiver of Default; Cumulative Remedies.** No failure of either party to enforce rights or remedies upon any default of the other party shall prejudice or affect the rights of the non-defaulting party upon any subsequent or similar default. All rights and remedies of any party hereunder shall be cumulative, and shall not exclude any other remedies allowed at law or in equity.

11. **Free Access and Other Uses.** Officers, agents, and employees of the School District reserve the right to enter and have free access to all areas of the Building at any and all times. Right At School further understands and agrees that during the term of this Agreement, School District may use or cause to be used for its use, any portion of the School District's premises not in use by Right At School.

12. **School District's Right to Cure.** If Right At School fails to make any payment or perform any act required by this Agreement, the School District, without waiving or releasing Right At School from any obligation or default under this Agreement, may, at its option, make such payment or perform such act for Right At School, and all sums thus expended by the School District and all costs and expenses so incurred shall constitute an additional Facility Fee due and payable hereunder and shall be paid by Right At School to the School District upon demand.

13. **Notices.** All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, telefaxed, or mailed by registered or certified mail (postage prepaid), return receipt requested, addressed to:

IF TO RIGHT AT SCHOOL: Right At School, LLC
990 Grove Street, Suite 500
Evanston, IL 60201

IF TO SCHOOL DISTRICT: Superintendent
Dunlap Community Unit School District No.
323
400 S. 4th Street Dunlap, IL 61525

WITH A COPY TO: Jay E. Greening
Miller, Hall & Triggs, LLC
416 Main Street, Suite 1125
Peoria, IL 61602

or to such other address as any party may designate by notice complying with the terms of this paragraph. Each such notice shall be deemed delivered (a) on the date delivered if by personal delivery; (b) on the date of transmission with confirmed answer back if by telefax; and (c) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

14. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, and such counterpart together shall constitute one and the same instrument.

15. **Severability.** If any provision of this Agreement shall be held to be void or unenforceable for any reason, the remaining terms and provisions hereof shall not be affected thereby.

16. **Time.** Time is of the essence of this Agreement.

17. **Binding Effect.** The provisions of this Agreement shall inure to the benefit of and bind the successors and assigns of the parties hereto.

18. **Entire Agreement.** This Agreement and the Exhibits attached hereto set forth all the covenants and understandings between the School District and Right At School concerning Right At School's use of the Building and Premises, and there are no other covenants or undertakings, either oral or written, between them. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and executed by them.

19. **Choice of Law.** It is the intention of Right At School and the School District that the laws of Illinois shall govern the validity of this Agreement, the construction of its terms and interpretation of the rights and duties of Right At School and the School District.

20. **Labor Harmony.** Right At School agrees to take no action at any time which would violate the School District's labor contracts, if any, affecting the Building, nor create any work stoppage, picketing, labor disruption or dispute, or any interference with the business of the School District or with the rights and privileges of any other person(s) lawfully in and upon said Building.

21. **Parties Not Partners or Joint Venturers.** Nothing contained in this Agreement shall be deemed to make the School District or Right At School partners or joint ventures.

22. **Successors and Assigns.** This Agreement shall inure to the benefit of, and be binding upon, the heirs, successors and assigns of the parties hereto; provided, however, that no transfer by either party in violation of the provisions hereof shall vest in such transferees any right, title or interest whatsoever in this Agreement or the Building or Premises referenced therein.

23. **Attorneys' Fees and Costs.** In the event that either party should find it necessary to retain an attorney for the enforcement of any of the provisions hereof occasioned by the fault of the other party, the party not at fault shall be entitled to recover reasonable attorney's fees and court costs incurred as a result thereof, whether said attorney's fees are incurred for the purpose of investigation, negotiation, trial, appellate proceedings or other legal services.

24. Confidential Information.

a. **Acknowledgement of Confidentiality.** The Parties acknowledge that they may be exposed to confidential and proprietary information of the other party including, without limitation, curriculum and instructional materials, other technical information (including functional and technical specifications, designs, analysis, research, processes, computer programs, and methods), business information (including marketing, financial, and personnel information), intellectual property, trade secrets, and other information designated as proprietary or confidential expressly or by the circumstances in which it is provided ("Confidential Information"). Confidential Information does not include (i) information already known or independently developed by the recipient, (ii) information in the public domain through no wrongful act of the recipient, or (iii) information received by the recipient from a third party who was free to disclose it.

b. **Covenant Not to Disclose or Misuse Confidential Information.** Each Party agrees that, with respect to the other Party's Confidential Information, it shall not, without the other Party's prior written approval, use, disclose to third parties, alter, or remove the Confidential Information in a manner not expressly authorized by this Agreement except as approved in advance by the owner of the information. Each Party shall use at least the same degree of care in safeguarding the other Party's Confidential Information as it uses in safeguarding its own confidential information.

c. **Ownership of Curriculum and Instructional Materials.** All curriculum, instructional materials, and other documents and items are the property of Right At School and are to be treated as proprietary and confidential. Such items shall not be used by the District for any purpose without the express written consent of Right At School.

d. **Student Records.** Right At School will comply with the relevant requirements of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) and the Illinois School Student Records Act (ISSRA) (105 ILCS 10/1 et seq.), regarding the confidentiality of student "education records" as defined in FERPA and "school student records" as defined in ISSRA. Any use of information contained in student education records to be released must be approved by the District. To protect the confidentiality of student education records, Right At School will limit access to student education records to those employees who reasonably need access to them in order to perform their responsibilities under this Agreement.

25. Compliance with Laws. Right At School shall operate in compliance with all applicable federal, state, county, and local laws and regulations and all applicable District and School policies and rules in effect now or later and as amended from time to time, including, but not limited to, the Drug Free Workplace

Act, the ISSRA, FERPA, the Protection of Pupil Rights Act, the Health Insurance Portability and Accountability Act, the Americans with Disabilities Act, and all applicable non-discrimination laws.

26. **Background Checks.** Right At School will perform criminal history records checks and Statewide Sex Offender Database checks {"Records Checks"} in accordance with all applicable legal requirements for Right At School's employees and independent contractors that (i) will have contact with children; and (ii) are not also employed by the District. Right At School must not allow any of its employees or contractors to have direct contact with a student of the District or School until a Records Check has been performed on that person and Right At School has determined that the results of the Records Check comply with all applicable legal requirements. For any District employees who perform services for Right At School, Right At School shall be entitled to rely on the District's criminal background check, Statewide Sex Off Database check, and determination of suitability for its employees, and Right At School shall not be required to perform any additional criminal background check, Statewide Sex Off Database check, or determination of suitability for such persons.

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

RIGHT AT SCHOOL:

Right At School, LLC, a Delaware limited liability company

By _____

Its Senior Regional Director

SCHOOL DISTRICT:

Dunlap Community Unit School District
No. 323

By _____

Its Board President