



20100913000298150 1/10 \$44.00  
Shelby Cnty Judge of Probate, AL  
09/13/2010 02:31:55 PM FILED/CERT

**This Instrument Prepared By:**

Ken Shapiro  
Mitchell & Shapiro, LLP  
3490 Piedmont Road, Suite 650  
Atlanta, Georgia 30305  
(404) 812-4748

Return to:

C. Brown  
109 N. 20th St  
Birmingham, AL 35203

**SUBORDINATION AGREEMENT**

THIS SUBORDINATION AGREEMENT is made and entered into as of the 30<sup>th</sup> day of July, 2010, by and among, **REDSTONE FEDERAL CREDIT UNION AND SOUTHERN DEVELOPMENT COUNCIL** ( together, the "Lender"), **PRIMROSE SCHOOL FRANCHISING COMPANY** ("Primrose"), **SLCK PROPERTIES, LLC**, an Alabama limited liability company ("Borrower"), and **DALTON EDUCATIONAL CONCEPTS, INC.**, an Alabama corporation d/b/a **PRIMROSE SCHOOL OF MEADOWBROOK** ("Franchisee"), and **RALPHE. DALTON** and **KATHRYN S. DALTON** (together "Guarantors").

**WITNESSETH:**

Borrower owns certain land in Shelby County, Alabama, more particularly described in Exhibit "A," attached hereto and incorporated herein by reference. Said land, together with all improvements and fixtures now or hereafter located thereon, all appurtenances thereto and all other property owned by Borrower located thereon and encumbered by the Loan Documents described below are hereinafter collectively referred to as the "Property."

*[Mortgages recorded as instrument Nos. 20100803000247660 + 20100817000247660]*

Lender is making loans to Borrower (and Franchisee, as co-borrower) (collectively, the "Loan"), evidenced by promissory notes in the total face/principal amount not to exceed \$2,798,000 and secured by deeds to secure debt or mortgages (collectively, the "Security Deed"), assignments of leases and rents, and various related instruments in connection with the Loan, all of which encumber or relate to the Property, which are dated on or about this date and are herein collectively referred to as the "Loan Documents". The Loan is guaranteed by Guarantor.



Primrose, Borrower and Franchisee have entered into that certain Franchise Agreement of even date herewith (the "Franchise Agreement"), pursuant to which Primrose has an option to purchase the Property (the "Option"). Pursuant to the terms of the Franchise Agreement, Borrower is executing and delivering to Primrose, simultaneously with the execution hereof, a Memorandum of Option in connection with the Option (the "Memorandum of Option"), and Franchisee is executing and delivering to Primrose a Collateral Assignment of Tenant's Interest in Lease (the "Tenant's Collateral Assignment"), both of which are to be filed for recording on or about the date hereof in the same real property records as the Loan Documents.

Lender requires that it receive a first (and, if appropriate, also a second) priority security deed or mortgage (as applicable), prior and superior to the Option, and Primrose is willing to subordinate the Option and Memorandum of Option and certain other rights granted to Primrose to the Tenant's Collateral Assignment but only on the terms and conditions set out herein. Lender is willing to agree to the terms and conditions set out herein below in order to induce Primrose to subordinate the Option to the Loan Documents and approve the Loan Documents, as required under the Franchise Agreement.

#### A G R E E M E N T:

NOW, THEREFORE, in consideration of the mutual covenants herein contained, Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce the closing of a financing as generally outlined above, the parties hereby covenant and agree as follows:

1. Subordination. Primrose and Lender agree that the Loan Documents shall be prior and superior to the Option, Memorandum of Option, Tenant's Collateral Assignment and all other documents executed to Primrose with respect to the Property ("Primrose Collateral Documents"), with the same force and effect as though the Loan Documents were executed and recorded prior to the date of execution and recordation of the Primrose Collateral Documents. Accordingly, Primrose hereby subordinates and makes its rights under the Primrose Collateral Documents inferior to the right, title and interest of Lender under the Loan Documents as to the Property. Lender acknowledges and consents to the terms of the Primrose Collateral Documents and agrees that the existence of the Primrose Collateral Documents shall not constitute a default under the Loan Documents, and the Primrose Collateral Documents shall remain in full force and effect as to the Property, but shall be second-in-priority behind the Loan Documents. The terms of this Subordination Agreement shall control in the event of any conflict or inconsistency between any term hereof and any term of the Loan Documents, and are hereby incorporated by reference into the Security Deed and other Loan Documents.

2. Modification of Security Documents. Lender agrees that, so long as the Primrose Collateral Documents remain in force, the Loan Documents will secure only the notes designated therein and no further advances (except for advances to pay any past due taxes or insurance premiums or to pay any other amounts paid to protect the Property, or advances under the construction loan in accordance with the loan documents), shall be made to Borrower without Primrose's prior written consent.





3. Notice of Default to Primrose; Rights of Primrose on Default. In the event of a monetary default under the Loan Documents or a default which would otherwise give the Lender the right to accelerate the Loan then, prior to acceleration, Lender will notify Primrose in writing of the nature of such default, and Primrose will thereupon have the following options and rights, in addition to any other rights available at law or in equity:

(a) Notice and Right to Cure. To cure or cause a cure of the default within ten (10) days in the case of a default consisting of the failure to make a payment of money to Lender, or fifteen (15) days or such longer period as is reasonable under the circumstances in the case of other defaults, from the date all cure periods under the Loan Documents have elapsed, Lender hereby agreeing to accept such cure. Any and all costs and expenses incurred by Primrose in effecting any cure shall be deducted from the purchase price payable to Borrower in the event Primrose purchases the Property under the Option, as set out in the Option. In the event such default is cured within said period, to the extent the indebtedness under the Loan Documents has been accelerated as a result of said default, the indebtedness shall be reinstated by Lender, so as to be payable upon the same terms and conditions in effect prior to said default. However, if Primrose fails to cure or cause a cure within such time, any default-related action previously taken by Lender shall continue in effect as of the date instituted; or

(b) Acquisition of Loan Documents. At any time after the default notice and prior to fifteen (15) days before the consummation of a foreclosure sale or sale under power of sale pursuant to the Security Deed, Primrose shall have the right and option (but no obligation whatsoever) to purchase the Loan Documents and any guarantees (except for SBA guarantees, if applicable), agreements and collateral securing same for an amount equal to the outstanding principal balance plus all accrued but unpaid interest, late charges, default interest and any actually incurred reasonable attorneys' fees of Lender's counsel. Upon notice from Primrose to Lender of Primrose's exercise of its right to purchase the Loan Documents and payment of the sums required hereby, the note secured by the Security Deed will be endorsed by Lender to Primrose without recourse or warranty and all the Loan Documents, including, without limitations, any and all guarantees, agreements or collateral, will be assigned by Lender to Primrose without recourse or warranty except that the Lender shall warrant: (i) that it holds title to the aforesaid note and the other Loan Documents free and clear of any lien, claim or participation interest, (ii) that it has the right and power to assign and convey such documents, and (iii) the amount of the principal and interest balance under the Loan Documents on the date of transfer. The original documents purchased and the Lender's title insurance policy shall be delivered to Primrose at the closing of the purchase, and, in addition, if Primrose desires to obtain any other documents which have been provided to Lender by Borrower or by third parties relating to the Property or to the Loan, then, provided that such documents remain in the possession of Lender or are readily available to Lender, Lender will deliver such documents to Primrose at said closing. After the sale of the Loan Documents to Primrose is completed in accordance with the terms of this Paragraph, Primrose shall, and hereby agrees to, indemnify and defend Lender from and against any and all claims, demands, suits or actions in connection with the Loan which arise





out of matters or circumstances occurring in connection with, or subsequent to, Primrose's acquisition of the Loan Documents.

4. Exercise of Option. In the event Primrose acquires title to the Property from Borrower as a result of exercising the Option (in its sole discretion), then Primrose shall either satisfy or assume the Loan.

5. Non-Disturbance and Attornment. Lender hereby agrees that, in the event Primrose exercises its rights under the Tenant's Collateral Assignment and becomes the tenant under the lease of the Property between Borrower and Franchisee, as such lease may be modified pursuant to the terms of the Tenant's Collateral Assignment (the "Lease"), then, so long as the Loan is (or is brought) current, the Lender has not previously consummated a foreclosure of the Property and Primrose thereafter complies with and performs its obligations under the Lease: (a) Lender will take no action which will interfere with or disturb Primrose's possession or use of the Property or other rights under the Lease, and (b) in the event Lender subsequently becomes the owner of the Property by foreclosure, conveyance in lieu of foreclosure or otherwise, the Property shall be subject to the Lease and Lender shall recognize Primrose as having the right to occupy the Property for up to 300 days from the date Primrose takes possession as herein provided; provided, however, that Lender shall not be liable for any act or omission of any prior landlord, or subject to any offsets or defenses which Primrose might have against any prior landlord, nor shall Lender be bound by any rent or additional rent which Primrose might have paid for more than the current month to any prior landlord, nor shall it be bound by any amendment or modification of the Lease (other than an amendment pursuant to the Tenant's Collateral Assignment) made without its consent, nor shall it be construed as Primrose having assumed the Lease, with Primrose being liable for lease payments only for the term that it, in fact, occupies the Property, with Primrose having no obligation to occupy the Property unless it so elects. Primrose does hereby agree with Lender that, in the event Lender subsequently becomes the owner of the Property by foreclosure, conveyance in lieu of foreclosure or otherwise, and Primrose becomes the tenant under the Lease pursuant to the Tenant's Collateral Assignment, then Primrose shall attorn to and recognize Lender as the landlord under the Lease for the remainder of the term that it occupies the Property, and Primrose shall perform and observe its obligations thereunder, subject only to the terms and conditions of the Lease and the Tenant's Collateral Assignment, provided however if the Lease payment is less than the monthly payment due on the Loan, the monthly rental payment shall be equal to the monthly Loan payment. Lender consents to the terms of the Tenant's Collateral Assignment and agrees to be bound thereby in the event it becomes the landlord under the Lease. Provided however, notwithstanding any other provision set out herein, Primrose shall have no right to occupy the Property for a period in excess of 300 days from the date it takes possession unless Lender and Primrose agree in writing to Primrose's occupancy beyond such period, and the Lease shall become null and void. The parties hereto agree that in the event Primrose takes possession of the Property as contemplated by this paragraph 5, all rental payments due under the Lease shall be made by Primrose directly to Lender, pursuant to Lender's security interest in the Property (regardless of whether Lender has foreclosed on the Property), and applied against amounts due under the Loan.





6. Loan Information. Lender shall, upon inquiry, provide Primrose with the name, address and telephone number of the officer of Lender having responsibility for the administration of its loan to Borrower. Lender and Primrose shall be free to confer with one another from time to time either orally or in writing with regard to the Property, Borrower and Franchisee. Lender agrees to provide Primrose with such information and copies of documentation regarding the Loan as may be reasonably requested by Primrose; provided, however, that Primrose shall notify Borrower and Franchisee of any such requests for information at the time such request is made. Primrose agrees to provide Lender with such information and documentation regarding the Property, Borrower and Franchisee as Lender may reasonably request.

7. Miscellaneous. The agreements contained herein shall continue in full force and effect until either all of Borrower's obligations and liabilities to Lender are paid and satisfied in full or the Option and Tenant's Collateral Assignment have terminated and Franchisee's obligations to Primrose under the Franchise Agreement have expired. The agreements contained herein may not be modified or terminated orally and shall be binding upon the successors, assigns, and personal representatives of the parties hereto.

8. Borrower Execution. Borrower and Franchisee have executed and entered into this Agreement for the purpose of consenting and agreeing to the terms and conditions set forth herein, and to all actions of Lender and Primrose contemplated herein.

9. Notices. Any and all notices, elections, approvals, consents, demands, requests and responses thereto ("Communication") permitted or required to be given under this Agreement shall be in writing, signed by or on behalf of the party giving the same, and shall be deemed to have been properly given and shall be effective upon the earlier of: (i) being personally delivered, or (ii) three (3) days after being deposited in the United States mail, postage prepaid, certified with return receipt requested, to the other party at the address of such other party set forth below or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance herewith; provided, however, that the time period in which a response to any Communication must be given shall commence on the date of receipt thereof; and provided further that no notice of change of address shall be effective until the date of receipt thereof. Personal delivery to a party or to any officer, partner, agent or employee of such party at said address shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received also constitute receipt. Any communication, if given to Primrose, shall be addressed as follows:

Ms. Jo Kirchner, President  
Primrose School Franchising Company  
3660 Cedarcrest Road  
Acworth, Georgia 30101



with a copy to: Kenneth A. Shapiro, Esq.  
Mitchell & Shapiro LLP  
3490 Piedmont Road  
Suite 650  
Atlanta, Georgia 30305

and, if given to Lender, shall be addressed as follows:

Redstone Federal Credit Union  
220 Wynn Drive  
Huntsville, Alabama 35893

and: Southern Development Council  
8132 Old Federal Rd.  
Montgomery, AL 36117

and, if given to Borrower, Franchisee or Guarantor shall be addressed as follows:

SLCK Properties, LLC  
4855 Meadowbrook Road  
Birmingham, AL 35242

10. Joint and Several Obligations. The obligations of Borrower and Franchisee hereunder shall be the joint and several obligations of such parties.

11. Lender not a Joint Venturer or Partner. Nothing herein shall be construed to create a partnership or joint venture to create a partnership or joint venture between Lender and Borrower and/or Franchisee and/or Primrose.

12. Notice to Lender of Franchise Default. In case of the occurrence of any default or event of default under the Franchise Agreement that will give Primrose the right to terminate the franchise granted under the Franchise Agreement (the "Franchise"), Primrose agrees to give Lender thirty (30) days notice of intent to terminate the Franchise. Lender may, but is not obligated to, undertake to cure such default on behalf of Franchisee within the time permitted, if any, under the default notice and the Franchise Agreement.

13. Deferral of Fees and Royalties. If Lender gives written notice to Primrose that Franchisee has stopped making principal and interest payments under the Loan, Primrose will allow the deferral of payment of unpaid fees and royalties accrued prior to the notice, and fees and royalties accruing after the notice under the Franchise Agreement for a period of ninety (90) days after receipt of Lender's written notice. Primrose will continue to provide any applicable services with respect to the Franchise so long as Franchisee is not otherwise in default under the Franchise Agreement. If Franchisee and Primrose cannot reach a mutually satisfactory arrangement for payment of deferred fees and royalties by the end of such ninety (90) day period, Primrose will then be authorized to pursue its rights and remedies under the Franchise



Agreement arising from Franchisee's failure to pay. Deferment of fees will not be cause for franchise termination.

IN WITNESS WHEREOF, the parties hereto have signed, sealed and delivered this Subordination Agreement as of the date written above.

LENDER:

REDSTONE FEDERAL CREDIT UNION

By: Neil A. Carville  
Name: Neil A. Carville  
Title: Business Loan Officer

[BANK SEAL]

STATE OF ALABAMA  
COUNTY OF Madison

This instrument was acknowledged before me on the 13<sup>th</sup> day of August, 2010 by Neil A. Carville, Business Loan Officer of Redstone Federal Credit Union.

(Notary Seal)

Andrea Cox  
Notary Public in and for the State of Alabama  
My Commission Expires: 2-12-2012

LENDER:

SOUTHERN DEVELOPMENT COUNCIL

By: William P. Barry  
Name: William P. Barry  
Title: Vice President

[BANK SEAL]

STATE OF ALABAMA  
COUNTY OF Montgomery

This instrument was acknowledged before me on the 13<sup>th</sup> day of August, 2010 by William P. Barry, Its Vice President of Southern Development Council.

(Notary Seal)

Andrea Cox  
Notary Public in and for the State of Alabama  
My Commission Expires: July 15, 2014

[Signature]  
WITNESS

STATE OF GEORGIA  
COUNTY OF PAULDING

PRIMROSE:

PRIMROSE SCHOOL FRANCHISING COMPANY

By: [Signature]  
Name: Jo Kirchner  
Title: President + CEO

(SEAL)

This instrument was acknowledged before me on the 27<sup>th</sup> day of July, 2010 by  
Jo Kirchner, of Primrose School Franchising  
Company, a Georgia corporation.

(Notary Seal)



[Signature]  
Notary Public in and for the State of Georgia  
My Commission Expires: May 18, 2014

FRANCHISEE:

DALTON EDUCATIONAL CONCEPTS, INC.,  
an Alabama corporation

By: [Signature]  
Name: President

[SEAL]

STATE OF ALABAMA  
COUNTY OF SHELBY

This instrument was acknowledged before me on the 30<sup>th</sup> day of July, 2010 by  
Ralph E. Dalton, President of Dalton Educational Concepts, Inc., an  
Alabama corporation.

(Notary Seal)

[Signature]  
Notary Public in and for the State of Alabama  
My Commission Expires: 12/14/2012





BORROWER:

SLCK PROPERTIES, LLC  
an Alabama limited liability company

Jennifer Hochmidge  
WITNESS

By: [Signature]  
Name: Ralph E. Dalton  
Title: Managing Member

STATE OF ALABAMA  
COUNTY OF SHELBY

[SEAL]

This instrument was acknowledged before me on the 30<sup>th</sup> day of July, 2010 by  
Ralph E. Dalton, Managing Member of SLCK Properties, LLC, an  
Alabama limited liability company.

(Notary Seal)

[Signature]  
Notary Public in and for the State of Alabama  
My Commission Expires: 12/14/2012

GUARANTORS:

Jennifer Hochmidge  
WITNESS

[Signature] (SEAL)  
RALPH E. DALTON

STATE OF ALABAMA  
COUNTY OF SHELBY

This instrument was acknowledged before me on the 30<sup>th</sup> day of July, 2010 by  
Ralph E. Dalton.

(Notary Seal)

[Signature]  
Notary Public in and for the State of Alabama  
My Commission Expires: 12/14/2012

Jennifer Hochmidge  
WITNESS

[Signature] (SEAL)  
KATHRYN S. DALTON

STATE OF ALABAMA  
COUNTY OF SHELBY

This instrument was acknowledged before me on the 30<sup>th</sup> day of July, 2010 by  
Kathryn S. Dalton.

(Notary Seal)

[Signature]  
Notary Public in and for the State of Alabama  
My Commission Expires: 12/14/2012



EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY  
PRIMROSE SCHOOL OF MEADOW BROOK

Lot 11A-2, according to Meadow Brook Corporate Park South, Phase II, Resurvey No. 9, being a resurvey of Lot 11A-1 (being a resurvey of Lots 11-A and 11-B) as recorded in Map Book 28, Page 59 in the Office of the Judge of Probate of Shelby, County, Alabama.



20100913000298150 10/10 \$44.00  
Shelby Cnty Judge of Probate, AL  
09/13/2010 02:31:55 PM FILED/CERT