

THIS INSTRUMENT PREPARED BY:  
William C. Brown  
ENGEL, HAIRSTON & JOHANSON, P.C.  
109 N. 20<sup>th</sup> Street, 4<sup>th</sup> Floor  
Birmingham, Alabama 35203  
(205) 328-4600

## THIRD PARTY LENDER AGREEMENT

THIS THIRD PARTY LENDER AGREEMENT (Agreement) is dated this 9th day of August 2010, by and between REDSTONE FEDERAL CREDIT UNION, (Third Party Lender) whose address is 220 Wynn Drive, Huntsville, Alabama 35893, and SOUTHERN DEVELOPMENT COUNCIL, INC., (CDC) whose address is 8132 Old Federal Road, Montgomery, Alabama 36117.

### RECITALS

1. As described in the "Authorization for Debenture Guarantee (SBA 504 Loan)," as amended (Authorization), and as detailed below, the Third Party Lender will provide term financing (Third Party Loan), and the CDC will provide a loan (the 504 Loan) funded by a debenture issued by the CDC and guaranteed by the U.S. Small Business Administration (SBA), to Borrower and Operating Company, if any, identified below (collectively, Borrower) for purposes of financing the Project described in the Authorization, which involves the acquisition and/or improvement of the real and/or personal property described below, and in Exhibit A attached hereto and incorporated herein by reference (Project Property):

SBA Loan #:	41871550-09
SBA Loan Name:	Primrose School of Meadowbrook
SBA Loan Amount:	\$1,170,000.00 secured by, among other things, that mortgage recorded as Instrument No. <u>20100817000263410</u> , in the Probate Office of Shelby County, Alabama.
Borrower:	SLCK PROPERTIES, LLC and DALTON EDUCATIONAL CONCEPTS, INC.
Operating Company (if any)	DALTON EDUCATIONAL CONCEPTS, INC.
Third Party Loan Amount:	\$1,628,000.00, secured by, among other things, that mortgage recorded as Instrument No. <u>20100803000247660</u> in the Probate Office of Shelby County, Alabama.
Term of Third Party Loan:	twenty (20) years
If Real Property -- Project Property Address:	
Street address:	4855 Meadowbrook Road
City, State, Zip code:	Birmingham, Alabama 35242
Attach Legal description as Exhibit A	

2. The parties have required the Borrower to grant liens or security interests in the Project Property to secure the separate loans advanced by the parties (Common Collateral), and the lien or security interest held by CDC (CDC Lien) will be junior and subordinate to the lien or security interest held by the Third Party Lender (Third Party Lender Lien), unless CDC and SBA agree otherwise in writing.

## TERMS AND CONDITIONS

In consideration of the above factual recitals, the mutual agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Amount of Third Party Loan. The Third Party Lender represents that the Third Party Loan is fully advanced and does not and will not exceed the amount allowed in the Authorization.
2. Subordination of 504 Loan. CDC agrees to make the 504 Loan to the Borrower, subject to SBA's approval, and accept a junior and subordinate position in the Common Collateral upon the condition that Third Party Lender executes this Agreement and makes the Third Party Loan.
3. Accurate Information. The Third Party Lender warrants and represents that all information provided to CDC, including, without limitation, all information regarding the Borrower's financial condition, is accurate to the best of its knowledge and that Third Party Lender has not withheld any material information. Third Party Lender acknowledges that for purpose of this transaction, CDC is acting on behalf of the SBA, an agency in the United States Government, except that SBA accepts no liability or responsibility for any wrongful act or omission by CDC. Third Party Lender further acknowledges that any false statements to CDC can be considered a false statement to the SBA, and that CDC and the SBA are relying upon the information submitted by the Third Party Lender.
4. Waiver of Provision Not to Encumber Common Collateral. If any of the Third Party Lender's documents evidencing the Third Party Loan and/or Third Party Lender Lien contain provisions that prohibit further encumbrances on the Common Collateral or subordinate debt by the Borrower or which restrict Borrower's ability to assign its lease on, or rents, income or profits from, the Common Collateral, then Third Party Lender waives its right to enforce such provisions as they may apply to the 504 Loan and the CDC Lien.
5. Compliance with 504 Loan Program Requirements. Third Party Lender agrees that all documents evidencing the Third Party Loan and the Third Party Lender Lien will comply with the 504 Loan Program requirements as established by the SBA and including those identified in the following subparagraphs, and in the event that it is determined that one or more of the provisions in such documents do not comply with any of these 504 Loan Program requirements, Third Party Lender agrees to waive the right to enforce all such provisions.
  - a. No Open-Ended Features and No Future Advances. The Third Party Loan must not be open-ended. After completion of the project, the Third Party Lender may not make future advances under the Third Party Loan except expenditures to collect the amounts due the Third Party Loan notes, maintain collateral and protect the Third Party Lender's lien position on the Third Party Loan.
  - b. No Early Call or Demand Provisions. Third Party Lender agrees that Third Party Loan documents must not contain any early call feature or permit the Lender to make demand prior to maturity unless the loan is in default.
  - c. No Cross-Collateralization. Third Party Lender agrees that the Common Collateral is not now, and will not be in the future, security for any other financing provided by Third Party Lender to Borrower other than the Third Party Loan in a superior position to that of the CDC lien unless authorized in writing by CDC and SBA.
  - d. No Cross-Default. During the term of the Third Party Loan, Third Party Lender will not exercise any cross-default, "deem at-risk," or any other provisions in documents evidencing the Third





Party Loan or Third Party Lender Lien which allow Third Party Lender to make demand prior to maturity unless the loan is in default.

e. Maturity and Balloon Payments. The Third Party Loan has a term of at least 7 years when the 504 loan is for a term of 10 years and 10 years when the 504 loan is for 20 years. If there is more than one Third Party Loan, an overall loan maturity must be calculated, taking into account the maturities and amounts of each loan. If there is a balloon payment, it must be clearly identified in the Authorization.

f. Reasonable Interest Rate. The Third Party Loan has a reasonable interest rate which does not and will not exceed the maximum interest rate for Third Party Loans from commercial financial institutions as published periodically by SBA in the Federal Register and in effect as of the date of this Agreement.

6. No Preference. No Third Party Lender shall establish a preference beyond its rights as a senior lender on the Third Party Loan without the prior written consent of CDC/SBA. See 13 C.F.R. §120.10 for a definition of preference.

7. Notice of Default under the Third Party Loan. In the event of a default under the Third Party Loan or Third Party Lien, Third Party Lender must give CDC and SBA written notice, referencing the loan number for the 504 loan, of such default within thirty (30) days of the event of default and at least sixty (60) days prior to Third Party Lender's foreclosure upon the Common Collateral.

8. Certification as to Default Interest Rate as Against Borrower. Third Party Lender may not escalate the rate of interest upon default to a rate greater than the maximum rate published by SBA in the Federal Register from commercial financial institutions in effect as of the date of this Agreement. SBA will only pay the interest rate on the note in effect before the date of Borrower's default.

9. Subordination to 504 Loan and CDC Lien, of Amounts Attributable to Default Provisions.

a. The term "Default Charges" used in this paragraph includes, but is not limited to, prepayment penalties, late fees, other default charges, and escalated interest after default due under the Third Party Loan.

b. To the extent the Third Party Lender Lien secures any amounts attributable to Default Charges, which may exist in the Third Party Loan and Third Party Lender Lien, Third Party Lender Lien is and will be subordinate to the 504 Loan and the CDC Lien. This subordination applies only to CDC and SBA and their successors and assigns, and in no event shall be applicable to Borrower or any guarantor of the Third Party Loan.

c. In the event of default under the Third Party Loan, CDC or SBA may bring the Third Party Loan current or may acquire the Third Party Loan secured by the Third Party Lender Lien. Third Party Lender agrees that in either of these circumstances, the amount to bring the Third Party Loan current or the purchase price of that loan will be net of all amounts attributable to the Default Charges so subordinated to the 504 Loan and the CDC Lien. Third Party Lender further agrees that if it receives from CDC/SBA any amounts attributable to such Default Charges, Third Party Lender holds such funds in trust for SBA and will remit such funds to SBA as soon as possible. Should CDC or SBA not purchase the Third Party Loan but rather bring the Third Party loan current, Default Charges on the Third Party Loan may remain due and owing from the Borrower.

*Paragraph 10 is optional and is applicable only if marked*



XXX 10. Liquidation. In the event that either the Third Party Loan or the 504 Loan is declared in default, Third Party Lender and CDC and SBA agree to cooperate in liquidating and/or selling the Collateral. Third Party Lender agrees to (a) accept a U.S. Treasury check(s) in connection with any purchase of Third Party Lender's note or any foreclosure or liquidation bid by CDC or SBA; (b) to provide CDC and SBA with the loan payment status, loan payment history, and an itemized payoff statement of the Third Party Loan; (c) to provide CDC and SBA with copies of any appraisals, environmental investigations, or title examinations or searches of the Collateral conducted by or for Third Party Lender; and (d) to provide any other information about Borrower or the Third Party Loan requested by CDC and SBA in writing.

11. Waiver of Right to Indemnification by SBA or CDC. If Third Party Lender's documents contain provisions granting Third Party Lender the right to indemnification by subsequent owners of the Project Property, then Third Party Lender waives its right to enforce such provisions against SBA or CDC in the event SBA or CDC acquires title to the Project Property through foreclosure of the CDC Lien, acceptance of a deed in lieu of foreclosure, or otherwise.

*Paragraph 12 is optional and should be marked if CDC uses Third Party Lender to perform Customer Identification.*

XXX 12. Bank Regulatory Issues. If Third Party Lender is regulated by one of the Federal functional regulators (Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, or National Credit Union Administration), Third Party Lender represents that it is subject to the Joint Final Rule on Customer Identification Programs (CIP) in 31 C.F.R. 103.121 and that it or its agent will perform with respect to the Borrower the specified requirements of its CIP.

13. No Implied Third Party Beneficiaries. To the extent there is a conflict between this Agreement and any provision in any agreement either Party may have with a third party, including but not limited to, Borrower, the terms and conditions in this Agreement shall supercede any such provision. The parties agree that SBA may enforce this agreement as a third party beneficiary, and further agree that this Agreement shall not grant any right, benefit, priority, or interest to any other third party, including but not limited to, Borrower and Guarantor(s).

14 Successors and Assigns. This Agreement will inure to the benefit of and bind the respective parties to this Agreement, and their successors and assigns, including any party acquiring the Third Party Loan and Third Party Lender Lien by sale, assignment, or other transfer from Third Party Lender. Third Party Lender agrees that CDC may assign this Agreement to the SBA, and waives all rights to contest such assignment.

15. Federal Law. When SBA is the holder of the loan instruments evidencing the 504 Loan and any security for that loan (including but not limited to the CDC Lien on the Common Collateral), this Agreement and all such instruments will be construed in accordance with Federal law. CDC or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes, but by using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax, or liability. The Third Party Lender may not claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to the 504 Loan.

16. Termination: This document will be released and terminated upon the payment in full of either the Third Party Loan or the 504 loan and all costs related thereto.

17. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument.

18. Validity of Provisions. In the event that any provision of this Agreement is deemed invalid by a court of competent jurisdiction, all other provisions of this Agreement shall remain valid and enforceable.

19. Revision of this Agreement. Both Third Party Lender and CDC agree that this Agreement is a standard SBA Form, and, as such, neither party has authority to modify or delete any provision in this Agreement, or add any additional provisions, without prior written authorization from the SBA.

20. Authority to Execute Agreement. The persons signing below certify that they have been duly authorized to execute this Agreement on behalf of their respective party.

LENDER:

REDSTONE FEDERAL CREDIT UNION

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

CERTIFIED DEVELOPMENT COMPANY (CDC):  
SOUTHERN DEVELOPMENT COUNCIL, INC.

By: William P. Barry  
William P. Barry, Its Vice President

#### ASSIGNMENT TO SBA

CDC assigns this Third Party Lender Agreement to SBA.

By: William P. Barry Date: August 9, 2010  
Typed Name: William P. Barry, Its Vice President, authorized officer of CDC.  
Attest: Rush Meriwether  
Rush Meriwether, Its [Asst] Secretary

[NOTE: ACKNOWLEDGMENTS CONTAINED ON FOLLOWING PAGE.]



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Shelby Cnty Judge of Probate, AL  
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STATE OF ALABAMA  
MADISON COUNTY

ACKNOWLEDGMENT OF THIRD PARTY LENDER

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Neil A. Carville, whose name as Business loan officer of REDSTONE FEDERAL CREDIT UNION, a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer, and with full authority, executed the same voluntarily, as an act of said corporation, acting in its capacity as aforesaid.

Given under my hand and official seal, this the 13<sup>th</sup> day of August, 2010.

Andrea Rene  
NOTARY PUBLIC  
My Commission Expires: 2-12-2012

STATE OF ALABAMA  
MONTGOMERY COUNTY

ACKNOWLEDGMENT OF CDC

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that William P. Barry, whose name as Vice President of SOUTHERN DEVELOPMENT COUNCIL, INC., a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer, and with full authority, executed the same voluntarily, as an act of said corporation, acting in its capacity as aforesaid.

Given under my hand and official seal, this the 9 day of August, 2010.

Andrea Cox  
NOTARY PUBLIC  
My Commission Expires  
**July 15, 2014**

STATE OF ALABAMA  
MONTGOMERY COUNTY

ACKNOWLEDGMENT FOR ASSIGNMENT

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that William P. Barry, whose name as Vice President of SOUTHERN DEVELOPMENT COUNCIL, INC., a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer, and with full authority, executed the same voluntarily, as an act of said corporation, acting in its capacity as aforesaid.

Given under my hand and official seal, this the 9 day of August, 2010.

Andrea Cox  
NOTARY PUBLIC  
My Commission Expires  
**July 15, 2014**

## EXHIBIT "A"

Lot 11A-2, according to the Map of Meadow Brook Corporate Park South, Phase II, Resurvey No. 10, as recorded in Map Book 29, Page 42, in the Probate Office of Shelby County, Alabama.

### SUBJECT TO:

- i) taxes and assessments for the year 2010, a lien but not yet payable;
- ii) title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, together with any release of liability for injury or damage to persons or property as a result of the exercise of such rights as recorded in Deed Book 66, Page 34;
- iii) building setback lines, easements and buffer zone as recorded in Map Book 28, Page 59;
- iv) Easement(s)/right(s) of way granted to Alabama Power Company as recorded under Instrument No. 2001-26138 in Probate Office of Shelby County, Alabama;
- v) Declaration of Covenants, Conditions and Restrictions for Meadow Brook Corporation Park as set out in Real 64, Page 91, along with 1<sup>st</sup> Amendment recorded in Real 95, Page 826; 2<sup>nd</sup> Amendment recorded in Real 141, Page 784; 3<sup>rd</sup> Amendment recorded in Real 177, Page 244; 4<sup>th</sup> Amendment recorded in Real 243, Page 453; 5<sup>th</sup> Amendment recorded in Real 245, Page 89; 6<sup>th</sup> Amendment recorded in Instrument # 1992-23529; 7<sup>th</sup> Amendment recorded in Instrument # 1995-03028; 8<sup>th</sup> Amendment recorded in Instrument # 1995-04188; 9<sup>th</sup> Amendment recorded in Instrument # 1996-5491; 10<sup>th</sup> Amendment recorded in Instrument # 1996-32318; 11<sup>th</sup> Amendment recorded in Instrument # 1997-30077; 12<sup>th</sup> Amendment recorded in Instrument # 1997-37856; 13<sup>th</sup> Amendment recorded in Instrument # 1998-5588; 14<sup>th</sup> Amendment recorded in Instrument # 1998-41655; 15<sup>th</sup> Amendment recorded in Instrument # 1998-46243; and 16<sup>th</sup> Amendment recorded in Instrument # 1999-2935; and
- vi) Any other coal, oil, gas and mineral and mining rights which are not owned by Grantor/Mortgagor.



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