

This instrument was prepared  
by and after recording return to:



Gardner Carton & Douglas  
191 North Wacker Drive  
Suite 3700  
Chicago, IL 60606-1698  
Attention: Edward J. Tabaczyk



dk02p157

Lawyers Title Insurance Corporation

Property of Cook County Clerk's Office

**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") made and entered into as of the 26<sup>th</sup> day of December, 2002 by and among OAK BROOK BANK, not personally but as trustee under Trust Agreement dated \_\_\_\_\_ and known as Trust Number 3266, an Illinois land trust (the "Lessor"), OAK BROOK BANK, an Illinois banking corporation ("Lender"), and Community Driving School, a \_\_\_\_\_ ("Tenant").

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**RECITALS**

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A. Tenant is the tenant under a lease for the improved real property described in Exhibit A attached hereto (the "Premises");

B. WHEREAS, Lender has agreed to make a loan to Lessor to be secured by a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing (as amended, restated, modified, extended, replaced or supplemented from time to time, the "Mortgage"), as well as by a separate Assignment of Lease and Rents (as amended, restated, modified, extended, replaced or supplemented from time to time, the "Assignment"; the Assignment, the Mortgage and the Notes (as defined in the Mortgage) are collectively referred to herein as the "Loan Documents") covering Lessor's interest in the Premises;

C. Pursuant to a lease dated 11-2-02 (the "Lease"), Tenant has leased from Lessor, as landlord, a portion of the Premises (the "Leased Premises") more particularly described therein; and

D. Lender has agreed to recognize the status of Tenant in the event Lender acquires title to the Premises by foreclosure, by the acceptance of a deed in lieu thereof, or by any other means and Tenant has agreed to attorn to Lender in any such event.

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## AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals which are hereby incorporated, the mutual covenants hereinafter mentioned and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Tenant certifies that the Lease has been fully executed and is in full force and effect, and has not been modified or amended except as expressly set forth in the Recitals above. Tenant further certifies that Tenant is not in default under any of the terms of the Lease and to Tenant's best knowledge, the Lessor is not in default under any of the terms of the Lease. Tenant has not entered into any agreements providing for the discounting, advance payment, abatement or offsetting of rents and no rent has been paid for more than one month in advance. Rental payments are being made on a current basis and have been paid through the month of November, 2002.

2. The Mortgage and any renewals or extensions thereof, shall be and remain at all times a lien or charge on the Premises prior and superior to the Lease, the leasehold estate created thereby and to any options to lease or to purchase the Premises contained therein, and to all rights, privileges, and conditions therein contained. Tenant declares and acknowledges that it hereby intentionally waives, relinquishes, and subordinates the priority and superiority of the leasehold estate created by the Lease to the Mortgage, subject to the terms of this Agreement. All amendments, modifications, substitutions, renewals, extensions and replacements of the Lease shall be and remain so subordinated as provided in this paragraph without the necessity of any further act of the parties. Tenant also declares and acknowledges that it understands that in reliance upon and in consideration of this waiver, relinquishment, and subordination, specific loans and advances secured by the Mortgage will be made, and monetary and other obligations will be entered into by third parties which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.

3. If (a) Lender shall acquire title to, and possession of, the Premises through foreclosure, a deed-in-lieu of foreclosure or otherwise, and by operation of law or otherwise there is a resulting termination or cancellation of the Lease, and (b) Tenant is not in default under the Lease beyond any applicable cure or grace periods, has not canceled or terminated the Lease (without regard to whether Lessor or Tenant is then in default under the Lease) nor surrendered, vacated or abandoned the Leased Premises, then, in such event, Lender shall enter into a new lease with Tenant upon the same terms and conditions as were contained in the Lease, except that (x) the obligations and liabilities of Lender under any such new lease shall be subject to the terms and conditions of this Agreement, and (y) the expiration date of such new lease shall coincide with the original expiration date of the Lease. Tenant shall execute any such new lease and shall attorn to Lender or its nominee, successors or assigns or any purchaser (as the case may be) as to establish direct privity between Lender and Tenant. In the event Lender decides to keep the existing Lease in full force and effect, Lender shall recognize Tenant's rights under the Lease and not disturb and peacefully allow Tenant to remain therein, subject to the terms of this Agreement.

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4. If (a) Lender shall acquire title to the Premises through foreclosure, a deed-in-lieu of foreclosure or otherwise and such acquisition of title does not result in a termination or cancellation of the Lease by operation of law or otherwise, and (b) Tenant is not in default under the Lease beyond any applicable cure or grace periods and Tenant has not surrendered, vacated or abandoned the Leased Premises at the time of such acquisition of title:

(i) Tenant shall be deemed to have made a full and complete attornment to Lender so as to establish direct privity between Lender and Tenant;

(ii) all obligations of Tenant under the Lease shall continue in full force and effect and be enforceable against Tenant by Lender, with the same force and effect as if the Lease had originally been made and entered into directly by and between Lender as landlord thereunder, and Tenant; and

(iii) Lender shall recognize and accept the rights of Tenant under the Lease and, subject to the provisions of Paragraphs 5 and 6 hereof, shall thereafter assume the obligations of Lessor under the Lease subject, in all events, to (A) the provisions of Paragraph 5 and 6 below and (B) Tenant's waiver, as against Lender, of any defaults of Lessor (whether or not curable) which occurred prior to Lender acquiring title to, and possession of, the Premises.

5. (a) Nothing herein contained shall impose any obligation upon Lender to perform any of the obligations of Lessor under the Lease, unless and until Lender shall take possession of the Premises, and, in any event, Lender shall have no liability with respect to any acts or omissions of Lessor occurring prior to the date on which Lender shall take possession of the Premises.

(b) Notwithstanding anything to the contrary contained herein, officers, directors, shareholders, agents, servants and employees of Lender shall have no personal liability to Tenant and the liability of Lender, in any event, shall not exceed and shall be limited to Lender's interest in the Premises.

6. Tenant hereby agrees that notwithstanding anything to the contrary in this Agreement or the Lease:

(a) no amendment, modification, termination, assignment or sublease of the Lease shall be effective against Lender, unless consented to in writing by Lender;

(b) Lender shall not be bound by any advance payment of rent or additional rent to Lessor (or its predecessors-in-interest) in excess of one month's prepayment thereof except as expressly approved in writing by Lender;

(c) Lender shall not be liable for any act or omission of Lessor (or, its predecessor-in-interest);

(d) Lender shall not be subject to any offsets or defenses which Tenant might have against Lessor for actions or omissions of Lessor.

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(e) Lender shall not be bound by any covenant to undertake or complete any construction of the Premises, the Leased Premises or any portion thereof;

(f) Lender shall not be bound by any obligation of Lessor to make any payment to Tenant, except that (i) Lender shall be liable for the timely return of any security or other deposit actually received by Lender and (ii) Lender shall be liable on account of any prepayments of rent or other charges owing to Tenant if the funds are actually received by Lender;

(g) Lender shall not be bound by any obligation to repair, replace, rebuild or restore the Premises, the Leased Premises, or any part thereof, in the event of damage by fire or other casualty, or in the event of partial condemnation, beyond such repair, replacement, rebuilding or restoration as can reasonably be accomplished with the use of the net insurance proceeds or the net condemnation award actually received by or made available to Lender; and

(h) Lender shall not be required to remove any person occupying the Leased Premises or any part thereof.

7. Prior to pursuing any remedy available to Tenant under the Lease, at law or in equity as a result of any failure of Lessor to perform or observe any covenant, condition, provision or obligation to be performed or observed by Lessor under the Lease (any such failure hereinafter referred to as a "Lessor Default"), Tenant shall: (a) provide Lender with a written notice of Lessor Default specifying the nature thereof, and (b) allow Lender thirty (30) days following receipt of such notice of Lessor Default to cure the same; provided, however, that, if such Lessor Default is not readily curable within such thirty (30) day period, Tenant shall give Lender such additional time as Lender may reasonably need to cure such Lessor Default so long as Lender is diligently pursuing a cure, but in no event shall the additional period exceed ninety (90) days. Tenant shall not pursue any remedy available to it as a result of any Lessor Default unless Lender fails to cure same within the time period specified above. For purposes of this Paragraph 7, a Lessor Default shall not be deemed to have occurred until all grace and/or cure periods applicable thereto under the Lease have lapsed without Lessor having effectuated a cure thereof.

8. Tenant and Lessor hereby agree that, in the event that Lender delivers to Tenant a notice (i) stating that a default, event of default or similar event (collectively, an "Event of Default") has occurred under any of the Loan Documents and (ii) requesting that all rent and additional rent due under the Lease be thereafter paid to Lender, Tenant shall pay, and is hereby authorized and directed by Lessor to pay, such rent and additional rent directly to Lender. Delivery to Tenant of the aforescribed notice from Lender shall be conclusive evidence of the right of Lender to receive such rents and payment of the rents by Tenant to Lender pursuant to such notice shall constitute performance in full of Tenant's obligation under the Lease to pay such rents to Lessor. Tenant agrees that Lender's demanding and/or receiving any such payments shall not operate to impose any liability upon Lender for performance of any obligation of Lessor under the Lease. Such payment of rents to Lender shall continue until Lender directs Tenant otherwise in writing, or until Tenant receives (i) a court order directing Tenant to pay rents to another

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person or entity, or (ii) notice that the Premises have been sold to a person or entity other than Lender. The provisions of this Paragraph 8 will terminate upon the earliest to occur of (a) termination of the Lease, (b) the recording of a release of the Mortgage, duly executed by Lender, or (c) Tenant's receipt of written notice to such effect from Lender.

9. Tenant agrees at any time and from time to time to execute, deliver and acknowledge to Lessor, to Lender or to any third party designated by Lessor or by Lender within ten (10) days after Lessor's or Lender's written request therefor, (a) a statement in writing certifying that the Lease is in full force and effect, that Lessor is not in default thereunder (or specifying any such defaults which Tenant alleges), that rent has not been prepaid more than one month in advance, and specifying any further information about the Lease or the Premises which Lessor or Lender or said third party may reasonably request, and (b) a statement in writing acknowledging or denying receipt of notice of any conditional or security assignment of the Lease to any third party. Tenant understands that prospective purchasers, mortgagees or lessors of the Premises or any part thereof will rely on such certificates. Tenant's obligation to deliver such certificates within 10 days as described above is a material obligation of Tenant hereunder and under the Lease.

10. Each of Lessor and Tenant represents and warrants to Lender that, as of the date hereof, there are no agreements other than the Lease in existence or contemplated between Lessor and Tenant, relating to the Premises or the Leased Premises or with respect to any other matter related to Tenant's occupancy of the Leased Premises.

11. Lessor, by its execution of this Agreement, agrees to be bound by and to act in accordance with the terms and conditions hereinabove contained.

12. This Agreement (i) shall be governed by and construed in accordance with the laws of the of Illinois, (ii) contains the entire agreement among the parties with respect to the subject matter hereof and (iii) may not be modified, nor may any provision hereof be waived, orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors, administrators and assigns.

13. All notices, requests and demands to or upon the respective parties hereto shall be made at:

If to Lender:

Oak Brook Bank  
1400 Sixteenth Street  
Oak Brook, Illinois 60523  
Attention: John Bonina  
Facsimile: (630) 571-0256

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with a copy to:

Gardner, Carton & Douglas  
191 North Wacker Drive  
Suite 3700  
Chicago, Illinois 60606-1698  
Attention: Edward J. Tabaczyk  
Facsimile: (312) 569-3141

If to Lessor:

Oak Brook Bank  
1400 Sixteenth Street  
Oak Brook, Illinois 60523  
Attention: John Bonino  
Facsimile: 630-571-0256

with a copy to (as  
beneficiary of Lessor):

Thomas Gangas  
8 Pembroke Lane  
Oak Brook, Illinois 60523  
Facsimile: 847-338-4069

with a copy to (as  
beneficiary of Lessor):

Bravo Properties-LLC  
3513 South County Club Drive  
Wood Stock, Illinois 60098  
Attention: Lewis Leonard  
Facsimile: 815-338-4069

If to Tenant:

Top Drive, Inc  
143 Sylvan Ave  
Englewood Cliffs NJ 07632  
Attention: Legal Dept  
Facsimile: 201 944 3416

Notices sent by facsimile transmission shall be deemed to have been given upon electronic confirmation; notices sent by mail shall be deemed to have been given three (3) business days after the date when sent by registered or certified mail, postage prepaid; notices sent by personal delivery or by a nationally recognized overnight delivery service (e.g., Federal Express) shall be deemed to have been given when received.

14. All rights of Lender hereunder shall accrue to, and all obligations of Lender shall be binding upon, Lender, its successors, assigns and nominees, including, without limitation, the grantee under a deed in lieu of foreclosure and/or the purchaser of the Premises at a foreclosure sale or at any sale of the Premises following the granting of a deed in lieu of foreclosure or following foreclosure; provided, however, that following any sale or other transfer of its interest in the Premises, Lender, any such grantee or purchaser (as the case may be) shall be fully released and discharged of and from any and all obligations and liabilities of any kind hereunder or under the Lease and/or under any such new lease. Without limiting the generality of the foregoing, this

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Agreement shall be binding upon and inure to the benefit of the successors, administrators and permitted assigns of Lessor and Tenant hereto.

15. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which taken together constitute one and the same agreement.

**[Signature page to follow]**

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IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first above set forth.

Lessor:

OAK BROOK BANK,  
not personally but as Trustee under Trust  
Agreement dated Nov 29, 2002 and  
known as Trust Number ~~3766~~ 3266

By: Charles D. Koli, its attorney  
Name: \_\_\_\_\_  
Its: Trustee

Lender:

OAK BROOK BANK

By: Charles J. Koli, its attorney  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Tenant:

Top Drive, Inc  
Community Driving School

By: [Signature]  
Name: Kesin Cambra  
Its: Executive Vice President

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STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that \_\_\_\_\_, \_\_\_\_\_ of Oak Brook Bank ("Trustee"), is personally known to me to be the same person whose name is subscribed to the foregoing instrument, as such \_\_\_\_\_, appeared before me this day in person and acknowledged that \_\_\_\_\_ signed, sealed and delivered the said instrument as \_\_\_\_\_ free and voluntary act and as the free and voluntary act of said Trustee, for the uses and purposes therein set forth.

Given under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

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STATE OF ILLINOIS        )  
  )        SS.  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a notary public in and for said County, in the State aforesaid, DO  
HEREBY CERTIFY THAT \_\_\_\_\_, personally known to me to be the  
\_\_\_\_\_ of Oak Brook Bank, and personally known to me to be the same person whose name  
is subscribed to the foregoing instrument, appeared before me this day in person and severally  
acknowledged that as the \_\_\_\_\_ of such corporation, he/she signed, attested and  
delivered the said instrument on behalf of said corporation pursuant to authority, as the free and  
voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

Notary Public [SEAL] \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

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STATE OF ILLINOIS     )  
  )  
COUNTY OF COOK     )     SS.

I, CHRISTINE GARNER, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT KEVIN CAMBRA, personally known to me to be the EXEC. VP of COMMUNITY PRIZING a CORP., and personally known to me to be the same person whose name is subscribed to the foregoing instrument, ~~appeared before me this day in person~~ and severally acknowledged that as the EXEC. VP. of such CORP., he/she signed, attested and delivered the said instrument on behalf of said CORP. pursuant to authority, as the free and voluntary act and deed of said CORP. for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 26<sup>th</sup> day of Dec., 2002.

Christine Garner

Notary Public [SEAL]  
My Commission expires: \_\_\_\_\_



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## EXHIBIT A

### LEGAL DESCRIPTION OF PREMISES

Lot 1 and the West 7.67 feet of Lot 2 in Block F in the Village of Hartford, a subdivision in the Northeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 31, Township 36 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 29-31-311-020

Address: 2023 Ridge Road  
Homewood, Illinois 60430-1749

CH01/12259847.1

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