

STATE OF ALABAMA )  
COUNTY OF SHELBY )

**MORTGAGE AND SECURITY AGREEMENT**  
(future advance)

**THIS MORTGAGE AND SECURITY AGREEMENT** ("Mortgage") is made this the 4th day of June, 1998, by **THE NORTH SHELBY COUNTY LIBRARY DISTRICT**, a public corporation ("Library District"), to and in favor of **HIGHLAND BANK**, a state chartered bank (the "Mortgagee").

**RECITALS**

Mortgagee is the Purchaser of a Two Million Four Hundred Thousand and No/100 Dollars (\$2,400,000.00) aggregate principal amount First mortgage General Obligation Bond Anticipation Note, Series A (the "Note") issued by the Library District. The proceeds of the Note will be advanced from time to time by Mortgagee, pursuant to a Construction Loan Agreement of even date. The proceeds thus advanced will be used to pay the costs of construction of a new main library building for the Library District. Upon completion of all construction with respect to said library building the Library District and Mortgagee will exchange the Note for the Library District's Two Million Four Hundred Thousand Dollar (\$2,400,000) aggregate principal amount First Mortgage General Obligation Bond, Series A (the "Bond"). The Library District's obligations under the Note and Bond are secured by (i) a Resolution of the Library District (the Borrowing Resolution) of even date; (ii) a Construction Loan Agreement; and (iii) this Mortgage. The Borrowing Resolution, the Construction Loan Agreement, and this Mortgage and all other documents and instruments securing or evidencing the Note and Bond shall be hereinafter referred to as the "Loan Documents".

**AGREEMENT**

**WITNESSETH**, that Library District, for the consideration set forth above and the covenants and promises contained herein, the receipt whereof is hereby acknowledged, hereby does irrevocably grant, bargain, sell, assign, transfer and convey to Mortgagee, and to its successors and assigns, in fee simple, with right of entry and possession as provided below, the following described property (all of which as described in (A) through (G) below, is referred to herein as the "Mortgaged Property"):

(A) The real property (the "Land") described in the attached Exhibit A and all mineral rights, development rights, air rights, water, and water rights, relating to the Land, all estates, rights, titles, interest, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever in any way belonging, relating or appertaining to any of the Land, and the reversions, remainders, rents, issues and profits thereof;

06/05/1998-20901  
12:51 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
019 ALD 54.50

*[Handwritten signature]*  
*[Handwritten initials]*

Inst # 1998-20901

(B) All present and future structures, buildings, improvements, septic systems, sewage lines and equipment, appurtenances and fixtures of any kind on the Land, whether now owned or hereafter acquired by the Library District, including but not limited to all apparatus, equipment and appliances used in connection with the operation or occupancy of the Land, such as heating and air-conditioning systems and facilities used to provide any utility services (including sewage services), refrigeration, ventilation, laundry, drying, dishwashing, garbage disposal, recreation or other services on the Land, including without limitation all furniture fixtures and equipment, and all window coverings, and pumping stations and other equipment used in connection with the existing septic system and any sewage line to be constructed on the land, it being intended and agreed that all such items will be conclusively considered to be a part of the real property conveyed by this Mortgage, whether or not attached or affixed to the property (the "Improvements").

(C) All appurtenances of the Land and all rights of the Library District in and to any streets, roads or public places, easements or rights of way, adjoining or relating to the Land, including but not limited to all rights of the Library District to any septic system, sewer line, agreements, permits, easements, equipment, licenses, resolutions, and related rights pertaining to any sewer and septic system constructed on the property.

(D) All of the rents, royalties, profits and income of the Land, and all rights of the Library District under all present and future leases affecting the Land, including but not limited to any security deposits.

(E) All awards, proceeds and claims arising on account of the exercise of eminent domain or any damage to or taking of the Land or any Improvements there in or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the Land or any Improvements.

(F) All building materials, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by the Library District for the purpose of being used or useful in connection with the Improvements located or to be located on the property, whether such materials, equipment, fixtures and fittings are actually located on or adjacent to the Land or not, and whether in storage or otherwise, wheresoever the same may be located. Property herein conveyed and mortgaged shall include, but without limitation, all lumber and lumber products, bricks, building stones and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, sewer lines and pumping stations and fixtures and equipment, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, furniture, ranges, refrigerators, dishwashers, disposal, and in general all building materials and equipment of every kind and character used or useful in connection with said Improvements.

(G) All general intangibles relating to the development or use of the Land, including but not limited to all governmental permits relating to construction on the property, all names under or by which the Land or any Improvements on the property may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks and goodwill in any way relating to the Land; and

**THIS CONVEYANCE** is intended to operate and to be construed to pass legal title to the Mortgaged Property to Mortgagee and is made under the provisions of Alabama law to secure the herein described indebtedness due Mortgagee (and interest thereon and other indebtedness as described herein) evidenced by the Note and Bond, and to further secure:

(1) Payments and performance of all the indebtedness and obligations of Library District under the Note and Bond, including all extensions, renewals, substitutions, restatements, amendments, and modifications of and to the Note and Bond.

(2) The payment and performance by the Library District of all the obligations under this Mortgage and under all of the other Loan Documents.

(3) The payment of all sums advanced or paid out by the Mortgagee under any provision of this Mortgage or the other Loan Documents or to protect the security of this Mortgage.

(4) To secure the payment and performance of the obligations of Library District under all other present and future agreements executed by the Library District in favor of the Mortgagee and relating to the Note and Bond or any one or more of the Loan Documents

**TO HAVE AND TO HOLD** the Mortgaged Property and all parts thereof unto Mortgagee and to its successors and assigns forever, subject however to the provisions of Article I, Paragraph 1 below and to the further terms and conditions herein:

**PROVIDED, HOWEVER,** that these presents are upon the condition that, if the Library District shall pay or cause to be paid to the Mortgagee the principal and interest payable in respect to the Note and Bond, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid, then this Mortgage shall be void otherwise to remain in force and effect.

## **ARTICLE I**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS OF LIBRARY DISTRICT**

In addition to covenants contained elsewhere herein, the Library District represents and warrants to and covenants and agrees with the Mortgagee as follows:



**1.1 Warranty of Title.** The Library District warrants and covenants that it is lawfully seized of an indefeasible estate in fee simple in the real property (described in Exhibit "A") hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid and that, except for the Permitted Exceptions attached as Exhibit "A" hereto, the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature; and that the Library District will warrant and forever defend the title thereto unto the Mortgagee, its successors and assigns, against the claims of all persons whomsoever, except with respect to the Permitted Exceptions attached as Exhibit "A" attached hereto.

**1.2 Performance of Obligations.** To pay and perform all indebtedness and Obligations that are secured by this Mortgage and the other Loan Documents in accordance with the terms thereof.

**1.3 Due Execution; Further Assurances.** The Library District covenants and represents that all of the Loan Documents have been duly executed and delivered and, to the best of Library District's knowledge, are valid and enforceable obligations of Library District in accordance with the terms thereof; and Library District covenants and agrees not to contest or dispute the validity or enforceability of any of the Loan Documents, all the terms of which Library District intends to be legally bound by. Library District agrees to execute and deliver to the Mortgagee on demand and at Library District's cost and expense any documents, further required mortgages, and instruments of further assurance required or desired by Mortgagee to effectuate, complete, enlarge, or perfect, or to continue and preserve (a) the obligations of the Library District under the Note and Bond, this Mortgage, all of the other Loan Documents, and (b) the lien of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Library District. Upon any failure of Library District to do so, Mortgagee may execute and record any such instruments for and in the name of Library District and Library District irrevocably appoints Mortgagee the agent and the attorney-in-fact of Library District to do so. The lien hereof will automatically attach, without further act, to all after-acquired property attached to or used in the operation of the Mortgaged Property.

**1.4 Assignment of Rents and Leases.** (a) All of the existing and future rents, royalties, revenues, income and profits of the Mortgaged Property that arise from its use or occupancy (together, the "Rents") and all leases, subleases, occupancy, management or leasing agreements pertaining to the Land or the Improvements (together, the "Leases") are hereby absolutely and presently assigned to the Mortgagee. Upon any default by the Library District, Mortgagee may in its discretion at any time without notice to the Library District collect the Rents itself or by an agent or receiver. No action taken by the Mortgagee to collect any Rents will make the Mortgagee a "mortgagee-in-possession" of the Mortgaged Property. Possession by a court appointed receiver will not be considered possession by the Mortgagee. All Rents

collected by the Mortgagee or a receiver will be applied first to pay all expenses of collection, and then to the payment of all costs of operation and management of the Mortgaged Property, and then to the payment of the indebtedness and obligations secured by this Mortgage in whatever order the Mortgagee directs in its absolute discretion and without regard to the adequacy of its security.

(b) The Library District will not execute any Leases with third party tenants without first having received the prior written approval from Mortgagee of the same, which approval will not be unreasonably withheld.

(c) Without the prior written consent of the Mortgagee, the Library District shall not accept any prepayments of Rent exceeding one month under any Leases nor in any manner impair the Library District's interest in the Rents. The Library District will perform all covenants of the lessor under any Lease. Upon the Mortgagee's request, the Library District will execute and deliver to Mortgagee for recordation an assignment of leases on the Mortgagee's form.

(d) If required by the Mortgagee, any lease must provide, in a manner approved by the Mortgagee, that the Lease is junior and subordinate to the lien of this Mortgage, and that the tenant will recognize as its lessor any person succeeding to the interest of the Library District upon any foreclosure of this Mortgage.

(e) Nothing herein shall render Mortgagee liable under any existing or future lease, regardless of the collection of Rents thereunder, for any of the covenants or agreements of Library District under such Leases.

**1.5 No Encumbrances.** Without the prior written consent of the Mortgagee the Library District shall not encumber any interest in the Mortgaged Property or sell, contract to sell, lease with an option to purchase, or otherwise transfer any interest in the Mortgaged Property. Mortgagee shall not be obligated to consent to any such encumbrance, sale, contract, lease, or other transfer [ all said encumbrances, sales, contracts, leases, and other transfers described above being collectively referred to as a "Prohibited Transfer" ], and Mortgagee's consent may be withheld regardless of whether any Prohibited Transfer may or may not impair Mortgagee's security or whether or not it may or may not be reasonable (commercially or otherwise) for Mortgagee to consent to any Prohibited Transfer. Without limiting the foregoing, Mortgagee's consent may, if given in Mortgagee's sole unfettered discretion, be conditioned upon (by way of illustration only and not being limited to): an increase in the interest rate, an approval of the credit of any such grantee, vendee, optionee, or transferee, a management contract acceptable to Mortgagee with a manager acceptable to Mortgagee, an assignment to Mortgagee of any security given to Library District in connection with the transaction, including without limitation, any purchase money second mortgage, and/or a change in any of the other terms and conditions of this Mortgage or in any of the



Loan Documents. Any Prohibited Transfer made without the consent of Mortgagee shall be void.

**1.6 Financial Statements.** Prior to March 31 of each year, Library District will deliver to Mortgagee, whether or not requested by Mortgagee, (i) a statement of income and expenses with respect to the activities and operations of the Library District at the Mortgaged Property, together with all schedules and exhibits thereto as are customarily required by sound accounting practices, (ii) a rent roll reflecting the name and address of any tenants who have executed Leases or who are in occupancy of any portion of the Mortgaged Property; (iii) (without limiting Mortgagee's right to approve the same as specified in the Loan Documents) a copy of each Lease not theretofore provided to Mortgagee. Mortgagee shall have the right, upon reasonable notice in writing, to require that the statement of income and expenses described hereinabove be prepared in accordance with generally accepted accounting principles and certified by an independent certified public accountant.

**1.7 Performance by Mortgagee.** Library District will, at its own expense, appear in and defend any action or proceeding that might affect Mortgagee's security or the rights or powers of the Mortgagee or that purports to affect any of the Mortgaged Property. If the Library District fails to perform any of its covenants or agreements contained in this Mortgage, or if any action or proceeding of any kind (including but not limited to any bankruptcy, insolvency, arrangement, reorganization or other debtor-relief proceeding) is commenced which might affect the Mortgagee's interest in the Mortgaged Property or the Mortgagee's right to enforce its security, then the Mortgagee may, at its option, make any appearances, disburse any sums and take any actions as may be necessary or desirable to protect or enforce this Mortgage or to remedy the failure of Library District to perform its covenants (without, however, waiving any default of the Library District). Library District agrees to pay all reasonable expenses of the Mortgagee thus incurred (including but not limited to fees and disbursements of counsel and other professionals). Any sums disbursed by the Mortgagee will be additional indebtedness of the Library District secured by this Mortgage, will bear interest at the default rate required by the Note and Bond, and will be payable by the Library District upon demand. This paragraph will not be construed to require Mortgagee to incur any expenses, make any appearances, or take any actions.

**1.8 Security Agreement.** This Mortgage constitutes a **SECURITY AGREEMENT** with respect to all personal property in which Mortgagee is granted a security interest hereunder, and Mortgagee shall have all of the rights and remedies of a secured party under the **ALABAMA UNIFORM COMMERCIAL CODE** as well as all other rights and remedies available at law or in equity. Library District hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Mortgagee the attorney-in-fact of Library District, to execute, deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as Mortgagee may request or require in order to impose, perfect or continue the perfection of, the lien or security interest created hereby. Upon the occurrence of any default hereunder,

Mortgagee shall have the right to cause any of the Mortgaged Property which is personal property and subject to the security interest of Mortgagee hereunder to be sold at any one or more public or private sales as permitted by applicable law, and Mortgagee shall further have all other rights and remedies, whether at law, in equity, or by statute, as are available to secured creditors under applicable law. Any such disposition may be conducted by an employee or agent of Mortgagee. Any person, including both Library District and Mortgagee, shall be eligible to purchase any part or all of such property at such disposition.

Expenses of retaking, holding, preparing for sale, selling or the like shall be borne by Library District and shall include Mortgagee's attorneys' fees and legal expenses. Library District, upon demand of Mortgagee, shall assemble such personal property and make it available to Mortgagee at the Premises, a place which is hereby deemed to be reasonably convenient to Mortgagee and Library District. Mortgagee shall give Library District at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such property or of the time of or after which any private sale or other intended disposition is to be made, and if such notice is sent to Library District, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Library District.

**1.9 Expenses and Professional Fees.** The Library District will pay or reimburse the Mortgagee for all reasonable attorney's fees, professional fees, costs and expenses incurred by the Mortgagee in connection with the closing of this loan (whether or not collected at closing and including without limitation all title, recording, survey, appraisal and legal fees and expenses), in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which the Mortgagee is involved or is made a party, or appears as party plaintiff or defendant, affecting the Note and Bond, Mortgage, and other Loan Documents, Library District or Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof and in any situation where Mortgagee employs an attorney to protect the Mortgagee's rights hereunder, whether or not legal proceedings are commenced or involved; and any such amounts paid by the Mortgagee shall be added to the Indebtedness and secured by the lien of this Mortgage.

**1.10 Septic System.** Library District understands that any septic system or sewage treatment facility or sewer line on the property or to be constructed from the property to a public sewer line and all personal property and rights therein are conveyed to Mortgagee hereunder as part of the Mortgaged Property, whether located on the property described in Exhibit A or adjacent to or connected with the same.



## ARTICLE II

### EVENTS OF DEFAULT

**2.1 Events of Default.** The Library District will be in default under this Mortgage if:

(a) Library District fails to make as and when due any payment required by the Note or Bond or by the other Loan Documents; or

(b) Library District fails to perform any other covenant or agreement contained in this Mortgage, or in the other Loan Documents, and does not cure that failure within thirty (30) days after receipt of notice of such default, except for failures that reasonably require longer than 30 days to cure, in which case Library District shall have a reasonable time to cure the same provided Library District proceeds with diligence to cure the same and uses means of cure reasonably calculated to accomplish such cure expeditiously; or

(c) Library District permits or suffers an attachment or judicial seizure of any substantial part of its assets; or

(d) Library District files a petition in bankruptcy or for an arrangement, reorganization or any other form of debtor relief under any present or future law relating to bankruptcy or debtor relief, or such a petition is filed against the Library District, or against any maker or endorser of the Note and Bond, and Library District does not oppose that filing or the petition is not dismissed within 60 days after filing, or Library District makes an assignment for the benefit of its creditors; or

(e) There has occurred and is continuing a default or event of default under any Loan Document; or

(f) Any representation or disclosure made to the Mortgagee by the Library District or by any guarantor of any indebtedness or obligations secured by this Mortgage, proves to have been materially false or misleading when made, whether or not that representation or disclosure appears in this Mortgage or in any of the other Loan Documents, or in the loan application; or

## ARTICLE III

### REMEDIES

**3.1 Parties Benefitted.** The title, interest, rights and powers granted herein by Library District to Mortgagee, particularly the power of sale granted herein, shall inure to the benefit of anyone to whom Mortgagee shall assign the indebtedness herein secured or convey



the property herein described, as well as to the successors and legal representatives of Mortgagee.

**3.2 Power of Sale.** If an Event of Default shall have occurred and be continuing, Library District hereby grants to Mortgagee, the following irrevocable power of attorney: To sell all or any part of the Mortgaged Property at auction, at the usual place for conducting sales at the Court House in the County where the land or any part thereof lies, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four (4) weeks immediately preceding such sale (but without regard to the number of days) in a newspaper published in the County where the land or any part thereof lies, or in the paper in which the Sheriff's advertisements for such County are published, all other notice being hereby waived by Library District. Mortgagee (or any person on behalf of Mortgagee) may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a sufficient conveyance of the property conveyed in fee simple, which conveyance may contain recitals as to the happening of the default upon which the execution of the power of sale herein granted depends. Library District hereby constitutes and appoints Mortgagee the agent and attorney in fact of Library District to make such recitals and hereby covenants and agrees that the recitals so made by Mortgagee shall be binding and conclusive upon Library District, and that the conveyance to be made by Mortgagee shall be effectual to bar equity of redemption of Library District in and to said property.

**3.3 Holding Over After Sale.** Library District further covenants that in case of a sale hereunder, Library District, or any person in possession under Library District, shall then become and be tenants holding over and shall forthwith deliver possession to the purchaser at such sale, or be summarily dispossessed, in accordance with the provisions of law applicable to tenants holding over.

**3.4 Power Coupled with Interest.** The power and agency hereby granted are coupled with an interest and are irrevocable by death, bankruptcy, dissolution, or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

**3.5 Subrogation.** It is agreed that the Mortgagee shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the Note and Bond.

**3.6 Remedies.** Without limiting the foregoing, if the Library District is in default, the Mortgagee may, at its continuing option, and without notice to or demand upon the Library District (except as required by law):

- (a) Declare any or all Indebtedness to be due and payable immediately;

(b) Enter onto the Mortgaged Property, in person or by agent or by court-appointed receiver, and take any and all steps which may be desirable in the Mortgagee's judgment to manage and operate the Mortgaged Property, and the Mortgagee may apply any Rents collected against the Indebtedness without in any way curing or waiving any default to the Library District;

(c) Bring a court action at law or in equity (1) to foreclose this Mortgage or (2) to enforce its provisions or any of the indebtedness or obligations secured by this Mortgage, either or both, concurrently or otherwise, and one action or suit shall not abate or be a bar to or waiver of Mortgagee's right to institute or maintain the other, provided that Mortgagee shall have only one payment and satisfaction of the indebtedness;

(d) Cause all or any part of the Mortgaged Property to be sold under the power of sale granted by this Mortgage in any manner permitted by applicable law;

(e) Exercise any other right or remedy available under law or in equity.

**3.7 Application of Proceeds.** The proceeds of any sale under this Mortgage will be applied in the following manner:

**FIRST:** Payment of the costs and expenses of the sale, including but not limited to Mortgagee's fees, and professional fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of the Mortgagee, together with interest at the After-Maturity Rate provided in the Note and Bond.

**SECOND:** Payment of all sums expended by the Mortgagee under the terms of this Mortgage and not yet repaid, together with interest on such sums at the After-Maturity Rate provided in the Note and Bond.

**THIRD:** Payment of the Indebtedness and obligations of the Library District secured by this Mortgage in any order that the Mortgagee chooses.

**FOURTH:** The remainder, if any, to the person or persons appearing of record to be the owner of the premises.

**3.8 Receiver.** If an Event of Default shall have occurred and be continuing, the Mortgagee, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents.

**3.9 Mortgagee's Option on Foreclosure.** At the option of the Mortgagee, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable



attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Mortgagee exercises its option to foreclose this Mortgage in equity, Mortgagee may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Library District, a defense to any proceedings instituted by the Mortgagee to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

**3.10 Waiver of Manner of Sale.** Library District waives all rights to direct the order or manner in which any of the Mortgaged Property will be sold in the event of any sale under this Mortgage, and also any right to have any of the Mortgaged Property marshalled upon any sale. Mortgagee may in its discretion sell all the personal and real property in bulk or in parcels, in one or more sales, and in any sequence Mortgagee selects.

#### ARTICLE IV

#### GENERAL PROVISIONS

**4.1 Partial Invalidity.** The invalidity or unenforceability of any one or more provisions of this Mortgage will in no way affect any other provision.

**4.2 (this paragraph intentionally omitted)**

**4.3 Other Taxes, Utilities and Liens.** (a) The Library District will pay promptly, when and as due, and will promptly exhibit to the Mortgagee receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Mortgagee in the Mortgaged Property as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon the Library District or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of the Mortgage for any amounts secured hereby or would have priority or equality with the Mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof.

(b) The Library District will promptly pay all charges by utility companies, whether public or private, for electricity, gas, water, sewer or other utilities.

(c) The Library District shall promptly pay and will not suffer any mechanic's, laborer's, statutory or other lien which might or could be prior to or equal to the lien of the Mortgage to be created or to remain outstanding upon any of the Mortgaged

Property. Provided, however, that Library District may, in good faith, by appropriate proceedings, contest the validity, applicability or amount of any asserted lien, after written notice of the same to Mortgagee. During such contest, Library District shall not be deemed in default hereunder if (i) prior to the delinquency of the lien, Library District deposits with Mortgagee cash or other security, in form satisfactory to Mortgagee in its sole unfettered discretion, adequate to cover the payment of such lien and any obligation, whether matured or contingent, of Library District or Mortgagee therefor, together with interest, costs and penalties thereon, and (ii) Library District promptly causes to be paid any amounts adjudged to be due, together with all costs, penalties and interest thereon, before such judgment becomes final. Each such contest shall be concluded and the lien, interest, cost and penalties thereon shall be paid prior to the dates such judgment becomes final or any writ or order is issued under which the Property could be sold pursuant to such judgment.

**4.4 Insurance.** The Library District will procure for, deliver to, and maintain for the benefit of, the Mortgagee during the life of this Mortgage, insurance policies, in such amounts as the Mortgagee shall require, but in no event less than the greater of (a) the aggregate amount of the Note and Bond, or (b) the full replacement cost of the Mortgaged Property, and with no more than \$5,000 deductible from the loss payable for any casualty, insuring the Mortgaged Property against the risk covered by the type of insurance known as "all risk" insurance including, without limitation, coverage against fire, lightning, windstorm, hail, vandalism and malicious mischief, tornado, war damage (if available), collapse, and such other insurable hazards, casualties and contingencies as the Mortgagee may reasonably require. If the property is located in a flood hazard area, flood insurance in an amount acceptable to Mortgagee shall also be provided by Library District. The policies shall include, without limitation, a "Replacement Cost Endorsement," "Difference in Conditions Endorsement," boiler and machinery insurance covering pressure vessels, sewage treatment facilities, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator equipment, and insurance against loss of occupancy or use arising from any such breakdown. Library District shall also maintain loss of rents or rental value insurance with coverage in an amount to cover a minimum of six months of projected gross annual rentals at 100% occupancy of the mortgaged property and general comprehensive public liability insurance with limits in the amount of \$500,000.00 for any claim, \$1,000,000.00 for each occurrence, and \$100,000.00 property damage. The form of such policy, and the companies issuing them shall be acceptable to the Mortgagee. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to the Mortgagee. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Mortgagee shall be delivered to the Mortgagee. The Library District shall deliver to the Mortgagee receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of the Library District in and to all insurance policies then in force shall pass to the purchaser or grantee.



The Mortgagee is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses, directly to the Mortgagee, instead of to the Library District and Mortgagee jointly. After deducting from said insurance proceeds any expenses incurred by it in the collection or handling of said fund, the Mortgagee may apply the net proceeds, at its option, either (a) toward restoring the Improvements, or (b) as a credit on any portion of the mortgage indebtedness selected by it, whether then matured or to mature in the future. or Mortgagee may elect any combination of (a) or (b), subject to the provisions of Paragraph 4.6(f) below. Mortgagee shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

If requested, the Library District will pay to the Mortgagee on the first day of each month, together with and in addition to the regular installment of principal and interest until the Note and Bond is fully paid, an amount equal to one-twelfth (1/12) of the yearly premiums for insurance. Such amount shall be used by Mortgagee to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Mortgagee, and no interest shall be payable in respect thereof. Upon demand of Mortgagee, the Library District agrees to deliver to the Mortgagee such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Mortgagee to pay such insurance premiums. In the event of a default by the Library District in the performance of any of the terms, covenants and conditions in the Note and Bond or Mortgage, the Mortgagee may apply to the reduction of the sums secured hereby, in such manner as the Mortgagee shall determine, any amount paid in accordance herewith remaining to the Library District's credit.

**4.5 Condemnation.** If all or any part of the Mortgaged Property in excess of ten percent (10%) of the Land or fifteen percent (15%) of the total square feet of buildings constructed on the Land, shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire Indebtedness shall at the option of the Mortgagee become immediately due and payable. The Mortgagee shall be entitled to all compensation, awards and other payments or relief thereof and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Library District's name, any action or proceedings relating to any condemnation. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Library District to the Mortgagee, who, after deducting therefrom all its expenses, including attorney's fees, (a) may apply any moneys so received by it toward restoring the Improvements, without affecting the lien of this Mortgage, or (b) may apply the same in such manner as the Mortgagee shall determine to the reduction of the sums secured hereby, or Mortgagee may elect any combination of (a) or (b) in its discretion, subject to the provisions of Paragraph 4.6(f) below. The Library District agrees to execute such further

assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Mortgagee may require. Notwithstanding the foregoing provisions, the Library District shall be entitled to receive any proceeds of condemnation over and above the unpaid principal balance of the Bond or Note secured hereby.

**4.6 Care of the Property.** (a) The Library District will preserve and maintain the Mortgaged Property in good condition and repair, and will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld with respect to alterations. The Library District may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances, subject to the lien hereof, which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, upon replacing the same by, or substituting for the same, other personal property or fixtures not necessarily of the same character, but of at least equal value to the Library District and costing not less than the amount realized from the property sold or otherwise disposed of, which shall forthwith become, without further action, subject to the lien of this Mortgage.

(c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, the Library District will give immediate written notice of the same to the Mortgagee.

(d) The Mortgagee is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours.

(e) The Library District will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

(f) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty (a "Casualty"), the Library District will promptly restore the Mortgaged Property to the equivalent of its original condition, regardless of whether insurance proceeds exist, are made available, or are sufficient. If a part of the Mortgaged Property shall be physically damaged through condemnation (a "Taking"), the Borrower will promptly restore, repair or



and take such actions as are necessary to make the undamaged or non-taken portion of the Mortgaged Property into a functional economic unit, insofar as is practicable under the circumstances. In the event the Mortgagee requires restoration of the Mortgaged Property as a result of any Taking or Casualty, the Mortgagee shall not have the right to require application of the insurance proceeds or condemnation awards to the indebtedness (except to the extent of any surplus over the amount required for restoration).

**4.7 Performance by Mortgagee of Defaults by Library District.** If the Library District shall default in the payment of any lien, assessment or charge levied or assessed against the Mortgaged Property; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage or under any prior lien or junior lien or in any lease, then the Mortgagee, at its option, may perform or observe the same, and all payments made for costs paid or incurred by the Mortgagee in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Library District to the Mortgagee with interest thereon at the default rate set forth in the Note and Bond. The Mortgagee shall be the sole judge of the legality, validity and priority of any such lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Library District or any person in possession holding under the Library District.

**4.8 Estoppel Affidavits.** The Library District within ten (10) days after written request from the Mortgagee shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note and Bond and whether or not any offsets or defenses exist against such principal and interest, specifying the nature of the same.

**4.9 Waiver of Exemption.** To the extent permitted by applicable law, Library District waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Library District waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the premises be set off against any part of the indebtedness secured hereby.

**4.10 Delay or Omission No Waiver.** No delay or omission of the Mortgagee or of any holder of the Note and Bond to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by this Mortgage to the Mortgagee may be exercised from time to time and as often as may be deemed expedient by the Mortgagee.

**4.11 No Waiver of One Default to Affect Another, etc.** No waiver of any default hereunder shall extend to or shall affect any subsequent or any other than existing default or shall impair any rights, powers or remedies consequent thereon.

If the Mortgagee (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein or in the Note and Bond; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or otherwise changes any of the terms of the Note and Bond or this Mortgage; (e) consents to the filing of any map, plat or replat thereof; (f) consents to the granting of any easement thereon; (g) makes or consents to any agreement subordinating the lien or change hereof; or (h) enters into any agreement with the Library District or any partner or stockholder thereof or any one or more of them changing any term of the Note and Bond or documents relating to the Note and Bond or releasing any partner or stockholder of Library District or any security or respecting any matter whatsoever, any such act or omission shall not release, discharge, modify, change, or affect the original liability under the Note and Bond, this Mortgage or otherwise of the Library District or any subsequent purchaser of the Mortgaged Property or any part thereof or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude the Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Mortgagee shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Mortgagee, without notice to any person or corporation is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

**4.12 Discontinuance of Proceedings - Position of Parties, Restored.** In case the Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Mortgagee, then and in every such case the Library District and the Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Mortgagee shall continue as if no such proceeding has been taken.

**4.13 Remedies Cumulative.** No right, power, or remedy conferred upon or reserved to the Mortgagee by this Mortgage is intended to be exclusive of any right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.



**4.14 Notices.** (a) All notices given under this Mortgage must be in writing and will be effectively served upon personal delivery or, by mailing in United States mail, postage prepaid, sent to the Mortgagee at Post Office Box 55338 Birmingham, Alabama 35255-5338 and sent to the Library District at its address appearing below its signature, which addresses may be changed by written notice. However, the service of any notice of default or notice of sale under this Mortgage as required by law will, if mailed, be effective on the date of mailing.

**4.15 Entries.** (a) Upon an event of default, the Mortgagee and its respective agents and representatives, will have the right at any reasonable time to enter the Property and inspect all parts thereof, and to examine, copy and audit the books, records, accounting data and other documents of the Library District relating to the Mortgaged Property.

(b) The Mortgagee is under no duty to supervise or inspect the Mortgaged Property, or operation of the Mortgaged Property, or examine any books and record. Any inspection or examination by the Mortgagee is for the sole purpose of protecting the Mortgagee's security and preserving the Mortgagee's rights under this Agreement. No default of the Library District will be waived by any inspection by the Mortgagee.

**4.16 Status and Authority.** (a) The Library District has executed this instrument as a public corporation and thus the following provisions shall apply: (a) the Library District warrants that (i) it is duly organized and validly existing in good standing under the laws of the state of its organization, (ii) it is duly qualified to do perform its operations, (iii) it has the power, authority and legal right to carry on its operations and to engage in the transactions contemplated by the Loan Documents and (iv) the execution and delivery of the Loan Documents and the performance and observance of the provisions thereof have been duly authorized by all necessary actions of the Library District.

(b) The Library District agrees that so long as any of its obligations hereunder, or under the Loan Documents remain unsatisfied, it will not dissolve or liquidate (in whole or in part) its existence, that it will maintain its existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or partnership, without the prior express written consent of the Mortgagee.

**4.17 Miscellaneous.** The term "Library District" includes both the original Library District and an subsequent owner or owners of any of the Mortgaged Property, and the term "Mortgagee" includes the original Mortgagee, and also any future owner or holder, including pledgers, assignees and participants, of the Note and Bond or any interest therein. Whenever the context requires, the singular includes the plural and vice versa and each gender includes each other gender. The headings of the articles of this Mortgage are for convenience only and do not limit its provisions.

**4.18 Successors.** Whenever the terms "Library District" or "Mortgagee" are used in this Mortgage such terms shall be deemed to include the successors and assigns of said parties. All rights and powers herein granted to the Mortgagee shall inure to and include the successors and assigns of each and all obligations herein imposed on the Library District shall extend to and include Library District's successors and assigns.

**4.19 Relationship of Mortgagee and Library District as Creditor and Debtor Only.** Mortgagee and Library District intend that the relationship between them shall be solely that of creditor and debtor. Nothing contained in any Loan Document or instrument made in connection with the Note and Bond shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by or between Mortgagee and Library District, or any relationship other than that of creditor and debtor.

IN WITNESS WHEREOF, Library District has hereunto set its hand and seal this 4<sup>th</sup> day of June, 1998.

North Shelby County Library District, a public corporation

[SEAL]

By: Ann M. Thayer

Its President

Notice Address:

\_\_\_\_\_  
\_\_\_\_\_

STATE OF ALABAMA     )  
COUNTY OF JEFFERSON    )

I, the undersigned, a Notary Public in and for said State and County, hereby certify that Ann M. Thayer, whose name as Its President, of North Shelby County Library District, a corporation, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day, that being informed of the contents of the conveyance, he/she as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

GIVEN under my hand and official seal of office, this 4 day of June, 1998.

[NOTARIAL SEAL]

Carol Ann

Notary Public

My Commission Expires: 10/15/98

c:\nsc\mortgage



First **American Title Insurance Company**  
**COMMITMENT**  
**SCHEDULE C**

Agent File No.: 116166

The land referred to in this Commitment is described as follows:

A parcel of land known as Lot 1A of a Resurvey of Lots 1 and 2 in Murray Oaks Estates, as recorded in Map Book 21 on page 142, in the Office of the Judge of Probate, Shelby County, Alabama said parcel being Lot 1 in said Murray Oaks Estates and also part of Lot 2 in said Murray Oaks Estates being more particularly described as follows:

Begin at an iron pin found at the NW corner of said Lot 2, said iron pin found also being the Northeast corner of said Lot 1; thence run in a Southeasterly direction along the Southwest line of said Lot 2 and also along the Northeast line of said Lot 1 for a distance of 343.21 feet to an iron pin found at the Southwest corner of said Lot 2, said iron pin found also being the Southeast corner of said Lot 1; thence turn an angle to the left of 66 deg. 37 min. 12 sec. and run in an Easterly direction along the South line of said Lot 2 for a distance of 274.56 feet to an iron pin set; thence turn an angle to the left of 123 deg. 46 min. 22 sec. and run in a Northwesterly direction for a distance of 475.08 feet to an iron pin set on a curve to the right having a central angle of 10 deg. 23 min. 53 sec. and a radius of 921.46 feet, said iron also being on the Southeast right of way of Cahaba Valley Road; thence turn an angle to the right of 0 deg. 00 min. 00 sec. to the radius of said curve and run in a Southwesterly direction along the arc of said curve and also along said Southeast right of way line for a distance of 167.23 feet to the point of beginning; being situated in Shelby County, Alabama.  
Mineral and mining rights excepted.

Inst # 1998-20901

06/05/1998-20901  
12:51 PM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE  
019 MCD 54.50

Inst # 1998-20901

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ms