

NOTE TO THE PROBATE RECORDING CLERK: THIS MORTGAGE IS GRANTED TO THE GOVERNMENTAL UTILITY SERVICES CORPORATION OF THE TOWN OF WESTOVER, AN INSTRUMENTALITY OF THE STATE OF ALABAMA, AND ENVIRO-SYSTEMS, L.L.C., AND IS EXEMPT FROM TAXATION PURSUANT TO ALABAMA CODE SECTION 11-97-18(c).

MORTGAGE AND SECURITY AGREEMENT between **ENVIRO-SYSTEMS, L.L.C.**, a Delaware limited liability company, party of the first part (herein called the "Developer"), and **THE GOVERNMENTAL UTILITY SERVICES CORPORATION OF THE TOWN OF WESTOVER**, a public corporation organized and existing under the laws of the State of Alabama, party of the second part (herein called the "Issuer");

RECITALS

Simultaneously with the delivery of this Mortgage and Security Agreement, the Issuer is issuing \$3,735,000 principal amount of its Sewer Revenue Bonds (Enviro-Systems, L.L.C. Project), Series 2004-A and Series 2004-B (herein called the "Bonds"), pursuant to a Trust Indenture dated as of March 1, 2004 (herein called the "Indenture"), between the Issuer and J.P. Morgan Trust Company, N.A., as Trustee (herein, with its successors in trust under the Indenture, called the "Trustee"). Also simultaneously with the delivery of this Mortgage and Security Agreement, the Issuer and the Developer are entering into a Loan Agreement dated as of March 1, 2004 (herein called the "Loan Agreement"), pursuant to which the Issuer is lending the entire proceeds of the Bonds to the Developer for the purpose of providing the Developer with moneys to pay a portion of the costs of acquiring and installing certain sewer system facilities in the Town of Westover, Alabama, and nearby areas (herein called the "Project"). The Loan Agreement will obligate the Developer to repay such loan, together with interest thereon, in accordance with such terms as will provide funds to the Issuer sufficient to pay, when due, the principal of and interest and premium (if any) on the Bonds as more particularly described in the Loan Agreement. The obligation of the Developer to repay such loan shall be evidenced by a promissory note (herein called the "Developer Note") payable to the Issuer or registered assigns.

The Developer is delivering this Mortgage and Security Agreement and is subjecting the Project to the lien hereof in order to secure the payment of the Developer Note and the performance of the other obligations of the Developer under the Loan Agreement. Under the Indenture, the Issuer will assign to the Trustee its right, title and interest in this Mortgage and Security Agreement, the Developer Note and the Loan Agreement (except for certain indemnification and expense payment rights retained by the Issuer).

NOW, THEREFORE,
THIS MORTGAGE AND SECURITY AGREEMENT
W I T N E S S E T H:

That in consideration of the premises and to secure the payment of the Developer Note and the performance of the obligations of the Developer under the Loan Agreement, it is hereby agreed among the parties signatory hereto as follows:

ARTICLE I
DEFINITIONS AND USE OF PHRASES

Section 1.1 **Definitions.** Unless the context clearly indicates a different meaning, the following words and phrases, as used herein, shall have the following respective meanings:

“Bonds” means the Series 2004 Bonds and any Additional Bonds, as defined in the Indenture.

“Construction Documents” means the Plans and Specifications, contracts with architects, engineers and contractors or construction managers for the design, construction and development of the Project, and performance and payment bonds with respect to the Project Development work.

“Developer” means the party of the first part hereto and includes its successors and assigns.

“Developer Note” means that certain promissory note of the Developer to be given to the Issuer in order to evidence the loan of the proceeds of the Series 2004 Bonds to the Developer pursuant to the Loan Agreement.

“Event of Default” means an "Event of Default" as specified in Section 4.1 hereof.

“Indenture” means that certain Trust Indenture dated as of June 1, 2004, between the Issuer and J.P. Morgan Trust Company, N.A., as trustee, under which (i) the Series 2004 Bonds are authorized to be issued and (ii) the Issuer's interests in the Developer Note, the Mortgage and the Loan Agreement are to be assigned and pledged as security for payment of the principal of and the interest on the Bonds, as the said Trust Indenture now exists and as it may hereafter be supplemented and amended.

“Independent Appraiser” means a person, firm or corporation (i) that is regularly engaged in the business of appraising real or personal property (as appropriate to the property being appraised or valued) and otherwise competent, in the opinion of the Trustee, to determine the value of the property in question and (ii) that has no continuing employment or business relationship or other connection with the Issuer or the Developer or any affiliate of either thereof which, in the opinion of the Trustee, might compromise or interfere with the independent judgment of such person, firm or corporation in the performance of any services to be performed hereunder as an Independent Appraiser.

“Issuer” means the party of the second part hereto and, subject to the provisions of Section 9.4 of the Indenture, includes its successors and assigns and any public corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party.

“Loan Agreement” means that certain Loan Agreement dated as of June 1, 2004, between the Issuer and the Developer as said Loan Agreement now exists and as it may from time to time be modified, supplemented or amended in accordance with the provisions of Article XIII of the Indenture.

“Mortgage” or **“this Mortgage”** means this Mortgage and Security Agreement, as it now exists and as it may from time to time be modified, supplemented or amended in accordance with the provisions of Article XIII of the Indenture.

“Permitted Encumbrances” means, with respect to any of the properties subject to the lien hereof, as of any particular time, any of the following: (i) liens for ad valorem taxes and general and special assessments not then delinquent; (ii) utility, access, drainage and other easements and rights-of-way, mineral and mining rights, covenants running with the land, zoning restrictions, environmental regulations and other restrictions and encumbrances affecting the use of real property, and minor defects and irregularities in title to real property, none of the foregoing of which, individually or in the aggregate, materially impair the use of such property for the purpose contemplated by the Loan Agreement; (iii) any inchoate mechanic's, materialman's, supplier's or vendor's lien or other right to a purchase money security interest if payment is not yet due and payable under the contract giving rise to such lien or right; and (iv) other matters that would be reflected by an accurate ALTA survey of the property, and easements, encumbrances and other matters of record.

“Plans and Specifications” means those certain plans and specifications which are to be prepared for the development and construction of the Project by the various contractors contracting with the Developer for the various portions of such construction and development, as such plans and specifications may from time to time be modified in accordance with the provisions hereof.

“Project Gross Revenues”, when used with reference to any period, means all receipts, revenues, income and other moneys received by or on behalf of the Developer during such period from whatever source derived, whether now existing or hereafter coming into existence and whether now owned or held or hereafter acquired by the Developer, including, but without limiting the generality of the foregoing, all revenues derived by the Developer from the Project or from any other source, all investment income derived and all rights to receive any of the foregoing (whether in the form of accounts receivable, contract rights, chattel paper, instruments or other rights) and the proceeds thereof, and any insurance thereon.

“Series 2004 Bonds” means those certain Sewer Revenue Bonds (Enviro-Systems, L.L.C. Project), Series 2004-A and Series 2004-B, authorized to be issued under the Indenture in the aggregate principal amount of \$3,735,000.

“Trustee” means the Trustee at the time serving as such under the Indenture.

Section 1.2 Definitions Contained in the Loan Agreement. Unless the context clearly indicates a different meaning, any words, terms or phrases that are used in the Mortgage as defined terms without being herein defined and that are defined in the Loan Agreement shall have the meanings respectively given them in the Loan Agreement.

Section 1.3 **Use of Phrases.** "Herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to the Mortgage as an entirety and not solely to the particular portion in which any such word is used. The definitions set forth in Section 1.1 hereof include both singular and plural. Whenever used herein, any pronoun shall be deemed to include both singular and plural and to cover all genders.

ARTICLE II

GRANTING CLAUSES

Section 2.1 **Granting Clauses.** In order to secure to the Issuer and its assigns the payment of the principal of and the interest on the Developer Note and the performance and observance by the Developer of the covenants, warranties and conditions on his part contained in the Loan Agreement, and in consideration of the indebtedness evidenced by the Developer Note and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Developer does hereby grant, bargain, sell and convey, assign, transfer and pledge to and with the Issuer, with power of sale, the leasehold estate of Developer pursuant to that certain Agreement for Lease of Real Estate between Westervelt Realty, Inc. and the Developer dated March 25, 2004 (herein called the "Ground Lease") and recorded in the Office of the Judge of Probate of Shelby County at Instr. # 2004- 410240, and all right, title and interest of the Developer in and to following described properties of the Developer, whether the same are now owned by it or may be hereafter acquired (all of such properties being herein called the "Mortgaged Property"):

I

The real property (the "property") described in the attached Exhibit A which is incorporated into this Mortgage by reference, and the following, to the extent owned by Developer: all minerals, oil, gas and other hydrocarbon substances on the property, as well as all Project rights, air rights, water, water rights, and water stock relating to the property, and all estates, rights, titles, interest, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever in any way belonging, relating or appertaining to any of the property, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law or in equity of the Developer of, in and to the same, including but not limited to the other rights herein enumerated;

II

All present and future structures, buildings, improvements, septic systems, sewage lines and equipment, appurtenances and fixtures of any kind on the property, whether now owned or hereafter acquired by the Developer, including but not limited to all apparatus, equipment and appliances used in connection with the operation or occupancy of the property, such as heating and air conditioning systems and facilities used to provide any utility services (including sewage services), refrigeration, ventilation or other services on the property, including, without limitation, all pumping stations and other equipment used in connection with any existing septic system and any sewage line to be constructed on the property, 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 (all the properties described in this clause being herein called the "Improvements");

III

All appurtenances of the property and all rights of the Developer in and to any streets, roads or public places, easements or rights of way, relating to the property, including but not limited to all rights of the Developer to any septic system, sewer line, agreements, permits, easements, equipment, licenses (including, without limitation, the Discharge Permit), resolutions, and related rights pertaining to any sewer and septic system constructed on the property;

IV

All of the rents, royalties, profits and income of the property including, without limitation, the Project Gross Revenues, and all rights of the Developer under all present and future leases affecting the property, including but not limited to any security deposits;

V

All proceeds and claims arising on account of any damage to or taking of the property or any Improvements thereon or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the property or any Improvements;

VI

All building materials, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by the Developer 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 property 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, and in general all building materials and equipment of every kind and character used or useful in connection with the Improvements;

VII

All Construction Documents and other contracts and contract rights related to the acquisition, construction, equipping and operation of the Project; and

VIII

All general intangibles relating to the Project or use of the property, including but not limited to all governmental permits relating to construction on the property, all names under or by which the property 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 property.

TO HAVE AND TO HOLD the same unto the Issuer, its successors and assigns forever, subject to Permitted Encumbrances; upon the terms herein set forth, for the protection and benefit of the Issuer and its assigns to secure the payment by the Developer of the principal of and the interest on the Developer Note and the performance and observance by the Developer of the covenants, warranties and conditions on his part contained in the Loan Agreement;

PROVIDED, HOWEVER, that these presents are upon the condition that if the Developer shall pay or cause to be paid the principal of and the interest on the Developer Note at the times and in the manner mentioned therein, according to the terms thereof, and shall perform and observe all covenants, warranties and conditions on its part contained in the Loan Agreement, then this Mortgage and the estate and rights granted hereby shall cease, determine and be void and the Issuer shall file a release and satisfaction of record; otherwise this Mortgage shall be and remain in full force and effect.

Section 2.2 **Security Interest in Project Equipment.** Pursuant to Article 9 of the Alabama Uniform Commercial Code, the Developer hereby grants the Issuer a security interest in all items of machinery, equipment and other personal property that at any time constitute part of the Mortgaged Property (all such items of machinery, equipment and other personal property being herein together called the "Project Equipment") and the proceeds thereof, whether such items are now owned or hereafter acquired by the Developer, to secure the payment by the Developer of the principal of and the interest on the Developer Note and the performance and observance by the Developer of the covenants, warranties and conditions on its part contained in the Loan Agreement.

ARTICLE III

CERTAIN PROVISIONS RELATING TO OBLIGATIONS OF THE DEVELOPER, THE USE OF THE MORTGAGED PROPERTY, THE DISPOSITION OF INSURANCE PROCEEDS AND CONDEMNATION AWARDS, AND THE ASSIGNMENT OF THE MORTGAGE

Section 3.1 **Payment of the Developer Note and Performance of Obligations Under Loan Agreement.** The Developer will promptly pay all installments of principal of and interest on the Developer Note as they respectively become due and will otherwise perform and observe all other agreements, conditions and covenants on its part contained in the Loan Agreement.

Section 3.2 **Warranty of Title to Mortgaged Property.** The Developer warrants as follows: it has good and marketable leasehold title to all property described and conveyed to the Issuer in Section 2.1 hereof pursuant to the Ground Lease (or it will have such title as of the time such property is to become subject to the lien of the Mortgage), free and clear of every lien, encumbrance, trust or charge prior to the lien of the Mortgage other than Permitted Encumbrances; it has the power and authority to make the conveyance of the property hereby made and to subject such property to the lien of the Mortgage and it has duly done so; and it will forever warrant and defend the title to the property conveyed hereby to the Issuer and its assigns, against the claims of all persons whomsoever, except those claiming under Permitted Encumbrances.

Section 3.3 Possession and Use of the Mortgaged Property. So long as it is not in default hereunder or under the Loan Agreement, the Developer shall, freely and without hindrance on the part of the Issuer or the Trustee, be entitled to possess, use and enjoy the Mortgaged Property, to manage and operate the same with all rights pertaining thereto, to alter, repair and move any of the buildings, structures or other improvements to real property forming a part thereof, to receive, use and dispose of the revenues, rentals and receipts derived by the Developer therefrom or in respect thereof in the ordinary course of its operations, and otherwise to use and operate all the Mortgaged Property and to exercise any and all rights and privileges pertaining thereto.

Section 3.4 Release Upon Payment of Condemnation Award to Trustee. If the Mortgaged Property or any part thereof shall be taken through the exercise of the power of eminent domain, the entire condemnation award referable thereto shall be paid directly to the Trustee in accordance with the provisions of Section 5.2 of the Loan Agreement. Upon payment to the Trustee of such award, the Issuer will, at the expense of the Developer, execute and deliver to the governmental authority or other entity successfully exercising such power of eminent domain any and all instruments that may be necessary to release from the lien of the Mortgage all property forming part of the Mortgaged Property that shall be so taken.

Section 3.5 Disposition of Condemnation Award. Reference is hereby made to Section 5.2 of the Loan Agreement wherein it is provided that if title to all or any part of the Mortgaged Property shall be taken through the exercise of the power of eminent domain, the condemnation award referable thereto shall be paid to the Trustee. Any condemnation award referable to the Mortgaged Property that is received by the Issuer shall be promptly paid to the Trustee as and to the extent provided in Section 5.2 of the Loan Agreement.

Section 3.6 Disposition of Insurance Proceeds. Reference is hereby made to Section 5.1 of the Loan Agreement wherein it is provided that if the Mortgaged Property is destroyed, in whole or in part, or is damaged, by fire or other casualty, then all of the net insurance proceeds referable to such loss shall be paid to the Trustee. Any insurance proceeds referable to the destruction or damage of any part of the Mortgaged Property that are received by the Issuer shall be promptly paid to the Trustee as and to the extent provided in Section 5.1 of the Loan Agreement.

Section 3.7 Assignment of Loan Agreement, Developer Note and Mortgage by the Issuer. It is understood and agreed that the Issuer will assign its right, title and interest in and to the Developer Note, the Mortgage and the Loan Agreement (other than certain indemnification and expense payment rights retained by the Issuer), and pledge any moneys received under the Developer Note and the Loan Agreement, to the Trustee as security for payment of the principal of and the interest on the Bonds. It is further understood and agreed that in the Indenture the Issuer will obligate itself to follow the instructions of the Trustee or the holders of the Bonds or a certain percentage thereof in the election or pursuit of any remedies vested in the Issuer by the Mortgage. Upon the assignment and pledge to the Trustee of the Issuer's right, title and interest in and to the Developer Note, the Mortgage and the Loan Agreement, the Trustee shall have all rights and remedies herein accorded the Issuer (other than the aforesaid expense payment and indemnification rights), and any reference herein to the Issuer shall be deemed, with the necessary changes in detail, to include the Trustee; and the Trustee and the holders of the Bonds shall be deemed to be third-party beneficiaries of the covenants and agreements on the part of the Developer herein contained and shall, to the extent contemplated by the Indenture, be entitled to enforce performance and observance

of the agreements and covenants on the part of the Developer contained herein to the same extent as if they were parties hereto. Subsequent to the issuance of the Series 2004 Bonds, the Issuer and the Developer shall have no power to modify, alter, amend, release or terminate the Mortgage without the prior written consent of the Trustee and then only as provided in the Indenture. The provisions of the Loan Agreement shall govern the interpretation and enforcement of the provisions of the Mortgage, and if any provision of the Mortgage is in conflict with any provision of the Loan Agreement, such provision of the Mortgage shall be deemed amended or modified to the extent necessary to avoid such conflict.

ARTICLE IV

EVENT OF DEFAULT AND REMEDIES OF THE ISSUER AND THE TRUSTEE

Section 4.1 **Events of Default Defined.** Any of the following shall be "Events of Default" under the Mortgage, and the term "Event of Default" shall mean, whenever it is used in the Mortgage, any one or more of the following conditions or events:

(a) an "Event of Default" under the Loan Agreement, as such term is therein defined, beyond any applicable notice or cure periods;

(b) an "Event of Default" under the Indenture, as such term is therein defined, beyond any applicable notice or cure periods;

(c) failure by the Developer to perform or observe any agreement or covenant on its part contained in the Mortgage [other than any covenant or agreement giving rise to an Event of Default referred to in the preceding clauses (a) and (b) of this section], which failure shall have continued for a period of sixty (60) days after written notice specifying, in reasonable detail, the nature of such failure and requiring the Developer to perform or observe the agreement or covenant with respect to which it is delinquent shall have been given to the Developer by the Issuer or the Trustee, unless (i) the Issuer and the Trustee shall agree in writing to an extension of such period prior to its expiration, or (ii) during such sixty (60) day period or any extension thereof, the Developer has commenced and is diligently pursuing appropriate corrective action, or (iii) the Developer is by reason of *force majeure* (as defined in Section 7.1 of the Loan Agreement) at the time prevented from performing or observing the agreement or covenant with respect to which it is delinquent; or

(d) any warranty, representation or other written statement by of the Developer in the Mortgage being untrue or misleading in any material respect at the time made.

Section 4.2 **Remedies on Default.** Whenever any Event of Default shall have occurred and be continuing, the Issuer shall have the following rights and remedies:

(a) Acceleration. Subject to and in compliance with the applicable conditions contained in the Loan Agreement, the Issuer or the Trustee may declare

the obligations of the Developer under the Developer Note and the Loan Agreement immediately due and payable in an amount equal to the principal amount of all outstanding Bonds plus interest accrued on such Bonds to the date of such declaration.

(b) Suit or Other Legal Proceedings. The Issuer or the Trustee may proceed to protect and enforce the rights of the Issuer hereunder by a suit or suits, whether for the specific performance of any covenant or agreement contained herein or in any of the Basic Agreements or in execution or aid of any power granted herein or therein or for the enforcement of any other proper, legal or equitable remedy, as the Issuer or the Trustee shall deem most effectual to protect and enforce its rights hereunder or thereunder.

(c) Receivership. The Issuer or the Trustee shall be entitled upon, or at any time after, the commencement of any proceedings instituted upon the occurrence of an Event of Default, as a matter of strict right, upon application to any court of competent jurisdiction, to the appointment of a receiver of the Mortgaged Property and of the revenues, rents, royalties and income therefrom. Any such receiver shall, except as herein otherwise provided, have all the usual powers and duties of receivers in similar cases, with full power upon the order of such court to lease the Mortgaged Property or any part thereof, upon any terms approved by such court.

(d) Possession of Mortgaged Property. The Issuer may, with or without the entire principal of the Developer Note having been declared due and payable by the Issuer or the Trustee, enter upon and take possession of the Mortgaged Property and lease the same in the name and as the agent of the Developer and from time to time maintain and restore and insure and keep insured the same, in the manner and to the same extent as is usual with like properties and likewise, from time to time, make all necessary repairs, renewals, replacements, alterations, additions and improvements thereto as may seem judicious and lease the same or any part thereof, as effectually as the Developer could do, and the Issuer shall be entitled to collect and receive all revenues, rents, royalties and income from the Mortgaged Property and every part thereof and, after paying the expenses of leasing the same, including the expenses of maintenance, repairs and insurance or other charges thereon, as well as reasonable compensation for the services of the Issuer and its agents, attorneys or receivers, the Issuer shall apply the moneys obtained as aforesaid as provided in Section 4.5 hereof.

(e) Sale of Mortgaged Property and Other Remedies. The Issuer, with or without entry, personally or by attorney, may in its discretion either

(1) sell, or cause to be sold, the Mortgaged Property, as a whole or in parcels, and the entire interest and equity of redemption of the Developer therein, such sale or sales to be made either (i) at public outcry at the main door of the Courthouse of Shelby County, Alabama, at such time or times and upon such terms as may be required by law or as the Issuer may determine, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) consecutive weeks prior to said sale, the first such publication to be at least twenty-one (21) days prior to the said sale, in a newspaper of general circulation then published in said county (or, in the event there is at the time no newspaper being published in the said

county, in a newspaper having general circulation in the said county) or (ii) in such other manner, including private sale, as may be permitted by applicable law, or

(2) institute such suit or proceeding for the foreclosure of the Mortgage, with or without further, other or incidental relief, such as the appointment of a receiver, the specific enforcement of covenants or obligations or an injunction to prevent violations or threatened violations of any covenant, agreement or obligation contained in any of the Basic Agreements.

Section 4.3 Sale of Mortgaged Property; Waiver of Appraisalment and Other Protective Laws. The following conditions shall apply to any sale of the Mortgaged Property or any part thereof by the Issuer pursuant to any powers granted by the Mortgage or pursuant to judicial authority:

(a) The entire principal of the Developer Note shall forthwith become due, anything in the Developer Note, the Loan Agreement or the Mortgage to the contrary notwithstanding.

(b) Any fixtures or personal property constituting a part of the Mortgaged Property may be sold without having such property at the place of sale, and the Developer, for itself, its successors and assigns and for all persons hereafter claiming through or under it, hereby expressly waives and releases all right to have such fixtures or personal property at the place of sale upon any foreclosure sale thereof.

(c) The Issuer may adjourn, or cause to be adjourned, from time to time, any sale (or any adjournment thereof), whether made under the power of sale herein granted or under or by virtue of judicial proceedings, by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by law, such sale may be made, without further notice or publication, at the time and place to which the same shall be so adjourned.

(d) If no cash bid for the property to be sold is received in an amount sufficient to pay all amounts then owing to the Issuer, the Issuer may, after first re-advertising such sale in the manner provided in Section 4.2(e) hereof to the extent required by applicable law, sell such property or any part thereof for an amount less than sufficient to pay all amounts then owing to the Issuer or for a consideration consisting of part cash and part purchase money mortgage, or both; provided (i) that such sale and the terms and amounts of any purchase money mortgage are approved in writing by the holders of a majority in principal amount of the then outstanding Bonds, and (ii) that in the opinion of the Trustee the price obtained at such sale represents the fair market value of the property sold, as demonstrated by more than one qualified bid therefor or by appraisal by an Independent Appraiser acceptable to the Trustee.

(e) Any holder or holders of the Bonds or the Trustee, or any of them, may bid for and purchase the property, or any portion thereof, to be sold at such sale.

(f) The purchaser may make payment, in whole or in part, of the amount by which his bid exceeds the sum necessary to discharge any prior liens and to pay costs, charges, fees and expenses by receipting for the share of the proceeds of the sale to which as a holder of any of the Bonds he would be entitled.

(g) The Issuer is hereby appointed, empowered and directed by the Developer as its irrevocable attorney to convey, assign, transfer and deliver to the purchaser the property sold and make all necessary conveyances and transfers thereof, without any covenant or warranty, express or implied, to the purchaser, all of which the Developer hereby approves and ratifies. The entire right, title, interest, claim and demand, legal and equitable, of the Developer in the property sold shall be completely divested by such sale and the same shall be a perpetual legal and equitable bar to any claim by the Developer thereto; provided, however, anything contained herein to the contrary notwithstanding, any such sale shall not divest the Developer of any right of redemption available to the Developer under applicable law with respect to the property sold. The Developer, however, if and when requested, will execute and deliver to the purchaser such instruments as may be requested by the purchaser in further assurance of the title so acquired.

(h) The purchaser upon paying the purchase money to the Issuer and receiving its receipt therefor need not inquire into the authorization, necessity, expediency or regularity of the sale and need not see to or in any way be responsible for the application by the Issuer of any part of the purchase money.

To the full extent that it may lawfully so agree, the Developer will not at any time insist upon, plead, claim or take the benefit or advantage of, any appraisalment, valuation, stay, or exemption law now or hereafter in force, in order to prevent or hinder the enforcement of the Mortgage or the absolute sale of the Mortgaged Property or any part thereof, or the possession thereof by any purchaser at any sale under the Mortgage, and the Developer, for itself and all who may claim under it, so far as it or they now or hereafter lawfully may do so, hereby waives the benefit of all such laws. The Developer, for itself and all who may claim under it, waives, to the extent that it lawfully may do so, all right to have the Mortgaged Property marshalled upon any foreclosure of the Mortgage, and agrees that any court having jurisdiction to foreclose the Mortgage may order the sale of the Mortgaged Property as an entirety. If there is now in force any law referred to in this paragraph of which the Developer could take advantage despite its agreement and waiver to the contrary, and if such law should hereafter be repealed or cease to be in force, then in such case such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the application of the provisions of this paragraph. To the full extent permitted by applicable law, the Issuer and the Developer hereby waive the effect of any law which requires that the Issuer make oath, file an inventory of property subject to the lien of the Mortgage, or give bond as security for the execution of the duties accepted by it under the Mortgage.

Section 4.4 Concerning the Issuer's Security Interest in the Project Equipment under the Alabama Uniform Commercial Code. Anything contained herein to the contrary notwithstanding, the Issuer shall have, without limitation, all of the rights and remedies provided by the Alabama Uniform Commercial Code to enforce its security interest in the Project Equipment granted hereby, including the right to proceed against all or any of the Project Equipment under the remedial provisions of the Alabama Uniform Commercial Code if an Event of Default shall have occurred and be continuing, or to proceed against all of the Mortgaged Property in accordance with its rights and remedies hereunder. If the Issuer should elect to enforce its security interest in the

Project Equipment separately, the Developer agrees to make the Project Equipment available to the Issuer, and if any notification of intended disposition of any of the Project Equipment is required by law, such notification shall be deemed commercially reasonable and reasonably and properly given if mailed to the Developer, in accordance with the provisions of Section 5.3 hereof, at least ten (10) days before such disposition.

Section 4.5 Application of Moneys Received from Enforcement of Rights Under the Mortgage. Upon the occurrence and continuation of an Event of Default, any moneys received by the Issuer or the Trustee from the exercise of any rights or remedies granted to either of them by the Mortgage shall be applied as follows:

(a) first, there shall be paid the costs and expenses of exercising any right, power or remedy created by the Mortgage and all sums advanced or expended by the Issuer (or by the Trustee for the account of the Issuer) on account of litigation, attorneys' fees, liens, insurance premiums or any other advances made or expenses incurred by such parties on account of the Mortgaged Property; and

(b) second, there shall be paid to the Trustee the balance of such moneys (if any) for application in accordance with the provisions of Section 10.3 of the Indenture.

Section 4.6 Payment of Costs of Enforcing the Mortgage. The Developer will pay all the reasonable costs, charges and expenses, including reasonable attorneys' fees, reasonably incurred or paid at any time by the Issuer or the Trustee in connection with the enforcement of any provisions of the Mortgage upon the occurrence and continuation of an Event of Default. If such costs, charges and expenses are paid by the Issuer or the Trustee pending payment thereof by the Developer, they (i) shall bear interest from the date of their payment by the Issuer or the Trustee, as the case may be, until the date of repayment thereof by the Developer at a per annum rate of two percent (2%) above the prime lending rate of the Trustee from time to time in effect until such amount is repaid or at the maximum applicable non-usurious per annum rate of interest then permitted by the laws of the State of Alabama, whichever of the foregoing rates of interest is the lesser, and (ii) shall become an additional obligation of the Developer secured by the Mortgage.

Section 4.7 No Waiver of Rights Resulting from Delays or Omissions. The lien of this Mortgage and the rights of the Issuer hereunder shall not be affected, nor shall any liability or obligation of the Developer hereunder be released by, any delay or omission by the Issuer or the Trustee to exercise any available right, power or remedy hereunder or under any of the other Basic Agreements. In the event any agreement or covenant contained herein should be breached by the Developer and thereafter waived by any party having the right to waive the same, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 4.8 Rights and Remedies Under the Mortgage Cumulative with Rights and Remedies Under other Basic Agreements. No right or remedy conferred upon or reserved to the Issuer by the Mortgage shall be exclusive of any other right or remedy available to the Issuer or the Trustee under any of the other Basic Agreements, but each and every right or remedy hereunder shall

be cumulative and in addition to every other right or remedy given under the Mortgage or any of the other Basic Agreements or otherwise made available to the Issuer or the Trustee.

ARTICLE V

MISCELLANEOUS PROVISIONS

Section 5.1 **Limitation of Rights.** Nothing herein contained shall confer any right on anyone other than the Developer, the Issuer, the Trustee and the holders of the Bonds.

Section 5.2 **Mortgage Governed by Alabama Law.** The Mortgage shall in all respects be governed by and construed in accordance with the laws of the State of Alabama.

Section 5.3 **Notices.** All notices, demands, requests and other communications hereunder shall be deemed sufficient and properly given if in writing and delivered in person to the following addresses or received by certified or registered mail, postage prepaid with return receipt requested, at such addresses:

(a) If to the Issuer:

The Governmental Utility Services
Corporation of the
Town of Westover
Post Office Box 356
Westover, Alabama 35185
Attention: Chairman of the Board of Directors

(b) If to the Developer:

Enviro-Systems, L.L.C.
550 Greensboro Avenue
Suite 507
Tuscaloosa, Alabama 35401

(c) If to the Trustee:

J.P. Morgan Trust Company, N.A.
3800 Colonnade Parkway, Suite 490

Birmingham, Alabama 35243
Attention: Institutional Trust Services

Any of the above-mentioned parties may, by like notice, designate any further or different addresses to which subsequent notices shall be sent. A copy of any notice given to any of the foregoing parties pursuant to the provisions of the Mortgage shall also be given to any of the foregoing parties to whom notice is not herein required to be given, but the failure to give a copy of such notice to any such other party shall not invalidate such notice or render it ineffective unless notice to such other

party is otherwise expressly required herein. Any notice hereunder signed on behalf of the notifying party by a duly authorized attorney at law shall be valid and effective to the same extent as if signed on behalf of such party by a duly authorized officer or employee.

Section 5.4 **Severability.** In the event that any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 5.5 **Article and Section Captions.** The article and section headings and captions contained herein are included for convenience only and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof.

IN WITNESS WHEREOF, the Developer has caused this Mortgage and Security Agreement to be duly executed in its name and behalf, and the Issuer has caused this Mortgage and Security Agreement to be duly executed in its corporate name, has caused its corporate seal to be hereunto affixed and has caused this Mortgage and Security Agreement to be attested, all by its duly authorized officers, in eight (8) counterparts, each of which shall be deemed an original, and the Developer and the Issuer have caused this Mortgage and Security Agreement to be dated as of June 1, 2004, although actually executed and delivered on July 22, 2004.

ENVIRO-SYSTEMS, L.L.C.

By: _____

Manager

THE GOVERNMENTAL UTILITY
SERVICES CORPORATION OF THE
TOWN OF WESTOVER

By _____

Chairman of the Board of Directors

ATTEST:

Its Secretary

[SEAL]

STATE OF ALABAMA)
 :
SHELBY COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that STANLEY L. GRAVES, whose name as Manager of ENVIRO-SYSTEMS, L.L.C., a limited liability company and instrumentality under the laws of the State of Delaware, 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 the said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

GIVEN under my hand and seal, this 21st day of July, 2004.

[NOTARIAL SEAL]

Σ. Alerin Ray

Notary Public

My Commission Expires: 9/9/05

STATE OF ALABAMA)
 :
SHELBY COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that J. MARK MCLAUGHLIN, whose name as Chairman of the Board of Directors of THE GOVERNMENTAL UTILITY SERVICES CORPORATION OF THE TOWN OF WESTOVER, a public corporation and instrumentality under the laws of the State of Alabama, 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 the said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

GIVEN under my hand and seal, this 21st day of July, 2004.

[NOTARIAL SEAL]

Σ. Alerin Ray

Notary Public

My Commission Expires: 9/9/05

EXHIBIT A
to
MORTGAGE AND SECURITY AGREEMENT
between
THE GOVERNMENTAL UTILITY SERVICES CORPORATION
OF THE TOWN OF WESTOVER
and
ENVIRO-SYSTEMS, L.L.C.
dated as of July 1, 2004

REAL PROPERTY DESCRIPTION

A parcel of land situated in Section 36, Township 19 South and Section 1 Township 20 South, all in Range 1 East, Huntsville Principal Meridian, Shelby County, Alabama, and being more particularly described as follows:

Commence at the NE corner of Section 1, Township 20 South, Range 1 East; thence S 72°10'57" W 2195.41 feet to the point of beginning; thence S 16°37'50" E 1108.23 feet to a point; thence S 72°45'04" W 1507.91 feet to a point; thence N 16°14'00" W 1112.23 feet to a point; thence N 17°07'51" W 1047.00 feet to a point; thence N 72°52'09" E 901.00 feet to a point; thence S 17°07'51" E 1047.02 feet to a point; thence N 72°56'37" E 599.15 feet to the point of beginning, containing 60.0 acres, more or less.

This instrument prepared by:

E. Alston Ray, Esq.
Johnston Barton Proctor & Powell LLP
2900 AmSouth/Harbert Plaza
1901 - 6th Avenue North
Birmingham, Alabama 35203
(205) 458-9488