

STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

REPURCHASE OPTION

THIS REPURCHASE OPTION (this "Agreement") is made and entered into as of the 4th day of January, 2006 by HILLTOP MONTESSORI SCHOOL, INC., an Alabama nonprofit corporation ("Hilltop"), in favor of EBSCO DEVELOPMENT COMPANY, INC., an Alabama corporation ("Developer").

R E C I T A L S:

Contemporaneously herewith, Developer has sold, transferred and conveyed to Hilltop that certain real property (the "Property") situated in Shelby County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference:

Developer agreed to sell, transfer and convey the Property to Hilltop only if and to the extent Hilltop granted to Developer an option to repurchase the Property in the event Hilltop desires to resell the Property at any time in the future.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and Hilltop do hereby agree as follows:

1. **Repurchase Option.**

(a) In the event Hilltop desires to sell, transfer, convey, lease, exchange or alienate the Property or any portion thereof (collectively, a "Sale"), then, subject to the provisions of Paragraphs 1(e) and 1(g) below, Hilltop shall provide to Developer a copy of the proposed sales contract, offer or letter of intent for any such proposed Sale (the "Offer Notice") and Developer shall have the right, at its option, to repurchase (the "Repurchase Option") the Property at the Repurchase Price, as herein defined. The Offer Notice shall include the gross purchase price which Hilltop has agreed to offer, or desires to accept, for the Property, as set forth in the Option Notice (the "Gross Purchase Price"). As used herein (but subject to the terms and provisions of Paragraph 1(g) below), the term "Repurchase Price" shall mean the Gross Purchase Price for the Property set forth in the Offer Notice delivered by Hilltop to Developer less the sum of \$690,000.00.

(b) In order to exercise the Repurchase Option, Developer must notify Hilltop in writing of its desire to exercise the Repurchase Option within 30 days following the giving of the Offer Notice by Hilltop to Developer. In the event Developer timely exercises the Repurchase Option, Developer shall be deemed to have agreed to purchase the Property on a date (the "Repurchase Closing Date") to be specified by Developer (but in no event later than 60 days following the giving of the Offer Notice) on the following terms: (i) on the Repurchase Closing Date, Developer shall pay to Hilltop the Repurchase Price, subject to the adjustments specified in Paragraph 1(d) below and

(ii) on the Repurchase Closing Date, the Property shall be conveyed by Hilltop to Developer by statutory warranty deed subject only to the then current year's ad valorem taxes, library district and fire district dues and assessments for the then current year and those easements, restrictions, rights-of-way, reservations and other matters of record as of the date and time of recordation of this Agreement in the Office of the Judge of Probate of Shelby County, Alabama and any other easements, restrictions, rights-of-way, reservations and other matters of record affecting the Repurchase Property which are approved in writing by Developer.

(c) In the event Developer fails to timely exercise the Repurchase Option as provided above, then the Repurchase Option shall automatically expire, terminate, be deemed null and void and of no further force or effect; provided, however, that if the sales transaction specified in the applicable Offer Notice is not consummated by Hilltop within six (6) months from the date of such Offer Notice or should any of the terms and provisions of such proposed transaction change from those as set forth in the Offer Notice, then Hilltop shall be obligated to re-offer the Property to Developer in accordance with the terms and provisions of this Paragraph 1. To the extent the Repurchase Option is not timely exercised by Developer, Developer covenants and agrees to execute a release in form reasonably acceptable to Hilltop or its successors and assigns acknowledging that the Repurchase Option has been terminated and releasing any further rights or interests which Developer may have in and to the Property as a result of the execution of this Agreement by Hilltop.

(d) Real estate ad valorem taxes, fire district and library district dues and assessments if any, affecting the Property shall be prorated on the Repurchase Closing Date. To the extent any Mortgage, as hereinafter defined, encumbers the Property, then (i) the Repurchase Price shall be reduced by the total amount of principal, interest and other sums due and payable to pay in full the indebtedness secured by any Mortgage as of the Repurchase Closing Date (the "Loan Balance") and (ii) Developer shall pay the Loan Balance to the holder of any Mortgage encumbering the Property; provided, however, that if the Loan Balance exceeds the Repurchase Price, Hilltop shall pay to the holders of such Mortgage on or before the Repurchase Closing Date the excess amount by which the Loan Balance exceeds the Repurchase Price.

(e) Subject to the terms and provisions of Paragraph 1(f) below, the Repurchase Option granted herein to Developer shall not be applicable to:

(i) The Sale of the Property by Hilltop to any entity (1) in which Hilltop is the owner of a controlling interest therein or (2) any entity which has a controlling interest in Hilltop. As used herein, the term "controlling interest" shall mean the ownership of fifty percent (50%) or more of the voting and beneficial interests in an entity; or

(ii) The granting of any Mortgage, as hereinafter defined, by Hilltop to any bona fide third party mortgagee ("Mortgagee"). As used herein, the term "Mortgage" shall mean any one or more mortgages which may be granted by Hilltop to any Mortgagee so long as such Mortgage (together with any other Mortgage encumbering the Property) secures an indebtedness owing by Hilltop which does not exceed the then appraised fair market value of the Property and any improvements

thereto, which appraisal shall be prepared by M. A. I. designated appraiser selected by the Mortgagee and reasonably satisfactory to Developer.

(f) To the extent Hilltop elects to effect a Sale of the Property to any third party which Sale, pursuant to the terms and provisions of Section 1(e) above, is not subject to the Repurchase Option granted herein, then such third party acknowledges and agrees that any subsequent Sale of the Property shall be subject to the terms and provisions of this Agreement and the Repurchase Option granted herein to Developer. Each Mortgagee, by acceptance of a Mortgage on any portion of the Property, acknowledges and agrees that, from and after the foreclosure of such Mortgage or the acceptance of any deed in lieu of foreclosure or the taking of any other action which results in such Mortgagee or any purchaser at foreclosure ("Foreclosure Purchaser") acquiring fee simple title to the Property (collectively, a "Foreclosure Action"), such Mortgagee and any Foreclosure Purchaser shall be bound by and subject to the terms and provisions of the Repurchase Option granted herein.

(g) Notwithstanding anything provided in this Agreement to the contrary, (i) the Repurchase Option shall not apply to any Foreclosure Action but shall continue to be applicable to any Sale of the Property following any Foreclosure Action and (ii) to the extent any Mortgagee or Foreclosure Purchaser elects to effect a Sale of the Property following such Foreclosure Action, then such Sale shall be subject to the Repurchase Option except that if the Repurchase Price payable by Developer to Mortgagee or such Foreclosure Purchaser pursuant to Paragraph 1(a) above would not pay in full the outstanding principal balance of the loan secured by the Mortgage which has been foreclosed by such Mortgagee plus all interest accrued thereon through the date on which the Foreclosure Action occurs (collectively, the "Foreclosure Balance"), then the Repurchase Price shall be increased to the Foreclosure Balance. Except as expressly set forth above in this Paragraph 1(g), the exercise of the Repurchase Option by Developer in connection with the Sale of the Property by any Mortgagee or Foreclosure Purchaser following a Foreclosure Action shall be on the same terms and conditions as set forth in this Paragraph 1.

2. **Enforcement.** Seller shall have the right to enforce the Repurchase Option by an action for specific performance.

3. **No Subordination.** The Repurchase Option granted herein by Hilltop to Developer shall be superior to any and all Mortgages and any and all other mortgages, liens or other encumbrances which may at any time encumber the Property or any portion thereof; provided, however, that following any Foreclosure Action involving a Mortgage, then the terms and provisions of Paragraph 1(g) above shall be applicable to and binding upon Seller.

4. **Miscellaneous.**

(a) All of the terms and provisions of this Agreement shall (i) be and are covenants running with the land and (ii) be binding upon and inure to the benefit of all present and future owners of the Property and their respective successors and assigns.

(b) This Agreement embodies the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior written or oral agreements and

undertakings of the parties relating to the subject matter of this Agreement. The terms and provisions of this Agreement may be modified, amended or supplemented only by a written instrument executed by Developer and the then owner(s) of the Property.

(c) The paragraph headings and captions used herein are for convenience of reference only and shall in no way define, limit, describe or restrict the scope or intent of this Agreement or in any way affect the terms and provisions hereof.

(d) Whenever the context requires or permits, the use of the masculine gender shall be deemed to include the feminine, the singular shall include the plural and vice versa.

(e) If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(f) This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

(g) All notices required or permitted under this Agreement shall be in writing and shall be served on the parties hereto at the following addresses:

If to Developer: EBSCO Development Company, Inc.
5 Mt Laurel Avenue
Birmingham, AL 35242
Attention: Mr. John O. Freeman, Sr. or
Ms. Della Pender
Facsimile: (205) 408-4785

With a copy to: Stephen R. Monk, Esq.
Bradley Arant Rose & White LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203
Facsimile: (205) 488-6429

If to Hilltop: Hilltop Montessori School, Inc.
112 Olmsted Street
Birmingham, Alabama 35242
Attention: Michele Scott
Facsimile: (205) 437-9344

2006010500007320 5/7 \$29.00
Shelby Cnty Judge of Probate, AL
01/05/2006 08:07:03AM FILED/CERT

With a copy to:

Richard W. Theibert, Esq.
Najjar Denaburg, P.C.
2125 Morris Avenue
Birmingham, Alabama 35203
Facsimile: (205) 326-3837

Any such notices shall be deemed to be sufficiently given or served upon any party hereto when either (i) sent by personal delivery to the address set forth above, (ii) deposited in the United States Mail by registered or certified mail, return receipt requested, postage prepaid and addressed as provided above, (iii) deposited with a nationally recognized overnight delivery courier service for next day delivery and addressed as set forth above or (iv) sent by facsimile, in which case notice shall be deemed delivered upon receipt of confirmation of transmission of such facsimile notice. The above addresses may be changed by written notice to the other parties given in the manner set forth above.

(h) In the event of any violation or threatened violation of any of the terms and provisions of this Agreement by any party hereto or any of their respective successors and assigns, then the non-defaulting party shall have the right to exercise all rights and remedies available to such party at law or in equity including, without limitation, seeking specific performance of this Agreement and any and all costs and expenses incurred by such non-defaulting party, including, without limitation, attorneys' fees and expenses, consultants' fees and expenses, court costs and all other expenses paid or incurred by the non-defaulting party, shall be paid by the defaulting party.

IN WITNESS WHEREOF, Hilltop and Developer have executed this Agreement as of the day and year first above written.

HILLTOP MONTESSORI SCHOOL, INC., an
Alabama nonprofit corporation

By: Erin J. Fox
Its: President

EBSCO DEVELOPMENT COMPANY, INC., an
Alabama corporation

By: John O. Freeman
Its: V.P. + General Manager

STATE OF ALABAMA)
COUNTY OF Shelby)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Elizabeth Fox, whose name as President of HILLTOP MONTESSORI SCHOOL, INC., an Alabama nonprofit corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/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 this 4th day of January, 2006.

Theresa J. Smith
Notary Public
My commission expires: June 19, 2008

[NOTARIAL SEAL]

STATE OF ALABAMA)
COUNTY OF SHELBY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that John O. Freeman, Sr., whose name as V.P. & GENERAL MANAGER of EBSCO Development Company, Inc., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 4th day of January, 2006..

Claudean Hill
Notary Public
My commission expires: 1-13-07

[NOTARIAL SEAL]

This instrument prepared by and
Upon recording should be returned to:

Stephen R. Monk, Esq.
Bradley Arant Rose & White LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203
(205) 521-8429

EXHIBIT A

Legal Description of Property

Hilltop Montessori School – Legal Description Tax Parcel 09-2-03-1-001-010.001

State of Alabama
Shelby County

A parcel of land situated in the S.W. $\frac{1}{4}$ of the N.E. $\frac{1}{4}$ of Section 3, Township 19 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northwest corner of the S.W. $\frac{1}{4}$ of the N.E. $\frac{1}{4}$ of Section 3, Township 19 South, Range 1 West and run in an Easterly direction along the North line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 108.96 feet to a point on the eastern right-of-way of Shelby County Highway 41 (Dunnavant Valley Road), said point being the POINT OF BEGINNING; thence continue along the last described course for a distance of 567.18 feet to a point, thence turn an angle of 90°00'00" to the right and run in a Southerly direction for a distance of 677.64 feet to a point on the Northwestern right-of-way of Olmsted Street, a private roadway, as recorded in the Shelby County Probate Office in map book 27, page 72 A & B; thence run in a Southwesterly direction along said northwesterly right-of-way of Olmsted Street for a distance of 617.27 feet to the westernmost point of the Mt Laurel Town Management, Inc. parking lot parcel as recorded in the Shelby County Probate Office instrument number 2001-13024, thence run in a Westerly direction along the Northern boundary of said parking lot parcel for a distance of 95.79 feet; thence run in a Northerly direction along the Eastern boundary of said parking lot parcel for a distance of 331.00 feet; thence 90°00' to the left in a Westerly direction along the Northern boundary of said parking lot parcel for a distance of 212.26 feet to a point on the Eastern right-of-way Shelby County Highway 41 (Dunnavant Valley Road); thence run in a Northerly direction along the Eastern right-of-way of said Highway 41 for a distance of 322.46 feet to the Southwestern corner of the Clear Springs Baptist Church parcel as recorded in the Shelby County Probate Office instrument number 2001-45087; thence run in an Easterly direction along the Southern boundary of said Clear Springs Baptist Church parcel for a distance of 187.00 feet; thence run in a Northerly direction along the Eastern boundary of said Clear Springs Baptist Church parcel for a distance of 349.96 feet; thence run in a Westerly direction along the Northern boundary of said Clear Springs Baptist Church parcel for a distance of 187.00 feet to a point on the Eastern right-of-way Shelby County Highway 41 (Dunnavant Valley Road); thence run in a Northerly direction along the Eastern right-of-way of said Highway 41 for a distance of 137.8 feet, more or less, to the POINT OF BEGINNING.

Said parcel containing 10.9 acres, more or less.