
**MORTGAGE, ASSIGNMENT OF LEASES
AND SECURITY AGREEMENT**

Dated September 1, 2005

from

HILLTOP MONTESSORI SCHOOL, INC.

112 Olmsted Street
Birmingham, Alabama 35242

to

AMSOUTH LEASING CORPORATION

AmSouth Center
1900 5th Avenue North
12th Floor
Birmingham, Alabama 35203

The maximum amount of indebtedness secured by this instrument is \$2,475,000.

This Mortgage, Assignment of Leases and Security Agreement was prepared by Heyward C. Hosch of Walston, Wells & Birchall, LLP, One Federal Place, 1819 5th Avenue North, Suite 1100, Birmingham, Alabama 35203

STATE OF ALABAMA)

SHELBY COUNTY)

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Shelby Cnty Judge of Probate, AL
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**MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS AND LEASES**

THIS MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES (as at any time amended or supplemented: this "Mortgage") is made and entered into as of September 1, 2005, by and between **HILLTOP MONTESSORI SCHOOL, INC.**, an Alabama nonprofit corporation, (the "Mortgagor"), and **AMSOUTH LEASING CORPORATION**, an Alabama corporation (the "Mortgagee").

Recitals

Pursuant to and for the purposes expressed in Chapter 92A of Title 11 of the Code of Alabama 1975 of the Code of Alabama 1975 (the "Enabling Law"), the Mortgagee and Shelby County Economic and Industrial Development Authority, an Alabama public corporation (the "Lessee") have delivered the Financing and Lease Agreement dated as of September 1, 2005 (the 2005 "Financing and Lease Agreement") to finance an elementary school under the Enabling Law, as more particularly described therein (collectively the "Project"), for lease to and use by the Mortgagor.

Pursuant to that certain Development Agreement dated the date of delivery (the "Development Agreement") by the Mortgagor and EBSCO Development Company, Inc. (the "Developer"), (a) the Developer has conveyed to the Mortgagor the within referenced Project Site for use as part of the Project and certain property referenced in the Development Agreement as the "Affected Property" and agreed to convey to the Mortgagor certain additional property (referenced as the "Additional Conveyance Property" in the Development Agreement) abutting the Project Site and agreed to construct a public road (referenced as the "Abbot Square Extension" in the Development Agreement) to such Additional Conveyance Property and Project Site and (b) the Mortgagor has agreed to convey the Affected Property to the Developer upon completion of Abbot Square Extension and receipt of title to the Additional Conveyance Property.

Pursuant to that certain Temporary Access Easement dated the date of delivery (the "Easement") by the Mortgagor to the Mortgagee, the Mortgagor has granted the Mortgagee an access easement across the Affected Property.

Pursuant hereto, the Mortgagor has agreed to amend this Mortgage, simultaneously with delivery of title to the Additional Conveyance Property to the Mortgagor, to subject the Additional Conveyance Property to the lien of this Mortgage.

For Value Received, in consideration of, and in satisfaction of certain conditions of the Lessor precedent to, the delivery of the Financing and Lease Agreement by the Lessor and the advance of funds thereunder on behalf of the Issuer for the benefit of the User and the Guarantor, the Guarantor has delivered this Mortgage simultaneously with the delivery of the Financing and Lease Agreement intending to be legally bound hereby.

Agreement

NOW, THEREFORE, in consideration of the premises, and to secure the due and punctual observance, payment and performance of the following (collectively, the "Obligations"):

(1) all of the obligations, covenants, liabilities and agreements of the Lessee under the Financing and Lease Agreement and the Mortgagor under the Assignment and under the Guaranty, including without limitation, the following:

(a) the payment of the Rent (as defined in the Financing and Lease Agreement) when and as the same comes due under the Financing and Lease Agreement, including without limitation both the Interest Portion and the Principal Portion of the Rent;

(b) all late charges and interest on late payments becoming due and payable under the Financing and Lease Agreement in accordance with the terms thereof;

(c) all amounts becoming due and payable under the Financing and Lease Agreement on account of advances made, and expenses and costs incurred, by the Mortgagee thereunder;

(d) all amounts becoming due and payable under the Financing and Lease Agreement in accordance with the terms thereof upon the occurrence and continuance of an Event of Default under the Financing and Lease Agreement; and

(e) all other amounts becoming due and payable under the Financing and Lease Agreement; and

(f) all amounts becoming due and payable under the Guaranty; and

(2) all other indebtedness, obligations and liabilities of the Mortgagor to the Mortgagee of every kind and description whatsoever, arising directly between the Mortgagor and the Mortgagee or acquired outright, as a participation or as collateral security from another by the Mortgagee, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, contracted or arising, joint or several, liquidated or unliquidated, regardless of how they arise or by what agreement or instrument they may be evidenced or whether they are evidenced by agreement or instrument, and whether incurred as maker, endorser, surety, guarantor, member of a partnership, syndicate, joint venture, association or other group, or otherwise, and any and all extensions, renewals and modifications of any of the same;

(3) the compliance with all of the stipulations, covenants, agreements, representations, warranties and conditions contained in this Mortgage, including without limitation the obligation to pay Advances (as defined below);

(4) all renewals and extensions of any or all of the obligations of the Mortgagor described in paragraphs (1) through (3) above, whether or not any renewal or extension agreement is executed in connection therewith;

the Mortgagor does hereby grant, bargain, sell and convey unto the Mortgagee, its successors and assigns, the property and interests in property described in the following Granting Clauses A through J both inclusive, and does hereby grant to the Mortgagee a security interest in said property and interests in property:

- A. The real estate described on Exhibit A attached hereto and made a part hereof (the "Project Site") and all improvements, structures, buildings and fixtures now or hereafter situated thereon (the "Project");
- B. All permits, easements, licenses, rights-of-way, contracts, appurtenances, privileges, immunities, tenements and hereditaments now or hereafter pertaining to or affecting the Project Site or the Project;

- C. The leasehold estate and interests of the Mortgagor in and to the Project Site under the Financing and Lease Agreement, together with all right, title and interest of the Mortgagor in and to all buildings, structures, improvements and fixtures now or hereafter located upon the Project Site, together with all right, title and interest of the Mortgagor in and to all easements, permits, licenses, rights-of-way, contracts, leases, tenements, hereditaments, appurtenances, rights, privileges, and immunities pertaining or applicable to the Project Site and interest therein, together with all right, title and interest of the Mortgagor in and to (i) all other rights, titles and privileges under the Financing and Lease Agreement, and (ii) all modifications, extensions and renewals of the Financing and Lease Agreement and (iii) all other, further or additional title, estate, options, privileges, interest or rights which the Mortgagor may now or hereafter acquire in and to the Project Site;
- D. (i) All leases, written or oral, and all agreements for use or occupancy of any portion of the Project Site or the Project with respect to which the Mortgagor is the mortgagee, any and all extensions and renewals of said leases and agreements and any and all further leases or agreements, now existing or hereafter made, including subleases thereunder, upon or covering the use or occupancy of all or any part of the Project Site or the Project (all such leases, subleases, agreements and tenancies heretofore mentioned, being hereinafter individually referred to as a "Lease", and collectively referred to as the "Leases");
- (ii) any and all guaranties of the lessee's and any sublessee's performance under any of the Leases;
- (iii) the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due or to which the Mortgagor may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of the Leases or from or out of the Project Site or any of the Project, or any part thereof, including, but not limited to, minimum rents, additional rents, percentage rents, common area maintenance charges, parking charges, tax and insurance premium contributions, and liquidated damages following default, the premium payable by any lessee upon the exercise of any cancellation privilege provided for in any of the Leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Project Site or the Project, together with any and all rights and claims of any kind that the Mortgagor may have against any such lessee under the Leases or against any subtenants or occupants of the Project Site or any of the Project, all such moneys, rights and claims in this paragraph described being hereinafter referred to as the "Rents"; provided, however, so long as no Event of Default has occurred, the Mortgagor shall have the right under a license granted hereby to collect, receive and retain the Rents (but not prior to accrual thereof); and
- (iv) any award, dividend or other payment made hereafter to the Mortgagor in any court procedure involving any of the lessees under the Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court and any and all payments made by lessees in lieu of rent. The Mortgagor hereby appoints the Mortgagee as the Mortgagor's irrevocable attorney in fact to appear in any action and/or to collect any such award, dividend or other payment;
- E. All building materials, equipment, fixtures, tools, apparatus and fittings of every kind or character now owned or hereafter acquired by the Mortgagor for the purpose of, or used or useful in connection with, the Project, wherever the same may be located, including, without limitation, all lumber and lumber products, bricks, stones, building blocks, sand, cement, roofing materials, paint, doors, windows, hardware, nails, wires, wiring, engines, boilers, furnaces, tanks, motors, generators, switchboards, elevators, escalators, plumbing, plumbing fixtures, air-conditioning and heating equipment and appliances, electrical and gas equipment and appliances, stoves, refrigerators, dishwashers, hot water heaters, garbage disposers, trash compactors, other appliances, carpets, rugs, window treatments, lighting, fixtures, pipes, piping, decorative fixtures,

and all other building materials, equipment and fixtures of every kind and character used or useful in connection with the Project;

- F. The Personal Property (as defined in the Financing and Lease Agreement) and any and all other personal property of every kind and nature owned by the Mortgagor now or at any time hereafter located on the Project Site or in the Project, including without limitation, all medical equipment, furniture, desks, chairs, book cases, shelving, computers, computer equipment, electronic equipment, private telephone systems, paging and public address systems, intercoms, books, audio-visual equipment and tools and equipment used in the maintenance and upkeep of the Project Site, the Project and any other Property;
- G. Any and all other real or personal property of every kind and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred to the Mortgagee, or in which the Mortgagee is granted a security interest, as and for additional security hereunder by the Mortgagor, or by anyone on behalf of, or with the written consent of, the Mortgagor;
- H. Each and every policy of hazard insurance now or hereafter in effect which insures the Property (but, in the case of blanket policies, only to the extent that such policy is applicable to the Property), or any part thereof (including without limitation the Personal Property and Project, or any part thereof), together with all right, title and interest of the Mortgagor in and to each and every such policy (but, in the case of blanket policies, only to the extent that such policy is applicable to the Property), including, but not limited to, all the Mortgagor's right, title and interest in and to any premiums paid on each such policy (but, in the case of blanket policies, only to the extent that such premiums are applicable to the Property), including all rights to return premiums;
- I. Any and all awards or payments, including all interest thereon, together with the right to receive the same, that may be made to the Mortgagor with respect to the Property as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade or of any street or (c) any other injury to or decrease in value of the Property;
- J. All rights, title and interest (including without limitation fee simple title), estate, options, privileges, interests or rights which the Mortgagor may acquire in and to the "Additional Conveyance Property" as described in the Development Agreement.

All of the property and interests in property described in the foregoing Granting Clauses A through J, both inclusive, being herein sometimes collectively called the "Property" and the personal property described in Granting Clause E, F and G and all other personal property covered by this Mortgage being herein sometimes collectively called the "Personal Property";

SUBJECT, HOWEVER, to the liens, easements, rights-of-way and other exceptions described on Exhibit C hereto ("Permitted Exceptions");

TO HAVE AND TO HOLD the Property unto the Mortgagee, its successors and assigns forever.

1. **Future Advance Mortgage.**

This Mortgage is a future advance mortgage and a portion of the Obligations is to be advanced by the Mortgagee to the Mortgagor in accordance with the terms of the Financing and Lease Agreement.

2. **Warranties of Title.**

The Mortgagor covenants with the Mortgagee that the Mortgagor is lawfully seized in fee simple of the Project Site and is the lawful owner of, and has good title to, the leasehold estate under the Financing and Lease

Agreement, the Personal Property, Project and other Property and has a good right to sell and convey the Property as aforesaid; that the Property is free of all encumbrances, unless otherwise provided hereinbefore, provided, that the fee simple title to the Project Site is subject to the leasehold interest created under the Financing and Lease Agreement; and that the Mortgagor will warrant and forever defend the title to the Property unto the Mortgagee against the lawful claims of all persons except those claiming under Permitted Encumbrances.

3. **Maintenance of Lien Priority.**

The Mortgagor shall take all steps necessary to preserve and protect the validity and priority of the liens on, security interests in, and assignment of, the Property created hereby. The Mortgagor shall execute, acknowledge and deliver such additional instruments as the Mortgagee may deem necessary in order to preserve, protect, continue, extend or maintain the liens, security interests and assignments created hereby as first liens on, security interests in, and assignments of, the Property, except as otherwise permitted under the terms of this Mortgage. All costs and expenses incurred in connection with the protection, preservation, continuation, extension or maintaining of the liens, security interests and assignments hereby created shall be paid by the Mortgagor.

4. **Covenants Regarding the Financing and Lease Agreement and Development Agreement.**

The Mortgagor covenants and agrees that the Mortgagor will:

(a) **Performance of the Financing and Lease Agreement.** At all times promptly and faithfully keep and perform all the terms, covenants and conditions contained in the Financing and Lease Agreement by the lessee therein to be kept and performed and in all respects conform to and comply with the terms and conditions of the Financing and Lease Agreement; and not to do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, will impair or tend to impair the security of this Mortgage or will be grounds for declaring a forfeiture or termination of the Financing and Lease Agreement and take all action necessary to keep the Financing and Lease Agreement in full force and effect.

(b) **Perform Development Agreement.** Duly and punctually observe and perform all agreements, covenants and obligations of the Mortgagor under and pursuant to the Development Agreement.

(c) **Enforce Development Agreement.** Take all action necessary or desirable to enforce the due and punctual observance and compliance by the Developer of all agreements, covenants and obligations of the Developer under the Development Agreement.

(d) **No Modification of the Development Agreement.** Not modify, extend or in any way alter the terms of the Development Agreement or cancel or surrender the Development Agreement, or waive, excuse, condone or in any way release or discharge the Developer from the obligations, covenants, conditions and agreements by the Developer to be done and performed; and the Mortgagor hereby expressly assigns, transfers and conveys to the Mortgagor all right, power and authority to cancel, surrender, terminate, release, amend, modify or alter in any way the terms and provisions of the Development Agreement, and any attempt on the part of the Mortgagor to exercise any such right without the express prior written consent of the Mortgagee shall constitute a default under the terms hereof.

(e) **Mortgage of Additional Conveyance Property.** Grant, bargain, sell and convey unto the Mortgagee all right, title and interest of the Mortgagor in and to the Additional Conveyance Property (as defined in the Development Agreement) simultaneously upon conveyance thereof to the Mortgagor by the Developer pursuant to Section 3 of the Development Agreement and execute, deliver and record such amendments to this Mortgage as the Mortgagee shall require to provide therefor.

5. **Representations and Warranties Related to Rents and Leases.**

The Mortgagor hereby represents and warrants:

(a) The Mortgagor has good title to the Rents and Leases hereby assigned and good right to assign the same, and no other person, corporation or entity has any right, title or interest therein.

(b) The Mortgagor has duly and punctually performed all and singular the terms, covenants, conditions and warranties of the existing Leases on the Mortgagor's part to be kept, observed and performed.

(c) The Mortgagor has not previously sold, assigned, transferred, mortgaged or pledged the Leases or the Rents, whether now due or hereafter to become due.

(d) No Rents due for any period subsequent to the month next succeeding the date of this Mortgage have been collected, and no payment of any of the Rents has otherwise been anticipated, waived, released, discounted, set-off or otherwise discharged or compromised.

(e) The Mortgagor has not received any funds or deposits from any lessee in excess of one month's rent for which credit has not already been made on account of accrued rents.

(f) To the best of the Mortgagor's knowledge, the lessees under the existing Leases are not in default under any of the terms thereof.

6. **Covenants To Pay Liens and Taxes.**

The Mortgagor will duly pay and discharge all taxes, assessments and other governmental charges and liens lawfully imposed on the Project; provided, however, the Mortgagor will not be required to pay any taxes, assessments or other governmental charges so long as in good faith it shall contest the validity thereof by appropriate legal proceedings, the Mortgagor has given notice of such contest to the Mortgagee, the Mortgagor has established adequate reserves therefor, and no part of the Project shall, in the opinion of the Mortgagee, be subject to loss or forfeiture.

7. **Insurance.**

General

(a) The Mortgagor will take out and continuously maintain in effect the following insurance with respect to the Project, paying as the same become due all premiums with respect thereto:

(1) **Property Insurance.** All Risk or Special Form Property insurance to the extent of the full replacement cost of the Project against loss or damage by fire, tornado, windstorm, and other casualties and hazards with uniform standard extended coverage endorsement limited only as may be provided in the standard form of extended coverage endorsement at the time in use in the State.

(2) **Liability Insurance.** Insurance against liability for bodily injury to or death of persons and for damage to or loss of property occurring on or about the Project or in any way related to the condition or operation of the Project, in the minimum amounts of \$1,000,000 combined single limit for death of or bodily injury to any one person and for property damage, all on a per occurrence basis.

(3) **Flood Insurance.** If any portion of the Project is in a special flood hazard area, flood insurance under the national flood insurance program established by the Flood Disaster Protection Act of 1973, as at any time amended, at all times while the Project are eligible under such program, in a amount at least equal to the total amount of the then effective Concluding Payments for all components of the Project or to the maximum limit of coverage made available with respect to the Project under said Act, whichever is less.

(4) **Builders Risk.** During the period of acquisition and construction of any part of the Project, builders' risk insurance in the amount of the full replacement value of the Project against all losses which are normally covered by such builders' risk insurance. The Mortgagor may satisfy said obligations



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with respect to the builder's risk insurance by causing such insurance to be carried by a construction contractor for any part of the Project.

(b) All policies evidencing the insurance required by the terms of this Section shall be taken out and maintained in generally recognized responsible insurance companies, qualified under the laws of the State to assume the respective risks undertaken, and shall name as insureds the Mortgagee and the Mortgagor (as their respective interests shall appear) and shall contain standard mortgage clauses providing for all losses thereunder to be paid jointly to the Mortgagee and the Mortgagor; provided that all losses may be adjusted by the Mortgagor, subject, in the case of any single loss in excess of \$10,000, to the approval of the Mortgagee. The Mortgagor may insure under a blanket policy or policies.

(c) Each insurance policy required to be carried by this Section shall contain, to the extent obtainable, an agreement by the insurer that (1) the Mortgagor may not, without the consent of the Mortgagee, cancel such insurance or sell, assign or dispose of any interest in such insurance, such policy, or any proceeds thereof, (2) such insurer will notify the Mortgagee if any premium shall not be paid when due or any such policy shall not be renewed prior to the expiration thereof, and (3) such insurer shall not materially amend or cancel any such policy except on 30 days prior written notice to the Mortgagee.

(d) All policies evidencing the insurance required to be carried by this Section shall be deposited with the Mortgagee; provided, however, that in lieu thereof the Mortgagor may deposit with the Mortgagee a certificate or certificates of the respective insurers attesting the fact that such insurance is in force and effect. Prior to the expiration of any such policy, the Mortgagor will furnish to the Mortgagee evidence reasonably satisfactory to the Mortgagee that such policy has been renewed or replaced by another policy or that there is no necessity therefor under this Agreement.

(e) If the Mortgagor fails to keep the Property insured as specified above, then, at the election of the Mortgagee and without notice to any person, the Mortgagee may, but shall not be obligated to, insure the Property for its full insurable value (or for such lesser amount as the Mortgagee may wish) against such risks of loss and for its own benefit. The amount of all premiums and other costs incurred by the Mortgagee in procuring insurance for the Property shall constitute an Advance.

Damage, Destruction and Condemnation

(a) The Mortgagor assumes all risk of loss of or damage to the Project from any cause whatsoever.

(b) If no Event of Default shall have occurred and be continuing, then in event of damage or destruction of the Project (in whole or in part) or a condemnation of the Project (in whole or in part) under the exercise of the power of eminent domain or a sale in lieu thereof, the Mortgagor shall continue to pay Rent (as defined in the Agreement) and will give written notice of such damage and destruction or condemnation or sale to the Mortgagee within ten (10) days of the occurrence of such event. All Net Proceeds resulting from claims for such losses, condemnation or sale shall be paid to the Mortgagee whereupon the Mortgagee may, at its option,

(i) apply the Net Proceeds to the immediate payment of the Obligations, with any amount of the Net Proceeds remaining after full payment of such amounts being paid to the Mortgagor; or

(ii) apply such Net Proceeds to the repair, restoration or replacement of the Project to a condition of value, quality, utility and capacity substantially the same as, or greater, than that in which the Project existed prior to the event causing such damage or destruction, the condemnation or the sale, as the case may be; or

(iii) release such Net Proceeds to the Mortgagor.

(c) If an Event of Default shall have occurred and be continuing, then in event of damage or destruction of the Project (in whole or in part), condemnation of the Project (in whole or in part) or sale in lieu thereof all Net Proceeds shall be applied to the immediate payment of the Obligations.

(d) In the event the Net Proceeds are not sufficient to pay in full all amounts owed to the Mortgagee hereunder the Mortgagor shall pay the deficiency to the Mortgagee on demand. If the Net Proceeds are not sufficient to or pay in full the cost of such repair or replacement of the Project as provided in (b)(ii) the Mortgagor shall pay the portion of such amounts in excess of the amount of the Net Proceeds. The Mortgagor shall not by reason of the payment of such excess costs be entitled to reimbursement or any abatement or diminution of the Rent hereunder.

(e) The Mortgagee shall cooperate fully with the Mortgagor in the handling and conduct of any prospective or pending condemnation proceeding with respect to the Project or any part thereof and will, to the extent it may lawfully do so, permit the Mortgagor to litigate in any such proceeding in the name and behalf of the Mortgagee. In no event will either party settle, or consent to the settlement of, any prospective or pending condemnation proceeding without the prior written consent of the other.

(f) For purposes hereof, the term Net Proceeds when used with respect to any insurance or condemnation award, means the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all reasonable expenses (including reasonable attorneys' fees) incurred in the collection of such gross proceeds.

9. **Maintenance, Repairs, Alterations, Use in Connection with other Projects; Easements Granted by Mortgagee.**

(a) The Mortgagor will, at the expense thereof, (1) keep the Project in as reasonably safe condition as operations permit, (2) maintain the Project in good repair, working order and condition, ordinary wear and tear excepted, and (3) pay all gas, electric, water, sewer and other charges for the operation, maintenance, use and upkeep of the Project.

(b) The Mortgagor will not permit any mechanics' or other liens to stand against the Project or the Project Site for labor or material furnished it. The Mortgagor may, however, in good faith contest any such mechanics' or other liens and in such event may permit any such liens to remain unsatisfied and undischarged during the period of such contest and any appeal therefrom unless by such action the lien of this Mortgage on the Project or any part thereof, or the Project or any part thereof shall be subject to loss or forfeiture, in either of which events such mechanics' or other liens shall be promptly satisfied.

(c) The Mortgagor may, at the expense thereof, make structural changes, additions, improvements, alterations or replacements to the Project that it may deem desirable, provided that such additions, improvements, alterations or replacements will not adversely affect the utility of the Project or substantially reduce the value thereof. All such changes, additions, improvements, alterations and replacements shall become a part of the Project and shall be covered by this Agreement and the Mortgage.

(d) The Mortgagee will, upon request of the Mortgagor, join in and consent to the grant of such utility and other similar easements over, across or under the Project Site as shall be necessary or convenient for the furnishing of utility and other similar services to the Project or to real property adjacent to or near the Project Site and owned or leased by the Mortgagor or any sublessee; provided that such easements shall not adversely affect the operation of the facilities forming a part of the Project.

10. **Environmental Representations and Warranties.**

Mortgagor hereby represents and warrants to the Mortgagee that:

(a) the Property is not in direct or indirect violation of any local, state, or federal statute, ordinance, code, order, decree, law, rule or regulation pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), the Resource Conservation and Recovery Act, as amended ("RCRA"), the Emergency Planning and Community Right-to-Know Act of 1986, as amended, the Hazardous Substances Transportation Act, as

amended, the Solid Waste Disposal Act, as amended, the Clean Water Act, as amended, the Clean Air Act, as amended, the Toxic Substance Control Act, as amended, the Safe Drinking Water Act, as amended, the Occupational Safety and Health Act, as amended, any state statutes analogous or comparable to the foregoing, any state super-lien and environmental clean-up statutes and all rules and regulations adopted in respect to the foregoing laws and all pertinent state or common law theories such as trespass or nuisance (collectively "Environmental Laws");

(b) the Property is not subject to any private or governmental lien or judicial or administrative notice or action or inquiry, investigation or claim relating to hazardous and/or toxic, dangerous and/or regulated, substances, wastes, materials, raw materials which include hazardous constituents, pollutants or contaminants (including without limitation, petroleum and polychlorinated biphenyls) and any other substances or materials which are included under or regulated by Environmental Laws or which are considered by scientific opinion to be otherwise dangerous in terms of the health, safety and welfare of humans (collectively "Hazardous Substances");

(c) no Hazardous Substances are or have been (including the period prior to Mortgagor's acquisition of the Property), released into or from, discharged into, generated, treated, disposed of or stored on, incorporated in, or released, removed or transported from, the Property other than in compliance with all Environmental Laws;

(d) no Hazardous Substances are present in, on or under any nearby real property which could migrate to or otherwise affect the Mortgaged Property; and

(e) no underground storage tanks exist on or under any of the Property.

11. **Environmental Covenants.**

(a) So long as Mortgagor owns or is in possession of the Property, the Mortgagor:

(1) shall keep the Property, or cause the Property to be kept, free from Hazardous Substances and in compliance with all Environmental Laws;

(2) (i) shall promptly notify Mortgagee if the Mortgagor shall become aware of any Hazardous Substances on or near the Property and/or if the Mortgagor shall become aware that the Property is in direct or indirect violation of any Environmental Laws and/or if the Mortgagor shall become aware of any condition on or near the Property that shall pose a threat to the health, safety or welfare of humans and (ii) shall, promptly after the Mortgagor becomes aware of same and at the Mortgagor's sole expense, remove such Hazardous Substances and/or cure such violations and/or remove such threats, as applicable, as required by law, (or as shall be required by the Mortgagee in the case of removal which is not required by law, but in response to the opinion of a licensed hydrogeologist, licensed environmental engineer or other qualified consultant engaged by the Mortgagee (the "Mortgagee's Environmental Consultant"). Nothing herein shall prevent the Mortgagor from recovering such expenses from any other party that may be liable for such removal or cure.

(b) The obligations and liabilities of the Mortgagor under this paragraph shall survive any termination, satisfaction, or assignment of this Mortgage and the exercise by the Mortgagee of any of its rights or remedies hereunder, including, without limitation, the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure and shall remain in full force and effect until the commencement of an action with respect thereto shall be prohibited by law.

12. **Asbestos.**

(a) The Mortgagor represents and warrants that, to the best of its knowledge, no asbestos or any substance or material containing asbestos ("Asbestos") is located on the Property. The Mortgagor shall not knowingly install in the Property, nor knowingly permit to be installed in the Property, Asbestos, shall exercise

reasonable care to see that no Asbestos is installed in the Property and shall remove any Asbestos promptly upon discovery to the satisfaction of the Mortgagee, at the Mortgagor's sole expense. The Mortgagor shall in all instances comply with, and ensure compliance by all occupants of the Property with, all applicable federal, state and local laws, ordinances, rules and regulations with respect to Asbestos, and shall keep the Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations. If the Mortgagor receives any notice or advice from any governmental agency or any source whatsoever with respect to Asbestos on, affecting or installed on the Property, the Mortgagor shall immediately notify the Mortgagee.

(b) The obligations and liabilities of the Mortgagor under this paragraph shall survive any termination, satisfaction, or assignment of this Mortgage and the exercise by the Mortgagee of any of its rights or remedies hereunder, including but not limited to, the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure and shall remain in full force and effect until the commencement of an action with respect thereto shall be prohibited by law.

13. **Environmental Monitoring.**

The Mortgagor shall give prompt written notices to the Mortgagee of and provide copies to the Mortgagee of: (a) any proceeding or inquiry by any party, including without limitation the U.S. Environmental Protection Agency, the Alabama Department of Environmental Management and any other governmental instrumentality, with respect to the presence of any Hazardous Substance or Asbestos on, under, from or about the Property; (b) the Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property to be subject to any investigation or cleanup pursuant to any Environmental Law. The Mortgagor shall permit the Mortgagee, at its own expense, to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Property in connection with any Environmental Law or Hazardous Substance, and the Mortgagor shall pay all attorneys' fees and disbursements incurred by the Mortgagee in connection therewith. Upon the Mortgagee's request, at any time and from time to time while this Mortgage is in effect, the Mortgagor shall provide, (i) an environmental site assessment, inspection or audit of the Property prepared by a licensed hydrogeologist or licensed environmental engineer approved by the Mortgagee indicating the presence or absence of Hazardous Substances on, in or near the Property, and/or (ii) an inspection or audit of the Property prepared by a duly qualified engineering or consulting firm approved by the Mortgagee, indicating the presence or absence of Asbestos on the Property. If the Mortgagor fails to provide such site assessment, inspection or audit within thirty (30) days after such request, the Mortgagee may order same, and the Mortgagor hereby grants to the Mortgagee and its employees and agents access to the Property and a license to undertake such site assessment, inspection or audit. The Mortgagor shall be responsible for the cost of such assessment, inspection or audit, and if the Mortgagor fails to pay such cost, the Mortgagee may make an Advance to pay the same. If any environmental site assessment report prepared in connection with such inspection or audit recommends that an operations and maintenance plan be implemented for Asbestos or any Hazardous Substance, the Mortgagor shall cause such operations and maintenance plan to be prepared and implemented at the Mortgagor's expense upon request of the Mortgagee. If any investigation, site monitoring, containment, cleanup, removal, restoration or other work of any kind (the "Remedial Work") is reasonably necessary or desirable under an applicable Environmental Law, the Mortgagor shall commence and thereafter diligently prosecute to completion all such Remedial Work within 30 days after written demand by the Mortgagee for performance thereof. All Remedial Work shall be performed by contractors approved in advance by the Mortgagee, and under the supervision of a consulting engineer approved by the Mortgagee. All costs and expenses of such Remedial Work shall be paid by the Mortgagor including, without limitation, the Mortgagee's reasonable attorneys' fees and disbursements incurred in connection with monitoring or review of such Remedial Work. If the Mortgagor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, the Mortgagee may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall constitute Advances.

14. **Handicapped Access.**

(a) Mortgagor agrees that the Mortgaged Property shall at all times strictly comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988 (if applicable), all state and local laws and ordinances related to handicapped access and all rules,

regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively "Access Laws").

(b) Notwithstanding any provisions set forth herein or in any other document regarding Mortgagee's approval of alterations of the Mortgaged Property, Mortgagor shall not alter the Mortgaged Property in any manner which would increase Mortgagor's responsibilities for compliance with the applicable Access Laws without the prior written approval of Mortgagee. The foregoing shall apply to tenant improvements constructed by Mortgagor or by any of its tenants. Mortgagee may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person acceptable to Mortgagee.

(c) Mortgagor agrees to give prompt notice to Mortgagee of the receipt by Mortgagor of any complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

15. **Indemnity.**

(a) In addition to any other indemnifications provided herein or in any of the other Financing Documents (as defined in the Financing and Lease Agreement) the Mortgagor shall protect, defend, indemnify and hold harmless the Mortgagee (and each officer, director, employee or agent thereof) from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements), imposed upon or incurred by or asserted against the Mortgagee by reason of :

(1) ownership of this Mortgage, the Easement, the Property or any interest therein or receipt of any Rents;

(2) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways;

(3) any use, nonuse or condition in, on or about the Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways;

(4) any failure on the part of the Mortgagor to perform or comply with any of the terms of any of the Financing Documents;

(5) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof;

(6) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substance or Asbestos on, from or affecting the Property;

(7) any personal injury (including without limitation wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance or Asbestos;

(8) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance or Asbestos;

(9) any violation of the Environmental Laws that are based upon or in any way related to such Hazardous Substance or of any state or federal law, rule or regulation governing Asbestos, including without limitation the costs and expenses of any Remedial Work, attorney and consultant fees and disbursements, investigation and laboratory fees, court costs, and litigation expenses;

(10) any failure of the Property to comply with any Access Laws;

(11) any representation or warranty made in the Financing and Lease Agreement, this Mortgage or any of the other Financing Documents being false or misleading in any material respect as of the date such representation or warranty was made;

(12) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with any Lease or other transaction involving the Property or any part thereof under any legal requirement or any liability asserted against the Mortgagee with respect thereto;

(13) the claims of any lessee of the Property or any part thereof or any person acting through or under any lessee or otherwise arising under or as a consequence of any Lease; and

(14) the Easement or the use of any portion of the Easement Area (as defined in the Easement) or the exercise of any right pursuant thereto.

(b) Any amounts payable to the Mortgagee by reason of the application of this paragraph shall be secured by this Mortgage and shall become immediately due and payable and shall bear interest at a variable interest rate equal to 2% in excess of the Prime Rate in effect from time to time from the date loss or damage is sustained by the Mortgagee until paid.

(c) The Mortgagor hereby agrees that the Mortgagee shall not incur any liability to the Mortgagor, and shall be indemnified against all liabilities, in exercising or refraining from asserting, maintaining or exercising any right, privilege or power of the Mortgagee under any of the Financing Documents if the Mortgagee is acting in good faith and without willful misconduct or in reliance upon a written request by the Mortgagor.

(d) If the Mortgagee shall be obligated to pay any claim, liability or loss, and if in accordance with all applicable provisions of this paragraph the Mortgagor shall be obligated to indemnify and hold the Mortgagee harmless against such claim, liability or loss, then, in such case, the Mortgagor shall have a primary obligation to pay such claim, liability or loss on behalf of the Mortgagee and may not defer discharge of its indemnity obligation hereunder until the Mortgagee shall have first paid such claim, liability or loss and thereby incurred actual loss.

(e) The obligations and liabilities of the Mortgagor under this paragraph shall survive the termination, satisfaction, or assignment of this Mortgage and the exercise by the Mortgagee of any of its rights or remedies hereunder, including without limitation the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure and shall remain in full force and effect until the commencement of an action with respect thereto shall be prohibited by law.

16. **Covenants Related to Rents and Leases.**

The Mortgagor covenants and agrees that the Mortgagor shall:

(a) observe, perform and discharge all obligations, covenants and warranties provided for under the terms of the Leases to be kept, observed and performed by the Mortgagor, and shall give prompt notice to the Mortgagee in the event the Mortgagor fails to observe, perform and discharge the same;

(b) enforce or secure in the name of the Mortgagee the performance of each and every obligation, term, covenant, condition and agreement to be performed by any lessee under the terms of the Leases;

(c) appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases or the obligations, duties or liabilities of the Mortgagor and any lessee thereunder, and, upon request by the Mortgagee to do so in the name and on behalf of the Mortgagee but at the expense of the Mortgagor, and to pay all costs and expenses of the Mortgagee, including reasonable attorneys' fees, in any action or proceeding in which the Mortgagee may appear;

(d) not receive or collect any Rents from any present or future lessee of the Project Site or any of the Project, or any part thereof, for a period of more than one month in advance, or pledge, transfer, mortgage or otherwise encumber or assign future payments of the Rents;

(e) not waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any lessee of the Project Site or any of the Project of and from any obligations, covenants, conditions and agreements by said lessee to be kept, observed and performed, including the obligation to pay rent in the manner and at the place and time specified in any Lease;

(f) not cancel, terminate or consent to any surrender of any Lease, or modify or in any way alter the terms thereof without, in each such instance, the prior written consent of the Mortgagee;

(g) not renew or otherwise extend the term of the existing Leases; provided, however, that nothing herein contained shall prevent the Mortgagor, upon expiration of the now-current term (or other expiration or termination) of the existing Leases, from leasing the property covered thereby to the lessee thereunder by a lease or leases expressly subject and fully subordinate to the lien, assignment and security interest of this Mortgage;

(h) promptly upon the execution by the Mortgagor of any future Lease, (i) furnish the Mortgagee with the name and address of the lessee thereunder, the term of such Lease and a description of the premises covered thereby and, upon request of the Mortgagee, a copy of such Lease, and (ii) execute all such further assignments of such Lease and the Rents therefrom as the Mortgagee may require;

(i) not, without the written approval of the Mortgagee, execute any management or leasing agreements affecting any of the Project Site; and

(j) if required by the Mortgagee, cause each Lease to provide, in a manner approved by the Mortgagee, that the Lease is junior and subordinate to the Lien of this Mortgage and that the Lessee will recognize as mortgagee, the Mortgagee or any person succeeding to the interest of the Mortgagor, upon the foreclosure of this Mortgage or any exercise by the Mortgagee of its rights, powers and remedies under this Mortgage with respect to the Leases.

17. **Covenant Against Sale, Lease or Transfer.**

Notwithstanding any other provision of this Mortgage or the Financing and Lease Agreement, if the Project Site or the Project, or any part thereof, or any interest therein, is sold, leased, conveyed or transferred, without the Mortgagee's prior written consent, or if the Project Site or the Project, or any part thereof, or any interest therein, becomes subject to any additional lien (which lien is not removed or otherwise dealt with in the manner and within the time provided in Section 19(f)), mortgage or other encumbrance, either voluntarily or involuntarily, without the Mortgagee's prior written consent, the Mortgagee may, at its sole option: (a) declare the Obligations immediately due and payable in full; or (b) require the payment, after the date of such sale, lease, conveyance or transfer, of a higher rate of interest on the unpaid principal portion of the Obligations as a condition to not exercising such option to accelerate the Obligations, whether such rights be exercised by the Mortgagee to obtain a higher rate of interest on the Obligations or to protect the security of this Mortgage. Any sale, transfer, conveyance, other disposition or act of creating, permitting or suffering to exist any lien, security interest or other encumbrance in violation of this paragraph shall be null, void and of no effect.

18. **Defeasance.**

This Mortgage is made upon the condition that if the Mortgagor pays, observes and performs the Obligations, as defined in this Mortgage (which Obligations include without limitation, all of the liabilities and obligations of the Issuer under the Financing and Lease Agreement and of the Lessor under the Assignment, Advances (as defined below) and interest thereon, and all other indebtedness, obligations and liabilities of the Mortgagor to the Lessor of every kind and description whatsoever, due or to become due, and now existing or

hereafter incurred, contracted or arising), and fulfills all of its other obligations under this Mortgage, this conveyance shall be null and void.

19. **Events of Default.**

The Mortgagor shall be deemed in default hereunder upon the occurrence of any of the following events ("Events of Default"):

(a) the Mortgagor shall fail to pay to the Mortgagee when and as due any Rent, or any other sum due under the Financing and Lease Agreement, the Assignment, the Guaranty or any other portion of the Obligations secured hereby; or

(b) if in the judgment of the Mortgagee any amounts advanced by the Mortgagee under the Financing and Lease Agreement or any part thereof are being, or shall at any time have been, diverted to a purpose other than the payment or discharge of Project Costs (as defined in the Financing and Lease Agreement) or the payment of closing costs with respect to the Obligations; or

(c) if the Mortgagor fails to comply with any covenant or agreement contained in, or other provision of, this Mortgage (including without limitation paragraph 4(e)), or of the Financing and Lease Agreement or the Assignment or the Guaranty or the Development Agreement or the Easement or any of the other Financing Documents; or

(d) if any statement, representation or warranty contained in this Mortgage, or in any of the other Financing Documents, or in any report, certificate or other instrument delivered to the Mortgagee in connection with any of the same, shall be untrue in any material respect; or

(e) if the Mortgagor conveys or further encumbers (as by a mortgage or other consensual encumbrance) all or part of the Property; or

(f) if any lien, statement of lien or suit to enforce a lien is filed against any of the Property and the Mortgagor fails to have such lien satisfied or suit dismissed or to secure the payment of the amount claimed by such lien, statement of lien or suit by a bond, letter of credit or other security satisfactory to the Mortgagee within thirty days of the day such lien or statement of lien is filed in the office of the Judge of Probate of the County in which the Project Site is located or such suit is filed in court; or

(g) if the Mortgagor at any time prior to completion of the Project (as defined in the Financing and Lease Agreement) abandons the Project, or ceases to work thereon for a period of more than ten consecutive calendar days, or fails diligently to prosecute the work on the Project; or

(h) if the Mortgagor or any co-maker, endorser, surety, or guarantor of any of the Obligations (hereinafter collectively called the "Obligors" and singularly an "Obligor") fails to pay such Obligor's debts generally, as they become due, or if a receiver, trustee, liquidator or other custodian is appointed for any Obligor or for any of the property of any Obligor, or if a petition in bankruptcy (whether for liquidation, reorganization, arrangement, wage-earner's plan or otherwise) is filed by or against any Obligor, or if any Obligor applies for the benefits of, or takes advantage of, any law for the relief of debtors, or enters into an arrangement or composition with, or makes an assignment for the benefit of, creditors; or

(i) if any Obligor that is a natural person dies or becomes insolvent, or if the Mortgagor dissolves or becomes insolvent; or

(j) if any other default or event of default occurs under the Financing and Lease Agreement or under any other Financing Documents which default or event of default is not cured within any applicable cure period; or

(k) the interest of the Mortgagee in any of the Property becomes endangered by reason of the enforcement of any prior lien or encumbrance thereon unless the Mortgagor cures such endangerment and/or enforcement in a manner and within a time satisfactory to the Mortgagee; or

(l) any law is passed imposing, or authorizing the imposition of, any specific tax upon this Mortgage or the Obligations or permitting or authorizing the deduction of any such tax from the principal of, or interest on, the Obligations, or by virtue of which any tax, lien or assessment upon the Property shall be chargeable against the owner of this Mortgage unless the Mortgagor is legally permitted to and does pay such tax, assessment or deduction or is legally permitted to and does immediately make the Mortgagee whole for such tax, assessment or deduction and cause any such lien to be discharged immediately after it attaches; or

(m) any of the covenants, agreements, conditions or undertakings contained in this Mortgage is declared invalid or inoperative by any court of competent jurisdiction; or

(n) any event of default occurs under the Development Agreement; or

(o) the Development Agreement or the Easement shall be terminated, prior to the completion of Abbot Square Extension (as defined in the Development Agreement) and conveyance of fee simple title to the Additional Conveyance Property (as defined in the Development Agreement) to the Mortgagor pursuant thereto, by operation of law or by contract (whether pursuant to the terms of the Development Agreement or the Easement) or by operation of the terms of either thereof or by any action or inaction of any Person, or otherwise; or

(p) the Abbot Square Extension (as defined in the Development Agreement) shall not be completed and placed in service before October 1, 2006.

20. **Rights and Remedies of Mortgagee upon Default.**

(a) **Acceleration of the Obligations.** Upon the occurrence of an Event of Default or at any time thereafter, the Mortgagee may at its option and without demand or notice to the Mortgagor, declare all or any part of the Obligations immediately due and payable, whereupon all such Obligations shall forthwith become due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Mortgagor, and the Mortgagee may immediately enforce payment of all such amounts and may exercise any or all of its rights and remedies under this Mortgage, the Financing and Lease Agreement, the Assignment, the Guaranty, any of the other Financing Documents and applicable law. The Mortgagor also waives any and all rights the Mortgagor may have to a hearing before any judicial authority prior to the exercise by the Mortgagee of any of its rights under this Mortgage, the Financing and Lease Agreement, any of the other Financing Documents and applicable law.

(b) **Access to Property; Operation of Property by Mortgagee.** Upon the occurrence of an Event of Default or at any time thereafter, in addition to all other rights herein conferred on the Mortgagee, the Mortgagee (or any person, firm or corporation designated by the Mortgagee) may, but will not be obligated to, enter upon, and without taking possession thereof, inspect or cause to be inspected, the Property, including testing for Hazardous Substances, and/or to take possession of any or all of the Property, exclude the Mortgagor therefrom, and hold, use, administer, manage and operate the same to the extent that the Mortgagor could do so, without any liability to the Mortgagor resulting therefrom; and the Mortgagee may collect, receive and receipt for all proceeds accruing from such operation and management, make repairs and purchase needed additional property, and exercise every power, right and privilege of the Mortgagor with respect to the Property.

(c) **Judicial Proceedings; Right to Receiver.** Upon the occurrence of an Event of Default or at any time thereafter, the Mortgagee, in lieu of, or in addition to, exercising the power of sale hereinafter given, may proceed by suit to foreclose its lien on, security interest in, and assignment of, the Property, to sue the Mortgagor for damages on account of or arising out of said default or breach, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. The Mortgagee shall be

entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the appointment by any competent court or tribunal of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property and with such other powers as may be deemed necessary.

(d) **Foreclosure Sale.** Upon the occurrence of an Event of Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and the Mortgagee shall be authorized, at its option, whether or not possession of the Property is taken, after giving twenty-one days notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in the county wherein the Property or any part thereof is located, to sell the Property (or such part or parts thereof as the Mortgagee may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. The Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshaling or like proceeding. In case the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Obligations secured hereby shall have been paid in full. The Mortgagor hereby waives any equitable rights otherwise available to it with respect to marshaling of assets hereunder, so as to require separate sales of the fee estate and the leasehold estate encumbered hereby or to require the Mortgagor to exhaust its remedies against any person, firm or entity; and the Mortgagor hereby expressly consents to and authorizes, at the option of the Mortgagee, the sale, either separately or together, of the fee estate and leasehold estate, or the merger, prior to sale, of the leasehold estate into the fee estate in order that the fee estate may be sold free and clear of the leasehold estate.

(e) **Personal Property and Fixtures.** Upon the occurrence of an Event of Default or at any time thereafter, the Mortgagee shall have and may exercise with respect to the Personal Property and fixtures included in the Property (the "Collateral") all rights, remedies and powers of a secured party under the Alabama Uniform Commercial Code with reference to the Collateral or any other items in which a security interest has been granted herein, including, without limitation, the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the Collateral and any part or parts thereof in any manner to the fullest extent authorized or permitted under the Alabama Uniform Commercial Code after default hereunder, without regard to preservation of the Collateral or its value and without the necessity of a court order. The Mortgagee shall have, among other rights, the right to take possession of the Collateral and to enter upon any premises where the same may be situated for the purpose of repossessing the same without being guilty of trespass and without liability for damages occasioned thereby and to take any action deemed appropriate or desirable by the Mortgagee; at its option and its sole discretion, to repair, restore or otherwise prepare the Collateral for sale, lease or other use or disposition. At the Mortgagee's request, the Mortgagor shall assemble the Collateral and make the Collateral available to the Mortgagee at any place designated by the Mortgagee. To the extent permitted by law, the Mortgagor and any rights or remedies of the Mortgagee with respect to, and the formalities prescribed by law relative to, the sale or disposition of the Collateral or to the exercise of any other right or remedy of the Mortgagee existing after default; provided, however, that to the extent that notice of sale or other disposition of Collateral is required by law, the Mortgagor agrees that if such notice is given to the Mortgagor in accordance with the provisions of paragraph 35 below, at least five days before the time of the sale or other disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice.

The Mortgagor agrees that the Mortgagee may proceed to sell or dispose of both the real and personal property comprising the Property in accordance with the rights and remedies granted under this Mortgage with respect to the real property covered hereby. The Mortgagor hereby grants the Mortgagee the right, at its option after default hereunder, to transfer at any time to itself or its nominee the Collateral or any part thereof and to receive the monies, income, proceeds and benefits attributable to the same and to hold the same as Collateral or to apply it on the Obligations in such order and amounts and manner as the Mortgagee may elect. The Mortgagor covenants and

agrees that all recitals in any instrument transferring, assigning, leasing or making other disposition of the Collateral or any part thereof shall be full proof of the matters stated therein and no other proof shall be required to establish the legal propriety of the sale or other action taken by the Mortgagee and that all prerequisites of sale shall be presumed conclusively to have been performed or to have occurred.

(f) **Rents and Leases.** Upon the occurrence of an Event of Default or at any time thereafter:

(i) The Mortgagee, at its option, shall have the right, power and authority to exercise and enforce any or all of the following rights and remedies with respect to Rents and Leases:

(A) to terminate automatically, without the necessity of taking any action, the license granted to the Mortgagor in Granting Clause D(iii) hereof to collect the Rents, and, without taking possession, in the Mortgagee's own name to demand, collect, receive, sue for, attach and levy the Rents, to give proper receipts, releases and acquittances therefor, and after deducting all necessary and reasonable costs and expenses of collection, including reasonable attorney's fees, to apply the net proceeds thereof to the Obligations in such order and amounts as the Mortgagee may choose (or hold the same in a reserve as security for the Obligations);

(B) without regard to the adequacy of the security, with or without any action or proceeding, through any person or by agent, or by a receiver to be appointed by court, to enter upon, take possession of, manage and operate the Property or any part thereof for the account of the Mortgagor, make, modify, enforce, cancel or accept surrender of any Lease, remove and evict any lessee or sublessee, increase or reduce rents, decorate, clean and make repairs, and otherwise do any act or incur any cost or expenses the Mortgagee shall deem proper to protect the security hereof, as fully and to the same extent as the Mortgagor could do if in possession, and in such event to apply any funds so collected to the operation and management of the Property (including payment of reasonable management, brokerage and attorney's fees) and payment of the Obligations in such order and amounts as the Mortgagee may choose (or hold the same in reserve as security for the Obligations); and

(C) to take whatever legal proceedings may appear necessary or desirable to enforce any obligation or covenant or agreement of the Mortgagor under this Mortgage.

(ii) The collection of the Rents and application thereof (or holding thereof in reserve) as aforesaid or the entry upon and taking possession of the Property or both shall not cure or waive any default or waive, modify or affect any notice of default under this Mortgage, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by the Mortgagee, once exercised, shall continue for so long as the Mortgagee shall elect, notwithstanding that the collection and application aforesaid of the Rents may have cured the original default. If the Mortgagee shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent default.

(g) **Application of Proceeds.** All payments received by the Mortgagee as proceeds of the Property, or any part thereof, as well as any and all amounts realized by the Mortgagee in connection with the enforcement of any right or remedy under or with respect to this Mortgage, shall be applied by the Mortgagee as follows: (i) to the payment of all necessary expenses incident to the execution of any foreclosure sale or sales or other remedies under this Mortgage, including reasonable attorneys' fees as provided herein and in the Financing and Lease Agreement and the other Financing Documents, (ii) to the payment in full of any of the Obligations that are then due and payable (including without limitation principal, accrued interest and all other sums secured hereby) and to the payment of attorneys' fees as provided herein, in the Financing and Lease Agreement or in any other Financing Document, (iii) to a cash collateral reserve fund to be held by the Mortgagee in an amount equal to, and as security for, any of the Obligations that are not then due and payable, and (iv) the remainder, if any, shall be paid to the Mortgagor or such other person or persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

(h) **Multiple Sales.** Upon the occurrence of an Event of Default or at any time thereafter, the Mortgagee shall have the option to proceed with foreclosure, either through the courts or by proceeding with foreclosure as provided for in this Mortgage, but without declaring all of the Obligations due. Any such sale may be made subject to the unmatured part of the Obligations secured by this Mortgage, and such sale, if so made, shall not in any manner affect the unmatured part of the Obligations secured by this Mortgage, but as to such unmatured part of the Obligations this Mortgage shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made under the provisions of this paragraph without exhausting the right of sale for any remaining part of the Obligations whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Property for any matured part of the Obligations without exhausting any power of foreclosure and the power to sell the Property for any other part of the Obligations, whether matured at the time or subsequently maturing.

(i) **Waiver of Appraisal Laws.** The Mortgagor waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisal before sale of any portion of the Property (commonly known as appraisal laws), or (ii) any extension of time for the enforcement of the collection of the Obligations or any creation or extension of a period of redemption from any sale made in collecting the Obligations (commonly known as stay laws and redemption laws).

(j) **Prerequisites of Sales.** In case of any sale of the Property as authorized by this paragraph, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the Obligations or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

21. **Collection Costs.**

The Mortgagor agrees to pay all costs, including reasonable attorneys' fees, incurred by the Mortgagee in collecting or securing, or attempting to collect or secure, the Obligations, or any part thereof, or in defending or attempting to defend the priority of this Mortgage against any Lien on the Property, unless this Mortgage is herein expressly made subject to any such Lien; and/or all costs incurred in the foreclosure of this Mortgage, either under the power of sale contained herein, or by virtue of the decree of any court of competent jurisdiction. The full amount of such costs incurred by the Mortgagee shall be a part of the Obligations and shall be secured by this Mortgage.

22. **No Obligations with Respect to Property.**

The Mortgagee shall not by virtue of this Mortgage or otherwise assume any duties, responsibilities, liabilities or obligations with respect to Leases, the Project, the Personal Property, the Project Site or any of the other Property (unless expressly assumed by the Mortgagee under a separate agreement in writing), and this Mortgage shall not be deemed to confer on the Mortgagee any duties or obligations that would make the Mortgagee directly or derivatively liable for any person's negligent, reckless or willful conduct. The Mortgagor agrees to defend, indemnify and save harmless the Mortgagee from and against any and all claims, causes of action and judgments relating to the Mortgagor's performance of its duties, responsibilities and obligations under Leases and with respect to the Project Site, the Project, the Personal Property, or any of the other Property.

23. **Construction of Mortgage.**

This Mortgage is and may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of them, in order fully to effectuate the lien hereof and the assignment and security interest created hereby and the purposes and agreements herein set forth.

24. **Successors and Assigns.**

All covenants and agreements herein made by the undersigned shall bind the undersigned and the heirs, personal representatives, successors and assigns of the undersigned; and every option, right and privilege herein reserved or secured to the Mortgagee shall inure to the benefit of the Mortgagee's successors and assigns.

25. **Waiver and Election.**

The exercise by the Mortgagee of any option given under the terms of this Mortgage shall not be considered as a waiver of the right to exercise any other option given herein, and the filing of a suit to foreclose the lien, security interest and assignment granted by this Mortgage, either on any matured portion of the Obligations or for the whole of the Obligations, shall not be considered an election so as to preclude foreclosure under power of sale after a dismissal of the suit; nor shall the publication of notices for foreclosure preclude the prosecution of a later suit thereon. No failure or delay on the part of the Mortgagee in exercising any right, power or remedy under this Mortgage shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or thereunder. The remedies provided in this Mortgage and in the other Financing Documents are cumulative and not exclusive of any remedies provided by law. No amendment, modification, termination or waiver of any provisions of this Mortgage or any of the Financing Documents, nor consent to any departure by the Mortgagor therefrom, shall be effective unless the same shall be in writing and signed by an executive officer of the Mortgagee, and then such waiver or consent shall be effective only in this specific instance and for the specific purpose for which given. No notice to, or demand on, the Mortgagor in any case shall entitle the Mortgagor to any other or further notice or demand in similar or other circumstances.

26. **Landlord-Tenant Relationship.**

Any sale of the Property under this Mortgage shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and the Mortgagor.

27. **Enforceability.**

If any provision of this Mortgage is now or at any time hereafter becomes invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and the remaining provisions hereof shall be construed in favor of the Mortgagee to effectuate the provisions hereof.

28. **Application of Payments.**

If the lien, assignment or security interest created by this Mortgage is invalid or unenforceable as to any part of the Obligations or is invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the Obligations shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Obligations, and all payments made on the Obligations, whether voluntary or under foreclosure or other enforcement action or procedures, shall be considered to have been first paid on, and applied to, the full payment of that portion of the Obligations which is not secured or not fully secured by said lien, assignment or security interest created hereby.

29. **Other Mortgages Encumbering the Project Site.**

The Mortgagor hereby authorizes and directs the holder of any other mortgage encumbering the Project Site or the Project to disclose to the Mortgagee from time to time and at any time the following information: (a) the amount of debt secured by such mortgage; (b) the amount of such debt that is unpaid; (c) whether such debt is or has been in arrears; (d) whether there is or has been any default with respect to such mortgage or the debt secured thereby; and (e) any other information regarding such mortgage or the debt secured thereby that the Mortgagee may request from time to time. The Mortgagor expressly agrees that if default should be made in the payment of principal, interest or any other sum secured by any other mortgage encumbering the Project Site or the Project, the Mortgagee may (but shall not be required to) pay all or any part of such amount in default, without notice to the

Mortgagor, any such payment by the Mortgagee constituting an Advance, as defined below. The Mortgagee understands and agrees that this paragraph does not expressly nor by implication permit the Mortgagee to grant, suffer, or permit to exist any other mortgages or other types of liens upon any of the Property that are not Permitted Exceptions or otherwise consented to in writing by the Mortgagee.

30. **Capitalized Terms; Rules of Construction.**

(a) Capitalized terms used herein without definition shall have the respective meanings assigned thereto in the Recitals hereto or in the Financing and Lease Agreement or in the Development Agreement.

(b) Whenever used, the singular number shall include the plural and the plural the singular, and pronouns of one gender shall include all genders; and the words "Mortgagor" and "Mortgagee" shall include their respective successors and assigns. Plural or singular words used herein to designate the undersigned shall be construed to refer to the maker or makers of this instrument, whether one or more natural persons, corporations, associations, partnerships or other entities.

31. **Advances by the Mortgagee.**

If the Mortgagor shall fail to comply with the provisions hereof with respect to the procurement of insurance, the payment of Liens, the keeping of the Property in repair, the performance of the Mortgagor's obligations under any Lease, the payment of any prior mortgages, environmental testing or Remedial Work, or the performance of any other agreement or covenant herein contained, the Mortgagee may (but shall not be required to) make advances (individually, an "Advance" and collectively, the "Advances") to perform the same, and where necessary enter the Property for the purpose of performing any such agreement or covenant. The fees and expenses of Mortgagee's Environmental Consultant shall also constitute an Advance. The Mortgagor agrees to repay all Advances upon demand, with interest from the date such Advances are made, at a variable rate equal to the Prime Rate in effect from time to time, or the highest rate permitted by law, whichever shall be less, and all Advances, with interest thereon, shall be a part of the Obligations and shall be secured hereby. The making of any Advances shall not be construed as a waiver by the Mortgagee of any Event of Default resulting from the Mortgagor's failure to pay the amounts paid with such Advances.

32. **Release or Extension by the Mortgagee.**

The Mortgagee, without notice to the Mortgagor and without in any way affecting the rights of the Mortgagee hereunder as to any part of the Property not expressly released, may release any part of the Property or any person liable for any of the Obligations and may agree with any party with an interest in the Property to extend the time for payment of all or any part of the Obligations or to waive the prompt and full performance of any term, condition or covenant of the Financing and Lease Agreement, this Mortgage, the Guaranty or any other Financing Document.

33. **Partial Payments.**

Acceptance by the Mortgagee of any payment of less than the full amount due on the Obligations shall be deemed acceptance on account only, and the failure of the Mortgagor to pay the entire amount then due shall be and continue to constitute an Event of Default, and at any time thereafter and until the entire amount due on the Obligations has been paid, the Mortgagee shall be entitled to exercise all rights conferred on it by the terms of this Mortgage in case of the occurrence of an Event of Default.

34. **Addresses for Notices.**

All notices, requests, demands and other communications provided for hereunder shall be in writing or by telex, telegram or cable and mailed or sent or delivered to the applicable party at its address indicated on the first page of this Mortgage or at such other address as shall be designated by such party in a written notice to the other parties hereto.

35. **Titles.**

All section, paragraph, subparagraph or other titles contained in this Mortgage are for reference purposes only, and this Mortgage shall be construed without reference to said titles.

36. **Inspection of Project by Mortgagee.**

The Mortgagee shall permit the Mortgagor and any of its duly authorized agents at all reasonable times to enter upon the Project Site and examine and inspect the Project.



20060105000007330 22/28 \$3804.50
Shelby Cnty Judge of Probate, AL
01/05/2006 08:07:04AM FILED/CERT

IN WITNESS WHEREOF, the undersigned Hilltop Montessori School, Inc. has caused this Mortgage to be executed in its name, under seal and the same attested, by officers thereof duly authorized thereunto, on the date first written above.

HILLTOP MONTESSORI SCHOOL, INC.

By Eric J. Fox

Eric J. Fox
print name

Title: President



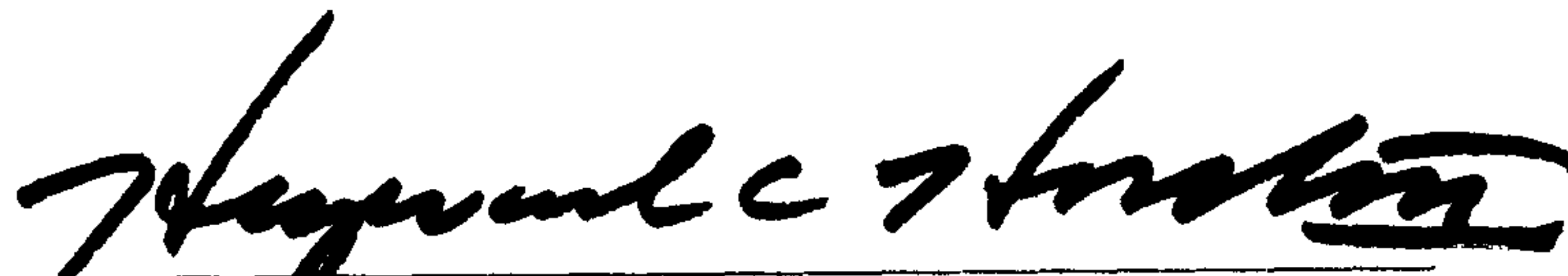
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Shelby Cnty Judge of Probate, AL
01/05/2006 08:07:04AM FILED/CERT

STATE OF ALABAMA

SHELBY COUNTY

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Eric J. Fox, whose name as President of Hilltop Montessori School, Inc., a nonprofit corporation, is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said Agreement, he, as such officer and with full authority, executed the same for and as the act of said nonprofit corporation.

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


Notary Public

NOTARIAL SEAL

My commission expires: June 19, 2008



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01/05/2006 08:07:04AM FILED/CERT

EXHIBIT A
TO
MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS AND LEASES


[Legal Description of the Project Site]



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Hilltop Montessori School – Net Remaining Property Legal Description

State of Alabama
Shelby County


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A parcel of land situated in the West $\frac{1}{2}$ 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 289.85 feet to the POINT OF BEGINNING; thence turn an angle of $97^{\circ}34'28''$ to the right and run in a Southwesterly direction a distance of 136.73 feet to the Northeast corner of the Clear Springs Baptist Church Parcel as recorded in the Shelby County Probate Office instrument number 2001-45087; thence continue along the last described course, and along the Eastern boundary line of said Clear Springs Baptist Church Parcel a distance of 349.96 feet to the Southeast corner of said parcel; thence leaving said Clear Springs Baptist Church Parcel boundary line continue along the last described course a distance of 50.17 feet; thence turn an angle of $69^{\circ}25'28''$ to the left and run in a Southeasterly direction a distance of 160.07 feet; thence turn an angle of $96^{\circ}02'48''$ to the left and run in a Northeasterly direction a distance of 61.14 feet; thence turn an angle of $5^{\circ}34'37''$ to the right and run in a Northeasterly direction a distance of 56.79 feet; thence turn an angle of $24^{\circ}17'24''$ to the right and run in a Northeasterly direction a distance of 27.65 feet; thence turn an angle of $7^{\circ}28'10''$ to the right and run in a Northeasterly direction a distance of 59.57 feet; thence turn an angle of $33^{\circ}30'59''$ to the left and run in a Northeasterly direction a distance of 88.91 feet; thence turn an angle of $12^{\circ}16'22''$ to the right and run in a Northeasterly direction a distance of 138.18 feet; thence turn an angle of $66^{\circ}36'04''$ to the right and run in a Southeasterly direction a distance of 72.27 feet; thence turn an angle of $104^{\circ}47'49''$ to the left and run in a Northerly direction a distance of 283.31 feet; thence turn an angle of $90^{\circ}00'00''$ to the left and run in a Westerly direction a distance of 386.29 feet to the POINT OF BEGINNING.

Said parcel containing 4.27 acres, more or less.

EXHIBIT B
TO
MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS AND LEASES

[Existing Leases]


20060105000007330 27/28 \$3804.50
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That certain Financing and Lease Agreement by and between AmSouth Leasing Corporation and Shelby County Economic and Industrial Development Authority dated as of September 1, 2005.

EXHIBIT C
TO
MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS AND LEASES

[Permitted Exceptions]

As set forth on Title Policy issued by Cahaba Title, Inc., agent for First American Title Insurance Company, Incorporated, by Agent's File No. 152174.



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01/05/2006 08:07:04AM FILED/CERT