

20060105000007350 1/10 \$38.50  
Shelby Cnty Judge of Probate, AL  
01/05/2006 08:07:06AM FILED/CERT

\$500.00

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**TEMPORARY ACCESS EASEMENT**

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**Dated  
January 4, 2006**

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**From**

**HILLTOP MONTESSORI SCHOOL, INC.**

**to**

**AMSOUTH LEASING CORPORATION**

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This instrument was prepared by Heyward C. Hosch of Walston, Wells & Birchall, LLP, One Federal Place, 1819 5<sup>th</sup> Avenue North, Suite 1100, Birmingham, Alabama 35203

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STATE OF ALABAMA )

SHELBY COUNTY )

**TEMPORARY ACCESS EASEMENT**

This **TEMPORARY ACCESS EASEMENT** (this "Agreement") is executed as of this 4<sup>th</sup> day of January, 2006, by and between **HILLTOP MONTESSORI SCHOOL, INC.** (the "Grantor") and **AMSOUTH LEASING CORPORATION** (the "Grantee").

**Recitals**

Grantor and EBSCO Development Company, Inc., (the "Developer") have heretofore entered into a Repurchase Option, dated the date hereof (the "Repurchase Option") which has been recorded as Instrument # 20060105000007320 in the Office of the Judge of Probate of Shelby County, Alabama.

Grantor and Developer have heretofore entered into a Development Agreement, dated the date hereof (the "Development Agreement") which has been recorded as Instrument # 20060105000007310 in the Office of the Judge of Probate of Shelby County, Alabama.

Grantor has heretofore executed and delivered to Grantee a Mortgage, Assignment of Leases and Security Agreement, dated the date hereof (the "Mortgage"), which has been recorded as Instrument # 20060105000007330 in the Office of the Judge of Probate of Shelby County, Alabama.

Grantor desires to grant to Grantee a temporary access easement over and upon the Affected Property (as defined in the Development Agreement), subject to the terms and conditions set forth in this Agreement.

**Agreement**

NOW, THEREFORE, in consideration of the Recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor and the Grantee hereby declare, agree, grant and covenant as follows:

**1. Grant of Easement.**

The Grantor does, by these presents and for the periods of time and subject to the reservations and conditions hereinafter expressed, grant, bargain, sell and convey unto the Grantee and its permittees, invitees, successors and assigns, the right and privilege to use, and an easement of free and unrestricted access over, across, under and through, the real property described on Exhibit A attached hereto and made a part hereof (the "Easement Area"), for pedestrian and vehicular ingress to and egress from the property described on Exhibit B attached hereto and made a part hereof. The Grantor further grants and conveys unto the Grantee and its permittees, invitees, successors and assigns all rights and privileges incidental, necessary or convenient for the full enjoyment or use of the rights and privileges herein granted.

**2. Reservations and Conditions Regarding Easement.**

The rights, privileges and easements herein granted and conveyed are subject to and may be exercised by Grantee only upon the terms and provisions of the Development Agreement, including, without limitation, the provisions of Paragraph 4(e) of the Development Agreement.

**3. Entire Agreement; Binding Effect.**

This instrument contains all the agreements and stipulations between the Grantor and the Grantee with respect to the subject matter hereof, and no representations or statements, verbal or written, have been made modifying, adding to,



or changing the terms of or consideration for this grant. The terms and provisions hereof shall inure to the benefit of and be binding upon the Grantor and its successors and assigns and the Grantee and its successors and assigns.

4. **Duration of Easement.**

This Agreement shall automatically terminate, be deemed null and void and of no further force or effect immediately upon the first to occur of either (a) the recordation of the Final Subdivision Plat, as defined in the Development Agreement, and the delivery and recordation of the deed conveyances and releases, if any, required of Developer and Grantor pursuant to Paragraph 3(d) of the Development Agreement or (b) the exercise by Developer of its repurchase option under the Repurchase Option. Grantee covenants and agrees with Grantor and Developer that Grantee will promptly on demand execute and deliver to Grantor and Developer any and all documents, instruments and agreements reasonably required by Grantor or Developer to evidence the termination of this Agreement and that Grantee has no further right, title or interest in or to any portion of the Easement Area or the Affected Property, as defined in the Development Agreement.

5. **Counterpart Signatures.**

This Agreement may be executed in counterpart originals each which shall constitute but one and the same instrument.

6. **Notices.**

Any notices given hereunder shall be sent by certified or overnight mail, postage prepaid, return receipt requested, addressed as follows:

Hilltop Montessori School, Inc.  
112 Olmsted Street  
Birmingham, Alabama 35242

AmSouth Leasing Corporation  
AmSouth Center  
1900 5th Avenue North  
Upper Lobby  
Birmingham, Alabama 35203

or to such other place as any party shall, by written notice to the others, hereafter designate for such purpose.

7. **Governing Law.**

The validity of this Agreement and all of its terms and provisions, as well as the rights and duties of the parties hereunder, shall be interpreted and construed in accordance with the laws of the State of Alabama.

8. **Severability.**

If any of the provisions of this Agreement for the application thereof to any person or situation shall be held invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to person or situation other than those as to which is shall have been invalid or unenforceable shall not be affected thereby and shall continue to be valid and enforceable to the fullest extent permitted by law.

9. **Additional Acts.**

The parties hereby agree to promptly perform, execute and deliver or cause to be promptly performed, executed or delivered any and all further acts, instruments or assurances as may reasonably be required to effectuate this Agreement.



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10. **Modification or Waiver.**

No modification, waiver or amendment of any provision of this Agreement shall be implied from any course of conduct or shall be effective unless set forth in a written agreement executed by the Grantor, the Grantee and the Developer.

11. **Assignment and Transfer by Grantee.**

The Grantee may not transfer, sell, assign, convey, or lease, in whole or in part, the rights, privileges and interests hereby created without the prior written consent and approval of Grantor and Developer; provided, however, that the easement rights granted herein to Grantee may be transferred and assigned by Grantee to any subsequent holder or transferee of the Mortgage.

TO HAVE AND TO HOLD the estate, easements, rights and privileges hereby granted and conveyed to the Grantee, its successors and assigns, on the terms and conditions and for the periods of time herein stated.



IN WITNESS WHEREOF the Grantor and the Grantee have each caused this instrument to be executed in its corporate name, under seal, by an officer thereof duly authorized thereunto, and the parties hereto have caused this instrument to be dated as of the date and year first above written.

**HILLTOP MONTESSORI SCHOOL, INC.**

By Erin J. Fox

Its President

**AMSOUTH BANK** Leasing Corporation

By B. B. Bank

Its Vice President

**Consent of EBSCO Development Company, Inc.**

EBSCO Development Company, Inc. (Developer) does hereby consent to the execution, delivery and recordation of the Easement and the creation of the estates and interests provided therein.

IN WITNESS WHEREOF, Developer has caused this instrument to be executed in its name, under seal, by an officer thereof duly authorized thereunto as of the date of the acknowledgment hereof.

**EBSCO DEVELOPMENT COMPANY, INC.**

By: John D. Freeman

Its: V. P. + General



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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 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, (s)he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

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

Notary Public

NOTARIAL SEAL

My commission expires: June 19, 2008

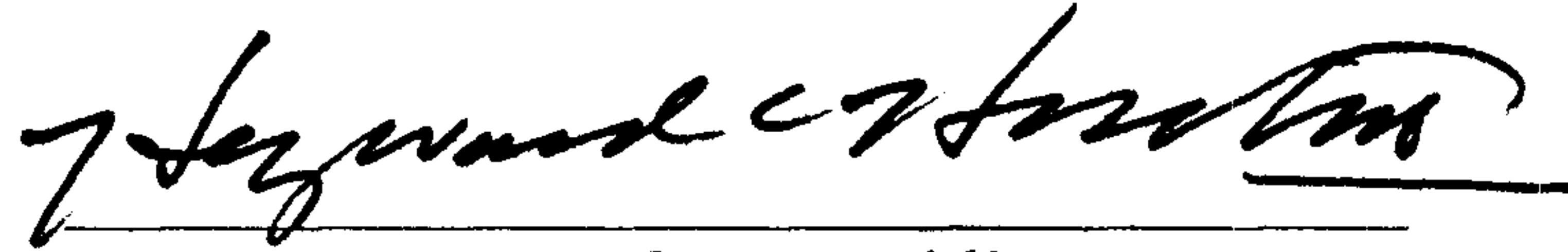
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STATE OF ALABAMA )

SHELBY COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Bo Buckner, whose name as Vice President of AmSouth Leasing Corporation, a 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 seal this the 4<sup>th</sup> day of January, 2006.



Notary Public

NOTARIAL SEAL

My commission expires: June 19, 2008

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STATE OF ALABAMA )

SHELBY COUNTY )

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. EGEN MGR of Hilltop Montessori School, Inc., a 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, (s)he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

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

Claudian Hill  
Notary Public

NOTARIAL SEAL

My commission expires: 1-13-07




Exhibit A



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

State of Alabama  
Shelby County

  
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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 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.

Shelby County, AL 01/05/2006  
State of Alabama

Deed Tax: \$.50