

## NON-DISTURBANCE AND ESTOPPEL AGREEMENT

On this 14 day of November, 2001, **COLONIAL REALTY LIMITED PARTNERSHIP**, whose address is 2101 Sixth Avenue North, Suite 750, Birmingham, Alabama, 35203 ("Lessor"), the lessor under that certain Lease (the "Lease") dated December 16, 1999 with **ODYSSEY CHILD DEVELOPMENT INC.**, whose address is 1634-A Montgomery Highway, Suite 216, Birmingham, Alabama, 35216 ("Lessee"), certifies, covenants and agrees with and to **ALABAMA COMMUNITY DEVELOPMENT CORPORATION** ("Lender") as follows:

1. Lessor is the fee simple owner of that certain real property (the "Leased Property") described on Exhibit "A" attached hereto and incorporated herein by reference, and Lessor is the lessor of the Leased Property under the Lease.
2. To Lessor's knowledge, the Lessee is the current lessee under the Lease.
3. The Lease (a true and correct copy of which is attached hereto as Exhibit "B") has not been canceled, modified, assigned, extended or amended.
4. As of this date, the Lease is in full force and effect; there are no uncured defaults under the Lease; Lessor has no claims against the Lessee under the Lease except as set forth in the Lease; to Lessor's knowledge, Lessee has no offsets against the rent or other charges payable by Lessee under the Lease; and as of the date hereof, Lessee has either satisfied all of its obligations to the Lessor under the Lease or the same have been waived by Lessor.
5. Lessor has received no actual notice of any sale, transfer or assignment, hypothecation or pledge of Lessee's right, title or interest in, to or under the Lease, except for a leasehold mortgage Lessee granted to Gainesville Bank and Trust.
6. Lessor has not sold, transferred, assigned, hypothecated or pledged the leased premises or its right, title or interest in, to or under the Lease.
7. Lessor acknowledges that Lessor has been notified that Lessee intends to mortgage and grant a security interest in its right, title and interest in, to and under the Lease to Lender as collateral for a loan (the "Loan"). Lessor hereby agrees that the making of the Loan and the encumbering of Lessee's interest in the Lease do not constitute a default under the Lease.
8. Lessor agrees that it will deliver to Lender, at the address set forth below, a duplicate copy of any and all written notices which Lessor may, from time to time, give or serve upon Lessee under the terms of the Lease, as and when Lessor gives or serves such notices upon Lessee:

Alabama Community Development Corporation  
Suite 100, 117 Southcrest Drive  
Birmingham, Alabama, 35209

12/04/2001-52519  
12:57 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
006 NEL 26.00

61525-1002 # 2001-52519  
Inst # 1541

Failure to deliver a copy of such notice to Lender shall in no way affect the validity of the notice as it respects Lessee, but shall make the same invalid as it respects the interest of the Lender.

9. Lessor further agrees that Lender shall have (a) fifteen (15) days following receipt of written notice from Lessor as to the non-payment of any monetary sum due under the Lease within which to cure such monetary default, and (b) the same period of time as Lessee after Lender has received written notice from Lessor of any non-monetary default by Lessee within which to cure such non-monetary default, or if such default(s) cannot be cured within such time, then such additional time, not to exceed ninety (90) days, as may be reasonably necessary to cure such default(s) (including, but not limited to, commencement of foreclosure proceedings, if necessary to effect such cure). Upon Lender curing such default in accordance with the foregoing, any notice of Lessor advising of any such event of default or any action of Lessor to terminate this Lease or to interfere with the occupancy, use or enjoyment of the Leased Property by reason thereof shall be deemed rescinded and this Lease shall be reinstated and shall continue in full force and effect.

10. Notwithstanding anything to the contrary contained in the Lease or in this Non-Disturbance and Estoppel Agreement, in addition and not in limitation of the foregoing, (a) Lessor and Lessee each agree not to (i) amend or modify the Lease in any respect without the prior written consent of Lender and/or (ii) terminate the Lease without Lender's prior written consent unless due to an uncured default by Lessee, and (b) Lessor and Lessee acknowledge and agree that the Lease shall not be amended, modified and/or terminated if either Lessor or Lessee attempts to amend, modify and/or terminate (except for a default) the Lease without first obtaining Lender's prior written consent.

11. Lessor agrees to accept performance of Lessee's obligations under the Lease by Lender as if it were performance by Lessee. Notwithstanding the foregoing, Lessor acknowledges that while Lender shall have the right to tender performance of Lessee's obligations under the Lease, Lender shall not have the obligation to do so.

12. If Lender or its successors or assigns succeeds to Lessee's interest in the Lease, the Lease shall not be terminated by such action and Lessor agrees to accept performance of Lessee's obligations under the Lease by Lender or its successors or assigns, and the Lease shall continue in full force and effect as a lease between Lessor and Lender or its successors or assigns. Lender shall not be responsible for obligations under the Lease unless and until Lender succeeds to Lessee's interest in the Lease. Lender shall remain responsible for Lessee's obligations under the Lease only so long as Lender is the tenant, and Lender will not be liable under the Lease following the sublease or assignment to a third party or its other disposition of Lessee's leasehold estate upon reasonable approval by Lessor of such third party's financial capacity, which approval shall not be unreasonably withheld or delayed.

13. Without the prior consent of Lender, i) the Lease shall not be surrendered or canceled (other than as a result of a default of Lessee after notice to and opportunity to cure of Lessee and Lender, respectively) prior to the expiration of the term of the Lease, ii) Lessee shall not have the right to exercise any option to terminate the Lease, and iii) any agreement purporting to



surrender, cancel, terminate, modify or amend the Lease or any attempted exercise of such option, without the consent of the Lender (other than due to an uncured default), shall be ineffective, null and void.

14. If the Lease terminates before its term expires, including the rejection of the Lease in a bankruptcy proceeding involving Lessee, except by eminent domain, Lessor shall serve upon Lender written notice of that fact, together with a statement of all sums which would at that time be due under the Lease but for the termination, and of all other defaults under the Lease then actually known to Lessor. The Lender may then obtain a new lease and a bill of sale for all personal property and fixtures in the building previously owned by Lessee and then owned by Lessor arising out of such termination, all in accordance with and upon the following terms and conditions. Upon the written request of Lender within thirty (30) days after service of notice that the Lease has been terminated, Lessor shall enter into a new lease of the Leased Property with Lender, or its designee (which designee does require the approval of Lessor, which approval shall not be unreasonably withheld, delayed or conditioned; provided, however, said designee does not require the approval of Lessor if the designee has the same or better financial condition as Lessee did at the date of the Lease), which new lease shall: (i) be entered into at the reasonable cost of the new tenant, (ii) be effective as of the date of termination of the Lease, (iii) be for the remainder of the term of the Lease, and (iv) be at the same rent and upon all the agreements, terms, covenants, and conditions of the Lease (including reversion of all personalty upon expiration of earlier termination of the new lease to Lessor); and (v) be executed within fourteen (14) business days after the same has been tendered by Lessor to Lender. The new lease shall require the tenant to perform all of Lessee's unfulfilled obligations under the Lease that are reasonably susceptible of being performed by the Lessee. Upon execution of the new lease, the new tenant shall pay all sums that would then be due under the Lease but for the termination. Lessor acknowledges that Lender is unwilling to make the Loan to Lessee without this paragraph, and without this paragraph, there is an inadequate remedy at law for Lender, therefore, if Lessor fails to enter into a new lease with Lender upon the terms and conditions set forth above within ten (10) days of the termination of the Lease, Lender may seek specific performance of Lessor's obligation to enter into a new lease upon the terms and conditions set forth above as Lender's sole and exclusive remedy.

15. Effective upon the commencement of the term of any new lease executed under section 14 above, all subleases shall be assigned and transferred without recourse by Lessor to the tenant under the new lease. The new tenant shall thereafter indemnify and hold Lessor, its agents and employees harmless from and against any claims of such subtenants with regard to any deposits actually received by the new tenant.

16. The provisions of this Non-Disturbance and Estoppel Agreement notwithstanding, nothing contained herein shall grant Lender any rights greater than those granted to Lessee under the Lease or expand any rights granted to Lessee under the Lease.

17. As to the personal property of Lessee's located on the Leased Property, Lessor subordinates its lien to any lien of Lender thereon until payment in full of the indebtedness due Lender.

18. Lessor further recognizes and acknowledges that Lender is entitled to any an all insurance and condemnation proceeds due resulting from a loss or destruction of any of Lessee's personal property located on the Leased Property.

19. Lessor has full power and authority to enter into and perform its agreements under this Agreement, and the person executing and delivering this Agreement on behalf of Lessor is fully and properly authorized to do so.

20. This Non-Disturbance and Estoppel Agreement may be executed in one or more counterparts, or by the parties executing separate counterpart signature pages, including facsimiles transmitted by telecopier, all of which shall be deemed the original counterpart of this Non-Disturbance and Estoppel Agreement.

21. Upon payment in full of all obligations due Lender secured by the mortgage given by Lessee to Lender on Lessee's interest in the Leased Property and Lease, and the satisfaction and termination of such leasehold mortgage, then this agreement shall terminate.

LESSOR:

**COLONIAL REALTY LIMITED PARTNERSHIP**  
a Delaware Limited Partnership

BY: **COLONIAL PROPERTIES TRUST**  
an Alabama Real Estate Investment Trust  
Its General Partner

BY

(Its

VICO PRESIDENT)

LESSEE:

**ODYSSEY CHILD DEVELOPMENT, INC.**  
an Alabama corporation

By:

C. Robert Mitchell

(Its President)

[ACKNOWLEDGEMENTS ON NEXT PAGE]

STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Charles B. Pell, Jr., whose name as Vice President of COLONIAL PROPERTIES TRUST, an Alabama Real Estate Investment Trust as general partner of COLONIAL REALTY LIMITED PARTNERSHIP, a Delaware limited partnership, 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, as an act of said real estate investment trust, acting in its capacity as general partner as aforesaid.

Given under my hand and official seal, this the 14<sup>th</sup> day of November, 2001.

Melanie D. Monti  
NOTARY PUBLIC  
My Commission Expires: 9/13/03

STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that C. Robert Mitchell whose name as President of ODYSSEY CHILD DEVELOPMENT, INC., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer, and with full authority, executed the same voluntarily, as an act of said corporation.

Given under my hand and official seal, this the 14 day of November, 2001.

[Signature]  
NOTARY PUBLIC  
My Commission Expires: 6/17/03



**EXHIBIT "A"**

**(Leased Property)**

Part of Lot 1, Heatherbrooke Office Park Resurvey, as recorded in Map Book 23, page 46, in the Probate Office of Shelby County, Alabama, described as follows:

A parcel of land in the Northeast  $\frac{1}{4}$  of Section 36, Township 18 South, Range 2 West, Huntsville Principal Meridian, Shelby County, Alabama, more particularly described as follows:

Commence at the Northwest corner of the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of said Section 36 and run thence South 88 degrees 15 minutes 29 seconds East along the Northerly line of the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of said Section 36 for a distance of 179.93 feet; thence leaving said Northerly line, South 01 degrees 44 minutes 02 seconds West for a distance of 169.47 feet to the point of beginning of the parcel herein described; thence South 79 degrees 32 minutes 29 seconds East for a distance of 179.18 feet; thence South 18 degrees 35 minutes 30 seconds West for a distance of 80.00 feet to the Northeasterly corner of Lot 2B, Heatherbrooke Office Park, as shown on the Map or Plat thereof, recorded in Map Book 12, Page 36, in the Office of the Judge of Probate of Shelby County, Alabama; thence run North 75 degrees 12 minutes 10 seconds West along the Northerly boundary line of said Lot 2B, for a distance of 158.00 feet; thence leaving said Northerly boundary line North 01 degrees 44 minutes 02 seconds East for a distance of 68.03 feet to the Point of Beginning.

Inst # 2001-52519

6

12/04/2001-52519  
12:57 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
006 MEL 26.00