

MORTGAGE

(Participation)

This mortgage made and entered into this 14 day of November, 2001, by and between ODYSSEY CHILD DEVELOPMENT, INC. (hereinafter referred to as mortgagor) and ALABAMA COMMUNITY DEVELOPMENT CORPORATION (hereinafter referred to as mortgagee), who maintains an office and place of business at Suite 100, 117 Southcrest Drive, Birmingham, Alabama, 35209.

WITNESSETH, that for the consideration hereinafter stated, receipt of which is hereby acknowledged, the mortgagor does hereby mortgage, sell, grant, assign, and convey unto the mortgagee, his successors and assigns, all of the following described property situated and being in the County of Shelby State of Alabama

(i) all right title and interest of Mortgagor under the terms of a lease dated December 16,, 1999 wherein COLONIAL REALTY LIMITED PARTNERSHIP (hereinafter "Ground Lessor") is Lessor and ODYSSEY CHILD DEVELOPMENT, INC. is Lessee and which was filed for record as Instrument 1999-51320 in the office of the Judge of Probate of Shelby County, Alabama (hereinafter "Lease") together with any and all options under the Lease or otherwise from the Ground Lessor to purchase the leased realty, the lease being of certain Premises owned by the Ground Lessor and located in Shelby County, Alabama and being more particularly described as Parcel I on Exhibit "A" attached hereto and made a part hereof, and

(ii) all right title and interest of the Mortgagor in and to the Premises situated in Shelby County, Alabama and described as Parcel I on Exhibit "A" attached hereto and incorporated herein by this reference, whether now owned or hereafter acquired (this Mortgage shall constitute a mortgage with respect to any fee interest in all or any portion of the Premises in the event Mortgagor acquires any such fee interest prior to the date of the satisfaction of this Mortgage).

(iii) the property described as Parcel II on Exhibit "A" attached hereto and incorporated herein by this reference.

Together with and including all buildings, all fixtures including but not limited to all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning apparatus, and elevators (the mortgagor hereby declaring that it is intended that the items herein enumerated shall be deemed to have been permanently installed as part of the realty), and all improvements now or hereafter existing thereon; the hereditaments and appurtenances and all other rights thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, all rights of redemption, and the rents, issues, and profits of the above described property (provided, however, that the mortgagor shall be entitled to the possession of said property and to collect and retain the rents, issues, and profits until default hereunder). To have and to hold the same unto the mortgagee and the successors in interest of the mortgagee forever in fee simple or such other estate, if any, as is stated herein.

The mortgagor covenants that he is lawfully seized and possessed of and has the right to sell and convey said property; that the same is free from all encumbrances except as hereinabove recited; and that he hereby binds himself and his successors in interest to warrant and defend the title aforesaid thereto and every part thereof against the claims of all persons whomsoever.

This instrument is given to secure the payment of a promissory note dated this date in the principal sum of \$ 550,000.00 signed by ODYSSEY CHILD DEVELOPMENT, INC. ~~in behalf of~~ and which has a maturity date during the year of 2022

12/04/2001-52518
12:57 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 MEL 851.00

Inst # 2001-52518

Said promissory note was given to secure a loan in which the Small Business Administration, an agency of the United States of America, has participated. In compliance with section 101.1(d) of the Rules and Regulations of the Small Business Administration [13 C.F.R. 101.1(d)], this instrument is to be construed and enforced in accordance with applicable Federal law.

1. The mortgagor covenants and agrees as follows:

a. He will promptly pay the indebtedness evidenced by said promissory note at the times and in the manner therein provided.

b. He will pay all taxes, assessments, water rates, and other governmental or municipal charges, fines, or impositions, for which provision has not been made hereinbefore, and will promptly deliver the official receipts therefor to the said mortgagee.

c. He will pay such expenses and fees as may be incurred in the protection and maintenance of said property, including the fees of any attorney employed by the mortgagee for the collection of any or all of the indebtedness hereby secured, or foreclosure by mortgagee's sale, or court proceedings, or in any other litigation or proceeding affecting said property. Attorneys' fees reasonably incurred in any other way shall be paid by the mortgagor.

d. For better security of the indebtedness hereby secured, upon the request of the mortgagee, its successors or assigns, he shall execute and deliver a supplemental mortgage or mortgages covering any additions, improvements, or betterments made to the property hereinabove described and all property acquired by it after the date hereof (all in form satisfactory to mortgagee). Furthermore, should mortgagor fail to cure any default in the payment of a prior or inferior encumbrance on the property described by this instrument, mortgagor hereby agrees to permit mortgagee to cure such default, but mortgagee is not obligated to do so; and such advances shall become part of the indebtedness secured by this instrument, subject to the same terms and conditions.

e. The rights created by this conveyance shall remain in full force and effect during any postponement or extension of the time of the payment of the indebtedness evidenced by said promissory note or any part thereof secured hereby.

f. He will continuously maintain hazard insurance, of such type or types and in such amounts as the mortgagee may from time to time require on the improvements now or hereafter on said property, and will pay promptly when due any premiums thereof. All insurance shall be carried in companies acceptable to mortgagee and the policies and renewals thereof shall be held by mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to the mortgagee. In event of loss, mortgagor will give immediate notice in writing to mortgagee, and mortgagee may make proof of loss if not made promptly by mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to mortgagee instead of to mortgagor and mortgagee jointly, and the insurance proceeds, or any part thereof, may be applied by mortgagee at its option either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged or destroyed. In event of foreclosure of this mortgage, or other transfer of title to said property in extinguishment of the indebtedness secured hereby, all right, title, and interest of the mortgagor in and to any insurance policies then in force shall pass to the purchaser or mortgagee or, at the option of the mortgagee, may be surrendered for a refund.

g. He will keep all buildings and other improvements on said property in good repair and condition; will permit, commit, or suffer no waste, impairment, deterioration of said property or any part thereof; in the event of failure of the mortgagor to keep the buildings on said premises and those erected on said premises, or improvements thereon, in good repair, the mortgagee may make such repairs as in its discretion it may deem necessary for the proper preservation thereof; and the full amount of each and every such payment shall be immediately due and payable; and shall be secured by the lien of this mortgage.

h. He will not voluntarily create or permit to be created against the property subject to this mortgage any lien or liens inferior or superior to the lien of this mortgage without the written consent of the mortgagee; and further, that he will keep and maintain the same free from the claim of all persons supplying labor or materials for construction of any and all buildings or improvements now being erected or to be erected on said premises.

i. He will not rent or assign any part of the rent of said mortgaged property or demolish, or remove, or substantially alter any building without the written consent of the mortgagee.

j. All awards of damages in connection with any condemnation for public use of or injury to any of the property subject to this mortgage are hereby assigned and shall be paid to mortgagee, who may apply the same to payment of the installments last due under said note, and mortgagee is hereby authorized, in the name of the mortgagor, to execute and deliver valid acquittances thereof and to appeal from any such award.

k. The mortgagee shall have the right to inspect the mortgaged premises at any reasonable time.

2. Default in any of the covenants or conditions of this instrument or of the note or loan agreement secured hereby shall terminate the mortgagor's right to possession, use, and enjoyment of the property, at the option of the mortgagee or his assigns (it being agreed that the mortgagor shall have such right until default). Upon any such default, the mortgagee shall become the owner of all of the rents and profits accruing after default as security for the indebtedness secured hereby, with the right to enter upon said property for the purpose of collecting such rents and profits. This instrument shall operate as an assignment of any rentals on said property to that extent.

3. The mortgagor covenants and agrees that if he shall fail to pay said indebtedness or any part thereof when due, or shall fail to perform any covenant or agreement of this instrument or the promissory note secured hereby, the entire indebtedness hereby secured shall immediately become due, payable, and collectible without notice, at the option of the mortgagee or assigns, regardless of maturity, and the mortgagee or his assigns may before or after entry sell said property without appraisal (the mortgagor having waived and assigned to the mortgagee all rights of appraisal):

(I) at judicial sale pursuant to the provisions of 28 U.S.C. 2001(a); or

(II) at the option of the mortgagee, either by auction or by solicitation of sealed bids, for the highest and best bid complying with the terms of sale and manner of payment specified in the published notice of sale, first giving four weeks' notice of the time, terms, and place of such sale, by advertisement not less than once during each of said four weeks in a newspaper published or distributed in the county in which said property is situated, all other notice being hereby waived by the mortgagor (and said mortgagee, or any person on behalf of said mortgagee, may bid with the unpaid indebtedness evidenced by said note). Said sale shall be held at or on the property to be sold or at the Federal, county, or city courthouse for the county in which the property is located. The mortgagee is hereby authorized to execute for and on behalf of the mortgagor and to deliver to the purchaser at such sale a sufficient conveyance of said property, which conveyance shall contain recitals as to the happening of the default upon which the execution of the power of sale herein granted depends; and the said mortgagor hereby constitutes and appoints the mortgagee or any agent or attorney of the mortgagee, the agent and attorney in fact of said mortgagor to make such recitals and to execute said conveyance and hereby covenants and agrees that the recitals so made shall be effectual to bar all equity or right of redemption, homestead, dower, and all other exemptions of the mortgagor, all of which are hereby expressly waived and conveyed to the mortgagee; or

(III) take any other appropriate action pursuant to state or Federal statute either in state or Federal court or otherwise for the disposition of the property.

In the event of a sale as hereinbefore provided, the mortgagor or any persons in possession under the mortgagor shall

then become and be tenants holding over and shall forthwith deliver possession to the purchaser at such sale or be summarily dispossessed, in accordance with the provisions of law applicable to tenants holding over. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

4. The proceeds of any sale of said property in accordance with the preceding paragraphs shall be applied first to pay the costs and expenses of said sale, the expenses incurred by the mortgagee for the purpose of protecting or maintaining said property, and reasonable attorneys' fees; secondly, to pay the indebtedness secured hereby; and thirdly, to pay any surplus or excess to the person or persons legally entitled thereto.

5. In the event said property is sold at a judicial foreclosure sale or pursuant to the power of sale hereinabove granted, and the proceeds are not sufficient to pay the total indebtedness secured by this instrument and evidenced by said promissory note, the mortgagee will be entitled to a deficiency judgment for the amount of the *deficiency without regard to appraisal*.

6. In the event the mortgagor fails to pay any Federal, state, or local tax assessment, income tax or other tax lien, charge, fee, or other expense charged against the property the mortgagee is hereby authorized at his option to pay the same. Any sums so paid by the mortgagee shall be added to and become a part of the principal amount of the indebtedness evidenced by said note, subject to the same terms and conditions. If the mortgagor shall pay and discharge the indebtedness evidenced by said promissory note, and shall pay such sums and shall discharge all taxes and liens and the costs, fees, and expenses of making, enforcing, and executing this mortgage, then this mortgage shall be canceled and surrendered.

7. The covenants herein contained shall bind and the benefits and advantages shall inure to the respective successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

8. No waiver of any covenant herein or of the obligation secured hereby shall at any time thereafter be held to be a waiver of the terms hereof or of the note secured hereby.

9. A judicial decree, order, or judgment holding any provision or portion of this instrument invalid or unenforceable shall not in any way impair or preclude the enforcement of the remaining provisions or portions of this instrument.

10. Any written notice to be issued to the mortgagor pursuant to the provisions of this instrument shall be addressed to the mortgagor at 1634-A Montgomery Highway, Suite 216, Birmingham, Alabama, 35216 and any written notice to be issued to the mortgagee shall be addressed to the mortgagee at Suite 100, 117 Southcrest Drive, Birmingham, Alabama, 35209.

11. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then, under SBA regulations: a) when SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with Federal Law; and b) Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any Federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan. Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

12. In the event Mortgagor shall acquire fee title to all or any portion of the Premises, this Mortgage shall further constitute a mortgage with respect to such fee interest or estate of the Mortgagor in the Premises upon the terms provided for herein without any amendment to or modification of this Mortgage being required. In such event

Mortgagor agrees, immediately upon the written request of the Mortgagee, to execute any amendment to this Mortgage or any additional mortgage or other agreement or instrument with respect to the Premises to further evidence and effect the existence of a valid mortgage in all or any portion of the Premises, the form and content of any such amendment, mortgage or other instrument shall not be inconsistent with the terms of this Mortgage and shall be approved by Mortgagee.

IN WITNESS WHEREOF, the mortgagor has executed this instrument and the mortgagee has accepted delivery of this instrument as of the day and year aforesaid.

ODYSSEY CHILD DEVELOPMENT, INC.

BY: Clarence R. Mitchell
Clarence R. Mitchell (Its President)

Executed and delivered in the presence of the following witnesses:

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Clarence R. Mitchell, whose name as President of ODYSSEY CHILD DEVELOPMENT, 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, he, as such officer, and with full authority, executed the same voluntarily, as an act of said corporation, acting in its capacity as aforesaid.

Given under my hand and official seal, this the 14 day of ^{Nov}~~August~~, 2001

William B. Hairston III
NOTARY PUBLIC
My Commission Expires: 6/17/03

THIS INSTRUMENT PREPARED BY AND AFTER
RECORDATION SHOULD BE RETURNED TO
William B. Hairston III
ENGEL HAIRSTON & JOHANSON, P.C.
4th Floor 109 North 20th Street
P.O. Box 370027
Birmingham, Alabama 35237-0027
(205) 328-4600

EXHIBIT "A"
TO
MORTGAGE
FINANCING STATEMENT (UCC-1)
PRIOR LIENHOLDER'S AGREEMENT
HAZARDOUS SUBSTANCE INDEMNIFICATION AND WARRANTY AGREEMENT

BORROWER: ODYSSEY CHILD DEVELOPMENT, INC.
LENDER: ALABAMA COMMUNITY DEVELOPMENT CORPORATION

PARCEL I:

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 ¼ 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 ¼ of the Northeast ¼ of said Section 36 and run thence South 88 degrees 15 minutes 29 seconds East along the Northerly line of the Southwest ¼ of the Northeast ¼ 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.

PARCEL II:

Lot 2B, according to a Resurvey of Lot 2 Heatherbrooke Office Park, as recorded in Map Book 12, page 36, in the probate office of Shelby County, Alabama

SUBJECT TO: i) terms and conditions of that certain Ground Lease dated 12-16-99 between Colonial Realty Limited Partnership and ODYSSEY CHILD DEVELOPMENT, INC. filed for record 12-20-99 as Instrument 1999-51320 (Parcel I); ii) taxes and assessments for the year 2001, a lien but not yet payable; iii) 25 foot building line as shown by recorded map; iv) 30 foot easement for sanitary sewer and drainage as shown by recorded map; and v) restrictions as shown by recorded map.

12/04/2001-52518
12:57 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 MEL 851.00

Inst # 2001-52518