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**MORTGAGE INDENTURE**

**between**

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF PELHAM**

**and**

**FIRST COMMERCIAL BANK**

**Dated as of September 1, 1990**

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**Relating to**

**\$840,000**

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF PELHAM**

**FIRST MORTGAGE INDUSTRIAL REVENUE BOND  
(Rainbow Technology Corporation Project)  
Series 1990-A**

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**THIS INSTRUMENT PREPARED BY:  
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BIRMINGHAM, ALABAMA 35203**

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**MORTGAGE INDENTURE** between **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF PELHAM**, a public corporation and instrumentality under the laws of the State of Alabama, party of the first part, and **FIRST COMMERCIAL BANK**, an Alabama banking corporation having its principal place of business in the City of Birmingham, Alabama, party of the second part,

### **RECITALS**

The party of the first part makes the following recitals of fact as the basis for the undertaking following: it is duly incorporated under the provisions of Code of Alabama 1975, Title 11, Chapter 54, Article 4, by Certificate of Incorporation duly filed for record in the office of the Judge of Probate of Shelby County, Alabama; its Certificate of Incorporation has not been further amended or revoked; it is not in default under any of the provisions contained in its Certificate of Incorporation, or in the laws of the State of Alabama; by proper corporate action it has duly authorized the issuance of the Series 1990-A Bond hereinafter referred to; and to secure payment of the principal of and the interest on the Series 1990-A Bond to be issued hereunder, it has by proper corporate action duly authorized the execution and delivery of this Mortgage Indenture.

### **NOW, THEREFORE, THIS MORTGAGE INDENTURE**

### **WITNESSETH:**

For the aforesaid purpose and in consideration of the respective agreements herein contained, it is hereby agreed between the parties signatory hereto as follows (provided, that in the performance of any of the agreements of the party of the first part herein contained, any obligation it may thereby incur for the payment of money shall not be a general debt on its part but shall be payable solely out of the revenues and receipts derived from the leasing or sale of the Project hereinafter referred to):

### **ARTICLE I**

### **DEFINITIONS AND USE OF PHRASES**

**Section 1.1 Definition.** The following words and phrases and others evidently intended as the equivalent thereof shall, in the absence of clear implication herein otherwise, be given the following respective interpretations:

**"Act"** means the statutes codified as Code of Alabama 1975, Title 11, Chapter 54, Article 4, as now amended and supplemented and at the time in force and effect.

**"Adjusted Rate"** means a rate of interest per annum equal to 200 basis points over the yield to maturity of United States Treasury Bonds, Notes or Bills trading closest to par with a maturity of five (5) years (as such yield is reported in the edition of the Wall Street Journal published on or most recently prior to March 15, 1996, but in no event lower than the initial rate. Protective shall have the option to change the interest rate on the Adjustment Date to the Adjusted Rate.

**"Adjustment Date"** means the first day of the sixty-first month following the Sale Date.

**"Affiliate"** of any designated Person means any Person which, directly or indirectly, controls, or is controlled by, or is under common control with, such designated Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person whether through the ownership of voting securities or by contract or otherwise.

**"After Maturity Interest Rate"** means Mortgagee shall be entitled to after maturity interest at the rate equal to four percent (4%) above the rate of interest then applicable upon the occurrence and continuance of an event of default.

**"Annual Yield Differential"** means, when determining any Applicable Prepayment Premium, the difference (but not less than zero) between the Applicable Rate on the date of prepayment and the yield on such date on the lowest yielding United States Treasury obligation with a maturity date closest to the maturity of the Series 1990-A Bond multiplied by the outstanding principal amount of the Series 1990-A Bond on the date of prepayment.

**"Applicable Prepayment Premium"** means (i) at any time prior to the Sale Date, a prepayment premium equal to zero, and (ii) at any time after the Sale Date, a prepayment premium equal to one-twelfth (1/12) of the Annual Yield Differential multiplied by the number of months from the date of prepayment through the date of maturity of the Series 1990-A Bond; provided, however, that no such prepayment premium shall be payable in the event that the Board (at the election of the Company) prepays the Bond after an adjustment in the Applicable Rate.

**"Applicable Rate"** means, (i) at any time prior to the Sale Date, the Prime Rate from time to time in effect, plus one-half of one percent (1-1/2%), and (ii) at any time on or after the Sale Date, a rate per annum equal to 200 basis points over the yield to maturity of United States Treasury Bonds, Notes or Bills trading closest to par with a maturity of five (5) years (as such yield is reported in the edition of the Wall Street Journal published on or most recently prior to March 15, 1991, subject to adjustment on the Adjustment Date to the Adjusted Rate.

**"Authorized Board Representative"** means the person or persons at the time designated as such by written certificate furnished to the Company and the Mortgagee, containing the specimen signature or signatures of such person or persons and signed on behalf of the Board by the Chairman or the Vice Chairman of the Directors; provided, however, that

no partner of the Company or any Affiliate thereof may also be designated as an Authorized Board Representative.

**"Authorized Company Representative"** means the person or persons at the time designated as such by written certificate furnished to the Board and the Mortgagee, containing the specimen signature or signatures of such person or persons and signed on behalf of the Company by the President or any Vice President thereof.

**"Bank"** means (i) the Mortgagee for so long as the Mortgagee is a bank or trust company having a principal place of business located in Jefferson County, Alabama (which shall initially be First Commercial Bank), or (ii) in the event that the Mortgagee is not a bank or trust company having a principal place of business located in Jefferson County, Alabama, a bank or trust company having a principal place of business in Jefferson County, Alabama, which by separate agreement with the Mortgagee agrees to serve as the depository, custodian and disbursing agent of the Construction Fund and the Bond Fund in accordance with the provisions of Articles IV and V hereof.

**"Basic Rent"** means (i) the moneys payable by the Company pursuant to the provisions of Section 5.2 of the Lease, (ii) any other moneys payable by the Company under the Lease to provide for the payment of the principal of and the interest on the Series 1990-A Bond (other than the aforesaid moneys payable pursuant to said Section 5.2), and (iii) any other moneys payable by the Company under the Lease that are therein referred to as Basic Rent.

**"Board"** means (i) the party of the first part hereto and its successors and assigns, and (ii) any public corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party as provided in Section 6.6 hereof.

**"Bond Counsel"** means Independent Counsel whose opinion respecting the legality or validity of securities issued by or on behalf of states or political subdivisions thereof is nationally recognized.

**"Bond Payment Date"** means the first day of each calendar month, commencing with November 1, 1990, on which any principal or interest with respect to the Series 1990-A Bond shall mature and be due and payable or on which any principal portion of the Series 1990-A Bond shall be required by the Mortgage to be redeemed prior to the stated maturity thereof.

**"Bond Proceeds"** means, as of the date of any determination thereof, an amount equal to the sum of (i) the aggregate amount (excluding accrued interest) received by the Board from the sale of the Series 1990-A Bond, less the expenses of issuing the Series 1990-A Bond and (ii) the cumulative amount of net income derived, as of such date of determination, from the investment and reinvestment of proceeds of the Series 1990-A Bond (including income derived from the investment and reinvestment of previously derived income), it being understood that such net income shall consist of the aggregate interest received from investments plus any profit actually realized from the purchase of investments at a discount, less any accrued interest and any premium paid as part of the purchase price of any investments.



**"Company"** means Rainbow Technology Corporation, a corporation organized and existing under the laws of the State of Alabama, and subject to the provisions of Section 8.4 of the Lease, includes its successors and assigns.

**"Company Guaranty"** means that certain Guaranty Agreement dated as of September 1, 1990, between the Company and the Mortgagee, in and by which the Company has unconditionally guaranteed the payment by the Board of the principal of and interest on the Series 1990-A Bond to the extent provided therein, as such Guaranty Agreement may from time to time be amended in accordance with the provisions hereof.

**"Completion Date"** means the date on which the completion of the Project Development Work and the satisfaction of the other conditions referred to in Section 4.6 of the Lease are certified to the Mortgagee and the Board in accordance with the provisions of said Section 4.6.

**"Construction Fund"** means the Rainbow Technology Corporation Construction Fund created in Section 4.2 hereof.

**"Counsel"** means any attorney duly admitted to practice before the highest court of any state of the United States of America or of the District of Columbia (including any director, officer or full-time employee of, or an attorney regularly employed or retained by, the Board, the Company or an Affiliate of either thereof who is so admitted to practice), it being understood that "Counsel" may also mean a firm of attorneys any of whose members is so admitted to practice.

**"Directors"** means the Board of Directors of the Board.

**"Eligible Certificates"** means certificates of deposit issued (i) by any bank organized under the laws of the United States of America or any state thereof the deposits in which are insured by the Federal Deposit Insurance Corporation or any department, agency or instrumentality of the United States of America that may succeed to the functions of such corporation and having, at the time of the acquisition by the Board of such certificates of deposit, combined capital, surplus and undivided profits of not less than \$5,000,000 or (ii) by the Bank irrespective of the amount of its combined capital, surplus and undivided profits.

**"Eligible Investments"** means (i) Eligible Certificates, (ii) Federal Securities and (iii) any other debt securities in which the Board is legally authorized to invest its moneys.

**"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended and at the time in force and effect.

**"Event of Default"** means an "Event of Default" as specified in Section 8.1 hereof.

**"Federal Securities"** means any debt securities that are direct, general obligations of the United States of America.

**"fully paid", "payment in full",** or any similar expression with respect to the Mortgage Indebtedness, means that the entire Mortgage Indebtedness has been paid in full

or duly provided for pursuant to Section 10.1 hereof and that the lien of the Mortgage has been cancelled, satisfied and discharged in accordance with the provisions of said Section 10.1.

**"Guaranties"** means the Company Guaranty and the Shareholder Guaranty.

**"Independent Appraiser"** means a person, firm or corporation that is not regularly employed or retained by the Board, the Company or an Affiliate of either thereof, that has no other material connection with the Board, the Company or an Affiliate of either thereof, and that is regularly engaged in the business of appraising real or personal property (as appropriate to the property being appraised or valued) and otherwise competent to determine the value of the property in question.

**"Independent Counsel"** means an attorney who is duly admitted to practice before the highest court of any state of the United States of America or the District of Columbia and who is not a partner, director, officer or full-time employee of, or regularly employed or retained by, the Board, the Company or an Affiliate of either thereof, it being understood that "Independent Counsel" may also mean a firm of attorneys any of whose members is so admitted to practice and none of whose members is a partner, director, officer or full-time employee of, or regularly employed or retained by, the Board, the Company or an Affiliate of either thereof.

**"Independent Engineer"** means an engineer or engineering firm that is licensed to engage in the independent practice of engineering under the laws of the State of Alabama, that is not regularly employed or retained by the Board, the Company or an Affiliate of either thereof, and that has no other material connection with the Board, the Company or an Affiliate of either thereof.

**"Lease"** means that certain Lease Agreement dated as of September 1, 1990, between the Board, as lessor, and the Company, as lessee, as said lease now exists or as it may be amended and supplemented.

**"Lease Default"** means an "Event of Default" under the Lease, as such term is defined in Section 10.1 of the Lease.

**"Maturity Date"** means (i) in the event that the sale and assignment of the Series 1990-A Bond and the related financing documents by First Commercial Bank to Protective shall occur, October 1, 2000, or (ii) in the event that such sale and assignment shall not occur for any reason, June 15, 1991.

**"Mortgage"** means this Mortgage Indenture as it now exists and as it may hereafter be supplemented and amended.

**"Mortgagee"** means the Person in whose name the Series 1990-A Bond is registered as the owner thereof on the registry books of the Board pertaining to the Series 1990-A Bond.

**"Mortgage Indebtedness"** means all indebtedness of the Board at the time secured by the Mortgage, including, without limitation, all principal of and interest and premium (if any) on the Series 1990-A Bond.

**"Municipality"** means the City of Pelham, Alabama, and any municipal corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party.

**"Newspaper"** means a newspaper printed in the English language, published not less than five days during each calendar week and being published or having general circulation in such localities as may be specified, if there be any such; otherwise published not less than once during each calendar week.

**"Permitted Encumbrances"** means, as of any particular time, any of the following: (i) the Lease and the Mortgage; (ii) liens imposed by law, such as mechanics', workmen's, materialmen's, carriers' and other like liens arising in the ordinary course of business, securing obligations which are not overdue or which are being contested in good faith and by appropriate proceedings (so long as there have been set aside on the books of the Company with respect to any such obligation so contested reserves which are adequate in the opinion of the Company); (iii) liens for property taxes not delinquent or for taxes which are being contested in good faith and by appropriate proceedings (so long as there shall have been set aside on the books of the Company with respect to any such taxes so contested reserves which are adequate in the opinion of the Company); (iv) attachments remaining undischarged for no longer than thirty (30) days after written or actual notice thereof has been received by the Company or in connection with litigation which is being defended in good faith and by appropriate proceedings; (v) liens in respect of judgments or awards relative to claims which (A) are fully covered by insurance, or (B) have been in force for less than the applicable appeal period, provided execution is not levied thereunder, and/or (C) with respect to which an appeal or proceeding for review is being prosecuted in good faith and a stay of execution has been obtained pending such appeal or review; and (vi) utility, access, drainage and other easements and rights-of-way, mineral rights, covenants running with the land, zoning restrictions, environmental regulations and other restrictions and encumbrances affecting the use of real property, or minor irregularities in the title to real property, none of the foregoing of which, individually or in the aggregate, materially impair the title of the Board to any part of the Project or the use of the Project for the purpose for which it was acquired or is held by the Board.

**"Person"** means any natural person, corporation, partnership, trust, government or governmental body, political subdivision, or other legal entity as in the context may be possible or appropriate.

**"Prime Rate"** means the "Prime Rate" as in effect from time to time as announced periodically by the Bank and published in a financial publication, which interest rate shall not change more often than quarterly.

**"Project"** means the Project Site and the Project Building as they may at any time exist, and all other property and rights of every kind that are or become subject to the demise of the Lease and the lien of the Mortgage.

**"Project Building"** means that certain building and related improvements that are required by the Lease to be constructed on the Project Site, as such building and related improvements may at any time exist.

**"Project Development Costs"** means (i) all costs and expenses incurred in connection with the planning, development and design of the Project, including the costs of preliminary investigations, surveys, estimates and plans and specifications, (ii) all costs of acquiring, preparing and landscaping the Project Site, (iii) all costs and expenses of constructing the Project Building, including the cost to the Company of supervising construction, payments to contractors and materialmen and fees for professional or other specialized services, (iv) the costs of contract bonds and of insurance of all kinds which may be necessary or desirable in connection with the Project Development Work and which are not paid by any contractor or otherwise provided for, (v) all expenses incurred in connection with the issuance and sale of the Series 1990-A Bond, including (without limitation) all legal, accounting, financial, underwriting, printing and recording and filing fees and expenses, (vi) all other costs which the Board shall be required to pay, under the terms of any contract or contracts, in connection with the Project Development Work, (vii) any amount that the Board may, by appropriate requisition satisfying the requirements of Section 4.2 of the Mortgage direct the Mortgagee to pay out of the Construction Fund into the Bond Fund for the payment of interest on the Series 1990-A Bond, provided that the cumulative amount so paid to the Mortgagee, together with the accrued interest received by the Board upon the sale of the Series 1990-A Bond, does not exceed the total interest that will accrue on the Series 1990-A Bond from its date until and including the Completion Date, and (viii) the reimbursement to the Company of all amounts paid directly by the Company in respect of any of the aforesaid costs and expenses and of all amounts advanced by the Company to the Board for the payment of such costs and expenses.

**"Project Development Work"** means all work and undertakings of whatever nature necessary or useful in connection with the acquisition, construction and equipping of the Project and the preparation thereof for operation as an industrial building, including (i) the acquisition of the Project Site and the preparation and improvement thereof to the extent that the Company deems necessary or desirable in connection with the construction of the Project Building and (ii) the planning, design and construction of the Project Building in accordance with the provisions of the Lease.

**"Project Site"** means (i) the parcel of land specifically described under the heading "I" in Section 2.1 hereof and (ii) any other land that under the terms hereof constitutes a part of the Project Site.

**"Protective"** means Protective Life Insurance Company, an Alabama corporation, and includes its successors and assigns and any corporation surviving or resulting from any consolidation or merger to which it or its successors may be a party.

**"Sale Date"** means the date on which First Commercial Bank shall sell and assign all of its right, title and interest in, to and under the Series 1990-A Bond, the Lease and the Mortgage to Protective.

**"Resolution"** means a resolution duly adopted by the Directors.

**"Series 1990-A Bond"** means that certain First Mortgage Industrial Revenue Bond (Rainbow Technology Corporation Project), Series 1990-A, authorized to be issued in Article III hereof.

**"Shareholder Guaranty"** means that certain Guaranty Agreement dated as of September 1, 1990, between the shareholders of the Company and the Mortgagee, in and by which said persons have unconditionally guaranteed the payment by the Board of the principal of and the interest on the Series 1990-A Bond to the extent provided therein, as such Guaranty Agreement may from time to time be amended in accordance with the provisions thereof.

**"Supplemental Mortgage"** means an agreement supplemental hereto.

**Section 1.2 Definitions Contained in the Lease.** Unless the context clearly indicates a different meaning, other words, terms or phrases which are not defined in the Mortgage but which are defined in the Lease shall have the meanings respectively given them in the Lease.

**Section 1.3 Use of Phrases.** "Herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter" and other equivalent words refer to the Mortgage and not solely to the particular portion thereof in which any such word is used. The definitions set forth in Section 1.1 hereof include both singular and plural. Whenever used herein, any pronoun shall be deemed to include both singular and plural and to cover all genders.

## ARTICLE II

### GRANTING CLAUSES

**Section 2.1 Granting Clauses.** In order to secure to the Mortgagee payment of the principal of and the interest on the Series 1990-A Bond and the performance and observance of the covenants and conditions herein and therein contained, and in consideration of its purchase and acceptance of the Series 1990-A Bond, the Board does hereby grant, bargain, sell and convey, assign, transfer and pledge to and with the Mortgagee the following described properties of the Board, whether the same are now owned by it or may be hereafter acquired:

#### I

The parcels of land described in Exhibit A attached hereto and made a part hereof.

#### II

Also, the Project Building and all other buildings, structures and other improvements constituting real property now or hereafter situated on the Project Site, all permits, easements, licenses, rights-of-way, contracts, leases, privileges, immunities and hereditaments pertaining or applicable to the Project Site and all fixtures now or hereafter owned by the Board and installed on the Project Site in the Project Building or in any of such other buildings, structures and improvements now or hereafter acquired for use as a part of or in connection with or as an improvement to the Project Site shall be as fully covered hereby as



if such property, rights and privileges were now owned by the Board and were specifically described herein;

### III

The moneys required by the Lease or the Mortgage to be deposited in the Construction Fund, together with any investments and reinvestments of such moneys and proceeds thereof, subject, however, to the disbursement and use thereof for the payment of Project Development Costs in accordance with the provisions of the Lease and the Mortgage;

### IV

Also, subject to the provisions of Section 7.1 hereof, the Basic Rent and all other rents, revenues, earnings and income of the Board from the aforescribed property;

### V

Also, all right, title and interest of the Board in and to the Lease (not including, however, any of the obligations of the Board under the Lease), except the expense reimbursement rights and the release and indemnification rights of the Board contained in the Lease;

### VI

Any and all moneys, rights and properties of every kind or description which may from time to time hereafter be sold, transferred, conveyed, assigned, hypothecated, endorsed, deposited, pledged, mortgaged, granted or delivered to, or deposited with, the Mortgagee by the Board or anyone on its part as additional security for the payment of the principal of and the interest on the Series 1990-A Bond, or which pursuant to any of the provisions hereof or of the Lease, may come into the possession or control of the Mortgagee as such additional security; and the Mortgagee is hereby authorized to receive any and all such moneys, rights and properties as and for additional security for the payment of the principal of and the interest on the Series 1990-A Bond and to hold and apply the same subject to the terms hereof;

TO HAVE AND TO HOLD the same unto the Mortgagee, its successor and assigns forever, subject to Permitted Encumbrances, upon the terms and conditions herein set forth;

PROVIDED HOWEVER, that these presents are upon the condition that if the Board shall pay or cause to be paid the principal of and the interest on the Series 1990-A Bond secured hereby at the times and in the manner mentioned in the Series 1990-A Bond, according to the true intent and meaning thereof, and shall pay or cause to be paid all other Mortgage Indebtedness, then the Mortgage and the estate and rights granted hereby shall cease, determine and be void; otherwise the Mortgage shall be and remain in full force and effect.

## ARTICLE III

### THE SERIES 1990-A BOND

**Section 3.1 Issuance of Series 1990-A Bond; Interest Rate and Other Terms of the Series 1990-A Bond.** There is hereby authorized to be issued under the Mortgage a single Series 1990-A Bond designated First Mortgage Industrial Revenue Bond (Rainbow Technology Corporation Project), Series 1990-A, in a principal amount of up to \$840,000. The Series 1990-A Bond shall be dated the date of its issuance, shall mature and become payable on the Maturity Date and shall be payable to the Mortgagee or its nominee.

The outstanding principal of the Series 1990-A Bond shall bear interest from its date until its maturity (whether by acceleration, mandatory redemption or otherwise), payable on November 1, 1990, and on the first (1st) day of each calendar month thereafter at a per annum rate equal to the Applicable Rate from time to time in effect.

Overdue installments of principal of and interest on the Series 1990-A Bond, including all such installments becoming due as a result of acceleration or mandatory redemption, shall bear interest from their respective due dates until paid at the Applicable Rate from time to time in effect. All interest on the Series 1990-A Bond (including, without limitation, interest on overdue installments of principal and interest) shall be computed on the basis of a 360-day year for the actual number of days elapsed.

The principal of and the interest on the Series 1990-A Bond shall be payable in lawful money of the United States of America at the principal office of the Mortgagee. The Series 1990-A Bond shall be registered by the Board as to both principal and interest.

**Section 3.2 Optional Redemption of the Series 1990-A Bond.** At the option of the Board (which option shall be exercisable only upon request by the Company if at the time no Lease Default shall have occurred and be continuing), the Series 1990-A Bond shall be subject to redemption and payment, as a whole, on the date of its issuance and on any date thereafter following ninety (90) days notice to the Mortgagee, at and for a redemption price equal to the principal amount of the Series 1990-A Bond to be redeemed plus accrued interest thereon to the date fixed for redemption, plus a prepayment premium equal to the Applicable Prepayment Premium.

**Section 3.3 Scheduled Mandatory Redemption of the Series 1990-A Bond.** Portions of the principal amount of the Series 1990-A Bond shall be subject to mandatory redemption and payment on the first day of the first calendar month following the month in which the Sale Date occurs and on the first day of each calendar month thereafter until and including September 1, 2000, in an amount equal to a principal component of a level monthly debt service payment calculated on the basis of the initial Applicable Rate and a thirty (30) year amortization of the outstanding principal balance of the Bond and a maturity of the entire unamortized principal balance of the Bond on October 1, 2000. The amount of the principal component herein provided for shall be adjusted upon a change to the Adjusted Rate

on the Adjustment Date. Principal portions of the Series 1990-A Bond shall be redeemed pursuant to the provisions of this section at and for a redemption price, with respect to each portion of the principal thereof to be redeemed, equal to the principal amount thereof to be redeemed plus accrued interest thereon to the date fixed for redemption.

If less than all the outstanding principal amount of the Series 1990-A Bond is redeemed pursuant to the provisions of Section 3.2 hereof, the principal amount of the Series 1990-A Bond so redeemed shall be credited in inverse chronological order against the mandatory redemptions of the principal amount of the Series 1990-A Bond required by this section, and unless and until all the principal amount of the Series 1990-A Bond shall have been paid in full, no such redemption of less than all the principal amount of the Series 1990-A Bond shall have the effect of extending or postponing the redemption date of any redemption of any principal amount of the Series 1990-A Bond required by this section or of reducing the principal amount of the Series 1990-A Bond required by this section to be redeemed on such date.

**Section 3.4 Extraordinary Redemption of the Series 1990-A Bond.** In the event that (i) any part of the Project is damaged or destroyed with the consequences described in the first paragraph of Section 7.1 of the Lease, (ii) all or substantially all of the Project is taken through the exercise of the power of Eminent Domain [as defined in the Lease] with the consequences described in Section 7.2(a) of the Lease or (iii) the Company exercises the option granted in Section 11.2 of the Lease to purchase the Project, then, and in either of such events, the Series 1990-A Bond shall be subject to mandatory redemption as a whole, at and for a redemption price, with respect to the outstanding principal amount of the Series 1990-A Bond, equal to the outstanding principal amount thereof plus accrued interest thereon to the date fixed for redemption. In case the Series 1990-A Bond is required to be redeemed pursuant to clause (i) of the first sentence of this Section, the date fixed for such redemption shall be the date on which the Lease terminates as provided in said first paragraph of Section 7.1 thereof (or such later date as may be required by the provisions of Section 11.2 hereof). In case the Series 1990-A Bond is required to be redeemed pursuant to clause (ii) of the first sentence of this Section, the date fixed for such redemption shall be the date on which the Lease terminates as provided in said Section 7.2(a) thereof (or such later date as may be required by the provisions of Section 11.2 hereof). In case the Series 1990-A Bond is required to be redeemed pursuant to clause (iii) of the first sentence of this Section, the date fixed for such redemption shall be the business day next succeeding the date of purchase of the Project determined by the Company in accordance with the provisions of clause (2) of Section 11.2 of the Lease. The provisions of Section 7.6 hereof shall apply to the redemption of the Series 1990-A Bond pursuant to this Section.

**Section 3.5 Optional Redemption of Series 1990-A Bond - Adjustment Date.** At the option of the Board (which option shall be exercisable only upon request by the Company if at any time no lease default shall have occurred and be continuing), the Series 1990-A Bond shall be subject to redemption, as a whole, or in part, in the event Protective exercises its option to change the interest rate on the Adjustment Date to the Adjusted Rate. In the event Protective exercises the option to change the rate, the Board (but only upon request of the Company) may entirely prepay the principal amount of the Series 1990-A Bond



plus accrued interest thereon to the date fixed for redemption without payment of the applicable prepayment premium. Such optional redemption must be effective within 120 days from the date of the Adjustment Date and accrued interest to date of prepayment will be calculated at the Applicable Rate. The Board shall also be entitled to partially redeem the Series 1990-A Bond on the same basis as herein set forth in an amount not less than \$200,000 nor more than \$300,000. In the event of a partial redemption pursuant to the provisions of this section, the principal and interest payment shall be appropriately adjusted to reflect partial redemption.

Section 3.6 **Form of Series 1990-A Bond.** The Series 1990-A Bond and the form of assignment applicable thereto shall be in substantially the following forms, respectively, with such insertions, omissions and other variations as may be necessary to conform to the provisions hereof:

[Form of Series 1990-A Bond]

\$840,000

\$840,000

UNITED STATES OF AMERICA

STATE OF ALABAMA

THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF PELHAM

FIRST MORTGAGE INDUSTRIAL REVENUE BOND  
(Rainbow Technology Corporation Project)  
Series 1990-A

On the Maturity Date (as defined in the Mortgage hereinafter referred to) unless the principal of this bond shall have been duly called for previous redemption and payment duly provided for, for value received, THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF PELHAM, a public corporation and instrumentality under the laws of the State of Alabama (herein called the "Board"), will pay to \_\_\_\_\_, or registered assigns, solely out of the sources of payment hereinafter referred to, the sum of

D O L L A R S

(or so much thereof as may have been advanced to the Board from time to time during the term hereof and not repaid by the Board pursuant to the terms hereof). The unpaid principal balance of this bond shall bear interest from the date hereof during each calendar quarter at a per annum rate equal to the "Applicable Rate" (as defined in the Mortgage hereinafter

referred to). The interest rate shall be subject to adjustment by Protective from the Applicable Rate to the Adjusted Rate on the Adjustment Date. The interest on this bond is payable on November 1, 1990, and on the first (1st) day of each calendar month thereafter until and at the maturity hereof. Overdue installments of principal of and interest on this bond, including all such installments becoming due as a result of acceleration or mandatory redemption, shall bear interest from their respective due dates until paid at the rate of interest otherwise applicable to this bond, computed and subject to adjustment as aforesaid. All interest on this bond (including, without limitation, interest on overdue installments of principal and interest) shall be computed on the basis of a 360-day year for the actual number of days elapsed. The principal of and the interest and premium on this bond shall be payable in lawful money of the United States of America at the principal office of the Mortgagee under the Mortgage hereinafter referred to. Interest shall accrue hereon at the After Maturity Interest Rate on any payments due hereunder which are not paid as and when due. A late charge equal to 4% of any scheduled monthly payment shall be paid on any installment of principal and interest not paid within ten (10) days of its due date.

This bond is authorized to be issued in a principal amount of up to \$840,000 and designated First Mortgage Industrial Revenue Bond (Rainbow Technology Corporation Project), Series 1990-A (herein called the "Series 1990-A Bond"). The Series 1990-A Bond has been issued under a Mortgage Indenture dated as of September 1, 1990 (herein called the "Mortgage"), between the Board and First Commercial Bank, Birmingham, Alabama, as Mortgagee (herein, together with its successors, called the "Mortgagee"), for the purpose of permanently financing the costs of acquiring and constructing a facility to be located in Shelby County, Alabama in the vicinity of the City of Pelham, Alabama (said facility and all land, improvements and other property acquired by the Board in connection therewith, as they may at any time exist, being herein together called the "Project"), as well as the costs of issuing the Series 1990-A Bond. In connection with the issuance of the Series 1990-A Bond, the Board has leased the Project to Rainbow Technology Corporation, an Alabama corporation (herein, together with its successors and assigns, called the "Company"), under a Lease Agreement dated as of September 1, 1990 (herein called the "Lease"), which obligates the Company to pay rent directly to the Mortgagee, for the account of the Board, on such dates and in such amounts as will provide moneys sufficient to pay, when due, the principal of and the interest on the Series 1990-A Bond. The Series 1990-A Bond is further secured by (i) a Guaranty Agreement dated as of September 1, 1990 (herein called the "Company Guaranty"), between the Company and the Mortgagee, pursuant to which the Company has unconditionally guaranteed to the Mortgagee, the payment of the principal of and the interest on the Series 1990-A Bond to the extent provided therein and (ii) a Guaranty Agreement dated as of September 1, 1990 (herein called the "Shareholder Guaranty"), between the shareholders of the Company and the Mortgagee, pursuant to which said shareholders have unconditionally guaranteed to the Mortgagee, the payment of the principal of and the interest on the Series 1990-A Bond to the extent provided therein (the Company Guaranty and the Shareholder Guaranty being herein together called the "Guaranties").

The Series 1990-A Bond is subject to redemption prior to its maturity as follows:

- (1) At the option of the Board, the Series 1990-A Bond is subject to redemption, as a whole, on the date of its issuance and on any date thereafter following ninety (90) days notice to the Mortgagee, at and for a redemption

price, with respect to each portion of the principal thereof called for redemption, equal to the principal amount thereof to be redeemed plus accrued interest thereon to the date fixed for redemption, plus a prepayment premium equal to the "Applicable Prepayment Premium" (as defined in the Mortgage).

(2) A portion of the principal of the Series 1990-A Bond is subject to mandatory redemption on the first day of the first calendar month following the month in which the Sale Date (as defined in the Mortgage) occurs, and on the first day of each calendar month thereafter until and including September 1, 2000, in an amount equal to the principal component of a level monthly debt service payment calculated on the basis of the initial Applicable Rate and a thirty (30) year amortization of the outstanding principal balance of the Series 1990-A Bond and a maturity of the entire unamortized principal balance of the Series 1990-A Bond on October 1, 2000. The amount of the principal component herein provided for shall be adjusted upon a change to the Adjusted Rate on the Adjustment Date. The portion of the principal of the Series 1990-A Bond called for such mandatory redemption shall be redeemed at and for a redemption price, with respect to each portion of the principal thereof called for redemption, equal to the principal amount thereof so called for redemption plus accrued interest thereon to the date fixed for redemption.

(3) The Series 1990-A Bond is subject to mandatory redemption as a whole on any date, at and for a redemption price, with respect to the outstanding principal amount of the Series 1990-A Bond, equal to the principal amount thereof plus accrued interest thereon to the date fixed for redemption, but only in the event of the taking through the exercise of the power of eminent domain of all or substantially all the Project, or in the event of the exercise by the Company of an option to purchase the Project granted in the Lease, which option shall be exercisable only if (a) any part of the Project is damaged or destroyed, by fire or other casualty, to such extent that, in the opinion of the Company, the restoration or repair of the property damaged or destroyed to the condition thereof immediately preceding such damage or destruction would not be economically practicable or desirable, or (b) under the exercise of the power of eminent domain, (i) title to all or substantially all the Project is taken, or (ii) the temporary use of all or part of the Project, or title to part of the Project, is taken to such extent that, in the opinion of the Company, the Company will thereby be prevented, or is likely to be thereby prevented, from making normal use of the Project for a period of not less than three (3) consecutive months, or (c) as a result of any changes in the Constitution of the United States of America or the Constitution of the State of Alabama, any legislative or administrative action (whether state or federal), or any final decree or judgment or order of any court or administrative body (whether state or federal) entered after the contest thereof by the Company in good faith, the Lease becomes void or unenforceable or impossible of performance in accordance with the intent and purposes of the parties thereto as expressed therein or unreasonable burdens or excessive liabilities are imposed on the Board or the Company, including any changes in the tax laws of the United States of America or the State of Alabama that will render the

operation of the Project significantly less economically advantageous to the Company, or (d) as a result of any change in the economic viability of the Project, the continued operation of the Project is, in the opinion of the Company, rendered impracticable or significantly less economically desirable in relation to the previous operation of the Project.

(4) At the option of the Board (which option shall be exercisable only upon request by the Company if at any time no lease default shall have occurred and be continuing), the Series 1990-A Bond shall be subject to redemption, as a whole, or in part, in the event Protective exercises its option to change the interest rate on the Adjustment Date to the Adjusted Rate. In the event Protective exercises the option to change the rate, the Board (but only upon request of the Company) may entirely prepay the principal amount of the Series 1990-A Bond plus accrued interest thereon to the date fixed for redemption without payment of the applicable prepayment premium. Such optional redemption must be effective within 120 days from the date of the Adjustment Date and accrued interest to date of prepayment will be calculated at the Applicable Rate. The Board shall also be entitled to partially redeem the Series 1990-A Bond on the same basis as herein set forth in an amount not less than \$200,000 nor more than \$300,000. In the event of a partial redemption pursuant to the provisions of this section, the principal and interest payment shall be appropriately adjusted to reflect partial redemption.

The principal of and the interest on the Series 1990-A Bond are payable solely from (i) the revenues and receipts to be derived from the leasing or sale of the Project, (ii) certain other moneys pledged under the Mortgage and (iii) moneys received by the Mortgagee under the Guaranties. The payment of the principal of and the interest on the Series 1990-A Bond is secured by a valid pledge of the aforesaid revenues, receipts and moneys out of which the Series 1990-A Bond are solely payable (including specifically the "Basic Rent" payable to the Board by the Company under the Lease), by the Mortgage, which constitutes a lien on the Project, and by an assignment to the Mortgagee of all right, title and interest of the Board in and to the Lease (except certain expense reimbursement and indemnification rights of the Board and certain other rights which are expressly reserved to the Board). Reference is hereby made to the Lease, the Mortgage and the Guaranties for complete information respecting the nature and extent of the security afforded by each of such instruments and the rights and duties of the Board and the Mortgagee with respect thereto.

The Mortgage provides that upon the occurrence and continuation of certain events of default as therein provided, the Mortgagee may declare the principal of and the interest accrued on this bond immediately due and payable, whereupon the same shall thereupon become immediately due and payable and the Mortgagee shall be entitled to pursue the remedies provided in the Mortgage. The Mortgage also provides that the Board and the Mortgagee may at any time and from time to time amend the Mortgage and any mortgage supplemental thereto. The Mortgage further provides that the Board and the Company, with the written consent of the Mortgagee, may at any time and from time to time amend, change or modify the Lease.

The Board is a public corporation organized under the provisions of Code of Alabama 1975, Title 11, Chapter 54, Article 4, and the Series 1990-A Bond is authorized to be issued for the purposes for which bonds are authorized to be issued under the specified provisions of said code. The Series 1990-A Bond and the covenants and representations contained in the Mortgage do not and shall never constitute a general liability or charge against the general credit of the Board. Neither the State of Alabama nor the City of Pelham nor any other political subdivision of said state shall in any manner be liable for payment of the principal of or the interest on the Series 1990-A Bond or for the performance of the undertakings of the Board contained herein or in the Mortgage.

It is hereby certified that all conditions, actions and things required by the Constitution and laws of the State of Alabama to exist, be performed and happen precedent to or in the issuance of this bond do exist, have been performed and have happened in due and legal form.

This bond is transferable by the registered holder hereof in person, or by duly authorized attorney, only on the books of the Board and only upon surrender of this bond to the Board for cancellation, and upon any such transfer a new fully registered bond of like tenor hereof will be issued to the transferee in exchange therefor, all as more particularly provided in the Mortgage. ANY ASSIGNEE OR TRANSFEREE OF THIS BOND TAKES IT SUBJECT TO ALL PAYMENTS OF PRINCIPAL, INTEREST AND PREMIUM IN FACT MADE WITH RESPECT HERETO, WHETHER OR NOT SUCH PAYMENTS ARE REFLECTED BY ENDORSEMENT ON THIS BOND OR ANY PAYMENT RECORD PERTAINING HERETO.

IN WITNESS WHEREOF, the Board has caused this bond to be executed in its name and behalf by the Chairman of its Board of Directors, has caused its corporate seal to be hereunto affixed, has caused this bond to be attested by its Secretary, and has caused this bond to be dated \_\_\_\_\_.

THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF PELHAM

By \_\_\_\_\_  
Chairman of the Board of Directors

ATTEST:

\_\_\_\_\_  
Secretary

[ S E A L ]

[Form of Record of Partial Payment or Redemption]

**RECORD OF PARTIAL PAYMENT OR REDEMPTION**

Upon each partial payment or redemption of the principal indebtedness evidenced by the within bond, such bond shall be surrendered to the Board for the appropriate endorsement by it of such payment or redemption on the record below.

Date of Payment or Redemption	Principal Amount Paid or Redeemed	Remaining Unpaid Balance	Signature

[Form of Assignment]

For value received, \_\_\_\_\_ hereby sell(s), assign(s) and transfer(s) unto \_\_\_\_\_ the within bond and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_ attorney, with full power of substitution in the premises, to transfer such bond on the books of The Industrial Development Board of the City of Pelham.

DATED this \_\_\_\_\_ day of \_\_\_\_\_.

NOTE: The name signed to this assignment must correspond with the name of the payee written on the face of the within bond in every particular, without alteration, enlargement or change whatsoever.

Section 3.7 Series 1990-A Bond to Bear Legend Concerning Lack of Registration under Securities Act. The Mortgagee acknowledges and understands that



the Series 1990-A Bond has been sold to the original purchaser without being registered under the Securities Act of 1933, as amended, and that the Series 1990-A Bond may not, therefore, be sold or otherwise transferred by any holder thereof without registration under said Securities Act, unless it is sold or otherwise transferred pursuant to an exemption from such registration. In accordance with such acknowledgment and understanding, the Mortgagee (anything to the contrary herein contained notwithstanding) will not authenticate any Series 1990-A Bond issued hereunder, irrespective of whether such Series 1990-A Bond is to be initially issued hereunder or is to be issued in exchange for or upon the transfer of the Series 1990-A Bond, unless on each such Series 1990-A Bond there is printed or typewritten in a conspicuous manner a legend in substantially the following form:

**TRANSFER RESTRICTED**

This Series 1990-A Bond has not been registered under the Securities Act of 1933, as amended, and has been acquired subject to the restrictions on its transferability contained in an investment letter executed by the original purchaser hereof. This Series 1990-A Bond may not be offered for sale, sold, pledged, transferred or otherwise disposed of except on the terms set forth in such investment letter, a copy of which is on file in the office of the Mortgagee under the Mortgage Indenture pursuant to which this Series 1990-A Bond was issued.

The Mortgagee may authenticate any Series 1990-A Bond issued hereunder without requiring such Series 1990-A Bond to bear the aforesaid legend if, prior to the issuance thereof,

(a) such Series 1990-A Bond is registered under the Securities Act of 1933, as amended, or

(b) the Mortgagee is furnished with an opinion of Counsel (who shall be knowledgeable with respect to the laws applicable to the sale of securities generally) to the effect (i) that the particular sale, transfer or other transaction requiring the issuance of such Series 1990-A Bond constitutes an exempted transaction under the Securities Act of 1933, as amended, and that registration of such Series 1990-A Bond under said Securities Act is not therefore required with respect to such sale, transfer or other transaction, or (ii) that, as a result of a change in applicable law or regulations issued pursuant thereto or as the result of other circumstances, such Series 1990-A Bond may be offered for sale, sold, pledged, transferred or otherwise disposed of with the same freedom as if it had been registered under said Securities Act.

**Section 3.8 Execution of Series 1990-A Bond.** The Series 1990-A Bond shall be executed by the Chairman or Vice Chairman of the Directors, and the seal of the Board shall be affixed thereto and attested by the Secretary or Assistant Secretary of the Board. Signatures on the Series 1990-A Bond by persons who were officers of the Board at the time such signatures were written shall continue effective although such persons cease to be such officers prior to the delivery of the Series 1990-A Bond.

No Series 1990-A Bond in any form shall be initially delivered under the Mortgage unless, prior to or simultaneously with the delivery of such Series 1990-A Bond, there shall have been furnished to the Mortgagee the following:

(a) original executed counterparts of the Lease, the Mortgage and the Series 1990-A Guaranties;

(b) a certified copy of a resolution or resolutions authorizing (i) the execution and delivery of the Lease on the part of the Board, (ii), the execution and delivery of the Mortgage on the part of the Board and (iii) the execution, delivery, issuance and sale of the Series 1990-A Bond by the Board;

(c) a closing certificate of officers of the Municipality respecting the organization of the Board, the incumbency of its directors and the absence of litigation affecting the Board or the issuance of the Series 1990-A Bond;

(d) a copy of the certificate of incorporation of the Company, together with all amendments thereto, certified as being true, correct and complete by the appropriate officials of the State of Alabama as of a date not more than forty-five (45) days prior to the issuance of the Series 1990-A Bond;

(e) a certificate of the appropriate official of the State of Alabama that the Company is in good standing in that state as of a date not more than twenty-one (21) days prior to the issuance of the Series 1990-A Bond;

(f) a certificate of the Secretary of the Company stating, among other things, (i) that there have been no amendments to the Company's certificate of incorporation not reflected in the copy thereof certified by officials of the State of Alabama and furnished to the Mortgagee, (ii) that the copy of the bylaws of the Company attached to such certificate is a true, correct and complete copy of such bylaws as then in effect, and (iii) that the copy of the resolutions of the Board of Directors of the Company attached to such certificate is a true, correct and complete copy of the resolutions authorizing the execution and delivery of the Lease on behalf of the Company;

(g) an executed counterpart of an investment letter or other form of agreement by First Commercial Bank representing that it is purchasing the Series 1990-A Bond for investment;

(h) a written opinion of Counsel for the Company stating, among other things, (i) that the Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Alabama and (iii) that the Lease and the Series 1990-A Company Guaranty have been duly authorized, executed and delivered on behalf of the Company and constitute valid and binding agreements thereof;

(i) a written opinion of Bond Counsel stating in substance (i) that the Board is a duly organized and validly existing public corporation under the



laws of the State of Alabama, (ii) that the Board has full corporate power and authority to issue and sell the Series 1990-A Bond, to enter into and perform the Lease and the Mortgage, and to carry out the transactions contemplated thereby, (iii) that the Lease and the Mortgage have each been duly authorized, executed and delivered on behalf of the Board, (iv) that relying upon the opinion of Counsel for the Company referred to in the preceding subparagraph (h) as to the organization and corporate powers of the Company and the authorization, execution and delivery of the Lease on behalf of the Company, the Lease and the Mortgage constitute legal, valid and binding agreements of the respective parties thereto, and (v) that the issuance and sale of the Series 1990-A Bond in accordance with the provisions of the Lease and the Mortgage have been duly authorized by the Board and that such Series 1990-A Bond constitutes legal, valid and binding special obligations of the Board payable from the sources provided in the Lease and the Mortgage.

Except for the certificates described in the preceding subparagraphs (d) and (e), the certificates and opinions required by this section shall all be dated as of the date of the delivery of the Series 1990-A Bond. The Lease, the Mortgage, the Series 1990-A Guaranties, the certificates described above, the respective opinion of Counsel to the Company and the opinion of Bond Counsel respecting the Series 1990-A Bond shall be in the respective forms therefor previously submitted to and approved by First Commercial Bank, the original purchaser of the Series 1990-A Bond from the Board.

**Section 3.9 Replacement of Mutilated, Lost, Stolen or Destroyed Series 1990-A Bond.** In the event that the Series 1990-A Bond is mutilated, lost, stolen or destroyed, the Board may execute a new Series 1990-A Bond of like tenor as that mutilated, lost, stolen or destroyed provided that (a) in the event that the Series 1990-A Bond is mutilated, such bond is first surrendered to the Board and (b) in the event that the Series 1990-A Bond is lost, stolen or destroyed, there is first furnished to the Board evidence of such loss, theft or destruction satisfactory to the Board, together with indemnity satisfactory to the Board if it so requires. The Board may charge the Mortgagee with the reasonable expenses of issuing any such new bond.

**Section 3.10 Registration and Transfer of Series 1990-A Bond.** The Secretary of the Board shall be the registrar and transfer agent of the Board and shall keep at the office of the Board proper registry and transfer books in which he will note the registration and transfer of the Series 1990-A Bond, all in the manner and to the extent hereinafter specified.

The Series 1990-A Bond, when issued, shall be registered as to both principal and interest on the registry books of the Board and shall continuously be so registered on the registry books of the Board for so long as any part of the principal thereof or interest thereon shall be outstanding and unpaid. The Series 1990-A Bond shall be transferable only on the transfer books of the Board. No transfer of the Series 1990-A Bond shall be valid hereunder unless such Series 1990-A Bond is presented at the office of the Board with written power to transfer signed by the registered owner thereof in person or by duly authorized attorney, properly stamped if required, in form and with guaranty of signature satisfactory to the

registrar, whereupon the Board shall execute and deliver to the transferee a new Series 1990-A Bond, registered in the name of such transferee and of like tenor as that presented for transfer. The Person in whose name the Series 1990-A Bond is registered on the books of the Board shall be the sole Person to whom or on whose order payments on account of the principal thereof and of the interest thereon may be made.

**Section 3.11 Person Deemed Owner of Series 1990-A Bond.** The Board may deem and treat the Person in whose name the Series 1990-A Bond is registered as the absolute owner thereof for all purposes; it shall not be affected by notice to the contrary; and all payments of principal of and interest on the Series 1990-A Bond to the Person in whose name the same is registered shall, to the extent thereof, fully discharge and satisfy all liability for the same.

**Section 3.12 Application of Proceeds from Sale of Series 1990-A Bond.** The entire proceeds derived from time to time from the sale by the Board of the Series 1990-A Bond shall be paid to the Mortgagee and promptly thereafter deposited by the Mortgagee into the Construction Fund, but if and only if, simultaneously with the payment of such proceeds to the Mortgagee, the Board delivers to the Mortgagee satisfactory evidence of its good and marketable title to the Project Site (subject only to Permitted Encumbrances), which evidence may consist of a title opinion by Independent Counsel acceptable to the Mortgagee or a policy or binder of title insurance acceptable to the Mortgagee insuring the mortgage interest of the Mortgagee in such real property for an amount not less than \$840,000.

#### ARTICLE IV

#### CONCERNING THE PROJECT DEVELOPMENT WORK AND PAYMENT OF PROJECT DEVELOPMENT COSTS

**Section 4.1 Agreement Respecting Completion of Project Development Work.** The Board will cause the Project Development Work to be undertaken and completed, all as and to the extent provided in Article IV of the Lease. The Board will complete the Project Development Work as soon as may be practicable, delays incident to any condition or event beyond the reasonable control of the Board only excepted, including, without limitation, strikes, riots, acts of God and the public enemy. The Board will promptly pay or cause to be paid, as and when due, all Project Development Costs, but the Board's obligation to pay such costs shall be limited to moneys on deposit in the Construction Fund and such other funds for the payment of such costs as may be made available by the Company under the provisions of the Lease.

The Board will not suffer or permit any mechanics' or materialmen's liens that might be filed or otherwise claimed or established upon or against the Project or any part thereof, and which might be or become a lien superior to the lien hereof, to remain unsatisfied and undischarged for a period exceeding thirty (30) days after the filing or establishment thereof; provided, however, that the Board may in good faith contest any such mechanics' or material-

men's lien claims so filed or established and, in the event that such lien claims are so contested, may permit the mechanics' or materialmen's liens so contested to remain unsatisfied and undischarged during the period of such contest and any appeal therefrom, irrespective of whether such period extends beyond the thirty (30) day period after the filing or establishment of such liens, unless the Mortgagee shall be of the opinion that by such action the lien of the Mortgage to any part of the Project shall be materially endangered or that the Project or any part thereof shall be subject to loss or forfeiture, in which event such mechanics' or materialmen's liens shall (unless they are bonded or superseded in a manner satisfactory to the Mortgagee) be satisfied prior to the expiration of said thirty (30) day period.

**Section 4.2 Construction Fund.** There is hereby created a special fund, the name of which shall be the "Rainbow Technology Corporation Construction Fund", for the purpose of providing funds for payment of Project Development Costs. The Bank shall be and remain the depository, custodian and disbursing agent for the Construction Fund and shall be entitled to reasonable compensation for its services hereunder, including extra compensation for unusual or extraordinary services. The moneys in the Construction Fund shall be disbursed by the Bank from time to time for the purpose of paying Project Development Costs, but only upon receipt of a requisition signed by at least one Authorized Company Representative and stating, with respect to each such payment, the following:

- (a) the amount requested to be paid;
- (b) the name and address of the person, firm or corporation to whom such payment is due;
- (c) the particular Project Development Cost for which the obligation to be paid was incurred;
- (d) that the purpose for which such payment is to be made is one for which Construction Fund moneys are authorized in the Mortgage to be expended;
- (e) that the payment requested in such requisition has not formed the basis for any previous requisition for the disbursement of moneys in the Construction Fund or any previous payment out of the proceeds derived by the Board from the sale of the Series 1990-A Bond;
- (f) in the case of a requisition for payment of any part of the costs of improving the Project Site (whether bills or contractors' estimates), a certification that the labor, services or materials represented thereby are located on or in, or are referable to, the Project Site;
- (g) a current statement of sources and uses of funds respecting the Project;
- (h) the approval of the architect for the Project Development Work (or such other inspector or consultant as shall be satisfactory to the Mortgagee)

of the payment requested in such requisition if the payment is for any Project Development Work which said architect (or inspector or consultant) is contractually obligated to oversee;

and (i) such other conditions as the Mortgagee may reasonably require;

(j) the written approval of the Mortgagee.

The completion of the Project Development Work and the payment of all Project Development Costs (except for amounts to be retained by the Bank at the Company's direction, as hereinafter provided, for any such costs not then due and payable or the liability for payment of which is being contested) shall be evidenced to the Bank by a certificate signed by an Authorized Company Representative as provided in Section 4.6 of the Lease. On the Completion Date, the Company, as agent for the Board, shall draw the balance of the \$840,000 total principal amount of the Bond and shall cause the Bank to apply the amount so drawn to the prepayment of the principal amount of the Board's Industrial Development Bond (Rainbow Technology Corporation Project), Series 1990-B.

The Mortgagee will keep and maintain (or cause the Bank to keep and maintain) adequate records pertaining to the Construction Fund and all moneys received therein and disbursed therefrom, and when the Construction Fund has been completely closed, whether on the Completion Date or (in accordance with the provisions of the next preceding paragraph of this Section 4.2) thereafter, the Mortgagee will file (or cause the Bank to file) with the Board and the Company an accounting of all moneys received into and disbursed from the Construction Fund.

**Section 4.3 Bank Protected in Construction Fund Payments. Additional Evidence May Be Required.** The Bank shall be fully protected in making withdrawals and payments out of the Construction Fund for the purposes specified in Section 4.2 hereof upon presentation to it of requisitions complying with the requirements of said Section 4.2, but the Bank shall, when requested in writing so to do by the Mortgagee, require as a condition precedent to any withdrawal or disbursement from the Construction Fund (other than a payment into the Bond Fund pursuant to the second paragraph of Section 4.2 hereof) such additional evidence as it may reasonably deem appropriate respecting the application of any moneys previously disbursed from the Construction Fund or as to the correctness of any estimate or bill presented to it for payment pursuant to the provisions of said Section 4.2.

**Section 4.4 Investment of Construction Fund Moneys.** Following the issuance of the Series 1990-A Bond, the Company may thereafter at any time and from time to time request the Mortgagee to invest the moneys held in the Construction Fund by furnishing to the Mortgagee a written certificate signed by an Authorized Company Representative and stating (i) what portions (if any) of the moneys on deposit in the Construction Fund are not then needed for payment of Project Development Costs and (ii) the approximate dates that such presently unneeded moneys will be needed for the payment of Project Development Costs. Promptly after receipt of each such certificate, the Mortgagee will, to the extent

practicable, cause the Construction Fund moneys certified in said certificate as not then needed for the payment of Project Development Costs to be invested in any Eligible Investments having stated maturities in such amounts and at such times, prior to or corresponding with the dates and amounts specified in said certificate, as to make available from the Construction Fund cash moneys sufficient to meet the needs of the Construction Fund as specified in said certificate. Such certificate may contain either specific or general instructions from the Company as to the kind of Eligible Investments in which the presently unneeded moneys in the Construction Fund are to be invested, and the Mortgagee will comply with such instructions to the extent that they are not inconsistent with the applicable provisions hereof. In the event that moneys in the Construction Fund are invested pursuant to the provisions hereof, the Eligible Investments in which such moneys are so invested, together with all income derived therefrom, shall become a part of the Construction Fund to the same extent as if they were moneys originally deposited therein. The Mortgagee shall convert (or cause the Bank to convert) any such investments into cash at their respective maturities, may sell or otherwise convert (or may cause the Bank to sell or otherwise convert) any such investments into cash if such sale or conversion is necessary to provide for payment of a requisition presented to it pursuant to the provisions of Section 4.2 hereof, and shall, upon written request of an Authorized Company Representative, sell or otherwise convert (or cause the Bank to sell or otherwise convert) any such investments into cash. The net proceeds from such sale or conversion shall become a part of the Construction Fund. The Mortgagee (and, if applicable, the Bank) shall be fully protected in making any such investment, sale or conversion in accordance with the provisions of this section. In any determination of the amount of moneys at any time forming a part of the Construction Fund, all Eligible Investments in which any portion of the Construction Fund is at the time so invested shall be included therein at their then market value.

## ARTICLE V

### APPLICATION OF REVENUES AND PAYMENT OF THE SERIES 1990-A BOND

**Section 5.1 Method of Payment of the Series 1990-A Bond.** The principal of and the interest and premium (if any) on the Series 1990-A Bond shall be payable at the principal office of the Mortgagee. In case any principal portion of the Series 1990-A Bond is called for partial redemption, the redemption price of such principal portion so called for redemption shall be payable at the principal office of the Mortgagee, whereupon the Mortgagee shall appropriately endorse such partial redemption on the Series 1990-A Bond or on any record of partial redemptions appertaining thereto and constituting a part thereof. Payment by the Company, directly to the Mortgagee at its principal office, of all Basic Rent at any time due shall constitute payment of the principal, interest and premium (if any) then due with respect to the Series 1990-A Bond.



## ARTICLE VI

### PARTICULAR COVENANTS OF THE BOARD

Section 6.1 **Payment of the Series 1990-A Bond.** The Board will pay or will cause to be paid, out of the revenues and receipts derived from the leasing or sale of the Project, the principal of and the interest on the Series 1990-A Bond as specified therein, and it will otherwise perform all obligations that, either expressly or by reasonable implication, are imposed on it in the Mortgage, and it will not default hereunder.

Section 6.2 **Priority of Pledge.** The pledge herein made of the revenues and receipts from any leasing or sale of the Project shall be prior and superior to any pledge thereof hereafter made for the benefit of any other securities hereafter issued or any contract hereafter made by the Board. In the event the Board should hereafter issue any other securities payable, in whole or in part, out of the revenues or receipts to be derived from the leasing or sale of the Project or for which any part of said revenues or receipts may be pledged or any part of the Project may be mortgaged, or in the event the Board should hereafter make any contract payable, in whole or in part, out of said revenues and receipts or for which any part of said revenues and receipts may be pledged or any part of the Project may be mortgaged, the Board will, in the proceedings under which any such securities or contract are hereafter authorized, recognize the priority of the pledge of said revenues and receipts made herein for the benefit of the Series 1990-A Bond. The Board recognizes that in the Lease it has agreed

(a) not to issue any securities, other than the Series 1990-A Bond, that are payable out of or secured by a pledge of the revenues and receipts derived by the Board from the leasing or sale of the Project or any part thereof, and

(b) not to place any mortgage or other encumbrance (other than the Mortgage or any Supplemental Mortgages contemplated thereby) on the Project or any part thereof,

without, in either case, the prior written request or consent of the Company and the Mortgagee.

Section 6.3 **Concerning the Lease.** The Mortgage and the rights and privileges of the Mortgagee are specifically made subject to the rights, options and privileges of the Company under the Lease, and nothing herein contained shall be construed to impair the rights, options and privileges granted to the Company by the Lease. The Board will perform and observe, or cause to be performed and observed, all agreements, covenants, terms and conditions required to be observed and performed by it in the Lease. Without relieving the Board from the consequences hereunder of any default in connection therewith, the Mortgagee (on behalf of the Board) may perform and observe, or cause to be performed and

observed, any such agreement, covenant, term or condition, all to the end that the Board's rights under the Lease may be unimpaired and free from default.

The Board will promptly notify the Mortgagee in writing of (i) the occurrence of any Lease Default, provided that the Board has knowledge of such default, and (ii) the giving of any notice of default under the Lease. The Board will also promptly notify the Mortgagee in writing if, to the knowledge of the Board, the Company fails to perform or observe any of the agreements or covenants on its part contained in the Lease. In the event of the occurrence of a Lease Default, any such giving of notice of default or any such failure, whether notice thereof is given to the Mortgagee by the Board, as aforesaid, or whether the Mortgagee independently has knowledge thereof, the Mortgagee will promptly give written notice thereof to the Company and shall in such notice expressly require the Company to perform or observe the agreement or covenant with respect to which the Company is delinquent, all to the end that if the Company does not perform or observe such agreement or covenant (or cause such agreement or covenant to be performed or observed) in the manner and within the time provided by the Lease, a Lease Default may be declared without delay.

So long as the Lease shall remain in effect the Board will cause the Basic Rent to be paid to the Mortgagee as provided in the Lease. The Board will not cancel, terminate or modify, or consent to the cancellation, termination or modification of, the Lease (except as is specifically provided, authorized or contemplated herein) unless and until the entire Mortgage Indebtedness shall have been paid in full; provided, however, that with the written consent of the Mortgagee, the Board may terminate the Lease under those provisions of the Lease or of any subsequent lease, including payment of the rentals therein provided and performance and observance of all agreements and covenants on the part of the Company or other lessee therein contained. In the event it should become necessary for the Board to terminate the Lease, or any subsequent lease entered into by the Board with respect to the Project or any part thereof, to prevent an Event of Default, the Board and the Mortgagee will, following any such termination (with the consent of the Mortgagee, as aforesaid, for termination of the Lease) as a consequence of any Lease Default or any default by the lessee under any subsequent lease, as the case may be, use their best efforts to lease the Project in such manner and on such terms as shall produce net revenues sufficient to provide for payment of the principal of and the interest on the Series 1990-A Bond when due (whether at maturity, by redemption or otherwise) and to that end will use their best efforts to provide in any such lease that the lessee thereunder will pay the costs of all repairs, maintenance, alterations and insurance, all utility charges, all taxes and other governmental charges, all fees and expenses of the Mortgagee and all other operating and incidental costs and expenses, all to the end that all cash rent payable to the Board under such lease may be used for payment of the principal of and the interest on the Series 1990-A Bond. Any such subsequent lease so made shall be subject to this Mortgage.

**Section 6.4 Maintenance, Repairs, Changes, Alterations, Taxes and Other Charges.** The Board will continuously maintain the Project Site and the Project Building in good repair and operating condition (reasonable wear and tear excepted), making from time to time all necessary and proper repairs thereto (including, without limitation, exterior and structural repairs), or it will cause the Project Site and the Project Building to be so

maintained and such repairs to be so made. Without the prior written consent of the Mortgagee, the Board will not itself make, or permit to be made, any change or alteration in the Project other than those permitted or contemplated by the Lease.

The Board will pay, or will cause to be paid, as the same respectively become due and payable,

(a) all taxes and governmental charges of any kind whatsoever that may be lawfully assessed or levied against or with respect to the Project or any part thereof, including, without limiting the generality of the foregoing, any taxes levied upon or with respect to any part of the receipts, income or profits of the Board from the Project and other taxes levied upon or with respect to the Project which, if not paid, would become a lien on the Project or any part thereof prior to or on a parity with the lien of the Mortgage or a charge on the revenues and receipts from the Project prior to or on a parity with the charge thereon and the pledge and assignment thereof created and made in the Mortgage, and

(b) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project, provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Board shall be obligated to pay, or cause to be paid, only such installments as come due while any part of the Mortgage Indebtedness remains outstanding and unpaid.

The Board may, however, defer or cause to be deferred payment of any such taxes, charges or assessments pending the bona fide contest thereof unless the Mortgagee shall be of the opinion that by such action the lien of the Mortgage as to any part of the Project shall be materially endangered or the Project or any part thereof shall be subject to loss or forfeiture, in which event any such payment then due shall not be deferred.

The Board will also pay, or cause to be paid, as the same respectively become due, all utility and other similar charges incurred in the operation, maintenance, use and upkeep of the Project.

**Section 6.5 Warranty of Title.** The Board warrants its title to the property described and mortgaged in Section 2.1 hereof as being free and clear of every lien, encumbrance, trust or charge prior hereto, other than Permitted Encumbrances; warrants that it has power and authority to subject said property to the lien hereof and that it has done so hereby; and warrants that it will forever warrant and defend the title to the Project unto the Mortgagee, for the benefit of the Mortgagee, against the claims of all persons whomsoever, except those claiming under Permitted Encumbrances.

**Section 6.6 Sale of Project Prohibited Except under Certain Conditions.** Consolidation of Board with Other Public Corporations, etc. The Board will not



hereafter sell or otherwise dispose of the whole or any part of the Project until the Mortgage Indebtedness has been paid in full, or unless and until provision for such payment has been made. If the laws of the State of Alabama at the time shall permit such action to be taken, nothing contained in this section shall prevent (a) the consolidation of the Board with, or the merger of the Board into, any public corporation having corporate authority to undertake and perform the obligations and agreements of the Board under the Lease and the Mortgage and whose property and income are not subject to taxation by either the State of Alabama or the United States of America or (b) the transfer by the Board of the Project as an entirety to the Municipality or to another public corporation having corporate authority to undertake and perform the obligations and agreements of the Board under the Lease and the Mortgage and whose property and income are not subject to taxation by either the State of Alabama or the United States of America; provided that upon any such consolidation, merger or transfer the following conditions shall be satisfied: (i) the due and punctual payment of the principal of and the interest on the Series 1990-A Bond according to its tenor and the due and punctual performance and observance of all the agreements and conditions of the Lease and the Mortgage to be kept and performed by the Board shall be expressly assumed in writing by the corporation resulting from such consolidation or surviving such merger or to which the Project shall be transferred as an entirety; and (ii) such consolidation, merger or transfer shall not cause or result in any mortgage or other lien being imposed on the Project or the revenues therefrom that will be prior to the lien of the Mortgage covering the Project or prior to the pledge of the revenues from the Project made in the Mortgage for the benefit of the Series 1990-A Bond. Nothing contained herein shall, however, be construed to prevent the Board from disposing of any unimproved portion of the Project Site pursuant to the provisions of Section 7.2 hereof.

**Section 6.7 Freedom of Project from Prior Liens.** The Board will not knowingly permit the Project to be or remain subject to any liens and encumbrances prior to the lien hereof (other than Permitted Encumbrances), but it may defer payment pending the bona fide contest of any claim unless the Mortgagee shall be of the opinion that by such action the lien of the Mortgage as to the Project or any part thereof shall be materially endangered or the Project or any part thereof shall be subject to loss or forfeiture, in which event any such payment then due shall not be deferred. Nothing herein contained shall be construed to prevent the Board from hereafter purchasing, for use in connection with the Project, additional property on conditional or lease sale contract or subject to vendor's lien or purchase money mortgage, and as to all property so purchased (other than property that is, under the terms hereof, to constitute part of the Project), the Mortgage shall be subject and subordinate to such conditional or lease sale contract, vendor's lien or purchase money mortgage.

**Section 6.8 Inspections by Mortgagee.** Subject to the provisions of Section 8.3 of the Lease, the Board will permit the Mortgagee and its duly authorized agents to inspect, at any reasonable time, any and every part of the Project and will permit the Mortgagee to inspect, at any reasonable time, the books and records of the Board pertaining to the Project. The Board will assist in furnishing facilities for any such inspection.

**Section 6.9 Recordation. Further Assurances.** The Board will cause the Mortgage, and all Supplemental Mortgages hereafter executed, to be filed for record in such public office or offices in which said documents are required by law to be filed in order to constitute constructive notice thereof and to preserve and protect fully the rights and security afforded thereby to the Mortgagee. In addition, the Board

(a) will, upon reasonable request, execute and deliver such further instruments and do such further acts as may be necessary or proper to carry out more effectually the purposes of the Mortgage, and in particular (without in any way limiting the generality of the foregoing) to make subject to the lien of the Mortgage any property hereafter acquired as a part of the Project and to transfer to any successor Mortgagee or Mortgagees the assets, powers, instruments and funds held in trust hereunder and to confirm the lien of the Mortgage with respect to the Series 1990-A Bond, and

(b) will take all actions that at any time and from time to time may be necessary (or, in the opinion of the Mortgagee, may be necessary) to perfect, preserve, protect and secure the interests of the Board and the Mortgagee, or either, in and to the Project and the Lease.

No failure to request such further instruments or further acts shall be deemed a waiver of any right to the execution and delivery of such instruments or the doing of such acts or to be deemed to affect the interpretation of any provisions of the Mortgage.

**Section 6.10 Escrow for Taxes and Insurance.** After the Sale Date, if required by the Mortgagee, the Board will escrow an amount sufficient to pay the annual hazard insurance premiums and the "service fee" due the City of Pelham.

## **ARTICLE VII**

### **CERTAIN PROVISIONS RELATING TO THE POSSESSION, USE AND RELEASE OF PROJECT AND TO THE DISPOSITION OF INSURANCE PROCEEDS AND CONDEMNATION AWARDS**

**Section 7.1 Retention of Possession of Project by Board.** Unless an Event of Default shall have occurred and be continuing, or except as otherwise provided herein, the Board may retain actual possession of the Project and may manage and lease the same, and may collect, use and enjoy the rents, revenues, income and profits thereof to such extent as does not violate any of the Board's covenants herein contained or contained in the Lease.

**Section 7.2 Release Upon Payment of Condemnation Award to Mortgagee.** If the Project or any part thereof shall be taken through the exercise of the power of Eminent Domain (as defined in the Lease), the entire condemnation award referable thereto shall be paid directly to the Mortgagee. Upon payment to the Mortgagee of such award, the

Mortgagee shall, at the expense of the Board, execute and deliver to the Board or to the corporation or governmental agency successfully exercising such power of Eminent Domain any and all instruments that may be necessary (i) to release from the demise of the Lease all property forming part of the Project that shall be so taken and (ii) to release from the lien of the Mortgage all property forming part of the Project that shall be so taken.

**Section 7.3 Disposition of Condemnation Award.** Reference is hereby made to the Lease wherein it is provided that if title to all or any part of the Project shall be taken through the exercise of the power of Eminent Domain, the entire condemnation award referable thereto shall be paid to and held by the Mortgagee and shall thereafter be applied by the Mortgagee in the manner and for the purposes specified in Section 7.2 of the Lease. The Mortgagee hereby accepts the duties and obligations on its part specified in the Lease with respect to such condemnation award and agrees that such condemnation award shall be applied in accordance with the applicable provisions of the Lease.

**Section 7.4 Disposition of Insurance Proceeds.** Reference is hereby made to the Lease wherein it is provided that if the Project is destroyed, in whole or in part, or is damaged, by fire or other casualty, to such extent that the loss to the Project resulting therefrom is in excess of \$5,000, then all "Net Insurance Proceeds" (as defined in the Lease) recovered by the Board, the Company and the Mortgagee shall be paid to and held by the Mortgagee and shall thereafter be applied by the Mortgagee in the manner and for the purposes specified in Section 7.1 of the Lease. The Mortgagee hereby accepts the duties and obligations on its part specified in the Lease with respect to such proceeds and agrees that such proceeds shall be applied in accordance with the applicable provisions of the Lease.

**Section 7.5 Termination of Lease or Exercise by the Company of Option to Purchase Project.** In the event that the Lease terminates pursuant to Section 7.1 or Section 7.2(a) thereof, or in the event the Company exercises the option to terminate the Lease granted in Section 11.1(a) thereof, or in the event that the Company is entitled to exercise the option to purchase the Project granted in Section 11.2 of the Lease and duly does so in accordance with the applicable provisions of said Section 11.2, then, in any of such events, the Mortgagee (i) shall segregate and set aside (or cause the Bank to segregate and set aside) in the Bond Fund (out of moneys therein, moneys in the Construction Fund, any insurance proceeds or condemnation awards then held by the Mortgagee that are referable to the Project and that are available for the retirement of the Series 1990-A Bond, and any moneys payable by the Company pursuant to the provisions of any of Sections 7.1, 7.2(a), 11.1(a) or 11.2 of the Lease, in the order named) moneys sufficient to retire the Series 1990-A Bond and pay all other Mortgage Indebtedness as provided in Sections 7.1, 7.2(a), 11.1(a) or 11.2 of the Lease, as the case may be, and (ii) shall, in accordance with the applicable provisions of the Lease, dispose of any balance of such moneys not needed for the retirement of the Series 1990-A Bond and the payment of all other Mortgage Indebtedness.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES OF MORTGAGEE AND CERTAIN PROVISIONS CONCERNING THE MORTGAGEE

Section 8.1 **Events of Default Defined.** Any of the following shall be "Events of Default" under the Mortgage and the term "Event of Default" shall mean, whenever it is used in the Mortgage, any one or more of the following conditions or events:

(a) failure by the Board to pay the principal of or the interest on the Series 1990-A Bond as and when the same become due as therein and herein provided (whether such shall become due at maturity, upon redemption, by acceleration or otherwise);

(b) a Lease Default;

(c) an "Event of Default" under the Guaranties, as such term is respectively defined and used in each agreement;

(d) failure by the Board to perform and observe any of the agreements and covenants on its part herein contained [other than (i) its agreement to pay the principal of and the interest on the Series 1990-A Bond and (ii) any other agreement with respect to which its failure to perform is the result of a Lease Default] after thirty (30) days' written notice to it of such failure given by the Mortgagee, unless during such period or any extension thereof the Board has commenced and is diligently pursuing appropriate corrective action;

(e) appointment by a court having jurisdiction of a receiver for the Project or for a substantial part thereof, or approval by a court of competent jurisdiction of any petition for rearrangement or readjustment of the obligations of the Board under any provisions of the bankruptcy laws of the United States;

(f) any material warranty, representation or other statement by or on behalf of the Board in the Lease or the Mortgage, or in any certificate furnished in compliance with or in reference to the Lease or the Mortgage, being false or misleading in any material respect at the time made; or

(g) at any time prior to the Sale Date (as defined in the Mortgage), an Event of Default with respect to the Board's Industrial Revenue Bond (Rainbow Technology Corporation Project), Series 1990-B, or any of the financing documents related thereto shall have occurred and be continuing.

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Section 8.2 **Remedies on Default.** Upon the occurrence and continuation of any Event of Default, the Mortgagee shall have the following rights and remedies, subject to the provisions of Section 8.6 hereof:

(a) **Acceleration.** The Mortgagee may, by written notice to the Board, declare the principal of and the interest accrued on the Series 1990-A Bond forthwith due and payable, and thereupon they shall so be, and if such acceleration shall occur after the Sale Date, together with a charge equal to the greater of (i) ten percent (10%) of the outstanding principal amount of the Series 1990-A Bond or (ii) one-twelfth (1/12) of the Annual Yield Differential multiplied by the number of months from the date of the applicable Event of Default through the maturity date of the Series 1990-A Bond, anything herein or therein to the contrary notwithstanding; provided however, that the Mortgagee may not have or exercise the right or remedy granted by this subsection (a) unless the Event of Default that has occurred is one of those specified in subsection (a), (b) or (c) of Section 8.1 hereof.

(b) **Possession of Project.** The Mortgagee shall have the power to require the Board to surrender possession of the Project to it, and the Board shall, upon demand so to do by the Mortgagee, forthwith surrender to the Mortgagee actual possession of the Project or such part or parts thereof as the Mortgagee may designate, and the Mortgagee shall take possession thereof and may wholly exclude the Board and its agents therefrom. The Mortgagee shall thereafter have the power to operate, lease or otherwise control, use and dispose of the Project in the manner it deems advisable. The Mortgagee shall further have the power to make, at the expense of any moneys held in either the Construction Fund or the Bond Fund, such repairs, replacements, alterations, additions or improvements to the Project as it may consider advisable, to collect the income therefrom and to pay all proper charges and maintenance expenses thereof, including all proper disbursements by the Mortgagee.

(c) **Sale of Project.** The Mortgagee shall have the power to sell, at public auction, as a whole or in parcels, at such time and on such terms as it deems best, to the highest bidder, all or any of the Project and the entire interest and equity of redemption of the Board therein, subject, however, to succeeding provisions of this Section 8.2 and to the provisions of Sections 8.3 and 8.4 hereof.

(d) **Other Remedies.** The Mortgagee shall have the power to proceed with any other right or remedy independent of or in aid of the foregoing powers, as it may deem best, including the right to foreclose the Mortgage by bill in equity or by proceedings at law, the right to secure specific performance by the Board of any agreement on its part herein contained, and the right to the appointment, as a matter of right and without regard to the sufficiency of the security afforded by the Project, of a receiver for all or any of the Project and the earnings, rents and income therefrom. The rights here specified are to be cumulative to all other available rights, remedies or powers and shall not exclude any such.



If, upon the occurrence of an Event of Default, the Board cures the default which is the reason for such Event of Default and every other default hereunder (except any principal and interest declared payable that would, absent such declaration, not then be payable), with interest on all overdue payments of principal and interest, and makes reimbursement of all the reasonable expenses of the Mortgagee, then the Mortgagee may in its discretion waive such default and its consequences, but no such waiver shall affect any subsequent default or right relative thereto. Further, upon the occurrence of any Event of Default, except a default in the payment of the principal of or the interest on the Series 1990-A Bond, the Mortgagee may in its discretion waive such default and its consequences without the Board having theretofore made good such default, but no such waiver shall affect any subsequent default or right relative thereto. In case any proceeding taken by the Mortgagee on account of any Event of Default shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Mortgagee, then and in every case the Board and the Mortgagee shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Mortgagee shall continue as though no such proceeding had been taken.

If, on any auction or offer for sale of the whole of the Project pursuant to the provisions of this Article VIII, no cash bid be received in an amount sufficient to pay all amounts then owing to the Mortgagee, the Mortgagee may, after first re-advertising such sale in the manner provided in Section 8.3 hereof, sell the Project for an amount less than sufficient to pay all amounts then owing to the Mortgagee or for a consideration consisting of part cash and part purchase money mortgage, or both.

**Section 8.3 Manner of Sale of Project.** Notice of any sale by the Mortgagee of any part of the Project pursuant hereto shall state the time and place of such sale (which time shall be between the legal hours of sale and which place shall be before the main entrance of the Courthouse of Shelby County, Alabama) describing briefly the property to be sold, and shall be sufficiently given if published once a week for three (3) successive weeks preceding the date of sale in a Newspaper published in Shelby County, Alabama. The Mortgagee may from time to time adjourn any such sale by announcing at the time and place appointed therefor an adjournment to a future time and place specified, at which it may effectively make the sale without further notice.

**Section 8.4 Sale of Project.** On any sale of the Project by the Mortgagee pursuant to any of the foregoing powers or pursuant to judicial authority,

(a) The principal of and the interest accrued on the Series 1990-A Bond not yet matured or declared due shall forthwith become due, anything therein or herein to the contrary notwithstanding.

(b) The Mortgagee may bid for and purchase the Project or the portion thereof to be sold, at such sale.

(c) The purchaser, if it be the Mortgagee, may make payment, in whole or in part, of the amount by which his bid exceeds the sum necessary to

discharge any prior liens and to pay costs, charges, fees and expenses by receipting for the share of the proceeds of the sale to which as Mortgagee it will be entitled.

(d) The Mortgagee is hereby appointed, empowered and directed by the Board as its irrevocable attorney to convey, assign, transfer and deliver to the purchaser the property sold and make all necessary conveyances and transfers thereof, all of which the Board hereby ratifies. The entire right, title, interest, claim and demand, legal and equitable, of the Board in the property sold shall be completely divested by such sale and the same shall be a perpetual legal and equitable bar to any claim by the Board thereto. The Board, however, if and when requested, will execute and deliver to the purchaser such proper instruments as may be requested in further assurance of the title so acquired.

(e) The purchaser, upon paying the purchase money to the Mortgagee and receiving his receipt therefor, need not inquire into the authorization, necessity, expediency or regularity of the sale and need not see to or in any way be responsible for the application by the Mortgagee of any part of the purchase money.

**Section 8.5 Application of Moneys Received From Enforcement of Remedies.** Any moneys received by the Mortgagee upon the exercise of any rights or remedies granted to it under the Lease or the Mortgage upon the occurrence and continuation of an Event of Default, together with all other funds then held by it (or for its account) hereunder, shall, after payment of all proper costs, expenses and liabilities incurred and disbursements made by the Mortgagee hereunder (including, without limitation, reasonable attorneys fees and costs of collection and/or foreclosure), and all liens and charges on the Project prior to the rights of the Mortgagee which in the opinion of the Mortgagee it is advisable to pay, be applied as follows:

(a) Unless the outstanding principal balance of the Series 1990-A Bond shall have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST - to the payment of all installments of interest then due on the Series 1990-A Bond, in the order of the maturity of the installments of such interest, with interest on overdue installments of interest;

SECOND - to the payment of the unpaid principal of the Series 1990-A Bond which shall have become due, in the order of the maturity on overdue installments of principal;

THIRD - the surplus, if any there be, into the Bond Fund, or in the event the Mortgage Indebtedness has been fully paid, to the Board or to whomsoever may be entitled thereto.

(b) If the outstanding principal balance of the Series 1990-A Bond shall have become or been declared due and payable, all such moneys shall be applied as follows:

**FIRST** - to the payment of the principal and interest then due and unpaid upon the Series 1990-A Bond (with interest on overdue principal and interest), without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest; provided, however, that if the outstanding principal balance of the Series 1990-A Bond shall have been declared due and payable and if such declaration shall thereafter have been rescinded under the provisions of Section 8.2 hereof, then, subject to the provisions of this subsection (b) in the event that the principal of the Series 1990-A Bond shall later become or be declared due and payable, such moneys shall be applied in accordance with the provisions of subsection (a) of this Section 8.5; and

**SECOND** - the surplus, if any there be, into the Bond Fund, or in the event the Mortgage Indebtedness has been fully paid, to the Board or to whomsoever may be entitled thereto.

Whenever moneys are to be applied pursuant to the provisions of this Section 8.5, such moneys shall be applied at such time or times, and from time to time, as the Mortgagee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Mortgagee shall apply such funds, it shall fix the date (which shall be an interest payment date unless it shall deem another date more suitable) upon which such application is to be made, and upon such date interest on the amounts of principal and interest to be paid on such dates shall cease to accrue.

**Section 8.6 Rights of the Company Upon Occurrence of an Event of Default.** If an Event of Default should occur solely by reason of some action or failure to act on the part of the Board, and if at the time there shall have not occurred and be continuing a Lease Default, the Mortgagee shall notify the Company in writing of the occurrence of such Event of Default and the Company shall have the right to remedy such Event of Default hereunder within fifteen (15) days after such written notice, provided that the Company shall pay all expenses of curing such Event of Default. The exercise of the remedies set forth in Section 8.2 hereof are subject to the right of the Company to cure such Event of Default as provided in this Section 8.6.

**Section 8.7 Delay No Waiver.** No delay or omission by the Mortgagee to exercise any available right, power or remedy hereunder shall impair or be construed a waiver thereof or an acquiescence in the circumstances giving rise thereto; every right, power or remedy given herein to the Mortgagee may be exercised from time to time and as often as deemed expedient.



**Section 8.8 Mortgagee Authorized to Perform Certain Acts on Failure of Board.** Without relieving the Board from the consequences of any default in connection therewith, the Mortgagee may pay any charge, including, without limitation, any tax, assessment or governmental or other charge upon any part of the Project, which the failure of the Board to pay has made or will make an encumbrance or lien on the Project prior to any rights of the Mortgagee under the Mortgage, and in the event the Board fails to take out, or to cause to be taken out, insurance on the Project to the extent required by Section 6.5 of the Lease, or in the event the Board fails to maintain the Project in good repair and in a reasonably safe condition, or to cause the Project to be so maintained, the Mortgagee may take out any such insurance on the Project that the Board has failed to furnish or cause to be furnished and may pay the premiums thereon, or it may pay the expenses of keeping the Project in good repair and in a reasonably safe condition, as the case may be. The Mortgagee shall not be obligated to perform any acts or make any payments pursuant to the preceding provisions of this section. All moneys expended under the provisions of this section shall be secured by the Mortgage, shall be repayable by the Board upon demand, shall bear interest from the date on which they are so expended until they are repaid at a per annum rate equal to one percent (1%) above the rate applicable to the Series 1990-A Bond until such moneys are repaid and shall (together with the interest thereon) be entitled to priority of payment over the principal of and the interest on the Series 1990-A Bond.

**Section 8.9 Mortgagee May Institute Suit, etc.** The Mortgagee may, in its own name and at any time, institute or intervene in any suit or proceeding for the enforcement of all rights of action (including the right to file proof of claims in connection with any reorganization, bankruptcy, receivership or like proceeding) hereunder or under the Series 1990-A Bond or the Lease.

**Section 8.10 Mortgagee and Board Required to Accept Directions and Actions of Company.** Whenever, after a reasonable request by the Company, the Board shall fail, refuse or neglect to give any direction to the Mortgagee or to require the Mortgagee to take any action which the Board is required to have the Mortgagee take pursuant to the provisions of the Lease or the Mortgage, the Company, as agent of the Board, may give any such direction to the Mortgagee or require the Mortgagee to take any such action, and the Mortgagee is hereby irrevocably empowered and directed to accept such direction from the Company as sufficient for all purposes of the Mortgage. The Company shall have the right as agent of the Board to cause the Mortgagee to comply with any of the Mortgagee's obligations under the Mortgage to the same extent that the Board is empowered so to do.

Certain actions or failures to act by the Board under the Mortgage may create or result in an Event of Default, and the Company, as agent of the Board, may, to the extent permitted by law, perform any and all acts or take such action as may be necessary for and on behalf of the Board to prevent or correct said Event of Default and the Mortgagee shall take or accept such performance by the Company as performance by the Board in such event.

The Board hereby makes, constitutes and appoints the Company irrevocably as its agent to give all directions, do all things and perform all acts provided, and to the extent so provided, by this Section 8.10.

## ARTICLE IX

### AUTHORIZATION OF SUPPLEMENTAL MORTGAGES AND MODIFICATIONS OF THE LEASE

Section 9.1 **Supplemental Mortgages.** The Board and the Mortgagee recognize that under the terms of Section 9.2 of the Lease, they may not amend the Mortgage or enter into any Supplemental Mortgage without the prior written consent of the Company. Subject to such consent, the Mortgagee and the Board may enter into such Supplemental Mortgages as may be mutually agreeable and may make such further agreements and stipulations as shall be contained therein. Any Supplemental Mortgage executed in accordance with the provisions of this article shall thereafter form a part of the Mortgage, and all the terms and conditions contained in such Supplemental Mortgage, as to any provisions authorized to be contained therein, shall be deemed to be a part of the terms and conditions of the Mortgage for any and all purposes.

Section 9.2 **Amendment to Lease.** With the prior written consent of the Mortgagee, the Board and the Company may at any time and from time to time, amend, change or modify the Lease to such extent as shall be deemed necessary or desirable by the Board and the Mortgagee.

## ARTICLE X

### PAYMENT AND CANCELLATION OF THE SERIES 1990-A BOND AND SATISFACTION OF THE MORTGAGE

Section 10.1 **Satisfaction of Mortgage.** Whenever the entire Mortgage Indebtedness shall have been fully paid and the Board shall have performed and observed all the covenants and promises expressed in the Series 1990-A Bond and in the Mortgage to be performed and observed by it or on its part, the Mortgagee shall, at the expense of the Board, cancel, satisfy and discharge the lien of the Mortgage and shall execute and deliver to the Board such deeds and instruments as shall be requisite to satisfy of record the lien hereof and to reconvey and transfer the property mortgaged hereunder to the Board.

Section 10.2 **Destruction of Surrendered Series 1990-A Bond.** The Mortgagee shall cancel and deliver to the Board the Series 1990-A Bond (i) in the event that the Series 1990-A Bond is mutilated and a new Series 1990-A Bond is delivered to the Mortgagee by the Board in replacement thereof or (ii) when the Series 1990-A Bond shall have been redeemed or paid at maturity.

Section 10.3 **Payment to Company of Remaining Trust Fund Moneys.** At such time as the entire Mortgage Indebtedness shall have been fully paid in accordance with the provisions of Section 10.1 hereof, the Mortgagee shall, if the Lease has not theretofore been terminated as a result of a Lease Default, pay or cause to be paid to the Company any surplus moneys then remaining in any of the special trust funds created in the Mortgage, but not including any amounts held by the Bank for the payment of the principal of and the interest on the Series 1990-A Bond.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

Section 11.1 **Disclaimer of General Liability.** It is hereby expressly recognized and made a condition of this Mortgage that

(a) the liability of the Board for the payment of the principal of and the interest on the Series 1990-A Bond and the performance and observance of all agreements, covenants and representations of the Board contained in the Mortgage or the Series 1990-A Bond shall be limited to the proper application of the revenues and receipts derived from the leasing or sale of the Project,

(b) any agreements, covenants or representations herein contained or contained in the Series 1990-A Bond do not and shall never constitute or give rise to any pecuniary liability or charge against the general credit of the Board, and

(c) in the event of a breach of any such agreement, covenant or representation, no pecuniary liability or charge payable directly or indirectly from the general revenues of the Board shall arise therefrom.

Neither the State of Alabama nor the Municipality or any other political subdivision of said state shall in any manner be liable for the payment of the principal of or the interest on the Series 1990-A Bond or for the performance or observance of any of the agreements, covenants or representations of the Board contained in the Mortgage or in the Series 1990-A Bond. Further, none of the directors, officers, employees or agents (other than the Company as agent of the Board in connection with the Project Development Work) of the Board shall have any personal liability whatever hereunder or any liability for the breach by the Board of any of the agreements on its part herein contained. Nothing contained in this section, however, shall relieve the Board from the observance and performance of the several covenants and agreements on its part herein contained or relieve the directors, officers or employees of the Board from performing all duties of their respective offices that may be necessary to enable the Board to perform the covenants and agreements on its part herein contained.

Section 11.2 **Payments Due on Saturdays, Sundays and Holidays.** In any case where the installment payment date of the principal of or the interest on the Series 1990-A

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Bond, or the redemption date of the Series 1990-A Bond, shall be, at the locale of payment, a Saturday, Sunday or legal holiday or a day on which banking institutions are authorized or obligated by law to close, then payment of such principal and interest need not be made on such date, but may be made on the next succeeding business day not a Saturday, Sunday or a legal holiday or a day upon which banking institutions are authorized or obligated by law to close, with the same force and effect as if made on such installment payment date, or such redemption date, and no interest shall accrue for the period after such installment payment date or such redemption date, as the case may be.

**Section 11.3 Limitation of Rights.** Nothing herein or in the Series 1990-A Bond shall confer any right on anyone other than the Board, the Mortgagee and the Company; provided, however, that anything herein or in the Lease to the contrary notwithstanding, the Company shall have no rights hereunder at any time during which a Lease Default shall have occurred and be continuing.

**Section 11.4 Granting of Utility and Access Easements.** Any other provisions hereof to the contrary notwithstanding, the Board may grant such utility, access and other similar easements, permits and rights-of-way over, across or under the Project Site as shall be requested in writing by the Company, provided that in connection with the grant of each such easement, permit or right-of-way the Mortgagee is furnished a certificate of the Company signed by an Authorized Company Representative stating that such easement, permit or right-of-way is, or will be, useful or necessary in the operation of the Project and will not materially interfere with or impair the use of the Project for the purpose for which it was acquired or is held by the Board.

**Section 11.5 Mortgage Governed by Alabama Law.** The Mortgage shall in all respects be governed by and construed in accordance with the laws of the State of Alabama.

**Section 11.6 Notices.** All notices, demands, requests and other communications hereunder shall be deemed sufficient and properly given if in writing and delivered, or sent by registered mail, postage prepaid, to the following addresses:

(a) If to the Board:

The Industrial Development Board  
of the City of Pelham  
City Hall  
Pelham, Alabama 35124  
Attention: Chairman of the Board of Directors

(b) If to the Company:

Rainbow Technology Corporation  
Post Office Box 26445  
Birmingham, Alabama 35226  
Attention: President

(c) If to the Mortgagee:

First Commercial Bank  
Post Office Box 11746  
Birmingham, Alabama 35202-1746  
Attention: President

Any of the above-mentioned parties may, by like notice, designate any further or different addresses to which subsequent notices shall be sent. The Mortgagee and the Board will send a copy of each notice that either thereof gives to the other pursuant to the provisions hereof to the Company so long as no Lease Default shall have occurred and be continuing; provided, however, that the failure of either the Board or the Mortgagee to send a copy of any such notice to the Company shall not invalidate such notice or render it ineffective unless notice to the Company is otherwise expressly required herein. Any notice hereunder signed on behalf of the notifying party by a duly authorized attorney at law shall be valid and effective to the same extent as if signed on behalf of such party by a duly authorized officer or employee.


**Section 11.7 Severability.** In the event that any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 11.8 Article and Section Captions.** The article and section headings and captions contained herein are included for convenience only and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof.

IN WITNESS WHEREOF, the Board has caused this Mortgage Indenture to be executed in its corporate name and behalf by the Chairman of the Directors, has caused its corporate seal to be hereunto affixed and has caused this Mortgage Indenture to be attested by its Secretary, and the Mortgagee has caused this Mortgage Indenture to be executed in its

name and behalf, has caused its corporate seal to be hereunto affixed and has caused this Mortgage Indenture to be attested, by its duly authorized officers, all in seven (7) counterparts, each of which shall be deemed an original, and the Board and the Mortgagee have caused this Mortgage Indenture to be dated as of September 1, 1990, although actually executed and delivered on September 28<sup>th</sup> 1990.

THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF PELHAM


By   
Chairman of the Board of Directors

ATTEST:

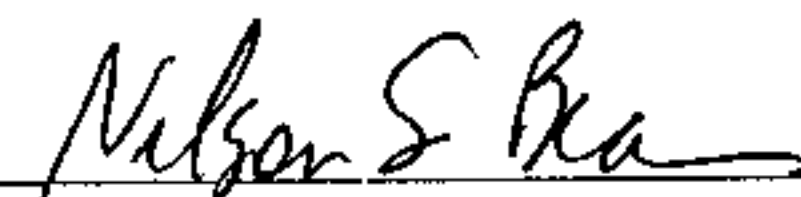
  
Its Secretary

[SEAL]

FIRST COMMERCIAL BANK

By   
Its Assistant Vice Pres

ATTEST:

  
Its Vice Pres

[SEAL]



STATE OF ALABAMA )

STEARNS COUNTY )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that DANIEL M. SPITLER, JR., whose name as Chairman of the Board of Directors of THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF PELHAM, a public corporation and instrumentality under the laws of the State of Alabama, 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 such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

GIVEN under my hand and seal, this 27<sup>th</sup> day of September, 1990.

[ NOTARIAL SEAL ]

[Signature]  
Notary Public

My Commission Expires: 1-21-92

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STATE OF ALABAMA )

Jefferson COUNTY )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Paul B. Wallace, whose name as Assistant Vice President of FIRST COMMERCIAL BANK, an Alabama banking 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 such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said banking corporation on the day the same bears date.

GIVEN under my hand and seal, this 28<sup>th</sup> day of September, 1990.

[ NOTARIAL SEAL ]

Virginia Means Buf.  
Notary Public

My Commission Expires: 4-7-92

**EXHIBIT A**  
to  
**MORTGAGE INDENTURE**  
between  
**THE INDUSTRIAL DEVELOPMENT BOARD**  
**OF THE CITY OF PELHAM**  
and  
**FIRST COMMERCIAL BANK**  
dated as of September 1, 1990

Part of Block 2 of Cahaba Valley Park North as recorded in Map Book 13, Page 140, in the Probate Office of Shelby County, Alabama, more particularly described as follows:

Commence at centerline PT Station 43+18.73 of Cahaba Valley Parkway; thence run east along the centerline of Cahaba Valley Parkway for 73.40 feet; thence run 90°-00' left and run north for 30.00 feet to the point of beginning; thence continue north along the same course for 300.0 feet to a point on the north boundary of Block 2 of Cahaba Valley Park North; thence 90°-00' right and run east along said boundary line for 171.87 feet to a point on the south line of a 50 feet wide Alabama Power Company right of way; thence 10°-48'-30" left and run northeasterly along said right of way line for 123.29 feet to an angle point; thence run 0°-49'-32" left and run northeasterly along said right of way for 109.28 feet; thence run 101°-38'-02" right and run south for 345.16 feet to a point on the north right of way line of Cahaba Valley Parkway; thence 90°-00' right and run west along said right of way line for 400.0 feet to the point of beginning. Said parcel contains 125,056.284 square feet, more or less.

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STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

90 OCT -3 AM 8:25

JUDGE OF PROBATE

1.	
2.	
3.	
4.	120.00
5.	3.80
6.	7.00
Total	124.00