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**LEASE AGREEMENT**

**between**

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

**and**

**RAINBOW TECHNOLOGY CORPORATION**

**Dated as of September 1, 1990**

**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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**LEASE AGREEMENT** between **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF PELHAM**, a public corporation organized and existing under the laws of the State of Alabama (herein called the "Board"), and **RAINBOW TECHNOLOGY CORPORATION**, a corporation organized and existing under the laws of the State of Alabama (herein called the "Company"),

### **RECITALS**

Pursuant to this Lease Agreement the Board is undertaking to acquire, construct and equip the "Project" hereinafter defined and the Company is undertaking to lease said Project from the Board for use as an industrial manufacturing facility. In order to finance the costs of acquiring, constructing and equipping said Project, the Board will issue its single First Mortgage Industrial Revenue Bond (Rainbow Technology Corporation Project), Series 1990-A, to be dated the date of its issuance, in the principal amount of up to \$840,000 (herein called the "Series 1990-A Bond"), and, as security for the payment of the principal of and the interest on the Series 1990-A Bond, (i) will mortgage said Project under the Mortgage hereinafter referred to and (ii) will pledge and assign under said Mortgage the Board's interest in this Lease Agreement (other than its reimbursement and indemnification rights hereunder), including particularly the "Basic Rent" payable hereunder by the Company for the use of said Project. Simultaneously with the delivery of this Lease Agreement, the shareholders of the Company and the Company will enter into separate Guaranty Agreements dated as of September 1, 1990, with the Mortgagee under said Mortgage, in and by which the said shareholders of the Company and the Company will unconditionally guarantee to said Mortgagee the prompt payment of the principal of and the interest on the Series 1990-A Bond to the extent respectively provided therein.

**NOW, THEREFORE, THIS LEASE AGREEMENT**

**WITNESSETH:**

That in consideration of the respective representations and agreements herein contained, the parties hereto agree as follows:

### **ARTICLE I**

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

**Section 1.1 Definitions.** 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 herein:

**"Act"** means the statutes codified as Code of Alabama 1975, Title 11, Chapter 54, Article 5, as amended and supplemented and at the time in force and effect.

**"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 the 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.

**"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 its Board of Directors; provided however, that no partner or employee 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 the "Bank" as defined in the Mortgage.

**"Basic Rent"** means (i) the moneys payable by the Company pursuant to the provisions of Section 5.2 hereof, (ii) any other moneys payable by the Company hereunder 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 Section 5.2 hereof), and (iii) any other moneys payable by the Company hereunder that are herein referred to as Basic Rent.

**"Board"** means (i) the party of the first part hereto and its successors and assigns, or (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 of the Mortgage.

**"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 the party of the second part hereto and, subject to the provisions of Section 8.4 hereof, 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 hereof 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 of the Mortgage.

**"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, or 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.

**"Eminent Domain"**, when used herein with reference to any taking of property, means the power (actual or claimed) of any governmental authority or any person, firm or corporation acting under governmental authority (actual or claimed) to take such property, and for purposes of the Lease, a taking of property under the exercise of the power of Eminent Domain shall include a conveyance made, or a use granted or taken, under either the threat or the fact of the exercise of governmental authority.

**"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 10.1 hereof.

**"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 of the Mortgage and that the lien of the Mortgage has been cancelled, satisfied and discharged in accordance with the provisions of said Section 10.1 thereof.

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

**"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 an attorney 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 an attorney 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" or "this Lease Agreement"** means this Lease Agreement as it now exists and as it may from time to time be modified, supplemented or amended as permitted by Article IX of the Mortgage.

**"Lease Term"** means the period beginning on the date of the delivery of this Lease Agreement and continuing until 11:59 o'clock, P.M., on October 1, 2000.

**"Mortgage"** means the Mortgage Indenture between the Board and First Commercial Bank, dated as of September 1, 1990, under which (i) the Series 1990-A Bond is authorized to be issued, (ii) the Board's interest in this Lease Agreement and the revenues and receipts to be derived by the Board from any leasing or sale of the Project are to be assigned and (iii) the Project is to be mortgaged, as security for payment of the principal of and the interest on the Series 1990-A Bond, as said Mortgage Indenture now exists and as it may hereafter be supplemented and amended.

**"Mortgagee"** means the person who is at the time the Mortgagee in accordance with the provisions of the Mortgage.

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

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

**"Net Condemnation Award"** means the total amount received as compensation for any part of the Project taken under the exercise of the power of Eminent Domain plus damages to any part of the Project not taken (including any compensation referable to the interest of the Company in the part of the Project taken and as damages to the interest of the Company in any part thereof not taken, but not including any compensation belonging to the Company pursuant to the provisions of Section 7.4 hereof), which compensation shall consist of (i) all awards received pursuant to administrative or judicial proceedings conducted in connection with the exercise of the power of Eminent Domain, plus (ii) all amounts received as the result of any settlement of compensation claims (whether in whole or in part) negotiated with the condemning authority, less (iii) all attorneys' fees and other expenses incurred in connection with the receipt of such compensation, including attorneys' fees and expenses relating to such administrative or judicial proceedings and to such settlement negotiations (other than any that may be paid directly by the Company).

**"Net Insurance Proceeds"** means the total insurance proceeds recovered by the Board, the Company and the Mortgagee on account of any damage to or destruction of the Project or any part thereof, less all expenses (including attorneys' fees and any extraordinary expenses of the Mortgagee) incurred in the collection of such proceeds.

**"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.

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

**"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 (or certain of its partners) of all amounts paid directly by the Company (or certain of its partners) in respect of any of the aforesaid costs and expenses and of all amounts advanced by the Company (or certain of its partners) 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 hereof.

**"Project Site"** means (i) the parcels of land specifically described under the heading "I" in Section 3.1 hereof and (ii) any other land that under the terms hereof constitutes a part of the Project Site.

**"Public Securities"** means bonds, notes or other obligations of a state, territory or a possession or any political subdivision of the United States of America or any political subdivision of any of the foregoing or of the District of Columbia.

**"Series 1990-A Bond"** means that certain First Mortgage Industrial Revenue Bond (Rainbow Technology Corporation Project), Series 1990-A, authorized to be issued under the Mortgage in the principal amount of up to \$840,000.

**"Shareholder"** means any individual shareholder of the Company and includes such Persons, heirs, legal representatives, successors and assigns, and **"Shareholders"** means collectively all such aforesaid Persons and includes their respective heirs, legal representatives, successors and assigns.

**"Shareholder Guaranty"** means that certain Guaranty Agreement dated as of September 1, 1990, between certain 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.

**"Tangible Net Worth"** means, as of the date of any determination thereof, the amount by which the sum of the amounts then appearing on the balance sheet of the Company as (i) the par value or stated value of all outstanding capital stock and (ii) capital, paid-in and earned surplus plus earnings retained in the business shall exceed the sum, without duplication, of (A) any deficit in any surplus account, (B) the aggregate amount of all assets then appearing on such balance sheet which under generally accepted accounting principles would be classified as intangibles, including, without limitation, treasury stock, unamortized debt discount and expense, good will, trademarks, trade names, patents and deferred charges, (C) the aggregate amount of all write-ups after December 31, 1989, in the book value of assets shown on the Company's balance sheet as of such date plus the aggregate amount of all write-ups in the book value of assets acquired by the Company after such date to the extent that such write-ups exceed the respective costs of the assets so written-up, and (D) the balance sheet value of any obligation due the Company if the terms thereof permit the payment of such obligation to be subordinated to the payment of any other indebtedness of the Person owing such obligation to the Company, all as determined in accordance with generally accepted accounting principles.

**"United States Corporation"** means a corporation organized under the laws of the United States of America, one of the States thereof or the District of Columbia.

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

Section 1.3 **Use of Phrases.** "Herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to the Lease as an entirety and not solely to the particular portion 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

### REPRESENTATIONS AND WARRANTIES

Section 2.1 **Representations and Warranties by the Board.** The Board makes the following representations and warranties as the basis for the undertakings on its part herein:

(a) **Organization.** The Board is a public corporation duly organized and validly existing under the provisions of the Act, as now existing, by reason of its certificate of incorporation duly filed for record in the office of the Judge of Probate of Shelby County, Alabama; the said certificate of incorporation of the Board has not been amended, except as noted above, or revoked, and is in full force and effect. The Board is not in default under any



of the provisions contained in said certificate of incorporation or in the laws of the State of Alabama. The Board has not initiated any proceedings or taken any action for its dissolution.

(b) Litigation; Observance of Orders. There are no actions, suits or proceedings pending (nor, to the knowledge of the Board, are any actions, suits or proceedings threatened) against or affecting the Board or any property of the Board in any court, or before an arbitrator of any kind, or before or by any governmental body, which might materially and adversely affect the transactions contemplated by this Lease Agreement or which might adversely affect the validity or enforceability of this Lease Agreement or any other agreement or instrument to which the Board is or is to be a party relating to the transactions contemplated by this Lease Agreement. The Board is not in default with respect to any order of any court, arbitrator or governmental body.

(c) Sale and Other Transactions are Legal and Authorized. The sale and issuance of the Series 1990-A Bond, the execution and delivery of this Lease Agreement and the Mortgage, and the compliance with all the provisions of each thereof and of the Series 1990-A Bond by the Board (i) are within the power and authority of the Board, (ii) will not conflict with or result in a breach of any of the provisions of, or constitute a default under, or result in or require the creation of any lien or encumbrance (other than Permitted Encumbrances) upon any property of the Board under, the Act or the certificate of incorporation of the Board, any agreement or other instrument to which the Board is a party or by which it may be bound, or any license, judgment, decree, order, law, statute, ordinance or governmental regulation applicable to the Board, and (iii) have been duly authorized by all necessary corporate action on the part of the Board.

(d) Governmental Consents. Neither the nature of the Board, nor any of its activities or properties, nor any relationship between the Board and any other Person, nor any circumstance in connection with the offering, sale, issuance or delivery of the Series 1990-A Bond is such as to require a consent, approval or authorization of, or filing, registration or qualification with, any governmental body on the part of the Board in connection with the execution, delivery and performance of either this Lease Agreement or the Mortgage or the offering, sale, issuance or delivery of any of the Series 1990-A Bond, other than (i) the filing with the Alabama Securities Commission of the notification of the Board's intention to issue the Series 1990-A Bond required by Act No. 586 enacted at the 1978 Regular Session of the Legislature of the State of Alabama (codified as Code of Alabama 1975, §§ 8-6-110 to 8-6-122, inclusive) and the issuance by the Director of the Alabama Securities Commission of such Certificate of Notification as may be required by said Act No. 586 in connection with the issuance of the Series 1990-A Bond, (ii) the due filing and/or recording of the deed by which the Board acquired title to the Project Site, the Lease and the Mortgage and (iii) the due filing of requisite Uniform Commercial Code financing statements. The Board has filed with the Alabama Securities Commission the notification of its intention to issue the Series 1990-A Bond as required by said Act No. 586, and the Director of the Alabama Securities Commission has issued a Certificate of Notification applicable to the issuance of the Series 1990-A Bond. The Certificate of Notification has not been revoked or rescinded by the Alabama Securities Commission and continues in full force and effect.

(e) No Default. No event has occurred and no condition exists which would constitute an "Event of Default" under the Mortgage, as "Event of Default" is therein defined,

or which would become such an Event of Default with the passage of time or with the giving of notice or both. The Board is not in default under the Act, its certificate of incorporation, its bylaws, or any agreement or instrument to which it is a party or by which it is bound, to the extent in any such case that the default in question would adversely affect the existence of the Board, its corporate power to carry out the transactions contemplated by this Lease Agreement or the validity of the Series 1990-A Bond or the security therefor.

(f) The Series 1990-A Bond. The Series 1990-A Bond, when issued and paid for in accordance with this Lease Agreement and the Mortgage, will constitute a legal, valid and binding special obligation of the Board payable solely from the sources provided in the Mortgage.

(g) No Employee Benefit Plans. There are no employee benefit plans [other than plans of a character described in Section 4021(b)(2) of ERISA] which have been established, which are maintained, or to which contributions have been made, by the Board or any of its "affiliates" as defined in ERISA or with respect to which the Board or any of such "affiliates" is (i) a "party in interest" within the meaning of Section 3(14) of ERISA or the regulations thereunder or (ii) a "disqualified person" within the meaning of Section 4975(e)(2) of the Code.

(h) Title to Project. The Board has good and marketable title to the Project Site, subject only to Permitted Encumbrances.

(i) Nature and Location of Project. The Project will consist of a "project" within the meaning of the Act, as now existing. As of the delivery of this Lease Agreement, the Project Site is located wholly within Shelby County, Alabama.

(j) Fulfillment of Purposes of Act. The Board has determined that the issuance of the Series 1990-A Bond, the performance of the Project Development Work and the leasing of the Project to the Company will promote industry, develop trade, further the use of the natural and human resources of the State of Alabama and otherwise fulfill the purposes of the Act, as now existing.

**Section 2.2 Representations and Warranties by the Company.** The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) Organization and Qualification of Company. The Company is a corporation duly organized and validly existing under the laws of the State of Alabama. The Company has the corporate power and authority to own its properties and assets, and to carry on its business as now being conducted, and it has all requisite corporate power, to enter into this Lease Agreement and to consummate the transactions contemplated hereby.

(b) Authorization and Validity of this Lease Agreement. The Company has, by all necessary corporate action, duly authorized the execution, delivery and performance of this Lease Agreement, and when duly executed and delivered by the Board, this Lease Agreement will constitute a legal, valid and binding obligation of the Company.

(c) Burdensome and Conflicting Agreements. The Company is not a party to any instrument or agreement or subject to any judgment, order, rule or regulation of any court or governmental body which materially and adversely affects, or in the future may (so far as the Company can now foresee) materially and adversely affect, the business, prospects, operations, properties, assets or condition (financial or otherwise) of the Company. Neither the execution and delivery of this Lease Agreement, nor the offering, sale and issuance of the Series 1990-A Bond, nor the consummation of the transactions herein contemplated, nor the fulfillment of or compliance with the terms and provisions hereof conflicts with, or results in a breach of, or constitutes a default under, or results in or requires the creation of any lien in respect of any properties or assets of the Company pursuant to, or requires any authorization, consent, approval, exemption or other action by, or any notice to, any Person (other than those already obtained, taken or made and which continue in full force and effect) pursuant to the terms, conditions or provisions of any applicable law, rule, regulation, agreement, instrument, judgment or order by which the Company is bound or to which Company or any of its properties is subject.

(d) Governmental Consents. Neither the business or property of the Company, nor any relationship between the Company and any other Person nor any circumstance in connection with the offering, sale, issuance or delivery of the Series 1990-A Bond is such as to require on the part of the any consent, approval, permit, exemption, action, order or authorization of, or filing, registration or qualification with, or with respect to, any court, regulatory agency or other governmental body in connection with the execution and delivery of this Lease Agreement or the offering, sale, issuance or delivery of the Series 1990-A Bond (other than those already obtained, taken or made and which continue in full force and effect).

(e) Litigation. There is no action, suit, inquiry, investigation or proceeding pending or overtly threatened against or affecting the Company at law or in equity or before or by any court or governmental body (nor, to the best knowledge and belief of the Company is there any basis therefor) which might result in any material adverse change in the business, prospects, operations, properties or assets or in the condition (financial or otherwise) of the Company, or which might materially and adversely affect the transactions contemplated by this Lease Agreement, or which might impair the ability of the Company to comply with its obligations hereunder.

(f) No Defaults. No event has occurred and no condition exists which, upon the issuance of the Series 1990-A Bond, would constitute an Event of Default or which would become such an Event of Default with the passage of time or with the giving of notice or both. To the best of the knowledge of the Company, no event has occurred and no condition exists which would constitute an "Event of Default" under the Mortgage, as "Event of Default" is therein defined, or which would become such an Event of Default with the passage of time or with the giving of notice or both. The Company is not in default in any respect under any agreement or other instrument to which it is a party or by which it is bound, or any judgment, order, rule or regulation of any court or other governmental body applicable to it, to the extent in any such case that the default in question would materially and adversely affect the transactions contemplated by this Lease Agreement or would impair the ability of the Company to comply with its obligations hereunder.



(g) Licenses, Permits, Etc. All licenses, permits or other approvals required in connection with the acquisition, restoration, improvement and installation of the Project have been duly obtained and are in full force and effect except for any such licenses, permits or other approvals (i) which are not yet required and which will be duly obtained not later than the time required or (ii) the failure to obtain which will not materially and adversely affect the acquisition, restoration, improvement and installation of the Project.

(h) Project's Compliance with Statutes and Regulations. The operation of the Project for the purpose for which it was designed and acquired will not conflict with any zoning, planning or similar regulations applicable thereto and will comply in all material respects with all applicable statutes, regulations, orders and restrictions.

(i) Nature and Location of Project. The Project will consist of a "project" within the meaning of the Act, as now existing. As of the delivery of this Lease Agreement, the Project Site is located wholly within Shelby County, Alabama.

(j) Inducement to Locate Project in Alabama. The undertakings by the Board to acquire, construct and equip the Project and to lease the same to the Company pursuant to this Lease Agreement have induced the Company to locate an industrial facility in the State of Alabama.

(k) Full Disclosure. Neither any information furnished by the Company to the Mortgagee in connection with the sale and issuance of the Series 1990-A Bond and the other transactions contemplated by this Lease Agreement, nor the representations and warranties made by the Company in this Lease Agreement or in any document in writing furnished by the Company to the Mortgagee in connection with the transactions contemplated hereby, contain (except to the extent, as to any such representation or warranty not made in this Lease Agreement or in a document required to be furnished pursuant to this Lease Agreement, corrected in any other written communication subsequently furnished by the Company to the Mortgagee prior to the execution and delivery of this Lease Agreement) any untrue statement of a material fact or omit a material fact necessary to make the statements contained therein or herein, in light of the circumstances in which they were made, not misleading at the times they were made. There is no fact known to the Company or which in the exercise of reasonable diligence should have been known to the Company which the Company has not disclosed to the Mortgagee in writing prior to the execution and delivery of this Lease Agreement which materially adversely affects or, so far as the Company can now in the exercise of its reasonable business judgment foresee, will materially adversely affect the Project, the condition (financial or otherwise) of the Company or the ability of the Company to perform its obligations hereunder or under any agreement contemplated thereby.

### ARTICLE III

#### DEMISING CLAUSES

Section 3.1 **Demising Clauses.** For and during the Lease Term, the Board hereby demises and leases to the Company, subject to Permitted Encumbrances, and the Company hereby rents from the Board, subject to Permitted Encumbrances, the following described properties and related rights:

##### I

The parcel 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 or in the Project Building or in any of such other buildings, structures and improvement now or hereafter located on the Project Site, it being the intention hereof that all property, rights and privileges 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.

### ARTICLE IV

#### CONCERNING THE PROJECT DEVELOPMENT WORK; ISSUANCE OF THE SERIES 1990-A BOND

Section 4.1 **Performance of the Project Development Work.** The Board has heretofore acquired the Project Site. The Board and the Company will commence and use their best efforts to complete the Project Development Work, or to cause the same to be completed, as promptly as practicable, delays incident to strikes, riots, acts of God or the public enemy or other acts beyond the reasonable control of the Board or the Company only excepted; provided, however, that no liability on the part of the Board nor any reduction in or postponement of any rentals payable by the Company hereunder shall result from any delay in the completion of any of the Project Development Work or from the failure of such work to be completed in accordance with the plans and specifications and the directions furnished by the Company.

The Board acknowledges that the Project is to be acquired and constructed in accordance with the requirements of the Company, and it is therefore agreed and understood that the Company, at any time and from time to time after the delivery of this Lease Agreement, may cause such changes to be made in the design of the Project Building or in the design of any of other improvements to be constructed on the Project Site as it, in the exercise of its sole judgment, may deem necessary or desirable; provided, however, that (i) the Project Building and such other improvements, as finally constructed in accordance with the requirements of the Company, shall be of a size and quality substantially equivalent to that contemplated by the Company at the time of the delivery of this Lease Agreement and (ii) the nature and character of the Project Building and such other improvements shall be such as is necessary for the Project to qualify as a "project" within the meaning of the Act. Except as provided in the foregoing provisions of this paragraph, neither the Company nor the Board will cause or permit any changes to be made in the design of the Project Building, or in the design of any other improvements to be constructed on the Project Site.

The Board will execute and deliver, or cause to be executed and delivered, all contracts, orders, requisitions, instructions and other written instruments and do, or cause to be done, all other acts or things that may be necessary or proper to carry out the Project Development Work and to perform fully its obligations under this Lease Agreement. In no event, however, will the Board hereafter enter into any contract with respect to the Project Development Work or any part thereof unless there is endorsed thereon a legend indicating that the Company has approved both the form and substance of such contract and such legend is signed on behalf of the Company by an Authorized Company Representative.

The Board hereby appoints the Company as its true and lawful agent to act on its behalf in connection with the Project Development Work, and the Company hereby accepts such agency to act and do all things on behalf of the Board required to carry out such work to completion. The appointment of the Company to act as agent for the Board and the authority thereby conferred on the Company shall irrevocably continue in effect until the Project Development Work has been completed in every respect; provided, however, that the Board may, upon the occurrence of an Event of Default and notwithstanding the preceding provisions of this paragraph, terminate the agency relationship created hereby.

The Board and the Company shall each appoint by written instrument an agent or agents authorized to act for each respectively in any or all matters arising under the Lease or the Mortgage which, by the specific terms of the Lease or the Mortgage, require action by such agents. Each agent so appointed to act for the Board shall be designated an Authorized Board Representative, and each agent so appointed to act for the Company shall be designated an Authorized Company Representative. Either the Board or the Company may from time to time, by written notice to the other party hereto and to the Mortgagee, revoke, amend or otherwise limit the authorization of any agent appointed by it to act on its behalf or designate another agent or agents to act on its behalf, provided that with reference to all the foregoing matters there shall be at all times at least one Authorized Board Representative authorized to act on behalf of the Board and at least one Authorized Company Representative authorized to act on behalf of the Company.

**Section 4.2 Agreement to Issue Series 1990-A Bond.** In order to finance the Project Development Costs, the Board will, simultaneously with the delivery hereof, issue and sell the Series 1990-A Bond and, as security therefor, execute and deliver the Mortgage. All the terms and conditions of the Mortgage (including, without limitation, those relating to the amounts and maturity date or dates of the principal of the Series 1990-A Bond, the interest rate or rates thereof and any provisions for redemption thereof prior to maturity) are hereby approved by the Company, and to the extent that any provision of the Mortgage is relevant to the calculation of any rent or other sum payable by the Company hereunder or to the determination of any other obligation of the Company hereunder, the Company hereby agrees that such provision of the Mortgage shall be deemed a part hereof as fully and completely as if set out herein.

**Section 4.3 Disbursement of Moneys from Construction Fund.** Subject to the conditions of Section 4.4 hereof, the Board will pay, or cause to be paid, all Project Development Costs, but such costs shall be paid solely out of the principal proceeds from the sale of the Series 1990-A Bond, income earned from the investment of such proceeds and any other moneys which the Company may cause to be deposited in the Construction Fund. The Company, as agent for the Board, will cause such requisitions to be prepared and submitted to the Mortgagee as shall be necessary to enable the Mortgagee to pay, out of moneys held in the Construction Fund in accordance with the provisions of Section 4.2 of the Mortgage, all the Project Development Costs.

The Board will, simultaneously with the issuance of the Series 1990-A Bond or as soon thereafter as may be practicable, cause the Mortgagee, upon submission of requisitions satisfying the requirements of the Mortgage, to reimburse the Company, out of the proceeds of the Series 1990-A Bond deposited in the Construction Fund, for (i) all costs and expenses that the Company may have heretofore paid or incurred in connection with the Project Development Work, and (ii) all advances and loans to the Board heretofore made by the Company in order to enable the Board to pay Project Development Costs. The Company hereby acknowledges and agrees that the failure by the Board to reimburse the Company, or to cause the Company to be reimbursed, in full for all such costs and expenses and all such advances (whether such failure results from insufficient moneys being available in the Construction Fund for such purpose, a decision by the Company not to request such reimbursement or any other cause) shall not result in any diminution or postponement of any rentals payable by the Company hereunder, or in the vesting of title to any of the Project in the Company, or in the imposition of a lien in favor of the Company upon any portion of the Project.

**Section 4.4 No Warranty of Suitability by the Board. Company Required to Make Arrangements for Payment of Project Development Costs.** The Company recognizes that the Project Development Work has been or is to be planned and carried out under its control and in accordance with its requirements, and the Board can, therefore, make no warranty, either express or implied, or offer any assurances that the Project resulting from the completion of such work will be suitable for the Company's purposes or needs or that the proceeds derived from the sale of the Series 1990-A Bond, together with the income (if any) earned from the investment of such proceeds, will be sufficient to pay in full all the Project

Development Costs. In the event such proceeds and investment income (if any) are insufficient to pay all the Project Development Costs, the Company

(a) will, subject to the provisions of the second paragraph of Section 4.1 hereof, cause such changes to be made in the scope of the Project Development Work as will result in the aggregate Project Development Costs not exceeding such proceeds and investment income, or

(b) will itself complete the Project Development Work as originally planned and will pay that portion of the Project Development Costs in excess of such proceeds and investment income, or

(c) will pay into the Construction Fund such moneys as are necessary for the payment of all Project Development Costs, in which case the Board will complete the Project Development Work, or

(d) will take action pursuant to any two or more of the courses of action described in the preceding clauses (a), (b) and (c),

all to the end that all obligations incurred by the Board in connection with the Project Development Work shall be paid in full and that the acquisition, restoration, improvement and installation of the Project shall be completed to the extent necessary for the Project to constitute a "project" within the meaning of the Act. The Company shall not, by reason of (1) its direct payment of any excess Project Development Costs, (2) its payment of any moneys into the Construction Fund for the payment of any such costs or (3) any other arrangements made by it for the payment of such costs, be entitled to any reimbursement from the Board or to any diminution or postponement of any rentals payable by the Company hereunder. Further, the fact that the Company directly pays, or directly or indirectly furnishes money to the Board for the payment of, any part of the Project Development Costs shall not result in the Company's acquisition of title to any part of the Project or in the imposition of a lien in favor of the Company upon any portion of the Project, it being understood and agreed (A) that title to all the Project shall, as between the Board and the Company, be fully and solely vested in the Board and (B) that any such lien in favor of the Company that might so result is hereby expressly waived and released by the Company.

**Section 4.5 Board to Pursue Rights against Suppliers and Contractors, etc.**  
In the event of default by any supplier, contractor or subcontractor under any contract with the Board for the performance of the Project Development Work or any part thereof, the Board will, upon written request made to it by the Company, proceed, either separately or in conjunction with others, to exhaust all remedies the Board may have against such supplier, contractor or subcontractor so in default and against each surety (if any) for the performance of such contract, but all actions taken by the Board to exhaust such remedies shall be at the expense of the Company. Further, in the event the Board proceeds in an arbitration proceeding or by an action at law or in equity against any such supplier, contractor, subcontractor or surety pursuant to the provisions of this section or in the event any such supplier, contractor, subcontractor or surety brings any such proceeding or action against the Board in connection with or relating to the Project Development Work, the Board will follow



all reasonable directions given to it by the Company in connection with such proceeding or action, and the Company shall have full and complete control thereof, including (without limitation) the right to select Counsel for the Board, but any Counsel so selected shall be satisfactory to the Board. The net amount recovered by the Board in any such proceeding or action shall be paid into the Construction Fund or, if such amount is recovered after the Completion Date, to the Company, unless an Event of Default shall have occurred and be continuing, in which case such amount shall be paid into the Bond Fund.

The Board hereby transfers and assigns to the Company all the Board's rights and interests in, to and under any maintenance or surety bonds or warranties respecting quality, durability or workmanship obtained by or vested in the Board in connection with the Project Development Work, and grants to the Company the right to take action, in the name of either the Board or the Company, but at the Company's sole cost and expense, for the enforcement of such bonds and warranties. The net amount recovered in any such action shall be paid into the Construction Fund or, if such amount is recovered after the Completion Date, to the Company, unless an Event of Default shall have occurred and be continuing, in which case such amount shall be paid into the Bond Fund.

**Section 4.6 Certification of Completion Date.** The Completion Date shall be evidenced to the Mortgagee (and, in case the Mortgagee is other than the Bank, to the Bank) and the Board by a certificate signed by an Authorized Company Representative stating that

- (a) the acquisition, restoration, improvement and installation of the Project and all other Project Development Work have been completed in accordance with the applicable plans, specifications and directions furnished by the Company,
- (b) all the Project Development Costs have been paid in full, except for amounts retained by the Mortgagee at the Company's direction for any such costs not then due and payable or the liability for payment of which is being contested or disputed by the Company or by the Board at the Company's direction, and
- (c) the Project is operational for the purpose for which it was designed.

## ARTICLE V

### DURATION OF LEASE TERM AND RENTAL PROVISIONS

**Section 5.1 Duration of Lease Term.** The Lease Term of this Lease Agreement shall begin on the date of the delivery of this Lease Agreement and, subject to the provisions of this Lease Agreement, shall continue until 11:59 o'clock, P.M., on October 1, 2000. The Board will deliver to the Company sole and exclusive possession of the Project (or such portion or portions thereof as are then in existence) on the commencement date of the Lease

Term, subject to the inspection and other rights reserved in Section 8.3 hereof, and the Company will accept possession thereof at such time; provided, however, that the Board will be permitted such access to the Project as shall be necessary and convenient for it to accomplish the undertakings on its part contained in Section 4.1 hereof; and provided further, that the Board will be permitted such possession of the Project as shall be necessary and convenient for it to make any repairs, restorations, additions or improvements required or permitted to be made by the Board pursuant to the provisions of the Lease.

**Section 5.2 Basic Rent.** For the use and occupancy of the Project during the Lease Term, the Company will, on or before the opening of business of the Mortgagee on November 1, 1990, and on or before the opening of business of the Mortgagee on the first day of each calendar month thereafter, until and including October 1, 2000, pay to the Mortgagee at its principal office, for the account of the Board, installments of Basic Rent. Each installment of Basic Rent shall be paid in immediately available funds and shall be in an amount equal to the sum of

(a) an amount equal to the interest which shall have accrued with respect to the outstanding principal amount of the Series 1990-A Bond during the next preceding calendar month, plus

(b) an amount equal to the principal (if any) maturing, or required by the terms of the Mortgage to be redeemed, with respect to the then outstanding principal amount of the Series 1990-A Bond on such rental payment date.

Anything to the contrary herein contained notwithstanding, if for any reason, after the payment by the Company of such installments of Basic Rent as are required to be paid by it pursuant to any provisions of the Lease the moneys then held by and available to the Mortgagee for payment or redemption of the principal of and the interest on the Series 1990-A Bond are not sufficient to pay, on the due or required redemption date thereof, the principal maturing or required to be redeemed with respect to the Series 1990-A Bond plus the interest maturing with respect to the Series 1990-A Bond, the Company will promptly pay to the Mortgagee (for the account of the Board) such additional Basic Rent as, when added to the aforesaid moneys held by and available to the Mortgagee, will equal an amount sufficient to pay the principal and interest so maturing or required to be redeemed with respect to the Series 1990-A Bond.

Nothing herein contained shall be construed as imposing on the Board or on the Mortgagee any duty or responsibility of giving any notice to the Company of the amount on deposit in the Bond Fund, or of the amount of any credits against Basic Rent available to the Company, as of any rent payment date, but the Board will cause the Mortgagee to respond to any reasonable requests that the Company may make for such information. Neither the Board nor the Mortgagee shall be obligated to give any prior notice to the Company of the due date or amount of any installment of Basic Rent, and failure to receive any such prior notice, even if customarily given by the Board or the Mortgagee, shall not relieve the Company of its obligation to pay such installment of Basic Rent when it is due and payable.

The Board will, promptly following the transfer of the Series 1990-A Bond, give written notice to the Company of the name and location of the principal office of such successor Mortgagee, or it will cause such notice to be promptly given. In the event the due date of any installment of Basic Rent payable hereunder is a Saturday, Sunday or legal holiday in the state in which the principal office of the Mortgagee is located or a day on which the Mortgagee is legally authorized to close, such installment shall be due in immediately available funds no later than the opening of business by the Mortgagee on the first business day next succeeding such due date, and payment of such installment shall be made on such postponed due date with the same effect as if made on the original due date. Any Basic Rent payment due hereunder that is not paid on the due date thereof shall bear interest from such due date until paid at the rate of interest that would otherwise apply to the Series 1990-A Bond, computed and subject to adjustment as specified in Section 3.1 of the Mortgage.

**Section 5.3 Additional Rent - Bank's Fee and Expenses.** In addition to the Basic Rent due from the Company hereunder, the Company will also pay, as additional rent, (i) any periodic or transactional fee of the Bank for its ordinary services as depository, custodian and disbursing agent for the special trust funds created under the Mortgage and (ii) the reasonable fees, charges and expenses of the Bank for necessary extraordinary services rendered by it and necessary extraordinary expenses incurred by it under the Mortgage. All such fees, charges and expenses shall be paid directly to the Bank, for its own account, upon presentation of its statements therefor, but the Company may, without creating a default hereunder, contest in good faith the necessity for any extraordinary services performed by the Bank or the reasonableness of the fees, charges or expenses of the Bank in connection therewith.

**Section 5.4 Additional Rent - Board's Expenses.** In addition to the Basic Rent and all other rental payments due from the Company hereunder, the Company will also pay, as additional rent, the reasonable and necessary expenses, not otherwise provided for, which may be incurred by the Board, or for which the Board may in any way become liable, as a result of issuing the Series 1990-A Bond, acquiring the Project and leasing the same to the Company, or being a party to the Lease or the Mortgage; provided, however, that, as to expenses incurred after the execution hereof, so long as no Event of Default shall have occurred and be continuing, the Company's liability under this Section 5.4 shall not include expenses voluntarily incurred by the Board without prior request or approval by the Company, unless such expenses are necessary to enable the Board to perform its obligations under the Lease and the Mortgage.

**Section 5.5 Optional Prepayment of Basic Rent.** The Company may, at its option at any time and from time to time, prepay directly to the Bank, for the account of the Board, such amount of Basic Rent as shall be sufficient to enable the Board to redeem and retire, in advance of maturity, any or all of the principal amount of the Series 1990-A Bond in accordance with its terms and the terms of the Mortgage. In the event of such prepayment, the Board will cause the amount of Basic Rent so prepaid to be applied to redemption and retirement of the principal of the Series 1990-A Bond, in accordance with the provisions of the Mortgage, on the earliest practicable date after receipt of such prepaid Basic



Rent on which, under their terms and the terms of the Mortgage, such principal amount of the Series 1990-A Bond may be redeemed, and will (upon being notified by the Company in writing of the Company's intention in this respect and without the necessity of the moneys therefor being deposited with the Bank) take all action necessary under the provisions of the Mortgage to effect such redemption. Prepayments of Basic Rent shall be applied to the redemption of the outstanding principal amount of the Series 1990-A Bond at the redemption prices and in accordance with the other terms and conditions set forth in Section 3.3 of the Mortgage.

**Section 5.6 General Provisions Concerning Prepayment of Basic Rent.** The prepayment of Basic Rent pursuant to any provision of the Lease will result in a total or partial abatement of the Basic Rent that would thereafter have come due had it not been for such prepayment. After the prepayment of Basic Rent sufficient to pay, redeem and retire the entire outstanding principal amount of the Series 1990-A Bond together with accrued interest thereon, the Company shall be entitled to the use and possession of the Project without the payment of any further Basic Rent but otherwise on all the same terms and conditions of the Lease.

**Section 5.7 Obligation of Company Unconditional.** The obligation of the Company to pay the Basic Rent, to make all other payments provided for herein and to perform and observe the other agreements and covenants on its part herein contained shall be absolute and unconditional, irrespective of any rights of set-off, recoupment or counterclaim it might otherwise have against the Board. The Company will not suspend, discontinue, reduce or defer any such payment or fail to perform and observe any of its other agreements and covenants contained herein or (except as expressly authorized herein) terminate the Lease for any cause, including, without limiting the generality of the foregoing, the failure of the Board to complete the acquisition, construction and equipping of the Project or any other part of the Project Development Work, any acts or circumstances that may deprive the Company of the use and enjoyment of the Project, failure of consideration or commercial frustration of purpose, or any damage to or destruction of the Project or any part thereof, or the taking by Eminent Domain of title to or the right to temporary use of all or any part of the Project, or any change in the tax or other laws of the United States of America, the State of Alabama or any political or taxing subdivision of either thereof, or any change in the cost or availability of labor, raw materials or energy adversely affecting the profitable use or operation of the Project by the Company, or any failure of the Board to perform and observe any agreement or covenant, whether express or implied, or any duty, liability or obligation arising out of or connected with the Lease.

The provisions of the first paragraph of this Section 5.7 shall remain in effect only so long as any of the Mortgage Indebtedness remains outstanding and unpaid. Nothing contained in this Section 5.7 shall be construed to prevent the Company, at its own cost and expense and in its own name or in the name of the Board, from prosecuting or defending any action or proceeding or taking any other action involving third persons which the Company deems reasonably necessary in order to secure or protect its rights hereunder, including, without limitation, such actions as may be necessary to insure that the Project Development Work will be completed in accordance with the directions and requirements of the Company,

and in such event the Board will cooperate fully with the Company in any such action or proceeding. Further, nothing contained in this Section 5.7 shall be construed to release the Board from the performance of any of the agreements on its part herein contained or to preclude the Company from instituting such action against the Board as the Company may deem necessary to compel such performance, it being understood and agreed, however, that no such action on the part of the Company shall in any way affect the agreements on the part of the Company contained in the first paragraph of this Section 5.7 or in any way relieve the Company from performing any such agreements.

**Section 5.8 Governmental Service Fee.** The Board and the Company acknowledge that, under present law, so long as the Project is owned by the Board, the Project is exempt from ad valorem taxation by the State of Alabama and any political or taxing subdivision thereof, including the Municipality and Shelby County, Alabama. The Company will, nevertheless, pay to the Municipality and not to the Board, Shelby County, the State of Alabama or any political or taxing subdivision thereof except the Municipality, on or before December 31 in each year during the term hereof beginning with 1992, a governmental service fee in the amount of \$5,940.

If the Project becomes subject to ad valorem taxation at any time during the Lease Term and if the Company is required to pay such ad valorem taxes pursuant to the provisions of Section 6.3 hereof, then in such case the ad valorem taxes so payable by the Company shall be credited in full against the governmental service fee required by this section for the applicable tax year, with the result that if the Project shall become fully subject to ad valorem taxation payable by the Company, no further payments shall be due pursuant to the provisions of this section.

## ARTICLE VI

### PROVISIONS CONCERNING MAINTENANCE, ADDITIONS, PARTY WALLS, INSURANCE AND TAXES

**Section 6.1 Maintenance, Additions, Alterations, Improvements and Modifications.** The Company will, at its own expense, (i) keep the Project in reasonably safe condition and (ii) keep all structures, equipment and other facilities at any time forming part of the Project 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); provided however, that the Company shall have no obligation hereunder to repair or maintain the Project after full payment of the Mortgage Indebtedness.

The Company may, at its own cost and expense, make, or cause to be made, any additions, alterations, improvements or modifications to the Project that it may deem desirable for its business purposes, provided that such additions, alterations, improvements or modifications do not change the character of the Project to such extent that it no longer constitutes a "project" within the meaning of the Act, or significantly impair the value or

utility of the Project and provided further that, if such additions, alterations, improvements or modifications affect the structural integrity of any structure forming a part of the Project, the Company furnishes the Board and the Mortgagee a certificate of an Independent Engineer acceptable to the Mortgagee, or a certificate signed on behalf of the Company by an Authorized Company Representative who is a licensed engineer, stating, in either case, that such additions, alterations, improvements or modifications will not significantly impair the value or utility of the Project.

Subject to the privilege of making full use of the party wall easements created by Section 6.2 hereof, all additions, alterations, improvements or modifications to the Project made, or caused to be made, by the Company shall

- (a) be located wholly within the boundaries of the Project Site, or
- (b) be located wholly within the boundaries of other adjacent land hereafter acquired by the Board that has been subjected (i) to the demise of the Lease and (ii) to the lien of the Mortgage if the Mortgage Indebtedness has not been fully paid, or
- (c) be located wholly within the boundaries of the Project Site and such other adjacent land.

Prior to the payment in full of the Mortgage Indebtedness, no additions, alterations, improvements or modifications to the Project shall be located, in whole or in part, on any land adjacent to the Project Site in accordance with the preceding clauses (b) and (c) unless the Board and the Mortgagee shall have been furnished either (i) an opinion of Independent Counsel satisfactory to the Mortgagee to the effect that the Board has good and marketable title to such land, subject only to Permitted Encumbrances, or (ii) a policy or policies of title insurance written by an insurer satisfactory to the Mortgagee and insuring the mortgage interest of the Mortgagee therein, except with respect to Permitted Encumbrances, in an amount approximately equal to the cost of such land and the improvements located or to be located thereon. Any such adjacent land so subjected to the demise hereof and to the lien of the Mortgage shall henceforth be considered, for purposes of the Lease and the Mortgage, as part of the Project Site. All such additions, alterations, improvements and modifications to the Project so made, or caused to be made, by the Company shall become a part of the Project.

In the event that, after the completion of the acquisition, restoration, improvement and installation of the Project the Company determines to make, or to cause to be made, any additions, alterations, improvements or modifications to the Project pursuant to the second paragraph of this Section 6.1, then the Board will execute and deliver, or cause to be executed and delivered, all contracts, orders, requisitions, instructions and other written instruments and do, or cause to be done, all other acts that may be necessary or proper in making such additions, alterations, improvements or modifications. In no event, however, will the Board hereafter enter into any contract with respect to any such additions, alterations, improvements or modifications unless there is endorsed thereon a legend indicating that the Company has approved both the form and substance of such contract and such legend is signed on behalf of the Company by an Authorized Company Representative. Any obligation

for the payment of money incurred or assumed by the Board in connection with such additions, alterations, improvements or modifications shall be payable solely from any moneys made available to the Board by the Company for such purpose.

The Company will not permit any mechanics' or other liens to stand against the Project for labor, materials, equipment or supplies furnished in connection with the original acquisition, restoration, improvement and installation of the Project or in connection with any additions, alterations, improvements, modifications, repairs or renewals that may subsequently be made thereto. The Company may, however, at its own expense and in good faith, contest any such mechanics' or other liens and in the event of any such contest may permit any such liens to remain unsatisfied and undischarged during the period of such contest and any appeal therefrom unless by such action the lien of the Mortgage to any part of the Project shall be endangered or any part of the Project shall be subject to loss or forfeiture, in either of which events such mechanics' or other liens shall (unless they are bonded or superseded in a manner satisfactory to the Mortgagee) be promptly satisfied.

At any time and from time to time, the Company may, at its own cost and expense, install on or about the Project Site any equipment or other personal property which in the Company's judgment is necessary or convenient for its use and occupancy of the Project, provided that the installation of such equipment or other personal property does not significantly impair the value or utility of the Project. Any such equipment or personal property owned or leased by the Company may be removed by the Company at any time and from time to time without responsibility or accountability to the Board or the Mortgagee, but the Company shall promptly repair at its own expense any damage to the Project caused by the removal of any such equipment or other personal property.

**Section 6.2 Party Wall Provisions.** If the Company purchases any unimproved part of the Project Site pursuant to the provisions of Section 11.4 hereof, or if the Company purchases, leases or otherwise acquires any other land adjacent to the Project Site, or if any unimproved portion of the Project Site is released from the demise hereof, then, in any such event, all building walls now standing or hereafter erected on or contiguous to any common boundary between the Project Site and any land theretofore constituting part of the Project Site that has been purchased by the Company, any other land adjacent to the Project Site that has been purchased, leased or otherwise acquired by the Company or any land theretofore constituting part of the Project Site that has been released from the demise thereof, as the case may be, shall be party walls, and each parcel of land on either side of such common boundary shall be subject to a reciprocal easement for the benefit of the other parcel, which easement on each side of such common boundary shall extend out fifteen feet from such boundary and shall be for the purposes of construction, inspection, maintenance, repair and replacement of any party wall now or hereafter erected on or contiguous to such common boundary.

Subject to the provisions of Section 6.1 hereof and to the extent permitted by applicable building codes and accepted principles of structural design, new buildings or other structures located on either side of any such common boundary may be structurally connected to any such party wall then in existence, but any party exercising such right of connection to an existing party wall shall indemnify and hold harmless the owner, mortgagee and lessee of

the parcel of land on which such party wall was erected (as well as any other person having an interest in said parcel) against any and all losses and damages that may in any way result from the construction and connection of adjacent buildings and other structures to such party wall, including damage or loss occurring after the completion of construction as well as any that may occur during construction.

If a building or other structure now or hereafter located on a parcel of land on either side of any such common boundary utilizes a party wall with a building or other structure now or hereafter located on the parcel of land on the other side of such common boundary, and if all buildings or other structures utilizing such party wall are leased by the same person or are otherwise operated under common control, then such party wall may be constructed or modified to permit such openness between the buildings or other structures utilizing such party wall as may be deemed desirable by the person exercising common control over such buildings or structures, and the utilities serving either of such parcels may be tied in or connected with the utilities serving the other of such parcels, but in the event that such parcels thereafter cease to be leased by the same person or otherwise operated under common control, the openings in such party wall shall be closed by using any materials or construction methods which will produce a completed wall of a structural quality equivalent to or better than the structural quality of the building located on the Project Site as of the date of the delivery of this Lease Agreement, as it then exists, and separate utilities shall be provided for each of such parcels of land.

The covenants and agreements on the part of the Board and the Company contained in this section shall run with all separate parcels of land into which the parcel of land described in the demising clauses of the Lease may be hereafter divided and shall be enforceable for the benefit of each such parcel by all present and future owners, lessees and mortgagees thereof.

**Section 6.3 Taxes, Other Governmental Charges and Utility Charges.** The Board and the Company acknowledge (i) that under present law no part of the Project, so long as it is owned by the Board, shall be subject to ad valorem taxation by the State of Alabama or by any political or taxing subdivision thereof and that under present law none of the receipts, income or profits (if any) of the Board from the Project is subject to either federal or state taxation, and (ii) that these factors, among others, induced the Company to enter into this Lease Agreement. However, the Company will pay, as the same respectively become due,

(a) all taxes and governmental charges of any kind whatsoever that may lawfully be assessed or levied against or with respect to the Project, 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 any other taxes levied upon or with respect to the Project which, if not paid, would become a lien on the Project prior to or on a parity with the lien of the Mortgage or a charge on the revenues and receipts therefrom prior to or on a parity with the charge thereon and pledge and assignment thereof to be 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 Company shall be obligated to pay only such installments as are required to be paid during any period while the Lease shall be in effect.

The Board will promptly forward to the Company any bills, statements, assessments, notices or other instruments asserting or otherwise relating to any such taxes, assessments or charges.

The Company may, at its own expense and in its own name and behalf or in the name and behalf of the Board, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless by such action the title of the Board to any portion of the Project shall be materially endangered or the Project or any part thereof shall become subject to loss or forfeiture, in which event such taxes, assessments or charges shall (unless they are bonded or are superseded in a manner satisfactory to the Mortgagee) be paid prior to their becoming delinquent. The Board will cooperate fully with the Company in any such contest.

The Company will also pay, as the same respectively become due, all utility and other similar charges incurred in the operation, maintenance, use and upkeep of the Project.

**Section 6.4 Insurance Required.** The Company will, not later than the date of delivery of this Lease Agreement, take out and thereafter continuously maintain in effect or cause to be taken out and thereafter continuously maintained in effect, insurance with respect to the Project against such risks as are customarily insured against by Persons owning properties of like size and type as the Project, paying as the same become due all premiums with respect thereto including, but not necessarily limited to, the following:

(a) until such time as the construction of the Project Building to be initially constructed on the Project Site shall have been completed, builder's risk insurance with respect to the Project Building to such extent as is necessary to provide for the full payment of the costs of repairing, restoring or replacing the property damaged or destroyed or, if insurance to such extent is not available, to the extent of the full insurable value (as determined by a recognized insurer) of the Project Building;

(b) insurance against loss or damage to all improvements located on the Project Site by fire, lightning, vandalism and malicious mischief, with uniform standard extended coverage endorsement limited only as may be provided in the standard form of extended coverage endorsement at the time in use in the State of Alabama, to such extent as is necessary to provide (i) for full payment of the costs of repairing, restoring or replacing the property damaged or destroyed or, if insurance to such extent is not available, to the extent of the full insurable value (as determined by a recognized insurer), such

improvements or (ii) for the recovery of such lesser amount as may be required for the full payment of the Mortgage Indebtedness then outstanding; provided, however, that the Company shall not be required to put into effect the insurance required by this clause (b) with respect to any property so long as the same shall be covered by the builder's risk insurance required by clause (a) of this paragraph;

(c) comprehensive general liability insurance against liability for personal or bodily injury to or death of persons and for damage to or loss of property occurring on or about the Project Site or in any way related to the use or occupancy of the Project, and against the Company's contractual obligation of indemnity hereunder, in the minimum amounts of \$1,000,000 single limit coverage for all death and personal or bodily injury claims and property damage occurring during any annual coverage period;

(d) business interruption insurance as is consistent with the customary practice and standards of Persons owning properties of like size and type as the Project, in the minimum amount equal to 12 months of Basic Rent;

(e) title insurance in the amount of \$840,000 written by a title insurance company satisfactory to the Mortgagee.

All policies evidencing the insurance required by the terms of the preceding paragraph shall be taken out and maintained in generally recognized responsible insurance companies, qualified under the laws of the State of Alabama to assume the respective risks undertaken, shall contain an agreement on the part of the insurer issuing such policy that the same shall not be cancelled, terminated or permitted to lapse by such insurer unless thirty (30) days' prior written notice of such cancellation, termination or lapse in coverage shall have been given to the Mortgagee, and may be written with deductible amounts comparable to those on similar policies carried by Persons owning properties of like size and type as the Project. All such insurance policies, other than those evidencing the insurance required by clause (c) of the preceding paragraph and such other policies or portions thereof as may evidence insurance against liability for injury to persons or property of others, shall name as insureds the Board, the Mortgagee and the Company (as their respective interests shall appear) and shall contain standard mortgage clauses providing for all losses thereunder in excess of \$5,000 to be paid to the Mortgagee; provided that all losses (including those in excess of \$5,000) may be adjusted by the Company, subject, in the case of any single loss in excess of \$5,000, to the approval of the Mortgagee. The insurance required by clause (c) of the preceding paragraph shall cover the liability, in the several respects indicated, both of the Board and of the Company. All policies evidencing the insurance required to be carried by this Section 6.4 shall be deposited with the Mortgagee; provided, however, that in lieu thereof the Company may deposit with the Mortgagee a certificate or certificates of the respective insurers attesting the fact that such insurance is in force and effect. Prior to the expiration or cancellation of any such policy, the Company will furnish to the Mortgagee evidence reasonably satisfactory to the Mortgagee that such policy has been renewed or replaced by another policy or that there is no necessity therefor under this Lease Agreement. Anything herein to the contrary notwithstanding, any insurance required by the provisions hereof may be evidenced by a blanket policy covering risks in addition to those hereby required to be

covered, but if and only if appropriate allocation certificates and loss payable endorsements are furnished to the Board and the Mortgagee.

**Section 6.5 Performance by Board or Mortgagee of Certain Company Obligations. Reimbursement of Expenses.** In the event the Company fails to take out or maintain the full insurance coverage required by this Lease Agreement, fails to pay the taxes and other charges required to be paid by this Lease Agreement at or prior to the time they are required to be paid, or fails to keep the Project in as reasonably safe condition as its operations permit and in good repair and operating condition, the Board or the Mortgagee, after first notifying the Company of any such failure on its part and after the subsequent failure by the Company to perform the obligation with respect to which it is delinquent, may (but shall not be obligated to) take out the required policies of insurance and pay the premiums on the same, pay such taxes and other charges or make such repairs as may be necessary to keep the Project in as reasonably safe condition as the Company's operations permit and in good repair and operating condition, respectively. Any amount so paid by the Board or the Mortgagee in performing any of such obligations of the Company shall become an additional obligation of the Company to the Board or to the Mortgagee, as the case may be, and shall be repaid by the Company, together with interest thereon, from the date such amount was paid by the Board or the Mortgagee, as the case may be, until the date of its repayment by the Company at a per annum rate equal to one percent (1%) above the rate of interest that would otherwise apply to the Series 1990-A Bond until such amount is repaid or at the maximum applicable non-usurious per annum rate of interest then permitted by the laws of the State of Alabama, whichever of the foregoing rates of interest is the lesser. Any remedy herein vested in the Board or the Mortgagee for the collection of Basic Rent shall also be available to the Board or the Mortgagee for the collection of all amounts so paid by the Board or the Mortgagee in performing any of such obligations of the Company.

**Section 6.6 Compliance With Law.** The Company shall comply with all applicable laws, rules, regulations and orders of any governmental authority, including, but not limited to, pollution control, tax filings and zoning regulations applicable to it or to any of its property, business operators or transactions, a breach of which could have a material adverse effect on the business of the Company.

## ARTICLE VII

### PROVISIONS RESPECTING DAMAGE, DESTRUCTION AND CONDEMNATION

**Section 7.1 Condemnation, Damage and Destruction Provisions.** If, at any time that the Series 1990-A Bond is outstanding (a) any damage or destruction of the Project or any portion thereof in excess of \$5,000 shall occur, or (b) title to or the temporary use of any portion of the Project shall be taken in any condemnation proceedings or by the exercise of the power of Eminent Domain by any governmental body or by any person acting under governmental authority, the Company shall with reasonable promptness notify the Mortgagee



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as to the nature and extent of such damage, destruction or taking. If the Company shall determine that restoration is practicable, the Company or any designee of the Mortgagee, in its sole discretion, shall proceed to restore and complete such portion of the Project in accordance with this section. Otherwise the amount equal to the Net Insurance Proceeds or Net Condemnation Award shall be paid by the Board or the Company, as the case may be, to the Mortgagee for application by the Mortgagee, at the Company's written direction (i) to the redemption of all or any portion of the Series 1990-A Bond as described in the Series 1990-A Bond, on the earliest date upon which redemption can be made, at the principal amount thereof plus accrued interest to the redemption date; provided that if such net proceeds and awards exceed the amount required to discharge the Series 1990-A Bond and the Mortgage, as provided therein, such excess shall be paid to the Company. In the event of the occurrence of any of the events described in the preceding sentence and the Net Insurance Proceeds or Net Condemnation Awards are equal to or greater than \$5,000, such amounts shall (i) if prior to the Completion Date, be paid to the Mortgagee for deposit in the Construction Fund and applied to the prompt repair or restoration of the portion of the Project which is the subject of such damage or destruction, or which remains after such condemnation, and (ii) if after the Completion Date, shall be paid to the Mortgagee to be disbursed by the Mortgagee for repair or restoration of the Project as provided in the Mortgage for disbursements from the Construction Fund. To the extent insurance proceeds or condemnation awards so deposited with the Mortgagee are not needed or used for such repair or restoration within one year following the loss, the Mortgagee shall apply them to the redemption of the Series 1990-A Bond with a corresponding credit against the amounts due under this Lease Agreement. If, after the full payment of the Mortgage Indebtedness and all of the Company's obligations hereunder, title to all or substantially all the Project is taken by such exercise of the power of Eminent Domain, the Net Condemnation Award referable to such taking shall be paid and belong to the Company.

**Section 7.2 Condemnation of Right to Use of the Project for Limited Period.** If the use, for a limited period, of all or any part of the Project is taken under the exercise of the power of Eminent Domain, this Lease Agreement (including, without limitation, the provisions hereof relating to the payment of Basic Rent) shall continue in full force and effect.

**Section 7.3 Condemnation of Company-Owned Property.** The Company shall be entitled to any condemnation award or portion thereof made for damages to or the taking of its own property not included in the Project, but any condemnation award resulting from damages to or the taking of all or any part of the leasehold estate or other interest of the Company in the Project created by this Lease Agreement shall be applied in accordance with the provisions hereof. In the event of any taking which involves both the Project and property of the Company, the Company shall be responsible for all attorney's fees and other expenses properly allocable to the taking of its own property.

**Section 7.4 Cooperation of the Board in the Conduct of Condemnation Proceedings.** The Board will cooperate fully with the Company in the handling and conduct of any prospective or pending condemnation proceeding with respect to the Project or any part thereof and will follow all reasonable directions given to it by the Company in connection

with such proceeding. In no event will the Board settle, or consent to the settlement of, any prospective or pending condemnation proceeding with respect to the Project or any part thereof without the prior written consent of the Company.

**Section 7.5 Cooperation of the Board With Respect to Restoration of the Project in the Event of Casualty or Condemnation.** If, as a result of the taking of title to less than substantially all the Project or the taking of the temporary use of all or any part of the Project through the exercise of the power of Eminent Domain, or if, as a result of any event causing destruction or damage to the Project or any part thereof, the Company determines, in accordance with any applicable provision of this Article VII, to acquire (by purchase, construction or otherwise) any additional property to replace any part of the Project so taken, or to have the Project repaired, replaced, restored, modified, relocated or rearranged in order to correct or ameliorate any condition caused by such taking, damage or destruction, as the case may be, then the Board will execute and deliver, or cause to be executed and delivered, all contracts, orders, requisitions, instruction and other written instruments and do, or cause to be done, all other acts that may be necessary or proper in carrying out all such undertakings with respect to the Project. In no event, however, will the Board hereafter enter into any contract with respect to any part of such undertakings unless there is endorsed thereon a legend indicating that the Company has approved both the form and substance of such contract and such legend is signed on behalf of the Company by an Authorized Company Representative at the time acting as such under the provisions hereof. Any obligation for the payment of money incurred or assumed by the Board in connection with such undertakings shall be payable solely out of any Net Condemnation Award or Net Insurance Proceeds held by the Mortgagee or from any other moneys made available to the Board by the Company under the provisions of the Lease.

**Section 7.6 Provisions Relating to the Incurring of Certain Expenses after Mortgage Indebtedness Paid.** The Board will not, at any time after full payment of the Mortgage Indebtedness, incur any expenses in connection with the collection of any insurance proceeds or any condemnation award with respect to the Project, or any part thereof, without the prior written consent of the Company.

## **ARTICLE VIII**

### **PARTICULAR COVENANTS OF THE COMPANY**

**Section 8.1 General Covenants.** The Company will not do or permit anything to be done in or about or with respect to the Project that will affect, impair or contravene any policies of insurance that may be carried on the Project against loss or damage by fire, casualty or otherwise. The Company will, in the use of the Project and the public ways abutting the Project Site, comply in all material respects with all valid and applicable laws, ordinances, regulations or orders of all governmental authorities or agencies; provided, however, that the Company may in good faith contest the validity of any such laws, ordinances, regulations or orders or the application thereof to the Project and in the event

of any such contest defer compliance therewith during the period of such contest and any appeal from any appealable decision in such contest, unless by such action the rights or interests of the Board or the Mortgagee with respect to the Project or any part thereof shall be materially endangered or impaired.

**Section 8.2 Release and Indemnification Covenants.** The Company releases the Board (and each director, officer, employee and agent thereof) and the Mortgagee from, and will indemnify and hold the Board (and each director, officer, employee and agent thereof) and the Mortgagee harmless against, any and all claims and liabilities of any character or nature whatsoever, regardless of by whom asserted or imposed, and losses of every conceivable kind, character and nature whatsoever claimed by or on behalf of any person, firm, corporation or governmental authority, arising out of, resulting from, or in any way connected with the Project, including, without limiting the generality of the foregoing, (i) any activities relating to the performance of the Project Development Work or any part thereof and (ii) the leasing of the Project to the Company and the condition, use, possession or management of the Project during the Lease Term; provided, however, that the Company shall not be obligated to indemnify any director, officer, employee or agent of the Board against any claim, liability or loss in any way connected with the Project unless such claim, liability or loss arises out of or results from official action taken in the name and behalf of the Board by such director, officer, employee or agent.

The Company acknowledges that it has furnished to the prospective purchaser of the Series 1990-A Bond, or has caused to be so furnished, certain information concerning the financial condition of the Company, and the Company further acknowledges that it has sought and received the assistance and cooperation of the Board in connection with the offering and sale of the Series 1990-A Bond. The Company will indemnify, hold harmless and defend the Board (and each director, officer and employee thereof) against

(a) any claim or liability whatsoever arising out of or based upon any untrue or misleading statement or alleged untrue or misleading statement of any material fact contained in any of the aforesaid information furnished, or caused to be furnished, by the Company to any prospective purchaser of the Series 1990-A Bond, or the omission or alleged omission to state in any such information any material fact necessary to make the statements contained therein not misleading in the light of the circumstances under which such statements were made, and

(b) any claim or liability arising out of any action taken by the Board at the request of the Company (or any other person authorized to act on behalf of the Company) in connection with the offering and sale of the Series 1990-A Bond.

The Company will pay or reimburse all legal or other expenses reasonably incurred by the Board (and each director, officer, employee and agent thereof), or the Mortgagee, as the case may be, in connection with the investigation or defense of any action or proceeding, whether or not resulting in liability, with respect to any claim, liability or loss in respect of

which indemnity may be sought against the Company under the provisions of this Section 8.2.

In the event that any action or proceeding is brought against any indemnifiable party (whether the Board, or any of the Board's directors, officers, employees or agents, or the Mortgagee), in respect of which indemnity may be sought against the Company under the provisions of this Section 8.2, such indemnifiable party shall, as a condition of the Company's liability under the provisions of this Section 8.2, be obligated to notify promptly the Company in writing of the commencement of such action or proceeding and shall thereafter forward to the Company a copy of every summons, complaint, pleading, motion or other process received with respect to such action or proceeding. The Company may (and if so requested by such indemnifiable party, shall) at any time assume the defense of such indemnifiable party in connection with any such action or proceeding, and in such case the Company shall pay all expenses of such defense and shall have full and complete control of the conduct on the part of such party of any such action or proceeding, including, without limitation, the right to settle or compromise any claim giving rise to such action or proceeding upon such terms and conditions as the Company, in its sole discretion, shall determine and the right to select Counsel for such party. Any other provision of this Section 8.2 to the contrary notwithstanding, the Company shall not be obligated to indemnify any such indemnifiable party for any liability resulting from the settlement of any action or proceeding if such settlement was made without the Company's consent, irrespective of whether the Company had, prior to such settlement, exercised its right to assume the defense of such indemnifiable party in connection with such action or proceeding.

Nothing contained in this Section 8.2 shall be construed to indemnify the Board, or any of the Board's directors, officers, employees or agents, or the Mortgagee, against, or to release any of such parties from liability for, any claim, liability or loss that may result from willful misconduct or gross negligence on the part of such parties.

Anything to the contrary in this Lease Agreement notwithstanding, the covenants of the Company contained in this Section 8.2 shall, with respect to any claim, liability or loss for which the Company is obligated to provide indemnity, remain in full force and effect after the termination of this Lease Agreement until (i) any cause of action brought in respect of such claim, liability or loss shall be barred by the applicable statute of limitations or (ii) the payment in full or the satisfaction of such claim, liability or loss, including all reasonable expenses incurred by the indemnifiable party or parties in defending against such claim, liability or loss; provided, however, that in the event any action or proceeding arguably barred by the applicable statute of limitations is brought against any indemnifiable party hereunder, the Company shall be obligated to defend such indemnifiable party with respect to such action or proceeding, all to the end that the bar of the statute of limitations may be asserted by the Company against the party bringing such action or proceeding but may not be asserted by the Company against the indemnifiable party in order to avoid performing any of its obligations under this Section 8.2.

**Section 8.3 Inspection of Project.** The Company will permit the Authority, the Mortgagee and their duly authorized agents at all reasonable times to examine and inspect the Project or any part thereof. So long as any of the Mortgage Indebtedness shall be outstanding and unpaid, the Company will also permit the Mortgagee and its duly authorized

agents to take such action as may be necessary and convenient to cause the Project to be kept in as reasonably safe condition as its operations permit and the Project to be kept in good repair and operating condition, all as and to the extent provided in Sections 6.1 and 6.6 hereof.

**Section 8.4 Agreement to Maintain Corporate Existence.** So long as any of the Mortgage Indebtedness shall be outstanding and unpaid, the Company will maintain its corporate existence, will not dissolve or sell, lease, transfer or otherwise dispose of all or substantially all its assets (either in a single transaction or in a series of related transactions), and will not consolidate with or merge into another corporation or permit one or more other corporations to consolidate with or merge into it; provided that it may, without violating the agreements contained in this section, consolidate with or merge into another United States Corporation, permit one or more other United States Corporations to consolidate with or merge into it, or sell, lease, transfer or otherwise dispose of all or substantially all its assets to another United States Corporation, but if and only if the following conditions are met:

(a) the corporation surviving or resulting from such consolidation or merger (if it be one other than the Company) or the corporation to which such sale, lease, transfer or other disposition shall be made, as the case may be (the "Successor Corporation"), (i) expressly assumes in writing all the obligations of the Company contained in the Lease, with the same effect as if the Successor Corporation had been named herein as a party hereto in lieu of the original Company, (ii) furnishes to the Board and the Trustee, promptly following such consolidation or merger or such sale, lease, transfer or other disposition, appropriately certified or fully executed copies of the writing by which the Successor Corporation so assumes such obligations and (iii) furnishes to the Board and the Trustee the opinions of one or more Counsel (who, although selected by the Company, shall be satisfactory to the Trustee) which, taken together, state in substance that the Successor Corporation is a duly organized and existing United States Corporation and has by such writing duly and validly assumed, and is bound by, all the obligations of the Company contained in the Lease;

(b) the Successor Corporation (irrespective of whether or not it is the original Company) will not have (either immediately following such consolidation or merger or such sale, lease, transfer or other disposition or as the result of the subsequent implementation of any transaction of which such consolidation or merger or such sale, lease, transfer or other disposition forms a part) a Tangible Net Worth less than ninety-five percent (95%) of the Tangible Net Worth which the Company had at the end of the fiscal year (as shown on the audited balance sheet of the Company for such fiscal year) next preceding the implementation of any transaction (including, without limitation, such consolidation or merger or such sale, lease, transfer or other disposition itself) or series of related transactions of which such consolidation or merger or such sale, lease, transfer or other disposition forms a part;



(c) at the time of such consolidation or merger or such sale, lease, transfer or other disposition and immediately upon giving effect thereto, the Successor Corporation shall be a solvent corporation;

(d) immediately after and giving effect to such merger, consolidation or such sale, lease, transfer or other disposition, no event which constitutes an Event of Default, or which would become an Event of Default with the passage of time or the giving of notice or both, shall have occurred and be continuing; and

(e) there shall have been delivered to the Board and to the Trustee a certificate signed by the Chairman of the Board, the President or any Vice President of the Company or the Successor Corporation, as the case may be, and stating that such merger, consolidation, sale, lease, transfer or other disposition complies with the provisions of this section and that all conditions precedent herein provided for relating to such transaction have been complied with.

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Upon any merger, consolidation or any sale, lease, transfer or other disposition complying with the provisions of this section, the Successor Corporation shall succeed to, and be substituted for, the Company for all purposes under the Lease, with the same effect as if the Successor Corporation had been named as the Company herein. If, after a sale or transfer by the Company of all or substantially all its assets to another United States Corporation under the circumstances described in the preceding provisions of this section, the Company does not thereafter dissolve, it shall not have any further rights or obligations hereunder.

**Section 8.5 Financial Statements.** The Company will maintain proper books of record and account in which it will make full and correct entries of all its business activities in accordance with sound accounting practice. For so long as any of the Mortgage Indebtedness shall be outstanding, the Company will furnish to the Mortgagee and, upon request, to the Board the following:

(a) not later than forty-five (45) days after the end of each quarterly period, other than the last quarterly period in each fiscal year, a report certified by the President or the principal financial officer of the Company covering the operations of the Company and its consolidated subsidiaries (if any) for the last preceding quarterly fiscal period and containing (A) consolidated statements of income and retained earnings for the period beginning on the first day of the fiscal year and ended with the last day of such quarterly fiscal period and (B) a consolidated balance sheet of the Company and such subsidiaries as at the close of such quarterly fiscal period, each accompanied by consolidated statements in comparative form for the corresponding periods in the preceding fiscal year, and all in reasonable detail;

(b) as soon as practicable and in any event within ninety (90) days after the end of each fiscal year, consolidated financial statements, covering the operations of the Company and its consolidated subsidiaries (if any) for such

fiscal year and containing (A) consolidated statements of income and of retained earnings for such fiscal year, and (B) a consolidated balance sheet of the Company and such subsidiaries (if any) as at the close of such fiscal year, each accompanied by consolidated statements in comparative form for the preceding fiscal year and a certificate or opinion in the standard form approved by the American Institute of Certified Public Accountants signed by an independent certified public accountant;

(c) such information relating to the performance or observance of the terms of the Lease or the Guaranty and the financial condition of the Company as the Mortgagee may from time to time reasonably request;

(d) immediately upon becoming aware of the existence of any default by the Company or the signatories to the Guaranty, as in the case may be applicable, in the performance or observance of any of the covenants set forth in the Lease or the Guaranty, a written notice specifying the nature and existence thereof and what action the Company is taking and proposes to take with respect thereto; and

(e) immediately upon becoming aware of any action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency which, if adversely determined, might impair the ability of the Company or any of the signatories to the Guaranty, as in the case may be applicable, to perform its or his obligations under the Lease or the Guaranty, impair the right of the Company to carry on its business substantially as now conducted, or materially and adversely affect the business, operations, properties, assets or condition (financial or otherwise) of the Company, a written notice describing such action, suit or proceeding and what action the Company or all or any of the signatories to the Guaranty, as in the case may be applicable, is taking or proposes to take with respect thereto.

**Section 8.6 Further Assurances.** The Company will, at its own cost and expense, take all actions that may at the time and from time to time be necessary to perfect, preserve, protect and secure the interests of the Board and the Mortgagee, or either, in and to the Project, including, without limitation, the filing of all financing and continuation statements that may at the time be required under the Alabama Uniform Commercial Code. The Company further agrees, without in any way limiting the generality of the foregoing, to take any and all such actions that in the judgment of the Board or the Mortgagee are necessary for the perfection, preservation, protection and securing of such interests.

## ARTICLE IX

### CERTAIN PROVISIONS RELATING TO ASSIGNMENT, SUBLEASING AND MORTGAGING AND TO THE SERIES 1990-A BOND

Section 9.1 **Provisions Relating to Assignment and Subleasing by Company.** The Company may assign the Lease and the leasehold interest created thereby, and may sublease the Project or any part thereof, without the necessity of obtaining the consent of the Board; provided, however, that the Company shall not assign the Lease or the leasehold interest created thereby or sublease the Project or any part thereof without the prior written consent of the Mortgagee, or if such assignment or subleasing would change the character of the Project to such an extent that any part thereof would not constitute a "project" within the meaning of the Act; provided further, that no assignee or sublessee or anyone claiming by, through or under any such assignment or sublease shall by virtue thereof acquire any rights in the Project or any part thereof greater than the rights the Company then has under the Lease and any rights such assignee or sublessee obtains hereunder shall be subject to defenses, counterclaims and rights of set-off to the same extent as rights of the Company hereunder, nor shall any such assignment or subleasing or any dealings or transactions between the Board or the Mortgagee and any sublessee or assignee in any way relieve the Company from primary liability for any of its obligations hereunder. Thus, in the event of any such assignment or subleasing, the Company shall continue to remain primarily liable for payment of the rent herein provided to be paid by it and for performance and observance of the other agreements and covenants on its part herein provided to be performed and observed by it.

Section 9.2 **Mortgaging of the Project by Board.** It is understood and agreed that the Board will mortgage the Project to the Mortgagee as security for the payment of the Series 1990-A Bond, subject to the Lease (which Lease and the estate of the Company hereunder shall be prior and superior to the lien of the Mortgage), and will assign its interest (other than the expense reimbursement rights contained in Section 6.5 hereof and the indemnification rights contained in Section 8.2 hereof) in the Lease and pledge any moneys receivable hereunder to the Mortgagee as security for payment of the principal of and the interest on the Series 1990-A Bond. It is further understood and agreed that in the Mortgage the Board will obligate itself to follow the instructions of the Mortgagee in the election or pursuit of any remedies herein vested in it. Upon the assignment and pledge to the Mortgagee of the Board's interest in the Lease, the Mortgagee shall have all rights and remedies herein accorded the Board (other than the aforesaid reimbursement and indemnification rights), and any reference herein to the Board shall be deemed, with the necessary changes in detail, to include the Mortgagee; and the Mortgagee shall be deemed to be a third party beneficiary of the covenants and agreements on the part of the Company contained in the Lease and shall, to the extent provided in the Mortgage, be entitled to enforce performance and observance of the agreements and covenants on the part of the Company contained in the Lease to the same extent as if it were a party hereto. Subsequent to the issuance of the Series 1990-A Bond and prior to the payment of the Mortgage Indebtedness in full, the Board and the Company shall have no power to modify, alter, amend or (except as specifically



authorized herein) terminate the Lease without the prior written consent of the Mortgagee and then only as provided in the Mortgage. The Board will not, so long as no Event of Default shall have occurred and be continuing, amend the Mortgage without the prior written consent of the Company.

Without the prior written request or consent of the Company, the Board will not, so long as no Event of Default shall have occurred and be continuing, hereafter issue any bonds or other securities (including refunding 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, nor, without such consent, will the Board, so long as no Event of Default shall have occurred and be continuing, hereafter place any mortgage or other encumbrance (other than the Mortgage and supplemental mortgages contemplated thereby) on the Project or any part thereof.

**Section 9.3 References to Series 1990-A Bond Ineffective after Mortgage Indebtedness Paid.** Upon full payment of the Mortgage Indebtedness and cancellation, satisfaction and discharge of the Mortgage in accordance with the provisions of Section 10.1 thereof, all references in the Lease to the Series 1990-A Bond and the Mortgagee shall be ineffective and the Mortgagee shall thereafter have no rights hereunder, saving and excepting any that shall have theretofore vested. For purposes of the Lease, the Series 1990-A Bond shall be deemed fully paid if there exists, with respect thereto, the applicable conditions specified in Section 10.1 of the Mortgage.

If the Mortgage Indebtedness is fully paid prior to the end of the Lease Term, the Company shall be entitled to use and occupancy of the Project for the remainder of the Lease Term without the payment of any further Basic Rent but otherwise on all the same terms and conditions hereof.

**Section 9.4 Disposition of Special Fund Moneys after Full Payment of Mortgage Indebtedness.** The Board hereby assigns to the Company all surplus moneys (if any) that may remain in the Construction Fund and the Bond Fund or that may otherwise be held by the Mortgagee (or the Bank, as the case may be) after the Mortgage Indebtedness has been fully paid, such assignment to be subject to the condition that the Lease shall not have been terminated prior to full payment of the Mortgage Indebtedness as a result of the occurrence of an Event of Default. The Board will provide in the Mortgage for such surplus moneys to be paid to the Company in accordance with such assignment. The provisions of this section shall survive the expiration or prior termination of the Lease.

## ARTICLE X

### EVENTS OF DEFAULT AND REMEDIES

**Section 10.1 Events of Default Defined.** The following shall be "Events of Default" under the Lease, and the term "Event of Default" shall mean, whenever it is used in the Lease, any one or more of the following conditions or events:

(a) failure by the Company to pay any installment of Basic Rent or to make any other payment required under the terms hereof on the date that such installment or such payment shall become due and payable by the terms of the Lease;

(b) failure by the Company to perform or observe any agreement or covenant on its part contained in the Lease [other than the covenants and agreements referred to in the preceding clause (a) of this section], which failure shall have continued for a period of sixty (60) days after written notice specifying, in reasonable detail, the nature of such failure and requiring the Company to perform or observe the agreement or covenant with respect to which it is delinquent shall have been given to the Company by the Board or the Mortgagee, unless (i) the Board and the Mortgagee shall agree in writing to an extension of such period prior to its expiration, or (ii) during such sixty (60) day period or any extension thereof, the Company has commenced and is diligently pursuing appropriate corrective action, or (iii) the Company is by reason of force majeure at the time prevented from performing or observing the agreement or covenant with respect to which it is delinquent;

(c) any warranty, representation or other statement by or on behalf of the Company contained herein or in any other document furnished by the Company in connection with the issuance and sale of the Series 1990-A Bond being untrue or misleading in any material respect at the time made;

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

(e) the dissolution or liquidation of the Company in violation of the provisions of Section 8.4 hereof;

(f) institution by the Company of proceedings to be adjudicated a bankrupt or insolvent, or consent by the Company to the filing of a bankruptcy or insolvency proceeding against it, or the filing by the Company of a petition or answer or consent seeking relief under Title 11 of the United States Code, as now constituted or as amended, or any other applicable federal or state bankruptcy or other similar law, or consent by the Company to the institution of proceedings thereunder or to the filing of any such petition, or consent by the Company to the appointment of, or the taking of possession of any of its property by, a receiver, liquidator, trustee, custodian or assignee in bankruptcy

or insolvency for the Company or for all or a major part of its property, or an assignment by the Company for the benefit of its creditors, or a written admission by the Company of its inability to pay its debts generally as they become due, or the taking of any action by the Company in furtherance of any of the foregoing events or actions;

(g) the entry of a decree or order by a court of competent jurisdiction for relief in respect of the Company or adjudging the Company to be a bankrupt or insolvent or approving as properly filed a petition seeking reorganization of the Company or the arrangement, adjustment or composition of its obligations under Title 11 of the United States Code, as now constituted or as amended, or any other applicable federal or state bankruptcy or other similar law, which decree or order shall have continued undischarged or unstayed for a period of sixty (60) days; or the entry of a decree or order of a court of competent jurisdiction for the appointment of a receiver, liquidator, trustee, custodian or assignee in bankruptcy or insolvency for the Company or for all or a major part of its property, or for the winding up or liquidation of its affairs, which decree or order shall have remained in force undischarged or unstayed for a period of sixty (60) days; or

(h) 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.

The term "force majeure" as used herein means acts of God or the public enemy, strikes, lockouts, work slowdowns or stoppages or other labor disputes, insurrections, riots or other civil disturbances, orders of the government of the United States of America or of any state of the United States of America or of any of the departments, agencies, political subdivisions or officials of the United States of America or of any state thereof, or orders of any other civil or military authority, or partial or entire failure of public utilities, or any other condition or event beyond the reasonable control of the Company. The Company will, to the extent that it may lawfully do so, use its best efforts to remedy, alleviate or circumvent any cause or causes preventing it from performing its agreements and covenants hereunder; provided, however, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the Company, and the Company shall not be required to settle strikes, lockouts and other labor disputes by acceding to the demands of the opposing party or parties when such course is in its judgment against its best interests.

**Section 10.2 Remedies on Default.** Whenever any Event of Default shall have happened and be continuing, the Board and the Mortgagee, or the Mortgagee on behalf of the Board, may take any one or more of the following remedial actions:

(a) re-enter and take possession of the Project, exclude the Company from possession thereof and rent the same for the account of the Company, holding the Company liable for the balance of all rent and other amounts due under the Lease;

(b) terminate the Lease, exclude the Company from possession of the Project and lease the same for the account of the Board and the Mortgagee, holding the Company liable for all rent and other amounts due under the Lease until the date such other lease is made for the account of the Board and the Mortgagee;

(c) declare immediately due and payable Basic Rent in an amount equal to outstanding principal balance due on the Series 1990-A Bond plus interest accrued on the Series 1990-A Bond to the date of such declaration, but only if, concurrently with such declaration, the principal of and accrued interest on the Series 1990-A Bond is also declared due and payable pursuant to subsection (a) of Section 8.2 of the Mortgage;

(d) have access to, and inspect, examine and make copies of, the books, records and accounts of the Company, but if and only if any of the principal and accrued interest on the Series 1990-A Bond are then outstanding; and

(e) take whatever legal proceedings may appear necessary or desirable to collect the rent then due, whether by declaration or otherwise, or to enforce any obligation, covenant or agreement of the Company under this Lease Agreement or any obligation of the Company imposed by any applicable law;

provided, however, that, except in the case of an Event of Default described in subparagraph (a) of Section 10.1 hereof, neither the Board and the Mortgagee, nor the Mortgagee on behalf of the Board, shall take any of the remedial actions described in either of subparagraphs (a) and (b) of this Section 10.2 unless the Event of Default authorizing such action shall have continued for a period of at least thirty (30) days.

**Section 10.3 No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Board or the Mortgagee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Board or the Mortgagee to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as is herein expressly required.

**Section 10.4 Agreement to Pay Attorneys' Fees.** In the event that, as a result of an Event of Default or a threatened Event of Default by the Company, the Board or the Mortgagee should employ attorneys at law or incur other expenses in or about the collection of rent or the enforcement of any other obligation, covenant, agreement, term or condition of the Lease, the Company will, if the Board or the Mortgagee is successful in such efforts or

if a final judgment for either is rendered by a court of competent jurisdiction, pay to the Board or to the Mortgagee or both, as the case may be, reasonable attorneys' fees and other reasonable expenses so incurred by the Board and the Mortgagee.

**Section 10.5 No Additional Waiver Implied by One Waiver.** In the event any agreement contained in the Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. Further, neither the receipt nor the acceptance of any rent hereunder by the Board, or by the Mortgagee on its behalf, shall be deemed to be a waiver of any breach of any covenant, condition or obligation herein contained or a waiver of any Event of Default even though at the time of such receipt or acceptance there has been a breach of one or more covenants, conditions or obligations on the part of the Company herein contained or an Event of Default (or both) and the Board or the Mortgagee (or both) have knowledge thereof.

## **ARTICLE XI**

### **OPTIONS**

**Section 11.1 Option to Terminate the Lease During the Lease Term.** The Company shall have the right, exercisable at its option, to cancel or terminate the Lease during the Lease Term upon compliance with the conditions specified in the succeeding provisions of this Section 11.1:

(a) At any time prior to full payment of the entire Mortgage Indebtedness, the Company may cancel or terminate the Lease by (i) giving the Board and the Mortgagee written notice of such termination and specifying in such notice the date on which such termination is to be effective and (ii) paying to the Mortgagee, for the account of the Board, on or before the effective date of such termination, an amount which, when added to the total of the amounts then held in the Construction Fund and the Bond Fund, will be sufficient to pay, redeem and retire the Series 1990-A Bond on the earliest practicable date next succeeding the effective date of such termination on which, under its terms and the terms of the Mortgage, it may be paid or redeemed, including, without limitation, principal, all interest to mature until and on such payment or redemption date, the expenses of redemption and all other Mortgage Indebtedness then owing and that will accrue until the payment, redemption and retirement of the Series 1990-A Bond.

(b) At any time after the entire Mortgage Indebtedness has been fully paid, the Company may cancel or terminate the Lease by giving the Board written notice of such termination not less than thirty (30) days prior to the date on which such termination is to be effective. Any cancellation or termination of the Lease as aforesaid notwithstanding, any obligations or liabilities of the Company hereunder, actual or contingent, which have arisen



on or before the effective date of such cancellation or termination shall remain in full force and effect.

**Section 11.2 Option to Purchase - Casualties.** While any of the Mortgage Indebtedness is outstanding and unpaid, the Company shall have the right and option, hereby granted by the Board, to purchase the Project 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 expressed in a written statement filed with the Board and the Mortgagee, (i) 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 by any governmental authority or person, firm or corporation acting under governmental authority, (i) title to all or substantially all the Project, 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 expressed in a written statement filed with the Board and the Mortgagee, 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 State of Alabama or the Constitution of the United States of America or of legislative or administrative action (whether state or federal) or by final decree, 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 as expressed herein or unreasonable burdens or excessive liabilities are imposed on the Board or the Company, including (without limiting the generality of the foregoing) any changes in federal or state tax laws that will render the operation of the Project significantly less advantageous economically 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 expressed in a written statement filed with the Board and the Mortgagee, rendered impracticable or significantly less economically desirable in relation to the previous operation of the Project.

To exercise such option, the Company

(1) shall, within sixty (60) days following the event authorizing the exercise of such option, give to the Board and the Mortgagee written notice,

signed by an officer of the Company, which shall contain a description of such event and shall state the reason why it authorizes the exercise of such option,

(2) shall specify in such notice the date of purchase, which (subject to the provisions of the last paragraph of this Section 11.2) shall be not less than forty-five (45) nor more than ninety (90) days after the date such notice is mailed or otherwise delivered,

(3) in the case of an authorizing event described in the preceding subparagraph (d), shall certify in such notice that the Company has discontinued, or will discontinue at the earliest practicable date, its occupancy of the Project, and

(4) shall on the date of purchase pay to the Mortgagee (for the account of the Board), as and for the purchase price of the Project, an amount which, when added to the total of the amounts then held in the Construction Fund and the Bond Fund, plus the amount of any Net Insurance Proceeds or Net Condemnation Award then held by the Mortgagee and referable to any damage, destruction or condemnation authorizing the exercise of such option, will be sufficient to pay, redeem and retire the Series 1990-A Bond on the date of purchase, including, without limitation, principal, premium (if any), all interest to mature until and on such payment or redemption date, expenses of redemption and all other Mortgage Indebtedness; provided, however, that if on the date of purchase the entire Mortgage Indebtedness has been paid in full, the Company shall not be required to pay any such amount in order to entitle it to exercise such option, in which event (any provision herein to the contrary notwithstanding) any Net Insurance Proceeds or Net Condemnation Award referable to any damage, destruction or condemnation authorizing the exercise of such option shall be paid to the Company simultaneously with or promptly after the exercise of such option.

Upon receipt of the amount required by this Section 11.2 to be paid by the Company as the purchase price of the Project (if payment of any such amount is required), and if at such time the Company is not in default in payment of the rent or any other amounts due hereunder, the Board will, by deed or other appropriate instrument complying with the provisions of Section 11.5 hereof, transfer and convey the Project (or such portion thereof - which may be none - as is then in existence and is owned by the Board) in its then condition, whatever that may be, to the Company.

In the event that the option granted by this Section 11.2 is exercised by the Company as a result of the taking of all or substantially all the Project under the exercise of the power of Eminent Domain, the date of purchase of the Project pursuant to such option shall not, irrespective of the date specified therefor pursuant to clause (2) of the first paragraph of this Section 11.2, be later than the date on which the Lease terminates in accordance with the provisions of Section 7.2(a) hereof, which date of termination is the forty-fifth (45th) day after the receipt by the Mortgagee of the final installment of the entire condemnation award in respect of such taking.

**Section 11.3 Option to Purchase.** If the Company pays all rent and other amounts due hereunder, it shall have the right and option, hereby granted by the Board, to purchase the Project from the Board at any time during the Lease Term after payment in full of the Mortgage Indebtedness, at and for a purchase price of \$100 plus the cost and expenses (including, without limitation, reasonable attorneys' fees) incurred by the Board in connection with the Company's exercise of such option. To exercise any such purchase option, the Company shall notify the Board in writing not less than thirty (30) days prior to the date on which it proposes to effect such purchase and, on the date of such purchase, shall pay the aforesaid purchase price to the Board in cash or bankable funds, whereupon the Board will, by deed or other instrument complying with the provisions of Section 11.4 hereof, transfer and convey the Project (in its then condition, whatever that may be) to the Company. Nothing herein contained shall be construed to give the Company any right to any rebate to or refund of any rent paid by it hereunder prior to the exercise by it of the purchase option hereinabove granted, even though such rent may have been wholly or partially prepaid.

**Section 11.4 Options - In General.** Each of the options herein granted to the Company may be exercised by it even though an Event of Default shall have occurred and be continuing, it being understood and agreed, however, that all other applicable conditions specified herein to the exercise of such option (including payment of any amounts of money herein required to be paid by the Company) are met.

In the event of the exercise by the Company of any of the options to purchase the Project or any part thereof granted in Sections 11.2 and 11.3 hereof, the Board will convey to the Company, after compliance by the Company with the conditions to purchase specified in the respectively applicable sections hereof, the property with respect to which such option was exercised by statutory warranty deed, bill of sale (in the case of personal property) or other appropriate instrument, subject only to Permitted Encumbrances, such liens, encumbrances and exceptions to which title to such property was subject when this Lease Agreement was delivered or such property was acquired by the Board (whichever occurred last), those to the creation or suffering of which the Company consented and those resulting from the failure of the Company to perform or observe any of the agreements or covenants on its part herein contained.

In case that, at the time of the exercise by the Company of either of the options to purchase the Project granted in Sections 11.2 and 11.3 hereof, there shall not have been collected by the Board, the Mortgagee or the Company the entire insurance proceeds or condemnation award referable to any damage, destruction or condemnation with respect to the Project which may have theretofore occurred, then in such case all Net Insurance Proceeds and all Net Condemnation Awards thereafter collected and referable to such damage, destruction or condemnation shall be paid to the Company, and the Board will take all actions necessary to cause the amount of any such proceeds or awards to be paid to the Company. The provisions of this paragraph shall survive the expiration of the term of the Lease or any prior termination of the Lease unless at the time of such expiration or termination the Company is in default in the payment of any amounts of money herein required to be paid by it.

**ARTICLE XII**  
**MISCELLANEOUS**

**Section 12.1 Covenant of Quiet Enjoyment.** So long as the Company performs and observes all the covenants and agreements on its part herein contained, it shall peaceably and quietly have, hold and enjoy the Project during the Lease Term, subject to all the terms and provisions hereof. At the end of the Lease Term or upon any prior termination of the Lease, the Company will surrender to the Board possession of all property then subject to the demise hereof (unless it is simultaneously purchasing such property from the Board) in its then condition, whatever that may be.

**Section 12.2 Retention of Title to Project by Board.** Without the prior written consent of the Company, the Board will not itself, so long as no Event of Default shall have occurred and be continuing, (i) sell, convey or otherwise dispose of all or any part of the Project (except to the Company as hereinabove provided) or (ii) except as provided in Section 9.2 hereof, mortgage or otherwise encumber the Project or any part thereof. The Board will, however, 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 Company furnishes to the Board and the Mortgagee a certificate signed by an Authorized Company Representative stating that such easement, permit or right-of-way is, or will be, useful or necessary in the use 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. The Company will pay all reasonable expenses incurred by the Board in connection with the granting of all such easements, permits and rights-of-way.

**Section 12.3 Net Proceeds of Lease.** The Company recognizes and understands that until the Series 1990-A Bond is fully paid all Basic Rent hereunder shall be available for payment of the principal and the interest on the Series 1990-A Bond. The Company's obligations hereunder shall be construed to effectuate such intent.

**Section 12.4 Statement of Intention Regarding Certain Tax Matters.** The Board and the Company acknowledge and agree that it is their mutual intention that the Company, for federal and state income tax purposes, will be entitled to all deductions and credits with respect to the Project (including, but not limited to, depreciation and investment credits) and that for such purposes the Lease will be deemed to be a financing of the Project. The Board shall execute such documents as the Company may reasonably request in order to make available to the Company said deductions and credits.

**Section 12.5 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:

(Prior to the Sale Date)

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

(After the Sale Date)

Protective Life Insurance Company  
Post Office Box 2606  
Birmingham, Alabama 35202

Any of the above mentioned parties may, by like notice, designate any further or different addresses to which subsequent notices shall be sent. A copy of any notice given to the Board, the Company or the Mortgagee pursuant to the provisions of the Lease shall also be given to that one of the foregoing three parties to whom notice is not herein required to be given, but the failure to give a copy of such notice to any such other party shall not invalidate such notice or render it ineffective unless notice to such other party is otherwise herein expressly required. 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.

Whenever, under the provisions hereof, any request, consent or approval of the Board or the Company is required or authorized, such request, consent or approval shall (unless otherwise expressly provided herein) be signed on behalf of the Board by an Authorized Board Representative and, on behalf of the Company by an Authorized Company Representative; and each of the parties and the Mortgagee are authorized to act and rely upon any such requests, consents or approvals so signed.



**Section 12.6 Certain Prior and Contemporaneous Agreements Cancelled.** The Lease shall completely and fully supersede all other prior or contemporaneous agreements, both written and oral, between the Board and the Company relating to the Project Development Work and the leasing of the Project all to the end that the Board and the Company shall look to the Lease for ultimate definition and determination of their respective rights, liabilities and responsibilities respecting the Project Development Work, the Project and the Series 1990-A Bond. The Company and the Board acknowledge that they have no outstanding agreement, commitment or understanding, either express or implied, for the grant to the Company of any option to purchase the Project or any part thereof or of any option to renew the term of the Lease, other than those options to purchase the Project contained in Article XI hereof.

**Section 12.7 Limited Liability of Board.** The Board is entering into this Lease Agreement pursuant to the authority conferred upon it by the Act. No provision hereof shall be construed to impose a charge against the general credit of the Board or any personal or pecuniary liability upon the Board except with respect to the proper application of the proceeds to be derived from the sale of the Series 1990-A Bond, moneys made available by the Company to the Board pursuant to the provisions hereof, and the revenues and receipts to be derived from any leasing or sale of the Project, including insurance proceeds and condemnation awards. Further, none of the directors, officers, employees or agents (other than the Company or any of its partners as agents of the Board in connection with the Project) of the Board shall have any personal or pecuniary 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 any director, officer, employee or agent of the Board from performing all duties of his respective office that may be necessary to enable the Board to perform the covenants and agreements on its part herein contained.

**Section 12.8 Binding Effect.** The Lease shall inure to the benefit of, and shall be binding upon, the Board, the Company and their respective successors and assigns. To the extent provided herein and in the Mortgage, the Mortgagee shall be deemed to be a third party beneficiary hereof, but nothing herein contained shall be deemed to create any right in, or to be for the benefit of, any other person who is not a party hereto.

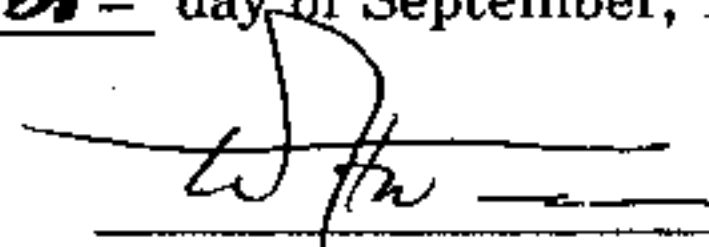
**Section 12.9 Severability.** In the event any provision of the Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. Without in any way limiting the generality of the foregoing, the Company specifically acknowledges and agrees that the several purchase options granted it herein are fully severable from and independent of the other provisions hereof and that neither the invalidity or unenforceability of any of such purchase or renewal options shall invalidate or render unenforceable any other provision hereof nor excuse the Company from fully performing and observing any of the agreements and covenants on its part herein contained, including but not limited to its obligation to pay in full the Basic Rent and all additional rent hereunder.

STATE OF ALABAMA     )  
                                  :  
SHELBY 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 the said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

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

[ NOTARIAL SEAL ]



Notary Public

My Commission Expires: 12-21-92

STATE OF ALABAMA     )  
                                  :  
Jefferson COUNTY     )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Sarah Dean Steeley, whose name as President of RAINBOW TECHNOLOGY CORPORATION, a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

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

[ NOTARIAL SEAL ]

  
Notary Public

My Commission Expires: 4-7-92

BOOK 312 PAGE 631

**EXHIBIT A**

**to  
LEASE AGREEMENT  
between  
THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF PELHAM  
and  
RAINBOW TECHNOLOGY CORPORATION  
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.

BOOK 312 PAGE 632

1.	137.80
2.	3.00
3.	
4.	
5.	100
6.	
Total	141.80

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

90 OCT -3 AM 8:18

JUDGE OF PROBATE