

## PRIOR LIENHOLDER'S AGREEMENT

This PRIOR LIENHOLDER'S AGREEMENT is by and between FIRST COMMERCIAL BANK (the "Prior Lienholder") and BIRMINGHAM CITY WIDE LOCAL DEVELOPMENT COMPANY (hereinafter along with its successors and assigns, the "CDC").

### RECITALS

WHEREAS, RAINBOW PLAY SYSTEMS OF ALABAMA, INC. (the "Borrower") is the owner of the real estate described on the attached Exhibit A (the "Real Estate"). Prior Lienholder has made a loan in the original principal amount of \$374,567.00 (the "Prior Loan"). The Prior Loan is secured by a first Mortgage dated February 11, 2000 and recorded as Instrument 2000-5218, 2000-20850, 2000-5219, 2000-5220, and 2000-5220 in the Office of the Judge of Probate of Shelby County, Alabama (collectively the "Prior Mortgage").

WHEREAS, CDC has agreed to make a loan in the amount of \$162,000.00 (the "504 Loan") to Borrower. The 504 Loan will be secured by a mortgage (the "504 Mortgage") to be recorded in the Office of the Judge of Probate of Shelby County, Alabama, contemporaneously with this agreement, and a security interest in the Equipment.

### AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing recitals, the mutual agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Balance of the Prior Loan. Following the funding of the 504 Loan, Prior Lienholder will receive \$154,233.00 from CDC in accordance with instruction given to CDC by Borrower. Such \$154,233.00 will reduce the note secured by the Prior Mortgage, and the principal balance of the Prior Loan will upon such reduction be no more than \$220,334.00, and will be the only obligation superior to Borrower's obligations to CDC which are secured by the Mortgage.

2. Subordination of Future Advances, Prepayment Fees, Late Fees, and Increased Post-Default Interest Fees. Except for advances made for reasonable costs of collection, maintenance and protection of the Prior Mortgage or Security Interest, the Prior Lienholder hereby subordinates to the 504 Loan and the lien(s) securing the 504 Loan (a) any sum advanced to the Borrower by the Prior Lienholder after the date of this Agreement and (b) any prepayment penalties, late fees, and increased default interest in connection with the Prior Loan.

3. Compliance with 504 Loan Program Requirements. Prior Lienholder confirms that the note and all other documents executed in connection with the Prior Loan (a) evidence a loan that does not exceed the principal amount permitted by the Authorization for Debenture Guarantee (SBA 504 Loan) issued by the U.S. Small Business Administration ("SBA") to CDC to assist Borrower, (b) have no open-ended features and allow only future advances for the reasonable costs of collection, maintenance and protection of the Prior Lienholder's lien

thereunder, (c) are not cross-collateralized with any other financing now or hereafter to be provided by Prior Lienholder, (d) have no early call features, (e) are not payable on demand unless the Prior Loan is in default, (f) have a term of at least, and do not require a balloon payment prior to, ten years for a 20-year 504 loan or seven years for a 10-year 504 loan, (g) have a reasonable interest rate that does not, and will not, exceed the maximum interest rate for a third party loan as published by SBA, and (h) do not establish a preference in favor of the Prior Lienholder as compared to CDC or SBA other than the Prior Lienholder's senior lien position. The Prior Lienholder agrees that if any provision in the note or any other document executed in connection with the Prior Loan does not comply with these requirements, then the Prior Lienholder waives its right to enforce any such provision.

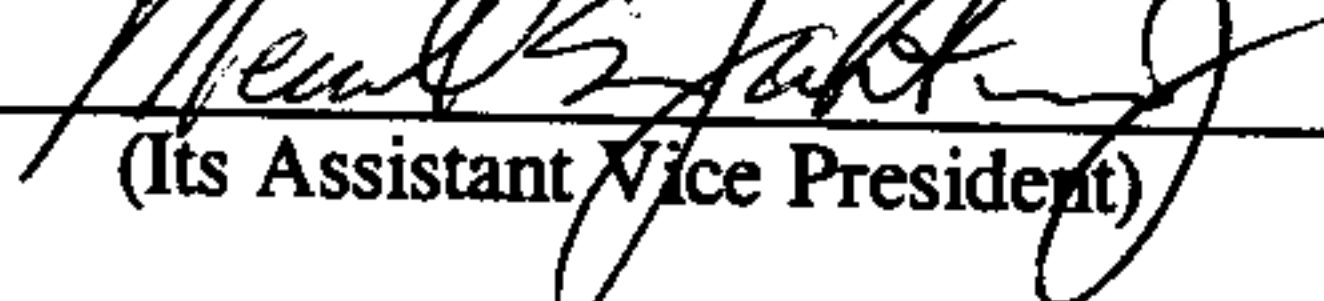
4. Waiver of Enforcement of Covenant Not to Encumber the Real Estate. If the Prior Mortgage or any document evidencing the Prior Loan contains any provision prohibiting Borrower from further encumbering the Real Estate, Prior Lienholder waives its right to enforce any such provision as it might apply to the lien arising from the 504 Mortgage securing or any document evidencing the 504 Loan.

5. Notice of Default Under the Prior Loan. If any default, event of default or delinquency, upon which the Prior Lienholder intends to take action, occurs under the Prior Mortgage or Security Interest or any document executed in connection with the Prior Loan, then the Prior Lienholder agrees to give the CDC and the U.S. Small Business Administration (the "SBA") written notice of such default, event of default or delinquency and the opportunity to cure or to purchase the note evidencing the Prior Loan and the Prior Mortgage prior to foreclosure. Such notice must be given within thirty (30) days after the default, event of default or delinquency upon which the Prior Lienholder intends to take action and at least sixty (60) days prior to the date of any proposed sale and the Prior Lienholder will not sell all or any portion of its collateral without giving the CDC and the SBA such notice. Notice under this Agreement shall be deemed to have been given when sent by certified or registered mail, return receipt requested, addressed, as the case may be, to the CDC, BIRMINGHAM CITY WIDE LOCAL DEVELOPMENT COMPANY, 110 North 12<sup>th</sup> Street, Birmingham, Alabama, 35203, and to the SBA at its Birmingham District Office, Suite 200, 2121 Eighth Avenue North, Birmingham, Alabama 35203-2398, Attention: District Counsel.

5. Successors and Assigns. This Agreement shall inure to the benefit of and bind the respective parties to this Agreement and their successors and assigns.

IN WITNESS WHEREOF, We have hereunto set our hands and seals this 4<sup>th</sup> day of November, 2000.

FIRST COMMERCIAL BANK

By   
(Its Assistant Vice President)

ACKNOWLEDGED AND CONSENTED TO:

RAINBOW PLAY SYSTEMS OF ALABAMA, INC.

By:   
Norman Jackson Core (Its President)

STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Merrill E. Johnston, Jr., whose name as Assistant Vice President of FIRST COMMERCIAL BANK, a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such officer, and with full authority, executed the same voluntarily, as an act of said corporation, acting in his/her capacity as aforesaid.

Given under my hand and official seal, this the 4 day of November, 2000

  
NOTARY PUBLIC

My Commission Expires: 6/7/03

THIS INSTRUMENT PREPARED BY:  
William B. Hairston III  
ENGEL HAIRSTON & JOHANSON, P.C.  
4th Floor 109 North 20th Street  
P.O. Box 370027  
Birmingham, Alabama, 35237-0027  
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**EXHIBIT "A"**  
**TO**  
**MORTGAGE**  
**AFFIDAVIT AND AGREEMENT**  
**PRIOR LIENHOLDER'S AGREEMENT**  
**HAZARDOUS SUBSTANCE INDEMNIFICATION AND WARRANTY AGREEMENT**

**BORROWER:** RAINBOW PLAY SYSTEMS OF ALABAMA, INC.

**LENDER:** BIRMINGHAM CITY WIDE LOCAL DEVELOPMENT COMPANY

**Lot 3-B, according to the Triangle  
Resurvey of Lot 3, Brook Highland Plaza,  
as recorded in Map Book 24, page 45, in  
the Probate Office of Shelby County,  
Alabama.**

Ex.a 10/23/00 9:22AM

**Inst # 2000-41535**

**12/04/2000-41535**

**11:00 AM CERTIFIED**

**SHELBY COUNTY JUDGE OF PROBATE**

**004 MMB 20.00**