

3736

AGREEMENT OF LEASE

BOOK 167 PAGE 505

City Birmingham, State Alabama

July 21, 1954

Tractor & Equipment Company, Inc., as Lessor, of No. 4401 - First Avenue, North
Birmingham, Alabama, hereby demises, lets, rents and Leases

To Dixie Lime & Manufacturing Company

As Lessee, of No. P.O. Box - 158, Pelham, Alabama

for a minimum term of 24 months, commencing July 21, 1954 (or from date of delivery) and

ending August 21, 1956 (or 24 months from date of delivery) and said Lessee hereby hires, takes and leases from said Lessor, the following-described personal property (hereinafter with all replacement parts, additions, repairs and accessories incorporated therein and/or affixed thereto, referred to as "equipment"):

- 1 - Used International Model 1D9-400-0 Diesel Crawler Tractor equipped with Hough Model T-9 Bulldozer-Shovel.
Tractor Serial No. TDCB-34501
Bulldozer-Shovel Serial No. 65421

and Lessor agrees within immediately months from the date hereof to cause said property to be delivered to Lessee, f.o.b.

Pelham, Alabama

RENTALS: Lessee shall pay to Lessor therefor an aggregate rental of \$ 5,935.92 in 24 monthly rental payments of

\$ 247.33 each, of which the 1st and _____ payments have been paid in advance, and the remaining payments are payable commencing August 21, 1954 and thereafter on the same date of each month until fully paid in lawful money of the United States.

PLACE OF USE: The equipment shall be kept at Pelham (Shelby County), State of Alabama, until Lessor, in writing, permits its removal, and shall be used in the conduct of Lessee's business solely.

REPAIRS: Lessor shall not be obligated to make any repairs or replacements; Lessee shall not incur for Lessor's account or liability any expense therefor without Lessor's written consent. Lessee shall inspect the equipment within 48 hours after its receipt; unless within said time Lessee notifies Lessor, stating the details of any defects, Lessee shall be conclusively presumed to have accepted the equipment in its then condition. Thereafter Lessee shall effect and bear the expense of all necessary repairs, maintenance and replacements.

OPERATORS: Lessee shall cause the equipment to be operated by competent employees only, and shall pay all expenses of operation.

LIABILITY: Lessee shall indemnify and save Lessor harmless from any and all injury to or loss of the equipment and liability arising out of the use, maintenance and/or delivery thereof, but shall be credited with any amounts received by Lessor from insurance procured by Lessee. Damage for loss or injury shall be based on the then true and reasonable market value of the equipment irrespective of rentals theretofore paid or accrued.

INSURANCE: Lessee, at its expense, shall keep said equipment insured, at the full value thereof, against fire and theft or under extended coverage and shall adequately insure against property damage, workmen's compensation and public liability, all in amounts and companies Lessor shall approve or require, with losses, if any, payable to Lessor. Lessee shall on request of Lessor deliver to Lessor the policies or evidence of the insurance satisfactory to Lessor, together with receipts for the premiums thereunder.

TAXES: Lessee shall comply with and conform to all laws and regulations relating to the ownership, possession, use or maintenance of the equipment, and save Lessor harmless against actual or asserted violations, and pay all costs and expenses of every character occasioned by or arising out of such use, and pay promptly when due all taxes and other public charges against or upon the equipment.

TITLE: All said equipment shall remain personal property and title thereof shall remain in Lessor exclusively. Lessee shall keep the equipment free from any and all liens and claims and do or permit no act or thing whereby Lessor's title or rights may be encumbered or impaired. Upon expiration or termination hereof, the equipment shall be returned unencumbered to Lessor at Lessee's sole expense and in the same condition as when received by Lessee, reasonable wear and tear resulting from proper use thereof alone excepted. Lessee shall pay rent at the said rate until all said equipment arrives at Lessor's premises.

INSPECTION: Lessee shall, whenever requested, advise Lessor of the exact location of the equipment and shall give Lessor immediate notice of any attachment or other judicial process affecting the equipment, and indemnify and save Lessor harmless from any loss or damage caused thereby. Lessor may, for the purpose of inspection, at all reasonable times enter upon any job, building or place where the equipment is located; and may remove the equipment forthwith, without notice to Lessee, if the equipment is, in the opinion of Lessor, being used beyond its capacity or in any manner improperly cared for or abused.

NON-WAIVER: Time is of the essence. Lessor's failure at any time to require strict performance by Lessee of any of the provisions hereof shall not waive or diminish Lessor's right thereafter to demand strict compliance therewith or with any other provision. Waiver of any default shall not waive any other default. Lessor's rights hereunder are cumulative and not alternative.

NON-WARRANTY: Lessor, not being the manufacturer of the equipment nor manufacturer's agent, makes no warranty against patent or latent defects in material, workmanship or capacity of the equipment, nor warranty that the equipment will satisfy the requirements of any law, rule, specification or contract which provides for specific machinery or operators, or special methods; all liabilities arising therefrom are assumed by Lessee at its sole risk and expense. No oral agreement, guaranty, promise, condition, representation or warranty shall be binding; all prior conversations, agreements or representations related hereto and/or to said equipment are integrated herein. No modification hereof shall be binding unless in writing signed by Lessor.

POSSESSION: Lessor covenants to and with Lessee that Lessor is the lawful owner of said equipment free from all encumbrances and that, conditioned upon Lessee's performing the conditions hereof, Lessee shall peaceably and quietly hold, possess and use the equipment during said term without let or hindrance.

REPOSSESSION: In the event of Lessee's default hereunder or becoming insolvent or if Lessee cease doing business as a going concern, or commit an act of bankruptcy or be a party as debtor or bankrupt to any proceeding under any bankruptcy law, or attempt to remove or sell or transfer or encumber or sublet or part with the possession of said equipment or if Lessor feels insecure, Lessor and/or its agents may, without notice, or liability, or legal process, enter into any premises of or under control or jurisdiction of Lessee or any agent of Lessee where said equipment may be or by Lessor is believed to be, and repossess the equipment, disconnecting and separating all thereof from any other property and using all force necessary or permitted by applicable law so to do; Lessee hereby expressly waives all further rights to possession of the equipment and all claims for injury suffered through or loss caused by such repossession. Should any legal proceeding be instituted by Lessor to recover any moneys due and to become due hereunder and/or for possession of the equipment, Lessee shall pay a reasonable sum (15% of the amount sued for if permitted by law) as attorney's fees, to be not less than \$50.00.

ASSIGNMENT: Neither this lease nor Lessee's rights hereunder shall be assignable except with Lessor's written consent; the conditions hereof shall bind any permitted successors and assigns of Lessee. If Lessor assigns the rents reserved herein or all or any of Lessor's other rights hereunder, assignee's rights shall be independent of any claim of Lessee against Lessor; Lessee on receiving notice of any such assignment shall abide thereby and make payment as may therein be directed. Following such assignment the term "Lessor" shall be deemed to include or refer to Lessor's assignee.

MISCELLANEOUS: Lessee will not change or remove any insignia or lettering on the equipment and shall conspicuously identify each item of the leased equipment to indicate Lessor's ownership. All transportation charges shall be borne by Lessee. All notices relating hereto shall be mailed registered to Lessor or Lessee at its respective address above shown or at any later address last-known to the sender. In case of any default by Lessee hereunder all sums due and to become due under this lease or any accompanying note(s) shall, at the option of Lessor or any assignee of Lessor, become payable forthwith. Lessee waives demand, protest and all demands and notices as to any such note(s). Lessee waives all rights under all exemption laws. Lessee admits the receipt of a true copy of this Agreement of Lease. This lease is irrevocable for the full terms hereof and total amount of rent herein reserved and the rent shall not abate by reason of termination of Lessee's right of possession by Lessor or for any other reason. In case of any default by Lessee hereunder, Lessor may sell the equipment or may release the equipment for a term and a rental which may be equal to, greater than, or less than the rental and term herein provided. Any proceeds of sale, or any rental payments received under the new lease for the period prior to the expiration of this lease, less Lessor's expenses of taking possession, storage, reconditioning and sale or re-leasing, shall be applied on the Lessee's obligations hereunder.

PURCHASE OPTION: At any time after 24 months from date, if all rental payments then matured shall have been met by Lessee promptly when due and Lessee be not then in default hereunder, Lessee shall have the option to purchase said equipment for an additional sum of \$ -0- upon giving written notice not less than 30 days prior to, and paying any then unpaid portion of said additional sum upon expiration of the original term hereof. In the event Lessee should prepay the Lease at any time after delivery, thereby acquiring title to the Tractor, the purchase price shall be \$5,300.00, with 94% of the rentals theretofore paid to apply against said purchase price.

STATE OF ALABAMA }
SHELBY COUNTY }

DIXIE LIME & MANUFACTURING COMPANY, (Lessee)

I, L. C. Walker, Judge of Probate hereby certify (SEAL) that Lessee was filed in the office of the Probate Judge on the 29 day of July 1954 at 10 o'clock P. M. and recorded in Deed Record 167 page 305 and examined 7-29-54 and the Mortgage Tax of \$ 5.50 and the Deed Tax of \$ 5.50 has been paid.

By M. M. Schuler
Its President

ACCEPTED:

TRACTOR & EQUIPMENT COMPANY, INC. (Lessor)

By J. R. Raines
Its Vice President

J. C. Walker
Judge of Probate

(SEAL)

4401
Mortgage & Deed Tax

Filed in the office of the Probate Judge on the 29 day of July 1954 at 10 o'clock P. M. and recorded in Deed Book 167 Page 305 this 29 day of July 1954. Deed Tax 5.50 Mortgage Tax has been paid. L.C. Walker, Judge of Probate