

904

PURCHASE MONEY MORTGAGE

Mortgagor:

THOMPSON TRACTOR CO., INC.
P. O. Box 10867
Birmingham, Alabama 35202

Mortgagee:

Carl H. Ivey, Nina W. Kent,
Virgil Wheat, Kermit Purcell,
Ollie W. McClung, Jr., as
trustees of **THE FRANK E. SPAIN**
ENDOWMENT TRUST
3507 Lynn Crest Drive
Birmingham, Alabama 35216

THIS PURCHASE MONEY MORTGAGE (herein called the "Mortgage") made this 27th day of January, 1992, by **THOMPSON TRACTOR CO., INC.**, an Alabama corporation, as Mortgagor (herein called the "Borrower") to Carl H. Ivey, Nina W. Kent, Virgil Wheat, Kermit Purcell and Ollie W. McClung, Jr., as trustees of **THE FRANK E. SPAIN ENDOWMENT TRUST**, (herein, together with its successors and assigns, called the "Lender").

Simultaneously with the execution hereof, the Lender is making a loan to the Borrower in the principal amount of **EIGHT HUNDRED THOUSAND and NO/100 DOLLARS** (\$800,000.00) (herein called the "Loan"), evidenced by a Secured Promissory Note of even date herewith (herein called the "Note"). In consideration of the Loan and as security therefor, the Borrower has this day executed various documents in favor of the Lender including, without limitation, the Note, (together with this Mortgage referred to collectively herein as the "Loan Documents").

Proceeds of this Loan have been applied to the purchase price of the Mortgaged Property closed simultaneously herewith.

NOW THEREFORE, in consideration of the Loan and the promises and covenants herein, and in order to secure the payment of the Loan with the interest thereon, and any extensions or renewals thereof and further to secure the performance of the covenants, conditions and agreements hereinafter set forth, the Borrower hereby does irrevocably grant, bargain, sell, convey, assign, alien, remise, release and confirm to the Lender, and to its successors and assigns, with right of entry and possession as provided below, and grants to the Lender a security interest in, the following (herein together called the "Mortgaged Property"):

(A) All of Borrower's estate and fee simple interest in and to the following described real property:

BOOK 393 PAGE 918

James S. Richey

Lots 2 and 3 of Shelby Development Park, recorded in Map Book 16, Page 21, in the Probate Office of Shelby County, Alabama (the "Land"),

as well as all development rights, air rights, water, water rights and water stock relating to the Land, and all estates, rights, titles, interest, privileges, liberties, tenements, hereditaments and appurtenances whatsoever in any way belonging, relating or appertaining to any of the Land, and the reversion and reversions, remainder and remainders, rents, issues, profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law and in equity of the Borrower of, in and to the same, including but not limited to the other rights herein enumerated.

(B) All of Borrower's estate and interest in and to all present and future structures, buildings, improvements and appurtenances of any kind now or hereafter situated on the Land (herein called the "Improvements") and all of Borrower's estate in and to all fixtures, fittings, apparatus, equipment and appliances of every kind and character now or hereafter attached or appertaining to the Improvements and all extensions, additions, improvements, betterments, renewals, substitutions, accessions, attachments and replacements to any of the foregoing, including, without limitation, all plumbing fixtures, ornamental and decorative fixtures, elevators, gas, steam, electric, solar and other heating, lighting, ventilating, air conditioning, refrigerating, cooking and washing equipment and appliances and sprinkling, smoke, fire and intrusion detection devices, floor and window coverings and treatments (including rugs, carpets, draperies, shades, curtains and awnings), it being intended and agreed that all such items will be conclusively considered to be a part of the real property conveyed by this Mortgage, whether or not attached or affixed to the Land.

(C) All of Borrower's estate and interest in and to all appurtenances to the Land and all rights of the Borrower in and to any streets, road, public places, easements or rights of way relating to the Land, including, without limitation, all rights of the Borrower to any septic system, sewer line, agreements, permits, easements, equipment, licenses, resolutions and related rights pertaining to any sewer and septic system on the Land.

(D) All of Borrower's estate and interest in and to all the rents, revenues, receipts, royalties, issues, income and profits of the Land and the Improvements and all rights of the Borrower under all present and future leases and subleases affecting the Land and the Improvements.

(E) All of Borrower's estate and interest in and to all proceeds and claims arising on account of any damage to or taking through condemnation of the Land or any Improvements thereon or any part thereof and all causes of action and recoveries for any loss or diminution in the value of the Land or any Improvements.

(F) All of Borrower's estate and interest in and to all general intangibles relating to the development or use of the Land, including, without limitation, all governmental permits relating to construction on the Land, all names under or by which the Land or any Improvements on the Land may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks and goodwill in any way relating to the Land.

This instrument secures:

- (1) The payment and performance of the Borrower's indebtedness and obligations under the Note, including all extensions, renewals, substitutions and modifications and replacements of the Note.
- (2) The payment and performance of the obligations of the Borrower under this Mortgage and the obligations of the Borrower under the other Loan Documents.
- (3) The payment of all sums advanced or paid out by the Lender under any provision of this Mortgage or the other Loan Documents or to protect the security of this Mortgage.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Lender and to its successors and assigns forever, subject however to the terms and conditions contained herein:

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrower shall pay or cause to be paid to the Lender the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, and shall pay and discharge, or cause to be paid and discharged, all other indebtedness secured hereby, and shall perform and observe or cause to be performed and observed all the covenants and promises contained in the Note, this Mortgage and all other Loan Documents, and any extension, renewal, substitution, modification or replacement thereof, expressed to be performed and observed by the Borrower and the other parties thereto, all without fraud or delay, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, and sold shall cease, terminate and be void, but shall otherwise remain in full force and effect.

ARTICLE I

COVENANTS OF BORROWER

The Borrower covenants and agrees with the Lender as follows:

1.1 Performance of Loan Documents. The Borrower covenants and agrees to pay, perform and observe all covenants, terms, conditions and obligations contained herein and in the other Loan Documents in accordance with their respective terms and to duly and punctually pay the principal and interest due under the Note and all other indebtedness secured hereby.

1.2 Warranty of Title. The Borrower covenants that it is lawfully seized of the estate herein conveyed and possessed in the Land hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the fee simple estate in the manner and form aforesaid; that the same is free and clear of all liens, charges and encumbrances whatsoever except as shown on the Title Insurance Commitment insuring this Mortgage, including, as to personal property and fixtures, conditional sales contracts, chattel mortgages, security

agreements, financing statements and anything of a similar nature; and that the Borrower will warrant and forever defend the title thereto unto the Lender and its successor and assigns against the claims of all persons whomsoever.

1.3 Further Assurances. After Acquired Property. The Borrower covenants and represents that all the Loan Documents executed by the Borrower have been duly executed and delivered and are valid and enforceable obligations of the Borrower in accordance with the terms thereof. The Borrower agrees to execute and deliver to the Lender on demand and at the Borrower's expense any documents, additional mortgages and instruments of further assurance reasonably required by the Lender to effectuate, complete, perfect, continue and preserve (a) the obligations of the Borrower under the Note, this Mortgage and the other Loan Documents and (b) the lien of this Mortgage as a first and prior lien upon all the Mortgaged Property, whether now owned or hereafter acquired by the Borrower.

1.4 Assignment of Leases and Rents. (a) All of the existing and future rents, revenues, royalties, issues, income and profits of the Mortgaged Property that arise from its use or occupancy, including, without limitation, security deposits and advance rentals (herein together called the "Rents") and all leases, subleases or management, leasing or occupancy agreements pertaining to the Land or the Improvements (herein together called the "Leases") are hereby absolutely and presently assigned to the Lender.

(b) Without the prior written consent of the Lender, which shall not be unreasonably withheld, the Borrower will not accept prepayments of rent exceeding one month under any of the Leases, nor modify or amend any of the Leases, nor in any manner impair the Borrower's interest in the Rents. The Borrower will perform all covenants of the lessor under the Leases.

(c) Nothing herein shall render the Lender liable under any existing or future Leases, regardless of the collection of rents thereunder, for any of the covenants or agreements of the Borrower under such Leases. Lender shall not be entitled to collection of any such rents until an Event of Default shall have occurred.

1.5 Compliance with Laws. The Borrower will promptly comply with all present and future laws, ordinances, rules, regulations and requirements of all governmental authorities having jurisdiction over the Mortgaged Property or any part thereof including, without limitation, all zoning regulations, building codes and parking regulations. The Borrower will comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Mortgaged Property.

1.6 Performance by the Lender. The Borrower will, at its own expense, appear in and defend any action or proceeding that might affect the Lender's security or the rights or powers of the Lender or that purports to affect any of the Mortgaged Property. The Lender is hereby empowered to enter and to authorize others to enter upon the Land or any part thereof for the purpose of performing or observing any defaulted covenant, condition, term or agreement hereof, without thereby becoming liable to the Borrower or any party in possession holding under the Borrower. This paragraph will not be construed to require the Lender to incur any expenses or take any actions.

ARTICLE II
EVENTS OF DEFAULT

2.1 Events of Default. The following shall be "Events of Default" hereunder, and the term "Event of Default" as used herein shall mean any one or more of the following events:

(a) The failure of the Borrower to make when due any payment required by the Note or by the other Loan Documents or the failure to pay any other indebtedness secured hereby and the continuation of such failure for a period of ten (10) days after receipt of notice of such default;

(b) The failure of the Borrower to perform any other covenant, condition or agreement contained in this Mortgage or in the other Loan Documents and the continuation of such failure for a period of thirty (30) days after receipt of notice of such default;

(c) Borrower files a petition in bankruptcy or for an arrangement, reorganization or any other form of debtor-relief under any present or future law relating to bankruptcy or debtor-relief, or such a petition is filed against the Borrower and the Borrower does not oppose that filing or the petition is not dismissed within thirty (30) days after filing, or Borrower makes an assignment for the benefit of its creditors;

ARTICLE III
REMEDIES

3.1 Acceleration/General. If an Event of Default shall have occurred, the Lender may, at its continuing option, and without notice to or demand upon the Borrower:

(a) Declare any or all indebtedness secured by this Mortgage to be due and payable immediately;

(b) Enter onto the Mortgaged Property, in person or by agent or by court-appointed receiver, and take any and all steps which may be desirable in the Lender's judgment to manage and operate the Mortgaged Property, and the Lender may apply any rents, royalties, income or profits collected against the indebtedness secured by this Mortgage without in any way curing or waiving any default to the Borrower;

(c) Bring a court action at law or in equity (1) to foreclose this Mortgage or (2) to enforce its provisions or any of the indebtedness or obligations secured by this Mortgage, either or both, concurrently or otherwise, and one action or suit shall not abate or be a bar to or waiver of Lender's right to institute or maintain the other, provided that Lender shall have only one payment and satisfaction of the indebtedness;

(d) Cause any or all of the Mortgaged Property to be sold under the power of sale granted by this Mortgage in any manner permitted hereunder or by applicable law;

BOOK 393 PAGE 922

(e) Exercise any other right or remedy available under law or in equity or under the Loan Documents;

3.2 Right of Lender to Enter and Take Possession. (a) If an Event of Default shall have occurred and be continuing, upon demand of the Lender the Borrower shall forthwith surrender to the Lender the actual possession of the Mortgaged Property, and if and to the extent permitted by law, the Lender may enter and take possession of all or any part of the Mortgaged Property and may exclude the Borrower and its agents and employees wholly therefrom

(b) Upon every such entering upon or taking of possession, the Lender may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property, (ii) insure or keep the Mortgaged Property insured, (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Borrower in its name or otherwise with respect to the same and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Lender, all as the Lender from time to time may determine to be to its best advantage, and the Lender may collect and receive all the rents of such Mortgaged Property including those past due as well as those accruing thereafter.

(c) The Lender may deduct from such Rents (i) all expenses of taking, holding, managing and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes), (ii) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions, (iii) the cost of such insurance, (iv) such taxes, assessments and other charges prior to the lien of this Mortgage as the Lender may determine to pay, (v) other proper charges upon the Mortgaged Property or any part thereof, and (vi) the reasonable compensation, expenses and disbursements of the attorneys and agent of the Lender. The Lender shall apply the remainder of the moneys so received to the payment of the indebtedness and obligations secured by this Mortgage, whether due or to become due, in whatever order and proportions the Lender elects in its absolute discretion and without regard to the adequacy of its security.

(d) Whenever all such Events of Default have been cured and satisfied, the Lender shall surrender possession of the Mortgaged Property to the Borrower, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur.

3.3 Collection of Rents. If an Event of Default shall have occurred and be continuing, the Lender may collect the Rents itself or by an agent or receiver. No action taken by the Lender to collect any Rents will make the Lender a "mortgagee-in-possession" of the Mortgaged Property, and possession by a court-appointed receiver will not be considered possession by the Lender. All rents collected by the Lender or a receiver will be applied first to pay all expenses of collection, and then to the payment of all costs of operation and management of the Mortgaged Property, and then to the payment of the indebtedness and obligations secured by this Mortgage in whatever order and proportions the Lender elects in its absolute discretion and without regard to the adequacy of its security.

3.4 Power of Sale. If an Event of Default shall have occurred and be continuing, the Lender may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the courthouse door in the county where the Land is located, either in person or by auctioneer, after having first given notice of the time, place and terms of the sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county. Upon payment of the purchase money, the Lender or any person conducting the sale for the Lender is authorized to execute to the purchaser at said sale a deed to the property so purchased. The Lender may bid at said sale and purchase said property or any part thereof if the highest bidder therefor.

3.5 Proceeds. The proceeds of any sale under this Mortgage will be applied in the following manner:

FIRST: Payment of the costs and expenses of the sale, including but not limited to legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of the Lender, together with interest at the After-Maturity Rate provided under the Note on all advances made by the Lender.

SECOND: Payment of all sums expended by the Lender under the terms of this Mortgage and not yet repaid, together with interest on such sums at the After-Maturity Rate provided under the Note.

THIRD: Payment of the indebtedness and obligations of the Borrower secured by this Mortgage in any order that the Lender chooses.

FOURTH: The remainder, if any, to the person or persons appearing of record to be the owner of the Mortgaged Property at the time of such sale.

3.6 Lender's Option on Foreclosure. At the option of the Lender, this Mortgage may be foreclosed as provided by law or in equity, in either event a reasonable attorneys' fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event the Lender exercises its option to foreclosure the Mortgage in equity, the Lender may, as its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Borrower, a defense to any proceedings instituted by the Lender to collect the sums secured hereby.

3.7 Receiver. (a) If an Event of Default shall have occurred, the Lender, upon application to a court of competent jurisdiction, shall be entitled, with notice but without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the Rents.

(b) The Borrower will pay to the Lender upon demand all expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this paragraph. All such expenses will be additional indebtedness of the Borrower

to the Lender secured by this Mortgage, will bear interest at the After-Maturity Rate specified in the Note and will be payable by the Borrower upon demand.

3.8 Suits to Protect the Mortgaged Property. The Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property and in the Rents and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with, such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Lender.

3.9 Remedies Cumulative. All remedies contained in this Mortgage are cumulative, and the Lender also has all other remedies provided by law or in any other agreement between the Borrower and the Lender. No delay or failure by the Lender to exercise any right or remedy under this Mortgage will be construed to be a waiver of that right or remedy or of any default by the Borrower. The Lender may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

3.10 Costs. If Lender prevails, Borrower will pay all of the Lender's reasonable expenses incurred in any efforts to enforce any terms of this Mortgage, whether or not any lawsuit is filed, including but not limited to legal fees and disbursements, foreclosure costs and title charges.

ARTICLE IV

GENERAL PROVISIONS

4.1 Release. Upon payment of one-half (1/2) of the original principal balance of the Note, together with accrued interest through the date of payment, Lender shall release from the lien of this Mortgage and shall execute, attest and deliver all releases and instruments reasonably required by Borrower to effect the release.

4.2 Non-Recourse Provision. Lender agrees to look solely to the Mortgaged Property and/or to the other collateral encumbered by the Mortgage and other Loan Documents given in connection herewith for the payment of all sums due under the Note and under the other Loan Documents, and the Borrower shall not be liable for any deficiency or other personal money judgment with respect to the payment of such sums.

4.3 Partial Invalidity. The invalidity or unenforceability of any one or more provisions of this Mortgage will in no way affect any other provision.

4.4 Other Taxes, Utilities and Liens. (a) The Borrower will pay promptly, when and as due, and will promptly exhibit to the Lender receipts for the payment of all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property

as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon the Borrower or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of the Mortgage for any amounts secured hereby or would have priority or equality with the Mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof.

(b) The Borrower shall promptly pay and will not suffer any mechanic's, laborer's, statutory or other lien which might or could be prior to or equal to the lien of this Mortgage created or to remain outstanding upon any of the Mortgaged Property. Provided, however, that Borrower may, in good faith, by appropriate proceedings, contest the validity, applicability or amount of any asserted lien, after written notice of the same to Lender. During such contest, Borrower shall not be deemed in default hereunder if (i) prior to the delinquency of the lien, Borrower deposits with Lender cash or other security, in form satisfactory to Lender in its sole unfettered discretion, adequate to cover the payment of such lien and any obligation, whether matured or contingent, of Borrower or Lender therefor, together with interest, costs and penalties thereon, and (ii) Borrower promptly causes to be paid any amounts adjudged to be due, together with all costs, penalties and interest thereon, before such judgment becomes final. Each such contest shall be concluded and the lien, interest, cost and penalties thereon shall be paid prior to the dates such judgment becomes final or any writ or order is issued under which the Mortgaged Property could be sold pursuant to such judgment.

4.5 Condemnation. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), the Lender shall be entitled to all compensation, awards and other payments or relief thereof and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Borrower's name, any action or proceedings relating to any condemnation. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Borrower to the Lender, who, after deducting therefrom all its expenses, including attorney's fees, shall apply the same in such manner as the Lender shall determine to the reduction of the sums secured hereby. The Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require.

4.6 Care of the Property. (a) The Borrower will preserve and maintain the Mortgaged Property in good condition and repair, and will not commit or suffer any waste; provided, however, that the Borrower may demolish or remove the existing buildings and drain or fill the existing lake. The Borrower will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, the Borrower will give immediate written notice of the same to the Lender.

(c) The Lender is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours.

(d) The Borrower will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

4.7 Performance by Lender of Defaults by Borrower. If the Borrower shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Mortgaged Property; in the payment of any utility charge, whether public or private; or in the performance or observance of any other covenant, condition or term of this Mortgage or under any prior lien or junior lien or in any lease, then the Lender, at its option, may perform or observe the same, and all payments made for costs paid or incurred by the Lender in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Borrower to the Lender with interest thereon at the After-Maturity Rate set forth in the Note. The Lender is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Borrower or any person in possession holding under the Borrower.

4.8 Waiver of Exemption. To the extent permitted by applicable law, Borrower waives all rights of exemption pertaining to the Mortgaged Property as to any indebtedness secured by or that may be secured by this Mortgage.

4.9 Delay or Omission No Waiver. No delay or omission of the Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by this Mortgage to the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender.

4.10 No Waiver of One Default to Affect Another, etc. No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

4.11 Discontinuance of Proceedings - Position of Parties Restored. In case the Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Lender, then and in every such case the Borrower and the Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Lender shall continue as if no such proceeding has been taken.

4.12 Remedies Cumulative. No right, power, or remedy conferred upon or reserved to the Lender by this Mortgage is intended to be exclusive of any right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

BOOK 393 PAGE 927

4.13 Notices. All notices given under this Mortgage must be in writing and will be effectively served upon personal delivery by certified United States mail, postage prepaid, telecopy or overnight courier, sent to the Lender and to Borrower at the addresses shown on page 1 hereof, which addresses may be changed by written notice. Any notice of default or notice of sale under this Mortgage as required by law will be effective on the date of delivery.

4.14 Entries. (a) The Lender and its respective agents and representatives, will have the right at any reasonable time to enter the Mortgaged Property and inspect all parts thereof. The Lender will also have the right to examine, copy and audit the books, records, accounting data and other documents of the Borrower relating to the Mortgaged Property.

(b) The Lender is under no duty to supervise or inspect the Mortgaged Property, or operation of the Mortgaged Property, or examine any books and records. Any inspection or examination by the Lender is for the sole purpose of protecting the Lender's security and preserving the Lender's rights under this Agreement. No default of the Borrower will be waived by any inspection by the Lender.

4.15 Status and Authority. The Borrower warrants that (i) it is duly organized and validly existing, in good standing under the laws of the state of its organization, (ii) it is duly qualified to do business and is in good standing in the state of its organization and in the state where the Mortgaged Property is located, (iii) it has the power, authority and legal right to carry on the business now being conducted by it and to engage in the transactions contemplated by the Loan Documents and (iv) the execution and delivery of the Loan Documents and the performance and observance of the provisions thereof have been duly authorized by all necessary actions of the Borrower.

4.16 Miscellaneous/Actions by Lender. (a) The term "Borrower" includes both the original Borrower and any subsequent owner or owners of any of the Mortgaged Property, and the term "Lender" includes the original Lender, and also any future owner or holder, including pledgees, assignees and participants, of the Note or any interest therein. Whenever the context requires, the singular includes the plural and vice versa and each gender includes each other gender. The headings of the articles of this Mortgage are for convenience only and do not limit its provisions.

(b) The parties acknowledge that this Mortgage was initially prepared by counsel for Borrower solely as a convenience and that all parties have read and negotiated the language used herein. Accordingly, no rule of construction shall apply to this Mortgage which construes ambiguous language in favor of or against any party.

4.17 Successors. Whenever the terms "Borrower" or "Lender" are used in this instrument such terms shall be deemed to include the heirs, administrators, executors, successors and assigns of said parties. All rights and powers herein granted to the Lender shall inure to and include his, her or its heirs, administrators, executors, successors and assigns, and all obligations herein imposed on the Borrower shall extend to and include Borrower's heirs, administrators, executors, successors and assigns.

4.18 Homestead/Commercial Property. Borrower warrants to Lender that no part of the Mortgaged Property constitutes the homestead of Borrower or of any other person, and that Borrower does not reside upon the Mortgaged Property or any part thereof.

The proceeds from this Mortgage have been applied to the purchase price of the property conveyed simultaneously herewith.

IN WITNESS WHEREOF, the Mortgagor has caused this mortgage to be executed in its name and its corporate seal to be hereunto affixed and attested by its duly authorized officers, as of the date first mentioned above.

**THOMPSON TRACTOR CO., INC., an
Alabama corporation**

By: *Michael D. Kuyper*
Its *President*
Date of Execution: *January 27, 1992*

ATTEST:

By: *John H. McLaughlin*
Its *Treas.*

[SEAL]

BOOK 393 PAGE 929

