

This instrument prepared by:
Richard W. Theibert, Attorney
Najjar Denaburg, P.C.
2125 Morris Avenue
Birmingham, Alabama 35203

STATE OF ALABAMA)

SHELBY COUNTY)

MORTGAGE

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the undersigned, John C. Fay, Jr., a married man (hereinafter called "Mortgagor") is indebted to Thompson Tractor Company, Inc., a corporation, (hereinafter called the "Mortgagee") for the sum of Six Hundred Fifty Thousand and No/100 Dollars (\$650,000.00), as evidenced by a judgment entered in the Circuit Court of Jefferson County, Alabama, Civil Action No: CV 99-6059, and has agreed to pay the same in accordance with the terms of that certain Settlement Agreement of even date herewith.

NOW, THEREFORE, in consideration of the premises and the sum of One Dollar (\$1.00) to the undersigned Mortgagor in hand paid by the Mortgagee, the receipt and sufficiency of which is hereby acknowledged, and for the purpose of securing the prompt payment of said indebtedness as it becomes due, the said John C. Fay, Jr., a married man, hereby grants, bargains, sells, and conveys to the Mortgagee the following described real property situated in Shelby County, State of Alabama, to-wit:

SEE EXHIBIT "A" WHICH IS ATTACHED HERETO AND MADE A PART HEREOF AS IF SET OUT FULLY HEREIN.

The property described herein is not the homestead of the Mortgagor or his spouse.

TO HAVE AND TO HOLD the same with all the rights, privileges, and appurtenances thereunto belonging or in anywise appertaining unto the said Mortgagee and assigns of the Mortgagee forever.

AND Mortgagor does covenant with Mortgagee that he is in lawful possession of the premises and has good right to convey the same; that the premises are free from all liens, charges, encumbrances, easements and restrictions whatsoever not herein specifically mentioned on attached Exhibit "B"; and that subject only to exceptions herein specifically mentioned, Mortgagor does warrant and will defend the title to the same unto Mortgagee against the unlawful claim of all persons whomsoever.

This mortgage is made, however, subject to the following covenants, conditions and agreements:

1. Mortgagor shall pay the said indebtedness and interest thereon when due, whether in course or under any condition, covenant or agreement herein contained, together with any other indebtedness which Mortgagor may owe to Mortgagee, it being further agreed that any statement in

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a note or obligation that it is secured by this mortgage shall be conclusive evidence of such fact.

2. Mortgagor shall keep the premises in good condition and repair, reasonable wear and tear excepted; shall not permit nor perform any act which would in any way impair the value of the premises; shall not remove any fixture nor remove or demolish any building or improvement located on the above described land without the written consent of Mortgagee; and shall neither commit nor permit waste of the premises.

3. Mortgagor shall pay and discharge as the same become due all taxes and assessments (except income taxes of the Mortgagee) that may accrue, be levied or assessed upon the premises or any part thereof, which may be or become a lien prior to the lien of this mortgage or have priority in payment to the debt secured hereby, or upon Mortgagee's interest therein or upon this mortgage or the indebtedness or evidence of indebtedness secured hereby, without regard to any law heretofore or hereafter enacted imposing payment of the whole or any part thereof upon the Mortgagee; upon the passage of any law imposing the payment of the whole or any part thereof upon the Mortgagee or upon the rendering by any appellate court of competent jurisdiction that the undertaking by the Mortgagor to pay such taxes is legally inoperative, then the indebtedness hereby secured without deductions shall, at the option of Mortgagee, become immediately due and payable, notwithstanding anything contained in this mortgage or any law heretofore or hereafter enacted; and Mortgagor shall not suffer or permit any such taxes or assessments on the said premises to become or remain delinquent or permit any part thereof or any interest therein to be sold for any taxes or assessments.

4. Mortgagor shall pay all debts, claims, or other charges that may become liens against the premises or any part thereof for repairs or improvements that may have been, or may hereafter be, made on the premises and shall not permit any lien or encumbrance of any kind which might become superior to the title of Mortgagee or the lien of this mortgage to accrue or remain on the premises or any part thereof.

5. Mortgagor shall provide, maintain, and deliver to Mortgagee policies of fire and such other insurance as Mortgagee may from time to time require in companies, form, and amount satisfactory to Mortgagee upon the leasehold improvements and contents now or hereafter situated on the mortgage premises, and shall assign and deliver to Mortgagee with satisfactory mortgage clauses all insurance policies of any kind or in any amount now or hereafter issued upon the premises. Mortgagor shall continue said insurance in force throughout the life of this Mortgage. Mortgagor shall give immediate notice in writing to Mortgagee of any loss or damage to the premises caused by any casualty. Full power is hereby conferred on Mortgagee to settle any compromise claims under all policies and to demand, receive, and receipt for all monies becoming payable thereunder and to assign absolutely all policies to any endorsee of the Note or to the grantee of the premises in the event of the foreclosure of this mortgage or other transfer of title to the premises in extinguishment of the indebtedness secured hereby. In the event of loss under any of the policies of insurance herein referred to, the proceeds of such policy shall be paid by the insurer to Mortgagee which, at its sole and absolute discretion, shall apply the same, wholly or partially, after deducting all costs of collection, including a reasonable attorney's fee, either as a payment on

account of the indebtedness secured hereby, whether or not then due or payable, or toward the alteration, reconstruction, repair, or restoration of the mortgaged premises, either to the portion thereof by which said loss was sustained or any other portion thereof. In the event of foreclosure, Mortgagor's interest in said insurance policies shall automatically pass to the purchaser at foreclosure.

6. If Mortgagor fails to insure the premises or to pay and furnish receipts for all taxes and assessments, or to pay debts, claims or other charges for repairs and improvements, or to keep the premises in good condition and repair, all as provided herein, Mortgagee may at its option procure such insurance, pay such taxes and assessments, redeem the property from any tax sale, procure such receipts, or enter upon the premises and make such repairs as it may deem necessary; and Mortgagor shall immediately pay to Mortgagee all sums which it shall have so paid, together with interest at the rate of fifteen percent (15%) per annum from the date the same was paid, and for payment thereof, this mortgage shall stand as security in like manner and effect as for the payment of the indebtedness referred to above; but the failure of Mortgagee to procure such insurance, to pay such taxes and assessments, to redeem the property from any tax sale, or to make repairs shall in no way render Mortgagee liable to Mortgagor, If Mortgagee shall elect to advance insurance premiums, taxes or assessments, or redeem from tax sale, the receipt of the insurance company or of the property tax official shall be conclusive evidence of the amount, validity and the fact of payment thereof.

7. Mortgagor shall immediately pay to Mortgagee all sums, including costs, expenses and reasonable agent's or attorney's fees which it may expend or become obligated to pay in any proceedings, legal or otherwise, to prevent the commission of waste; to establish or sustain the lien of this mortgage or its priority, or to defend against liens, claims, rights, estates, easements or restrictions, asserting priority to this Mortgage; in payment, settlement, discharge or release of any asserted lien, claim, right, easement or restriction made upon advice of competent counsel that the same is superior to the lien of this Mortgage; or to recover any sums hereby secured, together with interest on all such sums at the rate as set forth in the settlement agreement per annum until paid; and for payment of such sums and interest, this mortgage shall stand as security in like manner and effect as for the payment of the said indebtedness.

8. If default shall be made in the payment of the indebtedness secured hereby or any part thereof in accordance with the terms thereof, or in the performance of any covenant, condition, or agreement of this Mortgage, then the whole indebtedness hereby secured with all interest thereon, and all other amounts secured hereby shall, at the option of the Mortgagee, become immediately due and payable and this mortgage subject to foreclosure; and Mortgagee shall have the right and is hereby authorized to enter upon and take possession of the premises, and after or without taking possession, to sell the same before the Courthouse door in the county where the above described real estate is located, at public outcry for cash, after having given notice of the time, place and terms of sale by publication once a week of three successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Mortgagee or any person conducting said sale for Mortgagee is authorized and empowered to execute to the purchaser at said

sale a deed to the property so purchased. And Mortgagee may bid at said sale and purchase said property, or any part thereof, if the highest bidder therefor.

9. The proceeds of said sale shall be applied: First, to the expenses of advertising and selling, including reasonable attorney's fees; second, to the repayment of any money, with interest thereon, which Mortgagee may have paid, or become liable to pay, or which it may then be necessary to pay, for taxes, assessments, insurance or other charges, liens or debts as hereinabove provided; third, to the payment and satisfaction of the indebtedness hereby specially secured with interest to date of sale; fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the premises at the time of the sale after deducting any expense of ascertaining who is such owner. If this mortgage be foreclosed in Chancery, reasonable attorney's fees for foreclosing the same shall be paid out of the proceeds of the sale.

10. Mortgagor waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the premises be set off against any part of the indebtedness secured hereby.

11. After foreclosure of this Mortgage, Mortgagor and all holding under it shall become and be conclusively presumed to be tenants at will of the purchaser at the foreclosure sale.

12. Any promise made by Mortgagor herein to pay money may be enforced by a suit at law, and the security of this mortgage shall not be waived thereby, and as to such debts the Mortgagor waives all rights of exemption under the laws and agree to pay a reasonable attorney's fee for the collection thereof.

13. No delay or failure to Mortgagee to exercise any option herein given or reserved shall constitute a waiver of such option or estop Mortgagee from afterwards exercising same or any other option at any time; and the payment or contracting to pay by Mortgagee of anything Mortgagor has herein agreed to pay shall not constitute a waiver of the default of Mortgagor in failing to make said payments and shall not estop Mortgagee from foreclosing this mortgage on account of such failure of Mortgagor. ||

14. If Mortgagor shall well and truly pay and discharge the indebtedness hereby secured as it shall become due and payable (and all other indebtedness of Mortgagor to Mortgagee now in existence or hereinafter contracted or arising, joint or severally, contingent or absolute, direct or indirect, liquidated or unliquidated), and any and all renewals and extensions thereof, and shall do and perform all acts and provisions of this Mortgage, then this conveyance shall be and become null and void, and Mortgagee shall satisfy this mortgage at the expense of Mortgagor.

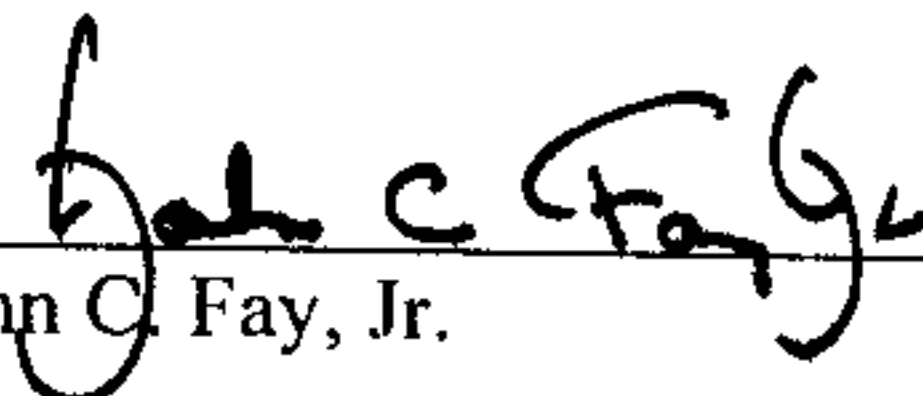
15. The term "Mortgagor", wherever used herein, shall mean the party or parties executing this Mortgage, jointly and severally and all the covenants, conditions and agreements hereof shall bind their respective heirs, executors, administrators, successors and assigns and shall inure to the benefit of and be available to the successors and assigns of Mortgagee. The rights, option, powers and remedies herein provided shall be cumulative and no one or more of them shall be exclusive of the other or others, or of any right or remedy now or hereafter given or allowed by law.

16. It is agreed that all awards of damages in connection with any condemnation for public use of or injury to any of said property are hereby assigned and shall be paid to Mortgagee, who may apply the same to payment of the installments last due under said note, and Mortgagee is hereby authorized in the name of Mortgagor, to execute and deliver valid acquittance thereof and to appeal from any such award.

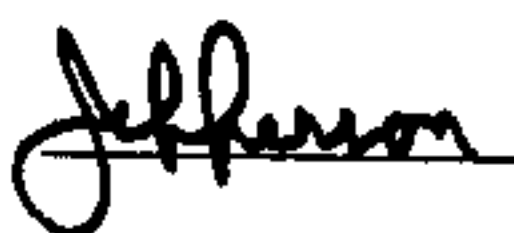
17. Transfer of the Property; Assumption. If all of any part of the property, or any interest therein, is sold or transferred by Mortgagor without Mortgagee's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Mortgage, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Mortgagee may, at Mortgagee's option, declare all the sums secured by this mortgage to be immediately due and payable. Mortgagee shall have waived such option to accelerate if, prior to the sale or transfer, Mortgagee and the person to whom the property is to be sold or transferred reach agreement, in writing, that the credit of such person is satisfactory to Mortgagee and that the interest payable on the sums secured by this mortgage shall be at such rate as Mortgagee shall request.

If Mortgagee exercise such option to accelerate, Mortgagee shall mail Mortgagor notice of acceleration. Such notice shall provide a period of not less than thirty (30) days from the date the notice is mailed within which Mortgagor may pay the sums declared due. If Mortgagor fails to pay such sums prior to the expiration of such period, Mortgagee may, without further notice or demand on Mortgagor, invoke any acceleration remedies.

IN WITNESS WHEREOF, the Mortgagor herein has executed this instrument on the 22nd day of June, 2000.

 (SEAL)
John C. Fay, Jr.

STATE OF ALABAMA)

 COUNTY)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that John C. Fay, Jr., a married man, whose name is signed to the foregoing mortgage, and who is known to me, acknowledged before me on this date, that being informed of the contents of said mortgage, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 22 day of June, 2000.


NOTARY PUBLIC
My commission expires:

SCHEDULE A CONTINUED
LEGAL DESCRIPTION

PARCEL I:

Commence at the Southwest corner of the Southwest 1/4 of the Southeast 1/4 of Section 21, Township 19 South, Range 1 West, Shelby County, Alabama, and run in a Westerly direction along the South line of said 1/4-1/4 section a distance of 452.76 feet to the POINT OF BEGINNING of the herein described parcel; thence continue in a Westerly direction along the South line of said 1/4-1/4 section a distance of 56.05 feet to a point on the Southeasterly right of way of Shelby County Highway #43; thence turn an interior angle of 75 degrees 41 minutes 10 seconds and run to the right along the Southeasterly right of way of Shelby County Highway #43 a distance of 327.03 feet to the point of beginning of a curve; thence deflect 6 degrees 13 minutes 50 seconds to the right to the tangent of said curve and run along the Southeasterly right of way of Shelby County Highway #43 and along the arc of said curve to the right having a central angle of 23 degrees 14 minutes 00 seconds and a radius of 1068.93 feet a distance of 433.45 feet to the point of tangent of said curve; thence turn an interior angle of 270 degrees 00 minutes 00 seconds from the tangent of last described curve and run to the left along the Northeasterly right of way of Shelby County Highway #43 a distance of 30.23 feet to a point; thence turn an interior angle of 90 degrees 00 minutes 00 seconds and run to the right along the Southeasterly right of way of said county highway a distance of 186.72 feet to a point; thence turn an interior angle of 45 degrees 14 minutes 11 seconds and leaving said right of way run to the right in a Southerly direction a distance of 490.42 feet to a point; thence turn an interior angle of 100 degrees 08 minutes 33 seconds and run to the right in a Southwesterly direction a distance of 306.87 feet to a point; thence turn an interior angle of 244 degrees 00 minutes 00 seconds and run to the left in a Southwesterly direction a distance of 294.31 feet to the point of beginning of the herein described parcel.

PARCEL II:

Begin at the Southeast corner of the Southwest 1/4 of the Southeast 1/4 of Section 21, Township 19 South, Range 1 West, Shelby County, Alabama and run in a Westerly direction along the South line of said 1/4-1/4 section a distance of 703.39 to a point; thence turn an interior angle of 87 degrees 42 minutes 20 seconds and run to the right in a Northerly direction a distance of 318.58 feet to a point; thence turn an interior angle of 153 degrees 07 minutes 15 seconds and run to the right in a Northeasterly direction a distance of 299.19 feet to a point; thence turn an interior angle of 119 degrees 10 minutes 25 seconds and run to the right in an Easterly direction a distance of 548.72 feet to a point on the East line of said 1/4-1/4 section; thence turn an interior angle of 89 degrees 36 minutes 40 seconds and run to the right in a Southerly direction and along the East line of said 1/4-1/4 section a distance of 579.57 feet to the point of beginning.

EXHIBIT "B"

1. Mortgage from John C. Fay, Jr. to First Commercial Bank, dated July 1, 1999 in Instrument No. 1999-28264.
2. Right of way to Shelby County recorded in Deed Book 228, Page 342.

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