

RESOLUTION NO. 94-218

A RESOLUTION TO AUTHORIZE PURCHASE OF REAL PROPERTY  
AND TO AUTHORIZE EXECUTION OF NECESSARY DOCUMENTS,  
CERTIFICATES, OPINIONS AND OTHER ITEMS.

WHEREAS, the Board of County Commissioners of St. Johns County, Florida is cognizant of the terms of the Agreement to Sell and Purchase real property attached hereto and incorporated herein by reference as Exhibit A; and

WHEREAS Borden Corporation, the Seller, has agreed to put up a \$100,000 letter of credit in favor of St. Johns County, Florida (see Exhibit B attached hereto and incorporated herein by reference) to ensure required environmental contamination remediation of the site to be purchased

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA:

Section 1. That the Board of County Commissioners hereby authorizes closing of the purchase from Borden Corporation of real property described in Exhibit A on condition that Borden Corporation provides St. Johns County with \$100,000 letter of credit acceptable to the Clerk of the Courts of St. Johns County, which letter of credit shall ensure required environmental remediation on the site to be purchased and on condition that

other closing requirements are met as determined by the office of the county attorney; and

Section 2. That the Board of County Commissioners further authorizes the county administrator to negotiate and to amend the agreement attached hereto as Exhibit A or enter into a new agreement as he may determine as necessary to provide for Borden Corporation's removal of trade fixtures and equipment after the closing of the purchase of said property. The Board of County Commissioners of St. Johns County furthermore authorizes the Chair of the Board of County Commissioners, or the Vice-Chair in the Chair's absence or unavailability, and the County Clerk, or a designated deputy County Clerk, in the County Clerk's absence or unavailability, to execute and deliver on behalf of the County such documents, certificates, opinions, or other items and to take such other actions as are necessary for such amendment or new agreement or the full, punctual, and complete performance of the covenants, agreements, provisions, and other terms as are contained in or authorized by such amended Agreement or by additional agreement as herein described.

Section 3. That the Board of County Commissioners of St. Johns County also authorizes the Chair of the Board of County Commissioners, or the Vice-Chair in the Chair's absence or unavailability, and the County Clerk, or a designated deputy

County Clerk, in the County Clerk's absence or unavailability, to execute and deliver on behalf of the County such documents, certificates, opinions, or other items and to take such other actions as are necessary for the full, punctual, and complete performance of the covenants, agreements, provisions, and other terms as are contained in or authorized by this resolution and said Agreement for Sale and Purchase of real property attached hereto as Exhibit A, as it may be amended.

Passed and Adopted this 29 day of November, 1994 by the Board of County Commissioners of St. Johns County, Florida.

BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA

By: Barbara Ward  
Its Chair

ATTEST: CARL "BUD" MARKEL, CLERK

By: Ima Pace  
Deputy Clerk

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AGREEMENT TO SELL AND PURCHASE

This Agreement to Sell and Purchase ("Agreement") including the attached and hereby incorporated Addendum, is made and entered into as of the 9 day of September, 1994 (date of delivery of executed Agreement to Purchaser) by and between BORDEN, INC., a New Jersey Corporation ("Seller"), and Board of County Commissioners, St. Johns County, a political subdivision of the state of Florida ("Purchaser").

ARTICLE I

DEFINED TERMS

1.1 Defined Terms. As used herein, the following terms shall have the meanings respectively indicated:

(a) "Closing" and "Close" mean the consummation of the purchase of the Property by Purchaser from Seller in accordance with the terms and provisions of Article VII hereof.

(b) "Closing Date" means the date specified in Section 7.1 hereof on which the Closing will be held.

(c) "Property" means the real estate situated in the City of St. Augustine, St. Johns County, Florida, described on Exhibit A attached hereto and incorporated herein by reference for all purposes, together with all and singular the improvements thereon and the rights and appurtenances pertaining thereto, including, without limitation, any right, title, and interest of seller in and to any and all adjacent streets, roads, alleys, easements or rights-of-way and all minerals, oil and gas if owned by Seller.

(d) "Title Company" means North Florida Title Company of St. Augustine, Florida.

(e) "Title Underwriter" means America Pioneer Title Insurance Company.

(f) "Broker" means Atlantic Commercial Properties, Inc.

(g) "Escrow Agent" means North Florida Title Company.

EX. A.

## ARTICLE II

### AGREEMENT OF PURCHASE AND SALE

2.1 Purchase and Sale. For the consideration hereinafter set forth, Seller hereby agrees to sell and convey the Property to Purchaser, and Purchaser hereby agrees to purchase and to pay for the Property, upon and subject to the terms, provisions, covenants and conditions herein contained.

2.2 Acceptance of Agreement by Seller. The Seller must execute and deliver this Agreement to St. Johns County within ten (10) St. Johns County official work days of its delivery to the Seller or the offer of its terms to the Seller becomes null and void except for Section 3.4.a.

## ARTICLE III

### EARNEST MONEY

3.1 Earnest Money. Purchaser has delivered to Broker a check payable to the order of the Broker in the amount of Twenty Five Thousand and 00/100 Dollars (\$25,000) as "Earnest Money". The Earnest Money check shall be held by Broker for the mutual benefit of the parties.

3.2 Upon joint execution of this Agreement by the parties, an escrow shall be opened at the offices of the Escrow Agent, into which said Earnest Money check shall be deposited.

3.3 Upon delivery of the Earnest Money check and a copy of the executed Agreement to the Escrow Agent, and acceptance of such check and Agreement by Escrow Agent, the escrow shall be deemed to be "open". The Escrow Agent shall give written notification to each of the parties of such opening and the date thereof. By its acceptance, the Escrow Agent agrees to promptly deposit the Earnest Money check into an interest bearing account, to act as Escrow Agent and to perform its duties in accordance with the provisions hereof, together with the provisions of the customary supplemental instructions of the Escrow Agent, and such other joint written instructions hereafter delivered, executed by the parties. In the event of any conflict between the provisions of the supplemental instructions and the text of this Agreement, then the provisions of this Agreement shall control.

3.4 Disbursement of Earnest Money. The Earnest Money and interest earned thereon shall be applied or disbursed as follows:

(a) If this Agreement is not executed and delivered to Purchaser in accordance with Section 2.2 then the Earnest Money check shall be returned by the Broker to the Purchaser without deductions forthwith. If Seller fails or refuses to perform its obligation to Close hereunder, then the Earnest Money and all interest earned thereon shall be returned to Purchaser but acceptance thereof shall not prejudice any claim Purchaser may have under this Agreement.

(b) If this Agreement is rightfully terminated, by either Seller, Purchaser or both, due to appraisals as provided for in Section 4.3, or due to survey or title matters as provided in Section 5.3, due to casualty loss as provided in Section 9.3, due to condemnation as provided in Article X, due to Purchaser's election not to proceed under Article XI hereof, or due to the Purchaser election to terminate under Section 12.2. then the Earnest Money and all interest thereon (less \$100.00 retained by Seller) shall be returned to Purchaser, and thereafter neither party shall have any rights as against the other except as provided in Section 11.1 hereof.

(c) If Purchaser wrongfully fails or refuses to perform its obligation to Close hereunder, the Earnest Money and all interest earned thereon shall be paid to Seller and all other rights of either party under this Agreement shall terminate except for the rights of the Seller pursuant to Section 11.1(a).

(d) If this transaction Closes, the Earnest Money shall be applied to the Purchase Price at the time of Closing and all interest earned on the Earnest Money shall be credited to Purchaser and applied to the Purchase Price.

#### ARTICLE IV

##### PURCHASE PRICE

4.1 Purchase Price. The Purchase Price (herein so called) to be paid by Purchaser to Seller at the Closing shall be Five Hundred Fifty Thousand and 00/100 Dollars (\$550,000).

4.2 Payment of the Purchase Price. The Purchase Price shall be payable by Purchaser to Seller as follows: (a) \$25,000 consisting of the Earnest Money, payable as hereinbefore set forth. (b) The balance in cash at the Closing by wire transfer of funds to a bank account to be designated by Seller, so as to constitute funds immediately available to Seller on the Closing Date.

4.3 Appraisals. Notwithstanding any other provision in this agreement, the Purchaser may have completed, at its own expense, one or two appraisals of this Property within the inspection period referenced in Article XI of this agreement. The appraiser or appraisers performing such appraisals shall be fully licensed within the state of Florida to perform such appraisals. If one appraisal is made and the value of the property established thereby (or the averaged appraisal value of the Property if two appraisals are made) is equal to or greater than the total purchase price offered (including Earnest Money deposits) then the Agreement shall remain in full force and effect. However, if said appraisal value or average of two appraisal values of the Property is less than the total offered purchase price (including Earnest Money deposit) then this Agreement shall be rescinded without fault assigned to either party, and any Earnest Money deposit shall be returned to the Purchaser.

## ARTICLE V

### TITLE BINDER AND SURVEY

5.1 Title Binder. Seller, at Seller's expense, shall deliver or cause to be delivered to Purchaser, within thirty (30) days from the opening of escrow, a Commitment for Title Insurance (hereinafter called the "Title Binder") issued by the Title Company on behalf of the Title Underwriter, showing good and marketable title to the Property in Seller, and committing to issue an owner's title insurance policy (current ALTA Form) to Purchaser subject only to the standard printed exceptions:

5.2 Survey. Purchaser shall deliver or cause to be delivered to Title Company, within thirty (30) days from the opening of escrow, a current (dated within 90 days of the Closing Date) survey (hereinafter called "Survey") of the Property made and certified by a licensed surveyor acceptable to the Title Company and upon which the Title Company may rely in amending or eliminating the survey exceptions in its title insurance policy.

5.3 Examination. In the event that any exceptions appear in the Title Binder other than: (a) matters which in the sole discretion of Purchaser do not materially affect the use or diminish the value of the property, or (b) the standard printed exceptions, or in the event that the Survey reveals any state of facts constituting exceptions to or deficiencies in title, Purchaser shall, within ten (10) days after the receipt of the last of the Title Binder and Survey notify Seller in writing of its objection to any such exception, deficiency or matter and Seller

shall have until the earlier of twenty (20) days after the receipt of written notice from Purchaser or the Closing Date within which it may, at its sole election: (i) remedy or remove such exception, deficiency or matter or (ii) obtain for Purchaser a Title Binder and/or survey without such exception, (iii) decline to take any such action or (iv) terminate this Agreement without further liability or obligation, provided further however, that if Seller declines to take any action or elects to terminate this Agreement then Purchaser shall have the right to terminate the Agreement, waive all of said exceptions, deficiencies and matters not remedied or removed by Seller and purchase the Property subject to the same. Any exception, deficiency or matter appearing in the Title Binder (other than the standard printed exceptions) or revealed in the Survey that are not objected to by Purchaser in writing as provided above, or that are waived by Purchaser as provided above, shall be considered "Permitted Exceptions".

5.4 Liens. Notwithstanding the foregoing, any title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount, which may be removed by the payment of money, shall not be considered Permitted Exceptions but, unless this Agreement specifically provides otherwise (as in the case of taxes and special assessments), shall be removed or discharged by Seller at the Closing.

## ARTICLE VI

### REPRESENTATIONS

6.1 Seller's Representations. Seller represents to Purchaser as follows (which representations shall be deemed also made by Seller to Purchaser as of the Closing Date and Purchaser's obligation to Close hereunder shall be conditional upon such representations being true and correct on the Closing Date):

(a) There are no parties in possession of any portion of the Property as lessees, tenants at sufferance or trespassers, other than Seller.

(b) Seller is duly incorporated and legally existing under the laws of the State of its incorporation and is duly qualified to do business in the State of Florida. The execution and delivery of, and Seller's performance under, this Agreement are within Seller's powers and have been duly authorized by all requisite corporate action. This Agreement constitutes the legal, valid and binding obligation of Seller enforceable in accordance with its terms, subject to laws applicable generally to creditor's rights. Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which Seller is a party or by which Seller might be bound.

(c) There is no pending or, to the knowledge of Seller, threatened special assessment affecting the Property, or any part thereof, nor to the knowledge of Seller is any such assessment contemplated by any city, village or other governmental authority.

(d) Seller has received no actual notice that the location, construction, occupancy, operation or use of the Property (including the buildings, improvements, fixtures and equipment located thereon) violates any restrictive covenant or deed restriction (recorded or otherwise) affecting the Property.

6.2 Purchaser's Representations. Purchaser represents to Seller that Purchaser is a political subdivision in the State of Florida and legally existing under the laws of the State and is duly qualified to do business in the State of Florida; that the execution and delivery by Purchaser of, and Purchaser's performance under, this Agreement are within Purchaser's powers and that this Agreement constitutes the legal, valid and binding obligation of Purchaser enforceable in accordance with its terms subject to laws applicable generally to creditor's rights; and that performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which Purchaser is a party or by which Purchaser might be bound. Such representations shall be deemed also made by Purchaser to Seller as of the Closing Date and Seller's obligation to Close hereunder shall be conditional upon such representations being true and correct on the Closing Date.

## ARTICLE VII

### CLOSING

7.1 Date and Place of Closing. The Closing of the purchase and sale of the Property shall occur not later than one hundred and twenty days (120) days from the date of this Agreement herein at the offices of the Title Company.

7.2 Events to Occur at Closing. At the closing the following shall occur:

(a) Seller, at Seller's sole cost and expense, shall deliver or cause to be delivered to Purchaser the following:

(i) A Warranty Deed ("Deed") to the Property, prepared in accordance with Section 689.02, Florida Statutes, 1993 and substantially in the form attached hereto as Exhibit B and incorporated herein by reference, subject only to the Permitted Exceptions and the following exceptions which shall appear in the Deed;

- a. All real estate taxes for the current year and all subsequent years which Purchaser assumes and agrees to pay subject to the provisions of section 7.6 of this Agreement;
- b. Special taxes and assessments, confirmed or unconfirmed, for improvements not yet completed, if any;
- c. Any state of facts which a good and accurate survey or inspection of the premises might reveal.
- d. Zoning and building laws or ordinances;
- e. Rights, if any, of the public in any portion of the premises which may fall within any public street, way or alley;
- f. All acts of the Purchaser occurring prior to, or subsequent to, the date of this instrument;
- g. Agreements, conditions, covenants, reservations, restrictions, and servitude of record; and
- h. Easements and rights of way of record.

(ii) Evidence satisfactory to Purchaser and to the Title Company that the Seller has authority to execute and deliver the Deed and that the person executing the Deed on behalf of Seller has full right, power and authority to do so.

(b) Purchaser, at Purchaser's sole cost and expense shall deliver or cause to be delivered to Seller the following:

(i) The wire transfer of the balance of the Purchase Price.

7.3 Title Insurance. Promptly following the Closing, Seller shall cause the Title Company to deliver to Purchaser an owner's title insurance policy (current ALTA Form) issued by the Title Company on behalf of the Title Underwriter in the amount of the Purchase Price and insuring that Purchaser owns marketable fee simple title to the Property, subject to no exceptions other than the Permitted Exceptions and the standard printed exceptions.

7.4 Seller's Closing Expenses. Seller's closing expenses shall include attorney's fees incurred by Seller in connection with this Agreement and the herein contemplated transaction, including, without limitation, any attorney's fees incurred in connection with

preparing, reviewing or revising the documents described in this Article VII; the costs of obtaining the Title Binder referred to in Section 5.1 hereof and any other expenses herein expressly stipulated to be paid by Seller.

7.5 Purchaser's Closing Expenses. Purchaser's closing expenses shall include attorney's fees incurred by Purchaser in connection with this Agreement and the herein contemplated transaction, including without limitation, any attorney's fees incurred by Title Company in recording any of the documents described in this Article VII; the amount of any documentary stamp or transfer tax imposed upon this transaction; the Survey referred to in Section 5.2 hereof and any other expenses herein expressly stipulated to be paid by Purchaser.

7.6 Prorations. Water and other utility charges, fuels, real estate taxes, and other similar items shall be adjusted ratably as of the Closing Date. If the amount of the current real estate taxes is not then ascertainable, the adjustment thereof, except for that amount which may accrue by reason of new or additional improvements, recently voted millage or changes in valuation, shall be on the basis of the amount of the most recent ascertainable taxes. Seller shall pay all special assessments or installments of special assessments (if payable by the installment method) due on or prior to the Closing Date. Special assessments or installments of special assessments (if payable by the installment method) for the year in which the Closing occurs which are not yet due and payable on the Closing Date shall be prorated to the Closing Date and assumed by Purchaser.

7.7 Escrow Fees. The escrow fees of the Title Company, if any, shall be divided equally between Seller and Purchaser.

## ARTICLE VIII

### POSSESSION

8.1 Possession. Seller shall deliver exclusive possession of the Property to Purchaser on the Closing Date.

## ARTICLE IX

### IMPROVEMENTS, DAMAGE OR DESTRUCTION

9.1 Improvements. This sale shall include all buildings and other improvements presently located upon the Property and all fixtures thereto, except for the equipment, other personal property and trade fixtures to be removed by Seller pursuant to Section 9.2 below.

9.2 Seller's Fixtures and Equipment. (a) Seller shall remove all trade fixtures, equipment and other personal property prior to closing, and may at its discretion, subject to Section 11.2.1(b), remove any wiring, plumbing or appendages to said trade fixtures, personal property or equipment.

(b) Seller at its expense shall repair any material damage done by the removal of its trade fixtures, personal property and equipment.

9.3 Damage or Destruction of Property. Risk of loss to the Property shall remain with Seller until closing, but if the Property or any portion thereof is damaged or destroyed by fire or other casualty or act of God or prior to the Closing, Seller and Purchaser shall have the following rights and obligations.

(a) If such damage or destruction is less than or equal to \$50,000 in value, Seller shall be obligated at its option either to repair the Property so as to restore it to the condition existing prior to such damage or destruction, or credit said amount to Purchaser.

(b) If such damage or destruction is more than \$50,000 in value, Seller and Purchaser shall both have the independent right to terminate this Agreement without liability to the other party. In the event the Agreement is so terminated, Purchaser shall then be refunded the Earnest Money plus accrued interest thereon through the date of termination.

Should the Seller undertake an obligation to repair the Property according to this Section 9.3 thereof, the Closing shall be extended if necessary, by a period of time equal to that period of time measured from the date of such damage or destruction until the Property is fully and completely restored to the condition existing prior to such damage or destruction.

## ARTICLE X

### CONDEMNATION

10.1 Condemnation. Seller shall notify Purchaser within ten (10) days if the Property, or any portion thereof, shall be taken or threatened to be taken through the exercise of the power of eminent domain. Upon receiving such notice, Purchaser shall have the right to terminate this Agreement and all liability thereunder, and have the Earnest Money plus accrued interest refunded. If Purchaser should elect to terminate this Agreement, all of the proceeds of the taking shall become the property of Seller. If Purchaser, after receipt of such notice, nevertheless, agrees to consummate the purchase and sale contemplated hereunder, the proceeds of taking shall belong to Purchaser.

## ARTICLE XI

### INSPECTION AND ENVIRONMENTAL MATTERS

11.1 Inspection. Purchaser and Seller (each at its own expense) shall have the right for sixty (60) days from the date of this Agreement to enter upon the Property for the purpose of inspecting the same and conducting surveys, studies and tests including environmental testing or assessment. If Purchaser has objections with regard to the inspection, surveys, studies, or tests only (excluding any environmental testing or assessments which shall be controlled by Section 11.2), it shall specify the items it objects to no later than twenty (20) business days from the date of its receipt of said inspection or study reports and Seller shall respond to Purchaser's objections and, either provide a proposed remedy and an estimated time frame for the completion of said remedy or give notice that it declines to correct any conditions objected to by Purchaser. Purchaser shall then have ten (10) business days from the receipt of Seller's response to review Seller's response and give its notice either: (1) approving said response and waiving all objections (other than environmental) to the Property, or (2) disapproving said response and terminating this Agreement. Failure to approve or disapprove shall constitute an approval by Purchaser of the Seller's response only (and not for any environmental matters) and a waiver of any objections to same. (a) Purchaser shall promptly repair or replace any damage or injury to the Property or the fixtures or improvements thereon, caused by any such inspections, surveys, tests or studies, including environmental testing or assessment as Purchaser may require. Purchaser shall indemnify to the extent allowed by law, defend and hold Seller and its agents, employees and Property free and harmless from any cost, expense (including reasonable attorneys fees), claim, cause of action, liability or charge incurred, occasioned by or related, directly or indirectly, to the right of access herein granted or to the activities of Purchaser, its agents, contractors or employees while upon the Property. (b) Purchaser agrees to do no act which would encumber title to the Property.

11.2 Environmental Agreement. Seller and Purchaser acknowledge and agree that the Property has been historically used for snack food production. Notwithstanding any provision of this Agreement or of law to the contrary, Seller and Purchaser agree to allocate responsibility and liability for all potential environmental matters arising out of such use or in any other way arising out of or associated or connected with the Property as set forth in the following paragraphs:

11.2.1 SELLER EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES AS TO THE CONDITION OR CHARACTER OF THE PROPERTY, THE MERCHANTABILITY THEREOF OR THE FITNESS OR SUITABILITY THEREOF FOR ANY USE OR PURPOSE. Seller makes no representations or warranties, expressed or implied, with respect to the environmental conditions of the Property and the surrounding Property (including, without limitation, all facilities, improvement, structures and equipment thereon and soil and groundwater thereunder), compliance with any federal, state or local environmental, health or safety statute, laws or regulations, and no indemnifications, expressed or implied, for any costs or liabilities arising out of or related to the presence, discharge, migration or release of a hazardous or toxic waste, substance or constituent, or any other substance on, in or from the Property. Notwithstanding any other provisions herein, Seller and Purchaser may, at their own expense and within sixty (60) days of the date of this Agreement, conduct an environmental assessment of the Property. Purchaser and Seller shall each have the right to all data generated by the other's assessment, the right to discuss any such matters with the other's consultant, and copies of any report (herein the "Environmental Report") provided by either consultant. Seller shall also give Purchaser, on the date of this Agreement, copies of all information, reports, statements, documents, or records which it or its agent may have concerning the environmental condition of the Property (hereinafter "Disclosure") however, such Environmental Report or Disclosures furnished by Seller shall not be representations or warranties by Seller.

(a) Notwithstanding any other provision of this Agreement, the Seller shall retain all responsibility and liability for completing all monitoring, remediation, and other action required by law for those conditions of the Property (which are known or unknown to the Seller) existing as of the date of closing.

(b) Purchaser acknowledges that there are Asbestos Containing Materials (ACM) on the Property and specifically in the floor mastic. The ACM in the floor mastic is in the adhesive between the concrete base and the tiles and currently is not friable, therefore the parties agree that it is impractical to remove it. Purchaser further acknowledges that the roof shingles on the building have not been tested and may contain ACM. Seller agrees to remove the ACM on approximately 20 elbows in the HVAC system.

11.2.2 (a) If Purchaser has any objection to conditions disclosed in the Disclosures or the Environmental Report, Purchaser shall specify the conditions it objects to within twenty (20)

business days after its receipt of the Disclosures and Environmental Reports and Seller shall respond to Purchaser's objections and provide a proposed remediation or assumption of liability plan and an estimated time frame for the completion of said plan or give notice that it declines to correct or remediate any conditions objected to by Purchaser and that it terminates the Agreement. Purchaser shall then have ten business days from the receipt of Seller's response to give in its discretion, its notice either: (1) approving said response, waiving all objections to said response and agreeing to purchase the Property, or (2) disapproving said response and stating its decision not to purchase the Property. Failure to notify Seller shall constitute an approval of Seller's response, a waiver of any objections to same and an agreement to purchase the Property. If Seller proceeds with any remediation, then Seller shall perform any remediation it deems necessary using its best engineering judgment in accordance with all applicable laws, rules and regulations as soon as practicable. Seller shall have the sole right to negotiate with the appropriate authorities. To the extent reasonably possible, in conjunction with its plan, Seller shall attempt to complete remediation before the Closing Date; however, the parties recognize that it may be necessary for remediation to continue after Closing.

(b) Purchaser acknowledges that Seller is currently performing groundwater remediation and that this remediation may last for approximately five years after Closing. Seller shall perform this remediation using its best engineering judgment in accordance with all applicable laws, rules and regulations and in conjunction with state specified requirements. Purchaser agrees to assist Seller in completing this work by allowing site access and agreeing not to construct or pave over the property such that it would interfere with the ongoing remediation activities.

11.2.3 If Purchaser purchases the property and subject to the terms of any remediation agreement and to the extent permitted by law, Purchaser shall indemnify, hold harmless and defend, Seller, its directors, officers and employees after the Closing Date against and in respect of any and all damages, costs, expenses (including, without limitation, fines, penalties, consequential damages and remedial costs) and other liabilities arising from claims based upon the environmental condition of the Property and the surrounding property (including, without limitation, all facilities, improvements, structures and equipment thereon and soil and groundwater thereunder) but only to the extent such claims either result from or are related to (a) Purchaser's ownership of the Property, or operations thereon by or on behalf of Purchaser, its affiliates, agents, successors, tenants, transferees, or tenants of the transferees; (b) claims arising out of, related to, or in connection with (i) the release of any hazardous or toxic

substance, waste, constituent or other substance into, onto or from the Property after the Closing Date; or (ii) any arrangement by Purchaser, its affiliates, successors, agents, tenants, transferees, or tenants of transferees, for the treatment, recycling, storage or disposal at any facility owned or operated by any person or entity of a hazardous or toxic substance, waste, constituent or other substance which is present on the Property, or has been or may be deposited at, disposed on, or released onto the Property; and (c) relate to demolition, cleanup or other remedial measures with regards to environmental conditions on or around the Property by Purchaser, its affiliates, successors, agents, tenants, transferees, or tenants of transferees. Notwithstanding the foregoing Purchaser does not indemnify Seller for claims related to the environmental conditions caused prior to the Closing Date, except and only to the extent such conditions are made worse by the negligent or unreasonable acts or omissions of Purchaser, its affiliates, successors, agents, tenants, transferees or tenants of transferees.

11.2.4 No Representations. Except as set forth herein or called for herein or called for in any of the instruments attached as exhibits hereto, neither Seller nor Purchaser makes any warranties or representations of any kind or character, express, or implied, with respect to the Property, its physical condition, income to be derived therefrom or expenses to be incurred with respect thereto, or their obligations or any other matter or thing relating to or affecting the same, and there are no written or oral agreements, warranties, or representations collateral to or affecting the Property except as may otherwise be expressly set forth herein.

## ARTICLE XII

### MISCELLANEOUS

12.1 Notices. Any notice hereunder must be in writing and delivered personally or by United States Mail, Registered or Certified, Return Receipt Requested; United States Express Mail; or Federal Express or equivalent courier service, and shall be effective only if and when received by the party to be notified. For purposes of notice, the addresses of the parties shall be as set forth below or as may be designated by notice to the other from time to time.

Seller: Borden, Inc.  
180 East Broad Street  
Columbus, Ohio 43215  
Attn: Director of Real Estate

Purchaser: Board of County Commissioners  
St. Johns County  
4020 Lewis Speedway  
St. Augustine, Florida 32095

12.2 Notwithstanding any other provision of the Agreement, Purchaser may terminate this Agreement for any cause whatsoever by giving written notice of termination to the Seller no later than fifteen days before the last day permitted for closing in accordance with Section 7.1. Upon such termination the Seller shall not have a cause of action for specific performance of this Agreement and the Seller shall promptly return the Earnest Money, less \$100.00, to the Purchaser. The provisions of the previous sentence shall survive the termination of this Agreement.

12.3 Entire Agreement. This Agreement constitutes the entire agreement between the parties and there are no agreements, representations or warranties, oral or written, which have not been incorporated herein provided that the executed Addendum to this Agreement is accepted by the parties as an integral part of the Agreement.

12.4 Time. Time is of the essence of all provisions of this Agreement.

12.5 Captions. The captions appearing in this Agreement are inserted for convenience only. They shall be ignored in construing this Agreement.

12.6 Governing Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Florida. The invalidation of one or more of the terms of this Agreement shall not affect the validity of the remaining terms.

12.7 Applicability. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and, to the extent that assignment is permitted hereunder, their assigns.

12.8 Assignment. This Agreement may not be assigned by Purchaser without the prior written consent of Seller.

12.9 Effective Date. This Agreement shall be deemed effective as of the date of its delivery in full and properly executed form to the Purchaser and reference to the "date hereof" or "date of this Agreement" shall be construed to refer to such date.

12.10 Further Acts. In addition to the acts and deeds recited herein and contemplated to be performed, executed, and/or delivered, Seller and Purchaser agree to perform, execute, and/or deliver or cause to be performed, executed and/or delivered at the Closing or after the Closing any and all such further acts, deeds and assurances as may be necessary to consummate the transactions contemplated hereby. Otherwise the acceptance of the Deed by the Purchaser or his nominee, as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said Deed.

ARTICLE XIII

COMMISSION

13.1 Real Estate Commission. Seller agrees to pay Broker its real estate brokerage commission if, as and when the Closing occurs.

Purchaser hereby represents and warrants to Seller that no other finders fee or real estate brokerage commission is payable by Purchaser to any party in connection with the transaction contemplated hereby, and Purchaser hereby agrees to indemnify and hold Seller harmless against the payment of any such other commission or fee to any party claiming by, through or under Purchaser.

Seller hereby represents and warrants to Purchaser that no other finders fee or real estate brokerage commission is payable by Seller to any party in connection with the transaction contemplated hereby, and Seller hereby agrees to indemnify and hold Purchaser harmless against the payment of any such other commission or fee to any party claiming by, through or under Seller.

BORDEN, INC.  
"Seller"

By: *[Signature]*

Its: Executive Vice President

OK  
8/3/94  
Jan  
8/3/94

*[Signature]*  
Witness

*[Signature]*  
Witness

(SEAL)

STATE OF Ohio  
COUNTY OF Franklin

The foregoing instrument was acknowledged before me this 9th day of September, 1994 by Jim VanMeter, CEO of Borden, Inc., a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

[Signature]  
\_\_\_\_\_

BOARD OF COUNTY COMMISSIONERS  
ST. JOHNS COUNTY, FLORIDA  
"Purchaser"

By: [Signature]

Its: County Administrator

Date of execution 8-25-94  
by St. Johns County

ATTEST: CLERK OF THE COURT  
ST. JOHNS COUNTY, FLORIDA

By: [Signature]

Exhibit A  
Property Description

SITE DESCRIPTION

LEGAL DESCRIPTION:

The site is described as a portion of Government Lot 1, Section 36, Township 6 South, Range 29 East, St. Johns County, Florida, being those lands as described in OR 262, page 154, less and except those lands as described in OR 592, page 691.

WARRANTY DEED  
(CORPORATE)

This WARRANTY DEED, dated \_\_\_\_\_ by \_\_\_\_\_

whose post office address is \_\_\_\_\_

hereinafter called the GRANTOR, to \_\_\_\_\_

whose post office address is \_\_\_\_\_

hereinafter called the GRANTEE:

(Wherever used herein the terms "GRANTOR" and "GRANTEE" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations.)

WITNESSETH: That the GRANTOR, for and in consideration of the sum of 110.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the GRANTEE, all that certain land situate in \_\_\_\_\_ County, Florida, viz:

Subject to restrictions, reservations, easements and covenants of record, if any. This reference to restrictions shall not operate to reimpose same.

SUBJECT TO

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND THE GRANTOR hereby covenants with said GRANTEE that except as above noted, the GRANTOR is lawfully seized of said land in fee simple; that the GRANTOR has good right and lawful authority to sell and convey said land; that the GRANTOR hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, GRANTOR has signed and sealed these presents the date set forth above.

SIGNED IN THE PRESENCE OF THE FOLLOWING WITNESSES:

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

State of \_\_\_\_\_  
County of \_\_\_\_\_

I am a notary public of the state of \_\_\_\_\_, and my commission expires: \_\_\_\_\_

THE FOREGOING INSTRUMENT was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_

of \_\_\_\_\_

, on behalf of the corporation.

He/she is personally known to me or has produced \_\_\_\_\_ as identification and did not take an oath.  
(type of identification) (did/did not)

Notary Seal

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_ Notary Public

## ADDENDUM

The following provisions are an integral part of that Agreement between St. Johns County, Florida, a political subdivision of the State of Florida ("Purchaser") and Borden, Inc., a New Jersey Corporation ("Seller") dated \_\_\_\_\_, 1994, and attached hereto.

1. Wherefore Seller and Purchaser agree:

A. No representation or warranty made by Seller in this Contract or in the Exhibits attached hereto contains any untrue statement of a material fact, or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading.

B. The execution and delivery of this Contract, the consummation of the transactions herein contemplated and compliance with the terms of this Contract do not and shall not conflict with, or, with or without notice or passage of time, result in a breach of any of the terms or provisions, or constitute a default under, any instrument or agreement to which the Seller is a party or by which the Seller or the Property, or any of it, are bound or under any applicable regulation of any governmental authority, or judgment, order or decree of any court or arbitration board having jurisdiction over the Seller, the Property or any of it.

C. No labor, services or material has been made or furnished to the Seller or the Property by any person or entity, including, without limitation, contractors, subcontractors, mechanics or materialmen, which could give rise to any lien as provided under the laws of the State of Florida. No notice of commencement has been filed or notice to owner received with respect to the Property within 12 months from the date of this Contract.

D. Seller agrees that, from the date of this Contract to the Closing Date, it will: (i) at Seller's expense, maintain all the Property in their present repair, order and condition, and permit no further damage or deterioration thereto or thereof other than may occur in the ordinary course of operation of the Property; (ii) not place or permit to be placed on or remove or permit to be removed from the Property any buildings, structures or other improvements of any kind without the prior written consent of the County; (iii) not transfer, convey, lease, mortgage or otherwise encumber the Property, it being expressly agreed that all mortgages, deeds of trust, financing agreements and other financial encumbrances affecting

the Property shall be paid in full or released at Closing at Seller's expense; (iv) not file any restrictive covenants affecting the Property without the prior written consent of County; and (v) not grant any licenses, easements or other uses or enter into any contractual agreements affecting the Property which continue in effect beyond the Closing Date.

E. All buildings, structures and improvements shall be, at the Closing, (i) in the same condition and state of repair as the same are at the date of this contract except for ordinary wear and tear and changes made by counsel or by the Purchaser or the changes made by the Seller as authorized by this Agreement.

2. On the Closing Date, Seller, to the extent requested by County or County's attorney, shall execute and deliver to County in form and content acceptable to County or County's attorney the following:

A. An affidavit in the form and substance reasonably required by the Title Company to the effect that no labor, services or material has been made or furnished to the Seller, the Property, or any of it, by any person or entity, including, without limitation, contractors, subcontractors, mechanics or materialmen, which could give rise to any lien as provided under the laws of the State of Florida. Seller shall furnish such other affidavits in the form and substance reasonably required by the Title Company to enable the Title Company to remove the standard exceptions from the title policy insuring the Property and otherwise to issue the title policy;

B. Such other instruments, documents and assignments as may be reasonably necessary, in the opinion of the County, to effect the transfer of the Property to the County;

C. Non-foreign affidavit;

D. The paid originals of all ad valorem real and personal property tax bills for the Property to the date of Closing;

E. Such satisfactions and releases of mortgages, deeds of trusts, judgments and other encumbrances executed by all mortgagees and holders of judgments and other encumbrances under any and all deeds of trust, mortgages and other encumbrances which may affect or encumber the Property;

F. Termination statements executed by all parties secured by any and all security agreements and/or as evidenced by financing statements which affect or encumber the Property, which termination statements shall be made pursuant to the Uniform Commercial Code of the State of Florida for filing with the Secretary of State for the State of Florida and recording with the St. Johns County Clerk's Office;

G. Certified copies of resolutions adopted by Seller's Board of Directors approving the execution, delivery and performance of this Contract by Seller, all in form and content acceptable to County and its counsel;

H. On or before the Closing Date and promptly after request by County, Seller shall deliver to County copies of all available building plans and specifications for improvements constructed on the Property showing such improvements in their "as built" condition.

I. Seller agrees that they will, at any time and from time to time after the Closing Date, upon request of County, do, execute, acknowledge and deliver or will cause to be done, executed, acknowledged and delivered all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assigning, transferring, granting, assuring and confirming to the County, or to its successors and assigns, or for aiding and assisting in connecting and reducing to possession any or all of the Property.

J. Within 20 days of the date of this Contract and prior to Closing, the Seller shall at his own expense provide a current inspection by a licensed pest control agent establishing that the premises is free of active infestation of wood destroying insects and organisms and free from damage from any current or past infestation. In addition, Seller will maintain in full force and effect all existing termite bonds.

K. The representations and warranties made by Seller in the Agreement and this Addendum hereof shall be true and correct on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of such Date; Seller shall have performed all covenants and obligations and complied with all conditions required by this Contract to be performed or complied with by them on or before the Closing Date;

L. Survival of Representations, Warranties and Agreements. The representations, covenants, agreements and indemnities set forth in or made pursuant to this Contract shall remain operative and shall survive the Closing, the disposition of escrowed funds and the execution and delivery of the deeds and other documents conveying title to the Property and shall not be merged therein, regardless of any investigation by or on behalf of any party. Any waiver of a condition by either party shall not operate as a waiver of any other provision of this Contract.

BORDEN, INC.  
"Seller"

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

(SEAL)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged  
before me this \_\_\_\_\_ of  
by \_\_\_\_\_ of  
a \_\_\_\_\_ corporation,  
on behalf of the corporation. He/she  
is personally known to me or has produced  
\_\_\_\_\_ as identification.

\_\_\_\_\_  
\_\_\_\_\_

BOARD OF COUNTY COMMISSIONERS  
ST. JOHNS COUNTY

By: Nicholas H. Hainger  
Its: County Administrator

Date of execution 8-25-94  
by St. Johns County

ATTEST: CLERK OF THE COURT  
ST. JOHNS COUNTY

By: Carol B. Mark  
Deputy Clerk

**BORDEN, INC.**

180 EAST BROAD STREET • COLUMBUS, OHIO 43215-3789

November 28, 1994

LAW DEPARTMENT

DIANE D. REYNOLDS

CORPORATE ATTORNEY

614-225-7481

FAX 614-225-7133

Daniel Bosanko  
Assistant County Attorney  
St. Johns County, Florida  
St. Augustine, FL 32805

Re: 4455 Avenue A  
St. Augustine, FL

Dear Mr. Bosanko:

Borden, Inc. is agreeable to putting up a \$100,000.00 letter of credit in favor of St. Johns County Florida to cover the environmental remediation at the site.

Sincerely,



Diane D. Reynolds

DDR/jkg

**EXHIBIT B**