AGREEMENT FOR PURCHASE AND SALE OF DIRT IN PLACE

THIS AGREEMENT made and entered into in duplicate this 25th day of March 19 96, is by and between Rayland Company, Inc., a Delaware Corporation, authorized for and doing business in the state of Florida, whose business address is P. O. Box 1188, Fernandina Beach, Florida 32035-1188, hereinafter called "RAYLAND", and Nassau County Board of County Commissioners, whose business address is P. O. Box 1010, Fernandina, Florida 32035, hereinafter called "PURCHASER".

WITNESSETH:

WHEREAS, RAYLAND has the rights to certain fill dirt; and WHEREAS, the PURCHASER has inspected and desires to purchase and remove the dirt;

NOW THEREFORE, in consideration of the mutual covenants hereinafter undertaken, RAYLAND and PURCHASER agree as follows:

1.0 <u>Material Identification and Location:</u> RAYLAND agrees to sell and PURCHASER agrees to purchase:

Fill materials (to be excavated) consisting of sand, dirt, top soil and rock existing in natural state as is, where is, at the LAND;

Hereinafter called "DIRT", located on the following described lands:

A portion of the Rayonier Management Compartment 3-13 of Nassau Forest in Nassau County, Florida, more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein, hereinafter called "LAND" or "LANDS".

- 2.0 <u>Transfer of Title:</u> All rights, title, and interest in the DIRT conveyed by this Agreement shall remain in RAYLAND until it is removed from the LAND.
- 3.0 <u>Agreement Term:</u> PURCHASER is granted the exclusive right to purchase and remove the DIRT identified by this Agreement until <u>September 2</u>, 1996.

If the PURCHASER wishes to extend the term for an additional SIX (6) MONTHS, due to delays in permitting and/or bonding, notification of such desire shall be given in writing to RAYLAND not less than SIXTY (60) DAYS prior to the expiration of this Agreement. Extension of the term in NOT a matter of right, and RAYLAND may, in its unqualified discretion, deny any such extension request, inasmuch as the removal of the DIRT by this Agreement is not an estate or paramount encumbrance upon the LAND, but a mere license to obtain and purchase material, as goods, by and under the terms of this Agreement. If extended, the DIRT will be sold based on a price to be agreed upon between the PURCHASER and RAYLAND.

4.0 Price and Deposit:

- 4.1 <u>Purchase Price:</u> PURCHASER agrees to pay to RAYLAND for the DIRT removed hereunder the sum <u>\$0.50</u> dollars per cubic yard for the first 100,000 cubic yards, and <u>\$0.45</u> dollars per cubic yard for any additional material. PURCHASER is responsible for payment of all sales taxes.
- 4.2 Payment: The PURCHASER will complete and deposit in a lock box on the LAND a load ticket for each load of DIRT hauled from the LAND. The load tickets will be supplied by Seller. The information supplied on the load ticket by the PURCHASER will serve as an accounting for the cubic volume hauled on each load. The Seller will periodically collect the load tickets and invoice the Purchaser monthly based on RAYLAND's fiscal month. Payment is due to Seller within 10 days of receipt of invoice. Delinquent invoices shall bear interest at EIGHTEEN (18) per cent INTEREST per annum, on the daily amount outstanding. Undisputed invoices remaining delinquent in excess of FOURTEEN (14) DAYS shall allow Seller to suspend continued shipment of DIRT from the LAND, until the amount is cured, and if not promptly cured, to declare this Agreement in default. Disputed invoices, if not resolved between the parties within TEN (10) DAYS of the settlement date, shall be submitted to arbitration within the next SEVEN (7) DAYS, for resolution as provided in this Agreement.
- 4.3 <u>Deposit</u>: Receipt is hereby acknowledged by RAYLAND of the sum of N/A, ("deposit"). In the event PURCHASER is unable to obtain all governmental permits and approvals necessary to use the

LAND for a borrow pit at least 10 days prior to the Agreement term date set forth in Section 3.0, PURCHASER may by written notice to RAYLAND terminate this Agreement, in which case PURCHASER'S deposit will be returned. In the event PURCHASER is able to obtain all necessary governmental permits and approvals, and proceed with removal of DIRT from the LAND, PURCHASER shall hereby receive credit for the above deposit, which will equate to N/A cubic yards of DIRT based on the price of N/A per cubic yard.

5.0 <u>Dirt Removal Area:</u> The boundaries of the area from which the DIRT is to be removed are to be clearly marked or designated on the LAND by PURCHASER and must be shown to, and approved by, RAYLAND. The volume of DIRT conveyed in this Agreement is estimated by RAYLAND to be 5.000 cubic yards of DIRT. Nothing in this Section alters RAYLAND's rights under Section 7.0.

6.0 <u>Title and Representations:</u>

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- 6.1 Title: RAYLAND warrants sufficient title and right to sell the DIRT, and further warrants that the DIRT is free and clear of any liens, and will remain free and clear of any liens arising under or by reason of RAYLAND, which would impair removal of the DIRT.
- 6.2 RAYLAND MAKES NO REPRESENTATION NOR
 WARRANTY TO PURCHASER WITH RESPECT TO THE
 QUALITY OR VALUE OF ANY DIRT NOR THE
 CONDITIONS THAT MAY EXIST IN CONNECTION WITH
 ACCESSING AND LOADING THE DIRT.
- 7.0 Right of Entry: RAYLAND also grants to PURCHASER, its successors and assigns, the right to enter upon LANDS at any and all times during said term with tools, wagons, carts, trucks, men and equipment and all other conveyances that are necessary for the removal of the DIRT, together with the right to operate roads and roadways upon, over and across the LANDS and as specified in Section 9.0 (f), when such roads and roadways are necessary for ingress and egress, and the right to erect temporary structures upon the LANDS. PURCHASER shall have and is hereby granted the right at any time during the term hereof and for ten (10) days thereafter, to remove any and all machinery, equipment and other property, (excluding any claim to timber) of PURCHASER, whether or not so fixed to the LANDS as to be regarded in law as a part of the LANDS, provided that the LANDS and other property are not damaged as a result of such removal. RAYLAND shall at all times during the term of this Agreement have the use of any and all part of the LAND for any and all purposes.

PURCHASER agrees to establish his own security system upon all areas being used by PURCHASER, without denying use of the area to RAYLAND.

Agreement is and shall be subject to any and all reservations of record of the timber, and the rights therein and thereto, in favor of RAYLAND's predecessors(s) in title, and, to any extent by which pre-existing rights in and to the timber may not exist of record, RAYLAND expressly reserves, for itself and it assigns, any such rights. The owner of the timber on the LAND may harvest and remove, at its discretion, all trees on the LAND pursuant to the terms of its standard form of agreement, for execution by PURCHASER at closing. Such Agreement shall call for the LAND to be clear cut. All reserved timber is to be removed within 180 days after closing or purchased by PURCHASER. Ownership of timber remaining on the LAND after that time will revert to PURCHASER.

9.0 Specifications:

During the removal of DIRT hereunder, PURCHASER shall:

- (a) be accessible at the address set forth in this Agreement during DIRT removal operations to receive notice of violations of regulations, laws, or contractual terms and take immediate corrective measures as determined by RAYLAND.
- (b) immediately repair any fence, cable, gate or improvement damaged during the operations;
- (c) maintain all roads used for hauling dirt in the same or better condition than they were prior to the fill dirt operation. Allowance will be made for reasonable wear resulting from normal use;
- (d) slope all completed sides of any borrow pit on the LAND to a minimum standard of 3:1;
- dispose of non-usable material from the LAND such as mulch or dirt with excessive organic content, debris, and vegetable matter in a manner approved in advance by RAYLAND's designated representative;
- (f) PURCHASER will be allowed to utilize existing timber roads,

- as shown on Exhibit A, for a haul road. PURCHASER will be responsible for all clearing and maintenance of these roads during the term of this Agreement.
- (g) Any borrow pit on the LAND will be constructed to the maximum depth permittable.
- (h) The LAND as described on Exhibit "A" will be located a minimum of 300 feet west of Rayonier Road 147. Exact location will be determined by PURCHASER and RAYLAND upon completion of jurisdictional delineation by PURCHASER.
- (i) PURCHASER will be responsible for stabilization of all side slopes, in a manner acceptable to RAYLAND, upon completion of this work.

10.0 Work Standards:

- 10.1 <u>Inspection & Rejection:</u> All work is subject to inspection and test by RAYLAND's representatives while in process and upon completion. RAYLAND reserves the right to reject as nonconforming, and require removal, repair and replacement of any work which is defective or which is not in conformity with specifications, drawings or descriptions approved by RAYLAND. Rejected work shall not be resubmitted for acceptance without concurrent notice of this prior rejection.
- 10.2 <u>Employees:</u> PURCHASER shall at all times adhere to and enforce all applicable, Federal, state, local and company workplace safety laws, regulations, standards and guidelines, and maintain strict discipline, and good order among its employees as well as any subcontractors or agents seeking entry to the LAND by reason of RAYLAND or work under this Agreement.
- 10.3 Safety: Before any work is begun on the LAND, PURCHASER's on-site supervisor(s) shall attend the LAND Safety Orientation and ensure that such information is communicated to and understood by PURCHASER's employees, and any subcontractor employees, before they commence work on the LAND. PURCHASER shall have an on-site supervisor qualified and briefed in safety procedures on the LAND at all times during the performance of work. PURCHASER will provide, upon request, appropriate reasonable assurance and competent records showing timely and proper communication of safety information and procedure to employees and subcontractors who enter on the LAND.

RAYLAND reserves the right to audit such safety records. PURCHASER shall be responsible for all safety related to the performance of the work and provide to its employees all equipment necessary for the safe performance of work, unless otherwise agreed between the parties hereto in writing. PURCHASER shall inform the designated RAYLAND representative of potential hazards to RAYLAND's employees, or other persons on the LAND, which may arise out of or during the course of PURCHASER's work.

Compliance with all State, Federal, and local laws; industry standards, as may be applicable; and Safety rules of the LAND shall not relieve PURCHASER of its obligations to use due care in performing the work hereunder, which may require that the PURCHASER take additional precautions as may be necessary or proper to the circumstances of the work.

The PURCHASER shall promptly notify the designated RAYLAND representative within 24 hours of any incident which resulted in, or could have resulted in, a major accident or personal injury to anyone including PURCHASER's employees.

10.4 Worksite Management: (1) The PURCHASER shall confine its equipment and materials, (including storage) and its workers to only those areas of the LAND necessary to the conduct of the work, and shall not unreasonably encumber the LAND with equipment or materials. The prior approval of the designated RAYLAND representative of the LAND shall be required before any materials or apparatus is stored in, on, or near the LAND, and a continuing and continuous inventory shall be maintained by PURCHASER and reported to he RAYLAND representative of all such materials and apparatus, including all stored chemicals, stored equipment or components, and the type of composition of all waste materials. (2) The PURCHASER shall at all times keep the worksite and surrounding area free from accumulation of waste materials, debris or rubbish caused by its employees or by the work. At completion the worksite shall be clear of all debris, equipment, and materials.

11.0 Protection of Work, Property, People and Company:

During the progress of the work, the PURCHASER shall:

(a) take extreme precaution against the possibility of fire,

- contamination, explosion or accident occurring with or in connection with the work:
- (b) at all times maintain adequate protection and on-site supervision of the work, its employees and all other persons present at, or unnecessarily or dangerously close to the worksite,
- avoid harm or disruption to the adjacent property or operations of (c) RAYLAND or other contractors; and;
- be responsible for any damage or injury, including death, (d) attributable in whole or in part to act(s) or neglect of the PURCHASER, its agents or employees in fulfilling the foregoing specific obligations of this order.

Any other provision of this contract notwithstanding, the PURCHASER shall, and specifically agrees to, assume responsibility and liability for, and keep and hold RAYLAND harmless, and indemnify it from, any and all costs, losses, damages, expenses or liabilities of any kind or nature (including death or personal injury to any persons, whether or not employees of PURCHASER, as well as all property damage) resulting form or arising by or in connection with negligence of, or attributed to, the PURCHASER or its agents or employees in the course of or in connection with the work.

12.0 Insurance: PURCHASER warrants coverage in existence, prior to commencing work, and shall provide RAYLAND with CERTIFICATE(S) of INSURANCE with coverage, and amounts, as follows:

A. Workers Compensation Statutory Limit Employer's Liability \$100,000/occur

В. General Liability, including Product Liability/Completed Operations Contractual Liability Personal Injury Liability Explosion, Collapse, Underground Damage (XCU coverage, as appropriate) Body Injury, each occurrence:

\$1,000,000

Property Damage, each occurrence

\$1,000,000

Bodily Injury & Property Damage,

Combined Single Limit, each

Occurrence \$1,000,000

C. Automobile Liability (including owned, non-owned, and hired vehicles)

Bodily Injury	
Each person	\$500,000
Each accident	\$500,000
Property Damage	
Each accident	\$500,000
OR	
Combined single limit	
Each accident	\$500,000

The Certificate of Insurance shall show RAYLAND as an ADDITIONAL NAMED INSURED under the general liability policy, and RAYLAND shall be given no less than TEN (10) DAYS prior notice before any cancellation, lapse, or material change of coverage takes effect. If the General Liability Coverage is written on a "claims made" basis, the Certificate must so state, and in such event contain the "retroactive date" of the policy.

13.0 <u>Dispute Resolution</u>: The parties will attempt to resolve any controversy or claim arising out of or relating to this order promptly by negotiations. If the disputed matter has not been resolved by negotiation or consensual mediation within ninety (90) days from the date such dispute resolution negotiations/mediations began, then either party may submit the disputed matter for mediation in accordance with mediation rules as established by the Florida Supreme Court prior to institution of legal proceedings by either party.

14.0 Compliance Standards:

14.1 Chemicals: All chemical compounds or components brought to the LAND by the PURCHASER must be properly labeled and a Material Safety Data Sheet (MSDS) must be delivered to and cleared by, the RAYLAND Safety Director for the LAND before being introduced to, upon, or into the LAND. The label must include: the identity of the components, chemicals or ingredients, hazard warnings and the name and address of the manufacturer or importer. The MSDS information must be specific to each chemical component with physical property, hazard and toxicity data, handing, usage, spill and emergency controls and exposure information. The MSDS must also have the telephone number of the manufacturer, importer or the responsible party preparing the MSDS, all consistent with Federal Hazard Communication Standard, 29 CFR 1910.1200.

- 14.2 (a) Permits: Before commencing work, PURCHASER shall obtain all necessary permits and licenses authorizing the work itself or the PURCHASER's performance of the work at the LAND, and provide copies of these permits and licenses to RAYLAND. Before and during the progress of the work, PURCHASER will provide all notices and comply with all laws, regulations and ordinances, whether Federal, state, county or other governmental entity with regulatory authority, relating to the performance of the work, and the risk and cost of any work not in conformance with any such law, ordinance, rule or regulation shall be with, and be borne by PURCHASER.
 - (b) PURCHASER is specifically responsible for assuring that any activities in the clearing, excavation and removal of DIRT from the LAND are fully permitted and without any encroachment or, prohibited negative impact upon regulated wetlands. Any breach of this provision is a material breach of the Agreement, and any responsibility of PURCHASER, from which RAYLAND shall be held harmless from the effect and expense of fines, penalties, enforcement actions, or remediation.
 - (c) The PURCHASER may permit an area for a borrow pit exceeding the boundary of the LAND with approval by RAYLAND. However, upon completion of the removal of DIRT from the LAND or termination of this Agreement, any areas permitted for a borrow pit outside of the original boundary of the LAND must be returned to their prepermitted condition. Before commencing work, PURCHASER shall provide to RAYLAND a list of all necessary permits and licenses necessary to allow the PURCHASER to perform the work contemplated.
- 14.3 Laws: PURCHASER warrants that in the performance of the work, it has complied with or will comply with all applicable Federal, state and local laws, ordinances, orders, rules and regulations, including but not limited to applicable provisions of Fair Labor Standards Act (29 U.S.C. Sec. 201-219) and regulations; Equal Opportunity including Sec. 202 of Executive Order 11246; Veterans employment including Executive Order 11701; affirmative action obligations concerning employment of minority and handicapped workers, including Executive Order 11758; and minority business enterprise including Executive Order

11625; and the relevant contract clauses of all the foregoing are by this reference adopted and incorporated in this contract.

15.0 Property:

- 15.1 Patents: PURCHASER agrees to defend and hold harmless RAYLAND from all liability, loss or damage by reason of any and all actions or proceedings charging infringement of any patent, trademark or copyright by reason of or in connection with any work performed under this Agreement, excluding only such matters as to which RAYLAND provided PURCHASER with exact specifications.
- 15.2 Documents: Plans and specifications developed by PURCHASER by, or in connection with, the work shall be submitted to RAYLAND prior to commencement of work of procurement of materials. All designs, plans, specifications and improvements, inventions and the rights thereto, developed by the PURCHASER in the course of performance of the work and this Agreement shall be promptly disclosed to, and become the property of RAYLAND.
- 15.3 <u>Confidentiality</u>: PURCHASER agrees to treat as strictly secret and confidential all specifications, drawings, blueprints, nomenclature, samples, models, data or other information supplied by RAYLAND. Unless written consent of RAYLAND is first obtained, PURCHASER shall not in any manner advertise or publish or release for publication any statement mentioning RAYLAND or the fact that PURCHASER has furnished or contracted to furnish work to RAYLAND, or quote the opinion of any employee(s) of RAYLAND. PURCHASER shall not disclose any information relating to this Agreement to any person not entitled to receive it.

16.0 Relationship:

- 16.1 <u>PURCHASER</u>: PURCHASER is an independent contractor relative to RAYLAND.
- 16.2 Absence of Conflict: PURCHASER covenants and warrants that neither PURCHASER nor any person furnishing materials or performing work pursuant to this Agreement are employees of RAYLAND within the meaning of or application of any Federal or State Unemployment Insurance Law, Old Age Benefit or Social

Security Law, Worker's Compensation, Industrial Accident, or Industrial or Labor law.

- 17.0 <u>Assignment:</u> This contract may not be assigned, pledged, transferred or subcontracted without the prior written consent of RAYLAND.
- 18.0 Applicable Law: This contract shall be governed by the laws of the state in which the RAYLAND LAND receiving performance under this Agreement is located.
- 19.0 <u>Default:</u> If PURCHASER fails to perform any obligation, or breaches any provision, of the Agreement, and fails to remedy the situation to the reasonable satisfaction of RAYLAND after notice and demand for cure, or if an undisputed settlement remains unpaid, RAYLAND shall have the right to declare this Agreement to be in default <u>and</u>, at its option: (1) terminate the Agreement, or (2) compel specific performance of the Agreement, or (3) suspend the right to remove DIRT from the LAND until the default has been remedied, and (4) seek such other form of relief as may be available by law or equity or both, Moreover, in the event of default of this Agreement, RAYLAND shall have the further right to declare any or all other contracts or agreements between RAYLAND and the PURCHASER in default and apply all deposits against this Agreement's unpaid settlement.

20.0 Miscellaneous:

- 20.1 As to all matters related to the settlement of payment, time is of the essence in the performance of this Agreement. As to all other matters, a reasonable period of time is applied.
- 20.2 Should either party give notice to the other, then such notice shall be by certified or registered mail, postage prepaid, addressed to the parties as follows:

In the case of RAYLAND
Attn: Paul B. Sakalosky
Post Office Box 1188
Fernandina Beach, Florida 32035-1188

In the case of PURCHASER:

NASSAU CO. BOARD OF CO. COMMISSIONERS Post Office Box 1010 Fernandina Beach, Florida 32035-1010

20.3 Recordation: The parties agree that this DIRT Agreement shall

- <u>NOT</u> be recorded in the public records of the County where the LAND is located; however, a memorandum form, acceptable to both parties, may be recorded.
- 20.4 The PURCHASER shall promptly report to RAYLAND and proper authorities any observed marijuana or suspected marijuana growing on the LAND.
- 20.5 <u>Complete Agreement:</u> This Agreement constitutes the entire understanding of the parties and the same may not be amended or modified orally. All understandings, representations and undertakings heretofore had between the parties are fully expressed in this Agreement. This Agreement may not be amended, in any respect whatsoever, except by written document duly executed by the parties hereto. All consents herein required must be in writing.

IN WITNESS WHEREOF, the parties have hereunto set their hands and delivered these presents as of the day and year first above written.

KAYLAND COMPANY, INC.

William J. Wolfer

Witnesses:

NASSAU CO. BRD. OF CO. COMMISSIONERS

By: Chairman As Its:

Witnesses:

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Approved as to form by the

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ADDENDUM A

21.0

- 21.1 The size of the LAND will be limited to <u>1.0</u> acres under this Agreement.
- 21.2 If PURCHASER wishes to increase this size above the 1.0 acre limit, hereinafter called "EXPANSION AREA", notification of such desire shall be submitted in writing to RAYLAND and will require approval by RAYLAND management. An increase in the size of the LAND is NOT a matter of right, and RAYLAND may, in its unqualified discretion, deny any such request. The boundaries of the proposed EXPANSION AREA from which DIRT is to be removed are to be clearly marked or designated by PURCHASER, and must be shown to, and approved by, RAYLAND. A new Agreement will be prepared to reflect the conditions of DIRT removal in the EXPANSION AREA.
- 21.3 Relocation of gopher tortoises (<u>Gopherus polyhemus</u>), whether from the LAND or EXPANSION AREA, will not be allowed on adjoining RAYLAND property without prior approval from RAYLAND management.

