

UNOFFICIAL COPY

09075760

905270043 08 001 Page 1 of 23

1999-11-16 15:12:30

Cook County Recorder

65.50

RMW:jmr/31,015/Record.Memo/November 16, 1999



09075760

MEMORANDUM FOR RECORDING  
OF CONTRACT FOR PURCHASE/SALE OF  
2615-51 NORTH PAULINA, CHICAGO, ILLINOIS

Seller: Transilwrap Company, Inc. and  
The Paulina Trust Partnership

Purchaser: Bafcor, Inc

Contract Date: October 8, 1998

Legal Description: See Schedule 1.3 (attached)

P.I.N. (s): 14-30-404-171 and 14-30-404-055  
14-30-404-066 and 14-30-404-070

Common Address: 2615-51 North Paulina, Chicago, Illinois

Mail to:

WIGODA & WIGODA  
444 North Michigan Avenue  
26th Floor  
Chicago, Illinois 60611  
Attn: Robert M. Wigoda

REAL ESTATE SALE CONTRACT

This Real Estate Contract (this "Agreement") is entered into as of this 8<sup>th</sup> day of October, 1998 by and between Bafcor, Inc., an Illinois corporation ("Purchaser") and Transilwrap Company, Inc., an Illinois corporation ("Transilwrap"), owner of the property at 2615 North Paulina Street, Chicago Illinois and 2651 North Paulina Street, Chicago Illinois (as further described on Schedule 1.3. appended hereto) and Herbert M. Drower and Sabra Minkus, co-partners d/b/a The Paulina Trust Partnership pursuant to a partnership agreement dated January 4, 1977 as amended (the "Paulina Partnership") owner of the property at 2645 North Paulina Street, Chicago Illinois (as further described on Schedule 1.3. appended hereto). Transilwrap and Paulina Partnership are hereinafter collectively referred to as "Seller" for purposes of convenience, though their rights, responsibilities and obligations hereunder are and are intended to be distinctly separate and singular with neither Transilwrap nor Paulina Partnership having any right, power or responsibility with regard to the other in connection with this Agreement.

ARTICLE I - PURCHASE AND SALE

1.1. Purchase. Purchaser agrees to purchase on the terms set forth herein, that property in the City of Chicago, County of Cook and State of Illinois, which is described hereinafter.

1.2. Sale. Seller agrees to sell on the terms set forth herein that property which is described hereinafter, and to convey or cause to be conveyed to Purchaser title thereto by a recordable warranty deed and trustee's deed, as the case may be, with release of homestead rights, if any, and a proper bill of sale for all personal property, if any, conveyed to Purchaser.

1.3. Ownership. Seller, composed of Transilwrap and the Paulina Partnership own all of the Property, as defined hereinafter; their respective parcels and manner of ownership is described on Schedule 1.3. appended hereto.

ARTICLE II - PROPERTY TO BE CONVEYED

2.1. Description of Property.

2.1.1. General Description of Real Estate. The real estate is improved with three (3) interconnected one (1) story industrial buildings, with lot dimensions of 404 feet by 124.5 feet (the real estate together with the land and improvements located thereon is referred to as the "Real Estate").

RMW:jmr/31,015/Paulina/Agreement.1/September 25, 1998

2.1.2. P.I.N. The permanent index numbers for the Real Estate are set forth on Schedule 1.3.

2.1.3. Legal Description. The legal description for the Real Estate is set forth on Schedule 1.3.

2.1.4. Common Address. The common address for the Real Estate is 2615-51 North Paulina, Chicago, Illinois.

2.2. The Property. The Real Estate may be hereinafter referred to as the "Property".

2.3. Appurtenant Property Rights. The Real Estate will be conveyed along with all right, title and interest of Seller, in and to any and all streets, roads, highways, easements, accesses, and rights-of-way appurtenant to the Real Estate, if any, and all right, title and interest of Seller, in and to any and all covenants, restrictions and agreements benefitting the Real Estate, if any.

ARTICLE III - PURCHASE PRICE

3.1. Purchase Price. The purchase price is THREE MILLION SIX HUNDRED FIFTY THOUSAND and No/100 DOLLARS (\$3,650,000.00) (the "Purchase Price").

3.2. Satisfaction of Purchase Price. Purchaser agrees to pay or satisfy the purchase price as follows:

3.2.1. Earnest Money. ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) deposited by Purchaser in escrow with Near North National Title Insurance Company, as escrowee, for the mutual benefit of the parties, on or before seven (7) days after the date of this Agreement, pursuant to a purchase money escrow in accordance with the terms hereof. At the option of Purchaser and at Purchaser's cost, the earnest money will be deposited in an interest bearing account for the benefit of Purchaser, except as otherwise set forth herein. Whenever this Agreement calls for the return of the earnest money to Purchaser, or its delivery to Seller, that shall include the interest earned thereon.

In the alternative, Purchaser can post an irrevocable stand-by letter of credit in favor of Seller, by the date and in the amount set forth hereinbefore, pursuant to such terms and conditions as the parties may agree upon. Whenever this Agreement calls for the return of the earnest money to Purchaser, that shall include the release of the aforesaid letter of credit.

RMW:jmr/31,015/Paulina/Agreement.1/September 25, 1998

3.2.2. Balance Due. The payment of the balance of the Purchase Price (plus or minus prorations) by immediately available federal funds at the time of Closing.

3.3. The allocation of the purchase price shall be as follows:

Transilwrap	.7892%
Paulina Partnership	.2108%

#### ARTICLE IV - CLOSING

4.1. Time and Place of Closing. The time of Closing shall be on the first to occur of (i) July 30, 1999, (ii) 30 days after the receipt of notice by Purchaser from Seller that Seller has vacated or will vacate the Real Estate and is prepared to deliver possession of same to Purchaser, (iii) 30 days after the receipt of notice by Purchaser from Seller that Seller wishes to close the sale contemplated hereby for the purpose of affecting the exchange referred to in paragraph 12.2 hereof, or (iv) 30 days after receipt of notice by Seller from Purchaser that Purchaser's mortgage commitment requires Closing prior to July 30, 1999.

In the event of Closing under the provisions of (iii) or (iv) hereof, possession of the Property shall not be delivered to Purchaser at Closing but shall be delivered on a date subsequent thereto as determined by Seller, but not later than July 30, 1999 in any and all events. If Seller does not deliver possession at Closing, the Seller shall, from the date of Closing until the date upon which Seller delivers possession of the Property to Purchaser (the "Retention Period"):

- (a) Pay all taxes, insurance, utilities, maintenance and operating expenses and any other costs incurred with regard to the Property during the Retention Period and hold harmless and indemnify Purchaser therefrom. It is the intention of the parties that Purchaser shall incur no cost or expense for the maintenance or operation of the Property during the Retention Period.
- (b) Seller shall maintain throughout the Retention Period, insurance of the following character: (a) casualty insurance against loss or damage by fire and other risks from time to time included under "extended coverage" policies, in the amount of the full replacement cost of all improvements to the Property; (b) comprehensive general public liability insurance (including contractual liability) against claims for bodily injury, death or property damage occurring on, in or about the Property and the adjoining streets, sidewalks and passageways, such insurance to afford protection of not less than

RMW:jmr/31,015/Paulina/Agreement.1/September 25, 1998

\$2,000,000 combined single limit per occurrence. Each policy of insurance shall be written on an occurrence basis and shall be in form and substance and be issued by a company satisfactory to Purchaser and shall name as the insured parties thereunder Purchaser and Seller and other parties designated by Seller, as their interests may appear. On or prior to the Closing Seller shall deliver to Purchaser certificates of the insurers, evidencing all of the insurance which is required to be maintained hereunder together with evidence of the payment of all premiums therefor, and Seller shall, within thirty (30) days prior to the expiration of any such insurance, deliver certificates of the insurers evidencing the renewal or replacement of such insurance together with evidence of the payment of all premiums therefor.

- (c) Pay to Purchaser as rental the sum of ONE THOUSAND and No/100 DOLLARS (\$1,000.00) per day for each day of the Retention Period. Said payment to be made monthly in arrears.
- (d) If an event of default shall have occurred in any of Seller's obligations hereunder, Purchaser may, by written notice to Seller, terminate Seller's rights of possession of the Property on a date specified in such notice. Immediately thereafter Purchaser may re-enter and repossess the Property or any part thereof by force, summary proceedings, ejectment or otherwise and the right to remove all persons and property therefrom. Purchaser shall be under no liability for or by reason of any such entry, repossession or removal. The repossession of the Property shall not relieve Seller of its liabilities and obligations hereunder, all of which shall survive such repossession.
- (e) In the event of the repossession of the Property by reason of the occurrence of an event of default, Seller shall pay to Purchaser the rent and other sums which would be payable hereunder by Seller in the absence of such repossession. In the event that Seller shall be in default in the performance of any of its obligations hereunder, and an action shall be brought for the enforcement thereof in which it shall be determined that Seller was in default, Seller shall pay to Purchaser all reasonable attorneys' fees and litigation expenses incurred or paid by it in connection therewith. In the event Purchaser shall, without fault on its part, be made a party to any litigation commenced against Seller, Seller shall pay as additional rent all costs and reasonable attorneys' fees incurred or paid by Purchaser

RMW:jmr/31,015/Paulina/Agreement.1/September 25, 1998

in connection with such litigation.

- (f) Whenever possession of the Property is delivered to Purchaser hereunder, it shall be delivered in the condition required by this Agreement.

**4.2. Place of Closing.** Closing shall be at the offices of Near North National Title Insurance Company, at 222 North LaSalle Street, Chicago, Illinois 60601, provided title is in accordance with this Agreement.

**4.3. Escrow Closing.** This sale shall be closed through an escrow with Near North National Title Insurance Company, in accordance with the general provisions of the usual form of Deed and Money Escrow Agreement then in use by Near North National Title Insurance Company, with such special provisions inserted in the escrow agreement as may be required to conform with this Agreement. Upon the creation of such an escrow, anything herein to the contrary notwithstanding, payment of purchase price and delivery of deed shall be made through the escrow and this Agreement and the earnest money shall be deposited in the escrow prior to or at the time of Closing. The cost of the escrow shall be divided equally between Seller and Purchaser. Purchaser shall be responsible for the cost of any money Lender's escrow. In no event shall any disbursements be made from escrow until such time as the title insurer is prepared to issue a title insurance policy as set forth herein. At Purchaser's election, the parties shall share the expense of a "New York style" Closing.

**4.3. Deliveries at Closing.**

**4.3.1. Sellers' Deliveries.** At the time of Closing Seller shall make the following deliveries:

- a. Such transfer declarations as may be required by any governmental authority for the recordation of the Deeds;
- b. Warranty Deed and Trustee's Deed, as the case may be;
- c. Affidavit of Title;
- d. A certification by Seller restating its warranties and representations made herein as of the Closing, and confirming their accuracy;
- e. A certification by Seller as may be required by the title insurer with respect to Seller's non-foreign taxpayer status;



RMW:jmr/31,015/Paulina/Agreement.1/September 25, 1998

- f. A certified copy of a resolution of Transilwrap's board of directors approving this Agreement and the sale of the Property to Purchaser;
- g. A certified copy of a resolutions of Paulina Partnership's partners approving this Agreement and the sale of the Property to Purchaser;
- h. A Plat Act Affidavit (if required);
- i. Such disclosures or certifications as may be required by the Illinois Responsible Property Transfer Act;
- j. A Certificate of Good Standing from the Secretary of State of Illinois for Transilwrap; and
- k. Such other matters as may be required by this Agreement or as may be customary and usual.

4.3.2. Purchasers' Deliveries. At the time of Closing Purchaser shall make the following deliveries:

- a. The balance of the Purchase Price; and
- b. Such other matters as may be required by this Agreement or as may be customary and usual.

4.3.3. Joint Deliveries. At the time of Closing Seller and Purchaser shall make the following joint deliveries:

- a. A Closing statement;
- b. Alta statements as may be required by the title insurer;
- c. Such other matters as may be required by this Agreement or as may be customary and usual;

4.4. Payment of Expenses.

4.4.1. Transfer Taxes. Seller shall pay any stamp tax imposed by state or county law on the transfer of the title to the Property, and shall furnish completed Real Estate Transfer Declarations signed by Seller or Seller's Agent as required with regard thereto. Seller shall also furnish any declaration signed by Seller or Seller's agent or meet other requirements as established by any local ordinance with regard to the transfer or transaction tax. The tax imposed by the City of Chicago shall be paid by Purchaser.

4.4.2. Additional Expenses. The parties shall each bear such other expenses, including their own attorney's fees, as may be customary and usual in transactions of this nature.

ARTICLE V - PRORATIONS

5.1. Prorations. Water and other utility charges, fuels, prepaid service contracts, various general taxes, accrued if any, rents and security deposits and other similar items shall be adjusted ratably as of the time of Closing. The parties shall use their best efforts to obtain final readings and statements for all utilities, as of the time of Closing.

5.2. Real Estate Taxes.

5.2.1. Initial Proration. If at the time of Closing, the amount of the current general taxes is not then ascertainable, the adjustment thereof except for that amount which may accrue by reason of new or additional improvements shall be on the basis of the amount of the most recent ascertainable taxes pursuant to the following formula:

1998: The most recent ascertainable tax bill x 100% minus the amount of the first installment if paid by Seller.

1999: The most recent ascertainable tax bill x 100% divided by 365 (or 366 in leap years) x the number of days from the first day of the year through and including the date of Closing.

5.2.2. Reproration. Upon receipt of the final bills for each tax year for which an ascertainable amount was not known at the time of Closing, the parties agree to reprorate same. Any payment due, shall be made within ten (10) days of the demand therefore.

5.2.3. Attorneys Fees and Costs. All attorneys fees and costs incurred by Purchaser in seeking a reduction of the level or assessed valuation of the real estate shall be prorated and shared (even in the event said fees are incurred after Closing) based on the actual savings realized by the parties.

ARTICLE VI - TITLE INSURANCE/CLEARANCE AND SURVEY

6.1. Commitment for Title Insurance. Seller shall deliver or cause to be delivered to Purchaser or Purchaser's agent, no later than thirty (30) days after the date of this Agreement, a title commitment for an owner's title insurance policy to Purchaser issued by Near North National Title Insurance Company in the amount



RMW:jmz/31,015/Paulina/Agreement.1/September 25, 1998

of the Purchase Price, covering title to the Real Estate on or after the date hereof, along with: (i) a Zoning 3.0 endorsement (said endorsement shall identify that the Premises are located within an R4 zoning district under the Zoning Ordinance of the City of Chicago); (ii) an endorsement that there are only four (4) permanent tax index numbers affecting the Property which does not affect any other land; (iii) an endorsement that there are no violations of any recorded covenants or restrictions affecting the Property; (iv) extended coverage over all the General Exceptions contained in the policy; and (v) a contiguity endorsement; showing title in the intended grantor subject only to (a) the General Exceptions contained in the policy and (b) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money and which Seller may so remove at that time by using the funds to be paid upon the delivery of the deed (all of which are herein referred to as the permitted exceptions). The title commitment shall be conclusive evidence of good title as therein shown as to all matters insured by the policy, subject only to the exceptions as therein stated. Seller also shall furnish Purchaser an affidavit of title in customary form covering the date of Closing, and showing title in Seller subject only to the permitted exceptions in foregoing items (a) and (b) and unpermitted exceptions or defects in the title disclosed by the survey, if any, as to which the title insurer commits to extend insurance in the manner specified hereinafter. Purchaser shall pay the cost of the endorsements described in parts (i) and (v) hereinbefore. Further, the endorsements described in parts (i), (iv) and (v) hereinbefore may not be available until after the delivery of the title commitment for an owner's title insurance as described hereinbefore.

**6.2. Survey.** Seller shall deliver or cause to be delivered to Purchaser or Purchaser's agent, no later than thirty (30) days after the date of this Agreement, at its own expense, a current Alta Standard Plat of Survey of the above real estate made, and so certified by the surveyor as having been made, in compliance with the Illinois Land Survey Standards, which Surveyor shall be duly licensed in the State of Illinois. The survey shall show the location on the real property of all improvements, building and set-back lines, fences, easements, roads, rights-of-way, and encroachments; and shall contain a legal description of the boundaries of the real property by meets and bounds which shall include a reference to the recorded plat, if any. The Surveyor shall certify to Purchaser, the Near North National Title Insurance Company and Purchaser's lender that the survey is correct and was made in accordance with minimum technical standards established for surveyors in the State of Illinois; and that there are no visible discrepancies, conflicts, encroachments, overlapping of improvements, violation of set-back lines, fences, easements, roads, or rights-of-way except as are shown on the survey. Any and

RMW:jmr/31,015/Paulina/Agreement.1/September 25, 1998

all recorded matters shown on said survey shall be legally identified by appropriate volume and page recording references with dates of recording noted. The survey shall be sufficient to permit the title insurer to provide extended coverage over all general exceptions.

**6.3. Cure of Title and Survey Defects.** If the title commitment or plat of survey discloses either unpermitted exceptions or survey matters that render the title unmarketable (herein referred to as "Survey Defects"), Seller shall have 30 days from the date of delivery thereof to have the exceptions removed from the commitment or to correct any survey defects or to have the title insurer commit to insure against loss or damage that may be occasioned by such exceptions or survey defects, and, in such event, the time of Closing shall be 35 days after delivery of the commitment or the time expressly specified in paragraph 4 herein, whichever is later. If Seller fails for any reason to have the exceptions removed or correct any survey defects, or in the alternative, to obtain the commitment for title insurance specified above as to such exceptions or survey defects within the specified time, Purchaser may terminate this Agreement or may elect, upon notice to Seller within ten (10) days after the expiration of the thirty (30) day period, to take title as it then is with the right to deduct from the purchase price liens or encumbrances of a definite or ascertainable amount. If Purchaser does not so elect, this Agreement shall become null and void without further action of parties.

#### ARTICLE VII - NOTICES

**7.1. Notices.** All notices, demands, and other communications required or desired in connection with this Agreement shall be in writing and shall be given by prepaid courier or certified mail, return receipt requested, or by facsimile transmission confirmed in writing contemporaneously by any of the foregoing methods, to the following addresses (or to such other address as a party may at any time and from time to time hereafter designate for itself by notice given in accordance herewith to the other party). Notice shall be effective when received or when tendered if delivery is refused or cannot be effected because the addressee is not at the address then effective hereunder, whichever shall first occur.

If to Seller:                      Mr. Jerome J. Kaplan  
   Transilwrap Company, Inc.  
   2828 North Paulina Street  
   Chicago, Illinois 60657  
   Facsimile (773) 296-2007

RMW:jmr/31,015/Paulina/Agreement.1/September 25, 1998

With a copy to: Mr. Arthur C. Chapman  
Chapman & Roin  
135 South LaSalle Street  
Suite 3600  
Chicago, Illinois 60603  
Facsimile (312) 419-1929

If to Buyer: Mr. Bruce A. Fogelson  
Bafcor, Inc.  
2501 North Lincoln Avenue  
Suite 225  
Chicago, Illinois 60614  
Facsimile (773) 528-8849

With a copy to: Mr. Robert M. Wigoda  
Wigoda & Wigoda  
111 East Wacker Drive  
28th Floor  
Chicago, Illinois 60601  
Facsimile (312) 263-8489

**ARTICLE VIII - PURCHASER'S OBLIGATIONS**

**8.1. Conditions to Purchaser's Obligations.** The following shall be and are conditions to Purchaser's obligations to close and otherwise proceed under this Agreement.

8.1.1. At the time of Closing, the condition of title (including but not limited to all covenants, conditions and restrictions) will be the same as was accepted by Purchaser and Purchaser's attorneys pursuant to Section 8.1.5.

8.1.2. The warranties and representations of Seller set forth herein, shall be true and correct in all respects.

8.1.3. Procurement by Purchaser within thirty (30) days after the date of this Agreement, of a letter of commitment for financing in the amount of eighty-five percent (85%) of the Purchase Price, to be secured by a mortgage or trust deed on the Real Estate to be conveyed, at a rate not to exceed the prime lending rate charged by Purchaser's lenders to its most favored customers, plus one percent, and with such other terms as are acceptable to Purchaser (the "Commitment"). If Purchaser is unable to procure the Commitment on or before that date, and serves notice thereof on Seller on or before that date, this Agreement shall become null and void and all earnest money, together with all interest earned thereon, shall be returned to Purchaser.

RMW:jmr/31,015/Paulina/Agreement.1/September 25, 1998

8.1.4. It is understood that Purchaser desires to acquire the Property with the express intention of obtaining an amendment to the Chicago Zoning Code so that it is zoned R4 (the "Zoning Amendment"). This Contract is subject to the condition that Purchaser be able to procure the Zoning Amendment within one hundred eighty (180) days after the date of this Agreement. If, after making every reasonable effort, Purchaser is unable to procure the required Final Zoning Amendment within one hundred eighty (180) days after the date of this Agreement, and serves notice thereof on Seller on or before that date, this Agreement shall become null and void and all earnest money, together with all interest earned thereon, shall be returned to Purchaser. Seller and Purchaser agree to cooperate with each other in Purchaser's efforts to procure the Zoning Amendment, at no cost to Seller.

8.1.5. Purchaser and Purchaser's attorneys shall have reviewed the Commitment for Title Insurance and Survey provided by Seller and approved all covenants, conditions, and restrictions of record; in the event of an objection by Purchaser or Purchaser's attorneys to the condition of either the Commitment for Title Insurance or Survey, notice of same shall be served upon Seller within thirty (30) days of receipt by Purchaser's attorneys of either the Commitment for Title Insurance or Survey, as the case may be; Seller shall have thirty (30) days from the receipt of said notice to cure the defects noted in the notice from Purchaser. If Seller fails to cure said defects within said thirty (30) days, then this Agreement shall become null and void and the earnest money shall be returned to Purchaser.

8.1.6. Seller has delivered to Purchaser a Phase I Environmental Property Assessment of the Property prepared by Environmental Services, Inc. dated April 3, 1998. Purchaser acknowledges receipt thereof and agrees that any additional environmental investigation sought by Purchaser shall be conducted subject to the following conditions:

8.1.6.1. All additional environmental investigations shall be conducted by Purchaser at its sole cost.

8.1.6.2. All such additional environmental investigations shall be completed within 180 days after the date of this Agreement.

8.1.6.3. Entry onto the Property for the purpose of making such environmental investigations shall be permitted only upon at least forty-eight (48) hours notice to Seller; and such investigations shall be conducted with due respect for Seller's ongoing operations in the Property. Seller shall cooperate with Purchaser to the extent Seller can reasonably do so without having a material negative impact upon its operations.

RMW:jmr/31,015/Paulina/Agreement.1/September 25, 1998

8.1.6.4. Purchaser shall promptly repair any damage to the Property resulting from its investigations and shall indemnify, defend and hold Seller (and each of them) harmless from and against all claims, costs, demands and expenses, including without limitation, reasonable attorney's fees, court costs and other expenses resulting from such investigations. Purchaser's obligations under this Section 8.1.6.4. shall survive termination of this Agreement.

8.1.6.5. If Purchaser's investigations disclose an environmental problem on the Property which Purchaser, in its sole discretion, is unwilling to accept, the Purchaser may terminate this Agreement by giving Seller written notice of its election to terminate at any time prior to the expiration of the time period in Section 8.1.6.2. hereof in which event this Agreement shall be and become null and void (except to the extent set forth in Section 8.1.6.4.) and the Earnest Money shall be returned to Purchaser. In the absence of such notice, this condition shall be deemed satisfied.

8.1.6.6. At the time of Closing, Seller shall deliver to Purchaser an environmental disclosure statement in a form which is customary and usual and provided by the title insurer.

8.1.7. The real estate shall be zoned R4.

8.1.8. Within sixty (60) days after the date of this Agreement, Purchaser and/or Purchaser's agent shall have inspected the Real Estate and approved the condition of same, and completed its due diligence review of the Real Estate and all related matters to determine that same is suitable for Purchaser's Intended use of the Real Estate. If Purchaser disapproves of its condition, and/or determines that it is not suitable for Purchaser's Intended use, and serves notice thereof on Seller on or before that date, this Agreement shall become null and void and all earnest money shall be returned to Purchaser.

8.2. In the event Purchaser disapproves of any of the items, which approval is a condition precedent to its obligations herein, then Purchaser may (i) cancel this Agreement and receive back its earnest money, in which event neither party shall have any further obligation or right hereunder; or (ii) waive the condition precedent and proceed to close this Agreement. In the event any of the conditions herein are not fulfilled, or Purchaser fails to approve the condition of the title, all earnest money shall be returned to Purchaser, without Purchaser being required to do anything further.



RMW:jmr/31,015/Paulina/Agreement.1/September 25, 1998

#### ARTICLE IX - CONDEMNATION

9.1. Condemnation. In the event that all or any part of the Property necessary to the Intended Use shall be acquired or condemned for any public or quasi-public use or purpose, or if any such acquisition or condemnation proceedings shall be threatened or begun prior to the Closing of this transaction, Purchaser shall have the option to either (i) terminate this Agreement by notice to Seller, in which event the Escrow Agent shall return to Purchaser the earnest money deposit together with all interest accrued thereon, and the obligations of all parties hereunder shall cease, or (ii) proceed, subject to all other terms, covenants, conditions, representations and warranties of this Agreement, to the Closing of the transaction contemplated hereby and receive title to the Property, receiving, however, any and all damages, awards or other compensation arising from or attributable to such acquisition or condemnation proceedings. Purchaser shall have the right to participate and/or intervene in any such proceedings.

#### ARTICLE X - RISK OF LOSS

10.1. Risk of Loss. All risk of loss to the Property, whether by fire, act of God, or otherwise, from the effective date hereof through and including the Closing Date shall be borne by Seller. Seller agrees to keep the Property fully insured with existing fire and extended coverage insurance through the Closing Date. In the event of any damage or destruction of the Property prior to Closing of a material nature, Purchaser may at its election and upon notice to Seller (i) cancel this Agreement and receive back its earnest money, in which event neither party shall have any further obligation or right hereunder; (ii) proceed to close this Agreement and receive an assignment from Seller of all interest in and to the insurance policy(s) and proceeds thereof (regarding the Real Estate only and specifically excluding insurance policy(s) and proceeds regarding personal property owned by Seller), with respect to the Property and the damage or destruction.

#### ARTICLE XI - SELLER'S WARRANTIES, REPRESENTATIONS AND DISCLOSURES

11.1. Seller's Warranties, Representations and Disclosures. Seller makes the following representations and warranties which shall be deemed to be made by Seller to Purchaser as of the Closing date:

11.1.1. That Transilwrap and Paulina Partnership each has full right, power and authority to sell, convey and transfer the Property owned by each of them, and to carry out Seller's obligations hereunder; if a Seller is not the owner of the property at the time of the recordation of the deed conveying the property to Purchaser, such Seller hereby and at the time of Closing, makes



RMW:jmr/31,015/Paulina/Agreement.1/September 25, 1998

all of those representations and warranties with respect to the condition of title which are incident to a Seller's representations and warranties in a warranty deed, as well as all of those representations and warranties set forth in this Agreement.

11.1.2. That Seller has not received any notice of any pending or threatened condemnation or reassessment or similar proceedings or assessments affecting the Property or any part thereof, nor to the best knowledge and belief of Seller are any such assessments or proceedings contemplated by any governmental authority excepting any proceedings which are customary and/or usual with respect to reassessment of the real estate by governmental authorities for tax purposes.

11.1.3. To the best of Seller's knowledge, there are no violations of any federal, state, or municipal laws, ordinances, orders, regulations or requirements affecting any portion of the real estate, nor has Seller received notice of any such violations issued by any governmental authority having jurisdiction over the property.

11.1.4. That all taxes relating to the Property that are due and owing have been paid in full, except for ad valorem real estate taxes. In addition, there are no agreements, waivers or other arrangements providing for an extension of time with respect to the assessment of any tax against the Property, nor to the best of Seller's knowledge are there any actions, suits, proceedings, investigations, or claims for additional taxes or assessments asserted by any authority.

11.1.5. That as of the Closing Date no work materials will have been furnished to the Property which might provide the basis for mechanic's and/or materialmen's liens, or other liens against the Property, or any portion thereof, unless emergency.

11.1.6. That Seller has received no notice of any actions, suits, or proceedings pending, and to the best of Seller's knowledge, none are threatened against Seller regarding the Property, or any portion thereof, in any court or by any federal, state, county or municipal department, commission, board, agency, or other governmental authority based on applicable building codes, environmental, zoning or land use matters.

11.1.7. Seller has received no notice of and is unaware of any special assessment proceedings affecting the property, existing or pending or proposed from any governmental authority.

11.1.8. Seller represents and warrants to Purchaser that no leases, tenancies, contracts, agreements or other obligations affecting the property, will survive the Closing.

RMW:jmr/31,015/Paulina/Agreement.1/September 25, 1998

1997 11.1.9. Seller represents and warrants to Purchaser that the ~~most recent ascertainable~~ real estate taxes on the Real Estate were \$66,926.10. *BT*

11.1.10. Seller represents and warrants that no broker's commissions are due as a result of this transaction, except as set forth in Section I. of Article XVIII.

11.1.11. Any and all fees and costs for permits, licenses, or other matters with respect to the Property, including, but not limited to, driveways, canopies, signage, curb-cuts, or other matters, where a fee is required to be paid to any governmental authority, are paid in full and will be paid in full through the date of closing.

11.1.12. To the best of Seller's knowledge, there are no claims which can be brought by any governmental authority that the Property is subject to additional taxation, or additional taxes are due for any years, except for current general real estate taxes.

11.2. Survival of Representations and Warranties. Any and all representations, warranties, disclosures, covenants and agreements of Purchaser and Seller, as well as any rights and benefits of the parties pertaining to a period of time following the Closing date of the transaction contemplated hereby, shall survive the Closing and shall not be merged therein.

ARTICLE XII - SELLER'S OBLIGATIONS

12.1. Seller's Obligations Prior to Closing. Prior to the Closing, Seller covenants as following:

12.1.1. Seller will not sell, assign or convey any right, title or interest whatever in or to the Property to any third party or create or permit to exist any additional lien, encumbrance or charge thereon, which will not be released at the time of Closing.

12.1.2. Seller agrees to cooperate with Purchaser in all respects, with respect to Purchaser's obtaining financing, or the rezoning, and any other inspections of the property or any other matters required by Purchaser in order to complete the matters set forth pursuant to this Agreement.

12.2. Transilwrap desires to exchange, for other property of like kind and qualifying use within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and the Regulations promulgated thereunder, fee title in the property owned by it which is the subject of this Agreement. Transilwrap expressly reserves the right to assign its rights, but not its obligations, hereunder

RMW:jmr/31,015/Paulina/Agreement.1/September 25, 1998

to a Qualified Intermediary as provided in IRC Reg. 1.1031 (k)-1(g)(4) on or before the Closing date. Purchaser agrees to cooperate, at no cost to itself, with Transilwrap in completing such exchange and Transilwrap agrees to hold Purchaser harmless from all claims and costs incident thereto.

#### ARTICLE XIII - DELIVERY OF POSSESSION

13.1. Delivery of Possession. Subject to the provisions of Section 4.1., Seller shall deliver possession of the Property on the day the sale has been closed, in accordance with all of the terms of this Agreement. Seller shall deliver possession of the Property to Purchaser in substantially the same condition as exists at the time of the execution of this Agreement, ordinary wear and tear excepted; further all personal property, refuse and debris shall be removed from the Real Estate (including all silos which shall remain the property of Transilwrap), which shall be in a clean and broom-swept condition.

#### ARTICLE XIV - REMEDIES

##### 14.1. Remedies.

14.1.1. If this Agreement is terminated without Purchaser's fault, the Earnest Money shall be returned to Purchaser. If the termination is caused by Purchaser's fault, then, upon notice to Purchaser the Earnest Money shall be forfeited to Seller as liquidated damages. In any event, the retention of the earnest money, shall be Seller's sole and exclusive remedy with respect to this Agreement and all matters related thereto.

14.1.2. In the event of a default by Seller prior to Closing, then Purchaser at its election may either (i) receive a refund of the earnest money and terminate this Agreement (as its sole remedy in the event of this election), or (ii) seek specific performance of Seller's obligations pursuant to this Agreement. In the event of a default by Seller after Closing, then Purchaser at its election may seek whatever remedies are available to it under the Agreement or at law or equity.

14.1.3. If a breach of warranty is discovered after the Closing, Purchaser shall be entitled to receive from Seller its actual damages, including attorneys' fees and costs, incurred as a result of such breach.

#### ARTICLE XV - INSPECTION OF PROPERTY

15.1. Inspection of Property. Purchaser and Purchaser's agents and prospective contractors shall have the right to inspect the property prior to Closing, upon reasonable notice to Seller and

RMW:jmr/31,015/Paulina/Agreement.1/September 25, 1998

at the mutual convenience of the parties, and at such times and with such conditions so as to not disrupt Seller's ongoing business activities. Purchaser shall also have the right to inspect the property seventy-two (72) hours or less prior to Closing, to insure that the Property is in the condition required by this Agreement.

**ARTICLE XVI - INDEMNIFICATION**

16.1. **Seller's Indemnification of Purchaser.** Seller shall forever defend, save harmless and indemnify Purchaser from and against the following:

16.1.1. Any and all obligations, liabilities, claims, accounts or demands, in any way related to or arising from any wrongful or negligent act, conduct or omission of Seller occurring on or prior to the Closing Date;

16.1.2. Any loss or damage to Purchaser resulting from any material inaccuracy in or breach of any representation or warranty of Seller, or resulting from any breach or default by Seller under any covenant or agreement of Seller under this Agreement; and

16.1.3. Any and all obligations, liabilities, claims, accounts or demands, in any way related to or arising from the ownership, operation and/or management of the Property or in any way related to or arising from the Property, on or prior to the Closing Date, and attributable solely to Seller.

16.1.4. This indemnification shall extend only to actual damages suffered by Purchaser and shall not include consequential or contingent damages.

**ARTICLE XVII - CONSTRUCTION**

A. **Governing Law.** This Agreement shall be construed and interpreted pursuant to the laws of the State of Illinois.

B. **Entire and Sole Agreement.** This Agreement embodies the entire agreement of the parties and can be modified only by written instrument subscribed to by all of the parties hereto, and supersedes any and all prior agreements, negotiations, representations or other matters by and between the parties hereto relating to the subject matter hereof.

C. **Singular and Plural.** Whenever used herein, the singular number shall include the plural, and the plural number shall include the singular when appropriate.

RMW:jmr/31,015/Paulina/Agreement.1/September 25, 1998

**D. Headings and Captions.** The headings and captions herein are inserted for convenient reference only and the same shall not limit or construe the paragraphs or sections to which they apply or otherwise affect the interpretation hereof.

**E. Gender.** Words of the masculine, feminine, or neuter gender shall mean and include the correlative words of other genders and words importing the singular number shall mean and include the plural number and vice versa.

**F. Persons.** Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons.

**G. Recitals.** The recitals set forth in this Agreement, be and are made a part of this Agreement, as though expressly set forth and contained herein.

**H. Drafter of the Document.** Neither of the parties hereto or the parties' respective attorneys shall be deemed the drafter of this Agreement in any litigation, or other proceeding which hereafter may arise between or among them, which Agreement was the result of negotiations between the parties and their respective attorneys.

**I. Escrow Agreement.** In the event of a conflict between this Agreement and any escrow agreement into which the parties may enter, the terms of this Agreement shall control.

#### **ARTICLE XVIII - MISCELLANEOUS**

**A. Inurement.** All covenants, representations, warranties and agreements of the parties contained herein shall be binding upon and inure to the benefit of their respective heirs, successors and permitted assigns.

**B. Time is of the Essence.** Time is the essence of this Agreement. In the computation of a period of time provided for in this Agreement or by law, the day of the act or event from which said period of time runs shall be excluded and the last day of such period shall be included, unless it is a Saturday, Sunday or legal holiday, in which case the period shall be deemed to run until the end of the next day which is not a Saturday, Sunday, or legal holiday.

**C. Venue and Jurisdiction.** The parties agree and consent that venue and jurisdiction with respect to any litigation with respect to this Agreement and any related matters shall be fixed in the County of Cook in the State of Illinois.



RMW:jmr/31,015/Paulina/Agreement.1/September 25, 1998

D. Counterparts. This Agreement may be executed in multiple duplicate originals, each one of which shall be deemed and considered an original.

E. Amendment and Waiver. No term or provision of this Agreement may be altered, amended, changed, waived, terminated or modified in any respect or particular except by written instrument signed by or on behalf of the party to be charged therewith. No waiver by either party of any breach hereunder shall be deemed a waiver of any other or any subsequent breach.

F. Further Assurances. The parties each agree to execute and deliver such further documents and to take all such further actions as shall be necessary or desirable to fully carry out this Agreement and to fully consummate and effect the transactions contemplated hereby.

G. Survival and Benefit. All representations, warranties, agreements, obligations and indemnities of the parties shall notwithstanding any investigation made by any party hereto, survive Closing and the same shall inure to the benefit of and be binding upon the respective successors and assigns of the parties.

H. No Third Party Benefits. This Agreement is for the sole and exclusive benefit of the parties hereto and their respective successors and assigns and no third party is intended to or shall have any rights hereunder.

I. Broker's Commission. Seller shall pay, out of the proceeds of sale at the Closing, a broker's commission to Sequoia Realty Group, the sole broker involved in this transaction, in accordance with its Exclusive Listing Agreement with Sequoia. Each of Seller and Purchaser warrants to the other that it dealt with no other broker in connection with this transaction and that it will hold the other party hereto harmless from all costs, expenses and damages (including attorney's fees) incurred by such other party because the said warranty of the indemnifying party is false or inaccurate. This undertaking shall survive the closing of this transaction.

J. Assignment. Purchaser shall have the right to assign its interest under this Agreement, and/or direct Seller to convey to its nominee. Seller shall have the right to assign its interest under this Agreement in accordance with Section 12.2.

K. Attorney's Fees. In the event of any litigation or other proceeding to enforce or interpret any right, obligation, or liability under the Agreement, the prevailing party shall be entitled to recover all reasonable costs and attorney's fees incurred as a result thereof, in addition to such other relief as



RMW:jmr/31,015/Paulina/Agreement.1/September 25, 1998


may be awarded by the court.

L. Lease Contingency. This Agreement shall be of no force or effect whatsoever unless and until Transilwrap shall enter into a lease with Coolidge-Chicago Equities, LLC for the premises at 9201 Belmont Avenue, Franklin Park, Illinois within fifteen (15) days from the date hereof. Transilwrap shall advise Purchaser, in writing, of the date upon which such lease is executed and Purchaser shall promptly deliver the earnest money (described in Section 3.2.1.) on receipt of such notice.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.


PURCHASER:

BAFCOR, INC.,  
an Illinois corporation

By:   
Bruce A. Fogelson,  
its President

SELLER:

Transilwrap Company, Inc.  
an \_\_\_\_\_ corporation

By:   
its President

The Paulina Trust Partnership,  
an Illinois general partnership

By:   
Herbert M. Drower, partner

By:   
Sabra Minkus, partner

RMW:jmr/31,015/Paulina/Agreement.1/September 25, 1998

SCHEDULE 1.3.

Property of Cook County Clerk's Office

**SCHEDULE 1.3**

TRANSILWRAP COMPANY, INC. is the owner of the following real estate:

Parcel 1: The North 79.26 feet of the South 279.26 feet in Lot 1 in Northwestern Terra Cotta company's Resubdivision of part of the North East quarter of the South East quarter of Section 30, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2: The South 200 feet of Lot 1 in Northwestern Terra Cotta Company's Resubdivision of a part of the North East quarter of the South East quarter of Section 30, Township 40 North, Range 14, East of the Third Principal Meridian, all in Cook County, Illinois.

PIN 14-30-404-071; 14-30-404-065

Parcel 3: The South 40 feet of the North 610 feet of Lot 1 in the Northwestern Terra Cotta Company's Resubdivision in the North East quarter of the South East quarter of Section 30, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

PIN 14-30-404-066

Parcels 1 and 2 cover the property at 2615 North Paulina Street. Parcel 3 covers the property at 2651 North Paulina Street.

HERBERT M. DROWER and SABRA MINKUS, co-partners d/b/a THE PAULINA TRUST PARTNERSHIP, are the owners of the following described real estate:

The North 85.28 feet of the South 364.54 feet of Lot 1 in the Northwestern Terra Cotta Company's Resubdivision of a part of the North East quarter of the South East quarter, Section 30, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

PIN 14-30-404-070

Title to parcels 1 and 2, owned by Transilwrap Company, Inc., is held by the American National Bank as Trustee of Trust No. 006660-6-5. Title to parcel 3 is held by Transilwrap Company, Inc. in its own name.

Title to the property owned by The Paulina Trust is held by the American National Bank as Trustee of Trust No. 004045-6-6. That property is located at 2645 North Paulina Street.