

PURCHASE AND SALE AGREEMENT

Route 11, Farmington, New Hampshire

ARTICLE 1: PROPERTY/PURCHASE PRICE

1.1 Certain Basic Terms.

- | | |
|--|--|
| (a) <u>Purchaser and Notice Address:</u> | (a) <u>Seller and Notice Address:</u> |
| A.C.M. Specialized Materials, LLC
George Sacco, Manager
977 Amesbury Road
Haverhill, MA 01830
Telephone: 978/556-9200
Email: acmspecialized@comcast.net | Edward Moran, Trustee of the
New Hampshire Custodial Trust
c/o 132 Summit Avenue
Mont Clair, NJ 07043
Telephone: 978/745-2215
Email: eg_moran@verizon.net |
- (c) Date of this Agreement: The latest date of execution by Seller or Purchaser, as indicated on the signature page.
- (d) Purchase Price: \$600,000
- (e) Deposit: \$30,000
- (f) Due Diligence Period: The period ending sixty (60) days from the Date of this Agreement, which period may be extended for up to thirty (30) days if required for Lender's due diligence and shall be extended by the number of days by which Seller fails to deliver the Property Information as required in Section 2.1 below.
- (g) Closing Date: The later of thirty-one (31) days after the receipt by Seller of the subdivision of the Property which is a Final Approval (defined below) or twenty-one (21) days after receipt by Purchaser of all financing approvals described in Section 2.5.
- (h) Brokers: The Kane Company, Inc., Peter Billip, Broker, (the "Broker")

1.2 Property.

(a) Purchase. Subject to the terms and conditions of this Agreement, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase (the "Purchase") from Seller, six (6) +/- acres, more or less, of land located in Farmington, New Hampshire, the general location of which is shown on a Plan attached hereto as Exhibit A and marked Parcel 1, together with all improvements located thereon containing approximately sixty-two thousand (62,000) square feet of building area (the "Improvements") and the fixtures, systems, and appurtenances thereto, and Seller's rights, easements or other interests, if any, in and to adjacent streets, alleys and rights-of-way abutting such

real property, and easements to existing septic leach fields which are needed for the operation of the Property located on other property of Seller (collectively, the "Property").

(b) Easement/Right of Way. The Property shall include an easement or right of way granted by Seller to Purchaser from Route 11 on Davidson Drive. The Property shall be subject to and burdened by an easement and right of access running in favor of the State of New Hampshire and the United States of America for purposes of conducting response activities with respect to environmental contamination present in the soil and groundwater of Seller's adjacent parcels. The easement shall be conditioned for reasonable access upon reasonable times and with reasonable notice to conduct such responses as may be deemed necessary or appropriate by the State of New Hampshire and/or the United States of America, provided, however, that such parties shall make reasonable efforts to avoid, minimize and mitigate disruptions to the Purchaser's business activities that may be caused by such response activities. In no case, however, shall the Purchaser be entitled to seek compensation for any such disruptions.

(c) Assignment(s) by Purchaser. The rights of Purchaser under this Agreement to Purchase as set forth in this Section 1.2 may be assigned by Purchaser to a special purpose entity controlled by it, which assignment shall be disclosed before the end of the Due Diligence Period.

1.3 Groundwater Remediation Leased Premises. Seller is currently operating a groundwater remediation plant in the building located on the Property in a space that is approximately four thousand (4,000) square feet. Purchaser agrees to allow Seller to conduct such operations under a lease agreement (the "Groundwater Remediation Leased Premises"), for a term of five (5) years with options to renew four (4) additional terms, the rental for which shall be \$1,000 per month, plus a pro rata share of taxes, utilities and common area maintenance. The rent for any additional terms provided hereunder shall be the original rent increased by no more than five percent (5%) per year during each of the renewal terms.

1.4 Deposit. Within five (5) business days after receipt of a fully executed copy of this Agreement, Purchaser shall send the Deposit to the Broker. The Deposit shall be applied to the Purchase Price at Closing. If this Agreement terminates pursuant to any express right of Purchaser to terminate this Agreement, the Deposit shall be refunded to Purchaser immediately upon request, and all further rights and obligations of the parties under this Agreement shall terminate, except those which by their terms survive any termination of this Agreement. The Deposit shall be held and disbursed by the Broker pursuant to Article 8 of this Agreement.

ARTICLE 2: INSPECTION AND LAND USE APPROVALS

2.1 Seller's Delivery of Specified Documents. The following information (the "Property Information") relating to the Property in the possession of Seller shall be made available to Purchaser and its consultants to copy within five (5) business days after this Agreement is executed by both parties: (i) the latest property tax bills and value renditions from all taxing authorities; (ii) any environmental reports; (iii) all existing plans, architectural plans and drawings, floor plans, specifications, permits, approvals (and any applications for permits or approvals), maps and surveys; (iv) any soils and engineering reports; (v) any contracts or agreements relating to the Property or services being provided or to be provided to the Property; and (vi) any material correspondence,

reports, plans or other documentation related to the condition of the Property and Improvements. Seller shall provide to Purchaser any material documents coming into Seller's possession or produced by Seller after the initial delivery above and shall continue to provide same until the Closing Date. Seller makes no warranties or representations concerning the Property Information of any kind, such information is provided as is where is subject to all flaws, inaccuracies, incompleteness, and data gaps.

2.2 Due Diligence. (a) Purchaser shall have through the last day of the Due Diligence Period in which to examine, inspect, and investigate the Property and, in Purchaser's sole and absolute judgment and discretion, to determine whether the Property is acceptable to Purchaser, including whether the Property can be used for Purchaser's intended uses. Notwithstanding anything to the contrary in this Agreement, Purchaser may terminate this Agreement by giving notice of termination (the "Due Diligence Termination Notice") to Seller on or before five (5) business days following the last day of the Due Diligence Period. If Purchaser does not give the Due Diligence Termination Notice, this Agreement shall continue in full force and effect and this condition shall be deemed to be waived.

(b) Purchaser and its agents, employees, and representatives shall have a continuing right of reasonable access to the Property until the Closing Date for the purpose of conducting surveys, engineering, geotechnical, and environmental inspections and tests, and any other inspections, studies, or tests reasonably required by Purchaser. Any due diligence performed on the building must be nondestructive, and all entry to the Property must be with prior permission, which shall be given by Seller at times reasonably acceptable to Seller. In the course of its investigations Purchaser may make inquiries to third parties including, without limitation, lenders, contractors, and government officials and representatives, and Seller consents to such inquiries. Purchaser shall keep the Property free and clear of any liens and will indemnify, defend, and hold Seller harmless from all claims and liabilities asserted against Seller as a result of any such entry by Purchaser, its agents, employees, or representatives. If any inspection or test disturbs the Property, Purchaser will restore the Property to the same condition as existed prior to any such inspection or test. Purchaser's obligations under this Section shall survive the Closing and any termination of this Agreement.

2.3 Land Use Approvals. Purchaser shall not be obligated to close this transaction unless Seller shall have obtained from all applicable private and governmental authorities final subdivision approval of the Property with parking as required by the zoning ordinances and subdivision regulations of the Town of Farmington, plus parking for twenty (20) semi-tractor trucks, (collectively, the "Land Use Approvals") required in connection with the subdivision of the parcel from the remaining land owned by Seller on Route 11, including all necessary approvals that may be required, if any, for the extension of Davidson Drive to the Property. Seller's efforts to obtain the Land Use Approvals shall be at its sole, cost and expense (including the Survey as described in Section 3.1 and the posting of any fiscal requirements). It shall be a condition to Purchaser's obligation to close that all appeal periods with respect to the Land Use Approvals shall have expired without any appeal having been filed or, if filed, such appeal shall have been resolved in favor of the approval of the subdivision, within sixty (60) days from the date such appeal was made (the "Outside Date").

2.4 Fire Suppression System. Prior to closing Seller shall obtain an estimate for refurbishment of the fire suppression system in the building located on the Property. Seller shall, within sixty (60) days hereof, take steps necessary to refurbish and place back in service the fire suppression system. At Purchaser's option, Purchaser may accept the fire suppression system as is without refurbishment. Seller shall make arrangement to have municipal water service available at the building which is a part of the Property within one (1) year after the Closing. Seller's obligation with respect to the water service shall not include the design or installation of any tanks, devices, systems or plumbing that may be required within the structure, and is instead, limited to bringing water service to the meter.

2.5 Financing. This Agreement is contingent upon Purchaser obtaining financing pursuant to a current program provided by the U. S. Small Business Administration. Purchaser shall make application for such financing within seven (7) days after the Date of this Agreement, failing which this contingency shall be deemed waived by Purchaser. Within 45 days after the Date of this Agreement, the Purchaser shall provide Seller with written evidence of the Purchaser's ability or inability to obtain such financing. If Purchaser is unable to obtain such financing, within 45 days of the Date of this Agreement, Purchaser may (i) waive this contingency and continue with the remaining terms of this Agreement or (ii) terminate this Agreement, and in such event, the Deposit shall be returned to Purchaser and neither party shall have any further rights or obligations under this Agreement.

ARTICLE 3: TITLE AND SURVEY REVIEW

3.1 Title Review and Cure. Purchaser agrees that it shall receive at closing a quitclaim deed with quitclaim covenants only. During the Due Diligence Period, Purchaser shall review title to the Property as disclosed by a commitment for title insurance (the "Title Commitment") issued by the Title Company (which shall include such reasonable and customary endorsements as may be necessary to secure financing) and a current ALTA/ACSM Urban survey of the Property ("Survey"), the Title Commitment to be obtained by Purchaser and the Survey to be obtained by the Seller. Seller will cooperate with Purchaser, without expense to Seller, in curing any objections Purchaser may have to title to the Property, but Seller shall have no obligation to cure title objections except (a) liens of an ascertainable amount created by, through or under Seller, which shall be released at the Closing, and (b) any exceptions or encumbrances to title which are created by, through or under Seller after the date of this Agreement without the written consent of Purchaser, which shall be removed by the Closing Date. The term "Permitted Exceptions" shall mean the specific exceptions (exceptions that are not part of the promulgated title insurance form) in the Title Commitment that the Title Company has not agreed to insure over or remove from the Title Commitment as of the expiration of the Due Diligence Period and that Seller is not required to remove as provided above and real estate taxes not yet due and payable. Seller agrees that all rights in and to any survey prepared for the Land Use Approvals may be used by Purchaser for a survey for Title Policy purposes, and at Closing the same shall be assigned by Seller to Purchaser.

3.2 Restrictive Covenants and Easements. Title to the Property shall be subject to certain restrictive covenants and easements in favor of the State of New Hampshire (the "State") and the United States Environmental Protection Agency (the "EPA"). Such restrictions may include restrictions on the use of groundwater and prohibitions on certain uses of the Property, such as for

residential purposes. Easements shall run in favor of the State and EPA for purposes of access to conduct environmental investigations and remediation installation, protection, management and operation of the groundwater monitoring wells including excavation to sample and remove water, soil and bedrock. Easements shall run in favor of Purchaser for purposes of using existing septic leach fields located on other property of Seller.

ARTICLE 4: REPRESENTATIONS AND WARRANTIES

4.1 Seller's Representations and Warranties. As a material inducement to Purchaser to execute this Agreement and consummate this transaction, Seller represents and warrants to Purchaser that:

(a) Authority. Seller has the full right and authority and has obtained any and all consents required therefor to enter into this Agreement, consummate or cause to be consummated the sale and make or cause to be made transfers and assignments contemplated herein.

(b) Contracts; Agreements. To Seller's knowledge, there are no contracts of any kind relating to the management, operation, maintenance or repair of the Property, which will not have been terminated by Seller prior to Closing.

(c) Leases. There are no leases for the Property, except the lease to be executed between Purchaser and Seller for Groundwater Remediation Leased Premises and a lease with Index Packaging for 10,000 square feet, ending on December 31, 2012, which may be terminated by either party thereto upon sixty (60) days notice to the lessee.

4.2 Purchaser's Representations and Warranties. As a material inducement to Seller to execute this Agreement and consummate this transaction, Purchaser represents and warrants to Seller that Purchaser has the full right and authority and has obtained any and all consents required therefor to enter into this Agreement and perform its obligations hereunder.

4.3 Representations and Warranties. The representations and warranties set forth in this Article 4 are made as of the date of this Agreement and are remade as of the Closing Date.

ARTICLE 5: ENVIRONMENTAL

5.1 Environmental. The representations and on-going obligations of this paragraph shall survive the Closing. While the Seller does not have any information establishing that the Property is affected by any existing contamination, such cannot be conclusively ruled out owing to the proximity of areas of known contamination and other factors. The property which is immediately adjacent to the Property is one of such areas of known contamination. Seller is attempting to obtain National Priorities List status for establishment of a remedy for certain of the existing environmental contamination that may exist in the soil, bedrock and groundwater on the property adjacent to the Property with the United States Environmental Protection Agency under the Superfund program. Purchaser agrees that the Seller may continue to pursue this status and agrees to cooperate with the Seller, the State of New Hampshire and the USEPA to carry out any and all investigations and remedial actions. As part of the consideration for this Agreement, Purchaser agrees that at the

Closing Date it will grant the State of New Hampshire and USEPA easements upon the Property to effectuate any investigation, remedial action or other response. The Property will also be subject to a groundwater management permit restricting and limiting use of groundwater on the Property. Purchaser shall be responsible for compliance with all terms and conditions specified in the Covenant Not to Sue issued by the State of New Hampshire pursuant to Section 5.4 below. Any entry onto or work performed on the building or the Property must be nondestructive, and all entry to the Property must be with prior permission, which shall be given by Purchaser at times reasonably acceptable to Purchaser, provided, however, that these restrictions shall not apply to the Groundwater Remediation Leased Premises. Seller shall keep the Property free and clear of any liens and shall require all contractors to have insurance. If any inspection or test disturbs the Property, Seller will restore the Property to the same condition as existed prior to any such inspection or test. Seller's obligations under this Section shall survive the Closing and any termination of this Agreement.

5.2 Environmental Assessment. During the Due Diligence Period, Purchaser may conduct a Phase I environmental site assessment by a consultant, satisfactory to Seller and at Seller's expense (such costs are subject to the prior approval of Seller). Purchaser shall make all reports, work papers and data available to Seller. Purchaser shall provide Seller with written acceptance of the environmental condition by the expiration of the Due Diligence Period or provide a Due Diligence Termination Notice to Seller in accordance with Section 2.2 hereof. If Purchaser fails to provide Seller with written notice of acceptance or a Due Diligence Termination Notice, then Seller may, in its sole discretion, terminate this Agreement and retain the Deposit, or treat the Condition as waived.

5.3 Existing Groundwater Treatment System. The existing groundwater treatment system shall be used, operated and controlled by the State and the EPA in accordance with the Groundwater Remediation Leased Premises. The State and the EPA shall conduct its use, operation and control of the groundwater treatment system in such a manner which will minimize as much as reasonably possible the interruption of business conducted on the Property.

5.4 Covenant Not to Sue. The State will execute a Covenant Not to Sue for the benefit of the Purchaser. The form of the Covenant Not to Sue shall be as set forth in Exhibit B hereto.

ARTICLE 6: CLOSING

6.1 Closing. The consummation of the transaction contemplated herein ("Closing") shall occur on the Closing Date at the offices of Devine, Millimet & Branch, Professional Association, 111 Amherst Street, Manchester, New Hampshire 03101 or by mail. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct Devine Millimet & Branch, Professional Association (the "Escrow Agent") to immediately record and deliver the closing documents to the appropriate parties and make disbursements according to the closing statements executed by Seller and Purchaser. The Escrow Agent shall agree in writing with Purchaser that (1) recordation of the Deed constitutes its representation that it is holding the closing documents, closing funds and closing statements and is prepared and irrevocably committed to disburse the closing funds in accordance with the closing statement and (2) release of funds to Seller shall irrevocably commit the Escrow Agent to issue the Title Policy in accordance with this Agreement.

6.2 Seller's Deliveries in Escrow. On or prior to the Closing Date, Seller shall deliver in escrow to Escrow Agent the following:

(a) Deed. A quitclaim deed in form provided for under New Hampshire law, executed and acknowledged by Seller, conveying to Purchaser good, indefeasible and marketable fee simple title to the Property, subject only to the Permitted Exceptions and the Restrictive Covenants set forth in Exhibit A (the "Deed").

(b) Assignment of Intangible Property. Such assignments and other documents and certificates as Purchaser may reasonably require in order to permit Purchaser to utilize the Property Information, licenses, land use approvals, all documents and contracts related thereto, and any other permits, rights under utility agreements and similar rights applicable to the Property. Seller makes no warranties or representations concerning the intangibles of any kind, such information is provided as is where is subject to all flaws, inaccuracies, incompleteness, and data gaps.

(c) State Law Disclosures. Such disclosures and reports, required by applicable state and local law in connection with the conveyance of real property.

(d) FIRPTA. A Foreign Investment in Real Property Tax Act affidavit executed by Seller. If Seller fails to provide the necessary affidavit and/or documentation of exemption on the Closing Date, Purchaser may proceed with withholding provisions as provided by law.

(e) Authority. Evidence of existence, organization, and authority of Seller and the authority of the person executing documents on behalf of Seller, reasonably satisfactory to Purchaser, Escrow Agent, and the Title Company.

(f) Additional Documents. Any additional documents listed on Exhibit C hereto or that Purchaser, Escrow Agent or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

6.3 Purchaser's Deliveries in Escrow. On or prior to the Closing Date, Purchaser shall deliver in escrow to Escrow Agent the following:

(a) Purchase Price. The Purchase Price, less the Deposit, plus or minus applicable prorations, deposited by Purchaser with Escrow Agent in immediate, same-day federal funds wired for credit into Escrow Agent's escrow account.

(b) State Law Disclosures. Such disclosures and reports required by applicable state and local law in connection with the conveyance of real property.

(c) Authority. Evidence of existence, organization, and authority of Purchaser and the authority of the person executing documents on behalf of Purchaser reasonably satisfactory to Seller, Escrow Agent, and the Title Company.

(d) Additional Documents. Any additional documents that Seller, Escrow Agent or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

6.4 Closing Statements. At Closing, Seller and Purchaser shall deposit with Escrow Agent executed closing statements consistent with this Agreement in form reasonably required by Escrow Agent, provided, however, that Seller reserves the right to approve the form and his failure to so approve shall not be a Seller Default.

6.5 Title Policy. Escrow Agent shall deliver to Purchaser the Title Policy pursuant to Section 3.2.

6.6 Possession. Seller shall deliver possession of the Property to Purchaser at the Closing in an "as is" condition with no warranties as to condition or suitability of any kind, subject only to the Permitted Exceptions.

ARTICLE 7: PRORATIONS

7.1 Taxes, Utilities, Fuel and Other Assessments. Real estate taxes, special assessments against the real estate, rents, water and sewage bills, and fuel in storage shall be prorated as of the Closing unless otherwise stated.

7.2 Transfer Taxes. Transfer taxes have been waived per bankruptcy confirmation order dated July 18, 2007, and Bankr Code sec. 1146(c).

7.3 Commissions. Seller and Purchaser represent and warrant each to the other that they have not dealt with any real estate broker, sales person or finder in connection with this transaction other than Broker. If this transaction is closed, Seller shall pay Broker in accordance with their separate agreement. Except as expressly set forth above, in the event of any claim for broker's commissions, finder's fees or similar compensation in connection with the negotiation, execution or consummation of this Agreement or the transactions contemplated hereby, each party shall indemnify and hold harmless the other party from and against any such claim based upon any statement, representation or agreement of such party.

ARTICLE 8: DEFAULT

8.1 Seller's Default. If this transaction fails to close as a result of Seller's default, the Deposit shall be returned to Purchaser. In addition, Purchaser shall be entitled to such remedies for breach of contract as may be available at law and in equity, including without limitation, the remedy of specific performance.

8.2 Purchaser's Default. If this transaction fails to close as a result of Purchaser's default, Seller shall be entitled to such remedies for breach of contract as may be available at law and in equity, including without limitation, the remedy of specific performance.

ARTICLE 9: DEPOSIT PROVISIONS

9.1 Investment and Use of Funds. The Broker shall hold the Deposit in a non-interest bearing account satisfactory to Purchaser, and shall not commingle the Deposit with any funds of the Broker or others.

9.2 Termination Pursuant to Section 2.2. Purchaser shall notify the Seller and the Broker of the date that the Due Diligence Period ends promptly after such date is established under this Agreement, and the Broker may rely upon such notice. If Purchaser elects to terminate the Purchase Agreement pursuant to Section 2.2, the Broker shall pay the entire Deposit to Purchaser three (3) business days following receipt of the Due Diligence Termination Notice from Purchaser and this Agreement shall thereupon terminate.

9.3 Other Terminations. Upon a termination of this Agreement other than as described in Section 9.2, either party to this Agreement (the "Terminating Party") may give written notice to the Broker and the other party (the "Non-Terminating Party") of such termination and the reason for such termination. Such request shall also constitute a request for the release of the Deposit to the Terminating Party. The Non-Terminating Party shall then have five (5) business days in which to object in writing to the release of the Deposit to the Terminating Party. If the Non-Terminating Party provides such an objection, then the Broker shall retain the Deposit until it receives written instructions executed by both Seller and Purchaser as to the disposition and disbursement of the Deposit, or until ordered by final court order, decree or judgment, which is not subject to appeal, to deliver the Deposit to a particular party, in which event the Deposit shall be delivered in accordance with such notice, instruction, order, decree or judgment.

9.4 Liability of the Broker. The Broker shall have no liability of any nature whatsoever with respect to the Deposit except for willful misconduct.

ARTICLE 10: MISCELLANEOUS

10.1 Parties Bound. Neither party may assign this Agreement without the prior written consent of the other, and any such prohibited assignment shall be void; provided that Purchaser may assign this Agreement without Seller's consent pursuant to part 1.2(c). Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties

10.2 Conditions to Closing. It shall be a condition to each party's obligation to close that the other party's representations and warranties herein contained are true in all material respects as of the Date of this Agreement and the Closing Date. For such purposes, if a representation is made to a party's knowledge, but the factual matter that is the subject of the representation is false notwithstanding any lack of knowledge or notice to the party making the representation, such event shall constitute a failure of this condition only, and which may be waived. In addition, it shall be a condition to Purchaser's obligation to close, that no action, suit or other proceeding shall be threatened or pending which would adversely affect the Property, or which seeks to restrain or prohibit, or to obtain damages or a discovery order with respect to, this Agreement or the consummation of the transactions contemplated hereby.

10.3 Headings; No Third Party Beneficiary; Entirety and Amendments; Time. The article and section headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof. This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary, decree, or otherwise. This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Property. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. Time is of the essence in the performance of this Agreement.

10.4 Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision.

10.5 Governing Law; Construction. This Agreement and said other instruments shall, in all respects, be governed, construed, applied, and enforced in accordance with the law of New Hampshire. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

10.6 Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Section 1.1. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered upon receipt, or (b) sent by personal delivery, in which case notice shall be deemed delivered upon receipt.

10.7 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 6:00 p.m. Manchester, New Hampshire time.

10.8 Risk of Loss; Insurance. The risk of loss of, and related to the Property will remain on Seller through the date of closing. Seller shall maintain present levels of insurance on the Property. In the event of damage to the Property, Purchaser may, at its sole option, either take title to the Property, in which event insurance proceeds relating to such damage will be paid to Purchaser; or Purchaser may rescind this Agreement, in which event the Deposit will be returned to Purchaser and neither party will have any further rights or duties hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

Edward Moran, Trustee of the New Hampshire
Custodial Trust under agreement dated _____,
Date: _____, 2012

A.C.M. SPECIALIZED MATERIALS, LLC

By: _____
Name: George Sacco
Title: Manager
Date: 7/27/2012, 2012

Potential Contaminant Source Areas

- I Former Solvent Storage Tanks
- II Blockhouse/Former Paint Spill Area
- III Former PCE Degreasing Pits
- IV Former Waste Oil Lst
- V Former No. 6 Fuel Oil USTs
- VI Former "Downstream" UST
- VII Northeast Sepsic System Leachfields (Active)
- VIII Northeast Sepsic System Leachfield (Inactive)
- IX Former Infiltration Basins
- X Former Waste Storage/Drum Holding Areas

Site Features and Exploration Location Plan

NH Department of Environmental Services
Farmington, New Hampshire

Drawn By: E. Wright
Designed By: T. White
Reviewed By: P. Rydell
Date: February 2009

1. This plan was modified from a Haley & Aldrich plan entitled "Bike Plan, Figure 2", dated October 2008.

2. The Hiley & Aldrich plan was modified from Figure 2 of GEI Consultants, Inc. (GEI) 1998 Annual Report. Dated March 2000, and from aerial photography. Existing monitoring well locations were surveyed by CLD Consulting Engineers, August 2003. Approximate locations and elevations of monitoring wells installed during 2006 were located by Hiley & Aldrich by taping from features above on the site plan and level survey using existing monitoring wells.
3. Locations of potential contaminant source areas I-A,B, II, IV, V, VI, and X were obtained from Figure 2, Entitled "Location of Potential Sources," included in GEI's Pre-Design Program Report (figure dated December 1992, report issued January 10, 1994), original scale: 1" = 200'.
4. Location of potential contaminant source area III-A,B was obtained from Figure 3, entitled "Site Sample Location Plan," included in GEI's Source Area Characterization Study (dated May 2000, original scale: 1" = 80'.
5. Locations of potential contaminant source areas VII and IX were obtained from a plan entitled "Approximate Location of Potential Sources," included in C.T. Meier's Remedial Investigation Report, dated September 1988. Original scale: 1" = 200'.
6. Location of potential contaminant source area VII was obtained from the above-mentioned Hiley & Aldrich October 2006 site plan.
7. The location of potential source area I-C was obtained from a site plan entitled "Es-o-Go Corporation" (July 9, 1987 revision).
8. The location of the former infiltration basins and the Warehouse was adjusted to be consistent with the site plan prepared by Yarron entitled "Phase 2 - Site History Pollution Investigation" (dated March 1988 and dated July 17, 1988).

Legend

- ◆ MW0232 Groundwater Monitoring Well Sampled January 2009
- ◆ SH-1R Bedrock Monitoring Well Installed 2008, Sampled January 2009
- ◆ MW0253 Monitoring Well
- ◆ F001 Groundwater Recovery/Containment Well
- ◆ F008 Flexometer
- ◆ Bedrock Supply Well Bedrock Supply Well Sampled January 2009
- ★ S-1 Former Infiltration Basin Soil Sample (Composite Locations Approximate)
- ★ SH-1 Stormwater Outlet Soil Sample (Composite Locations Indicated by a Single Symbol Locations Approximate)
- BAYVZ-3 Soil Boring/Vedose Zone Well (Vedose Zone Well Drilled by VZ-1446)

A' Cross Section Line (See Figure 4)



**STATE OF NEW HAMPSHIRE
COVENANT NOT TO SUE**

IN RE: Former Collins & Aikman Warehouse, Farmington, New Hampshire

WHEREAS, Metal Farm, LLC (“Metal Farm”) is a New Hampshire limited liability company which has its offices at 977 Amesbury Road Haverhill, MA 01830;

WHEREAS, Edward G. Moran, Trustee of the N.H. Custodial Trust is the owner of certain real property formerly owned by Collins & Aikman Automotive Interiors, LLC, and acquired by quitclaim deed made October 12, 2007, and recorded at the Strafford County Register of deeds, book 3585, page 0525 on October 24, 2007 (the “Farmington Plant Property”);

WHEREAS, Metal Farm is the purchaser of property of approximately __ +/- acres subdivided from the Farmington Plant Property and commonly referred to as the Collins & Aikman Warehouse Site (the “Warehouse Property”), pursuant to a Purchase and Sales Agreement, dated ____, 2012 (the “PSA”). The Warehouse Property, which is the subject of this covenant, is more fully described in the deed recorded at the Strafford County Registry of Deeds at book ____, page ____ on ____, 2012;

WHEREAS, the Farmington Plant Property was contaminated with volatile organic compounds (VOCs), and number 6 fuel oil (the “Existing Contamination”), prior to acquisition of the Warehouse Property by Metal Farm, as referenced in the Interim Report of Findings Soil-Gas and Groundwater Sampling, by Sanborn Head & Associates, dated May 2008 (the “2008 SHA Report”) or others as may be identified by Phase I Environmental Site Assessment;

WHEREAS, the extent and nature of Existing Contamination on, under or adjacent to the Warehouse Property, if any, is not known with certainty;

WHEREAS, Metal Farm has requested, as a condition to purchasing the Warehouse Property, binding assurances against liability to the State of New Hampshire for Existing Contamination on, under or adjacent to the Warehouse Property;

WHEREAS, Metal Farm shall comply with certain Activity and Use Restrictions and easements on the Warehouse Property;

WHEREAS, the State anticipates that acquisition by Metal Farm together with its capital investment and improvements at the Facility, and lawful operation of the facility including compliance with the Activity and Use Restrictions will result in substantial environmental and economic benefits for the Farmington region and for the State of New Hampshire;

NOW THEREFORE, based on the above-referenced recitals and the promises contained herein, which are an integral part of this agreement, and for other good and valuable consideration, the sufficiency of which is hereby expressly confirmed, the State and Metal Farm agree as follows:

A. The State covenants not to sue or to initiate any state law claim or action or to assert any liability against Metal Farm for any and all state law claims it may have relating to Existing Contamination.

B. This covenant is subject to the following conditions:

1. Metal Farm and each successor owner ("the Covenant Holder" or "Holder") shall not engage in any activity at the Warehouse Property that is inconsistent with or interferes with any responses and remedial action plans initiated by the State or the USEPA with respect to the Farmington Plant Property or the Warehouse Property, or with the use by Edward G. Moran, Trustee, or any successor trustee, of the Groundwater Remediation Leased Premises as defined in the PSA, or with any of the agreements made in Article 5 of the PSA.
2. The Covenant Holder shall provide the Department with all material documents and information relating to the performance of site investigation or remedial activities at the Warehouse Property.
3. The Covenant Holder shall comply with any Activity and Use Restrictions imposed on the Warehouse Property by the Department.
4. The Covenant Holder shall comply with all access and easements provided by Metal Farm (or its assignor) in the PSA, or granted by separate instrument thereafter.

C. If the Covenant Holder violates any condition set forth in Paragraph B, herein, he shall be given a reasonable opportunity to cure the noncompliance. The Covenant Holder shall be liable for the increased harm to human health and the environment caused by the noncompliance. If the covenant is voided, the Covenant Holder shall be liable under RSA 146-A, RSA 146- C, RSA 147-A and RSA 147-B, as applicable.

D. The Covenant shall be void and the Holder shall be subject to the liability provisions of RSA 146-A, RSA-146-C, RSA 147-A, and RSA 147-B, as applicable, if the applicant obtained this Covenant by fraud or material misrepresentation, by knowingly failing to disclose material information, or by providing a false certification to the Department.

E. Notwithstanding the foregoing, nothing herein shall:

1. Relieve the Holder from liability for any increased harm to human health and the environment caused by the Holder's noncompliance with the conditions of Paragraph B, notwithstanding cure.
2. Limit the liability that the Holder may hereafter incur due to its own activities as owner or operator of the Property or any provision thereof.
3. Release the Holder from liability for pre-existing, unknown contamination not disclosed in the 2008 SHA Report or others as may be identified by Phase I Environmental Site Assessment.
4. Release the Holder from liability for releases or discharges occurring at the Warehouse Property hereafter not attributable to contamination disclosed in the 2008 SHA Report.
5. Relieve the Holder from its obligation to address any condition on the Warehouse Property that poses an imminent threat to human health and the environment in accordance with a Department order.
6. Relieve the Holder of its obligation to record this covenant with all attachments at the Strafford County Registry of Deeds and to ensure that the Warehouse Property deed and each subsequent instrument of conveyance relating to the Warehouse Property references the covenant not to sue by Book and Page number and specifies that the Warehouse Property is subject to the use and activity restrictions, if any, contained in those documents.
7. Exempt the Holder from obtaining all permits and approvals required by law for further development of the Warehouse Property.

F. Neither the rule against perpetuities nor the rule restricting unreasonable restraints on alienation shall act to defeat, limit or modify any provision of this covenant.

G. The Department reserves the right to release or modify any Activity and Use Restrictions at the Warehouse Property by filing a release or modification of the restrictions in the chain of title for the Warehouse Property.

H. Nothing herein shall preclude the Department from taking action to abate an imminent hazard to human health or the environment relating to contamination on the Warehouse Property.

I. All covenants, agreements, representations, certifications and warranties made herein, in the PSA or any document submitted to the Department pursuant thereto or hereto, shall be deemed to have been relied upon by the Department, notwithstanding any investigation heretofore or hereafter made by it, shall survive the granting of this Covenant Not to Sue and shall continue in full force and effect for so long as this Covenant has effect. The person executing this Covenant for Metal Farm hereby personally certifies and affirms that each of the representations and warranties made herein, in the PSA or any document submitted to the Department pursuant thereto or hereto is true and correct,

and agrees to correct any material representations made by Metal Farm (or its assignor) to the Department in connection with the PSA, should facts and circumstances change in such a way as to render any such material representations misleading or false in light of such new facts and circumstances.

J. This Covenant shall for all purposes be construed in accordance with and be governed by the laws of New Hampshire. Each Holder agrees that any suit for the enforcement of this Covenant may be brought in the Superior Court for Merrimack County, New Hampshire, and consents to the jurisdiction of such court and service of process in any such suit being made upon the Holder by mail. Each Holder hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

K. No course of dealing or delay or omission on the part of the Department in exercising any right shall operate as a waiver thereof or otherwise be prejudicial thereto. No notice or demand upon the Holder shall entitle the Holder to other or further notice or demand in similar or other circumstances.

L. Metal Farm represents and warrants that it has the requisite corporate power to own its property and conduct its business as now conducted and as presently contemplated. Metal Farm further represents and warrants that the execution of this Covenant is within the authority of the person countersigning it and has been duly authorized by all the necessary proceedings.

M. The Covenant contained herein extends to successors in title, assigns or mortgagees of Metal Farm and shall be appurtenant to, bind and run with the Warehouse Property, subject to compliance by the successor owner with all conditions and obligations set forth herein. This Agreement is not assignable by Metal Farm to any party which acted as an owner, operator or in any similar capacity with respect to the Warehouse Property prior to Closing. Under no circumstances shall this agreement be interpreted to relieve any person of environmental liability under any state or federal statute, or any common-law doctrine, if that environmental liability is based on the person's actions or status prior to the Closing.

THE STATE OF NEW HAMPSHIRE

Michael A. Delaney, Esq.
ATTORNEY GENERAL

Dated: _____, 2012

By: _____
Peter C. L. Roth
Senior Assistant Attorney General
Environmental Protection Bureau New
Hampshire Department of Justice 33
Capitol Street
Concord, New Hampshire 03301
Tel. (603) 271-3679

Dated: _____, 2012

By: _____
George Sacco
Manager
Metal Farm, LLC

EXHIBIT C

Closing Documents

1. Quitclaim Deed
2. License Agreement
3. Bill of Sale for the personal property.
5. Assignment of Warranties and Guaranties related to the Property.
6. Persons in Possession and Mechanics Lien Affidavit with Indemnity for Purchaser and Title Insurance Company.
7. The Covenant Not to Sue executed by the State.
8. Such other documents as may be reasonably requested by Purchaser of the Title Insurance Company, in connection with the conveyance of the Property and continued effective operation thereof.
9. Paid real estate tax bill.