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INSTALLMENT SALE AGREEMENT

between

TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY

and

ONE MUSTANG DRIVE II, LLC

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DATED AS OF NOVEMBER 1, 2017

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\$5,185,000  
TAX-EXEMPT REVENUE BOND  
(ONE MUSTANG DRIVE II, LLC PROJECT), SERIES 2017

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## INSTALLMENT SALE AGREEMENT

THIS INSTALLMENT SALE AGREEMENT dated as of November 1, 2017 (this “Sale Agreement”) is between the TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having its office at 347 Old Niskayuna Road, Latham, New York 12110 (the “Issuer”), and ONE MUSTANG DRIVE II, LLC, a limited liability organized and existing under the laws of the State of Delaware, having an office at 1 Mustang Drive, Cohoes, New York 12047 (the “Company”).

### WITNESSETH:

WHEREAS, Title I of Article 18-A of the General Municipal Law of the State of New York (the “Enabling Act”) was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the “State”); and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its facilities and to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of and interest on any such bonds so issued and any agreements made in connection therewith, to mortgage and pledge any or all of its facilities, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof to secure the payment of such bonds and interest thereon; and

WHEREAS, the Issuer was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 594 of the Laws of 1980 of New York, as amended, constituting Section 911-d (collectively, with the Enabling Act, the “Act”) and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, the Company has presented an application (the “Application”) to the Issuer requesting that the Issuer consider undertaking a project (the “Project”) consisting of the refunding of the Issuer’s \$5,880,000 Multi-Modal Tax-Exempt Revenue Bond (One Mustang Drive II, LLC Project), Series 2010A (the “Series 2010A Bonds”); and

WHEREAS, the Series 2010A Bonds were issued to finance portion of a project (the “2010 Project”) consisting of the following: (A) the acquisition of two adjacent parcels of land totaling approximately 11 acres located at 1 Mustang Drive, in the Town of Colonie, Albany County, New York (the “Land”) and the existing 115,000 square foot facility located thereon (the “Existing Facility”), (B) the rehabilitation and renovation of the Existing Facility (the “Facility”) for use as a manufacturing facility and office space, and (C) the acquisition and installation therein and thereon of various machinery and equipment (the “Equipment”) (the Land, the Facility and the Equipment being collectively referred to as the “Project Facility”); and

WHEREAS, by resolution adopted on August 14, 2017 (the “Preliminary Inducement Resolution”), the members of the Issuer agreed, subject to numerous conditions, including satisfaction of the requirements of Section 859-a of the Act that relate to the Project, to accept the Application and enter into a preliminary agreement (the “Preliminary Agreement”) with the Company relating to the Project; and

WHEREAS, pursuant to the Preliminary Inducement Resolution, the Chairman of the Issuer (A) caused notice of public hearing of the Issuer (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project, to be mailed on October 3, 2017 to the chief executive officers of the county, the town and the school district in which the Project Facility is located, (B) caused notice of the Public Hearing to be published in the Times Union, a newspaper of general circulation available to the residents of the Town of Colonie, Albany County, New York, (C) conducted the Public Hearing on October 16, 2017 at 6:00 p.m., local time, in the second floor conference room at the Town of Colonie Public Operations Center, 347 Old Niskayuna Road in the Town of Colonie, Albany County, New York; and

WHEREAS, by resolution adopted on October 16, 2017 (the “Bond Resolution”), the members of the Issuer approved (A) the lease of the Project Facility by the Issuer from the Company; (B) the issuance of tax-exempt refunding revenue bonds of the Issuer (the “Bond” or the “Bonds”) in an aggregate principal amount sufficient to finance the refunding of the Series 2010A Bonds in an amount estimated to be approximately \$5,185,000; (C) the granting of the mortgage recording tax exemption (except as limited by Section 874 of the Act) with respect to the recording of any mortgage with the County Clerk of the County of Albany; and (D) the execution and delivery by the Issuer of various documents related to the issuance of the Bond (the “Bond Documents”), including an underlying lease from the Company to the Issuer (the Underlying Lease”) pursuant to which Underlying Lease the Company will lease the Project Facility to the Issuer, the Bond Purchase Agreement by and between the Issuer, the Company and Wells Fargo Bank, National Association dated as of November 1, 2017 (the “Bond Purchase Agreement”) and this Sale Agreement, pursuant to which Sale Agreement, (1) the Issuer will agree to sell its interest in the Project Facility to the Company; and (2) the Company will agree to make certain Installment Purchase Payments (as defined in the Bond Purchase Agreement) to or upon the order of the Issuer as the purchase price for the purchase of the Issuer’s interest in the Project Facility; and

WHEREAS, all things necessary to constitute this Sale Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done

and performed, and the creation, execution and delivery of this Sale Agreement have, in all respects, been duly authorized;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows (*provided that* in the performance of the agreements of the Issuer herein contained, any obligation it may incur for the payment of money shall not subject the Issuer to any pecuniary or other liability nor create a debt of the State of New York or of the Town of Colonie, and neither the State of New York nor Town of Colonie shall be liable on any obligation so incurred, but any such obligation shall be payable solely out of the Installment Purchase Payments, revenues and receipts derived from or in connection with the Project Facility, including moneys received under this Sale Agreement but excluding moneys due or to become due pursuant to the Reserved Rights, (as defined in the Bond Purchase Agreement):

## ARTICLE I

### DEFINITIONS; INTERPRETATION AND REPRESENTATIONS

Section 1.1 Definitions. All capitalized terms used in this Sale Agreement and not otherwise defined shall have the meanings assigned thereto in the Bond Purchase Agreement.

“*Bond Service Charge*” means the principal, Purchase Price, redemption premium, if any, and interest required to be paid by the Company on the Bond.

“*Financial Assistance*” means the mortgage recording tax exemption granted by the Agency to the Company in connection with the Project.

“*Governmental Authority*” means the United States of America, the State, any other state or any political subdivision of any of them, and any agency, department, commission, board, bureau or instrumentality of any of them.

“*Net Proceeds*” means so much of the gross proceeds with respect to which that term is used as remain after payment of all reasonable expenses, costs and taxes (including attorneys’ fees) incurred in obtaining such gross proceeds.

“*Real Estate Taxes*” means all general levy real estate taxes levied against the Project Facility by any municipality and the applicable school district, including water or sewer charges, special assessments, *ad valorem* charges or any similar charges.

“*Termination of Underlying Lease*” means the termination of underlying lease agreement by and between the Company, as tenant, and the Issuer, as landlord, intended to evidence the termination of the Underlying Lease Agreement, substantially in the form attached as Appendix B-1 to this Sale Agreement.

Section 1.2 Certain Rules of Interpretation. The definitions set forth in Section 1.1 of this Sale Agreement shall be equally applicable to both the singular and plural forms of the terms therein defined and shall cover all genders.

“*Herein*,” “*hereby*,” “*hereunder*,” “*hereof*,” “*hereinbefore*,” “*hereinafter*” and other equivalent words refer to this Sale Agreement and not solely to the particular Article, Section or subdivision hereof in which such word is used.

Any certificates, letters or opinions required to be given pursuant to this Sale Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Sale Agreement.

Section 1.3 Representations and Covenants of the Issuer. The Issuer makes the following representations and covenants:



(a) The Issuer is duly established under the provisions of the Act and has the power to enter into this Agreement, the Bond Purchase Agreement and the other Bond Documents to which it is a party and to carry out its obligations hereunder and thereunder. Based upon the representations of the Company as to the utilization of the Project Facility, the Project Facility will constitute a “project”, as such quoted term is defined in the Act. By proper official action the Issuer has been duly authorized to execute, deliver and perform this Agreement, the Bond Purchase Agreement, the Bond and the other Bond Documents to which it is a party.

(b) This Sale Agreement, the Bond and the other Bond Documents to which it is a party constitute the valid and binding obligation of the Issuer enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting or relating to the rights of creditors generally and general principles of equity.

(c) Neither the execution and delivery of this Agreement, the Bond and the other Bond Documents to which it is a party, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the provisions of the hereof or thereof will conflict with or result in a breach by the Issuer of any of the terms, conditions or provisions of the Act, the by-laws of the Issuer or any order, judgment, restriction, agreement or instrument to which the Issuer is a party or by which it is bound, or will constitute a default by the Issuer under any of the foregoing.

(d) The Issuer will sell its interest in the Project Facility to the Company pursuant to this Sale Agreement all for the purpose of advancing the job opportunities, health, general prosperity and economic welfare of the people of the State and improving their standard of living.

(e) To assist in refunding the Series 2010A Bonds, the Issuer will issue and sell the Bond.

(f) The Issuer, to the extent of its interest therein, shall not sell, assign, transfer, encumber or pledge as security the Issuer’s interest in the Project Facility or any part thereof except as contemplated or allowed by the terms of this Sale Agreement or the other Bond Documents to which the Issuer is a party.

Section 1.4 Representations and Covenants of the Company. The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company duly organized and existing under the laws of the State of Delaware, is duly authorized to do business in the State, has the power to enter into this Sale Agreement and the other Bond Documents to which it is a party and to carry out its obligations hereunder and thereunder and has duly authorized the execution, delivery and performance of this Sale Agreement and the other Bond Documents to which it is a party.

(b) The Bond Documents to which it is a party constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Company, enforceable in accordance with their respective terms subject to

bankruptcy, insolvency, reorganization, moratorium or similar laws affecting or relating to the rights of creditors generally and general principles of equity.

(c) Neither the execution and delivery by the Company of the Bond Documents to which it is a party, the consummation of the transactions contemplated hereby thereby nor the fulfillment of or compliance with the provisions thereof will (1) result in a breach of, or conflict with any term or provision in, the Company's articles of organization or operating agreement; (2) require consent under (which has not been heretofore received) or result in a breach of or default under any credit agreement, indenture, purchase agreement, mortgage, commitment, guaranty or other agreement or instrument to which the Company is a party or by which it or any of its real or personal property may be bound or affected (which default has not been waived); or (3) conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any Governmental Authority or court (domestic or foreign), having jurisdiction over the Company or any of the Property of the Company.

(d) The providing of the Project Facility by the Issuer, the sale thereof by the Issuer to the Company and the Issuer's assistance in refinancing a portion of the acquisition, construction and equipping of the Project Facility by the issuance of the Bond has been an inducement to the Company to continue to operate the Project Facility in the Town of Colonie.

(e) So long as the Bond shall be Outstanding or the Issuer holds a leasehold interest in the Project Facility, the Project Facility is and will continue to be a "project", as such quoted term is defined in the Act, and the Company will not take any action (or omit to take any action required by the Bond Documents to which it is a party or which the Issuer and Bond Counsel, advise the Company in writing should be taken), or allow any action to be taken, which action (or omission) would in any way (1) cause the Project Facility not to constitute a "project", as such quoted term is defined in the Act, or (2) cause the proceeds of the Bond to be applied in a manner contrary to that provided in the Bond Documents.

(f) The Company shall cause all notices as required by law to be given, and shall comply or cause compliance with all laws, ordinances, municipal rules and regulations and requirements of all Governmental Authorities applying to or affecting the conduct of work on the Project Facility (the applicability of such laws, ordinances, rules and regulations to be determined both as if the Issuer were the owner of the Project Facility and as if the Company were the owner of the Project Facility), and the Company will defend and save the Issuer and its officers, members, agents and employees harmless from all fines and penalties due to failure to comply therewith.

(g) The Company covenants to comply with the Environmental Compliance and Indemnification Agreement.

(h) The Project Facility and the operation thereof will comply in all material respects with all applicable building, zoning, environmental, including, without limitation, those relating to tax and hazardous substances, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility (the

applicability of such being determined both as if the Issuer were the owner of the Project Facility and as if the Company and not the Issuer were the owner of the Project Facility).

(i) All proceeds of the Bond shall be used to refund the Series 2010A Bonds.

(j) The Company, as agent for the Issuer, shall comply with any provisions of the Labor Law of the State applicable to the operation of the Project Facility. Except as provided in the preceding sentence, the provisions of this subsection do not create any obligations or duties not created by applicable law outside of the terms of this Sale Agreement.

(k) The Company shall deliver to the Issuer and the Bank Purchaser a written notice, within ten (10) days of its occurrence, or as soon thereafter as the Company becomes aware or should have become aware, of any Event of Default, the commencement of any material litigation or any failure to observe any covenant in the Bond Documents to which it is a party.

(l) The Company will not lease the whole or any portion of the Project Facility for an unlawful purpose.

(m) No part of the Project Facility will be located outside of the Town of Colonie, New York.

(n) The Company shall perform or cause to be performed, for and on behalf of the Issuer, each and every obligation of the Issuer which is within the control of the Company under and pursuant to the Bond Documents to which it is a party and shall defend, indemnify and hold harmless the Issuer and its members, officers, agents, servants and employees from and against every expense, liability or claim arising out of the failure of the Company to fulfill its obligations under the provisions of this subsection.

(o) No portion of the Project Facility is being used, or, to the best of the Company's knowledge, has been used at any time, for the disposal, storage, treatment, processing or other handling of any hazardous substances, except as permitted by, and in compliance with, the terms of the Environmental Compliance and Indemnification Agreement.

(p) The Company has not taken, and does not intend to take any action, and knows of no action that any other Person has taken or intends to take, which would cause interest on the Bond to be includable in the gross income of the recipients thereof for federal income tax purposes. Without limiting the generality of the foregoing, the Company shall not:

(i) make any use of the Project Facility that would cause the Bond to be deemed "federally guaranteed" within the meaning of Section 149(b) of the Code; and

(ii) take any action that would cause the Bond to become an "arbitrage bond" within the meaning of Section 103(b)(2) of the Code.

(q) The Company shall not occupy, use or operate the Project Facility or allow the Project Facility or any part thereof to be occupied, used or operated for any unlawful purpose or in violation of any certificate of occupancy affecting the Project Facility or which may constitute

a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto.

(s) The Company is in compliance with all of the terms, provisions and conditions of each financial covenant and any other material provision of the Continuing Covenant Agreement and the Related Documents (as defined in the Continuing Covenant Agreement) and any Contract (as defined in the Continuing Covenant Agreement) entered into in connection with any Debt (as defined in the Continuing Covenant Agreement).

Section 1.5 Covenant with Bank Purchaser . The Issuer and the Company agree that this Sale Agreement is executed in part to induce the purchase by the Bank Purchaser of the Bond. Accordingly, all covenants and agreements on the part of the Issuer and the Company set forth in this Sale Agreement are hereby declared to be for the benefit of the Bank Purchaser and the Owners from time to time of the Bond. The Company covenants and agrees that it will comply with the provisions of the Bond Purchase Agreement with respect to the Company and that the Bank Purchaser shall have the power, authority, rights and protections provided in the Bond Documents. The Company further covenants to use its best efforts to cause there to be obtained for the Issuer any documents or opinions required of the Issuer under the Bond Purchase Agreement.

ARTICLE II  
THE PROJECT

Section 2.1 Conveyance to Issuer.

(a) The Issuer has acquired a leasehold interest in the Land and the Facility pursuant to the Underlying Lease and has acquired title to the Equipment pursuant to the Bill of Sale to Issuer. The Company represents and warrants that the Company has good and marketable title to the Project Facility, free and clear of all Liens except for Permitted Encumbrances, and agrees that it will defend, indemnify and hold the Issuer and the Bank Purchaser harmless from any expense or liability due to any defect in title thereto.

(b) Subsequent to the Issue Date, (A) unless an Event of Default has occurred and is continuing, the Company shall continue to have sole and exclusive (as between the Company and the Issuer) possession and use of the Project Facility and (B) the Company shall be entitled to use and to allow other Persons to use, the Project Facility for use as a manufacturing facility and activities and uses ancillary and related thereto and for general office use and activities and uses ancillary and related thereto, provided such ancillary and related uses do not cause the Project Facility to fail to qualify or continue to qualify as a "project" under the Act.

(c) The Company shall maintain all necessary approvals from any and all Governmental Authorities requisite to the operation of the Project Facility, and shall operate the Project Facility in compliance with all federal, State and local laws, ordinances and regulations applicable thereto.

Section 2.2 Agreement to Issue the Bond; Application of Proceeds . In order to provide funds for the refunding of the Series 2010A Bonds, the Issuer agrees that it will issue, sell and cause to be delivered to the Bank Purchaser, the Bond bearing interest and maturing as set forth in the Bond Purchase Agreement and in the form of the Bond set forth therein. The proceeds of sale of the Bond shall be paid by the Bank Purchaser directly to the Series 2010A Trustee for deposit in the Bond Fund for the Series 2010A Bonds and applied to the refunding of the Series 2010A Bonds in accordance with the provisions of the Bond Purchase Agreement. The Issuer makes no representation express or implied, that the net proceeds of the Bond will be sufficient to refund the Series 2010A Bonds.

Section 2.3 Company Required to Pay Costs of the Refunding if Bond Proceeds Insufficient. If the proceeds of the Bond should not be sufficient to refund the Series 2010A Bonds in full, the Company agrees to pay any amount necessary to cause the redemption of the Series 2010A Bonds in full. The Issuer does not make any warranty, either express or implied, that the proceeds of the Bond and which, under the provisions hereof, will be available for refunding the Series 2010A Bonds, will be sufficient to pay all the costs which will be incurred in that regard. The Company agrees that if after exhaustion of the proceeds of the Bond, the Company should pay any portion of the amount necessary to refund the Series 2010A Bond pursuant to the provisions of this Section, it shall not be entitled to any reimbursement therefor from the Issuer

or the Bank Purchaser, nor shall it be entitled to any diminution in or postponement or abatement of the payments required to be made by the Company under this Sale Agreement.

## ARTICLE III

### AGREEMENT TO CONVEY FACILITY; INSTALLMENT PURCHASE PAYMENTS

#### Section 3.1 Agreement to Convey Facility.

(a) In consideration of the Company's covenant herein to make Installment Purchase Payments, and in consideration of the other covenants of the Company contained herein, including the covenant to make additional and other payments required hereby, the Issuer hereby agrees to sell and convey to the Company, and the Company hereby agrees to purchase and acquire from the Issuer, the Issuer's interest in the Project Facility, as more particularly described in Appendix A, subject only to Permitted Encumbrances. The obligation of the Issuer under this Section to convey its interest in the Project Facility to the Company shall be subject to there being no Event of Default existing hereunder, or any other event which would, but for the passage of time, be an Event of Default.

(b) The Company and the Issuer acknowledge that the Project Facility thereon and the interest therein conveyed to the Issuer from the Company and conveyed by the Issuer back to the Company are not "property" as defined in Title 5-A of Article IX of the Public Authorities Law of the State because such property and the interests therein are security for the Company's obligations to the Issuer under this Sale Agreement and the other Bond Documents, including, without limitation, (i) the Company's obligation to operate the Project Facility subject to the requirements set forth in the Bond Purchase Agreement on behalf of the Issuer and (ii) the compliance by the Company with its obligations with respect to the Reserved Rights.

#### Section 3.2 Conveyance; Instruments.

(a) Unless otherwise agreed to by the Issuer, the Issuer's interest in the Land and the Facility shall be conveyed by the Issuer to the Company on September 1, 2030 or the earlier termination of this Sale Agreement and shall be effected by the delivery by the Issuer to the Company of the Termination of Underlying Lease (in substantially the form attached hereto as Appendix B-1 and by this reference made a part hereof).

(b) The sale and conveyance of the Issuer's right, title and interest in and to the Equipment shall be effected by the delivery by the Issuer to the Company of the Bill of Sale to Company (in substantially the form attached hereto as Appendix B-2 and by this reference made a part hereof) in accordance with the provisions of this Sale Agreement.

(c) The Company agrees to prepare the Termination of Underlying Lease, the Bill of Sale to Company and all schedules thereto, together with all gains tax affidavits, equalization and assessment forms and other necessary forms and documentation and to forward same to the Issuer at least thirty (30) days prior to the date the Issuer's interest in the Project Facility or any part thereof is to be conveyed to the Company.

(d) The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from the transfer contemplated by this Section.

(e) Notwithstanding the foregoing, the Issuer's interest in the Project Facility shall not be transferred to the Company pursuant to this Section 3.2 and this Sale Agreement shall remain in full force and effect until (i) payment of all principal of and premium, if any, and interest on, the Bond; (ii) payment of all other payments and monetary obligations due from the Issuer or the Company to the Bank Purchaser pursuant to this Sale Agreement, the Bond Purchase Agreement or the other Bond Documents; and (iii) payment of all payments and other monetary obligations of the Company to the Issuer pursuant to this Sale Agreement or the other Bond Documents, and thereafter the obligations of the Company shall survive as set forth in Section 6.2 and Section 9.18 hereof.

### Section 3.3 Installment Purchase Payments and Other Amounts Payable.

(a) The Company shall pay basic Installment Purchase Payments to the Bank Purchaser, as assignee and pledgee of and for the account of the Issuer, sufficient in amount to pay when due the Bond Service Charges payable on the Bond, including, without limitation, the Purchase Price for the Bond on the Mandatory Purchase Date. The obligations of the Company to make any payment referred to in this Section 3.3 thereby providing for the payment of the Bond Service Charges as provided in the Bond Purchase Agreement, shall be deemed satisfied and discharged to the extent of the payments made directly by the Company to the Bank Purchaser. It is understood, however, that such payments shall not relieve the Company of any of its other payment obligations that may be due and payable under the Bond Documents to which it is a party.

(b) In addition to the basic Installment Purchase Payments pursuant to paragraph (a) of this Section 3.3, the Company shall pay to the Issuer or the Bank Purchaser, as additional Installment Purchase Payments, based upon a reasonable detailing thereof by the Issuer or the Bank Purchaser, as applicable, within ten (10) days of the receipt of demand therefor, an amount equal to the sum of the reasonable expenses of the Issuer and the Bank Purchaser and the agents thereof incurred (i) by reason of the interest of the Issuer or Bank Purchaser in, or financing or sale of, the Project Facility, or (ii) in connection with the carrying out of the duties and obligations of the Issuer or Bank Purchaser under the Bond Documents, the payment of which is not otherwise provided for under this Sale Agreement. The foregoing shall not be deemed to include any annual or continuing administrative or management fee beyond any initial administrative fee or fee for services rendered by the Issuer.

### Section 3.4 Installment Purchase Payments in the Event of the Redemption of the Bond.

(a) **Optional Redemption.** Subject to any limitations set forth in the Continuing Covenant Agreement, at any time and from time to time, the Company may deliver moneys to the Bank Purchaser in addition to Installment Purchase Payments required to be made pursuant to the terms of the Bond Purchase Agreement and the Continuing Covenant Agreement. Such moneys shall be applied as provided in the Continuing Covenant Agreement. Pending application as provided in the Continuing Covenant Agreement, any moneys so delivered shall not operate to abate or postpone Installment Purchase Payments otherwise becoming due or to alter or suspend any other obligations of the Company under this Sale Agreement.



(b) Extraordinary Optional Redemption. Within one hundred eighty (180) days of the occurrence of an event described in Section 4.02 of the Bond Purchase Agreement, the Company shall pay to the Bond Purchaser an amount equal to the Outstanding Principal Amount plus accrued interest to the date of redemption.

Section 3.5 Obligations of Company Hereunder Absolute and Unconditional. The obligations of the Company to make the payments required to be made hereunder and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional and shall not be subject to diminution by set-off, counterclaim, abatement or otherwise. Until such time as the principal of, and the interest on, the Bond and all other amounts payable hereunder or under the other Bond Documents shall have been paid in full, the Company (a) will not suspend or discontinue any payments required to be made under this Sale Agreement except to the extent the same have been prepaid, (b) will perform and observe all of its other agreements contained herein, and (c) will not terminate this Sale Agreement for any cause, including, without limiting the generality of the foregoing, failure of the Company's or the Issuer's title in and to the Project Facility or any part thereof, any acts or circumstances that may constitute failure of consideration, sale, loss, eviction or constructive eviction, destruction of or damage to the Project Facility or commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either or any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection herewith or with the Bond Documents to which it is a party. Nothing contained in this Section shall be construed to release the Issuer from the performance of any of the agreements on its part herein contained or contained in the Bond Purchase Agreement; and if the Issuer should fail to perform any such agreement, the Company may institute such action against the Issuer as the Company may deem necessary to compel performance so long as such action shall not do violence to the agreements on the part of the Company contained in the preceding sentence. The Company may, at its own cost and expense and in its own name or in the name of the Issuer, prosecute any action or proceeding or take any other action involving third persons which the Company deems reasonably necessary in order to secure or protect its right of possession, occupancy and use of the Project Facility, and in such event the Issuer hereby agrees at the cost and expense of the Company, to cooperate fully with the Company, to the extent it may legally do so, in any such action or proceeding if the Company shall so request. The Company shall at its own cost and expense defend the Issuer and the Bank Purchaser in any action or proceeding in which such Person is named as a defendant relating to the Project Facility, this Sale Agreement or the transactions contemplated hereby or by the other Bond Documents.

Section 3.6. Assignment of Agreement and Revenues. To secure the payment of Bond Service Charges on, and the purchase of, the Bond, and the performance by the Company under the Bond Documents, the Issuer shall assign to the Bank Purchaser all of its rights, title and interest in this Sale Agreement (except for the Reserved Rights), and shall grant to the Bank Purchaser, by the Bond Purchase Agreement, a security interest in its rights under and interest in the Revenues. The Company hereby agrees and consents to that assignment and grant.

Section 3.7 Financing Statements. The Company hereby authorizes the Issuer and the Bank Purchaser, or any of them, to prepare and file in the appropriate public office any UCC-1

Financing Statements or UCC-3 Amendments or Assignments necessary in order to protect the Issuer's and the Bank Purchaser's security interests in payments made pursuant to this Sale Agreement and any assignment thereof and in any property demised under this Sale Agreement.

**Section 3.8 Administrative Fees and Expenses.** The Company shall pay or cause to be paid the reasonable fees, costs and expenses of the Issuer and the Bank Purchaser (including legal, accounting and other administrative expenses), as and when the same become due, together with (i) any reasonable fees and disbursements incurred by the Issuer's bond counsel and general counsel and Bank Purchaser's counsel in connection with the Project or any Bond Document, including fees and expenses incurred after the occurrence and during the continuance of an Event of Default, (ii) any waiver, consent, modification or amendment to this Sale Agreement or any other Bond Document that may be requested or agreed to by the Company, or (iii) any action by the Issuer or the Bank Purchaser at the request of or on behalf of the Company hereunder or under any other Bond Document.

If the Company should fail to make any of the payments required in this Section when due, the item or installment which the Company has failed to pay shall continue as an obligation of the Company until the same shall have been fully paid, and the Company agrees to pay the same with interest thereon (to the extent permitted by law) for the period from the date such payment was due until the same is paid in full at a rate per annum equal to the Default Rate.

**Section 3.9 Earlier Conveyance of Project Facility.** Notwithstanding anything herein to the contrary, in the event (1) the Company fails to maintain the insurance described in Section 4.5 hereof, or (2) the Company fails to make any payment required of it under Section 4.4 hereof, or (3) upon the occurrence of any other Event of Default involving the Reserved Rights, the Issuer may, without notice to the Company but with five (5) days' notice to the Bank Purchaser, cause the Issuer's interest in the Project Facility to be conveyed to the Company in accordance with paragraph (b) of Section 3.2 hereof.

**Section 3.10 Early Termination of this Sale Agreement.** In the event of termination of this Sale Agreement pursuant to Section 3.9 hereof, the Company shall make the following payments:

(a) to the Bank Purchaser: an amount sufficient to pay the full principal of, premium, if any, and interest due and other amounts due on the Bond and under the Bond Documents.

(b) to the Issuer: an amount certified by the Issuer sufficient to pay all unpaid fees and expenses of the Issuer incurred under this Sale Agreement and the other Bond Documents.

(c) to the appropriate Person: an amount sufficient to pay all other reasonable fees and expenses due and payable under this Sale Agreement and the other Bond Documents and not otherwise paid.

ARTICLE IV  
MAINTENANCE, MODIFICATION, TAXES AND  
INSURANCE

Section 4.1 Maintenance and Modification of Facility by Company.

(a) During the term of this Sale Agreement, the Company will keep the Project Facility in good and safe operating order and condition, ordinary wear and tear excepted, will occupy, use and operate the Project Facility in the manner for which it was designed and as intended and contemplated by this Sale Agreement and will make all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) reasonably necessary to ensure that the security for the Bond shall not be materially impaired. All replacements, renewals and repairs shall be equal in quality, class and value to the original work and be made and installed in compliance with the requirements of all Governmental Authorities. The Issuer shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Project Facility, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Project Facility or to furnish any utilities or services for the Project Facility and the Company hereby agrees to assume full responsibility therefor.

(b) The Company shall have the privilege of making such alterations of the Project Facility or any part thereof from time to time as it in its discretion may determine to be desirable for its uses and purposes, *provided that* (i) such alterations are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable legal requirements; (ii) such alterations are promptly and fully paid for by the Company in accordance with the terms of the applicable contract(s) therefor, and in order that the Project Facility shall at all times be free of any mortgage, lien, charge, encumbrance, security interest or claim other than Permitted Encumbrances; and (iii) such alterations do not change the nature of the Project Facility so that it would not constitute a qualified “project” as defined in and as contemplated by the Act. All such alterations of the Project Facility shall constitute a part of the Project Facility, subject to this Sale Agreement and the Bond Purchase Agreement, and the Company shall deliver or cause to be delivered to the Issuer and the Bank Purchaser appropriate documents as may be necessary to subject such property to this Sale Agreement, free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances. Other than as provided above, any further capital improvements (including additions to and expansions of the Project Facility) shall be undertaken such that the Project Facility continues to be a “project” within the meaning of the Act. Should the Issuer consent to any capital improvements and provide “financial assistance” within the meaning of the Act with respect thereto, such consent may be conditioned upon, among other things, an increase in the Issuer’s administrative fee.

(c) The Company shall have the right to install or permit to be installed at the Project Facility additional machinery, equipment and other personal property not acquired with proceeds of the Bond (the “*Company’s Property*”) without subjecting such property to this Sale Agreement. The Issuer shall have no interest in the Company’s property and not be responsible for any loss of or damage to the Company’s Property. Subject to the provisions of the Bond

Purchase Agreement, the Continuing Covenant Agreement and the Mortgage, the Company shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Company's Property and to remove the Company's Property (or any portion thereof) from the Project Facility.

(d) The Company shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Project Facility or any part thereof, or the interest of the Company in the Project Facility or this Sale Agreement except for Permitted Encumbrances and as expressly permitted by the Continuing Covenant Agreement.

#### Section 4.2 Removal of Property of the Project Facility.

(a) Subject to the provisions of the Bond Purchase Agreement, the Continuing Covenant Agreement and the Mortgage, the Company shall have the privilege from time to time of removing from the Project Facility any portion of the Equipment or any fixture constituting part of the Project Facility provided that if such Equipment or fixture were financed with the proceeds of the Bond (the "*Existing Bond Financed Property*"):

(i) such Existing Bond Financed Property is substituted or replaced by property (A) having equal or greater operating efficiency and utility, and (B) being free of all mortgages, liens, charges, encumbrances, claims and security interests other than Permitted Encumbrances; or

(ii) if such Existing Bond Financed Property is not to be substituted or replaced by other property but is instead to be sold, scrapped, traded-in or otherwise disposed of in an arms'-length bona fide transaction for consideration in excess of \$250,000, the Company shall pay to the Bank Purchaser as a payment of principal on the Bond the amounts derived from such sale or scrapping, the trade-in value credit received or the proceeds received from such other disposition, *provided, however*, no such removal as set forth in this paragraph (a) shall be effected if (w) such removal would change the nature of the Project Facility so it would not constitute a qualified "project" as defined in and as contemplated by the Act, (x) such removal would impair the usefulness, structural integrity or operating efficiency of the Project Facility, (y) such removal would reduce the fair market value of the Project Facility below its value immediately before such removal, or (z) if there shall exist and be continuing an Event of Default hereunder. Any amounts received pursuant to this paragraph (a) which are not in excess of \$250,000 shall be retained by the Company.

(b) The Company shall deliver or cause to be delivered to the Issuer and the Bank Purchaser appropriate documents subjecting such substitute or replacement property to this Sale Agreement, and upon written request of the Company and at the Company's expense, the Issuer shall deliver to the Company appropriate documents conveying to the Company all of the Issuer's right, title and interest, if any, to any property removed from the Project Facility pursuant to paragraph (a) of this Section 4.2. The Company agrees to pay all costs and expenses (including reasonable attorneys' fees and disbursements) incurred in subjecting to this Sale

Agreement any substitute or replacement property installed or placed on the land or improvements comprising the Project Facility pursuant to this Section 4.2.

(c) The Company shall not, without the prior written consent of the Issuer and the Bank Purchaser and except as permitted above, part with possession or control of or suffer to allow to pass out of its possession or control any item of the Equipment or change the location of the Equipment or any part thereof from the Land.

(d) The removal from the Project Facility of any Existing Bond Financed Property pursuant to the provisions of paragraph (a) hereof shall not entitle the Company to any abatement or reduction in the Installment Purchase Payments and other amounts payable by the Company under this Sale Agreement or the other Bond Documents to which it is a party.

**Section 4.3 Operation of the Project Facility.** Except, as appropriate and for such period as may be necessary, in the case of a Loss Event as provided in Section 5.1 hereof, the Company shall operate the Project Facility and permit the Project Facility to be operated, at all times during the term of this Sale Agreement, solely for the purposes described in paragraph (b) of Section 2.1 hereof and in accordance with the provisions of the Act. For the purpose of this Sale Agreement, the Company shall be deemed to have ceased to operate the Project Facility for the purposes described herein if it (a) materially alters the use of the Project Facility, in the Issuer's or the Bank Purchaser's reasonable judgment, except as permitted hereunder, (b) closes the Project Facility other than for routine maintenance, observance of national holidays or regularly-scheduled seasonal closings, or (c) reduces the operations of the Project Facility to such an extent that, in the Issuer's or the Bank Purchaser's reasonable judgment, the public purpose to be derived from the Project has been substantially impaired. Any of the foregoing notwithstanding, the Company may use the Project Facility for some purpose other than that described herein with the prior written consents of the Issuer and the Bank Purchaser, but subject to the provisions of the Tax Compliance Agreement, which Issuer's consent may not be unreasonably withheld or delayed, and *provided further* that such proposed use constitutes a qualified "project" as defined under the Act.

**Section 4.4 Taxes, Assessments and Charges.** (a) The Company shall, prior to the date on which any interest or penalties shall commence to accrue thereon, cause to be paid and discharged all Real Estate Taxes that may be lawfully assessed against the Project Facility, if any; provided, however, that with respect to Real Estate Taxes which may lawfully be paid in installments over a period of years, the Company shall be obligated hereunder to pay only such installments as are required to be paid during the term of this Sale Agreement as such installments become due. The Company shall not suffer, and shall promptly cause to be paid and discharged, any Lien or charge whatsoever which by any present or future law may be or become superior, or on a parity with or junior to, either in Lien or in distribution out of the proceeds of any judicial sale to the Lien created by the Bond Documents. The Company will cause to be paid, when due, all charges for utilities whether public or private.

(b) None of the foregoing shall prevent the Company from contesting in good faith the validity, existence or applicability of any Real Estate Taxes or other charges if (i) such contest shall not result in the Project Facility or any part thereof or interest therein being in any

danger of being sold, forfeited or lost; (ii) such contest shall not result in the Company, the Issuer or the Bank Purchaser being in any danger of any civil or any criminal liability other than normal accrual of interest, late charges and similar charges, for failure to comply therewith; and (iii) the Company shall have furnished such security, if any, as may be reasonably requested by the Issuer or the Bank Purchaser to protect the security intended to be offered by the Bond Documents.

(c) In the event the Project Facility is exempt from any Real Estate Taxes solely due to the Issuer's interest in the Project Facility, the Company shall make payments in lieu thereof to the appropriate taxing authorities equivalent to the Real Estate Taxes which would have been imposed on the Project Facility if the Issuer had no interest in the Project Facility, with such payments to be made at the times that such Real Estate Taxes would otherwise be due and payable. Such payments shall be subject to late charges, default interest and other provisions and restrictions set forth in Section 874 of the Act.

(d) It is recognized that under the provisions of the Act, the Issuer is required to pay no taxes or assessments upon any of the Property acquired by it or under its jurisdiction, control or supervision or upon its activities. However, the parties recognize that the Issuer has **NOT** and will **NOT** file Form RP 412-a with the assessor of the Town of Colonie. The Issuer and the Company hereby agree that the Company, or any subsequent user of the Project Facility under this Sale Agreement, shall be required to make or cause to be made all payments of taxes and assessments levied by the school district or school districts, city, town, county, village and other political units wherein the Project Facility is located having taxing powers.

#### Section 4.5 Insurance.

(a) At all times throughout the term of this Sale Agreement, the Company shall maintain insurance, with insurance companies licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Company, including, without limitation:

(i) (A) property damage insurance and (B) during any period of construction, renovation or improvement of the Project Facility, Builders' All Risk Insurance written on "100% builders' risk completed value, non-reporting form," including coverage therein for "completion and/or premises occupancy," and coverage for property damage insurance, all of which insurance shall include coverage for removal of debris, insuring the buildings, structures, facilities, fixtures and other property constituting a part of the Project Facility against loss or damage to the Project Facility by fire, lightning, vandalism, malicious mischief and other casualties, with standard extended coverage endorsement covering perils of windstorm, hail, explosion, aircraft, vehicles and smoke (except as limited in the standard form of extended coverage endorsement at the time in use in the State) at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the Company, the Issuer and the Bank Purchaser from becoming a co-insurer of any loss under the insurance policies, but in any event in amounts equal to not less than eighty percent (80%) of the actual replacement value of the Project Facility,

as determined by a qualified insurance appraiser or insurer reasonably acceptable to the Issuer and the Bank Purchaser and paid for by the Company, such actual replacement value to be determined not more often than once every three (3) years;

(ii) public liability insurance in accordance with customary insurance practices for similar operations with respect to the Project Facility and the business thereby conducted in a minimum amount of \$5,000,000 per occurrence, which insurance (A) will also provide coverage of the Company's obligations of indemnity under Section 6.2 hereof; (B) may be effected under overall blanket or excess coverage policies of the Company or any Affiliate thereof, *provided, however*, that at least \$1,000,000 is effected by a comprehensive liability insurance policy; and (C) shall not contain any provisions for a deductible amount in excess of \$10,000 or for risk retention in any amount in excess of \$10,000 by the Company;

(iii) workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Company or the Issuer is required by law to provide covering loss resulting from injury, sickness, disability or death of the employees of the Company or any Affiliate thereof, or any contractor or subcontractor performing work with respect to the Project Facility; the Company shall require that all said contractors and subcontractors maintain all forms or types of insurance with respect to their employees required by laws;

(iv) boiler and machine property damage insurance with respect to any steam and pressure boilers and similar apparatus located at the Project Facility from risks normally insured against under boiler and machinery policies and in amounts and with deductions customarily obtained for similar business enterprises and in each case approved by the Issuer; and

(v) such other insurance in such amounts and against such insurable hazards as the Issuer or the Bank Purchaser from time to time may reasonably require.

(b) All insurance required by paragraph (a) hereof shall be procured and maintained in financially sound and generally-recognized, responsible insurance companies authorized to write such insurance in the State.

(c) Each of the policies or binders evidencing the insurance required above to be obtained shall:

(i) designate (except in the case of workers' compensation insurance) the Bank Purchaser and the Issuer as additional insureds as their respective interests may appear;

(ii) provide that all insurance proceeds with respect to loss or damage to the property of the Project Facility be endorsed and made payable to the Bank Purchaser and shall name the Bank Purchaser as a loss payee under the standard loss payee clause, which insurance proceeds shall be paid over to the Bank Purchaser and used as deposited in accordance with Section 5.1 of this Sale Agreement;

(iii) provide that in respect of the respective interests of the Issuer and the Bank Purchaser in such policies, the insurance shall not be invalidated by any action or inaction of the Company or any other Person and shall insure the Issuer and the Bank Purchaser regardless of, and any losses shall be payable notwithstanding, any such action or inaction;

(iv) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Issuer or the Bank Purchaser to the extent that such other insurance provides the Issuer or the Bank Purchaser, as the case may be, with contingent and/or excess liability insurance with respect to its respective interest as such in the Project Facility;

(v) provide that if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Issuer or the Bank Purchaser until at least thirty (30) days after receipt by the Issuer and the Bank Purchaser, respectively, of written notice by such insurers of such cancellation, lapse, expiration, reduction or change;

(vi) waive any right of subrogation of the insurers thereunder against any Person insured under such policy, and waive any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any Person insured under such policy; and

(vii) contain such other terms and provisions as any owner or operator of facilities similar to the Project Facility would, in the prudent management of its properties, require to be contained in policies, binders or interim insurance contracts with respect to facilities similar to the Project Facility owned or operated by it.

(d) Concurrently with the original issuance of the Bond, the Company shall deliver or cause to be delivered to the Issuer and the Bank Purchaser certificates of insurance, and upon the written request of the Issuer or the Bank Purchaser, duplicate copies of insurance policies and/or binders evidencing compliance with the insurance requirements of this Section 4.5. At least thirty (30) days prior to the expiration of any such policy, the Company shall furnish the Issuer and the Bank Purchaser with evidence that such policy has been renewed or replaced or is no longer required by this Sale Agreement.

(e) The Company shall, at its own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Issuer or the Bank Purchaser to collect from insurers for any loss covered by any insurance required to be obtained by this Section 4.5.

(f) The Company shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section 4.5 would or might be suspended or impaired.

(g) THE ISSUER DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF



COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE BUSINESS OR INTEREST OF THE COMPANY.

Section 4.6 Right of Bank Purchaser or Issuer to Pay Taxes, Insurance Premiums and Other Charges. If the Company fails to maintain any insurance required to be maintained by Section 4.5 hereof, or fails, and such failure continues, for ten (10) days after written notice to the Company (i) to pay any tax, together with any fine, penalty, interest or cost which may have been added thereto or become due or been imposed by operation of law for nonpayment thereof, or payments in lieu of taxes, assessment or other governmental charge required to be paid by Section 4.4 hereof; (ii) to pay any amount required to be paid by any law or ordinance relating to the use or occupancy of the Project Facility or by any requirement, order or notice of violation thereof issued by any Governmental Authority (unless being contested in accordance with Section 4.4 hereof); (iii) to pay any mechanic's lien which is recorded or filed against the Project Facility or any part thereof (unless contested in accordance with the provisions of Section 6.7 hereof) or (iv) to pay any other amount or perform any act hereunder required to be paid or performed by the Company hereunder, then the Issuer or the Bank Purchaser may, but shall not be obligated to, pay or cause to be paid such tax or payments in lieu of taxes, assessment or other governmental charge or the premium for such insurance or any such other payment or may perform any such act. No such payment by the Issuer or the Bank Purchaser, as the case may be, shall affect or impair any rights of the Issuer or the Bank Purchaser under the Bond Purchaser Agreement or other Bond Documents, arising in consequence of such failure by the Company. The Company shall, on demand, reimburse the Issuer or the Bank Purchaser for any amount so paid or for expenses or costs reasonably incurred in the performance of any such act by the Issuer or the Bank Purchaser pursuant to this Section (which shall include all reasonable legal fees and disbursements), together with interest thereon from the date of payment of such amount, expense or cost by the Issuer or the Bank Purchaser at the Default Rate or at the maximum rate permitted by law, whichever is less.

Section 4.7 Compliance with Law. The Company agrees that it will, throughout the term of this Sale Agreement and at its sole cost and expense, promptly observe and comply in all material respects with all federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Company, any occupant, user or operator of the Project Facility or any portion thereof (including, without limitation, those relating to zoning, land use, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) (the "*Legal Requirements*"), and will observe and comply with all conditions, requirements and schedules necessary to preserve and extend all rights, licenses, permits (including, without limitation, zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The Company will not, without the prior written consent of the Issuer and the Bank Purchaser, initiate, join in or consent to any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Project Facility or any part thereof which is not in effect on the date hereof. The Company shall indemnify and hold harmless the Indemnified Parties (as defined in Section 6.2 hereof) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any violation of or failure

to comply with any Legal Requirement, or (b) imposed upon the Company or any of the Indemnified Parties by any Legal Requirement, except for any such cost, liability or expense arising from the gross negligence or willful misconduct of such Indemnified Party. In case any action or proceedings is brought against any of the Indemnified Parties in respect to any Legal Requirement, the Company shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel reasonably satisfactory to the Indemnified Party. Each Indemnified Party shall promptly notify the Company of any claim or threatened claims relating to the Company or the Project Facility made against such Indemnified Party by any Person, as provided, in and subject to the provisions of paragraph (c) of Section 6.2 hereof.

The Company may contest in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Project Facility or any part thereof or interest therein being in any danger of being sold, forfeited or lost; (ii) such contest shall not result in the Company, the Issuer or the Bank Purchaser being in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith; and (iii) the Company shall have furnished such security, if any, as may be reasonably requested by the Issuer or the Bank Purchaser to protect the security intended to be offered by the Bond Documents.

Section 4.8 Depreciation Deductions and Tax Credits. The parties agree that as between them the Company shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any portion of the Project Facility pursuant to Sections 167 and 168 of the Code and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Project facility which constitutes "Section 38 Property" and to all other State and federal income tax deductions and credits which may be available with respect to the Project Facility.

## ARTICLE V

### DAMAGE, DESTRUCTION AND CONDEMNATION

#### Section 5.1 Damage, Destruction or Condemnation of the Project Facility.

(a) If the Project Facility shall be damaged or destroyed (in whole or in part), or the whole or any part of the Project Facility shall be taken or condemned by a competent authority or by agreement between the Issuer and those authorized to exercise such right or if the temporary use of the Project Facility or any part thereof shall be so taken by condemnation or agreement (a “Loss Event”) at any time while this Sale Agreement is in effect:

(i) the Issuer shall have no obligation to replace, repair, rebuild, restore or relocate the affected Project Facility; and

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Sale Agreement and the other Bond Documents (whether or not the Project Facility is replaced, repaired, rebuilt, restored or relocated); and

(iii) upon the occurrence of a Loss Event, the Net Proceeds derived from the insurance or the condemnation award, as the case may be, except as otherwise provided in paragraph (f) below, at the option of the Company and with the approval of the Bank Purchaser, shall be applied to either (A) replace, repair, rebuild, restore or relocate the Project Facility, or (B) redeem a principal amount of the Bond equal to such Net Proceeds in accordance with Section 4.02 of the Bond Purchase Agreement; and

(b) Any such replacements, repairs, rebuilding, restorations or relocations shall be subject to the following conditions:

(i) the restored Project Facility shall be in substantially the same condition and value as an operating entity as existed prior to the damage or destruction;

(ii) the restored Project Facility shall continue to constitute a “project” as such term is defined in the Act, and the tax-exempt status of the interest on the Bond shall not, as evidenced by an Opinion of Bond Counsel, be adversely affected;

(iii) the Project Facility will be subject to no Liens other than Permitted Encumbrances; and

(iv) any other conditions that Bank Purchaser shall reasonably impose.

(c) All such repair, replacement, rebuilding, restoration or relocation of the Project Facility shall be affected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements and shall be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts.

(d) In the event that the Net Proceeds of insurance are not sufficient to pay in full the costs of such replacement, repair, rebuilding, restoration or relocation, the Company shall nonetheless complete the work and pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds. All such replacements, repairs, rebuilding, restoration or relocations made pursuant to this Section, whether or not requiring the expenditure of the Company's own money, shall automatically become a part of the Project Facility as if the same were specifically described herein.

(e) Any balance of such Net Proceeds remaining after payment of all costs of replacement, repair, rebuilding, restoration or relocation of the Project Facility shall, subject to any rebate required to be made to the federal government pursuant to the Bond Purchase Agreement or the Tax Compliance Agreement, be used to redeem the Bond as provided in Section 4.02 of the Bond Purchase Agreement.

(f) If the entire principal amount of the Bond and interest thereon and all Obligations have been fully paid, or provision therefor has been made in accordance with the Bond Purchase Agreement, all such remaining Net Proceeds shall be paid to the Company.

(g) Except upon the occurrence of an Event of Default, the Company, with the consent of the Bank Purchaser, shall have the right to settle and adjust all claims under any policies of insurance required by Section 4.5(a)(ii) hereof on behalf of the Issuer and on its own behalf.

(h) The Company hereby waives the provisions of Section 227 of the Real Property Law of the State or any law of like import now or hereafter in effect.

(i) The Company further agrees to give prompt written notice to Issuer and the Bank Purchaser, if insurance proceeds or condemnation awards are received with respect to all or any portion of the Project Facility.

(j) Notwithstanding the above, so long as the Bank Purchaser is the Owner of the Bonds, the Company shall comply with the terms of the Continuing Covenant Agreement and the Mortgage relating to the use of Net Proceeds.

Section 5.2 Loss Event of Company-Owned Property. The Company shall be entitled to any insurance proceeds of any condemnation award, compensation or damages, or portion thereof attributable to the Company's Property and to other improvements, machinery, equipment or other property installed on or about the land or improvements comprising the Project Facility but which is not part of the Project Facility.

## ARTICLE VI

### SPECIAL COVENANTS

Section 6.1 No Warranty of Condition or Suitability by Issuer. THE ISSUER HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE PROJECT FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE PROJECT FACILITY, OR THE SUITABILITY OF THE PROJECT FACILITY FOR THE PURPOSES OR THE NEEDS OF THE COMPANY OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THE SALE OF THE BOND WILL BE SUFFICIENT TO REFUND THE SERIES 2010A BONDS. THE COMPANY ACKNOWLEDGES THAT THE ISSUER IS NOT THE MANUFACTURER OF THE EQUIPMENT INSTALLED IN THE PROJECT FACILITY NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE ISSUER SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE PROJECT FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 6.2 Hold Harmless Provisions.

(a) The Company releases the Issuer and the Bank Purchaser, and their respective officers, directors, agents, officials, employees (and, as to the Issuer, members of its governing body) and any Person who controls the Issuer or the Bank Purchaser within the meaning of the Securities Act of 1933, from, and covenants and agrees to indemnify, hold harmless and defend the Issuer and the Bank Purchaser and their respective officers, directors, employees, agents, members of the Issuer's governing body, officials and any Person who controls such party within the meaning of the Securities Act of 1933 and employees and each of them (each an "*Indemnified Party*") from and against, any and all losses, claims, damages, demands, liabilities and expenses (including reasonable attorneys' fees and expenses), taxes, causes of action, suits, claims, demands and judgments of any nature, joint or several, by or on behalf of any Person arising out of:

(i) the transactions provided for in the Bond Documents;

(ii) the execution and delivery or amendment of any document entered into in connection with the transactions provided for in the Bond Documents, including any certifications or representations made by any Person other than the party seeking indemnification;

(iii) the approval of the financing for the Project;

(iv) any and all claims arising in connection with the interpretation, performance, enforcement, breach, default or amendment of the Bond Documents or any other documents relating to the Project Facility, the Project or the Bond or in connection with any other matters relating to the Bond or the Project Facility, the Project, including, but not limited to, any federal or state tax audit, or any questions or other matters arising under such documents;

(v) the Bank Purchaser's acceptance or administration of the trusts created by the Bond Purchase Agreement or the exercise of its powers or duties under the Bond Purchase Agreement, this Sale Agreement, the Tax Compliance Agreement or any other agreements to which it is a party or otherwise in connection with the transactions provided for in the Bond Documents;

(vi) any and all claims arising in connection with (1) the issuance or sale of any Bond or any certifications or representations made by any Person other than the party seeking indemnification, including, but not limited to, any (A) statement or information made by the Company with respect to the Company or the Project Facility in any materials regarding the Bond, the Project Facility or the Company or in the Tax Compliance Agreement or in any other certificate executed by the Company which, at the time made, is misleading, untrue or incorrect in any material respect; (B) untrue statement or alleged untrue statement of a material fact relating to the Company or the Project Facility contained in any offering material relating to the sale of the Bond, as from time to time amended or supplemented, or arising out of or based upon the omission or alleged omission to state in such offering material a material fact relating to the Company or the Project Facility required to be stated in such offering material or necessary in order to make the statements in such offering material not misleading; and (C) failure to properly register or otherwise qualify the sale of the Bond or failure to comply with any licensing or other law or regulation which would affect the manner in which or to whom the Bond could be sold; and (2) the carrying out by the Company of any of the transactions provided for in the Bond Documents;

(vii) any act or omission of the Company or any of its agents, servants, employees or licensees in connection with this Sale Agreement or the Project Facility, including violation of any law, ordinance, court order or regulation affecting the Project Facility or any part of it or the ownership, occupancy or use of it;

(viii) any damage or injury, actual or claimed, of whatsoever kind, cause or character, to property (including loss of use of property) or Persons, occurring or allegedly occurring in, on or about the Project Facility or arising out of any action or inaction of the Company, whether or not related to the Project Facility, or resulting from or in any way connected with the management of the Project Facility, the issuance of the Bond or otherwise in connection with transactions provided for in the Bond Documents or otherwise in connection with the Project Facility, the Bond or the execution or amendment of any document relating to the Project Facility or the Bond;

(ix) any failure to comply with the Environmental Compliance and Indemnification Agreement applicable to, or the release of any toxic substance from, the Project Facility; and

(x) any and all claims arising in connection with the operation of the Project Facility, or the conditions, environmental or otherwise, occupancy, use, possession, conduct or supervision of work done in or about, or from the planning, design, acquisition, construction, repair or equipping of, the Project Facility or any part of it.

(b) This indemnification shall extend to and include, without limitation, all reasonable costs, attorneys' fees, expenses or liabilities incurred in connection with any such claim, or proceeding brought with respect to such claim, except (a) in the case of the foregoing indemnification of the Bank Purchaser or the Issuer or any of their respective Indemnified Parties, to the extent such damages are caused solely by the gross negligence or willful misconduct of such Person.

(c) An Indemnified Party shall promptly notify the Company in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Company pursuant to this Section 6.2. Such notice shall be given in sufficient time to allow the Company to defend or participate in such claims or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Company under this Section 6.2, except to the extent that the Company is actually and materially prejudiced, harmed or damaged by such failure.

(d) The provisions of this Section and the indemnification provided herein shall survive repayment of the Bond. Notwithstanding anything to the contrary in this Sale Agreement, the covenants of the Company contained in this Section 6.2 shall continue in full force and effect after the conveyance of the Project Facility by the Issuer to the Company or the expiration or earlier termination of this Sale Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought, and (ii) payment in full or the satisfaction of such claim or cause of action and all expenses and charges incurred by the Indemnified Party relating to the enforcement of this Section 6.2 and the provisions herein specified. For purposes of this Section 6.2, the Company shall not be deemed to constitute an employee, agent or servant of the Issuer or a Person under the Issuer's control or supervision.

(e) In the event of any claim against the Issuer or its members, directors, officers, agents or employees by any employee or contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

(f) The Company and every assignee of the Company's interest in this Sale Agreement hereby waives any and all of its rights against the Issuer (whether such rights currently exist or arise in the future by statute, common law or otherwise) as an owner or a prior

owner of the Project Facility with respect to any and all environmental liabilities, however or whenever accruing.

(g) To effectuate the purposes of this Section 6.2, the Company will provide for and insure, in the liability policies required in Section 4.5 hereof, not only its own liability in respect of the matters therein mentioned, but also the liability pursuant to this Section 6.2. Should an insurance carrier provide for the defense of the Indemnified Party in connection with any claim subject to indemnity under this Section 6.2, the Company shall cause such insurance carrier (and the attorneys retained by such insurance carrier) to promptly provide the Indemnified Party with such information regarding the status of such claims as the Indemnified Party may from time to time reasonably request, to immediately advise the Indemnified Party of any monetary verdict against it. Should the Company provide the defense of any such claim directly, the attorneys selected by the Company shall be subject to the prior approval of the Indemnified Party, not to be unreasonably withheld, and the Company shall cause such attorneys to promptly provide the Indemnified Party with such information regarding the status of such claims as the Indemnified Party may from time to time request, to immediately advise the Indemnified Party of any monetary verdict against it, and in no event shall the Company permit a judgment to be entered against the Indemnified Party arising out of such claim without thirty (30) days' prior written notice to the Indemnified Party.

(h) Should any lawsuit be commenced against an Indemnified Party which is subject to indemnity pursuant to this Section 6.2, and should such lawsuit result in a judgment being entered against such Indemnified Party, the Company shall not permit any lien resulting from such judgment to encumber any asset of such Indemnified Party (whether now owned or hereafter acquired). Should such judgment result in a lien encumbering any asset of such Indemnified Party, the Company shall promptly, upon demand by such Indemnified Party, cause such judgment to be released from all assets of such Indemnified Party (whether now owned or hereafter acquired), pursuant to documentation in form and content reasonably acceptable to such Indemnified Party. The Company shall be responsible for all damages suffered by such Indemnified Party (including incidental and consequential damages) resulting from any such judgment lien that may encumber any asset of such Indemnified Party, including, but not limited to, all out-of-pocket expenses (including reasonable attorneys' fees) incurred by such Indemnified Party to obtain releases of any such judgment lien.



### Section 6.3 Restrictions on Company.

(a) The Company agrees that it will (i) maintain its existence, (ii) continue to be an entity subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business in the State, (iii) not sell, transfer, pledge or otherwise encumber all or substantially all of the assets which constitute the Project Facility, except as permitted by, and in accordance with, this Sale Agreement and the other Bond Documents and except for Permitted Encumbrances, (iv) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets, and (v) not consolidate with or merge into another Person or permit one or more Persons to consolidate with or merge into it. The Company may, however, without violating the foregoing, but upon thirty (30) days' prior written notice to the Issuer and the Bank Purchaser, accompanied by the documents referred to in paragraph (b) hereof, and *provided that* the Issuer is paid a fee in accordance with its then existing policy and procedures (no such fee being imposed, however, if such merger, consolidation or transfer shall be with or to an Affiliate of the Company or in connection with a public offering of ownership interests in the Company or a private placement of less than a controlling interest in the ownership of the Company), consolidate with or merge into another Person or permit one or more Persons to consolidate with or merge into it, or sell or otherwise transfer all or substantially all of its property, business or assets to another Person (and thereafter liquidate, wind-up or dissolve or not, as the Company may elect) if all of the following conditions are satisfied: (i) the surviving, resulting or transferee Person, as the case may be, assumes and agrees in writing to pay and perform all of the obligations of the Company hereunder and under the other Bond Documents to which the Company is a party; (ii) the surviving, resulting or transferee Person, as the case may be, is subject to service of process in the State and qualifies to do business in the State; (iii) immediately after giving effect to such transaction, no Event of Default, nor any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default, shall have occurred and be continuing, (iv) the surviving, resulting or transferee Person has a net worth immediately after such transaction at least equal to the net worth of the Company at the end of the fiscal quarter immediately preceding the effective date of such transaction; (v) the Issuer and the Bank Purchaser receive an Approving Opinion; (vi) the Issuer and the Bank Purchaser receive an Opinion of Counsel to the effect that the surviving, resulting or transferee Person, as the case may be, is bound by all of the terms of this Sale Agreement and all other Bond Documents to which the Company shall have been a party; and (vii) the Issuer and the Bank Purchaser receive a certificate of an Authorized Representative of the Company to the effect that all of the conditions to such transaction that are contained in this paragraph (a) have been satisfied.

(b) The Company shall give to the Issuer and the Bank Purchaser at least thirty (30) days' prior written notice of any transaction described in paragraph (a) hereof, accompanied by (i) a draft of the document or instrument of assumption pursuant to which the requirements of clause (i) of the third sentence of Section 6.3(a) hereof will be satisfied, (ii) pro-forma financial statements evidencing satisfaction of the requirements of clause (iv) of the third sentence of Section 6.3(a) hereof, (iii) drafts of the opinions referred to in clauses (v) and (vi) of the third sentence of Section 6.3(a) hereof, and (iv) a draft of the certificate referred to in clause (vii) of the third sentence of Section 6.3(a) hereof.

On the date of the consummation of any transaction described in paragraph (a) hereof, the Company shall furnish to the Issuer and the Bank Purchaser (i) the document or instrument of assumption pursuant to which the requirements of clause (i) of the third sentence of Section 6.3(a) hereof is satisfied, (ii) a certificate of the Secretary of State of the State or other applicable governmental agency or authority of the State evidencing satisfaction of the requirements of clause (ii) of the third sentence of Section 6.3(a) hereof, (iii) pro forma financial statements evidencing satisfaction of the requirements of clause (iv) of the third sentence of Section 6.3(a) hereof, and (iv) the written confirmation (if applicable), the opinions and the certificate required by clauses (v), (vi) and (vii) of the third sentence of paragraph Section 6.3(a) hereof.

The Company shall provide such other information as the Issuer or the Bank Purchaser may reasonably request in order to assure compliance with this Section 6.3.

Notwithstanding anything in this Sale Agreement or in any of the other Bond Documents to the contrary, any Person who is a member of the Company on the Issue Date may, at any time and from time to time, sell, give, transfer or otherwise dispose of all or any portion or portions of his, her or its respective interests in the Company to any other Person who was also a member of the Company on the Issue Date without giving notice to, or obtaining the consent of, or paying any fee to, any other Person.

Section 6.4 Retention of Title; Grant of Easements; Release of Certain Land. Neither the Issuer nor the Company shall sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of its interest in or grant the right to occupy and use (other than in the ordinary course of the Company's business) the Project Facility or any part thereof or interest therein during the term of this Sale Agreement, except as set forth below and in Sections 4.2, 7.2 and 9.3 hereof, without the prior written consent of the other party and the Bank Purchaser, and any purported disposition without such consent shall be void.

The Issuer will, however, at the written request of the Company, so long as there exists no Event of Default hereunder, grant such rights-of-way or easements over, across or under the Project Facility, or grant such permits or licenses in respect to the use thereof, free from this Sale Agreement, as shall be necessary or convenient for the operation or use of the Project Facility, *provided that* such leases, rights-of-way, easements, permits or licenses shall not adversely affect the use or operation of the Project Facility, and *provided further* that any consideration received by the Issuer or the Company from the granting of said leases, rights-of-way, easements, permits or licenses shall be paid to the Bank Purchaser as a principal payment on the Bond. The Issuer agrees, at the sole cost and expense of the Company, to execute and deliver and to cause and direct the Bank Purchaser to execute and deliver any and all instruments necessary or appropriate to confirm and grant any such right-of-way or easement or any such permit or license and to release the same from this Sale Agreement.

Notwithstanding any other provision of this Sale Agreement, so long as there exists no Event of Default hereunder, the Company may from time to time request in writing to the Issuer and the Bank Purchaser the release of and removal from this Sale Agreement and the estate created thereby and hereby of any unimproved part of the Project Facility (on which none of the improvements, including the buildings, structures, improvements, related facilities, major

appurtenances, fixtures or other property comprising the Project Facility are situated) *provided that* such release and removal will not adversely affect the use or operation of the Project Facility and is permitted by the other Bond Documents. Upon any such request by the Company and written approval thereof by the Bank Purchaser, the Issuer shall, at the sole cost and expense of the Company, execute and deliver and cause and direct the Bank Purchaser to execute and deliver any and all instruments necessary or appropriate to so release and remove such portion of the Project Facility and convey all of the Issuer's right, title and interest, if any, thereto to the Company, subject to the following: (a) any liens, easements, encumbrances and reservations to which title to said property was subject at the time of recording of this Sale Agreement; (b) any liens, easements and encumbrances created at the request of the Company or to the creation or suffering of which the Company consented; (c) any liens and encumbrances or reservations resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Sale Agreement; (d) Permitted Encumbrances (other than the lien of this Sale Agreement); and (e) any liens for taxes or assessments not then delinquent, *provided that* no such release shall be effected unless there shall be deposited with the Bank Purchaser the following:

(i) a certificate of an Authorized Officer of the Company, dated not more than sixty (60) days prior to the date of the release, stating that, in the opinion of the Person signing such certificate, the portion of the Project Facility and the release so proposed to be made is not needed for the operation of the Project Facility, will not adversely affect the use or operation of the Project Facility and will not destroy the means of ingress thereto and egress therefrom; and

(ii) if such portion to be released was financed with proceeds of the Bond, an amount of cash is paid to the Bank Purchaser as a principal payment of the Bond in accordance with Section 4.02 of the Bond Purchase Agreement in an amount equal to the greatest of (A) the original cost of such portion of the Project Facility so released, such cost to be determined by the appraisal of an independent real estate brokerage firm of recognized standing within the Town of Colonie, or (B) the fair market value of such portion, such value to be determined by the appraisal of an independent real estate brokerage firm of recognized standing within the Town of Colonie, *provided, however*, if such portion is released in connection with the sale of such portion of the Project Facility, the amount to be paid to the Bank Purchaser shall be at least equal to the amount received by the Company upon such sale.

No conveyance or release effected under the provisions of this Section 6.4 shall entitle the Company to any abatement or diminution of the Installment Purchase Payments payable under Sections 3.3 or 3.4 hereof or the other payments required to be made by the Company under this Sale Agreement.

**Section 6.5 Company's Covenant as to Tax Exemption.** The Company covenants with the Issuer and with the Bank Purchaser of the Bond that it will comply with all of the terms, provisions and conditions set forth in the Tax Compliance Agreement, including, without limitation, the making of any payments and filings required thereunder.

The representations, warranties, covenants and statements of expectations of the Company set forth in the Tax Compliance Agreement are by this reference incorporated in this Sale Agreement as though fully set forth herein.

If the Bank Purchaser receives from the Internal Revenue Service a notice of assessment and demand for payment with respect to interest on any Bond, an appeal may be taken by the Owner or the Bank Purchaser. In either case, all expenses of the appeal, including reasonable attorneys' fees, shall be paid by the Company, and the Bank Purchaser and the Company shall cooperate and consult with each other in all matters pertaining to any such appeal, except that no Owner shall be required to disclose or furnish any non-publicly disclosed information, including, without limitation, financial information and tax returns. Before the taking of any appeal, however, the Bank Purchaser shall have the right to require the Company to pay the tax assessed and conduct the appeal as a contest for reimbursement.

The obligation of the Company to make the payments provided for in this Section shall be absolute and unconditional, and the failure of the Issuer, the Bank Purchaser or any other Person to execute or deliver or cause to be delivered any documents or to take any action required under this Sale Agreement or otherwise shall not relieve the Company of its obligation under this Section 6.5.

**Section 6.6 Notice of Certain Events.** The Company shall immediately notify the Issuer and the Bank Purchaser of the occurrence of any Determination of Taxability, Event of Default or any event which with notice and/or lapse of time would constitute an Event of Default under any Bond Document of which it has knowledge. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Officer of the Company and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the Company shall state this fact on the notice.

**Section 6.7 Discharge of Liens and Encumbrances.**

(a) The Company shall not permit or create or suffer to be permitted or created any lien or encumbrance, except for Permitted Encumbrances, upon the Project Facility or any part thereof.

(b) Notwithstanding the provisions of paragraph (a) hereof, the Company may in good faith contest any such lien or encumbrance. In such event, the Company may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the Issuer or the Bank Purchaser shall notify the Company that, by nonpayment of any such item or items, the security interest of the Bank Purchaser may be materially endangered or the Project Facility or any material part thereof may be subject to loss or forfeiture, in which event the Company shall promptly secure payment of all such unpaid items by filing a bond, in form and substance satisfactory to the Bank Purchaser, thereby causing such lien or encumbrance to be removed or by taking such other actions as may be satisfactory to the Bank Purchaser, to protect its interests. Mechanics liens or encumbrances shall be discharged, bonded or otherwise disposed of to the satisfaction of the Issuer, the Bank Purchaser within thirty (30) days of the filing or perfection thereof.

Section 6.8 Employment Opportunities; Sales Tax Reports; Notice of Jobs.

(a) The Company shall promptly furnish to the Issuer such information, in such form and supported by such certifications as the Issuer shall request, relating to the Company and the Project Facility, and the past, present and future employment by the Company at the Project Facility.

(b) The Company covenants and agrees that, in consideration of the participation of the Issuer in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, cause any new employment opportunities created in connection with the Project Facility to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300) in which the Project Facility is located (collectively, the “*Referral Agencies*”). The Company also agrees that except as otherwise provided by collective bargaining contracts or agreements to which it is a party, it will first consider for such new employment opportunities persons eligible to participate in federal job training partnership (PL 97-300) programs who shall be referred by the Referral Agencies.

Section 6.9 Further Assurances. The Company will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, at the sole cost and expense of the Company, as the Company, the Issuer or the Bank Purchaser deems reasonably necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Sale Agreement and any rights of the Issuer or the Bank Purchaser hereunder or under the other Bond Documents. The Issuer, at the sole cost of the Company, will co-operate with any reasonable request of the Company with respect the execution and delivery of Uniform Commercial Code financing statements.

Section 6.10 Recording and Filing. The Company shall cause this Sale Agreement as originally executed or a memorandum thereof to be recorded in the appropriate office of the County Clerk or in such other office as may at the time be provided by law as the proper place for the recordation thereof. The Company shall cause the filing of financing statements necessary to perfect the security interest of the Issuer hereunder and the assignment thereof to the Bank Purchaser which fully comply with the New York State Uniform Commercial Code — Secured Transactions in the office of the Secretary of State of the State, in the City of Albany, New York and in the appropriate office of the County Clerk. The Company shall file or cause to be filed, at the expense of the Company, all necessary continuation statements (and additional financing statements) within the time prescribed by the New York State Uniform Commercial Code — Secured Transactions in order to continue (or attach and perfect) the security interest created by the Bond Documents, to the end that the rights of the Issuer and the Bank Purchaser in this Sale Agreement and the other Bond Documents and all the sums due under this Sale Agreement and the other Bond Documents shall be fully preserved as against creditors or purchasers for value from the Issuer or the Company.

Section 6.11 Right to Cure Issuer Defaults. The Issuer hereby grants the Company full authority for the account of the Issuer to perform any covenant or obligation, the non-performance of which is alleged to constitute a default in any notice received by the Company, in the name and stead of the Issuer, with full power of substitution.

Section 6.12 Environmental Compliance and Indemnification Agreement. The Company covenants and agrees to perform all of its obligations, covenants and agreements under the Environmental Compliance and Indemnification Agreement.

Section 6.13 Use of Bond Proceeds. The Company shall use, or permit or suffer to be used, the proceeds of the Bond only for the purposes and costs permitted therefor under this Sale Agreement, the Bond Purchase Agreement and the Tax Compliance Agreement.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default Defined. Subject to Section 9.2 hereof, the following shall be “Events of Default” under this Sale Agreement:

(a) the failure by the Company to pay or cause to be paid (i) any amount due the Issuer pursuant to paragraph (b) of Section 3.3, and the continuation of such failure for ten (10) days following demand thereof by the Issuer; or (ii) any Installment Purchase Payment due and payable by the terms of Section 3.3 which results in an Event of Default under the Bond Purchase Agreement;

(b) (i) the failure of the Company to maintain or deliver evidence of the insurance coverage required by Section 4.5 hereof; (ii) the failure of the Company to perform its obligations under Section 6.2 hereof; or (iii) the failure of the Company to pay any amount (except the obligation to make those Installment Purchase Payments and other payments described in Section 7.1(a) hereof) that has become due and payable or to observe and perform any other covenant, condition or agreement on its part to be performed under Section 4.4 hereof, and continuance of any such failure for a period of thirty (30) days after receipt by the Company of written notice specifying the nature of such default from the Issuer or the Bank Purchaser;

(c) the failure of the Company to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in paragraphs (a), (b), (f), (g) or (h) hereof) and (i) continuance of such failure for a period of thirty (30) days after receipt by the Company of written notice specifying the nature of such default from the Issuer or the Bank Purchaser, or (ii) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, the Company fails to proceed with reasonable diligence after receipt of said notice to cure the same and in any event fails to cure the same within ninety (90) days after receipt by the Company of such notice;

(d) the Company shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property; (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due; (iii) make a general assignment for the benefit of its creditors; (iv) commence a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect); (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts; (vi) take any action for the purpose of effecting any of the foregoing; or (vii) be adjudicated a bankrupt or insolvent by any court;

(e) a proceeding or case shall be commenced, without the application or consent of the Company, in any court of competent jurisdiction seeking (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts; (ii) the

appointment of a trustee, receiver, liquidator, custodian or the like of the Company or of all or any substantial part of its assets; (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing against the Company shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or (iv) the Company shall fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under such Bankruptcy Code (the terms "dissolution" or "liquidation" of the Company as used above shall not be construed to prohibit any action otherwise permitted by Section 6.3 hereof);

(f) any representation or warranty made by or on behalf of the Company (i) in the application and related materials submitted to the Issuer or the Bank Purchaser for approval of the Project or its financing, or (ii) herein or in any of the other Bond Documents or (iii) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing shall prove to be false, misleading or incorrect in any material respect as of the date made;

(g) the default by the Company in any of its obligations under the Environmental Compliance and Indemnification Agreement and the failure to cure such default within thirty (30) days of written notice by the Issuer or the Bank Purchaser;

(h) an Event of Default under the Bond Purchase Agreement shall have occurred and be continuing; or

(i) the invalidity, illegality or unenforceability of any of the Bond Documents.

## Section 7.2 Remedies on Default.

(a) Whenever an Event of Default shall have happened and be subsisting, and except as waived by the Issuer (subject to limitation imposed herein) any one or more of the following remedial steps may be taken:

(i) if acceleration of the principal amount of the Bond has been declared by the Bank Purchaser pursuant to Section 6.02 of the Bond Purchase Agreement, the Issuer, shall declare all Installment Purchase Payments to be immediately due and payable, whereupon the same shall become immediately due and payable;

(ii) the Issuer or the Bank Purchaser may have access to, inspect, examine and make copies of the books, records, accounts and financial data of the Company pertaining to the Project Facility;

(iii) the Issuer or the Bank Purchaser may pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Sale Agreement to enforce the performance and observance of any other obligation or agreement of the Company under those instruments;



(iv) in addition to any other rights or remedies granted by this Section 7.2 to the Issuer, the Issuer may enforce any of its Reserved Rights without the consent of the Bank Purchaser or any other Person by an action for damages, injunction or specific performance, or by conveying the Project Facility to the Company as provided in paragraph (v) hereof or by any other appropriate remedies generally available in law or equity; and

(v) the Issuer may on five (5) days' notice to the Bank Purchaser, convey the Project Facility to the Company by tender of the Underlying Lease in accordance with Section 3.2 hereof, and the Company hereby agrees to accept such conveyance and designates the Issuer as its attorney-in-fact for the purpose of accepting such conveyance, together with execution and delivery of any other documents in connection therewith to be recorded, and to take such other and further action as may be reasonably necessary to accept the conveyance of the Project Facility.

(b) The Bank Purchaser may not waive an Event of Default arising with respect to the Reserved Rights of the Issuer without the prior written consent of the Issuer. Notwithstanding anything in Section 7.2(a) hereof to the contrary, the Issuer shall not be obligated to take any step which in its opinion will or might cause it to expend time or money or otherwise incur liability unless and until a satisfactory indemnity bond has been furnished to the Issuer at no cost or expense to the Issuer. Any amounts collected as Installment Purchase Payments or applicable to Installment Purchase Payments and any other amounts which would be applicable to the payment of Bond Service Charges collected pursuant to action taken under this Section shall be applied in accordance with the provisions of the Bond Purchase Agreement or, if the Bond has been paid and discharged in accordance with the provisions of the Bond Purchase Agreement and there are no other amounts owed to the Issuer or the Bank Purchaser, shall be paid to the Company.

(c) The provisions of this Section are subject to the further limitation that the rescission by the Bank Purchaser of its declaration that the Bond is immediately due and payable also shall constitute an annulment of any corresponding declaration made pursuant to paragraph (a) hereof and a waiver and rescission of the consequences of that declaration and of the Event of Default with respect to which that declaration has been made, *provided that* no such waiver or rescission shall extend to or affect any subsequent or other default or impair any right consequent thereon.

(d) Any sums payable to the Issuer as a consequence of any action taken pursuant to this Section 7.2 (other than those sums attributable to its Reserved Rights) shall be paid to the Bank Purchaser and applied to the payment of the Bond in accordance with Section 4.02 of the Bond Purchase Agreement.

(e) No action taken pursuant to this Section 7.2 shall, except as expressly provided herein, relieve the Company from its obligations hereunder, including the obligation to make all payments required by Section 3.3 and Section 3.4 hereof, all of which shall survive any such action.

(f) The Issuer's termination or reconveyance of the Project Facility pursuant to this Sale Agreement will not be deemed to terminate this Sale Agreement as against the Issuer and the Bank Purchaser, each of which retains its respective rights as set forth in this Sale Agreement.

**Section 7.3 Remedies Cumulative.** No remedy herein conferred upon or reserved to the Issuer or the Bank Purchaser is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Sale Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Bank Purchaser, as appropriate, to exercise any remedy reserved to it in this Article VII, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Sale Agreement or such notices as shall be required and may not be waived under applicable law. The Company hereby waives any notices required by applicable law to the extent such law permits waiver thereof.

**Section 7.4 No Additional Waiver Implied by One Waiver.** In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Issuer and/or the Bank Purchaser and the Company or any delay or omission on the part of the Issuer and/or the Bank Purchaser in exercising any rights hereunder or under the Bond Purchase Agreement or under any other Bond Document shall operate as a waiver.

**Section 7.5 Effect of Discontinuance of Proceedings.** In case any proceeding taken by the Issuer or the Bank Purchaser under the Bond Purchase Agreement or this Sale Agreement or under any other Bond Document on account of any Event of Default hereunder or under any other Bond Document shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Issuer or the Bank Purchaser, as the case may be, then, and in every such case, the Issuer and the Bank Purchaser shall be restored, respectively, to their former positions and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Issuer and the Bank Purchaser shall continue as in effect prior to the commencement of such proceedings.

**Section 7.6 Agreement to Pay Attorneys' Fees and Expenses.** In the event the Company should default under any of the provisions of this Sale Agreement and the Issuer or the Bank Purchaser should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to such Person the reasonable fees and disbursements of such attorneys and such other expenses so incurred.

Section 7.7 Notice of Default. The Company or the Issuer shall notify the Bank Purchaser immediately if they become aware of the occurrence of any Event of Default hereunder or of any fact, condition or event which, with the giving of notice or passage of time or both, would become an Event of Default.

Section 7.8 Service of Process. In the event that the Company shall ever cease to maintain a place of business in the State and if any service upon the Company may be required in connection with any suit or exercise of other remedies against it hereunder or under any other Bond Document, the Company shall and does hereby appoint the Secretary of State of New York as its agent to receive such service in such event with written notice sent by the Issuer or the Bank Purchaser to the Company by registered mail, postage prepaid at the address as provided for in Section 9.5 hereof. Without limiting the right of any Person to bring suit against the Company in any other jurisdiction, the Company does hereby consent to jurisdiction to any such suit brought in the State of New York and does hereby waive any objection to the venue of any such suit, action or proceeding on this Sale Agreement in any of the courts of the State of New York.

Section 7.9 Limited Liability of Issuer. Notwithstanding any provision or obligation to the contrary hereinabove set forth, no provision of this Sale Agreement shall be construed so as to give rise to a pecuniary liability of the Issuer or to give rise to a charge upon the general credit of the Issuer. The liability of the Issuer hereunder shall be limited to its interest in the Project Facility, this Sale Agreement, the Bond Purchase Agreement and all other related documents and collateral and the lien of any judgment shall be restricted thereto. In the performance of the agreements of the Issuer herein contained, any obligation it may incur for the payment of money shall not be a debt of the Issuer nor shall the Issuer be liable on any obligation so incurred. The Issuer does not assume general liability for the repayment of the Bond or for the costs, fees, penalties, taxes, interest, omissions, charges, insurance or any other payments recited herein, and shall have no obligation for such costs. The Issuer shall not be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the Company if a default shall occur hereunder.

## ARTICLE VIII

### OPTIONS

#### Section 8.1 Options.

(a) The Company shall have the option to terminate this Sale Agreement on any date during the term of this Sale Agreement by causing the redemption or purchase in whole of all the Bond in accordance with the terms set forth in the Bond Purchase Agreement and the Continuing Covenant Agreement. As a condition precedent to the termination of this Sale Agreement, pursuant to Section 3.10 hereof, the Company shall pay, in consideration thereof, in legal tender, advance Installment Purchase Payments (if payment in full of the principal of, and interest on, all the Bond, and the interest thereon at maturity or upon earlier redemption has not yet been made) equal to the sum of the following:

(1) to the Bank Purchaser, an amount which will be sufficient to redeem or purchase the Bond in accordance with the provisions of the Bond Purchase Agreement, including, without limitation, the principal of, together with interest to maturity or redemption date (as the case may be) on, the Bond;

(2) to the Bank Purchaser, expenses of redemption, the fees and expenses of the Bank Purchaser and all other amounts due and payable to the Bank Purchaser under this Sale Agreement and the other Bond Documents on or before such date; and

(3) to the Issuer, expenses of redemption, the fees and expenses of the Issuer and all other amounts due and payable to the Issuer under this Sale Agreement and the other Bond Documents on or before such date.

(b) Upon such payment in full of the of the amounts specified in Section 8.1(a), together with any amounts required to be rebated to the federal government pursuant to the Tax Compliance Agreement, the Company shall terminate this Sale Agreement by delivering to the Issuer and the Bank Purchaser prior written notice of an Authorized Officer of the Company no more than thirty (30) days after the payment in full of such amounts of the exercise of such option to terminate this Sale Agreement, which notice shall set forth a requested date for the termination of this Sale Agreement which shall be not later than sixty (60) days after the payment in full of such amounts. Upon the written request of the Company, and the written consent of the Bank Purchaser, the Issuer may approve the extension or waiver of any of the time periods set forth in this Section 8.1. The termination of this Sale Agreement is subject, however, to the survival of the obligations of the Company under Section 6.2 and Section 9.18 hereof.

(c) The Company shall not, at any time, assign or transfer its option to terminate this Sale Agreement as contained in this Section 8.1 separate and apart from a permitted assignment of this Sale Agreement pursuant to Section 9.3 hereof without the prior written consent of the Issuer and the Bank Purchaser.

ARTICLE IX  
MISCELLANEOUS

Section 9.1 Bond Purchase Agreement; Amendment. The Company shall have and may exercise all the rights, powers and authority stated to be in the Company in the Bond Purchase Agreement and in the Bond, and the Bond Purchase Agreement and the Bond shall not be modified, altered or amended in any manner which adversely affects such rights, powers and authority so stated to be in the Company or otherwise adversely affects the Company without the written consent of the Company.

Section 9.2 *Force Majeure*. In case by reason of force majeure either party hereto shall be rendered unable wholly or in part to carry out its non-monetary obligations under this Sale Agreement, then except as otherwise expressly provided in this Sale Agreement, if such party shall give notice and full particulars of such force *majeure* in writing to the other party and the Bank Purchaser within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than the obligations of the Company to make the Installment Purchase Payments or other payments required under the terms hereof, or to comply with Section 4.5 or Section 6.2 hereof), so far as they are affected by such force *majeure*, shall be suspended during the continuance of the inability then claimed which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term “force *majeure*,” as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation or any other similar or different cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of existing or impending strikes, lockouts or other industrial disturbances shall be entirely within the discretion of the party having the difficulty and that the above requirements that any force *majeure* shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be fulfilled even though such existing or impending strikes, lockouts and other industrial disturbances may not be settled, but could have been settled by acceding to the demands of the opposing person or persons.

Section 9.3 Assignment or Lease.

(a) The Company shall not assign or transfer this Sale Agreement to any Person unless (i) the Company shall have received the prior written consent of the Issuer (which consent shall not be unreasonably withheld or delayed) and the Bank Purchaser to such assignment or transfer, and (ii) the Issuer and the Bank Purchaser shall have received an Approving Opinion. Without limitation of the foregoing, (i) in the case of any assignment or transfer of this Sale Agreement, the assignee or transferee shall furnish written evidence to the Issuer of its compliance with the Issuer’s then existing policy and procedures, and (ii) in the case of any

assignment or transfer of this Sale Agreement, the assignee, transferee or lessee shall pay a fee to the Issuer in accordance with the Issuer's then existing policy and procedures.

(b) (1) The Company agrees that any and all Persons seeking to occupy all or any portion of the Project Facility (hereinafter referred to as "Proposed Tenants") must be approved in writing by the Issuer and the Bank Purchaser prior to any lease or other occupancy agreement relating to the Project Facility (or portion thereof) becoming effective. The Issuer's review shall be limited to determining, in accordance with the Act, that the occupancy by the Proposed Tenant is not prohibited by the Act and would not tend, in the reasonable judgment of the Issuer, to bring the Project Facility into dispute as a public project (any and all such Proposed Tenants being so approved by the Issuer being referred to herein as "Qualified Tenants") and would not cause the Project Facility to fail to qualify as a "project" within the meaning of the Act.

(2) In addition to complying with the requirements of Section 9.3(b)(1) above, prior to leasing all or any portion of the Project Facility to any Person, the Company shall, at its own cost and expense, furnish the Issuer and the Bank Purchaser with an Approving Opinion.

(3) Other than Precision Valve, there are no tenants in the Project Facility on the Issue Date.

(4) The Company shall pay the Issuer's reasonable costs (including reasonable attorney fees) incurred in connection with its requests for approval of leases pursuant to this paragraph (b).

(c) Any consent by the Issuer or the Bank Purchaser to any assignment or transfer described in paragraph (a) hereof or any consent by the Issuer to any lease described in paragraph (b) hereof shall apply only to the specific assignment, transfer or lease thereby consented to. Such consent shall not be construed as a waiver of the duty of the Company, or the successors or assigns of the Company, to obtain from the Issuer and the Bank Purchaser consent to any other or subsequent assignment, transfer or lease described in paragraphs (a) and (b) hereof, or as modifying or limiting the rights of the Issuer or the Bank Purchaser under the covenant of the Company contained in paragraphs (a) and (b) hereof.

Section 9.4 Amendments. This Sale Agreement may be amended only with the consent of the Issuer and the concurring written consent of the Bank Purchaser and only if the Company shall assume in writing the obligations of such amendment.

Section 9.5 Notices. All notices, certificates or other communications hereunder shall be in writing and shall be (a) delivered personally, or (b) sent by United States Postal Service prepaid, first-class mail, or by registered or certified mail, return receipt requested, or (c) sent overnight via substantial national delivery service, addressed as set forth immediately following this paragraph, or at such other addresses as the Issuer, the Company or the Bank Purchaser shall otherwise have given notice as herein provided:

(1) If to the Issuer:

Town of Colonie Industrial Development Agency  
347 Old Niskayuna Road  
Latham, New York 12110  
Attention: Executive Director  
Telephone: (518) 783-2781  
Facsimile: (518) 783-2888

with a copy to:

Barclay Damon LLP  
80 State Street  
Albany, New York 12207  
Attention: M. Cornelia Cahill, Esq.  
Telephone: (518) 429-4296  
Facsimile: (518) 533-2926



(2) If to the Company:

One Mustang Drive II, LLC  
1 Mustang Drive  
Cohoes, New York 12047  
Attention: Antonio Giordano  
Telephone: (518) 371-2684  
Facsimile: (518) 371-2688

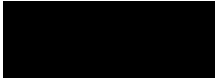
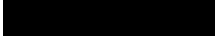
With a copy to:

Whiteman, Osterman & Hanna LLP  
One Commerce Plaza  
Albany, New York 12260  
Attention: Charles Haviland, Esq.  
Telephone: (518) 487-7655  
Facsimile: (518) 487-7777

(3) If to the Bank Purchaser:

Wells Fargo Bank, National Association  
150 East 42<sup>nd</sup> Street, Floor 39  
New York, New York 10017  
Attention: Farzad Sanei  
Telephone:   
Facsimile: 

with a copy to:

Wells Fargo, National Association  
4 Tower Place, Suite 901  
Albany, New York 12203  
Attention: Laura Conte  
Telephone:   
Facsimile: 

Section 9.6 Prior Agreements Superseded. This Sale Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral (other than the Bond Documents), between the Issuer and the Company relating to the Project Facility.

Section 9.7 Severability. If any clause, provision or section of this Sale Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

Section 9.8 Inspection of Project Facility. The Company will permit the Bank Purchaser or its duly-authorized agents, at all reasonable times upon reasonable notice, to enter upon the Project Facility and to examine and inspect the Project Facility and exercise their rights hereunder and under the Bond Documents with respect to the Project Facility. The Company will further permit the Issuer or its duly-authorized agent, at all reasonable times upon reasonable notice, to enter upon the Project Facility, but solely for the purpose of assuring that the Company is operating the Project Facility, or is causing the Project Facility to be operated, as a qualified “project” under the Act consistent with the purposes set forth in the Recitals to this Sale Agreement and with the public purposes of the Issuer, and not for any purpose of assuring the proper maintenance or repair of the Project Facility as such latter obligation is and shall remain solely the obligation of the Company.

Section 9.9 Effective Date; Counterparts. This Sale Agreement shall become effective upon its delivery. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.10 Binding Effect. This Sale Agreement shall inure to the benefit of, and shall be binding upon, the Issuer, the Company and their respective successors and assigns.

Section 9.11 Law Governing. This Sale Agreement shall be governed by, and construed in accordance with, the laws of the State without regard to conflicts of laws principles.

Section 9.12 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Sale Agreement or the Project Facility or any matters whatsoever arising out of or in any way connected with this Sale Agreement.

The provision of this Sale Agreement relating to waiver of a jury trial and the right of re-entry or re-possession shall survive the termination or expiration of this Sale Agreement.



Section 9.13 Non-Discrimination.

(a) At all times during the construction, maintenance and operation of the Project Facility, the Company shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin.

(b) The Company shall, in all solicitations or advertisements for employees placed by or on behalf of the Company, state that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

Section 9.14 No Recourse Under This Sale Agreement or on Bond. All covenants, stipulations, promises, agreements and obligations of the Issuer or Company, as applicable, contained in this Sale Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer or Company, as applicable, and not of any member, director, officer, employee or agent of the Issuer or Company, as applicable, in his individual capacity, and no recourse shall be had for the payment of the principal of, redemption premium, if any, or interest on the Bond or for any claim based thereon or hereunder against any member, director, officer, employee or agent of the Issuer or Company, as applicable, or any natural person executing the Bond.

Section 9.15 Limitation on Liability of the Issuer, the State and the Town. The liability of the Issuer to the Company under this Sale Agreement and to the Bank Purchaser shall be enforceable only out of, and limited to, the Issuer's interest under this Sale Agreement and in the Issuer's leasehold interest in the Project Facility. There shall be no other recourse against the Issuer, its members, directors, officers, agents, servants and employees and persons under the Issuer's control or supervision, past, present or future, or against any of the property now or hereafter owned by it or them. Any obligation the Issuer may incur for the payment of money in the performance of this Sale Agreement shall not create a debt of the State or of the Town of Colonie, and neither the State nor the Town of Colonie shall be liable on any obligation so incurred. Any such obligation shall be payable solely out of any Installment Purchase Payments or other proceeds or funds derived from this Sale Agreement.

No provision, covenant, representation, warranty or agreement contained in this Sale Agreement or in the Bond or any obligations herein or therein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge upon its general credit. In making the agreements, provisions, representations, warranties and covenants set forth in this Sale Agreement, the Issuer has not obligated itself except with respect to the Project Facility and the application of the revenues, income and all other property therefrom as hereinabove provided.

All covenants, stipulations, promises, agreements, representations, warranties and obligations of the Issuer contained herein shall be deemed to be covenants, stipulations, promises, agreements, representations, warranties and obligations of the Issuer and not of any member, director, officer, employee or agent of the Issuer in his individual capacity, and no recourse shall be had for the payment of the principal or interest on the Bond or for any claim

based thereon or hereunder against any member, director, officer, employee or agent of the Issuer or any natural person executing the Bond.

No order or decree of specific performance with respect to any of the obligations of the Issuer hereunder shall be sought or enforced against the Issuer unless (A) the party seeking such order or decree shall first have requested the Issuer in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Issuer shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; (B) if the Issuer refuses to comply with such request and the Issuer's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Issuer an amount or undertaking sufficient to cover such reasonable fees and expenses; and (C) if the Issuer refuses to comply with such request and the Issuer's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Issuer and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (2) if requested by the Issuer, furnish to the Issuer satisfactory security to protect the Issuer and its officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

Section 9.16 Date of Agreement for Reference Purposes Only. The date of this Sale Agreement shall be for reference purposes only and shall not be construed to imply that this Sale Agreement was executed on the date first above written. This Sale Agreement was executed and delivered on the date of original issuance and delivery of the Bond.

Section 9.17 Merger of Issuer.

Nothing contained in this Sale Agreement shall prevent the consolidation of the Issuer with, or merger of the Issuer into, or transfer of the Issuer's interest in the Project Facility to any other public instrumentality or political subdivision which has the legal authority to own and sell the Project Facility, *provided that*:

(i) upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Sale Agreement to be kept and performed by the Issuer shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Project Facility shall be transferred; and

(ii) the tax-exempt status of the interest on the Bond shall not be adversely affected thereby, as evidenced by an Approving Opinion.


SECTION 9.18. Survival of Obligations. . (A) The obligations of the Company to make the payments required by Section 3.3 and Section 3.4 hereof and to provide the indemnity required

by Sections 1.4, 2.1 and 6.2 hereof and the terms of the Environmental Compliance and Indemnification Agreement and the Mortgage shall survive the termination of this Sale Agreement, the full payment of the Bond and the discharge of the Mortgage, and all such payments after such termination shall be made upon demand of the party to whom such payment is due.

(B) The obligations of the Company with respect to the Reserved Rights shall survive the termination of this Sale Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the Reserved Rights may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Issuer, or its officers, members, agents or employees, relating thereto.

IN WITNESS WHEREOF, the Issuer and the Company have caused this Sale Agreement to be executed in their respective names by their duly-authorized officers, all as of November 1, 2017.

TOWN OF COLONIE INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Name: John Kearney  
Title: Chairman

STATE OF NEW YORK    )  
  ) SS.:  
COUNTY OF ALBANY    )

On the 6th day of November in the year 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared John Kearney, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

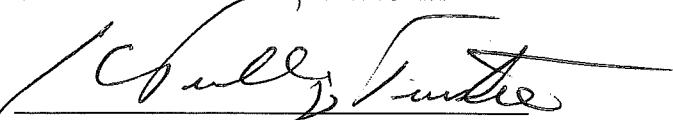
JO-ANN KILMER  
Notary Public, State of New York  
No. 01KI5052388  
Qualified in Saratoga County  
Commission Expires Nov. 20, 2021

ONE MUSTANG DRIVE II, LLC, a Delaware  
limited liability company

By: ANTHONY J. HYNES IRREVOCABLE  
TRUST NO. 2 DATED AUGUST 16, 2010,  
VOTING MEMBER AND MANAGER

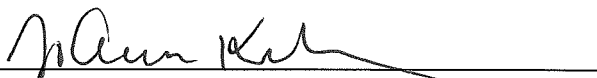
By:   
Kevin Tully, Trustee

By: ANTHONY J. HYNES IRREVOCABLE  
TRUST NO. 3 DATED AUGUST 16, 2010,  
VOTING MEMBER AND MANAGER

By:   
Kevin Tully, Trustee

STATE OF NEW YORK    )  
                                  ) SS.:  
COUNTY OF ALBANY    )

On the 13th day of November in the year 2017 before me, the undersigned, a Notary Public in and for said State, the undersigned, personally appeared Kevin Tully, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

JO-ANN KILMER  
Notary Public, State of New York  
No. 01K15052388  
Qualified in Saratoga County  
Commission Expires Nov. 20, 2021

APPENDIX A  
DESCRIPTION OF THE PROJECT FACILITY

*Fidelity National Title Insurance Company*  
*Issued by*  
**SNEERINGER MONAHAN PROVOST REDGRAVE**  
**TITLE AGENCY, INC.**  
**SCHEDULE A DESCRIPTION**

**Parcel 1:**

All that certain tract, piece or parcel of land situate generally southeasterly of Mustang Drive in the Town of Colonie, County of Albany, New York, and being more particularly bounded and described as follows:

Beginning at the point of intersection of the division line between the lands now or formerly of Mohawk Paper Mills, Inc. as described in Book 2357 of Deeds at Page 207 (N/F Colonie Ventures, Inc. as described in book 2421 of Deeds at Page 1075) on the northeast and lands now or formerly of H& S Reepmeyer (N/F Stella M. Reepmeyer Book 2878 of Deeds at Page 983) on the southwest with the southeasterly margin of Mustang Drive and; thence from said point of beginning and along said southeasterly road margin the following three (3) courses: 1) North 28 deg. 45 min. 01 sec. east, 95.82 feet to a point; 2) North 30 deg. 57 min. 59 sec. East, 197.38 feet to a point; and 3) North 28 deg. 36 min. 07 sec. East, 347.10 feet to a point; thence continuing along said road margin in part and along the Easterly line of lands now or formerly of the American Telephone and Telegraph Company (N/F P & R Holdings, LLC Book 2768 of Deeds at page 203) on the West the following two (2) courses: 1) North 18 deg. 59 min. 40 sec. East, 88.25 feet to a point; and 2) North 20 deg. 46 min. 10 sec. East, 200.00 feet to its point of intersection with the division line between the lands of said Mohawk Paper Mills, Inc. (N/F Colonie Ventures, Inc.) on the South and lands now or formerly of Frito Lay, Inc. (N/F P&R Holdings, LLC in Book 2609 of Deeds at Page 686) on the North; thence along the last mentioned division line South 69 deg. 113 min. 50 sec. East, 425.27 feet to its point of intersection with the common division line between the lands of said Mohawk Paper Mill, Inc. (N/F Colonie Venture, Inc.) on the West and lands now or formerly of M.W. Partners, Ltd. (N/F P&R Holdings, LLC) in part, S.V. Moffett, Jr. (N/F 10 Green Mountain Drive, LLC) in part, and McFarland Construction Co., Inc. (N/F Matthew T. Spiak and Stephanie J. Spiak) in part, the following two (2) courses: 1) South 20 deg. 46 min. 10 sec. West, 780.47 feet to a point; and 2) South 17 deg. 33 min. 12 sec. West, 197.98 feet to its point of intersection with the common division line between the lands of said Mohawk Paper Mills, Inc. (N/F Colonie Ventures, Inc.) on the North and lands of McFarland Construction Company, Inc. (N/F Daniel J. Buser and Mary E. Buser) in part, and W. Reepmeyer (N/F Stella M. Reepmeyer) on the South; thence along the last mentioned common division line North 81 sec. 06 min. 24 sec. West, 50.40 feet to its intersection with the above first mentioned division line; thence along said above first mentioned division line North 61 deg. 14 min. 59 sec. West, 484.57 feet to the point or place of beginning.

FOR INFORMATION ONLY, NOT INSURED: Containing 10.07 +/- acres of land.

**Parcel 2:**

All that certain tract, piece or parcel of land located in the Town of Colonie, County of Albany, and State of New York, described as follows:

Beginning at a point in the easterly line of Loudon Road, also known as New York State Route 9, with the northerly line of Fonda Road continuing thence North 19° 28' 52" East 127.32 feet to a point in the easterly line of Loudon Road; thence along the southerly line of the lands now or formerly of Boyland as described in Liber 2310 of deeds at page 583, South 74° 55' 38" East 191.13 feet to a point; thence North 28° 49' 02" East 335 feet to a point; thence North 73° 10' 50" West 10.38 feet to a point; thence North 20° 46' 10" East 150 feet to a point in the southerly line of Falcon Avenue; thence along the southerly line of Falcon Avenue South 73° 10' 50" East 62.09 feet to a point; thence along a curve to the right with a radius of 25 feet, an interior angle of 101° 46' 57" 44.41 feet to a point in the westerly line of Mustang Drive; thence along the westerly line of

Schedule A – Legal Description – Page 1 of 2  
SMPR Order No.: A-0131357  
Date: October 19, 2017

Fidelity National Title Insurance Company – Sneeringer Monahan Provost Redgrave Title Agency, Inc.

**LEGAL  
DESCRIPTION**

*Fidelity National Title Insurance Company*  
*Issued by*  
**SNEERINGER MONAHAN PROVOST REDGRAVE**  
**TITLE AGENCY, INC.**

Mustang Drive South 28° 36' 07" West 259.69 feet to a point; thence South 30° 57' 59" West 197.31 feet to a point; thence South 28° 45' 01" West 164.69 feet to a point; thence North 88° 57' 01" West 77.45 feet to a point in the northerly line of Fonda Road; thence North 54° 50' 35" West 150.93 feet to the point or place of beginning.



## APPENDIX B-1

### TERMINATION OF UNDERLYING LEASE

WHEREAS, One Mustang Drive II, LLC (the “Company”), as landlord, and Town of Colonie Industrial Development Agency (the “Issuer”), as tenant, entered into an underlying lease agreement dated as of November 1, 2017 (the “Underlying Lease Agreement”) pursuant to which, among other things, the Company leased the Project Facility (as defined in the Underlying Lease Agreement) to the Issuer; and

WHEREAS, pursuant to the Underlying Lease Agreement, the Company and the Issuer agreed that the Underlying Lease Agreement would terminate on the earlier to occur of (1) September 1, 2030 or (2) the date on which all of the requirements of Section 3.9 of the Installment Sale Agreement dated as of November 1, 2017 have been satisfied; provided, however, that the Company’s obligations under the Bond Documents shall survive the assignment of the Underlying Lease Agreement to the Company and the execution of this termination of underlying lease agreement by the Issuer is not intended, and shall not be construed, as a waiver or alteration by the Issuer or the Company of the provisions of Section 9.18 of the Lease Agreement.

WHEREAS, the Company and the Issuer now desires to evidence the termination of the Underlying Lease Agreement;

NOW, THEREFORE, it is hereby agreed that the Underlying Lease Agreement has terminated as of the dated date hereof.

IN WITNESS WHEREOF, the Company and the Issuer have signed this termination of lease agreement and caused to be dated as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

ONE MUSTANG DRIVE II, LLC, a Delaware limited liability company

By: ANTHONY J. HYNES IRREVOCABLE TRUST NO. 2 DATED AUGUST 16, 2010, VOTING MEMBER AND MANAGER

By: \_\_\_\_\_  
Kevin Tully, Trustee

By: ANTHONY J. HYNES IRREVOCABLE TRUST NO. 3 DATED AUGUST 16, 2010, VOTING MEMBER AND MANAGER

By: \_\_\_\_\_  
Kevin Tully, Trustee

TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY

By: \_\_\_\_\_  
John Kearney, Chairman

STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF                    )

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, a Notary Public in and for said State, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK    )  
                                  ) SS.:  
COUNTY OF                )

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, a Notary Public in and for said State, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

## APPENDIX B-2

### BILL OF SALE TO COMPANY

Town of Colonie Industrial Development Agency, a public benefit corporation of the duly organized under the laws of the State of New York, having its office at 347 Old Niskayuna Road, Latham, New York 12110 (the "Issuer"), hereby sells, transfers, and delivers unto One Mustang Drive II, LLC a limited liability company duly organized under the laws of the State of Delaware, having an address at One Mustang Drive, Cohoes, New York 12047 (the "Company"), its successors and assigns, for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Issuer, the receipt of which is hereby acknowledged by the Issuer, hereby sells, transfers, and delivers unto the Issuer, its successors and assigns, all those materials, machinery, equipment, fixtures and furnishings now owned or hereafter acquired or refinanced by the Company with proceeds of the sale of the Bond (as defined in that certain Installment Sale Agreement dated as of November 1, 2017 (the "Sale Agreement") between the Issuer and the Company, and described on Schedule A attached hereto, as such exists as of the date hereof, without representation or warranty, subject to the following: (1) any Liens to which such Equipment was subject when conveyed to the Issuer, (2) any Liens created at the request of the Company or to the creation of which the Company consented or in the creation of which the Company acquiesced, (3) any Permitted Encumbrances, and (4) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in the Sale Agreement. Capitalized terms used herein and in Schedule "A" shall have the meaning given to them in the Bond Purchase Agreement.

TO HAVE AND HOLD the same unto the Company, its successors and assigns, forever.

IN WITNESS WHEREOF, the Issuer has caused this instrument to be executed by its duly authorized representative on the date indicated beneath the signature of such representative and dated this \_\_\_\_\_ day of November, 2017.

TOWN OF COLONIE INDUSTRIAL  
DEVELOPMENT AGENCY

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

## SCHEDULE "A"

### DESCRIPTION OF THE EQUIPMENT

All articles of personal property and all appurtenances acquired by the Town of Colonie Industrial Development Agency (the "Issuer") with the proceeds of the Issuer's Multi-Mode Tax Exempt Revenue Bonds (One Mustang Drive II, LLC Project), Series 2010A, pursuant to Section 2.1 of the Sale Agreement dated as of September 1, 2010 (the "Sale Agreement"), by and between the Issuer and the Company and now or hereafter attached to, contained in or used in connection with the Land (as defined in the Sale Agreement) and/or the Project Facility (as defined in the Sale Agreement) or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators and other lunch room facilities, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.