

**ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36  
OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW**

**THIS INDENTURE** made this 4<sup>th</sup> day of September, 2014, between air  
Owner(s) Airco Properties, Inc., having an office at 575 Mountain Avenue, Murray Hill, County  
of Union, State of New Jersey (the "Grantor"), and The People of the State of New York (the  
"Grantee."), acting through their Commissioner of the Department of Environmental  
Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with  
its headquarters located at 625 Broadway, Albany, New York 12233,

**WHEREAS**, the Legislature of the State of New York has declared that it is in the public  
interest to encourage the remediation of abandoned and likely contaminated properties ("sites")  
that threaten the health and vitality of the communities they burden while at the same time  
ensuring the protection of public health and the environment; and

**WHEREAS**, the Legislature of the State of New York has declared that it is in the public  
interest to establish within the Department a statutory environmental remediation program that  
includes the use of Environmental Easements as an enforceable means of ensuring the  
performance of operation, maintenance, and/or monitoring requirements and the restriction of  
future uses of the land, when an environmental remediation project leaves residual contamination  
at levels that have been determined to be safe for a specific use, but not all uses, or which  
includes engineered structures that must be maintained or protected against damage to perform  
properly and be effective, or which requires groundwater use or soil management restrictions;  
and

**WHEREAS**, the Legislature of the State of New York has declared that Environmental  
Easement shall mean an interest in real property, created under and subject to the provisions of  
Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which  
contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with  
engineering controls which are intended to ensure the long term effectiveness of a site remedial  
program or eliminate potential exposure pathways to hazardous waste or petroleum; and

**WHEREAS**, Grantor, is the owner of real property located at the address of 4201  
Witmer Road in the Town of Niagara, County of Niagara and State of New York, known and  
designated on the tax map of the County Clerk of Niagara as tax map parcel numbers: Section  
130.16 Block 1 Lot 10, being the same as that property conveyed to Grantor by deed dated  
September 14, 1979 and recorded in the Erie County Clerk's Office in Liber and Page 1671 and  
38, comprising approximately 25.142 +/- acres, and hereinafter more fully described in the Land  
Title Survey dated November 7, 2012 prepared by Wendel Companies, which will be attached  
to the Site Management Plan. The property description (the "Controlled Property") is set forth in  
and attached hereto as Schedule A; and

**WHEREAS**, the Department accepts this Environmental Easement in order to ensure the  
protection of public health and the environment and to achieve the requirements for remediation  
established for the Controlled Property until such time as this Environmental Easement is  
extinguished pursuant to ECL Article 71, Title 36; and

**NOW THEREFORE**, in consideration of the mutual covenants contained herein,

[10/12]

Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement")

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

**Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv);**

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Niagara County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(7) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

[10/12]

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, New York 12233  
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

**This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation Law.**

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement certifying under penalty of perjury, in such form and manner as the Department may require, that:

- (1) the institutional controls and/or engineering controls employed at such site:
  - (i) are in-place;
  - (ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and
  - (iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;
- (2) the owner will continue to allow access to such real property;
- (3) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls; and
- (4) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of [10/12]



IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Airco Properties, Inc.:

By: Mark D. Weller

Print Name: Mark D. Weller

Title: Secretary Date: July 29, 2013

**Grantor's Acknowledgment**

STATE OF NEW ~~YORK~~ <sup>Jersey</sup> )  
 ) ss:  
COUNTY OF Union )

On the 29th day of July, in the year 20 13, before me, the undersigned, personally appeared Mark D. Weller, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Elisabeth I. Gaschler  
Notary Public - State of New York ~~YORK~~ <sup>Jersey</sup>

**Elisabeth I. Gaschler**  
**Notary Public of New Jersey**  
**My Commission Expires October 25, 2013**

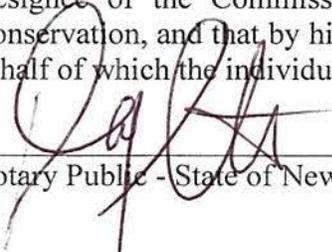
**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,**

By:   
Robert W. Schick, Director  
Division of Environmental Remediation

**Grantee's Acknowledgment**

STATE OF NEW YORK    )  
  ) ss:  
COUNTY OF ALBANY    )

On the 4<sup>th</sup> day of September, in the year 2018<sup>149K</sup>, before me, the undersigned, personally appeared Robert Schick, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, 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

**David J. Chiusano**  
**Notary Public, State of New York**  
**No. 01CH5032146**  
**Qualified in Schenectady County**  
**Commission Expires August 22, 2018**

## SCHEDULE "A" PROPERTY DESCRIPTION

All that tract or parcel of land situate in the Town of Niagara, County of Niagara and State of New York being part of Lot 24, Township 13, Range 9 of the Holland Land Company's Survey, bounded and described as follows:

Beginning at an existing rail monument at the southeast corner of lands conveyed to the Vanadium Corporation of America by deed recorded in the Niagara County Clerk's office in Liber 660, Page 319.

Running thence westerly along the southerly line of lands so conveyed, a distance of 1061.0' to a point.

Running thence northerly at right angles to the last previous course, a distance of 295.2' to a point.

Running thence northwesterly on a line deflecting to the left  $67^{\circ}-47'-54''$  from the last previous course 105.52' to the point of curve.

Running thence northwesterly and westerly on a curve to the left, said curve having a radius of 326.5', an arc distance of 135.47' to the point of tangency.

Running thence westerly along said line of tangency, a distance of 51.0' to a point.

(The last 3 herein described courses being 5.7' +/- northerly from the center line of an existing railroad spur.)

Running thence northwesterly, on a line deflecting to the right  $53^{\circ}-00'-55''$  from the last course, a distance of 284.0' to a point.

Running thence northerly, on a line deflecting to the right  $38^{\circ}-10'-30''$  from the last previous course, a distance of 483.75' to a point on the southerly line of lands appropriated by the Power Authority of the State of New York as shown on Power Authority of the State of New York Map No. 1295 Parcel 1295.

Running thence easterly at right angles to the last previous course and along the southerly line of lands appropriated by the Power Authority of the State of New York as aforesaid, a distance of 869.67' to a point.

Running thence southeasterly on a line forming an interior angle of  $121^{\circ}-00'-35''$  and along the northeasterly line of lands conveyed to the Vanadium Corporation of America by deeds recorded in Liber 887 at Page 122 and Liber 660 at Page 319, a distance of 1252.75' to the existing rail monument at the point of beginning.

Containing 25.142 +/- acres of land.