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

THIS INDENTURE made this 12th day of August, 2015, between Owner(s) Homogeneous Metals, Inc., having an office at 2395 Main Street, P.O. Box 294, Clayville, New York 13322, County of Oneida, State of New York (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 Don Reile Boulevard (f/k/a West Canada Boulevard) in the Village of Herkimer, County of Herkimer and State of New York, known and designated on the tax map of the County Clerk of Herkimer as tax map parcel numbers: Section 113.73 Block 1 Lots 45, 46 and 47, and Section 113.81 Block 2 Lot 56, being a portion of the property conveyed to Grantor by George R. Cogar to Homogeneous Metals, Inc. by deed dated March 23, 1979 and recorded in the Herkimer County Clerk's Office on March 23, 1979 in Liber 663 of Deeds at Page 914, a portion of the property conveyed by the Niagara Mohawk Power Corporation to Homogeneous Metals, Inc. by deed dated December 1, 1987 and recorded in the Herkimer County Clerk's Office on January 20, 1988 in Liber 737 of Deeds at Page 338, and a portion of the property conveyed by The People of the State of New York to Homogeneous Metals, Inc. by deed dated April 29, 1993 and recorded in the Herkimer County Clerk's Office on July 22, 1993 in Liber 806 of Deeds at Page 318. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 7.753 +/- acres,

and is hereinafter more fully described in the Environmental Easement Survey dated June 1, 2015 prepared by Thew Associates Land Surveyors, which will be attached to the Site Management Plan. The Controlled Property description 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 and the terms and conditions of Brownfield Cleanup Agreement Index Number: C622029-02-12, 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 Herkimer 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;

(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 by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) 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;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) 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 notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to:	Site Number: C622029 Office of General Counsel NYSDEC 625 Broadway Albany New York 12233-5500
With a copy to:	Site Control Section Division of Environmental Remediation NYSDEC

625 Broadway
Albany, NY 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

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

Homogeneous Metals, Inc.:

By: Mark Hewko

Print Name: Mark Hewko

Title: General Manager Date: 06/29/2015

Grantor's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 29th day of June, in the year 20 15, before me, the undersigned, personally appeared Mark Hewko, 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.

Notary Public - State of New York

LESLIE F. MURPHY
Notary Public in the State of New York
Qualified in Oneida County 01MU6100237
My Commission Expires Oct. 14, 20 15

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 12TH day of AUGUST, in the year 2015, before me, the undersigned, personally appeared Robert W. 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

PATRICK EUGENE FOSTER
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN KINGS COUNTY
NO. 02FO6278032
COMMISSION EXPIRES 03/18/2017

SCHEDULE "A" PROPERTY DESCRIPTION

ENVIRONMENTAL EASEMENT
TO BE GRANTED BY
HOMOGENEOUS METALS, INC.
TO
THE PEOPLE OF THE STATE OF NEW YORK,
ACTING THROUGH THEIR COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

CONTAINS: 337,716 square feet or 7.753 acres

All that tract or parcel of land situate in the Village of Herkimer, County of Herkimer, State of New York, and being more precisely described as follows:

Beginning at a 5/8-inch rebar with a 1 ¼-inch diameter yellow plastic cap marked "NASH LS 49168 SURVEY MARKER" (0.1 feet below grade) found at the southwesterly corner of a strip of land utilized for an electrical distribution line conveyed by The New York Central Railroad Company to the Niagara Mohawk Power Corporation by deed dated September 15, 1959 and recorded in the Herkimer County Clerk's Office on October 27, 1959 in Liber 536 of Deeds at Page 276, said rebar being 20 feet distant easterly measured at right angles from the centerline of the former Herkimer, Newport, and Poland Narrow Gauge Railroad, said rebar having New York State Plane Coordinates (NAD83/2011 – East Zone) of 1,530,540.91 feet North and 362,734.89 feet East;

thence along the southerly and easterly lines of the said Niagara Mohawk Power Corporation strip of land, the following four courses and distances:

1. North 54 degrees 05 minutes 34 seconds East a distance of 67.81 to a set 5/8-inch rebar with a 1 1/4-inch diameter red plastic cap marked "THEW ASSOCIATES - UTICA NY" (herein after referred to as a 5/8-inch rebar), said rebar being 86 feet distant easterly measured at right angles from the centerline of the former Herkimer, Newport, and Poland Narrow Gauge Railroad;
2. North 22 degrees 28 minutes 59 seconds West, parallel to and 86 feet distant easterly measured at right angles from the centerline of the former Herkimer, Newport, and Poland Narrow Gauge Railroad, a distance of 1,092.55 feet to a found 5/8-inch rebar (flush with grade), said course passing over a 5/8-inch rebar set at a distance of 7.43 feet;
3. North 67 degrees 13 minutes 11 seconds East a distance of 9.01 feet to a point, said point being South 67 degrees 13 minutes 11 seconds West a distance of 1.02 feet from a 5/8-inch rebar (flush with grade) found at the former low water mark of West Canada Creek;
4. North 35 degrees 06 minutes 24 seconds West, parallel to and 1-foot distant measured at right angles from the former low water mark of West Canada Creek, a distance of 228.23 to a 5/8-inch rebar set on the southerly line of lands of the People of the State of New York (no deed reference);

thence along the lands of the People of the State of New York, the following five courses and distances:

1. North 52 degrees 34 minutes 30 seconds East a distance of 37.46 feet to a 5/8-inch rebar set at the former northwesterly corner of the machine shop (now razed);

2. North 64 degrees 36 minutes 39 seconds East, in part along the northerly face of the former machine shop, a distance of 80.01 feet to a set 5/8-inch rebar;
3. South 25 degrees 23 minutes 01 seconds East a distance of 458.60 feet to a 5/8-inch rebar with a 1 ¼-inch diameter yellow plastic cap marked "NASH LS 49168 SURVEY MARKER" (extends 0.2 feet above grade) found at the former low water mark of the West Canada Creek;
4. South 39 degrees 30 minutes 30 seconds East, along the low water mark of the West Canada Creek, a distance of 825.99 feet to a found 5/8-inch rebar with a 1 ¼-inch diameter yellow plastic cap marked "NASH LS 49168 SURVEY MARKER" (flush with grade);
5. thence North 54 degrees 05 minutes 34 seconds East a distance 37.68 feet, more or less, to the westerly shore of West Canada Creek;

thence South 34 degrees 32 minutes 00 seconds East, along the westerly shore of West Canada Creek, a distance of 218.07 feet, more or less, to a point;

thence along the lands of the People of the State of New York, the following two courses and distances:

1. South 56 degrees 09 minutes 35 seconds West a distance of 145.39 feet to a found 5/8-inch rebar;
2. along on a curve deflecting to the left, non-tangent to the previous course, having a central angle of 01 degrees 47 minutes 58 seconds and a radius of 955.37 feet, an arc distance of 30.00 feet (chord: South 34 degrees 03 minutes 04 seconds East, 30.00 feet) to a 5/8-inch rebar set at the northeasterly corner of a parcel of land utilized for an electrical substation conveyed by The New York Central Railroad Company to the Niagara Mohawk Power Corporation by deed dated September 15, 1959 and recorded in the Herkimer County Clerk's Office on October 27, 1959 in Liber 536 of Deeds at Page 276;

thence along the northerly line of the Niagara Mohawk Power Corporation substation parcel, the following three courses and distances:

1. South 56 degrees 09 minutes 35 seconds West a distance of 246.00 feet to a set 5/8-inch rebar;
2. North 41 degrees 20 minutes 25 seconds West a distance of 30.26 feet to a found 5/8-inch rebar with a 1 ¼-inch diameter yellow plastic cap marked "NASH LS 49168 SURVEY MARKER" (flush with grade);
3. thence South 56 degrees 09 minutes 35 seconds West a distance of 102.45 feet to a point on the easterly line of a parcel of land conveyed by Douglas M. Spear to Trafalgar Power, Inc. by deed dated November 30, 1987 and recorded in the Herkimer County Clerk's Office on December 3, 1987 in Liber 735 of Deeds at Page 159, said point being 20 feet distant easterly measured at right angles from the centerline of the former Herkimer, Newport, and Poland Narrow Gauge Railroad, said point also being South 31 degrees 08 minutes 22 seconds East a distance of 1.18 feet from a found 1-inch iron pipe (0.1 feet below grade);
4. thence North 22 degrees 37 minutes 10 seconds West, along the easterly line of Trafalgar Power, Inc., and parallel to and 20 feet distant easterly measured at right angles from the centerline of the former Herkimer, Newport, and Poland Narrow Gauge Railroad, a distance of 205.56 feet to the **Point of Beginning.**

To contain 337,711 square feet or 7.753 acres of land, more or less.

The above-described parcel of land is intended to be a portion of the same premises conveyed by George R. Cogar to Homogeneous Metals, Inc. by deed dated March 23, 1979 and recorded in the Herkimer County Clerk's Office on March 23, 1979 in Liber 663 of Deeds at Page 914, the same premises conveyed by the Niagara Mohawk Power Corporation to Homogeneous Metals, Inc. by deed dated December 1, 1987 and recorded in the Herkimer County Clerk's Office on January 20, 1988 in Liber 737 of Deeds at Page 338, and the same premises conveyed by The People of the State of New York to Homogeneous Metals, Inc. by deed dated April 29, 1993 and recorded in the Herkimer County Clerk's Office on July 22, 1993 in Liber 806 of Deeds at Page 318.

The above-mentioned coordinates, bearings, and distances are referenced to the North American Datum of 1983 – 2011 adjustment (NAD83/2011), projected on the New York State Plane Coordinate System (East Zone).

A map of the above-described parcel of land, dated June 1, 2015, was prepared by Thew Associates PE-LS, PLLC, and is distinguished as Drawing No. UK518-11-14.