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

THIS INDENTURE made this 4th day of December, 2009, between Owner(s) NOCO Express Properties, LLC, having an office at 2440 Sheridan Drive, Tonawanda, New York 14150, (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 of ensuring the potential 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 1055 Genesee Street in the City of Buffalo, Erie County, State of New York, known and designated on the tax map of the County Clerk of Erie as tax map parcel numbers: Section 100.76 Block 5 Lot 1, being the same as that property conveyed to Grantor by Bargain and Sale Deed dated December 23, 2008 and recorded in the Erie County Clerk's Office in Book 11153 at page 7875 of deeds, comprising of approximately 0.726 ± acres, and hereinafter more fully described in the ALTA/ACSM Land Title Survey dated July 10, 2009, prepared by Millard, MacKay & Delles Land Surveyors, LLP and corresponding Schedule "A" property description, both documents are attached hereto and made a part hereof (the "Controlled Property"); and

WHEREAS, the Commissioner does hereby acknowledge that the Department accepts this Environmental Easement in order to ensure the protection of human health and the environment and to achieve the requirements for remediation established at this 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 covenants and mutual promises contained herein and the terms and conditions of Brownfield Cleanup Agreement Index Number B9-0741-07-04, Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the ECL 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 potential restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The following controls 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. The Controlled Property may be used for industrial or commercial use as described within 6 NYCRR Part 375- 1.8 (g) (2) (iii) and (iv), as long as the following long-term engineering controls are employed and the land use restrictions specified below are adhered to:

(i) All Engineering Controls on the Controlled Property must be operated and maintained as specified in the Site Management Plan (SMP);

(ii) All Engineering Controls on the Controlled Property must be inspected and certified at a frequency and in a manner defined in the SMP;

(iii) Groundwater, soil vapor and other environmental or public health monitoring must be performed as defined in the SMP;

(iv) Data and information pertinent to the Site Management for the Site must be reported at the frequency and in a manner defined in the SMP;

(v) Site-wide Inspection and On-Site environmental monitoring devices, including but not limited to groundwater monitoring wells must be protected and replaced as necessary to ensure continued functioning in a manner specified in the Site Monitoring Plan;

(vi) Use of groundwater underlying the Controlled Property is prohibited without treatment rendering it safe for the intended use. Approval by the New York State Department of Health must be obtained prior to such intended use;

(vii) All future intrusive activities and soil/fill handling at the Site must be completed in a safe and environmentally responsible manner and conducted in accordance with the Excavation Work Plan;

B. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the Site Management Plan ("SMP") that the Department has approved for the Controlled Property and all Department-approved amendments to that SMP.

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated December, 2009. 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 on the Controlled Property, 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. Upon notice of not less than thirty (30) days the Department in exercise of its discretion and consistent with applicable law may revise the SMP. The notice shall be a final agency determination. 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:

Regional Remediation Engineer
NYSDEC - Region 9
Division of Environmental Remediation
270 Michigan Avenue
Buffalo, NY 14203-2999
Phone: (716) 851-7200 fax: (716) 851-7211

or

Site Control Section
Division of Environmental Remediation
NYS DEC
625 Broadway
Albany, New York 12233

C. The Controlled Property may not be used for a higher level of use such as unrestricted residential or restricted residential use and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

D. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of 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 of Title 36 to Article 71 of the Environmental Conservation Law.

E. 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.

F. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

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 Controlled 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 the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, 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 intentionally violates this Environmental Easement, the Grantee may revoke the Certificate of Completion provided under ECL Article 56, Title 5 or ECL Article 27 Title 14 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. Grantor shall then have a reasonable amount of time from receipt of such notice to cure. At the expiration of said second period, Grantee may commence any proceedings and take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement in accordance with applicable law to require compliance with the terms of this Environmental Easement.

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 its enforcement rights in the event of a subsequent breach of or noncompliance with any of the terms of this Environmental Easement.

6. Notice. Whenever notice to the State (other than the annual certification) or approval from the State 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 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: C 915211
Department of Environmental Enforcement
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

Such correspondence shall be delivered by hand, or 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. This Environmental Easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation 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 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.

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

Grantor's Name: NOCO Express Properties, LLC .

By: _____
Manager - Michael F. Newman

Title: MANAGER Date: 12/4/09

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

By: _____
Alexander B. Grannis, Commissioner

By: _____
Dale A. Desnoyers, Director
Division of Remediation

Grantor's Acknowledgment

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

On the 4TH day of DECEMBER, in the year 2009, before me, the undersigned, personally appeared MICHAEL F NEWMAN, 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.

Mary Ellen Semlitsch (Sheehan)
Notary Public - State of New York

MARY ELLEN SEMLITSCH
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 5/15/2010

Grantee's Acknowledgment

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

On the 15th day of December, in the year 2009, before me, the undersigned, personally appeared Dale Desnoyers, 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 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 S. SAMPSON 02SA5013268
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN RENSSELAER COUNTY
COMMISSION EXPIRES JULY 15, ~~15~~ 2011

SCHEDULE "A" PROPERTY DESCRIPTION

Address: 1055 Genesee Street, Buffalo, NY
Erie County
Tax Map: 100.76-5-1

LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL Of LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Lot No. 5, Township 11, Range 8 of the Holland Land Company's Survey, described as follows:

Beginning at a point in the easterly line of Fillmore Avenue as a 100 foot wide right of way, distant 50 feet northerly from its intersection with the northerly line of Peterson Street as a 49.5 foot wide right of way, (which point of beginning is also the northwest corner of lands conveyed to Central Oil Company Inc. by deed recorded in Erie County Clerk's Office in Liber 1355 of Deeds page 405); running thence northerly along the easterly line of Fillmore Avenue 247.52 feet to its intersection with the southerly line of Geneses Street; running thence easterly along the southerly line of Genesee Street 130.47 feet to the northeast corner of the lands secondly described in a certain deed from John G. Bilz as executor of the last will and testament of Anna Maria Baeczhold, deceased, to August Aichinger and Mary his wife dated December 10, 1910 and recorded in said Clerk's Office in Liber 1170 of Deeds page 102; running thence southerly along the easterly line of said land so described in said deed to August Aichinger and Mary his wife, as aforesaid, 150 feet to the northerly line of lands conveyed by August Aichinger and Mary his wife to Joseph J. Stoll by deed dated June 1, 1911 and recorded in said Clerk s Office in Liber 1204 of Deeds page 66; running thence westerly along the northerly line of said lands so conveyed to Joseph J. Stoll, as aforesaid, .17 of a foot more or less to the westerly line of the lands so conveyed to Joseph J. Stoll, as aforesaid; running thence southerly along the said westerly line of said lands so conveyed to Joseph Stoll, as aforesaid 147.21 feet to the northerly line of Peterson Street; thence southwesterly along the northerly line of Peterson Street 47.63 feet to the easterly line of lands so conveyed to the Central Oil Company Inc.; thence northerly along the easterly line of lands so conveyed to the Central Oil Company Inc. 9.07 feet to the northeast corner of lands so conveyed to the Central Oil Company Inc.; thence westerly along the northerly line of lands so conveyed to the Central Oil Company Inc., 72 feet to the easterly line of Fillmore Avenue at the point or place of beginning.

TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to said premises.

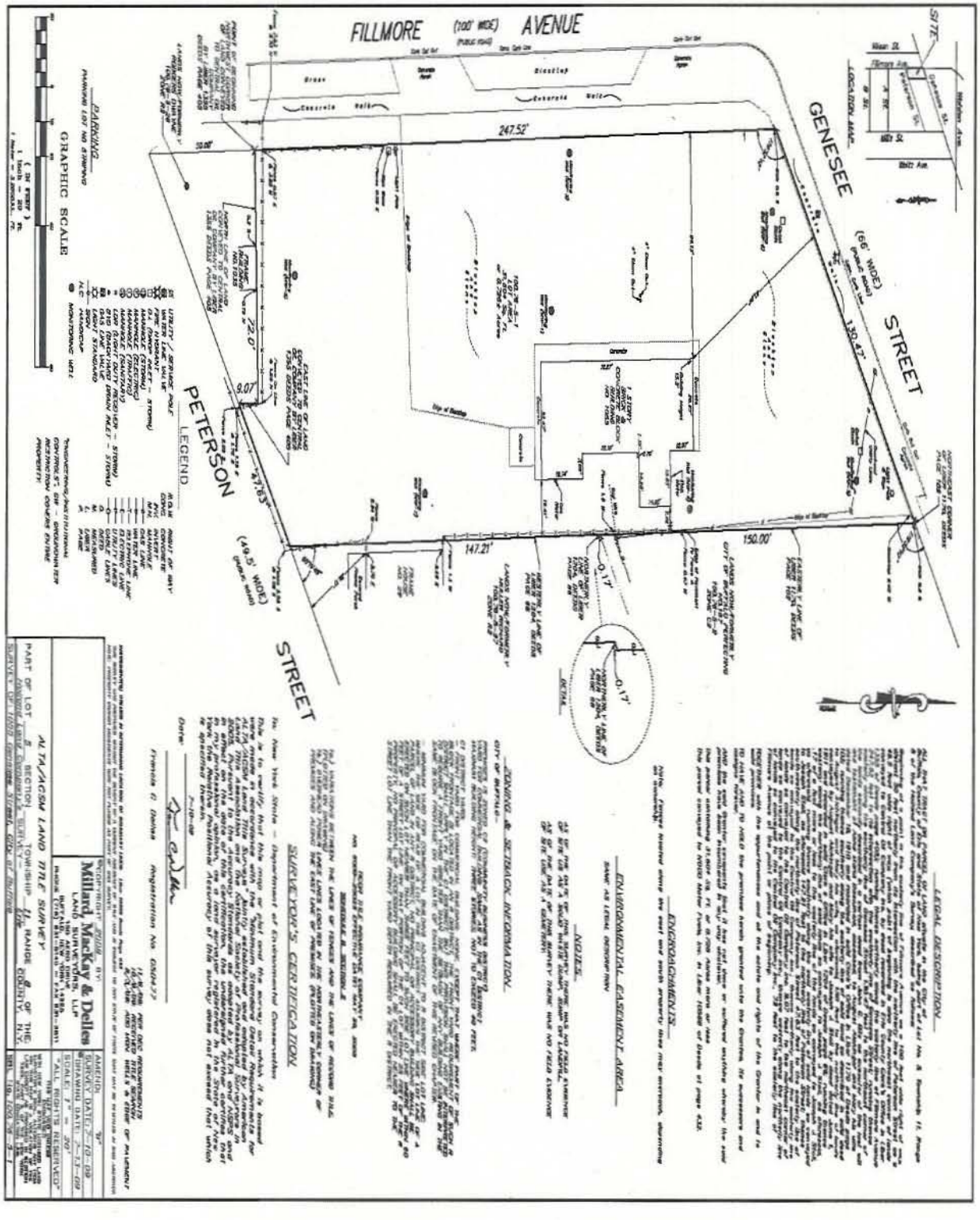
TO HAVE AND TO HOLD the premises herein granted unto the Grantee, its successors and assigns forever.

AND the said Grantor covenants that it has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

This parcel containing 31,604 Sq, Ft. or 0.726 Acres more or less

This parcel conveyed to NOCO Motor Fuels, Inc. in Liber 10566 of Deeds at page 432.

SURVEY


FILLMORE (100' WIDE) AVENUE
GENESEE STREET
PETERSON STREET
247.52'
130.47'
150.00'
147.21'
9.07'
LEGAL DESCRIPTION
EASEMENT DESCRIPTION
NOTES
ENGROACHMENTS
SURVEYOR'S CERTIFICATION
Millard, MacKay & Dellos
LAND SURVEYORS, LLP
ALTA/ACSM LAND TITLE SURVEY
PART OF LOT
SURVEY DATE
SCALE 1" = 20'
"ALL RIGHTS RESERVED"