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

**THIS INDENTURE** made this 11<sup>th</sup> day of June 2012, between Owner(s) County of Suffolk, a municipal corporation of the State of New York with offices at the Suffolk County Center, Center Drive, Riverhead, New York 11901, County of Suffolk, State of New York (the "Grantor"), acting by and through its Department of Economic Development and Planning (the "Department"), having its offices at 100 Veterans Memorial Highway, Hauppauge, New York 11788, 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 covered by the Environmental Easement located at the address of Francis S. Gabreski Airport, in the Town of Southampton, County of Suffolk and State of New York, known and designated on the tax map of the County Clerk of Suffolk County as tax map parcel number: District 0900 Section 312.00 Block 01.00

Lot 004.002 (p/o), being a portion of that property conveyed to Grantor by Quitclaim Deed dated July 12, 1972 and recorded in the Suffolk County Clerk's Office under Liber D00012607 and Page 533, comprised of approximately 1,440 acres; and

**WHEREAS**, this Environmental Easement shall encumber a portion of the Francis S. Gabreski Airport, comprised of approximately 57.943 acres, and hereinafter more fully described in the Land Title Survey, dated November 2010, as revised through January 13, 2012, prepared by Sidney B. Bowne & Son, LLP, 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 human 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 covenant contained herein and the terms and conditions of NYSDEC Voluntary Cleanup Agreement, *In the Matter of the Implementation of a Voluntary Cleanup Agreement for Airport Development District, Francis S. Gabreski Airport, "Site," by County of Suffolk, "Volunteer,"* Site Number V00576-1, Index No. W1-0985-04-09, 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: **Restricted Residential as described in 6 NYCRR Part 375-1.8(g)(2)(ii), 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) .**

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- (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) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;
  - (5) 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;
  - (6) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;
  - (7) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP.
  - (8) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP.
  - (9) 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 unrestricted residential use 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

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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 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, 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 intentionally violates this Environmental Easement, the Grantee may revoke the Release and Covenant Not to Sue 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:

Suffolk County, NYSDEC Site Number V00576-1, Index No. W1-0985-04-09, NYSDEC Voluntary Cleanup Agreement, Suffolk County Tax Map No. District 0900 Section 312.00 Block 01.00 Lot 004.002 (p/o).



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

County of Suffolk

By:



Regina Calcaterra

Title: Chief Deputy County Executive

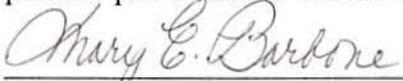
**Grantor's Acknowledgment**

STATE OF NEW YORK )

) ss:

COUNTY OF SUFFOLK )

On the 13<sup>th</sup> day of MARCH, in the year 2012, before me, the undersigned, personally appeared REGINA M. CALCATERRA 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

MARY E BARBONE  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01BA6127940  
Qualified in Suffolk County  
My Commission Expires May 31, 2013



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**SCHEDULE "A" PROPERTY DESCRIPTION****ADVANTAGE TITLE AGENCY, INC.****Title No. 10-CS-43094 (STIC)****SCHEDULE A**

ALL that certain plot, piece or parcel of land, situate, lying and being at Westhampton, Town of Southampton, County of Suffolk and State of New York, said parcel being more particularly described as follows:

BEGINNING at a point on the Easterly line of Westhampton - Riverhead Road (C.R. 31), said point being more particularly described thus;

COMMENCING at the intersection of the Easterly line of Westhampton - Riverhead Road (C.R. 31) with the Northerly line of Long Island Railroad (Montauk Branch) right of way, said point of commencement being the point of beginning of a lease parcel described in deed Liber 2854 Page 459 filed in the Office of the Suffolk County Clerk;

RUNNING THENCE along the Easterly line of Westhampton - Riverhead Road the following four (4) courses:

1. North 01 degree 15 minutes 33 seconds East a distance of 900.60 feet;
2. North 03 degrees 03 minutes 46 seconds East a distance of 1195.96 feet;
3. North 03 degrees 40 minutes 04 seconds East a distance of 899.58 feet;
4. North 05 degrees 10 minutes 08 seconds East a distance of 500.80 feet to the point of beginning;

THENCE along said Easterly line of Westhampton - Riverhead Road, North 05 degrees 10 minutes 08 seconds East a distance of 1069.01 feet;

THENCE continuing along the Easterly line of Westhampton - Riverhead Road, along a curve to the left having a radius of 2898.00 feet, an arc length of 430.26 feet;

THENCE continuing along the Easterly line of Westhampton - Riverhead Road, North 03 degrees 20 minutes 16 seconds West a distance of 1019.57 feet to the land reputedly now or formerly of the County of Suffolk;

THENCE along said land the following six (6) courses:

1. South 87 degrees 45 minutes 54 seconds East a distance of 434.94 feet;
2. Along a curve to the left having a radius of 4858.00 feet, an arc length of 762.02 feet;
3. South 55 degrees 02 minutes 37 seconds East a distance of 128.34 feet;
4. South 26 degrees 34 minutes 35 seconds West a distance of 32.59 feet;
5. Along a curve to the left having a radius of 150.00 feet, an arc length of 76.84 feet;
6. South 02 degrees 46 minutes 23 seconds East a distance of 201.93 feet to the Northerly line of the Sheltair Westhampton, LLC Lease Parcel as shown on a map dated August 18, 2008 prepared by L.K. McLean Associates, P.C.;

THENCE along said Sheltair Westhampton, LLC Lease Parcel the following three (3) courses:

1. South 86 degrees 27 minutes 08 seconds West a distance of 22.45 feet;
2. South 03 degrees 21 minutes 29 seconds East a distance of 121.19 feet;
3. North 86 degrees 42 minutes 31 seconds East a distance of 21.21 feet;

THENCE South 02 degrees 46 minutes 23 seconds East a distance of 369.10 feet to said Sheltair Westhampton, LLC Lease Parcel;

THENCE along said Sheltair Westhampton, LLC Lease Parcel the following three (3) courses:

1. South 86 degrees 34 minutes 16 seconds West a distance of 17.90 feet;
2. South 03 degrees 17 minutes 09 seconds East a distance of 417.12 feet to the Southerly line of the Sheltair Westhampton, LLC lease parcel;
3. North 86 degrees 27 minutes 08 seconds East, along said line, a distance of 14.17 feet;

THENCE South 02 degrees 46 minutes 23 seconds East a distance of 658.35 feet;

THENCE South 86 degrees 47 minutes 07 seconds West, a distance of 1228.62 feet to the Easterly line of Westhampton - Riverhead Road and the point of BEGINNING.

**SURVEY**

