

**RESOLUTION NO. 304 -2011, AUTHORIZING EXECUTION  
OF AN ENVIRONMENTAL EASEMENT AND OTHER  
DOCUMENTS WITH RESPECT TO THE VOLUNTARY  
CLEANUP AGREEMENT FOR FRANCIS S. GABRESKI  
AIRPORT, AIRPORT DEVELOPMENT DISTRICT**

**WHEREAS**, the County of Suffolk is the owner of Francis S. Gabreski Airport, in Westhampton, NY (also designated as Suffolk County Tax Map Number 0900-312.00-01.00-004.002); and

**WHEREAS**, within Francis S. Gabreski Airport, there exists an Airport Development District (ADD); consisting of 57.943 acres more or less (the "Site"); and

**WHEREAS**, the County of Suffolk entered into a Voluntary Cleanup Agreement with the New York State Department of Environmental Conservation (NYSDEC), captioned as, "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 #: V-00576-1, Index #: W1-0985-04-09, dated November 26, 2005 ("Voluntary Cleanup Agreement") (attached hereto as Exhibit "A" and made a part hereof); and

**WHEREAS**, the County of Suffolk anticipates completion of all remediation activities required by the Voluntary Cleanup Agreement during March 2011; and

**WHEREAS**, the Voluntary Cleanup Agreement requires the County of Suffolk to enter into an Environmental Easement to run with the land in favor of New York State, which Environmental Easement shall comply with the requirements of ECL Article 71, Title 36; and

**WHEREAS**, the Environmental Easement may include the following types of restrictions and requirements:

- Restrict use of the site to restricted residential or less restrictive uses (such as commercial and industrial), as defined by 6 NYCRR §375-1.8; and
- Restrict use of groundwater; and
- In the Soil Management Area, a small area consisting of approximately .5 acres, restrict disturbance of soils below 25 feet below grade without notification to the New York State Department of Environmental Conservation (NYSDEC); and
- Monitoring and Inspection; and
- Periodic reporting to the New York State Department of Environmental Conservation; and
- Annual Certification; and
- Any other restrictions or requirements of the New York State Department of Environmental Conservation;

and

**WHEREAS**, the Voluntary Cleanup Agreement also requires that an authorized representative (Chief Deputy County Executive as set forth in the 1st Resolved of this Resolution) execute a Notice of Agreement (Draft Notice of Agreement attached hereto as Exhibit "C" and made a part hereof); and

**WHEREAS**, after compliance with and completion of the requirements of the Voluntary Cleanup Agreement, the County of Suffolk shall be entitled to a Release and Covenant Not to Sue; now, therefore be it

**1<sup>st</sup>** **RESOLVED**, that the Suffolk County Legislature hereby authorizes, directs and empowers a Chief Deputy County Executive to act as the representative on behalf of the County of Suffolk in all matters related to, required by or necessary to fulfill the Voluntary Cleanup Agreement with the New York State Department of Environmental Conservation (NYSDEC) (attached hereto as Exhibit "A" and made a part hereof); and be it further

**2<sup>nd</sup>** **RESOLVED**, that a Chief Deputy County Executive is hereby authorized empowered and directed to execute all documents and take all actions necessary to comply with the Voluntary Cleanup Agreement (Exhibit "A"), including, but not limited to, execution and recording of an Environmental Easement covering the Airport Development District Site (Draft Environmental Easement attached hereto as Exhibit "B" and made a part hereof), execution and filing of a Notice of Agreement (Draft Notice of Agreement attached hereto as Exhibit "C" and made a part hereof), and otherwise acting for the County of Suffolk in all matters related to the Voluntary Cleanup Agreement; and be it further

**3<sup>rd</sup>** **RESOLVED**, that the execution and delivery on behalf of and in the name of the County by a Chief Deputy County Executive of the Voluntary Cleanup Agreement, the Notice of Agreement and the Environmental Easement presented to the members of the Legislature at this meeting in this Resolution is hereby authorized and directed, with such changes therein as the NYSDEC may require, the Chief Deputy County Executive may accept, and the County Attorney may approve; and be it further

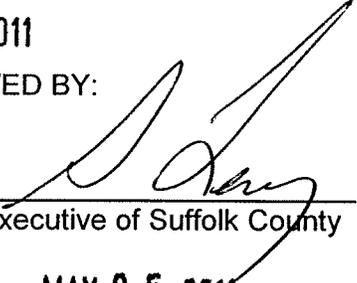
**4<sup>th</sup>** **RESOLVED**, that the execution and delivery of such Voluntary Cleanup Agreement, Notice of Agreement and Environmental Easement shall be conclusive evidence of approval of any such changes and of the authorization and direction thereof by this Legislature; and be it further

**5<sup>th</sup>** **RESOLVED**, that one (1) certified copy of this resolution shall be prepared and sent to the New York State Department of Environmental Conservation, together with the Notice of Agreement and the Environmental Easement; and be it further

**6<sup>th</sup>** **RESOLVED**, that this Legislature, being the State Environmental Quality Review Act (SEQRA) Lead Agency, hereby finds and determines that the adoption of this law is a Type II action pursuant to Title 6 NYCRR Section 617.5(c) (20) and (27) since it constitutes a local legislative decision in connection with routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment. As a Type II action, the Legislature has no further responsibilities under SEQRA.

DATED: **APR 26 2011**

APPROVED BY:

  
\_\_\_\_\_  
County Executive of Suffolk County

Date: **MAY 05 2011**

SUFFOLK COUNTY  
County Legislature  
RIVERHEAD, NY



*This is to Certify That I, TIM LAUBE, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County on April 26, 2011 and that the same is a true and correct transcript of said resolution and of the whole thereof.*

*In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk.*

*Tim Laube*

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Clerk of the Legislature

Intro. Res.

1299

Res. No.

304

April 26, 2011

**Motion:**

Romaine, Schneiderman, Browning, Muratore, Anker  
Eddington, Montano, Cilmi, Lindsay, Vilorio-Fisher, Barraga,  
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

**Co-Sponsors:**

Romaine, Schneiderman, Browning, Muratore, Anker  
Eddington, Montano, Cilmi, Lindsay, Vilorio-Fisher, Barraga,  
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

**Second:**

Romaine, Schneiderman, Browning, Muratore, Anker  
Eddington, Montano, Cilmi, Lindsay, Vilorio-Fisher, Barraga,  
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE	1				
2	Jay H. SCHNEIDERMAN					
3	Kate M. BROWNING					
4	Thomas MURATORE					
6	Sarah S. ANKER					
7	Jack EDDINGTON					
9	Ricardo MONTANO					
10	Thomas CILMI					
11	Thomas F. BARRAGA					
12	John M. KENNEDY, JR.					
13	Lynne C. NOWICK					
14	Wayne R. HORSLEY					
15	DuWayne GREGORY					
16	Steven H. STERN					
17	Lou D'AMARO					
18	Jon COOPER					
5	Vivian VILORIA-FISHER, D.P.O.	1				
8	William J. LINDSAY, P.O.					
	Totals	17	1	1	1	1

MOTION	
<input checked="" type="checkbox"/> Approve	
___ Table: _____	
___ Send To Committee	
___ Table Subject To Call	
___ Lay On The Table	
___ Discharge	
___ Take Out of Order	
___ Reconsider	
___ Waive Rule _____	
___ Override Veto	
___ Close	
___ Recess	
APPROVED <input checked="" type="checkbox"/> FAILED _____	
No Motion _____ No Second _____	

RESOLUTION DECLARED
<input checked="" type="checkbox"/> ADOPTED
___ NOT ADOPTED

*Tim Laube*

Roll Call \_\_\_\_\_ Voice Vote

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

**THIS INDENTURE** made this \_\_\_\_\_ day of \_\_\_\_\_ 2011, 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 Workforce Housing (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 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 900 Section 312 Block 01.00 Lot 004.002, being the same as that property

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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 \_\_\_\_\_, 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 or more restricted uses as described in 6 NYCRR Part 375-1.8(g)(2)(iii).

(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:

Walter J. Parish, P.E.  
Environmental Engineer III  
Division of Environmental Remediation  
New York State Department of Environmental Conservation, Region I

SUNY at Stony Brook  
50 Circle Road  
Stony Brook, New York 11790-3409  
Phone: (631) 444-0241

or

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 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 900 Section 312 Block 01.00 Lot 004.002.

Parties shall address correspondence to:      Site Number: V00675-1  
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



**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:

\_\_\_\_\_  
Dale A. Desnoyers, Director  
Division of Remediation

**Grantee's Acknowledgment**

STATE OF NEW YORK     )  
  ) ss:  
COUNTY OF                     )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, 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

## NOTICE OF AGREEMENT

This Notice is made as of the \_\_\_\_\_ day of 201\_\_\_ by County of Suffolk regarding a parcel of real property located at Francis S. Gabreski Airport, in the Town of Southampton, County of Suffolk, bearing and being a part of Suffolk County Tax Map Number District 900 Section 312 Block 01.00 and Lot 004.002 (the "Property"); and

WHEREAS, County of Suffolk ("Volunteer"), entered into a Voluntary Cleanup Agreement with the New York State Department of Environmental Conservation ("Department"), Site No. V-00576-1, Index #W1-0985-04-09 (the "Agreement") concerning contamination which is or may be present on the Property, which Agreement was executed on behalf of the Department on November 16, 2005; and

WHEREAS, in return for the remediation of the Property, pursuant to the Agreement to the satisfaction of the Department, the Department will provide Volunteer and its lessees and sub-lessees, grantees, successors, and assigns including their respective secured creditors, with a Release and Covenant Not to Sue and forbearance from bringing any action, proceeding, or suit related to the site's further investigation or remediation, subject to certain reservations set forth in the Agreement; and

WHEREAS, pursuant to the Agreement, Volunteer agreed to cause the filing of a Notice of the Agreement with the Suffolk County Clerk in accordance with Paragraph IX of the Agreement to give all parties who may acquire any interest in the Property notice of the Agreement.

NOW, THEREFORE, Volunteer, for itself and for its successors and assigns, declares that:

1. This Notice of Agreement is hereby given to all parties who may acquire any interest in the Property; and
2. This Notice shall terminate upon the filing of a Notice of Termination of this Agreement after having first received approval to do so from the New York State Department of Environmental Conservation or having terminated the Agreement pursuant to its Paragraph XII.

