

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

THIS INDENTURE made this 14<sup>th</sup> day of June, 2006, between Responsive Realty, LLC, residing at (or having an office at ) 362 Kingsland Avenue, Brooklyn, NY 11222, (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 ("brownfield 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 brownfield site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and;

**WHEREAS**, Grantor, is the owner of real property located in the Borough of Manhattan, New York County, New York known and designated on the tax map of the New York of New York as tax map (i) Lot 12, Block 690, Section 3, being the same as that property conveyed by Cotard Realty Associates to Grantor by deed dated December 12 2002, and recorded in the Land Records of the City of New York Register's Office, Borough of Manhattan, Division of Land at Reel 3691, Page 392, comprised of approximately 0.68 acres, and (ii) Lot 54, Block 690, Section 3, being the same as that property conveyed by Relyea French,

Limited to Grantor by deed dated March 9, 2004, and recorded on April 27, 2004, in the Land Records of the City of New York Register's Office, Borough of Manhattan, Division of Land as City Register File Number (CRFN) 2004000258936, comprised of approximately 0.012 acres (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, W2-1012-04-07, Site No. C231017, 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 (or until extinguished in accordance with the terms hereof) 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 commercial and/or industrial use as long as the following long-term engineering controls are employed:

- (i) any soil on the property must be covered by a barrier layer, that is comprised of a mud slab, a vapor barrier membrane, a structural concrete slab and building foundation walls, as set forth in the Site Management Plan approved by the Department for the Controlled Property (the "Site Management Plan");

- (ii) the garage sub level of the building covering the Controlled Property must be continuously vented by an active ventilation system;
- (iii) the barrier layer will be monitored for cracks from which water and vapors could emanate, the ventilation system will be monitored and both will be maintained and repaired as part of normal building maintenance, as described and according to the schedule set forth in the Site Management Plan. Cracks in the barrier layer will be sealed as soon as practicable after detection;
- (iv) an annual certification will be submitted to the Department by a New York State Licensed Professional Engineer, stating that the barrier layer is intact (including documentation of any repairs conducted since the prior certification) and that the ventilation system is in operation; and
- (v) any proposed soil excavation on the property below the barrier layer requires prior notification and prior approval of NYSDEC and the excavated soil must be managed, characterized, and properly disposed of in accordance with NYSDEC regulations and directives.

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

C. 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.**

D. 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.

E. 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:

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

2. 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 Controlled 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 27, Title 14, or the Satisfactory Completion of Project provided under ECL Article 56, Title 5 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 its County tax map number or the Liber and Page or computerized system tracking/identification number and address correspondence to:

Division of Environmental Enforcement  
Office of General Counsel  
New York State Department of Environmental Conservation  
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, or any successor agency with similar responsibilities, 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



**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: *Denise M. Sheehan*  
Denise M. Sheehan, Commissioner

**Grantee's Acknowledgment**

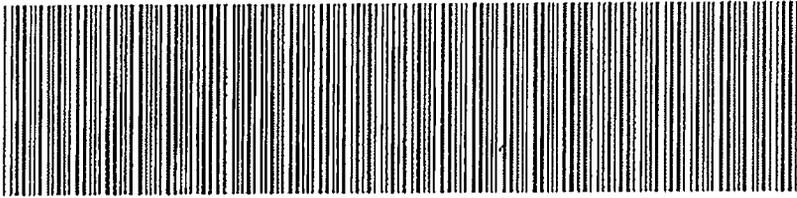
STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF                    )

On the 25<sup>th</sup> day of July, in the year 2006 before me, the undersigned, personally appeared Denise M. Sheehan, 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.

*Colleen A. McCarthy*  
Notary Public - State of New York

**COLLEEN A. MCCARTHY**  
Notary Public, State of New York  
Qualified in Albany County  
No. 02MC5048480  
Commission Expires July 17, 2009

NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER



2006073100919000001PD802

PAYMENT COVER PAGE

PAGE 1 OF 1

Transaction No.: 2006073100919

Document Date: 06-14-2006

Preparation Date: 07-31-2006

**PRESENTER:**  
FIDELITY NATIONAL TITLE INS. COMPANY  
ONE PARK AVENUE  
SUITE 1402  
NEW YORK, NY 10016  
212-481-5858  
PICK UP - #06-14907NYM

**RETURN TO:**  
LEONARD MORROW, ESQ.  
225 BROADWAY  
SUITE 1202  
NEW YORK, NY 10007

Document ID: 2006073100919001  
EASEMENT



0.00

Fees	\$	240.00	
Taxes	\$	0.00	
	\$	<u>240.00</u>	Document Total
	\$	240.00	Transaction Total
	\$	<u>240.00</u>	Amount Paid
	\$	<b>0.00</b>	<b>Balance Due</b>

14907

RECEIPT : K0070071154

DEPARTMENT OF FINANCE  
MANHATTAN PAYMENT CENTER  
66 JOHN STREET  
NEW YORK  
2ND FLOOR

CASHIER: NYC0307  
TOTAL DUE: \$240.00

7/31/06 3:18:44 PM  
1 SALE ITEM

ITEM DESCRIPTION  
=====

9500 ACRIS Recording Fees and Taxes \$240.00  
TRAN ID 2006073100919000001PD802

ACR SUBTOTAL: \$240.00  
SUBTOTAL: \$240.00  
TAX: \$0.00  
TOTAL DUE: \$240.00

1 PAYMENT ITEM \$240.00  
Business Check 044953

TOTAL DUE: \$240.00  
AMOUNT RECEIVED: \$240.00

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THANK YOU