

ENVIRONMENTAL EASEMENT

THIS INDENTURE made this 8th day of November, 2006, between River Place I Holdings LLC, having an office at 7 World Trade Center, 250 Greenwich Street, 38th Floor, New York, New York 10007, (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 an 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 City of New York, New York County, New York known and designated on the tax map of the City of New York as Block 1089, Lot 1, being the same as that property conveyed to Grantor by deed on June 14, 1999, and recorded in the Land Records of the New York County Clerk at Reel 2909 Page 1057, comprised of approximately 2.65 acres, and hereinafter more fully described in Schedule A 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

640 West 42nd Street
New York, New York

Block: 1089 Lot: 1

NOW THEREFORE, in consideration of the covenants and mutual promises contained herein and the terms and conditions of Brownfield Cleanup Agreement Number W2-1017-04-09, 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 residential, commercial, or industrial use as long as the following long-term engineering controls are employed:

- (1) The underground interlocking sheet pile barrier wall installed along a portion of the northern and southern property lines, and in a north south alignment approximately 35 feet west of the eastern property line of the Controlled Property as part of the Remedial Action ("RA") Plan approved for the Controlled Property by the NYSDEC on March 31, 2005, and depicted in the drawing entitled "Environmental Engineering Control Measures Lot 1," dated 04/29/2005, numbered E-1 and attached hereto as Schedule B to this Environmental Easement shall not be cut, removed or rendered ineffective by Grantor, Grantor's successors and assigns, or any lessees or persons using the Controlled Property; provided however, that incidental penetrations or cutting necessary for the installation of electric, gas, sewer, telephone and water cables, conduits, pipes, and mains may be made through the aforementioned underground interlocking sheet pile barrier wall in accordance with the Site Management Plan ("SMP") Plan approved for the Controlled Property by the NYSDEC and any NYSDEC-approved amendments to the SMP Plan, and additionally, such incidental penetrations or cutting requires the express written approval of the NYSDEC and;
- (2) The groundwater monitoring wells installed on the Controlled Property as part of the SMP Plan approved for the Controlled Property by the NYSDEC shall not, be removed or rendered ineffective by Grantor, Grantor's successors and assigns, or any lessees and persons using the Controlled Property without the express written approval of the NYSDEC, shall remain accessible at all times, and shall be inspected and tested in accordance with the SMP Plan approved for the Controlled Property by the NYSDEC and any NYSDEC-approved amendments

to that SMP Plan;

- (3) The groundwater on the Controlled Property shall not be used for any purpose unless it is first treated in a manner deemed acceptable to the NYSDEC to render such groundwater safe for the purpose in which it will be used;
- (4) Any areas of the Controlled Property that are not occupied by structures shall be paved with concrete or asphalt or covered by at least four feet of recycled concrete aggregate or clean soil as approved by the NYSDEC;
- (5) Any excavation in any portion of the Controlled Property, including but not limited to any excavation extending below a depth of fifteen feet below grade surface in the areas of Controlled Property depicted in the drawing entitled "Environmental Engineering Control Measures Lot 1," dated 04/29/2005, numbered E-1 and attached hereto as Schedule B to this Environmental Easement and any proposed excavation in any other portion of the Controlled Property, including any excavation beneath the lowest elevation floor slab of any building or structure located on the Controlled Property, shall be performed in accordance with the SMP Plan approved for the Controlled Property by the NYSDEC and any NYSDEC-approved amendments to that SMP Plan;
- (6) Any proposed excavation beneath the vapor-proof membrane system installed beneath the area of the Controlled Property depicted in Schedule B to this Environmental Easement or extending to a depth of 20 feet or more below grade surface in any other area of the Controlled Property shall be performed in accordance with the SMP Plan approved for the Controlled Property by the NYSDEC and any NYSDEC-approved amendments to that SMP Plan; and
- (7) Grantor shall provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP Plan approved for the Controlled Property by the NYSDEC and all NYSDEC-approved amendments to that SMP Plan.

B. The Controlled Property may not be used for a higher level of use such as unrestricted 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 to Title 36 of 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 Controlled 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 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 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 and filed with the office of the recording officer for the county or counties where the Controlled 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.

River Place I Holdings, LLC

By: [Signature]
Title: MANAGER Michael Levy
Date: 11/8/06 Manager

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: [Signature]
Denise M. Sheehan, Commissioner

Grantor's Acknowledgement

STATE OF NEW YORK)
COUNTY OF New York) ss:

On the 8th day of November in the year 2006, before me, the undersigned, personally appeared Michael Levy, 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.

Sofya Dubovaya
Notary Public - State of New York

SOFYA DUBOVAYA
Notary Public, State of New York
No. 01DU808990
Qualified in Kings County
Commission Expires March 31, 2007

Grantee's Acknowledgement

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:

On the 20th day of November 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/ 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.

Mark D. Sanza
Notary Public - State of New York

MARK D. SANZA
Notary Public, State of New York
No. 028A6010701
Qualified in Albany County
Commission Expires July 20, 2010

SCHEDULE A**Metes and Bounds Description
of River Place I Site**

The River Place I, West 42nd Street Gas Works Site (Site No. C231024) consists of all that parcel of real property commonly known as 640 West 42 Street in the County, City, and State of New York, and designated as Block 1089, Lot 1 on the Tax Map of the City of New York. The metes and bounds description of the River Place I, West 42nd Street Gas Works Site is as follows:

ALL that certain plot, piece or parcel of land, situate, lying and being in the County, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly line of West 41st Street with the easterly line of 12th Avenue, prior to widening;

RUNNING THENCE, northerly along the easterly line of 12th Avenue, 198 feet 103/4 inches to the corner formed by the intersection of the easterly line of 12th Avenue with the southerly line of West 42nd Street;

THENCE, easterly along the southerly line of West 42nd Street 565 feet 71/2 inches;

THENCE, southerly parallel with the easterly line of 12th Avenue, prior to widening, 79 feet 0 inches;

THENCE, westerly parallel with the southerly line of West 42nd Street, 53 feet 0 inches;

THENCE, southerly parallel with the easterly line of 12th Avenue, prior to widening, 71 feet 9 inches;

THENCE, easterly parallel with the northerly line of West 41st Street, 9 feet 10 inches;

THENCE, southerly parallel with the easterly line of 12th Avenue, prior to widening, 46 feet 9 inches to a point in the northerly line of West 41st Street; and

THENCE, westerly along the northerly line of West 41st Street 542 feet 4 inches to the point or place of **BEGINNING**.

TOGETHER WITH the Easements contained in the Reciprocal Easement Agreement made by and between River Place I LLC and River Place II LLC, dated as of June 14, 1999, recorded July 8, 1999 in Reel 2909 page 1160 in the Office of the New York City Register, County of New York.

SCHEDULE B

**ENGINEERING DRAWING DEPICTING SHEET PILE BARRIER WALL AND
PROPERTY AREAS UNDERLAIN BY RCA FILL AND VAPOR MEMBRANE
SYSTEM**

