

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

THIS INDENTURE made this 16th day of November, 2007, between Flushing Town Center III, L.P., having an office at c/o Muss Development Corp., 118-35 Queens Blvd., Forest Hills, NY 11375 (collectively, 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 ECL Article 71, Title 36 which contains a use restriction and/or a prohibition on the use of land in a manner that would be 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 on the northwestern corner of College Point Boulevard and 40th Road in Flushing, Queens, New York known and designated on the tax map of the City of New York as Tax Block 5066, Lots 1 and 100, being the same as that property conveyed to Grantor by deed on April 4, 2007, and recorded in the Land Division Records of the Office of the New York City Register for the Borough and County of Queens, New York on April 19, 2007 at CRFN 2007-000-203550, a portion of which, comprised of approximately 6.99 acres, and hereinafter more fully described in the survey map prepared by Wohl & O'Mara, L.L.P., dated November 6, 2007 and attached hereto as Schedule A and made a part hereof, which is the subject of this Environmental Easement (the "Controlled Property");

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;

NOW THEREFORE, in consideration of the covenants and mutual promises contained herein, and the terms and conditions of Brownfield Cleanup Agreement Index Number W2-1028-04-10, as amended, for Site Number C241078, 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.

- A. Site Management Plan. The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated November 2007 ("SMP"). The SMP, which is incorporated into the terms of this Environmental Easement, describes obligations that 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 a fundamental element of the Department's determination that the Controlled Property is and remains safe for a specific use, but not all uses. The Department may approve changes to the SMP for the Controlled Property from time to time on the basis of requests or information submitted by Grantor, and modifications in applicable statutes regulations, guidance or site conditions. The Department reserves a unilateral right to modify the SMP. The Grantor and all successors and assigns, assume the burden of performing all of the obligations contained in the SMP and obtaining an up-to-date version of the SMP from:

Regional Remediation Engineer:
Region 2
NYSDEC
Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101-5401

or:

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

- B. 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:
- (i) The Controlled Property may be used for Restricted-Residential use, as defined in 6 NYCRR 375-1.8(g)(2)(ii), as long as the long-term Institutional and Engineering controls set forth in the SMP dated November 2007 and any subsequent amendments thereto as may be approved by the Department are employed. Such institutional and engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement, and include, but are not limited to the following:
- a. an annual inspection of the Controlled Property will be conducted and an annual certification will be submitted to the Department by a New York State Licensed Professional Engineer, stating that long-term institutional and engineering controls have been properly monitored and maintained, in accordance with the SMP (including documentation of any repairs conducted since the prior certification); and
 - b. a soil vapor mitigation system consisting of a vapor barrier and sub-slab depressurization system under the building structure with retail use at grade must be inspected, certified, operated and maintained in accordance with the SMP; and
 - c. the use of the groundwater underlying the Controlled Property for any purpose, including but not limited to, potable, process or irrigation water, is prohibited without the implementation of necessary water quality treatment as determined by the New York State Departments of Health and Environmental Conservation; and
 - d. any proposed soil excavation or other activities on the property below the composite cover (consisting of asphalt, concrete or a minimum of two (2) feet of clean fill (meeting the Part 375 Restricted Residential SCOs, or for which specific approval was given by NYSDEC) requires prior notification to NYSDEC, in accordance with the SMP; and the excavated soil and construction waste water must be managed, characterized, and properly disposed of in accordance with the SMP; and
 - e. single family housing, vegetable gardens, farming, schools and day care facility are prohibited on the Controlled Property; and

- f. all Engineering Controls must be operated and maintained as specified in the SMP; and
 - g. data and information pertinent to Site Management for the Controlled Property must be reported at the frequency and in a manner defined in the SMP; and
 - h. on-Site environmental monitoring devices, including but not limited to, groundwater monitoring wells and soil vapor monitoring points, must be protected and replaced as necessary to ensure continued functioning in the manner specified in the SMP.
- C. The Controlled Property may not be used for a less restricted level of use, such as residential use, nor may the parking areas be converted to other enclosed purposes, without an amendment or the extinguishment of this Environmental Easement.
- A. 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 future leases, licenses, or other instruments granting a right to use the Controlled Property.
- F. Grantor and Grantor's successors and assigns covenant and agree that it, shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find reasonably 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 SMP 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 that are not expressly prohibited herein and are not inconsistent with, or limited by, the terms of this Environmental Easement; and

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 and Grantor's successors and assigns, 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 and Grantor's successors and assigns of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor and Grantor's successors and assigns can cure such breach or suspected breach and give Grantor and Grantor's successors and assigns 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 and Grantor's successors and assigns of any failure to adequately cure the breach or suspected breach. Grantor and Grantor's successors and assigns 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:

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 where the Controlled 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, or any successor agency with similar responsibilities, and filed with the office of the recording officer for the county 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, or any successor agency with similar responsibilities, and filed with the office of the recording officer for the county where the Controlled 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.

Flushing Town Center III, L.P.

By: 

Title: Manager

Date: 16 Nov. 2007

**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

Grantor's Acknowledgment

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

On the 16th day of November in the year 2007, before me, the undersigned,
personally appeared JOSHUA L. MUSS
(Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at
118-35 Queens Blvd., Forest Hills, NY 11375
(Full mailing address)

and that he/she/they is (are) the Manager
(President or other officer or director or attorney in fact duly appointed)

of the Flushing Town Center III, L.P.
(Full legal name of corporation)

the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

Diana Niemes
Notary Public, State of New York
DIANA NIEMES
Notary Public, State of New York
No. 01NI6125276
Qualified in Queens County
Commission Expires April 11, 2009

Grantee's Acknowledgment

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

On the *29th* day of *November*, in the year 200*7*, before me, the undersigned, personally appeared *Alexander B. Grannis*, 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.

Philip J. Lodico

Notary Public - State of New York

PHILIP J. LODICO
Notary Public, State of New York
No. 02106028067
Qualified in Albany County
My Commission Expires January 17, *2011*

SCHEDULE A

Metes and Bounds Description

There follows a suggested technical description of part of the property shown on map # 38448-F prepared by Wohl & O'Mara, LLP.

Beginning at a point on the northwesterly side of 40th. Road (50.0 feet wide); distant 734.88 feet westerly, as measured along said northwesterly side of 40th. Road, from the point formed by the intersection of said northwesterly side of 40th. Road with the westerly side of College Point Boulevard (100.00 feet wide). Said point of beginning is further being described as having coordinate values of LATITUDE 40-45'-21.3" and LONGITUDE 73-50'-10.45".

- 1) Running thence southwesterly along said northwesterly side of 40th. Road 118.75 feet to a point.
- 2) Thence northwesterly forming an interior angle of 127 degrees 12 minutes 25 seconds and a distance of 416.00 feet to a point.
- 3) Thence northerly forming an interior angle of 113 degrees 31 minutes 09 seconds and a distance of 101.23 feet to a point.
- 4) Thence northeasterly forming a interior angle of 147 degrees 03 minutes 18 seconds and a distance of 60.55 feet to a point.
- 5) Thence northeasterly forming an exterior angle of 179 degrees 15 minutes 06 seconds and a distance of 50.79 feet to a point.
- 6) Thence northwesterly forming an exterior angle of 122 degrees 57 minutes 53 seconds and a distance of 11.70 feet to a point.
- 7) Thence northeasterly forming an exterior angle of 230 degrees 43 minutes 11 seconds and a distance of 54.00 feet to a point.
- 8) Thence northeasterly forming an exterior angle of 181 degrees 19 minutes 37 seconds and a distance of 56.13 feet to a point.
- 9) Thence northerly forming an exterior angle of 153 degrees 30 minutes 11 seconds and a distance of 40.55 feet to a point.
- 10) Thence northerly forming an exterior angle of 178 degrees 45 minutes 42 seconds and a distance of 40.77 feet to a point.
- 11) Thence northerly forming an exterior angle of 178 degrees 13 minutes 03 seconds and a distance of 23.97 feet to a point.

- 12) Thence northeasterly forming an exterior angle of 253 degrees 19 minutes 59 seconds and a distance of 70.67 feet to a point.
- 13) Thence easterly forming an exterior angle of 195 degrees 08 minutes 51 seconds and a distance of 23.39 feet to a point.
- 14) Thence northerly forming an exterior angle of 90 degrees 07 minutes 49 seconds and a distance of 10.67 feet to a point.
- 15) Thence easterly forming an exterior angle of 270 degrees 00 minutes 00 seconds and a distance of 37.33 feet to a point.
- 16) Thence southerly forming an exterior angle of 270 degrees 00 minutes 00 seconds and a distance of 10.72 feet to a point.
- 17) Thence easterly forming an exterior angle of 90 degrees 00 minutes 00 seconds and a distance of 103.16 feet to a point.
- 18) Thence northerly forming an exterior angle of 90 degrees 00 minutes 00 seconds and a distance of 39.38 feet to a point.
- 19) Thence easterly forming an exterior angle of 270 degrees 00 minutes 00 seconds and a distance of 66.31 feet to a point.
- 20) Thence northerly and perpendicular to Roosevelt Avenue 30.50 feet to a point on the southerly side of Roosevelt Avenue (120.00 feet wide).
- 21) Thence along said southerly side of Roosevelt Avenue 309.03 feet to a point.
- 22) Thence southerly and perpendicular to said Roosevelt Avenue 222.00 feet to a point.
- 23) Thence westerly forming an interior angle of 90 degrees 00 minutes 00 seconds and a distance of 100.00 feet to a point.
- 24) Thence southerly forming an exterior angle of 90 degrees 00 minutes 00 seconds and a distance of 108.00 feet to a point.
- 25) Thence westerly forming an interior angle of 90 degrees 00 minutes 00 seconds and a distance of 160.00 feet to a point.
- 26) Thence southerly forming an exterior angle of 90 degrees 00 minutes 00 seconds and a distance of 299.40 feet to the point or place of beginning.

County: Queens

Site No: C241078

BCP No:W2-1028-04-10

SCHEDULE B

