

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

THIS INDENTURE made this 12<sup>th</sup> day of November, 2010, among Nine Mall Associates, LLC, having an address of 7 Ivy Terrace, Poughkeepsie, New York, 12601 and RNF, LLC, having an address of P.O. Box 22917, Hudson, Texas, 77227 (collectively referred to as the "Owner"), Nine Mall Investors, LLC, having an office at 1680 Route 23 North, Suite 330, Wayne, County of Passaic, State of New Jersey (the "Lessee") (the Owner and Lessee are sometimes collectively referred to as the "Grantor" as the context requires), 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 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 site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

**WHEREAS**, Owner is the owner of real property located at the address of 1810 and 1816-184 South Road in the Town of Poughkeepsie, County of Dutchess and State of New York, known and designated on the Tax Map of the Town of Poughkeepsie as Tax Map Parcel Numbers: Section 6158 Block 02 Lot 506817, Section 6158 Block 01 Lot 484850 being the same as that property as follows: as to 2/3 interest, by deed from Samuel Finnerman, Trustee, dated 12/14/1998 and recorded in the Office of the Dutchess County Clerk on 01/29/1999 in Liber 2022 of Deeds at Page 494, as corrected by deed from RNF, LLC to Walz Realty Company, LLC, dated 02/07/1999 and recorded 05/11/1999 as Instrument No. 02-1999-4057, and by deed from Walz Realty Company, LLC, dated July 2004 and recorded 08/20/2004 as Instrument No. 02-2004-8519; as to 1/3 interest, by deed from Samuel Finnerman, Trustee, dated 5/22/98 and recorded 6/10/98 in Liber 2010 of Deeds at Page 406,

comprising of approximately 11.46 ± acres, and hereinafter more fully described in the Land Title Survey dated July 14, 2010 prepared by The Chazen Companies and corresponding Schedule "A" property description, both documents are attached hereto and made a part hereof (the "Controlled Property"); and

**WHEREAS**, Lessee is the Lessee of the Controlled Property by Assignment and Assumption of Ground Lease, dated January 13, 2004 and recorded on January 23, 2004 in the Dutchess County Clerk's Office as Instrument No. 02-2004-1079; 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 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 mutual covenants contained herein and the terms and conditions of Brownfield Cleanup Agreement Index Number: W3-1057-05-03 [BCP Site # C314114], 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 potential 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:

**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)**

(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 Residential or Restricted Residential purposes, 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, 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:

Regional Remediation Engineer  
NYSDEC – Region 3  
Division of Environmental Remediation  
21 South Putt Corners Road  
New Paltz, New York 12561,  
Phone: (845) 256-3000

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, and leasehold interest owner, as the case may be, of the Controlled 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 violates this Environmental Easement, the Grantee may revoke the Certificate of Completion 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.



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

**Owner:** RNF, LLC

By: Richard Finner

Title: Principal Date: 7/8/2010

**NINE MALL ASSOCIATES, LLC**

By: [Signature]

Title: Member Date: 7/6/10

**Lessee:** NINE MALL INVESTORS, LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

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

**Owner: RNF, LLC**

By: \_\_\_\_\_

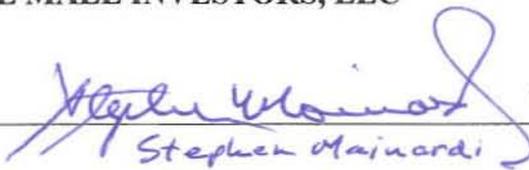
Title: \_\_\_\_\_ Date: \_\_\_\_\_

**NINE MALL ASSOCIATES, LLC**

By: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Lessee: NINE MALL INVESTORS, LLC**

By:   
Stephen Mainardi

Title: Manager Date: 6/23/10



**Owner's Acknowledgment**

STATE OF NEW YORK )

COUNTY OF Dutchess ) ss:

Somesh On the 6 day of July, in the year 2010, before me, the undersigned, personally appeared Somesh personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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

JON HOLDEN ADAMS

Notary Public, State of New York

No. 31-0016278

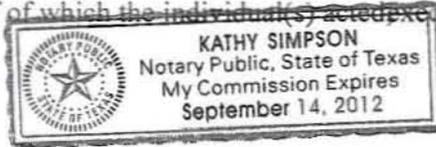
STATE OF ~~NEW YORK~~ Texas ) ss:

Commission Expires: May 31, 2011

COUNTY OF Harris )

On the 8th day of July, in the year 2010, before me, the undersigned, personally appeared Richard Finerman, 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~~ Texas



**Lessee's Acknowledgment**

STATE OF \_\_\_\_\_ )

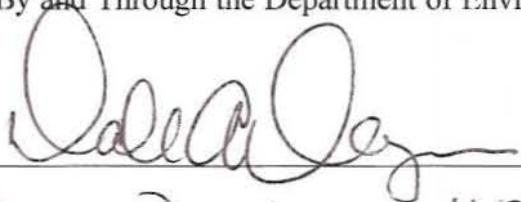
COUNTY OF \_\_\_\_\_ ) ss:

COUNTY OF \_\_\_\_\_ )

On the \_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the \_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_.

Notary Public - State of New York

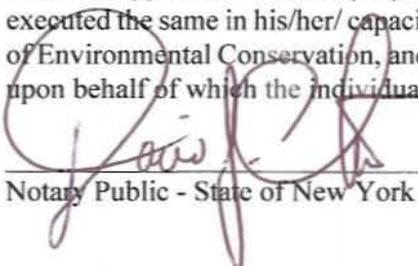
**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK**, Acting By and Through the Department of Environmental Conservation on behalf of the Commissioner,

By:   
Title: Division Director Date: 11-12-10

**Grantee's Acknowledgment**

STATE OF NEW YORK        )  
  ) ss:  
COUNTY OF Albany

On the 12<sup>th</sup> day of November in the year 2010, before me, the undersigned, personally appeared Dale Desnoyers, 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

**David J. Chiusano**  
**Notary Public, State of New York**  
**No. 01CH5032146**  
**Qualified in Schenectady County**  
**Commission Expires August 22, 2014**

**Schedule A Description**

ALL THOSE PLOT, PIECES OR PARCELS OF LAND, situate, and being in the Town of Poughkeepsie, County of Dutchess and State of New York, bounded and described as follows:

**PARCEL A:**

BEGINNING at a point at the easterly highway boundary of Route 9, said point being the northwesterly corner of the herein described parcel and the southwesterly corner of lands of Karas, described in Liber 1875 of Deeds at Page 856;

THENCE along lands of Karas, North 13°28'20" East, 204.38 feet to a point;

THENCE along lands of McManus, described in Liber 976 of Deeds at Page 255, and lands of Bennick, described in Liber 1602 of Deeds at Page 373, South 81°37'45" East, 178.46 feet, South 27°41'55" East, 124.95 feet, South 81°37'45" East, 214.09 feet and North 08°02'15" East, 101.00 feet to a point at the southerly terminus of Wendover Drive;

THENCE along File Map No. 2934, Block "A", South 81°57'45" East, 160.00 feet, South 23°08'05" East, 213.85 feet and South 46°08'07" East, 284.23 feet to a point;

THENCE along lands of Finnerman, described in Liber 1182 of Deeds at Page 645. Parcel B, South 62°18'04" West, 729.24 feet to a point in the easterly highway boundary of Route 9;

THENCE along the same, northerly on a curve to the right of radius 11401.16 feet an arc length of 169.35 feet, having a chord bearing North 26°42'05" West, 169.35 feet, North 26°11'01" West, 219.86 feet, North 27°03'26" West, 295.95 feet and North 34°07'09" West 9.92 feet to the point or place of BEGINNING.

**PARCEL B:**

BEGINNING at a point at the easterly highway boundary of Route 9, said point being the northwesterly corner of the herein described parcel and the southwesterly corner of lands of Finnerman, Parcel A described above;

THENCE along Parcel A, North 62° 18'04" East, 729.24 feet to a point;

THENCE along Filed Map No. 2934, Block A, South 47°08'07" East, 106.62 feet to a point;

THENCE along the lands of Caldor Corporation described in Liber 1867 of Deeds at Page 111, South 62°19'24" West, 407.97 feet and South 62°21'44" West, 357.30 feet to a point in the easterly highway boundary of Route 9;

THENCE along the same northerly on a curve to the right of radius 11401.16 feet an arc length of 100.01 feet, having a chord bearing North 27°22'42" West, 100.01 feet to the point or place of BEGINNING.