

New York State Department of Environmental Conservation
Office of General Counsel, 14th Floor
625 Broadway, Albany, New York 12233-1500
Phone: (518) 402-9495 • FAX: (518) 402-9018
Website: www.dec.ny.gov



Alexander B. Grannis
Commissioner

December 21, 2007

By UPS Overnight

Benjamin J. Teig, Esq.
Pryor Cashman LLP
410 Park Avenue
New York 10022

Re: Project No: C231048/ BCA No. A2-0531-1105
13th and 14th Street Realty, LLC/Environmental Easement
421-429, 431 and 433 East 13th Street, and 420 East 14th Street
New York, NY

Dear Mr. Teig:

Enclosed please find a copy of the Environmental Easement covering the above-referenced property which was accepted today by Commissioner Grannis. It must be recorded and indexed in the office of the City Register in the manner prescribed by New York State Real Property Law Article 9, and Environmental Conservation Law Article 71, Title 36. I am providing an executed TP 584.2 form with this letter.

Please provide the recording receipt and title insurance policy to me, either by fax to 518-402-9019 or e-mail at mxvonwer@gw.dec.state.ny.us. Please copy the NYSDEC Project Manager, Dan Walsh, so that he may enter the information in the Certificate of Completion before it is issued. Please feel free to contact me if you need further assistance with this matter.

Very truly yours,

Mary von Wergers
Superfund and Brownfields Restoration Bureau

Enclosure: Environmental Easement
TP.584.2

cc: Dan Walsh NYSDEC
R. Cozzy

EDMS # 287692



Recording Office Time Stamp

Real Estate Transfer Tax Return For Public Utility Companies, and Governmental Agencies, Easements and Licenses

This form may only be used by public utility companies regulated by the Public Service Commission and governmental agencies for the recording of easements and licenses where the consideration for the grant of such easement or license is \$500.00 or less.

Name of grantee (public utility company or governmental agency)

The New York State Department of Environmental Conservation

Address of grantee
625 Broadway, Albany, NY 12233-1500

Federal employer identification number

14-6013200
(if applicable)

Name and telephone number of person to contact

Mary vonWergers (518) 402-9495

	Name(s) of Grantor Of Easement or License	Address of Property	Consideration Given For Easement or License
1.	13 th + 14 th STREET Realty, LLC	421-429	\$ - 0 -
2.		431 + 433 East 13 th Street	
3.		420 East 14 th Street	
4.	TAX MAP PARCELS Block 441, Lots 17, 45, 46		
5.	ENVIRONMENTAL EASEMENT HELD BY NYSDEC		
6.	PURSUANT TO TITLE 36 OF ARTICLE 71		
7.	OF THE NYS ENVIRONMENTAL CONSERVATION LAW		
8.	SITE NO. C231048		
9.			
10.			
11.			
13.			
14.			
15.	If more than fifteen conveyances are to be recorded, attach a schedule of such other conveyances.		

Signature of Grantee

I certify that the grantee is a public utility regulated by the Public Service Commission or is a governmental agency and the grantee of the easements and/or licenses above that it is true to the best knowledge of the grantee that the granting of each such easement and/or license is exempt from Real Estate Transfer Tax imposed by Article 31 of the Tax Law by reason that each such conveyance is for a consideration of five hundred dollars or less and/or the conveyance is being made to a governmental agency.

THE PEOPLE OF THE STATE OF NY ACTING THROUGH THEIR COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Signature of partner, officer of corporation, governmental official, NYSDEC Office of General Counsel.

County: New York Site No: C231048 Contract/Order No: A2-0531-1105

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

THIS INDENTURE made this 21st day of December, 2007, between 13th and 14th Street Realty, LLC, a New York limited liability company, having an office at 400 Park Ave., Suite 1430, New York, NY 10022 (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 ("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, Grantor, is the owner of real property located at the address of 421-429, 431 and 433 East 13th Street and 420 East 14th Street in the Borough of Manhattan, City of New York, New York County, New York known and designated on the tax map of the Borough of Manhattan as tax map parcels Block 441, Lots 17 (421-429 East 13th Street ad 420 East 14th Street), 45 (433 East 13th Street) and 46 (431 East 13th Street), 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 on Reel 2909 at page 1057, comprised of approximately 16,827 square feet, and hereinafter more fully described by metes and bounds in Schedule A and by survey map in Schedule B, both 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

NOW THEREFORE, in consideration of the covenants and mutual promises contained herein and the terms and conditions of **Brownfield Cleanup Agreement Index Number A2-5031-1105**, 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 restricted residential use as long as the following long-term engineering controls are employed:

- a) all engineering controls (including the site cover and water/vapor membrane) must be operated and maintained as specified in the NYSDEC-approved Site Management Plan. No Engineering and Institutional Controls may be discontinued without a NYSDEC-approved amendment or extinguishment of this Environmental Easement;
- b) annual or bi-annual inspections of the Site, certifications of Institutional & Engineering controls and Site usage of controlled property, and Site Management Reporting to the Department must be conducted in accordance with the NYSDEC-approved Site Management Plan;
- c) all future soil disturbance activities on the Site that will impact residual contaminated material, including, but not limited to, building construction or expansion, subgrade utility line construction or repair, must be conducted in accordance with the Soil Management provisions in the NYSDEC-approved Site Management Plan;
- d) Operation, Monitoring and Maintenance (OM&M) of the water/vapor membrane must be performed in a manner specified in the NYSDEC-approved Site Management Plan;

- e) All environmental or public health monitoring required by the NYSDEC-approved Site Management Plan must be performed in a manner specified in that Plan;
- f) The use of the groundwater underlying the Controlled Property is prohibited without treatment rendering it safe for the intended purpose; and
- g) vegetable gardens are prohibited.

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated November 19, 2007 ("SMP"). The SMP 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 and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. Upon notice of not less than thirty (30) days the Department in exercise of its discretion and consistent with applicable law may revise the SMP. The notice shall be a final agency determination. 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:

Daniel Walsh
Region 2
NYS DEC
One Hunters's Plaza
47-40 21st Street
Long island City, NY 11101

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

B. The Controlled Property may not be used for a higher level of use such as **unrestricted 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 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 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 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 following information: County, NYSDEC Site Number, NYSDEC Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to: Environmental Easement Attorney
Office of General Counsel
NYSDEC
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 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.

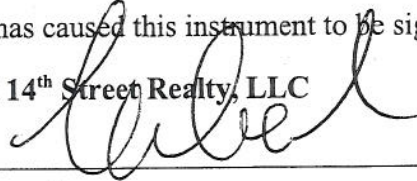
10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

County: New York Site No: C231048 Contract/Order No: A2-0531-1105

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

13th and 14th Street Realty, LLC

By: _____



Title: Director

Date: 12/10/07

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

County: New York Site No: C231048 Contract/Order No: A2-0531-1105

Grantor's Acknowledgment

IF GRANTOR IS A CORPORATION:

STATE OF New York)
)ss
COUNTY OF New York)

On the 10th day of December, in the year 2007, before me, the undersigned, personally appeared Robert Kubner, personally known to me who, being duly sworn, did depose and say that he/she/they reside at 19 Nottingham Rd, Livingston, NJ 07029 (full mailing address) and that he/she/they is (are) the Director (President or other officer or director or attorney in fact duly appointed of the 13th and 14th Street Realty LLC (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.

Benjamin Teig
Notary Public - State of New York

BENJAMIN TEIG
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02TE6142055
Qualified in New York County
Commission Expires March 13, 20 10

ACKNOWLEDGMENT FOR AN INDIVIDUAL

STATE OF NEW YORK)
)ss:
COUNTY OF)

On the _____ day of _____, in the year 2007, 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/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.

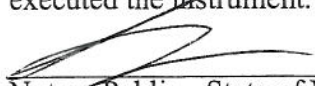
Notary Public - State of New York

County: New York Site No: C231048 Contract/Order No: A2-0531-1105

Grantee's Acknowledgment

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

On the 20 day of December, in the year 2007, 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 whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Commissioner of the State of New York Department of Environmental Conservation, and that by his 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

SCOTT OWENS
Notary Public, State of New York
No. 02OW6108092
Qualified in Albany County
Commission Expires April 12, 2008

SCHEDULE A

Controlled Property Description

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

BEGINNING at a point on the northerly side of East 13th Street, distant 244 feet easterly from the corner formed by the intersection of the said northerly side of East 13th Street, with the easterly side of First Avenue;

RUNNING THENCE northerly parallel with said easterly side of First Avenue, 115 feet;

THENCE easterly parallel with said northerly side of East 13th Street, 25 feet;

THENCE northerly parallel with said easterly side of First Avenue, 91 feet 6 inches to the southerly side of East 14th Street;

THENCE easterly along said southerly side of East 14th Street, 25 feet;

THENCE southerly parallel with said easterly side of First Avenue, 103 feet 3 inches to the center line of the block;

THENCE easterly along the center line of the block, 50 feet to a point in a line parallel with and distant 344 feet easterly from the said easterly side of First Avenue;

THENCE southerly parallel with said easterly side of First Avenue, 17 feet 5 inches more or less to a point;

THENCE in a northeasterly direction on an interior angle of 55 degrees 22 minutes 40 seconds, 9 feet 11 and $\frac{3}{4}$ inches to a point;

County: New York Site No: C231048 Contract/Order No: A2-0531-1105

THENCE easterly along a line parallel with the northerly line of East 13th Street, 30 feet 9 1/2 inches to a point;

THENCE southerly and at right angles to the last mentioned course, 91 feet 6 inches to said northerly side of East 13th Street;

THENCE westerly along said northerly line of East 13th Street, 139 feet to the point or place of BEGINNING.

EDMS # 285790

County: New York Site No: C231048 Contract/Order No: A2-0531-1105

SCHEDULE B
MAP OF CONTROLLED PROPERTY