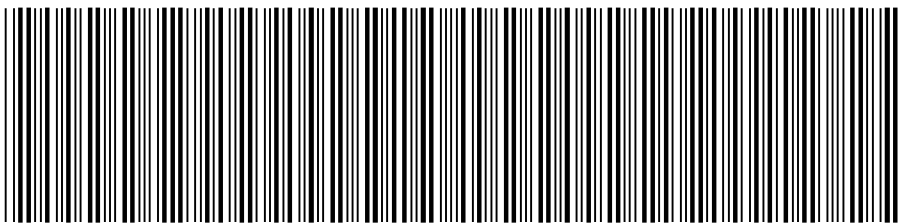


**NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER**

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2007121200639002001E85C0

RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 17

Document ID: 2007121200639002

Document Date: 11-16-2007

Preparation Date: 12-12-2007

Document Type: EASEMENT

Document Page Count: 16

PRESENTER:

TITLEASSOCIATES - PICK-UP/REALTY SKYLINE
AS AGENT FOR STEWART TITLE
825 THIRD AVENUE - TA07(06)706
NEW YORK, NY 10022
212-758-0050
royce.berliner@brsonline.com

RETURN TO:

JENNIFER COUGHLIN, ESQ.
SIVE, PAGET & RIESEL, P.C.
460 PARK AVENUE, SUITE 10TH FLOOR
NEW YORK, NY 10022

PROPERTY DATA

Borough	Block	Lot	Unit	Address
QUEENS	5066	1	Entire Lot	131-01 40TH ROAD

Property Type: COMMERCIAL REAL ESTATE

Borough	Block	Lot	Unit	Address
QUEENS	5066	100	Entire Lot	135-14 ROOSEVELT AVENUE

Property Type: COMMERCIAL REAL ESTATE

CROSS REFERENCE DATA

CRFN _____ or Document ID _____ or Year _____ Reel _____ Page _____ or File Number _____

PARTIES

GRANTOR/SELLER:

FLUSHING TOWN CENTER III, LP
C/O MUSS DEVELOPMENT CORP., 118-35 QUEENS
BLVD.
FOREST HILLS, NY 11375

GRANTEE/BUYER:

THE PEOPLE OF THE STATE OF NEW YORK ACTING
THROUGH THEIR COMMISSIONER OF THE
DEPARTMENT, OF ENVIRONMENTAL
CONSERVATION - 625 BROADWAY
ALBANY, NY 17238

FEES AND TAXES

Mortgage			Filing Fee:	\$	165.00
Mortgage Amount:	\$	0.00			
Taxable Mortgage Amount:	\$	0.00	NYC Real Property Transfer Tax:	\$	0.00
Exemption:					
TAXES: County (Basic):	\$	0.00	NYS Real Estate Transfer Tax:	\$	0.00
City (Additional):	\$	0.00			
Spec (Additional):	\$	0.00			
TASF:	\$	0.00			
MTA:	\$	0.00			
NYCTA:	\$	0.00			
Additional MRT:	\$	0.00			
TOTAL:	\$	0.00			
Recording Fee:	\$	120.00			
Affidavit Fee:	\$	0.00			

**RECORDED OR FILED IN THE OFFICE
OF THE CITY REGISTER OF THE
CITY OF NEW YORK**

Recorded/Filed 12-19-2007 16:30
City Register File No.(CRFN):
2007000620191



Annette McMill

City Register Official Signature

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		Federal employer identification number (if applicable) 14-6013200
Address of grantee 625 BROADWAY, ALBANY, NEW YORK 12233		Name and telephone number of person to contact MARY VAN WEGEN 518-402-9495
Name(s) of Grantor Of Easement or License	Address of Property PARCEL 2	Consideration Given For Easement or License

1. Flushing Town Center III, L.P. NORTHWEST CORNER - \$0 -
of College Point Blvd.
- 2.
3. * 40th Road, Flushing Queens
4. TAX Block 5066, Lots 1, 79, 91
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.
- 14.
- 15.

Environmental easement held by NYSDEC pursuant to
Title 36 of Article 71 of the Environmental
Conservation Law.
Brownfield Cleanup Agreement No. W2-1028-0410
Site NO. C241078

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

Name of grantee

Mary van Wegen, Esq.

Signature of partner, officer of corporation, governmental official, etc.

NYSDEC Office of General Counsel
Title

**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 (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 5.42 acres of Lot 1, and hereinafter more fully described in the in the metes and bounds description attached hereto as Schedule A and made a part hereof, is the subject of this Environmental Easement (the "Controlled Property"). A survey of the entire property prepared by Wohl & O'Mara, L.L.P., dated April 3, 2007, is attached hereto as Schedule B and a survey map of the Controlled Property, prepared by Wohl & O'Mara, L.L.P., dated November 6, 2007, is attached hereto as Schedule C;

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 W2-1027-04-10, as amended, for Site Number C241051, 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 December 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. 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 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
New York State Department of
Environmental Conservation
Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101-5401

or:

Site Control Section
Division of Environmental Remediation
NYS Department of Environmental Conservation
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 December 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. 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
 - c. 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 SCO calculated as the lower of the SCOs for Residential Use and for Protection of Groundwater,, 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
 - d. single family housing, vegetable gardens, farming, schools and day care facility are prohibited on the Controlled Property; and
 - e. all Engineering Controls must be operated and maintained as specified in the SMP; and
 - f. 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
 - g. on-Site environmental monitoring devices, including but not limited to, groundwater monitoring wells, 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.

- D. 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:

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 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: 10 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

County: Queens

Site No.C241051

BCP No: W2-1027-04-10

Grantor's Acknowledgment

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

On the 10th 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. 01N16125276
Qualified in Queens County
Commission Expires April 11, 2009

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 the point formed by the intersection of the southerly side of Roosevelt Avenue (120.00 feet wide) with the westerly side of College Point Boulevard (100.00 feet wide).

- 1) Running thence southerly along said westerly side of College Point Boulevard a distance of 312.18 feet to the point formed by the intersection of said westerly side of College Point Boulevard with the northwesterly side of 40 th. Road.
- 2) Thence southwesterly along said northwesterly side of 40 th. Road 734.88 feet to a point.
- 3) Thence northerly forming an interior angle of 64 degrees 25 minutes 30 seconds and a distance of 299.40 feet to a point.
- 4) Thence easterly forming an interior angle of 90 degrees 00 minutes 00 seconds and a distance of 160.00 feet to a point.
- 5) Thence northerly forming an interior angle of 90 degrees 00 minutes 00 seconds and a distance of 108.00 feet to a point.
- 6) Thence easterly forming an interior angle of 90 degrees 00 minutes 00 seconds and a distance of 100.00 feet to a point.
- 7) Thence northerly and perpendicular to Roosevelt Avenue 222.00 feet to a point on the southerly side of Roosevelt Avenue (120.00 feet wide).
- 8) Thence easterly along southerly side of Roosevelt Avenue (120.00 feet wide) 398.00 feet to the point or place of beginning.

SCHEDULE B

SCHEDULE C

