

**Michael J. Hecker**  
Partner  
Direct Dial: 716.848.1599  
E-mail: mhecker@hodgsonruss.com

December 21, 2020

**VIA E-MAIL AND FEDEX**

Dale L. Thiel, Legal Assistant 2  
New York State Department of Environmental Conservation  
Office of General Counsel  
625 Broadway  
Albany, New York 12233-1500

Dear Ms. Thiel:

RE: Environmental Easement Package  
Site Name: Qualitrol Company LLC  
Site: C828185

Per your letter dated December 1, 2020, enclosed please find a copy of the municipal notice provided to the Town of Perinton, New York via Federal Express, along with a copy of the recorded easement marked by the County Clerk's Office with the date and location of recording. Should you require anything else, feel free to contact me at your convenience.

Very truly yours,



Michael J. Hecker

MJH/mk  
Encl.

ec: B. Burns, Esq. – NYSDEC Central Office

December 21, 2020

Via FedEx

Jennifer West  
Town Clerk of the Town of Perinton  
1350 Turk Hill Road  
Fairport, New York 14450

Dear Ms. West:

Re: Environmental Easement

On behalf of Qualitrol Company LLC, attached please find a copy of an environmental easement granted to the New York State Department of Environmental Conservation (the "Department"), granted on December 15, 2020 by Richard M. Kloc, as authorized agent for Qualitrol Company LLC, for property at 1385 Fairport Road, Town of Perinton, New York, Tax Map No. 152.150-02-9.1 and 152.150-02-13.11, DEC Site No. C828185.

This environmental easement restricts future use of the above-referenced property to industrial uses. Any on-site activity must be done in accordance with the environmental easement and the Site Management Plan, which is incorporated into the environmental easement. Department approval is also required prior to any groundwater use.

Article 71, Section 71-3607 of the New York State Environmental Conservation Law requires that:

1. Whenever the Department is granted an environmental easement, it shall provide each affected local government with a copy of such easement and shall also provide a copy of any documents modifying or terminating such environmental easement.
2. Whenever an affected local government receives an application for a building permit or any other application affecting land use or development of land that is subject to an environmental easement and that may relate to or impact such easement, the affected local government shall notify the Department and refer

Jennifer West  
Page 2  
December 17, 2020

such application to the Department. The Department shall evaluate whether the application is consistent with the environmental easement and shall notify the affected local government of its determination in a timely fashion, considering the time frame for the local government's review of the application. The affected local government shall not approve the application until it receives approval from the Department.

An electronic version of every environmental easement that has been accepted by the Department is available to the public at: <http://www.dec.ny.gov/chemical/36045.html>. Please forward this notice to your building and/or planning departments, as applicable, to ensure your compliance with these provisions of New York State Environmental Conservation Law. If you have any questions or comments regarding this matter, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael J. Hecker". The signature is fluid and cursive, starting with a large loop and ending with a long horizontal stroke.

Michael J. Hecker

MJH/bjm  
Enclosure

Receipt # 2575171

Book Page D 12436 0592

No. Pages: 11

Instrument: EASEMENT AGREEMENT

Control #: 202012150590

Ref #: TT0000010161

Date: 12/15/2020

Time: 12:41:11 PM

Return To:  
HODGSON RUSS LLP  
140 PEARL ST STE 100  
BUFFALO, NY 14202

QUALITROL COMPANY LLC,  
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION,

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION,  
QUALITROL COMPANY LLC,

Recording Fee	\$26.00
Pages Fee	\$50.00
State Fee Cultural Education	\$14.25
State Fee Records	\$4.75
Management	
TP-584 Form Fee	\$5.00
<b>Total Fees Paid:</b>	<b>\$100.00</b>

Employee: CT

State of New York

MONROE COUNTY CLERK'S OFFICE  
WARNING – THIS SHEET CONSTITUTES THE CLERKS  
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &  
SECTION 319 OF THE REAL PROPERTY LAW OF THE  
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

Consideration: \$1.00

JAMIE ROMEO

MONROE COUNTY CLERK



County: Monroe Site No: C828185 Brownfield Cleanup Agreement Index : C828185-03-13

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

RECORDED  
Time: 12:41 PM

DEC 15 2020

THIS INDENTURE made this 1<sup>st</sup> day of December, 2020, between Owner(s) Qualitrol Company LLC, having an office at 1385 Fairport Road, Perinton, New York 14450, County of Monroe, State of New York (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, Monroe County Clerk's Office

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 the 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 1385 Fairport Road in the Town of Perinton, County of Monroe and State of New York, known and designated on the tax map of the County Clerk of Monroe as tax map parcel numbers: Section 152.15 Block 2 Lot 9.1, being the same as that property conveyed to Grantor by deed dated November 30, 1965 and recorded in the Monroe County Clerk's Office in Liber and Page 3696/115. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 9.938 +/- acres, and is hereinafter more fully described as "Parcel 1" in the Land Title Survey dated May 24, 2019 and last revised June 18, 2019 prepared by Alfred I. LaRue of McMahan LaRue Associates, P.C., which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

WHEREAS, Grantor, is the owner of real property located at the address of 1385 Fairport Road in the Town of Perinton, County of Monroe and State of New York, known and designated on the tax map of the County Clerk of Monroe as tax map parcel numbers: Section 152.15 Block

County: Monroe Site No: C828185 Brownfield Cleanup Agreement Index : C828185-03-13

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2 Lot 13.11, being the same as that property conveyed to Grantor by deed dated April 15, 1971 and recorded in the Monroe County Clerk's Office in Liber and Page 4114/370. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 4.673 +/- acres, and is hereinafter more fully described as "Parcel 2" in the Land Title Survey dated May 24, 2019 and last revised June 18, 2019 prepared by Alfred I. LaRue of McMahan LaRue Associates, P.C., which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

**WHEREAS**, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the 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: C828185-03-13, 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 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:

**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) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Monroe County Department of Health to render it safe for use as drinking water or for industrial purposes, and

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the user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(6) 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;

(7) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) 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, Restricted Residential or Commercial purposes as defined in 6NYCRR 375-1.8(g)(i), (ii) and (iii), 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. The SMP may be modified 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:

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

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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, at such time as NYSDEC may require, 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 of the Property, including:



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Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, NY 12233

All notices and correspondence shall be delivered by hand, 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. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, 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, or the Commissioner's Designee, 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.

11. Consistency with the SMP. To the extent there is any conflict or inconsistency between the terms of this Environmental Easement and the SMP, regarding matters specifically addressed by the SMP, the terms of the SMP will control.

**Remainder of Page Intentionally Left Blank**

County: Monroe Site No: C828185 Brownfield Cleanup Agreement Index : C828185-03-13

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

Qualitrol Company LLC:

By: [Handwritten Signature]

Print Name: Richard M. Kloc

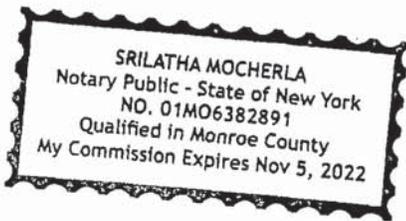
Title: VP- Ops Date: 1-10-2020

**Grantor's Acknowledgment**

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF )

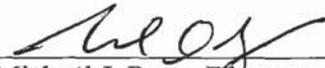
On the 10 day of January in the year 2020, before me, the undersigned, personally appeared before me, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed 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.

[Handwritten Signature]  
Notary Public - State of New York



County: Monroe Site No: C828185 Brownfield Cleanup Agreement Index : C828185-03-13

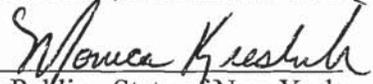
**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK**, Acting by and Through the Department of Environmental Conservation as Designee of the Commissioner,

By:   
Michael J. Ryan, Director  
Division of Environmental Remediation

**Grantee's Acknowledgment**

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

On the 1<sup>st</sup> day of DECEMBER in the year 2020 before me, the undersigned, personally appeared Michael J. Ryan, 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

MONICA KRESHIK, ESQ.  
Notary Public, State of New York  
No. 02KR6314859  
Qualified in Rensselaer County  
Commission Expires 11/17/2022

County: Monroe Site No: C828185 Brownfield Cleanup Agreement Index : C828185-03-13

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## **SCHEDULE "A" PROPERTY DESCRIPTION**

### **EASEMENT DESCRIPTION OF PARCEL 1**

All that tract or parcel of land situate in Part of Town Lot 53, Township 12, Range 4, Town of Perinton, Monroe County, Phelps and Gorham Purchase and State of New York, being more particularly described as follows:

Beginning at a point, being the intersection of the westerly line of Fairport Office Park Associates with the southerly appropriation line of Fairport Road, also known as New York State Route 31F; thence,

1. S 00 20'08" W, a distance of 1005.67 feet to a point being the northeasterly corner of S 00°20'08" W, a distance of 1005.67 feet to a point being the northeasterly corner of Lot 2 of the 1384 Fairport Road Subdivision filed in the Monroe County Clerk's Office under Liber 343 of Maps page 56; thence,
2. N 89 40'41" W, along the division line between Lot 1 and 2, a distance of 411.11 feet to N 89°40'41" W, along the division line between Lot 1 and 2, a distance of 411.11 feet to a point; thence,
3. N 00 39'03" W, a distance of 283.27 feet to an angle point; thence, N 00°39'03" W, a distance of 283.27 feet to an angle point; thence,
4. N 00 23'46" E, a distance of 125.77 feet to a point; thence, N 00°23'46" E, a distance of 125.77 feet to a point; thence,
5. S 89 40'41" E, a distance of 20.00 feet to a point; thence, S 89°40'41" E, a distance of 20.00 feet to a point; thence,
6. N 00 19'19" E, a distance of 408.93 feet to an angle point; thence, N 00°19'19" E, a distance of 408.93 feet to an angle point; thence,
7. N 00 23'05" E, a distance of 323.55 feet to a point along the southerly appropriation line N 00°23'05" E, a distance of 323.55 feet to a point along the southerly appropriation line of Fairport Road; thence,
8. S 71 45'34" E, a distance of 216.20 feet to a point; thence, S 71°45'34" E, a distance of 216.20 feet to a point; thence,
9. S 67 56'43" E, a distance of 150.33 feet to a point; thence, S 67°56'43" E, a distance of 150.33 feet to a point; thence,
10. S 74 30'59" E, a distance of 52.10 feet to the Point of Beginning. S 74°30'59" E, a distance of 52.10 feet to the Point of Beginning.

Subject to all easements, covenants, and restrictions of record.

Containing 432,900.1 Square Feet or 9.938 Acres of land, more or less.

County: Monroe Site No: C828185 Brownfield Cleanup Agreement Index : C828185-03-13

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LEGAL DESCRIPTION OF PARCEL 2

All that tract or parcel of land situate in Part of Town Lot 53, Township 12, Range 4, Town of Perinton, Monroe County, Phelps and Gorham Purchase and State of New York, being more particularly described as follows:

Commencing at a point, being the intersection of the westerly line of Fairport Office Park Associates with the southerly appropriation line of Fairport Road, also known as New York State Route 31F; thence, S 00°20'08" W, a distance of 1005.67 feet to the southeasterly corner of Lot 1 of the 1384 Fairport Road Subdivision filed in the Monroe County Clerk's Office under Liber 343 of Maps page 56, marking the point of beginning; thence,

1. S 00 20'08" W, a distance of 527.35 feet to a point; thence, S 00°20'08" W, a distance of 527.35 feet to a point; thence,
2. N 88 12'14" W, a distance of 183.75 feet to a point; thence, N 88°12'14" W, a distance of 183.75 feet to a point; thence,
3. N 00 34'25" E, a distance of 35.01 feet to a point; thence, N 00°34'25" E, a distance of 35.01 feet to a point; thence,
4. N 88 12'11" W, a distance of 210.16 feet to a point; thence, N 88°12'11" W, a distance of 210.16 feet to a point; thence,
5. N 00 54'26" E, a distance of 105.68 feet to a point; thence, N 00°54'26" E, a distance of 105.68 feet to a point; thence,
6. N 89 47'15" W, a distance of 12.05 feet to a point; thence, N 89°47'15" W, a distance of 12.05 feet to a point; thence,
7. N 00 39'03" W, a distance of 376.60 feet to a point marking the southwest corner of N 00°39'03" W, a distance of 376.60 feet to a point marking the southwest corner of Lot 1; thence,
8. S 89 40'41" E, a distance of 411.11 feet to the Point of Beginning. S 89°40'41" E, a distance of 411.11 feet to the Point of Beginning.

Subject to all easements, covenants, and restrictions of record.

Containing 203,541.8 Square Feet or 4.673 Acres of land, more or less; and