

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

**THIS INDENTURE** made this 10<sup>th</sup> day of October, 2018 between Owner(s) SOH Acquiring, Inc., having an office at 2025 Brighton-Henrietta Town Line Road, Rochester, New York 14623, 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,

**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 39 Commerce Drive in the Town of Henrietta, 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 161.15 Block 1 Lot 5, being the same as that property conveyed to Grantor by deed dated October 22, 1999 and recorded in the Monroe County Clerk's Office in Liber and Page 9232/679.

**WHEREAS**, Grantor, is the owner of real property located at the address of Commerce Drive in the Town of Henrietta, 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 161.15 Block 1 Lot 4, being the same as that property conveyed to Grantor by deed dated October 22, 1999 and recorded in the Monroe County Clerk's Office in Liber and Page 9232/685.

**WHEREAS**, the property subject to this Environmental Easement (the "Controlled Property") comprises approximately 4.386 +/- acres, and is hereinafter more fully described in the

Land Title Survey dated April 18, 2017 prepared by John E. McIntosh, III, L.L.S. of McIntosh & McIntosh, 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 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 to be listed in a 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 and run with the land. To the extent there are any inconsistencies between the SMP and this Easement, the terms of the SMP shall control. The below institutional controls 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 in a manner specified below.

A. The following institutional controls shall be implemented by Grantors:

(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) Grantor and subsequent Site owners shall ensure that the Environmental Easement remains in place and effect.

(3) Grantor shall ensure that 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 the user must first notify and obtain written approval to do so from the Department. Grantor shall adhere to the institutional controls required by the Environmental Easement, including the prohibition of the use of groundwater underlying the property without treatment rendering it safe for intended use; the prohibition of raising livestock or producing

animal products for human consumption; and the prohibition of installation of a basement beneath on-site structures.

(4) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP. The current use of the property at the time of the execution of this easement is as vacant land, and will be an acceptable use under the SMP.

(5) Upon the Department's written request with reasonable advance notice, Grantor and subsequent Site owners shall submit a written statement certifying that:

- (1) the institutional and engineering controls at the property:
  - (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 institutional controls are in the Department-approved format; and
  - (iii) that nothing has occurred that would impair the ability of such institutional control to protect the public health and environment;
  - (iv) that Grantor has taken no action which removes, alters or disturbs the existing engineering controls at the Controlled Property.
- (2) the owner will continue to allow the Department access to such real property to evaluate institutional and engineering controls;
- (3) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such institutional controls;
- (4) the information presented is accurate and complete.

(6) Grantor and subsequent Site owners shall notify the Department of changes of Site use and/or ownership.

(7) Grantor and subsequent Site owners shall report emergencies to the Department and other appropriate authorities.

(8) 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.

(9) The Controlled Property shall not be used for Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

(10) Grantor shall obtain 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

(11) 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.

(12) 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.**

(13) 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.

(14) 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, at reasonable times and with reasonable notice to Grantor to assure compliance with the above-stated restrictions.

(15) 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:

- (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 part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

B. All Engineering Controls shall be operated and maintained by Grantee as specified in the Site Management Plan (SMP);

(1) Grantee shall develop, install, operate, inspect, monitor and maintain the on-site and off-site engineering control(s) including any further investigations and implementation of a selected remedy. All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP by Grantee;

- that:
- (2) Grantee shall annually submit to Grantor a written statement certifying
    - (1) the engineering controls employed at such site:
      - (i) are in-place;
      - (ii) are unchanged from the previous certification, or identify any changes to the controls employed at the Site.
  - (3) Grantee shall prepare periodic review reports evaluating institutional and engineering controls; and
  - (4) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed by Grantee as defined in the SMP. Grantee shall operate, maintain, monitor, inspect, and prepare reports evaluating mechanical or physical components of the remedy; and
  - (5) Grantee shall decommission Site monitoring wells at an appropriate time to be determined by the Department.
  - (6) Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner, at reasonable times and with reasonable notice to Grantor to assure compliance with the above-stated restrictions.

## 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 Grantor or its successors violates the institutional controls of this Environmental Easement, or takes any action to remove, alter or disturb any of the engineering controls placed on the Controlled Property, 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 regarding Grantor's obligations. 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.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee 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 Brownfield Cleanup Agreement, State Assistance 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:       Site Number: 828079  
   Office of General Counsel  
   NYSDEC  
   625 Broadway  
   Albany New York 12233-5500

With a copy to:   Site Control Section  
   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.

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

SOH Acquiring, Inc.:

By: Richard F. Groth

Print Name: RICHARD F. GROTH

Title: PRES. Date: 8/31/18

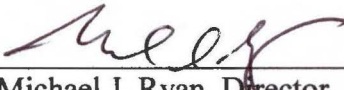
**Grantor's Acknowledgment**

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

On the 31 day of August, in the year 2018, before me, the undersigned, personally appeared Richard Groth, 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.

Christopher J Guck  
Notary Public - State of New York  
Notary Public - State of New York  
No. 01GU6236317  
Qualified in Monroe County  
My Commission Expires Feb.14, 2019

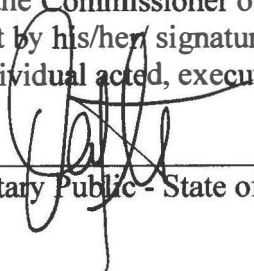
**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,**

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

**Grantee's Acknowledgment**

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

On the 10<sup>th</sup> day of October, in the year 2018, 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

**David J. Chiusano**  
**Notary Public, State of New York**  
**No. 01CH5032146**  
**Qualified in Schenectady County**  
**Commission Expires August 22, 2022**



**SCHEDULE "A" PROPERTY DESCRIPTION**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Henrietta, County of Monroe, State of New York and being part of Town Lot 8, Fifth Range, Township 12, Range 7, bounded and described as follows:

THE POINT OF BEGINNING of which is described by commencing at a point in the west line of West Henrietta Road where it is intersected by the southerly line of the premises conveyed to the Rochester and Honeoye Valley Railroad company by deed recorded in the Monroe County Clerk's Office in Liber 487 of Deeds at Page 125 which point is also the intersection of the north line of premises conveyed to Kheel Associates Inc. by deed recorded in the Monroe County Clerk's Office in Liber 3033 of Deeds at Page 22 with the west line of West Henrietta Road;

RUNNING THENCE: S-21°-30'-00"-W, along the west side of West Henrietta Road, a distance of 391.40 feet to a point;

RUNNING THENCE: N-68°-22'-00"-W, along the south line of Commerce Drive, a distance of 217.00 feet to the Point or Place of Beginning of the parcel herein described;

RUNNING THENCE: S-21°-30'-00"-W, a distance of 450.00 feet to a point;

RUNNING THENCE: S-88°-35'-00"-W, a distance of 278.32 feet to a point;

RUNNING THENCE: N-81°-44'-57"-W, a distance of 188.69 feet to a point;

RUNNING THENCE: N-14°-49'-56"-E, a distance of 291.01 feet to a point on the south line of Commerce Drive;

RUNNING THENCE: N-69°-38'-00"-E, along the south line of Commerce Drive, a distance of 213.85 feet to a point of curvature;

RUNNING THENCE: Northeasterly, along a curve to the right having a radius of 738.94 feet and along the south line of Commerce Drive, a distance of 251.94 feet to a point of tangency;

RUNNING THENCE: N-89°-08'-00"-E, along the south line of Commerce Drive, a distance of 96.76 feet to the POINT OR PLACE OF BEGINNING, containing 4.386 Acres, be the same, more or less.

SUBJECT to easements, rights of way and restrictions of record.

BEING AND INTENDED to be lands conveyed to Soh Acquiring, Inc. by deeds recorded in the Monroe County Clerk's Office in Liber 9232 of Deeds at Page 679 and in Liber 9232 of Deeds at Page 685.