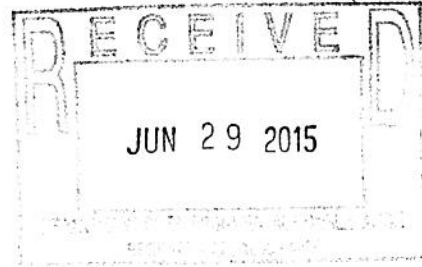


# GILBERTI STINZIANO HEINTZ & SMITH, P.C.

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June 29, 2015



Margaret Sheen, Esq.  
NYS DEC Region 7  
615 Erie Blvd. West  
Syracuse, NY 13204

Re: Former Miller Container Site No. 738029  
Volney (T), Oswego County  
Declaration of Covenants and Restrictions

Dear Ms. Sheen,

Enclosed is a copy of the Declaration of Covenants and Restrictions which was executed on June 23, 2015 and recorded in the Oswego County Clerk's Office on June 26, 2015.

Although we will not be a signatory to the finalized Site Management Plan ("SMP"), our comments on the draft SMP were solicited and submitted as an attachment to our letter dated May 13, 2015. We would be most appreciative of the Department's response to our comments.

Thank you again for your consideration of these matters.

Very truly yours,

GILBERTI STINZIANO HEINTZ & SMITH, P.C.

A handwritten signature in black ink, appearing to read "William J. Gilberti, Jr.", written over a horizontal line.

William J. Gilberti, Jr.

WJG/smm  
Enc.

cc: Riccelli Fulton, LLC

DECLARATION of COVENANTS and RESTRICTIONS 2015 JUN 26 A 11: 10

THIS DECLARATION of COVENANTS and RESTRICTIONS (the "Declaration") is made the 23 day of June 201~~4~~<sup>5</sup>, by Riccelli Fulton, LLC ("Riccelli"), a domestic limited liability company having an office for the transaction of business at 1902 County Route 57, Town of Volney, County of Oswego, State of New York.

**WHEREAS**, the Former Miller Container Site (Registry Site # 7-38-029) is the subject of a Remedial Program Order on Consent with Miller Brewing Company ("Miller") (Index # A7-0322-9411) ) (effective December 11, 1995) (the "Remedial Order") as part of the New York State Department of Environmental Conservation's (the "Department's") State Superfund Program, namely that parcel of real property located at the address of 1902 County Route 57, Town of Volney, County of Oswego, State of New York, being part of that property conveyed to Riccelli by Crysteel Manufacturing, Inc. by deed dated September 4, 2007 and recorded in the Oswego County Clerk's Office on September 10, 2007 as Instrument # R-2007-011843, and being more particularly described in Schedule "A," attached to this Declaration and made a part hereof, and hereinafter referred to as the "Property;" and

**WHEREAS**, the Department approved a remedy to eliminate or mitigate all significant threats to the environment presented by the contamination disposed at the Property (the "Remedy") and the Remedy requires that the Property be subject to restrictive covenants.

**NOW, THEREFORE**, Riccelli, for itself and its successors and/or assigns, covenants that:

First, the Property subject to this Declaration is as shown on a map attached to this Declaration as Schedule "B" and made a part hereof.

Second, unless prior written approval by the Department or, if the Department shall no longer exist, any New York State agency or agencies subsequently created to protect the environment of the State and the health of the State's citizens, hereinafter referred to as the "Relevant Agency," is first obtained, where contamination remains at the Property subject to the provisions of the Site Management Plan ("SMP"), there shall be no construction, use or occupancy of the Property that results in the disturbance or excavation of the Property which threatens the integrity of the engineering controls or which results in unacceptable human exposure to contaminated soils. The SMP may be obtained from the New York State Department of Environmental Conservation, Division of Environmental Remediation, Site Control Section, 625 Broadway, Albany, NY 12233.

Third, the owner of the Property shall not disturb, remove, or otherwise interfere with the installation, use, operation, and maintenance of engineering controls required for the Remedy, which are described in the SMP, unless in each instance, the owner first obtains a written waiver of such prohibition from the Department or Relevant Agency.

Fourth, the owner of the Property shall prohibit the Property from ever being used for purposes other than for commercial or industrial purposes without the express written waiver of such prohibition by the Department or Relevant Agency.

Fifth, the use of groundwater underlying the Property is prohibited without necessary water quality treatment, as determined by the NYSDOH or the Oswego 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 or Relevant Agency.

Sixth, the owner of the Property shall, in coordination with Miller and in accordance with the SMP, provide to the Department a periodic certification, prepared and submitted by a professional engineer or environmental professional acceptable to the Department or Relevant Agency, which will certify that the institutional and engineering controls put in place are unchanged from the previous certification, comply with the SMP, and have not been impaired.

Seventh, the owner of the Property shall, in coordination with Miller and in accordance with the SMP, continue in full force and effect any institutional and engineering controls required for the Remedy and maintain such controls, unless the owner first obtains permission to discontinue such controls from the Department or Relevant Agency, in compliance with the approved SMP, which is incorporated and made enforceable hereto, subject to modifications as approved by the Department or Relevant Agency.

Eighth, this Declaration is, and shall be deemed, a covenant that shall run with the land and be binding upon all future owners of the Property. The owner and its successors and assigns hereby consent to enforcement by the Department or Relevant Agency of the prohibitions and restrictions set forth in this Declaration and covenant not to contest the authority of the Department or Relevant Agency to seek enforcement.

Ninth, any deed of conveyance of the Property, or any portion thereof, shall recite, unless the Department or Relevant Agency has consented to the termination of such covenants and restrictions, that said conveyance is subject to this Declaration.

IN WITNESS WHEREOF, the undersigned has executed this instrument the day written below.

RICCELLI FULTON, LLC

By: Richard J. Riccelli

Print Name: RICHARD J. RICCELLI

Title: Member Date: 6/23/2015

**Grantor's Acknowledgment**

STATE OF NEW YORK )

) s.s.:

COUNTY OF ONONDAGA)

On the 23<sup>rd</sup> day of June, in the year 2015, before me, the undersigned, personally appeared Richard J. Riccelli, 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.

**FREDERICK J MICALE**  
Notary Public, State of New York  
No. 02MI6070642  
Qualified in Onondaga County  
Commission Expires March 04, 2018

[Signature]  
Notary Public State of New York

**SCHEDULE "A"**

**LEGAL DESCRIPTION**

**FORMER MILLER CONTAINER SITE**

**NYSDEC SITE #7-38-029**

All that tract or parcel of land situate in the Town of Volney, County of Oswego and State of New York, being part of Subdivision 8, Harpers Location in said Town, being part of Lot 1 as shown on the 2010 Resubdivision Map filed in Oswego County Clerk's Office March 25, 2011, Plat 21, Line 184, Inst. No. R2011002653, and being more particularly described as follows:

Beginning at a point in the southeasterly boundary of said Lot 1, said point being S 53° 09' 00" W, measured along said southeasterly boundary, a distance of 741.60 feet from the southeasterly corner of said Lot 1; running thence S 53° 09' 00" W along said southeasterly boundary, a distance of 354.40 feet to an angle point; thence N 83° 19' 00" W, continuing along said boundary, a distance of 80.80 feet to an angle point; thence S 52° 29' 00" W, continuing along said boundary, a distance of 20.30 feet to an angle point; thence N 29° 43' 09" W, a distance of 321.58 feet to a point; thence S 56° 47' 51" W, a distance of 603.39 feet to a point in range with the southerly prolongation of the division line between said Lot 1 on the east and lands now or formerly of Mark Drumm (reputed owner) on the west; thence N 20° 59' 07" W along said southerly prolongation and said division line and its northerly prolongation, a distance of 473.41 feet to a point; thence N 66° 48' 58" E, a distance of 698.12 feet to a point; thence N 38° 56' 44" E, a distance of 329.89 feet to a point; thence S 36° 50' 57" E, a distance of 160.00 feet to a point; thence S 3° 31' 32" E, a distance of 240.37 feet to a point; thence S 36° 51' 00" E, a distance of 423.44 feet to the point of beginning, containing 12.704 acres, more or less.

[illegible]