

## DECLARATION of COVENANTS and RESTRICTIONS

**THIS COVENANT** is made the 11<sup>th</sup> day of April 2016, by Lyndon Development, LLC, a limited liability company organized and existing under the laws of the State of New York and having an office for the transaction of business at 301 East 2<sup>nd</sup> Street, Suite 301, Jamestown NY 14701.

**WHEREAS**, 100 Harmon Avenue (a/k/a Resolve Mfg.) is the subject of a remedial program performed by the New York State Department of Environmental Conservation (the "Department"), namely those parcels of real property located at 60 and 100 Harmon Avenue in the Village of Falconer, Town of Ellicott, County of Chautauqua, State of New York; consisting of two parcels, the first of which is part of lands conveyed by Casella Waste Management to Lyndon Development, LLC by deed dated March 27, 2009, with the S.B.L. 371.12-1-4.1 and recorded in the Chautauqua County Clerk's Office in Liber 2674 and Page 756 and the second being lands conveyed by Buffalo Niagara Transport LLC, with the S.B.L. 371.12-1-4.2 and recorded in the Chautauqua County Clerk's Office in Liber 2012 and Page 1389; both of which being more particularly described in Appendix "A," attached to this declaration and made a part hereof, and hereinafter referred to as "the Property"; and

**WHEREAS**, the Department performed an investigation and has concluded that no additional investigation or remedial measure are required at this time and there are no known significant threats to human health and the environment presented at this time by the contamination remaining at the Property, however, the Property shall be subject to restrictive covenants.

**NOW, THEREFORE**, Lyndon Development, LLC, for itself and its successors and/or assigns, covenants that:

First, the Property subject to this Declaration of Covenants and Restrictions is as shown on a map attached to this declaration as Appendix "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, there shall be no construction, use or occupancy of the Property that results in the disturbance or excavation of the Property which results in unacceptable human exposure to contaminated soils.

Third, before any existing structures become occupied, or new structures constructed on the Property become occupied, the owner of the Property shall conduct

an evaluation of the potential for soil vapor intrusion in accordance with the New York State Department of Health "Guidance for Evaluating Soil Vapor Intrusion in the State of New York", or equivalent, and any successor methodology or guidance thereto, and implement any recommended actions to address exposures related to soil vapor intrusion; or in the alternative, the owner of the Property will install a soil vapor intrusion mitigation system in any structure on the Property intended for occupancy.

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

Fifth, the use of the groundwater underlying the Property is prohibited without necessary water quality treatment, as determined by the New York State Department of Health or the Chautauqua County Health Department, 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 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.

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

Eighth, 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 of Covenants and Restrictions.

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

By: 

Print Name: Jason Lynn

Title: Managing Date: 4-11-16  
Meitner



STATE OF NEW YORK )

) s.s.:

COUNTY OF )

On the 11<sup>th</sup> day of April, in the year 2016, before me, the undersigned, personally appeared Jason A. Lynn, 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.

HEATHER M. LYNN, #01LY6150013  
Notary Public, State of New York  
Qualified in Chautauqua County  
My Commission Expires July 24, 2018

Heather M. Lynn

Notary Public State of New York

Appendix A  
Legal Description

-----TO BE PROVIDED BY THE PROPERTY OWNER-----

## Appendix B

### Survey

-----TO BE PROVIDED BY THE PROPERTY OWNER-----