

## DECLARATION of COVENANTS and RESTRICTIONS

**THIS COVENANT** is made the 21 day of NOVEMBER 2019, by HJM Enterprises, 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 198 Potomac Avenue Buffalo, NY 14213.

**WHEREAS**, Chem-Core is the subject of a remedial program performed by the New York State Department of Environmental Conservation (the "Department"), namely that parcel of real property located on 1382 Niagara Street in the City of Buffalo, County of Erie, State of New York, which is part of lands conveyed by City of Buffalo to HJM Enterprises, LLC by deed dated March 20, 2008 and recorded in the Erie County Clerk's Office in Liber and Page Liber No. 11142, Page 2923, and 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 approved a remedy to eliminate or mitigate all significant threats to the environment presented by the contamination disposed at the Property and such remedy requires that the Property be subject to restrictive covenants (the "Remedy".)

**NOW, THEREFORE**, HJM Enterprises, 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 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.

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 use without the express written waiver of such prohibition by the Department or Relevant Agency.

Fifth, the owner of the Property shall prohibit the use of the groundwater underlying the Property without treatment to render it safe for drinking water or for industrial purposes, as appropriate, 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 provide 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 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 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.

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 of Covenants and Restrictions.

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

By: 

Print Name: HECTOR RODRIGUEZ

Title: PRESIDENT Date: 11/21/19  
HJM ENTERPRISES LLC

STATE OF NEW YORK )

) s.s.:

COUNTY OF )

On the 25 day of November, in the year 2017, before me, the undersigned, personally appeared Hector Rodriguez, 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.



Notary Public State of New York

MAYRA G. SEIN ROSA  
Notary Public, State of New York  
Qualified in Erie County  
Reg. No. 01SE6381833  
My Commission Expires 10/09/2022