

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

JERSEY CITY MUNICIPAL UTILITIES AUTHORITY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Consolidated under Docket
	)	No. 05-5955 (JLL-JAD)
HONEYWELL INTERNATIONAL INC.,	)	
	)	
Defendant.	)	
<hr/>		
JERSEY CITY INCINERATOR AUTHORITY	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 05-5993
	)	Consolidated under Docket
	)	No. 05-5955 (JLL-JAD)
HONEYWELL INTERNATIONAL INC.,	)	
	)	
Defendant.	)	
<hr/>		
HACKENSACK RIVERKEEPER, INC., et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 06-22
	)	Consolidated under Docket
	)	No. 05-5955 (JLL-JAD)
HONEYWELL INTERNATIONAL INC., et al.	)	
	)	
Defendants.	)	All actions consolidated under Civ. Action No. 95-2097 (JLL-JAD)
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**AMENDED CONSENT DECREE REGARDING REMEDIATION  
OF THE NEW JERSEY CITY UNIVERSITY REDEVELOPMENT AREA**

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## RECITALS

**Whereas**, on June 30, 2003, the district court for the District of New Jersey (hereafter “the Court”) issued a Final Judgment in *Interfaith Community Organization v. Honeywell International Inc.*, Civ. No. 95-2097 (“*ICO v. Honeywell*”), ordering the remediation of an area designated by the New Jersey Department of Environmental Protection (“NJDEP”) as Study Area 7 of the Chromium Chemical Production Waste Sites;

**Whereas**, on or about December 23, 2005, the Jersey City Municipal Utilities Authority (“JCMUA”) filed litigation styled *Jersey City Municipal Utilities Authority v. Honeywell International Inc.*, D.N.J., Civ. No. 05-5955, bringing claims against Honeywell International Inc. (“Honeywell”) under, among other grounds, Section 7002 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6972, seeking remediation of chromium contamination on property then owned by JCMUA and other relief;

**Whereas**, on or about December 28, 2005, the Jersey City Incinerator Authority (“JCIA”) filed litigation styled *Jersey City Incinerator Authority v. Honeywell International Inc.*, D.N.J., Civ. No. 05-5993, bringing claims against Honeywell under, among other grounds, Section 7002 of RCRA seeking remediation of chromium contamination on property then owned by JCIA and other relief;

**Whereas**, on or about January 4, 2006, Hackensack Riverkeeper, Inc., William Sheehan, Winston Clarke, and Lawrence Baker (collectively, “Riverkeeper”) filed litigation styled *Hackensack Riverkeeper, Inc. v. Honeywell International Inc.*, D.N.J., Civ. No. 06-0022, bringing a claim against Honeywell under Section 7002 of RCRA seeking remediation of chromium contamination in soils, groundwater, surface waters, and sediments associated with various properties collectively designated by NJDEP as Study Area 5, Study Area 6 North, which includes the properties formerly owned by the City of Jersey City, JCMUA, and JCIA

(collectively “the Jersey City Entities”), and Study Area 6 South, as well as a parcel adjacent to Study Area 5 owned by Regnal Realty, Inc.;

**Whereas**, Riverkeeper also named as defendants in *Riverkeeper v. Honeywell* owners of the properties comprising Study Areas 5, 6 North, and 6 South, including New Jersey City University (“NJCU”), Carlos Hernandez, in his official capacity as President of NJCU, Bayonne Municipal Utilities Authority (“BMUA”), Jersey City Fields LLC, Bob Ciasulli, Elisabeth and Rafael Rosario, Michael Vo, and Regnal Realty, as necessary party defendants pursuant to Rule 19 of the Federal Rules of Civil Procedure;

**Whereas**, *JCMUA v. Honeywell*, *JCIA v. Honeywell*, and *Riverkeeper v. Honeywell* were consolidated by the Court under the caption *Jersey City Municipal Utilities Authority v. Honeywell International Inc.*, D.N.J., Civ. No. 05-5955 (“Consolidated Litigation”);

**Whereas**, in the Consolidated Litigation, Riverkeeper has alleged that Honeywell bears responsibility for the presence and remediation of chromite ore processing residue (“COPR”) and chromium contaminated soils and groundwater on the Study Area 5 properties;

**Whereas**, Study Area 5 is comprised of five sites designated by NJDEP as Sites 079, 090, 117, 153, and 184;

**Whereas**, Honeywell owns the property that comprises Site 153 and such property is subject to an easement held by BMUA for purposes of its operation and maintenance of the pipeline that runs the length of Site 153 and carries sewage from the City of Bayonne to the regional wastewater treatment plant operated by the Passaic Valley Sewerage Commission;

**Whereas**, certain property owned by NJCU and certain property owned by Honeywell, subject to an easement held by BMUA, comprise a portion of Study Area 5, known collectively as the NJCU Redevelopment Area and also referred to herein as the Site;

**Whereas**, NJCU and Honeywell's affiliates, Kellogg Street 60 Property, LLC, Kellogg Street 80 Property, LLC, and Kellogg Street/440 Property, LLC, asserted cross-claims against each other in *Riverkeeper v. Honeywell*;

**Whereas**, on July 7, 2006, the Court entered a Stipulation and Order of Dismissal without Prejudice or Costs dismissing all cross-claims asserted in *Riverkeeper v. Honeywell* between NJCU and Kellogg Street 60 Property, LLC, Kellogg Street 80 Property, LLC, and Kellogg Street/440 Property, LLC;

**Whereas**, BMUA and Honeywell asserted cross-claims against each other in the Consolidated Litigation, which have been settled and dismissed pursuant to an Order of the Court dated January 7, 2008;

**Whereas**, on April 21, 2008, the Court entered the Consent Decree Regarding Remediation and Redevelopment of Study Area 6 North ("Study Area 6 North Consent Decree"), resolving issues between Honeywell, Riverkeeper, and the Jersey City Entities related to chromium contamination at Study Area 6 North;

**Whereas**, on May 28, 2008, the Court entered the Consent Order on Sediment Remediation and Financial Assurances ("Sediment Consent Order"), resolving issues related to the remediation of chromium contaminated sediments in the Hackensack River in the vicinity of Study Areas 5, 6, and 7;

**Whereas**, on September 3, 2008, the Court entered the Deep Overburden and Bedrock Groundwater Remedies Consent Order ("Deep Groundwater Consent Order"), resolving all issues related to the remediation of deep overburden and bedrock groundwater in both *ICO v. Honeywell* and the Consolidated Litigation, with the exception of any issues that might be related to the Regnal Realty Property;



**Whereas**, on December 29, 2008, the Court entered the Consent Decree and Order Regarding Remediation and Redevelopment of Study Area 6 South (“Study Area 6 South Consent Decree”), resolving issues between Honeywell and Riverkeeper related to chromium contamination at Study Area 6 South;

**Whereas**, on October 14, 2009, Honeywell, the Jersey City Entities, Riverkeeper and the Special Master, appointed to oversee matters related to Study Areas 6 and 7, requested that the Court enter the Consent Order Regarding Financial Assurances (also referred to as the Global Financial Assurances Order), which addresses financial assurance issues that have arisen under the financial assurance provisions in various orders and consent decrees, including the Study Area 6 North Consent Decree and the Study Area 6 South Consent Decree;

**Whereas**, the Parties to this Consent Decree each believe that it is in their mutual interest to move forward productively to resolve their differences so that they can implement environmental remediation at the NJCU Redevelopment Area that ensures the continued protection of human health and the environment and so that Study Area 5 can be redeveloped in keeping with Jersey City’s vision for a revitalized West Side;

**Whereas**, the settlement which is the subject matter of this Consent Decree contemplates the environmental remediation of the NJCU Redevelopment Area so that it may be redeveloped to create a major mixed use project in an important section of Jersey City;

**Whereas**, each of the actions to implement this Consent Decree have been fully considered by the Parties as a means to accomplish the aforesaid purposes of this settlement and each of the Parties consents to be bound by the provisions set forth herein subject to the limitations set forth in paragraph 89 for any future owner of the NJCU Commercial AOC;



**Whereas**, on January 21, 2010, the Court entered the Consent Decree Regarding Remediation of the New Jersey City University Redevelopment Area (“Consent Decree”) as an Order of the Court, ECF No. 302; and

**Whereas**, on or about September 13, 2016, Honeywell proposed, and the parties agreed, that Honeywell would construct approximately 500 additional linear feet of an underground barrier wall to supplement the shallow groundwater remedy set forth in the Consent Decree; and

**Whereas**, on or about March 2, 2017, the parties agreed to the design plan for the additional shallow groundwater remedial measures as set forth in the “SA-5 NJCU Site 90/184 Jersey City, New Jersey Addendum 16 to the 100% Design Proposed Sheet Pile Installation” design drawings as revised on February 17, 2017, by Honeywell’s contractor Amec Foster Wheeler Environment and Infrastructure, Incorporated; and

**Whereas**, the parties further agreed that the as-built drawings for the supplemental shallow groundwater remedy will be included in the next version of the Long Term Monitoring Plan (LTMP) required under paragraph 97 of this Consent Decree;

**Whereas**, the parties agree that certain amendments to the Consent Decree are therefore necessary; and

**Whereas**, paragraphs 5, 34, 72(a), 86, 148, and 160, and Exhibit A, are amended and all other provisions of the Consent Decree are unchanged and remain in full force and effect;

**Whereas**, entry of this amended Consent Decree does not affect or reset the deadlines or requirements of the original Consent Decree, including the deadlines and requirements for payment of past fees and expenses that were established in paragraph 149 of the original Consent Decree entered on January 21, 2010;

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED AS FOLLOWS:

## ARTICLE I: DEFINITIONS

For purposes of this Consent Decree, the following terms shall have the meanings set forth in this Article:

1. **BMUA** shall mean the Bayonne Municipal Utilities Authority or its successors in interest with regard to the easement and sewer pipeline that runs the length of Sites 153 North and South.

2. **Below 4 Feet Soils** shall mean those soils in the Residential AOC at a depth greater than four feet below final redevelopment grade following remediation pursuant to paragraph 72.

3. **Chromium Remedy** or **Chromium Remediation** shall mean those remedial actions set forth in Article III of this Consent Decree.

4. **Clean Fill** shall mean those fill materials satisfying the requirements set forth in paragraph 69.

5. **Commercial AOC** shall mean the area which is shaded in light green on the figure attached hereto as Exhibit A. The Commercial AOC is comprised of Site 153 North, which is owned by Honeywell, and the NJCU Commercial AOC, which is owned by NJCU.

6. **Consolidated Litigation** shall mean *Jersey City Municipal Utility Authority v. Honeywell International Inc.*, D.N.J., Civ. No. 05-5955, *Jersey City Incinerator Authority v. Honeywell International Inc.*, D.N.J., Civ. No. 05-5993, and *Hackensack Riverkeeper, Inc. v. Honeywell International Inc.*, D.N.J., Civ. No. 06-022.

7. **Construction Phase** shall mean the Chromium Remedy activities set forth in paragraphs 72, 74, 75, 78, 80, 81, and 86.

8. **Contingent Residential Conversion Financial Assurances** shall mean the financial assurances required under paragraph 139 for performance of Honeywell's remedial obligations set forth in paragraph 77.

9. The **Court** shall mean the United States District Court of the District of New Jersey, which has jurisdiction over the Consolidated Litigation.

10. **Deep Groundwater Consent Order** shall mean the Deep Overburden and Bedrock Groundwater Remedies Consent Order entered by the Court on September 3, 2008, in both *ICO v. Honeywell* and the Consolidated Litigation.

11. **Greater Than 20 Soils** shall mean those soils in which the hexavalent chromium concentration is greater than 20 mg/kg.

12. **Greater Than 5 Soils** shall mean those soils in which the hexavalent chromium concentration is greater than 5 mg/kg.

13. **Historic Fill** shall have the definition provided in the Technical Requirements for Site Remediation.

14. **Historic Fill Remedy** or **Historic Fill Remediation** shall mean the remedy set forth in the NJCU Remedial Investigation/Remedial Action Work Plan for contamination other than chromium or COPR, dated February 2006, except that the Historic Fill Remedy shall not be limited to the remedy set forth in the NJCU Remedial Investigation/Remedial Action Work Plan for contamination other than chromium or COPR if NJDEP requires a more stringent remedy.

15. **Honeywell** shall mean Honeywell International Inc. and its affiliates, including 425/445 Route 440 Property, LLC, Kellogg Street 80 Property LLC, Kellogg Street 60 Property LLC, and Kellogg Street/440 Property LLC.

16. **ICO v. Honeywell** shall mean *Interfaith Community Organization v. Honeywell International Inc.*, D.N.J., Civ. No. 95-2097.

17. **Including** shall mean including, but not limited to.

18. **NJCU** shall mean the New Jersey City University.

19. **NJCU Commercial AOC** shall mean the part of the Commercial AOC which does not include Site 153 North and which is owned by NJCU.

20. **NJCU Development Plan** shall mean the plan for development of the NJCU West Campus dated October 23, 2007, which is attached hereto as Exhibit B.

21. **NJCU Property** shall mean the area comprised of the NJCU Commercial AOC and the Residential AOC.

22. **NJCU Redevelopment Area** shall mean the area comprised of the Commercial AOC and the Residential AOC.

23. **NJCU Redevelopment Plan** shall mean the New Jersey City University West Campus Redevelopment Plan approved on February 9, 2005, and any approved amendments thereto.

24. **NJDEP** shall mean the New Jersey Department of Environmental Protection.

25. **NJDEP Chromium Policy** shall mean the chromium remediation policy set forth in the memorandum from Lisa Jackson to Irene Kropp on February 8, 2007, and attached as Exhibit C. The NJDEP Chromium Policy is also known as the NJDEP Chromium Directive.

26. **Non-Honeywell Parties** shall mean Riverkeeper, BMUA, and NJCU and any subsequent owner of any part of the NJCU Redevelopment Area.

27. **Non-Honeywell Party with an Interest** shall mean Riverkeeper and any Non-Honeywell Party who has an ownership or other real property interest in the property that is the subject of any particular document, action or decision under this Consent Decree.

28. **Outstanding Fees and Expenses** shall mean Riverkeeper's litigation costs, including attorneys' fees and expert witness fees, through the entry of this Consent Decree, less

the \$3,446,187.07 paid by Honeywell for fees and expenses in the Consolidated Litigation under the Prior Settlements. However, the term Outstanding Fees and Expenses excludes the fees and expenses covered by the following provisions of the Prior Settlements:

- (a) Paragraph 110 of the Study Area 6 North Consent Decree;
- (b) Paragraph 120 of the Study Area 6 South Consent Decree;
- (c) Paragraph 96 of the Site 79 Consent Decree;
- (d) Paragraph 88 and 89 of the Sediments Consent Order; and
- (e) Paragraph 30 of the Deep Groundwater Consent Order.

29. **Party or Parties** shall mean any one or all of the signatories to this Consent Decree.

30. **Prior Settlements** shall mean collectively the Study Area 6 North Consent Decree, the Study Area 6 South Consent Decree, the Site 79 Consent Decree, the Sediments Consent Order, and the Deep Groundwater Consent Order.

31. **RCRA** shall mean the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, as amended.

32. **Regnal Realty Property** shall mean the property owned by Regnal Realty, Inc., consisting of Block 1288.2, Lot 1, located at 420 Route 440, Jersey City, New Jersey, upon which Langer Transport operates a trucking operation.

33. **Remedial Action Work Plan** or **RAWP** shall mean the July 2007 Final Supplemental Remedial Investigation Report/Remedial Action Selection Report/Remedial Action Work Plan for Study Area 5, NJCU Redevelopment, Sites 90/184 and a Portion of Site 153 or any supplementation or modification thereto approved by NJDEP, including the April 17, 2008 Remedial Action Technical Specifications, Study Area 5, New Jersey City University Redevelopment.

34. **Residential AOC** shall mean the area which is shown on the figure attached hereto as Exhibit A.

35. **Riverkeeper** shall mean the plaintiffs in *Hackensack Riverkeeper, Inc. v. Honeywell International Inc.*, D.N.J., Civ. No. 06-22, and includes the Hackensack Riverkeeper, Inc., William Sheehan, Reverend Winston Clarke, and Lawrence Baker.

36. **Sediment Consent Order** shall mean the Consent Order on Sediment Remediation and Financial Assurances, entered by the Court on May 28, 2008, in *ICO v. Honeywell* and this Consolidated Litigation.

37. **Shallow Groundwater** or **Shallow Level of Groundwater** shall mean groundwater above the meadow mat, groundwater at stratigraphically equivalent depths in locations where there is no meadow mat, and groundwater that is contaminated by recent contact with COPR or other chromium soil contamination above the meadow mat and subsequently flows downward through or past the meadow mat into the upper portion of the lacustrine sediments. This does not include groundwater found in the bedrock, the deep zone, or any plume of contamination that is in both the intermediate and deep zones, as those zones are defined in the Final Groundwater Investigation Report, prepared in *ICO v. Honeywell*, dated February 2007, p. 1-2.

38. **Site** shall mean the NJCU Redevelopment Area.

39. **Site 79 Consent Decree** shall mean the Consent Decree Regarding Sites 79 and 153 South submitted to the Court contemporaneously with this Consent Decree.

40. **Site 79 Residential Properties** shall mean the properties within Site 79 owned by Elisabeth and Rafael Rosario and Michael Vo, consisting of Block 1292, Lot 49, and Block 1292, Lot 50, located at 93 and 95 Fisk Street, Jersey City, New Jersey, respectively.

41. **Site 153 North** shall mean the portion of Chromate Chemical Production Waste Site 153 that is part of the Commercial AOC.

42. **Site 153 South** shall mean the portion of Site 153 that abuts Site 117, the Garfield Home Furnishing Center, and the Regnal Realty Property, and is bounded to the north by the southern property line of the NJCU Redevelopment Area and to the south by Danforth Avenue.

43. **Soil** shall mean soils, historic fill, and/or COPR.

44. **Study Area 5** shall mean the property designated by NJDEP as Sites 79, 90, 117, 153, and 184 of the Chromate Chemical Production Waste Sites, including (a) all the property owned by Bob Ciasulli, consisting of Block 1291, Lot 76, and Block 1292, Lots 1F, 47, 48, 53, and 54PL, located at 540 Route 440, Jersey City, New Jersey, (b) all the property owned by Elisabeth and Rafael Rosario, consisting of Block 1292, Lot 49, located at 93 Fisk Street, Jersey City, New Jersey, (c) all the property owned by Michael Vo, consisting of Block 1292, Lot 50, located at 95 Fisk Street, Jersey City, New Jersey, (d) all the property owned by Jersey City Fields LLC, consisting of Block 1285.5, Lot 1, located at 440 Route 440, Jersey City, New Jersey, (e) all the property owned by 425/445 Route 440 Property LLC, consisting of Block 1289.5, Lot E, Jersey City, New Jersey, and (f) all the property owned by NJCU, consisting of Block 1286, Lots 5 and 6D, and Block 1286.5, Lots 1 and 2, Jersey City, New Jersey.

45. **Study Area 5 Shallow Groundwater** shall mean the shallow groundwater in Study Area 5 excluding the shallow groundwater in the NJCU Commercial AOC and Residential AOC, but including the shallow groundwater in Site 153 North.

46. **Study Area 6 North** shall mean the property comprising Sites 87 and 88 of the Chromate Chemical Production Waste Sites designated by NJDEP, which is subject to the Study Area 6 North Consent Decree.



47. **Study Area 6 North Consent Decree** shall mean the Consent Decree and Order Regarding Remediation and Redevelopment of Study Area 6 North, entered by the Court on April 21, 2008, in the Consolidated Litigation.

48. **Study Area 6 South** shall mean the property comprising Sites 73, 124, 125, 134, 140, and 163 of the Chromate Chemical Production Waste Sites designated by NJDEP, which is subject to the Study Area 6 South Consent Decree.

49. **Study Area 6 South Consent Decree** shall mean the Consent Decree and Order Regarding Remediation and Redevelopment of Study Area 6 South, entered by the Court on December 29, 2008, in the Consolidated Litigation.

50. **Study Area 6** shall mean Study Area 6 North and Study Area 6 South, collectively.

51. **Study Area 7** shall mean (a) the property currently owned by Bayfront Redevelopment LLC, located at 425 and 445 Route 440, Jersey City, Hudson County, New Jersey and (b) the property currently owned by Bayfront Redevelopment LLC, located at 465 Route 440, Jersey City, Hudson County, New Jersey.

52. **Subject Matter of the Consolidated Litigation** shall mean those matters set forth in Riverkeeper's Complaint, as amended.

53. **Subject to Comment by Riverkeeper and NJCU and Approval by the Special Master** shall mean that Honeywell shall submit a plan, report, or other document to Riverkeeper, NJCU and the Special Master. Riverkeeper, NJCU and the Special Master shall have the right to make comments, to which Honeywell shall respond. Unless there is consensus, the Special Master shall issue a recommendation. Any Party may challenge this recommendation by motion to the Court, but the Parties are not required to seek a ruling by the Court.

54. **Subject to Review and Comment by the Non-Honeywell Parties with an Interest** shall mean that Honeywell shall submit to the Non-Honeywell Parties with an Interest only those investigations, plans, reports, or other documents listed in paragraph 108(b) or expressly specified herein as being Subject to Review and Comment by the Non-Honeywell Parties with an Interest. Non-Honeywell Parties with an Interest shall have the right to make comments on each submitted item, to which Honeywell shall respond. In the event that the Parties are not able to reach agreement, any Party may seek resolution of the dispute by motion to the Court, but the Parties are not required to seek a ruling by the Court.

55. **Technical Requirements for Site Remediation** shall mean the NJDEP Technical Requirements for Site Remediation, N.J.A.C. Chapter 26E, as duly and properly promulgated and amended.

56. **Top 4 Feet Soils** shall mean those soils and Clean Fill in the Residential AOC to a depth of four feet below final redevelopment grade following remediation pursuant to paragraph 72.

57. **Unrestricted Use** shall mean that the contaminated medium is restored to a condition or quality suitable for all uses.

58. **Unrestricted Use No Further Action Determination** shall mean a No Further Action Letter issued by NJDEP pursuant to N.J.A.C. § 7-26C-2.6(c)(I)(i) or a Remedial Action Outcome issued by a New Jersey Licensed Site Remediation Professional in accordance with regulations then in effect stating that the specified area meets the requirements for Unrestricted Use.

**ARTICLE II: SCOPE OF THE CONSENT DECREE,  
JURISDICTION, AND CLAIMS RESOLVED**

59. This Court has jurisdiction over the Parties and subject matter of the Consolidated Litigation pursuant to Section 7002 of RCRA, 42 U.S.C. § 6972, and 28 U.S.C. § 1331.

60. For purposes of this Consent Decree, the Riverkeeper Complaint in the Consolidated Litigation states claims upon which relief may be granted against Honeywell with regard to the NJCU Redevelopment Area.

61. In the event that this Consent Decree is not terminated by one or more Parties pursuant to paragraph 146, this Consent Decree resolves, settles, and satisfies all claims by Riverkeeper against Honeywell, NJCU, and Carlos Hernandez with respect to soils and shallow groundwater at the NJCU Property and soils at Site 153 North. This Consent Decree does not resolve any claims by Riverkeeper against Honeywell with respect to the Site 79 Residential Properties, the Regnal Realty Property, or Study Area 5 Shallow Groundwater. Riverkeeper hereby forever settles, releases, compromises, waives, remises, discharges, and acquits NJCU, its predecessors, successors, subsidiaries, assigns, affiliates, and parent and the officers, agents, directors, any employees and any of them, including Carlos Hernandez, from each and every claim relating to the Subject Matter of the Consolidated Litigation that may exist as of the date of entry of this Consent Decree, whether known or unknown, and any claim which may hereafter arise against any one or more of them arising out of or relating to the Subject Matter of the Consolidated Litigation, and any claim that could have been brought prior to the date of entry of this Consent Decree relating to the Subject Matter of the Consolidated Litigation, except that it is agreed that this provision does not release NJCU or the president of NJCU, in his/her official capacity, from any claims that may arise with regard to breach or enforcement of the terms and conditions of this Consent Decree or the Global Financial Assurances Order, in the event that

NJCU becomes a party to the Global Financial Assurances Order. Further it is agreed that no officer, director, employee, or agent of NJCU, including Carlos Hernandez, shall have any personal obligation or liability under this Consent Decree.

62. Nothing in this Consent Decree shall be construed or interpreted to waive any claim or defense any Party has asserted or may assert against any third party in the Consolidated Litigation, except as explicitly stated herein.

63. This Consent Decree does not constitute an admission of any allegation, claim, or liability on the part of any Party with respect to any claims, cross-claims, or counter-claims in the Consolidated Litigation and each Party expressly denies those allegations and claims made against it as well as any liability resulting therefrom.

### **ARTICLE III: CHROMIUM REMEDIATION**

#### **A. General Terms of Chromium Remedy**

64. **Responsibility for Implementation of Chromium Remediation.** Honeywell shall be responsible for implementing the Chromium Remedies set forth in this Consent Decree and shall undertake remediation of COPR and chromium present at the NJCU Redevelopment Area under this Consent Decree. Honeywell shall perform its obligations under this Consent Decree without regard to whether it has or may have any claims, agreements, or rights, now or in the future, including for contribution, indemnity, or cost recovery, against any other entity. The terms and conditions of the Indemnity and Remediation Agreement dated December 30, 2003, among Honeywell, NJCU, and BSC Properties, Inc., as such may be amended or modified in writing by Honeywell and NJCU, shall remain in effect as between Honeywell and NJCU, but such agreement shall not limit Honeywell's performance of its responsibilities under this Consent Decree. Honeywell shall perform the remediation of COPR and chromium present at the

NJCU Redevelopment Area in accordance with the terms of the approved Remedial Action Work Plan and this Consent Decree.

65. **Scope and General Requirements of the Chromium Remedy.** The Chromium Remedy shall consist of the Residential AOC Soil Remedy, the Commercial AOC Soil Remedy, and the Shallow Groundwater Remedy as prescribed in this Article. The Chromium Remedy shall be consistent with the requirements set forth in this Article. The Chromium Remedy set forth in this Consent Decree addresses only the shallow level of groundwater at the NJCU Property. The shallow groundwater at Site 153 North is not addressed by this Consent Decree. The deep overburden and bedrock groundwater remediation, including source control, are addressed in the Deep Groundwater Consent Order.

66. **Consistency of the Chromium Remedy with NJDEP Guidance and Remedial Action Work Plan.** The Chromium Remedy shall be consistent with the Technical Requirements for Site Remediation, the NJDEP Chromium Policy, and the Remedial Action Work Plan approved by NJDEP, and the NJCU Development Plan. In the event of any conflict or inconsistency between this Consent Decree and any Remedial Action Work Plan approved by NJDEP, the provisions of this Consent Decree shall control. However, nothing in this Consent Decree shall limit NJDEP's authority to require Honeywell, other Parties, or third parties from undertaking remedial activities at the NJCU Redevelopment Area in addition to those required by this Consent Decree.

67. **Coordination with Historic Fill Remedy.** The Chromium Remedy shall be carried out diligently, and the development and implementation of the Historic Fill Remedy or any other remedy required for non-chromium contamination shall be coordinated by Honeywell and NJCU so as to not unreasonably delay satisfaction of the milestones in the Master Schedule established pursuant to paragraph 107.

68. **Demolition and Grading Activities.** During demolition and grading activities associated with the Chromium Remedy, Honeywell shall take adequate protective measures to protect Site workers and the community from airborne dusts and exposures to contaminated soils in accordance with applicable laws, regulations and orders, and health and safety standards.

69. **Clean Fill Requirement.** In all areas requiring the placement of Clean Fill, the materials used as Clean Fill shall comply with the criteria set forth in subparagraphs (a) through (c) based on the source and fate of the Clean Fill:

(a) Dirt, soils, backfill, or other fill materials (including stone, gravel, or dense graded aggregate (DGA) materials) brought onto the NJCU Redevelopment Area shall meet all applicable federal and New Jersey Department of Environmental Protection criteria for unrestricted use, including NJDEP residential soil criteria, or, alternatively, shall comply with a beneficial soil reuse plan that has been approved by the Parties and by the NJDEP. Such approval shall not be unreasonably withheld by the Parties. Such materials shall also have a hexavalent chromium concentration of 1 mg/kg or less.

(b) For any dirt, soil, backfill or other fill materials, including Historic Fill disturbed on the NJCU Redevelopment Area during construction and subsequently reused on the Site as Clean Fill at elevations of 4 feet or less below final redevelopment grade, such materials shall have a hexavalent chromium concentration of 5 mg/kg or less and shall comply with the capping requirements of the Historic Fill Remedy.

(c) For any dirt, soil, backfill or other fill materials, including Historic Fill, disturbed on the NJCU Redevelopment Area during construction and subsequently reused on the Site as Clean Fill at elevations greater than 4 feet, but less than or equal to 20 feet, below final redevelopment grade, such materials shall have a hexavalent chromium concentration of 20 mg/kg or less.

70. **Maintenance and Vegetation of Clean Fill.** Honeywell shall plant grass or other vegetation in all areas of the Chromium Remedy that will not involve paved or gravel roads or surfaces, sidewalks, paths, or walkways, or building structures, in such a manner as to protect and maintain the required depth of Clean Fill and to ensure that such vegetation shall not cause any interference with or penetration of the Commercial AOC cap. NJCU shall thereafter maintain the required depth of the Clean Fill and its cover vegetation as set forth in paragraphs 73 and 74(b). NJCU shall be responsible for any further vegetation consistent with the NJCU Redevelopment Plan.

71. **Permits and Authorizations.** Honeywell shall obtain all necessary federal, state, and local permits and authorizations to carry out the Chromium Remedy. NJCU agrees to cooperate with Honeywell, at no expense to NJCU, in the applications for any such permits, authorizations, or approvals. Such cooperation shall include providing information or data with respect to permit applications, co-signing permit applications, and allowing access to the Site to obtain information necessary for the permits.

#### **B. Residential AOC Soil Remedy**

72. **Residential AOC Soil Remedy.** In the Residential AOC, Honeywell shall:

(a) Excavate Greater Than 20 Soils to a depth of 20 feet below ground surface in the areas designated for excavation and shown in cross-hatch in the figure attached as Exhibit A;

(b) Excavate Greater Than 5 Soils to a depth of 4 feet below final redevelopment grade;

(c) Except as provided in subparagraph (a), excavate Greater Than 20 Soils at depths greater than 4 feet below final redevelopment grade, but less than or equal to 20 feet below final redevelopment grade.



(d) Remove and dispose of Greater Than 20 Soils excavated from the Residential AOC off-Site in accordance with all applicable laws and regulations.

(e) With regard to the Greater Than 5 Soils excavated from the Residential AOC either (i) remove and dispose of them off-Site in accordance with all applicable laws and regulations; or (ii) to the extent that such soils do not constitute Greater Than 20 Soils, place them in the Residential AOC at depths greater than 4 feet below final redevelopment grade.

(f) Backfill all excavated areas of the Residential AOC to final redevelopment grade pursuant to the Clean Fill requirement in paragraph 69. In areas excavated pursuant to subparagraph (b), Honeywell shall place a demarcation layer (snow fence, geotextile liner or similar material) immediately below the 4 feet before backfilling with Clean Fill to final redevelopment grade.

(g) Conduct further soil sampling during remedial design to further define and delineate areas where Greater than 5 Soils are present to a depth of 4 feet below final redevelopment grade in the Residential AOC. Excavation pursuant to subparagraph (c) shall be conducted based on existing data. Confirmatory sampling in the Residential AOC excavation areas shall be conducted in accordance with the Technical Requirements for Site Remediation.

73. **Management of Soil Remedy.** Following remediation pursuant to paragraph 72, NJCU shall use reasonable efforts to maintain the soils and Clean Fill in the Residential AOC during construction or other activity that involves disturbance of any soil or Clean Fill so that Below 4 Feet Soils are segregated and managed in such a way as to prevent them from being commingled in any way with Top 4 Feet Soils, unless the Top 4 Feet Soils will be treated as if they are Below 4 Feet Soils for purposes of handling, return, and/or disposal pursuant to this paragraph. Honeywell and NJCU shall both be responsible for handling and disposing of any Below 4 Feet Soils that cannot be returned to a depth greater than 4 feet below final

redevelopment grade. To the extent that such soils are disposed of off-Site, such disposal shall be in accordance with all applicable laws and regulations.

### **C. Commercial AOC Soil Remedy**

74. **Commercial AOC Cap.** In the Commercial AOC, the soil remedy shall consist of the placement of an engineered RCRA cap (absent soil gas venting) to isolate contaminated soils. The cap shall be designed and constructed so that:

(a) The cap shall consist of a base protective layer, an impervious geomembrane liner with a minimum thickness of 40 mil; a geocomposite drainage layer; a filter fabric; and a distinctive colored warning layer with markings in English and Spanish that would deter penetration of the cap in the event that digging occurred in the vicinity of the cap. Together, the layers set forth in this subparagraph shall constitute the “cap”;

(b) Exclusive of roadways, pavement, building foundations, parking lots, or other impervious surfaces, the cap shall be overlain by layers of Clean Fill, in accordance with subparagraph (c) below and paragraph 69, with a depth of at least three feet in those areas subject to planting with trees or bushes pursuant to either the NJCU Redevelopment Plan or any further agreement between Honeywell and NJCU and a minimum depth of at least two feet in other vegetated areas. One foot of Clean Fill in accordance with subparagraph (c) below and paragraph 69, covered with bituminous blacktop, shall be sufficient cover where roads, walkways, or other paved surfaces are located within the Commercial AOC.

(c) The existing soils in the Commercial AOC may be stripped off and set aside for use, if appropriate, during cap construction.

(i) Any Greater Than 20 Soils stripped off and set-aside shall either be placed under the cap or disposed of off-Site in accordance with applicable laws and regulations.

(ii) Any Greater Than 5 Soils stripped off and set aside during cap construction that are not also Greater Than 20 Soils may be placed at depths greater than 4 feet below final redevelopment grade in the Residential AOC or disposed of off-Site in accordance with applicable laws and regulations.

(iii) Any soils that have been stripped off may be reused as fill above the cap provided that such soils are not Greater Than 5 Soils.

(iv) Any Clean Fill placed above the cap shall be suitably compacted according to design specifications.

(v) Debris, to the extent it would interfere with the compaction specification requirements for final redevelopment design, shall not be placed under the cap, but shall be recycled, reused, or disposed of in accordance with all applicable state and federal laws and regulations.

75. **Initial Cap Completion.** After initial completion of the construction of the cap, Honeywell shall install an asphalt surface cover in the Lot 7 portion (excepting side slopes) of the Commercial AOC consisting of a 2-inch wearing course, 2-inch base course, and a 6-inch suitable sub-base (DGA or equivalent) suitable for use as a surface parking lot during the course of Phase I of the NJCU Development Plan (Exhibit B) and before NJCU constructs a building identified as Building 7 in Phase II of the NJCU Development Plan.

76. **Coordination of Cap with Future Construction of Building 7.** If NJCU advances to Phase II of the NJCU Development Plan and determines to undertake development of Building 7 as shown conceptually on Exhibit B attached hereto, NJCU and Honeywell shall cooperate in coordinating the construction schedule and construction of Building 7 with any necessary and/or required disturbance, repair, and replacement of the cap at elevations set forth in this paragraph. Honeywell recognizes that construction of Building 7 may require (a)

relocation of Clean Fill and removal of the geomembrane liner and other components of the cap within some or all of the Building 7 footprint area; (b) excavation and disposal of capped soils from the Building 7 footprint area to allow for reinstallation of the geomembrane liner at an elevation to accommodate building foundation design expected to be approximately 12 feet to 14 feet above mean sea level ("MSL"), (c) reinstallation of the geomembrane layer and other cap components to integrate the cap with construction of Building 7, and (d) such further work as may be necessary and/or required by the NJDEP to implement the above work and so that construction of Building 7 may proceed. Honeywell shall seek and obtain NJDEP approval or Licensed Site Remediation Professional approval, if required by law, for the further Chromium Remedy activities set forth in this paragraph and to perform such activities prior to construction of Building 7 in a timely manner so as not to unreasonably affect the construction, timing, and schedule of NJCU for the construction of Building 7. Honeywell shall present the work plan for the further Chromium Remedy in a document that is Subject to Review and Comment by the Non-Honeywell Parties with an Interest and approval by NJDEP.

**77. Further Remediation upon Future Unrestricted Use of the NJCU Commercial AOC.** At any time after January 1, 2030, if NJCU or a future owner of the NJCU Commercial AOC prepares a development plan similar in level of detail to Exhibit B to change all or any part of the NJCU Commercial AOC to residential or other uses currently prohibited under paragraph 87, it shall inform Honeywell and Riverkeeper. Within 90 days of receiving such written notice, Honeywell shall propose further remedial action, as necessary, for the entire NJCU Commercial AOC, to meet NJDEP's requirements for Unrestricted Use of the NJCU Commercial AOC in effect at that time and a schedule for undertaking such further remedial action in conjunction with the proposed development plan. Such proposal shall be presented by Honeywell in a document that is Subject to Review and Comment by the Non-Honeywell Parties

with an Interest. Following such review and comment by the Non-Honeywell Parties with an Interest and approval by NJDEP, Honeywell shall undertake the further remedial action pursuant to the schedule to be coordinated with NJCU or any future owner. Upon completion of such remedial actions, Honeywell and NJCU or any future owner shall apply to terminate the Deed Notice provisions restricting use and protecting the engineering controls that have been removed. As between the Parties, Honeywell shall undertake, at its sole cost and expense, to perform all Chromium Remedy work as required by law, pursuant to the then existing NJDEP standards and requirements for remediation to Unrestricted Use, including removal of the geomembrane cap, any excavation or treatment of existing chromium contaminated soils, and replacement with Clean Fill as required by law. The Parties shall use all reasonable efforts to undertake their respective responsibilities under this paragraph in a timely manner in coordination with, and so as not to unreasonably delay, planned redevelopment. Nothing in this paragraph shall prevent NJCU or a future owner from undertaking such further remediation at its sole cost and expense prior to January 1, 2030. Neither NJCU nor a future owner shall have any obligation to undertake such further remediation. However, NJCU or a future owner must comply with paragraph 87 until further remediation is undertaken pursuant to this paragraph and an Unrestricted Use No Further Action Determination is issued for the NJCU Commercial AOC.

78. **Utility Corridors.** With the exception of existing utilities located on Site 153 North and any extraction wells, monitoring wells, or collection trenches, all utilities in the Commercial AOC shall be placed above the Commercial AOC cap (but may be below the ground surface and/or contained within clean utility corridors). In the event that, in the performance of the Chromium Remedy, Honeywell discovers any abandoned non-functioning utilities, Honeywell shall either remove and dispose of them off-Site if necessary to perform the Chromium Remedy or leave such utilities in place and report in writing to the Parties. The

location and elevation of such abandoned and non-functioning utilities left in place shall be disclosed in the “as-built” drawings for the Commercial AOC Cap.

79. **Commercial AOC Utility Map.** Honeywell shall create a map of the utilities in the Commercial AOC that indicates the area where Greater Than 20 Soils have been determined to be present and provide such map to the Parties and to all entities with regulatory authority over utilities present in the Commercial AOC.

80. **Access Point Warnings.** Honeywell shall provide distinctive warnings in English and Spanish at sewer access points within Site 153 North, including manhole covers, that inform the reader of the presence of chromium at Site 153 North.

81. **Initial Site 153 North Remedy.** For those chromium-contaminated soils in Site 153 North that are not covered by the Commercial AOC cap, the existing surficial pavement shall constitute an engineering control. In the event that such pavement is disturbed as a result of any work associated with the Chromium Remedy or redevelopment activities, Honeywell shall restore the pavement as soon as reasonably possible, unless such pavement is replaced by some equivalent surface which shall then constitute part of the engineering control.

82. **Further Remediation upon Sewer Repair or Replacement.** Further remediation shall be undertaken by Honeywell as follows:

(a) Whenever any section of the BMUA force main sewer pipeline on Site 153 North is being replaced, Honeywell shall remove or treat all soils necessary to meet NJDEP’s chromium requirements for non-residential use in effect at the time, dispose of such removed material at a facility licensed to accept such materials, and replace such materials with materials deemed appropriate by BMUA and having a hexavalent chromium concentration less than the more stringent of (i) a formal New Jersey soil standard for Unrestricted Use duly adopted after the date of this Consent Decree or (ii) 1 mg/kg.

(b) Whenever any normal operating repairs for any section of the sewer on Site 153 North result in the removal of chromium soils to effectuate the repair and those soils exceed NJDEP's chromium requirements for non-residential use in effect at the time, Honeywell shall arrange for the disposal of such removed material at a facility licensed to accept such materials and replace such materials with materials deemed appropriate by BMUA and having a hexavalent chromium concentration less than the more stringent of (i) a formal New Jersey soil standard for Unrestricted Use duly adopted after the date of this Consent Decree or (ii) 1 mg/kg.

(c) Whenever any portion of ingress and egress and/or roadway areas for which NJCU holds or may in the future hold an easement over Site 153 North is being installed, repaired, or replaced, Honeywell shall remove all soils necessary to effectuate the installation, repair, or replacement that exceed NJDEP's chromium requirements for non-residential use in effect at the time, and Honeywell shall arrange for the disposal of such removed material at a facility licensed to accept such materials and replace such materials with materials deemed appropriate by NJCU and having a hexavalent chromium concentration less than the more stringent of (i) a formal New Jersey soil standard for Unrestricted Use duly adopted after the date of this Consent Decree or (ii) 1 mg/kg.

(d) Whenever any normal operating repairs on any other section of sewers, utilities, or roadways on the NJCU Property require the removal of soils that exceed NJDEP's chromium requirements for non-residential use in effect at the time, Honeywell shall arrange for the disposal of such removed material at a facility licensed to accept such materials and replace such materials with materials deemed appropriate by NJCU and having a hexavalent chromium concentration less than the more stringent of (i) a formal New Jersey soil standard for Unrestricted Use duly adopted after the date of this Consent Decree or (ii) 1 mg/kg.



(e) Whenever any contaminated materials are removed pursuant to this paragraph, to the extent allowed by the appropriate sewer utility, Honeywell shall also take appropriate steps, such as the placement of a geofabric, to ensure that new fill material does not become contaminated by any remaining contaminated soil.

(f) Whenever any contaminated materials are removed pursuant to this paragraph, Honeywell shall also update the map pursuant to paragraph 79.

83. **Worker Training Manual.** Honeywell shall develop a manual for training individuals who might be exposed to COPR, chromium-contaminated soils, or chromium-contaminated groundwater in conjunction with any utility or other subsurface work performed at the Commercial AOC (“Worker Training Manual”) in conformance with Occupational Safety and Health Administration (“OSHA”) rules and guidance. The Worker Training Manual shall detail all appropriate steps such individuals should take to protect themselves from exposure to chromium and shall provide procedures: (i) to identify when areas or sections of the BMUA pipeline surrounded by COPR or chromium-contaminated soil are scheduled for repair and/or replacement; (ii) to identify and implement appropriate actions to protect workers; and (iii) to coordinate with Honeywell regarding the removal of COPR or chromium-contaminated soils pursuant to paragraph 82. BMUA shall implement such program pursuant to paragraph 85.

84. **Inspection by Riverkeeper.** Riverkeeper shall have the right to enter the NJCU Redevelopment Area annually for the purposes of inspecting the Chromium Remedy thereon.

85. **BMUA Obligations.** BMUA shall develop a permanent plan to implement health and safety measures for its workers at Site 153 North in accordance with OSHA rules related to hazardous materials and shall utilize the Worker Training Manual prepared by Honeywell pursuant to paragraph 83 setting forth the procedures and protections that BMUA shall employ when it conducts activities at Site 153 North. In the event of any planned maintenance or

emergency repair of any of its pipelines located under Site 153 North that will involve any disturbance of the remedial measures required by paragraphs 74, 76, 81, and/or 82, BMUA shall notify Honeywell and Riverkeeper of the planned action(s) and the date(s) for the planned action. Notice to adjacent property owners, in the event of any planned or emergency repair or maintenance of pipelines located under Site 153 North, shall be provided in the manner described in paragraph 104.

#### **D. Shallow Groundwater Chromium Remedy**

86. **Shallow Groundwater Remedy.** The shallow groundwater remedy shall consist of:

(a) Approximately 700 linear feet of an underground barrier wall (consisting of slurry, sheetpile, or other materials generally accepted for construction of low-permeability underground barrier walls) placed along the western boundary of the NJCU Commercial AOC as shown on the figure attached as Exhibit A.

(b) Approximately 920 linear feet of an underground barrier wall (consisting of slurry, sheetpile, or other materials generally accepted for construction of low-permeability underground barrier walls) placed along the southern boundary of the NJCU Property with the Home Depot Site 117 property as shown on the figure attached as Exhibit A.

(c) Two sections of underground barrier wall (consisting of slurry, sheetpile, or other materials generally accepted for construction of low-permeability underground barrier walls), of approximately 300 linear feet in total, placed along the southeastern and northwestern boundaries of the NJCU Commercial AOC as shown on the figure attached as Exhibit A.

(d) Approximately 500 linear feet of an underground barrier wall (consisting of slurry, sheetpile, or other materials generally accepted for construction of low-permeability underground barrier walls) to be installed within the NJCU Commercial AOC to connect the

underground barrier walls constructed pursuant to sub-paragraphs 86(a)-(c) of this Consent Decree. Exhibit A to this Amended Consent Decree depicts the shallow groundwater chromium remedy.

(e) A contingency groundwater collection system consisting of extraction well(s), trench(es), underground pumps, horizontal underdrain piping, or a combination of some or all of the preceding located in or near the Commercial AOC and including such pipes and other equipment located outside the Commercial AOC as may be necessary for such collection system. The system shall be designed to collect and convey shallow groundwater in the NJCU Commercial AOC containing chromium concentrations above NJDEP water quality standards for chromium to a treatment plant outside the NJCU Redevelopment Area or to a local sewer connection and to maintain an inward gradient for shallow groundwater within the NJCU Commercial AOC.

#### **E. Institutional Controls**

87. **Restrictions on the Use of the NJCU Commercial AOC.** Until such time as further remedial activities are undertaken pursuant to paragraph 77 and an Unrestricted Use No Further Action Determination is issued for the NJCU Commercial AOC, residential, day care, and educational uses, other than administrative, are prohibited in the NJCU Commercial AOC. Commercial, retail, office, academic administrative use, open space, utility corridors, transportation, roadway, crossing or access to adjacent properties, or other uses that are not prohibited by the deed notice are permitted in the NJCU Commercial AOC.

88. **Annual Notice by NJCU.** Annually, beginning on January 15, 2011, and on each anniversary date in each year thereafter until such time as further remedial activities are undertaken pursuant to paragraph 77 and an Unrestricted Use No Further Action Determination is issued for the NJCU Commercial AOC, NJCU shall submit a written notice to Honeywell and

Riverkeeper stating whether NJCU is in compliance with the deed notice and whether there are any uses in the NJCU Commercial AOC that are prohibited under paragraph 87 or the deed notice. Such notice shall identify all categories of uses (*e.g.*, commercial, retail, etc.) of the property since the date of the last annual notice, including new and continuing categories of uses. Honeywell and Riverkeeper will remind NJCU of this annual obligation.

**89. Transfer of Title to the NJCU Commercial AOC.** During the period prior to the issuance of an Unrestricted Use No Further Action Determination for the NJCU Commercial AOC, the following requirements shall apply:

(a) NJCU and all subsequent owners of all or any part of the NJCU Commercial AOC shall provide, within 30 days after a transfer of title to all or any part of the NJCU Commercial AOC, written notice of such transfer to the Court. The filing with the Court providing such notice shall be accompanied by the following items: (i) a consent order, substantially in the form of Exhibit D, attached hereto, to which all Parties are hereby deemed to have consented, that shall be executed by all Parties and the transferee and provide for the transferee to be added as a limited party to this Consent Decree solely as to the provisions of this Consent Decree as set forth in subparagraph (b); and (ii) a motion requesting the Court to approve and enter the consent order.

(b) Upon becoming a limited party to this Consent Decree, the transferee shall have: (i) all of the rights and benefits applicable to NJCU set forth in this Consent Decree as they pertain to the NJCU Commercial AOC, including the right to enforce the obligations of Honeywell under paragraphs 64-86, 90, 91(a), 92, 95, 96-105, 107, 108(b) and (c), 110, 113, and 152 and the obligations of Riverkeeper under this Consent Decree; (ii) the protections afforded by the financial assurances provided under Article V of this Consent Decree, including the right to enforce Honeywell's obligations thereunder; and (iii) only those responsibilities applicable to

NJCU as set forth in paragraphs 70-71, 73, 76, 84, 87-89, 91(b), 92-94, 104-105, and 152 of this Consent Decree. The provisions of this paragraph apply regardless of the manner in which the title to all or any part of the NJCU Commercial AOC is transferred from one owner to another.

90. **Pre-Transfer Certification by Honeywell and Riverkeeper.** Prior to any transfer of title to all or part of the NJCU Commercial AOC, NJCU or a subsequent owner may make a written demand of Honeywell and Riverkeeper to each deliver to the requester any documents reasonably requested in the demand and a certification that includes the following:

- (a) A statement as to whether the Consent Decree is in full force and effect;
- (b) A statement as to whether the Consent Decree has been modified or amended and, if so, in what manner it has been modified or amended; and
- (c) A statement as to whether at the time of such certification there are any known breaches that are subject to a pending or intended motion to enforce this Consent Decree or constitute a default pursuant to paragraphs 122 or 133 with regard to any requirement under this Consent Decree applicable to the NJCU Commercial AOC.

Honeywell and Riverkeeper shall each deliver to the requester within 15 days of receipt of the demand the requested documents and certification. Unless the Parties have agreed to extend the time for response to a demand made pursuant to this paragraph, NJCU or the subsequent owner shall have the right to apply to the Court on short notice for an order to show cause for failure to make a timely and full response to a demand made pursuant to this paragraph.

91. **Deed Notices.** The following deed notices shall be recorded:

- (a) **Site 153 North Deed Notice.** Within 90 days of the completion of the remedial measures required by paragraphs 74 and 81, Honeywell shall record a deed notice for Site 153 North, in the form attached hereto as Exhibit E, including the following provisions:

(i) Notice of the presence of chromium contamination at Site 153 North;

(ii) Notice that Clean Fill, caps, including the Commercial AOC cap, and asphalt or other pavement covers each constitute an engineering control that must be maintained in accordance with the Technical Requirements for Site Remediation;

(iii) A restriction limiting the future uses of Site 153 North to open space, utility corridor, transportation, roadway, crossing, or access to adjacent properties.

Such deed notice shall encumber Site 153 North until such time as an Unrestricted Use No Further Action Determination is issued for Site 153 North. During the period in which Site 153 North is encumbered by the deed notice, Honeywell shall comply with the requirements of the deed notice. At the time the biennial reports required by the deed notice are submitted to NJDEP, Honeywell shall provide copies of the reports to Riverkeeper. The deed notice shall be enforceable against Honeywell in the Consolidated Litigation.

(b) **NJCU Commercial AOC Deed Notice.** Within 90 days of the completion of the remedial measures under paragraphs 74 and 86, NJCU shall record a deed notice for the NJCU Commercial AOC in the form attached hereto as Exhibit F. The deed notice shall encumber the NJCU Commercial AOC until such time as further remedial activities are undertaken pursuant to paragraph 77 and an Unrestricted Use No Further Action Determination is issued for the NJCU Commercial AOC. Upon completion of further remedial activities pursuant to paragraph 77, the deed notice shall be modified to (i) allow for Unrestricted Use of the NJCU Commercial AOC; (ii) identify any Greater Than 20 Soils remaining at depths greater than 20 feet below ground surface, if such conditions exist; and (iii) identify those engineering controls, if any, which may remain in place, such as any shallow groundwater remedy components installed pursuant to paragraph 86. During the period in which

the NJCU Commercial AOC is encumbered by the deed notice, NJCU and Honeywell shall comply with the requirements of the deed notice. At the time the biennial reports required by the deed notice are submitted to NJDEP, NJCU and Honeywell shall provide copies of the reports to Riverkeeper. The deed notice shall be enforceable against NJCU and Honeywell in the Consolidated Litigation.

92. **Recording of the Deed Notices.** The deed notices for Site 153 North and the NJCU Commercial AOC shall be recorded pursuant to N.J.S.A. §§ 46:15-1.i, 46:16-1.1, 46:16-2, and 58:10b-13, in the Office of the Hudson County Register and a conspicuous reference to the Consent Decree and deed notices shall be included in all instruments concerning title to Site 153 North and the NJCU Commercial AOC, as the case may be, as long as the respective property is required to be encumbered by the deed notice.

93. **NJCU Transfer of the NJCU Commercial AOC to Itself.** Within 30 days after the recording of the deed notice pursuant to paragraph 92, NJCU shall execute a deed, in the form and substance attached hereto as Exhibit G, with respect to all separate lots and blocks that may be included within the NJCU Commercial AOC and shall record the deed in the Office of the Hudson County Register. Such transfer is for the purpose of creating a deed that informs future owners of all or any part of the NJCU Commercial AOC of the deed notice and this Consent Decree. This Consent Decree shall be recorded at the same time as such deed.

94. **Language in Future Deeds and Ground Leases for the NJCU Commercial AOC.** Following the transfer pursuant to paragraph 93 and continuing until such time as an Unrestricted Use No Further Action Determination is issued for the NJCU Commercial AOC, any deed for all or any part of the NJCU Commercial AOC shall contain the terms set forth in paragraphs 5 and 6 of Exhibit G without modification.



95. **Ownership of and Access to Site 153 North.** Honeywell shall not voluntarily convey fee simple title to Site 153 North to any other person or entity, unless Site 153 North has been remediated such that no hexavalent or total chromium contamination remains at Site 153 North, whether in soils or in groundwater, in excess of the levels and at depths specified by NJDEP for Unrestricted Use in place at the time of the proposed sale or lease. Nothing in this paragraph shall prohibit Honeywell from granting easements or leases on Site 153 North to third parties without remediating to Unrestricted Use, provided that such easements or leases are for the purposes identified in paragraph 91(a)(iii). In the event that a future easement holder or lessee uses Site 153 North for purposes other than those identified in paragraph 91(a)(iii), the particular easement or lease shall be deemed void and Honeywell shall so provide in each future easement and lease instrument. Honeywell shall provide notice to Riverkeeper of each easement and lease granted, other than the current easement granted on Site 153 North.

#### **F. Long-Term Monitoring**

96. **Honeywell's Ongoing Responsibility.** Honeywell shall be responsible for implementing, monitoring, maintaining, repairing, and replacing the Chromium Remedy at (i) the NJCU Commercial AOC until Honeywell's completion of further remedial activities pursuant to paragraph 77 and its receipt of an Unrestricted Use No Further Action Determination for hexavalent chromium for the NJCU Commercial AOC; and (ii) Site 153 North until Honeywell's completion of further remedial activities pursuant to paragraph 82 and its receipt of an Unrestricted Use No Further Action Determination for hexavalent chromium for Site 153 North. Honeywell shall satisfy this responsibility through establishment and implementation of a Long-Term Monitoring Plan. In the event that Honeywell ceases to exist without a successor-in-interest or its obligations under this Consent Decree are stayed or limited due to a bankruptcy petition, the Court shall appoint an independent third-party fiduciary who shall be responsible for

implementing, monitoring, maintaining, repairing, and replacing the Chromium Remedies pursuant to the requirements of this Consent Decree and the Long-Term Monitoring Plan, except to the extent that NJCU and/or a future owner of all or part of the NJCU Commercial AOC volunteers in writing to assume all or part of Honeywell's responsibilities for the Chromium Remedies.

97. **Long-Term Monitoring Plan.** Subject to Review and Comment by the Non-Honeywell Parties with an Interest, Honeywell shall develop a Long-Term Monitoring Plan to ensure the ongoing effectiveness of the Chromium Remedies to meet the objectives set forth in paragraph 98. The Long-Term Monitoring Plan shall be consistent with the applicable EPA policies and guidance, including, among others, EPA's Comprehensive Five Year Review Guidance (2001) (or any subsequent revision) and with the Technical Requirements for Site Remediation.

98. **Long-Term Monitoring Plan Objectives.** Honeywell shall design the Long-Term Monitoring Plan to satisfy each of the following objectives:

(a) Provide monitoring to ensure that the integrity and effectiveness of the Chromium Remedies are maintained; and

(b) Provide monitoring to ensure that the restrictions of the institutional controls are being satisfied, including the use restrictions on the NJCU Commercial AOC and Site 153 North as set forth in the respective deed notices and paragraphs 87 and 91(a)(iii).

99. **Monitoring Activities in the Long-Term Monitoring Plan.** Honeywell shall undertake the following monitoring activities, which shall be described in more detail in the Long-Term Monitoring Plan, at intervals no less frequent than set forth below. If the results of Honeywell's monitoring show that a Chromium Remedy is compromised or threatens to become compromised, Honeywell shall undertake the remediation activities as set forth below:

(a) Quarterly visual inspection monitoring of the NJCU Commercial AOC and Site 153 North to ensure that neither is being put to any prohibited use or any use that would jeopardize the integrity or effectiveness of the Chromium Remedies. If Honeywell determines that the NJCU Commercial AOC is being used in a manner that would jeopardize the integrity or effectiveness of the Chromium Remedy, Honeywell shall notify Riverkeeper, NJCU, and NJDEP, and cooperate with NJCU and, if necessary, NJDEP to cause such use to cease as soon as possible. If there has been damage to the Chromium Remedy as a result of such use, Honeywell shall repair or replace it to original specifications or to a level of protection at least equivalent to the original Chromium Remedy. In such event, this Consent Decree shall not waive or limit any claims, rights, or causes of action Honeywell may have against any person to the extent that such person caused such damage to the Chromium Remedy.

(b) Quarterly visual inspection monitoring of the grade and slope in the Commercial AOC to identify whether erosion has occurred or is occurring in such a manner as to jeopardize the protectiveness of the Commercial AOC cap. Honeywell shall address any erosion that jeopardizes the protectiveness of the cap.

(c) Quarterly visual inspection monitoring to determine whether noticeable differential settlement or subsidence has occurred or is occurring in the Commercial AOC such that the integrity of the Chromium Remedy may be materially impaired. Honeywell shall address any differential settlement or subsidence that is beyond the degree of differential settlement/subsidence allowed for in the Final 100% Remedial Design and repair the cap and/or the overlying layers to original Final 100% Remedial Design specifications or to a level of protection at least equivalent to the original Chromium Remedy.

(d) Quarterly visual inspection monitoring to determine whether the Chromium Remedy in the Commercial AOC has been disturbed other than a planned disturbance

in connection with commercial development or BMUA sewer repair or replacement. Any evidence of the distinctive warning layer materials or any other cap materials as described in paragraph 74(a) at the surface is an indication that the cap has been disturbed. In such an event, Honeywell shall undertake further investigative measures to evaluate whether the integrity of the cap has been compromised or the contingency system for water level maintenance has been disturbed. In the event that the investigative measures show that the cap integrity has been compromised, Honeywell shall repair or replace the cap and the overlying layers to original Final 100% Remedial Design specifications or to a level of protection at least equivalent to the original Chromium Remedy. In the event that the investigative measures show that the contingency system for water level maintenance has been disturbed, Honeywell shall repair or replace the system to original Final 100% Remedial Design specifications or to a level of protection at least equivalent to the original Chromium Remedy.

(e) Quarterly visual inspection monitoring to ensure that burrowing animals are not materially impairing the integrity of the Chromium Remedy in the Commercial AOC. If evidence of burrowing animals is found, Honeywell shall follow accepted removal procedures and repair or replace the cap and the overlying layers to original Final 100% Remedial Design specifications or to a level of protection at least equivalent to the original Chromium Remedy.

(f) Quarterly visual inspection monitoring of the vegetative cover, including landscaping, if any, in the Commercial AOC to ensure that vegetative cover will not materially impair the integrity of the Chromium Remedy.

(g) Quarterly groundwater elevation monitoring to ensure that groundwater levels are maintained in accordance with the requirement to maintain an inward gradient for shallow groundwater in the Commercial AOC cap and in accordance with the water level control plan developed pursuant to the Study Area 6 North Consent Decree and subject to reasonable

modification, if necessary, for purposes of coordinating with any Study Area 5 Shallow Groundwater remedy.

(h) Monitoring during any development or construction in the NJCU Commercial AOC to ensure that at the conclusion of the construction activity, the maintenance, repair, or replacement of the cap and other engineering controls in the NJCU Commercial AOC are restored to the specifications set forth in the Final 100% Remedial Design or to a level of protection at least equivalent to the original Chromium Remedy.

(i) Monitoring during any development, construction, or other activities in the Residential AOC that involve disturbance of the Below 4 Feet Soils to ensure that such activities are being undertaken in a manner to satisfy the requirements of paragraph 73.

(j) Annual inspections of Site 153 North to ensure that all pavement is in good condition and does not have potholes or cracks that penetrate the pavement. The inspection shall take place in April or May of each year. Any potholes or cracks that do not penetrate the pavement shall be repaired as part of regular maintenance that takes place at least annually. Potholes or cracks that penetrate the pavement shall be repaired immediately and, if 10% or greater of a localized area or 25% or greater of the entire paved area suffers from such disturbances, Honeywell shall repave such portion(s) as are necessary to maintain the pavement in good condition.

(k) Annual inspection, and repair and/or replacement as necessary, of all warning signs on Site 153 North.

(l) Annual review, updated as necessary based on changes to field conditions and/or regulatory requirements, of the Worker Training Manual.

**100. Procedures for Proposing Changes to the Long-Term Monitoring Plan.** Any Party may, from time to time, propose changes to the scope of the monitoring activities under the

Long-Term Monitoring Plan. If the Parties agree, the Long-Monitoring Plan shall be so changed subject to NJDEP approval as necessary. If the Parties are unable to reach agreement over alterations to the monitoring, any Party may file a motion seeking a resolution of the dispute by the Court.

101. **Contingency Plan.** As part of the Long-Term Monitoring Plan, Honeywell shall develop a contingency plan to ensure the integrity of the remediation in the event of any planned penetration of the Commercial AOC cap or any underground barrier wall or otherwise planned activity that compromises the cap or any unplanned event or accident that penetrates the cap or otherwise compromises the integrity of the Commercial AOC Chromium Remedy. The contingency plan shall include, at a minimum, an annually updated plan to notify the relevant persons, including NJDEP, and the Parties: of (i) the event penetrating the cap, compromising the cap, or compromising the integrity of the Commercial AOC Chromium Remedy; (ii) the general steps to be taken to identify the extent of the problem; and (iii) the standards for remedying the problem.

102. **Recordkeeping.** Honeywell shall maintain written logs or other records of those monitoring and remediation activities undertaken pursuant to the Long-Term Monitoring Plan. Such logs shall be provided to the Parties on a quarterly basis.

103. **Monitoring and Reporting to the Parties.** Riverkeeper and NJCU shall be provided with all documents submitted to NJDEP with respect to the Chromium Remedies, including the documents identified in paragraph 108(b).

104. **Public Notice.** In each instance, if and when, public notice is required to be provided pursuant to N.J.A.C. 7:26E-1.4, such notice shall be made. For purposes of such public notice, the boundaries of Sites 90, 153 North and 184 shall be deemed to be the site or property boundaries. In addition, all commercial tenants on the NJCU Commercial AOC and all easement

holders on Site 153 North shall be provided at the time of their purchase, lease, or establishment of the easement with written notice of the chromium contamination in the NJCU Commercial AOC and the remedial actions that have been undertaken or are planned. To the extent the purchase, lease, or easement occurred prior to entry of this Consent Decree, such notice shall be provided within 90 days of entry of this Consent Decree. All Parties and other entities identified in the subparagraphs below shall be provided notice of monitoring and maintenance activities in the following manner:

(a) Honeywell shall provide notice, updated annually, to New Jersey One Call and any other underground alert hotlines existing in New Jersey now or in the future, identifying the location and type of contamination at or near pipelines under Site 153 North;

(b) In the event of any planned or emergency disturbance of the Chromium Remedy at Site 153 North, Honeywell shall provide notice to the Parties and any utility holding an easement on Site 153 North of any actions undertaken or planned and the safety measures implemented to protect individuals near Site 153 North from exposure;

(c) In the event of any planned or emergency disturbance of the Chromium Remedy in the Commercial AOC, Honeywell, NJCU and any party creating such disturbance shall provide notice to the Parties and any owner or tenant of the NJCU Commercial AOC of any actions undertaken or planned and the safety measures implemented to protect individuals near the Commercial AOC from exposure;

(d) Honeywell shall annually update summary notice of the Chromium Remedies that is made available on any website developed by Honeywell to inform the public of contamination at Study Area 6 North, Study Area 6 South, and any future website related, in whole or in part, to Study Area 5. Such notice shall include a description of the remedial actions undertaken and the contamination remaining at the Commercial AOC. Once the long-term



monitoring requirements set forth in paragraph 99 become effective, such annual update shall occur upon completion of the annual long-term monitoring required by paragraph 99; and

(e) NJCU shall provide Honeywell with a list of tenants in any development on the NJCU Commercial AOC and Honeywell shall provide annual written notice to the tenants of any long-term monitoring or maintenance activities undertaken with respect to the Chromium Remedy.

105. **Coordination of Construction Responsibilities.** NJCU shall construct, repair, and maintain any buildings in the NJCU Commercial AOC in such a way as to minimize disruption to the Chromium Remedy and shall cooperate with Honeywell in the coordination of any such construction with Honeywell's repair or replacement of components of the Chromium Remedy.

#### **ARTICLE IV: OVERSIGHT AND ENFORCEMENT**

106. **Federal Court Jurisdiction.** The Court shall retain jurisdiction over the Parties for the purpose of overseeing and enforcing this Consent Decree.

107. **Master Schedule.** Within 120 days of entry of this Consent Decree, Honeywell shall submit a revised and updated Master Schedule to NJDEP. The Parties recognize that implementation of the Chromium Remedy must be coordinated with the NJCU Redevelopment Plan and the NJCU Development Plan. The Parties currently anticipate that the Construction Phase will be completed on or before approximately December 31, 2011, and any Master Schedule which reflects this completion date shall be approved by the Parties. However, the Parties recognize that implementation of the Construction Phase must be coordinated with NJCU's implementation of the Historic Fill Remedy and preparation of the NJCU Property for redevelopment. Accordingly, Honeywell may reasonably adjust dates on the Master Schedule without further leave of Court or approval of the Parties provided that the implementation of the



Construction Phase is complete by December 31, 2013. The Master Schedule for the implementation of the Construction Phase shall be approved by NJCU and Riverkeeper and approval shall not be unreasonably withheld. With leave of Court or consent of the Parties, the completion date for the Construction Phase can be extended beyond December 31, 2013, with just cause.

**108. NJDEP Oversight of the Chromium Remedy.**

(a) **NJDEP Authority.** NJDEP shall retain its full statutory and regulatory authority with respect to the Site, including: (i) permitting authority; (ii) authority to review and approve all remedial documents pertaining to the Chromium Remedy, including the documents listed in paragraph 108(b); and (iii) authority to issue an Unrestricted Use No Further Action Determination or similar approval.

(b) **Submission of Documents by Honeywell.** The following documents shall be Subject to Review and Comment by the Non-Honeywell Parties with an Interest. Honeywell shall allow the Non-Honeywell Parties with an Interest a period of 60 days for review, comment, and approval of the documents listed in this paragraph. None of the Non-Honeywell Parties with an Interest shall unreasonably withhold approval of any document. Upon approval by the Parties, Honeywell shall submit each of the documents set forth in this paragraph to NJDEP. In the event that a Party does not approve a document set forth in this paragraph within the approval period, the approval period may be extended upon mutual agreement of the Parties. If the approval period is not extended, Honeywell may submit the document to NJDEP, with an express statement that the Party has not approved the document and Riverkeeper, NJCU, and/or BMUA shall have the right to submit comments to NJDEP. Consistent with its statutory and regulatory authority, NJDEP may accept or reject comments,

accept or reject the Parties' resolution of any comments, and approve or reject the documents described in this paragraph. The documents subject to this paragraph are:

- (i) An overall schedule with milestones for the design and implementation of the remedy ("Master Schedule");
- (ii) The Final 100% Design of the Chromium Remedy;
- (iii) The Site-wide master health and safety plan, including a plan for training workers at the Commercial AOC;
- (iv) A beneficial soil reuse plan pursuant to paragraph 69;
- (v) The Long-Term Monitoring Plan;
- (vi) A long-term plan for the inspection, monitoring, maintenance, and repair of the hydraulic controls identified in paragraph 86;
- (vii) The final Remedial Action Report or final construction report (including as-built drawings and such other reports as may be prepared of the remedy as implemented);
- (viii) A report reviewing measured shallow groundwater levels for the groundwater remedy;
- (ix) A plan for removal and disposal of COPR or chromium-contaminated soils in the event of sewer repairs or replacement or roadway or utility repair or replacement at the Commercial AOC pursuant to paragraph 82;
- (x) Post-implementation monitoring reports as required by the Long-Term Monitoring Plan;
- (xi) A manual setting forth the procedures and protections that BMUA and/or NJCU shall employ when conducting utility repair, maintenance, or other invasive work in the Commercial AOC; and

(xii) Plans for further remediation of the NJCU Commercial AOC pursuant to paragraph 77.

(c) **Future Appointment of Special Master.** In the event that a Party seeks appointment of a Special Master pursuant to paragraph 110 and the Court appoints a Special Master, the provisions of subparagraph (b) shall be of no further force or effect as to the matters for which the Special Master has been appointed and the provisions of the Order appointing the Special Master shall govern the procedures for the approval of documents Honeywell is required to submit pursuant to this Consent Decree.

109. **Appointment of a Special Master.** The Court hereby appoints a Special Master pursuant to Rule 53 of the Federal Rules of Civil Procedure for the purposes of overseeing financial assurances under this Consent Decree. The Special Master shall have jurisdiction over all matters for which he is appointed.

110. **Right to Seek Appointment of Special Master for Additional Matters.** The Parties dispute the need for a Special Master to oversee implementation of matters other than financial assurances under this Consent Decree. Therefore any Party has the right to seek appointment of a Special Master to oversee the implementation of this Consent Decree, in whole or in part, including referral of supervision of this Consent Decree to the Special Master who has been appointed to oversee implementation of the Study Area 6 North and Study Area 6 South Consent Decrees, and all other Parties reserve the right to oppose any such appointment or to seek limitations on the powers or authority of any Special Master appointed. No Party shall seek appointment of a Special Master until such time as it or another Party seeks resolution by the Court of a matter under this Consent Decree. As to any matter for which no Special Master has been appointed, Honeywell and NJCU shall undertake the obligations assigned to them in this Consent Decree without further order of the Court and Riverkeeper shall retain the right to

enforce this Consent Decree through any means permitted under federal law, including an initial motion or successive motions for appointment of a Special Master.

111. **Retention of Professionals.** The Special Master may retain the services of professionals and/or other technical personnel, as reasonably needed, to fulfill his obligations under this Consent Decree, and for which he will be reimbursed pursuant to paragraph 113.

112. **Insurance for the Special Master.** The Special Master shall obtain insurance coverage relating to the performance of the Special Master's duties and responsibilities under this Consent Decree. Such coverage shall be similar to the Special Master's existing coverage in *ICO v. Honeywell*, procured pursuant to the Court's November 11, 2005 Stipulation and Order Regarding Special Master's Application to Procure Insurance Coverage, and as extended to the Consolidated Litigation by the Sediment Consent Order. The insurance coverage shall be sufficiently extended in duration and scope to cover all additional duties and responsibilities as set forth hereunder. Honeywell shall pay the premiums and other administrative costs of the Special Master's insurance.

113. **Reimbursement of Special Master Fees and Expenses.** The Special Master shall submit fee applications to the Court for approval of reasonable fees and expenses incurred in the oversight of matters referred to him pursuant to this Consent Decree. Any Party may raise with the Court objections to such fee applications. Upon approval of a fee application by the Court, the reimbursement of the Special Master's fees and expenses shall be made from the escrow fund previously established by Honeywell for the purpose of paying the Special Master's fees and expenses in *ICO v. Honeywell* pursuant to this Court's September 15, 2003 Order Setting Financial Assurances and extended to the Consolidated Litigation by the Sediment Consent Order. If necessary, the Special Master's fees and expenses shall also be covered pursuant to paragraph 11 of the Global Financial Assurances Order.

114. **Expiration of Special Master's Appointment.** The Special Master's appointment under this Consent Decree to oversee financial assurances, unless modified by future order of the Court pursuant to an application under paragraph 110, shall expire after Honeywell has established its initial and long-term financial assurances under this Consent Decree. However, solely to the extent that the Special Master is still supervising other portions of the Consolidated Litigation or *ICO v. Honeywell*, after Honeywell's establishment of financial assurances, the Special Master shall continue to have jurisdiction to oversee such financial assurances under this Consent Decree until he has completed his specifically enumerated responsibilities under the Final Judgment in *ICO v. Honeywell*, the Prior Settlements, and any other future orders, decrees, or judgments in *ICO v. Honeywell* and the Consolidated Litigation. Enumerated responsibilities under any order, decree, or judgment shall include only those tasks specifically assigned to the Special Master in the order, decree, or judgment. Enumerated responsibilities shall not include any continued jurisdiction exercised over long-term monitoring beyond the initial period specified in the order, decree, or judgment. For example, the Special Master has jurisdiction over the first five years of long-term monitoring under the Sediment Consent Order. Oversight during these five years shall be an enumerated responsibility, but any continued oversight of long-term monitoring, pursuant to the extension of the Special Master's jurisdiction beyond the first five years, as provided in paragraph 60 of the Sediment Consent Order, shall not be an enumerated responsibility. Such extensions of jurisdiction shall be effective only so long as specific enumerated responsibilities in any order, decree, or judgment have not been fulfilled

## **ARTICLE V: FINANCIAL ASSURANCES**

### **A. Initial Financial Assurances**

115. **Chromium Remedy Letter of Credit.** Honeywell shall obtain a one-year, irrevocable letter of credit (the “Chromium Remedy Letter of Credit”) to be automatically renewed annually in an amount equal to the “Remedial Costs Subject to Financial Assurance.”

(a) Remedial Costs Subject to Financial Assurance shall mean:

(i) The costs of implementing the Chromium Remedy as set forth in paragraphs 72 through 86, except those activities set forth in paragraphs 73, 76, 77, and 82;

(ii) The costs of monitoring and maintenance activities for five years, as required by the Long-Term Monitoring Plan; and

(iii) A contingency of 25% with respect to those costs listed in subparagraphs (i) and (ii).

(b) The Chromium Remedy Letter of Credit shall be issued by a financial institution domiciled in the United States or by a United States subsidiary of a non-U.S. financial institution, provided that in either case, the financial institution shall be acceptable to the Special Master.

116. **Procedures for Review of the Proposed Chromium Remedy Letter of Credit.** No later than June 1, 2010, Honeywell shall submit to Riverkeeper and NJCU for their review the proposed (a) amount of the Chromium Remedy Letter of Credit; (b) form of the Chromium Remedy Letter of Credit; and (c) name of the institution that will issue the Chromium Remedy Letter of Credit. If either Riverkeeper or NJCU does not agree to the terms of the Chromium Remedy Letter of Credit, the Parties shall meet and confer in an effort to resolve their differences. If the Parties are unable to reach agreement over the terms of the Chromium Remedy Letter of Credit, the Parties shall submit the dispute to the Special Master, who shall recommend a resolution of the dispute. Any Party shall have the right to seek review by the Court of the Special Master’s recommendation regarding the terms of the Chromium Remedy

Letter of Credit. The Parties agree that Honeywell may satisfy this obligation through the Citibank Letter of Credit as defined by the Global Financial Assurances Order. They further agree that the provisions of paragraphs 2 and 3 of the Global Financial Assurances Order, in so far as they provide for the deferral of a present value calculation until the occurrence of specified events, apply to the establishment of the initial financial assurances under this Consent Decree without the need to satisfy paragraph 3(b) of the Global Financial Assurances Order. In the event that Honeywell decides to satisfy its obligation for the Chromium Remedy Letter of Credit through means other than the Citibank Letter of Credit, the Parties agree to defer a present value calculation for the costs set forth in paragraph 115(a) until such time as Honeywell seeks a reduction in the amount of the Chromium Remedy Letter of Credit pursuant to paragraph 118. At that time, the Parties shall: (i) agree on an inflation rate and discount rate and adjust the cost estimates accordingly; or (ii) in the absence of agreement on an inflation rate and discount rate, agree to continue to use unadjusted cost estimates until Honeywell seeks another adjustment pursuant to paragraph 118; or (iii) in the absence of any agreement, make the inflation rate and discount rate issues Subject to Comment by Riverkeeper and NJCU and Approval by the Special Master.

**117. Automatic Renewal.** The Chromium Remedy Letter of Credit shall be automatically renewed annually unless (a) no later than 120 days prior to the anniversary of the Chromium Remedy Letter of Credit issue date, the issuer provides notice of nonrenewal or (b) Honeywell seeks a reduction in the Chromium Remedy Letter of Credit, pursuant to paragraph 118, to correspond to the reduced estimate of Remedial Costs Subject to Financial Assurances. If the issuer provides notice of nonrenewal, Honeywell shall obtain a replacement one-year irrevocable Chromium Remedy Letter of Credit at least 95 days prior to the expiration date of the existing Chromium Remedy Letter of Credit. If Honeywell is not otherwise in default as

provided in Article V, the Special Master shall direct the cancellation of the prior Chromium Remedy Letter of Credit within 91 days after delivery to the Special Master of any replacement of a Chromium Remedy Letter of Credit. In the event that the Special Master is entitled to draw upon a Chromium Remedy Letter of Credit and there are two Chromium Remedy Letters of Credit currently in place, the Special Master shall not draw an aggregate amount in excess of the highest valued Chromium Remedy Letter of Credit. Upon Honeywell's request, the Special Master may, at his option, decide not to require overlapping letters of credit in any year based on Honeywell's financial strength in that year, provided that Honeywell has submitted all necessary information so that the Special Master can make his determination at least 150 days prior to the expiration of the Chromium Remedy Letter of Credit.

**118. Annual Right to Seek Reduction in Amount of Chromium Remedy Letter of Credit.** Honeywell shall have the right annually to seek a reduction in the Chromium Remedy Letter of Credit. At the time of seeking such reduction, Honeywell shall submit to the Riverkeeper, NJCU and the Special Master an estimate of the remaining Remedial Costs Subject to Financial Assurance, including the contingency as described in paragraph 115(a)(iii), and shall seek adjustment of the Chromium Remedy Letter of Credit so that the total estimated amount of remaining Remedial Costs Subject to Financial Assurance are covered by the Chromium Remedy Letter of Credit. However, the adjustment shall not result in reducing the Chromium Remedy Letter of Credit to an amount below the remaining estimated costs under paragraphs 115(a)(i) and 115(a)(ii), plus a contingency of 25% of the remaining estimated costs under paragraphs 115(a)(i) and 115(a)(ii), and shall not result in reducing the Chromium Remedy Letter of Credit to an amount less than \$8,000,000 as expressed in 2010 dollars unless long-term financial assurances are in place pursuant to Article V.B. Before making any request to reduce the amount or modify the terms of the Chromium Remedy Letter of Credit, Honeywell shall first



confer with the Riverkeeper and NJCU in an effort to reach agreement on the modified amount or terms of the Chromium Remedy Letter of Credit. If the Parties are unable to reach agreement over the modified amount or terms of the Chromium Remedy Letter of Credit, the Parties shall submit the dispute to the Special Master, who shall resolve the dispute. Any Party shall have the right to seek review by the Court of the Special Master's decision regarding the modified amount or terms of the Chromium Remedy Letter of Credit. Upon agreement on the amount of the reduction or modified terms of the Chromium Remedy Letter of Credit (or upon order of the Court directing that the Chromium Remedy Letter of Credit be reduced to an identified amount or otherwise modified), Honeywell shall obtain a replacement Chromium Remedy Letter of Credit in such amount and with such terms. If Honeywell is not otherwise in default as provided in Article V and the issuer of the primary Chromium Remedy Letter of Credit has not provided notice of non-renewal, within 30 days after delivery to the Special Master of any replacement of a Chromium Remedy Letter of Credit, the Special Master shall direct the cancellation of the prior Chromium Remedy Letter of Credit. Honeywell's right to seek a reduction under this paragraph shall also be subject to paragraph 3 of the Global Financial Assurances Order in the event that Honeywell seeks to satisfy its initial financial assurance obligation under this Consent Decree through the Citibank Letter of Credit.

119. **Bankruptcy Protection.** Neither the Chromium Remedy Letter of Credit nor the proceeds of the Chromium Remedy Letter of Credit shall be considered the property of Honeywell or property of the estate in the event of Honeywell's bankruptcy. The Chromium Remedy Letter of Credit shall contain the language necessary to assure that neither the Chromium Remedy Letter of Credit nor the proceeds of the Chromium Remedy Letter of Credit shall be affected or restricted in any way by operation of the automatic stay in 11 U.S.C. § 362.

120. **Exclusive Court Jurisdiction.** The Chromium Remedy Letter of Credit shall recite that the issuer submits to the exclusive jurisdiction of this Court for any and all disputes arising under the Letter of Credit.

121. **Application of New York Law.** The then-current provisions of the Uniform Customs and Practice (“UCP”) for Documentary Credits as published by the International Chamber of Commerce or such successor organization and New York law shall apply to the Chromium Remedy Letter of Credit at the time that Honeywell obtains such letter of credit or any replacements thereafter.

122. **Procedures upon Honeywell’s Material Default of Its Obligations.** During the period in which the Special Master has jurisdiction pursuant to paragraphs 109 and 114, the Chromium Remedy Letter of Credit shall be payable to the Special Master and shall not, prior to its expiration date, be revoked or terminated except consistent with this Consent Decree and with the consent of the Special Master and approval by the Court. After the expiration of the Special Master’s jurisdiction under paragraph 114, the Chromium Remedy Letter of Credit shall be payable to the Court and shall not, prior to its expiration date, be revoked or terminated except consistent with this Consent Decree and with the approval of the Court. The Special Master’s or the Court’s ability to draw upon the Chromium Remedy Letter of Credit shall not be limited by any agreement between Honeywell and the issuer. The Special Master may, without further order or notice to this Court, draw upon the Chromium Remedy Letter of Credit upon the occurrence of default by Honeywell, which shall include:

(a) The failure of Honeywell, in the event that notice is given pursuant to paragraph 117 to deliver a replacement Chromium Remedy Letter of Credit at least 95 days prior to the expiration date of the existing Chromium Remedy Letter of Credit;

(b) The material failure of Honeywell to proceed with diligence and in good faith to carry out the terms of this Consent Decree and the continuance of such a material breach for a period of 15 days after written notice to Honeywell thereof and (i) Honeywell, in the opinion of the Special Master without further input from the Parties, shall have failed to cure the breach; (ii) during the 15-day period, the Court has not entered an order to prevent the Special Master from drawing on the Chromium Remedy Letter of Credit; or (iii) the Court or the Special Master has not granted Honeywell additional time to cure the breach;

(c) The filing by Honeywell of a petition seeking relief, or the granting of relief, under the Federal Bankruptcy Code or any similar federal or state statute; any assignment for the benefit of creditors made by Honeywell; the involuntary filing of any of the foregoing against Honeywell if involuntary filing has not been dismissed within 60 days; the appointment of a custodian, receiver, liquidator, or trustee, or other similar official for Honeywell or for a substantial part of Honeywell's property; any action by Honeywell to effect any of the foregoing; or if Honeywell becomes insolvent as defined in Section 101(32) of the Federal Bankruptcy Code; or

(d) The dissolution, liquidation, merger, consolidation, or reorganization of Honeywell or the institution of any proceeding to effect any of the foregoing, other than under subparagraph (c), and the failure of Honeywell to provide assurance to the Special Master, within 15 days after written notice from the Special Master, that such an event will not impair Honeywell's ability to carry out the terms of this Consent Decree.

123. **Placement of Proceeds in Trust Account.** In the event that the Special Master or the Court draws upon the Chromium Remedy Letter of Credit due to an event of default, the Special Master or the Court shall hold the proceeds of the Chromium Remedy Letter of Credit which represent the remaining estimated Chromium Remedy costs under paragraphs 115(a)(i)

and 115(a)(ii), plus a contingency of 25% of the remaining estimated costs under paragraphs 115(a)(i) and 115(a)(ii), in a trust account and shall manage such account as necessary to ensure the availability of the necessary funds at the time such funds are needed to pay for the remediation activities. The Special Master shall not expend the proceeds of the Chromium Remedy Letter of Credit or the trust account without further order of the Court. The Special Master or the Court shall place all additional proceeds of the Chromium Remedy Letter of Credit in a separate trust fund pursuant to paragraph 128(b)(v).

**124. Use of the Proceeds in Event of Default.** If Honeywell has satisfied its obligation for initial financial assurances through the Citibank Letter of Credit, in the event of a default by Honeywell, the use of the proceeds from the Citibank Letter of Credit shall be governed by paragraph 7 of the Global Financial Assurances Order. In event of such default prior to the completion of the activities under paragraph 74 for the Commercial AOC, NJCU and/or Riverkeeper may request that the Court order use of the proceeds from the Chromium Remedy Letter of Credit to accomplish remediation of the NJCU Commercial AOC to Unrestricted Use rather than completion of the activities under paragraph 74.

**125. Termination of Chromium Remedy Letter of Credit.** The Chromium Remedy Letter of Credit may be withdrawn in its entirety upon the satisfaction of all of the following:

(a) The implementation of paragraphs 72, 74, 75, 78, and 86 of the Chromium Remedy; and

(b) Establishment of long-term financial assurance pursuant to Article V.B.

#### **B. Long-Term Financial Assurances**

**126. Long-Term Financial Assurances.** Honeywell shall fund long-term financial assurances as set forth herein to ensure that the activities set forth in paragraph 127(a) are carried out regardless of whether Honeywell is financially able to carry out such activities in perpetuity.

**127. Costs Subject to Long-Term Financial Assurances.**

(a) Long-term financial assurances shall provide enough funds to cover the costs of the following activities:

(i) Perpetual monitoring and maintenance of the Chromium Remedy;

(ii) Perpetual operation of the shallow groundwater remedies pursuant to paragraph 86;

(iii) Perpetual repair of the cap;

(iv) Anticipated costs of coordinating the cap repair and replacement with the construction of a commercial building in Lot 7 pursuant to paragraph 76;

(v) Perpetual replacement of the cap on a 75-year replacement interval (such costs shall not include building demolition or replacement); and

(vi) The perpetual administration of the trust fund regardless of whether such trust fund is selected by Honeywell pursuant to paragraph 128(a) or is established from the Long-Term Letter of Credit pursuant to paragraphs 128(b)(ii), 128(b)(v), or 134.

(b) The costs that shall be subject to financial assurances are an amount that will provide the full payment for each of the activities set forth in paragraphs 127(a)(i) through 127(a)(vi), plus a 25% contingency, when the activities in paragraphs 127(a)(i) through 127(a)(vi) are expected to be performed. The costs subject to financial assurances are forward-looking because they state an amount valued at the time the funds are needed. As such, they shall be stated in contemporary time as the present value (calculated on the basis of a nominal discount rate of 4.75% and an inflation rate of 2.5% (subject to possible future adjustments pursuant to paragraph 131) of the estimated future costs of the activities specified in paragraphs 127(a)(i) through 127(a)(vi), plus a 25% contingency.

128. **Long-Term Financial Assurance Mechanisms.** Honeywell shall provide long-term financial assurances in the amount of the costs subject to long-term financial assurances in the form of a trust fund, a letter of credit, or some combination of the two. The selected mechanism(s) shall satisfy the following requirements:

(a) **Trust Fund.** In the event that Honeywell selects a trust fund, Honeywell shall create a trust fund such that it can provide the full amount of the costs subject to long-term financial assurances, as set forth in paragraph 127(b), at the time those funds are necessary.

(i) The trust fund shall be at arm's length from Honeywell and shall not be considered the property of Honeywell or property of the estate in the event of Honeywell's bankruptcy, dissolution, privatization, or sale. The trust fund agreement shall contain the language necessary to assure that neither the trust fund nor the earnings of the trust fund shall be affected or restricted in any way by operation of the automatic stay in 11 U.S.C. § 362.

(ii) The trust fund shall be managed by a financial institution domiciled in the United States or by a United States subsidiary of a non-U.S. financial institution acceptable to NJCU and Riverkeeper or approved by the Court. In the event that the financial institution managing the trust fund declares bankruptcy, the Court shall withdraw the funds and appoint another financial institution meeting the requirements of this paragraph to manage the trust.

(iii) No more frequently than once per year, Honeywell may apply to the Court for an order directing the trust manager to reimburse Honeywell for any costs that it has incurred to carry out the activities set forth in paragraphs 127(a)(i) through 127(a)(v).

(b) **Long-Term Letter of Credit.** In the event that Honeywell selects a letter of credit, Honeywell shall obtain a one-year irrevocable letter of credit (the "Long-Term Letter

of Credit”) to be automatically renewed annually in an amount that provides sufficient funds such that a trust fund, separate from any trust fund created under paragraph 128(a) but satisfying the requirements of paragraph 128(a), could be created. The Long-Term Letter of Credit-funded trust, plus any trust fund established under paragraph 128(a), shall provide the full amount of the costs subject to long-term financial assurances, as set forth in paragraph 127(b), at the time those funds are necessary. The amount of any Long-Term Letter of Credit shall therefore be adjusted periodically as the cap replacement interval is approached because, for example, the money needed in the 10th year to fund a trust that can provide for replacement of the cap in the 75th year is much less than the money that would be needed in the 40th year. Such periodic adjustments shall be proposed and approved by the Court in conjunction with the adjustments under paragraph 131.

(i) Neither the Long-Term Letter of Credit nor the proceeds of the Long-Term Letter of Credit shall be considered the property of Honeywell or property of the estate in the event of Honeywell’s bankruptcy, dissolution, privatization, or sale. The Long-Term Letter of Credit shall contain the language necessary to assure that neither the Long-Term Letter of Credit nor the proceeds of the Long-Term Letter of Credit shall be affected or restricted in any way by operation of the automatic stay in 11 U.S.C. § 362.

(ii) The Long-Term Letter of Credit shall be issued by a financial institution domiciled in the United States or by a United States subsidiary of a non-U.S. financial institution acceptable to Riverkeeper and NJCU or approved by the Court. In the event that the financial institution issuing the Long-Term Letter of Credit declares bankruptcy, the Court shall authorize the drawing of funds from the Long-Term Letter of Credit and shall deposit those funds in a trust fund, separate from any trust fund created under paragraph 128(a) but satisfying the requirements of paragraph 128(a).



(iii) The then-current provisions of the Uniform Customs and Practice (“UCP”) for Documentary Credits as published by the International Chamber of Commerce or such successor organization and New York law shall apply to the Long-Term Letter of Credit at the time that Honeywell obtains such letter of credit or any replacements thereafter.

(iv) The Long-Term Letter of Credit shall be automatically renewed annually, unless, no later than 120 days prior to the anniversary of the Long-Term Letter of Credit issue date, the issuer provides notice of non-renewal. If the issuer provides notice of non-renewal, Honeywell shall obtain a replacement irrevocable Long-Term Letter of Credit at least 95 days prior to the expiration date of the existing Long-Term Letter of Credit. If Honeywell is not otherwise in default as provided in this Article, the Court shall direct the cancellation of the prior Long-Term Letter of Credit within 91 days after delivery to the Court of any replacement of a Long-Term Letter of Credit. In the event that the Court is entitled to draw upon a Long-Term Letter of Credit when there are two Letters of Credit currently in place, the Court shall not draw an aggregate amount in excess of the highest valued Long-Term Letter of Credit.

(v) Prior to the expiration of the Special Master’s appointment pursuant to paragraph 114, the Long-Term Letter of Credit shall be payable to the Special Master. During the time the Long-Term Letter of Credit is payable to the Special Master, the Special Master may draw on the Long-Term Letter of Credit as provided in paragraph 122. In the event that the Special Master draws upon the Long-Term Letter of Credit due to an event of default, the Special Master shall place the proceeds of the Long-Term Letter of Credit in a trust fund, separate from any trust fund created under paragraph 128(a) but satisfying the requirements of paragraph 128(a). After the Special Master’s appointment expires pursuant to paragraph 114, the Long-Term Letter of Credit shall be payable to the Court and, in the event that the Court draws on the Long-Term Letter of Credit, the Court shall place the proceeds of the Long-Term



Letter of Credit in a trust fund, separate from any trust fund created under paragraph 128(a) but satisfying the requirements of paragraph 128(a).

(vi) Whether the Long-Term Letter of Credit is payable to the Special Master or the Court, it shall not, prior to its expiration date, be revoked or terminated by Honeywell except consistent with this Consent Decree and with the approval of the Court. The ability of the Special Master or the Court to draw upon the Long-Term Letter of Credit shall not be limited by any agreement between Honeywell and the issuer.

(vii) In the event that the Long-Term Letter of Credit is drawn upon and invested pursuant to paragraph 128(b)(ii), 128(b)(v), or 134 and Honeywell has also selected a trust fund pursuant to paragraph 128(a), resulting in the existence of two trust funds, the two trust funds shall be managed so as to ensure that the combined amount of the trust funds is sufficient to provide the full amount of the costs subject to long-term financial assurances, as set forth in paragraph 127(b), at the time those funds are necessary.

(c) **Combination.** Honeywell may use a combination of a trust fund and a letter of credit to achieve the requirements of this paragraph. However, if a combination is used, Honeywell shall ensure that the combined amount of financial assurances is sufficient to provide the full amount of the costs subject to long-term financial assurances, as set forth in paragraph 127(b), at the time those funds are necessary. The trust fund and the letter of credit shall otherwise satisfy all the requirements of paragraphs 128(a) and 128(b).

**129. Procedures for Review of the Proposed Long-Term Financial Assurances.**

No later than December 31, 2010, Honeywell shall submit to Riverkeeper, NJCU, and the Special Master, for their review (a) the amount of the proposed long-term financial assurances; (b) the form(s) of the proposed long-term financial assurance mechanisms; and (c) the name(s) of the institution proposed to manage or issue the long-term financial assurances. If Riverkeeper

and NJCU agree to the terms of the proposed long-term financial assurances, within 60 days of such agreement, Honeywell shall create a trust fund and/or secure a Long-Term Letter of Credit on those terms. If the Parties are unable to reach agreement over the terms of the long-term financial assurances, the Parties shall submit the dispute to the Special Master, who shall recommend a resolution of the dispute. Any Party shall have the right to seek review by the Court of the Special Master's recommendation regarding the terms of the financial assurances.

130. **Temporary Maintenance of Chromium Remedy Letter of Credit.** Until the long-term financial assurances have been put into place, Honeywell shall maintain the Chromium Remedy Letter of Credit required by paragraph 115 in an amount equal to at least \$8,000,000 in 2010 dollars. In the event of any default by Honeywell pursuant to paragraph 122 while the Chromium Remedy Letter of Credit is in place, the provisions of paragraph 128(b)(v) for the placement of the proceeds that exceed the remaining estimated Chromium Remedy costs under paragraph 115(a)(i) and 115(a)(ii), plus a contingency of 25% of the remaining estimated costs under paragraphs 115(a)(i) and 115(a)(ii), shall apply.

131. **Adjustment of Amount Held in Long-Term Financial Assurances.** Every five years as marked from the establishment of the first long-term financial assurances pursuant to paragraph 128, the Parties shall report to the Court whether the long-term financial assurances are adequately funded to provide the full amount of the costs subject to long-term financial assurances, as set forth in paragraph 127(b), at the time those funds are necessary. At such time as the Parties report to the Court, any Party may seek an adjustment in the amount of the long-term financial assurances, including an adjustment in the discount rate and/or inflation rates used to calculate the long-term financial assurances. The Party seeking an adjustment must demonstrate that the long-term financial assurances are under-funded or over-funded to provide the full amount of the costs subject to long-term financial assurances, as set forth in paragraph

127(b), at the time those funds are necessary. Such demonstration shall reflect the actual costs of implementing the remedy and/or any replacement of the remedy, once such actual costs are available. The demonstration shall also reflect the costs of work completed to date and the actual lifetime of the cap, once the cap has been replaced or has passed a replacement interval without requiring replacement. The demonstration shall further reflect the actual performance of the fund and its ability to provide the full amount of the costs subject to long-term financial assurances, as set forth in paragraph 127(b), at the time those funds are necessary. Any demonstration shall be forward-looking and shall be based upon estimates of what the activities in paragraphs 127(a)(i) through 127(a)(vi) are expected to cost at the time they must be performed and the amount of funding projected to be available to undertake such activities at the time they must be performed. If, after reviewing the submission(s) received from the Parties, the Court determines that the long-term financial assurances are under-funded or over-funded to provide the full amount of the costs subject to long-term financial assurances, as set forth in paragraph 127(b), at the time those funds are necessary, the Court shall order an adjustment in the amount held in the long-term financial assurances to overcome the shortage or overage. In the event that the Court determines that the long-term financial assurances are under-funded, it shall order Honeywell to increase the amount held in the long-term financial assurances. In the event that the Court determines that any trust fund established pursuant to paragraph 128(a) is over-funded, the Court shall issue an order directing the trust manager to pay the overage to Honeywell. In the event that the Court determines that the Long-Term Letter of Credit is over-funded, the Court shall issue an order permitting Honeywell to reduce the amount covered during the next annual renewal of the Long-Term Letter of Credit pursuant to paragraph 128(b)(iv). Any adjustment to the amount of the Long-Term Letter of Credit pursuant to this paragraph shall

be in addition to any adjustment of the amount of the Long-Term Letter of Credit required pursuant to paragraph 128(b).

132. **Exclusive Court Jurisdiction.** The trust fund agreement and/or the Long-Term Letter of Credit shall recite that the trust fund manager and/or issuer of the Long-Term Letter of Credit submit to the exclusive jurisdiction of this Court for any and all disputes arising under the trust fund or the Long-Term Letter of Credit. The requirements of this paragraph shall apply whether the trust fund is established pursuant to paragraph 128(a), 128(b)(ii), 128(b)(v), or 134.

133. **Procedures upon Honeywell's Material Default of Its Obligations after the Special Master's Appointment Has Expired.** Upon the occurrence of default by Honeywell, after the Special Master's appointment has expired, Riverkeeper or NJCU may move the Court on an expedited basis for an order to withdraw funds from the trust fund or to draw on the Long-Term Letter of Credit. Default shall include:

(a) The failure of Honeywell, in the event that notice is given pursuant to paragraph 128(b)(iv) to deliver a replacement Long-Term Letter of Credit at least 95 days prior to the expiration date of the existing Long-Term Letter of Credit;

(b) The material failure of Honeywell to proceed with diligence and in good faith to carry out the terms of this Consent Decree and the continuance of such a material breach for a period of 30 days after written notice by Riverkeeper or NJCU to Honeywell of the alleged material failure, unless Honeywell cures the alleged breach within the 30-day notice period or such longer period as the Parties may agree to or the Court may order;

(c) The filing by Honeywell of a petition seeking relief, or the granting of relief, under the Federal Bankruptcy Code or any similar federal or state statute; any assignment for the benefit of creditors made by Honeywell; the involuntary filing of any of the foregoing against Honeywell if the involuntary filing is not dismissed within 60 days; the appointment of a

custodian, receiver, liquidator, trustee, or other similar official for Honeywell or for a substantial part of Honeywell's property; any action by Honeywell to effect any of the foregoing; or Honeywell becomes insolvent as defined in Section 101(32) of the Federal Bankruptcy Code; or

(d) The dissolution or liquidation of Honeywell or the institution of any proceeding to effect any of the foregoing, other than under subparagraph (c), if Honeywell fails to provide assurance to Riverkeeper, NJCU, and the Court, within 15 days after written notice from one or more of the Parties, that such an event will not impair Honeywell's ability to carry out the terms of this Consent Decree.

**134. Drawing on the Long-Term Letter of Credit in the Event of Honeywell's Default.** If the Court grants any motion by Riverkeeper or NJCU pursuant to paragraph 133 to draw on the Long-Term Letter of Credit, the sum approved by the Court's order granting the motion shall be paid from the Long-Term Letter of Credit into a trust fund, separate from any trust fund created under paragraph 128(a) but satisfying the requirements of paragraph 128(a). If Honeywell has satisfied its obligation for long-term financial assurances through the Citibank Letter of Credit, in the event of a default by Honeywell, the use of the proceeds from the Citibank Letter of Credit shall be governed by paragraph 7 of the Global Financial Assurances Order.

**135. Use of the Trust Fund in the Event of Honeywell's Default.** In the event of Honeywell's default, as defined in paragraphs 133(a) through 133(d), the money in the trust fund established pursuant to paragraph 128(a) shall be available to meet the obligations of paragraph 77 or paragraph 127(a), as well as for payment of future attorneys' fees and expenses pursuant to paragraph 150. Riverkeeper or NJCU shall file motions with the Court seeking orders directing how the money in the trust fund shall be used. The Court shall consider motions on an expedited

basis and shall enter appropriate orders. The Court may enter an order allowing for automatic withdrawal of regular expenses without separate motion to the Court by Riverkeeper or NJCU.

**136. Use of a Trust Fund Established Pursuant to Paragraph 123, 128(b)(ii), 128(b)(v), or 134.** In the event that a trust fund is established pursuant to paragraph 123, 128(b)(ii), 128(b)(v), or 134, the money in the trust fund shall be available to meet the obligations of paragraph 77 or 127(a), as well as for the payment of future attorneys' fees and expenses pursuant to paragraph 150. Riverkeeper or NJCU shall file motions with the Court seeking orders directing how the money in the trust fund shall be used. The Court shall consider motions on an expedited basis and shall enter appropriate orders. The Court may enter an order allowing for automatic withdrawal of regular expenses without separate motion to the Court by Riverkeeper or NJCU.

**137. Use of Proceeds for Further Remediation.** NJCU, a future owner of the NJCU Commercial AOC, and/or Riverkeeper may request that the Court order use of the proceeds under paragraphs 135, 136, and 144 to accomplish remediation of the NJCU Commercial AOC to Unrestricted Use rather than for other activities.

**138. Termination of the Long-Term Financial Assurances.** Honeywell's obligations under Article V.B shall be terminated and the long-term financial assurance mechanisms shall be terminated when the Court finds that no hexavalent or total chromium contamination remains on the Site, whether in soils or in groundwater, in excess of the levels specified for Unrestricted Use in the NJDEP Chromium Directive or any more restrictive standards for Unrestricted Use in place at the time, whichever is more restrictive. Upon determining that long-term financial assurances may be terminated, the Court shall order that any Long-Term Letter of Credit may be withdrawn in its entirety and any trust fund may be

terminated. In conjunction with its order terminating any trust fund, the Court in its discretion shall designate a recipient(s) of any remaining trust funds.

**C. Financial Assurances for Future Remediation in the NJCU Commercial AOC**

139. **Contingent Residential Conversion Financial Assurances.** Honeywell shall not be required to provide financial assurances to secure those remedial obligations set forth in paragraph 77 with respect to the NJCU Commercial AOC except as follows:

(a) If at any time during the period between January 1, 2025, and December 31, 2029, Honeywell's credit rating falls below BBB as provided in subparagraph (d), within 60 days of the date on which its credit rating falls below BBB, Honeywell shall provide financial assurances for the amount set forth in subparagraph (c), except that such amount shall be estimated in the dollars of the year in which the credit rating fell, and shall maintain those financial assurances until its obligation to provide Contingent Residential Conversion Financial Assurances terminates under paragraph 145.

(b) In the event that Honeywell is not required to provide financial assurances pursuant to subparagraph (a), Honeywell shall provide financial assurances under subparagraph (c) no later than January 1, 2030.

(c) Honeywell shall provide financial assurances under this paragraph in an amount equal to the costs, plus a 25% contingency, estimated in 2030 dollars or the year's dollars in which financial assurances are required under subparagraph (a), of the performance of Honeywell's remedial obligations set forth in paragraph 77. The Contingent Residential Conversion Financial Assurances shall be subject to the requirements of paragraphs 140 through 145.

(d) For purposes of this paragraph, a credit rating below BBB shall mean that the rating on Honeywell's long-term credit instruments has fallen below BBB on the Fitch or



S&P scale or Baa2 on the Moody scale. If these scales are no longer in effect or have been modified, the appropriate trigger is an equivalent rating. If there are differing opinions among the agencies, the lowest rating will be the deciding rating.

**140. Vehicle for Contingent Residential Conversion Financial Assurances.**

Honeywell shall provide Contingent Residential Conversion Financial Assurances by using any financial instrument or vehicle permitted pursuant to N.J. Stat. Ann. §13: 1E-68, and N.J. Admin. Code §§ 7:26c-7.12, as currently adopted and as they may be subsequently amended, modified, or replaced by any other provision of New Jersey law or regulation, except that:

(a) Honeywell shall not use a corporate self-guarantee or a line of credit as the financial instrument by which it provides Contingent Residential Conversion Financial Assurances;

(b) Neither the Contingent Residential Conversion Financial Assurances instrument nor any proceeds therefrom shall be considered the property of Honeywell or property of the estate in the event of Honeywell's bankruptcy or dissolution. The financial instrument shall contain the language necessary to assure that neither the financial instrument nor the proceeds therefrom shall be affected or restricted in any way by operation of the automatic stay in 11 U.S.C. § 362; and

(c) The Court shall be entitled to draw upon the financial assurance instrument in accordance with this Consent Decree.

**141. Procedures for Review of Honeywell's Contingent Residential Conversion Financial Assurances.** No later than 30 days prior to the date upon which Honeywell is obligated to provide financial assurances pursuant to paragraph 139, Honeywell shall notify NJCU and Riverkeeper, in writing, of (a) the amount of paragraph 139(c) remedial costs to be subject to financial assurances, (b) the form(s) of the proposed Contingent Residential



Conversion Financial Assurances mechanisms, and (c) the name(s) of the financial institution proposed to manage or issue the Contingent Residential Conversion Financial Assurances. If either NJCU or Riverkeeper objects to the amount of, mechanism for, or institution providing the financial assurances, the objecting Party shall notify and consult with Honeywell and the other Party in an effort to resolve the matter. If the Parties agree on the Contingent Residential Conversion Financial Assurances prior to the date upon which Honeywell is to provide such financial assurances, Honeywell shall move the Court for an order establishing the Contingent Residential Conversion Financial Assurances in the agreed amount. If NJCU, Riverkeeper, and Honeywell cannot reach agreement on the amount and financial instrument within 15 days prior to the date upon which Honeywell is obligated to provide financial assurances, any Party may move the Court for an expedited hearing on the matter. If the Court has not ruled on the matter by the date on which Honeywell is required to provide financial assurances pursuant to paragraph 139, Honeywell shall provide financial assurances in the amount it has proposed and using the financial mechanisms and institution it has proposed until such time as the Court rules on the dispute.

**142. Adjustments in Financial Assurances.**

(a) Every five years as marked from the establishment of the Contingent Residential Conversion Financial Assurances, the Parties shall report to the Court whether the Contingent Residential Conversion Financial Assurances are adequately funded to provide the full amount of the costs subject to the Contingent Residential Conversion Financial Assurances, as set forth in paragraph 139(c). At such time as the Parties report to the Court, Honeywell, NJCU, or Riverkeeper may seek an adjustment in the amount of, mechanism for, or institution providing the Contingent Residential Conversion Financial Assurances. If a Party seeks an adjustment in the amount of the financial assurances, it must demonstrate that the Contingent

Residential Conversion Financial Assurances are under-funded or over-funded to provide the full amount of the costs subject to financial assurances, as set forth in paragraph 139(c) as of the day that the adjustment is sought. Such demonstration shall also reflect the actual performance of the financial assurance mechanism, and the requirements of New Jersey law pertaining to financial assurances in effect at the time. If, after reviewing the submissions received from the Parties, the Court determines that the Contingent Residential Conversion Financial Assurances are under-funded or over-funded to provide the full amount of the costs subject to Contingent Residential Conversion Financial Assurances, the Court shall order an adjustment in the amount held in the Contingent Residential Conversion Financial Assurances to overcome the shortage or overage.

(b) From time to time, as the case may be, Honeywell may seek a change in the mechanism for, or institution providing, the Contingent Residential Conversion Financial Assurances. Prior to making such a change, Honeywell shall notify NJCU and Riverkeeper in writing and provide NJCU and Riverkeeper with 30 days to object to the change. If either NJCU or Riverkeeper objects, Honeywell may move the Court seeking such a change in either the mechanism for, or the institution providing, the Contingent Residential Conversion Financial Assurances. If NJCU and Riverkeeper consent, the Parties shall jointly move the Court to change the financial assurance mechanism or institution. The Court shall direct the cancellation of an existing Contingent Residential Conversion Financial Assurances instrument within 91 days after delivery to the Court of any replacement Contingent Residential Conversion Financial Assurances instrument. If Honeywell seeks a change in the mechanism for, or the institution providing, Contingent Residential Conversion Financial Assurances, Honeywell must demonstrate that the new mechanism or institution is allowed by New Jersey law and meets the requirements of this Consent Decree.

143. **Exclusive Court Jurisdiction.** Any Contingent Residential Conversion Financial Assurances instrument shall recite that the issuer or manager of the instrument submits to the exclusive jurisdiction of this Court for any and all disputes arising under the instrument.

144. **Procedures upon Honeywell's Default of Its Obligations.** Upon the occurrence of default by Honeywell as set forth in paragraph 133, NJCU or Riverkeeper may move the Court on an expedited basis for an order to draw on the Contingent Residential Conversion Financial Assurances instrument. If the Court grants any motion by NJCU or Riverkeeper pursuant to this paragraph, the sum approved by the Court's order granting the motion shall be paid into a trust fund pursuant to paragraph 134, and the trust fund shall be administered pursuant to the terms and conditions of paragraphs 135, 136, and 137.

145. **Termination of Honeywell's Contingent Residential Conversion Financial Assurances Obligations.** Honeywell's obligation to provide Contingent Residential Conversion Financial Assurances under this Consent Decree shall terminate on the earlier of: (a) January 1, 2040, or (b) the date on which Honeywell has fulfilled its obligations under paragraph 77.

#### **ARTICLE VI: TERMINATION**

146. **Termination of this Consent Decree by Withdrawal.** In the event that the Court fails to enter this Consent Decree, any Party may elect to withdraw from this Consent Decree provided that such Party provides 30 days written notice of withdrawal to the other Parties. In the event this Consent Decree is terminated by withdrawal pursuant to this paragraph, the Consent Decree shall no longer be binding on the Parties and shall be of no further effect. In such event, each Party to this Consent Decree reserves all of its rights, claims, and defenses (both legal and factual) against the other Parties with respect to the Subject Matter of the Consolidated Litigation and each Party remains free to pursue such rights, claims, and defenses.

147. **Termination of this Consent Decree through Remediation.** Honeywell's and NJCU's obligations under this Consent Decree shall terminate completely and this Consent Decree shall be of no further force and effect with respect to a specific area within the NJCU Redevelopment Area upon (i) Honeywell's completion of all remedial activities with respect to that specific area under this Consent Decree and (ii) Honeywell's receipt of an Unrestricted Use No Further Action Determination for hexavalent chromium for that specific area.

#### **ARTICLE VII: NOTICE**

148. **Notice.** Any and all notices given in connection with this Consent Decree shall be deemed adequately given only if in writing and addressed to the Party for whom such notices are intended at the addresses set forth in this paragraph. All notices shall be sent by Federal Express or other nationally recognized overnight messenger service or by first-class registered or certified mail, postage prepaid, return receipt requested. A written notice shall be deemed to have been given to the recipient party on the earlier of: (a) the date it shall be delivered to the address set forth in this paragraph; (b) the date delivery shall have been refused at the address set forth in this paragraph; or (c) with respect to notices sent by mail, the date as of which the postal service shall have indicated such notice to be undeliverable at the address set forth in this paragraph. Any and all notices referred to in this Consent Decree, or which any Party desires to give to the other, shall be addressed as follows:

If to Honeywell:

Tom Byrne, Esq.  
Honeywell International Inc.  
115 Tabor Road  
Morris Plains, NJ 07950  
(973) 455-2775

With copies to:

John Morris  
Honeywell International Inc.  
115 Tabor Road  
Morris, Plains, NJ 07950  
(973) 455-4003

Michael D. Daneker  
Arnold & Porter Kaye Scholer, LLP  
601 Massachusetts Ave., NW  
Washington, D.C. 20001-3743  
(202) 942-5000

Jeremy Karpatkin  
Arnold & Porter Kaye Scholer, LLP  
601 Massachusetts Ave., NW  
Washington, D.C. 20001-3743  
202-942-5000

If to Riverkeeper:

Carolyn Smith Pravlik  
Kathleen L. Millian  
Alicia C. Alcorn  
Terris, Pravlik & Millian, LLP  
1121 12th St., N.W.  
Washington, DC 20005-4632  
(202) 682-2100

If to NJCU:

Aaron Aska  
Vice President for Administration  
New Jersey City University  
2039 Kennedy Boulevard  
Hepburn Hall, Room 314  
Jersey City, New Jersey 07305  
(201) 200-3035

With copies to:

Robert A. Wayne, Esq.  
LeClairRyan, a Virginia Professional  
Corporation  
Two Penn Plaza East  
Newark, NJ 07105  
(973) 491-3312

If to City of Bayonne, as successor in interest  
to BMUA (now dissolved):

Tim Boyle  
Superintendent, Department of Public Works  
CITY OF BAYONNE  
City Hall  
630 Avenue C  
Bayonne, New Jersey 07002  
(201) - 858-6125

With copies to:

Donna M. Russo  
Assistant City Attorney  
CITY OF BAYONNE  
LAW DEPARTMENT  
City Hall  
630 Avenue C  
Bayonne, New Jersey 07002  
(201) 858-6091

Any party may change its designated recipients or addresses for notice in this paragraph  
by providing written notice of such change to all other Parties.

#### **ARTICLE VIII: RIVERKEEPER'S ATTORNEYS' FEES**

149. **Payment of Past Fees and Expenses.** Honeywell and Riverkeeper agree that the Court may award Riverkeeper costs of litigation, including reasonable attorney and expert witness fees, as a prevailing or substantially prevailing party for the Consolidated Litigation to the extent allowed by federal law. However, they disagree as to the amount. Therefore, the following methodology shall be used to resolve the Outstanding Fees and Expenses in the Consolidated Litigation:

(a) Within 30 days of entry of this Consent Decree, Honeywell shall pay \$1,000,000.00 to Terris, Pravlik & Millian, LLP. This payment shall not be considered a concession by Honeywell that Riverkeeper is entitled to any further payment of the Outstanding

Fees and Expenses. Riverkeeper and/or Terris, Pravlik & Millian, LLP shall not be required to reimburse Honeywell for any part of the \$1,000,000.00 regardless of the results of the procedure set forth in subparagraph (b).

(b) The following procedure shall be used to resolve whether Honeywell shall be required to pay an amount in addition to \$1,000,000.00 for the Outstanding Fees and Expenses:

(i) As soon as possible after the entry of this Consent Decree, Riverkeeper shall provide Honeywell with appropriate billing materials, similar in content to Exhibits 5, 6, 7, 17, 18, 21, and 23 in support of the Plaintiffs' Application for an Award of Litigation Costs, Including Attorneys' Fees and Expert Witness' Fees in *ICO v. Honeywell*, and a brief statement of its request for the Outstanding Fees and Expenses. Riverkeeper's provision of materials to Honeywell or to the Court, if necessary under this procedure, shall not be considered a concession of Riverkeeper's position regarding the binding effect of the Prior Settlements.

(ii) Within 30 days of its receipt of the materials provided by Riverkeeper pursuant to subparagraph (b), Honeywell shall present Riverkeeper with a brief statement of all of its objections to the Outstanding Fees and Expenses. Riverkeeper and Honeywell shall thereafter engage in good-faith negotiations to attempt to resolve any disputes regarding Honeywell's objections. If the negotiations are unsuccessful, either Party may request mediation by Magistrate Judge Dickson.

(iii) At any time after the passage of 60 days from the date that Riverkeeper submitted the documentation pursuant to subsubparagraph (i), Riverkeeper may file an application to the Court for an award of the Outstanding Fees and Expenses or any portion thereof that remains in dispute between Riverkeeper and Honeywell. Thereafter, briefing on the

application shall occur pursuant to a schedule agreed to by Riverkeeper and Honeywell and approved by the Court. Negotiation and mediation may continue with the agreement of both Riverkeeper and Honeywell. Any award for the Outstanding Fees and Expenses shall be off-set by the amount paid by Honeywell pursuant to subparagraph (a).

150. **Future Fees and Expenses.** Honeywell shall reimburse Riverkeeper's attorneys for reasonable fees and expenses incurred after the entry of this Consent Decree, including fees and expenses relating to Riverkeeper's efforts to obtain fees and expenses under paragraph 149, monitoring and enforcing this Consent Decree, and Riverkeeper's efforts to obtain fees and expenses for monitoring and enforcing this Consent Decree, to the extent allowed by federal law. Riverkeeper and Honeywell shall use the same procedure for resolving disputes as to fees and expenses set forth in paragraph 149(b). If Honeywell objects to only a portion of the Riverkeeper's statement of future attorneys' fees and expenses, Honeywell shall pay the undisputed portion within 60 days of Riverkeeper's submittal of the request for attorneys' fees and expenses to Honeywell. In the event of Honeywell's default, Riverkeeper may seek attorneys' fees from any fund established pursuant to the financial assurances provisions of this Consent Decree.

#### **ARTICLE IX: MISCELLANEOUS PROVISIONS**

151. **Force Majeure.** Force Majeure, for the purposes of this Consent Decree, is defined as an event arising from causes beyond the control of any Party or Parties (or their agents, contractors, subcontractors, representatives, or assigns) which could not have been overcome by reasonable diligence and which delays or prevents the performance of any obligation under this Consent Decree. Examples of events which may constitute force majeure include the refusal of any federal or state governmental authority to grant a permit or authorization necessary for the completion of actions required by this Consent Decree, floods,



hurricanes, tornadoes, and other extraordinary weather events, earthquakes and other natural disasters, terrorist attacks, war, and other national emergencies. Examples of events that are not force majeure events include normal inclement weather, increased costs or expense, the failure to timely and fully apply for a permit or authorization necessary for the completion of actions required by this Consent Decree, or financial difficulty of any Party. The Party claiming force majeure shall bear the burden of showing an event was a force majeure event.

152. **Successors and Assigns.** This Consent Decree shall be binding upon and shall inure to the benefit of the successors, assigns, heirs, corporate parents, subsidiaries, and affiliates of each Party, including by way of merger, consolidation, or reorganization. Notwithstanding the foregoing, a transferee of title to all or any part of the NJCU Commercial AOC shall only be bound by and have the benefits as and to the extent set forth in paragraph 89 of this Consent Decree. No assignment or delegation of the obligations hereunder shall release the assigning Party from its obligations under this Consent Decree except that (i) a transfer of all or any part of the NJCU Commercial AOC by NJCU or any subsequent owner shall release NJCU or the subsequent owner from the obligations of this Consent Decree as to the part of the NJCU Commercial AOC transferred as of the date of the transfer of title with the exception of those obligations set forth in paragraph 89(a), and (ii) a transfer of all or any part of the Residential AOC by NJCU or a subsequent owner shall release NJCU or the subsequent owner from the obligations set forth in paragraph 73 as to the part of the Residential AOC transferred as of the date of the transfer of title.

153. **Successors to Hackensack Riverkeeper, Inc.** In the event that Hackensack Riverkeeper, Inc. disbands, is dissolved, or otherwise ceases operations, it shall assign its rights under this Consent Decree to another qualified nonprofit organization. A nonprofit organization shall be qualified for assignment under this Consent Decree if it is a charitable organization

under Section 501(c)(3) of the Internal Revenue Code or its substantial equivalent and has an established record of working to enhance or preserve the ecology, natural habitat, or environment. Any such assignment shall be subject to approval by the Court, and Honeywell and NJCU shall have the right to object to any proposed assignment. Any successor organization shall have the duty to assign its rights under this Consent Decree to another qualified nonprofit organization in the event that the successor disbands, is dissolved, or otherwise ceases operations. In the event that a successor is not appointed at any given time, the Court shall request that the New Jersey Attorney General or equivalent officer appoint a successor subject to approval by the Court and objection by Honeywell and NJCU.

154. **Reservation of Rights and Claims.** Except as set forth expressly herein, this Consent Decree does not affect in any way any of the Parties' claims or defenses against third parties who have not signed the Consent Decree.

155. **Governing Law and Continuing Jurisdiction.** The Court shall retain jurisdiction over the matters addressed in this Consent Decree for purposes of enabling the Parties to apply to the Court for any further order as may be necessary to construe, carry out, or enforce the terms of this Consent Decree. This Consent Decree shall be interpreted and enforced under the laws of the United States and the State of New Jersey by the United States District Court for the District of New Jersey.

156. **Construction.** Questions regarding the interpretation of this Consent Decree shall not be resolved against any Party on the ground that this Consent Decree has been drafted by that Party. This Consent Decree is the result of review, negotiation, and compromise by each Party. The boldface word or words at the commencement of paragraphs and subparagraphs of this Consent Decree are included only as a guide to the contents thereof and are not considered

as controlling, enlarging, or restricting the language or meaning of those paragraphs or subparagraphs.

157. **Authority to Enter into Agreement.** The undersigned representative for each Party represents, certifies, and warrants that he or she is duly authorized by the Party whom he or she represents to enter into the terms of this Consent Decree and bind such Party legally to this Consent Decree.

158. **Measures to Effectuate This Consent Decree.** NJCU and BMUA shall take all appropriate steps to ensure that this Consent Decree has been (and that actions required hereunder will be) duly considered, ratified, and approved.

159. **Modifications.** This Consent Decree may be modified by mutual agreement of the Parties, but such agreement must be in writing, duly and properly signed by all Parties, and shall be submitted to the Court for approval.

160. **Signatures.** This Consent Decree may be signed simultaneously or in counterparts by the respective signatories, which shall be as fully valid and binding as if a single document was signed by all of the signatories.

Consented to and approved for entry:

/s/ Robert A. Wayne  
Robert A. Wayne, Esq.  
LeClairRyan, a Virginia Professional  
Corporation  
Two Penn Plaza East  
Newark, NJ 07105 (973) 491-3312  
  
*Counsel for New Jersey City University*

/s/ Tim Boyle  
Tim Boyle  
Superintendent, Department of Public Works  
CITY OF BAYONNE  
City Hall  
630 Avenue C  
Bayonne, NJ 07002  
  
*For City of Bayonne, as successor in interest to  
the Bayonne Municipal Utilities Authority  
(now dissolved)*

/s/ Michael D. Daneker  
Michael D. Daneker, Esq.  
Arnold & Porter Kaye Scholer LLP  
601 Massachusetts Ave., NW  
Washington, D.C. 20001-3743  
(202) 942-5000  
  
Dennis M. Toft, Esq.  
Chiesa, Shahinian & Giantomasi PC  
One Boland Drive  
West Orange, NJ 07062  
(973) 530-2014  
  
*Counsel for Honeywell International Inc.*

/s/ Carolyn Smith Pravlik  
Carolyn Smith Pravlik, Esq.  
Kathleen L. Millian, Esq.  
Alicia C. Alcorn, Esq.  
Terris, Pravlik & Millian, LLP  
1816 12th Street, NW, Suite 303  
Washington, DC 20009-4422  
(202) 682-2100  
  
Edward Lloyd, Esq.  
Columbia Law School  
435 West 116th Street, Room 831  
New York, NY 10027  
(212) 854-4376  
  
*Counsel for the Hackensack Riverkeeper,  
William Sheehan, Reverend Winston Clarke,  
and Lawrence Baker*

APPROVED AND ENTERED as an Order of this Court this 20 day of Sept, 2017.

  
\_\_\_\_\_  
Hon. Jose L. Linares  
United States District Judge

**EXHIBITS**

**Exhibit A:** Figure of the Chromium Remedy

**Exhibit B:** NJCU Development Plan

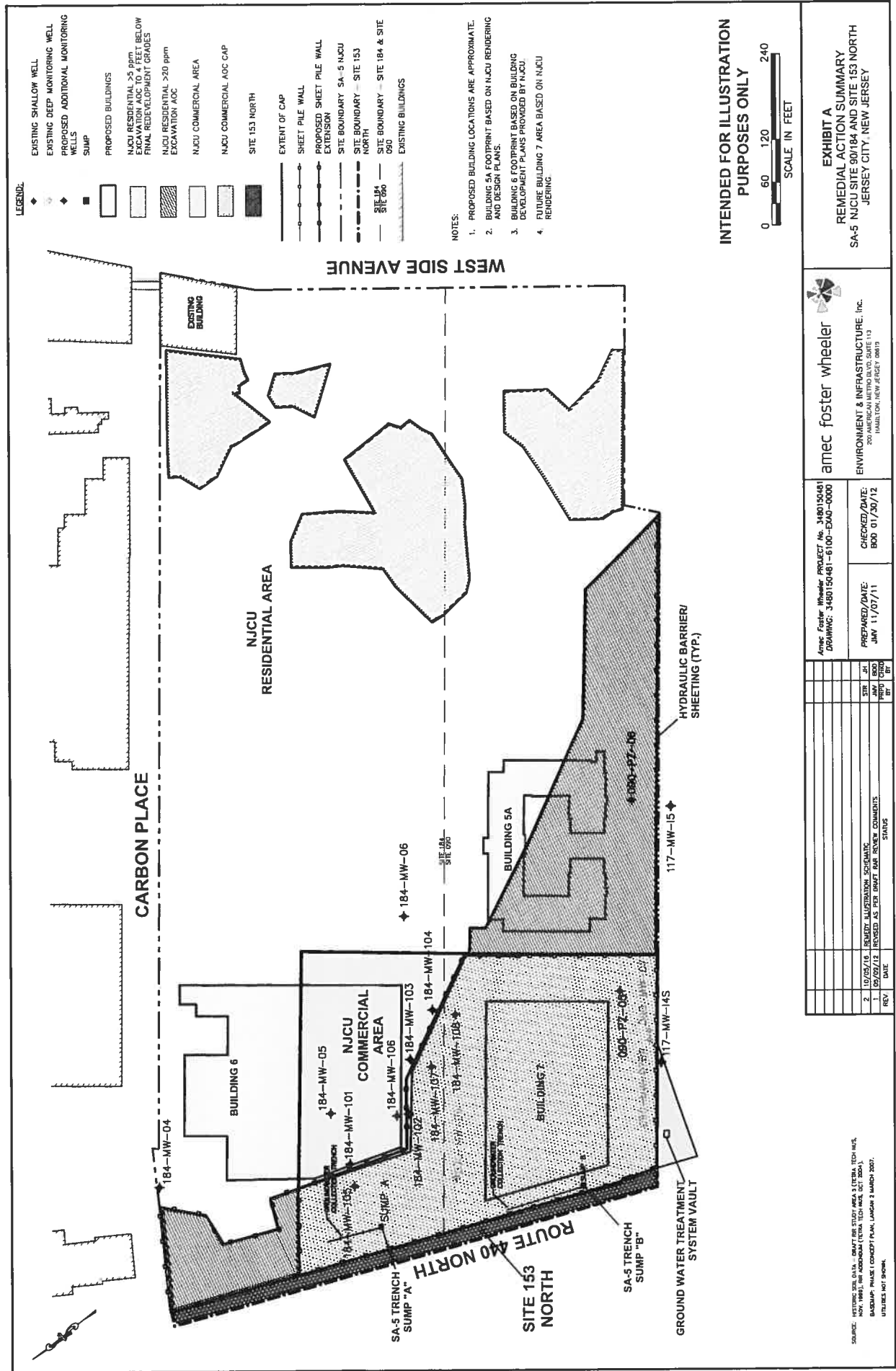
**Exhibit C:** NJDEP Chromium Policy

**Exhibit D:** Form Consent Order for Transfer of NJCU Commercial AOC to Future Owner

**Exhibit E:** Form Site 153 North Deed Notice

**Exhibit F:** Form NJCU Commercial AOC Deed Notice

**Exhibit G:** NJCU Commercial AOC Deed Language



# Exhibit B

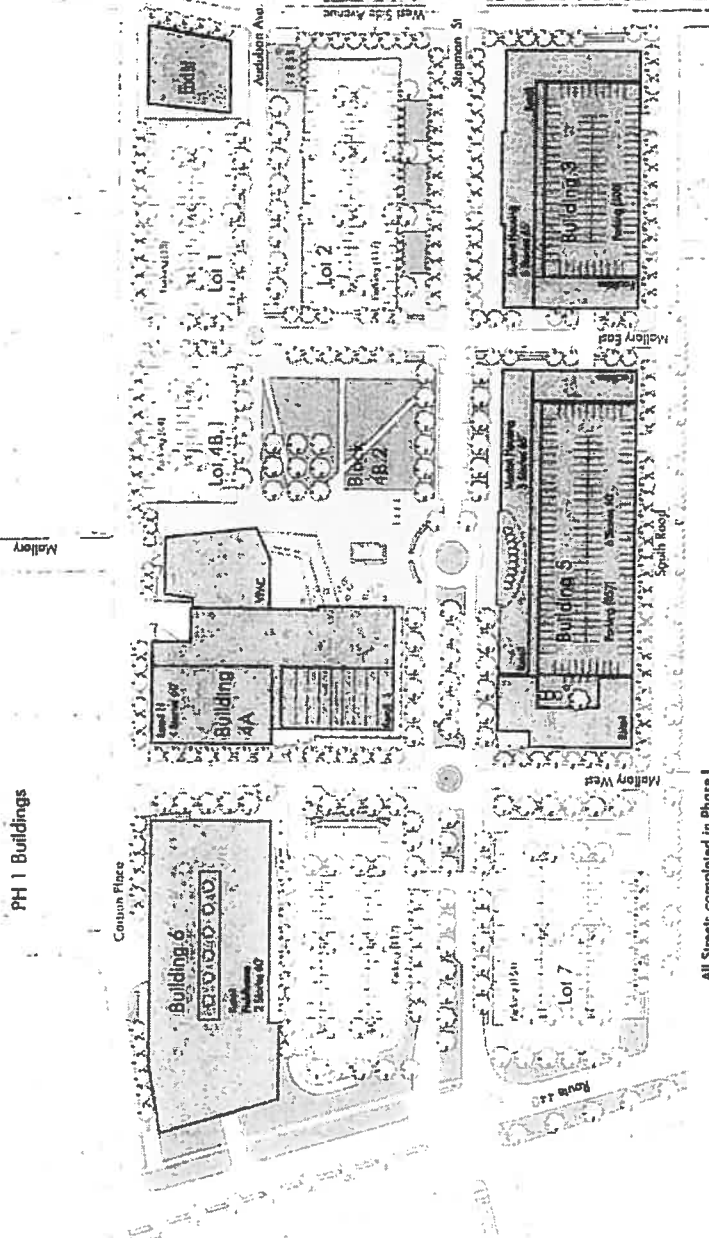


<b>Retail</b>	
Retail 3 =	18,211 sf
Retail 4A =	13,073 sf
Retail 4B =	12,051 sf
Retail 5 =	31,021 sf (first level)
Retail 6 =	6,000 sf (second level)
Retail 7 =	50,330 sf
Total Retail =	142,786 sf
<b>Academic</b>	
WPA 4A =	66,000 Univ
WPA 4B =	131,000 HS (4 story)
WPA 4C =	26,332 (1 story)
Total Academic =	223,332 sf
<b>Housing</b>	
Units =	1200 Student Housing
Housing 2 Student =	88,800 sf (4 story) - 80 Units
Housing 3 Student =	84,310 sf (4 story) - 64 Units
Housing 5 Student =	25,576 sf (2 story) - 10 Units
Total Student Housing =	80 Units
<b>University Facilities</b>	
Building =	20,000 sf
Facilities 3 =	5,576 sf
Facilities 5 =	5,576 sf
Total Facilities =	31,152 sf
<b>Parking</b>	
Parking =	327,436 cars
Parking (Steel) =	276 cars
Parking 1, 2, 4B, 5 =	280 cars
Parking 3 =	100 cars @ \$0.942 sf
Parking 6 =	852 cars
Parking 7 =	10 levels @ 41,420 sf
Parking 8 (Surface) =	117 Cars
Parking 9 (Lower Deck) =	316 Cars
Parking 10 (Surface Temp) =	154 Cars
Total Parking =	7,568 cars

Building 3 - 4A, 5, 6 - Type 2A Construction

KSS Architects  
317 Washington Street  
Newark, NJ 07102  
(973) 971-1131

PH 1 Buildings



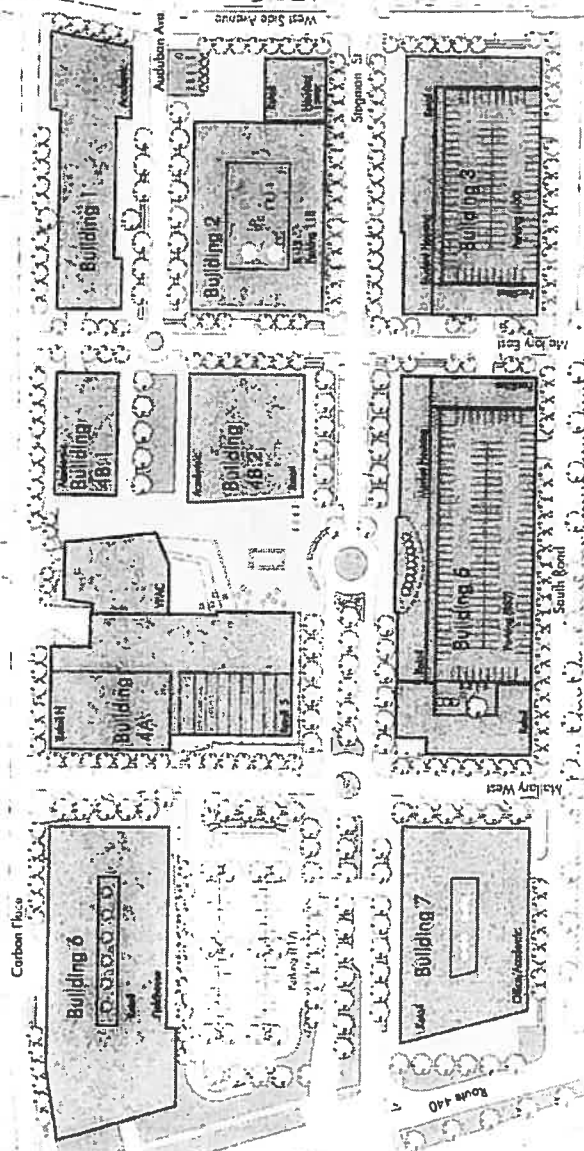
Phase One  
NUCU West Campus Development Plan

Scale: 1" = 50' 0"  
Date: 10/1/11



Retail	Residential
Retail 2 = 6,400 sf Retail 4A = 13,671 sf Retail 4AS = 12,651 sf Retail 4B.2 = 9,700 sf Retail 6 = 31,174 sf (first level) Retail 6 = 59,330 sf (second level) Retail 7 = 12,000 sf Total Retail = 205,189 sf	105 102 127 127 107 370 90 323 478 1001 /person
<b>Academic</b>	
Academic 1 = 117,476 sf (4 story) Academic 2 = 90,792 sf (3 story) Academic 4B.1 = 38,270 sf (3 story) Academic 4B.2 = 52,800 sf (3 story) Village G = 29,332 sf (1 story) Village 4A = 131,000 sf (4 story) Academic 7 = 94,000 sf (2 story) Total Academic = 623,669 sf	1175 908 393 500 180 1800 840 1001 /person
<b>Housing</b>	
Units = 1300 / person 1100 / student Housing	
Housing 2 Market = 77,500 sf (12 story) - 99 Units Housing 3 Student = 62,620 sf (4 story) - 100 Units Housing 6 Market = 25,570 sf (2 story) - 19 Units Total Housing = 265,690 sf Total Market Housing = 142 Units Total Student Housing = 90 Units	118 315 35 194 /student /student /student
<b>University Facilities</b>	
Facilities 3 = 6,576 sf Facilities 5 = 5,670 sf Total Facilities = 12,246 sf	200 100 /person
<b>Parking</b>	
Parking = 3500 / space	
Parking Street = 276 cars Parking 2 = 118 Cars Parking 3 = 41,004 sf Parking 5 = 600 (30,000 sf) Parking 6 = 822 cars Parking 6 (Level 2) = 41,430 sf Parking 6 (Surface) = 50,878 sf = 117 Cars Parking 6 (Lower Deck) = 118,378 sf = 318 Cars Total Parking = 2,281 cars	

## PH 1 Buildings



All Streets completed in Phase I

Future Phase  
NJCU West Campus Development PlanOctober 2017  
CS 14, 2003 10.11KSS Architects  
317 West 10th Street  
New York, NY 10014  
212 971 1131

# Exhibit C

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6097771914 TO 99736483956

P.02/04



State of New Jersey  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
PO Box 402

TRENTON, NJ 08625-0402

TEL # (609) 292-2885

FAX # (609) 292-7695

JON S. CORZINE  
Governor

LISA P. JACKSON  
Commissioner

MEMORANDUM

TO: Irene Kropp, Assistant Commissioner  
Site Remediation and Waste Management

FROM: Lisa P Jackson, Commissioner

DATE: February 8, 2007

SUBJECT: Chromium Moratorium

Please be advised that I am lifting the moratorium former Commissioner Bradley M. Campbell placed on the issuance of No Further Action letters (NFAs) and subsequently on Remedial Action Workplans (RAWPs) for sites or portions of sites presenting chromium contamination. I am making this decision based on the conclusions of the NJDEP Chromium Workgroup which found that the 1998 chromium cleanup criteria were based on sound science.

As a result of public health concerns raised by citizens at a November 2003 community meeting dealing with remediation of chromate ore sites in Jersey City and potential exposure to hexavalent chromium, former Commissioner Campbell, promised the community that the Department would review the science behind the existing standards. In March 2004, former Commissioner Campbell directed the Assistant Commissioner of the Site Remediation and Waste Management Program (Program) to suspend issuance of NFAs for sites or portions of sites presenting chromium contamination. This directive allowed the Program to seek a waiver from the Commissioner if protection of public health and the environment or other conditions militated a departure of that policy. This direction was made in conjunction with the establishment of a work group to evaluate the Department's existing guidance and, if necessary, develop new soil cleanup standards for hexavalent and trivalent chromium. The workgroup was charged with reviewing the technical basis for the current chromium cleanup criteria. Four subgroups were formed and directed to address issues associated with: 1) analytical chemistry; 2) environmental chemistry; 3) risk assessment and 4) air and dust transport.

In December 2004, a draft report was submitted to former Commissioner Campbell. The draft report was peer reviewed in January 2005, and was made available for public comment. Comments from peer reviewers and the public were reviewed and revisions to

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the draft report were completed in May 2005. The report has been available on the Department's website in its draft form at [www.state.nj.us/dep/dsr/chromium](http://www.state.nj.us/dep/dsr/chromium).

It is the conclusions/recommendations of this May 2005 draft that form the basis for my decision to modify the existing NFA moratorium. In addition to lifting the moratorium, I will be reinstating the risk assessment subgroup once the U.S. Department of Health and Human Services, National Toxicology Program's study of hexavalent chromium is completed. The risk assessment subgroup will evaluate any new information to see if it warrants the development of new chromium standards for soils. At the conclusion of their assessment, the May 2005 draft report will be updated as necessary and finalized.

Specifically, I am modifying the existing chromium policy to apply to sites or portions of sites, taking into account the intended future uses, as follows:

- An unconditional NFA approval relative to chromium can be issued for soils if 1) hexavalent chromium contamination in excess of 20 ppm is excavated and removed from the site and 2) any remaining chromium contamination that fails the SPLP test for impact to ground water is excavated and removed, from the site or treated and left on site provided the treated chromium will not fail the SPLP test in the future. An unconditional NFA approval relative to chromium can also be issued for soils if hexavalent chromium contamination in excess of 20ppm is treated and left on site provided the resulting concentration of hexavalent chromium in the soil remains below 20 ppm (i.e., no "rebound effect" for hexavalent chromium)
- An unconditional NFA approval relative to chromium can be issued for ground water when there is no ground water contamination above the ground water quality standard for chromium. In addition, as noted above, all existing on site and off-site sources of chromium contamination producing an exceedance of the ground water quality standard must be remediated.
- A conditional NFA (limited restricted use, restricted use) for soils and/or groundwater relative to chromium can be issued at a site or that portion of a site which have or will have residential, day care or educational uses when 1) hexavalent chromium soil contamination in excess of 20 ppm is excavated to a depth of 20 feet below grade or to the depth of the lowest point any underground structure made of porous material (whichever is greater), or if hexavalent chromium soil contamination is treated and left on site to a depth of 20 feet below grade or to a depth of the lowest point of any underground structure made of porous material (whichever is greater) provided the concentration of hexavalent chromium in such soil remains below 20 ppm (i.e., no "rebound effect" for hexavalent chromium), 2) a capillary break is put into place to prevent any crystallization of chromate on soil surfaces or subsurface building walls or floors, 3) any remaining chromium contamination left on site to a depth of 20 feet below grade or to a depth of the lowest point of any underground structure made of porous material (whichever is greater) must pass and continue to the SPLP test, and 4) ground water contamination and any on site sources of chromium ground

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water contamination below a depth of 20 feet below grade or to a depth of the lowest point of any underground structure made of porous material (whichever is greater) are controlled, contained or treated, through the use of conventional or innovative technologies, and a Classification Exception Area is established. As contamination would be left on site in this situation, a deed notice would be required. As always, the property owner has to agree to a deed restriction. Financial assurance must be in place for the operation and maintenance of institutional and engineering controls for duration of the intended treatment, containment, or controls.

- A conditional NFA (limited restricted use, restricted use) for soils and/or groundwater can be issued at a site or that portion of a site which have or will have commercial/industrial/open space uses consistent with the technical regulations and oversight regulations.

Remedial action plans that result in unconditional NFAs may be prioritized over those plans that do not. Assistant Director approval is required for remedial action workplan approvals which will result in conditional NFAs. Assistant Commissioner approval is required for remedial action workplan approvals that request alternate remedial standards for soils or any other proposed remedial action not addressed in this policy.

# Exhibit D

**LeClairRyan**  
*A Virginia Professional Corporation*  
Robert A. Wayne, Esq.  
Two Penn Plaza East  
Newark, New Jersey 07105-2249  
(973) 491-3312  
Attorneys for Defendant New Jersey City University

**UNITED STATES DISTRICT COURT  
DISTRICT FOR NEW JERSEY**

JERSEY CITY MUNICIPAL  
AUTHORITY,

Plaintiff,

vs.

HONEYWELL INTERNATIONAL, INC.,

Defendant.

Consolidated under Civil Action No.  
05-5955 (DMC-PS)

JERSEY CITY INCINERATOR  
AUTHORITY,

Plaintiff,

vs.

HONEYWELL INTERNATIONAL, INC.,

Defendant.

Civil Action No. 05-5993  
Consolidated under No. 05-5955  
(DMC-PS)

HACKENSACK RIVERKEEPER, INC.,  
et al.

Plaintiff,

vs.

HONEYWELL INTERNATIONAL, INC.,

Defendant.

Civil Action No. 06-22  
Consolidated under No. 05-5955  
(DMC-PS)

**CONSENT ORDER**



This matter having been opened to the Court by Unopposed Motion of Defendant \_\_\_\_\_ (hereinafter "Transferor") to add \_\_\_\_\_ (hereinafter "Transferee"), as the new title owner of that part of the NJCU Commercial AOC known as Block \_\_\_\_, Lot \_\_\_\_ on the Tax Map of the City of Jersey City, New Jersey ("Transferred Property") under Deed from Transferor to Transferee, dated \_\_\_\_\_ 20\_\_ and recorded in the Office of the Hudson County Clerk on \_\_\_\_\_ 20\_\_ in Book \_\_\_\_, Page \_\_\_\_, as a limited party to the Consent Decree Regarding Remediation of the New Jersey City University Redevelopment Area entered on \_\_\_\_\_, 20\_\_ (hereinafter "Consent Decree") pursuant to and in accordance with paragraph 89 of said Consent Decree, and the Parties to the Consent Decree having consented hereto, and good cause therefore appearing, it is, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, ORDERED that:

1. Transferee is hereby added to the Consent Decree as a limited party pursuant to and in accordance with paragraph 89 of the Consent Decree with only those rights and benefits under the Consent Decree applicable to New Jersey City University (hereinafter "NJCU") as they pertain to the Transferred Property including: (i) the right to enforce the obligations of Honeywell under paragraphs 64-86, 90, 91(a), 92, 95, 96-105, 107, 108(b) and (c), 110, 113, and 152 of the Consent Decree and the obligations of Riverkeeper under the Consent Decree; (ii) the protections afforded by the financial assurances provided under Article V of the Consent Decree, including the right to enforce Honeywell's obligations thereunder; and (iii) only those responsibilities applicable to NJCU as set forth in paragraphs 70-71, 73, 76, 84, 87-89, 91(b), 92-94, 104-105, and 152 of the Consent Decree.



2. Transferor is hereby released from all obligations under the Consent Decree as to the Transferred Property from and after the date of the Deed pursuant to and in accordance with paragraph 152 of the Consent Decree.

---

U.S.D.J.

Pursuant to paragraph 89 of the Consent Decree, we consent to the entry of this Order:

---

Attorneys for [Transferee]

---

Attorneys for Defendant Honeywell International, Inc.

---

Attorneys for Plaintiffs Hackensack Riverkeeper, Inc., William Sheehan, Reverend Winston Clarke, and Lawrence Baker

---

Attorneys for [Transferor]

---

Attorneys for Defendant Bayonne Municipal Utilities Authority

# Exhibit E

**DRAFT DEED NOTICE**

IN ACCORDANCE WITH N.J.S.A. 58:10B-13, THIS DOCUMENT IS TO BE RECORDED IN THE SAME MANNER AS ARE DEEDS AND OTHER INTERESTS IN REAL PROPERTY.

Prepared by: \_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[425/445 Route 440 Property LLC]  
[Print name below signature]

Recorded by:

\_\_\_\_\_  
[Signature, Officer of County Recording Office]

\_\_\_\_\_  
[Print name below signature]

**DEED NOTICE CONCERNING CONTROLS  
INSTALLED TO CONTAIN CHROMIUM  
CONTAMINATION UNDERLYING PROPERTY  
AND RESTRICTIONS CONCERNING THE USE OF  
PROPERTY**

This Deed Notice is made as of the \_\_\_\_th day of \_\_\_\_\_, 2009, by Honeywell International, Inc. and its subsidiary 425/445 Route 440 Property LLC, whose post office address is 101 Columbia Road, Morristown, New Jersey 07962. Owner shall mean 425/445 Route 440 Property LLC, together with its successors and assigns, including all successors in interest in the Property which is the subject of this Deed Notice as described fully below.

1. THE PROPERTY. 425/445 Route 440 Property LLC is the current owner in fee simple of certain real property designated as that portion of Block 1289.5, Lot E on the tax map of the City of Jersey City, Hudson County, New Jersey; the New Jersey Department of Environmental Protection Program Interest Numbers for the contaminated site which includes this property are Hudson County Chromate Site No. 153 Program Interest (PI) #G00000XXXX, and the property is known in part as Site 153 North pursuant to the Consent Decree Regarding the New Jersey City University Redevelopment Area (Sites 090, 184 and 153 North) ("Consent Decree") which is attached hereto and is entered as an order of the Court in the following consolidated actions *JCMUA v. Honeywell International, Inc.*, D.N.J., Civ. No. 05-05955; *JCIA v. Honeywell International, Inc.*, D.N.J., Civ. No. 05-5993; and *Hackensack Riverkeeper, Inc. v. Honeywell International, Inc.*, D.N.J., Civ. No. 06-22. The portion of the Property subject to this Deed Notice is described by metes and bounds in

Exhibit A-1 and further defined as Site 153 North in the Consent Decree. The Consent Decree restricts transfer, use and development of the Site 153 North portion of the Property without further remediation pursuant to the terms of the Consent Decree. To the extent that there is any conflict or inconsistency between the terms of this Deed Notice and the terms of the Consent Decree, the Consent Decree shall govern. To the extent that any action to be taken pursuant to this Deed Notice is in conflict with or inconsistent with the Consent Decree, the Consent Decree shall govern.

2. DEPARTMENT'S ASSIGNED BUREAU. The Bureau of State Case Management (BCM) was the New Jersey Department of Environmental Protection program that was responsible for the oversight of the remediation of the Property. The matter was Case No. Hudson County Chromate Site No. 153 Program Interest (PI) # G00000XXXX.

3. SOIL AND GROUNDWATER CONTAMINATION. Honeywell International Inc. ("Honeywell") a corporation in the State of New Jersey whose post office address is 101 Columbia Road, Morristown, New Jersey 07962, has remediated the Site 153 North portion of the Property to address chromium-related soil contamination. The Remedial Action Work Plan was approved by the New Jersey Department of Environmental Protection on July 26, 2007 for the New Jersey City University Properties including Hudson County Chromate Sites Nos. 090, 184 and 153 North. Remedial actions were further approved pursuant to the Consent Decree. Under both the Consent Decree and the Remedial Action Work Plan soil contamination remains in the Property which contains contaminants in concentrations that do not allow for the unrestricted use of the Site 153 North portion of the Property. The soil contamination is described, including the type, concentration and specific location of such contaminants, in Exhibit B, which is attached hereto and made a part hereof. As a result of the contamination, there is a statutory requirement for this Deed Notice and engineering controls in accordance with N.J.S.A. 58:10B-13. Under the terms of the Consent Decree and this Deed Notice, Honeywell is responsible for monitoring and maintaining the soil remediation for the Site 153 North portion of the Property until such time as the Site 153 North portion of the Property to remediated to the level that would permit the removal of this Deed Notice pursuant to the Consent Decree.

4. CONSIDERATION. In accordance with the New Jersey Department of Environmental Protection's approval of the Remedial Action Work Plan for the remediation of the New Jersey City University Properties including Hudson County Chromate Sites Nos. 090, 185 and 153 North and in consideration of the terms and conditions of that approval, and in accordance with the Consent Decree, and other good and valuable considerations, Owner has agreed to subject the Site 153 North portion of the Property to certain statutory and regulatory requirements which impose restrictions upon the use of the Site 153 North portion of the Property, to restrict certain uses of the Site 153 North portion of the Property, and to provide notice to easement holders, lessees and operators of the restrictions until the Site 153 North portion of the Property is further remediated and no longer must be encumbered by this Deed Notice pursuant to the terms of the Consent Decree.

5A. RESTRICTED AREAS. Due to the presence of these contaminants, Owner has agreed, as part of the remedial action for the Site 153 North portion of the Property, to restrict the use of the Site 153 North portion of the Property (the "Restricted Areas"); a narrative description of these restrictions, along with the associated monitoring and maintenance activities and the biennial

certification requirements are provided in Exhibit C, which is attached hereto and made a part hereof. Owner has also agreed to maintain a list of these restrictions on site for inspection by governmental enforcement officials.

5B. ENGINEERING CONTROLS. Due to the presence and concentration of these contaminants, Owner has also agreed, as part of the remedial action for the Site 153 North portion of the Property, to the placement of certain engineering controls on the Site 153 North portion of the Property. A narrative description of these engineering controls, along with the associated monitoring and maintenance activities and the biennial certification requirements are provided in Exhibit C. Honeywell shall be responsible for monitoring and maintenance of engineering controls and biennial certification requirements as specified in Paragraphs 7A&B.

6A. ALTERATIONS, IMPROVEMENTS, AND DISTURBANCES.

i. Except as provided in the Consent Decree and Paragraph 6B, below, no person shall make, or allow to be made, any alteration, improvement, or disturbance in, to, or about the Site 153 North portion of the Property which disturbs any engineering control at the Site 153 North portion of the Property except as (a) permitted in the Consent Decree and (b) without first obtaining the express written consent of the Department of Environmental Protection. Nothing herein shall constitute a waiver of the obligation of any person to comply with all applicable laws and regulations including, without limitation, the applicable rules of the Occupational Safety and Health Administration. To request the consent of the Department of Environmental Protection, contact:

Department of Environmental Protection  
Division of Remediation Management and Response  
Bureau of Operation, Maintenance and Monitoring  
Deed Notice Inspection Program  
P.O. Box 413  
401 E. State Street  
Trenton, NJ 08625-0413

ii. Notwithstanding subparagraph 6A.i., above, the Department of Environmental Protection's express written consent is not required for any alteration, improvement, or disturbance provided that the owner, lessee or operator:

(A) Takes such action in conformance with the Consent Decree; and

(B) Notifies the Department of Environmental Protection of the activity by calling the DEP Hotline, at 1-877-WARN-DEP or 1-877-927-6337, within twenty-four (24) hours after the beginning of each alteration, improvement, or disturbance;

(C) Notifies Honeywell of the activity by calling XXX;

(D) Restores or causes Honeywell to restore any disturbance of an engineering control to pre-disturbance conditions within sixty (60) calendar days after the initiation of the alteration, improvement or disturbance;

(E) Ensures that all applicable worker health and safety laws and regulations are followed during the alteration, improvement, or disturbance, and during the restoration;

(F) Ensures that exposure to contamination in excess of the applicable remediation standards does not occur;

(G) Submits, or causes Honeywell to submit a written report, describing the alteration, improvement, or disturbance, to the Department of Environmental Protection within sixty (60) calendar days after the end of each alteration, improvement, or disturbance. The report shall include the nature of the alteration, improvement, or disturbance, the dates and duration of the alteration, improvement, or disturbance, the name of key individuals and their affiliations conducting the alteration, improvement, or disturbance, a description of the notice the Owner gave to those persons prior to the disturbance, the amounts of soil generated for disposal, if any, the final disposition and any precautions taken to prevent exposure. Such a report shall be submitted to:

Department of Environmental Protection  
Division of Remediation Management and Response  
Bureau of Operation, Maintenance and Monitoring  
Deed Notice Inspection Program  
P.O. Box 413  
401 E. State Street  
Trenton, NJ 08625-0413

6B. EMERGENCIES. In the event of an emergency which presents, or may present, an unacceptable risk to the public health and safety, or to the environment, any person may temporarily breach any engineering control provided that that person complies with each of the following:

- i. Immediately notifies the Department of Environmental Protection of the emergency, by calling the DEP Hotline at 1-877-WARNDEP or 1-877-927-6337;
- ii. Immediately notifies Honeywell of the emergency by calling XXX\_\_\_\_\_;
- iii. Limits both the actual disturbance and the time needed for the disturbance to the minimum reasonably necessary to adequately respond to the emergency;
- iv. Implements all measures necessary to limit actual or potential, present or future risk of exposure to humans or the environment to the contamination;
- v. Notifies the Department of Environmental Protection when the emergency has ended by calling the DEP Hotline at 1-877-WARNDEP or 1-877-927-6337;
- vi. Notifies Honeywell when the emergency has ended by calling \_XXX\_\_\_\_\_; and



vii. Restores or causes Honeywell to restore the engineering control to the pre-emergency conditions as soon as possible, and provides a written report to the Department of Environmental Protection of such emergency and restoration efforts within sixty (60) calendar days after completion of the restoration of the engineering control. The report must include all information pertinent to the emergency, potential discharges of contaminants, and restoration measures that were implemented, which, at a minimum, should specify: (a) the nature and likely cause of the emergency, (b) the potential discharges of or exposures to contaminants, if any, that may have occurred, (c) the measures that have been taken to mitigate the effects of the emergency on human health and the environment, (d) the measures completed or implemented to restore the engineering control, and (e) the changes to the engineering control or site operation and maintenance plan to prevent recurrence of such conditions in the future. The report shall be submitted to:

Department of Environmental Protection  
Division of Remediation Management and Response  
Bureau of Operation, Maintenance and Monitoring  
Deed Notice Inspection Program  
P.O. Box 413  
401 E. State Street  
Trenton, NJ 08625-0413

**7A. MONITORING AND MAINTENANCE OF DEED NOTICE, AND PROTECTIVENESS CERTIFICATION.** Honeywell and the Owner shall monitor and maintain this Deed Notice, and certify to the Department on a biennial basis that the remedial action that includes this Deed Notice remains protective of the public health and safety and of the environment. The specific obligations to monitor and maintain the deed notice shall include all of the following:

- i. Monitoring and maintaining this Deed Notice according to the requirements in Exhibit C, to ensure that the remedial action that includes the Deed Notice continues to be protective of the public health and safety and of the environment;
- ii. Conducting any additional remedial investigations and implement any additional remedial actions, that are necessary to correct, mitigate, or abate each problem related to the protectiveness of the remedial action for the Site 153 North portion of the Property prior to the date that the certification is due to the Department pursuant to iii, below, in order to ensure that the remedial action that includes this Deed Notice remains protective of the public health and safety and of the environment.
- iii. Certify to the Department of Environmental Protection as to the continued protectiveness of the remedial action that includes this Deed Notice, on a form provided by the Department and consistent with N.J.A.C. 7:26C-1.2 (a)1, every two years on the anniversary of the date stamped on the Deed Notice that indicates when the Deed Notice was recorded.

**7B. MONITORING AND MAINTENANCE OF ENGINEERING CONTROLS, AND PROTECTIVENESS CERTIFICATION.** Honeywell and the Owners shall maintain all engineering

controls at the Site 153 North portion of the Property and certify to the Department on a biennial basis that the remedial action of which each engineering control is a part remains protective of the public health and safety and of the environment. The specific obligations to monitor and maintain the engineering controls shall include the following:

- i. Monitoring and maintaining each engineering control according to the requirements in Exhibit C, to ensure that the remedial action that includes the engineering control continues to be protective of the public health and safety and of the environment;
- ii. Conducting any additional remedial investigations and implement any additional remedial actions, that are necessary to correct, mitigate, or abate each problem related to the protectiveness of the remedial action for the Site 153 North portion of Property prior to the date that the certification is due to the Department pursuant to iii, below, in order to ensure that the remedial action that includes the engineering control remains protective of the public health and safety and of the environment.
- iii. Certify to the Department of Environmental Protection as to the continued protectiveness of the remedial action that includes the engineering control, on a form provided by the Department and consistent with N.J.A.C. 7:26C-1.2 (a)1, every two years on the anniversary of the date stamped on the Deed Notice that indicates when the Deed Notice was recorded.

8. ACCESS. Owner agrees to allow the Department, its agents and representatives access to the Property to inspect and evaluate the continued protectiveness of the remedial action that includes this Deed Notice and to conduct additional remediation to ensure the protection of the public health and safety and of the environment if persons responsible for monitoring the protectiveness of the remedial action, as described in Paragraph 7, above, fail to conduct such remediation pursuant to this Deed Notice as required by law. Owner shall also cause all leases, subleases, grants, and other written transfers of an interest in the Restricted Areas to contain a provision expressly requiring that all holders thereof provide such access to the Department.

#### 9. NOTICES.

- i. Owner shall cause all leases, grants, and easements for the Site 153 North portion of the Property to contain a provision expressly requiring all holders thereof to take the Property subject to the restrictions contained herein and to comply with all, and not to violate any of the conditions of this Deed Notice. Nothing contained in this Paragraph shall be construed as limiting any obligation of any person to provide any notice required by any law, regulation, or order of any governmental authority.
- ii. Owner shall notify any person intending to conduct invasive work or excavate within the 153 North portion of the Property on its behalf of the nature and location of contamination and, of the precautions necessary to minimize potential human exposure to contaminants.
- iii. Owner shall provide written notice to the Department of Environmental Protection at least thirty (30) calendar days before the effective date of any conveyance, grant, gift, or other transfer, in



whole or in part, of the owner's interest in the Site 153 North portion of the Property. . Any such conveyance, grant or gift must be consistent with the terms of the Consent Decree.

iv. Owner shall provide written notice to the Department within thirty (30) calendar days following the Owner's receiving notice of any petition for a rezoning of the Property. The Owner shall submit the written notice to:

Department of Environmental Protection  
Division of Remediation Management and Response  
Bureau of Operation, Maintenance and Monitoring  
Deed Notice Inspection Program  
P.O. Box 413  
401 E. State Street  
Trenton, NJ 08625-0413.

#### 10. ENFORCEMENT OF VIOLATIONS.

i. This Deed Notice itself is not intended to create any interest in real estate in favor of the Department of Environmental Protection, nor to create a lien against the Property, but merely is intended to provide notice of certain conditions and restrictions on the Site 153 North portion of the Property and to reflect the regulatory and statutory obligations imposed as a conditional remedial action for the Site 153 North portion of the Property.

ii. The restrictions provided herein may be enforceable by the Department against any person who violates this Deed Notice. To enforce violations of this Deed Notice, the Department may initiate one or more enforcement actions pursuant to N.J.S.A. 58:10-23.11u and require additional remediation and assess damages pursuant to N.J.S.A. 58:10-23.11g.

11. SEVERABILITY. If any court of competent jurisdiction determines that any provision of this Deed Notice requires modification, such provision shall be deemed to have been modified automatically to conform to such requirements. If a court of competent jurisdiction determines that any provision of this Deed Notice is invalid or unenforceable and the provision is of such a nature that it cannot be modified, the provision shall be deemed deleted from this instrument as if the provision had never been included herein. In either case, the remaining provisions of this Deed Notice shall remain in full force and effect.

12. SUCCESSORS AND ASSIGNS. This Deed Notice shall be binding upon Honeywell. This Deed Notice shall also be binding upon Owner and upon Owner's successors and assigns, and subsequent easement holders, lessees and operators while each has an interest in the Property.

#### 13. MODIFICATION AND TERMINATION.

i. Any person may request in writing, at any time, that the Department modify this Deed Notice where performance of subsequent remedial actions, a change of conditions at the Property, or the adoption of revised remediation standards suggest that modification of the Deed Notice would be appropriate.

ii. Any person may request in writing, at any time, that the Department terminate this Deed Notice because the conditions which triggered the need for this Deed Notice are no longer applicable.

iii. Any person seeking a modification of this Deed Notice must also have such modification approved by the United States District Court for the District of New Jersey pursuant to the Consent Decree.

iv. This Deed Notice may be revised or terminated only upon filing of an instrument, executed by the Department, in the office of the Hudson County Register, New Jersey, expressly modifying or terminating this Deed Notice.

14A. EXHIBIT A. Exhibit A includes the following maps of the Property and the vicinity:

i. Exhibit A-1: Vicinity Map - A map that identifies by name the roads, and other important geographical features in the vicinity of the Property;

ii. Exhibit A-2: Metes and Bounds Description - A metes and bounds description of the Property, including reference to tax lot and block numbers for the Property and a Tax Map;

iii. Exhibit A-3: Property Map - A scaled map of the Property, scaled at one inch to 200 feet or less, and if more than one map is submitted, the maps shall be presented as overlays, keyed to a base map; the map(s) shall include diagrams of major surface topographical features such as buildings, roads, and parking lots.

14B. EXHIBIT B. Exhibit B includes the following descriptions of the Restricted Areas:

i. Exhibit B-1 (Figures B-1A through B-1D): Restricted Area Maps - Maps for the Area that include, as applicable:

(A) As-built diagrams of each engineering control, including caps, fences, slurry walls, ground water monitoring wells, and ground water pumping system;

(B) As-built diagrams of any buildings, roads, parking lots and other structures that function as engineering controls; and

(C) Designation of all soil and/or sediment sample locations within the restricted areas that exceed any soil or sediment standard that are keyed into one of the tables described in the following paragraph.

ii. Exhibit B-2 (Tables B-2A through B-2D): Restricted Area Data Tables - Tables for the Area that include:

(A) Sample location designation from Restricted Area maps (Exhibit B-1);

(B) Sample elevation based upon mean sea level;

(C) Name and chemical abstract service registry number of each contaminant with a concentration that exceeds the unrestricted use standard;

(D) The restricted and unrestricted use standards for each contaminant in the table with instructions that direct the reader to the Consent Decree for further information; and

(E) The remaining concentration of each contaminant at each sample location at each elevation (or if historic fill, include data from the Department's default concentrations at N.J.A.C. 7:26E-4.6, Table 4-2).

14C. EXHIBIT C. Exhibit C includes narrative descriptions of the institutional controls and engineering controls as follows:

i. Exhibit C-1A through C. Exhibit C-1-A: Deed Notice as Institutional Control; Exhibit C-1-B: Consent Decree as Institutional Control; Exhibit C-1-C: Access Point Warnings as Institutional Control; Exhibit C-1-D: Conservation Restriction as Institutional Control: Exhibit C-1 (A through C) includes a narrative description of the restrictions and obligations of this Deed Notice that are in addition to those described above, as follows:

(A) General Description of the Institutional Controls:

- (1) Description and estimated size of the Restricted Areas as described above;
- (2) Description of the restrictions on the Property by operation of this Deed Notice and the other Institutional Controls; and
- (3) The objective of the restrictions;

(B) Description of the monitoring necessary to determine whether:

- (1) Any disturbances of the soil in the Restricted Areas did not result in the unacceptable exposure to the soil contamination;
- (2) There have been any land use changes subsequent to the filing of this Deed Notice and the other Institutional Controls or the most recent biennial certification, whichever is more recent;
- (3) The current land use on the Site 153 North portion of the Property is consistent with the restrictions in this Deed Notice and the other Institutional Controls;
- (4) Any newly promulgated or modified requirements of applicable regulations or laws apply to the Property; and
- (5) Any new standards, regulations, or laws apply to the Property that might necessitate additional sampling in order to evaluate the protectiveness of the remedial action which includes this Deed Notice and the other Institutional Controls, and conduct the necessary sampling; and

(C) Description of the following items that will be included in the biennial

certification:

- (1) A monitoring report that describes the specific activities, pursuant to (A) and (B), above, conducted in support of the biennial certification of the protectiveness of the remedial action that includes this Deed Notice and the other Institutional Controls;
- (2) Land use at the Site 153 North portion of the Property is consistent with the restrictions in this Deed Notice and the other Institutional Controls; and
- (3) The remedial action that includes this Deed Notice and the other Institutional Controls continues to be protective of the public health and safety and of the environment.

ii. Exhibit C-2-A through C. Exhibit C-2-A: Engineering Controls: Clean Fill and Geotextile Liner System; Exhibit C-2-B: Engineering Controls:[Access Point Warning System]; Exhibit C-2-C: Engineering Controls:.

Exhibit C-2 (series A-C) includes a narrative description of the engineering controls as follows:

(A) General Description of the engineering control:

- (1) Description of the engineering control;
- (2) The objective of the engineering control; and
- (3) How the engineering control is intended to function.

(B) Description of the operation and maintenance necessary to ensure that:

- (1) Periodic inspections of each engineering control are performed in order to determine its integrity, operability, and effectiveness;
- (2) Each engineering control continues as designed and intended to protect the public health and safety and the environment;
- (3) Each alteration, excavation or disturbance of any engineering control is timely and appropriately addressed to maintain the integrity of the engineering control;
- (4) The engineering control is being inspected and maintained and its integrity remains so that the remedial action continues to be protective of the public health and safety and of the environment;
- (5) A record of the self-inspection dates, name of the inspector, results of the inspection and condition(s) of the engineering control. Sampling, for example, may be necessary if it is not possible to visually evaluate the integrity/performance of the engineering control; and
- (6) Any new standards, regulations, or laws apply to the Property that might necessitate additional sampling in order to evaluate the protectiveness of the remedial action which includes this Deed Notice, and conduct the necessary sampling; and

(C) Description of the following items that will be included in the biennial certification:

- (1) A monitoring report that describes the specific activities, pursuant to (A) and (B), above, conducted in support of the biennial certification of the protectiveness of the remedial action that includes this Deed Notice;
- (2) The engineering control continues to operate as designed; and
- (3) The remedial action that includes the engineering control continues to be protective of the public health and safety and of the environment.

**[INSERT EXHIBITS]**

**15. SIGNATURES.**

IN WITNESS WHEREOF, Owner has executed this Deed Notice as of the date first written above.

[If Owner is a corporation]

ATTEST: [Name of corporation]

\_\_\_\_\_ By \_\_\_\_\_

\_\_\_\_\_  
[Print name and title] [Signature]



# Exhibit F

**DEED NOTICE**

IN ACCORDANCE WITH N.J.S.A. 58:10B-13, THIS DOCUMENT IS TO BE  
RECORDED IN THE SAME MANNER AS ARE DEEDS AND OTHER INTERESTS  
IN REAL PROPERTY.

Prepared by: \_\_\_\_\_  
[Signature]

Recorded by:

\_\_\_\_\_  
[Signature, Officer of County Recording Office]

\_\_\_\_\_  
[Print name below signature]

**DEED NOTICE CONCERNING CONTROLS  
INSTALLED TO CONTAIN CHROMIUM  
CONTAMINATION UNDERLYING THE NJCU  
COMMERCIAL AOC**

This Deed Notice is made as of the \_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 20\_\_\_\_, by *New Jersey City University, whose post office address is 2039 Kennedy Boulevard, Jersey City, New Jersey 07305*, (together with his/her/its/their successors and assigns (collectively "Owner")).

1. THE PROPERTY. *New Jersey City University is the owner in fee simple of certain real property designated as Block 1286, Lots 5 and 6D; and Block 1286.5, Lots 1 & 2, on the tax map of the City of Jersey City, Hudson County, New Jersey; the New Jersey Department of Environmental Protection Program Interest Numbers for the contaminated site which includes this property are Hudson County Chromate Site No. 090 - NJL000000901 [Block 1286, Lots 5 & 6D] and Hudson County Chromate Site No. 184 - NJL000069344 [Block 1286.5, Lots 1 & 2], and the property is more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "Property"). Part of the Property is known as the NJCU Commercial AOC pursuant to the Consent Decree Regarding Remediation of the New Jersey City University*



Redevelopment Area ("the Consent Decree") entered by the United States District Court for the District of New Jersey on \_\_\_\_\_, 20\_\_ in *Riverkeeper v. Honeywell International, Inc.*, D.N.J., Civ. No. 06-22 (Consolidated with Civ. No. 05-5955). The Consent Decree includes requirements regarding the transfer and use and of the NJCU Commercial AOC. To the extent that there is any conflict or inconsistency between the terms of this Deed Notice and the terms of the Consent Decree, the Consent Decree shall govern. To the extent that any action to be taken pursuant to this Deed Notice is in conflict with or inconsistent with the Consent Decree, the Consent Decree shall govern.

2. DEPARTMENT'S ASSIGNED BUREAU. The Bureau of Northern Case Management (BNCM) was the New Jersey Department of Environmental Protection program that was responsible for the oversight of the remediation of the Property. The matter was Case No. *Hudson County Chromate Site No. 090 - NJL000000901* and *Hudson County Chromate Site No. 184 - NJL000069344*.

3, SOIL AND GROUNDWATER CONTAMINATION. *Honeywell International Inc. (Honeywell)*, a corporation in the State of New Jersey whose post office address is 101 Columbia Road, Morristown, New Jersey 07962, has remediated the NJCU Commercial AOC to address chromium-related soil and shallow groundwater contamination. A Remedial Action Work Plan was approved by the New Jersey Department of Environmental Protection on [\_\_\_\_\_] for the NJCU Commercial AOC. Remedial actions were further provided under the Consent Decree. Under both the Remedial Action Work Plan and the Consent Decree, soil contamination remains in the NJCU Commercial AOC which contains contaminants in concentrations that do not allow for the unrestricted use of the NJCU Commercial AOC. This soil and groundwater contamination is described, including the type, concentration and specific location of such contaminants, in Exhibit B, which is attached hereto and made a part hereof. As a result, there is a statutory requirement for this Deed Notice and engineering controls in accordance with N.J.S.A. 58:10B-13. Under the terms of the Consent Decree and this Deed Notice, Honeywell is responsible for monitoring and maintaining the soil and shallow groundwater remediation for the NJCU Commercial AOC in perpetuity or until such time as the NJCU Commercial AOC is further remediated to the level that would permit unrestricted use of the NJCU Commercial AOC.

4. CONSIDERATION. In accordance with the New Jersey Department of Environmental Protection's approval of the remedial action work plan for the remediation of the site which included the NJCU Commercial AOC, and in consideration of the terms and conditions of that approval, and other good and valuable considerations, Owner has agreed to subject the NJCU Commercial AOC to certain statutory and regulatory requirements which impose restrictions upon the use of the NJCU Commercial AOC, to restrict certain uses of the NJCU Commercial AOC, and to provide notice to subsequent owners, lessees and operators of the restrictions and the monitoring, maintenance, and biennial certification requirements outlined in this Deed Notice and required by law, as set forth herein.

5A. RESTRICTED AREAS. Due to the presence of these contaminants, the Owner has agreed, as part of the remedial action for the site, to restrict the use of the NJCU Commercial AOC (also known as the "Restricted Area"); a narrative description of these restrictions, along with the associated monitoring and maintenance activities and the biennial certification requirements are provided in Exhibit C, which is attached hereto and made a part hereof. The Owner has also agreed to maintain a list of these restrictions on site for inspection by governmental enforcement officials.

5B. ENGINEERING CONTROLS. Due to the presence and concentration of these contaminants, the Owner has also agreed, as part of the remedial action for the Property, to the placement of certain engineering controls on the NJCU Commercial AOC. A narrative description of these engineering controls, along with the associated monitoring and maintenance activities and the biennial certification requirements are provided in Exhibit C. Honeywell shall be responsible for monitoring and maintenance of engineering controls and biennial certification requirements specified in Paragraphs 7A&B.

6A. ALTERATIONS, IMPROVEMENTS, AND DISTURBANCES.

i. Except as provided in the Consent Decree and in Paragraph 6B, below, no person shall make, or allow to be made, any alteration, improvement, or disturbance in, to, or about the NJCU Commercial AOC which disturbs any engineering control at the NJCU Commercial AOC without first obtaining the express written consent of the Department of Environmental Protection. Nothing herein shall constitute a waiver of the obligation of any person to comply with all applicable laws and regulations including, without limitation, the applicable rules of the Occupational Safety and Health Administration. To request the consent of the Department of Environmental Protection, contact:

Department of Environmental Protection  
Division of Remediation Management and Response  
Bureau of Operation, Maintenance and Monitoring  
Deed Notice Inspection Program  
P.O. Box 413  
401 E. State Street  
Trenton, NJ 08625-0413

ii. Notwithstanding subparagraph 6A.i., above, the Department of Environmental Protection's express written consent is not required for any alteration, improvement, or disturbance provided that the owner, lessee or operator:

(A) Takes such action in conformance with the Consent Decree;

(B) Notifies the Department of Environmental Protection of the activity by calling the DEP Hotline, at 1-877-WARN-DEP or 1-877-927-6337, within

twenty-four (24) hours after the beginning of each alteration, improvement, or disturbance;

(C) Notifies Honeywell of the activity by calling XXX;

(D) Restores any disturbance of an engineering control to pre-disturbance conditions within sixty (60) calendar days after the initiation of the alteration, improvement or disturbance;

(E) Ensures that all applicable worker health and safety laws and regulations are followed during the alteration, improvement, or disturbance, and during the restoration;

(F) Ensures that exposure to contamination in excess of the applicable remediation standards does not occur; and

(G) Submits a written report, describing the alteration, improvement, or disturbance, to the Department of Environmental Protection within sixty (60) calendar days after the end of each alteration, improvement, or disturbance. The owner, lessee or operator shall include in the report the nature of the alteration, improvement, or disturbance, the dates and duration of the alteration, improvement, or disturbance, the name of key individuals and their affiliations conducting the alteration, improvement, or disturbance, a description of the notice the Owner gave to those persons prior to the disturbance, the amounts of soil generated for disposal, if any, the final disposition and any precautions taken to prevent exposure. The owner, lessee, or operator shall submit the report to:

Department of Environmental Protection  
Division of Remediation Management and Response  
Bureau of Operation, Maintenance and Monitoring  
Deed Notice Inspection Program  
P.O. Box 413  
401 E. State Street  
Trenton, NJ 08625-0413

6B. EMERGENCIES. In the event of an emergency which presents, or may present, an unacceptable risk to the public health and safety, or to the environment, any person may temporarily breach any engineering control provided that that person complies with each of the following:

i. Immediately notifies the Department of Environmental Protection of the emergency, by calling the DEP Hotline at 1-877-WARNDEP or 1-877-927-6337;

ii. Immediately notifies Honeywell of the emergency by calling  
XXX\_\_\_\_\_;

iii. Limits both the actual disturbance and the time needed for the disturbance to the minimum reasonably necessary to adequately respond to the emergency;

iv. Implements all measures necessary to limit actual or potential, present or future risk of exposure to humans or the environment to the contamination;

v. Notifies the Department of Environmental Protection when the emergency has ended by calling the DEP Hotline at 1-877-WARNDEP or 1-877-927-6337;

vi.. Notifies Honeywell when the emergency has ended by calling  
\_XXX\_\_\_\_\_; and

vii. Restores the engineering control to the pre-emergency conditions as soon as possible, and provides a written report to the Department of Environmental Protection of such emergency and restoration efforts within sixty (60) calendar days after completion of the restoration of the engineering control. The report must include all information pertinent to the emergency, potential discharges of contaminants, and restoration measures that were implemented, which, at a minimum, should specify: (a) the nature and likely cause of the emergency, (b) the potential discharges of or exposures to contaminants, if any, that may have occurred, (c) the measures that have been taken to mitigate the effects of the emergency on human health and the environment, (d) the measures completed or implemented to restore the engineering control, and (e) the changes to the engineering control or site operation and maintenance plan to prevent recurrence of such conditions in the future. The owner, lessee, or operator shall submit the report to:

Department of Environmental Protection  
Division of Remediation Management and Response  
Bureau of Operation, Maintenance and Monitoring  
Deed Notice Inspection Program  
P.O. Box 413  
401 E. State Street  
Trenton, NJ 08625-0413

**7A. MONITORING AND MAINTENANCE OF DEED NOTICE, AND PROTECTIVENESS CERTIFICATION.** The persons in any way responsible, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., for the hazardous substances that remain at the NJCU Commercial AOC, the persons responsible for conducting the remediation, the Owner, and the subsequent owners, lessees, and operators, shall monitor and maintain this Deed Notice, and certify to the Department on a biennial basis that the remedial action that includes this Deed Notice remains protective of the public health and safety and of the environment. The subsequent owners, lessees and operators have this obligation only during their ownership, tenancy, or operation. The specific obligations to monitor and maintain the Deed Notice shall include all of the following:



i. Monitoring and maintaining this Deed Notice according to the requirements in Exhibit C, to ensure that the remedial action that includes the Deed Notice continues to be protective of the public health and safety and of the environment;

ii. Conducting any additional remedial investigations and implement any additional remedial actions, that are necessary to correct, mitigate, or abate each problem related to the protectiveness of the remedial action for the NJCU Commercial AOC prior to the date that the certification is due to the Department pursuant to iii, below, in order to ensure that the remedial action that includes this Deed Notice remains protective of the public health and safety and of the environment.

iii. Certify to the Department of Environmental Protection as to the continued protectiveness of the remedial action that includes this Deed Notice, on a form provided by the Department and consistent with N.J.A.C. 7:26C-1.2 (a)1, every two years on the anniversary of the date stamped on the Deed Notice that indicates when the Deed Notice was recorded.

**7B. MONITORING AND MAINTENANCE OF ENGINEERING CONTROLS, AND PROTECTIVENESS CERTIFICATION.** The persons in any way responsible, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., for the hazardous substances that remain at the NJCU Commercial AOC, the person responsible for conducting the remediation, and, the Owner, and the subsequent owners, lessees, and operators, shall maintain all engineering controls at the NJCU Commercial AOC and certify to the Department on a biennial basis that the remedial action of which each engineering control is a part remains protective of the public health and safety and of the environment. The subsequent owners, lessees and operators have this obligation only during their ownership, tenancy, or operation. The specific obligations to monitor and maintain the engineering controls shall include the following:

i. Monitoring and maintaining each engineering control according to the requirements in Exhibit C, to ensure that the remedial action that includes the engineering control continues to be protective of the public health and safety and of the environment;

ii. Conducting any additional remedial investigations and implement any additional remedial actions, that are necessary to correct, mitigate, or abate each problem related to the protectiveness of the remedial action for the NJCU Commercial AOC prior to the date that the certification is due to the Department pursuant to iii, below, in order to ensure that the remedial action that includes the engineering control remains protective of the public health and safety and of the environment.

iii. Certify to the Department of Environmental Protection as to the continued protectiveness of the remedial action that includes the engineering control, on a form provided by the Department and consistent with N.J.A.C. 7:26C-1.2 (a)1, every two

years on the anniversary of the date stamped on the Deed Notice that indicates when the Deed Notice was recorded.

8. ACCESS. The Owner and the subsequent owners, lessees and operators agree to allow the Department, its agents and representatives access to the NJCU Commercial AOC to inspect and evaluate the continued protectiveness of the remedial action that includes this Deed Notice and to conduct additional remediation to ensure the protection of the public health and safety and of the environment if persons responsible for monitoring the protectiveness of the remedial action, as described in Paragraph 7, above, fail to conduct such remediation pursuant to this Deed Notice as required by law. The Owner, and the subsequent owners and lessees, shall also cause all leases, subleases, grants, and other written transfers of an interest in the NJCU Commercial AOC to contain a provision expressly requiring that all holders thereof provide such access to the Department.

9. NOTICES.

i. The Owner and the subsequent owners and lessees, shall cause all leases, grants, and other written transfers of an interest in the NJCU Commercial AOC to contain a provision expressly requiring all holders thereof to take the NJCU Commercial AOC subject to the restrictions contained herein and to comply with all, and not to violate any of the conditions of this Deed Notice. Nothing contained in this Paragraph shall be construed as limiting any obligation of any person to provide any notice required by any law, regulation, or order of any governmental authority.

ii. Owner and all subsequent owners and lessees shall notify any person intending to conduct invasive work or excavate within the NJCU Commercial AOC, including, without limitation, tenants, employees of tenants, and contractors of the nature and location of contamination in the NJCU Commercial AOC, and, of the precautions necessary to minimize potential human exposure to contaminants.

iii. The Owner and the subsequent owners shall provide written notice to the Department of Environmental Protection at least thirty (30) calendar days before the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of the owner's interest in the NJCU Commercial AOC. Any such transfer must also be consistent with the terms of the Consent Decree.

iv. The Owner and the subsequent owners shall provide written notice to the Department within thirty (30) calendar days following the owner's petition for or filing of any document initiating a rezoning of the NJCU Commercial AOC. The Owner and the subsequent owners shall submit the written notice to:

Department of Environmental Protection  
Division of Remediation Management and Response  
Bureau of Operation, Maintenance and Monitoring  
Deed Notice Inspection Program

P.O. Box 413  
401 E. State Street  
Trenton, NJ 08625-0413.

10. ENFORCEMENT OF VIOLATIONS.

i. This Deed Notice itself is not intended to create any interest in real estate in favor of the Department of Environmental Protection, nor to create a lien against the Property, but merely is intended to provide notice of certain conditions and restrictions on the NJCU Commercial AOC and to reflect the regulatory and statutory obligations imposed as a conditional remedial action for this NJCU Commercial AOC.

ii. The restrictions provided herein may be enforceable by the Department against any person who violates this Deed Notice. To enforce violations of this Deed Notice, the Department may initiate one or more enforcement actions pursuant to N.J.S.A. 58:10-23.11u and require additional remediation and assess damages pursuant to N.J.S.A. 58:10-23.11g.

11. SEVERABILITY. If any court of competent jurisdiction determines that any provision of this Deed Notice requires modification, such provision shall be deemed to have been modified automatically to conform to such requirements. If a court of competent jurisdiction determines that any provision of this Deed Notice is invalid or unenforceable and the provision is of such a nature that it cannot be modified, the provision shall be deemed deleted from this instrument as if the provision had never been included herein. In either case, the remaining provisions of this Deed Notice shall remain in full force and effect.

12. SUCCESSORS AND ASSIGNS. This Deed Notice shall be binding upon Owner and upon Owner's successors and assigns, and subsequent owners, lessees and operators while each is an owner, lessee, or operator of the NJCU Commercial AOC.

13. MODIFICATION AND TERMINATION.

i. Any person may request in writing, at any time, that the Department modify this Deed Notice where performance of subsequent remedial actions, a change of conditions at the NJCU Commercial AOC, or the adoption of revised remediation standards suggest that modification of the Deed Notice would be appropriate.

ii. Any person may request in writing, at any time, that the Department terminate this Deed Notice because the conditions which triggered the need for this Deed Notice are no longer applicable.

iii. Any person seeking a modification or termination of this Deed Notice must also have such modification or termination approved by the United States District Court for the District of New Jersey pursuant to the Consent Decree until

such time as the Consent Decree terminates with regard to the NJCU Commercial AOC pursuant to paragraph 147 of the Consent Decree.

iv. This Deed Notice may be revised or terminated only upon filing of an instrument, executed by the Department, in the office of the Hudson County Clerk, New Jersey, expressly modifying or terminating this Deed Notice.

14A. EXHIBIT A. Exhibit A includes the following maps of the Property and the vicinity:

i. Exhibit A-1: Vicinity Map - A map that identifies by name the roads, and other important geographical features in the vicinity of the NJCU Commercial AOC;

ii. Exhibit A-2: Metes and Bounds Description of NJCU Commercial AOC - A metes and bounds description of the NJCU Commercial AOC, including reference to tax lot and block numbers for the NJCU Commercial AOC and a Tax Map;

iii. Exhibit A-3: NJCU Commercial AOC Map - A scaled map of the NJCU Commercial AOC, scaled at one inch to 200 feet or less, which includes diagrams of major surface topographical features such as buildings, roads, and parking lots.

14B. EXHIBIT B. Exhibit B includes the following descriptions of the Restricted Areas:

i. Exhibit B-1: Restricted Area Map - A map for the NJCU Commercial AOC that includes, as applicable:

(A) As-built diagrams of each engineering control, including caps, fences, slurry walls, ground water monitoring wells, and ground water pumping system;

(B) As-built diagrams of any buildings, roads, parking lots and other structures that function as engineering controls; and

(C) Designation of all soil and/or sediment sample locations within the restricted areas that exceed any soil or sediment standard that are keyed into one of the tables described in the following paragraph.

ii. Exhibit B-2: Restricted Area Data Table - A table for NJCU Commercial AOC that includes:

(A) Sample location designation from Restricted Area map (Exhibit B-1);

(B) Sample elevation based upon mean sea level;

(C) Name and chemical abstract service registry number of each contaminant with a concentration that exceeds the unrestricted use standard;



(D) The restricted and unrestricted use standards for each contaminant in the table; and

(E) The remaining concentration of each contaminant at each sample location at each elevation (or if historic fill, include data from the Department's default concentrations at N.J.A.C. 7:26E-4.6, Table 4-2).

14C. EXHIBIT C. Exhibit C includes narrative descriptions of the institutional controls and engineering controls as follows:

i. Exhibit C-1: Deed Notice as Institutional Controls: Exhibit C-1 includes a narrative description of the restriction and obligations of this Deed Notice that are in addition to those described above, as follows:

(A) General Description of the Deed Notice:

(1) Description and estimated size of the NJCU Commercial AOC as described above;

(2) Description of the restrictions on the NJCU Commercial AOC by operation of this Deed Notice; and

(3) The objective of the restrictions;

(B) Description of the monitoring necessary to determine whether:

(1) Any disturbances of the soil in the Restricted Areas did not result in the unacceptable exposure to the soil contamination;

(2) There have been any land use changes subsequent to the filing of this Deed Notice or the most recent biennial certification, whichever is more recent;

(3) The current land use on the NJCU Commercial AOC is consistent with the restrictions in this Deed Notice;

(4) Any newly promulgated or modified requirements of applicable regulations or laws apply to the NJCU Commercial AOC; and

(5) Any new standards, regulations, or laws apply to the NJCU Commercial AOC that might necessitate additional sampling in order to evaluate the protectiveness of the remedial action which includes this Deed Notice, and conduct the necessary sampling; and

(C) Description of the following items that will be included in the biennial certification:

(1) A monitoring report that describes the specific activities, pursuant to (A) and (B), above, conducted in support of the biennial certification of the protectiveness of the remedial action that includes this Deed Notice;

(2) Land use at the NJCU Commercial AOC is consistent with the restrictions in this Deed Notice; and

(3) The remedial action that includes this Deed Notice and the Consent Decree continues to be protective of the public health and safety and of the environment.

ii. Exhibit C-2 A through C. Exhibit C-2-A:: Engineering Controls: *Clean Fill and Soil Capping System*; Exhibit C-2 B: Engineering Controls: *Underground Containment Walls*; Exhibit C-2-C: Engineering Controls: *Shallow Groundwater Collection and Treatment System*.

Exhibit C-2 (series A-C) includes a narrative description of the engineering controls as follows:

(A) General Description of the engineering controls:

- (1) Description of the engineering controls;
- (2) The objective of the engineering controls; and
- (3) How the engineering controls are intended to function.

(B) Description of the operation and maintenance necessary to ensure that:

(1) Periodic inspections of each engineering control are performed in order to determine its integrity, operability, and effectiveness;

(2) Each engineering control continues as designed and intended to protect the public health and safety and the environment;

(3) Each alteration, excavation or disturbance of any engineering control is timely and appropriately addressed to maintain the integrity of the engineering control;

(4) The engineering controls are being inspected and maintained and its integrity remains so that the remedial action continues to be protective of the public health and safety and of the environment;

(5) A record of the self-inspection dates, name of the inspector, results of the inspection and condition(s) of the engineering controls. Sampling, for

example, may be necessary if it is not possible to visually evaluate the integrity/performance of the engineering controls; and

(6) Any new standards, regulations, or laws apply to the NJCU Commercial AOC that might necessitate additional sampling in order to evaluate the protectiveness of the remedial action which includes this Deed Notice, and conduct the necessary sampling; and

(C) Description of the following items that will be included in the biennial certification:

(1) A monitoring report that describes the specific activities, pursuant to (A) and (B), above, conducted in support of the biennial certification of the protectiveness of the remedial action that includes this Deed Notice and the Consent Decree;

(2) The engineering control continues to operate as designed; and

(3) The remedial action that includes the engineering control continues to be protective of the public health and safety and of the environment.

**EXHIBIT A**

**A-1 Vicinity Map**

**A-2 Metes and Bounds Description of NJCU Commercial AOC**

**A-3 NJCU Commercial AOC Map**

***Block 1286, Lots 5 and 6A; Block 1286.5, Lots 1 & 2  
City of Jersey City, New Jersey***

Exhibit Figure A-1 Vicinity Map consists of a road map for the vicinity of the NJCU Commercial AOC. Exhibit Figure A-2 consists of a tax map for the NJCU Commercial AOC. Exhibit Figure A-3 NJCU Commercial AOC Map consists of a figure indicating major surface features and engineering controls for the NJCU Commercial AOC.

**Exhibit Figure A-1  
Site Vicinity Map**

**A-2 Metes and Bounds Description of NJCU Commercial AOC**  
***Block 1286, Lots 5 and 6A; Block 1286.5, Lots 1 & 2***  
***City of Jersey City, New Jersey***

***The NJCU Commercial AOC is identified as a portion of Block 1286, Lots 5 and 6A; Block 1286.5, Lots 1 & 2, on the City of Jersey City tax maps, the property being presently owned by New Jersey City University. A copy of the current tax map showing the NJCU Commercial AOC is included as Exhibit Figure A-2.***

**Metes and Bounds Description of NJCU Commercial AOC:**

***[Metes and Bounds Description to be included in final document]***

**Exhibit Figure A-2**  
**Tax Map**

**Exhibit Figure A-3**  
**NJCU Commercial AOC Map**



## **EXHIBIT B**

### **B-1A&B Restricted Area Maps**

### **B-2 Restricted Area Data Table**

*Block 1286, Lots 5 and 6A; Block 1286.5, Lots 1 & 2  
City of Jersey City, New Jersey*

Exhibit B-1 Restricted Area Maps includes Exhibit Figure B-1A (Engineering Controls) and Exhibit Figure B-1B (Soil Sample Locations). Exhibit B-2 Restricted Area Data Table indicates soil samples locations with concentrations remaining above the NJDEP Soil Cleanup Criteria.

#### ***Restricted Area Map Notes:***

*Figure B-1A indicates proposed engineering controls (cap). For soils with hexavalent chromium concentrations above 20 mg/kg, the engineering controls include a capping system consisting of: impervious geo-membrane liner; geo-composite drainage layer; and clean soil cover with minimum 12 inches thickness in areas where buildings or pavement are proposed; and 36-inches thickness in areas where the planting of trees and bushes is proposed and a minimum 24-inches thickness in areas where other vegetation is proposed. Engineering controls will also include clean fill to be placed in excavated areas. Figure B-1A also indicates engineering controls for shallow groundwater. The engineering controls include underground barrier walls and a system of wells, pumps and piping for the collection and treatment of shallow groundwater from the NJCU Commercial AOC.*

*Figure B-1B indicates soil sample locations with concentrations above the NJDEP Soil Cleanup Criteria. This soil contaminant of concern is hexavalent chromium above the NJDEP soil cleanup criteria of 20 mg/kg. Figure B-1B also indicates shallow groundwater sampling locations with concentrations above the NJDEP groundwater quality standard. The groundwater contaminant of concern is total chromium above the NJDEP criteria of 70µg/l.*

**Exhibit Figure B-1A  
Engineering Controls Plan**

**Exhibit Figure B-1B**  
**Soil Sample Results - Hexavalent Chromium**  
*(To Be Provided in Final Document)*

**Exhibit B-2: Table B-2**  
***[To Be Revised/Updated in Final Document]***

**EXHIBIT C**

**C-1 Deed Notice as Institutional Controls**

**C-2 Engineering Controls**

***Block 1286, Lots 5 and 6A; Block 1286.S, Lots 1 & 2***

***City of Jersey City, New Jersey***

**C-1 Deed Notice as Institutional Controls  
Block 1286, Lots 5 and 6A; Block 1286.5, Lots 1 & 2  
City of Jersey City, New Jersey**

i. Exhibit C-1: Deed Notice as Institutional Controls: Exhibit C-1 includes a narrative description of the restriction and obligations of this Deed Notice that are in addition to those described above, as follows:

**(A) General Description of this Deed Notice.:**

**(1) Description and estimated size of the Restricted Areas as described above;**

*The NJCU Commercial AOC constitutes a portion of the Property known as Block 1286, Lots 5 and 6D, and the Property known as Block 1286.5, Lots 1 & 2 and constitutes the Restricted Area. The overall size of the Property is 17.3 acres. The NJCU Commercial AOC or Restricted Area is identified as the cap area on Exhibit Figure B-1; estimated at approximately 3.5 acres.*

**(2) Description of the restrictions on the NJCU Commercial AOC by operation of this Deed Notice; and**

*By operation of this Deed Notice, the NJCU Commercial AOC shall not be used for residential, day care, or educational uses, except administrative educational uses. Intrusive activities (i.e., excavation or digging) that breach the engineering controls (as described in Exhibit C-2) will only occur on the NJCU Commercial AOC with the appropriate measures. See Deed Notice for additional information; subsections 6A Alterations, Improvements, Disturbances, and 6B, Emergencies.*

**(3) The objective of the restrictions;**

*The restrictions will prohibit contact with soils above the NJDEP Soil Cleanup Criteria and with shallow groundwater above the NJDEP groundwater quality standard for total chromium.*

**(B) Description of the monitoring necessary to determine whether:**

**(1) Any disturbances of the soil in the NJCU Commercial AOC did not result in the unacceptable exposure to the soil or groundwater contamination;**

*Annual visual inspections of the NJCU Commercial AOC. Inspections and other monitoring of the NJCU Commercial AOC as set forth in the Long-Term Monitoring Plan developed pursuant to the Consent Decree.*

(2) There have been any land use changes subsequent to the filing of this Deed Notice or the most recent biennial certification, whichever is more recent;

*Same as (B)(1).*

(3) The current land use on the NJCU Commercial AOC is consistent with the restrictions in this Deed Notice;

*Same as (B)(1).*

(4) Any newly promulgated or modified requirements of applicable regulations or laws apply to the NJCU Commercial AOC; and

*Review of newly promulgated or modified requirements of applicable regulations or laws that potentially may apply to the NJCU Commercial AOC.*

(5) Any new standards, regulations, or laws apply to the NJCU Commercial AOC that might necessitate additional sampling in order to evaluate the protectiveness of the remedial action which includes this Deed Notice, and conduct the necessary sampling; and

*Same as (B)(4).*

(C) Description of the following items that will be included in the biennial certification:

(1) A monitoring report that describes the specific activities, pursuant to (A) and (B), above, conducted in support of the biennial certification of the protectiveness of the remedial action that includes this Deed Notice;

(2) Land use at the NJCU Commercial AOC is consistent with the restrictions in this Deed Notice; and

(3) The remedial action that includes this Deed Notice continues to be protective of the public health and safety and of the environment.

*The monitoring report will be included in the biennial certification. Components of the monitoring report will include the following:*

- A report of all conditions set forth in sections (A) and (B) above to assure that they have been adhered to, including evaluation of any available documents as a result of changes in land use or incidents.*



- *A report that determines whether or not the land use at the NJCU Commercial AOC has remained consistent with the restrictions in the Deed Notice.*
- *A report that determines whether or not the Deed Notice continues to be protective of the public health and safety and the environment.*

**C-2 Engineering Controls**  
**Block 1286, Lots 5 and 6A; Block 1286.5, Lots 1 & 2**  
**City of Jersey City, New Jersey**

ii. Exhibit C-2: Narrative description of the Engineering Controls including Existing Building Structures with concrete foundations and surrounding paved areas; and Proposed New Capping System, as follows:

(A) General Description of the engineering controls:

(1) Description of the engineering controls;

*The Engineering Controls consist of the following:*

*For soils with hexavalent chromium concentrations above 20 mg/kg, the engineering controls include a capping system consisting of: impervious geo-membrane liner; geo-composite drainage layer; and clean soil cover with minimum 12 inches thickness in areas where buildings or pavement are proposed; and 36-inches thickness in areas where the planting of trees and bushes is proposed and a minimum 24-inches thickness in areas where other vegetation is proposed. Engineering controls will also include clean fill to be placed in excavated areas. The engineering controls also include underground barrier walls and a system of wells, pumps and piping for the collection and treatment of shallow groundwater from the NJCU Commercial AOC.*

(2) The objective of the engineering controls; and

*The objective of the controls is to prevent direct contact with soils that exceed the NJDEP Soil Cleanup Criteria and shallow groundwater above the NJDEP groundwater quality standard for total chromium .*

(3) How the engineering controls are intended to function.

*The soil engineering controls are intended to function as a barrier to underlying and adjacent soils that exceed the NJDEP Soil Cleanup Criteria. The groundwater engineering controls are intended to restrict the flow of shallow groundwater, and to collect and treat contaminated groundwater from the NJCU Commercial AOC.*

(B) Description of the operation and maintenance necessary to ensure that:

(1) Periodic inspections of each engineering control are performed in order to determine its integrity, operability, and effectiveness;

*Performed annually by visual inspection of the NJCU Commercial AOC. In addition, Honeywell will perform quarterly monitoring by visual inspection of the NJCU Commercial AOC pursuant to the Consent Decree. Other monitoring activities shall be performed as set forth in the Long-Term Monitoring Plan developed pursuant to the Consent Decree.*

(2) Each engineering control continues as designed and intended to protect the public health and safety and the environment;

*Same as (B)(1) above.*

(3) Each alteration, excavation or disturbance of any engineering control is timely and appropriately addressed to maintain the integrity of the engineering controls;

*Same as (B)(1) above. Also, see Deed Notice and Consent Decree for additional information: subsections 6A Alterations, Improvements, Disturbances, and 6B Emergencies.*

(4) The engineering controls are being inspected and maintained and their integrity remains so that the remedial action continues to be protective of the public health and safety and of the environment;

*Same as (B)(1) above.*

(5) A record of the self-inspection dates, name of the inspector, results of the inspection and condition(s) of the engineering controls. Sampling, for example, may be necessary if it is not possible to visually evaluate the integrity/performance of the engineering controls; and

*Records of the inspections are to be maintained as listed in (5). Should the visual inspection or activities carried out in conformance with the Long-Term Monitoring Plan developed pursuant to the Consent Decree indicate that other activities are necessary, those activities will be listed and executed.*

(6) Any new standards, regulations, or laws apply to the NJCU Commercial AOC that might necessitate additional sampling in order to evaluate the protectiveness of the remedial action which includes this Deed Notice, and conduct the necessary sampling; and

*A review of any new standards, regulations, or laws will be conducted. Should the review indicate that other activities are necessary, those activities will be listed and executed.*

(C) Description of the following items that will be included in the biennial certification:

(1) A monitoring report that describes the specific activities, pursuant to (A) and (B), above, conducted in support of the biennial certification of the protectiveness of the remedial action that includes this Deed Notice;

(2) The engineering controls continues to operate as designed; and

(3) The remedial action that includes the engineering control continues to be protective of the public health and safety and of the environment.

*The monitoring report will be included in the biennial certification.  
Components of the monitoring report will include the following:*

- *A report of all conditions set fourth in sections (A) and (B) above to assure that they have been adhered to, including an evaluation to determine whether or not the engineering controls are continuing to meet the original objective and intended function.*
- *A report to determine whether or not the engineering controls continue to operate as designed.*
- *A report to determine whether or not the engineering controls continue to be protective of the public health and safety and of the environment.*

15. SIGNATURES. IN WITNESS WHEREOF, Owner has executed this Deed  
Notice as of the date first written above.

[If Owner is an individual]

WITNESS:

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print name below signature]

[If Owner is a corporation]

ATTEST:

\_\_\_\_\_  
[Name of corporation]

\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
[Print name and title]

\_\_\_\_\_  
[Signature]

[If Owner is a general or limited partnership]

WITNESS:

\_\_\_\_\_  
[Name of partnership]

\_\_\_\_\_

\_\_\_\_\_  
[Signature]

By \_\_\_\_\_, General  
[Print name]  
Partner

[If Owner is an individual]

STATE OF [State where document is executed] SS.:  
COUNTY OF [County where document is executed]

I certify that on \_\_\_\_\_, 20\_\_, [Name of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person [or if more than one person, each person]

(a) is named in and personally signed this document; and

(b) signed, sealed and delivered this document as his or her act and deed.

\_\_\_\_\_, Notary Public  
[Print Name and Title]

[If Owner is a corporation]

STATE OF [State where document is executed] SS.:  
COUNTY OF [County where document is executed]

I certify that on \_\_\_\_\_, 20\_\_, [Name of person executing document on behalf of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that:

(a) this person is the [secretary/assistant secretary] of [Owner], the corporation named in this document;

(b) this person is the attesting witness to the signing of this document by the proper corporate officer who is the [president/vice president] of the corporation;

(c) this document was signed and delivered by the corporation as its voluntary act and was duly authorized;

(d) this person knows the proper seal of the corporation which was affixed to this document; and

(e) this person signed this proof to attest to the truth of these facts.

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print name and title of attesting witness]

Signed and sworn before me on \_\_\_\_\_, 20\_\_

\_\_\_\_\_, Notary Public

\_\_\_\_\_  
[Print name and title]

[If Owner is a partnership]

STATE OF [State where document is executed] SS.:

COUNTY OF [County where document is executed]

I certify that on \_\_\_\_\_, 20\_\_, [Name of person executing document on behalf of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person:

- (a) is a general partner of [Owner], the partnership named in this document;
- (b) signed, sealed and delivered this document as his or her act and deed in his capacity as a general partner of [owner]; and
- (c) this document was signed and delivered by such partnership as its voluntary act, duly authorized.

\_\_\_\_\_  
[Signature]

\_\_\_\_\_, General Partner

[Print Name]

\_\_\_\_\_, Notary Public

\_\_\_\_\_  
[Print name and title]



# Exhibit G

### DEED

This Deed is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between **NEW JERSEY CITY UNIVERSITY**, a public institution of higher education of the State of New Jersey, having an address at 2039 Kennedy Boulevard, Jersey City, New Jersey 07305, as Grantor and **NEW JERSEY CITY UNIVERSITY**, a public institution of higher education of the State of New Jersey, having an address at 2039 Kennedy Boulevard, Jersey City, New Jersey 07305, as Grantee.

1. The Grantor grants and conveys (transfers ownership of) the property described below (hereinafter called the "Property") to Grantee in order to satisfy the requirement for such transfer imposed upon Grantor by paragraph 93 of the Consent Decree Regarding Remediation of the New Jersey City University Redevelopment Area ("the Consent Decree") entered by the United States District Court for the District of New Jersey on \_\_\_\_\_, 20\_\_ in *Riverkeeper v. Honeywell International, Inc.*, D.N.J., Civ. No. 06-22 (Consolidated with Civ. No. 05-5955) and recorded on \_\_\_\_\_, 20\_\_ in the Hudson County Register's Office in Book \_\_\_\_\_, at page \_\_\_\_\_.

2. This transfer is made for the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Grantor acknowledges receipt of this sum.

3. The Tax Map Reference for the Property is as follows: The City of Jersey City, New Jersey, County of Hudson: Block No. \_\_\_\_\_; Lot No. \_\_\_\_\_; Qualifier No. \_\_\_\_\_; Account No. \_\_\_\_\_.

4. The Property consists of all of the land and buildings and structures on the certain land in the City of Jersey City, County of Hudson and State of New Jersey as more fully described in the Legal Description annexed hereto as Schedule A and made a part hereof. A portion of the Property is the subject of a Deed Notice imposed pursuant to N.J.S.A. 58:10B-13 and N.J.A.C. 7:26E *et seq.* and recorded on \_\_\_\_\_ in the Hudson County Register's Office in Book \_\_\_\_\_, at page \_\_\_\_\_ ("Deed Notice") and is defined therein as the "Restricted Area" or the "NJCU Commercial AOC" (hereinafter "Restricted Area") which is more particularly described in Schedule B annexed hereto and made a part hereof.

5. This Deed and the conveyance of the Property hereunder are subject to each of the following:

(a) Each requirement set forth in the Deed Notice with respect to that portion of the Property referred to as the "Restricted Area" in said Deed Notice:

(b) Each right, benefit, protection and responsibility as set forth in paragraph 89 of the Consent Decree with respect to the Restricted Area; and

(c) The continuing obligation on the part of Grantee and all subsequent purchasers and lessees of the Restricted Area that, any and all further deed(s) and/or leases conveying or leasing any interest in the Restricted Area shall include each of the following,

- thereof;
- (i) The signature of the Grantee accepting and agreeing to the terms
  - (ii) The language set forth in this paragraph 5 and all of its subparts without modification; and
  - (iii) The language set forth in paragraph 6 without modification.

Notwithstanding the foregoing, the provisions of subparagraphs 5 (a), (b) and (c) hereof shall terminate as to any separate part of the Restricted Area upon the date that an Unrestricted Use No Further Action Determination, as defined in the Consent Decree, is issued for such separate part of the Restricted Area, except that this Deed and the conveyance hereunder shall remain subject that those requirements under the Deed Notice with respect to the Restricted Area as to any engineering controls in any separate part of the Restricted Area that may remain in place after the date of issuance of an Unrestricted Use No Further Action Determination.

6. The Grantee, for itself and its successors and assigns, by accepting this Deed and recording same, also agrees that any further deed and/or lease conveying or leasing all or any portion of the Restricted Area that does not expressly comply with the provisions of paragraph 5(a), (b) and (c) of this Deed as, when and to the extent required under paragraph 5 of this Deed, shall be null and void and the conveyance sought to be effectuated thereby shall be null and void and of no force and effect. The provisions of this paragraph 6 shall run with the land and be binding on Grantee and its successors and assigns.

7. The street address of the Property is: \_\_\_\_\_.

8. This Deed is signed and attested to by the Grantor's proper officers as of the date at the top of the first page of this Deed. This Deed is also signed and attested to by the Grantee's proper officers as of the date at the top of the first page of this Deed for the purpose of acknowledging and agreeing to its terms.

Attest:

**GRANTOR**

NEW JERSEY CITY UNIVERSITY

By: \_\_\_\_\_  
(Print Name): Carlos Hernandez  
Title: President

\_\_\_\_\_  
Secretary

Attest:

**GRANTEE**

NEW JERSEY CITY UNIVERSITY

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
(Print Name): Carlos Hernandez  
Title: President

STATE OF NEW JERSEY, COUNTY OF \_\_\_\_\_: SS.:

I CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_,  
\_\_\_\_\_, personally came before me and this person acknowledged under oath, to my  
satisfaction, that:

- (a) this person is the \_\_\_\_\_, secretary of \_\_\_\_\_  
corporation named in this Deed;
- (b) this person is the attesting witness to the signing of this Deed by the proper  
corporate officer who is \_\_\_\_\_ the President of the  
corporation;
- (c) this Deed was signed and delivered by the corporation as its voluntary act  
duly authorized by a proper resolution of its Board of Directors;
- (d) this person knows the proper seal of the corporation which was affixed to this  
Deed;
- (e) this person signed this proof to attest to the truth of these facts; and
- (f) the full and actual consideration paid or to be paid for the transfer of title is  
\$ \_\_\_\_\_ (such consideration is defined in N.J.S.A. 46:15-5).

Signed and sworn to before me on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Print name of attesting witness below signature)