

APPENDIX I

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JERSEY CITY MUNICIPAL UTILITIES AUTHORITY,)	
)	
Plaintiff,)	
)	
v.	)	Docket No. 05-5955(DMC)
	)	Consolidated under Docket
	)	No. 95-2097 (DMC)
HONEYWELL INTERNATIONAL INC.,)	
)	
Defendant.)	
)	
JERSEY CITY INCINERATOR AUTHORITY)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 05-5993
	)	Consolidated with Docket
	)	No. 05-5955 (DMC) under
HONEYWELL INTERNATIONAL INC.,	)	Docket No. 95-2097 (DMC)
)	
Defendant.)	
)	
)	
HACKENSACK RIVERKEEPER, INC.,)	
<i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.	)	Civil Action No. 06-22
	)	Consolidated with Docket
	)	No. 05-5955 (DMC) under
HONEYWELL INTERNATIONAL INC.,	)	Docket No. 95-2097
<i>et al.</i>)	
)	
Defendants.)	
)	

**FIRST AMENDED CONSENT DECREE REGARDING REMEDIATION
AND REDEVELOPMENT OF STUDY AREA 6 SOUTH**

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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 (DMC) (“*ICO v. Honeywell*”), ordering the remediation of an area designated by the New Jersey Department of Environmental Protection (“NJDEP”) as Study Area 7 by excavation of all chromium contamination on the property, under the oversight of a court-appointed Special Master;

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 (DMC), bringing claims against Honeywell International Inc. (“Honeywell”) under, *inter alia*, Section 6972 of the Resource Conservation and Recovery Act (“RCRA”), and 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 (DMC), bringing claims against Honeywell under, *inter alia*, Section 6972 of RCRA, and seeking remediation of chromium contamination on property then-owned by JCIA and other relief;

Whereas, on or about January 4, 2006, the Hackensack Riverkeeper, Inc., Captain William Sheehan, Reverend Winston Clarke, and Lawrence Baker (“Riverkeeper”) filed litigation styled *Hackensack Riverkeeper, Inc. v. Honeywell International Inc.*, D.N.J., Civ. No. 06-022 (DMC), bringing a claim against Honeywell under RCRA and seeking remediation of chromium contamination to soils, groundwater, surface waters, and sediments associated with

various properties collectively designated by NJDEP as Study Areas 5, 6 North, which includes the properties formerly owned by JCMUA and JCIA, and 6 South;

Whereas, Study Areas 6 North and South are directly adjacent to Study Area 7 on the north and south sides, respectively;

Whereas, Study Area 5 is comprised of properties to the east of Study Areas 6 North, 6 South, and 7 across Route 440;

Whereas, Riverkeeper also named as defendants in *Riverkeeper v. Honeywell* owners of the properties comprising Study Areas 5, 6 South, and 6 North;

Whereas, *JCMUA v. Honeywell*, *JCIA v. Honeywell*, and *Riverkeeper v. Honeywell* were consolidated by the Court (hereinafter the “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 in soils and groundwater on the Study Area 6 South property;

Whereas, on April 21, 2008, the Court entered the Consent Decree and Order Regarding Remediation and Redevelopment of Study Area 6 North (hereafter “the 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 April 21, 2008, the district court for the District of New Jersey entered the Settlement Consent Order by and between the Jersey City Entities and Honeywell International Inc. (hereafter “Jersey City/Honeywell Consent Order”), filed in the Consolidated Litigation simultaneously with the Study Area 6 North Decree, which resolved claims and cross-claims between Honeywell and the Jersey City Entities;

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 (hereafter “the 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;

Whereas, on May 13, 2011, Plaintiffs sent Honeywell a RCRA citizen action suit notice letter with respect to Site 163, and the Parties agree that the incorporation of Site 163 into this Consent Decree resolves any claims asserted, or that could have been asserted, in the RCRA notice letter or in any RCRA citizen suit with respect to Site 163;

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 Study Area 6 South that ensures the continued protection of human health and the environment and so that Study Area 6 and Study Area 7 can be redeveloped in keeping with Jersey City’s vision for a revitalized West Side;

Whereas, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, *et seq.*, as amended and supplemented (the “Redevelopment Law”) provides for municipalities to participate in the redevelopment and improvement of areas in need of redevelopment;

Whereas, Study Area 6 and Study Area 7 consist of parcels which by ordinance adopted by the City Council of Jersey City on February 27, 2008, have been determined to be “areas in

need of redevelopment” under the criteria of the Redevelopment Law because of conditions prevalent on those parcels;

Whereas, the settlement which is the subject matter of this Consent Decree contemplates the environmental remediation of Study Area 6 South and redevelopment of the parcels that comprise Study Areas 6 and 7 to create a major mixed use project in an important section of Jersey City; and

Whereas, each of the actions to implement this Consent Decree have been fully considered by the Honeywell, the Riverkeeper, and Jersey City as a means to accomplish the aforesaid purposes of this settlement:

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. **“20 to 1000 Soils”** shall mean those soils containing less than 1000 mg/kg of hexavalent chromium, but greater than 20 mg/kg. **“20 to 240 Soils”** shall mean those soils containing less than 240 mg/kg of hexavalent chromium, but greater than 20 mg/kg.
2. **Bayfront Redevelopment LLC** shall have the meaning set forth in paragraph 4.1 of the Jersey City/Honeywell Consent Order.
3. **COPR** shall mean Chromite Ore Processing Residue.
4. **Chromium Remedy or Chromium Remediation** shall mean the remedy set forth in Article III.
5. **Consolidated Litigation** shall mean *Jersey City Municipal Utility Authority v. Honeywell International Inc.*, D.N.J., Civ. No. 05-5955 (DMC), *Jersey City Incinerator*

Authority v. Honeywell International Inc., D.N.J., Civ. No. 05-5993 (DMC), and *Hackensack Riverkeeper, Inc. v. Honeywell International Inc.*, D.N.J., Civ. No. 06-022 (DMC).

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

7. **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.

8. **Deep Groundwater Remedy** shall mean the deep overburden and bedrock groundwater pump and treat remedy as required by the Order Approving the Deep Overburden Groundwater Remediation, entered on October 6, 2006, the Stipulation on Consent Regarding the Schedule for Implementation of Deep Groundwater Remedial Actions, entered on August 15, 2008, in *ICO v. Honeywell*, and the remedies required under the Deep Groundwater Consent Order.

9. **Development Area of Concern** (“AOC”) shall mean those portions of Study Area 6 South in which the hexavalent chromium concentration in the top 20 feet of soil below ground surfaces exceeds a concentration of 20 mg/kg, and for which future uses of the property may include commercial or residential development. The Open Space AOC shall not be part of the Development AOC and vice versa. The Development AOC consists of two parts: the Kellogg Street Development AOC and the Site 163 Development AOC. Collectively, the two parts shall be referred to as the “Development AOC.” The approximate boundaries of the Development AOC as a whole and its two parts are shown on Exhibit A, but the boundaries may be further defined in the implementation of the Chromium Remedy. For the Kellogg Street Development AOC, remedial measures shall assume only a residential use. For the Site 163 Development AOC, remedial measures shall be implemented with the goal of unrestricted use, but limitations

on future uses (including prohibiting residential use) in some or all of the Site 163 Development AOC may be part of the remedy as set forth in paragraph 61.

10. **Hackensack River Watershed Land Trust** shall mean the dedicated fund of the Hackensack Riverkeeper, Inc., established under Section 501(c) of the Internal Revenue Code for the purpose of acquiring and preserving open space within the Hackensack River watershed and administered by the Board of Trustees of the Hackensack Riverkeeper, Inc.

11. **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.

12. **Honeywell's Treatment Plant** shall mean the treatment plant currently located at 80 Kellogg Street that is used to treat, *inter alia*, chromium contaminated groundwater.

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

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

15. **JCIA** shall mean the Jersey City Incinerator Authority.

16. **JCMUA** shall mean the Jersey City Municipal Utilities Authority.

17. **Jersey City Entities** shall mean the City of Jersey City, including the Department of Public Works ("DPW") and other agencies and branches thereof, the JCIA, and the JCMUA.

18. **Jersey City/Honeywell Consent Order** shall mean the Settlement Consent Order by and between the Jersey City Entities and Honeywell International Inc. entered in the Consolidated Litigation on April 21, 2008.

19. **“L-Well Groundwater”** shall mean the groundwater found at the depth of the “L” wells on and near the former bowling alley property, NJDEP Site 124, located at 427 Route 440. The L-Well Groundwater is located within what has been referred to as the plume diversion area.

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

21. **NJDEP Chromium Directive** shall mean the Chromium Directive issued by NJDEP on February 8, 2007, and attached as Exhibit B.

22. **Open Space AOC** shall mean the portion of Study Area 6 South that is identified as The Promenade park and Grand Boulevard extending from Route 440 to the Hackensack River on page 39 of the Redevelopment Plan and for which the future uses of the property shall be restricted pursuant to paragraph 74, following remediation pursuant to paragraph 65. The Development AOC shall not be part of the Open Space AOC and vice versa. The approximate boundaries of the Open Space AOC are shown on Exhibit A, and the boundaries may be further defined in the implementation of the Chromium Remedy.

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

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

25. **Redevelopment Area** shall mean Study Area 6 North, Study Area 6 South, and Study Area 7, collectively.

26. **Redevelopment Law** shall mean the New Jersey Local Redevelopment and Housing Law, N.J.S.A. § 40A:12A1, *et seq.*, as amended and supplemented.

27. **Redevelopment Plan** shall mean the Bayfront I Redevelopment Plan as adopted by Jersey City on March 12, 2008.

28. **Remedial Investigation Work Plan Addendum or RIWP Addendum** shall mean the “Remedial Investigation Work Plan Addendum Study Area 6 South” submitted to NJDEP on June 27, 2008.

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

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

31. **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.

32. **Site** shall mean Study Area 6 South.

33. **Site Preparation Activities** shall mean those activities necessary to begin implementation of the Chromium Remedy in Article III of this Consent Decree, including, if appropriate, the temporary or permanent relocation of current activities and operations conducted on Study Area 6 South.

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

35. The **Special Master** shall mean Senator Robert G. Torricelli, appointed as the Special Master in *ICO v. Honeywell* and the Consolidated Litigation, and his successors or whomever the Court may appoint as Special Master.

36. **Stratum O** shall mean the layer composed of soft brown silty fine sand interlayered with soft gray silty clay and fine sandy to clayey silt generally located above the meadow mat below the Historic Fill and/or COPR.

37. **Study Area 5** shall mean that property comprising Sites 79, 90, 117, 153, and 184 of the Chromate Chemical Production Waste Sites designated by NJDEP, comprising approximately 42 acres and including (a) all such 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 such property owned by Elisabeth and Rafael Rosario consisting of Block 1292, Lot 49, located at 93 Fisk Street, Jersey City, New Jersey, (c) all such property owned by Michael Vo consisting of Block 1292, Lot 50, located at 95 Fisk Street, Jersey City, New Jersey, (d) all such property owned by NJCU consisting of Block 1286, Lots 5 and 6D and Block 1286.5, Lots 1 and 2, Jersey City, New Jersey, (e) all such property owned by Inland Southeast Jersey City LLC consisting of Lot 1, Block 1285.5 located at 440 Route 440, Jersey City, New Jersey, and (f) all such property owned by 425/445 Route 440 Property LLC, consisting of Block 1289.5, Lot E, Jersey City, New Jersey.

38. **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.

39. **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.

40. **Study Area 6 South** shall mean (a) that property currently owned by Bayfront Redevelopment Property LLC consisting of Site 73, located at 200 Kellogg Street Jersey City, Hudson County, New Jersey; (b) that property currently owned by Bayfront Redevelopment LLC consisting of Site 134, located at 100 Kellogg Street Jersey City, Hudson County, New Jersey; (c) that property currently owned by Bayfront Redevelopment LLC consisting of Site 140 located at 80 Kellogg Street Jersey City, Hudson County, New Jersey; (d) that property currently owned by Bayfront Redevelopment LLC consisting of Site 125, located at 60 Kellogg Street Jersey City, Hudson County, New Jersey; (e) that property currently owned by Bayfront Redevelopment LLC consisting of Site 124, Jersey City, Hudson County, New Jersey; (f) that property currently owned by Kellogg St/Harsimus Cove Realty located at 150 Kellogg Street, Jersey City, Hudson County, New Jersey, (g) that property currently owned by Bayfront Redevelopment LLC located at 38 Kellogg Street, Jersey City, Hudson County, New Jersey; (h) that property currently owned by Bayfront Redevelopment LLC located at 28 Kellogg Street, Jersey City, Hudson County, New Jersey; and (i) that property currently owned by Bayfront Redevelopment LLC, consisting of Site 163, formerly the Colonial Concrete Company, located at 75 Kellogg Street in Jersey City, Hudson County, New Jersey.

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

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

property currently owned by Bayfront Redevelopment LLC located at 465 Route 440, Jersey City, Hudson County, New Jersey.

43. **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.

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

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

45. This Court has jurisdiction over the Parties and subject matter of the Consolidated Litigation pursuant to Section 6972 of RCRA.

46. For purposes of this Consent Decree, the Riverkeeper Complaint in the Consolidated Litigation states claims upon which relief may be granted against Honeywell.

47. In the event that this Decree is not terminated by one or more Parties pursuant to paragraph 113, this Consent Decree resolves, settles, and satisfies all claims by Riverkeeper against Honeywell with respect to soils, shallow groundwater and L-Well groundwater at Study Area 6 South. This Consent Decree does not resolve any claims by Riverkeeper against Honeywell with respect to Study Area 5 or property owned by Regnal Realty consisting of Block 1288.2, lot 1, located at 420 Route 440, Jersey City, New Jersey.

48. 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.

49. This Consent Decree does not constitute an admission of liability on the part of any Party with respect to any claims, cross-claims, or counter-claims in the Consolidated Litigation.

ARTICLE III: CHROMIUM REMEDIATION

A. General Terms and Requirements

50. Responsibility for Implementation of Chromium Remediation. As between the Parties, Honeywell shall be responsible for and shall undertake remediation of COPR and chromium present in Study Area 6 South at Honeywell's sole cost and expense. Remediation of COPR and chromium present in Study Area 6 South shall be undertaken in accordance with the terms of this Consent Decree.

51. Designation of Chromium Areas of Concern. For the purposes of remediation, Study Area 6 South shall consist of two AOC's, designated as the Open Space AOC and the Development AOC as shown approximately on Exhibit A. The exact boundaries of the two AOC's shall be subject to further delineation during the design and implementation of the Chromium Remedy.

52. Consistency of the Chromium Remedy with NJDEP Guidance and Remedial Action Work Plan. The Chromium Remedy shall be consistent with the NJDEP Technical Requirements for Site Remediation, the Chromium Directive as issued by NJDEP on February 8, 2007 ("the NJDEP Chromium Directive"), and any Remedial Action Work Plan, including any modifications or addenda approved by NJDEP. Prior to submitting any Remedial Action Work Plan, Honeywell shall take all reasonable steps to ensure that the plan is consistent with the Chromium Remedy. However, this Consent Decree shall have precedence over any Remedial Action Work Plan in the event of any inconsistency. The approved Remedial Action Work Plan is a minimum standard, and the Chromium Remedy may be more protective than the remedy NJDEP approves.

53. General Scope of the Chromium Remedy. The Chromium Remedy shall address shallow groundwater and L-Well groundwater containing total chromium concentrations of 70 µg/l or greater and soil containing hexavalent chromium at concentrations of 20 mg/kg or greater within the top 20 feet of soil below the ground surface, and shall be consistent with the requirements set forth in this Article. The Chromium Remedy set forth in this Consent Decree addresses only the shallow and L-Well levels of groundwater (see paragraphs 69 - 72). The deep overburden and bedrock groundwater remediation, including source control, is addressed in the Deep Groundwater Consent Order.

54. Development of a Schedule for the Chromium Remedy. The Chromium Remedy shall be carried out diligently, and the development and implementation of any remedy required by NJDEP for non-chromium contamination shall not delay satisfaction of the milestones in the Schedule established pursuant to this paragraph. Within 90 days of entry of this Consent Decree, Honeywell shall propose a Master Schedule for the implementation of the Chromium Remedy .

(a) The Master Schedule shall incorporate the following dates:

(i) No later than August 15, 2008, Honeywell shall submit a Chromium Impacted Soils Pilot Test Work Plan to NJDEP and Riverkeeper;

(ii) No later than September 15, 2008, Honeywell shall complete field work in accordance with the RIWP Addendum;

(iii) No later than December 31, 2008, Honeywell shall submit an Initial Treatment Study Report and Remedial Action Work Plan pursuant to paragraph 86(c);

(iv) No later than July 31, 2012, Honeywell shall submit the soil and groundwater data from its 2010 and 2011 supplemental investigation of Site 163, a brief summary report, and

a designation of the boundaries of the Site 163 Development AOC to the Special Master pursuant to paragraph 86(c);

(v) No later than October 1, 2012, Honeywell shall submit an addendum to the Study Area 6 South 100% Design setting forth the 100% Design for the Site 163 Development AOC portion of the Study Area 6 South Chromium Remedy; and

(vi) Honeywell shall undertake, in good faith, to begin implementation of the Chromium Remedy by March 1, 2013.

(b) In addition, the Master Schedule shall propose deadlines for the following milestones:

(i) Submission of all documents subject to submission and review pursuant to paragraph 86(c);

(ii) Completion of those Site Preparation Activities necessary for the implementation of the Chromium Remedy;

(iii) Submission, following implementation of the soil components of the Chromium Remedy for the Development AOC, of the groundwater plans and reports required by paragraphs 70 and 72;

(iv) Completion of additional sampling for shallow groundwater delineation pursuant to paragraph 71 and a proposal for a remedy pursuant to paragraph 71, if needed;

(v) The submission of a 50% Design Report for the Chromium Remedy;

(vi) The submission of a 100% Design Report for the Chromium Remedy;

(vii) The date for completion of the installation of the Chromium Remedy;

(viii) Implementation of the long-term protections of the Open Space AOC established pursuant to paragraph 74; and

(ix) Transfer of the Open Space AOC to Jersey City pursuant to paragraph 74(a)(iii).

B. Initial Chromium Remedy Steps: Delineation, Treatment Study, and Remedial Action Work Plan

55. **Delineation of Development AOC.** Honeywell shall conduct further soil sampling on Study Area 6 South in accordance with the RIWP Addendum. In addition to the locations set forth in the RIWP Addendum, Honeywell shall conduct further soil sampling pursuant to the provisions of the RIWP Addendum at the boring locations set forth in Exhibit E. Upon completion of the soil sampling required by this paragraph, Honeywell shall submit a Second Supplemental Remedial Investigation Report that sets forth the results of the sampling and Honeywell's proposal as to the delineation of the Development AOC. In conjunction with its proposal, Honeywell shall set forth its rationale as to whether prior sampling data should be included or excluded in the proposed delineation. The soil sampling and submission of a Second Supplemental Remedial Investigation Report shall be completed in accordance with the Schedule set forth in paragraph 54. Honeywell shall submit the Second Supplemental Remedial Investigation Report pursuant to paragraph 86(c). The Site 163 Development AOC shall be exempt from the requirements of paragraphs 55-58.

56. **Conduct of a Treatment Study in the Development AOC.** Honeywell shall conduct a field study of the efficacy of *in situ* treatment of 20 to 1000 Soils in accordance with the Chromium Impacted Soil Pilot Test Work Plan. The purpose of the pilot test shall be to evaluate whether *in situ* chemical treatment of 20 to 1000 Soils with one or more reductants can result in the permanent establishment of hexavalent chromium concentrations below 20 mg/kg under conditions in those areas of the Development AOC that may be subject to treatment as a remedy. Honeywell shall provide the raw data from the pilot test to NJDEP and Riverkeeper in scientifically useable electronic form as soon as the data become available. Honeywell shall

submit an Initial Treatment Study Report setting forth the initial results of the pilot test pursuant to paragraph 86(c) .

57. Continued Monitoring of the Treatment Study. As the result of the need to complete Study Area 7 remediation, to maintain Study Area 7 remediation support operations currently located on Study Area 6 South, and to conduct Site Preparation activities including the relocation of operating businesses on Study Area 6 South in advance of implementation of the Chromium Remedy, the Parties do not anticipate that implementation of field work for the Chromium Remedy will begin until March 1, 2013. Honeywell shall continue to monitor the performance of the pilot test and shall submit a Final Treatment Study Monitoring Report assessing the long term effectiveness of treatment for 20 to 1000 Soils in the Development AOC pursuant to paragraph 86(c) no later than December 31, 2011.

58. Submission of a Remedial Action Work Plan. On or before December 31, 2008, Honeywell shall submit a Remedial Action Work Plan for the Chromium Remedy pursuant to paragraph 86(c). The Remedial Action Work Plan shall be consistent with the Chromium Remedy set forth in this Consent Decree.

C. Development AOC Soil Remedy

59. Remedial Components. In the Development AOC, soils containing hexavalent chromium at concentrations greater than 20 mg/kg shall be remediated as follows:

(a) Soils with a concentration greater than 1000 mg/kg shall be:

(i) Excavated and disposed of off-site at a waste disposal facility licensed to accept such waste; or

(ii) Treated *ex situ* and consolidated under the cap in the Open Space AOC provided the requirements of paragraphs 60 and 63 are satisfied and provided that such soils do not

require venting of gases and do not serve as the basis for gas venting as set forth in paragraph 65(a).

(b) 20 to 1000 Soils shall be:

(i) Excavated and consolidated within the Open Space AOC provided that such soils do not require venting of gases and do not serve as the basis for gas venting as set forth in paragraph 65(a); or

(ii) Excavated and disposed of off-site pursuant to the requirements of paragraph 59(a); or

(iii) Remediated pursuant to paragraphs 59(c) or 59(d) provided that such soils are also 20 to 240 soils and meet the requirements of paragraphs 59(c) or 59(d).

(c) 20 to 240 Soils may be remediated by excavation and consolidation within the Study Area 6 North AOC 1 Open Space Area, provided that such soils do not require venting of gases and shall not serve as the basis for the inclusion of gas venting as part of the Study Area 6 North AOC 1 Open Space Area remedy.

(d) 20 to 240 Soils within the Site 163 Development AOC may be remediated by *in situ* treatment, provided the requirements of paragraph 61 are satisfied.

60. Treatment and Consolidation of Soils Containing Greater than 1000 mg/kg Hexavalent Chromium. *Ex situ* treatment and consolidation under the Open Space AOC cap may be used as a remedial component for soils containing greater than 1000 mg/kg hexavalent chromium provided that the requirements of this paragraph are satisfied:

(a) Honeywell demonstrates in the Final Treatment Study Monitoring Report that the proposed treatment will likely result in the reduction of the hexavalent chromium concentration of the treated soils such that the post-treatment total chromium concentration shown by Toxicity

Characteristic Leaching Procedure SW-846, Test Method 1311, is less than 5 mg/l and the soils are no longer classified as hazardous waste under 40 C.F.R. 261.24 (Subpart C);

(b) Following a review of the demonstration required by paragraph 60(a) pursuant to the NJDEP review process set forth in paragraph 86(d), NJDEP agrees that Honeywell has made the demonstration required by paragraph 60(a).

(c) Plaintiffs have had an opportunity to review and comment on the demonstration required by paragraph 60(a) pursuant to the NJDEP review process set forth in paragraph 86(d) and pursuant to the Special Master review process set forth in paragraphs 86(e)-86(f); and

(d) Following review of the demonstration required by paragraph 60(a) pursuant to the Special Master review process set forth in paragraph 86(f), the Special Master issues a recommendation finding that Honeywell has made the demonstration required by paragraph 60(a) or the Court finds that Honeywell has made the demonstration required by paragraph 60(a) in the event that any Party seeks the Court's review of the Special Master's recommendations under this paragraph.

61. Treatment as a Remedial Component for 20 to 240 Soils. *In situ* treatment may be used as a remedial component for the 20 to 240 Soils in the Site 163 Development ACO, provided that such soils are 3 feet or more below ground surface and the requirements of this paragraph are satisfied:

(a) If Honeywell elects to treat *in situ* 20 to 240 Soils in the Site 163 Development AOC, Honeywell shall include in the 100% Design Addendum for Site 163 a plan for such treatment. Such treatment plan shall be comparable in detail and approach to the pipeline treatability plan which is Appendix F to the Study Area 6 North 100% Design. The goal of such *in situ* treatment

shall be to reduce hexavalent chromium soil concentrations to less than 20 mg/kg in soils 20 feet or less below ground surface;

(b) Three years after conducting the treatment set forth in subparagraph (a), Honeywell shall collect additional soil samples in the treated areas to evaluate the success of the treatment. These soil samples shall be analyzed for EH, pH, hexavalent chromium (using EPA/NJDEP Methods 3060A/7199), and sulfides (using EPA Method 9030B). Within 60 days of its receipt of the final data from such sampling, Honeywell shall submit a report with such data to the Special Master pursuant to paragraph 86(c);

(c) In the event that the sampling pursuant to subparagraph (b) shows that soils with greater than 20 mg/kg hexavalent chromium remain or that excess treatment reductant remains present, Honeywell may elect to pursue one or more of the following approaches after providing notice to the Special Master, Riverkeeper and the Jersey City Entities;

(i) In the case of excess treatment reductant remaining in the soil, continue to monitor such areas pursuant to subparagraph (b) until the excess reductant is no longer present;

(ii) In the case of soils with greater than 20 mg/kg hexavalent chromium:

(1) Excavate such soils and consolidate them under the cap in the Open Space AOC, consolidate them under the cap in the Study Area 6 North AOC 1 Open Space Area, and/or dispose of them off-site provided that in each instance the applicable requirements of paragraph 59 are satisfied;

(2) Conduct further *in situ* treatment using additional treatment reductant and submit a monitoring plan pursuant to paragraph 64; or

(3) In the event that the soils are within the areas depicted as River Front Park, Riverfront Drive or Kellogg Street on page 39 of the Redevelopment Plan, cover the affected

soils with a road, walkway, and/or other hardscape and restrict the use of that area through each of the following institutional controls:

(a) Issuance and recording of a conservation restriction comparable to that required under paragraphs 74(b) and 74(d);

(b) Transfer of title to that area to Jersey City pursuant to paragraphs 74(a)(iii) through 74(a)(iv)(2); and

(c) Issuance and recording of a deed notice comparable to that required under paragraphs 74(c) and 74(d).

62. Submissions Related to Site 163. Pursuant to the Schedule, Honeywell shall prepare and submit the following with regard to Site 163:

(a) A summary report of all chromium soil and groundwater data collected during site investigations in 2010 and 2011; and

(b) An addendum incorporating Site 163 into the 100% Design.

63. Post-Treatment Analysis of Soils Containing Greater than 1000 mg/kg Hexavalent Chromium. In the event that *ex situ* treatment is used as a final remedy for any portion of the soils containing greater than 1000 mg/kg pursuant to paragraph 59(a)(ii), Honeywell shall conduct post-treatment analysis of each treated batch of soil to demonstrate that the treatment has resulted in the reduction of the hexavalent chromium concentration such that the post-treatment total chromium concentration shown by Toxicity Characteristic Leaching Procedure SW-846, Test Method 1311, is less than 5 mg/l and the soils are no longer classified as hazardous waste under 40 C.F.R. 261.24 (Subpart C). Such monitoring and demonstration shall be made prior to consolidation of the treated soils under the Open Space AOC cap pursuant to paragraph 59(a)(ii). In the event that Honeywell fails to make the demonstration required by this paragraph,

Honeywell shall dispose of the soils off-site at a waste disposal facility licensed to accept such waste.

64. Post-Treatment Monitoring for 20 to 1000 Soils. In the event that *in situ* treatment is used as a final remedy for any portion of the 20 to 1000 Soils, Honeywell shall conduct post-treatment monitoring to demonstrate that the treatment has resulted in permanent hexavalent chromium concentrations of less than 20 mg/kg in the treated area. Honeywell shall propose a program of post-treatment monitoring in a document that is submitted pursuant to paragraph 86(c). In the event that Honeywell fails to make the demonstration required by this paragraph, Honeywell shall propose further remedial actions pursuant to paragraph 59 in a document that is submitted pursuant to paragraph 86(c).

D. Open Space AOC Components of the Chromium Remedy

65. Open Space AOC Soil Remedy. In the Open Space AOC, the soil remedy shall consist of an engineered RCRA cap to isolate contaminated soils with gas venting, if necessary, to address the generation of methane and other naturally occurring gases in the Stratum O and/or Stratum D in the Open Space AOC. Soils consolidated under the cap, pursuant to paragraph 59(b)(i), shall not require gas venting and shall not be the basis for the inclusion of gas venting as a component of the cap. The cap shall be designed and constructed so that:

(a) The cap shall consist of a gas collection system, if gas venting is necessary, 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;

(b) All utilities, including those supporting the pump-and-treat system for groundwater remediation, with the exception of any extraction wells or collection trenches, shall be placed above the cap (but may be below the ground surface and/or contained within utility corridors). In the event that above-cap-grade gas collection and treatment is selected or is needed to meet current or future regulatory requirements, such collection and treatment facilities are prohibited in the Open Space AOC, except for piping to connect the sub-liner collection system with the treatment facilities; and

(c) Exclusive of roadways, the cap shall be overlain by layers of clean fill, backfill and/or overburden with an average depth of at least three feet and a minimum depth of at least two feet provided that any layer that incorporates overburden shall be below at least two feet of clean fill. Any clean fill or backfill soil brought to the Site will either meet all applicable federal and NJDEP criteria, including NJDEP residential soil criteria, or comply with a beneficial soil reuse plan that is approved by NJDEP and subject to review and comment by the Parties and approval by the Special Master. One foot of clean fill, covered with bituminous blacktop, shall be sufficient cover where roads, walkways, or other paved surfaces are located within the Open Space AOC. All clean soil fill in areas that will not involve paved roads, walkways, or other paved surfaces shall be vegetated in such a manner as to protect and maintain the required depth of the clean soil fill and to ensure that such vegetation shall not cause any interference with or penetration of the cap.

(d) The existing overburden soils in the Open Space AOC shall first be stripped off and set aside for use. If hexavalent chromium concentrations in the overburden exceed 20 mg/kg, the overburden shall be placed under the cap. If hexavalent chromium concentrations in the overburden do not exceed 20 mg/kg, the overburden may be placed above the cap but below the

two feet of clean fill required by paragraph 65(c). Excavated 20 to 1000 Soils from the Development AOC shall be placed and spread in the Open Space AOC under the cap. Both the chromium impacted soils and the previously stripped overburden shall be suitably compacted according to design specifications. Debris, to the extent it would interfere with the compaction specification requirements of the 100% Design, shall not be placed under the cap. The engineered cap shall be installed over the chromium-impacted soils exceeding 20 mg/kg hexavalent chromium.

E. Demolition, Grading, and Backfill Requirements

66. **Demolition and Grading Activities.** During demolition and grading activities, adequate protective measures shall be taken to protect site workers and the community from airborne dusts and exposures to contaminated soils.

67. **Backfill Requirements.** Soils excavated from the Development AOC shall be replaced with backfill soil. Any backfill soil brought to the Site shall either meet all applicable federal and NJDEP criteria, including NJDEP residential soil criteria, or comply with a beneficial soil reuse plan that is approved by NJDEP and subject to review and comment by the Parties and approval by the Special Master.

68. **Vegetation of Clean Fill.** All clean soil fill in areas that will not involve paved roads, sidewalks, paths, walkways, or building structures shall be vegetated in such a manner to protect and maintain the required depth of clean soil fill.

F. Groundwater Components of the Chromium Remedy

69. **Shallow Groundwater Remedy for the Open Space AOC.** The Open Space AOC shallow groundwater remedy shall consist of hydraulic barriers with a pump-and-treat system designed to isolate shallow groundwater and to intercept and treat shallow groundwater flowing

above the meadow mat in the Open Space AOC to the extent that such groundwater contains total chromium in concentrations in excess of 70 µg/l. The shallow groundwater remedy shall consist of the following:

(a) The existing soil/cement/bentonite wall on the boundary of Study Area 6 South and Study Area 7 shall be incorporated into the other engineering controls;

(b) Subterranean slurry walls or other hydraulic barriers shall be installed along the southern, eastern and western sides of the Open Space AOC and keyed into the meadow mat or Stratum O or to comparable depths below ground surface;

(c) A groundwater extraction system shall be established that shall consist of (i) one or more shallow extraction wells, sumps, or french drains within the Open Space AOC; (ii) pumps; and (iii) underground piping to convey any extracted water to Honeywell's Treatment Plant;

(d) The capture zone for the shallow groundwater remedy shall include at least the entire area of contaminated shallow groundwater within the Open Space AOC;

(e) A plan for control of water levels shall be developed;

(f) In the event that underground structures are demolished, the plans shall address the need for special attention for structures that extend below the meadow mat in order to control needed water levels; and

(g) Honeywell shall submit such information as is required to allow NJDEP to establish a classification exception area for groundwater at the Site, in accordance with NJDEP regulations.

70. The Shallow Groundwater Remedy for the Development AOC. Following implementation of the Development AOC soil components of the Chromium Remedy, Honeywell shall submit a report to (a) determine whether shallow groundwater remaining in the

Development AOC exceeds 70 µg/l total chromium and, (b) if so, evaluate the need for further remedial measures to address any such shallow groundwater remaining in the Development AOC with total chromium concentrations in excess of 70 µg/l. This evaluation shall be subject to review and comment by the Parties and approval by the Special Master.

(a) In the event that the evaluation demonstrates that further remedial measures are necessary, Honeywell shall propose such measures subject to review and comment by the Parties and approval by the Special Master;

(b) The capture zone of any remedy shall include at least the entire area of contaminated shallow groundwater except for shallow groundwater that is captured and subject to the shallow groundwater remedy for the Open Space AOC pursuant to paragraph 69;

(c) In the event that a pump-and-treat system is selected as a contingency measure for shallow groundwater in the Development AOC, all infrastructure for the pump-and-treat contingency system that is needed to ensure that the contingency system is fully operational, as required by paragraph 70(d), shall be installed prior to or in conjunction to any development of the Site. This includes at least one shallow extraction well, sump, or french drain, and the piping to convey any extracted groundwater to Honeywell's water treatment plant;

(d) If it is determined that the pump-and-treat contingency system must be activated, the pump-and-treat system shall be operational no later than six months after the date of the determination.

71. Off-Site Shallow Groundwater Remedy. Honeywell shall propose additional sampling to complete delineation of contaminated shallow groundwater in the area to the southeast of the Site. Honeywell shall submit a report of the results of such sampling and, in the event that contaminated shallow groundwater is found to extend off-site, a proposal for a remedy based on

such results. The report and the proposal for a remedy shall be subject to review and comment by the Parties and approval by the Special Master.

72. L-Well Groundwater Remedy. At the time this Decree is entered, the L-Well Groundwater is contained and not contributing to further contamination of surrounding waters and/or soils. However, in order to verify that this status continues following implementation of the Chromium Remedy, including any groundwater remedial measures pursuant to paragraphs 70 and 71, Honeywell shall propose a plan for one round of monitoring designed to evaluate whether the L-Well Groundwater remains contained. The plan shall include monitoring for total and hexavalent chromium and major ion chemistry to determine whether there has been movement in the L-Well Groundwater.

(a) In the event that no substantial change is detected in the major ion chemistry, no further action is required unless paragraph 72(c) is applicable.

(b) In the event that substantial changes are detected in the major ion chemistry, Honeywell shall propose a plan for further monitoring of the L-Well Groundwater. Such a plan shall be subject to review and comment by the Parties and approval by the Special Master.

(c) In the event that the initial monitoring or monitoring conducted pursuant to paragraph 72(b) demonstrates that proximate waters have total chromium concentrations in excess of 70 µg/l, regardless of whether there is a change in the major ion chemistry, Honeywell shall propose a remediation plan for the L-Well Groundwater. Such remediation plan shall be subject to review and comment by the Parties and approval by the Special Master.

G. Permits and Authorizations

73. Permits and Authorizations. Honeywell shall obtain all necessary federal, state, and local permits and authorizations to carry out the Chromium Remedy as set forth in this Article.

H. Long-Term Monitoring, Maintenance, and Protection of Engineering and Institutional Controls

74. Protection of the Open Space AOC. Except as provided in paragraphs 74(j) and 74(k), development in the Open Space AOC shall be prohibited. The Open Space AOC shall be protected against activities that may jeopardize the integrity of the cap and/or the groundwater remedial measures that shall be installed in the Open Space AOC pursuant to the Chromium Remedy or that may impede the long-term monitoring and maintenance of the cap and/or groundwater remedial measures. It is the intention of the Parties to implement different layers of protection, which alone or in concert, impose restrictions on development, run with the land, and survive all parties. Accordingly, the following actions shall be taken pursuant to the Schedule provided in paragraph 54:

(a) Ownership of and Access to the Open Space AOC. Ownership of and access to the Open Space AOC shall be in accordance with the following:

(i) Bayfront Redevelopment LLC, as the current owner in fee simple absolute of all property that comprises the Open Space AOC, shall not convey any rights or interests in any parcel that comprises the Open Space AOC property except as provided in this Decree. Within 90 days of entry of this decree, Bayfront Redevelopment LLC shall give Jersey City an option to buy all of the Open Space AOC property prior to the planned transfer pursuant to paragraph 74(a)(iii). Such option to buy shall be subject to the conservation restriction imposed pursuant to paragraph 74(b). Jersey City shall exercise the option to buy the Open Space AOC in the event that the conditions allowing for withdrawal of funds from the financial assurance mechanisms under paragraphs 98(c) or 98(d) are met;

(ii) Within 90 days of the entry of this Consent Decree, Bayfront Redevelopment LLC shall grant a conservation restriction for the Open Space AOC pursuant to the requirements of paragraph 74(b);

(iii) Upon the final construction of all roads and utility corridors within the Open Space AOC, Bayfront Development LLC shall donate good and marketable title to all the land comprising the Open Space AOC to Jersey City. In conjunction with such donation, Bayfront Redevelopment LLC shall petition to subdivide the properties within Study Area 6 South to create a new parcel(s) comprising the Open Space AOC. At the time of the donation, Jersey City shall grant Honeywell an easement for the purpose of monitoring and maintaining the Chromium Remedy. Jersey City shall also grant Honeywell all necessary access to the Open Space AOC by license or such other mechanisms as may be appropriate for purposes of monitoring and maintaining the Chromium Remedy. After it acquires title pursuant to this paragraph, Jersey City shall retain ownership of the Open Space AOC unless and until it shall have complied with the requirements of paragraph 74(a)(iv);

(iv) After it acquires title pursuant to this paragraph, Jersey City shall not convey or enter into any lease of the Open Space AOC to any other person or entity unless it has first satisfied either of the following conditions:

(1) Jersey City has obtained the Special Master's (or if the Special Master's appointment has expired, the Court's) approval to convey the Open Space AOC to a government entity that has the capacity and willingness to fulfill Jersey City's obligations under the Consent Decree with respect to the Open Space AOC and such entity agrees to submit to the Court's jurisdiction and to be bound by the requirements of the Consent Decree that Jersey City has committed to fulfill with respect to protection of the Open Space AOC pursuant to this paragraph

and routine maintenance of the permissible development in the Open Space AOC pursuant to paragraph 78(d); or

(2) The Open Space AOC has been remediated such that no hexavalent or total chromium contamination remains in the Open Space AOC, 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, and Jersey City has demonstrated to the Special Master and/or the Court, as appropriate, that such remediation has been completed in accordance with all applicable requirements.

(b) **Conservation Restriction.** Prior to the grant of the option to buy pursuant to paragraph 74(a)(i), Bayfront Redevelopment LLC shall grant an open space conservation restriction, pursuant to N.J.S.A. 13:8-B-1, *et seq.*, over the Open Space AOC substantially in the form set forth in Exhibit C. Exhibit C is a conservation restriction that is consistent with the terms of this paragraph and this Consent Decree. The conservation restriction shall allow for the implementation, maintenance, monitoring, repair and replacement of the Chromium Remedy and development consistent with paragraphs 74(j) and 74(k), including the construction and placement of roads and utilities. The Conservation Restriction shall also allow for current uses of the Open Space AOC to continue until such time as construction of the Chromium Remedy begins. The Hackensack River Watershed Land Trust shall be the primary holder of the conservation restriction, with all rights of monitoring and enforcement. Riverkeeper shall propose an entity to serve as the secondary holder of the conservation restriction subject to comment by the Parties and review by the Special Master. The secondary holder shall have secondary rights of monitoring and enforcement.

(i) The conservation restriction shall be incorporated into this Consent Decree and made part of this Consent Decree. The final, executed conservation restriction shall be lodged with the Court and entered as an order of the Court. The conservation restriction shall be enforceable in this Court, in the same manner as this Consent Decree.

(ii) The conservation restrictions provided under this Consent Decree shall be consistent with the prohibited and permitted development of the Open Space AOC as set forth in paragraphs 74(j) and 74(k) below.

(iii) Jersey City shall not take any action, whether through exercise of any power of eminent domain, application to the State of New Jersey for approval of a diversion of public park or recreation land, legal challenge to the validity or enforceability of the conservation restriction, or otherwise, the effect of which would be to in any way terminate, abrogate, or diminish the terms, conditions, or purposes of the conservation restriction. If, notwithstanding the preceding sentence, Jersey City proceeds with a condemnation or other action, the result of which would be to terminate, abrogate, or otherwise diminish the terms, conditions, or purposes of the conservation restriction, Jersey City shall, before taking any such action satisfy all of the conditions set forth in paragraph 74(a)(iv)(2).

(iv) Notwithstanding the foregoing, the conservation restriction may be terminated upon application of any Party when no hexavalent or total chromium contamination remains in the Open Space AOC, 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.

(c) **Deed Notice.** Upon completion of the Chromium Remedy, the Open Space AOC shall be subjected to the deed notice substantially in the form set forth in Exhibit D that restricts

future activities on the Open Space AOC. Nothing in the deed notice shall be construed as preventing the imposition of more stringent restrictions on the development allowed in the Open Space AOC pursuant to this paragraph and, in particular, the conservation restriction provided for in paragraph 74(b).

(d) Recording of the Consent Decree, Conservation Restriction, and Deed Notice.

This Consent Decree, the conservation restriction imposed pursuant to paragraph 74(b), and the deed notice imposed pursuant to paragraph 74(c) shall be recorded, pursuant to N.J.S.A. §§ 46:15-1.1, 46:16-1.1, and 46:16-2, in the office of the Hudson County Register and a conspicuous reference to the Consent Decree, conservation restriction, and deed notice shall be included in all instruments concerning title to the Open Space AOC. Any Party shall have the right, periodically, but no more than once every 25 years, to record memoranda or other instruments that reference, incorporate, or attach this Consent Decree, the conservation restriction, the deed notice, and/or any further orders of the Court related to the Open Space AOC in the real estate records related to the Open Space AOC.

(e) Zoning. Pursuant to the Redevelopment Plan, the Open Space AOC is designated for open space and park. Jersey City shall not amend or change this designation unless it first satisfies the requirements of paragraph 74(a)(iv)(2).

(f) Recreation and Open Space Inventory. Upon acquiring fee simple absolute title to the Open Space AOC, Jersey City shall add those portions of the Open Space AOC not covered by roads, the pedestrian thoroughfare, and utility corridors adjacent to roads onto its Green Acres Program Recreation and Open Space Inventory (“ROSI”) pursuant to N.J.A.C. § 7:36 and shall specify in such listing that it is subject to (i) Honeywell’s prior easement to monitor, maintain, repair, and replace the Chromium Remedy; (ii) the actions necessary to implement, monitor,

maintain, repair, and replace the Chromium Remedy; (iii) the actions necessary to install any development permissible under paragraphs 74(j) and 74(k); and (iv) the conservation restriction imposed pursuant to paragraph 74(b). Jersey City shall also take all steps necessary or appropriate to notify the New Jersey Green Acres Program that such portions of the Open Space AOC have been added to its ROSI, such that those portions of the Open Space AOC shall thereafter be subject to all procedural and regulatory requirements applicable under the Green Acres Program, including prohibitions against diversion.

(g) **Eminent Domain.** If all or part of the Open Space AOC is taken in exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, by any public, corporate, or other authority so as to terminate, abrogate, or limit the restrictions created by this Consent Decree or the conservation restriction imposed pursuant to paragraph 74(b), in whole or in part, any Party may take appropriate actions to challenge such taking if there is a reasonable legal basis for doing so. In the event that the Parties are unable to prevent a taking notwithstanding their reasonable and appropriate efforts, any Party may take appropriate actions to recover the full value of the interests in the Open Space AOC subject to the taking or in lieu purchase, and all direct and incidental damages, costs, and fees occasioned thereby.

(h) **Environmental Covenant.** In the event that New Jersey enacts the Uniform Environmental Covenants Act or its substantial equivalent, the Parties shall address the issue of whether an environmental covenant shall be established for the Open Space AOC under the statute. If the Parties are unable to reach agreement on establishment of an environmental covenant, the Parties shall submit the dispute to the Special Master, who shall recommend a resolution of the dispute. The Special Master shall recommend adoption of an environmental covenant if it would provide substantial additional protection for the Open Space AOC without

unreasonably harming the interests of any Party. Any Party shall have the right to seek review by the Court of the Special Master's recommendation or consideration by the Court of the dispute in the event that the Special Master's appointment has expired.

(i) **Future Protections.** Any Party shall have the right to propose consideration of additional or substitute protections for the Open Space AOC. If the Parties are unable to reach agreement with regard to the proposal, the Parties shall submit the dispute to the Special Master, who shall recommend a resolution of the dispute. The Special Master shall recommend adoption of additional or substitute protections for the Open Space AOC if they would provide substantial additional protection for the Open Space AOC without unreasonably harming the interests of any Party. Any Party shall have the right to seek review by the Court of the Special Master's recommendation or consideration by the Court of the dispute in the event that the Special Master's appointment has expired.

(j) **Prohibited Development in Open Space AOC.** Only development satisfying the requirements of this paragraph and paragraph 74(k) shall be permitted in the Open Space AOC. All other development in the Open Space AOC shall be prohibited.

(i) Honeywell shall establish Open Space Design Standards that shall govern all development in the Open Space AOC regardless of when the construction or installation of permissible development occurs. The Open Space Design Standards shall satisfy each of the requirements set forth in paragraph 74(j)(v) and shall set forth the requirements for development that are necessary for the protection of the integrity of the Chromium Remedy.

(ii) The Initial Development in the Open Space AOC shall be the development undertaken following the completion of the Chromium Remedy in the Open Space AOC. The Initial Development may occur in one or more phases. Honeywell and Bayfront

Redevelopment LLC shall prepare a Development Plan before the initiation of each phase of the Initial Development. The Initial Development Period for each phase shall consist of the period covered by the Initial Development, plus a period of 10 years following the submission of the as-built documentation for the phase pursuant to paragraph 74(j)(viii).

(iii) The Special Master shall have jurisdiction to review the Open Space Design Standards and the Development Plan(s) solely for the purpose of ensuring that any development undertaken during the Initial Development Period is consistent with this Consent Decree and with protection of the integrity of the Chromium Remedy. The Special Master's jurisdiction with regard to development in the Open Space AOC shall run through the Initial Development Period for each phase.

(iv) Honeywell shall ensure that the requirements of this paragraph and paragraph 74(k) are satisfied with regard to any development undertaken within the Initial Development Period. Honeywell shall also ensure that any development undertaken within the Initial Development Period is designed and installed in a manner consistent with this Consent Decree and with protection of the integrity of the Chromium Remedy.

(v) Any development undertaken in the Open Space AOC, regardless of when undertaken, shall satisfy each of the following requirements:

- (1) It shall not jeopardize the integrity of the Chromium Remedy;
- (2) It shall be limited to the types of development permitted under paragraph 74(k);
- (3) It shall be consistent with this Consent Decree, including the conservation restriction imposed pursuant to paragraph 74(b), and the Redevelopment Plan; however, in the

event of any conflict or inconsistency between this Decree and the Redevelopment Plan, this Decree shall govern;

(4) In total, at least 75% of the Open Space AOC, exclusive of the acreage used for roads and the pedestrian thoroughfare, shall be comprised of landscaping, as defined by paragraph 74(k)(xi);

(5) The portion of the Open Space Design Standards necessary for protection of the Chromium Remedy as related to all roads, the pedestrian thoroughfare and associated utility corridors as well as the general location of such items shall be included in the 100% Design of the Chromium Remedy;

(6) If the lowest elevation for the bedding for any utility line, including irrigation or sprinkler lines, is two feet from the top of the warning layer of the cap, the utility line shall be placed in a utility corridor;

(7) In any event, there shall be two feet of soil or more between the warning layer of the cap and the lowest elevation of the bedding for any irrigation or sprinkler lines; and

(8) No permanent concession facilities shall be permitted.

(vi) Honeywell shall submit the Open Space Design Standards and the Development Plan(s) for any development undertaken during the Initial Development Period pursuant to the requirements of paragraph 86(c), except that such documents need not be submitted to NJDEP. Following Honeywell's submission of such documents, the procedures of paragraphs 86(e) and 86(f) shall apply, except that the Special Master need not provide notice to NJDEP.

(vii) During the Initial Development Period, any development in the Open Space AOC shall require the preparation and submission of a Development Plan pursuant to

paragraph 74(j)(vi) and such Development Plan shall be subject to review by the Special Master pursuant to paragraph 74(j)(iii).

(viii) Upon completion of each phase of the Initial Development, Honeywell shall provide as-built documentation for the Initial Development to the Special Master, Riverkeeper, and Jersey City. Upon completion of any further development during the Initial Development Period for the phase, Honeywell shall also provide as-built documentation to the Special Master, Riverkeeper, and Jersey City for the additional development. Such additional as-built documentation for a phase shall not affect the running of the Initial Development Period for the phase.

(ix) During the Initial Development Period, replacement in-kind of development features or facilities included in the Initial Development or minor modifications to the development features or facilities included in the Initial Development shall not require the preparation of a Development Plan or be subject to review by the Special Master, provided that such replacement or modification satisfies the requirements of the Open Space Design Standards, the applicable Development Plan, and paragraphs 74(j)(v) and 74(j)(x)(3)(notice requirement).

(x) After the Initial Development Period, all development is prohibited unless one of the following conditions is met:

(1) Jersey City satisfies the conditions set forth in paragraph 74(a)(iv)(2);

(2) The development is a replacement in-kind and such replacement is made in conformance with the specifications of the Open Space Design Standards, the applicable Development Plan, and paragraph 74(j)(v); or

(3) The development meets the requirements of paragraphs 74(j)(v) and 74(j)(xi), and Jersey City provides notice of its intention to alter or add to the development undertaken in the Initial Development Period. Such notice shall be provided in writing to Honeywell, Riverkeeper, and the holders of the conservation restriction established pursuant to paragraph 74(b) at least 30 days prior to Jersey City's alteration or addition to development undertaken in the Initial Development Period. Honeywell, Riverkeeper, or any holder of the conservation restriction shall have the right to move the Court to prohibit such alteration or addition.

(xi) If any of the development features or facilities that Jersey City seeks to add pursuant to paragraph 74(j)(x) require utilities that would require utility corridors other than the utility corridors installed during the Initial Development Period, Jersey City shall obtain approval from the Court before installing such new utility corridors.

(xii) Jersey City shall provide Honeywell, Riverkeeper, and the holder(s) of the conservation restriction established pursuant to paragraph 74(b) with an annual report that describes any alterations or additions, including those activities under paragraph 74(j)(x)(2), to the development undertaken during the Initial Development Period.

(xiii) All development features or facilities, whether included in the Initial Development or added subsequent thereto, are subject to demolition and/or removal to the extent necessary to maintain, replace, or repair the Chromium Remedy.

(k) **Permissible Development in the Open Space AOC.** The Initial Development or any subsequent addition or alteration thereto may include any or all of the following types of development features or facilities, provided that such development features or facilities satisfy the conditions set forth in paragraph 74(j)(v):

(i) Roads and the pedestrian thoroughfare -- both crossing and running along the Open Space AOC, but no more extensive than provided for in the diagram on page 39 of the Redevelopment Plan;

(ii) Curbing and fences;

(iii) Sidewalks, paths, walkways, and nature trails;

(iv) Utilities and utility corridors, lighting, and restrooms;

(v) Irrigation or sprinkler components or systems;

(vi) Water features;

(vii) Above-ground storm water cisterns;

(viii) Signs, including the signs or display required by paragraph 74(l);

(ix) Benches, trash receptacles, and bicycle racks;

(x) Recreational facilities, such as playground equipment, bocce ball courts, tennis courts, basketball courts, and athletic fields; and

(xi) Landscaping, including natural grasses, small trees, shrubbery, flowers, and potted plants, provided that such landscaping and the anticipated root structure of each landscaping component do not and will not jeopardize the integrity of the Chromium Remedy. Any portion of an athletic field that is covered in natural grass shall be considered landscaping for purposes of the percentage set forth in paragraph 74(j)(v)(4).

(l) **Signs or Displays.** Honeywell shall develop a permanent plan for informing visitors to the Open Space AOC of the history of the chromium production, contamination, and its remediation. Such plan shall provide for appropriate signs or displays that communicate this information. Such plan shall be subject to review and comment by the Parties and approval by the Special Master.

75. Honeywell's Ongoing Responsibility. Honeywell shall be responsible for implementing, monitoring, maintaining, repairing and replacing the Chromium Remedy in perpetuity. 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 Remedy pursuant to the requirements of this Consent Decree and the Long-Term Monitoring Plan, unless Jersey City volunteers to assume these responsibilities for the Chromium Remedy.

76. Long-Term Monitoring Plan. In consultation with the Parties, and subject to approval by the Special Master and NJDEP, Honeywell shall develop a Long-Term Monitoring Plan to ensure the ongoing effectiveness of the Chromium Remedy to meet the objectives set forth in paragraphs 65, 69, 68, 69, 72, and 77. 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 NJDEP's Technical Requirements for Site Remediation (or any subsequent revision).

77. 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 Remedy are maintained; and

(b) Provide monitoring to ensure that the restrictions of the institutional controls are being satisfied, including the prohibition on development in the Open Space AOC.

78. Monitoring and Remediation Under the Long-Term Monitoring Plan. The Long-Term Monitoring Plan shall include the monitoring and remediation activities set forth in this paragraph and other monitoring and remediation activities, if necessary, to meet the objectives of paragraph 77. Honeywell shall provide Riverkeeper, the Special Master, and NJDEP with annual reports on activities conducted under the Long-Term Monitoring Plan.

(a) Monitoring Activities in the Long-Term Monitoring Plan. Honeywell shall undertake the following monitoring activities at intervals to be specified in the Long-Term Monitoring Plan, but no less frequently than set forth below, and, if the monitoring shows it is necessary, Honeywell shall also undertake the remediation activities as set forth below:

(i) Quarterly visual inspection monitoring of the Open Space AOC to ensure that it is not being put to any use that is inconsistent with paragraphs 74(j) and 74(k) or any use that may compromise the integrity of the Chromium Remedy. The Long-Term Monitoring Plan shall include an inventory of the prohibited and permissible uses pursuant to paragraph 74 and a corresponding checklist to be used by the individuals conducting the monitoring. If Honeywell determines that the Open Space AOC is being used in a manner inconsistent with the protections or the integrity and effectiveness of the Chromium Remedy, Honeywell shall act as soon as possible to cause such use to cease and, if there has been damage to the Chromium Remedy, to repair or replace it to original specifications or to a level of protection equivalent to the original Chromium Remedy;

(ii) Quarterly visual inspection monitoring of the Open Space AOC grade and slope to identify whether erosion has occurred or is occurring. Honeywell shall remediate any significant erosion.

(iii) Quarterly visual inspection monitoring to determine whether noticeable differential settlement or subsidence has occurred or is occurring in the Open Space AOC such that the integrity of the Chromium Remedy may be materially impaired. If evidence of differential settlement or subsidence is found, Honeywell shall propose further investigative measures. Honeywell shall remediate any differential settlement or subsidence that is beyond the degree of differential settlement/subsidence allowed for in the 100% Design and repair the cap and/or the overlying layers to original 100% Design specifications or to a level of protection at least equivalent to the original Chromium Remedy;

(iv) A baseline topographic survey at the completion of the Chromium Remedy and three additional surveys conducted at five-year intervals beginning five years after the conduct of the baseline survey. The topographic survey shall be of sufficient precision and accuracy to present the results as one-foot contours;

(v) Quarterly visual inspection monitoring to determine whether the Chromium Remedy in the Open Space AOC has been disturbed. Any evidence of the distinctive warning layer materials or any other cap materials as described in paragraph 65(a) at the surface is an indication that the cap has been disturbed. In such an event, Honeywell shall propose further investigative measures to evaluate whether the integrity of the cap has been compromised. 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 100% Design specifications or to a level of protection at least equivalent to the original Chromium Remedy;

(vi) Quarterly visual inspection monitoring to ensure that burrowing animals are not materially impairing the integrity of the Chromium Remedy. If evidence of burrowing animals is found, Honeywell shall follow humane removal procedures and repair or replace the cap and

the overlying layers to original 100% Design specifications or to a level of protection at least equivalent to the original Chromium Remedy;

(vii) Quarterly visual inspection monitoring of the vegetative cover in the Open Space AOC to ensure that vegetative cover is in conformance with the landscaping provisions of the 100% Design and the Redevelopment Plan and will not materially impair the integrity of the Chromium Remedy. Maintenance of the vegetative cover shall include, at a minimum, mowing to ensure that tree species cannot become established and removal of any other vegetation with the potential to damage the Chromium Remedy;

(viii) Quarterly groundwater monitoring to ensure that groundwater levels are maintained in accordance with the requirement to maintain an outward gradient from Study Area 7 and in accordance with the water level control plan developed pursuant to paragraph 69(e);

(ix) Monitoring of vented gases and the gas venting system to ensure proper operation of the system, to evaluate any degradation of the system, to assess the need for treatment of vented gases, either initial, subsequent, or further depending on whether treatment has been previously provided, and to detect any condition that might endanger public health or safety. Such monitoring shall be conducted on a monthly basis for at least one year and, if the readings are stable, such monitoring may be conducted thereafter on a quarterly basis; and

(x) Any additional monitoring as required by specific details added in the design phase of the Open Space AOC.

(b) 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 approval by NJDEP and by the Special Master, if his appointment has not terminated, or otherwise, by the Court. If the Parties are unable to reach agreement over alterations to the monitoring and the Special Master's appointment has not terminated under this Consent Decree, 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. In the event that the dispute arises after the Special Master's appointment has terminated, any Party may file a motion seeking a resolution of the dispute by the Court.

(c) **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 cap 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 Chromium Remedy. The contingency plan shall include, at a minimum, an annually updated plan to notify the relevant persons, including the Special Master, NJDEP, and the Parties, of (i) the event penetrating the cap, compromising the cap, or compromising the integrity of the Chromium Remedy; (ii) the general steps to be taken to identify the extent of the problem; and (iii) the standards for remedying the problem.

(d) **Routine Maintenance.** The title owner of the Open Space AOC shall conduct maintenance of the Open Space AOC features or facilities that are permissible under paragraphs 74(j) and 74(k). The maintenance workers shall be trained in maintenance procedures that do not jeopardize the integrity of the Chromium Remedy. The training shall include the identification and reporting of any uses or features that are not permissible in the Open Space AOC or that may jeopardize the integrity of the Chromium Remedy. Honeywell shall provide all training materials. The title owner of Open Space AOC shall annually provide to the other Parties and

the Special Master a report describing the training which has been provided to its maintenance workers. The title owner of the Open Space AOC shall also provide to the Parties and the Special Master notice of any violations of the restrictions relating to the Open Space AOC identified by its workers during routine maintenance.

(e) **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 Riverkeeper on a quarterly basis.

79. Monitoring and Reporting to Riverkeeper. Riverkeeper shall be provided with all documents submitted to NJDEP and/or the Special Master with respect to the Chromium Remedy, including the documents identified in paragraph 86(c).

80. Notice to Stakeholders. All residents, regardless of whether they are owners or lessees, and all commercial tenants on Study Areas 6 and 7 are hereby deemed stakeholders. Honeywell shall ensure that all stakeholders shall be provided at the time of their purchase or lease with notice of the contamination, the remedial actions that have been undertaken or are planned, and the importance of reporting activities that may appear to jeopardize the integrity of the engineering controls. Notice shall be accomplished in the following manner:

(a) Bold or otherwise conspicuous language on the first page of the deed provided to all purchasers in the Residential Area;

(b) A summary notice of the Chromium Remedy which:

(i) Has been subject to review and comment by the Parties and approval by the Special Master; and

(ii) Provides a reference to public websites and libraries and/or the future equivalents thereof, where the following can be found:

- (1) Zoning and other Jersey City maps showing the Open Space AOC; and
- (2) Documents describing the contamination and the remediation, including:
 - (a) This Consent Decree;
 - (b) The Remedial Investigation Report and the Final Remedial Action Report,
 - (c) The annual reports on long-term monitoring and maintenance and repair activities as required by paragraph 78 and annual reports on changes to the Initial Development as required by paragraph 74(j)(xii); and
 - (d) The Long-Term Monitoring Plan.
- (c) The public provision of the maps and documents referred to in paragraph 80(b)(ii) via websites and libraries and/or the future equivalents thereof; and
- (d) Notices to lessees and commercial tenants in all lease documents.

81. Annual Letter to Riverkeeper on Notice to Stakeholders. Each year beginning one year after the issuance of the first notice in a deed or lease pursuant to paragraph 80, Honeywell shall provide a letter to the Riverkeeper documenting its compliance with paragraph 80.

82. Future Notice to Stakeholders. Honeywell shall ensure that all stakeholders are provided with notice, at least annually, of long-term monitoring activities and any additional remediation activities undertaken with respect to the Chromium Remedy. Such notice shall be accomplished by notices on websites or future equivalents thereof, including Jersey City websites, any websites created to provide information about the Chromium Remediation or redevelopment of the Redevelopment Area, and one or more of the following:

- (a) Any community message board or other similar site used and/or maintained by stakeholders or the manager(s) of the Redevelopment Area;
- (b) Mailings to all stakeholders; and

(c) Posters and flyers throughout the Redevelopment Area.

83. Stakeholder Enforcement. Any stakeholder shall have the right to enforce the remedial obligations of this Consent Decree in the Court, including post-implementation monitoring and maintenance obligations, and the terms of any deed notice or use restriction.

I. Oversight and Enforcement by the Special Master and NJDEP

84. Federal Court Jurisdiction. The Court shall retain jurisdiction for the purpose of overseeing and enforcing this Consent Decree and to review any issue or dispute which is not resolved through the oversight process described in Article III.I.

85. Appointment and Jurisdiction of the Special Master. The Chromium Remedy provided for in this Consent Decree is hereby referred to a Special Master pursuant to Rule 53 of the Federal Rules of Civil Procedure. The Special Master is appointed in the Consolidated Litigation for the purpose of overseeing and enforcing the Chromium Remedy, the first five years of long-term monitoring of the Chromium Remedy, financial assurances for the Chromium Remedy, and the Initial Development Period for each phase of development in the Open Space AOC. The Special Master is also appointed in the Consolidated Litigation for the limited purpose of ensuring that the scheduling and implementation of any non-chromium related remedy, any site preparation activities, and any site redevelopment activities do not undermine the integrity of, unreasonably interfere with, or unnecessarily delay the effectuation of the Chromium Remedy, the Study Area 7 remedies, and other remedies within his jurisdiction as of the date of entry of this Consent Decree. The Special Master shall have jurisdiction over all matters for which he is appointed.

86. Oversight of the Chromium Remedy.

(a) **NJDEP Authority.** Nothing in or pursuant to this Consent Decree shall limit NJDEP's full statutory and regulatory authority with respect to the Study Area 6 South site, including (i) permitting authority; (ii) authority to review and approve the Treatment Study reports, the Remedial Action Work Plan, the 100% Design, and final Remedial Action Report for the Chromium Remedy; and (iii) authority to issue a no further action letter.

(b) **Special Master Responsibilities.** The Special Master shall have the following responsibilities:

(i) Ensuring that Honeywell's implementation of the Chromium Remedy satisfies the requirements of this Consent Decree;

(ii) Ensuring that Honeywell's implementation of the Chromium Remedy conforms with federal, state, and local permit requirements;

(iii) Establishing a reasonable schedule for the implementation of the Chromium Remedy and monitoring conformance with it;

(iv) Reviewing monthly progress reports and conducting periodic meetings with the Parties to review the progress of the implementation of the Chromium Remedy. NJDEP shall be invited, but not required, to participate in these meetings and the decision as to whether to participate shall be left to NJDEP's sole discretion;

(v) Submitting bi-monthly progress reports to the Court pursuant to the schedule for the submission of such reports established in *ICO v. Honeywell*;

(vi) Overseeing the financial assurances established pursuant to paragraphs 91 through 100, and, until the expiration of his term pursuant to paragraph 90, overseeing the financial assurances established pursuant to paragraphs 101 through 112;

(vii) Coordinating review of the documents as provided in paragraphs 86(c) through 86(g);

(viii) Overseeing all development undertaken in the Open Space AOC during the Initial Development Period pursuant to paragraph 74(j)(iii); and

(ix) To the extent that, in matters within the jurisdiction of the Special Master as set forth herein, a dispute arises between the Parties with respect to implementation of the Chromium Remedy, issuing a recommendation to the Court with respect to the dispute.

(c) **Submission of Documents by Honeywell.** Honeywell shall submit the following documents to Riverkeeper, Jersey City, the Special Master, and NJDEP:

(i) An overall schedule with milestones for the design and implementation of the remedy (“Schedule”) consistent with paragraph 54 above;

(ii) A Second Supplemental Remedial Investigation Report reporting the results of the field work conducted pursuant to paragraph 55;

(iii) A Chromium Impacted Soils Pilot Test Work Plan and Analytical Protocol for conduct of the treatment study pursuant to paragraph 56, unless such documents are agreed to by NJDEP and Riverkeeper before the entry of this Consent Decree;

(iv) An Initial Treatment Study Report for the Development AOC;

(v) A Final Treatment Study Monitoring Report;

(vi) The documents for Site 163 submitted pursuant to paragraphs 54(a)(iv), 54(a)(v), 61, and 62;

(vii) A report to evaluate the need for remediation of any potentially remaining contaminated shallow groundwater in the Development AOC after implementation of the Development AOC Soils Remedy and, based on such an evaluation, a proposal;

(viii) A report of the results of the sampling to complete delineation of contaminated shallow groundwater in the area to the southeast of the Site pursuant to paragraph 71 and, based on the results, a proposal for a remedy;

(ix) A plan for one round of monitoring to evaluate whether the L-Well Groundwater remains contained pursuant to paragraph 72;

(x) A proposal for a remedy of the L-Well Groundwater, in the event L-Well Groundwater monitoring indicates the contaminated groundwater is no longer contained, pursuant to paragraph 72;

(xi) A Remedial Action Work Plan;

(xii) A 50% Design Report (which may include the Development AOC Conceptual Design Plan as a component) as well as design drawings and specifications at the 50% level for other components of the Chromium Remedy (hereinafter the 50% Design);

(xiii) Design drawings and specifications at the 100% level (after selection of the contractor) (hereafter "100% Design");

(xiv) The data validation plan, including quality control and quality assurance protocols;

(xv) The site-wide master health and safety plan;

(xvi) The Long-Term Monitoring Plan;

(xvii) 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);

(xviii) A program for post-treatment monitoring pursuant to paragraph 63, and, depending on such results, a proposal for further remedial actions;

(xix) A report reviewing measured groundwater levels for the groundwater remedy;

(xx) Documents required during the Initial Development Period pursuant to paragraphs 74(j)(vi), 74(j)(vii), and 74(j)(viii); and

(xxi) Other post-implementation monitoring reports as required by the Long-Term Monitoring Plan.

(d) **Initial Review of Documents by NJDEP.** The Parties and Special Master shall allow the period of time set forth below for NJDEP to conduct its review of a submission (hereinafter “NJDEP Review Period”) before the document is subject to the Special Master review and approval process. During the NJDEP Review Period, any Party may submit comments to NJDEP. For the Second Supplemental Remedial Investigation Report, the Remedial Action Work Plan, the Initial Treatment Study, and the Final Treatment Study Monitoring Report, the NJDEP Review Period shall be 90 days from the date of submission of the document to NJDEP, the Special Master, and the Parties. For any other documents identified in paragraph 86(c), the NJDEP Review Period shall be 30 days from the date of submission of the document to NJDEP, the Special Master, and the Parties. The NJDEP review period shall be extended an additional 30 days for any document for which NJDEP provides the Parties and the Special Master with notice that its review will require an additional 30 days. At the conclusion of the NJDEP Review Period, the comment and review process provided for in paragraphs 86(e) and 86(f) shall commence. In the event that any document has been revised during the NJDEP Review Period, Honeywell shall resubmit the applicable document for purposes of the comment and review provided for in paragraphs 86(e) and 86(f).

(e) **Comment on Submitted Documents.** For each of the documents submitted by Honeywell pursuant to paragraph 86(c), and following conclusion of the NJDEP Review Period as described in paragraph 86(d), the Special Master shall establish a schedule for the submission

of comments and responses to comments. For each of the documents submitted, Riverkeeper, Jersey City, the Special Master, and NJDEP shall have the right to submit comments to Honeywell. Honeywell shall address all comments received and submit a revised document. The revised document shall be submitted by Honeywell to Riverkeeper, Jersey City, the Special Master, and NJDEP. The revised document shall be subject to review and approval pursuant to paragraph 86(f), unless the Parties agree both on the revised document and that further review and approval pursuant to paragraph 86(f) is unnecessary. In that event, the Parties shall inform the Special Master that review under paragraph 82(f) is unnecessary and Honeywell shall proceed to implement the revised document.

(f) Review and Approval of the Submitted/Revised Document

(i) Scope of Review. Subject to the limitations in paragraph 82(e), all documents submitted by Honeywell, pursuant to paragraph 86(c) and 86(e), shall be subject to review and approval by the Special Master in accordance with the following procedure. All such documents, except the Schedule and the 100% Design, shall be subject to the review and approval process and shall not require an order of the Court. The Schedule and 100% Design documents shall be subject to the review and approval process, but shall also require an order of the Court as provided in paragraph 86(g). A document shall be approved if the document (1) complies with this Consent Decree; (2) complies with the Remedial Action Work Plan for the Chromium Remedy; and (3) complies with the Schedule and 100% Design.

(ii) Procedure. Prior to making a decision on a document, the Special Master shall notify NJDEP of his intention to rule on the document or make a recommendation to the Court on the document. Such notice shall notify NJDEP that the Special Master will consider any comments NJDEP wishes to submit on the document if such comments are submitted within

the timeframe established by the Special Master in the schedule for comments pursuant to paragraph 86(e). NJDEP shall in its sole discretion determine whether to submit comments to the Special Master.

(iii) **Court Review.** If any Party objects to the Special Master's recommendation to the Court or approval of any document pursuant to this paragraph, that Party may seek further relief from the Court with respect to the document.

(g) **Schedule and 100% Design Documents.** As to the Schedule and the 100% Design documents, Honeywell shall have the responsibility, within 30 days of the Special Master's approval of each document, of (i) moving for entry of an order by the Court approving the document as approved by the Special Master; or (ii) filing objections with the Court to the Special Master's approval (and any recommendations contained therein) and moving for entry of the Schedule or 100% Design (including any such recommendations of the Special Master to which Honeywell agrees). Riverkeeper shall have the right in these proceedings to raise any objections they might have to the Schedule or 100% Design as approved by the Special Master or to the submission by Honeywell to the Court. NJDEP shall receive notice of any motion filed with respect to the Schedule or the 100% Design.

(h) **Flexibility in 50% and 100% Design Documents.** The Parties recognize that work conducted to implement the Chromium Remedy may be conducted by Honeywell contractors and that Honeywell may establish performance-based criteria or specifications for its contractors. As a result, the Parties recognize that the 50% Design and 100% Design documents for the Chromium Remedy may include performance-based standards, criteria, and specifications. These documents shall be sufficiently prescriptive to enable the Parties and the Special Master to evaluate their conformance with the Remedial Action Work Plan and this Consent Decree. The

Parties also recognize that the 100% Design will be completed after Honeywell has selected a contractor. The Parties further recognize that completing the 100% Design after the selection of the contractor(s) shall not make the 100% Design subject to any less stringent or more deferential review. Honeywell's commitment to the contractor(s) shall not be cause to limit review by the Parties and the Special Master.

(i) **Changes to the Schedule.** The Parties recognize that changes to individual line items in the Schedule will occur. To the extent that (i) the Parties and the Special Master agree that such changes do not have a material impact on satisfaction of the Schedule milestones established for items set forth in paragraph 54; and (ii) such changes do not require modifications to any necessary permits or authorizations for the Chromium Remedy, such changes may be made upon agreement of the Parties and the Special Master without further order of the Court.

87. 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 89.

88. 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.

89. **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.

90. **Expiration of Special Master's Appointment.** The Special Master's appointment under this Consent Decree shall expire after Honeywell has completed the first five years of long-term monitoring of the Chromium Remedy and the Initial Development Period for each phase of development has been concluded as provided in paragraph 74(j)(ii). However, solely to the extent that the Special Master is still supervising other portions of the Consolidated Litigation or *ICO v. Honeywell* after Honeywell has completed the first five years of long-term monitoring of the Chromium Remedy or the Initial Development Period for each phase of development as provided in paragraph 74(j)(ii), whichever is later, the Special Master shall continue to have jurisdiction under this Consent Decree until he has completed his specifically enumerated responsibilities under the Final Judgment in *ICO v. Honeywell*, the Sediment Consent Order, the Deep Groundwater Consent Order, the Study Area 6 North Consent Decree, 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.

J. Initial Financial Assurances

91. **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 calculated using factors, including inflation and discount rates, determined to be appropriate in the Study Area 6 North Consent Decree financial assurance comment and approval process;

(ii) The costs of monitoring and maintenance activities for five years, as required by the Long-Term Monitoring Plan, calculated using factors including inflation and discount rates determined to be appropriate in the Study Area 6 North Consent Decree financial assurance comment and approval process; and

(iii) A contingency of 25% with respect to those costs listed in paragraphs 91(a)(i) and 91(a)(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.

92. Procedures for Review of the Proposed Chromium Remedy Letter of Credit. No later than December 31, 2008, Honeywell shall submit to Riverkeeper and the Special Master 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 Riverkeeper 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.

93. 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 94, 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 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 III.J, 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 because 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.

94. 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 and the Special Master an estimate of the remaining Remedial Costs Subject to Financial Assurance, including the contingency as described in paragraph 91(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 91(a)(i) and 91(a)(ii), plus a contingency of 25% of the remaining estimated costs under paragraphs 91(a)(i) and 91(a)(ii), and shall not result in reducing the Chromium Remedy Letter of Credit to an amount less than \$20,000,000 as expressed in 2008 dollars unless long-term financial assurances are in place pursuant to Article III.K. 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

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 III.J 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.

95. 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.

96. 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.

97. **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.

98. **Procedures upon Honeywell’s Material Default of Its Obligations.** During the period in which the Special Master has jurisdiction pursuant to paragraph 85, 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. The Special Master’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 93 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 either (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 paragraph 98(c), and the failure of Honeywell to provide assurance to the Special Master, within 15 days after written notice, that such an event will not impair Honeywell's ability to carry out the terms of this Consent Decree.

99. Placement of Proceeds in Court Registry Investment System Account. In the event that the Special Master draws upon the Chromium Remedy Letter of Credit due to an event of default, the Special Master shall place the proceeds of the Chromium Remedy Letter of Credit which represent the remaining estimated Chromium Remedy costs under paragraphs 91(a)(i), plus a contingency of 25% of the remaining estimated costs under paragraph 91(a)(i), in an account with the Court Registry Investment System in accordance with Local Civil Rule 67.1 and not expend the proceeds of the Letter of Credit without further order of this Court. The

Special Master shall place all additional proceeds of the Chromium Remedy Letter of Credit in a trust fund pursuant to paragraph 103(b)(v).

100. **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 the Chromium Remedy; and
- (b) Establishment of long-term financial assurance pursuant to Article III.K.

K. Long-Term Financial Assurances

101. **Long-Term Financial Assurances.** Honeywell shall fund long-term financial assurances to ensure that the activities set forth in paragraph 102(a) are carried out regardless of whether Honeywell is financially able to carry out such activities in perpetuity.

102. **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, including installation, operation and monitoring of any above-cap-grade gas collection and/or treatment system as may be necessary, but such system is not part of the 100% Design;

(ii) Perpetual operation of the shallow groundwater remedies pursuant to paragraphs 69, 70, and 71;

(iii) Perpetual repair of the cap;

(iv) Perpetual replacement of the cap on a 75-year replacement interval; and

(v) The perpetual administration of the trust fund regardless of whether such trust fund is selected by Honeywell pursuant to paragraph 103(a) or is established from the Long-Term Letter of Credit pursuant to paragraphs 103(b)(ii), 103(b)(v), or 109.

(b) The costs that shall be subject to financial assurances is an amount that will provide the full payment for each of the activities set forth in paragraphs 102(a)(i) through 102(a)(v) plus a 25% contingency when the activities in paragraphs 102(a)(i) through 102(a)(v) 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 discount rate of 4.75%) of the estimated future costs of the activities specified in paragraphs 102(a)(i) through 102(a)(v), plus a 25% contingency on those costs.

103. **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 102(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 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 102(a)(i) through 102(a)(iv).

(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 103(a) but satisfying the requirements of paragraph 103(a), could be created. The Long-Term Letter of Credit-funded trust, plus any trust fund established under paragraph 103(a), shall provide the full amount of the costs subject to long-term financial assurances, as set forth in paragraph 102(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 106.

(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 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 103(a) but satisfying the requirements of paragraph 103(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 90, 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 98. 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 103(a) but satisfying the requirements of paragraph 103(a). After the Special Master's appointment expires pursuant to paragraph 90, 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 103(a) but satisfying the requirements of paragraph 103(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 103(b)(ii), 103(b)(v), or 109 and Honeywell has also selected a trust fund pursuant to paragraph 103(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 102(b), at the time those funds are necessary.

(c) **Combination.** Honeywell may use some 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 102(b), at the time those funds are necessary. The trust fund and the letter of credit shall otherwise satisfy all the requirements of paragraphs 103(a) and 103(b).

104. **Procedures for Review of the Proposed Long-Term Financial Assurances.** No later than June 1, 2009, Honeywell shall submit to Riverkeeper 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 agrees 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.

105. **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 91 in an amount equal to at least \$20,000,000 in 2008 dollars. In the event of any default by Honeywell pursuant to paragraph 98 while the Chromium Remedy Letter of Credit is in place, the provisions of paragraph 103(b)(v) for the placement of the proceeds that exceed the remaining estimated Chromium Remedy costs under

paragraph 91(a)(i), plus a contingency of 25% of the remaining estimated costs under paragraph 91(a)(i), shall apply.

106. 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 103, 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 102(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. 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 102(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 102(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 102(a)(i) through 102(a)(v) 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 102(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 103(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 103(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 103(b).

107. **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 103(a), 103(b)(ii), 103(b)(v), or 109.

108. **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 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 103(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 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 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 paragraph 108(c), if Honeywell fails to provide assurance to Riverkeeper, and the Court, within 15 days after written notice, that such an event will not impair Honeywell's ability to carry out the terms of this Consent Decree.

109. Drawing on the Long-Term Letter of Credit in the Event of Honeywell's Default.

If the Court grants any motion by Riverkeeper or pursuant to paragraph 108 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 103(a) but satisfying the requirements of paragraph 103(a).

110. Use of the Trust Fund in the Event of Honeywell's Default. In the event of Honeywell's default, as defined in paragraphs 108(a) through 108(d), the money in the trust fund established pursuant to paragraph 103(a) shall be available to meet the obligations of paragraph 102(a), as well as for payment of future attorneys' fees and expenses pursuant to paragraph 120. Riverkeeper 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.

111. Use of a Trust Fund Established Pursuant to Paragraph 99, 103(b)(ii), 103(b)(v), or 109. In the event that a trust fund is established pursuant to paragraph 99, 103(b)(ii), 103(b)(v), or 109, the money in the trust fund shall be available to meet the obligations of paragraph 102(a), as well as for the payment of future attorneys' fees and expenses pursuant to paragraph 120. Riverkeeper 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.

112. Termination of the Long-Term Financial Assurances. Honeywell's obligations under Article III.K 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 in the Open Space AOC or 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.

ARTICLE IV: TERMINATION

113. **Termination of this Consent Decree.** This Consent Decree shall terminate upon the withdrawal of any Party as provided for in this paragraph. Any Party may elect to withdraw from this Consent Decree due to the occurrence of one or more of the following events, provided that such Party provides written notice of withdrawal to the other Parties pursuant to paragraph 118:

(a) The Court fails to enter this Consent Decree or this Consent Decree is determined to be invalid on appeal; or

(b) NJDEP takes one of the following actions with respect to the Remedial Action Work Plan:

(i) Rejects or fails to approve the Remedial Action Work Plan for the Chromium Remedy within 180 days of submission of the plan;

(ii) Approves the Remedial Action Work Plan for the Chromium Remedy, but conditions such approval on changes in the Work Plan that result in more than a 50% increase in the estimated costs of the Chromium Remedy as set forth in Article III; or

(iii) Approves the Remedial Action Work Plan for the Chromium Remedy, but conditions such approval on changes in the Work Plan that result in a substantial reduction of the protection of human health and/or the environment.

114. **Procedures for Withdrawal and Termination.** Any Party electing to withdraw pursuant to paragraph 113 and thereby terminate this Consent Decree shall provide written notice of such withdrawal and termination to all other Parties within 30 days of the occurrence giving rise to the decision to withdraw. If any Party objects to termination of the Consent Decree, or believes that the conditions set forth in paragraph 113 have not been met, such objecting Party may move the Court for an expedited hearing on the issue of whether the conditions for termination have been effectuated.

115. **Good-Faith Obligation to Avoid Termination.** The Parties agree that they will each endeavor to fulfill the terms of this Consent Decree, that they will work diligently and in good faith to meet their obligations hereunder, and that they will promptly and timely take all reasonable steps to give effect to this Consent Decree and to avoid termination under paragraph 113.

116. **Effect of Termination.** If this Consent Decree is terminated pursuant to paragraph 113, the Consent Decree shall no longer be binding on the Parties and shall be of no further effect. In the event that this Consent Decree is terminated by one or more Parties pursuant to paragraph 113, 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 matters at issue in the Consolidated Litigation and each Party remains free to pursue such rights, claims, and defenses.

ARTICLE V: TRANSFER OF TITLE TO BAYFRONT REDEVELOPMENT LLC

117. **Transfer of Title of Study Areas 6 South and 7 to and from Bayfront Redevelopment LLC.** The transfer of title of Study Area 6 South and Study Area 7 properties to Bayfront Redevelopment LLC pursuant to the Jersey City/Honeywell Consent Order and any subsequent transfers shall not impede Honeywell's obligations to (a) complete the remediation of

Study Area 7 and implement the Final Judgment and subsequent orders in *ICO v. Honeywell* or (b) complete the Chromium Remedy and conduct long-term monitoring and fulfill its other obligations set forth in this Consent Decree. Such transfers of Study Areas 6 South and Study Area 7 shall not include a transfer of Honeywell's obligations to implement the Final Judgment and subsequent orders in *ICO v. Honeywell* or a transfer of Honeywell's obligations under this Consent Decree, but shall include a right of access or any other right required by Honeywell to complete the remediation. Any subsequent transfer of Study Area 6 South or Study Area 7 from Bayfront Redevelopment LLC to a redeveloper or other party shall provide all necessary agreements to allow Honeywell all necessary access to Study Area 6 South and Study Area 7 for purposes of completing Honeywell's obligations with respect to Study Area 6 South under this Consent Decree and completing the Study Area 7 remediation and implementing the Final Judgment and subsequent orders in *ICO v. Honeywell*.

ARTICLE VI: NOTICE

118. **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 and/or
Bayfront Redevelopment LLC :

Tom Byrne, Esq.
Honeywell International Inc.
101 Columbia Road
Morristown, NJ 07962
(973) 455-2775

With copies to:

John Morris
Honeywell International Inc.
101 Columbia Road
Morristown, NJ 07962
(973) 455-4003

If to Jersey City:

William Matsikoudis
Corporation Counsel
City of Jersey City
280 Grove Street
Jersey City, NJ 07305
(201) 547-4667

If to Riverkeeper:

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

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 VII: RIVERKEEPER'S ATTORNEYS' FEES

119. Payment of Past Fees and Expenses. Within 30 days of the entry of this Consent Decree, Honeywell shall pay Terris, Pravlik & Millian, LLP the sum of \$813,000.00 which represents the following:

(a) A compromise of the attorneys' fees incurred by Riverkeeper in the litigation of Study Area 6 South portion of *Riverkeeper v. Honeywell* through August 31, 2008; and

(b) \$353,746.67 in out-of-pocket expenses representing a portion of the expenses incurred by Riverkeeper in *Riverkeeper v. Honeywell* from the inception of the litigation after deducting the expenses paid pursuant to the Sediment Consent Order, the Deep Groundwater Consent Order, and the Study Area 6 North Consent Decree.

(c) Payment of the sum of \$813,000.00 shall be in full satisfaction of all obligations, duties, and responsibilities of Honeywell with respect to the \$879,317.92 in fees and expenses that Riverkeeper claimed with regard to the above described fees and expenses.

120. Future Fees and Expenses. Honeywell shall reimburse Riverkeeper's attorneys for reasonable fees and expenses incurred: (a) in negotiating this Consent Decree after August 31, 2008; (b) in the monitoring and enforcement of this Consent Decree; and (c) in participation in the Special Master process established pursuant to this Consent Decree. Honeywell shall also reimburse Riverkeeper for reasonable attorneys' fees and expenses for Riverkeeper's review of and participation in the Long-Term Monitoring Plan and monitoring and enforcement of this Consent Decree following the term of the Special Master. In the event that any dispute arises between the Parties under this Consent Decree that must be resolved by the Court, Riverkeeper shall be entitled to recover its attorneys' fees and expenses for litigation of the dispute to the extent allowed by federal law. Riverkeeper and Honeywell shall use the same informal procedure for attempting to settle fees issues as has been used for post-judgment monitoring fees in *ICO v. Honeywell*. In the event that Riverkeeper and Honeywell are unable to reach a settlement on fees, Riverkeeper shall apply to the Court for an award of attorneys' fees and expenses. If Honeywell objects to only a portion of the Riverkeeper's statement of attorneys' fees and expenses, Honeywell shall pay the undisputed portion within 60 days of Riverkeeper's submittal of the statement to Honeywell. The Court shall resolve any objections to

Riverkeeper's statement of attorneys' fees and expenses and shall enter an appropriate Order. In the event of Honeywell's default, Riverkeeper may seek attorneys' fees from any trust fund or court registry funds established pursuant to the financial assurances provisions of this Consent Decree.

ARTICLE VIII: MISCELLANEOUS PROVISIONS

121. **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.

122. **Bayfront Redevelopment LLC as a Party.** As a signatory to this Consent Decree, Bayfront Redevelopment LLC subjects itself to the Court's jurisdiction for the purpose of enforcing this Consent Decree and agrees to be bound by this Consent Decree. This Consent Decree shall be fully enforceable against Bayfront Redevelopment LLC.

123. **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. No assignment or delegation of the obligations hereunder shall release the assigning Party from its obligations under this Consent Decree.

124. **Successors to Hackensack Riverkeeper, Inc.** In the event that Hackensack Riverkeeper, Inc. disbands 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 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 or otherwise ceases operations. In the event that a successor is not appointed at any given time, the New Jersey Attorney General or equivalent officer shall appoint a successor subject to approval by the Court and objection by Honeywell.

125. **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.

126. **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.

127. **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.

128. **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.

129. **Measures to Effectuate This Consent Decree.** Jersey City shall take all appropriate steps to ensure that commitments it has agreed to with regard to the Open Space AOC have been duly considered, ratified, and approved. Such steps include consideration of such commitments and an effectuating ordinance at a meeting of the City Council, open to the public, at which members of the public have the opportunity to comment on all aspects of the commitments made by Jersey City..

130. **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.

131. **Severability.** Each of the provisions in paragraph 74 of this Consent Decree shall be deemed severable and, in the event that one or more of such provisions is deemed invalid or unenforceable, it shall not affect the validity or enforceability of the other provisions of the Consent Decree.

132. **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. This Consent Decree may be signed electronically by any or all signatories, and such electronic signature shall be as fully valid and binding as a hand-written signature.

Consented to and approved for entry:

s/Aurelio Vincitore

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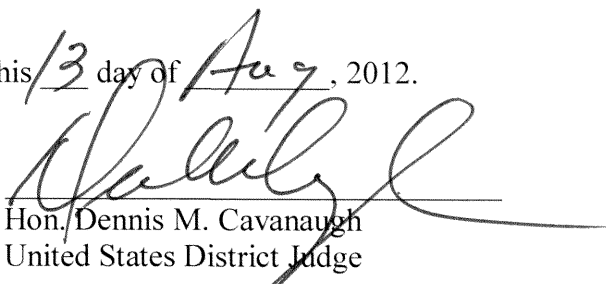
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*Counsel for the Hackensack Riverkeeper,
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and Lawrence Baker*

APPROVED AND ENTERED as an Order of this Court this 13 day of Aug, 2012.



Hon. Dennis M. Cavanaugh
United States District Judge