

Record and Return to:
Annette Wall, Senior Paralegal
Gibbons P.C.
One Gateway Center
Newark, NJ 07102

DEED NOTICE

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

Prepared by: *John J. Morris*
[Signature] _____
John J. Morris
[425/445 Route 440 Property LLC]
[Print name below signature]



20101130010092950 1/172
11/30/2010 02:36:26 PM DEED
Bk: 8765 Pg: 187
Willie L. Flood
Hudson County, Register of Deeds
Receipt No. 474756

Recorded by:

[Signature, Officer of County Recording Office]

[Print name below signature]

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

This Deed Notice is made as of the 11th day of ~~November~~ 2010, by Honeywell International Inc. ("Honeywell") and its subsidiary 425/445 Route 440 Property LLC, whose post office address is 101 Columbia Road, Morristown, New Jersey 07962. Owner shall mean 425/445 Route 440 Property LLC, together with its successors and assigns, including all successors in interest in the Property which is the subject of this Deed Notice as described fully below.

1. THE PROPERTY. 425/445 Route 440 Property LLC is the current owner in fee simple of certain real property designated as that portion of Block 1289.5, Lot E on the tax map of the City of Jersey City, Hudson County, New Jersey (Property); the New Jersey Department of Environmental Protection (NJDEP) Program Interest Number for the contaminated site which includes this Property is Hudson County Chromate Site No. 153 Program Interest (PI) #G000008767. The Property is known in parts as Site 153 South and Site 153 North pursuant to the Consent Decree Regarding Site 79 and 153 South and the Consent Decree Regarding Remediation of the New Jersey City University Redevelopment Area ("Consent Decrees"), which are attached hereto and entered as

\$ 1753.00 - 142 Pages

orders of the Court in the following consolidated actions *JCMUA v. Honeywell International Inc.*, D.N.J., Civ. No. 05-05955; *JCIA v. Honeywell International Inc.*, D.N.J., Civ. No. 05-5993; and *Hackensack Riverkeeper, Inc. v. Honeywell International Inc.*, D.N.J., Civ. No. 06-22. The portion of the Property subject to this Deed Notice is described by metes and bounds in Exhibit A-1 and further defined as Site 153 South and Site 153 North in the Consent Decrees. The Consent Decrees restrict transfer, use and development of the Site 153 South and North portions of the Property without further remediation, pursuant to the terms of the Consent Decrees. To the extent that there is any conflict or inconsistency between the terms of this Deed Notice and the terms of the Consent Decrees, the Consent Decrees shall govern. To the extent that any action to be taken pursuant to this Deed Notice is in conflict with or inconsistent with the Consent Decrees, the Consent Decrees shall govern.

2. DEPARTMENT'S ASSIGNED BUREAU. The Bureau of State Case Management (BCM) was the New Jersey Department of Environmental Protection program that was responsible for the oversight of the remediation of the Property. The matter was Case No. Hudson County Chromate Site No. 153 Program Interest (PI) # G000008767.

3. SOIL CONTAMINATION. Honeywell, a corporation in the State of New Jersey whose post office address is 101 Columbia Road, Morristown, New Jersey 07962, is remediating the Property to address chromium-related soil contamination. The Remedial Action Work Plan for the NJCU Remediation Area, including that portion of the Property designated as Site 153 North abutting NJCU property was approved by NJDEP on July 26, 2007. Interim Remedial Action Work Plans for Site 153 South Lower and Upper Segments have been submitted to NJDEP on October 15, 2009 and May 21, 2010, respectively. Remedial actions were further approved pursuant to the Consent Decrees. Under the Consent Decrees and the Remedial Action Work Plan, soil contamination remains in the Property which contains contaminants in concentrations that do not allow for the unrestricted use of the Property. The soil contamination is described, including the type, concentration and specific location of such contaminants, in Exhibit B, which is attached hereto and made a part hereof. As a result of the contamination, there is a statutory requirement for this Deed Notice and engineering controls in accordance with N.J.S.A. 58:10B-13. The remedial actions and engineering controls are further described in Exhibit C. Under the terms of the Consent Decrees and this Deed Notice, Honeywell is responsible for monitoring and maintaining the soil remediation for the Site 153 North and South portions of the Property until such time as the Property is remediated to the level that would permit the removal of this Deed Notice pursuant to the Consent Decrees.

4. CONSIDERATION. In accordance with the NJDEP's approval of the Remedial Action Work Plan for the remediation of Hudson County Chromate Site No. 153 and in consideration of the terms and conditions of that approval, and in accordance with the Consent Decrees, and other good and valuable considerations, Owner has agreed to subject the Property to certain statutory and regulatory requirements which impose restrictions upon the use of the Property, to restrict certain uses of the Property, and to provide notice to easement holders, lessees and operators of the restrictions until the

Property is further remediated and no longer must be encumbered by this Deed Notice pursuant to the terms of the Consent Decree.

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

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

5C. ADDITIONAL PROVISIONS PURSUANT TO CONSENT DECREE. The clean fill, caps and asphalt cover (also referred to as the Restricted Area) constitute engineering controls that must be maintained in accordance with the New Jersey Technical Requirements for Site Remediation, N.J.A.C. § 7:26E. Future uses of the Property are limited to open space, utility corridor, transportation, roadway, crossing, or access to adjacent properties.

6A. ALTERATIONS, IMPROVEMENTS, AND DISTURBANCES.

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

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

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

- (A) Takes such action in conformance with the Consent Decrees; and
- (B) Notifies NJDEP of the activity by calling the NJDEP Hotline, at 1-877-WARN-DEP or 1-877-927-6337, within twenty-four (24) hours after the beginning of each alteration, improvement, or disturbance;
- (C) Notifies Honeywell of the activity by calling 973-455-3302;
- (D) Restores or causes Honeywell to restore any disturbance of an engineering control to pre-disturbance conditions within sixty (60) calendar days after the initiation of the alteration, improvement or disturbance;
- (E) Ensures that all applicable worker health and safety laws and regulations are followed during the alteration, improvement, or disturbance, and during the restoration;
- (F) Ensures that exposure to contamination in excess of the applicable remediation standards does not occur;
- (G) Submits, or causes Honeywell to submit a written report, describing the alteration, improvement, or disturbance, to NJDEP within sixty (60) calendar days after the end of each alteration, improvement, or disturbance. The report shall include in the report the nature of the alteration, improvement, or disturbance, the dates and duration of the alteration, improvement, or disturbance, the name of key individuals and their affiliations conducting the alteration, improvement, or disturbance, a description of the notice the Owner gave to those persons prior to the disturbance, the amounts of soil generated for disposal, if any, the final disposition and any precautions taken to prevent exposure. Such a report shall be submitted to:

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

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

- i. Immediately notifies NJDEP of the emergency, by calling the NJDEP Hotline at 1-877-WARNDEP or 1-877-927-6337;
- ii. Immediately notifies Honeywell of the emergency by calling 973-455-3302;
- iii. Limits both the actual disturbance and the time needed for the disturbance to the minimum reasonably necessary to adequately respond to the emergency;
- iv. Implements all measures necessary to limit actual or potential, present or future risk of exposure to humans or the environment to the contamination;
- v. Notifies NJDEP when the emergency has ended by calling the NJDEP Hotline at 1-877-WARNDEP or 1-877-927-6337;
- vi. Notifies Honeywell when the emergency has ended by calling 973-455-3302; and
- vii. Restores or causes Honeywell to restore the engineering control to the pre-emergency conditions as soon as possible, and provides a written report to NJDEP of such emergency and restoration efforts within sixty (60) calendar days after completion of the restoration of the engineering control. The report must include all information pertinent to the emergency, potential discharges of contaminants, and restoration measures that were implemented, which, at a minimum, should specify: (a) the nature and likely cause of the emergency, (b) the potential discharges of or exposures to contaminants, if any, that may have occurred, (c) the measures that have been taken to mitigate the effects of the emergency on human health and the environment, (d) the measures completed or implemented to restore the engineering control, and (e) the changes to the engineering control or site operation and maintenance plan to prevent recurrence of such conditions in the future. The report shall be submitted to:

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

7A. MONITORING AND MAINTENANCE OF DEED NOTICE, AND PROTECTIVENESS CERTIFICATION. Honeywell and the Owner shall monitor and maintain this Deed Notice, and certify to NJDEP on a biennial basis that the remedial

action that includes this Deed Notice remains protective of the public health and safety and of the environment. The specific obligations to monitor and maintain the deed notice shall include all of the following:

- i. Monitoring and maintaining this Deed Notice according to the requirements in Exhibit C, to ensure that the remedial action that includes the Deed Notice continues to be protective of the public health and safety and of the environment;
- ii. Conducting any additional remedial investigations and implement any additional remedial actions, that are necessary to correct, mitigate, or abate each problem related to the protectiveness of the remedial action for the Property prior to the date that the certification is due to NJDEP pursuant to iii, below, in order to ensure that the remedial action that includes this Deed Notice remains protective of the public health and safety and of the environment.
- iii. Certify to NJDEP as to the continued protectiveness of the remedial action that includes this Deed Notice, on a form provided by NJDEP and consistent with N.J.A.C. 7:26C-7.4(b)1, every two years on the anniversary of the date stamped on the Deed Notice that indicates when the Deed Notice was recorded.

7B. MONITORING AND MAINTENANCE OF ENGINEERING CONTROLS, AND PROTECTIVENESS CERTIFICATION. Honeywell and the Owner shall maintain all engineering controls at the Property and certify to the Department on a biennial basis that the remedial action of which each engineering control is a part remains protective of the public health and safety and of the environment. The specific obligations to monitor and maintain the engineering controls shall include the following:

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

8. ACCESS. Owner agrees to allow NJDEP, its agents and representatives access to the Property to inspect and evaluate the continued protectiveness of the remedial action that

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

9. NOTICES.

i. Owner shall cause all leases, grants, and easements for the Property to contain a provision expressly requiring all holders thereof to take the Property subject to the restrictions contained herein and to comply with all, and not to violate any of the conditions of this Deed Notice. Nothing contained in this Paragraph shall be construed as limiting any obligation of any person to provide any notice required by any law, regulation, or order of any governmental authority.

ii. Owner shall notify any person intending to conduct invasive work or excavate within the Property on its behalf of the nature and location of contamination and, of the precautions necessary to minimize potential human exposure to contaminants.

iii. Owner shall provide written notice to NJDEP at least thirty (30) calendar days before the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of the owner's interest in the Property. Any such conveyance, grant or gift must be consistent with the terms of the Consent Decrees.

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

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

10. ENFORCEMENT OF VIOLATIONS.

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

ii. The restrictions provided herein may be enforceable by NJDEP against any person who violates this Deed Notice. To enforce violations of this Deed Notice, NJDEP may

initiate one or more enforcement actions pursuant to N.J.S.A. § 58:10-23.11u and require additional remediation and assess damages pursuant to N.J.S.A. § 58:10-23.11g.

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

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

13. MODIFICATION AND TERMINATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

ii. Exhibit B-2: Restricted Area Data Table - Table for the Restricted Area that includes:

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

(B) Sample elevation based upon mean sea level;

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

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

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

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

i. Exhibit C-1: Deed Notice as Institutional Control; Exhibit C-1 includes a narrative description of the restrictions and obligations of this Deed Notice that

are in addition to those described above, as follows:

(A) General Description of the Institutional Controls:

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

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

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

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

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

ii. Exhibit C-2: Engineering Controls: Clean Fill, Vegetative Cover, Pavement and Access Point Warnings:

Exhibit C-2 includes a narrative description of the engineering controls as follows:

(A) General Description of the engineering control:

- (1) Description of the engineering control;
- (2) The objective of the engineering control; and

(3) How the engineering control is intended to function.

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

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

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

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

14D. EXHIBIT D. Consent Decrees as Institutional Controls: Exhibit D-1 includes a copy of the Consent Decree Regarding Sites 79 and 153 South. Exhibit D-2 includes a copy of the Consent Decree Regarding Remediation of the New Jersey City University Redevelopment Area.

15. SIGNATURES.

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

ATTEST:
Maria Kaouris
MARIA KAOURIS
[Print name and title] Remediation
Manager

425/445 Route 440 Property-LLC
By John J. Morris
John J. Morris
[Signature] Remediation Director

STATE OF NEW JERSEY SS.:
COUNTY OF ~~[where document is executed]~~ MORRIS

I certify that on Nov. 11, 2010, ~~[Name of person executing document on behalf of Owner]~~ Maria Kaouris personally came before me, and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the ~~[secretary/assistant secretary]~~ Remediation Manager of Route 425/445 Route 440 LLC, the corporation named in this document;
- (b) this person is the attesting witness to the signing of this document by the proper corporate officer who is the ~~[president/vice president]~~ John J. Morris Remediation Director of the corporation;
- (c) this document was signed and delivered by the corporation as its voluntary act and was duly authorized;
- (d) this person knows the proper seal of the corporation ~~which was affixed to this document~~; and
- (e) this person signed this proof to attest to the truth of these facts.

Maria Kaouris
[Signature]
MARIA KAOURIS - Remediation manager
[Print name and title of attesting witness]

Signed and sworn before me on Nov. 11, 2010
Cheryl L. Toles, Notary Public
Cheryl L. Toles
[Print name and title]
My Commission Expires: October 27, 2015

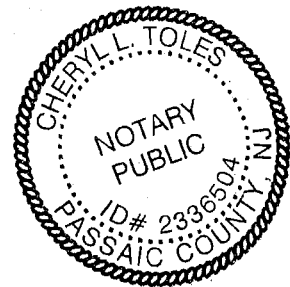


EXHIBIT A

**A-1 Vicinity Map
A-2 Metes and Bounds Description
A-3 Property Map**

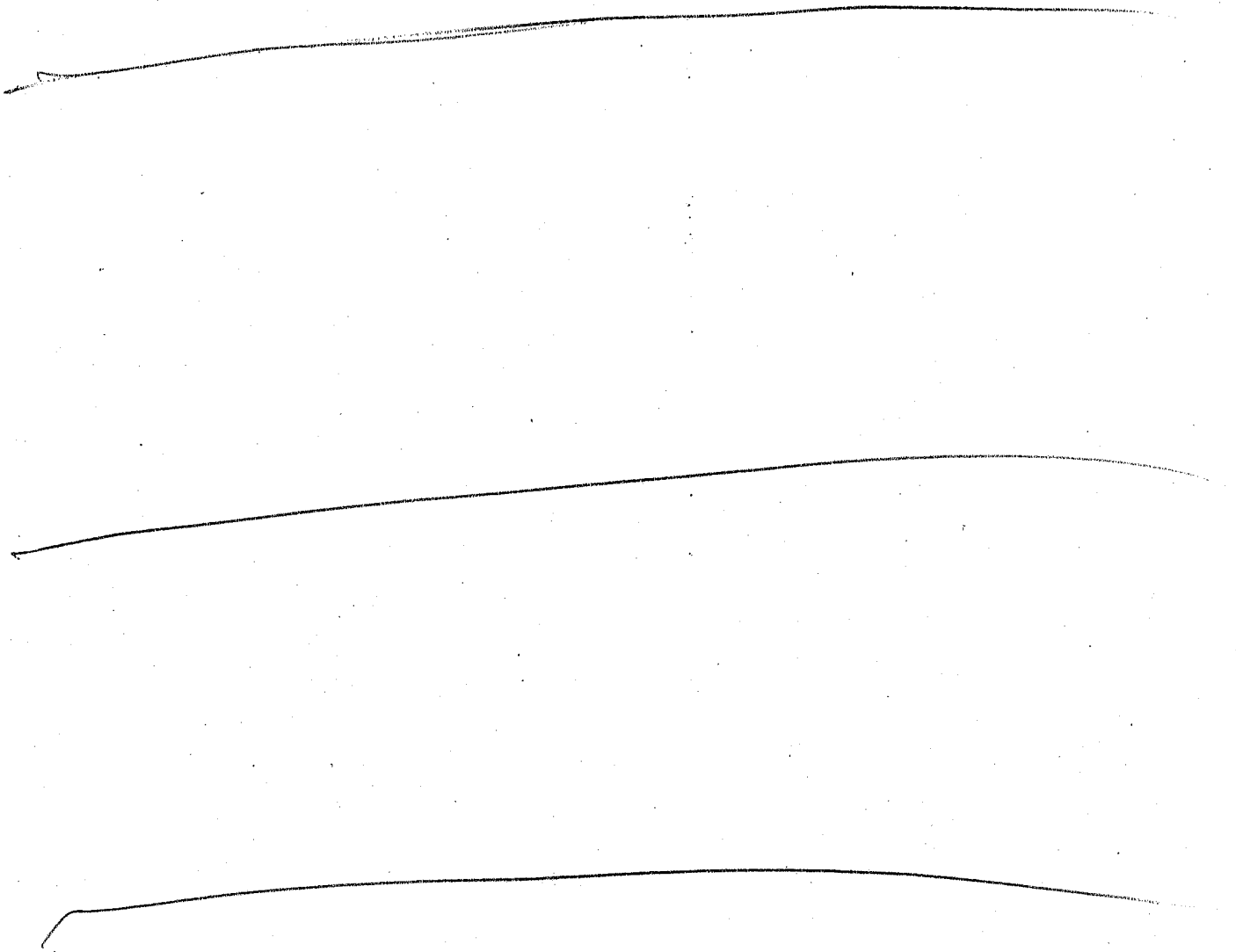
NJDEP Site No. 153 Former Morris Canal
Block 1289.5, Lot E
City of Jersey City, Hudson County, New Jersey

Exhibit A-1 consists of a road map for the vicinity of the Property.

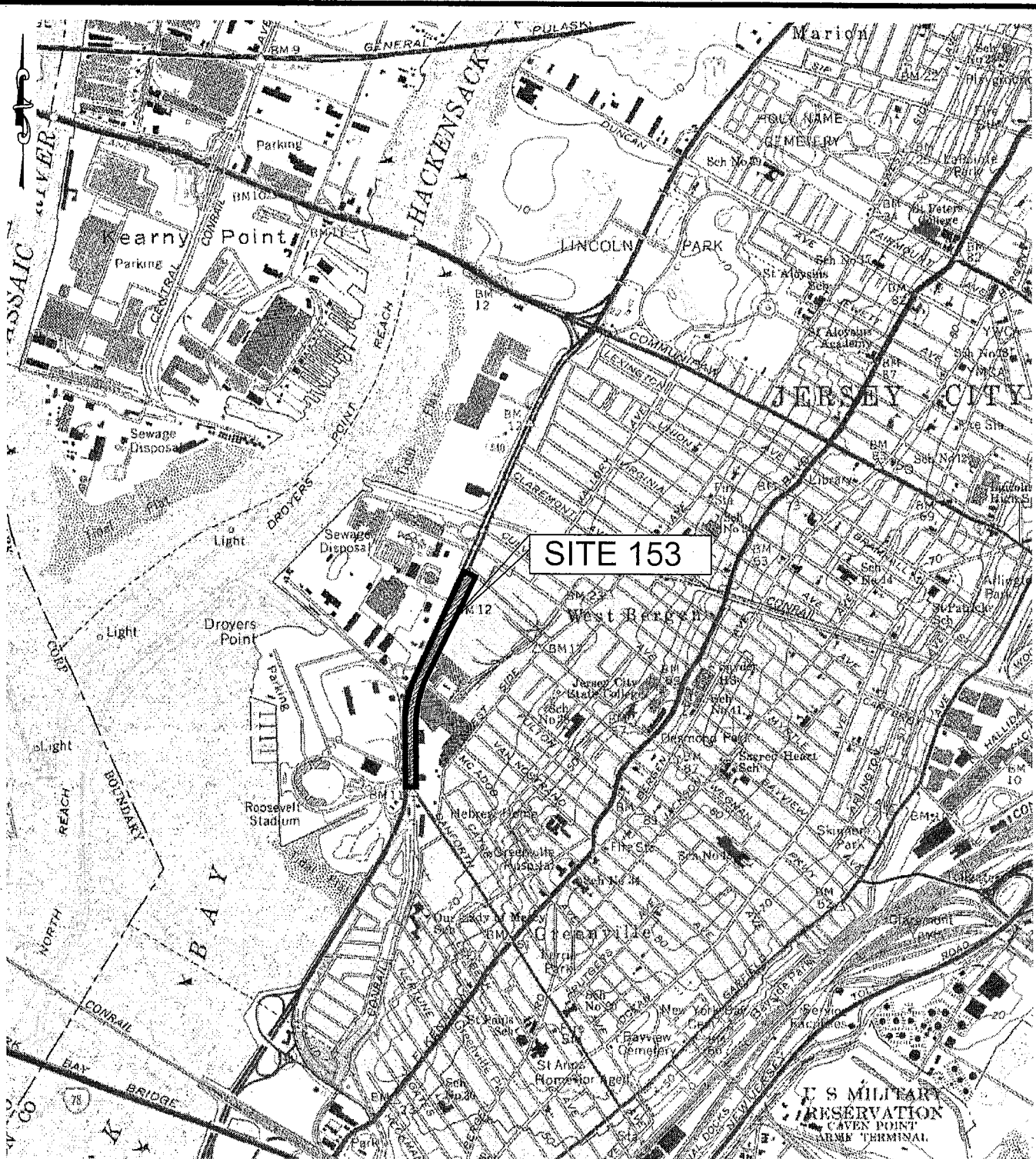
Exhibit A-2 consists of a metes and bounds description for the Property

Exhibit A-3 (A-3A through A-3D) consists of a figures indicating major surface features and existing features for the Property.

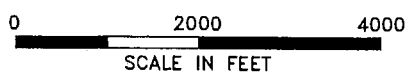
**Exhibit Figure A-1
Site Vicinity Map**



FILE: P:\LOAD\INSTRUMENTS\JERSEY CITY\SA 5\SITE 153\DEED RESTRICTIONS\CURRENT DRAWINGS\EXHIBIT A-1.DWG, DATE: 10/16/2010 04:06:53PM Layout: Layout



SOURCE: JERSEY CITY, NJ USGS QUADRANGLE MAP, 1983



MACTEC PROJ No.: 3480050145 DRAWING: EXHIBIT A-1	
PREPARED/DATE: STR 5/5/2010	CHECKED/DATE: KS 5/5/2010

MACTEC
 MACTEC Engineering and Consulting
 200 American Metro Boulevard, Suite 113
 Hamilton, NJ 08619

EXHIBIT A-1
 VICINITY MAP
 DEED NOTICE
 BLOCK 1289.5, LOT E
 SA 5 - SITE 153 FORMER MORRIS CANAL
 JERSEY CITY, NEW JERSEY

Exhibit A-2
Metes and Bounds Description of Property

Block 1289.5, Lot E
City of Jersey City, New Jersey

Metes and Bounds Description

Real property in the City of Jersey City, County of Hudson, State of New Jersey, described as follows: All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Jersey City, County of Hudson, State of New Jersey:

All those two certain pieces or parcels of land, being a part or portion of Grantor's property known as Branch No.1 identified as Line Code 0597 in Grantor's corporate records, also known as Lot E, Block 1289.5 on City of Jersey City Tax maps, situate in the City of Jersey City, County of Hudson and State of New Jersey, separately bounded and described in accordance with a Plat of Survey prepared by Albert N. Faraldi, Professional Land Surveyor No. 29346, of Albert N. Faraldi Group, P.C., 854 Eight Street, Secaucus, New Jersey, dated August 10, 1988; as follows:

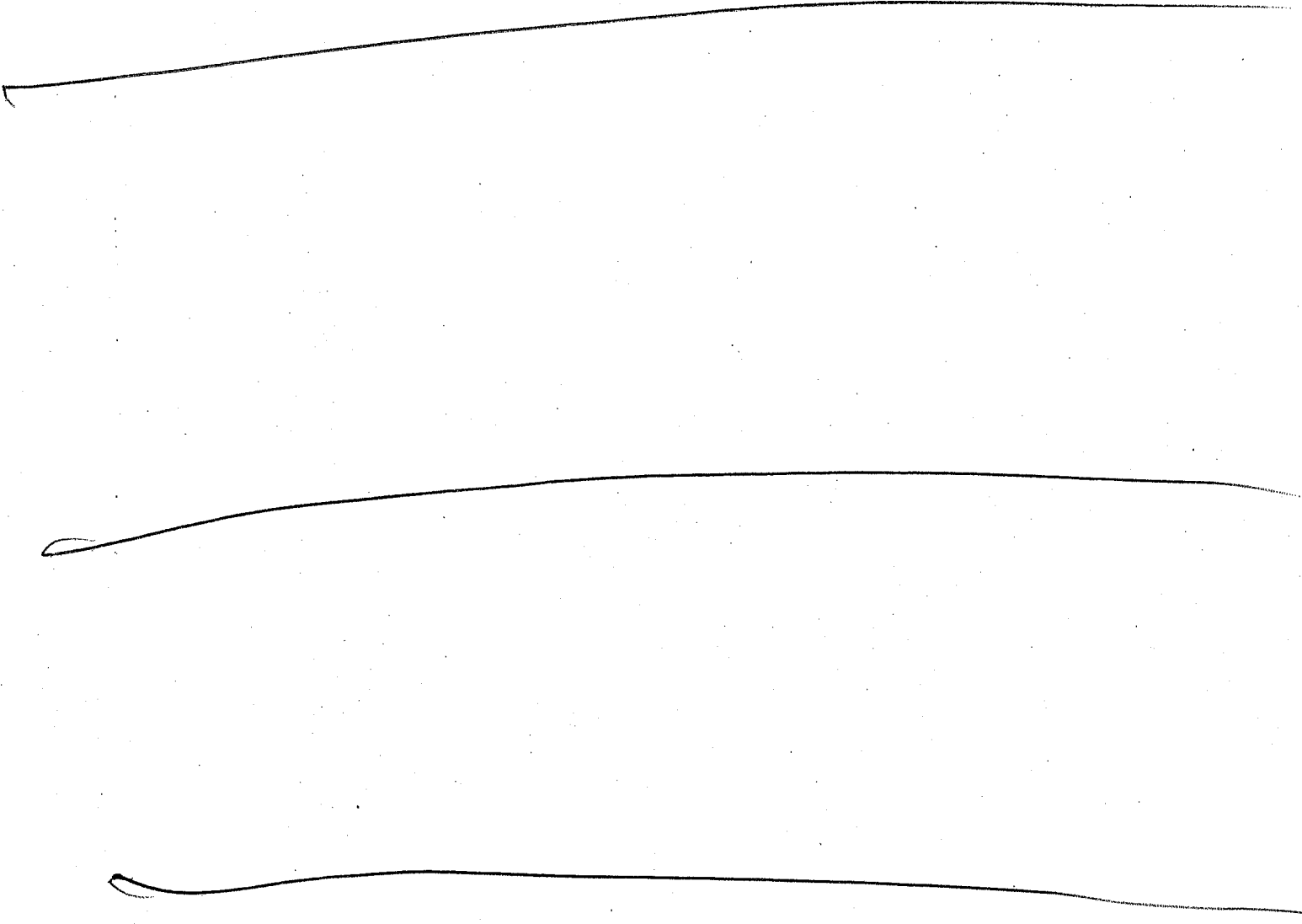
Tract I

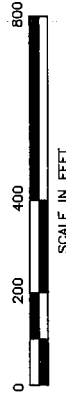
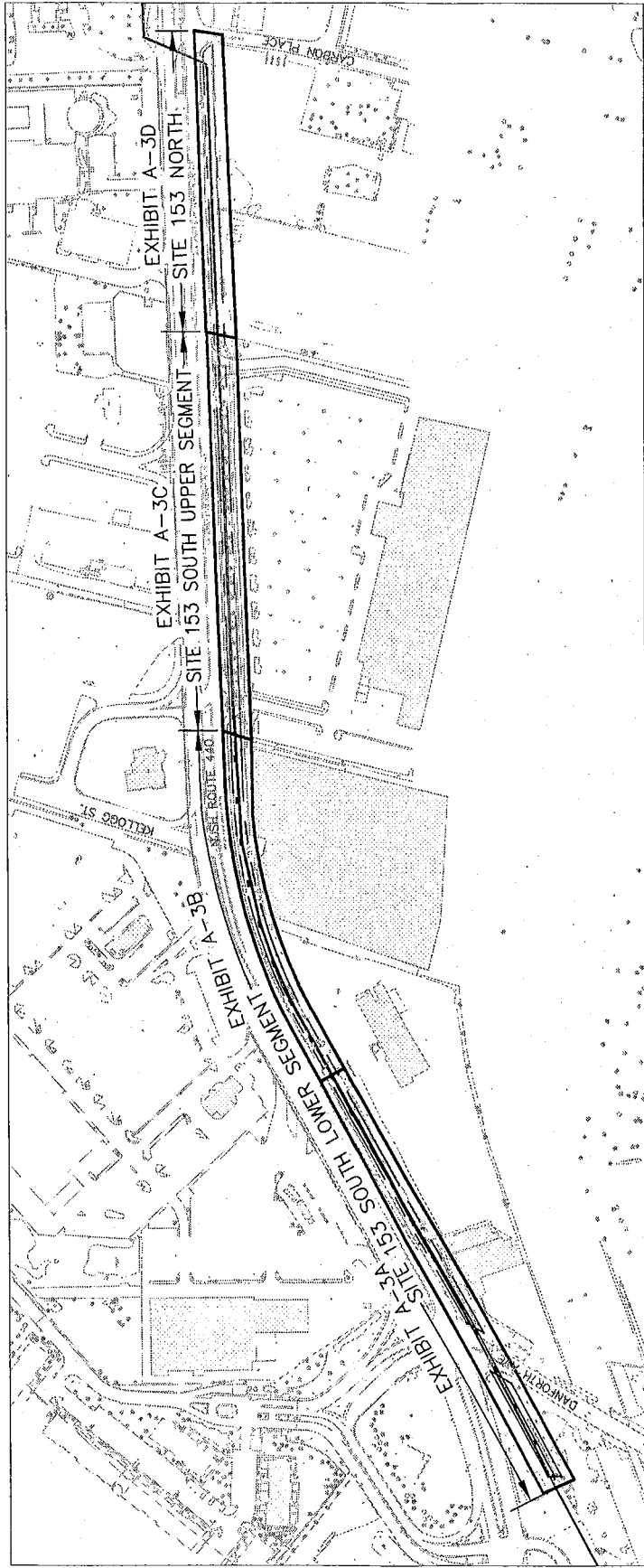
Beginning at a point in the easterly line of New Jersey State Highway Route 440 distant 4.12 feet southerly from the State Highway Route 440 with the southerly line of Carbon Place (40 feet wide); and running thence (1) southerly along said New Jersey State Highway Route 440 on a curve to the left with a radius of 27.00 feet and an arc distant of 39.41 feet; thence (2) South 25°09' 35" West, 1,763.23 feet to a point of curvature; thence (3) still southerly and along said New Jersey State Highway Route 440 on a curve to the left with a radius of 1,237.57 feet and an arc distance of 580.19 feet to a point of tangency; thence (4) still southerly along said New Jersey State Highway Route 440 South 1° 42' 05" East, 816.38 feet to the northerly line of Danforth Avenue (70 feet wide); thence (5) South 32° 23' 37" East, 47.02 feet; thence (6) North 1 42' 05" West, 855.39 feet to a point of curvature; thence (7) on a curve to the right with a radius of 1,213.57 feet and an arc distance of 568.94 feet to a point of tangency; thence (8) North 25° 09' 35" East, 1,790.06 feet, to the point of place of Beginning. Containing 78,016 square feet, or 1.791 acres, more or less.

Tract II

Beginning at a point formed by the easterly line of new Jersey State Highway Route 440 with the southerly line of Danforth Avenue (70 feet wide); and running thence (1) South 1° 42' 05" East, 290.86 feet; thence (2) South 80° 59' 02" East, 30.53; thence (3) North 1 ° 42' 05" West, 246.00 feet; thence (4) North 32° 23' 37" West, 58.77 feet to the point or place of Beginning. Containing 8,052.2 square feet, or 0.1848 of an acre, more or less.

**Exhibit Figure A-3
Property Map**





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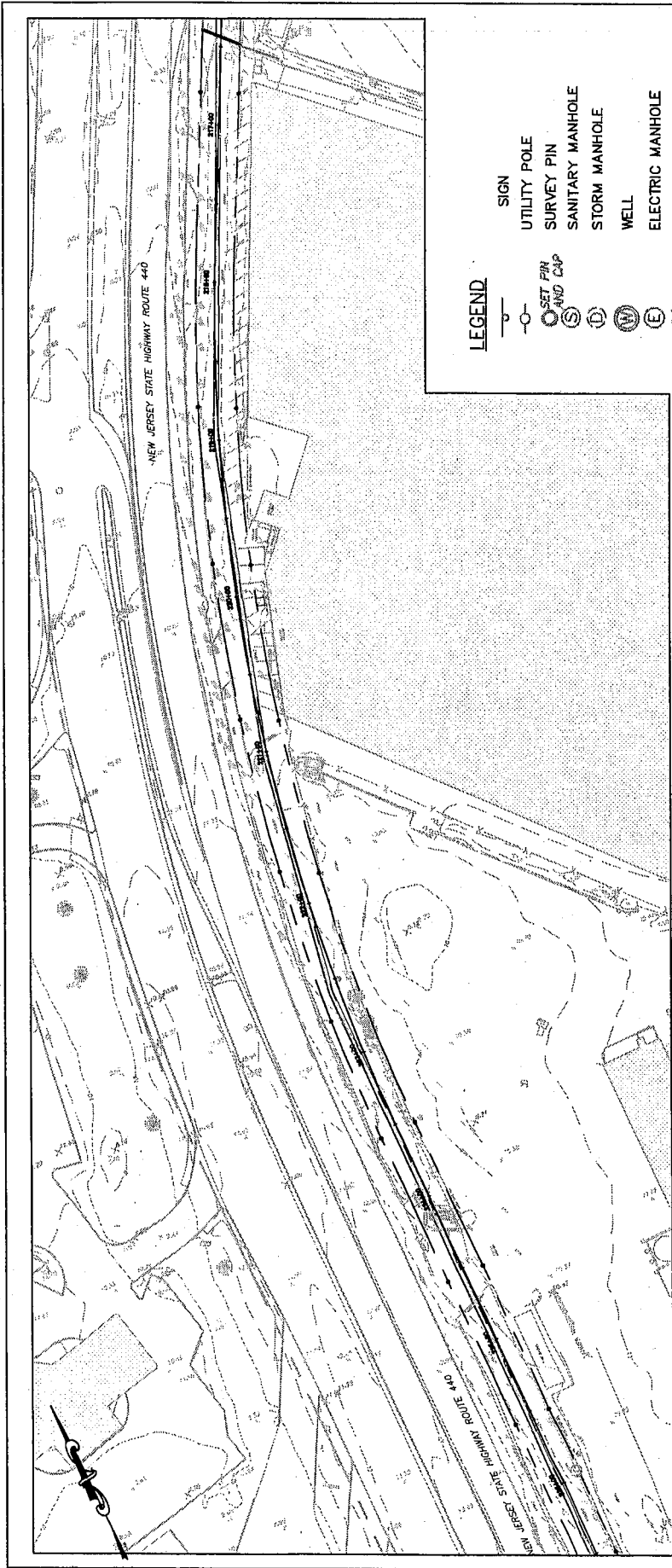
MACTEC PROJ. No.: 3480050184
 DRAWING: EXHIBIT A-3 tract 2

PREPARED/DATE:
 STR 05/05/10

CHECKED/DATE:
 KS 05/05/10

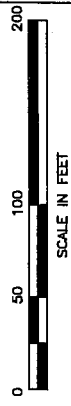
REV.	DATE	STATUS	DRY	DRWD	BT

EXHIBIT A-3
 PROPERTY MAP KEY
 DEED NOTICE
 BLOCK 1289.5, LOT E
 SA 5 - SITE 153 FORMER MORRIS CANAL
 JERSEY CITY, NEW JERSEY



LEGEND

- SIGN
- UTILITY POLE
- SURVEY PIN
- SANITARY MANHOLE
- STORM MANHOLE
- WELL
- ELECTRIC MANHOLE
- GAS VALVE
- CATCH BASIN
- SPOT ELEVATION
- TREE/BRUSH LINE
- EXISTING BUILDING
- BM/A FORCEMAIN
- PROPERTY LINE
- FENCE LINE
- CENTERLINE STATIONING
- GROUND ELEVATION CONTOUR
- CONCRETE CURB



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MACTEC PROJ No.: 3480050164
 DRAWING: EXHIBIT A-3 tract 2

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 STR 05/05/10

CHECKED/DATE:
 KS 05/05/10

REV.	DATE	STATUS	DRFT	CHKD	BY

EXHIBIT A-3B
 PROPERTY MAP
 SITE 153 SOUTH LOWER SEGMENT
 DEED NOTICE
 BLOCK 1289.5, LOT E
 SA 5 - SITE 153 FORMER MORRIS CANAL
 JERSEY CITY, NEW JERSEY

EXHIBIT B

B-1: Restricted Area Map and Engineering Controls

B-2: Restricted Area Data Table

NJDEP Site No. 153 Former Morris Canal
Block 1289.5, Lot E
City of Jersey City, Hudson County, New Jersey

Exhibit B-1A through B-1D includes maps that illustrate the Restricted Area and engineering/institutional controls.

Exhibit B-2 includes data table which identify the Restricted Area containing soils that are in excess of NJDEP unrestricted soil cleanup standards.

**Exhibit Figures B-1A through B-1D
Restricted Area Maps and Engineering Controls**

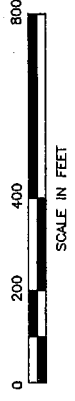
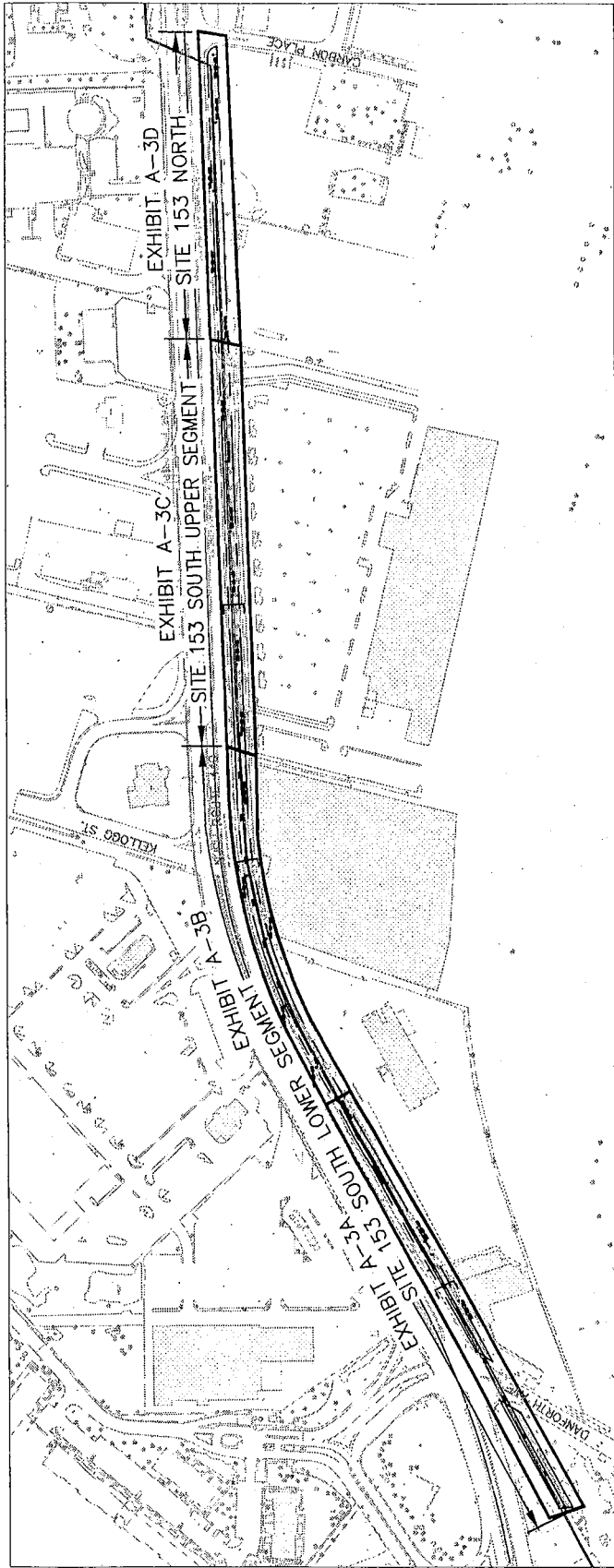
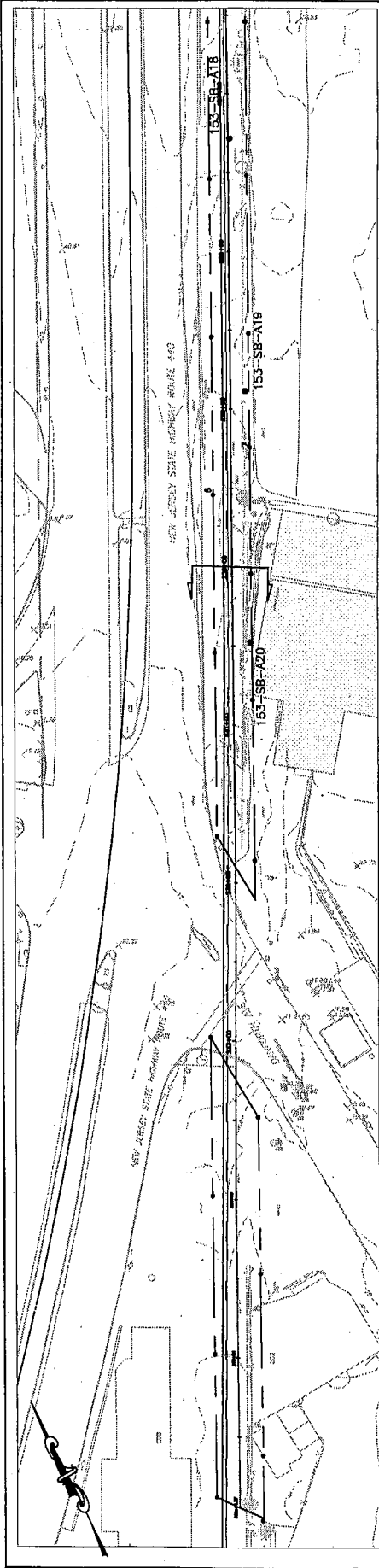


EXHIBIT B-1
RESTRICTED AREA MAP KEY
 DEED NOTICE
 BLOCK 1289.5, LOT E
 SA 5 - SITE 153 FORMER MORRIS CANAL
 JERSEY CITY, NEW JERSEY

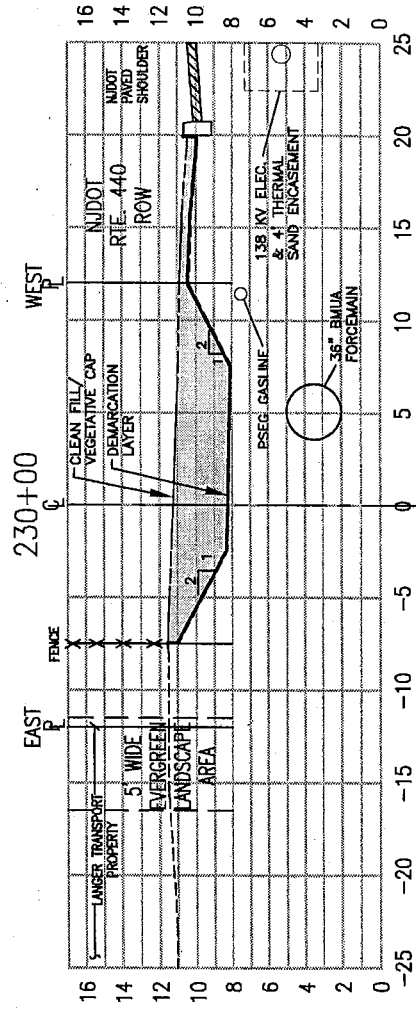
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MACTEC PROJ No.: 3480050164
 DRAWING: EXHIBIT B-2 tract 2
 PREPARED/DATE: STR 05/05/10
 CHECKED/DATE: KS 05/05/10

REV.	DATE	STATUS	DEPT	CHKD	BY



PLAN VIEW
 0 50 100 200
 SCALE IN FEET



CROSS SECTION STA. 213+00
 SCALE: 1"=10' HORIZONTAL
 1"=1' VERTICAL

- LEGEND**
- 153-SB-AXX
 - SAMPLE LOCATION
 - CROSS SECTION DIRECTION & LOCATION
 - DEED RESTRICTION AREA
 - BMUA FORCEMAIN
 - PROPERTY LINE
 - CENTERLINE STATIONING

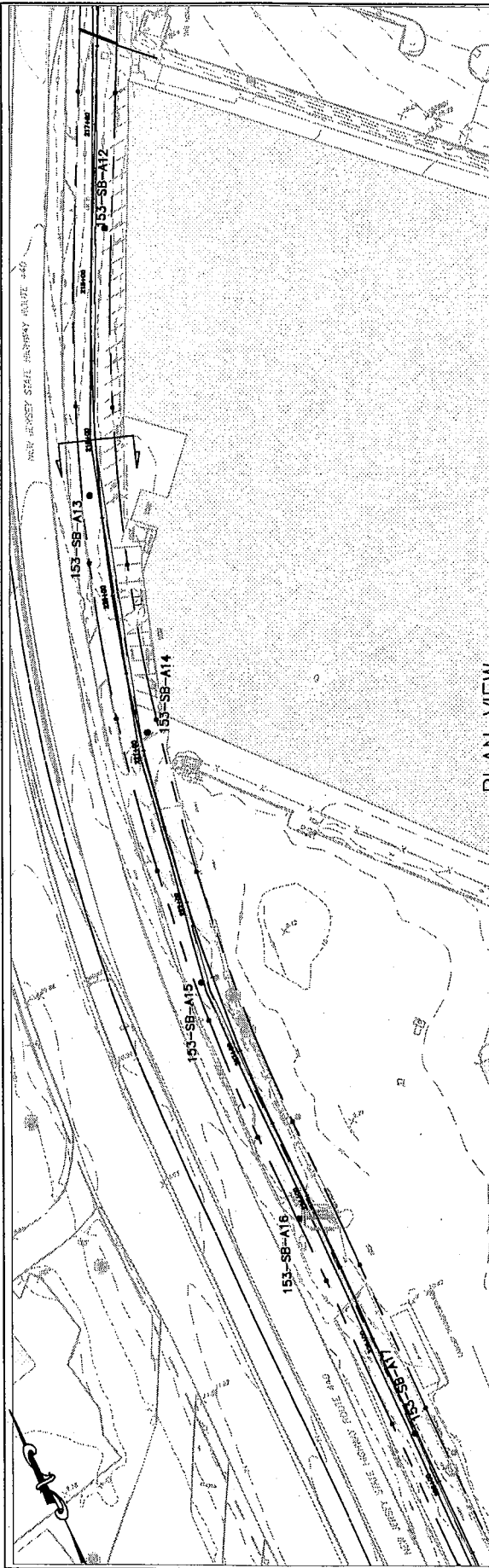
REV.	DATE	STATUS	BY	CHKD.

MACTEC PROJ No: 3480050164
 DRAWING: EXHIBIT B-2 tract 2

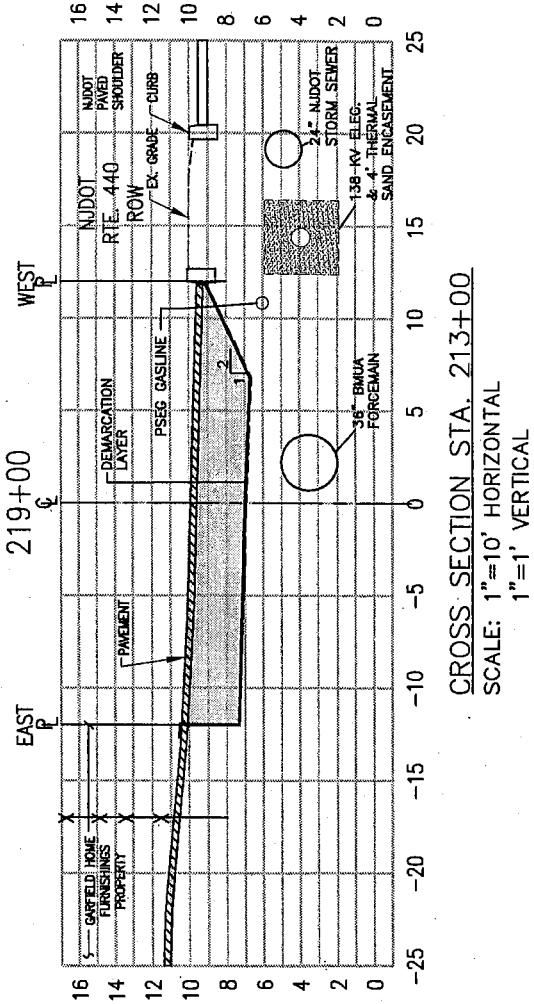
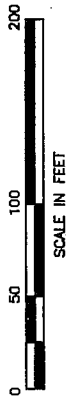
PREPARED/DATE: STR 05/05/10
 CHECKED/DATE: KS 05/05/10

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EXHIBIT B-1A
 RESTRICTED AREA MAP
 SITE 153 SOUTH LOWER SEGMENT
 DEED NOTICE
 BLOCK 1289.5, LOT E
 SA 5 - SITE 153 FORMER MORRIS CANAL
 JERSEY CITY, NEW JERSEY



PLAN VIEW



LEGEND

- 153-SB-AXX • SAMPLE LOCATION
- 4 CROSS SECTION DIRECTION & LOCATION
- DEED RESTRICTION AREA
- BMUA FORCEMAIN
- PROPERTY LINE
- 2300+00 CENTERLINE STATIONING

EXHIBIT B-1B
 RESTRICTED AREA MAP
 SITE 153 SOUTH LOWER SEGMENT
 DEED NOTICE
 BLOCK 1289.5, LOT E
 SA 5 - SITE 153 FORMER MORRIS CANAL
 JERSEY CITY, NEW JERSEY

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MACTEC PROJ No.: 3480050164
 DRAWING: EXHIBIT B-2 tract 2

PREPARED/DATE: STR 05/05/10
 CHECKED/DATE: KS 05/05/10

REV.	DATE	STATUS	DRAWN BY	CHECKED BY

Exhibit B-2
Restricted Area Data Table

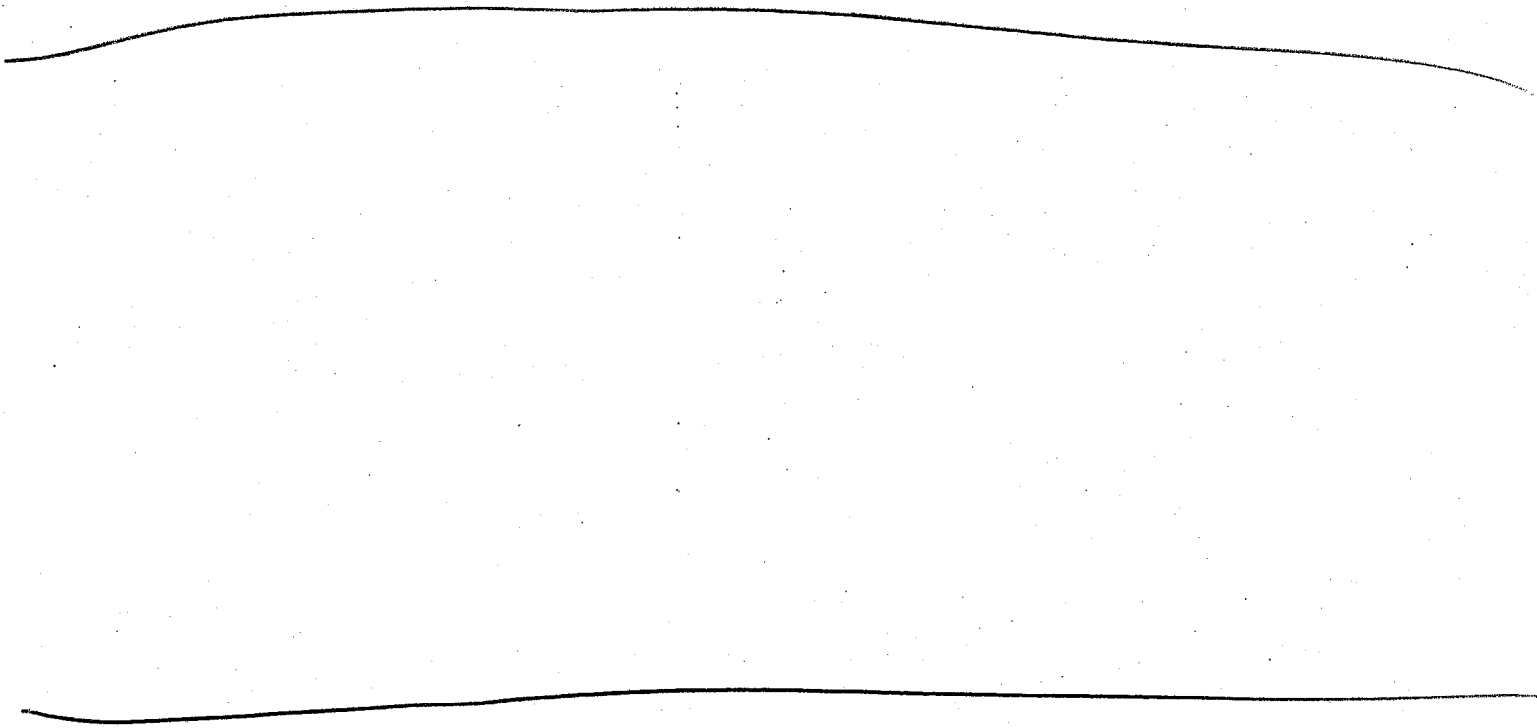
A large, empty rectangular area bounded by two curved lines, representing a redacted table. The lines are black and follow a similar path, with the top line curving slightly upwards in the middle and the bottom line curving slightly downwards in the middle. The interior of the rectangle is completely blank.

Exhibit Table B-2
Restricted Area Data
Site 153 Former Morris Canal
Block 1289.5, Lot E, Jersey City, New Jersey

Location	Sample Date	Sample Depth (ft)	Elevation (ft msl)	Field Sample ID	Contaminant	CASR#	NJDEP RDCSRS (mg/kg)	NJDEP NRDSRS (mg/kg)	Soil Concentration (mg/kg)
153-SB-A01	5/21/1997	04-06	2.89 to 4.89	153-SB-A01-0406	Hex Chromium	18540-29-9	20	NA	7490J
153-SB-A01	5/21/1997	06-08	0.89 to 2.89	153-SB-A01-0608	Hex Chromium	18540-29-9	20	NA	7690J
153-SB-A01	5/21/1997	12-14	-5.11 to -3.11	153-SB-A01-1214	Hex Chromium	18540-29-9	20	NA	60.7J
153-SB-A01	5/21/1997	14-16	-7.11 to -5.11	153-SB-A01-1416	Hex Chromium	18540-29-9	20	NA	20.8J
153-SB-A02	5/21/1997	0-2	7.11 to 9.11	153-SB-A02-0002	Hex Chromium	18540-29-9	20	NA	281J
153-SB-A02	5/21/1997	02-04	5.11 to 7.11	153-SB-A02-0204	Hex Chromium	18540-29-9	20	NA	998J
153-SB-A02	5/21/1997	04-06	3.11 to 5.11	153-SB-A02-0406	Hex Chromium	18540-29-9	20	NA	361J
153-SB-A03	5/21/1997	0-2	8.54 to 10.54	153-SB-A03-0002	Hex Chromium	18540-29-9	20	NA	66.1J
153-SB-A03	5/21/1997	04-06	4.54 to 6.54	153-SB-A03-0406	Hex Chromium	18540-29-9	20	NA	1160J
153-SB-A03	5/21/1997	06-08	2.54 to 4.54	153-SB-A03-0608	Hex Chromium	18540-29-9	20	NA	49.7J
153-SB-A03	5/21/1997	08-10	0.54 to 2.54	153-SB-A03-0810	Hex Chromium	18540-29-9	20	NA	227J
153-SB-A03	5/21/1997	08-10	0.54 to 2.54	153-SB-A03-0810	Mercury	7439-97-6	23	65	32.9J
153-SB-A04	5/21/1997	04-06	5.11 to 7.11	153-SB-A04-0406	Hex Chromium	18540-29-9	20	NA	7680J
153-SB-A04	5/21/1997	06-08	3.11 to 5.11	153-SB-A04-0608	Hex Chromium	18540-29-9	20	NA	33.2J
153-SB-A04	5/21/1997	08-10	1.11 to 3.11	153-SB-A04-0810	Hex Chromium	18540-29-9	20	NA	93J
153-SB-A04	5/21/1997	10-12	-0.89 to 1.11	153-SB-A04-1012	Hex Chromium	18540-29-9	20	NA	222J
153-SB-A04	5/21/1997	10-12	-0.89 to 1.11	153-SB-A04-1012-D	Hex Chromium	18540-29-9	20	NA	229J
153-SB-A05	5/21/1997	0-2	10.14 to 12.14	153-SB-A05-0002	Hex Chromium	18540-29-9	20	NA	624J
153-SB-A05	5/21/1997	02-04	8.14 to 10.14	153-SB-A05-0204	Hex Chromium	18540-29-9	20	NA	4520J
153-SB-A05	5/21/1997	04-06	6.14 to 8.14	153-SB-A05-0406	Hex Chromium	18540-29-9	20	NA	8250J
153-SB-A05	11/18/1998	04-08	4.14 to 8.14	153-SB-A05-0408-GP1	Hex Chromium	18540-29-9	20	NA	8560J
153-SB-A05	11/18/1998	04-08	4.14 to 8.14	153-SB-A05-0408-GP2	Hex Chromium	18540-29-9	20	NA	5690J
153-SB-A05	11/18/1998	04-08	4.14 to 8.14	153-SB-A05-0408-GP3	Hex Chromium	18540-29-9	20	NA	5670J
153-SB-A05	11/18/1998	04-08	4.14 to 8.14	153-SB-A05-0408-GP4	Hex Chromium	18540-29-9	20	NA	3960J
153-SB-A05	5/21/1997	06-08	4.14 to 6.14	153-SB-A05-0608	Hex Chromium	18540-29-9	20	NA	9150J
153-SB-A05	5/21/1997	08-10	2.14 to 4.14	153-SB-A05-0810	Hex Chromium	18540-29-9	20	NA	7020J
153-SB-A05	5/21/1997	12-14	-1.86 to 0.14	153-SB-A05-1214	Hex Chromium	18540-29-9	20	NA	2570J
153-SB-A05	5/21/1997	14-16	-3.86 to -1.86	153-SB-A05-1416	Hex Chromium	18540-29-9	20	NA	187J
153-SB-A06	5/22/1997	0-2	10.8 to 12.8	153-SB-A06-0002	Hex Chromium	18540-29-9	20	NA	194J
153-SB-A06	5/22/1997	04-06	6.8 to 8.8	153-SB-A06-0406	Hex Chromium	18540-29-9	20	NA	159J
153-SB-A06	5/22/1997	06-08	4.8 to 6.8	153-SB-A06-0608	Hex Chromium	18540-29-9	20	NA	4110J
153-SB-A06	5/22/1997	08-10	2.8 to 4.8	153-SB-A06-0810	Hex Chromium	18540-29-9	20	NA	3230J
153-SB-A06	5/22/1997	08-10	2.8 to 4.8	153-SB-A06-0810-D	Hex Chromium	18540-29-9	20	NA	3600J
153-SB-A06	5/22/1997	10-12	0.8 to 2.8	153-SB-A06-1012	Hex Chromium	18540-29-9	20	NA	1070J
153-SB-A06	5/22/1997	12-14	-1.2 to 0.8	153-SB-A06-1214	Hex Chromium	18540-29-9	20	NA	1970J
153-SB-A06	5/22/1997	18-20	-7.2 to -5.2	153-SB-A06-1820	Hex Chromium	18540-29-9	20	NA	96.3J
153-SB-A06	5/22/1997	20-22	-9.2 to -7.2	153-SB-A06-2022	Hex Chromium	18540-29-9	20	NA	70.4J
153-SB-A06	5/22/1997	22-24	-11.2 to -9.2	153-SB-A06-2224	Hex Chromium	18540-29-9	20	NA	63.9J
153-SB-A07	5/22/1997	0-2	10.29 to 12.29	153-SB-A07-0002	Hex Chromium	18540-29-9	20	NA	179J
153-SB-A07	5/22/1997	0-4	6.29 to 8.29	153-SB-A07-0406	Hex Chromium	18540-29-9	20	NA	1520J
153-SB-A07	5/22/1997	6-8	4.29 to 6.29	153-SB-A07-0608	Hex Chromium	18540-29-9	20	NA	7750J
153-SB-A07	5/22/1997	6-8	4.29 to 6.29	153-SB-A07-0608	Vanadium	7440-62-2	78	1100	443
153-SB-A07	5/22/1997	8-10	2.29 to 4.29	153-SB-A07-0810	Hex Chromium	18540-29-9	20	NA	184
153-SB-A07	5/22/1997	16-18	-5.71 to -3.71	153-SB-A07-1618	Hex Chromium	18540-29-9	20	NA	30.4J
153-SB-A07	5/22/1997	18-20	-7.71 to -5.71	153-SB-A07-1820	Hex Chromium	18540-29-9	20	NA	34.1J
153-SB-A08	5/22/1997	0-2	9.71 to 11.71	153-SB-A08-0002	Hex Chromium	18540-29-9	20	NA	13100
153-SB-A08	5/22/1997	2-4	7.71 to 9.71	153-SB-A08-0204	Hex Chromium	18540-29-9	20	NA	4750
153-SB-A08	5/22/1997	04-06	5.71 to 7.71	153-SB-A08-0406	Hex Chromium	18540-29-9	20	NA	3110
153-SB-A08	5/22/1997	6-8	3.71 to 5.71	153-SB-A08-0608	Hex Chromium	18540-29-9	20	NA	9070
153-SB-A08	5/22/1997	6-8	3.71 to 5.71	153-SB-A08-0608-D	Hex Chromium	18540-29-9	20	NA	8970
153-SB-A08	5/22/1997	8-10	1.71 to 3.71	153-SB-A08-0810	Vanadium	7440-62-2	78	1100	433
153-SB-A08	5/22/1997	08-10	1.71 to 3.71	153-SB-A08-0810	Hex Chromium	18540-29-9	20	NA	5380
153-SB-A09	5/22/1997	0-2	9.09 to 11.09	153-SB-A09-0002	Hex Chromium	18540-29-9	20	NA	39.7
153-SB-A09	5/22/1997	4-6	5.09 to 7.09	153-SB-A09-0406	Hex Chromium	18540-29-9	20	NA	155
153-SB-A09	5/22/1997	06-08	3.09 to 5.09	153-SB-A09-0608	Hex Chromium	18540-29-9	20	NA	110
153-SB-A09	5/22/1997	8-10	1.09 to 3.09	153-SB-A09-0810	Arsenic	7440-38-2	19	19	250
153-SB-A09	5/22/1997	08-10	1.09 to 3.09	153-SB-A09-0810	Lead	7439-92-1	400	800	588J
153-SB-A09	5/22/1997	8-10	1.09 to 3.09	153-SB-A09-0810	Mercury	7439-97-6	23	65	299J
153-SB-A09	5/22/1997	08-10	1.09 to 3.09	153-SB-A09-0810	Benzo(A)anthracene	56-55-3	0.6	2	2.3J
153-SB-A09	5/22/1997	8-10	1.09 to 3.09	153-SB-A09-0810	Benzo(A)pyrene	50-32-8	0.2	0.2	1.5J
153-SB-A09	5/22/1997	08-10	1.09 to 3.09	153-SB-A09-0810	Benzo(B)fluoranthene	205-99-2	0.6	2	2.5J
153-SB-A09	5/22/1997	08-10	1.09 to 3.09	153-SB-A09-0810	Indeno(1,2,3-CD)pyrene	193-39-5	0.6	2	0.84J
153-SB-A10	5/22/1997	0-2	8.84 to 10.84	153-SB-A10-0002	Hex Chromium	18540-29-9	20	NA	59.8J
153-SB-A10	5/22/1997	02-04	6.84 to 8.84	153-SB-A10-0204	Hex Chromium	18540-29-9	20	NA	599J
153-SB-A10	5/22/1997	04-06	4.84 to 6.84	153-SB-A10-0406	Hex Chromium	18540-29-9	20	NA	2450J
153-SB-A10	5/22/1997	08-10	0.84 to 2.84	153-SB-A10-0810	Hex Chromium	18540-29-9	20	NA	3680J

Exhibit Table B-2
Restricted Area Data
Site 153 Former Morris Canal
Block 1289.5, Lot E, Jersey City, New Jersey

Location	Sample Date	Sample Depth (ft)	Elevation (ft msl)	Field Sample ID	Contaminant	CASR#	NJDEP RDCSRS (mg/kg)	NJDEP NRDSRS (mg/kg)	Soil Concentration (mg/kg)
153-SB-A11	5/22/1997	0-2	8.76 to 10.76	153-SB-A11-0002	Hex Chromium	18540-29-9	20	NA	58.5J
153-SB-A11	5/22/1997	02-04	6.76 to 8.76	153-SB-A11-0204	Hex Chromium	18540-29-9	20	NA	10900J
153-SB-A11	5/22/1997	04-06	4.76 to 6.76	153-SB-A11-0406	Hex Chromium	18540-29-9	20	NA	67J
153-SB-A11	5/22/1997	06-08	2.76 to 4.76	153-SB-A11-0608	Hex Chromium	18540-29-9	20	NA	481J
153-SB-A11	5/22/1997	08-10	0.76 to 2.76	153-SB-A11-0810	Hex Chromium	18540-29-9	20	NA	675J
153-SB-A11	5/22/1997	08-10	0.76 to 2.76	153-SB-A11-0810-D	Hex Chromium	18540-29-9	20	NA	560
153-SB-A12	5/22/1997	04-06	4.05 to 6.05	153-SB-A12-0406	Hex Chromium	18540-29-9	20	NA	52.7J
153-SB-A12	5/22/1997	06-08	2.05 to 4.05	153-SB-A12-0608	Arsenic	7440-38-2	19	19	47.9
153-SB-A12	5/22/1997	06-08	2.05 to 4.05	153-SB-A12-0608	Hex Chromium	18540-29-9	20	NA	1470J
153-SB-A12	5/22/1997	06-08	2.05 to 4.05	153-SB-A12-0608	Mercury	7439-97-6	23	65	201J
153-SB-A12	5/22/1997	06-08	2.05 to 4.05	153-SB-A12-0608	Vanadium	7440-62-2	78	1100	599
153-SB-A12	5/22/1997	06-08	2.05 to 4.05	153-SB-A12-0608	Benzo(A)anthracene	56-55-3	0.6	2	300
153-SB-A12	5/22/1997	06-08	2.05 to 4.05	153-SB-A12-0608	Benzo(A)pyrene	50-32-8	0.2	0.2	290
153-SB-A12	5/22/1997	06-08	2.05 to 4.05	153-SB-A12-0608	Benzo(B)fluoranthene	205-99-2	0.6	2	340
153-SB-A12	5/22/1997	06-08	2.05 to 4.05	153-SB-A12-0608	Benzo(K)fluoranthene	207-08-9	6	23	120J
153-SB-A12	5/22/1997	06-08	2.05 to 4.05	153-SB-A12-0608	Carbazole	86-74-8	24	96	100J
153-SB-A12	5/22/1997	06-08	2.05 to 4.05	153-SB-A12-0608	Chrysene	218-01-9	62	230	300
153-SB-A12	5/22/1997	06-08	2.05 to 4.05	153-SB-A12-0608	Dibenzo(A,H)anthracene	53-70-3	0.2	0.2	39J
153-SB-A12	5/22/1997	06-08	2.05 to 4.05	153-SB-A12-0608	Fluorene	86-73-7	2300	24000	150
153-SB-A12	5/22/1997	06-08	2.05 to 4.05	153-SB-A12-0608	Indeno(1,2,3-CD)pyrene	193-39-5	0.6	2	180
153-SB-A12	5/22/1997	06-08	2.05 to 4.05	153-SB-A12-0608	Naphalene	91-20-3	6	17	170
153-SB-A13	5/22/1997	02-04	5.73 to 7.73	153-SB-A13-0204	Hex Chromium	18540-29-9	20	NA	54.5J
153-SB-A13	5/22/1997	04-06	3.73 to 5.73	153-SB-A13-0406	Hex Chromium	18540-29-9	20	NA	34.4J
153-SB-A13	5/22/1997	08-10	-0.27 to 1.73	153-SB-A13-0810	Hex Chromium	18540-29-9	20	NA	232J
153-SB-A14	5/22/1997	08-10	-0.07 to 1.93	153-SB-A14-0810	Hex Chromium	18540-29-9	20	NA	116J
153-SB-A15	5/22/1997	08-10	1.2 to 3.2	153-SB-A15-0810	Hex Chromium	18540-29-9	20	NA	315
153-SB-A16	5/22/1997	08-10	1.14 to 3.14	153-SB-A16-0810	Arsenic	7440-38-2	19	19	331
153-SB-A16	5/22/1997	08-10	1.14 to 3.14	153-SB-A16-0810	Lead	7439-92-1	400	800	710J
153-SB-A16	5/22/1997	08-10	1.14 to 3.14	153-SB-A16-0810	Mercury	7439-97-6	23	65	398J
153-SB-A16	5/22/1997	08-10	1.14 to 3.14	153-SB-A16-0810	Benzo(A)anthracene	56-55-3	0.6	2	1.1J
153-SB-A16	5/22/1997	08-10	1.14 to 3.14	153-SB-A16-0810	Benzo(A)pyrene	50-32-8	0.2	0.2	0.95J
153-SB-A16	5/22/1997	08-10	1.14 to 3.14	153-SB-A16-0810	Benzo(B)fluoranthene	205-99-2	0.6	2	1.5J
153-SB-A17	5/27/1997	02-04	7.72 to 9.72	153-SB-A17-0204	Hex Chromium	18540-29-9	20	NA	44.1J
153-SB-A18	5/27/1997	04-06	5.67 to 7.67	153-SB-A18-0406	Hex Chromium	18540-29-9	20	NA	42.2J
153-SB-A18	5/27/1997	8-10	1.67 to 3.67	153-SB-A18-0810	Hex Chromium	18540-29-9	20	NA	77.2J
153-SB-A19	5/27/1997	2-4	7.2 to 9.2	153-SB-A19-0204	Hex Chromium	18540-29-9	20	NA	21.6J
153-SB-A20	5/27/1997	12-14	-3.08 to -1.08	153-SB-A20-1214	Hex Chromium	18540-29-9	20	NA	92.7J

Notes:

- NJDEP Residential Direct Contact Soil Remediation Standards (RDCSRS) N.J.A.C. 7:26D (last revised 11/4/09).
- NJDEP Non-Residential Direct Contact Soil Remediation Standards (NRDCSRS) N.J.A.C. 7:26D (last revised 11/4/09).
- CASR#: Chemical Abstract Service Registry Number
- J: indicates estimated value based on data validation
- Sample locations and data from the initial RI (TTNUS November 1999).
- Samples from recent additional RI delineation sampling not included as work is still in progress as of May 2010.

EXHIBIT C

C-1: Institutional Controls

C-2: Engineering Controls

NJDEP Site No. 153 Former Morris Canal
Block 1289.5, Lot E
City of Jersey City, Hudson County, New Jersey

Exhibit C-1 includes a description of the deed notice as institutional control including monitoring and reporting requirements.

Exhibit C-2 includes a description of engineering controls consisting of clean fill, vegetative cover and/or pavement; operations and maintenance, monitoring and reporting requirements.

C-1 Deed Notice as Institutional Control

NJDEP Site No. 153 Former Morris Canal
Block 1289.5, Lot E
City of Jersey City, Hudson County, New Jersey

(A) General Description:

- (1) The Property shown on Exhibit B-1 known as Block 1289.5, Lot E is a Restricted Area. The estimated size of the Restricted Area is approximately 86,000 square feet or approximately 2 acres.
- (2) Proper precautions must be taken (i.e., excavation or digging) that may penetrate the bottom of the engineering controls on the Restricted Area. See subsections 6A and 6B of the Deed Notice for directions on Alterations, Improvements, Disturbances, and Emergencies.
- (3) The restrictions will prevent contact with soils above the NJDEP Soil Remediation Standards.

(B) Description of monitoring:

- (1) Annual visual inspections of the Restricted Area will be conducted to ensure that the engineering controls are good condition and to determine whether any disturbances of the soil in the Restricted Area may have resulted in unacceptable exposure to the soil contamination;
- (2) Annual visual inspections of the Restricted Area will be conducted to determine whether there have been any land use changes subsequent to the filing of this Deed Notice or the most recent biennial certification, whichever is more recent;
- (3) Annual visual inspections of the Restricted Area will be conducted to determine whether the current land use on the property is consistent with the restrictions in this Deed Notice;
- (4) A review will be conducted to determine if any newly promulgated or modified requirements of applicable regulations or laws apply to the site; and
- (5) A review will be conducted to determine if any new standards, regulations, or laws apply to the site that might necessitate additional sampling in order to evaluate the protectiveness of the remedial action which includes this Deed Notice. If necessary, this additional sampling will be performed.

(C) Biennial certification items:

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

- A report of all conditions set forth in Deed Notice subparagraph 14C.i.(C) to assure that they have been adhered to, including evaluation of any available documents created as a result of changes in land use or incidents.
- A report that determines whether or not the land use at the site has remained consistent with the restrictions in the Deed Notice.
- A report that determines whether or not the Deed Notice continues to be protective of the public health and safety and of the environment.

**C-2 Engineering Controls
Clean Fill, Vegetative Cover, Pavement Cap and
Access Point Warnings**

NJDEP Site No. 153 Former Morris Canal
Block 1289.5, Lot E
City of Jersey City, Hudson County, New Jersey

(A) General Description:

- (1) Site 153 North: Engineering controls for this portion of the Property consist of the existing pavement cap which is approximately six (6) inches thick.
- (2) Site 153 South – Lower Segment: Engineering controls for this portion of the Property include a nominal 24 feet wide, 1,150 feet long vegetated area from Danforth Avenue to the northern property limit of the adjacent Regnal Realty property (Block 1288.2, Lot 1) and a nominal 24 feet wide 425 feet long asphalt area from the Regnal Realty northern property limit to the Eden Wood Realty (Block 1275, Lot 4; Garfield Home Furnishing)/Jersey City Fields, LLC (Block 1285.5, Lot 1; The Home Depot) property limit. The vegetated cap area consists of 3 feet of clean soil with warning layer at the base and asphalt cap area consists of 12” of pavement surface on the top of 24” of granular fill with warning layer at the base. These areas were remediated in accordance with Interim Remedial Action Work Plan for Site 153 South Lower Segment submitted to NJDEP on October 15, 2009.
- (3) Site 153 South – Upper Segment: Engineering controls for this portion of the Property consist of existing landscaped vegetation areas and four-inch thick asphalt cap that extends under a sloped landscaped soil berm to the adjacent Jersey City Fields, LLC (Block 1285.5, Lot 1; The Home Depot) property line. The asphalt layer is used as a sidewalk along Route 440 and provides an acceptable engineering control where it is in good condition. Existing soil vegetation areas and asphalt areas in degraded condition will be remediated and restored in accordance with the Interim Remedial Action Plan for Site 153 South Upper Segment submitted to NJDEP on April 22, 2010.
- (4) Site 153 Tract 2: Engineering controls for this portion of the Property located south of Danforth Avenue consists of the existing pavement cap which consists of base gravel aggregate and asphalt pavement approximately six (6) inches average thickness.
- (5) Access Point Warnings: Access point warning signs will be installed within sewer manholes on the Property to communicate the presence of and prevent contact with contaminated soils.
- (6) The objective of the Engineering Controls is to prevent direct contact with soils that are above the applicable NJDEP Soil Remediation Standards.

(7) The Engineering Controls is intended to function as a barrier to underlying soils, which may be above the applicable NJDEP Soil Remediation Standards.

(B) Description of the operation and maintenance:

Visual inspections of the Property will be performed annually to ensure that:

- (1) Each engineering control is in good condition and to ensure the integrity, operability, and effectiveness of each engineering control;
- (2) Each engineering control continues as designed and intended to protect the public health and safety and the environment;
- (3) Each alteration, excavation or disturbance of any engineering control is timely and appropriately addressed to maintain the integrity of the engineering control (also, see subsections 6A and 6B of this Deed Notice for directions on Alterations, Improvements, Disturbances, and Emergencies.)
- (4) The integrity of each institutional control is maintained so that the remedial action continues to be protective of the public health and safety and of the environment; and,
- (5) Records of the inspections are to be maintained as listed in Deed Notice subparagraph 14C.ii.(B)(5). Should the visual inspection indicate that other activities are necessary, those activities will be listed and executed.
- (6) A review of any new standards, regulations, or laws will be conducted to evaluate the protectiveness of the remedial action, which includes this Deed Notice. Should the review indicate that other activities are necessary, those activities will be listed and executed.

(C) Biennial certification items:

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

- A report of all conditions set forth in Deed Notice subparagraph 14(C).ii.(C) to ensure that they have been adhered to, including an evaluation to determine whether the Engineering Controls are continuing to meet their original objectives and intended functions.
- A report to determine whether the Engineering Controls continue to operate as designed.
- A report to determine whether the Engineering Controls continue to be protective of the public health and safety and of the environment.

EXHIBIT D

Consent Decrees as Institutional Controls

D-1: Consent Decree Regarding Sites 79 and 153 South

D-2: Consent Decree Regarding Remediation of the NJCU Redevelopment Area

NJDEP Site No. 153 Former Morris Canal
Block 1289.5, Lot E
City of Jersey City, Hudson County, New Jersey

The Property subject to this Deed Notice is defined as Site 153 North and Site 153 South in the Consent Decree Regarding Sites 79 and 153 South and the Consent Decree Regarding Remediation of the New Jersey City University (NJCU) Redevelopment Area, which are attached hereto and were entered as an order of the Court in the following consolidated actions *JCMUA v. Honeywell International Inc.*, D.N.J., Civ. No. 05-05955; *JCIA v. Honeywell International Inc.*, D.N.J., Civ. No. 05-5993; and *Hackensack Riverkeeper, Inc. v. Honeywell International Inc.*, D.N.J., Civ. No. 06-22.

The Consent Decrees restrict the transfer, use and development of the Site 153 South and North portions of the Property without further remediation pursuant to the terms of the Consent Decrees. To the extent that there is any conflict or inconsistency between the terms of this Deed Notice and the terms of the Consent Decrees, the Consent Decrees shall govern. To the extent that any action to be taken pursuant to this Deed Notice is in conflict with or inconsistent with the Consent Decrees, the Consent Decrees shall govern.

EXHIBIT D-1

Consent Decree Regarding Sites 79 and 153 South

NJDEP Site No. 153 Former Morris Canal
Block 1289.5, Lot E
City of Jersey City, Hudson County, New Jersey

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JERSEY CITY MUNICIPAL UTILITIES)
AUTHORITY,)

Plaintiff,)

v.)

HONEYWELL INTERNATIONAL INC.,)

Defendant.)

Consolidated under Docket
No. 05-5955 (DMC-PS)

JERSEY CITY INCINERATOR AUTHORITY)

Plaintiff,)

v.)

HONEYWELL INTERNATIONAL INC.,)

Defendant.)

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

HACKENSACK RIVERKEEPER, INC.,)
et al.)

Plaintiffs,)

v.)

HONEYWELL INTERNATIONAL INC.,)
et al.)

Defendants.)

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

CONSENT DECREE REGARDING SITES 79 AND 153 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 of the Chromium Chemical Production Waste Sites;

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

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

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

which includes the properties formerly owned by the City of Jersey City, JCMUA, and JCIA (collectively "the Jersey City Entities"), and Study Area 6 South, as well as a parcel adjacent to Study Area 5 owned by Regnal Realty, Inc.;

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

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

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

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

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

Whereas, based on a recent survey of Honeywell's Site 153 property, there is a question as to the property line between Honeywell's property and the Regnal Realty Property. Langer Transport operates a trucking operation on the Regnal Realty Property. Langer Transport and

Regnal Realty, Inc. are owned by the same entity. Based on the survey, Honeywell believes that Langer Transport's operations encroach upon Honeywell's property;

Whereas, Bob Ciasulli, Elisabeth and Rafael Rosario, and Michael Vo own the properties that comprise Site 79. The Rosario and Vo properties are residential. The Ciasulli property is currently used as an auto dealership with sales and service operations;

Whereas, Bob Ciasulli and Honeywell asserted cross-claims against each other in the Consolidated Litigation, and Honeywell has asserted cross-claims against Michael Vo and Elisabeth and Rafael Rosario;

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

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

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

Whereas, on September 3, 2008, the Court entered the Deep Overburden and Bedrock Groundwater Remedies Consent Order ("Deep Groundwater Consent Order"), resolving all issues related to the remediation of deep overburden and bedrock groundwater in both *ICO v.*

Honeywell and the Consolidated Litigation, with the exception of any issues that might be related to the Regnal Realty Property;

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

Whereas, the Parties to this Consent Decree believe that it is in their mutual interest to resolve their differences so that Honeywell can remediate environmental conditions at the Site 079 Ciasulli Property and Site 153 South in order to ensure the continued protection of human health and the environment; and

Whereas, each of the actions to implement this Consent Decree have been fully considered by Honeywell, Riverkeeper, Ciasulli, and BMUA, as a means to accomplish the aforesaid purposes of this settlement and each of the Parties consents be bound by the provision set forth herein;

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

ARTICLE I: DEFINITIONS

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

1. **BMUA** shall mean the Bayonne Municipal Utilities Authority or its successors in interest with regard to the easement and sewer pipeline that runs the length of Site 153 South.
2. **COPR** shall mean Chromite Ore Processing Residue.

3. **Chromium Remedy or Chromium Remediation** shall mean the remedy set forth in Article III for the particular site and collectively, they are referred to herein as the **Chromium Remedies**. **Initial Chromium Remedy or Remedies** shall mean the remedies set for in Article III, except for paragraphs 61 and 71. **Final Chromium Remedy or Remedies** shall mean the further remedial activities set for in paragraph 61 and/or paragraph 71.

4. **Ciasulli** shall mean Bob Ciasulli, whose legal name is Robert G. Ciasulli, the current owner of the Site 79 Ciasulli Property and his successors in interest to the Site 79 Ciasulli Property.

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. **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. **Final Chromium Remedy or Remedies** shall have the meaning set forth in paragraph 3.

9. **Greater than 20 Soils** shall mean those soils in which the hexavalent chromium concentration in the top 20 feet of soil below ground surface is greater than 20 mg/kg.

10. **Honeywell** shall mean Honeywell International Inc. and its subsidiary 425-445 Route 440 Property LLC.

11. **ICO v. Honeywell** shall mean *Interfaith Community Organization v. Honeywell International Inc.*, D.N.J., Civ. No. 95-2097 (DMC).
12. **Including** shall mean including, but not limited to.
13. **Initial Chromium Remedy or Remedies** shall have the meaning set forth in paragraph 3.
14. **NJDEP** shall mean the New Jersey Department of Environmental Protection.
15. **NJDEP Chromium Policy** shall mean the chromium remediation policy set forth in the memorandum from Lisa P. Jackson to Irene Kropp on February 8, 2007, and attached as Exhibit A. The NJDEP Chromium Policy is also known as the NJDEP Chromium Directive.
16. **Non-Honeywell Parties** shall mean Riverkeeper, BMUA, and Ciasulli, except that the term shall exclude BMUA or Ciasulli, wherever BMUA or Ciasulli would not be a Non-Honeywell Defendant with an Interest.
17. **Non-Honeywell Defendant with an Interest** shall mean any Non-Honeywell Defendant who has an ownership or other real property interest in property that will be affected by an action or decision under this Consent Decree.
18. **Party or Parties** shall mean any or all of Riverkeeper, Honeywell, BMUA, or Ciasulli.
19. **RCRA** shall mean the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, as amended.
20. **Regnal Realty Property** shall mean the property owned by Regnal Realty, consisting of Block 1288.2, Lot 1, located at 420 Route 440, Jersey City, New Jersey.
21. **Riverkeeper** shall mean Hackensack Riverkeeper, Inc., William Sheehan, Reverend Winston Clarke, and Lawrence Baker.

22. **Route 440** shall mean New Jersey state highway Route 440, a portion of which is part of Site 153 South.

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

24. **Shallow Groundwater or Shallow Level of Groundwater** shall mean groundwater (i) above the meadow mat, (ii) groundwater at stratigraphically equivalent depths in locations where there is no meadow mat, and (iii) groundwater that is contaminated by recent contact with COPR or other chromium contaminated soil 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.

25. **Site 79** shall mean all property in Study Area 5 owned by Ciasulli, Elisabeth and Rafael Rosario, and Michael Vo.

26. **Site 79 Ciasulli Property** shall mean the property within Site 79 owned by 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.

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

28. **Site 153** shall mean Site 153 North and Site 153 South.

29. **Site 153 North** shall mean that portion of Site 153 that abuts Sites 184 and 90 and is bounded to the north by Carbon Place and to the south by the southern property line of Site 90.

30. **Site 153 South** shall mean that portion of Site 153 that abuts Site 117, the Garfield Home Furnishing Center, and the Regnal Realty Property, and is bounded to the north by the southern property line of Site 90 and to the south by Danforth Avenue. Site 153 South is comprised of the Site 153 South Lower Segment and Site 153 South Upper Segment.

31. **Site 153 South Lower Segment** shall mean that portion of Site 153 South that is bounded to the north by the southern property line of Site 117 and to the south by Danforth Avenue.

32. **Site 153 South Upper Segment** shall mean that portion of Site 153 South that abuts Site 117.

33. **Soil** shall mean soils, historic fill, COPR, or any combination thereof.

34. **Study Area 5** shall mean that property designated by NJDEP as Sites 79, 90, 117, 153, and 184 of the Chromate Chemical Production Waste Sites 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 Jersey City Fields LLC, consisting of Block 1285.5, Lot 1, located at 440 Route 440, Jersey City, New Jersey, (e) all such property owned by 425/445 Route 440 Property LLC, consisting of Block 1289.5, Lot E, Jersey City, New Jersey, and (f) 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.

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

36. **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.

37. **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.

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

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

40. **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.

41. **Subject to Review and Comment by the Non-Honeywell Parties** shall mean that Honeywell shall submit an investigation, plan, report, or other document to the Non-Honeywell Parties. Non-Honeywell Parties shall have the right to make comments, to which Honeywell shall respond. In the event that the Parties are not able to reach agreement, any Party

may seek resolution of the dispute by motion to the Court, but the Parties are not required to seek a ruling by the Court.

42. **Technical Requirements for Site Remediation or Tech Regs** shall mean the NJDEP Technical Requirements for Site Remediation, N.J.A.C. Chapter 26E, as amended.

43. **Unrestricted Use No Further Action Determination** shall mean a No Further Action Letter issued by NJDEP pursuant to N.J.A.C. § 7:26C-2.6(c)(1)(i) or a Remedial Action Outcome issued by a New Jersey Licensed Site Remediation Professional in accordance with regulations then in effect stating that the site meets the requirements for Unrestricted Use.

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 7002 of RCRA, 42 U.S.C. § 6972, and 28 U.S.C. § 1331.

46. For purposes of this Consent Decree, the Riverkeeper Complaint in the Consolidated Litigation states claims upon which relief may be granted against Honeywell with regard to the Site 79 Ciasulli Property and Site 153 South.

47. In the event that this Decree is not terminated by one or more Parties pursuant to paragraph 89, this Consent Decree resolves, settles, and satisfies all claims by Riverkeeper against Honeywell with respect to (i) soils and shallow groundwater at the Site 79 Ciasulli Property and (ii) soils at Site 153 South, except any such soils that might be inside of the current Langer Transport fence line. This Consent Decree does not resolve any claims regarding the Site 79 Residential Properties or Site 153 North. This Consent Decree does not resolve any claims regarding any soils at Site 153 South that might be inside of the current Langer Transport fence

line. The Consent Decree does not resolve any claims regarding shallow groundwater contamination at Site 153 South. Honeywell and Riverkeeper reserve their respective rights and defenses regarding these unresolved claims. In the event that this Decree is not terminated by one or more Parties pursuant to paragraph 89, this Consent Decree resolves, settles, and satisfies all claims by Honeywell against Ciasulli in this Litigation and by Ciasulli against Honeywell in this Litigation.

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 of the parties to the Consolidated Litigation or any third party, 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 or with respect to any claims by any third party.

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 at the Site 79 Ciasulli Property and Site 153 South at Honeywell's sole cost and expense. Honeywell shall perform the remediation of COPR and chromium present at the Site 79 Ciasulli Property and Site 153 South in accordance with the terms of this Consent Decree as set forth below.

51. **Consistency of the Chromium Remedy with NJDEP Guidance and Remedial Action Work Plans.** The Initial Chromium Remedies shall be consistent with the Technical Requirements for Site Remediation, the NJDEP Chromium Policy, and any Remedial Action

Work Plan or other work plan approved by NJDEP for the Site 79 Ciasulli Property or Site 153 South, including any modifications or addenda thereto approved by NJDEP. Prior to submitting any Remedial Action Work Plan or other work plan for the Site 79 Ciasulli Property or Site 153 South to NJDEP, Honeywell shall take all reasonable steps to ensure that the plan is consistent with the Chromium Remedies set forth herein. In the event of any conflict or inconsistency between this Consent Decree and any Remedial Action Work Plan approved by NJDEP, the provisions of this Consent Decree shall control. However, nothing in this Consent Decree shall limit NJDEP's authority to require Honeywell, other Parties, or third-parties from undertaking remedial activities at the Site 79 Ciasulli Property or Site 153 South in addition to those required by this Consent Decree.

52. **General Scope of the Chromium Remedies.** Due to the current uses of the Site 79 Ciasulli Property and Site 153 South and NJDEP's anticipated establishment of formal soil remediation standards for hexavalent chromium, remediation of the chromium contamination of the soils will take place in two phases, an initial phase and a final phase. The Initial Chromium Remedies shall address soil containing hexavalent chromium concentrations greater than 20 mg/kg within the top 20 feet of soil below ground surface as set forth herein and shall be consistent with the requirements set forth in this Article. The Final Chromium Remedies shall address the remediation of hexavalent chromium in soils as necessary to meet NJDEP's requirements in effect at the time further remedial activities are required under this Consent Decree. The Parties understand and agree that Honeywell is agreeing to use soil with a hexavalent chromium concentration of less than 1 mg/kg as backfill solely as a partial condition of settlement and that the requirement to use soil with a hexavalent chromium concentration of less than 1 mg/kg as backfill is applicable only to Site 153 South and shall not be used as a

precedent for any other site. The Parties also understand and agree that Riverkeeper is agreeing to use the requirements set forth in the NJDEP Chromium Policy related to Greater than 20 Soils for purposes of the Initial Chromium Remedies as a partial condition of this settlement and that such agreement shall not be used in any way to prejudice its advocacy for final remediation herein or at any other site at a different level. The only groundwater aquifer addressed by this Consent Decree is the shallow aquifer. The remediation of deep overburden and bedrock groundwater, including source control, is addressed in the Deep Groundwater Consent Order.

53. **Development of a Schedule for the Chromium Remedies.** Within 90 days of entry of this Consent Decree, Honeywell shall propose a Master Schedule, subject to review and comment by the Non-Honeywell Parties, for the implementation of the Initial Chromium Remedies. The Master Schedule shall incorporate the following dates:

- (a) A date for the submission of an amended Remedial Action Work Plan for the Site 79 Ciasulli Property to NJDEP based on the Initial Chromium Remedy for the Site 79 Ciasulli Property set forth in this Consent Decree;
- (b) Dates for the submission of workplan/design documents for the Upper Segment and Lower Segment of Site 153 South to NJDEP based on the Initial Chromium Remedy for Site 153 South set forth in this Consent Decree;
- (c) Dates for the initiation and completion of the Initial Chromium Remedy for the Site 79 Ciasulli Property; and
- (d) Dates for the initiation and completion of the Initial Chromium Remedy for Site 153 South.

As such time as it becomes appropriate, Honeywell shall propose amendments to the Master Schedule, subject to review and comment by the Non-Honeywell Parties, for implementation of the Final Chromium Remedies.

54. **Demolition and Grading Activities.** During demolition and grading activities for the Chromium Remedies, adequate measures shall be taken to protect site workers and the community from airborne dusts and exposure to contaminated soils in accordance with applicable laws, regulations, and health and safety standards.

55. **Permits and Authorizations.** Honeywell shall obtain all necessary federal, state, and local permits and authorizations to carry out the Chromium Remedies as set forth in this Article. Ciasulli and BMUA agree to cooperate with Honeywell in the applications for any such permits, authorizations, or approvals. Such cooperation shall include providing information or data with respect to permit applications, co-signing permit applications, and allowing access to the Site to obtain information necessary for the permits.

B. Chromium Remedy for the Site 79 Ciasulli Property

56. **Hotspot Excavation.** Honeywell shall excavate Greater than 20 Soils in the vicinity of soil borings 79-SB-004 and 79-SB-D005 in the approximate area set forth on the figure attached as Exhibit B. Based on existing data, it is anticipated that such excavation shall remove soils in the top two to four feet below ground surface. Honeywell shall dispose of excavated Greater than 20 Soils off-site at a waste disposal facility licensed to accept such waste.

57. **In Situ Treatment.** Honeywell shall conduct *in situ* treatment of Greater than 20 Soils with a chemical reductant in the approximate area shown on Exhibit B in accordance with the treatment protocol set forth in Exhibit C. Honeywell's treatment obligations under this Consent Decree shall not be subject to confirmation sampling and Honeywell shall have no

obligation under this Consent Decree to treat soils at the Site 79 Ciasulli Property beyond the requirements set forth in the treatment protocol.

58. **Asphalt Cap Remedy.** Until such time as further remedial action may be required pursuant to paragraph 61, Honeywell shall inspect and maintain the asphalt cover at the Site 79 Ciasulli Property over all Greater than 20 Soils in approximately the area shown on Exhibit B and hereinafter referred to as the "Site 79 Capped Area."

59. **Deed Notice.** Within 90 days of entry of this Consent Decree, a deed notice, substantially in the form attached as Exhibit D and including the following provisions, shall be recorded by Ciasulli for the Site 79 Ciasulli Property pursuant to paragraph 60:

- (a) Notice that the asphalt cover for the Site 79 Capped Area, also referred to as the Restricted Area in the deed notice (Exhibit D), constitutes an engineering control that must be maintained in accordance with the Tech Regs;
- (b) An easement providing access to Honeywell for the purposes of inspecting, repairing, and maintaining the asphalt cover; and
- (c) A restriction limiting the future uses of the Site 79 Capped Area to commercial, retail, or open space, including continued use as an auto dealership.

The deed notice shall encumber the Site 79 Ciasulli Property until such time as further remedial activities are undertaken pursuant to paragraph 61 and an Unrestricted Use No Further Action Determination is issued for the Site 79 Ciasulli Property. During the period in which the Site 79 Ciasulli Property is encumbered by the deed notice, Ciasulli and Honeywell shall comply with the requirements of the deed notice. At the time the biennial reports required by the deed notice

are submitted to NJDEP, Ciasulli and Honeywell shall provide copies of the reports to Riverkeeper. The deed notice shall be enforceable against Ciasulli and Honeywell in the Consolidated Litigation.

60. **Recording of the Deed Notice.** The deed notice and this Consent Decree shall be recorded pursuant to N.J.S.A. §§ 46:15-1.1, 46:16-1.1, 46:16-2, and 58:10B-13 in the office of the Hudson County Register and a conspicuous reference to the Consent Decree and Deed Notice shall be included in all instruments concerning title to the Site 79 Ciasulli Property as long as the property is required to be encumbered by the deed notice pursuant to paragraph 59.

61. **Further Remedial Activities.** Within 90 days of receiving written notice from Ciasulli that he wants to have the opportunity to use, offer, or market the Site 79 Ciasulli Property for residential purposes, Honeywell shall propose further remedial action at the Site 79 Ciasulli Property as necessary to meet NJDEP's requirements for Unrestricted Use of the property in effect at that time and a schedule for undertaking such further remedial action. Such proposal and schedule shall be presented by Honeywell in a document that is subject to review and comment by the Non-Honeywell Parties. Following such review and comment by the Non-Honeywell Parties, Honeywell shall undertake the further remedial action pursuant to the schedule. To the extent that Honeywell wants to rely on treatment conducted pursuant to paragraph 57 as having reduced the hexavalent chromium concentration in the soils to the level that would make further remediation unnecessary under this paragraph, Honeywell shall conduct post-treatment sampling to demonstrate that the treatment has resulted in permanent hexavalent chromium concentrations of less than that required to meet NJDEP's requirement for Unrestricted Use of the property in effect at the time. Honeywell shall propose a program of post-treatment monitoring in a document that is subject to review and comment by the Non-

Honeywell Parties. In the event that Honeywell fails to make the demonstration required by this paragraph with respect to treatment, Honeywell shall undertake further remedial actions as required herein. The Parties shall use all reasonable efforts to ensure that the property is remediated pursuant to this paragraph in a timely manner in coordination with, and so as not to unreasonably delay, planned redevelopment.

62. Shallow Groundwater. The parties agree that chromium levels in shallow groundwater at Site 79 do not exceed the current New Jersey Ground Water Quality Standards and that, as part of the Initial Chromium Remedy, no shallow groundwater remediation is required for the Site 79 Ciasulli Property. Shallow groundwater remediation may be required in conjunction with further remedial activities pursuant to paragraph 61. At the time that it makes its proposal pursuant to paragraph 61, Honeywell shall address whether shallow groundwater remediation is required to meet NJDEP's requirements for Unrestricted Use of the property in effect at the time and, if necessary, incorporate such groundwater remediation into its proposal. In the meantime, Honeywell shall conduct water level monitoring pursuant to paragraph 80(a)(vi) to ensure that chromium contaminated shallow groundwater is not migrating from Route 440 to the Site 79 Ciasulli Property.

63. Disturbance of the Cap. In the event of any planned actions in the Site 79 Capped Area that will involve disturbance of the cap, Ciasulli shall notify the Parties reasonably in advance of the planned action(s) and the date(s) of the planned action. In the event of any emergency actions in the Site 79 Capped Area that will involve disturbance of the cap, Ciasulli shall notify the Parties in a timely manner of the emergency action and the date on which it was undertaken. Honeywell shall provide notice of such disturbance to adjacent property owners in the manner described in paragraph 81.

64. Inspection by Riverkeeper. After providing the Parties with seven days advance written notice, Riverkeeper shall have the right to enter the Site 79 Ciasulli Property annually for purposes of inspecting the cap provided that the time for such inspection shall be coordinated with Ciasulli so as not to unreasonably disrupt Ciasulli's business.

65. Annual Certification to Court. Annually, beginning on the anniversary date of the entry of this Consent Decree and continuing until such time as the Site 79 Ciasulli Property is no longer encumbered by the deed notice pursuant to paragraph 59, Ciasulli shall submit a certification to the Court regarding his compliance with the Consent Decree and the deed notice. Such certification shall identify all uses of the property since the date of the last annual certification. Honeywell and Riverkeeper will remind Ciasulli of this annual obligation.

66. Conveyance of the Site 79 Ciasulli Property. Within 30 days of conveyance of all or any part of the property, Ciasulli shall provide notice of such conveyance to the Court and the Parties. Such notice shall be accompanied by appropriate papers adding the new owner as a party to the Consent Decree with respect to only that portion of the property acquired. The Parties agree to cooperate in the addition or substitution of the new owner as a party to the Consent Decree. Once added or substituted, the new owner shall have all of the rights and responsibilities of this Consent Decree applicable to Ciasulli.

C. Chromium Remedy for Site 153 South

67. Site 153 South Lower Segment Remedial Action. Honeywell shall remediate soils within the Site 153 South Lower Segment as follows:

- (a) Except as limited by the provisions of paragraph 67(a)(i)-(iv), and subject to Honeywell's ability to obtain all necessary permits and approvals, Honeywell shall excavate all soils to a depth of three feet below ground

surface and shall dispose of or recycle all excavated soils at a facility licensed to accept such material.

- (i) The excavation adjacent to Route 440 shall be conducted at a sufficient slope to prevent subsidence of soil beneath Route 440. The top of the slope shall be as close as practicable to Route 440. The slope shall descend at approximately a 1:2 ratio (i.e., the slope will descend one foot vertically for every two feet of lateral extent) until it reaches a depth of three feet below ground surface. Honeywell shall install a geotextile liner over the slope back that is designed to prevent exposure to the chromium contaminated soils and to prevent contamination of the clean soil fill installed pursuant to subparagraph (b). The geotextile liner and the final dimensions of the slope shall be subject to the approval of the New Jersey Department of Transportation and all other necessary governmental authorities.

- (ii) In order to maintain sufficient support for existing utility poles, excavation to three feet below ground surface will not be conducted within approximately a four-foot radius of the center of existing utility poles. In the four-foot support radius, Honeywell shall excavate to approximately six inches below ground surface and shall back fill the excavated area with clean soil, as set forth in subparagraph(b), except that no demarcation layer shall be required. Over the four-foot support radius, Honeywell shall

install a geotextile liner that is designed to prevent exposure to the chromium contaminated soils left in place and to prevent contamination of the clean soil fill installed pursuant to subparagraph (b). The liner and final specifications for excavation around existing utility poles shall be subject to the approval of all necessary government authorities and utilities.

(iii) In the segment that is adjacent to the Regnal Realty Property, the excavation shall extend from the western property line of Site 153 to the current Langer Transport fence line with the exception that the Langer Transport fence support posts, sign and building foundations shall be treated either like the Route 440 slope back, consistent with (i) above or like utility poles, consistent with (ii) above, and no excavation is required under the paved entrance between Langer Transport and Route 440.

(iv) No excavation shall be required of the soils under Route 440.

(b) Honeywell shall place an orange demarcation layer (orange snow fence, geotextile liner, or similar material) at the bottom of the excavation and shall backfill the excavation with clean soil having hexavalent chromium concentrations of less than 1 mg/kg. After backfilling, where appropriate, Honeywell shall plant appropriate grass or other vegetation to minimize erosion of the clean fill.

68. Site 153 South Upper Segment Remedial Action. Within 90 days of the entry of this Consent Decree, Honeywell shall propose a remedy for the remediation of the soils in the

Site 153 Upper Segment that is subject to review and comment by the Non-Honeywell Parties. In the event that such proposed remedy employs excavation to a depth of three feet below ground surface, in whole or in part, the requirements of paragraph 67 shall apply in the areas to be excavated. Honeywell shall remediate the soils as agreed by the Parties subject to Honeywell's ability to obtain all necessary permits and approvals.

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

70. Site 153 South Utility Map. Honeywell shall create a map of the utilities present at Site 153 South, to the extent such information is available through utility suppliers, and provide copies of the map to BMUA and all entities with authority over utilities present at Site 153 South. Honeywell shall revise such map each time chromium contaminated soils are removed pursuant to paragraph 71.

71. Further Remediation upon Sewer Repair or Replacement. Further remediation of the chromium contaminated soils in Site 153 South shall be undertaken by Honeywell as follows:

- (a) Whenever any section of the sewer in Site 153 South is being replaced, Honeywell shall remove or treat all soils necessary to meet NJDEP's requirements for non-residential use in effect at the time, dispose of such removed material at a facility licensed to accept such materials, replace such materials with materials deemed appropriate by BMUA and having a hexavalent chromium concentration less than the more stringent of (i) the remediation standard for Unrestricted Use adopted by the Court after trial in

the Consolidated Litigation or (ii) a New Jersey soil standard for Unrestricted Use duly adopted after the date of this Consent Decree or, (iii) if no decision has been rendered in the Consolidated Litigation or no standard has been adopted, 1 mg/kg, and document the locations of the removed material pursuant to paragraph 70.

- (b) Whenever any normal operating repairs on any section of the sewer in Site 153 South result in the removal of chromium contaminated soils, Honeywell or the appropriate sewer authority shall remove all such soils necessary to effectuate the repair and that exceed NJDEP's requirements for non-residential use in effect at the time, and Honeywell shall arrange for the transportation and disposal of such removed material at a facility licensed to accept such materials, replace such materials with materials deemed appropriate by BMUA and having a hexavalent chromium concentration of less than the more stringent of (i) the remediation standard for Unrestricted Use adopted by the Court after trial in the Consolidated Litigation or (ii) a New Jersey soil standard for Unrestricted Use duly adopted after the date of this Consent Decree or, (iii) if no decision has been rendered in the Consolidated Litigation or no standard has been adopted, 1 mg/kg, and document the locations of the removed material pursuant to paragraph 70.
- (c) Whenever any contaminated materials are removed from Site 153 South pursuant to this paragraph, Honeywell shall, to the extent allowed by the sewer authority, also take appropriate steps, such as the placement of a geofabric, to ensure that new fill material does not become contaminated by

any contaminated soil remaining in Site 153 South. Honeywell shall also update the map pursuant to paragraph 70.

72. **Worker Training Plan.** Honeywell shall develop a plan for training all individuals who might be exposed to COPR, chromium-contaminated soils, or chromium-contaminated groundwater in conjunction with any utility or other work performed at Site 153 South ("Worker Training Plan") in conformance with Occupational Safety and Health Administration ("OSHA") rules and guidance. The Worker Training Plan shall detail all appropriate steps such individuals should take to protect themselves from exposure to chromium and shall provide procedures (i) to identify when areas or sections of the pipeline surrounded by COPR or chromium-contaminated soil are scheduled for repair and/or replacement, (ii) to identify and implement appropriate actions to protect workers, and (iii) to coordinate with Honeywell regarding the removal of COPR or chromium-contaminated soils pursuant to paragraph 71. BMUA shall implement such plan pursuant to paragraph 77.

73. **Site 153 South Deed Notice.** Within 90 days of the completion of the remedial measures required by paragraphs 67 and 68, a deed notice, substantially in the form attached as Exhibit E and including the following provisions, shall be recorded by Honeywell pursuant to paragraph 74:

- (a) Notice of the presence of chromium contamination at Site 153 South;
- (b) Notice that clean fill, caps, and asphalt cover each constitute an engineering control that must be maintained in accordance with the Tech Regs;

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

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

74. **Recording of the Deed Notice.** The deed notice for Site 153 South and this Consent Decree shall be recorded pursuant to N.J.S.A. §§ 46:15-1.1, 46:16-1.1, 46:16-2, and 58:10B-13, in the office of the Hudson County Register and a conspicuous reference to the Consent Decree and Deed Notice shall be included in all instruments concerning title to Site 153 South as long as the property is required to be encumbered by the deed notice pursuant to paragraph 73.

75. **Inspection by Riverkeeper.** Riverkeeper shall have the right to enter Site 153 South annually for purposes of inspecting the Initial Chromium Remedy.

76. **Ownership of and Access to Site 153 South.** Honeywell shall not voluntarily convey fee simple title to Site 153 South to any other person or entity, unless Site 153 South has been remediated such that no hexavalent or total chromium contamination remains at Site 153 South, whether in soils or in groundwater, in excess of the levels and at depths specified by NJDEP for Unrestricted Use in place at the time of the proposed sale or lease. Nothing in this paragraph shall prohibit Honeywell from granting easements or leases on Site 153 South to third

parties without remediating to Unrestricted Use, provided that such easements or leases are for the purposes identified in paragraph 73(c). In the event that a future easement holder or lessee uses Site 153 South for purposes other than those identified in paragraph 73(c), the particular easement or lease shall terminate and Honeywell shall so provide in each future easement and lease instrument. Honeywell shall provide notice to Riverkeeper of each future easement and lease granted, other than the existing easement on Site 153 South.

77. **BMUA Obligations.** BMUA shall develop a permanent plan to implement health and safety measures for its workers at Site 153 South in accordance with OSHA rules related to hazardous materials and shall utilize the plan prepared by Honeywell pursuant to paragraph 72 setting forth the procedures and protections that BMUA shall employ when it conducts activities at Site 153 South. In the event of any planned maintenance or emergency repair of any of its pipelines located under Site 153 South that will involve any disturbance of the remedial measures required by paragraphs 67 and 68, BMUA shall notify Honeywell and Riverkeeper of the planned action(s) and the date(s) for the planned action. Notice to adjacent property owners, in the event of any planned or emergency repair or maintenance of pipelines located under Site 153 South, shall be provided by Honeywell in the manner described in paragraph 81.

D. Long-Term Maintenance and Monitoring

78. **Honeywell's Ongoing Responsibility.** Honeywell shall be responsible for implementing, monitoring, maintaining, repairing, and replacing the Site 79 Ciasulli Property and Site 153 South Chromium Remedies until an Unrestricted Use No Further Action Determination is issued for the respective site pursuant to the terms of this Consent Decree. Honeywell shall satisfy this responsibility through establishment and implementation of a Long-Term Monitoring Plan.

79. **Long-Term Monitoring Plan.** Subject to review and comment by the Non-Honeywell Parties and approval by NJDEP, Honeywell shall develop a Long-Term Monitoring Plan to ensure the ongoing effectiveness of the Site 79 Ciasulli Property and Site 153 South Chromium Remedies to meet the objectives set forth in Sections B and C of this Article. The Long-Term Monitoring Plan shall be consistent with applicable EPA and NJDEP policies and guidance, including EPA's Comprehensive Five Year Review Guidance (2001) (or any subsequent revision) and the Tech Regs. Honeywell shall design the Long-Term Monitoring Plan to satisfy each of the following objectives:

- (a) Provide monitoring to ensure that the integrity and effectiveness of the Chromium Remedies are maintained; and
- (b) Provide monitoring to ensure that the restrictions of the institutional controls are being satisfied, including the deed notices for the sites.

80. **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 79. Honeywell shall provide the Non-Honeywell Parties 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, which shall be described in more detail in the Long-Term Monitoring Plan, at intervals no less frequent than set forth below. If the results of Honeywell's monitoring show that the Chromium Remedy for Site 79 Ciasulli Property

or Site 153 South are compromised or threaten to become compromised, Honeywell shall also undertake remediation activities, as set forth below:

- (i) Annual inspections of the Site 79 Capped Area and Site 153 South to ensure that all pavement is in good condition and does not have potholes or cracks that penetrate the pavement. The inspection shall take place in April or May of each year. Any potholes or cracks that do not penetrate the pavement shall be repaired as part of regular maintenance that takes place at least annually. Potholes or cracks that penetrate the pavement shall be repaired immediately and, if 10% or greater of a localized area or 25% or greater of the entire paved area suffers from such disturbances, Honeywell shall repave such portion(s) as are necessary to maintain the pavement in good condition.
- (ii) Annual inspection monitoring of the vegetative cover at Site 153 South to ensure that any vegetative cover is in conformance with paragraph 67(b);
- (iii) Annual inspection of the caps installed in Site 153 South to isolate the chromium contaminated soils left in place for the slope back and around utility poles pursuant to paragraph 67;
- (iv) Annual inspection, and repair and/or replacement, as necessary, of all warning signs at Site 153 South;

- (v) Annual review, updated as necessary based on changes to field conditions and/or regulatory requirements, of the Worker Training Plan for Site 153 South; and
 - (vi) To evaluate the gradient from the portions of the Site 79 Ciasulli Property that adjoin Route 440, water level measurements in the groundwater shall occur at the intervals specified for measurement of water levels in shallow groundwater in the Long-Term Monitoring Plan for the Deep Overburden and Bedrock Groundwater Remedy for Study Area 7. In the event that such monitoring indicates that contaminated shallow groundwater is migrating from Route 440 toward the Site 79 Ciasulli Property, Honeywell shall either undertake water quality monitoring to determine whether the groundwater moving towards the Site 79 Ciasulli Property is contaminated, or undertake action to reverse the flow direction. If contaminated groundwater is migrating into the Site 79 Ciasulli Property, Honeywell shall undertake remedial action to prevent such migration.
- (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-Term Monitoring Plan shall be so changed subject to approval by NJDEP or a New Jersey Licensed Site Remediation Professional. If the Parties are unable to reach agreement over alterations

to the Long-Term Monitoring Plan, the Party proposing the change may submit the dispute to the Court for resolution.

- (c) **Contingency Plan.** As part of the Long-Term Monitoring Plan, Honeywell shall develop a contingency plan to ensure the integrity of the Chromium Remedies in the event of (i) any planned penetration of the Site 79 Capped Area or the clean fill or other remedial measures at Site 153 South or (ii) any unplanned event or accident that penetrates the Site 79 Capped Area or otherwise compromises the integrity of the Initial Chromium Remedies at the Site 79 Ciasulli Property or Site 153 South. The contingency plan shall include, at a minimum, an annually updated plan to notify the relevant persons, including NJDEP and the Non-Honeywell Parties, of (i) the event penetrating the cap, compromising the cap, or compromising the integrity of the Initial 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) **Recordkeeping.** Honeywell shall maintain written logs or other records of those monitoring and remediation activities undertaken pursuant to the Long-Term Monitoring Plan. Such logs shall be provided to the Parties on an annual basis.

81. **Notice to Stakeholders.** All owners, residents, or tenants of the Site 79 Ciasulli Property and Site 153 South and properties adjacent thereto on the eastern side of Route 440, and any entity that holds a utility easement on the Site 79 Ciasulli Property or Site 153 South are deemed to be stakeholders for purposes of this paragraph. Honeywell shall ensure that all

stakeholders are provided notice of conditions in and activities affecting the Site 79 Ciasulli Property and Site 153 South in the following manner:

- (a) Notice, updated annually, to New Jersey One Call and any other underground alert hotlines existing in New Jersey now or in the future, identifying the location and type of contamination at or near pipelines or other utilities within the Site 79 Ciasulli Property and Site 153 South;
- (b) In the event of any planned or emergency excavation within the Site 79 Capped Area or Site 153 South, notice of any actions undertaken or planned and the safety measures implemented to protect individuals near the Site 79 Ciasulli Property and/or Site 153 South from exposure; and
- (c) An annually updated summary notice of the Chromium Remedy that is made available on any website developed to inform the public of contamination at Study Area 6 North, Study Area 6 South, and any future website related, in whole or in part, to Study Area 5. Such notice shall include a description of the remedial actions undertaken and the contamination remaining at the Site 79 Ciasulli Property and Site 153 South. Once the long-term monitoring requirements set forth in paragraph 80 become effective, such annual update shall occur upon completion of the annual long-term monitoring required by paragraph 80(a).

Each year beginning one year after the issuance of the first notice pursuant to paragraph 81(a), Honeywell shall provide a letter to Riverkeeper documenting its compliance with this paragraph.

82. 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.

C. Oversight and Enforcement

83. Federal Court 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 and the terms of the deed notices required by paragraphs 59 and 73.

84. Oversight of the Chromium Remedies.

- (a) **NJDEP Authority.** Nothing in this Consent Decree shall limit NJDEP's full statutory and regulatory authority with respect to Site 79 or Site 153 South, including (i) permitting authority; (ii) authority to review and approve all submissions required by the Tech Regs for the Chromium Remedies; or (iii) authority to issue or allow no further action letters.
- (b) **Special Master.** The Parties dispute the need for a Special Master to oversee implementation of the injunctive relief set forth in this Consent Decree. Riverkeeper therefore reserves the right to seek appointment of a Special Master to oversee the injunctive provisions of this Consent Decree, including referral of supervision of this Consent Decree to the Special Master who has been appointed to oversee implementation of the Study Area 6 North and Study Area 6 South Consent Decrees, and Honeywell and Ciasulli reserve the right to oppose any such appointment or to seek limitations on the powers or authority of any Special Master

appointed. Riverkeeper agrees to defer seeking the appointment of a Special Master until the conclusion of trial in the Consolidated Litigation, except that such right shall not be deferred in the event that a consent decree is entered that resolves Riverkeeper's remaining claims in the Consolidated Litigation. In the event that Riverkeeper's request for appointment of a Special Master to oversee the implementation of this Consent Decree is denied, Honeywell shall undertake the obligations assigned to it in this Consent Decree without further order of the Court and Riverkeeper shall retain the right to enforce this Consent Decree through any means permitted under federal law, including a successive or renewed motion for appointment of a Special Master.

- (c) **Submission of Documents by Honeywell.** The following documents shall be subject to review and comment by the Non-Honeywell Parties. Honeywell shall submit the following documents to Riverkeeper, any Non-Honeywell Defendant with an Interest, and NJDEP. Document submittal shall be satisfied by making available electronic files of such documents on an accessible file transfer or other web site provided that notice is provided of the availability of such document and the time period for review runs from the provision of such notice. All documents shall be submitted to Riverkeeper and any Non-Honeywell Defendant with an Interest for review and comment at least 30 days before the document is submitted to NJDEP, to the extent such documents are required to be submitted to NJDEP. Honeywell may submit a document to NJDEP at

any time after the 30-day review and comment period has elapsed, even if Honeywell, Riverkeeper, and any Non-Honeywell Defendant with an Interest have not reached agreement on the contents of the document.

- (i) The Master Schedule required by paragraph 53;
- (ii) An amended Remedial Action Work Plan for the Site 79 Ciasulli Property, as required by paragraph 53(a);
- (iii) A work plan/design document for Site 153 South, as required by paragraph 53(b);
- (iv) A map of the utilities at Site 153 South, to the extent such information is available through utility suppliers, that indicates the areas where COPR and/or chromium contaminated soils are present;
- (v) Design drawings and specifications at the 100% level (after selection of the contractor) (hereafter "100% Design") for Initial Chromium Remedies;
- (vi) Site-wide master health and safety plan for implementation of the Initial Chromium Remedies;
- (vii) Long-Term Monitoring Plan for the Initial Chromium Remedies;
- (viii) Final Remedial Action Reports or final construction reports (including as-built drawings and such other reports as may be prepared of the remedy as implemented) for the Initial Chromium Remedies;

- (ix) All post-implementation monitoring reports as required by the Long-Term Monitoring Plan; and
 - (x) All documents required by the Tech Regs for the Final Chromium Remedies.
- (d) **Review of Documents.**
- (i) **Dispute Resolution for Honeywell Submittals.** With regard to each document identified in paragraph 83(c), Riverkeeper, Honeywell, and each Non-Honeywell Defendant with an Interest shall engage in a good-faith efforts to reach an agreement on the contents of the document and the activities to be undertaken pursuant thereto. Such effort may include the submission of comments to Honeywell or NJDEP, informal negotiations, or, with the consent of all concerned Parties, mediation. In the event that Riverkeeper, Honeywell, and each Non-Honeywell Defendant with an Interest reach agreement on the contents of a document, Honeywell shall finalize the document as agreed and shall proceed with the activity as set forth therein. In the event that Riverkeeper, Honeywell, and each Non-Honeywell Defendant with an Interest are unable to reach agreement, any one of them may make a motion to have the Court resolve the dispute. No motion may be made to the Court pursuant to this paragraph until NJDEP has had at least 90 days to review the document or such longer time as may be agreed upon by the concerned Parties.

- (ii) **Flexibility in 100% Design Documents.** The Parties recognize that work conducted to implement the Chromium Remedies 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 100% Design documents for the Chromium Remedies may include performance-based standards, criteria, and specifications. These documents shall be sufficiently prescriptive to enable the Non-Honeywell Parties to evaluate their conformance with the Remedial Action Work Plan and this Consent Decree.
- (iii) **Changes to the Schedule.** The Parties recognize that changes to individual line items in the Master Schedule may occur. To the extent that (i) the Parties agree that such changes do not have a material impact on satisfaction of the Schedule milestones established for items set forth in paragraph 53, and (ii) such changes do not require modifications to any necessary permits or authorizations for the affected Chromium Remedy, such changes may be made upon agreement of the Parties without further order of the Court.
- (e) **Appointment of Special Master.** In the event that Riverkeeper seeks appointment of a Special Master pursuant to paragraph 84(b) and the Court appoints a Special Master, the provisions of paragraph 84(d) shall be of no further force or effect and the provisions of the Order appointing

the Special Master shall govern the procedures for the approval of documents Honeywell is required to submit pursuant to this Consent Decree.

D. Financial Assurances

85. **No Financial Assurances Required.** Honeywell shall not be required to provide any financial assurances pursuant to this Consent Decree to secure performance of its obligations under this Consent Decree.

86. **Right to Seek Financial Assurances.** Riverkeeper reserves the right to seek an order requiring Honeywell to provide financial assurances to secure performance of its obligations under this Consent Decree, including the long-term protectiveness of the remedies set forth herein, and Honeywell reserves all rights to oppose any such order. Riverkeeper agrees to defer seeking any order requiring Honeywell to provide financial assurances until the conclusion of trial in this Consolidated Litigation, except that such right shall not be deferred in the event that a consent decree is entered that resolves Riverkeeper's remaining claims in the Consolidated Litigation.

87. **No Limitation on Financial Assurances Required by Regulatory Authorities.** Nothing in this Consent Decree shall be construed as limiting the right of NJDEP or any other administrative agency to require Honeywell to provide financial assurances related to any of the remedial actions Honeywell is undertaking pursuant to this Consent Decree.

ARTICLE IV: TERMINATION

88. **Termination of This Consent Decree upon Full Remediation.** Honeywell's obligations under this Consent Decree with respect to the Site 79 Ciasulli Property shall terminate completely and this Consent Decree shall be of no further force and effect with regard

thereto upon Honeywell's completion of further remedial activities pursuant to paragraph 61 and its receipt of an Unrestricted Use No Further Action Determination for hexavalent chromium for the Site 79 Ciasulli Property. Honeywell's obligations under this Consent Decree with respect to Site 153 South shall terminate completely and this Consent Decree shall be of no further force and effect with regard thereto upon Honeywell's completion of the further remedial activities pursuant to paragraph 71 and its receipt of an Unrestricted Use No Further Action Determination for hexavalent chromium for Site 153 South.

89. **Termination for Other Reasons.** Except as set forth in paragraph 88, this Consent Decree shall terminate, in whole or in part, only upon the withdrawal of any Party as provided for in this paragraph. Any Party may elect to withdraw from this Consent Decree, with respect to one or both Sites, 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 90:

- (a) Any Party may elect to withdraw from the Consent Decree in its entirety if the Court fails to enter this Consent Decree or this Consent Decree is determined to be invalid by the Court or any other court of competent jurisdiction, in which case the entire Consent Decree shall terminate;
- (b) Any Party may elect to withdraw from those portions of the Decree related to the Site 79 Ciasulli Property and such portions of the Consent Decree shall terminate if NJDEP takes one of the following actions with respect to the Amended Remedial Action Work Plan for the Initial Chromium Remedy at the Site 79 Ciasulli Property:

- (i) Rejects or fails to approve such plan within 180 days of submission of the plan; or
 - (ii) Approves such plan, but conditions such approval on changes in the plan that result in a substantial reduction of the protection of human health and/or the environment.
- (c) In the event NJDEP approves the Amended Remedial Action Work Plan for the Initial Chromium Remedy for the Site 79 Ciasulli Property, but conditions such approval on changes in the plan that result in more than a 50% increase in the estimated costs of the Initial Chromium Remedy, as set forth in Article III, Honeywell only may withdraw from those portions of this Consent Decree related to the Site 79 Ciasulli Property and such portions of the Consent Decree shall terminate.
- (d) Any Party may elect to withdraw from those portions of the Consent Decree related to Site 153 South, and such portions of the Consent Decree shall terminate if NJDEP takes one of the following actions with respect to the Remedial Action Work Plan or other work plan for Initial Chromium Remedy for Site 153 South:
 - (i) Rejects or fails to approve such plan or other work plan within 180 days of submission of the plan; or
 - (ii) Approves such plan, but conditions such approval on changes in the plan that result in a substantial reduction of the protection of human health and/or the environment.

- (e) In the event NJDEP approves the Remedial Action Work Plan or other work plan for the Initial Chromium Remedy for Site 153 South, but conditions such approval on changes in the plan that result in more than a 50% increase in the estimated costs of the Initial Chromium Remedy, as set forth in Article III, Honeywell only may withdraw from those portions of this Consent Decree related to Site 153 South and such portions of the Consent Decree shall terminate.

90. **Procedures for Withdrawal and Termination.** Any Party electing to withdraw pursuant to paragraph 89 and thereby terminate all or a portion of 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 all or a portion of the Consent Decree or believes that the conditions set forth in paragraph 89 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 met and the Party seeking termination shall bear the burden of proof that the conditions for termination have been met.

91. **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 89.

92. **Effect of Termination.** If this Consent Decree is terminated in whole or in part pursuant to paragraph 89, the terminated terms of 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 in whole or in part by one or more Parties pursuant to paragraph 89, 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 previously addressed by the terminated terms and each Party remains free to pursue such rights, claims, and defenses.

ARTICLE V: NOTICE

93. **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 FedEx 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 earliest 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 notices referred to in this Consent Decree or which any Party desires to give to another shall be addressed as follows:

If to Honeywell:

Thomas Byrne, Esq.
Chief Environmental Counsel
Honeywell International Inc.
101 Columbia Road
Morristown, NJ 07962
(973) 455-2775

With copies to:

Michael D. Daneker, Esq.
Arnold & Porter LLP
555 Twelfth Street, NW
Washington, DC 20004
(202) 942-5177

and

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

If to Riverkeeper:

Bruce J. Terris, Esq.
Carolyn Smith Pravlik, Esq.
Kathleen L. Millian, Esq.
Terris, Pravlik & Millian LLP
1121 Twelfth Street, NW
Washington, DC 20005
(202) 682-2100

If to Bayonne Municipal Utilities Authority:

Donna M. Russo, Esq.
General Counsel
Law Department, BMUA
630 Avenue C
Bayonne, NJ 07002
(201) 858-6095

If to Bob Ciasulli:

Robert G. Ciasulli
Bob Ciasulli Auto Group
1485 Route 46 East
Little Falls, NJ 07424
973-785-8413

With a copy to:

Robert J. Woehling, Esq.
Woehling & Freeman LLP
50 Elmer Street
Westfield, NJ 07090
908-232-3700

94. **Changes to Notice.** Any party may change its designated recipients or addresses for notice in paragraph 93 by providing written notice of such change to all other Parties.

ARTICLE VI: RIVERKEEPER'S ATTORNEYS' FEES

95. **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 \$489,957.36 which represents the following:

- (a) A compromise of the attorneys' fees incurred by Riverkeeper in the litigation of the Sites 79 and 153 South portion of the Consolidated Litigation through June 30, 2009; and
- (b) \$87,568.41 in out-of-pocket expenses representing a portion of the expenses incurred by Riverkeeper in the Consolidated Litigation from the inception of the litigation after deducting the expenses paid pursuant to the Sediment Consent Order, the Deep Groundwater Consent Order, the Study Area 6 North Consent Decree, and the Study Area 6 South Consent Decree.
- (c) Payment of the sum of \$489,957.36 shall be in full satisfaction of all obligations, duties, and responsibilities of Honeywell with respect to the \$511,135.73 in fees and expenses that Riverkeeper claimed with regard to the above described fees and expenses.

96. Future Fees and Expenses. Honeywell shall reimburse Riverkeeper's attorneys for reasonable fees and expenses incurred in negotiating this Consent Decree after June 30, 2009, and in the monitoring and enforcement of this Consent Decree. 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 funds established pursuant to any financial assurances required by further order of the Court.

ARTICLE VII: MISCELLANEOUS PROVISIONS

97. 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.

98. **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.

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

100. **Reservation of Rights and Claims.** Except as set forth expressly herein, this Consent Decree in no way affects any of the Parties' claims or defenses against third parties who have not signed the Consent Decree.

101. **Governing Law.** 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.

102. **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.

103. **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.

104. **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.

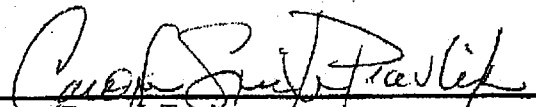
105. **Signatures.** This Consent Decree may be signed simultaneously or in counterparts by the respective signatories, which shall be as fully valid and binding as if a single document was signed by all of the signatories.

[SIGNATURES FOLLOW]

Consented to and approved for entry:



Michael D. Daneker
Arnold & Porter LLP
555 12th Street, NW
Washington, DC 20004
(202) 942-5000



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Carolyn Smith Pravlik
Kathleen L. Millian
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50 Elmer Street
Westfield, NJ 07090
(908) 232-3700

*Counsel for Bayonne Municipal Utilities
Authority*

Counsel for Bob Ciasulli

APPROVED AND ENTERED as an Order of this Court this ___ day of _____, 2009.

Hon. Dennis M. Cavanaugh
United States District Judge

Consented to and approved for entry:

Michael D. Daneker
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Counsel for Bob Ciasulli

APPROVED AND ENTERED as an Order of this Court this ___ day of _____, 2009.

Hon. Dennis M. Cavanaugh
United States District Judge

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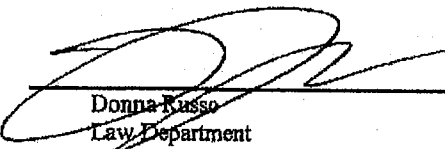
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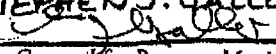
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Clarke, and Lawrence Baker*



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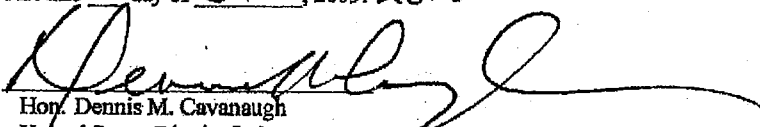
STEPHEN J. GALLO, B.M.A.


*Counsel for Bayonne Municipal Utilities
Authority*

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Westfield, NJ 07090
(908) 232-3700

Counsel for Bob Ciasulli

APPROVED AND ENTERED as an Order of this Court this 21 day of JAN, 2009. 2010



Hon. Dennis M. Cavanaugh
United States District Judge

EXHIBIT D-2

Consent Decree Regarding Remediation of the NJCU Redevelopment Area

NJDEP Site No. 153 Former Morris Canal
Block 1289.5, Lot E
City of Jersey City, Hudson County, New Jersey

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JERSEY CITY MUNICIPAL UTILITIES)
AUTHORITY,)

Plaintiff,)

v.)

HONEYWELL INTERNATIONAL INC.,)

Defendant.)

Consolidated under Docket
No. 05-5955 (DMC-PS)

JERSEY CITY INCINERATOR AUTHORITY)

Plaintiff,)

v.)

HONEYWELL INTERNATIONAL INC.,)

Defendant.)

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

HACKENSACK RIVERKEEPER, INC.,)
et al.)

Plaintiffs,)

v.)

HONEYWELL INTERNATIONAL INC.,)
et al.)

Defendants.)

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

**CONSENT DECREE REGARDING REMEDIATION
OF THE NEW JERSEY CITY UNIVERSITY REDEVELOPMENT AREA**

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RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE I: DEFINITIONS

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

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

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

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

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

5. **Commercial AOC** shall mean the area which is shaded in light green on Figure 6A of the approved RAWP, attached hereto as Exhibit A. The Commercial AOC is comprised of Site 153 North, which is owned by Honeywell, and the NJCU Commercial AOC, which is owned by NJCU.

6. **Consolidated Litigation** shall mean *Jersey City Municipal Utility Authority v. Honeywell International Inc.*, D.N.J., Civ. No. 05-5955 (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).

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

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

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

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

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

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

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

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

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

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

17. **Including** shall mean including, but not limited to.
18. **NJCU** shall mean the New Jersey City University.
19. **NJCU Commercial AOC** shall mean the part of the Commercial AOC which does not include Site 153 North and which is owned by NJCU.
20. **NJCU Development Plan** shall mean the plan for development of the NJCU West Campus dated October 23, 2007, which is attached hereto as Exhibit B.
21. **NJCU Property** shall mean the area comprised of the NJCU Commercial AOC and the Residential AOC.
22. **NJCU Redevelopment Area** shall mean the area comprised of the Commercial AOC and the Residential AOC.
23. **NJCU Redevelopment Plan** shall mean the New Jersey City University West Campus Redevelopment Plan approved on February 9, 2005, and any approved amendments thereto.
24. **NJDEP** shall mean the New Jersey Department of Environmental Protection.
25. **NJDEP Chromium Policy** shall mean the chromium remediation policy set forth in the memorandum from Lisa Jackson to Irene Kropp on February 8, 2007, and attached as Exhibit C. The NJDEP Chromium Policy is also known as the NJDEP Chromium Directive.
26. **Non-Honeywell Parties** shall mean Riverkeeper, BMUA, and NJCU and any subsequent owner of any part of the NJCU Redevelopment Area.
27. **Non-Honeywell Party with an Interest** shall mean Riverkeeper and any Non-Honeywell Party who has an ownership or other real property interest in the property that is the subject of any particular document, action or decision under this Consent Decree.
28. **Outstanding Fees and Expenses** shall mean Riverkeeper's litigation costs, including attorneys' fees and expert witness fees, through the entry of this Consent Decree, less

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

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

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

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

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

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

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

34. **Residential AOC** shall mean the area which is shaded in blue on Figure 6A of the approved RAWP, attached hereto as Exhibit A.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III: CHROMIUM REMEDIATION

A. General Terms of Chromium Remedy

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

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

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

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

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

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

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

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

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

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

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

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

B. Residential AOC Soil Remedy

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

(a) Excavate Greater Than 20 Soils to a depth of 20 feet below ground surface in the areas designated for excavation and shown in cross-hatch in Figure 6A of the approved RAWP (Exhibit A);

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

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

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

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

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

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

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

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

C. Commercial AOC Soil Remedy

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Shallow Groundwater Chromium Remedy

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

(a) Approximately 700 linear feet of an underground barrier wall (consisting of slurry, sheetpile, or other materials generally accepted for construction of low-permeability underground barrier walls) to be placed along the western boundary of the NJCU Commercial AOC in place of the permeable reactive barrier shown on Figure 6A of the approved RAWP (Exhibit A).

(b) Approximately 920 linear feet of an underground barrier wall (consisting of slurry, sheetpile, or other materials generally accepted for construction of low-permeability underground barrier walls) to be placed along the southern boundary of the NJCU Property with the Home Depot Site 117 property as shown on Figure 6A of the approved RAWP (Exhibit A).

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

for chromium to a treatment plant outside the NJCU Redevelopment Area or to a local sewer connection and to maintain an inward gradient for shallow groundwater within the NJCU Commercial AOC.

E. Institutional Controls

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

88. **Annual Notice by NJCU.** Annually, beginning on January 15, 2011, and on each anniversary date in each year thereafter until such time as further remedial activities are undertaken pursuant to paragraph 77 and an Unrestricted Use No Further Action Determination is issued for the NJCU Commercial AOC, NJCU shall submit a written notice to Honeywell and Riverkeeper stating whether NJCU is in compliance with the deed notice and whether there are any uses in the NJCU Commercial AOC that are prohibited under paragraph 87 or the deed notice. Such notice shall identify all categories of uses (e.g., commercial, retail, etc.) of the property since the date of the last annual notice, including new and continuing categories of uses. Honeywell and Riverkeeper will remind NJCU of this annual obligation.

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

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

(b) Upon becoming a limited party to this Consent Decree, the transferee shall have: (i) all of the rights and benefits applicable to NJCU set forth in this Consent Decree as they pertain to the NJCU Commercial AOC, including the right to enforce the obligations of Honeywell under paragraphs 64-86, 90, 91(a), 92, 95, 96-105, 107, 108(b) and (c), 110, 113, and 152 and the obligations of Riverkeeper under this Consent Decree; (ii) the protections afforded by the financial assurances provided under Article V of this Consent Decree, including the right to enforce Honeywell's obligations thereunder; and (iii) only those responsibilities applicable to NJCU as set forth in paragraphs 70-71, 73, 76, 84, 87-89, 91(b), 92-94, 104-105, and 152 of this Consent Decree. The provisions of this paragraph apply regardless of the manner in which the title to all or any part of the NJCU Commercial AOC is transferred from one owner to another.

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

(a) A statement as to whether the Consent Decree is in full force and effect;

(b) A statement as to whether the Consent Decree has been modified or amended and, if so, in what manner it has been modified or amended; and

(c) A statement as to whether at the time of such certification there are any known breaches that are subject to a pending or intended motion to enforce this Consent Decree or constitute a default pursuant to paragraphs 122 or 133 with regard to any requirement under this Consent Decree applicable to the NJCU Commercial AOC.

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

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

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

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

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

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

Such deed notice shall encumber Site 153 North until such time as an Unrestricted Use No Further Action Determination is issued for Site 153 North. During the period in which Site 153

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

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

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

North and the NJCU Commercial AOC, as the case may be, as long as the respective property is required to be encumbered by the deed notice.

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

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

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

easement and lease instrument. Honeywell shall provide notice to Riverkeeper of each easement and lease granted, other than the current easement granted on Site 153 North.

F. Long-Term Monitoring

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

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

Guidance (2001) (or any subsequent revision) and with the Technical Requirements for Site Remediation.

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

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

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

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

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

waive or limit any claims, rights, or causes of action Honeywell may have against any person to the extent that such person caused such damage to the Chromium Remedy.

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

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

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

system for water level maintenance has been disturbed, Honeywell shall repair or replace the system to original Final 100% Remedial Design specifications or to a level of protection at least equivalent to the original Chromium Remedy.

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

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

(g) Quarterly groundwater elevation monitoring to ensure that groundwater levels are maintained in accordance with the requirement to maintain an inward gradient for shallow groundwater in the Commercial AOC cap and in accordance with the water level control plan developed pursuant to the Study Area 6 North Consent Decree and subject to reasonable modification, if necessary, for purposes of coordinating with any Study Area 5 Shallow Groundwater remedy.

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

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

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

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

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

100. **Procedures for Proposing Changes to the Long-Term Monitoring Plan.** Any Party may, from time to time, propose changes to the scope of the monitoring activities under the Long-Term Monitoring Plan. If the Parties agree, the Long-Monitoring Plan shall be so changed subject to NJDEP approval as necessary. If the Parties are unable to reach agreement over alterations to the monitoring, any Party may file a motion seeking a resolution of the dispute by the Court.

101. **Contingency Plan.** As part of the Long-Term Monitoring Plan, Honeywell shall develop a contingency plan to ensure the integrity of the remediation in the event of any planned penetration of the Commercial AOC cap or any underground barrier wall or otherwise planned

activity that compromises the cap or any unplanned event or accident that penetrates the cap or otherwise compromises the integrity of the Commercial AOC Chromium Remedy. The contingency plan shall include, at a minimum, an annually updated plan to notify the relevant persons, including NJDEP, and the Parties: of (i) the event penetrating the cap, compromising the cap, or compromising the integrity of the Commercial AOC Chromium Remedy; (ii) the general steps to be taken to identify the extent of the problem; and (iii) the standards for remedying the problem.

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

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

104. **Public Notice.** In each instance, if and when, public notice is required to be provided pursuant to N.J.A.C. 7:26E-1.4, such notice shall be made. For purposes of such public notice, the boundaries of Sites 90, 153 North and 184 shall be deemed to be the site or property boundaries. In addition, all commercial tenants on the NJCU Commercial AOC and all easement holders on Site 153 North shall be provided at the time of their purchase, lease, or establishment of the easement with written notice of the chromium contamination in the NJCU Commercial AOC and the remedial actions that have been undertaken or are planned. To the extent the purchase, lease, or easement occurred prior to entry of this Consent Decree, such notice shall be provided within 90 days of entry of this Consent Decree. All Parties and other entities identified in the subparagraphs below shall be provided notice of monitoring and maintenance activities in the following manner:

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

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

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

(d) Honeywell shall annually update summary notice of the Chromium Remedies that is made available on any website developed by Honeywell to inform the public of contamination at Study Area 6 North, Study Area 6 South, and any future website related, in whole or in part, to Study Area 5. Such notice shall include a description of the remedial actions undertaken and the contamination remaining at the Commercial AOC. Once the long-term monitoring requirements set forth in paragraph 99 become effective, such annual update shall occur upon completion of the annual long-term monitoring required by paragraph 99; and

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

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

ARTICLE IV: OVERSIGHT AND ENFORCEMENT

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

107. **Master Schedule.** Within 120 days of entry of this Consent Decree, Honeywell shall submit a revised and updated Master Schedule to NJDEP. The Parties recognize that implementation of the Chromium Remedy must be coordinated with the NJCU Redevelopment Plan and the NJCU Development Plan. The Parties currently anticipate that the Construction Phase will be completed on or before approximately December 31, 2011, and any Master Schedule which reflects this completion date shall be approved by the Parties. However, the Parties recognize that implementation of the Construction Phase must be coordinated with NJCU's implementation of the Historic Fill Remedy and preparation of the NJCU Property for redevelopment. Accordingly, Honeywell may reasonably adjust dates on the Master Schedule without further leave of Court or approval of the Parties provided that the implementation of the Construction Phase is complete by December 31, 2013. The Master Schedule for the implementation of the Construction Phase shall be approved by NJCU and Riverkeeper and approval shall not be unreasonably withheld. With leave of Court or consent of the Parties, the completion date for the Construction Phase can be extended beyond December 31, 2013, with just cause.

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

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

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

- (i) An overall schedule with milestones for the design and implementation of the remedy ("Master Schedule");
- (ii) The Final 100% Design of the Chromium Remedy;
- (iii) The Site-wide master health and safety plan, including a plan for training workers at the Commercial AOC;

(iv) A beneficial soil reuse plan pursuant to paragraph 69;

(v) The Long-Term Monitoring Plan;

(vi) A long-term plan for the inspection, monitoring, maintenance, and repair of the hydraulic controls identified in paragraph 86;

(vii) The final Remedial Action Report or final construction report (including as-built drawings and such other reports as may be prepared of the remedy as implemented);

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

(ix) A plan for removal and disposal of COPR or chromium-contaminated soils in the event of sewer repairs or replacement or roadway or utility repair or replacement at the Commercial AOC pursuant to paragraph 82;

(x) Post-implementation monitoring reports as required by the Long-Term Monitoring Plan;

(xi) A manual setting forth the procedures and protections that BMUA and/or NJCU shall employ when conducting utility repair, maintenance, or other invasive work in the Commercial AOC; and

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

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

Special Master shall govern the procedures for the approval of documents Honeywell is required to submit pursuant to this Consent Decree.

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

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

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

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

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

114. **Expiration of Special Master's Appointment.** The Special Master's appointment under this Consent Decree to oversee financial assurances, unless modified by future order of the Court pursuant to an application under paragraph 110, shall expire after Honeywell has established its initial and long-term financial assurances under this Consent Decree. However, solely to the extent that the Special Master is still supervising other portions

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

ARTICLE V: FINANCIAL ASSURANCES

A. Initial Financial Assurances

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

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

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

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

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

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

116. Procedures for Review of the Proposed Chromium Remedy Letter of Credit.

No later than June 1, 2010, Honeywell shall submit to Riverkeeper and NJCU for their review the proposed (a) amount of the Chromium Remedy Letter of Credit; (b) form of the Chromium Remedy Letter of Credit; and (c) name of the institution that will issue the Chromium Remedy Letter of Credit. If either Riverkeeper or NJCU does not agree to the terms of the Chromium Remedy Letter of Credit, the Parties shall meet and confer in an effort to resolve their differences. If the Parties are unable to reach agreement over the terms of the Chromium Remedy Letter of Credit, the Parties shall submit the dispute to the Special Master, who shall recommend a resolution of the dispute. Any Party shall have the right to seek review by the Court of the Special Master's recommendation regarding the terms of the Chromium Remedy Letter of Credit. The Parties agree that Honeywell may satisfy this obligation through the Citibank Letter of Credit as defined by the Global Financial Assurances Order. They further agree that the provisions of paragraphs 2 and 3 of the Global Financial Assurances Order, in so far as they provide for the deferral of a present value calculation until the occurrence of specified events, apply to the establishment of the initial financial assurances under this Consent Decree without the need to satisfy paragraph 3(b) of the Global Financial Assurances Order. In the

event that Honeywell decides to satisfy its obligation for the Chromium Remedy Letter of Credit through means other than the Citibank Letter of Credit, the Parties agree to defer a present value calculation for the costs set forth in paragraph 115(a) until such time as Honeywell seeks a reduction in the amount of the Chromium Remedy Letter of Credit pursuant to paragraph 118. At that time, the Parties shall: (i) agree on an inflation rate and discount rate and adjust the cost estimates accordingly; or (ii) in the absence of agreement on an inflation rate and discount rate, agree to continue to use unadjusted cost estimates until Honeywell seeks another adjustment pursuant to paragraph 118; or (iii) in the absence of any agreement, make the inflation rate and discount rate issues Subject to Comment by Riverkeeper and NJCU and Approval by the Special Master.

117. Automatic Renewal. The Chromium Remedy Letter of Credit shall be automatically renewed annually unless (a) no later than 120 days prior to the anniversary of the Chromium Remedy Letter of Credit issue date, the issuer provides notice of nonrenewal or (b) Honeywell seeks a reduction in the Chromium Remedy Letter of Credit, pursuant to paragraph 118, to correspond to the reduced estimate of Remedial Costs Subject to Financial Assurances. If the issuer provides notice of nonrenewal, Honeywell shall obtain a replacement one-year irrevocable Chromium Remedy Letter of Credit at least 95 days prior to the expiration date of the existing Chromium Remedy Letter of Credit. If Honeywell is not otherwise in default as provided in Article V, the Special Master shall direct the cancellation of the prior Chromium Remedy Letter of Credit within 91 days after delivery to the Special Master of any replacement of a Chromium Remedy Letter of Credit. In the event that the Special Master is entitled to draw upon a Chromium Remedy Letter of Credit and there are two Chromium Remedy Letters of Credit currently in place, the Special Master shall not draw an aggregate amount in excess of the highest valued Chromium Remedy Letter of Credit. Upon Honeywell's request, the Special

Master may, at his option, decide not to require overlapping letters of credit in any year based on Honeywell's financial strength in that year, provided that Honeywell has submitted all necessary information so that the Special Master can make his determination at least 150 days prior to the expiration of the Chromium Remedy Letter of Credit.

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

reduction or modified terms of the Chromium Remedy Letter of Credit (or upon order of the Court directing that the Chromium Remedy Letter of Credit be reduced to an identified amount or otherwise modified), Honeywell shall obtain a replacement Chromium Remedy Letter of Credit in such amount and with such terms. If Honeywell is not otherwise in default as provided in Article V and the issuer of the primary Chromium Remedy Letter of Credit has not provided notice of non-renewal, within 30 days after delivery to the Special Master of any replacement of a Chromium Remedy Letter of Credit, the Special Master shall direct the cancellation of the prior Chromium Remedy Letter of Credit. Honeywell's right to seek a reduction under this paragraph shall also be subject to paragraph 3 of the Global Financial Assurances Order in the event that Honeywell seeks to satisfy its initial financial assurance obligation under this Consent Decree through the Citibank Letter of Credit.

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

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

121. **Application of New York Law.** The then-current provisions of the Uniform Customs and Practice ("UCP") for Documentary Credits as published by the International Chamber of Commerce or such successor organization and New York law shall apply to the

Chromium Remedy Letter of Credit at the time that Honeywell obtains such letter of credit or any replacements thereafter.

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

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

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

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

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

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

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

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

- (a) The implementation of paragraphs 72, 74, 75, 78, and 86 of the Chromium Remedy; and
- (b) Establishment of long-term financial assurance pursuant to Article V.B.

B. Long-Term Financial Assurances

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

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

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

- (i) Perpetual monitoring and maintenance of the Chromium Remedy;
- (ii) Perpetual operation of the shallow groundwater remedies pursuant to paragraph 86;
- (iii) Perpetual repair of the cap;

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

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

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

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

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

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

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

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

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

(b) **Long-Term Letter of Credit.** In the event that Honeywell selects a letter of credit, Honeywell shall obtain a one-year irrevocable letter of credit (the "Long-Term Letter of Credit") to be automatically renewed annually in an amount that provides sufficient funds such that a trust fund, separate from any trust fund created under paragraph 128(a) but satisfying the requirements of paragraph 128(a), could be created. The Long-Term Letter of Credit-funded trust, plus any trust fund established under paragraph 128(a), shall provide the full amount of the costs subject to long-term financial assurances, as set forth in paragraph 127(b), at the time those funds are necessary. The amount of any Long-Term Letter of Credit shall therefore be adjusted periodically as the cap replacement interval is approached because, for example, the money

needed in the 10th year to fund a trust that can provide for replacement of the cap in the 75th year is much less than the money that would be needed in the 40th year. Such periodic adjustments shall be proposed and approved by the Court in conjunction with the adjustments under paragraph 131.

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

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

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

(iv) The Long-Term Letter of Credit shall be automatically renewed annually, unless, no later than 120 days prior to the anniversary of the Long-Term Letter of Credit issue date, the issuer provides notice of non-renewal. If the issuer provides notice of non-

renewal, Honeywell shall obtain a replacement irrevocable Long-Term Letter of Credit at least 95 days prior to the expiration date of the existing Long-Term Letter of Credit. If Honeywell is not otherwise in default as provided in this Article, the Court shall direct the cancellation of the prior Long-Term Letter of Credit within 91 days after delivery to the Court of any replacement of a Long-Term Letter of Credit. In the event that the Court is entitled to draw upon a Long-Term Letter of Credit when there are two Letters of Credit currently in place, the Court shall not draw an aggregate amount in excess of the highest valued Long-Term Letter of Credit.

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

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

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

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

129. Procedures for Review of the Proposed Long-Term Financial Assurances. No later than December 31, 2010, Honeywell shall submit to Riverkeeper, NJCU, and the Special Master, for their review (a) the amount of the proposed long-term financial assurances; (b) the form(s) of the proposed long-term financial assurance mechanisms; and (c) the name(s) of the institution proposed to manage or issue the long-term financial assurances. If Riverkeeper and NJCU agree to the terms of the proposed long-term financial assurances, within 60 days of such agreement, Honeywell shall create a trust fund and/or secure a Long-Term Letter of Credit on those terms. If the Parties are unable to reach agreement over the terms of the long-term financial assurances, the Parties shall submit the dispute to the Special Master, who shall recommend a resolution of the dispute. Any Party shall have the right to seek review by the Court of the Special Master's recommendation regarding the terms of the financial assurances.

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

131. **Adjustment of Amount Held in Long-Term Financial Assurances.** Every five years as marked from the establishment of the first long-term financial assurances pursuant to paragraph 128, the Parties shall report to the Court whether the long-term financial assurances are adequately funded to provide the full amount of the costs subject to long-term financial assurances, as set forth in paragraph 127(b), at the time those funds are necessary. At such time as the Parties report to the Court, any Party may seek an adjustment in the amount of the long-term financial assurances, including an adjustment in the discount rate and/or inflation rates used to calculate the long-term financial assurances. The Party seeking an adjustment must demonstrate that the long-term financial assurances are under-funded or over-funded to provide the full amount of the costs subject to long-term financial assurances, as set forth in paragraph 127(b), at the time those funds are necessary. Such demonstration shall reflect the actual costs of implementing the remedy and/or any replacement of the remedy, once such actual costs are available. The demonstration shall also reflect the costs of work completed to date and the actual lifetime of the cap, once the cap has been replaced or has passed a replacement interval without requiring replacement. The demonstration shall further reflect the actual performance of the fund and its ability to provide the full amount of the costs subject to long-term financial

assurances, as set forth in paragraph 127(b), at the time those funds are necessary. Any demonstration shall be forward-looking and shall be based upon estimates of what the activities in paragraphs 127(a)(i) through 127(a)(vi) are expected to cost at the time they must be performed and the amount of funding projected to be available to undertake such activities at the time they must be performed. If, after reviewing the submission(s) received from the Parties, the Court determines that the long-term financial assurances are under-funded or over-funded to provide the full amount of the costs subject to long-term financial assurances, as set forth in paragraph 127(b), at the time those funds are necessary, the Court shall order an adjustment in the amount held in the long-term financial assurances to overcome the shortage or overage. In the event that the Court determines that the long-term financial assurances are under-funded, it shall order Honeywell to increase the amount held in the long-term financial assurances. In the event that the Court determines that any trust fund established pursuant to paragraph 128(a) is over-funded, the Court shall issue an order directing the trust manager to pay the overage to Honeywell. In the event that the Court determines that the Long-Term Letter of Credit is over-funded, the Court shall issue an order permitting Honeywell to reduce the amount covered during the next annual renewal of the Long-Term Letter of Credit pursuant to paragraph 128(b)(iv). Any adjustment to the amount of the Long-Term Letter of Credit pursuant to this paragraph shall be in addition to any adjustment of the amount of the Long-Term Letter of Credit required pursuant to paragraph 128(b).

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

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

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

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

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

(d) The dissolution or liquidation of Honeywell or the institution of any proceeding to effect any of the foregoing, other than under subparagraph (c), if Honeywell fails to provide assurance to Riverkeeper, NJCU, and the Court, within 15 days after written notice

from one or more of the Parties, that such an event will not impair Honeywell's ability to carry out the terms of this Consent Decree.

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

135. Use of the Trust Fund in the Event of Honeywell's Default. In the event of Honeywell's default, as defined in paragraphs 133(a) through 133(d), the money in the trust fund established pursuant to paragraph 128(a) shall be available to meet the obligations of paragraph 77 or paragraph 127(a), as well as for payment of future attorneys' fees and expenses pursuant to paragraph 150. Riverkeeper or NJCU shall file motions with the Court seeking orders directing how the money in the trust fund shall be used. The Court shall consider motions on an expedited basis and shall enter appropriate orders. The Court may enter an order allowing for automatic withdrawal of regular expenses without separate motion to the Court by Riverkeeper or NJCU.

136. Use of a Trust Fund Established Pursuant to Paragraph 123, 128(b)(ii), 128(b)(v), or 134. In the event that a trust fund is established pursuant to paragraph 123, 128(b)(ii), 128(b)(v), or 134, the money in the trust fund shall be available to meet the obligations of paragraph 77 or 127(a), as well as for the payment of future attorneys' fees and expenses pursuant to paragraph 150. Riverkeeper or NJCU shall file motions with the Court

seeking orders directing how the money in the trust fund shall be used. The Court shall consider motions on an expedited basis and shall enter appropriate orders. The Court may enter an order allowing for automatic withdrawal of regular expenses without separate motion to the Court by Riverkeeper or NJCU.

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

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

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

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

- (a) If at any time during the period between January 1, 2025, and December 31, 2029, Honeywell's credit rating falls below BBB as provided in subparagraph (d), within 60

days of the date on which its credit rating falls below BBB, Honeywell shall provide financial assurances for the amount set forth in subparagraph (c), except that such amount shall be estimated in the dollars of the year in which the credit rating fell, and shall maintain those financial assurances until its obligation to provide Contingent Residential Conversion Financial Assurances terminates under paragraph 145.

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

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

(d) For purposes of this paragraph, a credit rating below BBB shall mean that the rating on Honeywell's long-term credit instruments has fallen below BBB on the Fitch or S&P scale or Baa2 on the Moody scale. If these scales are no longer in effect or have been modified, the appropriate trigger is an equivalent rating. If there are differing opinions among the agencies, the lowest rating will be the deciding rating.

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

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

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

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

141. Procedures for Review of Honeywell's Contingent Residential Conversion Financial Assurances. No later than 30 days prior to the date upon which Honeywell is obligated to provide financial assurances pursuant to paragraph 139, Honeywell shall notify NJCU and Riverkeeper, in writing, of (a) the amount of paragraph 139(c) remedial costs to be subject to financial assurances, (b) the form(s) of the proposed Contingent Residential Conversion Financial Assurances mechanisms, and (c) the name(s) of the financial institution proposed to manage or issue the Contingent Residential Conversion Financial Assurances. If either NJCU or Riverkeeper objects to the amount of, mechanism for, or institution providing the financial assurances, the objecting Party shall notify and consult with Honeywell and the other Party in an effort to resolve the matter. If the Parties agree on the Contingent Residential Conversion Financial Assurances prior to the date upon which Honeywell is to provide such financial assurances, Honeywell shall move the Court for an order establishing the Contingent Residential Conversion Financial Assurances in the agreed amount. If NJCU, Riverkeeper, and

Honeywell cannot reach agreement on the amount and financial instrument within 15 days prior to the date upon which Honeywell is obligated to provide financial assurances, any Party may move the Court for an expedited hearing on the matter. If the Court has not ruled on the matter by the date on which Honeywell is required to provide financial assurances pursuant to paragraph 139, Honeywell shall provide financial assurances in the amount it has proposed and using the financial mechanisms and institution it has proposed until such time as the Court rules on the dispute.

142. Adjustments in Financial Assurances.

(a) Every five years as marked from the establishment of the Contingent Residential Conversion Financial Assurances, the Parties shall report to the Court whether the Contingent Residential Conversion Financial Assurances are adequately funded to provide the full amount of the costs subject to the Contingent Residential Conversion Financial Assurances, as set forth in paragraph 139(c). At such time as the Parties report to the Court, Honeywell, NJCU, or Riverkeeper may seek an adjustment in the amount of, mechanism for, or institution providing the Contingent Residential Conversion Financial Assurances. If a Party seeks an adjustment in the amount of the financial assurances, it must demonstrate that the Contingent Residential Conversion Financial Assurances are under-funded or over-funded to provide the full amount of the costs subject to financial assurances, as set forth in paragraph 139(c) as of the day that the adjustment is sought. Such demonstration shall also reflect the actual performance of the financial assurance mechanism, and the requirements of New Jersey law pertaining to financial assurances in effect at the time. If, after reviewing the submissions received from the Parties, the Court determines that the Contingent Residential Conversion Financial Assurances are under-funded or over-funded to provide the full amount of the costs subject to Contingent Residential

Conversion Financial Assurances, the Court shall order an adjustment in the amount held in the Contingent Residential Conversion Financial Assurances to overcome the shortage or overage.

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

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

144. **Procedures upon Honeywell's Default of Its Obligations.** Upon the occurrence of default by Honeywell as set forth in paragraph 133, NJCU or Riverkeeper may move the Court on an expedited basis for an order to draw on the Contingent Residential Conversion Financial Assurances instrument. If the Court grants any motion by NJCU or Riverkeeper pursuant to this paragraph, the sum approved by the Court's order granting the motion shall be

paid into a trust fund pursuant to paragraph 134, and the trust fund shall be administered pursuant to the terms and conditions of paragraphs 135, 136, and 137.

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

ARTICLE VI: TERMINATION

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

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

ARTICLE VII: NOTICE

148. **Notice.** Any and all notices given in connection with this Consent Decree shall be deemed adequately given only if in writing and addressed to the Party for whom such notices

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

If to Honeywell:

Tom Byrne, Esq.
Honeywell International Inc.
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

Michael D. Daneker
Arnold & Porter, LLP
555 12th St., N.W.
Washington, DC 20004
(202) 942-5000

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

If to NJCU:

Aaron Aska
New Jersey City University
2039 Kennedy Boulevard,
Jersey City, New Jersey 07305
(201) 200-2035

With copies to:

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

If to BMUA:

Donna Russo
McManimon & Scotland LLC
One Riverfront Plaza
Fourth Floor
Newark, NJ 07102
(973) 622-7333

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

ARTICLE VIII: RIVERKEEPER'S ATTORNEYS' FEES

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

(a) Within 30 days of entry of this Consent Decree, Honeywell shall pay \$1,000,000.00 to Terris, Pravlik & Millian, LLP. This payment shall not be considered a concession by Honeywell that Riverkeeper is entitled to any further payment of the Outstanding Fees and Expenses. Riverkeeper and/or Terris, Pravlik & Millian, LLP shall not be required to reimburse Honeywell for any part of the \$1,000,000.00 regardless of the results of the procedure set forth in subparagraph (b).

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

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

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

(iii) At any time after the passage of 60 days from the date that Riverkeeper submitted the documentation pursuant to subsubparagraph (i), Riverkeeper may file an application to the Court for an award of the Outstanding Fees and Expenses or any portion thereof that remains in dispute between Riverkeeper and Honeywell. Thereafter, briefing on the application shall occur pursuant to a schedule agreed to by Riverkeeper and Honeywell and approved by the Court. Negotiation and mediation may continue with the agreement of both

Riverkeeper and Honeywell. Any award for the Outstanding Fees and Expenses shall be off-set by the amount paid by Honeywell pursuant to subparagraph (a).

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

ARTICLE IX: MISCELLANEOUS PROVISIONS

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

force majeure events include normal inclement weather, increased costs or expense, the failure to timely and fully apply for a permit or authorization necessary for the completion of actions required by this Consent Decree, or financial difficulty of any Party. The Party claiming force majeure shall bear the burden of showing an event was a force majeure event.

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

153. **Successors to Hackensack Riverkeeper, Inc.** In the event that Hackensack Riverkeeper, Inc. disbands, is dissolved, or otherwise ceases operations, it shall assign its rights under this Consent Decree to another qualified nonprofit organization. A nonprofit organization shall be qualified for assignment under this Consent Decree if it is a charitable organization under Section 501(c)(3) of the Internal Revenue Code or its substantial equivalent and has an established record of working to enhance or preserve the ecology, natural habitat, or

environment. Any such assignment shall be subject to approval by the Court, and Honeywell and NJCU shall have the right to object to any proposed assignment. Any successor organization shall have the duty to assign its rights under this Consent Decree to another qualified nonprofit organization in the event that the successor disbands, is dissolved, or otherwise ceases operations. In the event that a successor is not appointed at any given time, the Court shall request that the New Jersey Attorney General or equivalent officer appoint a successor subject to approval by the Court and objection by Honeywell and NJCU.

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

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

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

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

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

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

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

Consented to and approved for entry:

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

Donna Russo
McManimon & Scotland LLC
One Riverfront Plaza
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Authority*

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New York, NY 10027
(212) 854-4376

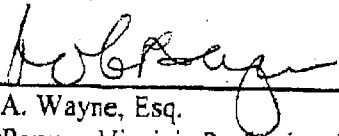
Counsel for Honeywell International Inc.

*Counsel for the Hackensack Riverkeeper,
William Sheehan, Reverend Winston Clarke,
and Lawrence Baker*

APPROVED AND ENTERED as an Order of this Court this ____ day of _____, 2009.

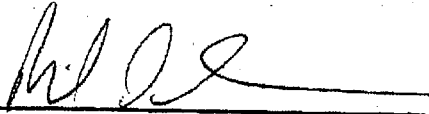
Hon. Dennis M. Cavanaugh
United States District Judge

Consented to and approved for entry:



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Edward Lloyd
Columbia Law School
435 West 116th Street, Room 831
New York, NY 10027
(212) 854-4376

Counsel for Honeywell International Inc.

*Counsel for the Hackensack Riverkeeper,
William Sheehan, Reverend Winston Clarke,
and Lawrence Baker*

APPROVED AND ENTERED as an Order of this Court this ___ day of _____, 2009.

Hon. Dennis M. Cavanaugh
United States District Judge

Consented to and approved for entry:

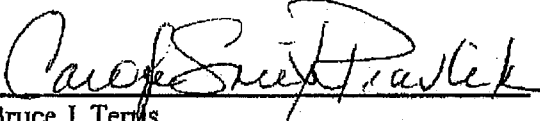
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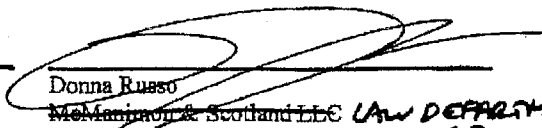
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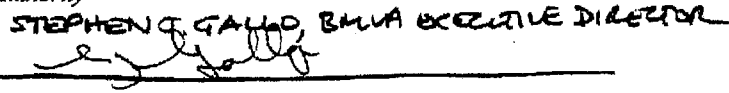
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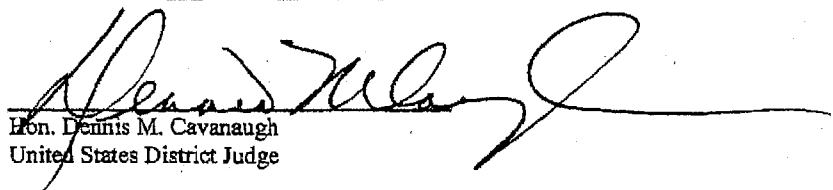
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