

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

INTERFAITH COMMUNITY ORGANIZATION, <i>et al.</i> , <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> HONEYWELL INTERNATIONAL INC., <i>et al.</i> , <p style="text-align: right;">Defendants</p>	Civil Action No. 95-2097 (DMC)
JERSEY CITY MUNICIPAL UTILITIES AUTHORITY, <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> HONEYWELL INTERNATIONAL INC., <p style="text-align: right;">Defendant</p>	Civil Action No. 05-5955 (DMC) <i>Consolidated under No. 95-2097</i>
JERSEY CITY INCINERATOR AUTHORITY, <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> HONEYWELL INTERNATIONAL INC., <p style="text-align: right;">Defendant</p>	Civil Action No. 05-5993 (DMC) <i>Consolidated under No. 95-2097</i>
HACKENSACK RIVERKEEPER, INC., <i>et al.</i> , <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> HONEYWELL INTERNATIONAL INC., <i>et al.</i> , <p style="text-align: right;">Defendants.</p>	Civil Action No. 06-0022 (DMC) <i>Consolidated under No. 95-2097</i> <p style="text-align: center;"><i>Document Electronically Filed.</i></p>

SECOND AMENDED CONSENT ORDER REGARDING FINANCIAL ASSURANCES

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WHEREAS, Honeywell is conducting remediation of hexavalent chromium contamination at Study Area 5, Study Area 6 North, Study Area 6 South, and Study Area 7 pursuant to court orders in *Interfaith Community Organization v. Honeywell*, D.N.J., Civ. No. 95-2097 (DMC)(hereafter “*ICO v. Honeywell*”) and *Hackensack Riverkeeper v. Honeywell International Inc.*, D.N.J., Civ. No. 06-cv-0022, consolidated with *Jersey City Municipal Utilities Authority v. Honeywell International Inc.*, D.N.J., Civ. No. 05-cv-5955, and *Jersey City*

Incinerator Authority v. Honeywell International Inc., D.N.J., Civ. No. 05-cv-5993 (hereafter “the Consolidated Litigation”)¹; and

WHEREAS, Honeywell is required to provide financial assurances for its remedial obligations pursuant to the court orders which are collectively defined below as the Consent Decrees; and

WHEREAS, the Court has appointed a Special Master to oversee implementation of the remedies provided in the Final Judgment and certain Consent Decrees as well as the implementation of financial assurances under the Consent Decrees; and

WHEREAS, in the course of the Study Area 7 remediation, Honeywell secured an automatically-renewable, irrevocable \$200 million letter of credit from Citibank, N.A. to satisfy its financial assurance obligations pursuant to the 2003 Financial Assurances Order; and

WHEREAS, Honeywell amended the Citibank Letter of Credit in 2009 to also satisfy its financial assurance obligations under the Sediment Consent Order, Study Area 6 North Consent Decree, the Study Area 6 South Consent Decree, and the Groundwater Consent Order; and

WHEREAS, Honeywell, Plaintiffs, and the Jersey City Entities entered into the Global Financial Assurances Order in December of 2009 to resolve certain issues regarding financial assurances; and

WHEREAS, after review and approval by Plaintiffs, the Jersey City Entities, and the Special Master, Honeywell replaced the then-current Citibank Letter of Credit with one or more Letters of Credit (collectively “Letters of Credit”) to satisfy its financial assurance obligations under all of the Consent Decrees; and

¹ Following the entry of the Amended Consent Order Regarding Financial Assurances, also known as the Amended Global Financial Assurances Order, entered by the Court in *ICO v. Honeywell* September 22, 2010 (ECF No. 996), *ICO v. Honeywell* and the Consolidated Litigation were consolidated under *ICO v. Honeywell*, Civ. No. 95-2097, for all purposes, not just for matters related to the Special Master proceedings.

WHEREAS, the Parties have agreed that in the event of Honeywell's default under one or more Consent Decrees, the Special Master may draw on the Letters of Credit in an amount necessary to cure those obligations on which Honeywell has defaulted without regard to any underlying allocation of credit between Consent Decrees. If the total amount of money available under the Letters of Credit proves insufficient to address all defaulted obligations, the Special Master is authorized, with the Court's approval, to prioritize those defaulted obligations presenting the greatest threat to human health and the environment; and

WHEREAS, the Parties have conferred regarding the amount of financial assurances required under the Consent Decrees and agree as to the current amounts necessary to meet the financial assurance requirements of the Consent Decrees and the Special Master has accepted the Parties' agreement; and

WHEREAS, the Parties agree that, in light of the additional financial assurance requirements of the Consent Decrees, which are set forth in paragraph 7 herein and which are to be met by the Letters of Credit, the Amended Consent Order Regarding Financial Assurances (entered on September 22, 2010, ECF No. 996 in *ICO v. Honeywell*) should be superseded by this Second Amended Consent Order Regarding Financial Assurances; and

WHEREAS, if there is any issue as to whether the 2003 Financial Assurances Order and the 2005 Insurance Order provided financial assurances for the Special Master's fees and expenses, those provisions are clarified herein to remove any doubt that the Special Master's fees and expenses shall be assured financially as set forth herein;

NOW, THEREFORE, it is **ORDERED** and **DECREED** as follows:

ARTICLE I: DEFINITIONS

1. **Definitions.** The following terms shall have the following meanings:

(a) **“The 2003 Financial Assurances Order”** shall mean the September 15, 2003 Order Setting Financial Assurance for Honeywell International, Inc., entered by the Court in *ICO v. Honeywell* (ECF No. 409).

(b) **“The 2005 Insurance Order”** shall mean the November 15, 2005 Stipulation and Order Regarding the Special Master’s Application to Procure Insurance Coverage, entered by the Court in *ICO v. Honeywell* (ECF No. 669).

(c) **“Consent Decrees”** or **“Consent Decree(s)”** shall mean, as individually and collectively, and, if applicable, as amended, the Final Judgment, the 2003 Financial Assurances Order, the 2005 Insurance Order, the Sediment Consent Order, the Groundwater Consent Order, the Mass Removal Consent Decree, the Study Area 6 North Consent Decree, the Study Area 6 South Consent Decree, the NJCU Consent Decree, and the Study Area 5 Shallow Groundwater and Fisk Street Homes Consent Decree.

(d) **“The Court”** shall mean the Court in both *ICO v. Honeywell* and the Consolidated Litigation unless otherwise specified.

(e) **“The Final Judgment”** shall mean the June 30, 2003 Final Judgment of the Court in *ICO v. Honeywell* (ECF No. 356).

(f) **“The Groundwater Consent Order”** shall mean the Deep Overburden and Bedrock Groundwater Remedies Consent Order, entered by the Court in *ICO v. Honeywell* and the Consolidated Litigation on September 3, 2008 (ECF Nos. 898 and 222, respectively).

(g) **“Honeywell”** shall mean Honeywell International Inc. and its affiliates, including, but not limited to, 425-445 Route 440 Property LLC, Kellogg Street 80 Property LLC, Kellogg Street 60 Property LLC, Kellogg Street/440 Property LLC, and Bayfront Redevelopment LLC.

(h) **“The Jersey City Entities”** shall mean the City of Jersey City, including the Department of Public Works and other agencies and branches thereof, the Jersey City Incinerator Authority, and the Jersey City Municipal Utilities Authority.

(i) **“The Letters of Credit”** shall mean one or more automatically renewable, irrevocable letters of credit procured or to be procured by Honeywell from Citibank or other financial institutions, as well as any replacement letter(s) of credit that Honeywell procures. Except as may be proposed and accepted under paragraph 9, the Letters of Credit do not include the Maintenance and Monitoring Letter of Credit.

(j) **“The Maintenance and Monitoring Letter of Credit”** shall mean the Maintenance and Monitoring Letter of Credit provided as financial assurance pursuant to paragraphs 79 through 86 of the Sediment Consent Order.

(k) **“The Mass Removal Consent Decree”** shall mean the Deep Overburden and Bedrock Groundwater Mass Removal Consent Decree, entered by the Court in *ICO v. Honeywell* and the Consolidated Litigation on May 18, 2010 (ECF Nos. 979 and 324, respectively).

(l) **“NJCU”** shall mean the New Jersey City University.

(m) **“The NJCU Consent Decree”** shall mean the Consent Decree Regarding Remediation of the New Jersey City University Redevelopment Area, entered by the Court in the Consolidated Litigation on January 22, 2010 (ECF No. 302).

(n) **“Parties”** shall mean Plaintiffs, the Jersey City Entities, NJCU and Honeywell.

(o) **“Plaintiffs”** shall mean, collectively, Interfaith Community Organization, Hackensack Riverkeeper, Inc., Lawrence Baker, Winston Clarke, Margarita Navas, Martha Webb Herring, Margaret Webb, William Sheehan, Elizabeth Rosario, and Rafael Rosario.

(p) **“The Sediment Consent Order”** shall mean the Consent Order on Sediment Remediation and Financial Assurances, entered by the Court in *ICO v. Honeywell* on May 29, 2008 (ECF No. 882), and by the Court in the Consolidated Litigation on July 1, 2008 (ECF No. 211).

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

(r) **“The Special Master Escrow Account”** shall mean the single purpose interest-bearing escrow account, held by Connell Foley, LLP, and serving as security for the payment of the fees and expenses of the Special Master and his Court-appointed professionals, established in the 2003 Financial Assurances Order and further defined in the 2005 Insurance Order.

(s) **“The Study Area 5 Shallow Groundwater and Fisk Street Homes Consent Decree”** shall mean the Consent Decree Regarding Remediation of the Study Area 5 Shallow Groundwater and the Site 79 Residential Properties, entered by the Court in the Consolidated Litigation on January 22, 2010 (ECF No. 303).

(t) **“Study Area 6 North”** shall mean the property which is the subject of the Study Area 6 North Consent Decree.

(u) **“The Study Area 6 North Consent Decree”** shall mean the Consent Decree Regarding Remediation and Redevelopment of Study Area 6 North, entered by the Court in the Consolidated Litigation on April 21, 2008 (ECF No. 202).

(v) **“Study Area 6 South”** shall mean the property which is the subject of the Study Area 6 South Consent Decree.

(w) **“The Study Area 6 South Consent Decree”** shall mean the Consent Decree Regarding Remediation and Redevelopment of Study Area 6 South, entered by the Court in the Consolidated Litigation on December 29, 2008 (ECF No. 234).

(x) **“Study Area 7”** shall mean Sites 115, 120, and 157 of the Chromate Chemical Production Waste Sites, as designated by the New Jersey Department of Environmental Protection.

(y) **“Subject to Comment by Plaintiffs, the Jersey City Entities, and NJCU, and Approval by the Special Master”** shall mean that Honeywell shall submit a proposal to Plaintiffs, the Jersey City Entities, NJCU, and the Special Master. Plaintiffs, the Jersey City Entities, NJCU, and the Special Master shall have the right to make comments, to which Honeywell shall respond. Unless there is consensus among the Parties, 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. The term Subject to Comment by Plaintiffs, the Jersey City Entities, and NJCU, and Approval by the Special Master shall not provide any party with substantive or procedural rights with respect to matters covered by Consent Decrees to which it is not a party.

ARTICLE II: SCOPE AND EFFECT

A. General

2. **Amended Consent Order Regarding Financial Assurances Superseded.** The Amended Consent Order Regarding Financial Assurances, also known as the Amended Global Financial Assurances Order, entered by the Court in *ICO v. Honeywell* September 22, 2010 (ECF No. 996), is hereby vacated and superseded by this Second Amended Consent Order Regarding Financial Assurances (hereafter “Global Financial Assurances Order”).

B. Setting Financial Assurances

3. **Deferral of Present Value Calculation on Initial Financial Assurances.** The Parties agree not to apply an inflation rate or a discount rate that would be used to determine the present value of the costs requiring financial assurance pursuant to the initial financial assurances provisions in the Sediment Consent Order (paragraphs 68 through 78), the Groundwater Consent Order (paragraph 15), the Study Area 6 North Consent Decree (paragraphs 77 through 86), the Study Area 6 South Consent Decree (paragraphs 91 through 100), the NJCU Consent Decree (paragraphs 115 through 125), and the Study Area 5 Shallow Groundwater and Fisk Street Homes Consent Decree (paragraphs 83 through 92). Initial financial assurances under the Sediment Consent Order, the Groundwater Consent Order, the Study Area 6 North Consent Decree, the Study Area 6 South Consent Decree, the NJCU Consent Decree, and the Study Area 5 Shallow Groundwater and Fisk Street Homes Consent Decree shall, at present, be set at the amount agreed to by the Parties for the work that must be completed, without adjustment for inflation and discount rates.

4. **Decision as to Inflation and Discount Rates for Initial Financial Assurances.** If Honeywell seeks to reduce the amount of the Letters of Credit pursuant to any Consent Decree,

or if Honeywell seeks, pursuant to paragraph 9, to satisfy any financial assurance obligations under the Consent Decrees beyond those set forth in paragraph 7 through the Letters of Credit, the Parties shall agree on an inflation and discount rate to resolve the dispute as to initial financial assurances deferred pursuant to paragraph 3 and adjust cost estimates accordingly; or, in the absence of agreement on an inflation rate and discount rate for initial financial assurances, agree to continue to apply the terms of paragraph 3 until Honeywell proposes any subsequent adjustment to the Letters of Credit; or in the absence of any agreement to continue to apply the terms of paragraph 3, make the inflation rate and discount rate issues for initial financial assurances Subject to Comment by Plaintiffs, the Jersey City Entities, and NJCU and Approval by the Special Master.

5. **Present Value Calculation on Long-Term Financial Assurances.** The Parties have agreed to the use of a specific nominal discount rate of 4.75% and a specific inflation rate of 2.5% in the current calculation of the present value of long-term financial assurances under the Consent Decrees until the first five-year review. At the time of any five-year review, the Parties will propose new specific inflation and discount rates to be used in the present value calculation, unless the Parties have agreed on formulas for the calculation of discount and inflation rates. If the Parties have agreed on formulas for the calculation of discount and inflation rates, the rates determined by the formulas shall apply for all five-year review periods following agreement on the formulas, unless and until a Party proposes a change in the formulas or the use of specific discount and inflation rates to replace the formulas. If the Parties agree to the change and the Court approves, the new formulas or the use of specific discount and inflation rates shall apply for all five-year review periods following agreement on the new formulas or the use of specific discount and inflation rates. If at any time the Parties do not agree on specific

inflation and discount rates or the formulas to be applied, any Party may move the Court for resolution of the dispute.

6. **Five-Year Adjustments of Long-Term Financial Assurances.** Long-term financial assurances as provided in the Consent Decrees are reviewed and subject to adjustment every five years from the date of their establishment. See paragraph 92 of the Study Area 6 North Consent Decree, paragraph 106 of the Study Area 6 South Consent Decree, paragraph 131 of the NJCU Consent Decree, and paragraph 98 of the Study Area 5 Shallow Groundwater and Fisk Street Homes Consent Decree. Long-term financial assurances pursuant to the decrees identified in this paragraph shall be deemed to be established as of December 13, 2010. Therefore, all five-year adjustment periods under those decrees shall begin to run as of December 13, 2010. Long-term financial assurances provided by any of the Consent Decrees not identified in this paragraph shall be subject to review and adjustment on five-year intervals that coincide with five-year intervals that begin to run on December 13, 2010. All other provisions of the Consent Decree paragraphs referenced in this paragraph, including discussions of what the five-year reviews shall consider, shall remain in full force and effect.

7. **Financial Assurances Obligations Satisfied by the Letters of Credit.** The Parties agree that the Letters of Credit are sufficient at this time to satisfy the following financial assurances obligations:

(a) The remaining financial assurance obligations of the 2003 Financial Assurances Order, as modified by the 2005 Insurance Order and the Sediment Consent Order (paragraph 67);

(b) The initial financial assurance obligations of the Sediment Consent Order (paragraphs 68 through 78);

(c) The initial financial assurance obligations of the Groundwater Consent Order (paragraph 15), including obligations related to source control and mass removal under the Groundwater Consent Order and the Mass Removal Consent Decree;

(d) The long-term financial assurance obligations of the Groundwater Consent Order (paragraphs 16 through 26);

(e) The initial financial assurance obligations of the Study Area 6 North Consent Decree (paragraphs 77 through 86);

(f) The long-term financial assurance obligations of the Study Area 6 North Consent Decree (paragraphs 87 through 98);

(g) The initial financial assurance obligations of the Study Area 6 South Consent Decree (paragraphs 91 through 100);

(h) The long-term financial assurance obligations of the Study Area 6 South Consent Decree (paragraphs 101 through 112);

(i) The initial financial assurance obligations of the NJCU Consent Order (paragraphs 115 through 125);

(j) The long-term financial assurance obligations of the NJCU Consent Order (paragraphs 126 through 138);

(k) The initial financial assurance obligations of the Study Area 5 Shallow Groundwater and Fisk Street Homes Consent Decree (paragraphs 83 through 92);

(l) The long-term financial assurance obligations of the Study Area 5 Shallow Groundwater and Fisk Street Homes Consent Decree (paragraphs 93 through 104); and

(m) Fees and expenses incurred by the Special Master and his retained professionals for the performance of the Special Master's duties under the Consent Decrees, as provided in paragraph 18.

8. **Amount of Financial Assurances.** The total amount of current financial assurances is set forth in the Consent Order Regarding the Amount of Financial Assurances (entered on September 22, 2010, ECF No. 995 in *ICO v. Honeywell*). Whenever appropriate and consistent with the requirements of the Consent Decrees, the Consent Order Regarding the Amount of Financial Assurances shall be amended to reflect the then current total amount of financial assurances. Nothing in any amendments to the Consent Order Regarding the Amount of Financial Assurances shall amend this Global Financial Assurances Order.

9. **Extension of Financial Assurances Obligations Satisfied by the Letters of Credit.** To the extent that financial assurance obligations under the Consent Decrees other than those set forth in paragraph 7 can be satisfied by the Letters of Credit without exceeding their value, Honeywell may, in accordance with the applicable Consent Decree(s), propose that such additional financial assurance obligations be satisfied by the Letters of Credit. For example, the Parties recognize that Honeywell may seek to include the financial assurance obligations of the Maintenance and Monitoring Letter of Credit, pursuant to paragraph 79 of the Sediment Consent Order, among the financial assurances that can be satisfied by the Letters of Credit. Subject to Comment by Plaintiffs, the Jersey City Entities, and NJCU, and Approval by the Special Master and provided such additional financial assurance obligations can be satisfied by the Letters of Credit without exceeding the value of the Letters of Credit, the addition of these financial assurances to the Letters of Credit will not require amending this Global Financial Assurances Order.

10. **Reductions in Value of the Letters of Credit.** To the extent that Honeywell has the right under certain Consent Decrees to seek an annual reduction in its initial financial assurances to account for work performed, Honeywell shall not seek such a reduction until December 2012.

11. **Drawing on the Letters of Credit in the Event of Honeywell's Default.** In the event of Honeywell default, as defined in the Consent Decrees, the Special Master is authorized to draw on the Letters of Credit to carry out all defaulted obligations. In the event of default, the Special Master may draw upon the Letters of Credit without further order or notice to the Court, as provided in the Consent Decrees. If, at the time of such default, there are multiple Letters of Credit from which to draw and the Special Master need not draw on all of the Letters of Credit to carry out all defaulted obligations, the Special Master shall draw from the Letters of Credit in his sole discretion and based on the information then available.

12. **Use of the Proceeds in the Event of Default.** In the event of a default by Honeywell, the Special Master is authorized to apply to the Court for orders to expend the proceeds of the Letters of Credit to carry out those defaulted obligations of Honeywell that are secured by the Letters of Credit. The Special Master is authorized to use proceeds that exceed the amount needed to satisfy a defaulted obligation in order to satisfy any other defaulted obligations. If the proceeds are insufficient to implement all defaulted obligations under the Consent Decrees, the Special Master is authorized, with the Court's approval, to prioritize those defaulted obligations presenting the greatest threat to human health and the environment and use the proceeds of the Letters of Credit for addressing such obligations.

13. **Placement of the Proceeds of the Letters of Credit.** The Special Master shall place those proceeds obtained by drawing on the Letters of Credit as necessary to cure the

defaulted obligations with the Court Registry Investment System or in a trust fund, in accordance with the relevant Consent Decree(s). In the event that the proceeds are required to be placed in a trust fund, they shall be placed first in the Court Registry Investment System until such time as the trust fund(s) is established pursuant to the relevant Consent Decree.

14. **Tax-Exempt Trust as Beneficiary for Long-Term Financial Assurances.** In the event that Honeywell proposes to establish one or more trust funds in order to satisfy its obligations to provide the long-term financial assurances under any or all of the Consent Decrees, Honeywell agrees to work in good faith with Plaintiffs, the Jersey City Entities, and NJCU to ensure the trust fund(s) is tax-exempt upon its establishment. If the trust fund(s) cannot be established in such a way as to ensure its tax-exempt status, it shall be funded with money sufficient to cover the expected costs of remediation, as provided by the applicable Consent Decrees, and any expected taxes. In the event that Honeywell defaults or ceases to exist, any independent fiduciary appointed by the Court as a beneficiary of the Trust Fund shall be a tax-exempt entity.

15. **Continuing Application.** The provisions of this Global Financial Assurances Order relating to long-term financial assurances shall continue to apply after the Special Master's term has expired pursuant to the Consent Decrees. Specifically, paragraphs 1, 5 through 9, 11 through 14, and 19 through 25 shall continue to apply. Where the Special Master is assigned rights or obligations pursuant to these paragraphs, those rights and obligations shall transfer to the Court upon the expiration of the Special Master's term under all of the Consent Decrees and the Parties may move the Court on an expedited basis for appropriate orders.

B. Special Master Fees and Expenses

16. **Special Master Escrow Account.** In addition to Honeywell's obligations as provided in paragraph 18, to provide financial assurances for the Special Master's fees and expenses, including but not limited to any additional insurance premiums, the terms of the 2003 Financial Assurances Order that establish the requirements for the Special Master Escrow Account shall be modified as provided herein. Specifically, upon the provision of the financial assurances required by paragraph 18, Honeywell shall no longer be required to replenish the Special Master Escrow Account to the full \$3 million if the balance falls below \$2.5 million. Instead, Honeywell shall provide financial assurances for the Special Master's fees and expenses as set forth in paragraph 18; the Special Master Escrow Account shall be maintained at a balance of \$1.5 million; and Honeywell shall be required to replenish the Special Master Escrow Account when the balance falls below \$1 million.

17. **2005 Insurance Order.** Upon Honeywell's provision of financial assurances for the Special Master's fees and expenses as provided in paragraph 18, the terms of the 2005 Insurance Order shall be modified as provided in paragraph 16 above. The 2005 Insurance Order shall be modified only insofar as paragraph 3 of that order sets forth requirements for the amount of money to be held in the Escrow Account. All other rights and obligations set forth in the 2005 Insurance Order shall remain in full force and effect, except for the amount of the \$200 million Letter of Credit in paragraph 4 of the 2005 Insurance Order. The amount of the Letter of Credit referenced in paragraph 4 of the 2005 Insurance Order is hereby modified to be consistent with the amount of financial assurances set forth in the Consent Order Regarding the Amount of Financial Assurances and any future orders addressing the amount of financial assurances, where such orders are approved by the parties, the Special Master, and the Court.

18. **Financial Assurance of the Special Master's Fees and Expenses.** Honeywell shall provide financial assurances for the Special Master's fees and expenses, including the fees and expenses of the Special Master's Court-appointed professionals, sufficient for the Special Master to carry out his functions under the Consent Decrees and Final Judgment for the period from July 1, 2009, through August 30, 2019. However, this time period shall be subject to reevaluation if at any time Honeywell seeks to reduce the amount of the Letters of Credit pursuant to the Consent Decree(s), or if Honeywell seeks, pursuant to paragraph 9, to satisfy any financial assurance obligations under the Consent Decrees beyond those set forth in paragraph 7 through the Letters of Credit. The evaluation of the time period shall be based on estimates of the length of time that will be required for the completion of the Special Master's appointments pursuant to the Consent Decrees. In the event of default as set forth in the Consent Decrees, the Special Master may use the financial assurances to provide for his fees and expenses.

C. Modification of Sediment Consent Order Maintenance and Monitoring Letter of Credit

19. **Modification of Maintenance and Monitoring Letter of Credit.** The provisions of the Maintenance and Monitoring Letter of Credit, as set forth in paragraphs 79 to 86 of the Sediment Consent Order, are hereby modified as follows:

(a) Prior to the expiration of the Special Master's appointment pursuant to paragraph 60, the Maintenance and Monitoring Letter of Credit shall be payable to the Special Master.

(b) The Special Master may draw upon the Maintenance and Monitoring Letter of Credit pursuant to the default provisions of paragraph 76 of the Sediment Consent Order. The Special Master shall use the proceeds to complete the remedial obligations for which

Honeywell must provide financial assurance pursuant to paragraph 79 of the Sediment Consent Order.

(c) In the event that the Special Master draws upon the Maintenance and Monitoring Letter of Credit due to an event of default, the Special Master shall place the proceeds in an account with the Court Registry Investment System in accordance with Local Civil Rule 67.1 and not expend the proceeds of the Maintenance and Monitoring Letter of Credit without further order of this Court.

ARTICLE III: MISCELLANEOUS PROVISIONS

20. **Construction.** Questions regarding the interpretation of this Global Financial Assurances Order shall not be resolved against any party on the ground that this Order has been drafted by that party. This Order is the result of review, negotiation, and compromise by each party.

21. **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 Global Financial Assurances Order and bind such party legally to this Order.

22. **Force and Effect of Financial Assurance Provisions in Consent Decrees.** This Global Financial Assurances Order addresses the topic of financial assurances for remediation. Financial assurances are further addressed in the Final Judgment (paragraph 10), the 2003 Financial Assurances Order, the 2005 Insurance Order (paragraphs 2 through 4), the Sediment Consent Order (paragraphs 67 through 86), the Groundwater Consent Order (paragraphs 15 through 26), the Mass Removal Consent Decree (paragraph 7), the Study Area 6 North Consent Decree (paragraphs 77 through 98), the Study Area 6 South Consent Decree (paragraphs 91 to

112), the NJCU Consent Decree (paragraphs 115 through 145), and the Study Area 5 Shallow Groundwater and Fisk Street Homes Consent Decree (paragraphs 83 through 104). Those provisions remain in full force and effect except as modified herein or as modified through any amendment to such Consent Decree.

23. **Parties' Substantive Rights and Obligations.** Nothing in this Global Financial Assurances Order shall provide any Party with substantive rights or obligations under Consent Decrees to which it is not a Party.

24. **Modifications.** This Global Financial Assurances Order 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.

25. **Signatures.** This Global Financial Assurances Order 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:

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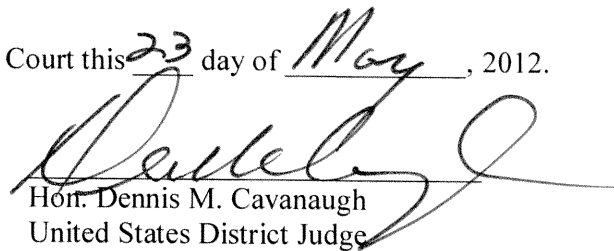
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APPROVED and **ENTERED** as an Order of this Court this 23 day of May, 2012.



Hon. Dennis M. Cavanaugh
United States District Judge