

DEED NOTICE

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

Prepared by: _____



[Signature]

Global Director - Remediation Design & Construction
[Bayfront Redevelopment, LLC]

Recorded by: _____

[Signature, Officer of County Recording Office]

[Print name below signature]



20171214010145840 1/117
12/14/2017 12:50:04 PM DEED
Bk: 9265 Pg: 148
Diane Coleman
Hudson County, Register of Deeds
Receipt No. 1312716

**DEED NOTICE CONCERNING CONTROLS
INSTALLED FOR CHROMIUM CONTAMINATION
UNDERLYING THE PROPERTY**

This Deed Notice is made as of the ^{29th} day of November, 2017, by *Bayfront Redevelopment LLC*, whose post office address is *115 Tabor Road, Morris Plains, New Jersey 07950*. "Owner" shall mean Bayfront Redevelopment, 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. Block 21901 Lot 5 is currently owned by Bayfront Redevelopment, LLC. The "Property" (also referenced herein as the "Deferred Area" or the "Restricted Area(s)") shall consist of those lands particularly described by metes and bounds in Exhibit A-2 attached hereto.

1. THE PROPERTY. Bayfront Redevelopment, LLC is the current owner in fee simple of certain real property designated the Deferred Area as portions of *Block 21901, Lot 4 on the tax map of the City of Jersey City, Hudson County, New Jersey*¹. 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. 087 Program Interest ("PI") # G000008710* (NJDEP PI# for non-chromium-related contaminants at the Property is #745719). The Property is part of Site 087 pursuant to the Consent Decree Regarding Remediation and Redevelopment of

¹ All references to Block 21901 Lot 4 in this Deed Notice shall mean the applicable portions of Block 21901 Lot 4 as shown in the metes and bounds description, regardless of whether the word "portion(s)" is specifically called out or not.

Study Area 6 North (“Consent Decree”) which is attached hereto as Appendix I and is entered as an order of the Court in the following consolidated actions *JCMUA v. Honeywell International, Inc.*, D.N.J., Civ. No. 05-05955; *JCIA v. Honeywell International, Inc.*, D.N.J., Civ. No. 05-5993; and *Hackensack Riverkeeper, Inc. v. Honeywell International, Inc.*, D.N.J., Civ. No. 06-22 (consolidated under Civ. No. 95-2097).

2. REMEDIATION.

i. The Department’s Bureau of State Case Management (BCM) is the entity within the Department that is responsible for the oversight of the remediation of the SA-6 North. The matter was Case No. Hudson County Chromate Site No. 087 PI# G000008710. The Department has approved this Deed Notice as an institutional control for the Property, which is part of the remediation of the Property.

ii. N.J.A.C. 7:26-C-7 requires the Owner, among other persons, including the responsible party Honeywell International Inc. (“Honeywell”), to obtain a soil remedial action permit for the soil remedial action at the Property. That permit will contain the monitoring, maintenance and biennial certification requirements that apply to the Property.

3. SOIL AND GROUNDWATER CONTAMINATION. Honeywell, a corporation of the State of Delaware, licensed to do business in the State of New Jersey whose post office address is 115 Tabor Road, Morris Plains, New Jersey 07950, has remediated SA-6 North to address chromium-related soil and shallow groundwater contamination, except for the Property and certain other deed noticed areas where engineering controls were implemented. The Remedial Action Work Plan (“RAWP”) was approved by the Department on February 19, 2009 for Hudson County Chromate Site Nos. 087 and 088, which included the Property. Remedial actions were further approved pursuant to the Consent Decree.

Under both the Consent Decree and the RAWP soil contamination remains in the Property which contains contaminants in concentrations that do not allow for the unrestricted use of the Property. A Remedial Action Report (“RAR”) for SA-6 North was submitted to the Department on March 16, 2017. The Department approved the RAR on June 1, 2017. A Construction Completion Report (“CCR”) for SA-6 North to document the implementation of the Chromium Remedy pursuant to Article III of the Consent Decree (the “Chromium Remedy”) to address chromium-impacted soil and groundwater for SA-6 North was entered by the Court on December 5, 2017, Docket No. 1528.

The Property consists of two small areas on SA-6 North adjacent to the Route 440 Right-Of-Way (“ROW”) where the Public Service Electric & Gas (“PSE&G”) gas main is located north and east of the SA-6 North Open Space Area. The Property is comprised of two tracts of land; Tract 1 is near Culver Circle at the Route 440 ROW and Tract 2 is further south along the Route 440 ROW closer to the SA-6 North Open Space Area. Tract 1 is an approximately 1,408 square foot area. Tract 2 is an approximately 971 square foot area. Both tracts include chromium only. Excavations in this part of SA-6 North were limited in these areas by the PSE&G gas main and will be deferred until after the Route 440 ROW widening project. Thus, these areas are termed “Deferred Areas.” This deed notice is for both Tracts 1 and 2 together. Once the remediation of these areas is completed consistent with Article III of the Consent Decree, Honeywell will terminate this Deed

Notice pursuant to Paragraph 13 below. In the meantime, the provisions of the Long Term Monitoring Plan ("LTMP"), developed pursuant to the Consent Decree, will apply to the Property.

It is not anticipated that implementation of the Bayfront I Redevelopment Plan will impact the Property. Because this area is so narrow, is proximate to the Route 440 ROW, and the gas main is located within the area, remediation of the Property will need to be deferred until the gas main is relocated.

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. Groundwater contaminant concentrations and restrictions for SA-6 North in its entirety are addressed in the Classification Exception Area (CEA) approved by the NJDEP on February 16, 2012 and in a forthcoming Remedial Action Permit for Groundwater (recent groundwater samples from the Property do not indicate shallow groundwater contamination). As a result of the remaining soil contamination, there is a statutory requirement for this Deed Notice and engineering controls in accordance with N.J.S.A. 58:10B-13. Under the terms of the Consent Decree and this Deed Notice, Honeywell is responsible for monitoring and maintaining the soil remediation for the Property in perpetuity or until remediation is implemented that renders this Deed Notice unnecessary.

4. CONSIDERATION. In accordance with the Department's approval of the chromium RAWP for the remediation of Hudson County Chromate Site Nos. 087 and 088 which includes the Property, and in consideration of the terms and conditions of that approval, and in accordance with the Consent Decree, and other good and valuable considerations, Owner has agreed to subject the 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 subsequent owners, lessees and operators of the restrictions and the monitoring, maintenance, and biennial certification requirements outlined in this Deed Notice and required by law, as set forth herein.

5A. RESTRICTED AREAS. Due to the presence of contamination remaining at concentrations that do not allow for unrestricted use, Owner has agreed, as part of the remedial action for the Property, to restrict the use of the Property (the "Restricted Areas"); a narrative description of these restrictions, along with the associated monitoring and maintenance activities and the biennial certification requirements are provided in Exhibit C, which is attached hereto and made a part hereof. Owner will develop a binder containing a list of these restrictions which will be maintained at either the onsite trailers or within the Groundwater Treatment Plant building, available for review and inspection by governmental enforcement officials if requested.

5B. RESTRICTED LAND USES. The following land use restrictions apply to the Property:

- i. The Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-12.g(10), prohibits the conversion of a contaminated site, remediated to non-residential soil remediation standards that require the maintenance of engineering or institutional controls, to a child care facility, or public, private, or charter school without the Department's prior written approval, unless a presumptive remedy is implemented;

ii. The Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-12.g(12), prohibits the conversion of a landfill, with gas venting systems and or leachate collection systems, to a single-family residence or a child care facility without the Department's prior written approval; and

iii. The Consent Decree, paragraph 53, prohibits the unrestricted use of the Property until the Chromium Remedy set forth in Article III of the Consent Decree is implemented and the concentration of hexavalent chromium in soil is less than 20 mg/kg to a depth of 20 feet below ground surface.

5C. ENGINEERING CONTROLS. Due to the presence and concentration of these contaminants, the Owner has also agreed, as part of the remedial action for the Property, to the placement of certain engineering controls within the Property. The engineering controls include a cap consisting of 1 foot of clean soil at the northern-most restricted area and a cap consisting of a geotextile demarcation fabric overlain by 6-inches of gravel at the southern-most restricted area. 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 the Consent Decree, the LTMP, and Paragraphs 8A and 8B herein.

5D. LONG TERM MONITORING PLAN. Pursuant to the Consent Decree, Honeywell has developed a LTMP which sets forth requirements for monitoring, maintaining, and repairing or replacing the soil and groundwater chromium remedial measures including engineering controls within the Property, and requirements for notification and reporting pursuant to the Consent Decree, Deed Notice, and Soil Remedial Action Permit. A copy of the LTMP is maintained by Honeywell at 115 Tabor Road, Morris Plains, NJ 07950. This Deed Notice is appended to the LTMP.

5F. WORKER TRAINING MATERIALS. All maintenance workers engaged in maintenance at the Property shall be trained in maintenance procedures that do not jeopardize the integrity of the Chromium Remedy. Workers shall be trained using materials developed by Honeywell pursuant to the Consent Decree.

6A. CHANGE IN OWNERSHIP AND REZONING.

i. The Owner and the subsequent owners and lessees, shall cause all leases, grants, and other written transfers of an interest in the Restricted Areas 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. The Owner and the subsequent owners shall provide written notice to the Department of Environmental Protection on a form provided by the Department and available at www.nj.gov/srp/forms within thirty (30) calendar days after the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of the owner's interest in the Restricted Area.

iii. The Owner and the subsequent owners shall provide written notice to the Department, on a form available from the Department at www.nj.gov/srp/forms, within thirty (30) calendar days after the owner's petition for or filing of any document initiating a rezoning of the Property to residential.

6B. SUCCESSORS AND ASSIGNS. This Deed Notice shall be binding upon Owner and upon Owner's successors and assigns, and subsequent owners, lessees, and operators while each is an owner, lessee, or operator of the Property.

7A. ALTERATIONS, IMPROVEMENTS, AND DISTURBANCES.

i. The Owner and all subsequent owners and lessees shall notify any person of whom it has knowledge, including, without limitation, tenants, employees of tenants, developers, and contractors, intending to conduct invasive work or excavate within the Property, of the nature and location of known contamination in the Property, and, of the precautions necessary to protect the engineering controls and minimize potential human exposure to contaminants.

ii. Except as provided in the Consent Decree and Paragraph 7B 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 Decree and (b) without first obtaining a Soil Remedial Action Permit modification from the Department. 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.

iii. Notwithstanding subparagraph 7A.ii.(b), above, a Soil Remedial Action Permit modification is not required for any alteration, improvement, or disturbance provided that:

(A) Such action is taken in conformance with the Consent Decree and this Deed Notice; and

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

(C) Honeywell is notified of the activity by calling 855-727-2658; and

(D) Honeywell and/or the owner restores any disturbance of an engineering control to pre-disturbance conditions, consistent with the requirements of the Consent Decree and LTMP, within sixty (60) calendar days after the initiation of the alteration, improvement or disturbance; and

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

(F) Appropriate measures are taken so that human exposure, and exposure of the environment outside the containment of the engineering controls, to contamination in excess of the applicable remediation standards does not occur; and

(G) The next biennial certification includes a description of 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.

7B. 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, or immediate environmental concern, see N.J.S.A. 58:10C-2, any person may temporarily breach an engineering control provided that:

i. The Department of Environmental Protection is immediately notified of the emergency, by calling the DEP Hotline at 1-877-WARNDEP or 1-877-927-6337; and

ii. Immediately after notifying NJDEP, Honeywell is notified of the emergency by calling 855-727-2658; and

iii. Both the actual disturbance and the time needed for the disturbance are limited to the minimum reasonably necessary to adequately respond to the emergency; and

iv. All measures necessary to limit actual or potential, present or future risk of exposure to humans or the environment to the contamination are implemented; and

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

vi. Honeywell is notified when the emergency has ended by calling 855-727-2658; and

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

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

8A. MONITORING AND MAINTENANCE OF DEED NOTICE, AND PROTECTIVENESS CERTIFICATION. The persons in any way responsible, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., for the hazardous substances that remain at the Property, the persons responsible for conducting the remediation, Honeywell, the Owner, and the subsequent owners, lessees, and operators, shall monitor and maintain this Deed Notice. The subsequent owners, lessees and operators have this obligation only during their ownership, tenancy, or operation. Honeywell shall certify to the Department on a biennial basis that the remedial action that includes this Deed Notice remains protective of the public health and safety and of the environment. The specific obligations to monitor and maintain the deed notice shall include all of the following:

i. Monitoring and maintaining this Deed Notice according to the requirements in Article III of the Consent Decree and Exhibit C herein, 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, pursuant to Paragraph 8B below; and

ii. Conducting any additional remedial investigations and implementing 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, so that the remedial action that includes this Deed Notice remains protective of the public health and safety and of the environment, pursuant to Paragraph 8B below; and

iii. Certifying to the Department of Environmental Protection the continued protectiveness of the remedial action that includes this Deed Notice, on a form provided by the Department and consistent with N.J.A.C. 7:26C-1.2 (a)1, every two years on the anniversary of the date stamped on the Deed Notice that indicates when the Deed Notice was recorded, pursuant to Paragraph 8B below.

8B. MONITORING AND MAINTENANCE OF ENGINEERING CONTROLS, AND PROTECTIVENESS CERTIFICATION. Honeywell 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 Article III of the Consent Decree, the LTMP, and Exhibit C herein, so that the remedial action that includes the engineering control continues to be protective of the public health and safety and of the environment; and

ii. Conducting any additional remedial investigations and implementing 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, so that the remedial action that includes the engineering control remains protective of the public health and safety and of the environment; and

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

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

10. NOTICES.

i. Owner shall cause all leases, grants, and other written transfers of an interest in 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. Honeywell or the Owner shall notify any person intending to conduct invasive work or excavate within the Property of the nature and location of contamination and, of the precautions necessary to minimize potential human exposure, and exposure of the environment outside the containment of the engineering controls, to contaminants.

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

iv. Owner shall provide written notice to the Department within thirty (30) calendar days following the Owner's receiving notice of any petition for a rezoning of the Property. Any such rezoning must be consistent with the terms of the Consent Decree. 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.

11. ENFORCEMENT OF VIOLATIONS.

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

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

iii. This Deed Notice is also enforceable in the United States District Court for the District of New Jersey by all residents, owners, lessees, and all commercial tenants on Study Areas 6 and 7 pursuant to paragraphs 66 and 69 of the Consent Decree.

12. 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.

13. MODIFICATION AND TERMINATION.

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

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

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

iv. If the United States District Court for the District of New Jersey and NJDEP have concluded that this Deed Notice shall be modified or terminated, such modification or termination will only be effective upon the filing of a Termination of Deed Notice, available at N.J.A.C. 7:26C Appendix C, with the office of the Register of Deeds of Hudson County, New Jersey, expressly modifying or terminating this Deed Notice.

v. Within thirty (30) calendar days after the filing of a Termination of Deed Notice, the owner of the Property shall apply to the Department for modification or termination of the Soil Remedial Action Permit pursuant to N.J.A.C. 7:26C-7.

vi. This Deed Notice may be modified only if it has first been terminated pursuant to subparagraphs 13v above, and upon filing of a modified Deed Notice, executed by the Owner of the Property, in the office of the Register of Deeds of Hudson County, New Jersey.

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

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

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

iii. Exhibit A-3: Property Map - A scaled map of the Property, scaled at one inch to 200 feet or less, and if more than one map is submitted, the maps shall be presented as overlays, keyed to a base map; the map(s) shall include diagrams of major surface topographical features such as buildings, roads, and parking lots. Unless this Deed Notice has been terminated pursuant to Paragraph 13, after development of the Property, this Deed Notice shall be modified to show topographical features constructed on the Property such as buildings, roads, and parking lots.

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

i. Exhibit B-1: Restricted Area Map - Maps for the Property that include, as applicable:

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

(B) As-built diagrams of any buildings, roads, parking lots, utility corridors, 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 below.

ii. Exhibit B-2 (Table B-2): Restricted Area Data Tables - Table for the Property 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; and

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

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

i. Exhibit C-1A through C-1C. Exhibit C-1A: Deed Notice as Institutional Control; Exhibit C-1B: Consent Decree as Institutional Control; Exhibit C-1C: Zoning 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 Control:

- (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 resulted 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. Exhibit C-2: Engineering Controls:

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.

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

ATTEST:

Stephanie Frank
 Print name: Stephanie Frank

BAYFRONT REDEVELOPMENT, LLC

By *William J. Hague*
 William J. Hague
 Global Director-Remediation
 Design & Construction

STATE OF NEW JERSEY)
)SS.:
 COUNTY OF Morris)

I CERTIFY that on November 29, 2017, William J. Hague, personally appeared before me and that this person acknowledged under oath, to my satisfaction, that:

(a) this person is the Global Director-Remediation Design & Construction, an authorized representative of Bayfront Redevelopment, LLC, the limited liability company named in the attached document;

(b) this person executed and delivered the attached document as the voluntary act and deed of the limited liability company; and

(c) this person was authorized by the members of the limited liability company to execute and deliver the attached document on behalf of the limited liability company.

Sworn to and subscribed before me
 on this 29th day of November, 2017.

Cheryl L. Toles
 Notary Public



EXHIBIT A
Deed Notice #9 SA-6 North Deferred Area (Former Trenk Property)

A-1 Vicinity Map

A-2 Metes and Bounds Description and Tax Map

A-3 Property Map Portions of Block 21901, Lot 4, City of Jersey City, New Jersey

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

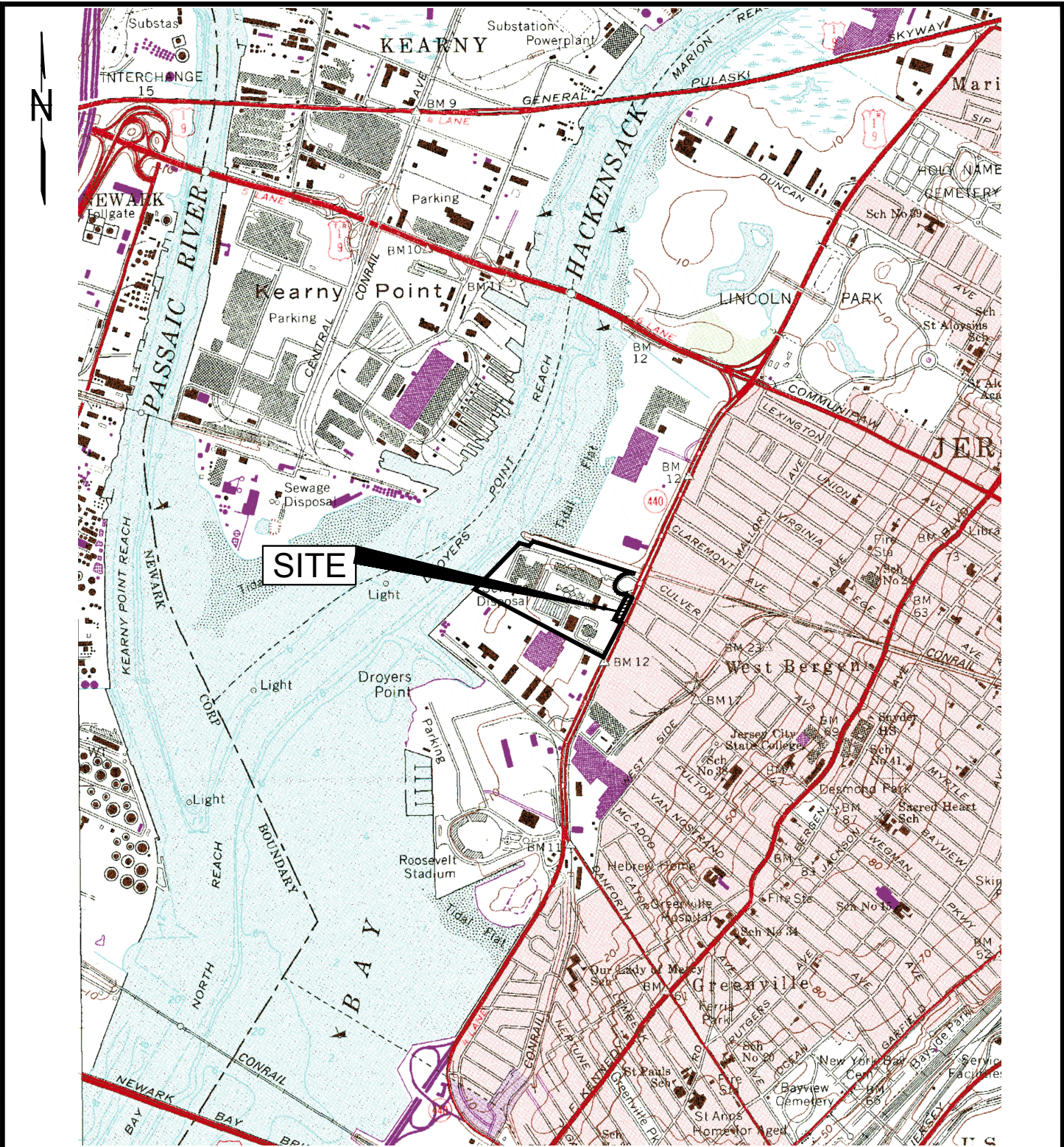
Exhibit A-2 consists of metes and bounds and a tax map for the Property.

Exhibit A-3 Property Map consists of a figure indicating major surface features and engineering control for the Property. Unless this Deed Notice has been terminated pursuant to Paragraph 13, after development of this Property, this Deed Notice shall be modified to show topographical features constructed on the Property such as buildings, roads, and parking lots.

Exhibit A-1
Site Vicinity Map
Jersey City, New Jersey

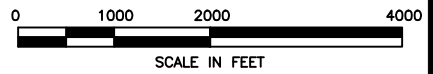
EXHIBIT A-1
SITE VICINITY MAP
PORTIONS OF STUDY AREA 6 NORTH SITE 087
JERSEY CITY, NEW JERSEY

CONFIDENTIAL AND MAY NOT BE COPIED OR DISCLOSED; AND (D) THIS DOCUMENT MAY ONLY BE USED BY THE CLIENT IN THE CONTEXT AND FOR THE EXPRESS PURPOSE FOR WHICH IT HAS BEEN DELIVERED. ANY OTHER USE OR RELIANCE ON THIS DOCUMENT BY ANY THIRD PARTY IS AT THAT PARTY'S SOLE RISK AND RESPONSIBILITY.
 P:\CADD\HONEYWELL\JERSEY CITY_SA_6_NORTH\3480150487_6100\610001\DEED_NOTICE\DN_9\3480150487-6100-A109-0000.dwg Tue, 28 Nov 2017 - 10:35am scott.cudkin



SOURCE: USGS QUADRANGLE MAP, 7.5 MIN SERIES
 JERSEY CITY, NJ-NY 1967, PHOTO REVISED 1981

 RESTRICTED AREA



Amec Foster Wheeler PROJECT No. 3480150450 DRAWING: 3480150487-6100-A109-0000	
PREPARED/DATE: STR 12/15/16	CHECKED/DATE: NW 01/31/17


 ENVIRONMENT & INFRASTRUCTURE, Inc.
 200 AMERICAN METRO BLVD, SUITE 113
 HAMILTON, NEW JERSEY 08619

EXHIBIT A-1
 VICINITY MAP
 BLOCK 21901 LOT 4
 SA-6 NORTH
 JERSEY CITY, NEW JERSEY
 DEED NOTICE #9

Exhibit A-2
Deed Notice #9 SA-6 North Deferred Area (Former Trenk Property)

Metes and Bounds Description of Property: See Attached

A-2 Metes and Bounds Description of Property Portions of Block 21901, Lot 4
City of Jersey City, New Jersey

If there is any discrepancy between the Metes and Bounds and the tax map or any other maps attached hereto, the Metes and Bounds prevails.

The Property is identified as portions of Block 21901, Lot 4 on the City of Jersey City tax maps, the Property being presently owned by Bayfront Redevelopment, LLC. A copy of the current tax map which includes the Property is attached as Exhibit A-2.



Consulting, Municipal & Environmental Engineers
Planners ▪ Surveyors ▪ Landscape Architects

331 Newman Springs Road
Suite 203
Red Bank, NJ 07701
Tel: 732.383.1950 ▪ Fax: 732.383.1984

DESCRIPTION OF PROPERTY
CITY OF JERSEY CITY
HUDSON COUNTY, NEW JERSEY
PROJECT NO. 10000292R

DEED NOTICE AREA 9
BLOCK 21901, LOT 4
MAY 18, 2016
REVISED OCTOBER 13, 2016
Page 1 of 2

All those certain lots, tracts or parcels of land situate lying and being in the City of Jersey, in the County of Hudson and State of New Jersey, and being a portion of Lot 4 in Block 21901, designated as Deed Notice Area 9 as shown on an exhibit entitled, "Deed Notice Area 9, SA6 North, Block 21901, Lot 4, City of Jersey City, Hudson County, New Jersey," prepared by Maser Consulting P.A., dated May 12, 2016, last revised October 7, 2016 and being more particularly bounded and described as follows, to wit:

TRACT I

COMMENCING at the intersection of the westerly line of New Jersey State Highway Route 440 (112 foot wide right of way), with the northeasterly corner of Lot 4 in Block 21901, lands now or formerly of Paul Trenk; thence –

A) **S 24° 46' 55" W, 22.21 feet** along said westerly line to the True Point of **BEGINNING**, as shown on the aforesaid exhibit and running; thence –

1. Along said westerly line of Route 440, **S 24° 46' 55" W, 137.98 feet**; thence –

Running through a portion of Lot 4 in Block 21601, the following four (4) courses:

2. **N 39° 23' 38" W, 11.11 feet**; thence –

3. **N 24° 46' 55" E, 138.43 feet**; thence –

4. **N 84° 58' 58" E, 5.43 feet**; thence –

5. **S 08° 44' 20" E, 9.57 feet**, to the Point and Place of **BEGINNING**.

CONTAINING: 1,408 S.F. of land more or less or 0.032 acre of land more or less.

TRACT II

BEGINNING at the intersection of the westerly line of New Jersey State Highway Route 440 (112 foot wide right of way), with the southeasterly corner of Lot 4 in Block 21901, lands now or formerly of Paul Trenk and running; thence –

1. Along the southerly line of Lot 4 in Block 21901, **N 49° 08' 25" W, 15.61 feet**; thence –



**DESCRIPTION OF PROPERTY
CITY OF JERSEY CITY
HUDSON COUNTY, NEW JERSEY
PROJECT NO. 10000292R**

**DEED NOTICE AREA 9
BLOCK 24601, LOT 4
APRIL 6, 2016
REVISED OCTOBER 13, 2016
PAGE 2 OF 2**

Running through a portion of said Lot 4 in Block 21601, the following four (4) courses:

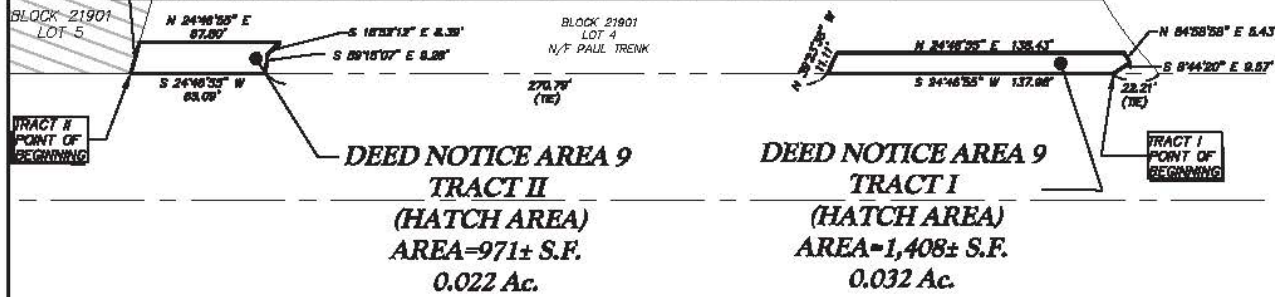
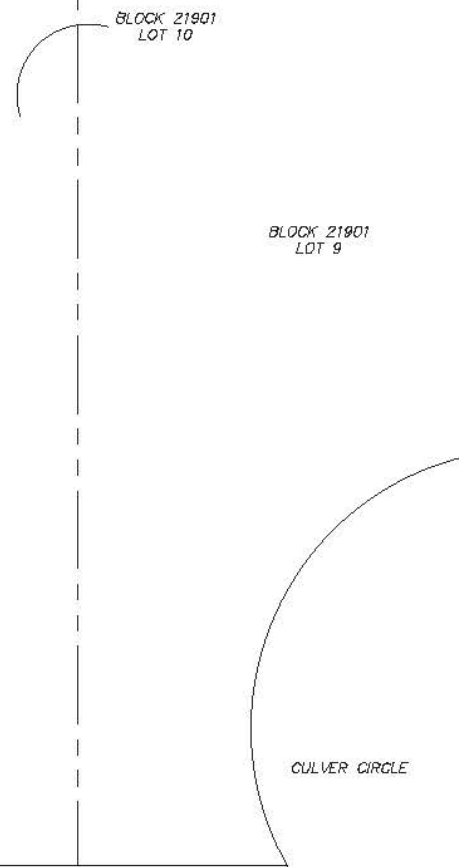
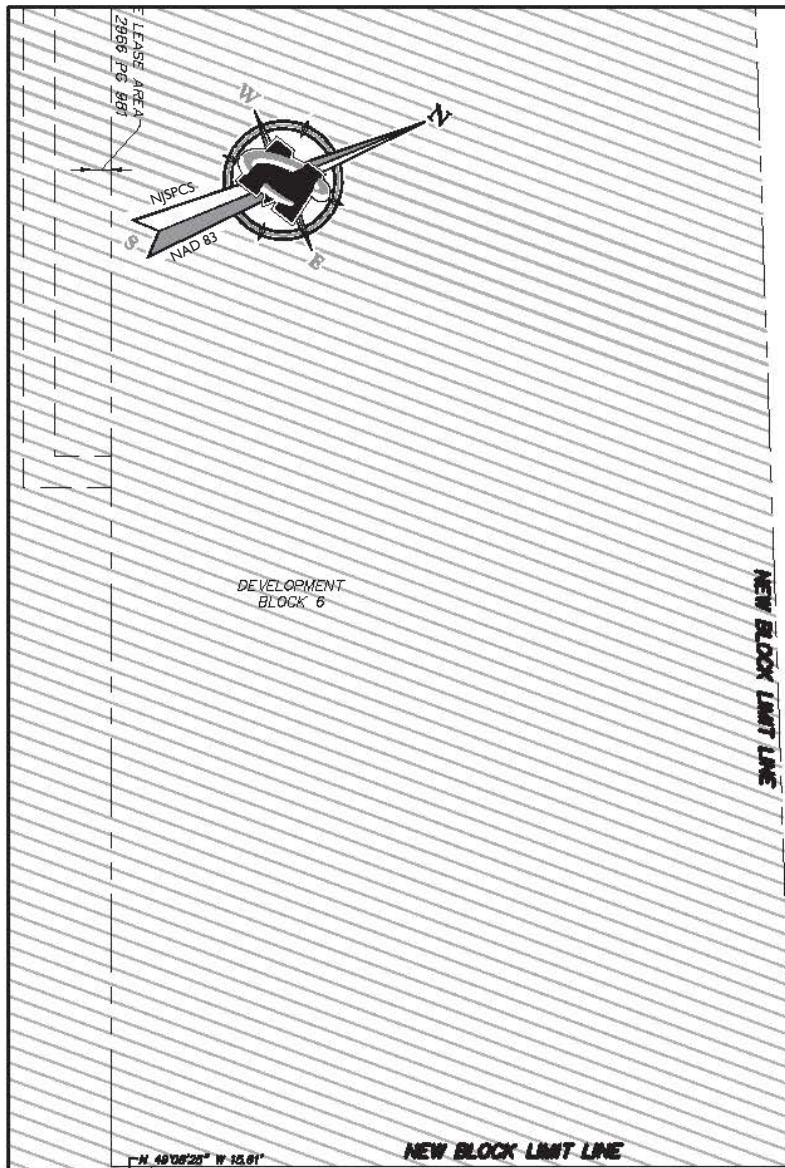
2. N 24° 46' 55" E, 67.80 feet; thence –
3. S 18° 52' 12" E, 8.39 feet; thence –
4. S 59° 15' 07" E, 9.26 feet, to the aforesaid westerly line of New Jersey State Highway Route 440; thence –
6. Along said westerly line of Route 440, S 24° 46' 55" W, 65.09 feet, to the Point and Place of BEGINNING.

CONTAINING: 971 S.F. of land more or less or 0.022 acre of land more or less.

GLEN J. LLOYD, P.L.S.
NEW JERSEY PROFESSIONAL LAND SURVEYOR
LICENSE NUMBER GS037598

10/13/16
DATE SIGNED

\\HQFAS1\General\Projects\2010\10000292R\Survey\Description\Metes & Bounds-Deed Notice 9_REV.docx



NEW JERSEY STATE HIGHWAY ROUTE 440
 (112' WDE R.O.W.)



SCALE : 1" = 60'

MASER CONSULTING & ASSOCIATES, P.A.

Customer Loyalty through Client Satisfaction
 www.maserconsulting.com

Office Locations:

■ Red Bank, NJ	■ Albany, NY
■ Clinton, NJ	■ Chestnut Ridge, NY
■ Hamilton, NJ	■ Newburgh, NY
■ Morris, NJ	■ New Rochelle, NY
■ Mt. Arlington, NJ	■ Lehigh Valley, PA
■ Mt. Laurel, NJ	■ Exton, PA
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REV	DATE	DRAWN BY	DESCRIPTION
1	10/7/16	KAN	ADD PORTION FROM DN 6 TO DN 9 AS REQUESTED
2	1/11/17	KAN	REVISED BLOCK 6
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-

DEED NOTICE AREA 9
 SA6 NORTH

BLOCK 21901
 LOT 4

CITY OF JERSEY CITY
 HUDSON COUNTY
 NEW JERSEY

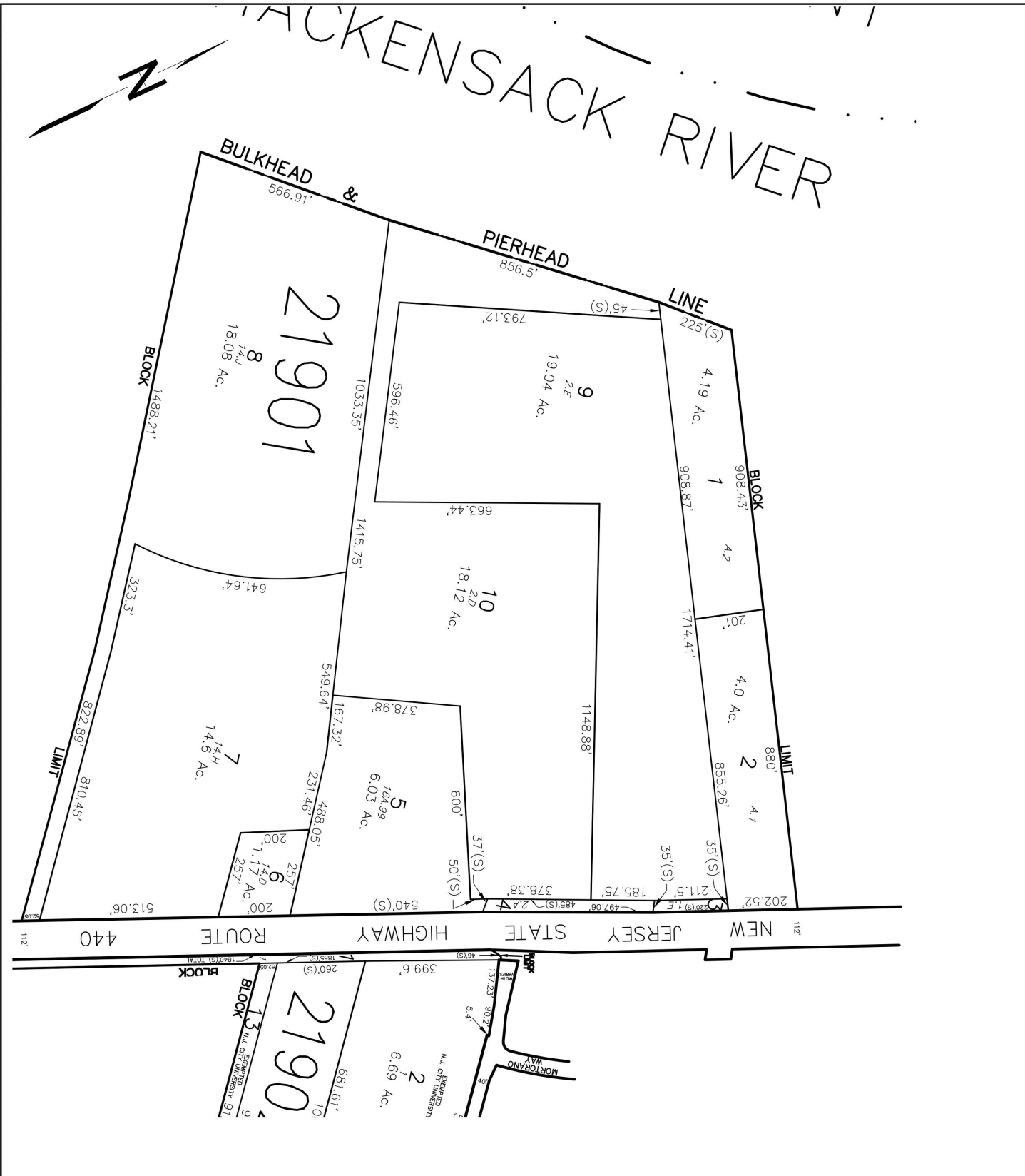
811
 PROTECT YOURSELF
 ALL STATES REQUIRE NOTIFICATION OF EXCAVATORS, DESIGNERS OR ANY OTHERS PREPARING TO DISTURB THE EARTH'S SURFACE ANYWHERE IN ANY STATE.

Call before you dig
 FOR STATE SPECIFIC DIRECT PHONE NUMBERS VISIT WWW.CALL811.COM

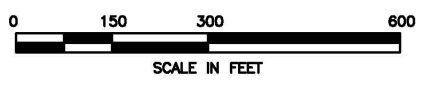
RED BANK OFFICE
 Corporate Headquarters
 311 Newsum Spring Road
 Suite 203
 Red Bank, NJ 07701
 Phone: 732.383.1950
 Fax: 732.383.1954

DATE	11/21/16	DRAWN BY	KAN	CHECKED BY	CKK
PROJECT NUMBER	20101000	DRAWING NAME	V.EXIBT-DN-9-REV	SHEET TITLE	
DEED NOTICE EXHIBIT					
SHEET NUMBER: 1 of 1					

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SOURCE:
 DRAWING TITLED: "TAX MAP CITY OF JERSEY CITY", PREPARED BY
 T&M ASSOCIATED, MIDDLETOWN TWP., NJ SHEET 219, DATED
 AUGUST, 2006; NEW JERSEY DEPARTMENT OF THE TREASURY
 DIVISION OF TAXATION PROPERTY ADMINISTRATION DATED MAY 8,
 2009 SERIAL NO.: 934.



Amec Foster Wheeler PROJECT No. 3480150450 DRAWING: 3480150487-6100-A209-0000	
PREPARED/DATE: STR 09/07/16	CHECKED/DATE: NW 01/31/17

amec foster wheeler

ENVIRONMENT & INFRASTRUCTURE, Inc.
 200 AMERICAN METRO BLVD, SUITE 113
 HAMILTON, NEW JERSEY 08619

EXHIBIT A-2
 TAX MAP
 BLOCK 21901, LOT 4
 SA-6 NORTH
 JERSEY CITY, NEW JERSEY
 DEED NOTICE #9

**Exhibit A-3
Property Map**

EXHIBIT B
Deed Notice #9 SA-6 North Deferred Area (Former Trenk Property)

B-1 Restricted Area Maps
B-2 Restricted Area Data Table
Portions of Block 21901, Lot 4
City of Jersey City, New Jersey

Exhibit B-1 Restricted Area Maps include Exhibit B-1A (Restricted Area Soil Sample Locations), Exhibit B-2B (Cap System Detail), and Exhibit B-1C (As-Built Restoration Plan).

Exhibit B-2 is a Restricted Area Data Table indicating soil sample locations with concentrations of hexavalent chromium remaining above the level established in the New Jersey Department of Environmental Protection's (NJDEP) Chromium Policy of 20 milligrams per kilogram (mg/kg).

Restricted Area Map Notes:

Exhibit B-1 indicates engineering controls. For soils with hexavalent chromium concentrations above 20 mg/kg, the engineering controls include a cap consisting of 1 foot of clean soil at the northern-most restricted area and a cap consisting of a geotextile demarcation fabric overlain by 6-inches of gravel at the southern-most restricted area.

Exhibit B-1
Restricted Area Maps

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LEGEND



SOIL SAMPLE LOCATION
HEXAVALENT CHROMIUM > 20mg/kg
(SEE EXHIBIT B-2)

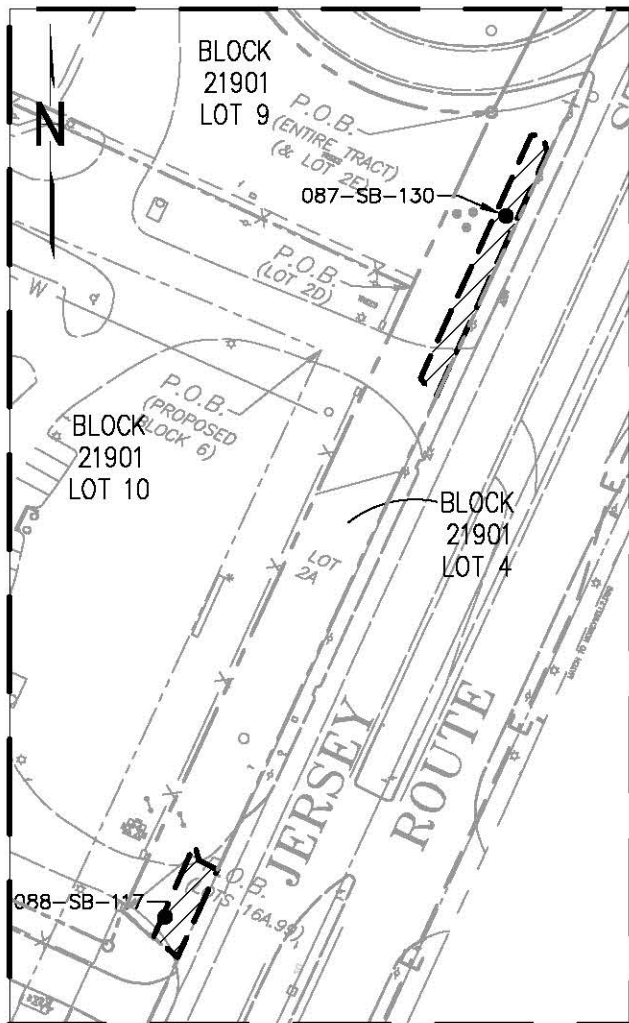
PROPERTY BOUNDARY



RESTRICTED AREA



KEY MAP
SCALE: 1" = 600'



SOURCE REFERENCE:

DRAWING TITLED: "ALTA/ASCM LAND TITLE SURVEY FOR BAYFRONT REDEVELOPMENT, LLC., BLOCK 21901 LOTS 5 THRU 10, PREPARED BY MASER CONSULTING, P.A. DATED 10/16/15 CITY OF JERSEY CITY, HUDSON COUNTY, NEW JERSEY"

DATUM:
HORIZONTAL DATUM: NAD83
VERTICAL DATUM: NGVD29

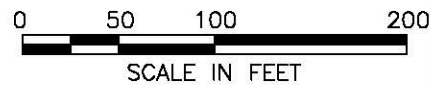
Amec Foster Wheeler PROJECT No. 3480150487
DRAWING: 3480150487-6100-B009-0000

PREPARED/DATE:
STR 12/15/16

CHECKED/DATE:
NW 01/31/17



ENVIRONMENT & INFRASTRUCTURE, Inc.
200 AMERICAN METRO BLVD, SUITE 113
HAMILTON, NEW JERSEY 08619

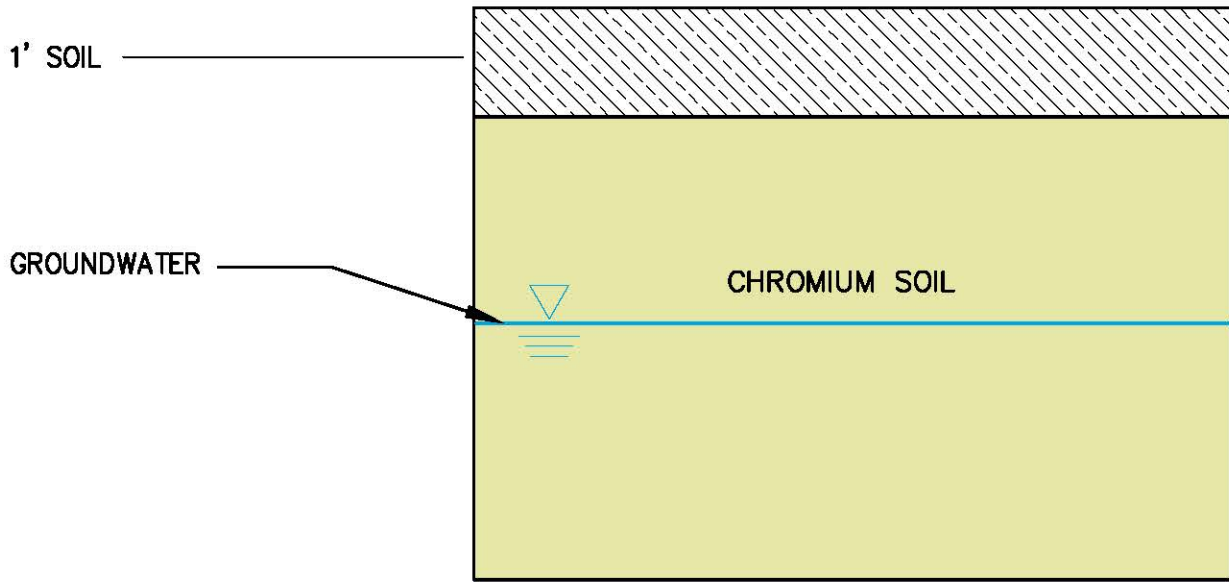


SCALE IN FEET

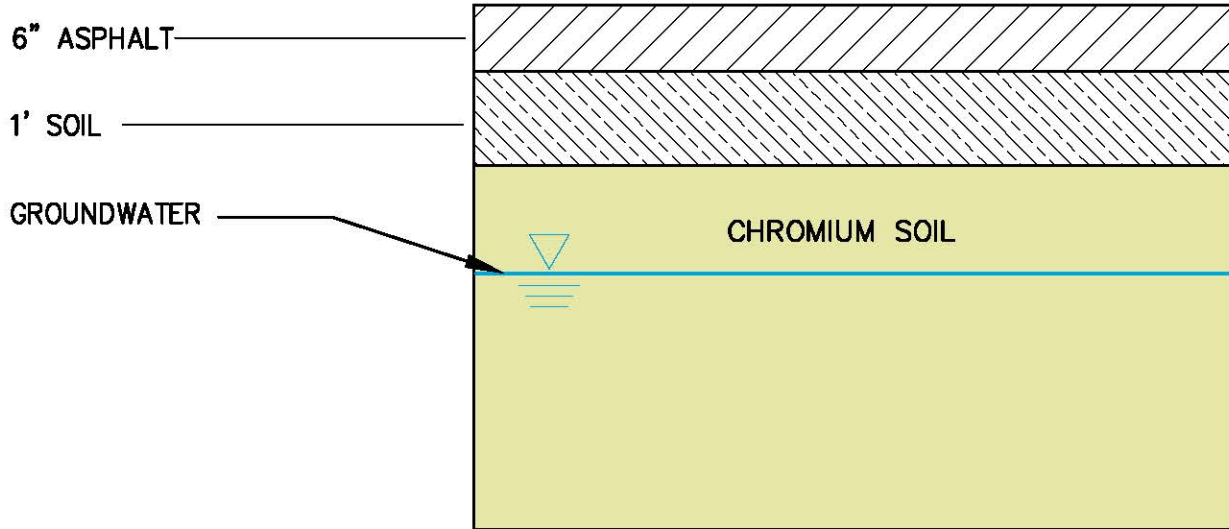
EXHIBIT B-1A
RESTRICTED AREA MAP
BLOCK 21901, LOT 4
SA-6 NORTH
JERSEY CITY, NEW JERSEY
DEED NOTICE #9

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P:\GDD\HONETWELL\JERSEY CITY\SA 6 NORTH\3480150487\6100\610001\DEED NOTICE\DWG\3480150487-6100-B209-0000.dwg Tue, 28 Nov 2017 10:44am scott.lradkin



**CAP SYSTEM DETAIL
(NORTHERN PARCEL)
NTS**



**CAP SYSTEM DETAIL
(SOUTHERN PARCEL)
NTS**

Amec Foster Wheeler PROJECT No. 3480150488 DRAWING: 3480150487-6100-B209-0000	
PREPARED/DATE: STR 01/25/17	CHECKED/DATE: NW 10/24/17


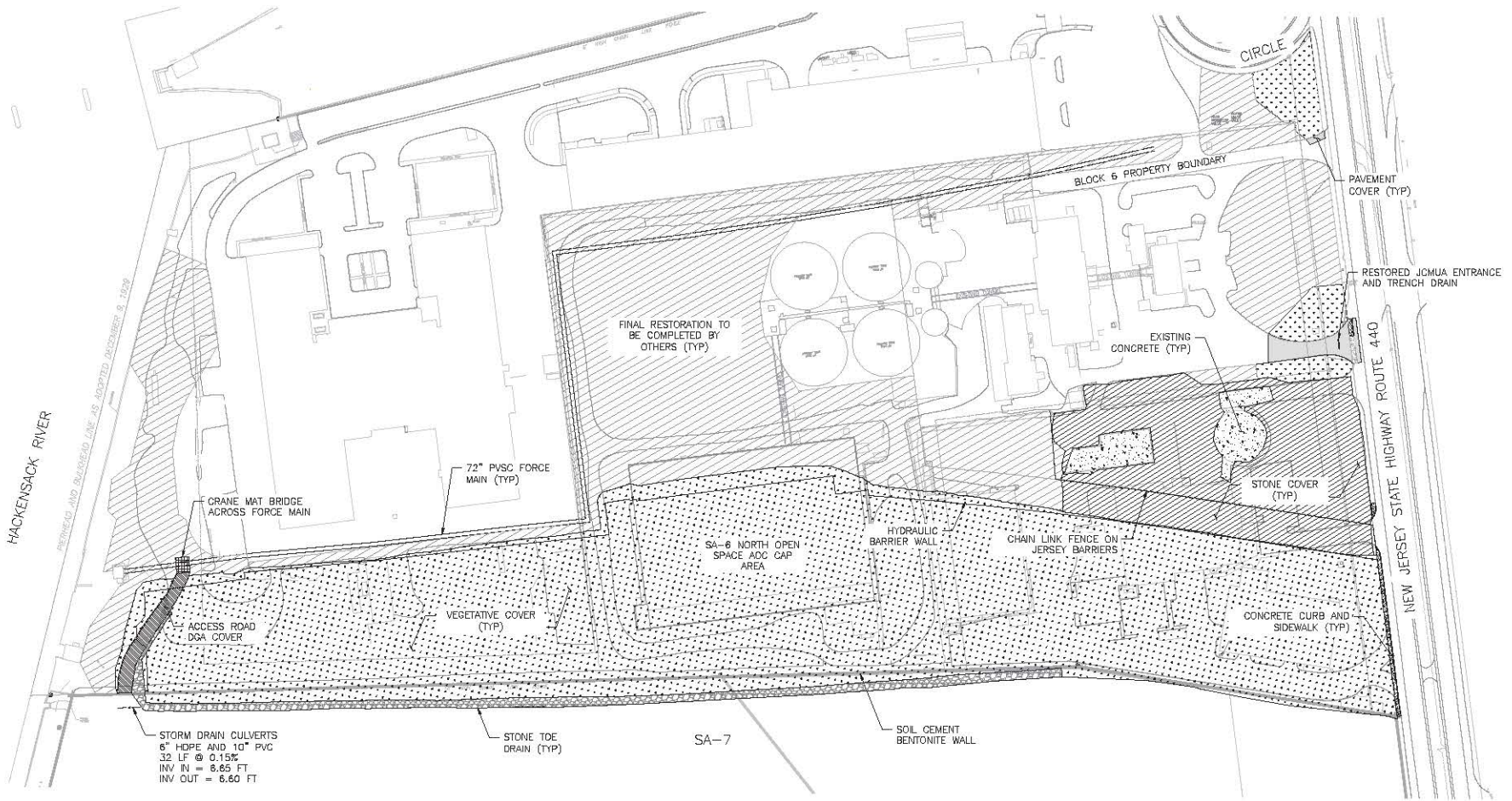
amec foster wheeler 
 ENVIRONMENT & INFRASTRUCTURE, Inc.
 200 AMERICAN METRO BLVD, SUITE 113
 HAMILTON, NEW JERSEY 08619

EXHIBIT B-1B
 CAP SYSTEM DETAIL
 BLOCK 21901; LOT 4
 SA-6 NORTH
 JERSEY CITY, NEW JERSEY
 DEED NOTICE #9

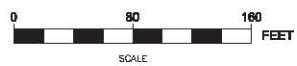


NOTE:

1. REFER TO CONSTRUCTION CONTROL GRID FIGURE AND ATTACHED TABLES FOR SURVEY DOCUMENTATION OF 6 INCH GRAVEL HISTORIC FILL CAP INSTALLATION.
2. OPEN SPACE CAP AREA WITHIN LIMITS OF THE BARRIER WALLS IS COVERED WITH CLEAN IMPORTED SOILS TO THE DEPTHS IDENTIFIED IN THE DESIGN. THE VEGETATED SLOPE WITHIN THE DEVELOPMENT AREA IS COVERED WITH A MINIMUM OF 12 INCHES OF CLEAN IMPORTED FILL. THE VEGETATED SLOPE ALONG SA-7 WAS CONSTRUCTED ENTIRELY FROM CLEAN IMPORTED FILL.
3. REMAINING RESTORATION AREAS IDENTIFIED ON THE CHROMIUM REMEDY 100% DESIGN DRAWINGS WILL BE ADDRESSED AS PART OF THE NON CHROMIUM REMEDIATION WORK CURRENTLY BEING COMPLETED. FINAL RESTORATION OF ALL AREAS IS SCHEDULED TO BE COMPLETE IN MARCH 2017.

EXHIBIT B-1C

	STONE COVER		DGA COVER
	VEGETATED COVER		RESTORATION BY OTHERS
	PAVEMENT COVER		STONE TOE DRAIN
	CONCRETE COVER		STORM DRAIN PIPE



REV	DATE	BY	CHKD	APVD	DESCRIPTION
0	1/7/17	EQP	AE	AE	AS BUILT RESTORATION PLAN

ENTACT 302 Unity Plaza
Lutrobs, PA 15650

DRAWING NAME
AS BUILT RESTORATION PLAN
SA-6 NORTH - SHEET 001
1/6/17

PROJECT NAME & LOCATION
HONEYWELL SA-6 REMEDIATION
JERSEY CITY, NJ

Exhibit B-2: Table B-2
Soil Sample Data Table (Hexavalent Chromium)

EXHIBIT B-2
Restricted Area Data Table
 Study Area 6 North
 Portions of Block 21901, Lot 4
 Deed Notice 9, SA-6 North, Deferred Area (Former Trenk Property)
 Jersey City, New Jersey

Location ID	Sample Date	Sample Depth (feet bgs)	Sample Elevation (feet msl NAVD88)	Contaminant	CASR#	NJDEP Chromium SCC (mg/kg)	CONC	Q
087-SB-130	06/02/2008	1 - 1.5	0	Hexavalent Chromium	18540-29-9	20	24.3	
088-SB-117	06/02/2008	6.5 - 7	0	Hexavalent Chromium	18540-29-9	20	4670	

Notes:

Results reported in mg/kg.

Data Qualifiers:

J - Data indicates the presence of a compound that meets the identification criteria. The concentration given is an approximate value.

Abbreviations:

Feet bgs - Feet below ground surface

mg/kg - milligrams per kilogram

feet msl = feet mean sea level NAVD88 - North American Vertical Datum of 1988

NJDEP Chromium SCC - New Jersey Department of Environmental Protection Chromium Soil Cleanup Criteria, revised April 2010

EXHIBIT C
Deed Notice #9 SA-6 North Route 440 Deferred Area (Former Trenk Property)

C-1 Institutional Controls
C-2 Engineering Controls
Portions of Block 21901, Lot 4
City of Jersey City, New Jersey

C-1 Institutional Controls

C-1 Deed Notice, Consent Decree, Zoning as Institutional Controls: Exhibit C-1 (A through C) for portions of Block 21901, Lot 4, City of Jersey City, New Jersey known as the Deferred Area

i. Exhibits C-1A through C-1C. Exhibit C-1A: Deed Notice as Institutional Control; Exhibit C-1B: Consent Decree as Institutional Control; Exhibit C-1C Zoning as Institutional Control Exhibits C-1 include a narrative description of the restrictions and obligations of this Deed Notice and the other Institutional Controls that are in addition to those described above, as follows:

(A) General Description of the Institutional Control:

The Property consists of two small areas on SA-6 North adjacent to the Route 440 ROW where the PSE&G gas main is located north of the SA-6 North Open Space Area. The Property is comprised of two tracts of land; Tract 1 is near Culver Circle at the Route 440 ROW and Tract 2 is further south along the Route 440 ROW closer to the SA-6 North Open Space Area. Tract 1 is an approximately 1,408 square foot area. Tract 2 is an approximately 971 square foot area. Both tracts include chromium only. Excavations in this part of SA-6 North were limited in these areas by the PSE&G gas main and will be deferred until after the Route 440 ROW widening project. Thus, these areas are termed “Deferred Areas.” This deed notice is for both Tracts 1 and 2 together. Once the remediation of these areas is completed consistent with Article III of the Consent Decree, Honeywell will terminate this Deed Notice pursuant to Paragraph 13 above. In the meantime, the provisions of the LTMP, developed pursuant to the Consent Decree, will apply to the Property.

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

The Property constitutes portions of Block 21901, Lot 4. The estimated size of the Area containing chromium-impacted soils (hexavalent chromium above 20 mg/kg) as identified on Exhibit B-1 is estimated at approximately 2,370 square feet or approximately 0.05 acres.

(2) Description of the restrictions on the Property by operation of the Institutional Control;

The Property shall only be used for activities consistent with this Deed Notice, the Consent Decree, and the applicable zoning standards. Intrusive activities (i.e., excavation or digging) that breach the engineering controls (as described in

Exhibit C-2) will not be permitted on the Property except in compliance with the terms of the Consent Decree and the applicable portions of the LTMP developed thereunder, and this Deed Notice. See subsections 7A Alterations, Improvements, Disturbances, and 7B Emergencies for additional information. A copy of the LTMP is maintained by Honeywell at 115 Tabor Road, Morris Plains, NJ 07950.

(3) The objective of the restrictions;

The restrictions will prohibit contact with soils containing hexavalent chromium above the level established in the NJDEP Chromium Policy of 20 mg/kg.

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

(1) Any disturbances of the soil in the Restricted Areas resulted in the unacceptable exposure to the soil contamination;

Visual inspections of the Property and other monitoring as set forth in the Consent Decree and the applicable portions of the LTMP developed thereunder.

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

Same as (B)(1).

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

Same as (B)(1).

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

Review of newly promulgated or modified requirements of applicable regulations or laws that potentially may apply to the site.

(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 conduct the necessary sampling; and

Same as (B)(4).

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

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

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

- ***A report of all conditions set forth in sections (A) and (B) above to assure that they have been adhered to, including evaluation of any available documents as a result of changes in land use or incidents.***
- ***A report that determines whether or not the land use at the Property has remained consistent with the restrictions in the Consent Decree, this Deed Notice, and the applicable zoning standards.***
- ***A report that determines whether or not the Deed Notice continues to be protective of the public health and safety and the environment.***

**C-2 Engineering Controls
Deed Notice #9 SA-6 North Route 440 Deferred Area**

**Portions of Block 21901, Lot 4
City of Jersey City, New Jersey**

ii. Exhibits C-2A through C: Narrative description of the Engineering Controls including Clean Fill as follows:

(A) General Description of the engineering controls:

(1) Description of the engineering controls;

The Engineering Controls consist of a cap consisting of 1 foot of clean soil at the northern-most restricted area and a cap consisting of a geotextile demarcation fabric overlain by 6-inches of gravel at the southern-most restricted area.

(2) The objective of the engineering controls; and

The objective of the controls is to prevent contact with soils containing hexavalent chromium above the level established in the NJDEP Chromium Policy of 20 mg/kg.

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

The soil engineering controls are intended to function as a barrier to underlying and adjacent soils containing hexavalent chromium above 20 mg/kg within the Property. Monitoring requirements for the engineering controls are set forth in the applicable portions of the LTMP.

(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;

Honeywell will perform monitoring by visual inspection of the Property pursuant to the Consent Decree. Other monitoring activities shall be performed as set forth in the applicable portions of the LTMP developed pursuant to the Consent Decree.

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

Same as (B)(1) above.

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

Same as (B)(1) above. Also, see the Consent Decree and subsections 7A Alterations, Improvements, Disturbances, and 7B Emergencies for additional information.

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

Same as (B)(1) above. Other monitoring activities shall be performed as set forth in the applicable portions of the LTMP developed pursuant to the Consent Decree.

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

Records of the inspections are to be maintained as listed in (5). Other monitoring activities shall be performed as set forth in the applicable portions of the LTMP developed pursuant to the Consent Decree.

(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

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

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

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

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

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

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

- ***A report of all conditions set forth in sections (A) and (B) above to assure that they have been adhered to, including an evaluation to determine***

whether or not the engineering controls are continuing to meet the original objective and intended function.

- *A report to determine whether or not the engineering controls continue to operate as designed.*
- *A report to determine whether or not the engineering controls continue to be protective of the public health and safety and of the environment.*

Appendix I
Consent Decree

APPENDIX I

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

JERSEY CITY MUNICIPAL UTILITIES)
AUTHORITY,)

Plaintiff,)

v.)

HONEYWELL INTERNATIONAL INC.,)

Defendant.)

Civil Action No. 05-5955
Consolidated under Docket
No. 95-2097 (DMC)

JERSEY CITY INCINERATOR AUTHORITY)

Plaintiff,)

v.)

HONEYWELL INTERNATIONAL INC.,)

Defendant.)

Civil Action No. 05-5993
Consolidated under Docket
No. 05-5955 (DMC) under
Docket No. 95-2097 (DMC)

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) under
Docket No. 95-2097 (DMC)

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

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RECITALS

Whereas, on June 30, 2003, the district court for the District of New Jersey issued a Final Judgment in *Interfaith Community Organization v. Honeywell International Inc.*, Civ. No. 95-2097 (DMC) (“*ICO v. Honeywell*”), ordering the remediation of an area designated by the New Jersey Department of Environmental Protection (“NJDEP”) as Study Area 7 by excavation of all chromium contamination on the property, under the oversight of a court-appointed Special Master;

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

Whereas, on or about December 28, 2005, the Jersey City Incinerator Authority (“JCIA”) filed litigation styled *Jersey City Incinerator Authority v. Honeywell International Inc.*, D.N.J., Civ. No. 05-5993 (DMC), bringing claims against Honeywell under, *inter alia*, Section 6972 of RCRA, and seeking remediation of chromium contamination on property owned by JCIA and other relief;

Whereas, on or about January 4, 2006, the Hackensack Riverkeeper, Inc., Captain William Sheehan, Reverend Winston Clarke, and Lawrence Baker (“Riverkeeper”) filed litigation styled *Hackensack Riverkeeper, Inc. v. Honeywell International Inc.*, D.N.J., Civ. No. 06-022 (DMC), bringing a claim against Honeywell under RCRA and seeking remediation of chromium contamination to soils, groundwater, surface waters, and sediments associated with various properties collectively designated by NJDEP as Study Areas 5, 6 North, and 6 South;

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

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

Whereas, the property owned by JCIA and JCMUA and collectively the subject of *JCMUA v. Honeywell* and *JCIA v. Honeywell* comprises a part of Study Area 6 North;

Whereas, the City of Jersey City (“Jersey City”) also owns property that comprises a part of Study Area 6 North;

Whereas, Riverkeeper also named as defendants in *Riverkeeper v. Honeywell* Jersey City, JCMUA, and JCIA (collectively the “Jersey City Entities”);

Whereas, the Jersey City Entities and Honeywell also asserted cross-claims against each other in *Riverkeeper v. Honeywell*;

Whereas, *JCMUA v. Honeywell*, *JCIA v. Honeywell*, and *Riverkeeper v. Honeywell* were consolidated by the United States District Court for the District of New Jersey (hereinafter the “Consolidated Litigation”);

Whereas, in the Consolidated Litigation, the Jersey City Entities and Riverkeeper have alleged that Honeywell bears responsibility for the presence and remediation of chromite ore processing residue (“COPR”) and chromium in soils and groundwater on the Study Area 6 North property;

Whereas, in the Consolidated Litigation, Honeywell has alleged that the Jersey City Entities bear full responsibility for lead and other contamination on the Study Area 6 North property, and also bear an equitable share of liability for the presence and remediation of COPR and chromium in soils and groundwater on the Study Area 6 North property and for chromium and other contamination in Hackensack River sediments in the vicinity of Study Area 6 North;

Whereas, on October 9, 2007, Honeywell and Riverkeeper submitted 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, the Parties to this Consent Decree each believe that it is in their mutual interest to move forward productively to resolve their differences so that they can implement environmental remediation at Study Area 6 North that ensures the continued protection of human health and the environment and so that Study Area 6 and Study Area 7 can be redeveloped in keeping with Jersey City’s vision for a revitalized West Side;

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

Whereas, the portions of Study Area 6 and Study Area 7 (i) which are owned by the Jersey City Entities, (ii) which are owned by Honeywell, (iii) as to which Honeywell has a purchase and sale agreement with the current owner, or (iv) which hereafter will be acquired by a Jersey City Entity and/or Honeywell are parcels which by ordinance adopted by the City Council of Jersey City on February 27, 2008; have been determined to be “areas in need of redevelopment” under the criteria of the Redevelopment Law because of conditions prevalent on those parcels;

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

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;

Whereas, the consent of each of the Jersey City Entities to this Consent Decree was considered at a duly noticed and appropriate meeting of their respective governing bodies, open to the public, at which members of the public were provided an opportunity to comment on all aspects of the settlement, including, without limitation, the commitments made by the Jersey City Entities herein; and

Whereas, Honeywell and the Jersey City Entities are settling their claims, cross-claims, or counter-claims in the Consolidated Litigation against each other in the *Settlement Consent Order by and between the Jersey City Entities and Honeywell International Inc.* (hereafter “Jersey City/Honeywell Consent Order”), filed in the Consolidated Litigation simultaneously with this Consent Decree and attached as Exhibit A to this Consent Decree:

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. **AOC 1** shall mean that area of Study Area 6 North in which the hexavalent chromium concentration in the top 20 feet of soil below existing ground surfaces exceeds concentrations of 20 mg/kg and the Chromium Remedy will be implemented pursuant to Article III. AOC 1 is shown on Exhibit B.

2. **AOC 1 Additional Excavation Areas** shall mean those areas of Study Area 6 North which require excavation pursuant to paragraph 57. The AOC 1 Additional Excavation Areas are not contiguous to AOC 1. The AOC 1 Additional Excavation Areas are shown on Exhibit B.

3. **AOC 1 Open Space Area** shall mean the AOC 1 Open Space Area, as defined by paragraph 53, consisting of approximately 11 acres enclosed by the hydraulic barrier walls constructed under the Chromium Remedy, and which shall be subject to paragraph 60. The AOC 1 Open Space Area is shown on Exhibit B.

4. **AOC 2** shall mean that area of Study Area 6 North on which the Historic Fill Remedy will be implemented pursuant to Article II.B of the Jersey City/Honeywell Consent Order. AOC 2 is shown on Exhibit B.

5. **Bayfront Redevelopment LLC** shall have the meaning set forth in paragraph 4.1 of the Jersey City/Honeywell Consent Order.

6. **COPR** shall mean Chromite Ore Processing Residue.

7. **Chromium Remedy** or **Chromium Remediation** shall mean the remedy set forth in Article III.

8. **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).

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 Remedy** shall mean the deep overburden and bedrock groundwater pump and treat remedy as required by the Order Approving the Deep Overburden Groundwater Remediation, entered on October 6, 2006, and the Stipulation on Consent Regarding the Schedule for Implementation of Deep Groundwater Remedial Actions, currently pending before the Special Master in *ICO v. Honeywell*. In the event that Riverkeeper and Honeywell reach a settlement on source control issues, the Deep Groundwater Remedy shall

include the remedy to which Riverkeeper and Honeywell have agreed. In the event that Riverkeeper and Honeywell do not reach a settlement on source control issues, the Deep Groundwater Remedy shall include the remedy ordered by the Special Master or the Court in *ICO v. Honeywell* for source control.

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

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

13. **Historic Fill Remedy or Historic Fill Remediation** shall mean the remedy set forth in Article II.B of the Jersey City/Honeywell Consent Order, except that the Historic Fill Remedy shall not be limited to the remedy set forth in Article II.B of the Jersey City/Honeywell Consent Order if NJDEP requires a more stringent remedy.

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

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

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

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

20. **JCRA** shall mean the Jersey City Redevelopment Agency.

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

22. **Jersey City/Honeywell Consent Order** shall mean the *Settlement Consent Order by and between the Jersey City Entities and Honeywell International Inc.* entered in the Consolidated Litigation simultaneously with this Consent Decree.

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

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

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

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

27. **Redevelopment Agreement** shall have the meaning set forth in paragraph 4.11(e) of the Jersey City/Honeywell Consent Order.

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

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

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

31. **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.

32. **Sediment Consent Order** shall mean the Consent Order on Sediment Remediation and Financial Assurances, which the Parties expect will be entered by the Court in *ICO v. Honeywell* and this Consolidated Litigation.

33. **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.

34. **Site** shall mean Study Area 6 North.

35. **Site Preparation Activities** shall have the meaning set forth in paragraph 3.1 of the Jersey City/Honeywell Consent Order.

36. **Site Preparation Plan** shall have the meaning set forth in paragraph 3.2 of the Jersey City/Honeywell Consent Order.

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

38. 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.

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

40. **Study Area 6 North** shall mean that property comprising Sites 87 and 88 of the Chromate Chemical Production Waste Sites designated by NJDEP, comprising approximately 41.58 acres and including: (a) all such property owned by JCMUA located at 555 Route 440, Jersey City, New Jersey, (b) all such property owned by JCIA located at 501 Route 440, Jersey City, New Jersey; (c) all such property owned by Jersey City or its Department of Public Works and located at 575 Route 440, Jersey City, New Jersey; and (d) all such property owned by Paul Trenk consisting of Block 1290.1, Lot 2A, Jersey City, New Jersey. Such properties are more fully described in Exhibit H to the Jersey City/Honeywell Consent Order.

41. **Study Area 6 South** shall mean (a) that property currently owned by 425/445 Route 440 Property LLC consisting of Site 73, located at 200 Kellogg Street Jersey City, Hudson County, New Jersey; (b) that property currently owned by Kellogg Street 80 Property LLC consisting of Site 134, located at 100 Kellogg Street Jersey City, Hudson County, New Jersey; (c) that property currently owned by Kellogg Street 80 Property LLC consisting of Site 140 located at 80 Kellogg Street Jersey City, Hudson County, New Jersey; (d) that property currently owned by Kellogg Street 60 LLC consisting of Site 125, located at 60 Kellogg Street Jersey City, Hudson County, New Jersey; (e) that property currently owned by Kellogg Street/440 Property LLC consisting of Site 124, Jersey City, Hudson County, New Jersey; (f) that property currently owned by Kellogg St/Harsimus Cove Realty located at 150 Kellogg Street, Jersey City, Hudson County, New Jersey, (g) that property currently owned by Cordova Enterprises Ltd located at 38 Kellogg Street, Jersey City, Hudson County, New Jersey, and (g) that property currently owned by Cordova Enterprises Ltd located at 28 Kellogg Street, Jersey City, Hudson County, New Jersey. Such properties are more fully described in Exhibit H to the Jersey City/Honeywell Consent Order.

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

43. **Study Area 7** shall mean (a) that property currently owned by 425/445 Route 440 Property LLC located at 425 and 445 Route 440, Jersey City, Hudson County, New Jersey, and (b) that property currently owned by Roned Realty/Edward Navlen located at 465 Route 440, Jersey City, Hudson County, New Jersey. Such properties are more fully described in Exhibit H to the Jersey City/Honeywell Consent Order.

44. **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.

45. **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**

46. Except as provided in this paragraph, the terms of the Jersey City/Honeywell Consent Order shall remain in full force and effect. To the extent that any provision in the Jersey City/Honeywell Consent Order refers to the Chromium Remedy or Chromium Remediation, it shall be construed as referring to Article III of this Decree. In the event of any conflict or inconsistency between the terms of this Decree and the Jersey City/Honeywell Consent Order, the terms of this Decree govern. In the event that any action taken pursuant to the Jersey City/Honeywell Consent Order is in conflict with or inconsistent with the terms of this Decree, the terms of this Decree shall govern.

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

48. For purposes of this Consent Decree, the Complaints in the Consolidated Litigation each state claims upon which relief may be granted against Honeywell.

49. In the event that this Decree is not terminated by one or more Parties pursuant to paragraph 100, this Consent Decree resolves, settles, and satisfies all claims by Riverkeeper against Honeywell with respect to soils and shallow groundwater at Study Area 6 North. This Consent Decree does not resolve any claims by Riverkeeper against Honeywell with respect to Study Area 6 South, Study Area 5, or groundwater at Study Area 6 North other than shallow groundwater.

50. 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.

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

ARTICLE III: CHROMIUM REMEDIATION

A. Chromium Remedy

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

53. **AOC 1 and AOC 2.** For the purposes of remediation, Study Area 6 North shall consist of two Areas of Concern ("AOCs"), designated as AOC 1 and AOC 2 as shown on Exhibit B. AOC 1 is set forth on Exhibit B and consists of that portion of Study Area 6 North for which chromium remediation is required pursuant to paragraphs 55, 56, and 57. AOC 2 consists of the entirety of Study Area 6 North, including AOC 1, to the extent that historic fill is present in any area of Study Area 6 North. For AOC 1, the intended land use will determine the types

of remedial measures taken in the Chromium Remedy. There are two distinct land uses for AOC 1: open space and residential. As a result, AOC 1 will be further subdivided into:

(a) The AOC 1 Open Space Area, which shall comprise that portion of AOC 1 for which future use shall be restricted as provided in paragraph 60. The AOC 1 Open Space Area is shown on Exhibit B;

(b) The AOC 1 Residential Area, which shall comprise that portion of AOC 1 for which future use shall allow for residential and/or commercial and retail uses, but for which the remedial measures shall assume only a residential use. The AOC 1 Residential Area is shown on Exhibit B; and

(c) The AOC 1 Additional Excavation Areas, which consist of those portions of Study Area 6 North that require remediation pursuant to paragraph 57. The planned land use for the AOC 1 Additional Excavation Areas is residential and/or commercial and retail uses, but the remedial measures shall assume only a residential use.

54. Scope and General Requirements of the Chromium Remedy. The Chromium Remedy shall address shallow groundwater and soil containing hexavalent chromium in AOC 1, and shall be consistent with the requirements set forth in this Article. The Chromium Remedy set forth in this Consent Decree addresses only the shallow level of groundwater (see paragraph 58). The deep overburden and bedrock groundwater remediation, including source control, shall be addressed in a separate consent order, which shall place these issues within the jurisdiction of the Special Master in conjunction with the groundwater remedies for Study Area 7.

(a) The Chromium Remedy shall be consistent with the NJDEP Technical Requirements for Site Remediation, the Chromium Directive as issued by NJDEP on February 8, 2007 (“the NJDEP Chromium Directive”), and the Remedial Action Work Plan (with addenda) approved by NJDEP on or about February 19, 2008. This Consent Decree shall have precedence

over the Remedial Action Work Plan in the event of any inconsistency.

(b) The Chromium Remedy shall be carried out diligently, and the development and implementation of the Historic Fill Remedy shall not delay satisfaction of the milestones in the Schedule established pursuant to this paragraph. Honeywell shall propose a master Schedule for the implementation of the Chromium Remedy within 90 days of the entry of this Consent Decree, which shall include, at a minimum, the following milestones:

(i) Submission to the Special Master for all documents subject to review by the Special Master pursuant to paragraph 72(c);

(ii) Relocation of the Jersey City Entities' Study Area 6 North Operations as shall be required prior to the implementation of the Chromium Remedy;

(iii) Completion of those Site Preparation Activities necessary for the implementation of the Chromium Remedy, including remediation of the AOC 1 Additional Excavation Areas;

(iv) A final date for Honeywell's proposal of *in situ* treatment for any part of the AOC 1 Residential Area pursuant to paragraph 55(d) and a date for the final decision as to whether excavation or *in situ* treatment shall be used in the event of such a proposal;

(v) The initiation of work related to the Chromium Remedy;

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

(vii) Implementation of the long-term protections of the AOC 1 Open Space Area established pursuant to paragraph 60; and

(viii) Transfer of the AOC 1 Open Space Area to Jersey City pursuant to paragraph 60(a)(iii).

(c) **Demolition and Grading Activities.** During demolition and grading activities, adequate protective measures shall be taken to protect site workers and the community

from airborne dusts and exposures to contaminated soils.

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

55. **AOC 1 Residential Area Soil Remedy.** In the AOC 1 Residential Area, soils containing hexavalent chromium at concentrations greater than 20 mg/kg shall be excavated to a depth of 20 feet below the current ground surface in accordance with the NJDEP Chromium Directive.

(a) Those soils excavated from the AOC 1 Residential Area in which hexavalent chromium concentrations exceed 240 mg/kg shall be disposed of off-site at a waste disposal facility licensed to accept such waste.

(b) Those soils excavated from the AOC 1 Residential Area in which the hexavalent chromium concentration is less than 240 mg/kg, but greater than 20 mg/kg, shall be consolidated within the AOC 1 Open Space Area. However, any such soils which would require venting of gases shall be disposed of off-site.

(c) Soils excavated from the AOC 1 Residential Area shall be replaced with existing soils from AOC 2 or backfill soil. Any backfill soil brought to the Site shall either meet all applicable federal and NJDEP criteria, including NJDEP residential soil criteria, or comply with a beneficial soil reuse plan that is approved by NJDEP and subject to review and comment by the Parties and approval by the Special Master.

(d) In the AOC 1 Residential Area, excavation of soils containing hexavalent chromium greater than 20 mg/kg shall be the presumptive remedy. Around remaining active underground utilities or other structures, such as the bulkhead, *in situ* treatment may be considered in lieu of excavation only if Honeywell demonstrates, and all Parties, the Special

Master, and NJDEP agree that (1) excavation is technically impracticable and (2) treatment will result in hexavalent chromium concentrations of 20 mg/kg or less and no rebound will occur. If no treatment option is available, Honeywell shall propose an alternative remedial approach, subject to review and comment by the Parties and approval by the Special Master.

(e) Honeywell shall excavate all soils containing hexavalent chromium greater than 20 mg/kg in conjunction with the placement of the piping for the Deep Groundwater Remedy. Honeywell shall not propose treatment in lieu of excavation based on the location of the pipes for the Deep Groundwater Remedy or any apparent impracticability of excavating in conjunction with their installation.

56. AOC 1 Open Space Area Soil Remedy. In the AOC 1 Open Space Area, the soil remedy shall consist of an engineered RCRA cap to isolate contaminated soils, with gas venting, if necessary, to address the generation of methane and other naturally occurring gases in the Stratum O and/or Stratum D in the Open Space AOC. Soils consolidated under the cap, shall not require gas venting and shall not be the basis for the inclusion of gas venting as a component of the cap. The cap shall be designed and constructed so that:

(a) The cap shall consist of gas collection system, if gas venting is necessary, a base protective layer, an impervious geomembrane liner with a minimum thickness of 40 mil; a geocomposite drainage layer; a filter fabric; and a distinctive colored warning layer with markings in English and Spanish that would deter penetration of the cap in the event that digging occurred in the vicinity of the cap;

(b) All utilities, including those supporting the pump-and-treat system for groundwater remediation, with the exception of any extraction wells or collection trenches, shall be placed above the cap (but may be below the ground surface and/or contained within utility corridors). In the event that above-cap-grade gas collection and treatment is selected or is

needed to meet current or future regulatory requirements, such collection and treatment facilities are prohibited in the Open Space AOC, except for piping to connect the sub-liner collection system with the treatment facilities. Honeywell shall configure the cap so that all active piping for the wastewater treatment system operated by JCMUA, including all force mains and any connections to the emergency outfall, shall be outside the capped area. Honeywell may propose, subject to the review process in paragraph 72, to use treatment in lieu of excavation in the vicinity of the emergency outfall line if the criteria of paragraph 55(d) are satisfied; and

(c) Exclusive of roadways, the cap shall be overlain by layers of clean fill, backfill and/or overburden with an average depth of at least three feet and a minimum depth of at least two feet provided that any layer that incorporates overburden shall be below at least two feet of clean fill. Any clean fill or backfill soil brought to the Site will either meet all applicable federal and NJDEP criteria, including NJDEP residential soil criteria, or comply with a beneficial soil reuse plan that is approved by NJDEP and subject to review and comment by the Parties and approval by the Special Master. One foot of clean fill, covered with bituminous blacktop, shall be sufficient cover where roads, walkways, or other paved surfaces are located within the AOC 1 Open Space Area. All clean soil fill in areas that will not involve paved roads, walkways, or other paved surfaces shall be vegetated in such a manner as to protect and maintain the required depth of the clean soil fill and to ensure that such vegetation shall not cause any interference with or penetration of the cap.

(d) The existing overburden soils in the AOC 1 Open Space Area shall first be stripped off and set aside for use. If hexavalent chromium concentrations in the overburden exceed 20 mg/kg, the overburden shall be placed under the cap. If hexavalent chromium concentrations in the overburden do not exceed 20 mg/kg, the overburden may be placed above the cap but below the two feet of clean fill required by paragraph 56(c). Excavated hexavalent

chromium impacted soils (with concentrations between 20 mg/kg and 240 mg/kg) from the AOC 1 Residential Area shall be placed and spread in the AOC 1 Open Space Area under the cap. Excavated hexavalent chromium impacted soils (with concentrations between 20 mg/kg and 240 mg/kg) from the Study Area 6 South Development AOC (as defined in the First Amended Consent Decree Regarding Remediation and Redevelopment of Study Area 6 South and including only those portions of Study Area 6 South for which the future uses of the property may include commercial or residential development) may be placed and spread in the AOC 1 Open Space Area under the cap, provided that such soils do not require venting of gases and shall not serve as the basis for the inclusion of gas venting as part of the Study Area 6 North AOC 1 Open Space Area remedy. Both the chromium impacted soils and the previously stripped overburden shall be suitably compacted according to design specifications. Debris, to the extent it would interfere with the compaction specification requirements of the 100% Design, shall not be placed under the cap. The engineered cap shall be installed over the chromium-impacted soils exceeding 20 mg/kg hexavalent chromium.

57. AOC 1 Additional Excavation Areas Remedy. For those AOC 1 Additional Excavation Areas, soils containing hexavalent chromium at concentrations greater than 20 mg/kg shall be excavated to a depth of 20 feet below the current ground surface in accordance with the NJDEP Chromium Directive. Excavation of those areas comprising the AOC 1 Additional Excavation Areas shall initially be conducted in the 50-foot by 50-foot area planned in the RAWP but shall not be so limited in the event that confirmation sampling indicates that hexavalent chromium concentrations continue to exceed 20 mg/kg. Honeywell shall excavate laterally and vertically (to depths of up to 20 feet below current ground surface) until the hexavalent chromium is less than 20 mg/kg based on the results of confirmation sampling. Confirmation sampling for the AOC 1 Additional Excavation Areas shall be taken from the side

walls and bottom of the excavation, in accordance with the Technical Requirements for Site Remediation, to confirm complete removal of contaminated soils.

58. Shallow Groundwater Remedy. The shallow groundwater remedy shall consist of hydraulic barriers with a pump-and-treat system designed to isolate shallow groundwater and to intercept and treat shallow groundwater flowing above the meadow mat in the AOC 1 Open Space Area. The shallow groundwater remedy shall consist of the following:

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

(b) Subterranean slurry walls or other hydraulic barriers shall be installed along the northern, eastern and western sides of the AOC 1 Open Space Area and keyed into the meadow mat or Stratum O or to comparable depths below ground surface;

(c) A groundwater extraction system shall be established that will consist of (i) one or more shallow extraction wells, sumps, or french drains within the AOC 1 Open Space Area; (ii) pumps; and (iii) underground piping to convey any extracted water to Honeywell's Treatment Plant;

(d) The capture zone for the shallow groundwater remedy shall include at least the entire area of contaminated shallow groundwater (except for shallow groundwater that penetrates the meadow mat and is captured by the Deep Groundwater Remedy);

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

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

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

regulations.

59. **Permits and Authorizations.** Honeywell shall obtain all necessary federal, state, and local permits and authorizations to carry out the Chromium Remedy as set forth in this Article. The Jersey City Entities 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 Study Area 6 North to obtain information necessary for the permits.

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

60. **Protection of the AOC 1 Open Space Area.** Except as provided in paragraphs 60(j) and 60(k), development in the AOC 1 Open Space Area shall be prohibited. The AOC 1 Open Space Area shall be protected against activities that may jeopardize the integrity of the cap and/or the groundwater remedial measures that shall be installed in the AOC 1 Open Space Area pursuant to the Chromium Remedy or that may impede the long-term monitoring and maintenance of the cap and/or groundwater remedial measures. It is the intention of the Parties to implement different layers of protection, which alone or in concert, impose restrictions on development, run with the land, and survive all parties. Accordingly, the following actions shall be taken pursuant to the Schedule provided in paragraph 54(b):

(a) Ownership of and Access to the AOC 1 Open Space Area.

Ownership of and access to the AOC 1 Open Space Area shall be in accordance with the following:

(i) Pursuant to the terms of this Consent Decree and paragraph 4.3 of the Jersey City/Honeywell Consent Order, Bayfront Redevelopment LLC shall become the owner in fee simple absolute of all of the property that comprises the AOC 1 Open Space Area and shall not convey any rights or interests in such property except as provided in this Decree. At the time

of the conveyance from JCRA to Bayfront Redevelopment LLC, Bayfront Redevelopment LLC shall give Jersey City an option to buy AOC 1 Open Space Area prior to the planned transfer pursuant to paragraph 60(a)(iii). Such option to buy shall be subject to the conservation restriction imposed pursuant to paragraph 60(b). Jersey City shall exercise the option to buy the AOC 1 Open Space Area in the event that the conditions allowing for withdrawal of funds from the financial assurance mechanisms under paragraphs 84(c) or 84(d) are met;

(ii) At the time the JCRA conveys the Study Area 6 North property to Bayfront Redevelopment LLC pursuant to paragraph 4.3 of the Jersey City/Honeywell Consent Order, Bayfront Redevelopment LLC shall grant a conservation restriction for the AOC 1 Open Space Area pursuant to the requirements of paragraph 60(b);

(iii) Upon the final construction of all roads and utility corridors within the AOC 1 Open Space Area, Bayfront Development LLC shall donate good and marketable title to all the land comprising the AOC 1 Open Space Area to Jersey City. In conjunction with such donation, Bayfront Redevelopment LLC shall petition to subdivide the properties within Study Area 6 North to create a new parcel(s) comprising the AOC 1 Open Space Area. At the time of the donation, Jersey City shall grant Honeywell an easement for the purpose of monitoring and maintaining the Chromium Remedy. Jersey City shall also grant Honeywell all necessary access to the AOC 1 Open Space Area by license or such other mechanisms as may be appropriate for purposes of monitoring and maintaining the Chromium Remedy. After it acquires title pursuant to this paragraph, Jersey City shall retain ownership of the AOC 1 Open Space Area unless and until it shall have complied with the requirements of paragraph 60(a)(iv);

(iv) After it acquires title pursuant to this paragraph, Jersey City shall not convey or enter into any lease of the AOC 1 Open Space Area to any other person or entity unless it has first satisfied either of the following conditions:

(1) Jersey City has obtained the Special Master's (or if the Special Master's appointment has expired, the Court's) approval to convey the AOC 1 Open Space Area to a government entity that has the capacity and willingness to fulfill Jersey City's obligations under the Consent Decree with respect to the AOC 1 Open Space Area and such entity agrees to submit to the Court's jurisdiction and to be bound by the requirements of the Consent Decree that Jersey City has committed to fulfill with respect to protection of the AOC 1 Open Space Area pursuant to this paragraph and routine maintenance of the permissible development in the AOC 1 Open Space Area pursuant to paragraph 64(d); or

(2) The AOC 1 Open Space Area has been remediated such that no hexavalent or total chromium contamination remains in the AOC 1 Open Space Area, whether in soils or in groundwater, in excess of the levels specified for Unrestricted Use in the NJDEP Chromium Directive or any more restrictive standards for Unrestricted Use in place at the time, whichever is more restrictive, and Jersey City has demonstrated to the Special Master and/or the Court, as appropriate, that such remediation has been completed in accordance with all applicable requirements.

(b) **Conservation Restriction.** At the time the JCRA conveys the Study Area 6 North property to Bayfront Redevelopment LLC pursuant to paragraph 4.3 of the Jersey City/Honeywell Consent Order, but prior to the grant of the option to buy pursuant to paragraph 60(a)(i), Bayfront Redevelopment LLC shall grant an open space conservation restriction, pursuant to N.J.S.A. 13:8-B-1, *et seq.*, over the AOC 1 Open Space Area substantially in the form set forth in Exhibit D. Exhibit D is a conservation restriction that is consistent with the terms of this paragraph and this Consent Decree. The conservation restriction shall allow for the implementation, maintenance, monitoring, repair and replacement of the Chromium Remedy and development consistent with paragraphs 60(j) and 60(k), including the construction and

placement of roads and utilities. The Hackensack River Watershed Land Trust shall be the primary holder of the conservation restriction, with all rights of monitoring and enforcement. Riverkeeper shall propose an entity to serve as the secondary holder of the conservation restriction subject to comment by the Parties and review by the Special Master. The secondary holder shall have secondary rights of monitoring and enforcement.

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

(ii) The conservation restrictions provided under this Consent Decree shall be consistent with the prohibited and permitted development of the AOC 1 Open Space Area as set forth in paragraphs 60(j) and 60(k) below.

(iii) Jersey City shall not take any action, whether through exercise of any power of eminent domain, application to the State of New Jersey for approval of a diversion of public park or recreation land, legal challenge to the validity or enforceability of the conservation restriction, or otherwise, the effect of which would be to in any way terminate, abrogate, or diminish the terms, conditions, or purposes of the conservation restriction. If, notwithstanding the preceding sentence, Jersey City proceeds with a condemnation or other action, the result of which would be to terminate, abrogate, or otherwise diminish the terms, conditions, or purposes of the conservation restriction, Jersey City shall, before taking any such action satisfy all of the conditions set forth in paragraph 60(a)(iv)(2).

(iv) Notwithstanding the foregoing, the conservation restriction may be terminated upon application of any Party when no hexavalent or total chromium contamination remains in the AOC 1 Open Space Area, whether in soils or in groundwater, in excess of the

levels specified for Unrestricted Use in the NJDEP Chromium Directive or any more restrictive standards for Unrestricted Use in place at the time, whichever is more restrictive.

(c) **Deed Notice.** Upon completion of the Chromium Remedy, the AOC 1 Open Space Area shall be subjected to the deed notice substantially in the form set forth in Exhibit E that restricts future activities on the AOC 1 Open Space Area. Nothing in the deed notice shall be construed as preventing the imposition of more stringent restrictions on the development allowed in the AOC 1 Open Space Area pursuant to this paragraph and, in particular, the conservation restriction provided for in paragraph 60(b).

(d) **Recording of the Consent Decree, Conservation Restriction, and Deed Notice.** This Consent Decree, the conservation restriction imposed pursuant to paragraph 60(b), and the deed notice imposed pursuant to paragraph 60(c) shall be recorded, pursuant to N.J.S.A. 46:15-1.1, 46:16-1.1, and 46:16-2, in the office of the Hudson County Register and a conspicuous reference to the Consent Decree, conservation restriction, and deed notice shall be included in all instruments concerning title to the AOC 1 Open Space Area. Any Party shall have the right, periodically, but no more than once every 25 years, to record memoranda or other instruments that reference, incorporate, or attach this Consent Decree, the conservation restriction, the deed notice, and/or any further orders of the Court related to the AOC 1 Open Space Area in the real estate records related to the AOC 1 Open Space Area.

(e) **Zoning.** Pursuant to the Redevelopment Plan, the AOC 1 Open Space Area is designated for open space and park. Jersey City shall not amend or change this designation unless it first satisfies the requirements of paragraph 60(a)(iv)(2).

(f) **Recreation and Open Space Inventory.** Upon acquiring fee simple absolute title to the AOC 1 Open Space, Jersey City shall add those portions of the AOC 1 Open Space Area not covered by roads, the pedestrian thoroughfare, and utility corridors adjacent to

roads onto its Green Acres Program Recreation and Open Space Inventory ("ROSI") pursuant to N.J.A.C. 7:36 and shall specify in such listing that it is subject to (i) Honeywell's prior easement to monitor, maintain, repair, and replace the Chromium Remedy; (ii) the actions necessary to implement, monitor, maintain, repair, and replace the Chromium Remedy; (iii) the actions necessary to install any development permissible under paragraphs 60(j) and 60(k); and (iv) the conservation restriction imposed pursuant to paragraph 60(b). Jersey City shall also take all steps necessary or appropriate to notify the New Jersey Green Acres Program that such portions of the AOC 1 Open Space Area have been added to its ROSI, such that those portions of the AOC 1 Open Space Area shall thereafter be subject to all procedural and regulatory requirements applicable under the Green Acres Program, including prohibitions against diversion.

(g) **Eminent Domain.** If all or part of the AOC 1 Open Space Area is taken in exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, by any public, corporate, or other authority so as to terminate, abrogate, or limit the restrictions created by this Consent Decree or the conservation restriction imposed pursuant to paragraph 60(b), in whole or in part, any Party may take appropriate actions to challenge such taking if there is a reasonable legal basis for doing so. In the event that the Parties are unable to prevent a taking notwithstanding their reasonable and appropriate efforts, any Party may take appropriate actions to recover the full value of the interests in the AOC 1 Open Space Area subject to the taking or in lieu purchase, and all direct and incidental damages, costs, and fees occasioned thereby.

(h) **Environmental Covenant.** In the event that New Jersey enacts the Uniform Environmental Covenants Act or its substantial equivalent, the Parties shall address the issue of whether an environmental covenant shall be established for the AOC 1 Open Space Area under the statute. If the Parties are unable to reach agreement on establishment of an environmental

covenant, the Parties shall submit the dispute to the Special Master, who shall recommend a resolution of the dispute. The Special Master shall recommend adoption of an environmental covenant if it would provide substantial additional protection for the AOC 1 Open Space Area without unreasonably harming the interests of any Party. Any Party shall have the right to seek review by the Court of the Special Master's recommendation or consideration by the Court of the dispute in the event that the Special Master's appointment has expired.

(i) **Future Protections.** Any Party shall have the right to propose consideration of additional or substitute protections for the AOC 1 Open Space Area. If the Parties are unable to reach agreement with regard to the proposal, the Parties shall submit the dispute to the Special Master, who shall recommend a resolution of the dispute. The Special Master shall recommend adoption of additional or substitute protections for the AOC 1 Open Space Area if they would provide substantial additional protection for the AOC 1 Open Space Area without unreasonably harming the interests of any Party. Any Party shall have the right to seek review by the Court of the Special Master's recommendation or consideration by the Court of the dispute in the event that the Special Master's appointment has expired.

(j) **Prohibited Development in AOC 1 Open Space Area.** Only development satisfying the requirements of this paragraph and paragraph 60(k) shall be permitted in the AOC 1 Open Space Area. All other development in the AOC 1 Open Space Area shall be prohibited.

(i) Honeywell shall establish Open Space Design Standards that shall govern all development in the AOC 1 Open Space Area regardless of when the construction or installation of permissible development occurs. The Open Space Design Standards shall satisfy each of the requirements set forth in paragraph 60(j)(v) and shall set forth the requirements for development that are necessary for the protection of the integrity of the Chromium Remedy.

(ii) The Initial Development in the AOC 1 Open Space Area shall be the

development undertaken following the completion of the Chromium Remedy in the AOC 1 Open Space Area. The Initial Development may occur in one or more phases. Honeywell and Bayfront Redevelopment LLC shall prepare a Development Plan before the initiation of each phase of the Initial Development. The Initial Development Period for each phase shall consist of the period covered by the Initial Development, plus a period of 10 years following the submission of the as-built documentation for the phase pursuant to paragraph 60(j)(viii).

(iii) The Special Master shall have jurisdiction to review the Open Space Design Standards and the Development Plan(s) solely for the purpose of ensuring that any development undertaken during the Initial Development Period is consistent with this Consent Decree and with protection of the integrity of the Chromium Remedy. The Special Master's jurisdiction with regard to development in the AOC 1 Open Space Area shall run through the Initial Development Period for each phase.

(iv) Honeywell shall ensure that the requirements of this paragraph and paragraph 60(k) are satisfied with regard to any development undertaken within the Initial Development Period. Honeywell shall also ensure that any development undertaken within the Initial Development Period is designed and installed in a manner consistent with this Consent Decree and with protection of the integrity of the Chromium Remedy.

(v) Any development undertaken in the AOC 1 Open Space Area, regardless of when undertaken, shall satisfy each of the following requirements:

- (1) It shall not jeopardize the integrity of the Chromium Remedy;
- (2) It shall be limited to the types of development permitted under paragraph 60(k);
- (3) It shall be consistent with this Consent Decree, including the conservation restriction imposed pursuant to paragraph 60(b), and the Redevelopment Plan;

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

(4) In total, at least 75% of the AOC 1 Open Space Area, exclusive of the acreage used for roads and the pedestrian thoroughfare, shall be comprised of landscaping, as defined by paragraph 60(k)(xi);

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

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

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

(8) No permanent concession facilities shall be permitted.

(vi) Honeywell shall submit the Open Space Design Standards and the Development Plan(s) for any development undertaken during the Initial Development Period pursuant to the requirements of paragraph 72(c), except that such documents need not be submitted to NJDEP. Following Honeywell's submission of such documents, the procedures of paragraphs 72(d) and 72(e) shall apply, except that the Special Master need not provide notice to NJDEP.

(vii) During the Initial Development Period, any development in the AOC 1 Open Space Area shall require the preparation and submission of a Development Plan pursuant

to paragraph 60(j)(vi) and such Development Plan shall be subject to review by the Special Master pursuant to paragraph 60(j)(iii).

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

(ix) During the Initial Development Period, replacement in-kind of development features or facilities included in the Initial Development or minor modifications to the development features or facilities included in the Initial Development shall not require the preparation of a Development Plan or be subject to review by the Special Master, provided that such replacement or modification satisfies the requirements of the Open Space Design Standards, the applicable Development Plan, and paragraphs 60(j)(v) and 60(j)(x)(3)(notice requirement).

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

(1) Jersey City satisfies the conditions set forth in paragraph 60(a)(iv)(2);

(2) The development is a replacement in-kind and such replacement is made in conformance with the specifications of the Open Space Design Standards, the applicable Development Plan, and paragraph 60(j)(v); or

(3) The development meets the requirements of paragraphs 60(j)(v) and 60(j)(xi), and Jersey City provides notice of its intention to alter or add to the

development undertaken in the Initial Development Period. Such notice shall be provided in writing to Honeywell, Riverkeeper, and the holders of the conservation restriction established pursuant to paragraph 60(b) at least 30 days prior to Jersey City's alteration or addition to development undertaken in the Initial Development Period. Honeywell, Riverkeeper, or any holder of the conservation restriction shall have the right to move the Court to prohibit such alteration or addition.

(xi) If any of the development features or facilities that Jersey City seeks to add pursuant to paragraph 60(j)(x) require utilities that would require utility corridors other than the utility corridors installed during the Initial Development Period, Jersey City shall obtain approval from the Court before installing such new utility corridors.

(xii) Jersey City shall provide Honeywell, Riverkeeper, and the holders of the conservation restriction established pursuant to paragraph 60(b) with an annual report that describes any alterations or additions, including those activities under paragraph 60(j)(x)(2), to the development undertaken during the Initial Development Period.

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

(k) Permissible Development in the AOC 1 Open Space Area. The Initial Development or any subsequent addition or alteration thereto may include any or all of the following types of development features or facilities, provided that such development features or facilities satisfy the conditions set forth in paragraph 60(j)(v):

(i) Roads and the pedestrian thoroughfare -- both crossing and running along the AOC 1 Open Space Area, but no more extensive than provided for in the diagram on page 39 of the Redevelopment Plan;

- (ii) Curbing and fences;
- (iii) Sidewalks, paths, walkways, and nature trails;
- (iv) Utilities and utility corridors, lighting, and restrooms;
- (v) Irrigation or sprinkler components or systems;
- (vi) Water features;
- (vii) Above-ground storm water cisterns;
- (viii) Signs, including the signs or display required by paragraph 60(I);
- (ix) Benches, trash receptacles, and bicycle racks;
- (x) Recreational facilities, such as playground equipment, bocce ball courts, tennis courts, basketball courts, and athletic fields; and
- (xi) Landscaping, including natural grasses, small trees, shrubbery, flowers, and potted plants, provided that such landscaping and the anticipated root structure of each landscaping component do not and will not jeopardize the integrity of the Chromium Remedy. Any portion of an athletic field that is covered in natural grass shall be considered landscaping for purposes of the percentage set forth in paragraph 60(j)(v)(4).

(l) **Signs or Displays.** Honeywell shall develop a permanent plan for informing visitors to the AOC 1 Open Space Area of the history of the chromium production, contamination, and its remediation. Such plan shall provide for appropriate signs or displays that communicate this information. Such plan shall be subject to review and comment by the Parties and approval by the Special Master.

61. Honeywell's Ongoing Responsibility. Honeywell shall be responsible for implementing, monitoring, maintaining, repairing and replacing the Chromium Remedy in perpetuity. Honeywell shall satisfy this responsibility through establishment and implementation of a Long-Term Monitoring Plan. In the event that Honeywell ceases to exist without a

successor-in-interest or its obligations under this Consent Decree are stayed or limited due to a bankruptcy petition, the Court shall appoint an independent third-party fiduciary who shall be responsible for implementing, monitoring, maintaining, repairing and replacing the Chromium Remedy pursuant to the requirements of this Consent Decree and the Long-Term Monitoring Plan, unless Jersey City volunteers to assume these responsibilities for the Chromium Remedy.

62. Long-Term Monitoring Plan. In consultation with the Parties, and subject to approval by the Special Master and NJDEP, Honeywell shall develop a Long-Term Monitoring Plan to ensure the ongoing effectiveness of the Chromium Remedy to meet the objectives set forth in paragraphs 56, 58, and 63. The Long-Term Monitoring Plan shall be consistent with the applicable EPA policies and guidance, including, among others, EPA's Comprehensive Five Year Review Guidance (2001) (or any subsequent revision) and with NJDEP's Technical Requirements for Site Remediation (or any subsequent revision).

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

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

(b) Provide monitoring to ensure that the restrictions of the institutional controls are being satisfied, including the prohibition on development in the AOC 1 Open Space Area.

64. 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 63. Honeywell shall provide Riverkeeper, the Jersey City Entities, the Special Master, and NJDEP with annual reports on activities conducted under the Long-Term Monitoring Plan.

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

(i) Quarterly visual inspection monitoring of the AOC 1 Open Space Area to ensure that it is not being put to any use that is inconsistent with paragraphs 60(j) and 60(k) or any use that may compromise the integrity of the Chromium Remedy. The Long-Term Monitoring Plan shall include an inventory of the prohibited and permissible uses pursuant to paragraph 60 and a corresponding checklist to be used by the individuals conducting the monitoring. If Honeywell determines that the AOC 1 Open Space Area is being used in a manner inconsistent with the protections or the integrity and effectiveness of the Chromium Remedy, Honeywell shall act as soon as possible to cause such use to cease and, if there has been damage to the Chromium Remedy, to repair or replace it to original specifications or to a level of protection equivalent to the original Chromium Remedy;

(ii) Quarterly visual inspection monitoring of the AOC 1 Open Space Area grade and slope to identify whether erosion has occurred or is occurring. Honeywell shall remediate any significant erosion.

(iii) Quarterly visual inspection monitoring to determine whether noticeable differential settlement or subsidence has occurred or is occurring in the AOC 1 Open Space Area such that the integrity of the Chromium Remedy may be materially impaired. If evidence of differential settlement or subsidence is found, Honeywell shall propose further investigative measures. Honeywell shall remediate any differential settlement or subsidence that is beyond the degree of differential settlement/subsidence allowed for in the 100% Design

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

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

(v) Quarterly visual inspection monitoring to determine whether the Chromium Remedy in the AOC 1 Open Space Area has been disturbed. Any evidence of the distinctive warning layer materials or any other cap materials as described in paragraph 56(a) at the surface is an indication that the cap has been disturbed. In such an event, Honeywell shall propose further investigative measures to evaluate whether the integrity of the cap has been compromised. In the event that the investigative measures show that the cap integrity has been compromised, Honeywell shall repair or replace the cap and the overlying layers to original 100% Design specifications or to a level of protection at least equivalent to the original Chromium Remedy;

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

(vii) Quarterly visual inspection monitoring of the vegetative cover in the AOC 1 Open Space Area to ensure that vegetative cover is in conformance with the landscaping provisions of the 100% Design and the Redevelopment Plan and will not materially impair the integrity of the Chromium Remedy. Maintenance of the vegetative cover shall include, at a

minimum, mowing to ensure that tree species cannot become established and removal of any other vegetation with the potential to damage the Chromium Remedy;

(viii) Quarterly groundwater monitoring to ensure that groundwater levels are maintained in accordance with the requirement to maintain an outward gradient from Study Area 7 and in accordance with the water level control plan developed pursuant to paragraph 58(e);

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

(x) Any additional monitoring as required by specific details added in the design phase of the AOC 1 Open Space Area.

(b) Procedures for Proposing Changes to the Long-Term Monitoring Plan.

Any Party may, from time to time, propose changes to the scope of the monitoring activities under the Long-Term Monitoring Plan. If the Parties agree, the Long-Monitoring Plan shall be so changed subject to approval by NJDEP and by the Special Master, if his appointment has not terminated, or otherwise, by the Court. If the Parties are unable to reach agreement over alterations to the monitoring and the Special Master's appointment has not terminated under this Consent Decree, the Parties shall submit the dispute to the Special Master, who shall recommend a resolution of the dispute. Any Party shall have the right to seek review by the Court of the Special Master's recommendation. In the event that the dispute arises after the Special Master's appointment has terminated, any Party may file a motion seeking a resolution of the dispute by

the Court.

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

(d) **Routine Maintenance.** The title owner of the AOC 1 Open Space Area shall conduct maintenance of the AOC 1 Open Space Area features or facilities that are permissible under paragraphs 60(j) and 60(k). The maintenance workers shall be trained in maintenance procedures that do not jeopardize the integrity of the Chromium Remedy. The training shall include the identification and reporting of any uses or features that are not permissible in the AOC 1 Open Space Area or that may jeopardize the integrity of the Chromium Remedy. Honeywell shall provide all training materials. The title owner of AOC 1 Open Space Area shall annually provide to the other Parties and the Special Master a report describing the training which has been provided to its maintenance workers. The title owner of the AOC 1 Open Space Area shall also provide to the Parties and the Special Master notice of any violations of the restrictions relating to the AOC 1 Open Space Area identified by its workers during routine maintenance.

(e) **Recordkeeping.** Honeywell shall maintain written logs or other records of those monitoring and remediation activities undertaken pursuant to the Long-Term Monitoring

Plan. Such logs shall be provided to Riverkeeper and the Jersey City Entities on a quarterly basis.

65. Monitoring and Reporting to Riverkeeper and Jersey City Entities. Riverkeeper and Jersey City Entities shall be provided with all documents submitted to NJDEP and/or the Special Master with respect to the Chromium Remedy, including the documents identified in paragraph 72(c).

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

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

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

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

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

(1) Zoning and other Jersey City maps showing the AOC 1 Open Space Area; and

(2) Documents describing the contamination and the remediation, including:

(a) This Consent Decree;

(b) The Remedial Investigation Report and the Final Remedial Action Report,

(c) The annual reports on long-term monitoring and maintenance and repair activities as required by paragraph 64 and annual reports on changes to the Initial Development as required by paragraph 60(j)(xii); and

(d) The Long-Term Monitoring Plan.

(c) The provision of the maps and documents referred to in paragraph 66(b)(ii) to the public via websites and libraries and/or the future equivalents thereof; and

(d) Notices to lessees and commercial tenants in all lease documents.

67. Annual Letter to Riverkeeper and Jersey City Entities on Notice to Stakeholders. Each year beginning one year after the issuance of the first notice in a deed or lease pursuant to paragraph 66, Honeywell shall provide a letter to the Riverkeeper and the Jersey City Entities documenting its compliance with paragraph 66.

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

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

(b) Mailings to all stakeholders; and

(c) Posters and flyers throughout the Redevelopment Area.

69. 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 by the Special Master and NJDEP

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

71. Appointment and Jurisdiction of the Special Master. The Chromium Remedy provided for in this Consent Decree is hereby referred to a Special Master pursuant to Rule 53 of the Federal Rules of Civil Procedure. The Special Master is appointed in the Consolidated Litigation for the purpose of overseeing and enforcing the Chromium Remedy, the first five years of long-term monitoring of the Chromium Remedy, financial assurances for the Chromium Remedy, and the Initial Development Period for each phase of development in the AOC 1 Open Space Area. The Special Master is also appointed in the Consolidated Litigation for the limited purpose of ensuring that the scheduling and implementation of the Historic Fill Remedy, the site preparation activities, and the site redevelopment activities described in the Jersey City/Honeywell Consent Order, Articles II.B, III, and IV, do not undermine the integrity of, unreasonably interfere with, or unnecessarily delay the effectuation of the Chromium Remedy, the Study Area 7 remedies, and other remedies within his jurisdiction as of the date of entry of this Consent Decree. The Special Master shall have jurisdiction over all matters for which he is appointed.

72. Oversight of the Chromium Remedy.

(a) **NJDEP Authority.** NJDEP shall retain its full statutory and regulatory authority with respect to the Study Area 6 North site, including (i) permitting authority; (ii) authority to review and approve the Remedial Action Work Plan, 100% Design, and final

Remedial Action Report for the Chromium Remedy; and (iii) authority to issue a no further action letter.

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

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

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

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

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

(v) Submitting quarterly progress reports to the Court;

(vi) Overseeing the financial assurances established pursuant to paragraphs 77 through 86, and, until the expiration of his term pursuant to paragraph 76, overseeing the financial assurances established pursuant to paragraphs 87 through 98;

(vii) Coordinating review of the documents as provided in paragraphs 72(c) through 72(f);

(viii) Overseeing all development undertaken in the AOC I Open Space Area during the Initial Development Period pursuant to paragraph 60(j)(iii); and

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

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

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

(ii) Design drawings and specifications at the 50% level;

(iii) Design drawings and specifications at the 100% level (after selection of the contractor) (hereafter “100% Design”);

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

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

(vi) The Long-Term Monitoring Plan;

(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 groundwater levels for the groundwater remedy;

(ix) Documents required during the Initial Development Period pursuant to paragraphs 60(j)(vi), 60(j)(vii), and 60(j)(viii) ; and

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

(d) **Comment on Submitted Documents.** For each of the documents submitted by Honeywell pursuant to paragraph 72(c), the Special Master shall establish a schedule for the submission of comments and responses to comments. For each of the documents submitted, Riverkeeper, the Jersey City Entities, the Special Master, and NJDEP shall have the right to submit comments to Honeywell. Honeywell shall address all received comments and submit a revised document. The revised document shall be submitted by Honeywell to Riverkeeper, the Jersey City Entities, the Special Master, and NJDEP. The revised document shall be subject to review and approval pursuant to paragraph 72(e).

(e) **Review and Approval of the Submitted/Revised Document**

(i) **Scope of Review.** All documents submitted by Honeywell, pursuant to paragraph 72(c) and 72(d), shall be subject to review and approval by the Special Master in accordance with the following procedure. All such documents, except the Schedule and the 100% Design, shall be subject to the review and approval process and shall not require an order of the Court. The Schedule and 100% Design documents shall be subject to the review and approval process, but shall also require an order of the Court as provided in paragraph 72(f). A document shall be approved if the document (1) complies with this Consent Decree; (2) complies with the Remedial Action Work Plan for the Chromium Remedy; and (3) complies with the Schedule and 100% Design.

(ii) **Procedure.** Prior to making a decision on a document, the Special Master shall notify NJDEP of his intention to rule on the document or make a recommendation to the Court on the document. Such notice shall notify NJDEP that the Special Master will consider any comments NJDEP wishes to submit on the document if such comments are submitted within 30 days of NJDEP's receipt of the notice. NJDEP shall in its sole discretion determine whether to submit comments to the Special Master.

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

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

(g) **Flexibility in 50% and 100% Design Documents.** The Parties recognize that work conducted to implement the Chromium Remedy may be conducted by Honeywell contractors and that Honeywell may establish performance-based criteria or specifications for its contractors. As a result, the Parties recognize that the 50% Design and 100% Design documents for the Chromium Remedy may include performance-based standards, criteria, and specifications. These documents shall be sufficiently prescriptive to enable the Parties and the Special Master to evaluate their conformance with the Remedial Action Work Plan and this Consent Decree. The Parties also recognize that the 100% Design will be completed after Honeywell has selected a contractor. The Parties further recognize that completing the 100% Design after the selection of the contractor(s) shall not make the 100% Design subject to any less

stringent or more deferential review. Honeywell's commitment to the contractor(s) shall not be cause to limit review by the Parties and the Special Master.

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

73. **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 75.

74. **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 Consent Order on Sediment Remediation and Financial Assurances ("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.

75. **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.

76. **Expiration of Special Master's Appointment.** The Special Master's appointment under this Consent Decree shall expire after Honeywell has completed the first five years of long-term monitoring of the Chromium Remedy and the Initial Development Period for each phase of development has been concluded as provided in paragraph 60(j)(ii). However, solely to the extent that the Special Master is still supervising other portions of the Consolidated Litigation or *ICO v. Honeywell* after Honeywell has completed the first five years of long-term monitoring of the Chromium Remedy or the Initial Development Period for each phase of development as provided in paragraph 60(j)(ii), whichever is later, the Special Master shall continue to have jurisdiction under this Consent Decree until he has completed his specifically enumerated responsibilities under the Final Judgment in *ICO v. Honeywell*, the Sediment Consent Order, the Deep Groundwater Consent Order, 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.

D. Initial Financial Assurances

77. 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;

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

(iii) A contingency of 25% with respect to those costs listed in paragraphs 77(a)(i) and 77(a)(ii).

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

78. Procedures for Review of the Proposed Chromium Remedy Letter of Credit. No later than 60 days after entry by the Court of this Consent Decree, Honeywell shall submit to Riverkeeper, Jersey City Entities, and the Special Master for their review the proposed (a) amount of the Chromium Remedy Letter of Credit; (b) form of the Chromium Remedy Letter of Credit; and (c) name of the institution that will issue the Chromium Remedy Letter of Credit. If

Riverkeeper or the Jersey City Entities do 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.

79. 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 80, to correspond to the reduced estimate of Remedial Costs Subject to Financial Assurances. If the issuer provides notice of nonrenewal, Honeywell shall obtain a replacement irrevocable Chromium Remedy Letter of Credit at least 95 days prior to the expiration date of the existing Chromium Remedy Letter of Credit. If Honeywell is not otherwise in default as provided in Article III.D, the Special Master shall direct the cancellation of the prior Chromium Remedy Letter of Credit within 91 days after delivery to the Special Master of any replacement of a Chromium Remedy Letter of Credit. In the event that the Special Master is entitled to draw upon a Chromium Remedy Letter of Credit because there are two Chromium Remedy Letters of Credit currently in place, the Special Master shall not draw an aggregate amount in excess of the highest valued Chromium Remedy Letter of Credit. Upon Honeywell's request, the Special Master may, at his option, decide not to require overlapping letters of credit in any year based on Honeywell's financial strength in that year, provided that Honeywell has submitted all necessary information so that the Special Master can make his determination at least 150 days prior to the expiration of the Chromium Remedy Letter of Credit.

80. 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, the Jersey City Entities, and the Special Master an estimate of the remaining Remedial Costs Subject to Financial Assurance, including the contingency as described in paragraph 77(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 77(a)(i) and 77(a)(ii), plus a contingency of 25% of the remaining estimated costs under paragraphs 77(a)(i) and 77(a)(ii), and shall not result in reducing the Chromium Remedy Letter of Credit to an amount less than \$20,000,000 as expressed in 2008 dollars unless long-term financial assurances are in place pursuant to Article III.E. 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 the Jersey City Entities in an effort to reach agreement on the modified amount or terms of the Chromium Remedy Letter of Credit. If the Parties are unable to reach agreement over the modified amount or terms of the Chromium Remedy Letter of Credit, the Parties shall submit the dispute to the Special Master, who shall resolve the dispute. Any Party shall have the right to seek review by the Court of the Special Master's decision regarding the modified amount or terms of the Chromium Remedy Letter of Credit. Upon agreement on the amount of the reduction or modified terms of the Chromium Remedy Letter of Credit (or upon order of the Court directing that the Chromium Remedy Letter of Credit be reduced to an identified amount or otherwise modified), Honeywell shall obtain a replacement Chromium Remedy Letter of Credit in such amount and with such

terms. If Honeywell is not otherwise in default as provided in Article III.D 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.

81. 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.

82. 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.

83. Application of New York Law. The provisions of the Uniform Customs and Practice ("UCP") for Documentary Credits (1993 Revision) International Chamber of Commerce Publication #500 and New York law shall apply to the Chromium Remedy Letter of Credit.

84. Procedures upon Honeywell's Material Default of Its Obligations. During the period in which the Special Master has jurisdiction pursuant to paragraph 71, the Chromium Remedy Letter of Credit shall be payable to the Special Master and shall not, prior to its expiration date, be revoked or terminated except consistent with this Consent Decree and with the consent of the Special Master and approval by the Court. The Special Master's ability to draw upon the Chromium Remedy Letter of Credit shall not be limited by any agreement between Honeywell and the issuer. The Special Master may, without further order or notice to

this Court, draw upon the Chromium Remedy Letter of Credit upon the occurrence of default by Honeywell, which shall include:

(a) The failure of Honeywell, in the event that notice is given pursuant to paragraph 79 to deliver a replacement Chromium Remedy Letter of Credit at least 95 days prior to the expiration date of the existing Chromium Remedy Letter of Credit;

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

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

(d) The dissolution, liquidation, merger, consolidation, or reorganization of Honeywell or the institution of any proceeding to effect any of the foregoing, other than under paragraph 84(c) above, and the failure of Honeywell to provide assurance to the Special Master, within 15 days after written notice, that such an event will not impair Honeywell's ability to

carry out the terms of this Consent Decree.

85. Placement of Proceeds in Court Registry Investment System Account. In the event that the Special Master draws upon the Chromium Remedy Letter of Credit due to an event of default, the Special Master shall place the proceeds of the Chromium Remedy Letter of Credit which represent the remaining estimated Chromium Remedy costs under paragraphs 77(a)(i), plus a contingency of 25% of the remaining estimated costs under paragraph 77(a)(i), in an account with the Court Registry Investment System in accordance with Local Civil Rule 67.1 and not expend the proceeds of the Letter of Credit without further order of this Court. The Special Master shall place all additional proceeds of the Chromium Remedy Letter of Credit in a trust fund pursuant to paragraph 90(b)(v).

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

- (a) The implementation of the Chromium Remedy; and
- (b) Establishment of long-term financial assurance pursuant to Article III.E.

E. Long-Term Financial Assurances

87. Long-Term Financial Assurances. Honeywell shall fund long-term financial assurances to ensure that the activities set forth in paragraph 89(a) are carried out regardless of whether Honeywell is financially able to carry out such activities in perpetuity.

88. Resolution of the Amount of Long-Term Financial Assurances. The Parties have agreed to the following options with regard to how the long-term financial assurances shall be determined:

- (a) If the Parties agree that the current amount necessary to cover the costs to be subject to long-term financial assurances, as set forth in paragraph 89(b), is \$10,000,000 or less,

and agree on the amount of funding needed, Honeywell shall provide long-term financial assurances as required by Article III.E.

(b) If the Parties agree that the current amount necessary to cover the costs to be subject to long-term financial assurances, as set forth in paragraph 89(b), is \$10,000,000 or less, but disagree on the amount of funding needed, Honeywell shall provide long-term financial assurances as required by Article III.E except that the dispute as to the amount of the long-term financial assurances shall be submitted to the Special Master pursuant to paragraph 91.

(c) If the Parties do not agree that the current amount necessary to cover the costs to be subject to long-term financial assurances, as set forth in paragraph 89(b), is \$10,000,000 or less, or the Parties agree that the current amount necessary to cover the costs to be subject to long-term financial assurances, as set forth in paragraph 89(b), is greater than \$10,000,000, the Parties shall seek resolution by the Court of the long-term financial assurances issues, including (i) the type of financial assurances to be provided; (ii) the scope of the financial assurances; (iii) the amount of the financial assurances; and (iv) the duration of the financial assurances. In the event that the Parties seek resolution by the Court, the provisions of paragraphs 90 through 98 shall not apply.

(d) Within 60 days of the entry of this Consent Decree, the Parties shall determine which option under this paragraph shall apply. In the event that the Parties determine that paragraph 88(c) applies, Riverkeeper shall initiate the proceedings by moving the Court for the imposition of long-term financial assurances.

(e) If the Parties determine that they are proceeding under paragraph 88(c), Honeywell shall maintain the Chromium Remedy Letter of Credit required by paragraph 77 in an amount equal to at least \$20,000,000 in 2008 dollars until such time as the long-term financial assurances ordered by the Court are in place. In the event of any default by Honeywell pursuant

to paragraph 84 while the Chromium Remedy Letter of Credit is in place, the provisions of paragraph 90(b)(v) for the placement of the proceeds that exceed the remaining estimated Chromium Remedy costs under paragraph 77(a)(i) plus a contingency of 25% of the remaining estimated costs under paragraph 77(a)(i), shall apply.

89. Costs Subject to Long-Term Financial Assurances.

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

(i) Perpetual monitoring and maintenance of the Chromium Remedy, including installation, operation and monitoring of any above-cap-grade gas collection and/or treatment system as may be necessary, but such system is not part of the 100% Design;

(ii) Perpetual operation of the shallow groundwater pump-and-treat remedy;

(iii) Perpetual repair of the cap;

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

(v) In the event that Honeywell selects a trust fund pursuant to paragraph 90(a), the perpetual administration of the trust fund.

(b) The costs that shall be subject to financial assurances is an amount that will provide the full payment for each of the activities set forth in paragraphs 89(a)(i) through 89(a)(v) plus a 25% contingency when the activities in paragraphs 89(a)(i) through 89(a)(v) are expected to be performed. The costs subject to financial assurances are forward looking because they state an amount valued at the time the funds are needed. As such, they shall be stated in contemporary time as the present value (calculated on the basis of a discount rate of 4.75%) of

the estimated future costs of the activities specified in paragraphs 89(a)(i) through 89(a)(v), plus a 25% contingency on those costs.

90. 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 89(b), at the time those funds are necessary.

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

(ii) The trust fund shall be managed by a financial institution domiciled in the United States or by a United States subsidiary of a non-U.S. financial institution acceptable to Riverkeeper and the Jersey City Entities 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 89(a)(i) through 89(a)(iv).

(b) **Long-Term Letter of Credit.** In the event that Honeywell selects a letter of credit, Honeywell shall obtain a one-year irrevocable letter of credit (the “Long-Term Letter of Credit”) to be automatically renewed annually in an amount that provides sufficient funds such that a trust fund, separate from any trust fund created under paragraph 90(a) but satisfying the requirements of paragraph 90(a), could be created. The Long-Term Letter of Credit-funded trust, plus any trust fund established under paragraph 90(a), shall provide the full amount of the costs subject to long-term financial assurances, as set forth in paragraph 89(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 92.

(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 the Jersey City Entities 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 90(a) but satisfying the requirements of paragraph 90(a).

(iii) The provisions of the Uniform Customs and Practice (“UCP”) for Documentary Credits (1993 Revision) International Chamber of Commerce Publication #500 and New York law shall apply to the Long-Term Letter of Credit.

(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 76, 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 84. 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 90(a) but satisfying the requirements of paragraph 90(a). After the Special Master’s appointment expires pursuant to paragraph 76, 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 90(a) but satisfying the requirements of paragraph 90(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 90(b)(ii), 90(b)(v) or 95 and Honeywell has also selected a trust fund pursuant to paragraph 90(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 89(b), at the time those funds are necessary.

(c) **Combination.** Honeywell may use some combination of a trust fund and a letter of credit to achieve the requirements of this paragraph. However, if a combination is used, Honeywell shall ensure that the combined amount of financial assurances is sufficient to provide the full amount of the costs subject to long-term financial assurances, as set forth in paragraph 89(b), at the time those funds are necessary. The trust fund and the letter of credit shall otherwise satisfy all the requirements of paragraphs 90(a) and 90(b).

91. Procedures for Review of the Proposed Long-Term Financial Assurances. In the event that the Parties have determined that they are proceeding pursuant to paragraph 88(a) or 88(b), no later than 120 days after the determination under paragraph 88(d), Honeywell shall submit to Riverkeeper, the Jersey City Entities, 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 the Jersey City Entities 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. In any event, until the long-term financial assurances have been put into place, Honeywell shall maintain the Chromium Remedy Letter of Credit and the requirements of paragraphs 88(e) and 90(b)(v) shall apply to the Chromium Remedy Letter of Credit.

92. 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 90, 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 89(b), at the time those funds are necessary. At such time as the Parties report to the Court, any Party may seek an adjustment in the amount of the long-term financial assurances. The Party seeking an adjustment must demonstrate that the long-term financial assurances are under-funded or over-funded to provide the full amount of the costs subject to long-term financial assurances, as set forth in paragraph 89(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 89(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 89(a)(i) through 89(a)(v) are expected to cost at the time they must be performed and the amount of funding projected to be available to undertake such activities at the time they must be performed. If, after reviewing the submission(s) received from the Parties, the Court determines that the long-term financial assurances are under-funded or over-funded to provide the full amount of the costs subject to long-term financial assurances, as set forth in paragraph 89(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 90(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 90(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 90(b).

93. 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 90(a), 90(b)(ii), 90(b)(v), or 95.

94. 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 the Jersey City Entities 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 90(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 the Jersey City Entities to Honeywell of the alleged material failure, unless Honeywell cures the alleged breach within the 30-day notice period or such longer period as the Parties may agree to or the Court may order;

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

(d) The dissolution, liquidation, merger, consolidation, or reorganization of Honeywell or the institution of any proceeding to effect any of the foregoing, other than under

paragraph 94(c), if Honeywell fails to provide assurance to Riverkeeper, the Jersey City Entities, and the Court, within 15 days after written notice, that such an event will not impair Honeywell's ability to carry out the terms of this Consent Decree.

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

If the Court grants any motion by Riverkeeper or the Jersey City Entities pursuant to paragraph 94 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 90(a) but satisfying the requirements of paragraph 90(a).

96. Use of the Trust Fund in the Event of Honeywell's Default. In the event of Honeywell's default, the money in the trust fund established pursuant to paragraph 90(a) shall be available to meet the obligations of paragraph 89(a). Riverkeeper and/or the Jersey City Entities 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 the Jersey City Entities.

97. Use of a Trust Fund Established Pursuant to Paragraph 85, 90(b)(ii), 90(b)(v), or 95. In the event that a trust fund is established pursuant to paragraph 85, 90(b)(ii), 90(b)(v), or 95, the money in the trust fund shall be available to meet the obligations of paragraph 89(a). Riverkeeper and/or the Jersey City Entities 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 the Jersey City Entities.

98. Termination of the Long-Term Financial Assurances. Honeywell's obligations

under Article III.E shall be terminated and the long-term financial assurance mechanisms shall be terminated when the Court finds that no hexavalent or total chromium contamination remains in the AOC 1 Open Space Area or on the Site, whether in soils or in groundwater, in excess of the levels specified for Unrestricted Use in the NJDEP Chromium Directive or any more restrictive standards for Unrestricted Use in place at the time, whichever is more restrictive. Upon determining that long-term financial assurances may be terminated, the Court shall order that any Long-Term Letter of Credit may be withdrawn in its entirety and any trust fund may be terminated. In conjunction with its order terminating any trust fund, the Court in its discretion shall designate a recipient(s) of any remaining trust funds.

ARTICLE IV: IMPLEMENTATION SCHEDULE AND TERMINATION

99. Schedule for Remedy and Site Preparation Implementation Activities. The Chromium Remedy under Article III and the Historic Fill Remedy under Article II.B of the Jersey City/Honeywell Consent Order and Site Preparation Activities under Article III of the Jersey City/Honeywell Consent Order shall be undertaken by the Parties in accordance with the following anticipated schedule, recognizing that this schedule may be further modified in writing by agreement of the Parties and with the approval of the Court:

(a) By October 1, 2008, the Jersey City Entities and Honeywell shall develop a Site Preparation Plan, pursuant to paragraph 3.2 of the Jersey City/Honeywell Consent Order, for all Site Preparation Activities necessary to undertake the Chromium Remedy;

(b) No later than June 18, 2009, Honeywell shall submit to NJDEP a remedial design document for the Chromium Remedy;

(c) No later than September 1, 2009, Honeywell shall submit all applications for permits and authorizations for the performance of the Chromium Remedy to all appropriate local, state, and federal government entities;

(d) Honeywell shall use its best efforts to complete the Chromium Remedy no later than four years after all appropriate applications and authorizations for the performance of the Chromium Remedy have been obtained;

(e) By May 1, 2008, Honeywell and the Jersey City Entities shall submit a work plan for further Remedial Investigation for AOC 2 to NJDEP; and

(f) By December 1, 2008, Honeywell and the Jersey City Entities shall submit a Remedial Action Selection Report and Remedial Action Workplan for the Historic Fill Remedy set forth in Article II.B of the Jersey City/Honeywell Consent Order. The Workplan shall contain a schedule for implementation of the Historic Fill Remedy.

100. Termination of this Consent Decree. This Consent Decree shall terminate upon the withdrawal of any Party as provided for in this paragraph. Any Party may elect to withdraw from this Consent Decree due to the occurrence of one or more of the following events, provided that such Party provides written notice of withdrawal to the other Parties pursuant to paragraph 108:

(a) The Court fails to enter the Jersey City/Honeywell Consent Order or this Consent Decree or either the Jersey City/Honeywell Consent Order or this Consent Decree is determined to be invalid on appeal;

(b) JCRA fails to take those actions required under paragraphs 4.11(a), (b), and (c) of the Jersey City/Honeywell Consent Order within nine months of entry of this Consent Decree; or

(c) JCRA fails to approve a Redevelopment Agreement between Bayfront Redevelopment LLC and JCRA pursuant to paragraph 4.11(e) of the Jersey City/Honeywell Consent Order within 12 months of entry of this Consent Decree.

101. Procedures for Withdrawal and Termination. Any Party electing to withdraw pursuant to paragraph 100 and thereby terminate this Consent Decree shall provide written notice of such withdrawal and termination to all other Parties within 30 days of the occurrence giving rise to the decision to withdraw. If any Party objects to termination of the Consent Decree, or believes that the conditions set forth in paragraph 100 have not been met, such objecting Party may move the Court for an expedited hearing on the issue of whether the conditions for termination have been effectuated.

102. 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 100.

103. Effect of Termination. If this Consent Decree is terminated pursuant to paragraph 100, the Consent Decree shall no longer be binding on the Parties and shall be of no further effect. In the event that this Consent Decree is terminated by one or more Parties pursuant to paragraph 100, each Party to this Consent Decree reserves all of its rights, claims, and defenses (both legal and factual) against the other Parties with respect to the matters at issue in the Consolidated Litigation and each Party remains free to pursue such rights, claims, and defenses.

**ARTICLE V: ADDITIONAL PROVISIONS RELATED TO HISTORIC
FILL AND SITE PREPARATION AND REDEVELOPMENT**

104. Historic Fill Remedy. This Consent Decree shall adopt and incorporate the terms of Article II.B of the Jersey City/Honeywell Consent Order with respect to the Historic Fill Remedy. The Historic Fill Remedy shall not be limited to the activities set forth in Article II.B of the Jersey City/Honeywell Consent Order in the event that NJDEP requires a more extensive remedy. The Historic Fill Remedy shall be compatible with the Chromium Remedy such that no

part of the Historic Fill Remedy shall interfere with the installation, maintenance, and monitoring of the Chromium Remedy. In addition, the Historic Fill Remedy for any discharge of non-chromium contaminants to the Hackensack River shall not interfere with the remedies under the Sediment Consent Order, including the source control remedies. In the event that Jersey City conducts the Historic Fill Remedy instead of Honeywell, the terms of this paragraph shall still apply.

105. Oversight of Historic Fill Remedy. Paragraph 2.11 of the Jersey City/Honeywell Consent Order shall apply only to the Historic Fill Remedy, not the Chromium Remedy. The Progress Reports provided for in paragraphs 2.12 and 3.7 of the Jersey City/Honeywell Consent Order shall be provided to Riverkeeper and the Special Master at the time they are submitted.

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

Consent Decree and completing the Study Area 7 remediation and implementing the Final Judgment and subsequent orders in *ICO v. Honeywell*.

107. Dispute Resolution Procedures. The provisions of Article VIII of the Jersey City/Honeywell Consent Order do not apply to any disputes regarding or impacting the Chromium Remedy, which shall be resolved as provided in paragraph 72. The provisions of Article VIII of the Jersey City/Honeywell Consent Order shall apply to disputes between the Jersey City Entities and Honeywell regarding the Historic Fill Remedy and other obligations provided in the Jersey City/Honeywell Consent Order, except to the extent that such disputes may affect the Chromium Remedy. If any such dispute may affect the Chromium Remedy, it shall be resolved as provided in paragraph 72. Honeywell shall provide Riverkeeper with a copy of each notice of any breach provided under paragraph 8.1 of the Jersey City/Honeywell Consent Order within 10 days of Honeywell's receipt or issuance of such notice. Honeywell shall provide Riverkeeper with a copy of any written resolution of a dispute pursuant to paragraph 8.2 within 10 days of the resolution.

ARTICLE XI: NOTICE

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

Any and all notices referred to in this Consent Decree, or which any Party desires to give to the other, shall be addressed as follows:

If to Honeywell and/or
Bayfront Redevelopment LLC :

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

With copies to:

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

If to Jersey City:

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

If to JCMUA:

Sam Della Fera Jr.
Trenk, DiPasquale, Webster,
Della Fera & Sodono, P.C.
347 Mount Pleasant Ave.
West Orange, NJ 07052
(973) 243-8600

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 JCIA:

David L. Isabel
Golub & Isabel, PC
160 Littleton Road
Parsippany, NJ 07054
(973) 968-3377

If to JCRA:

Robert Antonichello
Executive Director
30 Montgomery Street
Jersey City, NJ 07302
(201) 547-5810

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 XII: RIVERKEEPER'S ATTORNEYS' FEES

109. **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 \$1,513,217.15 which represents the following:

(a) A compromise of the attorneys' fees incurred by Riverkeeper in the litigation of Study Area 6 North portion of *Riverkeeper v. Honeywell* through March 27, 2008; and

(b) \$187,862.27 in out-of-pocket expenses representing 50% of the expenses incurred by Riverkeeper in *Riverkeeper v. Honeywell* from the inception of the litigation after deducting the expenses to be paid pursuant to the Sediment Consent Order.

Payment of the sum of \$1,513,217.15 shall be in full satisfaction of all obligations, duties, and responsibilities of Honeywell with respect to the \$1,556,747.46 in fees and expenses that Riverkeeper claimed with regard to the above described fees and expenses.

110. **Future Fees and Expenses.** Honeywell shall reimburse Riverkeeper's attorneys for reasonable fees and expenses incurred: (a) in negotiating this Consent Decree after March 27, 2008; (b) in the monitoring and enforcement of this Consent Decree; and (c) in participation in the Special Master process established pursuant to this Consent Decree. Honeywell shall also reimburse Riverkeeper for reasonable attorneys' fees and expenses for Riverkeeper's review of and participation in the Long-Term Monitoring Plan and monitoring and enforcement of this Consent Decree following the term of the Special Master. In the event that any dispute arises between the Parties under this Consent Decree that must be resolved by the Court, Riverkeeper shall be entitled to recover its attorneys' fees and expenses for litigation of the dispute to the extent allowed by federal law. Riverkeeper and Honeywell shall use the same informal procedure for attempting to settle fees issues as has been used for post-judgment monitoring fees in *ICO v. Honeywell*. In the event that Riverkeeper and Honeywell are unable to reach a

settlement on fees, Riverkeeper shall apply to the Court for an award of attorneys' fees and expenses. If Honeywell objects to only a portion of the Riverkeeper's statement of attorneys' fees and expenses, Honeywell shall pay the undisputed portion within 60 days of Riverkeeper's submittal of the statement to Honeywell. The Court shall resolve any objections to Riverkeeper's statement of attorneys' fees and expenses and shall enter an appropriate Order.

ARTICLE XIII: MISCELLANEOUS PROVISIONS

111. **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.

112. **JCRA and Bayfront Redevelopment LLC as Parties.** As signatories to this Consent Decree, JCRA and Bayfront Redevelopment LLC subject themselves to the Court's jurisdiction for the purpose of enforcing this Consent Decree and agree to be bound by this Consent Decree. This Consent Decree shall be fully enforceable against JCRA and Bayfront Redevelopment LLC.

113. **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.

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

115. **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.

116. **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.

117. **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.

118. **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.

119. **Measures to Effectuate This Consent Decree.** The Jersey City Entities and JCRA 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. Such steps include consideration of this Consent Decree at a meeting of the City Council, open to the public, at which members of the public have the opportunity to comment on all aspects of the Settlement, including the commitments made by Jersey City; and consideration by and approval of the commissioners of the JCIA, JCMUA, and JCRA.

120. **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.

121. **Severability.** Each of the provisions in paragraph 60 of this Consent Decree shall be deemed severable and, in the event that one or more of such provisions is deemed invalid or unenforceable, it shall not affect the validity or enforceability of the other provisions of the Consent Decree.

122. **Signatures.** This Consent Decree may be signed simultaneously or in counterparts by the respective signatories, which shall be as fully valid and binding as if a single document was signed by all of the signatories. This Consent Decree may be signed electronically by any or all signatories, and such electronic signature shall be as fully valid and binding as a hand-written signature.

Consented to and approved for entry:

s/Aurelio Vincitore

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

Counsel for the City of Jersey City

s/David L. Isabel

David L. Isabel
Golub & Isabel, PC
160 Littleton Road
Parsippany, NJ 07054
(973) 968-3377

Counsel for Jersey City Incinerator Authority

s/ Joni Noble McDonnell

Joni Noble McDonnell
Genova, Bruns & Giantomasi
4974 Broad Street
Newark, NJ 07102
973-535-4435

*Counsel for Jersey City Municipal Utilities
Authority*



Robert Antonichello
Executive Director
30 Montgomery Street
Jersey City, NJ 07302
(201) 547-5810

*Executive Director of Jersey City
Redevelopment Agency*

s/ David Sheehan

David Sheehan
Baker Hostetler
45 Rockefeller Plaza
11th Floor
New York, NY 10111
(212) 589-4200

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

*Counsel for Honeywell International Inc. and
Bayfront Redevelopment LLC*

s/ Edward Lloyd

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

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

*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 _____, 2012.

Hon. Dennis M. Cavanaugh
United States District Judge

EXHIBITS

Exhibit A: Jersey City/Honeywell Consent Order

Exhibit B: Remedial AOC's and Remedial Approach Map

Exhibit C: NJDEP Chromium Policy

Exhibit D: Conservation Restriction

Exhibit E: Deed Notice

Deed Notice

Dated: _____, 2017

BAYFRONT REDEVELOPMENT LLC

Grantor(s).

Record and return to:

**Waters, McPherson, McNeill, P.C.
P.O. Box 1560
300 Lighting Way
Secaucus, New Jersey 07096-1560**

ATTN: _____, Esq
