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RECITALS

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

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

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

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

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

Whereas, Riverkeeper also named as defendants in *Riverkeeper v. Honeywell* owners of the properties comprising Study Areas 5, 6 North, and 6 South, including Elisabeth and Rafael Rosario, Michael Vo, and Regnal Realty, as necessary party defendants pursuant to Rule 19 of the Federal Rules of Civil Procedure;

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

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

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

Whereas, Elisabeth and Rafael Rosario, and Michael Vo own properties that comprise a part of Site 79. The Rosario and Vo properties are residential and have been referred to in the Consolidated Litigation as the Site 79 Residential Properties or the Fisk Street Homes;

Whereas, Honeywell has asserted cross-claims against Elisabeth and Rafael Rosario and against Michael Vo;

Whereas, Jersey City Fields currently owns the property that comprises Site 117, also referred to as the Home Depot Site;

Whereas, for Site 117, Riverkeeper only asserted a claim against Honeywell with regard to chromium contamination in the groundwater due to Honeywell’s receipt of a No Further Action determination from NJDEP with regard to the soils at Site 117;

Whereas, Regnal Realty and Honeywell asserted cross-claims against each other in the Consolidated Litigation;

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

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

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

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

Whereas, on October 14, 2009, Honeywell, the Jersey City Entities, Riverkeeper and the Special Master, appointed to oversee matters related to Study Areas 6 and 7, requested that the Court enter the Consent Order Regarding Financial Assurances (also referred to as the Global Financial Assurances Order), which addresses financial assurance issues that have arisen under

the financial assurance provisions in various orders and consent decrees, including the Study Area 6 North Consent Decree and the Study Area 6 South Consent Decree;

Whereas, on January 13, 2010, Honeywell, Riverkeeper, and certain other parties to the Consolidated Litigation submitted to the Court the Consent Decree Regarding the NJCU Redevelopment Area, resolving Riverkeeper's claims with respect to Sites 90, 184, and Site 153 North (other than for shallow groundwater on Site 153);

Whereas, on January 13, 2010, Honeywell, Riverkeeper, and certain other parties to the Consolidated Litigation submitted the Court the Consent Decree Regarding Site 79 and Site 153 South, resolving Riverkeeper's claims with respect to the portion of Site 79 owned by Robert Ciasulli and Site 153 South (other than shallow groundwater);

Whereas, with the exception of the Study Area 5 Shallow Groundwater, the Site 79 Residential Properties, and the Regnal Realty Property, Riverkeeper and Honeywell have resolved all claims between them in the Consolidated Litigation.

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 conclude this litigation and implement environmental remediation of the Study Area 5 Shallow Groundwater and the Site 79 Residential Properties that ensures the continued protection of human health and the environment;

Whereas, Riverkeeper has attempted to communicate with Vo through an interpreter, but such attempts have been unsuccessful. The Parties have decided to proceed with this Consent Decree without Vo as a signatory, but will continue efforts to communicate with Vo in order to afford him an opportunity to participate in the decisionmaking pursuant to paragraphs 61 and 62;

Whereas, this Consent Decree, together with the Prior Decrees and Orders will fully and finally resolve all matters in the Consolidated Litigation through the date of the entry of this

Consent Decree with the exception of Riverkeeper's claim for litigation costs as set forth in paragraphs 149 and 150 of the NJCU Redevelopment Area Consent Decree and any matters that have arisen or may arise in the future under any one or more of the Prior Decrees and Orders and this Consent Decree; and

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

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

2. **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).

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

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

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

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

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

8. **Jersey City Fields** shall mean Jersey City Fields, LLC, the current owner of the property that comprises Site 117, and its successors in interest to such property.

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

10. **NJCU Redevelopment Area Consent Decree** shall mean the Consent Decree Regarding Remediation of the New Jersey City University Redevelopment Area, submitted to the Court on January 13, 2010.

11. **NJCU Property** shall mean the area comprised of the NJCU Commercial AOC and the Residential AOC, as defined in the NJCU Redevelopment Area Consent Decree.

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

13. **Non-Honeywell Litigants** shall mean Riverkeeper, Rosario, and Vo.

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

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

16. **Prior Decrees and Orders** shall mean the following decrees and orders: the Study Area 6 North Consent Decree, the Study Area 6 South Consent Decree, the Site 79

Consent Decree, the NJCU Redevelopment Area Consent Decree, the Sediments Consent Order, the Global Financial Assurances Order, and the Deep Groundwater Consent Order.

17. **Property Owners** shall mean Elizabeth and Rafael Rosario, Michael Vo, Regnal Realty, Inc., and Jersey City Fields.

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

19. **Regnal Realty** shall mean Regnal Realty, Inc. and its successors in interest to the Regnal Realty Property.

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

21. **Remedial Action Work Plan** or **RAWP** shall mean any Remedial Action Work Plan required by the Technical Requirements for Site Remediation for the remedial activities required under this Consent Decree.

22. **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.

23. **Rosario** shall mean Elizabeth and Rafael Rosario and their successors in interest to the Rosario Property.

24. **Rosario Property** shall mean the property consisting of Block 1292, Lot 49, located at 93 Fisk Street, Jersey City, New Jersey, currently owned by Rosario.

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

26. **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.

27. **Sites** shall mean the Site 79 Residential Properties and the Study Area 5 Shallow Groundwater, collectively.

28. **Site 79 Consent Decree** shall mean the Consent Decree Regarding Sites 79 and 153 South submitted to the Court on January 13, 2010.

29. **Site 79 Residential Properties** shall mean the Rosario and Vo Properties.

30. **Site 117** shall mean the property owned by Jersey City Fields that is Site 117 of Chromate Chemical Production Waste Sites designated by NJDEP.

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

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

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

34. **Study Area 5** shall mean the property designated by NJDEP as Sites 79, 90, 117, 153, and 184 of the Chromate Chemical Production Waste Sites, including (a) all the property

owned by Bob Ciasulli, consisting of Block 1291, Lot 76, and Block 1292, Lots 1F, 47, 48, 53, and 54PL, located at 540 Route 440, Jersey City, New Jersey, (b) all the property owned by Elisabeth and Rafael Rosario, consisting of Block 1292, Lot 49, located at 93 Fisk Street, Jersey City, New Jersey, (c) all the property owned by Michael Vo, consisting of Block 1292, Lot 50, located at 95 Fisk Street, Jersey City, New Jersey, (d) all the property owned by Jersey City Fields LLC, consisting of Block 1285.5, Lot 1, located at 440 Route 440, Jersey City, New Jersey, (e) all the property owned by 425/445 Route 440 Property LLC, consisting of Block 1289.5, Lot E, Jersey City, New Jersey, and (f) all the property owned by NJCU, consisting of Block 1286, Lots 5 and 6D, and Block 1286.5, Lots 1 and 2, Jersey City, New Jersey.

35. **Study Area 5 Shallow Groundwater** shall mean (a) the shallow groundwater in Study Area 5, excluding the shallow groundwater in the NJCU Property, but including the shallow groundwater in Site 153 North; and (b) any shallow groundwater outside and downgradient of Study Area 5 that is found pursuant to delineation under paragraph 63, 68, or 71 to be part of the zone of contamination which extends from Study Area 5.

36. **Study Area 5 Shallow Groundwater Chromium Remedy** shall mean the remedy set forth in Article III.C of this Consent Decree and any additional groundwater remediation undertaken pursuant to paragraph 71.

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

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

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

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

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

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

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

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

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

46. **Vo** shall mean Michael Vo.

47. **Vo Property** shall mean the property consisting of Block 1292, Lot 50, located at 95 Fisk Street, Jersey City, New Jersey, currently owned by Michael Vo.

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

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

49. For purposes of this Consent Decree, the Riverkeeper Complaint in the Consolidated Litigation states claims upon which relief may be granted against Honeywell with regard to the Study Area 5 Shallow Groundwater and the Site 79 Residential Properties. Rosario hereby adopts and joins Riverkeeper's Complaint as a plaintiff in the Consolidated Litigation and asserts the claims therein against Honeywell insofar as such claims relate to the Rosario Property. Riverkeeper's Complaint is hereby amended to dismiss or exclude Rosario as a necessary party defendant.

50. In the event that this Consent Decree is not terminated by one or more Parties pursuant to paragraph 105, this Consent Decree, together with the Prior Decrees and Orders fully and finally resolve all matters in the Consolidated Litigation through the date of the entry of this Consent Decree with the exception of Riverkeeper's claim for litigation costs as set forth in paragraphs 149 and 150 of the NJCU Redevelopment Area Consent Decree and any matters that have or may arise under any one or more of the Prior Decrees and Orders. This Consent Decree resolves, settles, and satisfies all remaining claims in the Consolidated Litigation by Riverkeeper and Rosario against Honeywell and the Property Owners, including all claims with respect to: (i) soils and shallow groundwater at the Site 79 Residential Properties; (ii) soils and groundwater, both shallow and deep, at the Regnal Realty Property; and (iii) Study Area 5 Shallow Groundwater. In the event that this Consent Decree is not terminated by one or more Parties

pursuant to paragraph 105, this Consent Decree resolves, settles, and satisfies all claims by Honeywell against Rosario and Vo in the Consolidated Litigation. Upon entry of this Consent Decree and each of the Prior Decrees and Orders, Riverkeeper and Rosario settle, release, and waive any and all claims that each has or may have had against Honeywell with respect to the presence, migration, or remediation of COPR or chromium contamination in the soil, surface water, groundwater, sediments, or any other media, at, on, in, or from the properties designated as Study Areas 5 and 6 by NJDEP and the Regnal Realty Property, except that this provision does not release Honeywell from (i) any claims that may arise with regard to implementation and/or enforcement of the terms and conditions of this Consent Decree and each of the Prior Decrees and Orders, including claims for future fees and expenses; or (ii) the claim for litigation costs as set forth in paragraphs 149 and 150 of the NJCU Redevelopment Area Consent Decree.

51. Within ten (10) days of entry of this Consent Decree, Riverkeeper shall dismiss its claims against the Property Owners without prejudice, but may seek leave to refile such claims solely for the purposes of enforcing Honeywell's obligations under this Consent Decree or the Prior Decrees and Orders.

52. Within ten (10) days of entry of this Consent Decree, Honeywell shall dismiss its claims against the Property Owners without prejudice, but may seek leave to refile such claims solely for the purposes of enforcing Honeywell's obligations under this Consent Decree or Prior Decrees and Orders.

53. 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.

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

Consolidated Litigation and each Party expressly denies those allegations and claims made against it as well as any liability resulting therefrom.

ARTICLE III: CHROMIUM REMEDIATION

A. General Terms of Chromium Remedy

55. **Responsibility for Implementation of Chromium Remediation.** Honeywell shall be responsible for and shall undertake the Chromium Remedies set forth in this Consent Decree at its sole cost and expense, except that nothing shall prevent Honeywell from seeking contributions for such cost and expense against any party other than the Non-Honeywell Litigants. Honeywell shall perform the remediation of COPR and chromium present at the Site 79 Residential Properties and in the Study Area 5 Shallow Groundwater in accordance with the terms of any approved Remedial Action Work Plan and this Consent Decree.

56. **Scope of the Chromium Remedy.** The Chromium Remedy shall consist of the remedial measures prescribed in this Article. To the extent that this Consent Decree addresses groundwater, it addresses only the shallow level of groundwater. The deep overburden and bedrock groundwater remediation, including source control, are addressed in the Deep Groundwater Consent Order.

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

58. **Protective Measures during Remediation Activities.** During remediation construction activities, if any, associated with the Chromium Remedy, Honeywell shall take adequate protective measures to protect site workers and the community from airborne dusts and exposures to contaminated soils in accordance with applicable laws, regulations and orders, and health and safety standards.

59. **Permits and Authorizations.** Honeywell shall obtain all necessary federal, state, and local permits and authorizations to carry out the Chromium Remedy.

B. Chromium Remedy for the Site 79 Residential Properties

60. **Chromium Sampling.** The Parties agree that a sample taken on July 13, 2009, to a depth of 4 feet at the Rosario Property shows hexavalent chromium concentrations in the sample between approximately 2 mg/kg and 13 mg/kg. The Parties disagree whether further delineation and/or remediation of the Site 79 Residential Properties is required. Accordingly, the Parties have agreed to a process for resolution of the disagreement.

61. **Soil Remedy.** The determination of whether a soil remedy is required for the Site 79 Residential Properties shall be made pursuant to the following procedure:

(a) In the event that before July 1, 2013, NJDEP establishes, through formal rulemaking, a residential soil standard for hexavalent chromium that is more stringent than 20 mg/kg, Honeywell shall propose and conduct delineation of the Site 79 Residential Properties to the duly adopted residential soil remediation standard for hexavalent chromium. If necessary based on such delineation, Honeywell shall propose and conduct remediation of the Site 79 Residential Properties. All proposals under this paragraph shall be subject to the review requirements of paragraphs 78(c) through (i) and shall require an order of the Court, which shall be obtained pursuant to the procedure set forth in paragraph 78(h).

(b) In the event that by July 1, 2013, NJDEP has not established, through formal rulemaking, a residential soil standard for hexavalent chromium, the Parties may submit proposals for further delineation and/or remediation, if any, of hexavalent chromium in soils at the Site 79 Residential Properties. The procedures set forth in paragraph 78(c) through (i) shall be used to determine whether soil remediation beyond that ordered pursuant to paragraph 62, including delineation, is required under Section 7002 of RCRA, 42 U.S.C. § 6972, for the Site 79 Residential Properties. Such decision shall be made on the basis of submissions and oral presentations by the Parties. Any Party shall have the right to seek review by the Court of the Special Master's recommendation. Regardless of whether review by the Court is sought, any decision under this paragraph shall require an order of the Court, which shall be obtained pursuant to the procedure set forth in paragraph 78(h).

(c) Honeywell shall conduct any delineation and remediation required by a decision under subparagraph (a) or (b).

62. Initial Soil Remedial Actions. The Parties disagree whether an interim soil remedy is needed at the Site 79 Residential Properties in the period prior to a determination under paragraph 61. Accordingly, the Parties have agreed to have the dispute resolved pursuant to the procedures set forth in paragraphs 78(c) through (i). Within 60 days of the entry of this Consent Decree, the Parties shall make submissions pursuant to paragraphs 78(c) or (d) that address their respective positions on delineation and interim remediation of the Site 79 Residential Properties. The Parties shall follow the procedures set forth in paragraphs 78(c) through (i), to determine whether an interim soil remedy is required under Section 7002 of RCRA, 42 U.S.C. § 6972 for the Site 79 Residential Properties until such time as a determination is made pursuant to paragraph 61. Such decision shall be made on the basis of submissions and oral presentations by the Parties. Any Party shall have the right to seek review by the Court of

the Special Master's recommendation. Regardless of whether review by the Court is sought, any decision under this paragraph shall require an order of the Court, which shall be obtained pursuant to the procedure set forth in paragraph 78(h). Honeywell shall conduct any delineation and remediation required by a decision under this paragraph.

C. Study Area 5 Shallow Groundwater Chromium Remedy

63. **Further Delineation.** Honeywell shall install 3 additional groundwater monitoring wells at the approximate locations identified on Exhibit A. Honeywell shall conduct sampling of these wells and any further wells that may have to be installed in order to complete delineation of shallow groundwater contamination. Honeywell shall propose plans for each phase of sampling and analysis that may be needed to complete delineation. Each proposal shall be subject to the review requirements of paragraphs 78(c) through (i). The first phase shall include at least 2 rounds of groundwater sampling at each of the 3 new wells identified on Exhibit A and monitoring well 117-MW-A14 in order to determine the extent of the contamination. The rounds of sampling shall be spaced at least 6 months apart, but no more than 12 months apart. The delineation shall be conducted to a standard of 70 µg/l of total chromium. All samples shall be analyzed for total chromium and hexavalent chromium using Method 200.8 for total chromium and Method 7199 for hexavalent chromium. Following completion of such sampling and in conjunction with the submission required by paragraph 64, Honeywell shall submit a report, pursuant to paragraph 78(c), that provides the results of such sampling and that delineates the groundwater contamination for the Study Area 5 Shallow Groundwater. If necessary in order to complete the delineation, Honeywell shall propose in its report, the next phase of groundwater sampling.

64. **Groundwater Remedy Proposal.** Following completion of the sampling required by paragraph 53, Honeywell shall submit a proposal for any remedial actions that may

be required under Section 7002 of RCRA, 42 U.S.C. § 6972, to address Study Area 5 Shallow Groundwater, including, if appropriate, either individually or in concert, containment, *in situ* treatment or other methods of source removal, pumping and treating, an environmental permit, a classification exception area or functional equivalent, or other form of institutional control permitted under the Technical Requirements for Site Remediation. Such proposal shall be subject to the review requirements of paragraphs 78(c) through (i) and shall require an order of the Court, which shall be obtained pursuant to the procedure set forth in paragraph 78(h).

65. **Study Area 5 Shallow Groundwater Remedy Implementation.** Honeywell shall implement the groundwater remedy, if any, approved for the Study Area 5 Shallow Groundwater.

66. **Water Level Monitoring.** Following implementation of the remedy pursuant to paragraph 65 and continuing until such time as the Long-Term Monitoring Plan becomes applicable, Honeywell shall make and report on water level measurements for the Study Area 5 Shallow Groundwater in conjunction with its monitoring under the Long-Term Monitoring Plan established under paragraph 12 of the Deep Groundwater Consent Order.

67. **Coordination with Study Area 6 South Consent Decree.** The requirements of paragraphs 63-65 shall be coordinated with the requirements of paragraph 71 of the Study Area 6 South Consent Decree. The wells and sampling events conducted to satisfy the requirements of this Consent Decree may be used to satisfy the requirements of the Study Area 6 South Consent Decree and vice versa.

68. **Change in the Groundwater Standard.** If at any time prior to the termination of this Consent Decree pursuant to paragraph 106, NJDEP adopts a more stringent groundwater standard for total chromium or a standard for hexavalent chromium in groundwater and the remedy implemented pursuant to paragraph 65 is a passive remedy, in whole or in part, including

containment, Honeywell shall propose further delineation and remediation, as necessary, to satisfy such new standard(s). During the period in which the Special Master has jurisdiction pursuant to paragraph 82, such proposals shall be subject to the review requirements of paragraphs 78(c) through (i) and shall require an order of the Court, which shall be obtained pursuant to the procedure set forth in paragraph 78(h). After the Special Master's appointment has expired pursuant to paragraph 82, such proposals shall be submitted for approval by the Court. Upon approval by the Special Master or the Court, Honeywell shall undertake such further delineation and remediation.

D. Long-Term Monitoring

69. **Honeywell's Ongoing Responsibility.** Honeywell shall be responsible for implementing, monitoring, maintaining, repairing, and replacing the Study Area 5 Shallow Groundwater Chromium Remedy in perpetuity. Honeywell shall satisfy this responsibility through establishment and implementation of a Long-Term Monitoring Plan, which at Honeywell's option may be established in conjunction with or as part of a long-term monitoring plan for groundwater established under one or more of the Prior Decrees or Orders as long as it meets the requirements of this Consent Decree. In the event that Honeywell ceases to exist without a successor-in-interest or its obligations under this Consent Decree are stayed or limited due to a bankruptcy petition, the Court shall appoint an independent third-party fiduciary who shall be responsible for implementing, monitoring, maintaining, repairing, and replacing the Chromium Remedies pursuant to the requirements of this Consent Decree and the Long-Term Monitoring Plan.

70. **Long-Term Monitoring Plan for the Study Area 5 Shallow Groundwater Remedy.** Honeywell shall establish and implement a long-term monitoring plan for the Study Area 5 Shallow Groundwater Chromium Remedy to ensure that the integrity and ongoing

effectiveness of the remedy are maintained. The Long-Term Monitoring Plan shall be subject to the review requirements of paragraphs 78(c) through (i). The Long-Term Monitoring Plan shall be consistent with the applicable EPA policies and guidance, including, among others, EPA's Comprehensive Five Year Review Guidance (2001) (or any subsequent revision) and with the Technical Requirements for Site Remediation. The Long-Term Monitoring Plan shall be coordinated with the shallow groundwater provisions of the Long-Term Monitoring Plan established under the Study Area 6 South Consent Decree, including any contingency plan developed thereunder, and provide at least the following:

- (a) Quarterly water level monitoring; and
- (b) A determination of whether further remediation activities are required due

to changes in groundwater flow patterns, including discharges to the combined sewer under Route 440.

71. **Monitoring and Remediation under the Long-Term Monitoring Plan.** If the monitoring undertaken pursuant to the Long-Term Monitoring Plan shows that further remediation is necessary, Honeywell shall undertake such remediation.

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

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

74. **Monitoring and Reporting to the Parties.** The Non-Honeywell Parties with an Interest shall be provided with all documents submitted to NJDEP with respect to the Chromium Remedies, including the documents identified in paragraph 78(c).

75. **Public Notice.** Public notice shall be given as provided in N.J.A.C. 7:26E-1.4. In addition, Honeywell shall annually update summary notice of the Study Area 5 Shallow Groundwater Chromium Remedy on any website developed by Honeywell to inform the public of contamination at Study Area 6 North, Study Area 6 South, and any future website related, in whole or in part, to Study Area 5. Such notice shall include a description of the remedial actions undertaken and the Shallow Groundwater contamination remaining at the Sites. Once the long-term monitoring requirements set forth in paragraph 70 become effective, such annual update shall occur upon completion of the annual long-term monitoring required by paragraph 70.

ARTICLE IV: OVERSIGHT AND ENFORCEMENT

76. **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 this Article.

77. **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 appointed in the Consolidated Litigation is hereby appointed for the purpose of overseeing and enforcing the Chromium Remedy, the first three years of long-term monitoring of the Chromium Remedy, and financial assurances for the Chromium Remedy. The Special Master shall have jurisdiction over all matters for which he is appointed.

78. **Oversight of the Chromium Remedy.**

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

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

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

(vi) Overseeing the financial assurances established pursuant to Article V, until the expiration of the Special Master's appointment pursuant to paragraph 82;

(vii) Coordinating review of the documents as provided in subparagraphs (c) through (h);

(viii) Coordinating submission of materials by the Parties and making determinations regarding the need for remedial measures at the Site 79 Residential Properties pursuant to paragraphs 61 and 62; 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 the Non-Honeywell Litigants with an Interest, the Special Master, and NJDEP:

(i) A schedule or schedules with milestones for the design and implementation of the remedy (“Master Schedule” or “Master Schedules”);

(ii) Proposals and reports regarding further delineation of the Study Area 5 Shallow Groundwater pursuant to paragraph 63 and, if applicable, paragraph 68;

(iii) A proposal regarding remediation of the Study Area 5 Shallow Groundwater pursuant to paragraph 64 and, if applicable, paragraph 68 (hereafter “Study Area 5 Shallow Groundwater Remedy Proposal”);

(iv) Proposals with respect to the Site 79 Residential Properties pursuant to paragraphs 61 and 62.

(v) A Remedial Action Work Plan, if required, for the Site 79 Residential Properties and/or the Study Area 5 Groundwater Remedy;

(vi) Design drawings and specifications at the 100% level (after selection of the contractor) (hereafter “100% Design”) for the Chromium Remedy;

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

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

(ix) The Long-Term Monitoring Plan;

(x) 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);

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

(d) Submission of Documents by Non-Honeywell Litigants. In the event that Riverkeeper, Rosario, or Vo chooses to submit a document pursuant to paragraphs 61 or 62, such document shall be submitted to Honeywell, the Special Master, and NJDEP and shall be treated under subparagraphs (e) through (h) as a document submitted pursuant to subparagraph (c).

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

(f) Comment on Submitted Documents. For each of the documents submitted pursuant to subparagraph (c), and following conclusion of the NJDEP Review Period as described in subparagraph(e), the Special Master shall establish a schedule for the submission of comments and responses to comments (and in the case of documents submitted pursuant to paragraphs 51 or 52, for the making of oral presentations). For each of the documents submitted by Honeywell, the Non-Honeywell Litigants with an Interest, the Special Master, and NJDEP shall have the right to submit comments to Honeywell. For each of the documents submitted by a Non-Honeywell Litigant with an Interest, Honeywell, the Special Master, and NJDEP shall have the right to submit comments to the Non-Honeywell Litigant with an Interest. The submitting Litigant shall address all comments received and submit a revised document to all who received the initial document. The revised document shall be subject to review and approval pursuant to subparagraph (g), unless the Parties agree both on the revised document and that further review and approval pursuant to subparagraph (g) is unnecessary. In that event, the Parties shall inform the Special Master that review under subparagraph (g) is unnecessary and Honeywell shall proceed to implement the revised document. With respect to any document submitted to the Special Master pursuant to paragraphs 61 and 62, the Special Master shall provide an opportunity for Rosario and Vo to comment or otherwise be heard, even if neither submitted a document pursuant to subparagraph (c).

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

(i) Scope of Review. Subject to the limitations in subparagraph (f), all documents submitted by Honeywell, pursuant to subparagraphs (c) and (f), shall be subject to review and approval by the Special Master in accordance with the following procedure. With the exception of the documents specified in the next sentence, all such documents shall be subject to the review and approval process and shall not require an order of the Court. The Master Schedule, any

100% Design, any Study Area 5 Shallow Groundwater Remedial Action Work Plan or other proposal, if any, pursuant to paragraph 64 or 68, and any Special Master recommendation pursuant to paragraphs 61 or 62 shall be subject to the review and approval process, but shall also require an order of the Court as provided in subparagraph (h). 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 Master Schedule and 100% Design.

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

(h) **Procedure for Obtaining a Court Order.** As to any document requiring a Court order under paragraph 78(h), Honeywell shall have the responsibility, within 30 days of the Special Master's recommendation of each document, of (i) moving for entry of an order by the Court approving the document as recommended by the Special Master; or (ii) filing objections with the Court to the Special Master's recommendation, in whole or in part, and moving for resolution of the matter. Riverkeeper shall have the right in these proceedings to raise any

objections they might have to the Special Master's recommendation or to the matters raised by Honeywell's motion. NJDEP shall receive notice of any motion filed under this Paragraph.

(i) Flexibility in 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 100% Design documents, if any, 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 any Remedial Action Work Plan and this Consent Decree. The Parties also recognize that the 100% Design may be completed after Honeywell has selected a contractor. The Parties further recognize that completing a 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.

(j) Changes to the Master Schedule. The Parties recognize that changes to individual line items in the Master 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 Master Schedule milestones; 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.

79. 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 81.

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

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

82. **Expiration of Special Master's Appointment.** The Special Master's appointment under this Consent Decree shall expire after Honeywell has completed the first three years of long-term monitoring of the Chromium Remedy. 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 three years of long-term monitoring of the

Chromium Remedy, the Special Master shall continue to have jurisdiction under this Consent Decree until he has completed his specifically enumerated responsibilities under the Final Judgment in *ICO v. Honeywell*, the Sediment Consent Order, the Deep Groundwater Consent Order, the Study Area 6 North Consent Decree, and any other future orders, decrees, or judgments in *ICO v. Honeywell* and the Consolidated Litigation. Enumerated responsibilities under any order, decree, or judgment shall include only those tasks specifically assigned to the Special Master in the order, decree, or judgment. Enumerated responsibilities shall not include any continued jurisdiction exercised over long-term monitoring beyond the initial period specified in the order, decree, or judgment. For example, the Special Master has jurisdiction over the first five years of long-term monitoring under the Sediment Consent Order. Oversight during these five years shall be an enumerated responsibility, but any continued oversight of long-term monitoring, pursuant to the extension of the Special Master's jurisdiction beyond the first five years, as provided in paragraph 60 of the Sediment Consent Order, shall not be an enumerated responsibility. Such extensions of jurisdiction shall be effective only so long as specific enumerated responsibilities in any order, decree, or judgment have not been fulfilled.

ARTICLE V: FINANCIAL ASSURANCES

A. Initial Financial Assurances

83. **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 for \$500,000. 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.

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

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

85. Automatic Renewal. The Chromium Remedy Letter of Credit shall be automatically renewed annually unless no later than 120 days prior to the anniversary of the Chromium Remedy Letter of Credit issue date, the issuer provides notice of nonrenewal. If the issuer provides notice of nonrenewal, Honeywell shall obtain a replacement one-year irrevocable Chromium Remedy Letter of Credit at least 95 days prior to the expiration date of the existing Chromium Remedy Letter of Credit. If Honeywell is not otherwise in default as provided in Article V, the Special Master shall direct the cancellation of the prior Chromium Remedy Letter of Credit within 91 days after delivery to the Special Master of any replacement of a Chromium Remedy Letter of Credit. In the event that the Special Master is entitled to draw upon a

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

86. **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.

87. **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.

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

89. **Procedures upon Honeywell's Material Default of Its Obligations.** During the period in which the Special Master has jurisdiction pursuant to paragraph 82, the Chromium Remedy Letter of Credit shall be payable to the Special Master and shall not, prior to its

expiration date, be revoked or terminated except consistent with this Consent Decree and with the consent of the Special Master and approval by the Court. After the expiration of the Special Master's jurisdiction under paragraph 82, the Chromium Remedy Letter of Credit shall be payable to the Court and shall not, prior to its expiration date, be revoked or terminated except consistent with this Consent Decree and with the approval of the Court. The Special Master's or the Court's ability to draw upon the Chromium Remedy Letter of Credit shall not be limited by any agreement between Honeywell and the issuer. The Special Master may, without further order or notice to this Court, draw upon the Chromium Remedy Letter of Credit upon the occurrence of default by Honeywell, which shall include:

(a) The failure of Honeywell, in the event that notice is given pursuant to paragraph 85 to deliver a replacement Chromium Remedy Letter of Credit at least 95 days prior to the expiration date of the existing Chromium Remedy Letter of Credit;

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

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

substantial part of Honeywell's property; any action by Honeywell to effect any of the foregoing; or if Honeywell becomes insolvent as defined in Section 101(32) of the Federal Bankruptcy Code; or

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

90. **Placement of Proceeds in Trust Account.** In the event that the Special Master or the Court draws upon the Chromium Remedy Letter of Credit due to an event of default, the Special Master or the Court shall hold the proceeds of the Chromium Remedy Letter of Credit which represent the remaining costs for implementation of all remedial measures under paragraphs 61 through 63 in a trust account and shall manage such account as necessary to ensure the availability of the necessary funds at the time such funds are needed to pay for the remediation activities. The Special Master shall not expend the proceeds of the Chromium Remedy Letter of Credit or the trust account without further order of the Court. The Special Master shall place all additional proceeds of the Chromium Remedy Letter of Credit in a separate trust fund pursuant to paragraph 95(b)(v).

91. **Use of the Proceeds in Event of Default.** If Honeywell has satisfied its obligation for initial financial assurances through the Citibank Letter of Credit, in the event of a default by Honeywell, the use of the proceeds from the Citibank Letter of Credit shall be governed by paragraph 7 of the Global Financial Assurances Order.

92. **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 all remedial measures required under paragraphs 61 through 63 of the Chromium Remedy; and

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

B. Long-Term Financial Assurances

93. **Long-Term Financial Assurances.** Honeywell shall fund long-term financial assurances as set forth herein to ensure that the activities set forth in paragraph 94(a) are carried out regardless of whether Honeywell is financially able to carry out such activities in perpetuity.

94. **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) Construction of the Study Area 5 Shallow Groundwater Remedy;

(ii) Operation, maintenance, and monitoring of the Study Area 5 Shallow Groundwater Remedy for the duration of the remedy (or in perpetuity if no duration has been established);

(iii) Replacement of any infrastructure for the Study Area 5 Shallow Groundwater Remedy for the duration of the remedy (or in perpetuity if no duration has been established), with replacement intervals of 20 years for mechanical, electrical, and instrumentation components and the wells, and 75 years for the piping, unless experience shows the replacement intervals to be longer or shorter;

(iv) The perpetual administration of the trust fund regardless of whether such trust fund is selected by Honeywell pursuant to paragraph 95(a) or is established from the Long-Term Letter of Credit pursuant to paragraphs 95(b)(ii), 95(b)(v), or 101.

(b) The costs that shall be subject to financial assurances are an amount that will provide the full payment for each of the activities set forth in paragraphs 94(a)(i) through

94(a)(iv), plus a 10% contingency on costs set forth in paragraphs 94(a)(i) and 94(a)(ii) and a 20% contingency on the costs set forth in paragraphs 94(a)(iii) through 94(a)(iv), when the activities in paragraphs 94(a)(i) through 94(a)(iv) are expected to be performed. The costs subject to financial assurances are forward-looking because they state an amount valued at the time the funds are needed. As such, they shall be stated in contemporary time as the present value (calculated on the basis of a nominal discount rate of 4.75% and an inflation rate of 2.5% (subject to possible future adjustments pursuant to paragraph 98) of the estimated future costs of the activities specified in paragraphs 94(a)(i) through 94(a)(iv), plus the applicable contingency.

95. **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 94(b), at the time those funds are necessary.

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

(ii) The trust fund shall be managed by a financial institution domiciled in the United States or by a United States subsidiary of a non-U.S. financial institution acceptable to Riverkeeper or approved by the Court. In the event that the financial institution

managing the trust fund declares bankruptcy, the Court shall withdraw the funds and appoint another financial institution meeting the requirements of this paragraph to manage the trust.

(iii) No more frequently than once per year, Honeywell may apply to the Court for an order directing the trust manager to reimburse Honeywell for any costs that it has incurred to carry out the activities set forth in paragraphs 94(a)(i) through 94(a)(iii).

(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 95(a) but satisfying the requirements of paragraph 95(a), could be created. The Long-Term Letter of Credit-funded trust, plus any trust fund established under paragraph 95(a), shall provide the full amount of the costs subject to long-term financial assurances, as set forth in paragraph 94(b), at the time those funds are necessary.

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

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

fund, separate from any trust fund created under paragraph 95(a) but satisfying the requirements of paragraph 95(a).

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

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

(v) Prior to the expiration of the Special Master’s appointment pursuant to paragraph 82, 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 89. 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 95(a) but satisfying the requirements of paragraph 95(a). After the Special Master’s appointment expires pursuant to paragraph 82, 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 95(a) but satisfying the requirements of paragraph 95(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 95(b)(ii), 95(b)(v), or 101 and Honeywell has also selected a trust fund pursuant to paragraph 95(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 94(b), at the time those funds are necessary.

(c) **Combination.** Honeywell may use a combination of a trust fund and a letter of credit to achieve the requirements of this paragraph. However, if a combination is used, Honeywell shall ensure that the combined amount of financial assurances is sufficient to provide the full amount of the costs subject to long-term financial assurances, as set forth in paragraph 94(b), at the time those funds are necessary. The trust fund and the letter of credit shall otherwise satisfy all the requirements of paragraphs 95(a) and 95(b).

96. **Procedures for Review of the Proposed Long-Term Financial Assurances.** No later than December 31, 2010, Honeywell shall submit to Riverkeeper and the Special Master for their review (a) the amount of the proposed long-term financial assurances; (b) the form(s) of

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

97. Temporary Maintenance of Chromium Remedy Letter of Credit. Until the long-term financial assurances have been put into place, Honeywell shall maintain the Chromium Remedy Letter of Credit required by paragraph 83. In the event of any default by Honeywell pursuant to paragraph 89 while the Chromium Remedy Letter of Credit is in place, the provisions of paragraph 95(b)(v) for the placement of the proceeds that exceed the remaining costs for completion of activities required by paragraphs 61, 62, and 63 shall apply.

98. 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 95, 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 94(b), at the time those funds are necessary. At such time as the Parties report to the Court, any Party may seek an adjustment in the amount of the long-term financial assurances, including an adjustment in the discount rate and/or inflation rates used to calculate the long-term financial assurances. The Party seeking an adjustment must demonstrate that the long-term financial assurances are under-funded or over-funded to provide the full amount of the costs subject to long-term financial assurances, as set forth in paragraph 94(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. 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 94(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 94(a)(i) through 94(a)(iv) 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 94(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 95(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 95(b)(iv).

99. **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 95(a), 95(b)(ii), 95(b)(v), or 101.

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

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

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

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

(d) The dissolution or liquidation of Honeywell or the institution of any proceeding to effect any of the foregoing, other than under subparagraph (c), if Honeywell fails

to provide assurance to Riverkeeper and the Court, within 15 days after written notice from one or more of the Parties, that such an event will not impair Honeywell's ability to carry out the terms of this Consent Decree.

101. Drawing on the Long-Term Letter of Credit in the Event of Honeywell's Default. If the Court grants any motion by Riverkeeper, pursuant to paragraph 100, 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 95(a) but satisfying the requirements of paragraph 95(a).

102. Use of the Trust Fund in the Event of Honeywell's Default. In the event of Honeywell's default, as defined in paragraphs 100(a) through 100(d), the money in the trust fund established pursuant to paragraph 95(a) shall be available to meet the obligations of paragraph 94(a), as well as for payment of future attorneys' fees and expenses pursuant to paragraph 110. Riverkeeper shall file motions with the Court seeking orders directing how the money in the trust fund shall be used. The Court shall consider motions on an expedited basis and shall enter appropriate orders. The Court may enter an order allowing for automatic withdrawal of regular expenses without separate motion to the Court by Riverkeeper.

103. Use of a Trust Fund Established Pursuant to Paragraphs 90, 95(b)(ii), 95(b)(v), or 101. In the event that a trust fund is established pursuant to paragraph 90, 95(b)(ii), 95(b)(v), or 101, the money in the trust fund shall be available to meet the obligations of paragraph 94(a), as well as for the payment of future attorneys' fees and expenses pursuant to paragraph 110. Riverkeeper shall file motions with the Court seeking orders directing how the money in the trust fund shall be used. The Court shall consider motions on an expedited basis and shall enter appropriate orders. The Court may enter an order allowing for automatic withdrawal of regular expenses without separate motion to the Court by Riverkeeper.

104. Termination of the Long-Term Financial Assurances. Honeywell's obligations under Article V.B shall be terminated and the long-term financial assurance mechanisms shall be terminated when the Court finds that Honeywell's obligations have terminated pursuant to paragraph 106. 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 VI: TERMINATION

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

106. Termination of this Consent Decree through Remediation. Honeywell's obligations under this Consent Order may be terminated upon the Court's finding, pursuant to a motion by Honeywell in which Honeywell shall bear the burden of proof, that the following conditions have been met:

(a) With regard to the Site 79 Residential Properties, Honeywell has completed all remedial activities required under paragraphs 61 and 62;

(b) With regard to the Study Area 5 Shallow Groundwater, either of subsubparagraphs (i) or (ii) are met:

(i) The Study Area 5 Shallow Groundwater is no longer contaminated by hexavalent and total chromium contamination in excess of the most restrictive applicable state or federal standards for hexavalent and/or total chromium in groundwater in place at the time; provided, however, that if such standards have been made less stringent since the date of entry of this Consent Order, the terms of paragraph 107 shall also be met by Honeywell; or

(ii) Any required containment measures have been constructed and continued operation of the Study Area 5 Shallow Groundwater Chromium Remedy would not achieve any significant further reduction in hexavalent and total chromium contamination in the Study Area 5 Shallow Groundwater and is not necessary to prevent migration of chromium-contaminated Study Area 5 Shallow Groundwater.

107. Limitations on Right to Seek Change in Designation. If at any time Honeywell seeks a designation for the Study Area 5 Shallow Groundwater that would permit more hexavalent and/or total chromium contamination than is allowed under the state and federal standards that are applicable to the Study Area 5 Shallow Groundwater as of the entry of this Consent Decree or under any more stringent standard established by the state or federal government thereafter, it shall notify Riverkeeper, in writing, prior to submitting to NJDEP, EPA, or any other government agency any written material pertaining to the appropriate groundwater standard or any application for a change in designation. Before any changed designation shall be applied to allow termination of this Consent Decree pursuant to paragraph 106, regardless of whether Honeywell sought the change, Honeywell shall seek an Order from the Court that the new designation applies for purposes of paragraph 106(b)(i) of this Consent Decree. Honeywell shall bear the burden of proof for any such application. Riverkeeper reserves

all rights and legal arguments with respect to such application, including, but not limited to, the argument that compliance with a less stringent standard than the most restrictive applicable state or federal standards for hexavalent and/or total chromium in groundwater in place at the time this Consent Decree is entered or any more stringent standard established by the state or federal government thereafter will result in the continued existence of an imminent and substantial endangerment and that proof that contamination is lower than the applicable state or federal standards is not, alone, sufficient to show a lack of imminent and substantial endangerment. Honeywell reserves all rights and legal arguments with respect to such application, including, but not limited to, arguments that Riverkeeper's arguments are incorrect as a matter of law.

ARTICLE VII: 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:

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

With copies to:

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

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

If to Riverkeeper or Rosario:

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 Vo:

Michael Vo
95 Fisk Street
Jersey City, NJ 07302
(201) 915-0614

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

ARTICLE VIII: RIVERKEEPER'S ATTORNEYS' FEES

109. **Payment of Past Fees and Expenses.** Payment for attorneys' fees and expenses incurred through the entry of this Consent Decree shall be governed by paragraph 149 of the NJCU Redevelopment Area Consent Decree and payment for attorneys' fees and expenses associated with Riverkeeper's efforts to obtain such fees and expenses under paragraph 149 of the NJCU Redevelopment Area Consent Decree shall be governed by paragraph 150 of the NJCU Redevelopment Area Consent Decree.

110. **Future Fees and Expenses.** Honeywell shall reimburse Riverkeeper's attorneys for reasonable fees and expenses incurred after the entry of this Consent Decree, including fees and expenses relating to the negotiating of this Consent Decree incurred after the entry of the

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

ARTICLE IX: MISCELLANEOUS PROVISIONS

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. **Successors and Assigns.** This Consent Decree shall be binding upon and shall inure to the benefit of the successors, assigns, heirs, corporate parents, subsidiaries, and affiliates of each Party, including by way of merger, consolidation, or reorganization. No assignment or delegation of the obligations hereunder shall release the assigning Party from its obligations under this Consent Decree.

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

114. **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.

115. **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.

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

117. **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.

118. **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.

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

Consented to and approved for entry:



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

David Sheehan
Troutman Sanders, LLP
The Chrysler Building
405 Lexington Avenue
New York, NY 10174
(212) 704-6058

Counsel for Honeywell International Inc.

Bruce J. Terris
Carolyn Smith Pravlik
Kathleen L. Millian
Terris, Pravlik & Millian, LLP
1121 12th Street, N.W.
Washington, DC 20005-4632
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Edward Lloyd
Columbia Law School
435 West 116th Street, Room 831
New York, NY 10027
(212) 854-4376

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

APPROVED AND ENTERED as an Order of this Court this ___ day of _____, 2010.


Hon. Dennis M. Cavanaugh
United States District Judge

Consented to and approved for entry:

Michael D. Daneker
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555 12th Street, N.W.
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*Counsel for the Hackensack Riverkeeper,
William Sheehan, Reverend Winston Clarke,
Lawrence Baker, and Elizabeth and Rafael
Rosario*

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



Hon. Dennis M. Cavanaugh
United States District Judge