

STUDY AREA 6 NORTH AMENDED CONSERVATION RESTRICTION

This **AMENDED CONSERVATION RESTRICTION** ("Amended Conservation Restriction"), made on this _____ day of _____, 2019, between BAYFRONT REDEVELOPMENT LLC, a limited liability company, having an address at c/o Honeywell International Inc., 115 Tabor Road, Morris Plains, NJ 07950 (hereafter the "Grantor"), HONEYWELL INTERNATIONAL INC., a corporation of the State of Delaware, having an address at 115 Tabor Road, Morris Plains, NJ 07950, and THE HACKENSACK WATERSHED LAND TRUST, a non-profit Corporation of the State of New Jersey with offices at 231 Main Street, Hackensack, New Jersey 07061 (hereafter "Grantee").

WHEREAS, the Grantee, is a non-profit corporation incorporated under the laws of the State of New Jersey as a tax exempt public charity under Section 501(c)(3) and 509(a)(1) of the Internal Revenue Code; is qualified under section 170(h) of the Internal Revenue Code to receive conservation contributions; is a charitable conservancy within the meaning of N.J.S.A. 13:8B-2(a); is qualified to do business in the State of New Jersey; and whose purpose is to preserve natural areas for scientific, charitable, educational, and aesthetic purposes; and

WHEREAS, Grantor is the owner in fee simple of certain Property consisting of approximately 10.18 acres and now known and designated as a portion of Block 21901.01, Lots 1 and 3 on the Tax Map of the City of Jersey City, as described on Schedule A attached hereto (the "Conservation Restriction Area Property"); and

WHEREAS, the Conservation Restriction Area Property consists of two parcels, the AOC 1 Open Space Property which is approximately 10 acres, and the AOC 1

Roadway Area Property which is approximately 0.18 Acres (see the metes and bounds for both the AOC 1 Open Space Property and the AOC 1 Roadway Area Property in Exhibit A-1 and A-2 and a figure showing both parcels in Exhibit B); and

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

WHEREAS, on or about December 28, 2005, the Jersey City Incinerator Authority (“JCIA”) filed litigation styled *Jersey City Incinerator Authority v. Honeywell International Inc.*, D.N.J., Civ. No. 05-5993 (DMC), bringing claims against Honeywell under, *inter alia*, Section 6972 of RCRA, and seeking remediation of chromium contamination on property then-owned by JCIA, which included the area known as the Conservation Restriction Area Property; and

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

WHEREAS, Study Area 6 North includes the properties previously owned by JCMUA, JCIA, and the City of Jersey City and includes the Conservation Restriction Area Property.

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

WHEREAS, the Consolidated Litigation was resolved, in part, by a certain “Consent Decree Regarding Remediation and Redevelopment of Study Area 6 North,” which was recorded on January 9, 2009, in Book 8644, Page 390 of the Book of Deeds in the Office of the Register of Hudson County; and

WHEREAS, the Consent Decree Regarding Remediation and Redevelopment of Study Area 6 North was amended by the First Amended Consent Decree Regarding Remediation and Redevelopment of Study Area 6 North entered by the Court in the Consolidated Litigation on August 15, 2012, ECF No. 1141 in Civ. Docket 95-2097, and is being recorded simultaneously with this Conservation Restriction; and

WHEREAS, the First Amended Consent Decree Regarding Remediation and Redevelopment of Study Area 6 North shall be referenced herein as the “Amended Consent Decree” and as it has been or may be from time to time amended (hereinafter the “Amended Consent Decree”); and

WHEREAS, the Amended Consent Decree will be further amended as soon as practicable to add provisions related to deferred remedy areas known as Deed Notice Areas 6, 7, 9, and 10; to include long-term protection of the Chromium Remedy for AOC

1 Roadway Property; and to include provisions related to surface transit as a permissible development in the AOC 1 Open Space Property; and

WHEREAS, the Amended Consent Decree requires that Bayfront Redevelopment transfer title of the AOC1 Open Space Property to the City of Jersey City and that the City of Jersey City take the property subject to this Amended Conservation Restriction; and

WHEREAS, the AOC 1 Open Space Property is subject to a certain Option to Purchase in favor of the City of Jersey City which may be exercised upon the occurrence of certain conditions, which is being recorded simultaneously with this Amended Conservation Restriction, and which provides for purchase of the AOC 1 Open Space Property subject to this Amended Conservation Restriction; and

WHEREAS, the Conservation Restriction Area Property is subject to a certain Deed Notice that is required by the Amended Consent Decree and was recorded on December 14, 2017, in Book 9264, Page 678 of the Book of Deeds in the Office of the Register of Hudson County; and

WHEREAS, the Chromium Remediation for Study Area 6 North, including the Conservation Restriction Area Property, has been approved by the New Jersey Department of Environmental Protection in a Compliance Letter, dated September 13, 2018; and

WHEREAS, the AOC 1 Open Space Area Property has been remediated for chromium contamination by capping and containment in-place of contaminated soils and shallow groundwater; and

WHEREAS, the AOC 1 Roadway Area Property remedy for chromium contamination includes the existing capping in-place of contaminated soils by approximately twelve (12) feet of clean fill and will also include the future installation of a paved roadway surface; and

WHEREAS, development of the Conservation Restriction Area Property is prohibited except in the limited circumstances set forth in the Amended Consent Decree and this Amended Conservation Restriction; and

WHEREAS, subject to certain roadway and utility improvements affecting portions of the Conservation Restriction Area Property, and consistent with the terms of the Amended Consent Decree, the Chromium Remedy as defined in the Amended Consent Decree, and this Amended Conservation Restriction, the Conservation Restriction Area Property will be re-developed for open space/public park and roadway purposes. Now that the Chromium Remedy is complete, the Conservation Restriction Area will be established as a predominantly green open space with associated pedestrian walkways, outdoor recreation facilities for the use and enjoyment of the public, and roadways, while serving to protect the long-term integrity of the Chromium Remedy; and

WHEREAS, pursuant to the Bayfront I Redevelopment Plan, adopted by Jersey City on March 12, 2008, the Conservation Restriction Area Property has been zoned for open space and park use and certain roadways and utility improvements; and

WHEREAS, the Conservation Restriction Area Property is subject to certain provisions in the Amended Consent Decree; and

WHEREAS, the Amended Consent Decree requires that all future development and work in the AOC 1 Open Space Property is subject to the Open Space Design Standards (“OSDS”) which were developed by the Parties to the Amended Consent Decree, approved by Special Master Torricelli, and entered by the Court in the Consolidated Litigation at ECF No. 1176-37 in civil docket 95-2097; and

WHEREAS, paragraph 60(b) of the Amended Consent Decree provides that Bayfront Redevelopment LLC shall grant an open space conservation restriction over the AOC 1 Open Space Property; and

WHEREAS, on January 9, 2009 a Conservation Restriction for Study Area 6 North AOC 1 Open Space Property (“Study Area 6 North Conservation Restriction”) was recorded with the Hudson County Register of Deeds in Book 8644, Page 662 of the Book of Deeds; and

WHEREAS, Schedule A of the Study Area 6 North Conservation Restriction calls for the property subject to the Study Area 6 North Conservation Restriction to be re-surveyed after completion of the hydraulic barrier walls to establish a metes and bounds description of the property (“As-Built Description”); and

WHEREAS, following completion of the As-Built Description, Schedule A of the Study Area 6 North Conservation Restriction calls for the creation of an Amended Conservation Restriction substituting the As-Built Description for the metes and bounds description set forth in Exhibit A of the Study Area 6 North Conservation Restriction; and

WHEREAS, during implementation of the Study Area 6 North Chromium Remedy, the parties agreed that the AOC 1 Roadway Area Property, which is outside of the northern hydraulic barrier wall and was not included in the 2009 Conservation

Restriction, is additional property that will be incorporated into and protected by this Amended Conservation Restriction;

WHEREAS, the hydraulic barrier walls have been constructed, and the As-Built Description has been developed;

WHEREAS, the parties have developed this Amended Conservation Restriction, incorporating the As-Built Description and the AOC 1 Roadway Area Property, in order to restrict future uses of, and activities on, the Conservation Restriction Area Property, and to assure appropriate monitoring and enforcement of the conservation, open space, parks, roadway and recreation purposes of this Amended Conservation Restriction;

WHEREAS, the Grantee has reviewed the Amended Consent Decree, OSDS, and the Long Term Monitoring Plan that are referenced in this Amended Conservation Restriction and are applicable to the Property, and the Grantee is satisfied that the requirements of these documents do not release any restrictions on the Property and are consistent with the purpose of the January 2009 Study Area 6 North Conservation Restriction;

WHEREAS, the Grantee has evaluated the provisions of this Amended Conservation Restriction that potentially allow surface transit as a permissible development and the Grantee is satisfied that the surface transit provisions will not negatively affect the conservation value of this Amended Conservation Restriction, will not create additional value in the Property for the Grantor, and are consistent with the purpose of the January 2009 Study Area 6 North Conservation Restriction;

WHEREAS, the Grantee has reviewed all amendments set forth in this Amended Conservation Restriction and agrees that all amendments: a) are consistent with the

conservation purposes of the January 2009 Conservation Restriction, b) will not result in significant harm or damage to the natural resources or conservation value this Amended Conservation Restriction is intended to protect, c) will not compromise Grantee's ability to effectively monitor and enforce the Amended Conservation Restriction, and d) substantially conform to the intent of the parties in connection with this grant;

WHEREAS, the Grantee agrees that this Amended Conservation Restriction will not: a) limit the term of the January 2009 Conservation Restriction; b) impair the qualification of this Amended Conservation Restriction or the status of the Grantee under Sections 170(h) and 501(c)(3) of the federal Internal Revenue Code (the "Code"), the New Jersey Conservation Restriction and Historic Preservation Restriction Act or any substantially similar provisions of any successor enactments, and c) result in an impermissible private benefit or private inurement under applicable provisions of the Code.

NOW THEREFORE, WITNESSETH: For and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by Grantee to Grantor, the receipt and sufficiency of which is acknowledged by Grantor, and in consideration of the covenants hereinafter contained, the parties to this Amended Conservation Restriction, intending to be legally bound, do

HEREBY AGREE AS FOLLOWS:

1. **Incorporation of Recitals.** The above recitals are incorporated herein as though fully set forth as operative provisions of this Conservation Restriction.

2. **Purpose.** It is the purpose of this Amended Conservation Restriction to protect and preserve the Conservation Restriction Area Property; to permit Honeywell to implement, monitor, maintain, repair, and replace the Chromium Remedy; to prevent any use of the Conservation Restriction Area Property that will impair or interfere with the purposes of the Amended Consent Decree; and to preserve the Conservation Restriction Area Property as predominantly green open space and public roadways with associated pedestrian walkways and outdoor recreation facilities for the use and enjoyment of the public. However, nothing in this Amended Conservation Restriction shall grant a public right of access to enter upon, or use, the Conservation Restriction Area Property, or any portion thereof until completion of each phase of Initial Development, as defined by the Amended Consent Decree. Thereafter, Grantor and Grantee intend that this Amended Conservation Restriction will confine the use of the Conservation Restriction Area Property to such activities as are consistent with the purpose of the Amended Consent Decree. In the event of any conflict between the Amended Consent Decree and this Amended Conservation Restriction, the Amended Consent Decree shall control.

3. **Title.** Grantor covenants and represents that Grantor is the sole owner and is seized of the Conservation Restriction Area Property in fee simple and has good right to grant and convey this Amended Conservation Restriction and that Grantee(s) shall have the use of, and enjoyment of, the benefits derived from and existing out of this Amended Conservation Restriction.

3.1 Future Transfer of Title. Paragraph 60(a) of the Amended Consent Decree requires that upon the final construction of all roads and utility corridors within

the AOC 1 Open Space Property, Bayfront Development, LLC shall donate good and marketable title, subject to this Conservation Restriction, to all the land comprising the AOC 1 Open Space Property to the City of Jersey City and paragraph 60(a) of the Amended Consent Decree further limits all subsequent conveyance of title or lease of the AOC 1 Open Space Property by the City of Jersey City unless certain conditions are met. The Parties in the Consolidated Litigation have agreed that the AOC 1 Roadway Area Property may be transferred by Bayfront to the City of Jersey City prior to the final construction of roadways and utilities, but that the City of Jersey City will not further transfer the AOC 1 Roadway Property until or unless (i) the conditions of paragraph 60(a)(iv) of the Amended Consent Decree are met; or (ii) this Amended Conservation Restriction is terminated pursuant to section 11.

3.2 Successors and Assigns. The term “Grantor” shall include Grantor and Grantor’s heirs, executors, administrators, successors, and assigns. The term “Grantor” shall also mean the masculine, feminine, corporate, singular, or plural of the word as needed in the context of its use.

4. **Definitions.**

4.1 Capitalized terms in this Amended Conservation Restriction which are not defined herein shall have the meaning ascribed to them in the Amended Consent Decree.

4.2 Amended Consent Decree shall mean the Amended Consent Decree Regarding Remediation and Redevelopment of Study Area 6 North, August 15, 2012, ECF No. 1141 in the Consolidated Litigation, and as same may from time to time be amended.

4.3 AOC 1 Open Space Property shall mean the property consisting of approximately 10 acres and now known and designated as a portion of Block 21901.01, Lot 3 on the Tax Map of the City of Jersey City, as described more fully on Exhibit A-1 attached hereto. The AOC 1 Open Space Property is the same property as the AOC 1 Open Space Area in the Amended Consent Decree.

4.4 AOC 1 Roadway Area Property shall mean the property consisting of approximately 0.18 acres now known and designated as a portion of Block 21901.01, Lot 1 on the Tax Map of the City of Jersey City, as described more fully on Exhibit A-2 attached hereto.

4.5 Bayfront Redevelopment LLC shall mean the limited liability company created by Honeywell for the purposes described in paragraph 4.1 of the Settlement Consent Order by and between the Jersey City Entities and Honeywell International Inc., entered by the Court on April 21, 2008, ECF No. 193, in the Consolidated Litigation.

4.6 Chromium Remedy shall mean the remedy set forth in Article III of the Amended Consent Decree.

4.7 Consolidated Litigation shall mean *Jersey City Municipal Utilities Authority v. Honeywell International Inc.*, D.N.J., Civ. No. 05-5955 (JLL), *Jersey City Incinerator Authority v. Honeywell International Inc.*, D.N.J., Civ. No. 05-5993 (JLL), and *Hackensack Riverkeeper, Inc. v. Honeywell International Inc.*, D.N.J., Civ. No. 06-022 (JLL), consolidated under Civ. No. 95-2097 (JLL).

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

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

4.10 Holders of this Amended Conservation Restriction shall mean Grantee and its successors and assigns and, in the event a Secondary Grantee is designated pursuant to paragraph 8.3 herein, its successors and assigns.

4.11 Honeywell shall mean Honeywell International Inc.

4.12 Grantee shall mean Hackensack Watershed Land Trust, and/or its designated successors and assigns. Grantee shall also mean the Secondary Grantee, in the event that the Secondary Grantee is designated pursuant to paragraph 8.3, and must fill the role of Grantee pursuant to paragraph 8.4.

4.13 Grantor shall mean Bayfront Redevelopment LLC as the current holder of the fee simple title to the Conservation Restriction Area Property and any subsequent holder of the fee simple title to the Conservation Restriction Area Property, including Jersey City, which will be the future owner of the Conservation Restriction Area Property pursuant to the requirements of the Amended Consent Decree.

4.14 Jersey City shall mean the City of Jersey City, New Jersey.

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

4.16 Long Term Monitoring Plan (“LTMP”) shall mean the plan developed by the Parties and approved by the Special Master pursuant to the Amended Consent Decree. The requirements and procedures of the LTMP apply to the Conservation Restriction Area Property.

4.17 Open Space Deed Notice shall mean the deed notice recorded on the Conservation Restriction Area Property on December 14, 2017, in Book 9264, Page 678 of the Book of Deeds in the Office of the Register of Hudson County. The Open Space Deed Notice includes the entirety of the Conservation Restriction Area Property, is required by the Amended Consent Decree for the Open Space Area Property, and was agreed to by the Parties and Special Master in the Consolidated Litigation for the AOC 1 Roadway Area Property.

4.18 Open Space Design Standards (“OSDS”) shall mean the standards and requirements developed by the Parties, approved by the Special Master and entered by the Court at ECF No. 1176-37 in civil docket 95-2097, and any amendments made thereto and approved by the Court pursuant to the Amended Consent Decree. The OSDS apply to all development and maintenance activities in the AOC 1 Open Space Area Property only.

4.19 Party or Parties shall mean any one or all of the signatories to the Amended Consent Decree.

4.20 Qualified Holder shall mean (a) an organization exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code that satisfies the requirements to be a qualified organization within the meaning of Section 170(h)(3) of the Internal Revenue Code, or under any substantially similar provision of

any successor tax code, and that is authorized to hold such a restriction with respect to property located within the State of New Jersey, (b) any trust or other entity created by the legislature of the State of New Jersey or by Hudson County for substantially similar purposes, or (c) the State of New Jersey, Hudson County, or any other public body in New Jersey that is empowered to hold and administer such a restriction.

4.21 Redevelopment Plan shall have the same meaning as in Paragraph 30 of the Amended Consent Decree.

4.22 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.

4.23 Secondary Grantee shall mean a qualified organization designated by Grantee pursuant to paragraph 8.3 herein.

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

5. **Conservation Restriction.**

5.1 Grant. Grantor hereby grants and conveys to Grantee, a non-public conservation restriction on, over and across the Conservation Restriction Area Property as is depicted on the recorded Plat, which area is described in Exhibit A-1 and Exhibit A-2 attached hereto and made a part hereof.

5.2 Grantor's Retained Responsibilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the

ownership of the Conservation Restriction Area Property including the payment of taxes. Grantor shall keep Grantee's interest in the Conservation Restriction Area Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor. Honeywell shall be solely responsible for the implementation, monitoring, maintenance, repair, and replacement of the Chromium Remedy in the Conservation Restriction Area Property as provided for under the Amended Consent Decree. Neither Grantee nor Secondary Grantee, if such a grantee is designated pursuant to paragraph 8.3 herein, shall have any responsibility whatsoever with respect to the implementation, monitoring, maintenance, repair, and/or replacement of the Chromium Remedy in the Conservation Restriction Area Property.

5.3 Recordation, Notice in Future Instruments. This Amended Conservation Restriction shall be recorded in the office of the Hudson County Register and a conspicuous reference to this Amended Conservation Restriction shall be included in all instruments concerning title to the Conservation Restriction Area Property. Any Party to the Amended Consent Decree and Grantee shall have the right, periodically, but no more than once every 25 years, to record memoranda or other instruments that reference, incorporate, or attach this Amended Conservation Restriction in the real estate records related to the Conservation Restriction Area Property. This right of recordation shall be exercised in conjunction with the right of recordation provided in paragraph 60(d) of the Amended Consent Decree.

5.4 Notice of Future Transfers. Grantor shall give written notice to Grantee(s) of any sale, lease, or other transfer of any interest in the Conservation Restriction Area Property not later than ten days following the date of such sale, lease,

or transfer, which notice shall include the name and address of each party to whom an interest was sold, leased, or transferred. However, sales, leases, or transfers of the Conservation Restriction Area Property other than in accordance with the terms of paragraph 60 of the Amended Consent Decree are prohibited, except that paragraph 60(a)(iii) of the Amended Consent Decree shall not apply to the AOC 1 Roadway Area Property because the parties have agreed that the AOC 1 Roadway Area Property may be transferred by Bayfront to the City of Jersey City prior to the final construction of roadways and utilities.

6. **Permitted Activities.**

6.1 Remediation and Redevelopment as Open Space/Public Park and Roadway. Grantor and/or Honeywell shall be permitted to undertake all activities reasonably required in connection with: (i) the implementation, maintenance, monitoring, repair, and replacement of the Chromium Remedy consistent with the Amended Consent Decree and Long Term Monitoring Plan, (ii) the construction of roads, associated utilities, and associated pedestrian walkways and outdoor recreation facilities at the Conservation Restriction Area Property as permitted by the Amended Consent Decree and -- in the AOC 1 Open Space Area -- consistent with the Open Space Design Standards, (iii) such further development of the AOC 1 Open Space Area Property into an open space/public park and roadway as is consistent with paragraphs 60(j) and 60(k) of the Amended Consent Decree and paragraphs 6.2 and 6.3 of this Amended Conservation Restriction, and (iv) such further development of the AOC 1 Roadway Property into paved road, paved sidewalk or other hardscape surface as is consistent with paragraphs 6.2 and 6.4 of this Amended Conservation Restriction.

6.2 Prohibited Development in the Conservation Restriction Area

Property. Only development satisfying the requirements of this paragraph, paragraph 6.3 herein, and the applicable requirements of paragraphs 60(j) and 60(k) of the Amended Consent Decree shall be permitted in the Conservation Restriction Area Property. All other development in the Conservation Restriction Area Property shall be prohibited. Notwithstanding any provision in this Conservation Restriction that is or may be construed to be to the contrary, the AOC 1 Roadway Area Property shall not be subject to the Open Space Design Standards.

(a) Honeywell has established Open Space Design Standards that shall govern all development in the AOC 1 Open Space Property regardless of when the construction or installation of permissible development occurs. The Open Space Design Standards satisfy the requirements set forth in paragraph 60(j)(v) of the Amended Consent Decree and paragraph 6.2(e) herein, and set forth the requirements for development that are necessary for the protection of the integrity of the Chromium Remedy for the AOC 1 Open Space Property, in accordance with the Amended Consent Decree.

(b) The Initial Development in the AOC 1 Open Space Property shall be the development undertaken now that the Chromium Remedy in the AOC 1 Open Space Property is completed, pursuant to the Amended Consent Decree. The Initial Development may occur in one or more phases. Honeywell and Bayfront Redevelopment LLC shall prepare a Development Plan before the initiation of each phase of the Initial Development. The Initial Development Period for each phase shall consist of the period covered by the Initial Development, plus a period of 10 years

following the submission of the as-built documentation for the phase pursuant to paragraph 60(j)(viii) of the Amended Consent Decree and paragraph 6.2(h) herein.

(c) The Special Master, appointed in the Consolidated Litigation pursuant to the Amended Consent Decree, shall have jurisdiction to review the Open Space Design Standards (as to the AOC 1 Open Space Property) and the Development Plan(s) solely for the purpose of ensuring that any development undertaken during the Initial Development Period is consistent with the Amended Consent Decree and with protection of the integrity of the Chromium Remedy. The Special Master's jurisdiction is governed by the Amended Consent Decree with regard to the Conservation Restriction Area Property and shall at a minimum run through the Initial Development Period for each phase.

(d) Honeywell shall ensure that the requirements of this paragraph and paragraph 6.3 herein, and of paragraphs 60(j) and 60(k) of the Amended Consent Decree are satisfied with regard to any development undertaken within the Initial Development Period. Honeywell shall also ensure that any development undertaken within the Initial Development Period is designed and installed in a manner consistent with the requirements of the Amended Consent Decree and with protection of the integrity of the Chromium Remedy installed pursuant to the Amended Consent Decree.

(e) Any development undertaken in the Conservation Restriction Area Property, regardless of when undertaken, shall satisfy each of the following requirements:

(i) It shall not jeopardize the integrity of the Chromium

Remedy installed pursuant to the Amended Consent Decree;

(ii) It shall be limited to the types of development permitted under paragraph 60(k) of the Amended Consent Decree and paragraph 6.3 herein;

(iii) It shall be consistent with this Amended Conservation Restriction, the Amended Consent Decree, and the Redevelopment Plan; however, in the event of any conflict or inconsistency between this Amended Conservation Restriction, the Amended Consent Decree, and the Redevelopment Plan, the Amended Consent Decree shall govern;

(iv) In total, at least 75% of the AOC 1 Open Space Area Property, exclusive of the acreage used for roads and the pedestrian thoroughfare, shall be comprised of landscaping, as defined by paragraph 60(k)(xi) of the Amended Consent Decree and paragraph 6.3(l) herein;

(v) If the lowest elevation for the bedding for any utility line in the AOC 1 Open Space Area, including irrigation or sprinkler lines, is two feet from the top of the warning layer of the cap, the utility line shall be placed in a utility corridor;

(vi) In any event, in the AOC 1 Open Space Area there shall be two feet of soil or more between the warning layer of the cap and the lowest elevation of the bedding for any irrigation or sprinkler lines; and

(vii) No permanent concession facilities shall be permitted.

(f) Honeywell shall submit the Development Plan(s) for any development undertaken during the Initial Development Period pursuant to the

requirements of paragraph 72(c) of the Amended Consent Decree, except that such documents need not be submitted to NJDEP. Following Honeywell's submission of such documents, the procedures of paragraphs 72(d) and 72(e) of the Amended Consent Decree shall apply, except that the Special Master need not provide notice to NJDEP.

(g) During the Initial Development Period, any development in the AOC 1 Open Space Area Property shall require the preparation and submission of a Development Plan pursuant to paragraph 60(j)(vi) of the Amended Consent Decree and paragraph 6.2(f) herein, and such Development Plan shall be subject to review by the Special Master pursuant to paragraph 60(j)(iii) of the Amended Consent Decree and paragraph 6.2(c) herein.

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

(i) During the Initial Development Period, replacement in-kind of development features or facilities included in the Initial Development or minor modifications to the development features or facilities included in the Initial Development shall not require the preparation of a Development Plan or be subject to

review by the Special Master, provided that such replacement or modification satisfies the requirements of the Open Space Design Standards (for the AOC 1 Open Space Property), the applicable Development Plan, and paragraphs 60(j)(v) and 60(j)(x)(3)(notice requirement) of the Amended Consent Decree and paragraphs 6.2(e) and 6.2(j)(iii) herein.

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

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

(ii) The development is a replacement in-kind and such replacement is made in conformance with the specifications of the Open Space Design Standards (for the AOC 1 Open Space Property), the applicable Development Plan, and paragraph 60(j)(v) of the Amended Consent Decree and paragraph 6.2(e) herein; or

(iii) The development meets the requirements of paragraphs 60(j)(v) and 60(j)(xi) of the Amended Consent Decree and paragraphs 6.2(e) and 6.2(k) herein, and Jersey City provides notice of its intention to alter or add to the development undertaken in the Initial Development Period. Such notice shall be

provided in writing to Honeywell, Riverkeeper, and the holders of this Amended Conservation Restriction at least 30 days prior to Jersey City's alteration or addition to development undertaken in the Initial Development Period. Honeywell, Riverkeeper, or any holder of this Amended Conservation Restriction shall have the right to move the Court to prohibit such alteration or addition.

(k) If any of the development features or facilities that Jersey City seeks to add, pursuant to paragraph 60(j)(x) of the Amended Consent Decree and paragraph 6.2(j) herein, require utilities that would require utility corridors other than the utility corridors installed during the Initial Development Period, Jersey City shall obtain approval from the Court before installing such new utility corridors.

(l) If any of the development features or facilities that Jersey City seeks to add, pursuant to paragraph 60(j) of the Amended Consent Decree and paragraph 6.2(j) herein, is surface transit, such surface transit may not be developed in the AOC 1 Open Space Property unless the Open Space Design Standards have been amended to establish development standards specific to surface transit in accordance with the requirements of paragraph 60(j) of the Amended Consent Decree, and in order to maintain the conservation value of this Amended Conservation Restriction such surface transit shall not extend beyond the limits of the proposed roadways allowed by paragraph 60 of the Amended Consent Decree and the OSDS.

(m) Jersey City shall provide Honeywell, Riverkeeper, and the holders of this Amended Conservation Restriction with an annual report that describes any alterations or additions, including those activities under paragraph 60(j)(x)(2) of the Amended Consent Decree and 6.2(j)(ii) herein, to the development undertaken during

the Initial Development Period.

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

6.3 Permissible Development in the AOC 1 Open Space Area Property.

The Initial Development or any subsequent addition or alteration thereto in the AOC 1 Open Space Area Property may include any or all of the following types of development features or facilities, provided that such development features or facilities satisfy the conditions set forth in paragraph 60(j)(v) of the Amended Consent Decree and paragraph 6.2(e) herein:

(a) Roads and the pedestrian thoroughfare -- both crossing and running along the Conservation Restriction Area, but no more extensive than provided for in the diagram on page 39 of the Redevelopment Plan;

(b) Surface transit that complies with amended Open Space Design Standards – surface transit may only be permitted after amendment of the Amended Consent Decree to allow such use, and amendment of the Open Space Design Standards dated June 2013 and entered by the Court at ECF 1176-37 in civil docket 95-2097 to include standards to protect the Chromium Remedy in connection with the development of surface transit;

(c) Curbing and fences;

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

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

- (f) Irrigation or sprinkler components or systems;
- (g) Water features;
- (h) Above-ground storm water cisterns;
- (i) Signs, including the signs or display required by paragraph 60(l) of the Amended Consent Decree;
- (j) Benches, trash receptacles, and bicycle racks;
- (k) Recreational facilities, such as playground equipment, bocce ball courts, tennis courts, basketball courts, and athletic fields; and
- (l) Landscaping, including natural grasses, small trees, shrubbery, flowers, and potted plants, provided that such landscaping and the anticipated root structure of each landscaping component do not and will not jeopardize the integrity of the Chromium Remedy. Any portion of an athletic field that is covered in natural grass shall be considered landscaping for purposes of the percentage set forth in paragraph 60(j)(v)(4) of the Amended Consent Decree and paragraph 6.2(e)(iv) herein.

6.4 Permissible Development in the AOC 1 Roadway Area Property. Permissible development in the AOC 1 Roadway Area Property is restricted to paved road, paved sidewalk or other paved hardscape. No other development shall be allowed, except that utilities may be installed beneath any road, sidewalk or other hardscape as long as the lowest elevation of the utility or utility bedding is a minimum of three (3) feet above contaminated soils.

6.5 Easement for Monitoring, Maintenance, Repair, and Replacement: As between Grantor, Honeywell and Grantee, Honeywell shall remain solely responsible

for monitoring, maintenance, repair, and replacement of the Chromium Remedy in accordance with the Amended Consent Decree and Long Term Monitoring Plan and shall reserve, or obtain a grant of, an easement for the purpose of such monitoring, maintenance, repair, and replacement. Neither Grantee nor Secondary Grantee, if such grantee is designated pursuant to paragraph 8.3 herein, shall have any responsibility whatsoever with respect to the implementation, monitoring, maintenance, repair, and/or replacement of the Chromium Remedy in the Conservation Restriction Area Property. Honeywell shall be entitled and required to promptly record such reservation and/or easement and Grantee, Grantor, Honeywell and Jersey City agree that the terms, conditions, and restrictions and purposes of such reservation and/or easement, or reference thereto, will be inserted in any subsequent deed or other legal instrument by which the City of Jersey City, Grantor, or Grantee divests either a real property or other recordable interest in the Conservation Restriction Area Property.

7. **Prohibited Activities.** Development at the Conservation Restriction Area Property is prohibited, except insofar as it meets the requirements of the Amended Consent Decree and of paragraph 6 herein.

8. **Grantee's Rights.** To accomplish the purpose of this Conservation Restriction, the following rights are conveyed to Grantee:

8.1 Right of Entry. The right to enter the Conservation Restriction Area Property prior to the completion of the Initial Development pursuant to the Amended Consent Decree at reasonable times and with prior notice for the purpose of: (a) inspecting the Conservation Restriction Area Property to determine if Grantor is complying with the covenants and purposes of this Amended Conservation Restriction;

(b) enforcing the terms of this Amended Conservation Restriction; and (c) taking any and all actions with respect to the Conservation Restriction Area Property as may be legal, necessary and appropriate, to remedy or abate any material violations hereof. After the Initial Development has been implemented, Grantee shall have the right to enter the Conservation Restriction Area Property at reasonable times for the purposes above without the need for prior notice.

8.2 Enforcement. This Amended Conservation Restriction may be enforced by the Grantee, Grantor, Honeywell, Jersey City, or any other Party to the Amended Consent Decree to prevent any improvement, activity on, or use of, the Conservation Restriction Area Property that is inconsistent with the purpose of this Amended Conservation Restriction and to require the restoration of such areas or features of the Conservation Restriction Area Property, including all elements of the Chromium Remedy, that may be damaged by any inconsistent improvement or use. The Grantee shall have the primary right to enforcement, and all others with enforcement rights shall have a right to secondary enforcement should the Grantee not enforce. Upon learning of any improvement activity or use of the site that is inconsistent with this Amended Conservation Restriction, the Grantee shall have thirty (30) days to initiate enforcement action. Any party with a secondary right to enforce this Amended Conservation Restriction shall notify the Grantee in writing of any intent to enforce this Amended Conservation Restriction and allow the Grantee thirty (30) days to begin enforcement action. If, after thirty (30) days, the Grantee has not begun an enforcement action, the Party with a secondary right to enforce may commence the enforcement action that was noticed to the Grantee. For purposes of the enforcement of

this Amended Conservation Restriction, the Party pursuing enforcement agrees to pursue such enforcement solely before the Court in the Consolidated Litigation and to submit to the jurisdiction of that Court.

8.3 Designation of Secondary Grantee. Grantee has the right to designate a Qualified Holder as a Secondary Grantee with the written consent of Grantor, which consent will not be unreasonably withheld. Within 60 days of such designation, this Amended Conservation Restriction shall be modified by the Parties and duly recorded.

8.4 Allocation of Responsibilities between Grantee and Secondary Grantee. In the event a Secondary Grantee is designated pursuant to paragraph 8.3 herein, then the following shall apply: for so long as Grantee, or any successor in interest to Grantee, remains a holder of this Amended Conservation Restriction, and unless and until Grantee and Secondary Grantee or their respective successors or assigns shall otherwise agree in a writing executed by them in recordable form and delivered to Grantor, Grantee shall be delegated the primary responsibility for monitoring and enforcing compliance with the terms of this Amended Conservation Restriction. In connection therewith, Grantee, or its successors and assigns, shall have sole power and authority, as between Grantee and Secondary Grantee of this Amended Conservation Restriction, to grant or withhold any and all other consents or approvals that may be required to be obtained by Grantor under the terms of this Amended Conservation Restriction. Notwithstanding the foregoing, Secondary Grantee shall be entitled to receive a copy of all notices required to be given to Grantee, and shall be provided with a copy of all requests for approval submitted by Grantor and all written

approvals, or denials thereof, given pursuant to this Amended Conservation Restriction. Secondary Grantee's right to exercise rights and remedies conferred by this Amended Conservation Restriction upon Grantee, other than as provided in this paragraph, shall become effective upon Grantee's dissolution, in the event that Grantee has failed to name a successor.

9. **Grantee's Remedies.**

9.1 Proceedings upon Violation. In the event that Grantee becomes aware of a violation of the terms of this Amended Conservation Restriction, Grantee shall promptly give notice to Grantor, Honeywell, the Jersey City Entities, and Riverkeeper of such violation via certified mail, return receipt requested, and request corrective action sufficient to abate such violation and restore the Conservation Restriction Area Property to the condition that would have existed had there been no violation. Failure by Grantor or Honeywell to cause discontinuance, abatement, or initiate such other corrective action as may be required by the Amended Consent Decree within 90 days after receipt of such notice, or such longer period as may be necessary if the violation cannot reasonably be cured within 90 days, shall entitle Grantee to move the Court to enforce the terms of this Amended Conservation Restriction; to require the restoration of the Conservation Restriction Area Property to its previous condition; and/or to enjoin compliance. If Grantee believes that circumstances are such that immediate action is required to prevent or mitigate significant additional harm or damage to the Conservation Restriction Area Property, Grantee may pursue its remedies without waiting for any period provided for cure to expire and without prior notice.

9.2 Proceedings upon Alteration or Addition to Development. Grantee shall have the right to participate in proceedings under paragraph 6.2(j)(iii) herein and paragraph 60(j)(x)(3) of the Amended Consent Decree to prohibit any alterations or additions to the development in the Conservation Restriction Area Property.

9.3 Forbearance. Any forbearance by Grantee to exercise its rights under this Amended Conservation Restriction in the event of any breach of any term of this Amended Conservation Restriction by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Amended Conservation Restriction or of any of Grantee's rights under this Amended Conservation Restriction. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. Grantor shall not be entitled to assert any defense based upon laches, estoppel, or prescription with respect to any violation of this Amended Conservation Restriction as to which Grantee was not specifically notified by Grantor in writing.

10. **Parties Subject to Amended Conservation Restriction.** The covenants agreed to and the terms, conditions, and restrictions imposed by this grant shall be binding upon Grantor, its lessees, agents, personal representatives, successors, assigns, and all other successors in interest to Grantor, including Jersey City. The covenants agreed to and the terms, conditions, and restrictions imposed by this grant shall be binding upon Grantee(s), their lessees, agents, personal representatives, successors, assigns, and all other successors in interest to Grantee(s).

11. **Termination.**

11.1 This Amended Conservation Restriction is intended to be of unlimited duration, subject only to termination as provided in paragraph 11.2 herein, and therefore may not be terminated solely by mutual agreement of Grantor and Grantee.

11.2 This Amended Conservation Restriction may be terminated in whole or separately as to the AOC 1 Open Space Property or the AOC 1 Roadway Area Property upon application to the Court of any Party to the Amended Consent Decree when no hexavalent or total chromium contamination remains in either the AOC 1 Open Space Property or the AOC 1 Roadway Area Property, whether in soils or in groundwater, in excess of the levels specified for Unrestricted Use in the NJDEP Chromium Directive or any more restrictive standards for Unrestricted Use in place at the time, whichever is more restrictive. Upon Court approval of termination of this Amended Conservation Restriction in the AOC 1 Open Space Property or in the AOC 1 Roadway Area Property, Grantor shall conduct a public hearing in accordance with N.J.S.A 13:8B-5 and Grantee(s) shall release the Amended Conservation Restriction as to the AOC 1 Open Space Property or the AOC 1 Roadway Area Property and shall execute, at the request of Grantor, a release of this Amended Conservation Restriction as to the AOC 1 Open Space Property or the AOC 1 Roadway Area Property and any other instrument to that effect deemed necessary or desirable.

12. **Assignment.**

12.1 Right to Assign. Grantee, and any future assignee of this Amended Conservation Restriction, may with the prior written consent of Grantor, which consent will not be unreasonably withheld, transfer and assign this Amended Conservation Restriction and the rights and obligations created hereby, in whole or in part, to one or

more Qualified Holders as defined in paragraph 4.15 herein. The assignee shall simultaneously with such assignment assume the obligation to carry out the conservation purposes for which this Amended Conservation Restriction is granted.

12.2 Executory Limitation. In the event that Secondary Grantee is designated pursuant to paragraph 8.3 herein, and such grantee dissolves and fails to assign all of its rights and interest in the Property and delegate all of its responsibilities under this Amended Conservation Restriction to one or more Qualified Holders, such rights and responsibilities shall be vested in another Qualified Holder pursuant to a *cy pres* proceeding in the Court. Grantor and Honeywell shall have the right to appear in any such proceeding as interested parties.

12.3 Release of Grantee's Further Obligations. The holder or holders of this Amended Conservation Restriction immediately before any assignment or judicial re-vesting pursuant to paragraph 12.2 herein shall thereafter have no further obligation to monitor compliance with, or enforce the provisions of, this Amended Conservation Restriction, provided that the assignee meets the requirements set forth above and has assumed the obligation to monitor and enforce this Amended Conservation Restriction.

13. **Miscellaneous Provisions.**

13.1 Severability. If any provision of this Amended Conservation Restriction or the application thereof to any person or circumstances is found to be invalid, the remaining provisions of this Amended Conservation Restriction, and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected.

13.3 No Third-Party Beneficiaries. The parties hereto intend that there be no third-party beneficiaries to this Amended Conservation Restriction except the Parties to the Amended Consent Decree.

13.4 Captions. The captions herein have been inserted solely for convenience of reference and are not a part of this Amended Conservation Restriction and shall have no effect upon construction or interpretation.

13.5 Notices. Any notices required in this Amended Conservation Restriction shall be sent by registered or certified mail to the persons at the following addresses. Any party listed below may change the recipient or location for receipt of such notice by sending written notice of such change to the other Parties listed below:

(a) If to Grantor:

Tom Byrne, Esq.
Honeywell International Inc.
115 Tabor Road
Morris Plains, NJ 07950
(973) 455-2775

(b) With copy to:

John Morris
Honeywell International Inc.
115 Tabor Road
Morris Plains, NJ 07950
(973) 455-4003

(c) If to Grantee Hackensack River Watershed Land Trust:

William Sheehan
231 Main Street
Hackensack, NJ 07601

With copy to:
Alicia Alcorn
Terris, Pravlik & Millian, LLP
1816 12th Street, NW

Washington, DC 20009
(202) 682-2100

(d) If to Jersey City:

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

13.6 Amendment. This Amended Conservation Restriction may be amended only with the written consent of Grantee and Grantor and of the Parties to the Amended Consent Decree. Any such amendment shall be consistent with the purpose of the Amended Consent Decree and this Amended Conservation Restriction and shall comply with any applicable requirements of N.J.S.A. 13:8B-1 et seq.

13.7 No Extinguishment through Merger. If Grantee comes to own all or any portion of the fee interest in the Conservation Restriction Area Property, (a) Grantee, as successor in title to Grantor, shall observe and be bound by the obligations of Grantor and the restrictions imposed upon the Conservation Restriction Area Property by this Amended Conservation Restriction, (b) in view of the public interest in its enforcement, this Amended Conservation Restriction shall survive such simultaneous ownership of fee and Conservation Restriction interests in the Conservation Restriction Area Property, and shall not be extinguished notwithstanding any otherwise applicable legal doctrine under which such property interests would or might be merged, and (c) Grantee shall, as promptly as practicable, either assign its interests in this Amended Conservation Restriction to another Qualified Holder in conformity with the requirements of this paragraph or divest itself of its fee interest in the

Conservation Restriction Area Property. Any instrument of assignment of this Amended Conservation Restriction or the rights conveyed herein shall refer to the provisions of this paragraph, and shall contain language necessary to continue it in force.

13.8. Governing Documents. Grantee shall maintain a copy of the Amended Conservation Restriction, Amended Consent Decree, OSDS, LTMP, Deed Notice, As-builts of the Chromium Remedy, and As-builts of all permissible development in the Initial Development Period as defined in the Amended Consent Decree.

IN WITNESS WHEREOF, the parties hereunto set their hands and seals the day and year first above written.

Bayfront Redevelopment LLC,
a Delaware limited liability company

By: Honeywell International Inc., a Delaware
corporation, its Sole Member

By: _____
Daniel Kirschner,
Vice President, Global Real Estate

Honeywell International Inc.,
a Delaware corporation

By: _____
Daniel Kirschner
Vice President, Global Real Estate

Hackensack Watershed Land Trust

By: _____
William Sheehan
Riverkeeper

STATE OF ILLINOIS)
) **ss.**
COUNTY OF LAKE)

I CERTIFY that on January ____, 2019,

Before me, the subscriber, an officer authorized to take acknowledgments in the State of Illinois, personally appeared Daniel Kirschner, being by me duly sworn on his oath, deposes and makes proof to my satisfaction that:

(a) This person is the Vice President, Global Real Estate of Honeywell International Inc., as Honeywell, and as the sole member of Bayfront Redevelopment LLC, as Bayfront, the entities named in the within Instrument;

(b) The execution as well as the making of this Instrument has been duly authorized by Honeywell and Bayfront and said Instrument was signed and delivered as and for the voluntary act and deed of such entities.

Notary Public

STATE OF NEW JERSEY)

COUNTY OF)

SS:

I **CERTIFY** that on January _____, 2019, William Sheehan, personally came before me and this person acknowledged under oath, to my satisfaction, that

- (a) this person is the Riverkeeper of the Hackensack Watershed Land Trust, the trust named in the attached document;
- (b) this document was signed and made by the trust as its voluntary act and deed and was duly authorized by the trust; and
- (c) this person delivered the attached document as the voluntary act and deed of the trust.

Sworn to and Subscribed before me
this _____ day of _____, 2019

A Notary Public

* * * *

RECORD AND RETURN TO:

Gibbons P.C.
One Gateway Center
Newark, NJ 07102
Attn: Russell Bershada, Esq.

Exhibit A-1 and A-2
Description of the Conservation Restriction Area Property

The Conservation Restriction Area Property consists of two parcels: The Open Space Area Property and the AOC 1 Roadway Area Property. The Open Space Area Property is the area bounded by underground Hydraulic Barrier Walls constructed as part of the Chromium Remedy for Study Area 6 North, as described in Exhibit A-1. The AOC 1 Roadway Area Property is an area outside of the northern hydraulic barrier wall identified as a portion of Treatment Area 10 that lies south of the northern curblineline of the future Stegman Boulevard, as described in Exhibit A-2. Metes and bound descriptions of the Open Space Area Property and the AOC 1 Roadway Area Property are provided below.