# EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

### WITNESSETH:

WHEREAS, Grantor is the owner of a parcel of land located in the County of Suffolk, State of New York, identified on the Suffolk County Tax Map as Map 100 Section 36 Block 1 Lot 7.1 (the "Property") which is sometimes also known as 82 Milbar Boulevard, East Farmingdale, New York, being more particularly described in Exhibit "A" annexed hereto (legal description of Property); and

WHEREAS, pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, USEPA placed the Circuitron Corporation Superfund Site ("Site") on the National Priorities List, as set forth in Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300; and

WHEREAS, the Property is included within the Site; and

WHEREAS, USEPA, pursuant to CERCLA, conducted remedial investigations and feasibility studies for the Site and, following such studies, selected response activities to address environmental contamination that had been released at and from the Site, and documented such selection in Records of Decision, including a first Record of Decision in March of 1991 and a second Record of Decision in September of 1994 (the "Second ROD"); and

WHEREAS, the Second ROD documented USEPA's selection of a response action to address volatile organic compounds ("VOCs") and metal contamination detected in the shallow aquifer below and south of the Property, by extraction of contaminated groundwater, treatment via precipitation and air stripping, and the reinjection of the treated groundwater into the aquifer; and

WHEREAS, in order to implement the "response action" selected in the Second ROD, USEPA constructed and is now operating a groundwater treatment system, portions of which are located on the Property; and

WHEREAS, the specific infrastructure of the groundwater treatment system (the "Groundwater Treatment System") located on the Property is depicted on Exhibit "B" annexed hereto and includes the following:

- a) a rectangular steel building 40' by 60' in size located in the southeast quadrant of the Property, containing equipment and machinery operating to pump and treat contaminated groundwater associated with the Site (the "treatment plant");
- b) a trench (the "reinjection trench") located in the northwest quadrant of the Property for the purpose of receiving treated groundwater and reinjecting it into the ground, and an associated underground pipeline running from the reinjection trench to the treatment plant;
- c) three underground pipelines carrying contaminated groundwater from extraction wells located south of the Property to the south side of the treatment plant;
- d) above- and below-ground utilities servicing the treatment plant, reinjection trench, extraction wells, and associated piping;
- e) the access driveway to the treatment plant; and
- f) groundwater monitoring wells on the Property.

WHEREAS, USEPA anticipates that it and/or the New York State Department of Environmental Conservation will operate the Groundwater Treatment System until the performance standards for groundwater cleanup specified in the Second ROD have been achieved; and

WHEREAS, Grantor has acquired title to the Property and Grantor and Grantee have entered into an Agreement and Covenant Not to Sue (Index Number CERCLA-02-2005-2002) with respect to the Property (the "Agreement"), which agreement is on file with USEPA at its address first above given; and

WHEREAS, the parties hereto have agreed that Grantor shall grant an Easement and Declaration of Restrictive Covenants in order to:

- a) provide a right of access over the Property to Grantee and its designees, for purposes of operating, monitoring and maintaining the Groundwater Treatment System in connection with implementing the Second ROD remedy; and
- b) impose on the Property use restrictions, as specified herein, that will run with the land for the purpose of protecting human health and the environment by permitting the Groundwater Treatment System to operate undisturbed,

until the performance standards for groundwater cleanup specified in the Second ROD have been achieved; and

WHEREAS, the parties hereto have agreed that this Easement and Declaration of Restrictive Covenants is necessary:

- a) as a condition of the Agreement through which USEPA seeks to recover certain costs it incurred in responding to the release or threatened release of hazardous substances, pollutants or contaminants at the Site; and
- b) to provide for the return of the Property to productive use;

### NOW, THEREFORE:

- 1. Grant: Grantor, on behalf of itself, its successors and assigns, in consideration of the Agreement and other good and valuable consideration, does hereby give, grant, covenant and declare in favor of the Grantee, that the Property shall be subject to the restrictions on use and rights of access set forth below, and does give, grant and convey to the Grantee the right to operate, monitor and maintain the Groundwater Treatment System in connection with implementing the response activities described in the Second ROD, and the right to enforce said restrictions, and such other rights, of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.
- 2. <u>Purpose</u>: It is the purpose of this instrument to convey to the Grantee real property rights, which will run with the land, to facilitate the remediation of environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.
- 3. <u>Restrictions on use</u>: The following restrictions on use apply to the use of the Property, run with the land and are binding on the Grantor:
  - a. The integrity of the Groundwater Treatment System, and each element thereof shall not be disturbed;
  - b. Grantee shall have the sole and exclusive right to the use of all elements of the Groundwater Treatment System, except that the Grantor shall be permitted to use the "access driveway to the treatment plant" but only in a manner that does not interfere with Grantee's use of such driveway; and
  - c. In order to ensure the integrity of the Groundwater Treatment System, all digging, drilling, covering, or any other manner of disturbance to the soil above any element of the

Groundwater Treatment System is prohibited without the express prior written consent of Grantee, as set forth in Paragraph 26 of the Agreement.

- 4. Right of access: A right of access to the Property, at all reasonable times, shall run with the land and be binding on Grantor in favor of Grantee and its designees, for the purposes of:
  - a. Implementing the response actions in the Second ROD, including but not limited to operating, monitoring, and maintaining the Groundwater Treatment System:
  - b. Inspecting the Groundwater Treatment System;
  - c. Obtaining or verifying any data or information relating to the Groundwater Treatment System;
  - d. Repairing the Groundwater Treatment System; and
  - e. Verifying that no action is being taken on the Property in violation of the terms of this instrument.
- 5. Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights, covenants and easements granted herein.
- 6. Modification or termination of restrictions and rights of access: The restrictions on use specified in Paragraph 3 of this instrument and grant of access specified in Paragraph 4 of this instrument may not be modified, whether in whole or part, except by written instrument, signed by Grantee and Grantor, its successors or assigns. Said restrictions and grant of access will terminate when USEPA has issued a written determination that the performance standards for groundwater cleanup specified in the Second ROD have been achieved and that the Groundwater Treatment System is no longer needed; or when the Agreement has been terminated pursuant to Paragraph 49 thereof; or otherwise when so provided by written instrument, signed by Grantee, whichever event is sooner. If requested by the Grantor, any such writing will be executed by Grantee in recordable form.
- 7. <u>Federal authority</u>: Nothing in this document shall limit or otherwise affect Grantee's rights of entry and access or Grantee's authority to take response actions under CERCLA, the NCP, or other law or regulation.
- 8. No public access and use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

9.	Public notice: Grantor agrees to include in each instrument conveying any interest in any
	portion of the Property, including but not limited to deeds, leases and mortgages, a notice
	which is in substantially the following form:
	나는 내용하는 그는 생각이 되었다. 그는 사람들은 사람들은 사람들은 사람들은 사람들이 되었다.

 NOTICE: THE INTEREST CONVEYED HEREBY IS
SUBJECT TO AN EASEMENT AND DECLARATION OF
RESTRICTIVE COVENANTS, DATED, 200_,
RECORDED IN THE SUFFOLK COUNTY CLERK'S
OFFICE ON, 200_, IN BOOK, PAGE
, IN FAVOR OF, AND ENFORCEABLE BY, THE
UNITED STATES OF AMERICA OR ASSIGNS.

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor agrees to provide Grantee with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

- 10. <u>Administrative jurisdiction</u>: The federal agency having administrative jurisdiction over the interests acquired by the United States by this instrument is the USEPA.
- 11. Enforcement: The Grantee shall be entitled to enforce the terms of this instrument by resort to specific performance. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including those under CERCLA. Enforcement of the terms of this instrument shall be at the discretion of the Grantee, and any forbearance, delay or omission to exercise Grantee's rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee of such term or of any of the rights of the Grantee under this instrument.
- 12. <u>Damages</u>: Grantee shall also be entitled to recover damages from the holder of title for breach of any covenant or violation of the terms of this instrument including any impairment to the Groundwater Treatment System that increases the cost of the selected response action for the Site as a result of such breach or violation.
- 13. <u>Waiver of certain defenses</u>: Grantor hereby waives any defense of laches, estoppel, or prescription.
- 14. Covenants: Grantor hereby covenants, with the Grantee and its assigns, that if County of Suffolk takes title to the Property pursuant to the Suffolk County Tax Act, the County will be authorized to sell the same, subject to a requirement that the County's successor is able to obtain New York State title insurance; furthermore, the parties understand that the County's sale of title to the Property is subject to any existing defects, limitations or encumbrances on the County's title based on its tax deed. See Paragraph 22 of the Agreement.

15. Notices: Any notice, demand, request, consent, approval, or communication under this instrument that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Suffolk County Department of Planning Division of Real Estate H. Lee Dennison Building - 4th Floor 100 Veterans Memorial Highway P. O. Box 6100 Hauppauge, NY 11788 Attention: Patricia Zielenski, Director

Now known as SUFFOLK COUNTY DEPT, OF ENVIRONMENT AND ENERGY, DIVISION OF REAL PROPERTY ACQUISITION AND MANAGEMENT

and

Suffolk County Department of Law
H. Lee Dennison Building - 6th Floor
100 Veterans Memorial Highway
P.O. Box 6100
Hauppauge, NY 11788
Attention: Christine Malafi, Suffolk County Attorney

To Grantee:

USEPA Region II
Emergency and Remedial Response Division
290 Broadway, 19<sup>th</sup> Floor
New York, NY 10007
Attention: Circuitron Corporation Superfund Site Project-Manager

With one copy to:

USEPA Region II
Office of Regional Counsel
290 Broadway, 17<sup>th</sup> Floor
New York, NY 10007
Attention: Circuitron Corporation Superfund Site Attorney

### 16. General provisions:

a. Controlling law: The interpretation and performance of this instrument shall be

governed by the laws of the United States or, if there are no applicable federal laws, by the law of the State of New York.

- b. <u>Construction</u>: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.
- c. <u>Severability</u>: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.
- d. <u>No forfeiture</u>: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- e. <u>Joint obligation</u>: If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.
- f. Successors: The covenants, easements, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall include the United States of America and its agencies, departments, representatives, delegatees, successors, and assigns. The rights of the Grantee under this instrument are freely assignable.
- g. <u>Captions</u>: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- h. <u>Counterparts</u>: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto the Grantee and its assigns forever.

-8- IN WITNESS WHEREOF, Grantor has caused this instr	ument to be signed in its name.
하지 않는데, 사람이 사랑이를 하지 않아 살아가 하네요. 소개를 했다.	
Executed this 2m day of march, 200 7.	
COUNTY OF SUFFOLK	
BY: Paul Sabatino II Chief Deputy County Executive	
Date:	
APPROVED: SUFFOLK COUVEY DEPARTMENT OF PLANNING BY: Thomas A. Isles Director	
Date: 2/16/67	
DIVISION OF REAL ESTATE  BY: Lattera L	Now known as SUFFOLK COUNTY DEPT. OF ENVIRONMENT AND ENERGY DIVISION OF REAL PROPERTY ACQUISITION AND MANAGEMEN
APPROVED AS TO LEGALITY: CHRISTINE MALAFI, SUFFOLK COUNTY ATTORNEY  BY: Jennifer B. Kohn Assistant County Attorney  Date: 22257	

STATE OF NEW YORK )	경기가 되어왔다. 저는 영수점하게 되었다면 어떻게
) ss.:	
COUNTY OF SUFFOLK—)—————	
good and	
On the A day of MARCH	, in the year 200_/, before me, the
undersigned, personally appeared Paul Saba	atino II
personally known to me or proved to me on the basis	s of satisfactory evidence to be the
individual(s) whose name(s) is (are) subscribed to th	
that he/she/they executed the same in his/her/their ca	
signature(s) on the instrument, the individual(s), or the	
individual(s) acted, exceuted the instrument.	
Ima Mamontano	늘었으며 있다. 중요한 전경 등년 병하다.
Signature and Office of Individual	
Taking Acknowledgment	ANNA TRAMONTANO
(1) 1일 등에 하는 내용하는 사람들이 되는 사람들이 되었다.	Notary Public, State of New York No. 9370715
회사가 들면 경험하게 하는데 공원을 되고 있다고 있다.	Qualified in Suffelk County
	Term Expires: 2/28/20/
STATE OF)	
) ss.:	
COUNTY OF)	
	fore me personally came
	, being duly sworn, did depose and say that
	[if the place of residence is in a city,
include the street and street number, if any, thereof];	
other officer or director or attorney in fact duly appo	
corporation described in and which executed the abo	
seal of said corporation; that the seal affixed to said	
so affixed by authority of the board of directors of sa	aid corporation, and that he/she/they signed
his/her/their name(s) thereto by like authority.	
Witness my hand and official seal hereto affixed the	day and year written above.
Note: Dublic is and for the	
Notary Public in and for the	
State of	
My Commission Evniron	
My Commission Expires:	
선물보다 마다 전환 회사 회사 회사 전환 사람은 발표한 다양한 것이 되었다. 계약 경기를 받는데 기계를 하셨다면 없는	

This instrument is accepted this 26th day of March, 2007.
UNITED STATES OF AMERICA BY U.S. ENVIRONMENTAL PROTECTION AGENCY
By: Carl P. Garvey Assistant Regional Counsel Office of Regional Counsel, Region II
STATE OF Suffeld) ss.:  COUNTY OF Suffeld)  On the 26 day of March in the year 2007 before me personally came  Carl P. Garvey to me known, who, being duly sworn, did depose and say that he is an Assistant Regional Counsel for the U.S. Environmental Protection Agency, Office of Regional Counsel, Region II, and, having the requisite delegated authority, he executed the above instrument.  Witness my hand and official seal hereto affixed the day and year written above.
Notary Public in and for the  State of

Attachments:

Exhibit A - Legal description of Property

Exhibit B - General Depiction of the Groundwater Treatment System

## Uniform Form Certificate of Acknowledgment

State of New York		
County of Suffolk		
On the 26th day of March in the year 2007, before me, the undersigned, personally appeared		
Carl P. Garrey		
personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is/ are subscribed to the within instrument and acknowledged to me that he/ she / they executed the same in his/ her/ their capacity (ies), and that by his/ her/ their signature (s) on the instrument, the individual (s), or the person upon behalf of which the individual (s) acted, executed the instrument.		
TV CI EDV'S OFFICE		

COUNTY CLERK'S OFFICE STATE OF NEW YORK COUNTY OF SUFFOLK

SS.:

12-0245p. 01/07kd

CLERK Quaits a. Passale

# EXHIBIT A Legal Description of Real Property

### Parcel-1:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Babylon, County of Suffolk and State of New York Being, bounded and described as follows:

BEGINNING at a point on the Southerly side of a road known and designated as Milbar Boulevard as shown on plan of proposed road (Milbar Boulevard) made by Harold R. Bausch dated March 24th, 1960 and which map is filed in the office of the Clerk of the County of Suffolk on June 3rd, 1960 as Map No. A160, and which point of beginning is distant 718.72 feet easterly measured along the southerly side of Milbar Boulevard from the easterly end of a curve connecting the southerly side of Milbar Boulevard with the easterly side of Broad Hollow Road, also known as New York State Route #110; running

THENCE south 88 degrees 54 minutes 50 seconds east along the southerly side of Milbar Boulevard 100 Feet;

THENCE south 1 degree 05 minutes 10 seconds West 186.93 feet to land now or formerly of Philip A. Schmitt;

THENCE north 85 degrees 46 minutes 30 seconds west along said land 100.15 feet;

THENCE north 1 degree 05 minutes 10 seconds East 181.45 feet to the southerly side of Milbar Boulevard at the point or place of BEGINNING.

For Information Only: Sometimes known as 82 Milbar Boulevard, Farmingdale, New York

### Parcel 2:

ALL that certain plot, piece or parcel of land, situate, lying and being At Lower Melville, in the Town of Babylon, County of Suffolk and State of New York Being, bounded and described as follows:

BEGINNING at a point on the Southerly side of Road known and designated as Milbar Boulevard as shown on plan of proposed road (Milbar Boulevard) made by Harold R. Bausch, dated July 1957, and revised August 24, 1957 and June 10th, 1958, and which map is intended to be filed in the Office of the Clerk of the County of Suffolk distant 818.72 feet Easterly from the Easterly end of the curve connecting the Southerly side of said Milbar Boulevard with the Easterly side of Broadhollow Road, also known as New York State Route No. 110;

<u>RUNNING THENCE</u> South 88 degrees 54 minutes 50 seconds East along the Southerlyside of said Milbar Boulevard 55 Feet;

THENCE South 1 degree 05 minutes 10 seconds West 189.95 Feet to Land of Philip Schmitt;

THENCE North 85 degrees 46 minutes-30 seconds West along said land 55.08 feet; and

<u>RUNNING THENCE</u> North 1 degree 05 minutes 10 seconds East 186.93 feet to the Southerly side of said Milbar Boulevard the point or place of <u>BEGINNING</u>.

For Information Only: Sometimes known as 90 Milbar Boulevard, Farmingdale, New York

### Parcel 3:

ALL that certain plot, piece, or parcel of land, with the buildings and improvements thereon erected, situate, lying and being at Lower Melville, in the Town of Babylon, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at a point on the Southerly side of a road known and designated as Milbar Boulevard as shown on plan of proposed road (Milbar Boulevard) made by Harold R. Bausch, dated July 1957 and revised August 24, 1957 and June 10, 1958 and which map is intended to be filed in the Office of the Clerk of the County of Suffolk distant 873.72 feet Easterly from the Easterly end of the curve connecting the Southerly side of said Milbar Boulevard with the Easterly side of Broadhollow Road, also known as New York State Route #110;

RUNNING THENCE South 88 degrees 54 minutes 50 seconds East along the Southerly side of said Milbar Boulevard 55 feet:

THENCE South 1 degree 05 minutes 10 seconds West 192.96 feet to land of Philip Schmitt;

THENCE North 85 degrees 46 minutes 30 seconds West along said land 55.08 feet; and

THENCE North 1 degree 05 minutes 10 seconds East 189.95 feet to the Southerly side of said Milbar Boulevard, the point or place of BEGINNING.

For Information Only: Sometimes known as 94 Milbar Boulevard, Farmingdale, New York.

### **EXHIBIT B**

General Depiction of the Groundwater Treatment System

1<sup>st</sup> Page: Site Plan

2<sup>nd</sup> Page: Drywell Locations

3<sup>rd</sup> Page: Monitoring Well Locations

4<sup>th</sup> Page: Yard Piping and Electrical Layout

5<sup>th</sup> Page: Yard Piping Trench Sections









