

## AGREEMENT AND DECLARATION of COVENANTS and RESTRICTIONS

**THIS AGREEMENT and COVENANT**, made the 4<sup>th</sup> day of April, 2004, by The City of Hudson and Niagara Mohawk Power Corporation, a National Grid Company, involves property located on Water Street in the City of Hudson, Columbia County, New York, as more fully described below. The City of Hudson is a City under the Laws of the State of New York and holds all powers provided by said laws. The Department of Environmental Conservation is an Agency of the State of New York. Niagara Mohawk Power Corporation, A National Grid Company, is a corporation organized and existing under the laws of the State of New York and having an office for the transaction of business at 300 Erie Blvd., West, Syracuse, New York.

**WHEREAS**, the City of Hudson is the present owner of an inactive hazardous waste disposal site which is listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 4-11-005 located on Water Street in the City of Hudson, Columbia County, State of New York, which is part of lands more particularly described in Appendix "A," attached to this declaration and made a part hereof, and hereinafter referred to as "the Property"; and

**WHEREAS**, the Property is the subject of an Order on Consent ("Order") entered by the New York State Department of Environmental Conservation with Niagara Mohawk Power Corporation, dated November 7, 2003, because of the historic release of hazardous waste and/or hazardous substances at the Property; and

**WHEREAS**, the New York State Department of Environmental Conservation set forth a remedy to eliminate or mitigate all significant threats to the environment presented by hazardous waste disposal at the Site in a Record of Decision ("ROD") dated March 2001, and such ROD or the Work Plan for the implementation of the ROD required that the Property be subject to restrictive covenants; and

**WHEREAS**, this Agreement and Declaration of Covenants and Restrictions (hereafter "Declaration of Covenant Restrictions") is intended by the parties to prevent any activity that is likely to disrupt or expose hazardous waste or substances, or to increase human exposure to such wastes or substances, or any other conduct that will may tend to interfere with an ongoing or completed remedial action program implemented at the site; and

**WHEREAS**, this Agreement and Declaration of Covenants and Restrictions is intended by the parties to apply to, and be binding upon, all owners and subsequent purchasers of the Property so that any such owners and subsequent purchasers shall not interfere with the completed remedial action and shall not substantially change the commercial and/or industrial use of the Property without first notifying the Department of Environmental Conservation, the City of Hudson, and Niagara Mohawk Power Corporation (hereinafter "Respondent") so that such parties may review, comment and, as provided in this document and as otherwise provided by law, enjoin or authorize any proposed change of use on the Property;

**NOW, THEREFORE**, in mutual consideration of the promises, conditions, covenants and payments recited herein and otherwise made in the Order on Consent dated November 7, 2003, and the Agreement between the City and Niagara Mohawk Power Corporation dated November 26, 2003, the sufficiency of which is acknowledged by the parties hereto, the City of Hudson and any of its agencies, authorities or corporations, for itself and its successors and/or assigns, The New York State Department of Environmental Conservation, and Niagara Mohawk Power Corporation, A National Grid Company, hereby agree and covenant that:

First, the Property subject to this Agreement and Declaration of Covenants and Restrictions (hereinafter "Declaration of Covenants and Restrictions") is as shown on a map attached to this declaration as Appendix "B" and made a part hereof, and as described in Appendix "A".

Second, unless prior written approval by the New York State Department of Environmental Conservation (NYS DEC), New York State Department of Health or, if such Departments shall no longer exist, any New York State agency or agencies subsequently created to protect the environment of the State and the health of the State's citizens, hereinafter referred to as "the Relevant Agency," and Niagara Mohawk Power Corporation is first obtained, no person shall engage in any activity that will, or that reasonably is anticipated to, prevent or interfere significantly with any proposed, ongoing or completed environmental remediation program at the Property or that will, or is reasonably foreseeable to, expose the public health or the environment to a significantly increased threat of harm or damage associated with environmental contaminant conditions at the Property. No person shall conduct an activity or use of the Property which creates a greater risk of harm to health, safety, the environment, or public welfare, than

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the limited activities which are authorized for this Property, to wit: commercial and/or industrial activities and uses, (other than the operation of a commercial child care center, long term care facility or any other housing facility, which is strictly prohibited), which:

1. do not disturb the implementation and maintenance of the approved remedial action plan approved by the NYS DEC; and

2. do not involve or increase the risk of exposure, either by inhalation, ingestion, dermal contact, or any other human exposure pathway, to hazardous wastes or substances remaining in the subsurface of the Property;

Third, the City and any subsequent owner of the Property shall permit Niagara Mohawk Power Corporation to maintain any cap that may be applied to cover the Property. In the event that the City or subsequent owner ("owner") wishes to change the use of the Property, it may, after notifying Respondent Niagara Mohawk Power Corporation and the Relevant governmental agencies, seek to obtain the written approval of the Relevant Agency and Niagara Mohawk Power Corporation. Niagara Mohawk will review the proposal and shall either approve the proposal or provide written reasons why the proposal is not adequately protective of human health and/or the environment and is not consistent with the goals of the remedial actions at the Property. Niagara Mohawk will not unreasonably withhold its approval of a proposal. The owner may also seek authorization to cap the Property with another material, but only after notification and permission is obtained as set forth above. The Property has an existing warehouse which the City, Niagara Mohawk, and the Department expect to remain on the Property for future commercial use. No other structures or development outside of the footprint of the warehouse within the Property boundary shall be permitted without the express written authorization of the Relevant agencies and Niagara Mohawk Power Corporation as described above. Where Niagara Mohawk disapproves of a proposal or request for authorization as discussed above, the parties shall meet to attempt to informally resolve the disagreement. If such initial informal attempts to resolve the dispute are not successful, the parties shall notify the New York State Department of Environmental Conservation and request a meeting with the Division Director of Environmental Remediation, or a representative assigned by the Director, to present the dispute and hear the position of the DEC. The parties may also seek the input of the New York State Department of Health. In the event that the parties, after hearing the position of the DEC, still cannot agree to a resolution of the dispute, the parties may submit and present the matter to arbitration.. In the event that future construction inside or outside the footprint of the warehouse is authorized by the Relevant agencies and Niagara Mohawk Power Corporation and implemented, the owner at the time of said construction shall be fully and solely responsible for the proper excavation, handling, transport and disposal of any soils in the construction area. Nothing in these restrictive covenants is meant to interfere with routine maintenance and minor park enhancement activities conducted on the Property, including minor plantings, pole placements, bench placements, installation of lighting fixtures, and other minor intrusion activities having a minimal impact on the soil at the site, provided the City fully complies with the soil management plan approved by DEC. Within a reasonable time prior to such activities that require excavation into the subsurface of the Property, the City will provide notification to Niagara Mohawk.

Fourth, the City and any subsequent owner of the Property shall prohibit, and take the necessary measures to so prohibit, the Property from ever being used for purposes other than for commercial and/or industrial uses, (other than a commercial child care center, long term care facility or any other housing facility, which are strictly prohibited), without the express written waiver of such use limitation by the Relevant Agency and Niagara Mohawk Power Corporation. Any written waiver from a Relevant Agency shall be sent to Respondent Niagara Mohawk Power Corporation by the owner of the Property obtaining the waiver.

Fifth, the owner of the Property shall not use, and shall prohibit the use of the groundwater underlying the Property for drinking water or other uses without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains written permission to do so from the Relevant Agency, including but not limited to, the New York State Department of Health.

Sixth, there shall be no agricultural or residential housing use of the Property.

Seventh, any emergency utility maintenance activities on the Property shall be limited to such activity needed to address the emergency. The owner must notify Niagara Mohawk and the Relevant Agencies no later than 3 business days after the emergency utility maintenance activities begin. Prior to any planned utility work being performed on the Property, the site owner must first notify, in writing, Niagara Mohawk Power Corporation and the Relevant Agencies. In the event that utility work is performed on the Property, the site owner shall fully restore any cap or cover, that is a part of the remedial action, to the condition that existed before the utility work. In the event that utility work is performed on the Property, the site owner shall make certain that an appropriate Health and

Safety Plan is implemented by the contractors performing the utility work.

Eighth, in the event that the City sells the Property, it shall give a minimum of thirty days written notice to enter into a contractual agreement with the purchaser that provides for and obligates the owner of the Property to permit Niagara Mohawk Power Corporation to continue in full force and effect any institutional and engineering controls the Department required to be placed and maintained unless the owner first obtains written permission to discontinue such controls from the Relevant Agency and obtains the written consent of Niagara Mohawk Power Corporation to such discontinuance. Nothing herein shall be deemed to preclude the owner from taking over the obligation to implement and maintain the institutional and engineering controls required of Respondent so long as both Niagara Mohawk Power Corporation and the Relevant agencies consent in writing to the transfer of such obligations.

Ninth, this Declaration is and shall be deemed a covenant that shall run with the land and shall be binding upon all future owners of the Property and shall provide that the owner, and its successors and assigns, consents to the enforcement by the Relevant Agency and Niagara Mohawk Power Corporation of the prohibitions and restrictions that Paragraph X of the Order requires to be recorded, and hereby covenants not to contest the authority of the Department or Niagara Mohawk Power Corporation to seek enforcement. Further, it is the intention of the City, the Department and Niagara Mohawk Power Corporation ("party" or "parties") that each of them be permitted to enforce the covenants and restrictions described herein, and that no party will oppose any attempt by the other party to enforce such covenants and restrictions. In the event that a future owner fails to comply with this Declaration, the parties reserve any rights available to enforce the terms of this Covenant. In any such circumstance, the parties shall support the enforcement of the land use limitations established by this Declaration.

Tenth, any deed of conveyance of the Property, or any portion thereof, shall recite, unless the Relevant Agency and Niagara Mohawk Power Corporation have consented to the termination of such covenants and restrictions, that said conveyance is subject to this Declaration of Covenants and Restrictions. The City of Hudson agrees that this Declaration shall be incorporated either in full or by reference into all future deeds, easements, leases, licenses, occupying agreements or any other instrument of transfer.

Eleventh, the parties to this Declaration agree and consent to the right of the Department of Environmental Conservation, and their own rights, to enforce the provisions of this Declaration. It is the intention of the parties that each of them be able to enforce the terms of this Agreement and Declaration at law and at equity, and each owner of the Property shall advise and obtain the acknowledgment of any subsequent purchasers of the Property that the parties to this Agreement and Declaration have the power to enforce the provisions herein, including the right to seek specific performance of the restrictions set forth herein.

IN WITNESS WHEREOF, the undersigned has executed this instrument the day written below.

CITY OF HUDSON

By: \_\_\_\_\_

NIAGARA MOHAWK POWER CORPORATION

By: \_\_\_\_\_

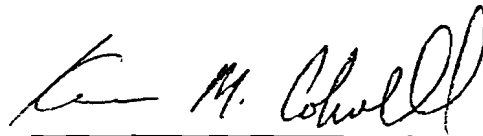
4/2/04  
4/2/04

STATE OF NEW YORK )

)SS.:

COUNTY OF Columbia )

On the 25<sup>th</sup> day of August in the year two thousand four before me, the undersigned, a notary public in and for said state, personally appeared Richard Scalera, Mayor of the CITY OF HUDSON, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

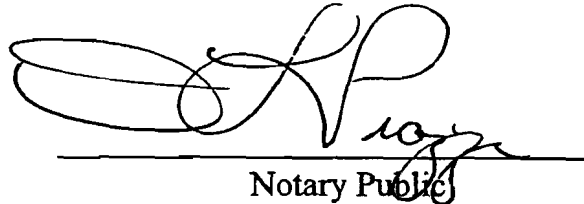
KEVIN M. COLWELL  
NOTARY PUBLIC, State of New York  
No. 02CO8003271  
Qualified in ~~Albany County~~ Columbia County  
Commission Expires: 3/2/06

STATE OF NEW YORK )

)SS.:

COUNTY OF Onondaga )

On the 1<sup>st</sup> day of Sept. in the year two thousand four before me, the undersigned, a notary public in and for said state, personally appeared Joseph M. Kwasnik, VP-Environmental of NIAGARA MOHAWK POWER CORPORATION, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

VICKI L. PIAZZA  
Notary Public in the State of New York  
Qualified in Onondaga County, No. 4848074  
My Commission Expires March 30, 2007

## **APPENDIX "A"**

### **Legal Description of Property Subject to Agreement and Declaration of Covenants and Restrictions**

## Legal Description of Lot 10

Beginning at a point formed by the intersection of the westerly line of Water Street with the northerly line of River Street (not constructed). Being the southeasterly corner of the lands now owned by the City of Hudson. Proceed along the northerly line of River Street (not constructed).

THENCE North 58 degrees 54 minutes 00 seconds West for a distance of 168.50 feet to a corner of land now or formerly of Lockwood Properties, Inc., as described in deed book 531 page 791. Continue along the lands of Lockwood on the south and this parcel on the north.

THENCE North 58 degrees 54 minutes 00 seconds West for a distance of 36.13 feet. Here continue along the westerly line of the parcel of the City of Hudson.

THENCE North 33 degrees 48 minutes 00 seconds East for a distance of 14.85 feet.

THENCE North 54 degrees 41 minutes 00 seconds West for a distance of 107.00 feet to the southwesterly corner of the lands of the City of Hudson. Being at or under the waters of the Hudson River. Continue along the westerly line of the lands of the City of Hudson.

THENCE North 31 degrees 10 minutes 00 seconds East for a distance of 4.24 feet to a point. Here continue through the lands of the City of Hudson.

THENCE South 54 degrees 55 minutes 25 seconds East for a distance of 59.05 feet to a point on a concrete wall with a chain link fence. Continue along the concrete wall and chain link fence.

THENCE South 54 degrees 55 minutes 25 seconds East for a distance of 31.14 feet.

THENCE South 56 degrees 36 minutes 00 Seconds East for a distance of 36.17 feet.

THENCE South 55 degrees 30 minutes 20 seconds East for a distance of 42.33 feet.

THENCE South 55 degrees 33 minutes 45 seconds East for a distance of 43.66 feet.

THENCE South 55 degrees 54 minutes 20 seconds East for a distance of 46.40 feet.

THENCE South 55 degrees 49 minutes 50 seconds East for a distance of 50.72 feet to the westerly line of Water Street. Continue along the westerly line of Water Street.

THENCE South 20 degrees 30 minutes 25 seconds West for a distance of 9.21 feet to the point or place of beginning. All as shown on a map entitled "EASEMENT GRANT MAP FOR: THE CITY OF HUDSON" prepared by Robert J. Ihlenburg and last revised March 24, 2004.

Together with and subject to covenants, easements, and restrictions of record.

Said property contains 0.079 acres more or less.

Being the same premises conveyed by Robert C. Hunter, as referee, and Hudson Petroleum Incorporated, by referee, to the City of Hudson by deed dated November 26, 1997 and recorded December 11, 1997 in the Columbia County Clerk's Office in Liber 303 of Deeds at Page 1782.

## **Legal Description of Lot 15**

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Hudson, County of Columbia, State of New York, being bounded and described as follows:

Beginning at the southeasterly corner of Broad Street and Water Street, and running thence northeasterly along the southerly side of Water Street 239.7 feet, more or less, to the division line between the lands of the New York Power and Light Corporation and lands formerly of Charles McArthur; thence southeasterly along said division line 127.9 feet, more or less, to a point in the northerly line of Franklin Street; thence southwesterly along the northerly line of Franklin Street 184.4 feet, more or less, to the division line between said lands of the said New York Power and Light Corporation and lands now supposed to be owned by the Boston and Albany Railroad; thence northwesterly along said division line to an angle point in said division line; thence southwesterly along said division line 90 feet, more or less, to the easterly line of Broad Street 43 feet, more or less, to the point or place of beginning. Containing 0.56 of an acre, be the same more or less.

Being the same premises conveyed by South Bay Capital Limited to the City of Hudson by deed dated December 8, 2003 and recorded December 15, 2003 in the Columbia County Clerk's Office in Liber 481 of Deeds at Page 1288.

Also including the premises conveyed by Francis P. Shader to the City of Hudson by deed dated December 1, 2003 and recorded December 15, 2003 in the Columbia County Clerk's Office in Liber 481 of Deeds at Page 1292.

## **Legal Description of Former Lockwood Property (Lot 16.2)**

ALL THAT PARCEL of land situate in the First Ward, City of Hudson and State of New York, bounded and described as follows:

BEGINNING at an iron rod set at the point of intersection of the southerly line of River Street with the westerly line of Water Street; thence along said westerly line of Water Street South 44 degrees 11 minutes 50 seconds West, 245.00 feet to an iron rod; thence North 48 degrees 00 minutes 12 seconds West, 250.19 feet to an iron rod; thence North 48 degrees 00 minutes 12 seconds West, 39.81 feet; thence generally along the easterly shore of the Hudson River North 36 degrees 10 minutes 10 seconds East, 204.61 feet; thence South 58 degrees 54 minutes East, 122.23 feet to an iron rod; thence along lands of Canada Oil Company South 58 degrees 54 minutes East, 36.13 feet to an iron rod; thence South 31 degrees 06 minutes West, 26.0 feet to an iron rod in the southerly line of River Street; thence along the southerly line of River Street South 58 degrees 54 minutes East, 163.85 feet to the point of beginning.

CONTAINING 68,459 square feet or 1.572 acres of land, more or less.

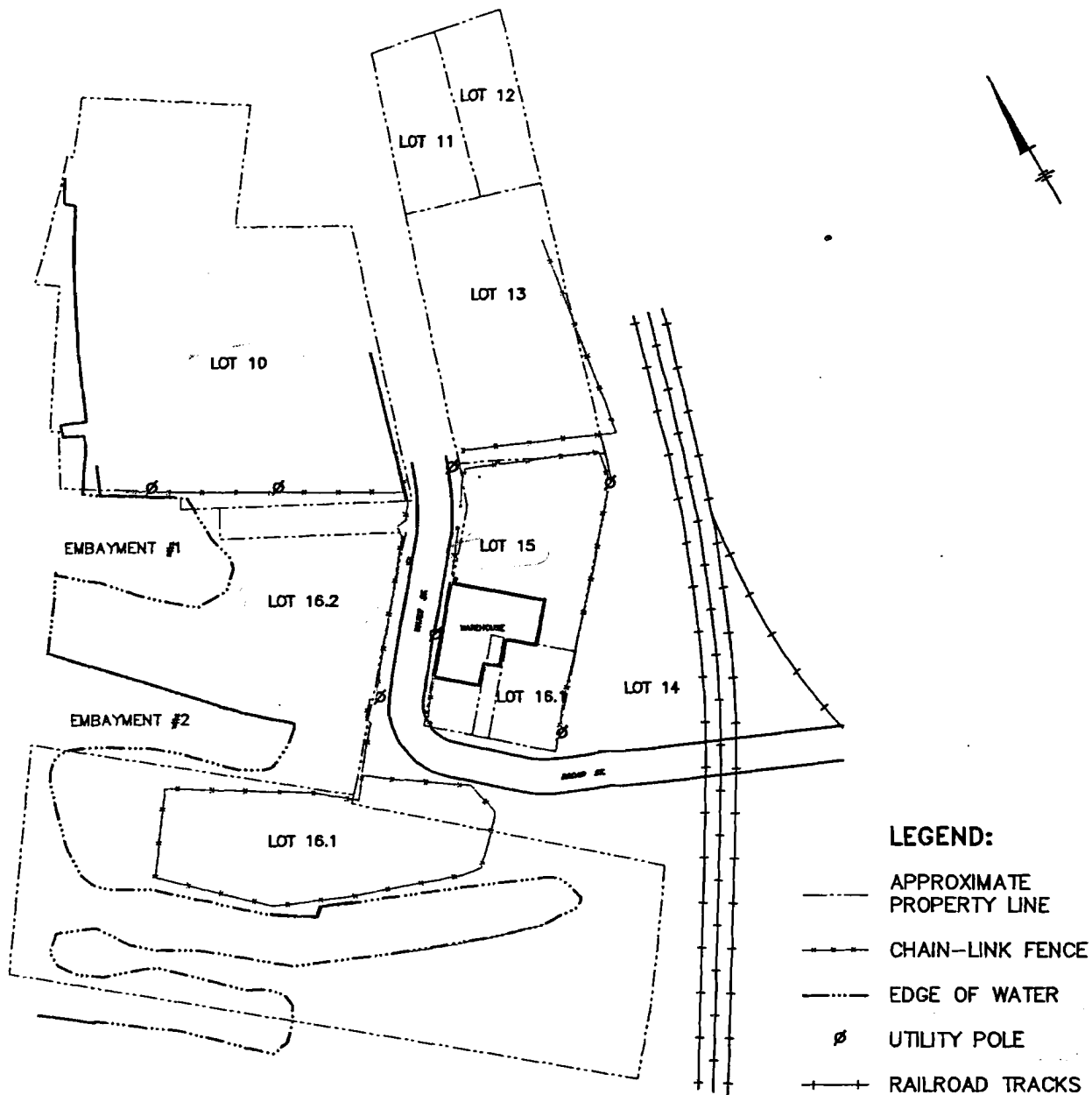
Being the same premises conveyed by Lockwood Brothers Inc. to the City of Hudson by deed dated January 14, 2003 and recorded March 28, 2003 in the Columbia County Clerk's Office in Liber 443 of Deeds at Page 0675.



## **APPENDIX "B"**

### **MAP**

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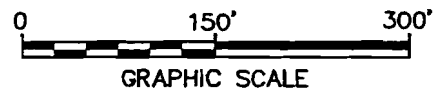


#### NOTES:

1. BASE MAP FROM TOPOGRAPHIC SURVEY BY BOSK ASSOCIATES, DRAWING FILE HUDSONDL.DWG, DATED 3/24/95.

2. THE SOUTHERN PORTION OF THE RIVER SHORELINE IS BASED ON BBL SURVEYS CONDUCTED IN DECEMBER 1995, AUGUST 1996 AND MARCH 1998.

3. ALL LOCATIONS ARE APPROXIMATE.



NIAGARA MOHAWK, A NATIONAL GRID COMPANY  
HUDSON (WATER STREET) SITE  
HUDSON, NEW YORK

#### SITE PLAN

**BBL**  
BLASLAND, BOUCK & LEE, INC.  
engineers & scientists

FIGURE

