COVER SHEET REV 07-12-05

ERIE COUNTY CLERKS OFFICE

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Party 1:

NIAGARA FRONTIER TRANSPORTATION AUTHORITY

Party 2:

Recording Fees:	
RECORDING	$122.00
COE COUNTY	1.00
COE STATE GENERAL	$14.25
COE STATE RM	$4.75

Consideration Amount:	**$0.00**
BASIC	**$0.00**
SONYMA	**$0.00**
ADDL	**$0.00**
NFTA MT	**$0.00**
TRANSFER	**$0.00**
NFTA TT	**$0.00**

Total: **$142.00**

STATE OF NEW YORK
ERIE COUNTY CLERK'S OFFICE

WARNING - THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT, REQUIRED BY SECTIONS 319&316-a (5) OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH. THIS IS NOT A BILL.

David J. Swarts
County Clerk

Bk 374 (JAO)

DECLARATION of COVENANTS and RESTRICTIONS

THIS COVENANT, made the 20th day of December, 2005, by Niagara Frontier Transportation Authority (formerly known as the Niagara Frontier Port Authority or "NFPA"), a corporation organized and existing under the laws of the State of New York and having an office for the transaction of business at 181 Ellicott Street, Buffalo, New York 14202 (hereinafter referred to as "NFTA"):

WHEREAS, NFTA is the owner of an inactive hazardous waste disposal site which has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 915026, 910 Fuhrmann Boulevard in the City of Buffalo, County of Erie, State of New York, which is part of lands conveyed by Henry Ford and Son, Incorporated, to Niagara Frontier Port Authority by deed dated June 15, 1959 and recorded in the Erie County Clerk's Office on June 15, 1959 in Book 6434 of Deeds at Page 43, and being more particularly described in Exhibit "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 a consent order issued by the New York State Department of Environmental Conservation ("NYSDEC" or "Department") to Honeywell International Inc.; and

WHEREAS, the NYSDEC 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 31, 1999, and an Explanation of Significant Differences ("ESD") dated January 29, 2003, and such remedy required that the Property be subject to restrictive covenants.

NOW, THEREFORE, NFTA, for itself and its successors and/or assigns, covenants that:

First, the Property subject to this Declaration of Covenants and Restrictions consists of all the premises contained within and described by the metes and bounds description set forth in Exhibit "A" and is as shown on the "Plan Showing Institutional Control Area" and similar maps contained within the Site Management Plan approved by NYSDEC made a part hereof and attached to this declaration as Exhibit "B", and

Second, unless prior written approval by the NYSDEC or, if the NYSDEC 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," 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 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.

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Third, the owner of the Property shall maintain the cap covering the Property by maintaining its cover or, after obtaining the written approval of the Relevant Agency, by capping the Property with another material.

Fourth, the owner of the Property shall prohibit the Property from ever being used for purposes other than for commercial use (excluding day care, child care, and medical care uses), or industrial use, without the express written waiver of such prohibition by the Relevant Agency.

Fifth, the owner of the Property shall prohibit the use of the groundwater underlying the Property without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains permission to do so from the Relevant Agency.

Sixth, the owner of the Property shall continue in full force and effect any institutional and engineering controls the Department required Respondent to put into place and maintain unless the owner first obtains permission to discontinue such controls from the Relevant Agency. The owner acknowledges that future activities at the Property are subject to a NYSDEC-approved Site Management Plan and that annual inspection is required to confirm that the remedy and required restrictions remain in place.

Seventh, 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 of these prohibitions and restrictions that are required to be recorded, and hereby covenants not to contest the authority of the Relevant Agency to seek enforcement.

Eighth, any deed of conveyance of the Property, or any portion thereof, shall recite, unless the Relevant Agency has consented to the termination of such covenants and restrictions, that said conveyance is subject to this Declaration of Covenants and Restrictions.

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

NIAGARA FRONTIER TRANSPORTATION AUTHORITY

Date: 12/20/05

By: James M. Weeks

Title: Executive Director

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 20th day of December, in the year 2005, before me, the undersigned, personally appeared Lawrence Meckler, 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 the 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.

Darleen M. Singerman
Notary Public

BFLO Doc. # 1478646.2

DARLEEN M. SINGERMAN
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 3-19-07

Exhibit A

Metes and Bounds Description
For the affected areas at the
Buffalo Outer Harbor/Radio Tower Area

All that tract or parcel of land, being a portion of property reputedly owned by NIAGARA FRONTIER TRANSPORTATION AUTHORITY (NFTA), TMP# 122.17-1-1, situate in the City of Buffalo, County of Erie, State of New York, more particularly described as follows:

Commencing at a capped rebar found at or near the intersection of the west line of Fuhrmann Blvd. with the division line between said NFPA property (on the north) and Property reputedly of Freezer Queen Foods, Inc., TMP# 132.06-1-1.1 as described in Liber 9547, Page 579 (on the south). Thence, South 69°12'31" West, along said division line, a distance of 100.31 feet; thence, South 20°15'55" East, continuing along said division line, a distance of 1.65 feet; thence, South 69°44'05" West, continuing along said division line, a distance of 993.90 feet; thence North 20°15'55" West, in said NFTA property, a distance of 1115.50 feet to the POINT OF BEGINNING, The same

1. Thence, North 49°20'15" East, continuing in said property, a distance of 82.58 feet;
2. Thence, North 38°46'30" East, continuing in said property, a distance of 45.15 feet;
3. Thence, North 43°36'11" East , continuing in said property, a distance of 41.53 feet;
4. Thence, North 21°11'57" West, continuing in said property, a distance of 45.89 feet;
5. Thence, North 25°14'12" East, continuing in said property, a distance of 121.63 feet;
6. Thence, North 63°56'28" West, continuing in said property, a distance of 34.66 feet,
7. Thence, North 79°26'09" West, continuing in said property, a distance of 106.97 feet,
8. Thence, South 28°58'36" West, continuing in said property, a distance of 179.04 feet,
9. Thence, South 24°26'10" East, continuing in said property, a distance of 164.87 feet to the POINT OF BEGINNING.

Containing 39,016 square feet, (0.896± acres). Bearings and north orientation refer to grid north, NAD 83 NYSP, west zone.

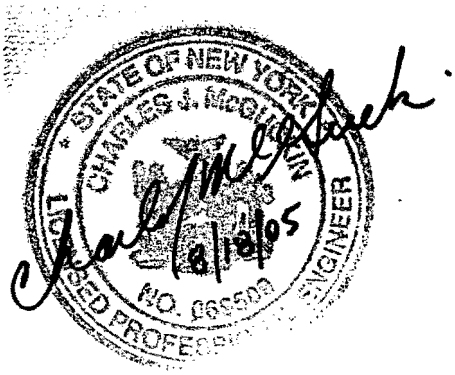
Intending to describe a portion of said NFTA property as depicted on a plan prepared by Clough Harbour & Associates LLP, titled "Plan showing Institutional Control Area being a portion of land N/F Niagara Frontier Transportation Authority", dated July 2005.

Exhibit B

August 17, 2005

SITE MANAGEMENT PLAN

Buffalo Outer Harbor/Radio Tower Area
Buffalo, New York



Prepared for:

HONEYWELL INTERNATIONAL, INC.
101 Columbia Road
Morristown, New Jersey 07962

Remedial Engineering, P.C.
Environmental Engineers

Remedial *209 Shafter Street, Islandia, New York 11749 ◆ 631-232-2600*

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FIGURES

APPENDICES

1.0 INTRODUCTION

On behalf of Honeywell International Inc. (Honeywell), this Site Management Plan (SMP) has been prepared for the Buffalo Outer Harbor/Radio Tower Area in the City of Buffalo, Erie County, New York (Site) by Remedial Engineering, P.C. (Remedial Engineering) and Roux Associates, Inc. (Roux Associates). The Outer Harbor/Radio Tower area is located in the southeast corner of a larger parcel of land known as the Buffalo Outer Harbor (Figure 1) in the vicinity of the Niagara Frontier Transportation Authority (NFTA) communications radio tower. The Site is generally bordered to the east by Fuhrmann Boulevard and to the west by Lake Erie (Figure 2).

1.1 Overview and Objectives

The Site is a 0.896-acre parcel of vacant property currently owned by the NFTA. The location of the portion of the Site subject to the requirement of this SMP is provided in Appendix A. The Site consists of the soil cover system that was installed pursuant to a Remedial Order on Consent (Index No. B9-0233-88-07) (NYSDEC, 2003a) entered into by Honeywell with the New York State Department of Environmental Conservation (NYSDEC) and in accordance with the approved Remedial Design/Remedial Action (RD/RA) Work Plan (Remedial Engineering, 2003).

As discussed in the Remediation Action Completion Report (RACR) (Remedial Engineering, 2005), remedial activities were conducted at the Site from June 23, 2003 through December 21, 2003 and August 31, 2004 to September 13, 2004. The remedial activities consisted of two *in situ* chemical oxidation injection rounds using potassium permanganate ($KMnO_4$) to treat the nitrobenzene-impacted soil approximately 8 to 20 feet below land surface (bls). Following the *in situ* chemical oxidation injection rounds, *in situ* stabilization was used to immobilize any residual soil (following the two rounds of *in situ* chemical oxidation) that contained nitrobenzene concentrations above 14 ppm (mg/kg).

The final remedial activity consisted of the installation of a soil cover system. The soil cover system is 24 inches thick and consists of 20 inches of imported clean fill overlain by 4 inches of topsoil. An as-built drawing of the soil cover system is provided in Appendix A. The remedial activities are described in more detail in the RACR (Remedial Engineering, 2005).

The objective of this SMP is to set guidelines for the management of soil during future construction/excavation activities which would disturb the soil cover system or disturb soil within the institutional control area but not under the soil cover system. These activities may include, but are not limited to:

- utility installation; and
- redevelopment/construction of temporary and permanent structures.

The soil sampling and handling requirements to be incorporated into future construction design plans are provided in this document. This SMP is not intended to serve as a remedial action work plan or take the place of future remedial action work plans. Sampling performed in accordance with this SMP will support any construction/excavation activities for the contemplated use of the Site.

The Site is subject to a Declaration of Covenants and Restrictions (institutional control). Site usage limitations that exist as a result of this control are set forth in Section 3.0.

2.0 NATURE AND EXTENT OF CONTAMINATION

To characterize environmental conditions at the Buffalo Outer Harbor Site, a Remedial Investigation and Feasibility Study (RI/FS) was completed by the NYSDEC in two phases, May through November 1994 and June 1995 (Dvirka and Bartilucci Engineers, 1995). The RI/FS found elevated concentrations of volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs) at depth, as well as metals in the soil. The soil contamination was associated with a zone of stained subsurface soils that were encountered at an approximate depth from 8 to 20 feet bls. The contaminant of concern found in the stained subsurface soils is nitrobenzene, which was detected at concentration levels as high as 13,000 milligrams per kilogram (mg/kg), or parts per million (ppm). Toxicity Characteristic Leaching Procedure (TCLP) testing results indicated that these soils would be a characteristic hazardous waste, based upon the leachable concentrations of nitrobenzene measured. The RI/FS also found slightly elevated levels of select VOCs and SVOCs in groundwater.

As discussed in Section 1.1, the remedy, in part, consisted of treating and stabilizing the nitrobenzene impacted soil where nitrobenzene exceeded the Site cleanup goal of 14 ppm. Traces of nitrobenzene may remain in the soil at concentrations below 14 ppm cleanup goal but above the TAGM 4046-unrestricted use cleanup objective of 0.2 ppm. This would include soil at depths greater than 8 feet bls within the institutional control area but not under the soil cover system. A more detailed discussion of the nature and extent of contamination can be found in the RI/FS (Dvirka and Bartilucci Engineers, 1995) and the RACR (Remedial Engineering, 2005).

3.0 FUTURE USE OF SITE

Future use of the Site will be limited to commercial or industrial purposes. Residential development, schools, playgrounds, and other similar uses will not be permitted per the Declaration of Covenants and Restrictions. It is anticipated that the soil cover system will be integrated into future development plans for the Site (i.e., parking lot).

4.0 PURPOSE AND DESCRIPTION OF SOIL COVER SYSTEM

The purpose of the soil cover system is to eliminate the potential for direct contact with the treated/stabilized material. The soil cover system consists of 4 inches of top soil and 20 inches of clean fill underlain by a 12-ounce non-woven geotextile fabric. Beyond the boundaries of the geotextile fabric, common fill at the edges of the soil cover system were "feathered" into the existing landscape. As part of the stormwater management controls, the soil cover system was sloped to allow for proper drainage. The soil cover system was seeded with a hydro-seed mix of local grasses. The hydro-seed included a tack coat with mulch and fertilizer. The cap is subject to long-term maintenance and monitoring. An as-built of the soil cover system is provided in Appendix B.

5.0 MANAGEMENT OF SOIL

The purpose of this section is to provide the appropriate protocol for soil management for such activities that require disturbance of the soil cover system and/or soil within the institutional control area but not under the soil cover system. The analytical testing of designated soils required prior to handling, and disposal or reuse requirements is also discussed in this section. This SMP is to be implemented during all future development and maintenance/repair activities undertaken by any person that requires subsurface activities at the Site. Health and safety precautions, discussed further in Section 7.0, will be implemented during all handling of designated soils. The maintenance of the soil cover system is discussed in Section 6.0. This SMP may be updated in the future, as necessary, to provide guidance on new conditions encountered and/or as different equipment, technologies, etc., become available.

5.1 Disturbance of Soil Cover System

The soil cover system must be replaced to its original condition or, if necessary, repaired using clean fill from an acceptable borrow source, if any future intrusive work (i.e., construction or utility work) disturbs the soil cover system. The fill used to repair the soil cover system must meet the NYSDEC recommend soil cleanup objectives included in TAGM 4046. The disturbed area must be re-seeded to maintain Site drainage, prevent erosion, and maintain the appropriate cover over the treated/stabilized material.

All excavation work below the soil cover system must be performed under the direction of a licensed professional engineer in the State of New York. The licensed professional engineer will also provide a stamped/signed certification that excavation work below the soil cover system and subsequent repair/replacement of the soil cover system was conducted in a manner consistent with this SMP. The professional engineering certification must be included in the annual certification report discussed in Section 8.0.

5.2 Excavation of Soils at Depths of 8 to 20 Feet Below Land Surface

As discussed in Section 2.0, there is a potential to encounter soil outside the capped area that exceeds the NYSDEC recommended soil cleanup level for nitrobenzene during excavation/construction activities at depths of 8 to 20 feet bls. The Site soil at depths from land surface to 20 feet bls within the institutional control area, but not under the soil cover system,

that is excavated and intended to be removed from the Site must be managed, characterized, and properly disposed of in accordance with NYSDEC regulations and directives.

Excavated soil from land surface to 20 feet bls within the institutional control area will be sampled to determine if it may be reused at the Site or if it requires proper offsite disposal at a permitted facility. For excavated soil with visual evidence of contamination (i.e., staining or elevated photoionization detector [PID] measurements), one composite sample and a duplicate sample will be collected for each 100 cubic yards of stockpiled soil. For excavated soil that does not exhibit visual evidence of contamination, one composite sample and a duplicate sample will be collected for 2,000 cubic yards of stockpiled soil, and a minimum of one sample will be collected for volumes less than 2,000 cubic yards.

The composite sample will be collected from five locations within each stockpile. A duplicate composite sample will also be collected. PID measurements (PID with a 10.6 eV [photon energy] lamp) will be recorded for each of the five individual locations. A grab sample will be collected from one of the five individual locations used to make the composite sample with the highest PID measurement. If none of the five individual sample locations exhibit PID readings, one location will be selected at random. A total of three samples will be collected from each stockpile. The samples will be analyzed by a New York State Department of Health (NYSDOH) ELAP-certified laboratory for nitrobenzene using USEPA Method 8270.

Soil samples will be composited by placing equal portions of soil from each of the five composite sample locations into a pre-cleaned, stainless steel mixing bowl. The mixing bowl will be covered between the addition of each soil-sub sample to minimize potential volatilization. The soil will be thoroughly homogenized using a stainless steel scoop or trowel and transferred to pre-cleaned jars provided by the laboratory. Sample jars will then be labeled and a chain-of-custody form will be prepared.

All soil exhibiting visual evidence of contamination or determined to exceed the TAGM 4046 soil cleanup level for nitrobenzene will be placed in roll-off containers or stockpiled away from the construction activities on flat terrain on double layers of polyethylene sheeting, each with a minimum 8 mil thickness between the excavated soils and ground or pavement surface. The