

APPENDIX C
DRAFT EASEMENT

**ENVIRONMENTAL PROTECTION EASEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

This Environmental Protection Easement and Declaration of Restrictive Covenants is made this ____ day of _____, 20____, by and between _____, _____, ("Grantor"), having an address of _____, and, _____ ("Grantee"), having an address of _____.

WITNESSETH:

WHEREAS, Grantor is the owner of a parcel of land located in the county of _____, State of New York, more particularly described on **Exhibit A** attached hereto and made a part hereof together with any buildings and improvements thereon and appurtenances thereto (the "Property");

WHEREAS, the Property is being utilized in connection with the remediation of the Hudson River PCBs Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed 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, by publication in the Federal Register on September 21, 1984;

WHEREAS, in a Record of Decision dated February 1, 2002 (the "ROD"), the Regional Administrator of EPA Region 2 selected, and the New York State Department of Environmental Conservation ("NYSDEC") concurred with, a "response action" for the Site, which provides, in part, for the targeted dredging and off-site disposal of polychlorinated biphenyl (PCB)-containing sediments from the Hudson River between Hudson Falls, New York and the Federal Dam at Troy, New York [description of the remedy should be supplemented, as needed, to specify the components of the remedy that will necessitate the specific access restrictions or use(s) of the Grantor's property];

WHEREAS, the United States and General Electric Company ("GE") have entered into a Consent Decree relating to the Site, in *United States of America v. General Electric Co.*, Civil Action No. _____ (the "Consent Decree"), which was entered by the United States District Court for the Northern District of New York on [date];

WHEREAS, [describe current status of site response activities; to be filled in at the time the covenant is executed];

WHEREAS, the parties hereto have agreed that Grantor shall grant a permanent easement and covenant a) to provide a right of access over the Property to the Grantee for purposes of implementing, facilitating and monitoring the response action; and b) to impose on the Property use restrictions that will run with the land for the purpose of protecting human health and the environment; and

WHEREAS, Grantor wishes to cooperate fully with the Grantee in the implementation of all response actions at the Site.

NOW, THEREFORE:

1. Grant: Grantor, on behalf of itself, its successors and assigns, in consideration of the terms of the Consent Decree 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 with general warranties of title the right to enforce said restrictions and rights, which shall be of the nature, character and duration, and for the purposes hereinafter set forth, with respect to the Property.
2. Purpose: 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 past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.
3. Restrictions on use: The following restrictions on use apply to the use of the Property, run with the land and are binding on the Grantor: [insert specific restrictions; may vary depending on the property]
4. Modification or termination of restrictions: The restrictions on use specified in the preceding paragraph, and other requirements of this instrument, shall terminate when EPA notifies Grantor that the remedial activities at the Property have been completed. EPA will deem such activities as having been completed when they are no longer needed to (i) carry out or maintain the effectiveness of the remedial activities required pursuant to the Consent Decree; (ii) implement required operation, maintenance, and monitoring; or (iii) protect human health and the environment. In the absence of such notification by EPA, the restrictions on use specified in Paragraph 3, above, may only be modified, or terminated in whole or in part, in writing, by the Grantee, with the prior written consent of EPA, provided, however, that any modification or termination of said restrictions and

requirements shall not adversely affect the remedy selected by EPA for the Site. If requested by the Grantor, such writing will be executed by Grantee in recordable form.

5. Right of access: A right of access for GE [if not the Grantor], the United States, New York State, and their employees, representatives, agents, contractors, and subcontractors, to the Property at all reasonable times for the following purposes shall run with the land and be binding on Grantor:
 - a) Implementing or overseeing the response actions described in the ROD and the Consent Decree, including but not limited to, [insert as applicable to particular property];
 - b) Verifying any data or information relating to the Site;
 - c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
 - d) Conducting investigations under CERCLA relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils; and
 - e) Implementing additional or new response actions under CERCLA.

In conducting such activities on the Property, the party having access to the Property shall use reasonable efforts to minimize interference with or interruption of Grantor's use of the Property, to the extent consistent with the requirements of the Consent Decree, and shall provide to the Grantor the results from any sampling on the Property.

6. 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.
7. Federal authority: Nothing in this document shall limit or otherwise affect EPA's rights of entry and access or EPA's authority to take response actions under CERCLA, the NCP, or other federal law.
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:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, DATED _____, 20__, RECORDED IN THE [insert name of records office] ON _____, 20____, IN BOOK _____, PAGE _____, IN FAVOR OF, AND ENFORCEABLE BY, THE [insert name of grantee] AND BY THE UNITED STATES OF AMERICA AND THE STATE OF NEW YORK AS THIRD PARTY BENEFICIARIES.

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

10. 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 CERCLA. 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.
11. Damages: Grantee shall also be entitled to recover damages for breach of any covenant or violation of the terms of this instrument including any impairment to the remedial action that increases the cost of the selected response action for the Site as a result of such breach or violation.
12. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.
13. Covenants: Grantor hereby covenants to and with the Grantee and its assigns that the Grantor has a good and lawful right and power to sell and convey the Property or any interest therein.
14. 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:

To Grantee:

A copy of each such communication shall also be sent to the following:

To EPA:

To NYSDEC:

15. 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) Liberal construction: 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) Severability: 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) Entire agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein; provided that nothing in this instrument shall be deemed to alter or modify the Consent Decree.

- e) No forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- f) Joint obligation: If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.
- g) 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 persons and/or entities named at the beginning of this document, identified as "Grantee" and their personal representatives, heirs, successors, and assigns.
- h) Captions: 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.
- i) Counterparts: 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.
- j) Third-Party Beneficiary: Grantor and Grantee hereby agree that the United States, through EPA, and NYSDEC shall be, on behalf of the public, third-party beneficiaries of the benefits, rights and obligations conveyed to Grantee in this instrument; provided that nothing in this instrument shall be construed to create any obligations on the part of EPA or NYSDEC, nor to reduce any obligations otherwise possessed by EPA and NYSDEC.

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

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Executed this _____ day of _____, 20__.

By: _____

Its: _____

STATE OF _____)
) ss
COUNTY OF _____)

On the _____ day of _____ in the year _____ before me personally came _____ to me known, who, being duly sworn, did depose and say that he/she/they reside(s) in _____ [if the place of residence is in a city, include the street and street number, if any, thereof]; that he/she/they is [are] the [president or other officer or director or attorney in fact duly appointed] of the [name corporation], the corporation described in and which executed the above instrument; that he/she/they know(s) the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said 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.

Notary Public in and for the
State of _____

My Commission Expires: _____.

This instrument is accepted this _____ day of _____, 20__.

[insert name of grantee]

By: _____

STATE OF _____)
) ss
COUNTY OF _____)

On the _____ day of _____ in the year _____ before me personally came _____ to me known, who, being duly sworn, did depose and say that he/she/they reside(s) in _____ [if the place of residence is in a city, include the street and street number, if any, thereof]; that he/she/they is [are] the [president or other officer or director or attorney in fact duly appointed] of the [name corporation], the corporation described in and which executed the above instrument; that he/she/they know(s) the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said 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.

Notary Public in and for the
State of _____

My Commission Expires: _____.

Attachment: Exhibit A - legal description of the Property