

County:

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**DECLARATION OF COVENANTS, RESTRICTIONS AND ENVIRONMENTAL  
EASEMENT FOR 7 EAST HOOK CROSS ROAD**

This Declaration of Covenants, Restrictions and Environmental Easement (“**DCR & EE**”) is made this 10<sup>th</sup> day of September, 2018, by and between Uwe and Carlotta Heitmann, having an address at 11 East Hook Cross Road, Town of East Fishkill, New York (“**Grantor**”), and the People of the State of New York, acting through their Commissioner of the New York State Department of Environmental Conservation (“**NYSDEC**”) with its Central Office, located at 625 Broadway, Albany, New York 12233 (“**Grantee**”).

WITNESSETH:

WHEREAS, Grantor is the owner of a parcel of land located in the Town of East Fishkill, County of Dutchess, 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 (“**Property**”); and

WHEREAS, the Property is part of the Shenandoah Road Groundwater Contamination Superfund Site (“**Site**”), the location of a former business to clean and repair computer chip racks 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 June 14, 2001; and

WHEREAS, in a Record of Decision dated September 30, 2012 (“**ROD**”), EPA Region 2 selected, and NYSDEC concurred with, a response action for the Site, which provided, in part, for the following actions:

- *Restricting use of the Property, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action and Operation & Maintenance.*
- *In accordance with an EPA and NYSDEC-approved Institutional Controls Implementation and Assurance Plan (“**ICIAP**”) and Operation, Maintenance and Monitoring Manual (“**OM&M Manual**”), copies of which must be obtained by any party with an interest in the Property (copies of the ICIAP and OM&M Manual may be obtained from NYSDEC, Division of Environmental Remediation, Site Control Section, 625 Broadway, Albany, NY 12233, or at [derweb@gw.dec.state.ny.us](mailto:derweb@gw.dec.state.ny.us)), the restrictions shall include, but not be limited to: prohibiting construction or other activities conducted on the Property that may interfere with remedial components, including the source extraction and treatment system.*

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WHEREAS, pursuant to a judicial consent decree entered between the United States and International Business Machines Corporation (“IBM”), in *United States v. IBM*, 7:14-cv-936-KMK (the “CERCLA Consent Decree”), the construction activities associated with the remedial action have been completed at the Site by IBM and groundwater remediation and long-term monitoring activities are ongoing; and

WHEREAS, the parties hereto have agreed that Grantor shall grant to the Grantee this permanent Declaration of Covenants, Restrictions and Environmental Easement, including but not limited to providing a right of access over the Property for purposes of implementing, facilitating and monitoring the response action; and to impose on the Property, 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, for ten dollars and other good and valuable consideration, receipt whereof is hereby acknowledged, does hereby give, grant, covenant and declare in favor of the Grantee that the Site shall be subject to this DCR & EE and Grantor does further give, grant and convey to the Grantee the perpetual right to enforce said restrictions, covenants, right of access and Environmental Easement, all of which shall be of the nature and character, and for the purposes hereinafter set forth, with respect to the Property. Grantor does further give, grant and convey to EPA, and IBM, as third-party beneficiaries, the perpetual right to access the property for purposes of implementing, facilitating and monitoring any ongoing response action on the Property, in addition to the enforcement rights granted to the third-party beneficiaries in paragraph 11 below.
2. Purpose: It is the purpose of this instrument to convey to the Grantee real property rights, which will run with the land, facilitate the remediation of past environmental contamination and to impose use restrictions and covenants to protect human health and the environment by reducing the risk of exposure to contaminants.
3. Restrictions: The following restrictions apply to the use of the Property, run with the land and are binding on the Grantor and its successors in title and assigns:
  - No wells may be drilled; provided that Grantee, EPA and IBM shall have the right to drill wells in connection with removal or remedial actions required by Grantee or EPA.
  - Construction of any permanent structure within the footprint of the contaminated soil removal effort as shown on **Exhibit B** must have a slab-on-grade foundation and footers that must not involve excavation to a depth of greater than six feet below ground surface (bgs). Such structures must not be for human occupancy as a dwelling and must not require water and sewer services based on Town codes and none may be installed. Roof drainage may only be conveyed to the nearest

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existing storm catch basin, but may not impede the capacity of the storm sewer system to convey the treated groundwater discharge from the Groundwater Treatment Facility. Unless already installed by buried cable, electrical service to any structure must be by overhead pole-to-structure cabling.

- No penetration or excavation of soil is permitted extending 25 feet in all directions from features that are associated with the Source Extraction and Treatment System, as such System is shown on **Exhibit C**; provided that Grantee, EPA and IBM shall have the right to penetrate or excavate soils in connection with removal or remedial actions required by Grantee or EPA.
- No penetration or excavation of soil is permitted within any area where further remedial action elements would be installed beyond those currently shown on **Exhibit C**, such as a conveyance piping connection to one or more of the pit water pipes; provided that Grantee, EPA and IBM shall have the right to penetrate or excavate soils in connection with removal or remedial actions required by Grantee or EPA.

4. Modification or termination of restrictions, covenants and easement: The restrictions and easement specified in the preceding paragraph of this instrument may only be modified or terminated, in whole or in part, in writing, by the Grantee, provided, however, that any modification or termination of said restrictions shall not adversely affect the remedy selected by EPA and NYSDEC for the Site. If requested by the Grantor, such writing will be executed by Grantee in recordable form. Any request by Grantor for a modification or termination of this instrument shall be made in writing by Grantor to NYSDEC and to EPA in accordance with paragraph 15 of this instrument.

5. Right of access: Grantors hereby convey to Grantee, to EPA and to IBM, including its contractors and representatives, a right of access to the Property at all reasonable times for the following purposes, which shall run with the land and be binding on Grantor, their successors and /or assigns, and on any tenants or any other parties having an interest in and/or rights to the Property:

- a) Implementing the response actions in the ROD;
- 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 or the New York Environmental Conservation Law (“ECL”) 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 or ECL.

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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. State authority: Nothing herein shall constitute a waiver of any rights the State may have pursuant to the Environmental Conservation Law, regulations and/or relevant provisions of statutory or common law.
9. 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.
10. Public notice: Grantor, on behalf of itself, its successors and assigns, 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 A DECLARATION OF COVENANTS, RESTRICTIONS AND ENVIRONMENTAL EASEMENT, DATED \_\_\_\_\_, 20\_\_, RECORDED IN THE DUTCHESS COUNTY CLERK'S OFFICE ON \_\_\_\_\_, 20\_\_, IN BOOK \_\_\_\_\_, PAGE \_\_\_\_\_, IN FAVOR OF, AND ENFORCEABLE BY, THE PEOPLE OF THE STATE OF NEW YORK AND BY THE UNITED STATES OF AMERICA AND IBM AS THIRD-PARTY BENEFICIARIES.**

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

11. Enforcement: The Grantee, EPA, and IBM 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 available to Grantee or EPA at law or in equity, including CERCLA and the ECL. Any forbearance, delay or omission to exercise Grantee's or EPA'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 or EPA of such term or of any of the rights of the Grantee or EPA under this instrument. IBM's third-party beneficiary right to enforcement shall be exercised solely at the direction of EPA and pursuant to the provisions of the CERCLA Consent Decree.
12. 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.

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13. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.
14. Covenants: Grantor hereby covenants that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein and that the Property is free and clear of encumbrances.
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:

Uwe and Carlotta Heitmann  
7 East Hook Cross Road  
Hopewell Junction, New York 12533

To Grantee:

Office of General Counsel  
NYS Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233-5500

NYS Department of Environmental Conservation  
Division of Environmental Remediation  
Site Control  
625 Broadway  
Albany, New York 12233

A copy of each such communication shall also be sent to EPA and IBM in the same manner as to Grantor or Grantee, and addressed to the following addresses:

Chief, Eastern New York Remediation Section  
New York Remediation Branch  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency, Region 2  
Attn: Shenandoah Road Groundwater Contamination Superfund Site Remedial Project Manager  
290 Broadway, 20<sup>th</sup> Floor  
New York, New York 10007-1866

Chief, New York Caribbean Superfund Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
Attn: Shenandoah Road Groundwater Contamination Superfund Site Attorney  
290 Broadway, 17<sup>th</sup> Floor  
New York, New York 10007-1866

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International Business Machines Corporation  
Dean W. Chartrand, Project Coordinator  
8976 Wellington Road  
Manassas, Virginia 20109

International Business Machines Corporation  
Linda N. Daubert, Alternate Project Coordinator  
8976 Wellington Road  
Manassas, Virginia 20109

International Business Machines Corporation  
IBM Environmental Counsel  
1 North Castle Drive  
Armonk, NY 10503

16. Recordation: Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner of the New York State Department of Environmental Conservation or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

17. General provisions:

a) Controlling law: The interpretation and performance of this instrument shall, with respect to the Declaration of Covenants, Restrictions and Environmental Easement, be governed by the laws of the State of New York, and with respect to other matters, 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) No forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantors' title in any respect.

e) 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.

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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 in perpetuity 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 mean the People of the State of New York acting through their Commissioner of NYSDEC or through any successor department or agency of the State of New York.

g) 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.

h) 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.

i) Third-Party Beneficiary: Grantor and Grantee hereby agree that the United States, through EPA, shall be 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 the United States.

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 30 day of May, 2018

GRANTOR: Uwe Heitmann and Carlotta Heitmann

By: [Signature]

Title: Owner

By: [Signature]

Title: Owner

County:

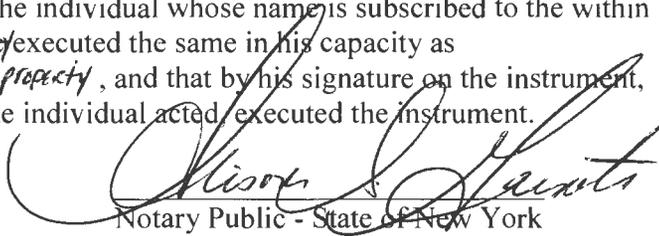
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**Grantor's Acknowledgment**

STATE OF NEW YORK )  
COUNTY OF Dutchess ) ss:

On the 30<sup>th</sup> day of MAY, in the year 2016, before me, the undersigned, personally appeared UWE AND CARLOTTA HEITMANN, 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 as OWNERS of the PROPERTY, and that by his signature on the instrument, the Grantor S, upon behalf of which the individual acted, executed the instrument.



Notary Public - State of New York

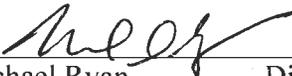
**ALISON A. GARNOT**  
**01GA6188032**  
Notary Public, State of New York  
Qualified in Dutchess County  
My commission expires JUNE 2nd, 2020

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**THIS ENVIRONMENTAL EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner.**

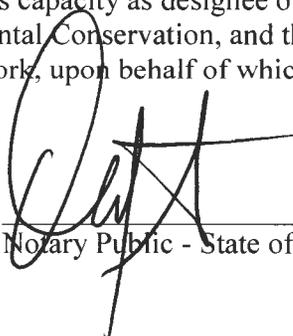
By:   
 Michael Ryan, Director  
 Division of Environmental Remediation

Date: September 10, 2018

**Grantee's Acknowledgment**

STATE OF NEW YORK )  
 ) ss:  
 COUNTY OF )

On the 10<sup>th</sup> day of September, in the year 2018 before me, the undersigned, personally appeared Michael Ryan, 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 as designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his signature on the instrument, the People of the State of New York, upon behalf of which the individual acted, executed the instrument.

  
 Notary Public - State of New York

**David J. Chiusano**  
**Notary Public, State of New York**  
 No. 01CH5032146  
 Qualified in Schenectady County  
 Commission Expires August 22, 2022

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**EXHIBIT A**  
**To**  
**Declaration of Covenants, Restrictions & Environmental & Easement**  
**Property Description [Map 2]**

**SHENANDOAH ROAD DCR AND EE AREA DESCRIPTION MAP 2**

DESCRIPTION OF AN ENVIRONMENTAL EASEMENT  
ON LANDS OF CARLOTTA & UWE HEITMANN  
7 EAST HOOK CROSS ROAD  
TOWN OF EAST FISHKILL, DUTCHESS COUNTY, NEW YORK

Beginning at a point on the Easterly side of East Hook Cross Road, said point also being on the Westerly line of lands of Bethel Baptist Church, Liber 1936 – Page 475, and running:

1) thence from said point of beginning, along the Westerly line of lands of Bethel Baptist Church, the following courses and distances: South 2° 57' 09" East, 65.67 feet to a point;

2) thence South 13° 12' 23" West, 202.82 feet to a point;

3) thence continuing along the Westerly line of lands of Bethel Baptist Church and lands of Town of East Fishkill, Liber 22007 – Page 9183, South 11° 00' 31" East, 348.18 feet to a point;

4) thence still along the Westerly line of lands of Town of East Fishkill, South 29° 17' 25" West, 111.99 feet to a point at the Northwesterly corner of other lands of Carlotta Heitmann and Uwe Heitmann, Liber 1401 – Page 215;

5) thence along the Westerly line of other lands of Heitmann, the following courses and distances: South 33° 50' 17" West, 303.22 feet to a point on the Northerly line of other lands of Carlotta Heitmann, Liber 1307 – Page 261;

6) thence along the Northerly and Easterly lines of other lands of Heitmann, the following courses and distances: North 59° 15' 51" West, 95.65 feet to a point;

7) thence North 30° 44' 09" East, 435.60 feet to a point;

8) thence North 23° 26' 51" West, 95.50 feet to a point;

9) thence North 4° 41' 51" West, 215.05 feet in East hook Cross Road;

10) thence through and along the Easterly side of East Hook Cross Road, the following courses and distances: North 48° 32' 09" East, 32.40 feet to a point;

11) thence North 23° 40' 17" East, 226.72 feet to the place of beginning.

CONTAINING: 1.850 Acres or 80,586 Square Feet

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The above-described premises are subject to an Engineering Control Area known as EC2; said area described as follows:

ENGINEERING CONTROL AREA 2 (EC2)

Beginning at a point at the Southwesterly corner of lands at the Town of East Fishkill, Liber 22007 – Page 9183, said point also being the Northwesterly corner of lands of Carlotta Heitmann and Uwe Heitmann, Liber 1401 – Page 215 (47 Stone Ridge Lane), and running:

- 1) thence from said point of beginning, along the Westerly line of other lands of Heitmann (47 Stone Ridge Lane), South  $33^{\circ} 50' 17''$  West, 29.64 feet to point;
- 2) thence through the lands of Uwe and Carlotta Heitmann (7 East Hook Cross Road) the following courses and distances: North  $61^{\circ} 37' 05''$  West, 7.70 feet to a point;
- 3) thence North  $37^{\circ} 08' 56''$  West, 73.22 feet to a point;
- 4) thence South  $8^{\circ} 46' 34''$  West, 116.23 feet to a point;
- 5) thence South  $8^{\circ} 42' 09''$  East, 40.91 feet to a point on the Westerly line of other lands of Carlotta & Uwe Heitmann (47 Stone Ridge Lane);
- 6) thence along the Westerly line of other lands of Heitmann (47 Stone Ridge Lane), South  $33^{\circ} 50' 17''$  West, 20.80 feet to a point;
- 7) thence continuing through the lands of Heitmann (7 East Hook Cross Road) the following courses and distances: South  $81^{\circ} 17' 51''$  West, 35.94 feet to a point;
- 8) thence North  $8^{\circ} 42' 09''$  West, 63.92 feet to a point;
- 9) thence North  $8^{\circ} 46' 34''$  East, 93.32 feet to a point on the Easterly line of lands of Carlotta Heitmann, Liber 1307 – Page 261 (11 East Hook Cross Road);
- 10) thence along the Easterly line of other lands of Heitmann (11 East Hook Cross Road), North  $30^{\circ} 44' 09''$  East, 158.32 feet to a point;
- 11) thence continuing through the lands of Uwe & Carlotta Heitmann (7 East Hook Cross Road) the following courses and distances: North  $80^{\circ} 12' 48''$  East, 35.26 feet to a point;
- 12) thence South  $2^{\circ} 24' 07''$  East, 57.26 feet to a point;
- 13) thence South  $36^{\circ} 22' 11''$  West, 40.24 feet to a point

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14) thence South  $37^{\circ} 08' 56''$  East, 61.95 feet to a point on the Westerly line of lands of Town of East Fishkill;

15) thence along the Westerly line of lands of Town of East Fishkill, South  $29^{\circ} 17' 25''$  West, 20.50 feet to the place of beginning.

ENGINEERING CONTROL (EC 2) AREA CONTAINING: 0.427 Acres or 18,585.41 Square Feet.

All Bearings are referred to Magnetic North.

The above described easement is shown on "Map 2, Environmental Easement on Lands of Uwe Heitmann and Carlotta Heitmann, 7 East Hook Cross Road" Prepared by Brinnier & Larios, P.C., Dated January 11, 2017

JANUARY 11, 2017

CHRISTOPHER J. ZELL, P.L.S.  
BRINNIER and LARIOS, P.C.