

CON 12-15
DOC# 35325

February 1, 2019

Via Email and Federal Express

Owens Hull
(hull.owens@epa.gov)
Remedial Project Manager
Site Remedial Branch – Superfund Division
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, KS 66219

Via Email and Federal Express

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Iowa Dept. of Natural Resources
Land Quality Bureau
502 East 9th Street
Des Moines, IA 50319-0034

Via Email and Federal Express:

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Region 7
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Via Email and Federal Express

Robert Drustrup
(Bob.Drustrup@dnr.iowa.gov)
State Project Coordinator
Contaminated Sites Section
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, IA 50319-0034

***Re: Notice of Sale Pursuant to Consent Decree for Railroad Avenue Superfund Site,
Southern Plume, Operable Unit 02, West Des Moines, Iowa***

Dear Sirs:

On October 15, 2007, Delavan, Inc. (“Delavan”) entered into a Consent Decree in the matter *United States v. Delavan, Inc.*, No. 07-331, filed in the United States District Court for the Southern District of Iowa., in connection with the Railroad Avenue Superfund Site in West Des Moines, Iowa. Pursuant to Section 9(b) of the Consent Decree, Delavan hereby gives notice of the transfer of 2250 Fuller Road, West Des Moines, Iowa (“the Property”) to 2250 Fuller Road, LLC (“Purchaser”).

The Purchaser is also the current tenant. Purchaser has leased the Property since December 1, 2005. Purchaser entered into a Purchase and Sale Agreement on September 18, 2018 with Delavan to purchase the Property. Pursuant to Section 9(b) of the Consent Decree, Delavan

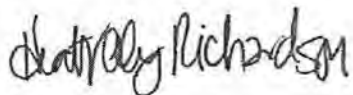
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provided written notice to the Purchaser of the Consent Decree, access easements, and/or restrictive easements on or before September 18, 2018. Additionally, the Purchaser has agreed to provide USEPA and Iowa Department of Natural Resources with access to the Property and provide rights to implement institutional controls pursuant to Deed Restrictions that will be recorded as of the Closing. *See attached Deed Restrictions (Exhibit 1), including Sections 5 and 6 which provide specific access and institutional control rights under the Consent Decree.*

The proposed date of the closing for the property is February 8, 2019. Please note that USEPA has been in discussions with the Purchaser since the fall of 2018. USEPA also provided the attached comfort letter to Delevan dated November 29, 2018 approving the sale and proposed construction of a slab-on-grade building. *See attached November 29, 2018 letter Exhibit 2.*

Delavan respectfully requests confirmation in writing that this written notice will suffice as notice to USEPA of a sale of the property under Section 9(b) of the Consent Decree.

Very truly yours,



Heather A. Richardson

Enclosures

cc: Mr. Bruce Amig (*Via Email – Bruce.Amig@utc.com*)
Mr. Scott Klemp (*Via Email – dsk@klemp-stanton.com*)

**Exhibit 1 –
Deed Restrictions**

Exhibit C to Special Warranty Deed

Deed Restrictions

The Property is conveyed subject to the reservations, restrictions and restrictive covenants set forth herein, which are hereby established, declared, granted and reserved by Grantor.

1. **Definitions.** Below are certain definitions of terms as used in these Restrictions and Reservations:

"Benefitted Parties" means Grantor and United Technologies Corporation, a Delaware corporation ("UTC"), and each of their respective successors and assigns.

"Building Materials" means any materials whatsoever that exist in the Improvements or on its surfaces or in building and construction materials, including its coatings, decorations, and fixtures, and materials meeting the definition of a hazardous substance, if present, such as mold, asbestos, asbestos containing materials, PCBs and lead.

"Environment" means soil, land, surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins, and wetlands), groundwaters, stream sediments, ambient air (including indoor air, but only to the extent that Regulated Materials have volatilized from environmental media to indoor air), plant and animal life, and any other environmental medium or natural resource.

"Environmental Condition" means any Regulated Materials in the Environment that could result in liability or obligations under Environmental Law.

"Environmental Law" means any applicable federal or state law, statute, code, order, decree, judgment, writ, injunction, rule or regulation of any Governmental Body relating to the protection of human health or the Environment, including the protection of air, surface water, groundwater or land, and/or governing the handling, use, generation, treatment, storage or disposal of Regulated Materials.

"Environmental Media" means soil, land, surface or subsurface strata, surface waters, groundwaters, and stream sediments.

"Environmental Remedial Action" means Property-specific investigation and remediation, including follow-up operation, maintenance, and monitoring activities, designed to address any Regulated Material in the Environment and that is protective of human health and the environment in accordance with Environmental Law. Environmental Remedial Action may include any and all actions required to (i) investigate, clean up, remediate, remove, treat, contain or in any other way address any Regulated Materials in the Environment, (ii) prevent the Release or threat of Release or minimize the further Release of Regulated Materials to the Environment so they do not migrate or endanger public health or welfare or the Environment, and (iii) perform pre-remedial studies and investigations and post-remedial monitoring, maintenance and care.

“Governmental Body” means all federal, state or local governmental bodies, instrumentalities, or agencies, including all political subdivisions of the State of Iowa having jurisdiction over environmental matters and/or the Environmental Remedial Action.

“New Building” means any new building, addition or material renovation to any existing building, or other occupied structure built after the date hereof.

“Occupants” means any persons who could be expected to utilize a New Building in light of the contemplated use of such New Building.

“Qualified Consultant” means any licensed professional engineer having a minimum of five (5) years’ experience in the design of Vapor Protection Systems.

“Regulated Material” means material that Grantor or the other Benefitted Parties are or may be obligated to investigate, clean up, remediate, remove, treat, contain or address and that is also (i) a hazardous substance as defined by any Environmental Law; (ii) a petroleum or petroleum product, oil or waste oil; (iii) asbestos or polychlorinated biphenyls; (iv) a hazardous material, toxic substance, toxic pollutant, solid waste, municipal waste, industrial waste, hazardous waste, flammable material, radioactive material, pollutant or contaminant or similar materials subject to regulation under any applicable Environmental Law and/or (v) any other chemical, material, or substance exposure to which or whose discharge, emission, disposal or Release is prohibited, limited, or regulated under any applicable Environmental Law. Notwithstanding the foregoing, “Regulated Material” shall not include any of the materials in subparagraphs (i) through (v) above when those materials exist or occur in Building Materials.

“Release” means any spill, leak, emission, discharge, leaching, dumping or other release of any Regulated Material into the Environment, whether intentional or unintentional.

“Vapor Protection System” means a sufficiently impermeable membrane designed for preventing vapor intrusion, such that Occupants of a New Building are protected from any potential intrusion of soil and groundwater vapors.

2. **Restrictions on Use and Occupancy.**

(a) The Property shall not be used for any purpose other than industrial, warehouse and/or commercial purposes that under applicable law do not require the Property to meet environmental clean-up or remediation standards for residential uses. Without limiting the generality of the foregoing, the Property shall not be used for any of the following uses: single or multi-family residential, school, daycare, group home, nursing home, hospital, meeting hall, church or other place of congregation or worship, hotel, motel or other type of lodging, playground or other recreational use or other residential use.

(b) Except to the extent allowed or required under groundwater remediation and monitoring plans that have been approved by any Governmental Body having jurisdiction over the Property, no surface or subsurface water at, on, or under the Property shall be used for consumption by humans or animals, irrigation or any other purpose that might bring it into contact, directly or indirectly, with humans or animals.

(c) No underground storage tanks or piping for petroleum or other hazardous substances or compounds shall be maintained, used or installed in, at on or under the Property; provided, however, that it is acknowledged that an abandoned underground storage tank is presently located at the Property.

(d) There shall be no use at or on the Property of any chlorinated solvents or any other chemicals or compounds that have breakdown products similar to breakdown products of chlorinated solvents.

(e) With regard to: (i) any buildings or structures constructed or erected on the Property subsequent to the date hereof; and (ii) any structural modifications to existing buildings or structures on the Property; utility corridors shall be designed, configured and constructed to minimize the potential for collection of vapor within utility corridors, migration of vapor through utility corridors and vapor intrusion into such buildings or structures.

(f) Apart from footings, foundations and other construction requirements consistent with applicable federal, state, county or municipal law, no buildings or structures shall have a basement or other space extending below the surface of the ground (including, without limitation, parking garages) without the prior written consent of the Benefitted Parties.

(g) Grantee shall not remove or penetrate the slab foundation located on the Property as of the date hereof without first obtaining the written consent of the Benefitted Parties, which consent shall not be unreasonably withheld, conditioned or delayed. In the event that Grantee undertakes any invasive testing involving a penetration of the slab of any Improvements on the Property, or otherwise penetrates or removes the slab, either in connection with Grantee's further evaluation of the Property or future redevelopment of the Property, or otherwise, and if such testing, penetration or removal reveals any soils or other contamination, then, Grantee shall assume all liability in connection therewith, but subject in all respects to the performance of Grantor's obligations under the terms of the Consent Decree (as defined in Section 5 below).

3. Notice and Release Concerning Historical Use of Chlorinated Solvents.

(a) Grantee acknowledges, for itself and the Benefitted Parties, that historical use of volatile organic solvents occurred on the Property.

(b) In respect of the foregoing, any utility corridors on the Property shall be designed, configured and constructed to minimize the potential for collection of vapor associated with Regulated Material within utility corridors, migration of vapor through utility corridors and vapor intrusion into buildings or other structures.

(c) In addition, Grantee covenants and agrees that no New Building shall be placed on the Property after the date hereof unless constructed with the following: (i) a Vapor Protection System, and (ii) additional vapor intrusion mitigation systems, such as passive or active vapor control systems designed to vent vapors, to the extent required by Environmental Law. The Vapor Protection System and any other required vapor intrusion mitigation systems shall be installed at Grantee's sole cost and expense. The Vapor Protection System design shall be certified by a Qualified Consultant. In providing such certification, the Qualified Consultant shall certify that the Vapor Protection System (y) was designed in conformance with standard

engineering principles and practices and meets all state and federal legal and regulatory requirements for indoor air vapor mitigation systems, and (z) is safe and effective in preventing residual vapors that may exist in Environmental Media from entering the New Building.

(b) Grantee acknowledges, for itself and its successors and assigns, and for its successors and assigns in title, that each Vapor Protection System shall be continually maintained in good working order at the expense of the then owner of the Property.

(c) Grantee, for itself and its successors and assigns, and for its successors and assigns in title, expressly releases and waives, as to the Benefitted Parties, and their respective affiliates, successors and assigns, any and all claims, damages and/or liability on account of any failure by Grantee or its successors or assigns, or its successors in title, to install a Vapor Protection System on any such New Building.

4. **Environmental Remedial Action.**

(a) All use of and activities on the Property and in and about the buildings and structures thereon by Grantee shall be conducted so that there shall be no material interference with any Environmental Remedial Action then being conducted or reasonably anticipated to be conducted at the Property, nor shall use or activities result in any exacerbation of any Environmental Condition on the Property.

(b) In particular, and without limiting the generality of the foregoing, no buildings or other structures or improvements or alterations thereof shall be constructed, erected or maintained on the Property and no activities, use, operation or occupancy of the Property shall be conducted in such a way so as to materially interfere with the installation, operation, maintenance, repair or replacement of any Remediation System. For the purposes of these Deed Restrictions, the term "**Remediation System**" means, collectively, all soil vapor extraction wells and related equipment, all purge wells and related equipment, all groundwater wells, monitoring wells, groundwater treatment injection wells or infiltration galleries, or other environmental wells, any groundwater pump and treatment system, and any groundwater and/or soil remediation facilities, including without limitation, any collection trenches, subsurface in-situ treatment trenches or barriers, subsurface pipes, air strippers, groundwater and wastewater ponds and aeration weirs, or other environmental remediation facilities, structures or equipment required for the purpose of conducting or maintaining any Environmental Remedial Action.

5. **Undertakings of Grantee and Successors in Title.**

(a) Grantee, and its successors in title and any and all occupants of the Property, shall reasonably cooperate with the Benefitted Parties, and with any persons that the Benefitted Parties may reasonably designate, in connection with any Environmental Remedial Action that the Benefitted Parties, or any of them, or their designees may undertake at the Property.

(b) Grantee and its successors in title shall grant to the United States Environmental Protection Agency ("EPA"), Grantor and/or Iowa Department of Natural Resources ("IDNR") the right to perform any actions required under the Consent Decree entered between Seller and the United States of America on October 15, 2007, Civil Action No. 07-331 filed in the United States District Court for the Southern District of Iowa (the "**Consent Decree**"), any

Environmental Remedial Action or implement such restrictive covenants, access rights and other institutional controls of such form and substance as the applicable agency may require and shall obtain and deliver to EPA and/or Iowa Department of Natural Resources such subordinations to, and/or releases to the grant of such restrictive covenants of those having an interest in the Property as EPA and/or Iowa Department of Natural Resources may require, including without limitation covenants under the Iowa Covenants Act under Section 102 of the Iowa Code ("**State Environmental Covenant**"). Grantee hereby irrevocably appoints Grantor and the other Benefitted Parties as Grantee's attorney-in-fact, coupled with an interest, to act jointly or severally on behalf of Grantee to execute and record any such grant of restrictive covenant or other institutional control and take any action to implement the same, in the event Grantee or any successor in title shall fail or refuse to comply with the requirements of this subparagraph.

(c) In addition to the foregoing, to the extent the Benefitted Parties in their sole discretion choose to perform any Environmental Remedial Action not required by EPA and/or IDNR, Grantee and its successors in title shall grant to the Benefitted Parties the right to perform any Environmental Remedial Action or implement such restrictive covenants, access rights and other institutional controls, provided that such Environmental Remedial Action, restrictive covenants, access rights or other institutional controls do not unreasonably disrupt or interfere with the lawful use and operation of the Property by the occupants thereof.

(d) Grantee, its successors in title, and all occupants of the Property, shall not conduct any invasive activity of the soil or groundwater on the Property that shall disturb residual contamination.

(e) Grantee, its successors and assigns, shall reimburse Grantor for any damage resulting from a violation of the provisions of Section 4 herein, including but not limited to, the cost of repairing or replacing the Remediation System.

(f) Grantee, its successors and assigns in title and its and their respective successors and assigns shall not communicate with any Governmental Body regarding or concerning, or that may affect, any Environmental Remedial Action being performed by any of the Benefitted Parties and relating to the Property. All correspondence, discussions and negotiations with, and submissions to, any Governmental Body concerning, or that may affect, the Benefitted Parties' Environmental Remedial Action shall be controlled by and coordinated with the Benefitted Parties. Notwithstanding the foregoing, nothing in these Deed Restrictions shall preclude the then owner from making any filing or other communication necessary to satisfy a legal obligation or pursue a legal right or remedy.

(g) Grantee, its successors and assigns in title and its and their respective successors and assigns shall not perform any activities on the Property that have the potential to exacerbate or would exacerbate any Environmental Conditions on the Property or any environmental conditions located off-site, or materially interfere with the Environmental Remedial Action.

6. **Reserved Right of Access.** Grantor hereby reserves to itself, its successors and assigns, and its successors in title, and does hereby grant to the Benefitted Parties and their successors and assigns, an easement and right of entry into and on the Property for themselves and their respective employees, contractors, agents, and consultants, upon reasonable written

notice and at reasonable times (in light of the purpose of the entry), for the purpose of determining compliance with the terms of these Deed Restrictions, to perform any Environmental Remedial Action that the Benefitted Parties may be obligated to perform, including under the Consent Decree, Such right shall include a right and easement to place, install, maintain, repair, replace or store machinery, equipment and other property on the Property and the right to post notices on the Property pursuant to the Benefitted Parties' obligations to perform any Environmental Remedial Action, provided, however, that such right and easement shall not unreasonably disrupt or interfere with the use and operation of the Property by the occupants thereof.

7. **Covenants Run with the Land.** These Deed Restrictions shall run with the land and shall bind Grantee, Grantee's heirs, administrators, executors, successors and assigns, and can only be terminated by a written instrument executed by Grantor or UTC and duly recorded in the local land records in the jurisdiction where the Property is located.

8. **Limitation of Liability.** These Deed Restrictions are made for the benefit of then Benefitted Parties. The reservation by Grantor of the rights and benefits herein to perform one or more activities and the grant of rights and benefits by the Grantor to the other Benefitted Parties does not imply, and is not to be construed as imposing, any liability on the Grantor or the other Benefitted Parties or, except as expressly provided herein, any duty on the part of Grantor or the other Benefitted Parties or its or their respective successors and assigns to perform any such activity.

9. **Enforcement.**

(a) The rights herein reserved and/or granted may be enforced jointly or separately by the Benefitted Parties and their respective corporate successors and assigns.

(b) In the event that Grantee or its heirs, successors and assigns shall fail to comply with the requirements of these Deed Restrictions, such persons who so fail to comply shall be liable to the Benefitted Parties for any and all costs and reasonably attorney's fees associated with the enforcement of any provision or obligation created herein.

10. **Severability.** If any court of competent jurisdiction determines that any provision of this instrument is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court. In the event that the provision invalidated is of such nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the invalidity of such provision shall not affect the validity of any other provisions hereof, and all such other provisions shall continue unimpaired and in full force and effect.

11. **Amendment.** These Deed Restrictions may be amended only with the consent of the Grantor or its corporate successors and assigns having at the relevant time the benefits of the rights herein granted, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, except to the extent otherwise provided in the instrument of assignment, if any rights shall be assigned to a Governmental Body, no amendment or termination shall be

effective unless consented to in writing by the Grantor or its corporate successors, which shall not be unreasonably withheld, conditioned or delayed.

12. **Notices.**

(a) Except as otherwise required or allowed herein, any required notice from one party to another under these Deed Restrictions shall be sufficient if such notice is in writing and shall be deemed to have been duly given or sent (i) when received, if dispatched by registered or certified mail (return receipt requested), (ii) when received, if delivered in hand, or (iii) on the following business day, if dispatched by a reputable overnight courier which requires a signature of the receiving party, in each case to the party intended at its address as follows:

If to Grantor: Kristen W. Sherman
Assistant General Counsel
UTC Aerospace Systems
One Hamilton Road
MS 1-1-BC18
Windsor Locks, CT 06096
Tel: 860-654-5813
Cell: 860-541-0101
Fax: 860-998-1786

with a copy to United Technologies Corporation:
Office of the General Counsel
United Technologies Corporation
One Financial Plaza
Mailstop 524-Legal
Hartford Connecticut 06101

If to Grantee: 2250 Fuller Road, LLC
13504 15th Avenue North
Plymouth, MN 55441
Attention: Kevin Moore
Tel. 952-346-0102

Any of the parties may change the address to which notices may be sent by written notice to the other parties; provided, however, that no such change of address shall be binding unless notice thereof has been recorded in the same land records as these Deed Restrictions.

13. **Donation.** These Deed Restrictions shall continue in perpetuity, unless otherwise modified in writing by the Grantor in accordance with Section 11 above.

14. **Rights not Abridged by Public Restriction.** Grantor and Grantees intend that a separate agreed upon State Environmental Covenant regarding the Property will be recorded, and they agree that if the same is recorded, such State Environmental Covenant shall not diminish any right or obligation described herein of either Grantor or Grantee or their respective heirs, successors or assigns.

**Exhibit 2 –
11/29/18 Letter**



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7**

11201 Renner Boulevard
Lenexa, Kansas 66219

NOV 29 2018

Mr. Kevin Moore
Ultimate Events Inc.
13405 15th Avenue N
Minneapolis, Minnesota 55441

Re: Construction of Building on Railroad Avenue Groundwater Contamination Superfund Site,
2250 Fuller Road, West Des Moines, Iowa

Dear Mr. Moore:

On October 25, 2018, you contacted the U.S. Environmental Protection Agency regarding the planned purchase of the 2250 Fuller Road property in West Des Moines, Iowa, and the proposal to build a slab-on-grade building. The property is currently owned by Delevan, Inc., a division of Goodrich/United Technologies Corporation and is designated as Operable Unit 2 of the Railroad Avenue Groundwater Contamination Superfund Site, EPA ID IA0001610963.

The EPA is supportive of further development of the 2250 Fuller Road property; however, there are on-site groundwater monitoring wells that need to be maintained and sampled in the future. As you are aware, the monitoring wells are there to provide samples to help document the natural attenuation of a plume of volatile organic compounds, or VOCs, in groundwater under the facility. The ongoing monitoring is being conducted by Delevan, Inc., with EPA oversight.

Any construction should be planned to avoid the existing monitoring wells and to allow sufficient room for continued access to sample the wells. Based on our conversation and the figure you have provided, the proposed slab-on-grade building location should not affect the ongoing work related to the Railroad Avenue Groundwater Contamination Superfund Site. Additionally, the EPA believes that there are no known vapor intrusion issues at the site from the VOC plume which would present a VOC vapor exposure problem within (or outside) the building you have described.

If you have any questions or concerns, please contact me at (913) 551-7226.

Sincerely,

A handwritten signature in black ink that reads "Owens Hull".

Owens Hull
Remedial Project Manager
Site Remediation Branch
Superfund Division

cc: Hylton Jackson, IDNR