

BK: 2020 PG: 1821
Instrument Number: 1821
Recorded: 5/18/2020 at 2:32:01.0 PM
County Recording Fee: \$137.00
Iowa E-Filing Fee: \$5.56
Combined Fee: \$142.56
Revenue Tax:
Nancy Booten RECORDER
Lee County, Iowa

(ABOVE SPACE RESERVED FOR RECORDER'S USE)

Document Title: Environmental Covenant

Document Date: May 15, 2020

Grantors: David B. Grimes and Miriam K. Grimes, husband and wife.

Holder: United Technologies Corporation
Executive Director, Remediation Programs
9 Farm Springs
9FS-MS101
Farmington, CT 06032

Agencies: Iowa Department of Natural Resources
Wallace State Office Building
502 E 9th Street
Des Moines, Iowa 50319

United States Environmental Protection Agency – Region 7
11201 Renner Blvd.
Lenexa, Kansas 66219

Legal Description: Attached as Exhibit A

Prepared By: Gary M. Myers
Davis, Brown, Koehn, Shors & Roberts, PC
215 10th Street, Ste. 1300
Des Moines, IA 50309
515/288-2500

Return To: Gary M. Myers
Davis, Brown, Koehn, Shors & Roberts, PC
215 10th Street, Ste. 1300
Des Moines, IA 50309
515/288-2500

ENVIRONMENTAL COVENANT

This environmental covenant (Covenant) is established pursuant to Iowa Code (IC) chapter 455I entitled Uniform Environmental Covenants Act.

David B. Grimes and Miriam K. Grimes, hereafter "Grantors," United Technologies Corporation (UTC), hereafter "Holder," and the United States Environmental Protection Agency (EPA) in its capacity as an agency of the United States government and the Iowa Department of Natural Resources (Department) in its capacity as an agency of Iowa state government (together, the Department and EPA shall be referred to as the "Agencies," or may be referred to generically as an "Agency" when a provision could apply to either), enter into this Covenant for the purpose of subjecting the affected property described below to certain activity and use limitations in accordance with the terms and conditions as specified and the authorities granted the Department in IC chapter 455I, § 455B.103(7), and Department rules in chapter 567 Iowa Administrative Code (IAC) 133.

1. **Affected Property.** The Grantors are the fee title owners of approximately 30 acres located in Lee County, Iowa. The portion of the property affected by this Covenant contains 6.606 acres and is legally described as:

A parcel of land located in the SW $\frac{1}{4}$, SW $\frac{1}{4}$, Section 35, T66N, R5W, 5th P.M., Lee County, Iowa and described by the following metes and bounds: Commencing at the southwest corner of said Section 35, being the intersection of 340th Street and 260th Avenue; thence N00°08'21"W, 127.86 ft. with the west line of said Section 35 and centerline of 260th Avenue; thence N89°51'39"E, 33.00 ft. to the easterly right of way line of said 260th Avenue and point of beginning; thence N00°08'21"W, 528.54 ft. along said easterly right of way line of 260th Avenue; thence N88°06'46"E, 57.71 ft.; thence N50°11 '10"E, 310.07ft.; thence S89°33'46"E, 46.01 ft.; thence S47°26'29"E, 162.27 ft.; thence S01°35'18"E, 273.90ft.; thence S19°31 '47"E, 26.71 ft.; thence S02°12'28"E, 148.74 ft.; thence S41°45'44"W, 215.99 ft.; thence S87°59'49"W, 290.87 ft.; thence West, 47.80 ft. to the Point of Beginning; containing 6.606 acres.

Hereinafter, the affected portion of the property will be referred to as "the Property."

2. **Purpose.** Because contamination will remain at the Property at levels above those appropriate for unlimited use and unrestricted exposure, this Covenant is being imposed on the Property for the purposes of protecting public health and the environment, and to prevent interference with the performance, and the operation and maintenance, of any environmental response project required under the terms of the below-referenced Consent Decree and any subsequent decrees or orders. The signatories acknowledge that failure of these activity and use limitations to serve their intended purpose of preventing exposure to contamination at the Property could require the performance of additional work by UTC at the Property, in accordance with the Consent Decree, to ensure the protectiveness of the environmental response project.

3. **Background.** The Property is part of the Sheller-Globe Corporation Disposal Superfund Site (Site), which is located four miles north of the City of Keokuk, in the extreme southeast corner of Iowa. From 1948 until 1972, waste materials associated with the manufacture of rubber products and automobile components were taken to the Site from the former Sheller-Globe Keokuk plant. The materials, including rubber products, wood, paper, plastics, some solvents and paint sludge, were periodically burned and the ash spread over the hillsides. The Site includes a primary disposal area and a smaller secondary disposal area. The Property was the primary disposal area and was the source area for contamination at the Site. The Property is a 6.606-acre portion of the Site bordered by Airport Road (340th Street) to the south, 260th Avenue to the west, and two nameless intermittent streams to the north and east. In 1972, the use of the Site for disposal was discontinued and the area was covered with soil.

David B. Grimes purchased the Site from Sheller-Globe Corporation on January 26, 1973 with the knowledge that it had been formerly used as an industrial landfill. Miriam K. Grimes, his wife, was conveyed an interest in the Site in 1979, and they are the current owners of the Site. They subsequently constructed a home and other improvements on the Site.

In September 1989, the Department listed the Site on the State of Iowa's Registry of Confirmed Hazardous Waste or Hazardous Substance Disposal Sites pursuant to IC § 455B.426 et seq., which provides in pertinent part:

1. A person shall not substantially change the manner in which a hazardous waste or hazardous substance disposal site on the registry . . . is used without the written approval of the director.
2. A person shall not sell, convey, or transfer title to a hazardous waste or hazardous substance disposal site which is on the registry . . . without the written approval of the director. IC § 455B.430.

On October 1, 1990, the EPA placed the Site on the National Priorities List (NPL), 40 C.F.R. Part 300, Appendix B, as published in the Federal Register at 55 Fed. Reg. 35502.

The EPA and Sheller-Globe Corporation entered into an Administrative Order on Consent for Remedial Investigation/Feasibility Study (AOC) on October 18, 1990 in the matter of Sheller-Globe Corporation, U.S. EPA Docket No. VII-91-F-0003.

On September 10, 1991, Grantors entered into an agreement (1991 Agreement) with Sheller-Globe Corporation, which provides for and incorporates a Consent to Allow Access to the Property (Consent to Allow Access). The Consent to Allow Access was executed by the Grantors on July 29, 1991 and filed with the Lee County Recorder's Office on October 7, 1991. In the Consent to Allow Access, the Grantors provided access to:

Sheller-Globe Corporation, the U.S. EPA, the State of Iowa, any other potentially responsible persons to be identified by the U.S. EPA, and each of their respective employees, contractors, agents, representatives, and designees . . . in order for the foregoing parties to comply with the [AOC] . . . and with any subsequent order(s)

that may be issued or entered into with respect to investigation, remediation and/or monitoring of the Site.

Sheller-Globe Corporation was later acquired by UTC and was at various times known as United Technologies Automotive Systems, Inc. (UTAS).

On September 20, 1995, the EPA Region 7 Regional Administrator selected a remedial action for the Site, which includes, in part, restrictive covenants/deed restrictions; demolition and disposal of the on-site residence; removal and disposal of exposed drums; construction of a soil cover over exposed ash; and implementation of a monitoring program for remedial action to evaluate and ensure compliance of the soil cover with the approved remedial design/remedial action work plan and performance standards. The selected remedy is documented in the Record of Decision (ROD) for the Site.

On March 3, 1998, in *United States of America v. United Technologies Automotive Systems, Inc., and Miriam and David B. Grimes*, Case No. 3-98-CV-90150 (Consent Decree), the Grantors agreed to provide access and to implement institutional controls, and UTAS agreed to and later performed the Remedial Action and Maintenance, which is described in the ROD.

On September 12, 2000, the Grantors recorded in Lee County an Environmental Protection Declaration of Restrictive Covenants for the purposes of protecting the value and desirability of the Property and protecting human health and environment. The Environmental Protection Declaration of Restrictive Covenants prohibited the use of the Property for residential purposes unless approved in writing by the EPA or its assigns and disturbance of the surface or subsurface of the Property by drilling, excavation, removal of topsoil, rock or minerals, or change of the topography in any manner. Although the Grantors conveyed to UTAS the perpetual right to enforce these use restrictions, the covenants contained in the Environmental Protection Declaration of Restrictive Covenants were subject to terminate 21 years after the date that the covenants were recorded, subject to extensions by the filing of a verified claim in accordance with IC § 614.24. The 2000 Environmental Protection Declaration of Restrictive Covenants is attached hereto as Exhibit B.

In September 2001, the Site was deleted from the NPL. UTC continues to conduct periodic Site inspections to provide information for five-year reviews of the Site.

The ROD and the administrative record are available for review online at the EPA's profile page for the Sheller-Globe Corporation Disposal Site, which may be accessed at <https://www.epa.gov/superfund/shellerglobecorp>.

4. **Reopening.** The signatories acknowledge that if the activity and use limitations provided below fail to serve their intended purpose—including the prevention of exposure to contamination—the Agencies may reopen their review and regulatory oversight of the contaminant condition on the Property as provided under this Covenant, as provided for in IC chapter 455I.

5. **Identity of Grantor(s) and Holder(s).**

Grantor: David B. Grimes and Miriam K. Grimes, husband and wife.

Holder: United Technologies Corporation (UTC)

Agencies: The U.S. Environmental Protection Agency (EPA) and the Iowa Department of Natural Resources (Department) are each an Agency under this Covenant.

6. **Representations and Warranties.** The Grantors warrant to the other signatories to this Covenant that the Grantors:

- a. are the sole fee title owners of the property;
- b. hold sufficient fee title to the property to grant the rights and interests described in this Covenant free of any conflicting legal and equitable claims; and
- c. have identified all other persons holding legal or equitable interests, including, but not limited to, contract buyers, mortgage holders, other consensual lienholders and lessees, and secured their consent by signatures on this Covenant.

7. **Running with the Land.** This Covenant is perpetual and runs with the land as provided in IC § 455I.9 until modified or terminated. The terms of this Covenant are binding on the Grantors and all successors in interest, assigns and all Transferees acquiring or owning any right, title, lien or interest in the property and their heirs, successors, assigns, grantees, executors, administrators and devisees. The term "Transferee," as used in this Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, contract buyers, mortgagees, easement holders and/or lessees.

8. **Activity and Use Limitations and Terms.** The Property is subject to the following activity and use limitations:

- a. Unless approved in writing by the EPA or its assigns, the Property shall not be used for residential purposes;
- b. Unless approved in writing by the EPA or its assigns, there shall be no disturbance of the surface or subsurface of the Property by filling, drilling, excavation, removal of topsoil, rock or minerals, or change of the topography in any manner;
- c. Groundwater from the Property shall not be consumed or otherwise used for any purpose, except as approved in writing by EPA or its assigns for the collection of groundwater samples for environmental analysis purposes;
- d. There shall be no drilling or other artificial penetration of any groundwater-bearing unit(s) containing contaminants, unless performed in accordance with a work plan approved by the EPA; and
- e. Installation of any new groundwater wells on the Property is prohibited, except for wells used for investigative, monitoring and/or remediation purposes installed in accordance with a work plan approved by the EPA.

9. **Notice of Non-Compliance.** Any property owner or subsequent Transferee of an interest in the Property shall notify the Agencies as soon as possible of conditions which would constitute a breach of the activity and use limitations in Paragraph 8 if they have actual knowledge of these conditions or would reasonably be deemed to have knowledge within the normal course of administration of their property interest.

10. **Notice to Lessees.** Grantors, any holder with a property interest sufficient to grant a lease of the property, and any subsequent Transferee shall incorporate the activity and use limitations of this covenant either in full or by reference to this instrument in any lease, license, or other instrument granting a right to possession of the Property.

11. **Access to Property.** Reasonable access to the Property is granted to UTC, as Holder, and to the Agencies or any authorized representative of the Agencies, for the purpose of implementation, monitoring and enforcement of the terms of this Covenant. The Holder and/or Agencies, their authorized representatives or other persons entitled to access shall provide the current owner of the Property with reasonable notice, an explanation of the reasons for entry and the scope of on-site activities prior to access. Right of access includes, but is not limited to, the following:

- a. repair and maintenance of remedial action equipment, soil caps, groundwater monitoring wells and associated aboveground or subsurface structures;
- b. fencing and other technological controls;
- c. groundwater sampling and monitoring;
- d. additional drilling;
- e. construction of soil boring and/or groundwater monitoring wells; and
- f. other activities authorized or otherwise directed by the EPA.

The Grantors acknowledge that the 1991 Agreement and the Consent to Allow Access remain in force and that the Consent Decree is a “subsequent order” within the contemplation of the Consent to Allow Access, and that UTC will continue to have access to the Property at all reasonable times for the purpose of implementing, facilitating, and monitoring the Remedial Action and the Work to be done as defined in and pursuant to the Consent Decree and any subsequent decrees or orders that may be issued or entered into with respect to investigation, remediation and/or monitoring of the Site.

No right of access or use by the general public to any portion of the Property is intended by the Grantors or Grantees or is conveyed by this instrument.

12. **Groundwater Hazard Statement Notice.** IC § 558.69 requires submission of a groundwater hazard statement and disclosure if “hazardous waste” exists on the Property as defined in IC § 455B.411(3) or if the Department determines that solid waste exists on the Property that is potentially hazardous. If hazardous waste is present, the groundwater hazard statement must state that the condition is being managed in accordance with Department rules. The signatories and all subsequent Transferees required to submit a groundwater hazard statement under IC § 558.69 shall make reference to this Covenant in substantially the following form—filling in the blanks with the relevant and applicable details:

THE INTEREST CONVEYED IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 2019, RECORDED IN THE LEE COUNTY, IOWA RECORDER'S OFFICE ON _____, 2020, IN *(document, book and page, or parcel number)*.

UNLESS APPROVED IN WRITING BY THE EPA OR ITS ASSIGNS, THE PROPERTY SHALL NOT BE USED FOR RESIDENTIAL PURPOSES; UNLESS APPROVED IN WRITING BY THE EPA OR ITS ASSIGNS, THERE SHALL BE NO DISTURBANCE OF THE SURFACE OR SUBSURFACE OF THE PROPERTY BY FILLING, DRILLING, EXCAVATION, REMOVAL OF TOPSOIL, ROCK OR MINERALS, OR CHANGE OF THE TOPOGRAPHY IN ANY MANNER; GROUNDWATER FROM THE PROPERTY SHALL NOT BE CONSUMED OR OTHERWISE USED FOR ANY PURPOSE, EXCEPT AS APPROVED IN WRITING BY EPA OR ITS ASSIGNS FOR THE COLLECTION OF GROUNDWATER SAMPLES FOR ENVIRONMENTAL ANALYSIS PURPOSES; THERE SHALL BE NO DRILLING OR OTHER ARTIFICIAL PENETRATION OF ANY GROUNDWATER-BEARING UNIT(S) CONTAINING CONTAMINANTS, UNLESS PERFORMED IN ACCORDANCE WITH A WORK PLAN APPROVED BY THE EPA; AND INSTALLATION OF ANY NEW GROUNDWATER WELLS ON THE PROPERTY IS PROHIBITED, EXCEPT FOR WELLS USED FOR INVESTIGATIVE, MONITORING AND/OR REMEDIATION PURPOSES INSTALLED IN ACCORDANCE WITH A WORK PLAN APPROVED BY THE EPA.

13. **Modification and Termination.** Modification or termination of this Covenant shall comply with the standards in IC chapter 455I and applicable Department administrative rules. This Covenant may be modified or terminated by written consent of the Agencies, the then current fee simple title owner, and all original signatories (unless exempted under the provisions of IC § 455I.10(1)(c) in accordance with and subject to the provisions of IC § 455I.10). The termination or modification is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any modification or termination of this Covenant shall be in accordance with IC § 455I.9 and such additional terms as specified in this Covenant.

14. **Enforcement.** This Covenant may be enforced in a civil action for injunctive or other equitable relief by David B. Grimes and/or Miriam K. Grimes, as Grantors, UTC, as Holder, and all the signatories and those persons authorized by and in accordance with IC § 455I.11. Additionally, the signatories to this covenant authorize UTC the right to enforce the terms of this covenant as provided in IC § 455I.11(1)(c).

15. **Severability.** If this Covenant is found to be unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

16. **Governing Law.** This Covenant shall be governed by and interpreted in accordance with the laws of the State of Iowa.

17. **Recordation.** Within thirty (30) days after Agencies approval of this Covenant, the grantors shall record the Covenant in the same manner as a deed to the Property with the Lee County, Iowa Recorder's Office.

18. **Effective Date.** The effective date of this Covenant shall be the date upon which the fully executed Covenant has been properly recorded with the Lee County, Iowa Recorder's Office.

19. **Notice.** Unless otherwise notified in writing by the Agencies, any document or communication required by this Covenant shall be submitted to:

Director
Iowa Department of Natural Resources
Wallace State Office Building
Des Moines, Iowa 50319

Director, Superfund & Emergency Management Division
U.S. Environmental Protection Agency
11201 Renner Boulevard
Lenexa, Kansas 66219

David B. and Miriam K. Grimes
3376 Mississippi River Road
Keokuk, Iowa 52632

United Technologies Corporation
Executive Director, Remediation Programs
9 Farm Springs
9FS-MS101
Farmington, CT 06032

20. **Subordination and Consent.** By signing this Covenant, the signatories knowingly and intelligently acknowledge their consent to this Covenant and agree to subordinate their interest in the Property. The following persons have expressly consented and subordinated interests: None.

21. **Notice of Change in Ownership.** Grantor and holder with sufficient Property interest to convey a possessory interest in the Property and any subsequent Transferee with sufficient interest shall reference and incorporate the terms of this agreement into any subsequent instrument which conveys a possessory interest in the Property.

22. **Prior Covenant.** This Covenant supersedes the prior Environmental Protection Declaration of Restrictive Covenants for the Property, recorded in Lee County, Iowa on September 12, 2000, a copy of which is attached hereto as Exhibit B.

GRANTOR:

2/10/, 2020

David B. Grimes
David B. Grimes

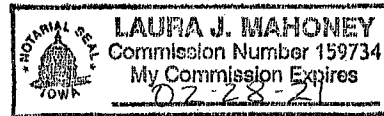
State of Iowa)

County of Lee) ss.

This instrument was acknowledged before me this 10 day of February, 2020,
by David B. Grimes.

Laura J. Mahoney

Notary Public, State of Iowa:



GRANTOR:

2/10, 2020

Miriam K. Grimes
Miriam K. Grimes

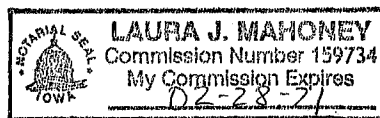
State of Iowa)

County of Lee) ss.

This instrument was acknowledged before me this 10 day of February, 2020,
by Miriam K. Grimes.

Laura J. Mahoney

Notary Public, State of Iowa:



HOLDER:

United Technologies Corporation*

February 19, 2020

By: [Signature]
Name: R. BENNETT Richard Bennett
Its: Corp. vp.

State of Connecticut)

County of Hartford) ss.

On this 19th day of February, 2020, before me personally appeared Richard Bennett, known to me to be the Corporate V.P. of United Technologies Corporation or the lawful designee of _____, who being duly sworn, did sign this Covenant.

GIGI M. BARNARD
NOTARY PUBLIC
State of Connecticut
My Commission Expires
February 28, 2024

Notary Public, State of Connecticut

*On behalf of United Technologies Automotive Systems, Inc. f/k/a Sheller-Globe Corporation.

AGENCY:

IOWA DEPARTMENT OF NATURAL RESOURCES

2/27, 2020

Kayla Lyon
Kayla Lyon
Director
Iowa Department of Natural Resources

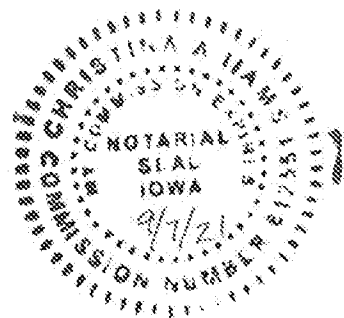
State of Iowa)

County of Polk) ss.

On this 27 day of February, 2020, before me personally appeared Kayla Lyon, known to me to be the Director of the Iowa Department of Natural Resources or the lawful designee of the Director, who being duly sworn, did sign this Covenant.

Christina A. Ijams Christina A. Ijams
Notary Public, State of Iowa:

#812551



AGENCY:

U.S. ENVIRONMENTAL PROTECTION AGENCY

May 4, 2020

Mary P. Peterson

By: Mary P. Peterson, Director

Superfund & Emergency Management Division

State of Kansas)

County of Johnson) ss.

On this 5th day of May, 2020, before me personally appeared Mary P. Peterson, the Director of the Superfund & Emergency Management Division of Region 7 of the U.S. Environmental Protection Agency, who being duly sworn, did sign this Covenant.

Sarah A. Morend

Notary Public, State of Kansas

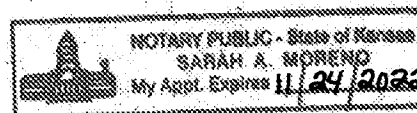


Exhibit A:
Affected Property Description

A parcel of land located in the SW¹/₄, SW¹/₄, Section 35, T66N, R5W, 5th P.M., Lee County, Iowa and described by the following metes and bounds: Commencing at the southwest corner of said Section 35, being the intersection of 340th Street and 260th Avenue; thence N00°08'21"W, 127.86 ft. with the west line of said Section 35 and centerline of 260th Avenue; thence N89°51'39"E, 33.00 ft. to the easterly right of way line of said 260th Avenue and point of beginning; thence N00°08'21"W, 528.54 ft. along said easterly right of way line of 260th Avenue; thence N88°06'46"E, 57.71 ft.; thence N50°11 '10"E, 310.07ft.; thence S89°33'46"E, 46.01 ft.; thence S47°26'29"E, 162.27 ft.; thence S01°35'18"E, 273.90ft.; thence S19°31 '47"E, 26.71 ft.; thence S02°12'28"E, 148.74 ft.; thence S41°45'44"W, 215.99 ft.; thence S87°59'49"W, 290.87 ft.; thence West, 47.80 ft. to the Point of Beginning; containing 6.606 acres.

Exhibit B:

Environmental Protection Declaration of Restrictive Covenants,
recorded in Lee County on September 12, 2000

FILED FOR RECORD # 2349
LEE COUNTY, IOWA, AT KLOKUK
00 SEP 12 AM 8:58
00S-76 B1
LOCATION _____
FEES 61. R. _____ A. _____
TARRY HOLTkamp, RECORDER
JANE CLARK, DEPUTY
Receipt #1039

Return To:

Prepared by: Gary M. Myers, 666 Walnut Street, Suite 2500, Des Moines, Iowa 50309 Phone: (515) 288-2500

ENVIRONMENTAL PROTECTION
DECLARATION OF RESTRICTIVE COVENANTS

This Environmental Protection Declaration of Restrictive Covenants is made this 3rd day of August, 2000, by and between MIRIAM K. GRIMES AND DAVID B. GRIMES, wife and husband ("Grantors"), having an address of 1866 300th Street, Donnellson, Iowa 52625, and UNITED TECHNOLOGIES AUTOMOTIVE SYSTEMS, INC. ("UTAS" or "Grantee"), having an address of 5200 Auto Club Drive, Dearborn, Michigan 48126.

WITNESSETH:

A. WHEREAS, Grantors are the owners of real property consisting of approximately 30 acres located in Lee County, Iowa and legally described in EXHIBIT A, attached and made part of this instrument ("Site"); and

B. WHEREAS, the parcel of property subject to this Environmental Protection Declaration of Restrictive Covenants is a part of the aforesaid Site and the subject parcel of property consists of approximately seven (7) acres which is legally described in EXHIBIT B, attached and made part of this instrument ("Property"); and

C. WHEREAS, in September 1989, the Site was listed on the State of Iowa's Registry of Confirmed Hazardous Waste or Hazardous Substance Disposal Sites pursuant to Iowa Code § 455B.426 et al., which provides in pertinent part:

1. A person shall not substantially change the manner in which a hazardous waste or hazardous substance disposal site on the registry...is used without the written approval of the director.

2. A person shall not sell, convey, or transfer title to a hazardous waste or hazardous substance disposal site which is on the registry...without the written approval of the director. *Iowa Code § 455B.430*; and

D. WHEREAS, the subject Property is part of the Sheller-Globe Superfund Site which the United States Environmental Protection Agency ("EPA" or "Third Party Beneficiary") placed on the National Priorities List ("NPL"), 40 C.F.R. Part 300, Appendix B, as published in the Federal Register on September 30, 1990, 55 Fed. Reg. 35502; and

RECEIVED

SEP 21 2000

SUPERFUND DIVISION

24

E. WHEREAS, the EPA and UTAS, formerly known as Sheller-Globe Corporation ("SGC"), entered into an Administrative Order on Consent for Remedial Investigation/Feasibility Study ("AOC") on October 18, 1990 in the matter of Sheller-Globe Corporation, U.S. EPA Docket No. VII-91-F-0003; and

F. WHEREAS, Grantors entered into an Agreement with UTAS dated September 10, 1991, ("Agreement"), which Agreement, inter alia, provides for and incorporates therein a Consent to Allow Access executed by the Grantors which was attached to the Agreement; and

G. WHEREAS, by the aforesaid Consent to Allow Access, which was executed by the Grantors on July 29, 1991 and filed with the Lee County Recorder's Office on October 7, 1991, the Grantors provided access to:

Sheller-Globe Corporation [now known as UTAS], the U.S. EPA, the State of Iowa, any other potentially responsible persons to be identified by the U.S. EPA, and each of their respective employees, contractors, agents, representatives, and designees...in order for the foregoing parties to comply with the [AOC]...and with any subsequent order(s) that may be issued or entered into with respect to investigation, remediation and/or monitoring of the Site; and,

H. WHEREAS, in a Record of Decision, executed on September 20, 1995, (the "ROD"), the EPA Region 7 Regional Administrator selected a remedial action for the Sheller-Globe Superfund Site, which includes, in part, the following actions:

Restrictive covenants/deed restrictions; Demolition and disposal of the on-site residence; Removal and disposal of exposed drums; Construction of a soil cover over exposed ash; and, Implementation of a monitoring program for remedial action to evaluate and ensure compliance of the soil cover with the approved RD/RA Work Plan and performance standards; and

I. WHEREAS, in a Consent Decree entered on March 3, 1998, in United States of America v. United Technologies Automotive Systems, Inc., and Miriam and David B. Grimes, Case No. 3-98-CV-90150 ("Consent Decree"), Miriam K. Grimes and David B. Grimes, who are the Grantors herein and the Owner Settling Defendants in the Consent Decree, agreed to provide access and to implement institutional controls, which include the restrictive covenants and deed restrictions as referenced in Paragraph H above, and UTAS, which is the Grantee herein and the other Settling Defendant in the Consent Decree, agreed to perform the Remedial Action and Maintenance, which is described in the ROD; and

J. WHEREAS, the Grantors acknowledge that the aforesaid Agreement and the Consent to Allow Access remain in force and that the Consent Decree is a "subsequent order" within the contemplation of the Consent to Allow Access and that, consequently, the Grantors agree that, pursuant to the Consent to Allow Access, UTAS, EPA and any party that the EPA designates as its authorized representative continue to have access to the Property at all reasonable times for

the purpose of implementing, facilitating, and monitoring the Remedial Action and the Work to be done as defined in and pursuant to the Consent Decree; and

K. WHEREAS, the Grantors have agreed to impose use restrictions on the Property as covenants that will run with the land for the purpose of protecting the value and desirability of the Property and to protect human health and environment; and

L. WHEREAS, the approximately seven acre Property on which the disposal occurred is being restricted so as to benefit the remaining approximately twenty-three acres of the Site, which are also owned by the Grantors; and

M. WHEREAS, Grantors intend to cooperate fully with Grantee and the EPA in the implementation of all response actions at the Site.

NOW, THEREFORE:

1. Grant: Grantors, on behalf of themselves, their heirs, successors and assigns, in consideration of the terms of the Consent Decree, hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and do give, grant and convey to the Grantee and its assigns, with general warranties of title, the perpetual right to enforce said use restrictions of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.

2. Purpose: It is the purpose of this instrument to give to the Grantee, UTAS, and to the Third Party Beneficiary, EPA, the right to enforce the use restrictions, as defined in Paragraph 3 below, in order to assure that the Property will be used only for purposes which are compatible with the remedy selected in the ROD and to ensure that the Property will not be used in a manner that will cause a failure of the remedy selected in the ROD.

3. Restrictions on use: The following covenants, conditions, and restrictions apply to the use of the Property, run with the land, and are binding on the Grantors, their heirs, successors, transferees, and assigns, for the benefit of the Grantee and its successors, transferees, and assigns:

- a. Unless approved in writing by the EPA or its assigns, the Property shall not be used for residential purposes; and
- b. Unless approved in writing by the EPA or its assigns, there shall be no disturbance of the surface or subsurface of the Property by filling, drilling, excavation, removal of topsoil, rock or minerals, or change of the topography in any manner.

4. Modification of Restrictive Covenants, Conditions, and Restrictions: The above restrictive covenants, conditions, and restrictions may be modified or terminated, in whole or in part, only upon written approval by the EPA or its assigns. If the Grantors or their successors in

interest seek to modify or terminate the restrictive covenants, conditions or restrictions, they may file a petition with the EPA setting forth the nature of the proposed change, the reasons therefor, and any expected impact of the changes on the response action, the public health, and the environment. The Grantors may undertake the restricted use or activity only if the EPA or its assigns determines to allow such use or activity to be implemented pursuant to an approved plan. If requested by Grantors, such writing shall be executed in recordable form.

5. Termination of Covenants: The covenants contained herein shall be deemed covenants running with the land, and shall remain in full force and effect until the earlier of the termination of these covenants by the Grantee or the Grantee's successors and assigns, with the approval of EPA or its assigns, or twenty-one (21) years after the date these covenants are recorded in the Office of the County Recorder of the county where the Property is located. These covenants may be extended for successive twenty-one (21) year periods by the filing of a verified claim in accordance with *Iowa Code* § 614.24, which verified claim may be filed by the Grantee, EPA or their assigns or any party holding any lien or other interest in the Property.

6. Reserved Rights of Grantors: Grantors hereby reserve unto themselves, their heirs, successors, transferees, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions and rights set forth herein.

7. EPA Access Authority Unaffected: Nothing in this instrument shall limit or otherwise affect EPA's rights of entry and access provided by law or regulation.

8. No Public Access and Use: No right of access or use by the general public to any portion of the Property is intended by the Grantors or Grantee or is conveyed by this instrument.

9. Notice Requirement: Grantors agree to include in any 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 THE EFFECT OF AN ENVIRONMENTAL PROTECTION DECLARATION OF RESTRICTIVE COVENANTS, DATED _____, 1999, RECORDED IN THE PUBLIC LAND RECORDS IN THE LEE COUNTY, IOWA RECORDER'S OFFICE ON _____, 1999, IN BOOK _____, PAGE _____, IN FAVOR OF AND ENFORCEABLE BY, THE GRANTEE, UNITED TECHNOLOGIES AUTOMOTIVE SYSTEMS, INC., AND ALSO ENFORCEABLE BY THE THIRD PARTY BENEFICIARY, THE UNITED STATES OF AMERICA, AND ITS ASSIGNS.

NOTICE FURTHER: HAZARDOUS WASTES AND/OR HAZARDOUS SUBSTANCES WERE DISPOSED OF ON THIS PROPERTY FROM APPROXIMATELY 1948 TO 1972. IN SEPTEMBER 1989, THE PROPERTY AS PART OF AN APPROXIMATELY 30 ACRE SITE, WAS LISTED AS THE GRIMES PROPERTY ON THE STATE OF IOWA'S REGISTRY OF CONFIRMED HAZARDOUS WASTE OR HAZARDOUS SUBSTANCE DISPOSAL SITES

PURSUANT TO *IOWA CODE* § 455B.426 ET AL., WHICH PROVIDES IN PERTINENT PART:

1. A PERSON SHALL NOT SUBSTANTIALLY CHANGE THE MANNER IN WHICH A HAZARDOUS WASTE OR HAZARDOUS SUBSTANCE DISPOSAL SITE ON THE REGISTRY . . . IS USED WITHOUT THE WRITTEN APPROVAL OF THE DIRECTOR.

2. A PERSON SHALL NOT SELL, CONVEY, OR TRANSFER TITLE TO A HAZARDOUS WASTE OR HAZARDOUS SUBSTANCE DISPOSAL SITE WHICH IS ON THE REGISTRY . . . WITHOUT THE WRITTEN APPROVAL OF THE DIRECTOR. *IOWA CODE* § 455B.430.

THE CURRENT USE OF THIS SITE IS NON-RESIDENTIAL AND SUBJECT TO THE RESTRICTIONS ON THE USE SET FORTH HEREIN.

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantors must provide Grantee and the Third Party Beneficiary 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 and the Third-Party Beneficiary shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. All remedies available under this instrument shall be in addition to any and all other remedies at law or in equity, including CERCLA. Any failure, forbearance, delay or omission to exercise their 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 the Third Party Beneficiary of such term or any subsequent breach of the same or any other term, or of any of the rights of the Grantee or the Third Party Beneficiary under this instrument.

11. Third Party Beneficiary: Grantors on behalf of themselves and their heirs, successors, transferees, and assigns and the Grantee on behalf of itself and its successors, transferees, and assigns hereby agree that the EPA shall be the Third Party Beneficiary of all the benefits and rights conveyed to the Grantee under this instrument.

12. Waiver of Certain Defenses: Grantors on behalf of themselves and their heirs, successors, transferees, and assigns hereby waive any defense of laches, estoppel, or prescription.

13. Covenants: Grantors hereby covenant to and with the Grantee and its assigns, that the Grantors are lawfully seized in fee simple of the Property, that the Grantors have a good and lawful right and power to grant the covenants herein, that the Property is free and clear of encumbrances, except those noted on Exhibit C attached hereto, and that the Grantors will forever warrant and defend the title thereto and the quiet possession thereof.

14. Addresses: Any notice, demand, request, consent, approval, or communication that Grantors or Grantee or the Third Party Beneficiary desire or are required to give the other under

this instrument shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantors:

Miriam and David B. Grimes
1866 300th Street
Donnellson, Iowa 52625

To Grantee:

United Technologies Automotive Systems, Inc.
Attention: General Counsel
5200 Auto Club Drive
Dearborn, Michigan 48126.

With a copy to:

Regional Counsel
Sheller-Globe Superfund Site
United States Environmental Protection Agency
Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101

and

Iowa Department of Natural Resources
Wallace State Office Building
Des Moines, Iowa 50119

15. 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 Iowa.

16. 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 purposes of this instrument and the policy and purpose of CERCLA, 42 U.S.C. § 9601 *et seq.* 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.

17. Severability: If any provision of this instrument, or the application of it to any person, real property or circumstance, is found to be invalid, the remainder of the provisions of this

instrument, or the application of such provisions to persons, real property or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

18. No Forfeiture: Nothing contained in this instrument will result in a forfeiture or reversion of Grantors' title in any respect.

19. Joint Obligation: The obligations imposed by this instrument upon the Grantors shall be joint and several.

20. Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the Grantors and Grantee and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running with the Property. The term "Grantors", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this instrument, identified as "Grantors" 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 instrument, identified as "Grantee" and its personal representatives, heirs, successors, and assigns. The rights of the Grantors and Grantee under this instrument are freely assignable, subject to the notice provisions in this instrument.

21. Termination of Rights and Obligations: Unless otherwise provided by the Consent Decree, the Grantors' rights and obligations under this instrument terminate upon transfer of the Grantors' interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

22. 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.

23. Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be considered signed by all 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.

TO HAVE AND TO HOLD unto the United Technologies Automotive Systems, Inc. and its assigns forever.

IN WITNESS WHEREOF, Grantors have caused this Environmental Protection Declaration of Restrictive Covenants to be signed in their name.

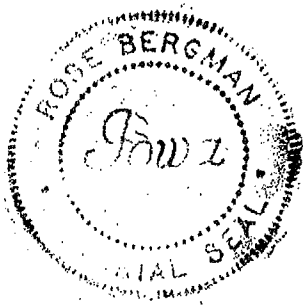
Executed this 3rd day of August, 2000.

By: Miriam K. Grimes
Miriam K. Grimes

By: David B. Grimes
David B. Grimes

STATE OF IOWA)
) ss.
COUNTY OF LEE)

On this 3rd day of August, 2000, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Miriam K. Grimes and David B. Grimes, husband and wife, to me personally known to be the identical persons named in and who executed the within and foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.



Name: Ron Bergman
Notary Public in and for the State of Iowa

My Commission Expires: 11-6-02

ATTACHMENTS:

Exhibit A - Legal description of the Site.

Exhibit B - Legal description of the Property subject to the restrictive covenants.

Exhibit C - List of permitted title encumbrances.

EXHIBIT A - LEGAL DESCRIPTION OF THE SITE

The legal description of the approximately thirty acre Site is as follows:

That part of the West Half ($W\frac{1}{2}$) of the West Half ($W\frac{1}{2}$) of the Southwest Quarter ($SW\frac{1}{4}$) of Section Thirty-five (35) in Township Sixty-six (66) North in Range Five (5) West of the Fifth Principal Meridian lying West of the old Public Road, containing Thirty-three and one-half ($33\frac{1}{2}$) acres, more or less;

EXCEPT that part of the North Nine Hundred (900) feet of said West Half ($W\frac{1}{2}$) of the Southwest Quarter ($SW\frac{1}{4}$) of said Section Thirty-five (35) deeded to Henry G. Weirather as recorded in Book 116, page 373, at the Lee County Recorder's Office at Keokuk;

all being in Lee County, Iowa.

EXHIBIT B - LEGAL DESCRIPTION OF THE PROPERTY SUBJECT TO THE
RESTRICTIVE COVENANTS.

The legal description of the approximately seven (7) acre Property subject to the restrictive covenants is as follows:

A parcel of land located in the SW ¼, SW ¼, Section 35, T66N, R5W, 5th P.M., Lee County, Iowa and described by the following metes and bounds: Commencing at the southwest corner of said Section 35, being the intersection of 340th Street and 260th Avenue; thence N00°08'21"W, 127.86 ft. with the west line of said Section 35 and centerline of 260th Avenue; thence N89°51'39"E, 33.00 ft. to the easterly right of way line of said 260th Avenue and point of beginning; thence N00°08'21"W, 528.54 ft. along said easterly right of way line of 260th Avenue; thence N88°06'46"E, 57.71 ft.; thence N50°11'10"E, 310.07ft.; thence S89°33'46"E, 46.01 ft.; thence S47°26'29"E, 162.27 ft.; thence S01°35'18"E, 273.90ft.; thence S19°31'47"E, 26.71 ft.; thence S02°12'28"E, 148.74 ft.; thence S41°45'44"W, 215.99 ft.; thence S87°59'49"W, 290.87 ft.; thence West, 47.80 ft. to the Point of Beginning; containing 6.606 acres

EXHIBIT C - LIST OF PERMITTED TITLE ENCUMBRANCES

1. Real estate taxes that are not yet delinquent.
2. Notice dated November 7, 1989, recorded November 14, 1989 on Microfiche 89S-70A13 in the Lee County Recorder's Office, in which the Iowa Department of Natural Resources gives notice that the Site has been used for the disposal of hazardous wastes or hazardous substances, and that the Site has been placed on the registry of abandoned or uncontrolled disposal sites.
3. Consent to Allow Access dated July 29, 1991, recorded October 7, 1991 on Microfiche 91S-66D11 in the Lee County Recorder's Office, in which David B. Grimes and Miriam K. Grimes consent to allow Sheller-Globe Corporation, the United States Environmental Protection Agency, the State of Iowa, and others the right to enter upon the Site.
4. Notice To Successors-in-Title dated April 30, 1999, recorded May 6, 1999 on Microfiche 99S-37B1 in the Lee County Recorder's Office, in which David B. Grimes and Miriam K. Grimes give notice that the property is subject to the Consent Decree entered on March 3, 1999, in the United States District Court for the Southern District of Iowa, Davenport Division, in Civil No. 3-98-CV-90150.