

FOR REFERENCE PLEASE SEE  
PLAT BOOK NO. 87 PAGE 46-48

Contract No. GS-01-D-97CA-C-0118

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, That the UNITED STATES OF AMERICA, acting by and through the Secretary of the Air Force, under and pursuant to the powers and authority contained in the provisions of Section 2828 of the Defense Authorization Act for Fiscal Year 1989, Public Law 100-456(Sept. 29, 1988), 102 Stat. 2123-24, hereinafter called the "Grantor", for and in consideration of the sum of FIFTEEN MILLION THREE HUNDRED THOUSAND DOLLARS (\$15,300,000.00), the receipt of which is hereby acknowledged, does hereby GRANT, REMISE, RELEASE, AND FOREVER QUITCLAIM, without warranty or representation, express or implied, unto 4300 EAST FIFTH AVENUE LLC, an Ohio Limited Liability Company whose address is 1800 Moler Road, Columbus, Ohio, 43207, hereinafter called the "Grantee", effective this 17<sup>th</sup> day of OCTOBER, 1997, all such right and title as the Grantor has in and to property known as Air Force Plant 85, situated at 4300 East Fifth Avenue, Columbus, Ohio, 43219, and legally described in Exhibit "A" of this Deed, and hereinafter referred to as the "Property", together with all the buildings, improvements, fixtures and personalty located thereon and used in the operation of said buildings as buildings, and all and singular the tenements, hereditaments, appurtenances and improvements thereunto belonging, or in anywise appertaining and the benefits of all easements which serve the Property.

The Property is conveyed "As is" and "Where is", and except as expressly set forth herein, without representation, warranty, or guaranty as to quantity, quality, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose for which intended

CONVEYANCE TAX EXEMPT	TRANSFERRED
	OCT 17 1997
JOSEPH W. TESTA FRANKLIN COUNTY AUDITOR	JOSEPH W. TESTA AUDITOR FRANKLIN COUNTY, OHIO

any of the Easement Areas in compliance with all applicable laws. In such event, the owner of the Adjoining Property shall provide the owner of the Property, to the extent reasonably possible, equivalent substituted areas to and from the Property over and upon the Adjoining Property to the Airport in the manner contemplated herein.

No Merger. The acquisition of the dominant estate (whether fee, leasehold or otherwise) and servient estate into a common ownership shall not merge said estates into one estate or operate to release and terminate the easement rights and benefits granted and created herein, unless the instrument or instruments intending to so merge, terminate and release such rights shall specifically state such rights and benefits are merged and terminated and shall be recorded with the Recorder's Office, Franklin County, Ohio with reference made to this Deed.

**ENVIRONMENTAL WARRANTIES.** Subject to the remediation standards set forth in this section, the Grantor warrants to Grantee that: 1.) Grantor has completed, or will complete, such remedial action necessary to protect human health and the environment with respect to environmental contamination that was known to exist on the Property on December 18, 1996, which the parties agree consists only of that contamination disclosed by the final Environmental Baseline Survey prepared by Earth Tech, Inc. dated October, 1996, called the "EBS", a copy of which is attached hereto as Exhibit "O" and incorporated by reference herein; and 2.) Grantor will complete such remedial action necessary to protect human health and the environment with respect to environmental contamination that is found to have been caused by the Grantor but discovered after December 18, 1996. The parties agree Grantor shall have fully complied with the requirement to complete "such remedial action necessary to protect human health and the environment" if Grantor remediates any contamination on the Property sufficiently to use the Property for industrial land uses in accordance with the Ohio Voluntary Action Program as set forth at Chapter 3745-300 of the Ohio Administrative Code (December, 1996). Notwithstanding, these warranties do not apply to any asbestos, lead-based paint, or polychlorinated biphenyls (PCBs) contained in electrical transformers on the Property unless Grantor and Grantee agree on transformers leaking PCBs as of the date of recording hereof. Grantee accepts responsibility for any liability arising from, and covenants not to sue Grantor, for any liability related to said excluded asbestos, lead-based paint or PCBs. Grantor's performance of said warranties shall, pursuant to Section 2828 P.L. 100-456, 102 Stat. 2123, September 29, 1988, operate to release Grantor from any other environmental obligations or liabilities which existed prior to, or may arise subsequent to, the date hereof.

**ENVIRONMENTAL RESTRICTIONS ON USE.** Use of the Property shall be limited to industrial land uses as contemplated in said Ohio Voluntary Action Program, except for: 1. any part of the Property remaining in the possession of Grantor, which may be used for office use; or, 2. for any office use incidental to an industrial land use or any use as a non-public warehouse of durable goods or other non-food-chain products, if such incidental office use or warehouse use is permitted by the applicable environmental authorities without requiring further remediation beyond Grantor's obligations as set forth in the Environmental Warranties section of this Deed. In the event Grantee or any successor desires to use the Property for any other uses, including but not limited to, commercial or office use, then Grantee or such successor at its sole cost shall perform all additional environmental remediation required by law or by applicable governmental

authorities for such other uses and shall further be required to comply with all laws, rules, regulations and ordinances applicable thereto, including zoning requirements and requirements of applicable regulatory authorities.  
JAMES ROAD ENVIRONMENTAL RESTRICTION.

The Grantor, United States Air Force hereby provides public notice about, and imposes restrictions on, the following described real estate commonly known as the James Road parcel which is a sub parcel of the Property, which sub parcel shall hereinafter be referred to as the "Area", more particularly described as follows:

Situated in the State of Ohio, County of Franklin, City of Columbus, in Quarter Township 4, Township 1, Range 17, United States Military Lands and being part of the 62.068 acre tract conveyed to The United States of America by deed of record in Deed Book 1733, page 399, Records Office, Franklin County, Ohio, and being more particularly described as follows:

Beginning for reference at a found railroad spike in the centerline of James Road at an inside corner of said 62.068 acre tract, at the northeast corner of a 2.353 acre tract conveyed to Modern Builders Supply, Incorporated, by deed of record in Official Record 21382, Page B11, Records Office, Franklin County, Ohio; thence across said 62.068 acre tract on a projection of the centerline of said James Road, North 53 12'32" East, a distance of 322.37 feet to the TRUE POINT OF BEGINNING in the westerly line of the herein described tract of land; thence with said westerly line.

North 34 11'05" West, a distance of 74.70 feet to a set iron pin; thence

North 55 48'55": East, a distance of 230.13 feet to a set iron pin; thence

South 34 11'05" East, a distance of 110.00 feet to a set iron pin about 10 feet southeast of the southeast edge of the old James Road pavement; thence with a line generally parallel to said edge of pavement and about 10 feet distant therefrom,

South 55 48'55" West, a distance of 230.13 feet to a set iron pin; thence North 34 11'05" West, a distance of 35.30 feet to the TRUE POINT OF BEGINNING, passing said edge of pavement at about 10 feet, containing 0.581 acre of land.

1. In consideration for the Director of the Ohio EPA's approval on August 29, 1997, of the Amended Closure Plan For James Road Hazardous Waste Storage Pad dated July, 1997, for U.S. Air Force Plant 85, Columbus, Ohio, EPA RCRA Permit No. OH 1170090004, Grantor agreed to impose the restrictions described below on the Area.
2. The Grantor hereby imposes the following restrictions on the Area:

The Area shall not be used for residential activities, but may be used for industrial

activities. The term "residential activities" shall include the following:

- (1) Single and multi-family dwelling and rental units;
- (2) Day care centers and preschools;
- (3) Hotels and motels;
- (4) Educational (except as a part of the facility's industrial activities) and religious facilities;
- (5) Restaurants and other food and beverage services (except as a part of the facility's industrial activities);
- (6) Entertainment and recreational facilities (except as a part of the facility's industrial activities);
- (7) Hospitals and other extended care medical facilities; and
- (8) Transient or other residential facilities.

The term "industrial activities" shall include manufacturing, processing operations and office and warehouse use, including but not limited to production, storage and sales of durable goods and other non-foodchain products and parking/driveway use.

3. All of the above restrictions on the Area shall run with the land and be binding upon the Grantor, its successors, assigns, transferees, or any other owner of the Facility. All of the above restrictions shall continue in perpetuity, subject to termination as described below.

4. Any person may request written approval for a use of the Area which is not specifically permitted by the restriction set forth above in paragraph 3 by submitting a written petition, via certified mail, to the Director of Ohio EPA. The Director shall respond to such request within sixty (60) days of receipt of such written request. Any such request which constitutes a change in the specific prohibition may only be granted based on the standards described below. In such event, the petition for modification or termination shall state the specific provision(s) sought to be modified or terminated and shall further include evidence demonstrating:

- (a) The Area meets Ohio's risk-based closure performance standard in effect at the time of such petition for a residential (or equivalent) land-use scenario; or
- (b) The Area has been sample tested and compared with background samples taken from land surrounding the Area which has been unaffected by past treatment, storage, or disposal of hazardous waste, and such data shows

that current conditions present at the Area are not statistically greater than background conditions; or

- (c) The Area does not pose an unacceptable risk to human health or the environment.

5. The petition will be considered by the Director of Ohio EPA only when it presents new and relevant information not previously considered by the Agency. The Director of Ohio EPA will issue a final determination within such sixty (60) day period based upon the criteria set forth above.

6. For violation or breach of the foregoing Use Restriction, Ohio EPA shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to obtain injunctive relief in order to prevent violation or breach of the foregoing Use Restriction. Failure to timely enforce the foregoing covenant and Use Restriction by any party shall not bar subsequent enforcement by such party and shall in no manner be deemed a waiver.

**DISCLOSURE OF GROUNDWATER AND SOIL CONDITIONS.** The EBS discloses the groundwater and soil contain contaminants. The Grantor has contracted with environmental services companies to remediate these conditions and other such contracts may be entered into in the future. Equipment has been installed and processes are being carried out on the Property for environmental remediation purposes.

**RESTRICTIONS ON GROUNDWATER.** Neither the Grantee nor its successors, assigns, or Permittees shall use or remove groundwater, nor in any way affect the condition or flow of groundwater until the Grantor has certified to the Grantee the groundwater remediation has been completed. Thereafter, use of existing wells and any proposed new wells will be strictly subject to approval of applicable governmental authority having jurisdiction.

**RESTRICTIONS ON USE OF SOIL.** Neither the Grantee nor its successors, assigns or Permittees shall remove soils designated in the EBS as Categories 5, 6, or 7 as contaminated or soils to be so designated in the future by Grantor in accordance with the terms of the section entitled "Uses of Land Subject to Environmental Investigation or Remediation". Neither shall there be any excavations or other disturbances of such soils without the prior written authorization of the Grantor. This restriction shall be in effect until the Grantor has certified to the Grantee that the environmental remediation of such soils has been completed.

**RESERVATION OF REMEDIATION EQUIPMENT AND RIGHTS OF ACCESS.** The Grantor reserves for itself and its contractors, licensees, and assigns ownership of all wells, pumps, piping, tanks, and related equipment used to study or remediate the groundwater and soil. The Grantor or its contractors, licensees or assigns may elect to abandon any or all such uncontaminated wells, pumps, piping, tanks, and any other uncontaminated remediation equipment, except that Grantor or any party who drills monitoring and test boring wells shall close any such well as directed by applicable environmental authorities. The Grantor also reserves for itself and its contractors, licensees, and assigns rights of ingress and egress to operate, maintain, repair, replace, or modify

such equipment, and to drill wells and conduct soil borings until such time as the Grantor determines that no further environmental remediation is needed.

**EFFECT OF CHANGED SITE CONDITIONS ON REMEDIATION.** The Grantee and its successors and assigns shall bear all costs of replacement and/or relocation of remediation installations and equipment necessitated by the Grantee's changes to the land or buildings. This includes an obligation to construct a heated shelter if remediation activities are displaced from existing buildings. Such replacement and relocation shall be carried out by the Grantor or its remediation contractor which will coordinate with the Grantee to minimize interference with Grantee's use of the Property.

**USES OF LAND SUBJECT TO ENVIRONMENTAL INVESTIGATION OR REMEDIATION.**  
The Parties agree:

- a.) **EBS Sites.** Grantee will rank sites identified in the EBS as requiring environmental investigation and remediation and Grantor will use reasonable efforts to adopt said ranking to prioritize such environmental investigation and remediation. Before any use, improvement, or other change in those portions of the Property classified in the EBS as Categories 5,6, or 7, until such sites have been closed by applicable environmental authorities, Grantee, its successors, assigns, or Permittees will coordinate with, and obtain the prior authorization of, Grantor's designated agent.
- b.) **Cooperation of Parties.** Grantor, its agents, and contractors, Grantee, its successors, assigns and Permittees, will cooperate with each other and with regulatory personnel in the identification, investigation, and environmental remediation on the Property. Such cooperation will include without limitation granting access to the Property, connecting to utilities, permitting use of Grantee's drawings, delivery of true and correct copies of the results of all environmental testing of the Property to Grantor, and coordination by the parties, their successors, assigns and Permittees, to minimize interference with each other's activities. As part of such cooperation, Grantee or any agent, contractor, successor, assign or Permittee shall notify and coordinate with Grantor regarding any construction involving excavation below grade level, for any improvement, new foundation or structure. Grantee shall, prior to excavation and such construction conduct environmental testing to determine whether contamination requiring remediation exists therein. Prior to any exercise of its rights under the Environmental Warranties provision hereof as to a site not identified in the EBS, Grantee shall deliver such test results to Grantor along with a request for remediation. William R. Kugel, Jr., 1800 Moler Road, Columbus, Ohio, 43207, or such other person as Grantee shall designate, shall act as the single agent to coordinate environmental activity with Grantor and applicable environmental authorities with respect to the Property. Notwithstanding any terms of the Deed to the contrary, Grantor's Environmental Warranties shall exclude subsurface non-complying conditions under any building, structure or improvement constructed after the date hereof unless Grantor shall have first received written notice, evidence of non-complying subsurface condition caused by Grantor, and a reasonable opportunity to remediate such condition.

- c.) Restoration Following Remediation. Upon completion of subsurface remediation on any portion of the Property, Grantor shall backfill excavation sites with clean soil or gravel to grade level in a clean and safe condition and to comparable compaction. Grantor shall not be liable to replace any building structure or improvement which is required to be destroyed or altered as part of Grantor's obligations under the Environmental Warranties section herein. Grantor shall notify Grantee of any destruction of, or material alteration of improvements required by Grantor's environmental obligations herein. Grantor shall reasonably cooperate with Grantee's reasonable request for delay of any said destruction or material alteration if such delay is allowed by environmental authorities without cost or liability to Grantor, or if Grantee is willing to assume any such cost.
  
- d.) Limitation of Liability. Grantee agrees on behalf of itself, its successors, and assigns to waive any and all claims, losses, or legal actions against the United States, any office, department, agency, or employee thereof, arising from the exercise of Grantor's environmental obligations pursuant to this Deed, except to the extent a cause of action arises under 28 USC Section 1346 et seq. Grantee agrees for itself, its successors, and assigns, to defend and hold the United States harmless from and against any claim, demand, or cause of action by any tenant of Grantee for indirect or consequential damages that may arise from the exercise of the Government's environmental obligations under the Deed, provided that the Grantor is not found to have been negligent or engaged in willful misconduct, and provided that the Grantor exercised reasonable efforts to cooperate with tenant activities.

NOTICE OF THE PRESENCE OF ASBESTOS. The Property contains asbestos. The conditions of the asbestos-containing materials is varied. WARNING:

- a. The Grantee is warned that the Property contains asbestos. Asbestos is a hazardous material. Unprotected exposure to asbestos fibers has been determined to significantly increase the risk of cancer, mesothelioma, and asbestosis. These diseases can cause serious bodily harm resulting in disability or death.
  
- b. The Grantee has inspected the Property as to its asbestos content and any hazardous environmental condition relating thereto. The Grantee is deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including any asbestos hazards or concerns.
  
- c. No warranties, either express or implied, are given with regard to the condition of the Property including, without limitation, whether the Property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of the Grantee to inspect or to be fully informed as to the condition of all or any portion of the Property will not constitute grounds for any claim or demand for adjustment in price or revocation of the conveyance.
  
- d. The description of the Property set forth in the Invitation for Bids and any other information provided therein with respect to the Property is based on the best

information available to the Grantor and is believed to be correct, but any error or omission, including but not limited to the agency having custody of the Property and/or any other Federal agency, shall not constitute grounds or reason for any claim by the Grantee against the Government including, without limitation, any claim for allowance, refund, or deduction from the purchase price.

- e. The Grantor assumes no liability for damages for personal injury, illness, disability, or death to the Grantee, or to the Grantee's successors, assigns, employees, invitees, or any other person including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property, whether the Grantee, its successors or assigns has or have properly warned or failed to properly warn the individuals injured.
- f. Grantee covenants that in its use and occupancy of the Property it will comply with all Federal, state, and local laws relating to asbestos.

**NOTICE OF THE POSSIBLE PRESENCE OF LEAD-BASED PAINT.** The Grantee has been informed that the Property includes improvements that are duly presumed to contain lead-based paint because they were constructed before 1978. The hazards of lead-based paint are often presented in dust, paint chips, or surfaces upon which lead-based paint has been applied. High concentrations of lead in the body can damage the brain, nervous system, kidneys, or hearing, affect learning and coordination, cause behavioral problems, blindness, and even death; and cause problems in pregnancy and fetal development. Lead is especially hazardous to children of less than seven years of age.

The Grantee has inspected the Property as to its lead-based paint content and condition and any hazardous or environmental conditions relating thereto. The Grantee is deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any lead-based paint hazards or concerns.

Before any use of the Property for residential habitation or occupancy by children under seven years of age, the Grantee, its successors and assigns, shall remove all lead-based paint hazards and all potential lead-based paint hazards from the Property and shall certify to the Grantor (in form acceptable to the Grantor), and Grantor determines, through its inspection (or at its discretion, the inspection and certification of a local government official) that all lead-based paint hazards have been removed from the Property in accordance with Title 24, CFR Part 35, Subpart E.

The Grantor's inspection and finding that Grantee has satisfactorily performed its obligations with respect to lead-based paint hazards does not constitute a guarantee that all lead-based paint hazards and potential lead-based paint hazards have been eliminated from the Property and does not relieve the Grantee from the responsibility for complying with applicable State and local lead-based paint laws and regulations.

The Grantee agrees to indemnify the Grantor from any liability arising by reason of the Grantee's failure to perform its obligation under this agreement with respect to elimination of immediate lead-based paint health hazards, the prohibition against the use of lead-based paint, and the Grantee's responsibility for complying with applicable State and local lead-based paint laws and regulations

To the fullest extent permitted by law and equity, these covenants shall be binding for the benefit and in favor of and be enforceable by the Grantor. The Grantor shall be entitled to institute legal action to enforce performance and observance of these covenants, enjoin acts which are violative of these covenants, and exercise any other legal or equitable right or remedy with respect to these covenants. These rights and remedies may be exercised separately or in combination.

**COVENANT AGAINST DISCRIMINATION.** The Grantee does by the acceptance of this Quitclaim Deed covenant that it shall not discriminate upon the basis of race, sex, color, religion, or national origin in the use, occupancy, sale, or lease of the Property, or in its employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Property, and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

**NO MERGER.** The acquisition of the dominant estate (whether fee, leasehold or otherwise) and servient estate into a common ownership shall not merge said estates into one estate or operate to release and terminate the easement rights and benefits granted and created herein, unless the instrument or instruments intending to so merge, terminate and release such rights shall specifically state such rights and benefits are merged and terminated and shall be recorded with the Recorder's Office, Franklin County, Ohio with reference made to this Deed.