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Judith M. Hunter, County Clerk  
3 East Pulteney Square  
Bath, NY 14810  
(607) 776-9631

### Steuben County Clerk Recording Cover Sheet

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BUFFALO, NY 14203

**First GRANTOR**

INGERSOLL RAND COMPANY

**First GRANTEE**

PAINTED POST DEVELOPMENT LLC

Index Type : Deeds

Book : 1988 Page : 10

Type of Instrument : Deed

Type of Transaction : Deed - (Other Property)

Recording Fee : \$601.00

Recording Pages : 133

The Property affected by this instrument is situated in Erwin, in the County of Steuben, New York

**Real Estate Transfer Tax**

RETT # : 1895

Deed Amount : \$300,000.00

RETT Amount : \$1,200.00

Total Fees : \$1,801.00

State of New York

County of Steuben

I hereby certify that the within and foregoing was recorded in the Clerk's office for Steuben County, New York

On (Recorded Date) : 12/01/2005

At (Recorded Time) : 3:48:01 PM



Doc ID - 000735040133

*Judith M. Hunter*  
Judith M. Hunter, County Clerk



This sheet constitutes the Clerks endorsement required by Section 319 of Real Property Law of the State of New York and conforms to Steuben County Local Law # 10 of 2003. DO NOT DETACH

Printed On : 12/01/2005 At : 3:48:01PM

(133)

421

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10

5

106

1200 TT

**BARGAIN AND SALE DEED  
FORMER INGERSOLL-RAND FOUNDRY SITE  
STEBEN COUNTY  
PAINTED POST, NEW YORK**

THIS INDENTURE, made as of the 1<sup>st</sup> day of August 2005, by and between **INGERSOLL-RAND COMPANY**, a New Jersey corporation, having an address at 155 Chestnut Ridge Road, Montvale, New Jersey 07645 (the "Grantor") and **PAINTED POST DEVELOPMENT, LLC**, a New York limited liability company, having an address at 5 East Market Street, Suite 301, Corning, New York 14830 (the "Grantee"), and acknowledged by the **VILLAGE OF PAINTED POST, STEUBEN COUNTY, NEW YORK** (the "Village") and the **NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION** (the "DEC").

WITNESSETH, that Grantor is the owner of certain real property containing approximately forty-nine (49) acres with certain improvements thereon and located in the vicinity of 450 West Water Street in the Village of Painted Post, Steuben County, New York (the "Foundry Premises" or the "Premises"), as more particularly set forth and described in SCHEDULE "A" attached hereto and made a part hereof, and including a portion of the Premises indicating the presence of contaminated soil within the three-hundred foot (300 ft.) radius of monitoring well 2B (the "MW-2B Area") as depicted on Schedule A attached to the Declaration (as defined below);

WITNESSETH, that the history of prior environmental investigations and remediation conducted at the Premises is described more fully in SCHEDULE C attached hereto and made a part hereof;

WITNESSETH, that part of the selected remedial actions selected by the DEC, in the form of an institutional control, required the Grantor to record a deed restriction on the MW-2B Area identifying the presence of contaminated soil and to minimize the potential for future human exposure to certain environmental conditions by restricting certain uses and activities at the Premises and pursuant thereto the Grantor recorded a Declaration of Conditions, Covenants and Restrictions on the Premises in the Steuben County Clerk's Office on January 10, 2001 at Liber 1697, Page 312 (the "Declaration");

WITNESSETH, that the Grantor has released the Premises from the Declaration pursuant to that certain Release of Property From Declaration of Conditions, Covenants and Restrictions, dated as of August 1, 2005 and to be recorded in the Steuben County Clerk's Office (the "Release") and the DEC acknowledges such Release;

WITNESSETH, that Grantor, in consideration of One And More Dollars lawful money of the United States, the use restrictions contained herein and other good and valuable consideration paid by Grantee, does hereby grant and release unto Grantee, its successors and assigns forever, the Premises;

TOGETHER with the appurtenances and all the estate and rights of Grantor in and to the Premises;

SUBJECT TO all matters of public record, including, but not limited to, all covenants, easements, rights of entry, liens, encumbrances and restrictions of record affecting the Premises and subject to all laws, statutes, ordinances, codes, rules and regulations;

BEING a portion of the parcel conveyed to Grantor by deed recorded on July 26, 2000 at the Steuben County Clerk's Office in Liber 1667 of Deeds at Page 312;

TO HAVE AND TO HOLD the Premises herein granted unto Grantee, its heirs, successors and assigns forever subject to the terms, restrictions and covenants set forth herein and all matters of public record, including, but not limited to all covenants, easements, rights of way, liens, encumbrances and restrictions of record affecting the Premises and subject to all laws, statutes, ordinances, codes, rules and regulations;

AND Grantor and Grantee covenant and agree as follows:

A. Restrictions on Use

FIRST, that in order to protect human health and the environment the Department of Environmental Conservation has required that the uses of the Premises be restricted to industrial uses and/or restricted commercial uses, excluding uses for child care, day care or health care. The Village, in order to promote community objectives, has required the use of the Premises be further restricted to the following uses currently authorized in an "Industrial District" under Section 280.18, entitled "USE REGULATIONS - SCHEDULE OF USES TABLE", of the Village of Painted Post Zoning Law ("the Village Zoning Law"): commercial vehicle; low-profile business; offices-general; offices - one practicing professional in existing building; offices - more than one practicing professional; planned commercial districts (consistent with the restrictions contained herein); retail business or service not otherwise specially mentioned under the Village Zoning law (consistent with the restrictions contained herein); wholesale business or service not otherwise specifically mentioned under the Village Zoning Law; manufacture, fabrication, extraction, assembly warehousing and other handling of material; research laboratories; storage facility indoor; trucking/wholesale warehouse terminals (with approval by a majority of the Village of Painted Post Planning Board); accessory use/building/structure on same or separate lot; communication tower (new or co-location on existing tower) public utility or transportation use - office; public utility or transportation use - repairs, service or storage; satellite dish; and mixed use (more than one of the above permitted uses); provided, however, the following uses, otherwise authorized in an "Industrial District" under the Village Zoning Law, shall be prohibited hereunder: automobile repair garage; bowling alley; car washing station; convenience/mini-markets (with or without gas); day-care center; drive-in movie; equipment rental or sales yard; gasoline filling station; grocery store; laundry or dry cleaning plant; newsrack; newspaper offices and printing shops; restaurant; roadside stand; storage yards for equipment; theater or concert hall; veterinary office, animal hospital or kennels; contractors yard and equipment; storage facility, outdoor; nursing or convalescent home; agricultural use for

crops; agricultural use for manufacture; cemetery; church or other places of worship; club, membership; crematory; cultural facilities (library, art gallery, museum, etc.); golf course or country club; hospital or sanitarium; institutional or philanthropic use; and/or private, public or parochial school. All other uses including, but not limited to, day care center, adult entertainment uses and all uses under the category "Residential Uses" in the "SCHEDULE OF USES TABLE" contained in the Village of Painted Post Zoning Law are strictly prohibited. A copy of the current version of Section 280.18 of the Village of Painted Post Zoning Law along with a copy of the relevant definitions from the Village of Painted Post Zoning Law are attached hereto as SCHEDULE "B" and incorporated herein.

**B. Restrictions and Conditions on Activities**

SECOND, that certain Notices are given and required to be given before the undertaking of certain physical activities consistent with the uses of the Premises in order to prevent or mitigate exposure of individuals and/or the public from residual contamination as follows:

1. Notice and warning is hereby provided that polynuclear aromatic hydrocarbons ("PAHs"), which are semi-volatile organic compounds, are located in soils at and below the ground surface of the Premises. Notice and warning is hereby provided that such PAHs may pose a risk to humans in a scenario where future use of the Premises includes invasive activities at or below the surface of the Premises, and appropriate precautions should be taken.

2. No disturbance or excavation of surface or subsurface soils or other materials at or below the Premises shall be conducted without prior notification thereof to or consent by the DEC. Any disturbance or excavation of surface or subsurface soils or other materials at or below the Premises shall be conducted (i) consistent with the Remedial Work Plan and the Soil Fill Management Protocol attached thereto, all as more particularly described in SCHEDULE "D" attached hereto and made a part hereof and as may the same may be amended by and between DEC and the Grantee from time to time, or (ii) as otherwise permitted by the DEC.

3. The Grantee, its successors and assigns, shall prohibit the use of ground water underlying the Premises (unless the Grantee, or its successors and assigns, first obtains permission to do so from the DEC), but such responsibility to prohibit such use shall be strictly limited to ground water withdrawn from within the boundaries of the Premises, and the Grantee, its successors and assigns, shall only be responsible to prohibit such use for those individuals that have title to the Premises, or to those individuals that have a legally enforceable leasehold interest in the Premises.

THIRD, that the Grantee is contemplating the acquisition, construction, installation, equipping and operation of a large-scale warehousing and distribution facility of approximately 400,000 square feet at the Premises (the "Development Project") and

(A) Grantee, its successors and assigns, shall notify Grantor in writing sixty (60) days, but not more than one hundred and twenty (120) days, prior to the onset of construction activities as related to the Development Project or Alternate Project (as defined below). Upon receipt of such

written notice, Grantor shall seek to secure environmental insurance for the benefit of Grantor and as related to the Property, in a form, coverage, content (as outlined in Exhibit I to the Transfer Agreement (as defined below)) and a carrier acceptable to Grantor in its sole reasonable discretion, with Grantee named as an additional insured (the "Environmental Insurance"). Grantee, its successors and assigns, shall be solely responsible for the cost and expense of such Environmental Insurance, and any and all such cost and expense in an amount in excess of \$70,000 and arising out of the Development Project, Alternate Project or changes in insurance market conditions, shall be deemed part of and added to the consideration for the conveyance of the Premises pursuant to that certain Settlement and Real Property Transfer Agreement, dated as of August 1, 2005 (the "Transfer Agreement"), by and between the Grantor, Grantee and the Village, and shall be paid to Grantor promptly upon submission by Grantor to Grantee, its successors and assigns, of an invoice pertaining to such Environmental Insurance;

(B) notwithstanding anything contained herein to the contrary, (a) the Grantee, its successors and assigns, shall provide to Grantor (i) reasonable written notice of its intention or desire to pursue a commercial redevelopment project other than the Development Project (such commercial redevelopment project other than the Development Project hereinafter referred to as the "Alternate Project") and (ii) drawings, layouts, plans and other relevant information (collectively, the "Concept Plan") detailing the Alternate Project and (b) the Grantor shall (i) have a reasonable opportunity to review the Concept Plan and may request other reasonable and relevant information in connection with the Alternate Project, (ii) determine whether the Alternate Project is consistent with the uses permitted herein, (iii) have the right to approve the Alternate Project, which approval shall not be unreasonably withheld, delayed or conditioned and (iv) seek to secure the Environmental Insurance at the sole cost and expense of Grantee, its successors and assigns as provided in the foregoing paragraph and

(C) in the event Grantor exercises such right to secure the Environmental Insurance and such Environmental Insurance is unable to be secured, Grantor may withhold any approval of the Alternate Project as provided in the foregoing paragraph.

#### C. Enforcement

FOURTH, the restrictions and covenants contained herein are binding on the Grantee, its successors and assigns, and shall run with the Premises, and are forever enforceable by the DEC (the "Beneficiary"). Said restrictions and covenants herein shall bind all owners, lessees, users and occupiers of the Premises or any part thereof, and their respective successors and assigns, as well all parties claiming by, through, or under them or any of them. All of the parties referred to in the immediately preceding sentence agree and covenant, for themselves and for their respective successors and assigns, to conform and observe said covenants and restrictions.

1. As it may be impossible to measure monetarily the damages which may accrue to the Beneficiary by reason of a violation of the provisions hereof, the Beneficiary shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof. The failure of the Beneficiary to enforce any provision hereof shall in no event be construed as a waiver of the right of the Beneficiary to

enforce any provision of this Deed as to the same or similar violation occurring prior to or subsequent to any such failure to enforce. No liability shall attach to the Grantor or any parent, subsidiary or other affiliate of Grantor, or any officer, director, shareholder, employee, member, manager, partner, agent, committee or committee member of any of them, (excepting, however, Grantee, its successors and assigns, and any subsequent owner, lessee, user or occupier of the Premises, or any part thereof, in breach hereof) or to the Beneficiary for failure to enforce the provisions hereof. If the Beneficiary successfully brings an action to extinguish a breach or otherwise enforce the provisions hereof, the costs of such action, including legal fees, shall become a binding, obligation of the owner, lessee, user and/or occupier of the Premises, or any part thereof, in breach hereof. Neither Grantee (its successors and assigns) nor any subsequent owner, lessee, user or occupier of the Premises, or any part thereof, may circumvent the remedies provided for herein or be relieved of their obligations and/or liabilities hereunder by conveying, transferring, or leasing the Premises, or any part thereof, or by assigning any rights or obligations hereunder.

2. The restrictions and covenants contained herein shall be inserted by Grantee, its successors and assigns, and any and all future owners of the Premises, in any deed, lease, easement, right of way or other legal instrument by which Grantee, its successors and assigns, and any and all future owners of the Premises, divests itself of either the fee simple title or any other lesser estate in the Premises or any portion thereof. Notwithstanding this provision, failure to include the restrictions and covenants contained herein in subsequent conveyances does not abrogate the status of such restrictions and covenants as binding upon the parties, their successors and assigns.

3. Grantee, for itself, its successors and assigns, and any and all future owners, lessees, users or occupiers of the Premises or any portion thereof, (i) covenants that it will not undertake or allow any activity on or use of the Premises that would violate the use restrictions and covenants contained herein and (ii) will indemnify, defend and hold harmless the Grantor, its successors and assigns for breach of the aforementioned covenant.

4. Grantor and Grantee agree and understand that the Grantee, by its acceptance of this Deed, agrees that, as part of the consideration for this Deed, the Grantee covenants and agrees for itself, its successors and assigns, forever, that this Deed is made and accepted upon each of the restrictions and covenants contained herein which restrictions and covenants shall be binding upon and enforceable against the Grantee, its successors and assigns, and any and all future owners, lessees, users and occupiers of the Premises or any part thereof, in perpetuity; and the covenants and restrictions set forth herein are a binding servitude on the Premises herein conveyed.

D. Modification and Termination

FIFTH, any modification or termination of the provisions hereof affecting any part of the Premises shall require the written consent of the DEC which consent shall not be unreasonably withheld, conditioned or delayed. Any modification or termination of the provisions hereof shall not become effective until the instrument evidencing such modification or termination has been

duly recorded in the Steuben County Clerk's Office.

1. Neither the provisions hereof nor any modification thereof shall be interpreted as permitting any action or thing prohibited by the applicable laws, ordinances, rules or regulations of any governmental authority having jurisdiction over the part of the Premises affected or by specific restrictions imposed by any other instrument relating to the Premises or to such part of the Premises.

2. No change of conditions or circumstances shall operate to amend the provisions hereof, and the provisions hereof may be modified or terminated only in the manner provided herein. The determination by any court of competent jurisdiction that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

SIXTH, that Grantor covenants that Grantor has not done or suffered anything whereby the Premises have been encumbered in any way whatsoever and that Grantor, in compliance with Section 13 of the Lien Law, will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of any improvement and will apply the same first to the payment of any cost of any improvement before using any part of the total of the same for any other purpose.

SEVENTH, Grantee accepts the Premises in its "As Is" condition "with all faults" pursuant to the terms of the Transfer Agreement, the terms of which are incorporated herein by reference.

EIGHTH, any and all references herein to Grantee, and/or Grantee's successors and assigns, shall be deemed to include, and the covenants and restrictions herein shall be binding upon, any and all (i) owners, grantees, transferees, lessees, sublesses, users and occupiers of the Premises or any portion thereof, (ii) licensees, invitees, contractors, easement holders, mineral rights holders, employees, guests and other parties who may enter the Premises (or any portion thereof) or may have right to enter the Premises (or any portion thereof) and (iii) all parties claiming by, through or under any of the aforementioned parties referred to in this paragraph Eighth.

**[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, Grantor has executed this Deed the day and year first above written.

INGERSOLL-RAND COMPANY

By: Barbara A. Santoro  
Name: Barbara A. Santoro  
Title: Secretary

Agreed to and Accepted  
this \_\_\_\_ day of August, 2005 by:

PAINTED POST DEVELOPMENT, LLC

By: \_\_\_\_\_  
Jack E. Benjamin, Manager

NEW YORK STATE DEPARTMENT  
OF ENVIRONMENTAL CONSERVATION

By: \_\_\_\_\_  
David A. Munro, Assistant Attorney General  
New York State Department of Law, Environmental Protection Bureau  
on behalf of New York State Department of Environmental Conservation

VILLAGE OF PAINTED POST

By: \_\_\_\_\_  
Edward A. Franklin, Jr., Mayor

PLEASE RECORD AND RETURN TO:

John A. Pappano, Esq.  
Phillips Lytle LLP  
3400 HSBC Center  
Buffalo, New York 14203  
Tel. (716) 847-5404



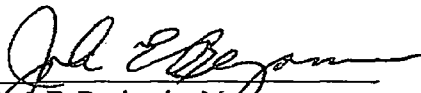
IN WITNESS WHEREOF, Grantor has executed this Deed the day and year first above written.

INGERSOLL-RAND COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Agreed to and Accepted  
this 21<sup>st</sup> day of August, 2005 by:

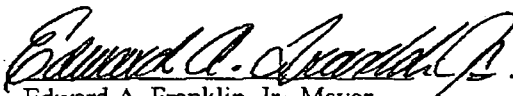
PAINTED POST DEVELOPMENT, LLC

By:   
Jack E. Benjamin, Manager

NEW YORK STATE DEPARTMENT  
OF ENVIRONMENTAL CONSERVATION

By: \_\_\_\_\_  
David A. Munro, Assistant Attorney General  
New York State Department of Law, Environmental Protection Bureau  
on behalf of New York State Department of Environmental Conservation

VILLAGE OF PAINTED POST

By:   
Edward A. Franklin, Jr., Mayor

PLEASE RECORD AND RETURN TO:

John A. Pappano, Esq.  
Phillips Lytle LLP  
3400 HSBC Center  
Buffalo, New York 14203  
Tel. (716) 847-5404

IN WITNESS WHEREOF, Grantor has executed this Deed the day and year first above written.

INGERSOLL-RAND COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Agreed to and Accepted  
this 29<sup>th</sup> day of August, 2005 by:

PAINTED POST DEVELOPMENT, LLC

By: \_\_\_\_\_  
Jack E. Benjamin, Manager

NEW YORK STATE DEPARTMENT  
OF ENVIRONMENTAL CONSERVATION

By: David A. Munro  
David A. Munro, Assistant Attorney General  
New York State Department of Law, Environmental Protection Bureau  
on behalf of New York State Department of Environmental Conservation

VILLAGE OF PAINTED POST

By: \_\_\_\_\_  
Edward A. Franklin, Jr., Mayor

PLEASE RECORD AND RETURN TO:

John A. Pappano, Esq.  
Phillips Lytle LLP  
3400 HSBC Center  
Buffalo, New York 14203  
Tel. (716) 847-5404

STATE OF \_\_\_\_\_)

## SCHEDULE C

### HISTORICAL INVESTIGATIONS AND REMEDIAL ACTIONS

The Premises consist of approximately forty-nine (49) acres of land upon which there existed a 287,000+/- square foot foundry. The Foundry operated from approximately 1920 through December 1985, and produced gray iron castings principally for Ingersoll-Rand Company's ("I-R") compressor plant located at a separate site in Painted Post, New York. The operations consisted of pattern construction, sand mold lines, melt furnaces, castings, shakeout, casting, clearing and pattern and casting storage. After the foundry was idled in December 1985, an environmental evaluation and cleanup was conducted by I-R as part of its facility closure activity. In addition, pursuant to an Order on Consent with the DEC, I-R has performed further investigation and remediation activities at the Premises.

Documentary information with respect to the environmental investigations and cleanup that have taken place at the Premises, and any areas of the Premises that may have been impacted by releases of hazardous wastes, substances or constituents, can currently be obtained from documents submitted to DEC at its Albany, New York office (currently at 625 Broadway, Albany, New York 12233), and its Region 8 office at Avon, New York (currently at 6274 East Avon-Lima Road, Avon, New York 14414). Further information with respect to past activities at the Premises, including the use of foundry sand as backfill throughout wide portions of the MW-2B Area of the Premises, current activities, previous environmental investigations, information and investigations concerning the foundry sand at the Premises, groundwater quality, soil contamination, areas of possible environmental concern, topography, geology, hydrogeology, human health and environmental impacts can be obtained from the documentary information and other documents submitted to the DEC at the above-identified locations.

Such documentary information includes, but is not limited to, DEC's Record of Decision, dated March 1994 ("ROD") entitled "Ingersoll-Rand Foundry Inactive Hazardous Waste Site; Site Number 8-51-012, Village of Painted Post, Steuben County, New York". That ROD, in part, summarizes environmental sampling data which identified polynuclear aromatic hydrocarbons ("PAHs") near the MW-2B Area. Soil samples collected from within the fill material in this area confirmed that the PAHs in the fill were stationary and not migrating. The PAHs in the fill material appear to be petroleum based, and are commonly found in creosote, coal tar, and heavy oil-type products. The PAHs have been detected in an approximately three hundred (300) foot radial area surrounding the MW-2B Area, at a depth of approximately three (3) to six (6) feet below ground surface. Subsequent environmental investigations, as identified below, have detected PAHs in other areas of the Premises.

The DEC has determined that the PAHs at the Premises may pose a risk to humans in a scenario where future use includes invasive activities at the Premises. To address this concern, as part of the DEC's selected remedy under the ROD, a restriction was placed on the Premises indicating the presence of in-place soils contaminated by PAHs. The declarations by I-R in the Declaration satisfied and the restrictions, covenants and notices contained in this Deed are intended to satisfy the elements of the ROD's selected remedy and minimize the potential for

future human exposure.

In April, 2004, the Grantee, as part of its due diligence investigation in connection with acquisition of the Premises, performed supplemental environmental investigations. Soil borings were installed to delineate and characterize the extent of PAHs within the MW-2B Area. Samples of the soil fill material were also collected as part of a pre-construction geotechnical study. Results of the investigations indicated that fill material contained elevated concentrations of PAHs that exceed the NYSDEC TAGM soil clean-up objectives. The fill material also contained elevated nickel, magnesium and zinc at concentrations that exceeded typical background soils concentrations. Documentary and further information with respect to such environmental investigation can be obtained from DEC's Region 8 office in Avon, New York.

In June 2004 through November 2004, Grantee caused to be conducted additional environmental investigations at the Premises, including a remedial investigation in connection with Grantee's application to DEC in regard to the DEC's Brownfield Cleanup Program. The remedial investigation included surface and subsurface soil/fill sampling and groundwater sampling at the Premises. Documentation and further information with respect to such investigations can be obtained from DEC's Region 8 Office in Avon, New York. The deed restrictions which are a part hereof are intended to supplant the above referenced restriction and contemplates a certain level of development at the Premises, in concert with a remedial action plan and related soil management plan, all of which is in connection with the DEC's Brownfield Cleanup Program and consents and approvals related thereto.

**SCHEDULE D - REMEDIAL WORK PLAN**

Attached hereto