



BROOME COUNTY – STATE OF NEW YORK
JOSEPH A. MIHALKO, COUNTY CLERK
60 HAWLEY STREET, P.O. BOX 2062
BINGHAMTON, NY 13902

COUNTY CLERK'S RECORDING PAGE

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BOOK/PAGE: D2680 / 481
INSTRUMENT #: 202200003841

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Rec Date: 02/17/2022 09:47:42 AM
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Rec'd Frm: HINMAN HOWARD & KATTELL LLP

Party1: DTRT VESTAL PIPE LLC
Party2: NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
Town: TOWN OF VESTAL

Recording:

Cover Page	5.00
Recording Fee	75.00
Cultural Ed	14.25
Records Management - Coun	1.00
Records Management - Stat	4.75
TP584	20.00

Sub Total: 120.00

Transfer Tax	
Transfer Tax - State	0.00
Transfer Tax - County	0.00

Sub Total: 0.00

Total: 120.00
**** NOTICE: THIS IS NOT A BILL ****

***** Transfer Tax *****
Transfer Tax #: TT003413
Transfer Tax
Consideration: 0.00

Total: 0.00

WARNING***

This sheet constitutes the clerks endorsement,
required by Section 316-A (5) & Section 319 of the
Real Property Law of the State of New York. DO
NOT DETACH.

Joseph A. Mihalko
Broome County Clerk

Record and Return To:

HINMAN HOWARD & KATTELL LLP
80 EXCHANGE ST
PO BOX 5250
BINGHAMTON NY 13902

**DECLARATION OF COVENANTS, RESTRICTIONS
AND ENVIRONMENTAL EASEMENT**

This Declaration of Covenants, Restrictions and Environmental Easement is made this 7th day of February, 2021, by and between, DTRT Vestal Pipe, LLC ("Grantor"), organized and existing under the laws of New York, having its principal office at 3421 Vestal Road, Vestal New York and the People of the State of New York acting through their Commissioner of the New York State Department of Environmental Conservation with its Central Office, located at 625 Broadway, Albany, New York 12233 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of a parcel of land located at 3421 Old Vestal Road Town of Vestal, County of Broome, State of New York, known and designated as Broome County Tax Map Parcel 158.07-2-15, being the same as that property conveyed to Grantor by deed dated March 23, 2006, and recorded in the Broome County Clerk's Office on March 31, 2006 in Liber 2144 of Deeds at Page 442 (hereinafter, the "Property"). The Property is within the Robintech Inc./National Pipe Co. Superfund Site ("Site") together with any buildings and improvements thereon and appurtenances thereto which the United States Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List ("NPL"), as set forth in Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, by publication in the *Federal Register* on June 10, 1986; and

WHEREAS, in a Record of Decision dated March 31, 1992 ("1992 ROD"), EPA selected, and Grantee concurred with, a remedial action for the Site pursuant to CERCLA, which provided for, in part, the extraction and treatment of contaminated groundwater from certain on-Site wells, long-term groundwater monitoring and institutional controls in the form of deed restrictions to prevent the extraction of groundwater for potable purposes;

WHEREAS, in an amended Record of Decision dated July 25, 1997 ("1997 ROD"), EPA selected, and Grantee concurred with, a remedial action for the Site pursuant to CERCLA, which provided for, in part, the excavation and treatment of contaminated on-Site soils, natural attenuation of contaminated overburden groundwater, and the placement of institutional controls to restrict the installation and use of groundwater wells at and downgradient of the Site;

WHEREAS, in a Consent Decree approved and entered by the District Court on October 27, 1998, ("Consent Decree"), BFX Hospitality Group, Inc., a potentially responsible party, agreed to perform the remedial action selected in EPA's 1997 ROD and refrain from using the Site in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures, including refraining from installing or using any drinking water wells at the

Site or any production or extraction wells in certain areas at the Site unless approved and/or required by EPA;

WHEREAS, in an Explanation of Significant Differences dated August 28, 2018 ("ESD"), EPA documented its determination to incorporate into the remedy for the Site an informational Institutional Control to address vapor intrusion into indoor air in occupied/potentially occupied structures on the Property and Off-Property areas;

WHEREAS, the parties hereto have agreed that Grantor shall grant to the Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the New York State Environmental Conservation Law, covenant with respect to the restrictions on the use of the Property, and provide a right of access to the Property in favor of Grantee, all of which shall run with the land, for purposes of implementing, facilitating and monitoring the CERCLA response action in order to protect human health and the environment; and

WHEREAS, Grantor wishes to cooperate fully with the Grantee in the implementation of all response actions at the Site.

NOW, THEREFORE:

1. Grant: Grantor, on behalf of itself, its successors and assigns, for ten dollars and other good and valuable consideration, receipt whereof is hereby acknowledged, does hereby give, grant, covenant and declare in favor of the Grantee that the Property shall be subject to this Declaration of Covenants, Restrictions and Environmental Easement, and Grantor does further give, grant and convey to the Grantee the perpetual right to enforce said restrictions, covenants, right of access and Declaration of Covenants, Restrictions and Environmental Easement, all of which shall be of the nature and character, and for the purposes hereinafter set forth, with respect to the Property. The description of the property subject to this Declaration of Covenants, Restrictions and Environmental Easement is set forth in and attached hereto as Schedule A, and further depicted on the maps attached hereto as Schedule B.
2. Purpose: It is the purpose of this instrument to convey to the Grantee real property rights, which will run with the land, facilitate the remediation of past environmental contamination, and impose use restrictions and covenants to protect human health and the environment by reducing the risk of exposure to contaminants.
3. Restrictions on Use and Maintenance of Engineering Controls: The following restrictions apply to the use of the Property, as provided below, run with the land and are binding on the Grantor and its successors in title and assigns.

Grantor agrees that no activity shall be conducted on the Property that would interfere with or adversely affect the integrity and protectiveness of remedial measures selected in the 1992 and 1997 RODs. Grantor shall refrain from conducting the following activities:

- a) Using groundwater underlying the Property without necessary treatment as determined by the New York Department of Health or the Broome County Health Department to render it safe for use as drinking water or for industrial purposes, and without prior written approval by EPA;
- b) Interfering with any groundwater monitoring wells at or downgradient of the Property;
- c) Drilling into the bedrock within the three-acre on-Property portion of the NPL Site for any purpose without written approval from EPA and NYSDEC;
- d) Disturbing the concrete pad that currently holds, or formerly held, the groundwater treatment equipment at the Property, unless Grantor addresses the contaminated soil under the pad as required by the 1997 ROD; and
- e) Using the Property for single-family residential purposes without first notifying and obtaining written approval to do so from EPA and NYSDEC.

4. Modification or termination of restrictions and covenants: The restrictions specified in the preceding paragraph of this instrument may only be modified or terminated, in whole or in part, in writing, by the Grantee with approval of EPA, provided, however, that any modification or termination of said restrictions shall not adversely affect the remedy selected by EPA and New York State Department of Environmental Conservation ("NYSDEC") for the Site. If requested by the Grantor, such writing will be executed by Grantee in recordable form. Any request by Grantor for a modification or termination of this instrument shall be made, not less than thirty (30) days in advance of any modification or termination, in writing by Grantor to NYSDEC and to EPA in accordance with paragraph 15 of this instrument.
5. Right of access: Grantors hereby convey to Grantee and to EPA a right of access to the Property at all reasonable times for the following purposes, which right of access shall run with the land and be binding on Grantor, its successors and/or assigns, and on any tenants or any other parties having an interest and/or rights to any portion of the Property:
- a) Implementing the response actions selected in the RODs;
 - b) Verifying any data or information relating to the Site;
 - c) Verifying that no action is being taken at the Site in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
 - d) Conducting investigations under CERCLA relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils; and
 - e) Implementing additional or new response actions under CERCLA.
6. Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights, covenants and easements granted herein.

7. Federal authority: Nothing in this document shall limit or otherwise affect EPA's rights of entry and access or EPA's authority to take response actions under CERCLA, the NCP, or other federal law.
8. State authority: Nothing herein shall constitute a waiver of any rights the State may have pursuant to the Environmental Conservation Law, regulations and/or relevant provisions of statutory or common law.
9. No public access and use: No right of access or use by the general public to any portion of the Site is conveyed by this instrument.
10. Public notice: Grantor, on behalf of itself, its successors and assigns, agrees to include in each instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: THIS PROPERTY IS SUBJECT TO A DECLARATION OF COVENANTS, RESTRICTIONS AND ENVIRONMENTAL EASEMENT, DATED _____, 2021, RECORDED IN THE BROOME COUNTY CLERK'S OFFICE ON _____, 2021, IN BOOK _____, PAGE _____, AND HELD BY THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PURSUANT TO TITLE 36, ARTICLE 71 OF THE ENVIRONMENTAL CONSERVATION LAW. THE DECLARATION OF COVENANTS, RESTRICTIONS, AND ENVIRONMENTAL EASEMENT IS ENFORCEABLE BY THE PEOPLE OF THE STATE OF NEW YORK AND BY THE UNITED STATES OF AMERICA AS THIRD-PARTY BENEFICIARY.

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

11. Enforcement: The Grantee shall be entitled to enforce the terms of this instrument by resort to specific performance. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Any forbearance, delay or omission to exercise Grantee's rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee of such term or of any of the rights of the Grantee under this instrument.
12. Damages: Grantee shall also be entitled to recover damages for breach of any covenant or violation of the terms of this instrument including any impairment to the remedial action that increases the cost of the selected response action for the Site as a result of such breach or violation.
13. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.

14. Covenants: Grantor hereby covenants that the Grantor is lawfully seized in fee simple of the real property at the Site, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein and that the Site is free and clear of encumbrances.
15. Notices: Any notice, demand, request, consent, approval, or communication under this instrument that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

DTRT Vestal Pipe, LLC
3421 Old Vestal Road
Vestal, NY 13850

To Grantee:

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

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

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

U.S. Environmental Protection Agency
Emergency & Remedial Response Division
New York Remediation Branch
Attention: Mark Granger, Superfund Site Remedial Project Manager
290 Broadway, 19th Floor,
New York, New York 10007-1866

U.S. Environmental Protection Agency
Office of Regional Counsel
Attention: Marla E. Wieder Superfund Site Attorney
290 Broadway, 17th Floor,
New York, New York 10007-1866

16. General provisions:

- a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the State of New York, and with respect to other matters, shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the State of New York.

b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to affect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) No forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantors' title in any respect.

e) Joint obligation: If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

f) Successors: The covenants, easements, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the real property at the Site. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee," wherever used herein, and any pronouns used in place thereof, shall mean the People of the State of New York acting through their Commissioner of NYSDEC or through any successor department or agency of the State of New York.

g) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

h) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

i) Third-Party Beneficiary: Grantor and Grantee hereby agree that the United States, through EPA, shall be, on behalf of the public, a third-party beneficiary of the benefits, rights and obligations conveyed to Grantee in this instrument, provided that nothing in this instrument shall be construed to create any obligations on the part of EPA.

17. Recordation: Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner of the New York State Department of Environmental Conservation or her/his authorized representative in the office of the recording officer for the

County: Broome

Site No: 704002

Consent Decree: Civil Action No. 98-CV-1297

county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

TO HAVE AND TO HOLD unto the Grantee and its assigns forever.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Executed this 11th day of DEC, 2021.

GRANTOR:  DART VESTAL PIPE, LLC

By: DAVID CULBERTSON

Title: MEMBER

Grantor's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF BROOME)

On the 11th day of DEC, in the year 2021, before me, the undersigned, personally appeared DAVID CULBERTSON, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity as MEMBER of DART VESTAL PIPE, LLC, and that by his/her signature on the instrument, the Grantor, upon behalf of which the individual acted, executed the instrument.


Notary Public - State of New York

LILLIAN L. LEVY
Notary Public, State of New York
No. 02154302003
Residing in Broome County
My Commission Expires Not after 30 25

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

By: Susan Edwards
Susan Edwards, Acting Director
Division of Environmental Remediation

Date: 2/7/2022

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF Albany)

On the 7th day of February, in the year 2022, before me, the undersigned, personally appeared Susan Edwards, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his signature on the instrument, the People of the State of New York, upon behalf of which the individual acted, executed the instrument.

Jennifer Andoloro
Notary Public - State of New York

JENNIFER ANDALORO
Notary Public, State of New York
No. 02AN60982-0
Qualified in Albany County
Commission Expires January 14, 2024

EXHIBIT A

To Declaration of Covenants, Restrictions and Environmental Easement

**Property Description
Robintech Inc. / National Pipe, Co. Superfund Site**

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Vestal,
County of Broome and State of New York, bounded and described as follows:

Beginning at a point on the northerly line of Old Vestal Road (County Road 311)
at its intersection with the westerly line of Commerce Road; thence North 65-7-32
West, a distance of 422.67 feet to an iron pin; thence North 6-39-16 East a distance
of 957.47 feet to a point located along the right of way of Consolidated Rail
Corporation; thence along said right of way North 71-16-8 East a distance
of 231.96 feet to an iron pin; thence running south 1-52-14 West a distance of
173.90 feet to an iron pin; thence running south 64-48-0 East a distance of 513.28
feet to an iron pin; thence running south 25-12-0 West a distance of 882.0 feet to a
point located in the westerly line of Commerce Road and said right of way; thence
running south 67-0-24 West a distance of 33.00 feet to the point or place of
beginning.

EXHIBIT B

**To
Declaration of Covenants, Restrictions and Environmental Easement**

**Property Depiction – Map 1 – Aerial View
Robintech Inc./National Pipe Co. Superfund Site**



Property Depiction – Map 2 – Site Features
Robintech Inc./National Pipe Co. Superfund Site

