

# **EXHIBIT D**

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**LAND USE COVENANT**

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This is an environmental covenant executed pursuant to the Voluntary Remediation and Redevelopment Act, West Virginia Code Chapter 22, Article 22, and the Uniform Environmental Covenants Act, West Virginia Code Chapter 22, Article 22B, to restrict the activities on, and uses of, the following described St. Gobain Ceramics and Plastics, Inc. doing business as (dba) Corhart Refractories (Corhart) subject parcel (comprised of approximately 0.338 acre – see attached site map – Exhibit A).

“Certain tract or parcel of land situate on the waters of a tributary to Fink Run, near the intersection of Liggett Avenue and Fourth Street, in Buckhannon District, Upshur County, West Virginia, more particularly described as follows: Beginning at a 1/2-inch iron rod, found, at the southwesterly corner of an existing Industrial Waste Landfill N.P.D.E.S. # WV0079073 of Corhart Refractories Corporation, from which a 1/2 inch iron rod, found in the outside property boundary of said Corhart Refractories Corporation, bears N 73° 12' 05" E 403.89 feet, thence leaving said landfill and with five (5) lines, N 62° 38' 25" W 107.04 feet to a 5/8-inch rod with a cap stamped MSES Consultants, set, thence, S 84° 15' 45" W 102.63 feet to a 5/8-inch rod with a cap stamped MSES Consultants, set, thence, N 30° 26' 00" W 18.42 to a 5/8-inch rod with a cap stamped MSES Consultants, set, thence, N 55° 41' 45" E 83.39 feet to a 5/8-inch rod with a cap stamped MSES Consultants, set, thence, N 62° 11' 40" E 87.11 feet to a 5/8-inch rod with a cap stamped MSES Consultants, set, thence, N 81° 15' 00" E 38.20 feet to a 1/2-inch iron rod, found, at the northwesterly corner of an existing Industrial Waste Landfill N.P.D.E.S. # WV0079073 of Corhart Refractories Corporation, thence with said landfill, S 08° 45' 00" E for 150.00 feet to the beginning, containing 14,708.44 Square Feet or 0.338 Acres, more or less, as determined by a survey conducted in April, 2006, and as shown on a plat of survey by reference made a part of this survey.” (see attached site map – Exhibit A).

Activities on and uses of the above describe property that may result in excessive human exposure or in the release of a contaminant that was contained as part of remedial action related to this covenant are prohibited. Those activities and uses include, but are not limited to:

Uses of the property for any purpose other than nonresidential use as defined by the Voluntary Remediation Act (West Virginia Code §22-22-2, et seq).

The current owners of record of the property, and their contact information, are:

St. Gobain Ceramics and Plastics, Inc. doing business as (dba) Corhart Refractories  
Rural Route 10, Box 82  
Buckhannon, West Virginia 26201  
Contact Name: Mr. John L. Martin, Plant Manager  
Telephone: 304/473-1279  
Fax Transmission: 304/473-1202

Any person, including a person that owns an interest in the real property, the state or federal agency determining or approving the environmental response project pursuant to which an environmental covenant is created, or a municipality or other unit of local government may be a holder of an environmental covenant. The following are all of the holders of this covenant:

St. Gobain Ceramics and Plastics, Inc. doing business as (dba) Corhart Refractories  
Rural Route 10, Box 82  
Buckhannon, West Virginia 26201

The facts regarding the remediation response project at this property are:

- Interest in the site began in June 2005, when an area of barren soils was observed along the rear plant fence line during a routine Compliance Evaluation Inspection (CEI) by the WVDEP. WVDEP collected and analyzed soil samples, and identified chromium at a maximum concentration of 334 mg/kg, above its reported statewide background level of 290 mg/kg. Corhart was to further investigate this anomaly to determine the source of this area.
- Chromium (total and trivalent) was identified in soils at concentrations above its published statewide background level during additional site investigation activities in 2005. Chromium was not identified in concentrations above the human-health Risk Based Concentration (RBC) for trivalent chromium in industrial soils during the site investigation activities in 2005. No chromium contamination above its RBC was identified in subsequent site investigation activities. Residual concentrations of chromium remain in soils in some areas of the site, but at levels below the migration to groundwater standard and the human-health based De Minimis RBC for direct contact with chromium in non-residential/industrial soils. No chromium contamination was identified in groundwater in concentrations above its groundwater standard. No other contaminants of potential concern (COPCs), specified for this project as tin and ethylene glycol, based on historic practices at the site and its surroundings, were identified in soils or groundwater at the site. Thus, following completion of the site investigations and risk assessment for the site, no COCs were identified for either the direct contact with soil or the soil to groundwater migration pathways and no COCs were identified for direct contact with groundwater.
- Non-residential exposure assumptions were used to comply with De Minimis standards. The industrial soil RBCs used for this risk assessment consider ingestion and dermal exposure to soil and inhalation exposure to contaminants moving from soil to ambient air as the exposure pathways for the applicable receptors defined for the site. A deed restriction will maintain nonresidential site usage for the subject property.

The owner(s) of the property shall provide written notice to the Secretary of the Department of Environmental Protection within 10 days following transfer of a specified interest in the property subject to this covenant, changes in use of the property, application for building permits regarding the property, or proposals for any site work affecting the contamination on the property.

The owner(s) shall conduct inspections of the property to monitor compliance with this Land Use Covenant at least one (1) time per year, and shall submit two (2) signed copies of the inspection monitoring report to the WVDEP, DLR headquarters in Charleston, within thirty (30) days of the inspection.

This covenant relieves the applicant and subsequent successors and assigns from all civil liability to the state as provided under West Virginia Code Article 22 of Chapter 22 and shall remain in effect so long as the property complies with the applicable standards in effect at the time this covenant was issued.

This covenant shall not be amended, modified or terminated except by written instrument executed in accordance with W. Va. Code § 22-22B-10, by and between the Owner at the time of the proposed amendment, modification or termination, the Secretary of the West Virginia Department of Environmental Protection, and the holders of this covenant. Within 5 days of executing an amendment, modification or termination of this Land Use Covenant, the Owner shall record such amendment, modification or termination with the Clerk of the County Commission, and within 5 days thereafter, the Owner shall provide a true copy of the recorded amendment, modification or termination to the Secretary of the Department of Environmental Protection.

The administrative record for the environmental response project reflected in this covenant is maintained in the West Virginia Department of Environmental Protection, Division of Land Restoration, 601 57<sup>th</sup> Street, Charleston, WV 25304, 304-926-0455, and is entitled "Corhart Refractories, VRP Project# 07848".

The West Virginia Department of Environmental Protection is granted full right of access to the property for the purpose of implementation or enforcement of this covenant.

All restrictions and other requirements described in this covenant shall run with the land and shall be binding upon all holders and their grantees, lessees, authorized agents, employees or persons acting under their direction or control.

IN WITNESS WHEREOF, the following holders have executed this covenant on the dates indicated.

SIGNED: 

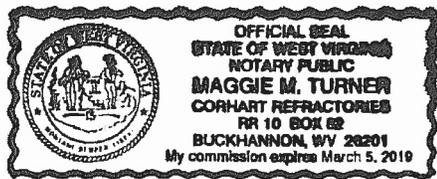
Date: 1/10/11

ST. GOBAIN CERAMICS AND PLASTICS, INC. dba CORHART REFRACTORIES

I, Maggie M. Turner, a Notary Public in and for the County of Upshur, State of West Virginia, do hereby certify that the holder whose name is signed above, this day executed this document in my presence or this day acknowledged same to be the true act and deed of said holder.

Given under my hand this the 10 day of January, 2011.

Notary Public



SIGNED: Maggie M. Turner

Date: 1/10/2011

Ken Ellison, Director

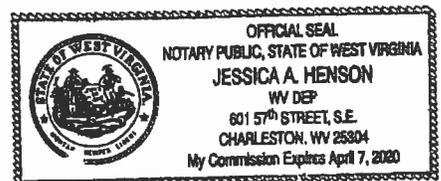
WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

I, Jessica A. Henson, a Notary Public in and for the County of Kanawha, State of West Virginia, do hereby certify that the holder whose name is signed above, this day executed this document in my presence or this day acknowledged same to be the true act and deed of said holder.

Given under my hand this the 9<sup>th</sup> day of February, 2011.

Notary Public

Jessica A. Henson



# EXHIBIT A

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## Property Description and Site Map

**DESCRIPTION OF SURVEY  
FOR  
CORHART REFRACTORIES CORPORATION  
REMEDIATION SITE**

A description of survey of a certain tract or parcel of land situate on the waters of a tributary to Fink Run, near the intersection of Liggett Avenue and Fourth Street, in Buckhannon District, Upshur County, West Virginia, more particularly described as follows:

Beginning at a 1/2-inch iron rod, found, at the southwesterly corner of an existing Industrial Waste Landfill N.P.D.E.S. # WV0079073 of Corhart Refractories Corporation, from which a 1/2 inch iron rod, found in the outside property boundary of said Corhart Refractories Corporation, bears N 73° 12' 05" E 403.89 feet, thence leaving said landfill and with five (5) lines,

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Surveyed by MSES Consultants, Inc.

*Richard R. Casteel*  
Richard R. Casteel, PS 864  
MSES Consultants, Inc.  
609 West Main Street, Building 2  
P.O. Box 190  
Clarksburg, West Virginia 26301  
(304)624-9700



