

Chautauqua County Clerk

Return To:

LUNDBERG + GUSTAFSON LLP
202 W FOURTH ST

JAMESTOWN NY 14702-0579

JAMESTOWN CONTAINER REALTY INC

NEW YORK STATE DEPARTMENT OF E
NVIRONMENTAL CONSERV ATION

Index DEED BOOK

Book 02585 Page 0427

No. Pages 0006

Instrument DECLAR-DEEDS

Date : 10/25/2005

Time : 3:34:17

Control # 200510250276

INST# DE 2005 006372

Employee ID SWEENEY

COUNTY	\$	24.00
	\$.00
SED/CEA	\$	19.00
	\$.00
	\$.00
	\$.00
	\$.00
	\$.00
	\$.00
Total:	\$	43.00

STATE OF NEW YORK
Chautauqua County Clerk

TRANSFER TAX

WARNING: THIS SHEET CONSTITUTES THE CLERK'S
ENDORSEMENT, REQUIRED BY SECTION 316-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH.

CONSIDERATN \$.00

Transfer Tax \$.00

Sandra K. Sopak
County Clerk



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DECLARATION OF COVENANTS AND RESTRICTIONS

THIS COVENANT is made the 16th day of August, 2005, by JAMESTOWN CONTAINER REALTY, INC., a corporation organized and existing under the laws of the State of New York and having an office for the transaction of business at 14 Deming Drive, Falconer, New York 14733.

WHEREAS, Jamestown Container Realty, Inc., is the owner of an inactive hazardous waste disposal site that is listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 907020, located on 65 South Dow Street in the Village of Falconer, Town of Ellicott, County of Chautauqua, State of New York, which is part of lands conveyed by Dowcraft Corporation to Jamestown Container Realty, Inc., by deed dated May 10, 1999, and recorded in the Chautauqua County Clerk's office on September 29, 1999, in Book 2423 of Deeds at page 703, and being more particularly described in Appendix A, attached to this Declaration and made a part hereof, and hereinafter referred to as "the Property"; and

WHEREAS, the Property is the subject of a Consent Order to be issued by the New York State Department of Environmental Conservation to Jamestown Allenco, Inc., pursuant to which Jamestown Allenco, Inc., has assumed the responsibility of performing the remediation of the site; and

WHEREAS, the New York State Department of Environmental Conservation set forth a remedy to eliminate or mitigate all significant threats to the environment presented by hazardous waste disposal at the Site in a Record of Decision ("ROD") dated March 31, 2003, and such ROD or the Work Plan for the implementation of the ROD required that the Property be subject to restrictive covenants.

NOW, THEREFORE, Jamestown Container Realty, Inc., for itself and its successors and/or assigns, covenants that:

First, the Property subject to this Declaration of Covenants and Restrictions is as shown on a map attached to this Declaration as Appendix B and made a part hereof and consists of the Property as described in Appendix A to this Declaration.

Second, unless prior written approval by the New York State Department of Environmental Conservation or, if the Department shall no longer exist, any New York State agency or agencies subsequently created to protect the environment of the state and the health of the state's citizens, hereinafter referred to as "the Relevant Agency," is first obtained, no person shall engage in any activity that will, or that reasonably is anticipated to, prevent or interfere significantly with any proposed, ongoing, or completed program at the Property or that will, or is reasonably foreseeable to, expose the public health or the environment to a significantly increased threat of harm or damage.

Third, the owner of the Property shall permit the right of access to the Property to carry out the ROD or the Work Plan for the implementation of the ROD and maintenance of the monitoring wells installed on the Property as part of the Property's remedial program. The owner of the Property shall have no responsibility for the monitoring wells located at the Property other than responsibility for damage caused to said wells by the owner, its employees, invitees, contractors, consultants, or agents.

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Fourth, the owner of the Property shall prohibit the Property from ever being used for other than industrial or commercial purposes without the express written waiver of such prohibition by the Relevant Agency.

Fifth, the owner of the Property shall prohibit the use of the groundwater underlying the Property without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains permission to do so from the Relevant Agency.

Sixth, the owner of the Property shall not interfere with any institutional or engineering controls that the Department required Dowcraft Corporation and/or Jamestown Allenco, Inc., to put into place without first obtaining the Relevant Agency's permission.

Seventh, this Declaration is and shall be deemed a covenant that shall run with the land, shall be binding upon all future owners of the Property, and shall provide that the owner, and its successors and assigns, consents to the enforcement by the Relevant Agency of the prohibitions and restrictions that Paragraph X of the Order requires to be recorded and covenants not to contest the authority of the Department to seek enforcement.

Eighth, any deed of conveyance of the Property, or any portion thereof, shall recite, unless the Relevant Agency has consented to the termination of such covenants and restrictions, that said conveyance is subject to this Declaration of Covenants and Restrictions.

IN WITNESS WHEREOF, the undersigned has executed this instrument the date first above written.

JAMESTOWN CONTAINER REALTY, INC.

By Joseph R. Palmeri
Its President

State of New York }
County of Chautauqua } ss.

On this 16th day of August, 2005, before me personally appeared Joseph R. Palmeri, 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, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Margerie J. Ridout
Notary Public

MARGERIE J. RIDOUT
Notary Public, State of New York
No. 01RI6017227
Qualified in Chautauqua County
Commission Expires December 7, 2006

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APPENDIX A
Property Description

ALL THAT TRACT OR PARCEL OF LAND, situate in the Village of Falconer, Town of Ellicott, County of Chautauqua and State of New York; being part of Lot 12, Town 2 and Range 11 of the Holland Land Company's Survey; and being further bounded and described as follows:

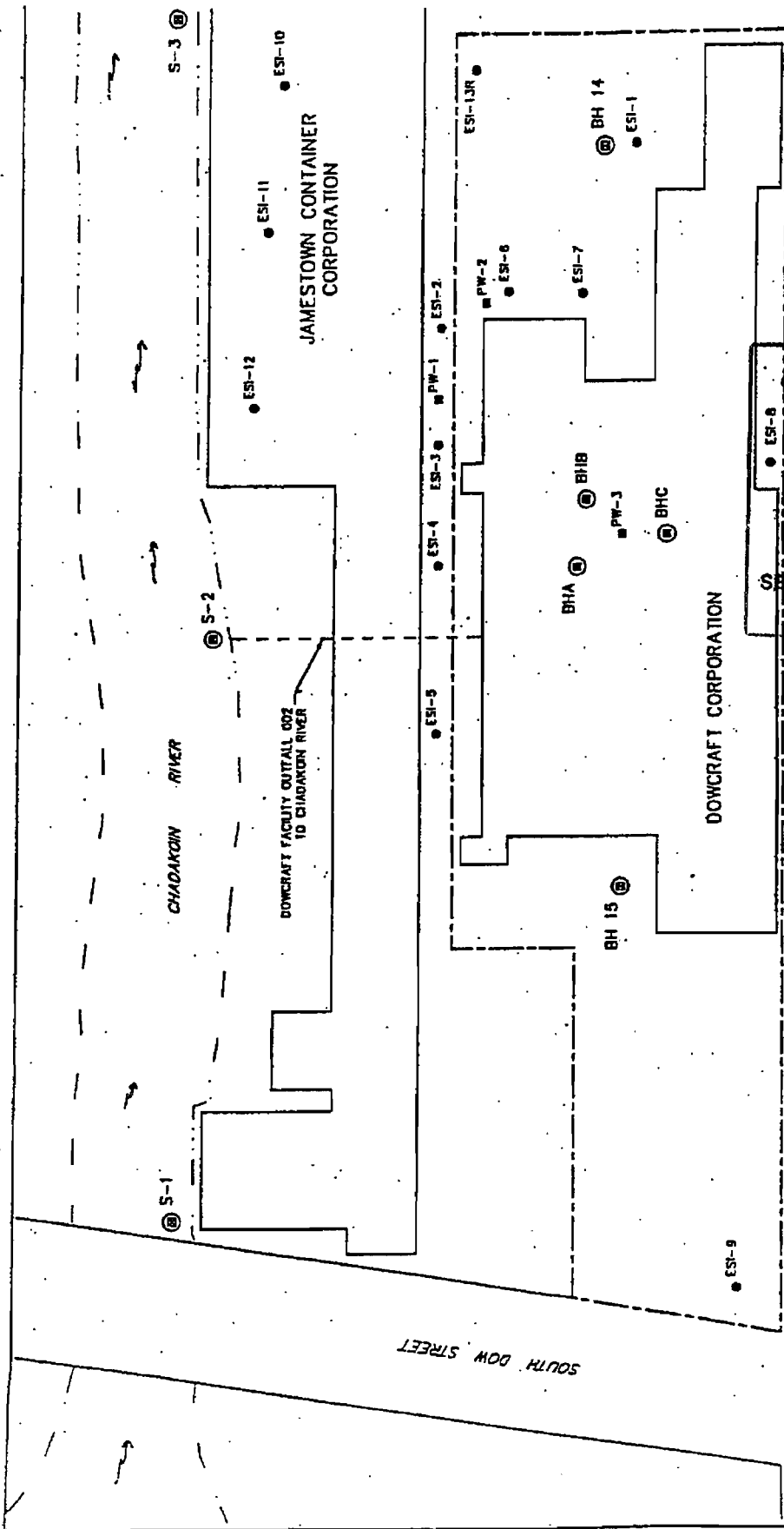
BEGINNING, at an iron stake at the intersection of the easterly bounds of South Dow Street and the northerly bounds of the Conrail Railroad right-of-way, which is also the northerly line of the former Buffalo and Southwestern Railroad Company's right-of-way; thence North 10 degrees and 07 minutes and 00 seconds West along the easterly bounds of South Dow Street, 101.20 feet to an iron stake at the southwesterly corner of lands conveyed by Chemetals Corporation to Jamestown Coca-Cola Bottling Co., Inc. by deed dated August 6, 1943 and recorded in the Chautauqua County Clerk's Office in Liber 683 of Deeds at page 304; thence North 68 degrees and 40 minutes and 30 seconds East, 175.88 feet to an iron stake at a southeasterly corner of lands conveyed to said Jamestown Coca-Cola Bottling Co., Inc.; thence North 21 degrees and 11 minutes and 30 seconds West along an easterly bounds of lands of said Jamestown Coca-Cola Bottling Co., Inc. 60.03 feet to an iron stake; thence North 68 degrees and 42 minutes and 30 seconds East, 459.97 feet to an iron stake; thence South 21 degrees and 18 minutes and 00 seconds East, 159.32 feet to an iron stake in the northerly bounds of the Conrail Railroad right of way (formerly Buffalo and Southwestern Railroad); thence South 68 degrees and 42 minutes and 00 seconds West along the northerly bounds of the Conrail Railroad right-of-way 655.59 feet to the iron stake at the point or place of beginning.

TOGETHER WITH a non-exclusive right of way over a strip of land 10 feet in width, the southerly boundary of which is the northerly bounds of that portion of the land above described and extending from the easterly bounds of the land of Jamestown Coca-Cola Bottling Company, 460 feet to the easterly line of the lands above described.

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APPENDIX B
Map of Property





STATE OF NEW YORK, COUNTY OF CHAUTAUQUA, A TRUE COPY OF THE ORIGINAL FILED OR RECORDED IN THIS OFFICE

DEC 29 2005

WITNESS MY HAND AND OFFICIAL SEAL OF THE COUNTY OF CHAUTAUQUA

André R. D'Amico
CHAUTAUQUA COUNTY CLERK

LEGEND

- PW-2 PLUME CONTAINMENT WELL
- PROPERTY LINE
- ESI-5 MONITORING WELL
- ⊙ BH 15 PROPOSED DEEP BOREHOLE/WELL (TENTATIVE LOCATION)
- ⊙ BH-1 PROPOSED SHALLOW SOIL BOREHOLE
- ⊙ S-2 PROPOSED SURFACE WATER AND SEDIMENT SAMPLING LOCATION

NOTE: MONITORING WELL LOCATIONS ARE APPROXIMATE

CRA

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figure 1
EXISTING CONDITIONS
DOWCRAFT CORPORATION
Falconer, New York

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