

## ***Appendix EE***

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# **New York Central Lines, LLC Restrictive Covenant**

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**DO NOT DETACH - THIS IS PAGE 1 OF RECORDED DOCUMENT**

**NIAGARA COUNTY CLERK RECORDING PAGE**  
**OFFICE OF THE CLERK COUNTY OF NIAGARA**  
WAYNE F. JAGOW, COUNTY CLERK  
County Courthouse, 175 Hawley Street, P.O. Box 461, Lockport, NY 14095  
Phone (716) 439-7027 Fax (716) 439-7066

INSTRUMENT DATE \_\_\_\_\_

DOCUMENT TYPE Declaration of Covenants and Restrictions

(5)

Parties: (Print Names in Full)  
Part Consolidated Rail Corporation  
Part \_\_\_\_\_  
Town/City North Tonawanda

Delivered To:  
Donald D. Anderson  
McGwire Woods, LLP  
50 N. Laura St., Ste. 3300  
Jacksonville, FL 32202

**THIS SPACE RESERVED FOR COUNTY CLERK**

MORTGAGE# \_\_\_\_\_

MORTGAGE AMOUNT \_\_\_\_\_

One/two family  Other

Check if to be apportioned

DOCUMENT # 1006877  
BOOK 3245 PAGE 720  
NUMBER OF PAGES 51 DEEDS  
RECORDED 08/05/2003 09:26:30 A.M.  
RECEIPT # 20302 DOCUMENT TOTAL: \$42.00  
PAID - COUNTY CLERK  
WAYNE F. JAGOW

**RECORDING TAX RECEIPT**

ASIC \$ \_\_\_\_\_  
ADDITIONAL \$ \_\_\_\_\_  
SPECIAL \$ \_\_\_\_\_  
TOTAL \$ \_\_\_\_\_  
dated \_\_\_\_\_, 20\_\_\_\_

State of New York) as  
County of Niagara)  
I do hereby certify that I have  
Received on the within Mortgage, being  
the amount of the Recording Tax  
Imposed thereon & paid at recording.

# \_\_\_\_\_  
REAL ESTATE TRANSFER  
TAX  
\$ \_\_\_\_\_  
\_\_\_\_\_  
NIAGARA COUNTY

**Mortgage Tax Clerk of Niagara County**

Prepared by and return to:  
Donald D. Anderson  
McGuireWoods LLP  
50 N. Laura St., Suite 3300  
Jacksonville, FL 32202

#### DECLARATION OF COVENANTS AND RESTRICTIONS

THIS COVENANT is made the 28<sup>th</sup> day of July, 2003, by NEW YORK CENTRAL LINES, LLC, a Delaware Limited Liability Company and wholly-owned subsidiary of Consolidated Rail Corporation ("NYCLLC") and having an office for the transaction of business at 500 Water Street, Jacksonville, Florida,

WHEREAS, Booth Oil Site is the subject of a Order On Consent ("Consent") executed by Conrail as part of the New York State Department of Environmental Conservation's (the "Department's") Voluntary Cleanup Program, namely that parcel of real property located on 50 Robinson Street in the City of North Tonawanda, of Niagara County, State of New York, which is part of lands conveyed by Consolidated Rail Corporation to New York Central Lines, LLC by deed dated July 21, 1999 and recorded in the Niagara County Clerk's Office on July 21, 1999 in Library 2944, Page 1 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 Department approved a remedy to eliminate or mitigate all significant threats to the environment presented by the contamination disposed at the Property and such remedy requires that the Property be subject to restrictive covenants.

NOW, THEREFORE, NYCLLC, 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 metes and bounds as attached hereto as Appendix "A".

Second, unless prior written approval by the Department 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, there shall be no construction, use or occupancy of the Property that results in the disturbance or excavation of the Property, which threatens the integrity of the soil cap, or which results in unacceptable human exposure to contaminated soils.

Third, the owner of the Property shall maintain the cap covering the Property by maintaining its grass cover or, after obtaining the written approval of the Relevant Agency, by capping the Property with another material.

Fourth, the owner of the Property shall prohibit the Property from ever being used for purposes other than for Manufacturing, Industrial, Light Industrial or Commercial purposes. Any other use may be allowed only upon demonstration to the satisfaction of the Relevant

Agency that any such proposed use will not pose a danger to public health, safety or the environment. Any approval granted by the Relevant Agency for the restricted uses shall be in writing, must contain reference to this instrument and shall be filed with the Niagara County Clerk's Office.

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 continue in full force and effect any institutional and engineering controls required under the Consent and maintain such controls unless the owner first obtains permission to discontinue such controls from the Relevant Agency.

Seventh, this Declaration is and shall be deemed a covenant that shall run with the land and shall be binding upon all future owners of the Property, and shall provide that the owner and its successors and assigns consent to enforcement by the Relevant Agency of the prohibitions and restrictions that Paragraph XI of the Consent require to be recorded, and hereby covenant not to contest the authority of the Relevant Agency 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 day written below.

Dated: July 28, 2003

NEW YORK CENTRAL LINES LLC

By: J. Randall Evans  
Title: VICE PRESIDENT

Printed Name: J. RANDALL EVANS

STATE OF FLORIDA  
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of July, 2003 by J. RANDALL EVANS the VICE PRES of NEW YORK CENTRAL LINES LLC, a DELAWARE LIMITED LIABILITY CORPORATION, on behalf of the corporation. He/she [is personally known to me or ] produced as identification.

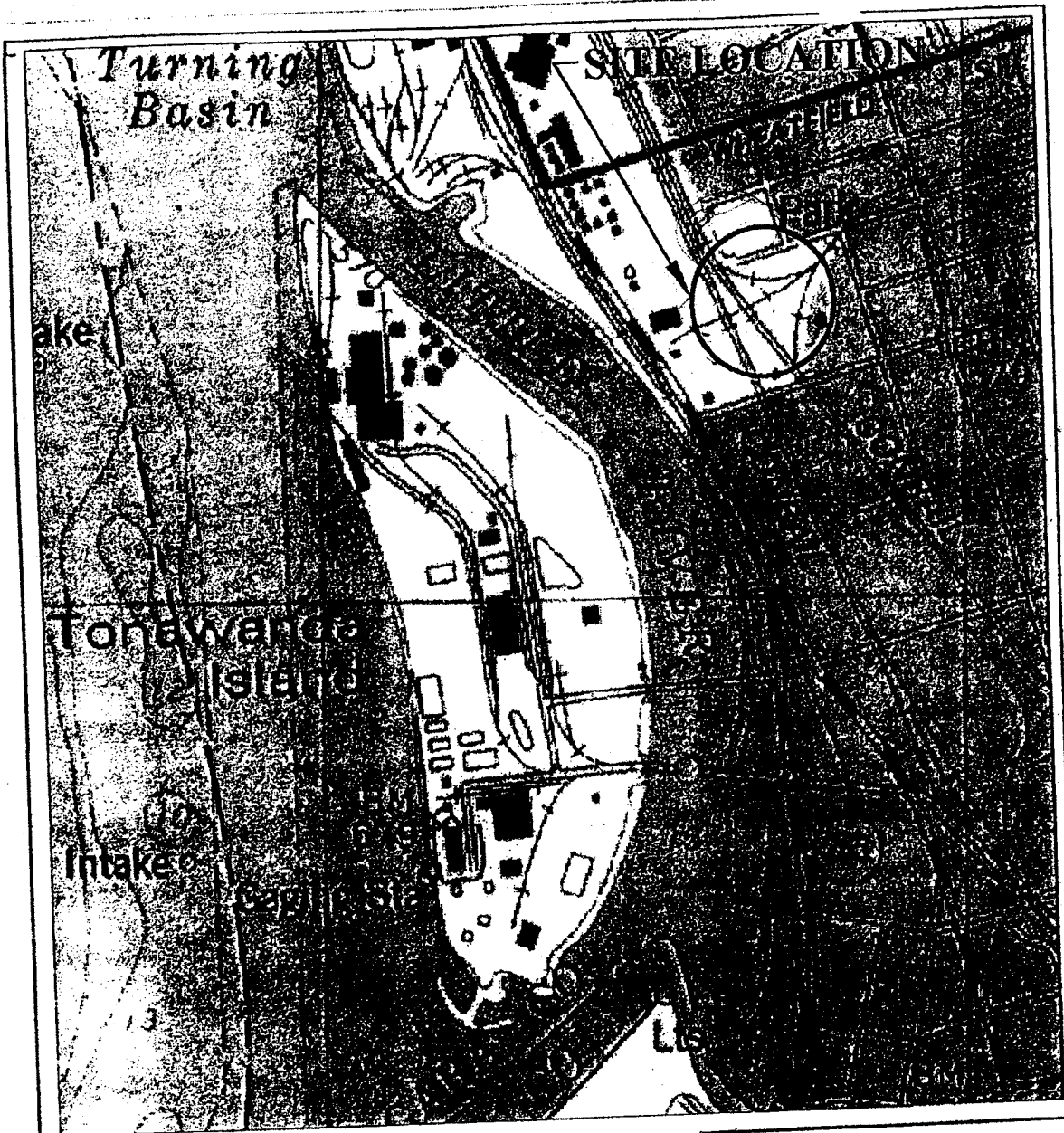
Betty D. Jones  
BETTY D. JONES  
Print Name  
Notary Public, State and County aforesaid  
Commission No.: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_



**APPENDIX "A"**


2.48 Acres in Subdivision Lots 11, 12 & 13, commonly known as 50 Robinson Street, North Tonawanda, Niagara County, New York. SBL #182.17-1-34.1

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TONAWANDA WEST, N. Y.  
 S.W. 1/4 TONAWANDA 1P PALMINDER  
 N4300-77852.57.5  
 1980  
 DINA 0270 DI SW-SERIES 1982



BOOTH OIL	
SITE No. 9-32-100	
New York State Department of Environmental Conservation 	
FILE: 27a London, NY	DRAWING BY: JCC
<b>SITE LOCATION</b>	
DATE: 7/1/79	FIGURE 1