

RESOLUTION NO. 1991 - 21

AUTHORIZING AN OPTION CONTRACT WITH THE ALUMINUM COMPANY OF AMERICA FOR THE ACQUISITION OF APPROXIMATELY 18.5 ACRES OF LAND LOCATED IN THE CITIES OF NEWBURGH HEIGHTS AND CUYAHOGA HEIGHTS, OHIO, FOR AN OPTION PRICE NOT TO EXCEED \$40,000 - E & C DEPARTMENT BUDGET.

WHEREAS, the Greater Cleveland Regional Transit Authority needs a site conveniently located to the freeway system in order to construct a new fifth district garage; and

WHEREAS, The Aluminum Company of America is the owner of vacant land suitably located for use as a new district garage and has offered the Authority an option to purchase the land for a purchase price of Eighty-Eight Thousand Dollars (\$88,000) per acre plus incidental costs associated with the sale; and

WHEREAS, the price for said option is equal to the cost of performing an environmental assessment, not to exceed Forty Thousand Dollars (\$40,000); and

WHEREAS, the General Manager deems the offer of The Aluminum Company of America to be in the best interest of the Authority and recommends acceptance thereof.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Greater Cleveland Regional Transit Authority, Cuyahoga County, Ohio:

Section 1. That the offer by The Aluminum Company of America of an option to acquire approximately 18.5 acres of land located in the cities of Newburgh Heights and Cuyahoga Heights, Ohio, and known as the Alcoa East Parking Lot and Parcel No. 8 as shown on Attachment A hereto be and it is hereby accepted.

Section 2. That the General Manager of the Authority be and he is hereby authorized to enter into an option contract with The Aluminum Company of America for the acquisition of the above described land for an option price not to exceed Forty Thousand Dollars (\$40,000) and a purchase price calculated at the rate of Eighty-Eight Thousand Dollars (\$88,000) per acre plus associated incidental sales cost for a total purchase price not to exceed One Million Seven Hundred Thousand Dollars (\$1,700,000).

Section 3. That the option price shall be payable from the RTA Capital Fund, E & C Department Budget.

Section 4. That this resolution shall take effect immediately.

Section 5. That said contract shall be binding upon and an obligation of the Authority contingent upon compliance by The Aluminum Company of America to the requirements thereof and all applicable laws relating to the contractual

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obligations of the Authority.

Adopted: January 22, 1991



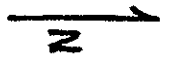
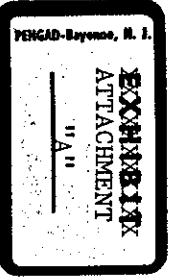
President

Attest: 

General Manager/Secretary-Treasurer

COR. HTS.

NEW, HTS.



PAVEMENT HERE

BER

EAST 26TH. STR.

S1°25'52"E 1262.24

S88°46'29"W 432.71

S85°46'23"W 1211.3

S8°10'30"W 168.76

S5°02'31"W 724.14

S21°52'36"E 370.00

S1°22'36"E 130

N1°13'31"W 1234.66

PARCEL #8
4.5682 ACRES

ALCOA

ALCOA
EAST PARKING LOT
14.0198 ACRES

ALCOA
RESERVED
PARKING

774'

1800'

2174.7'

RID AVE.

HARVARD AVE.

GATE 2

5

1

50

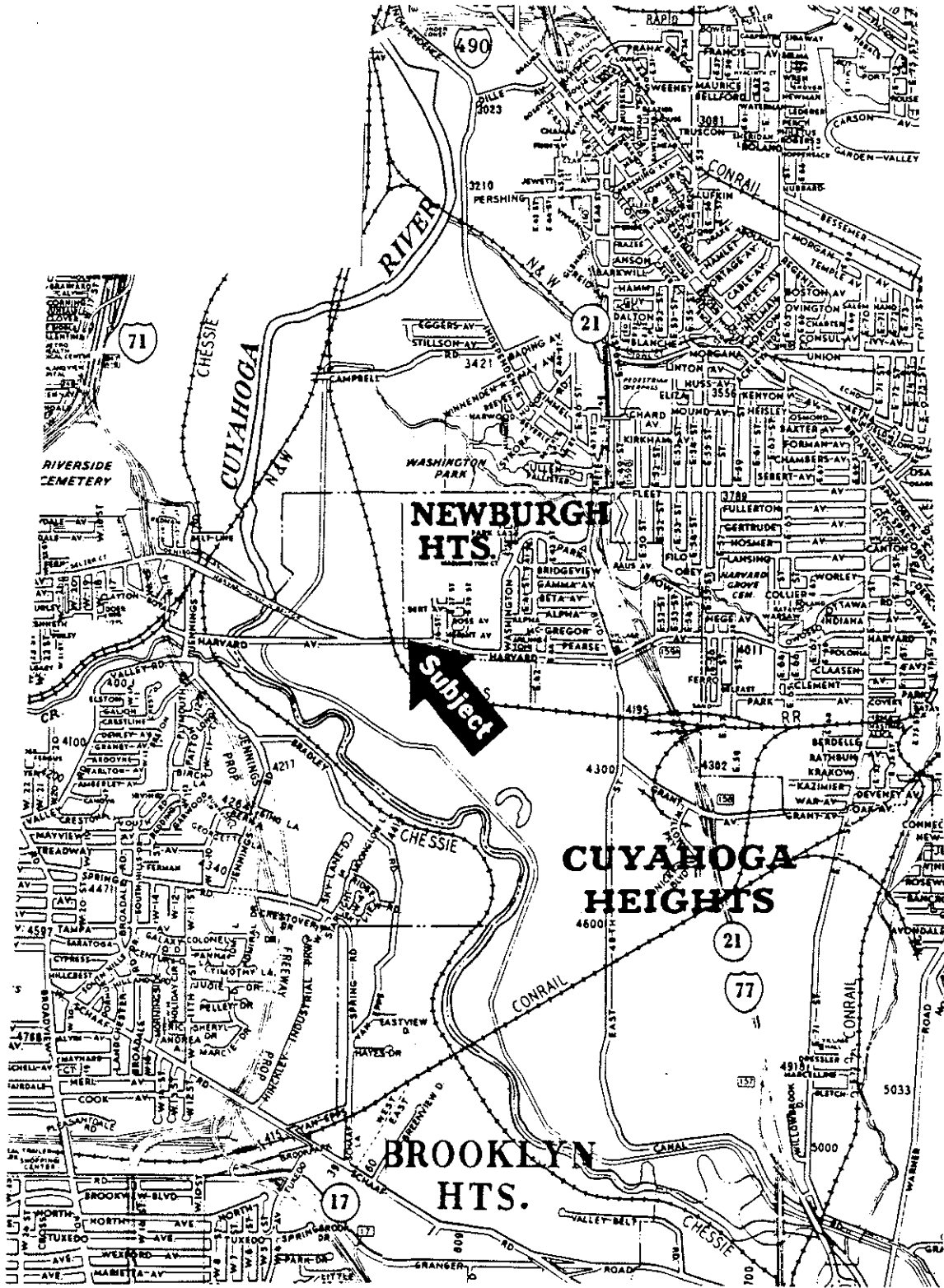
GATE 1

1000'

235'

CHARLES P. BRAMAN & CO.
Real Estate Appraisals

Location Map





OPTION AGREEMENT

THIS OPTION AGREEMENT (this "Agreement") is made and entered into as of this ____ day of January, 1991 by and between ALUMINUM COMPANY OF AMERICA, a Pennsylvania corporation (hereinafter referred to as "Optionor"), and GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY, a political subdivision of the State of Ohio (hereinafter referred to as "Optionee").

W I T N E S S E T H :

WHEREAS, Optionor is the owner of certain tracts or parcels of real property located in the cities of Newburgh Heights and Cuyahoga Heights, County of Cuyahoga, State of Ohio, known as "Parcel 8" and "Alcoa East Parking Lot" and as more fully described in Exhibit A, attached hereto and made a part hereof, together with all improvements, easements, rights, privileges, hereditaments, appurtenances and fixtures thereunto belonging ("the Property"); and

WHEREAS, Optionor desires to grant to Optionee the sole and exclusive right and option to purchase Optionor's right, title, estate and interest in and to the Property (the "Option"), and Optionee desires to purchase the Option, but only upon and pursuant to the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the promises and covenants contained hereinbelow and intending to be legally bound hereby, the parties hereto agree as follows:

1. Grant of Option. For and in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged,

Optionor, for itself and its successors and assigns, hereby sells and grants unto Optionee, and its successors and assigns, the exclusive and irrevocable right and option to purchase all of Optionor's right, title, estate and interest in and to the Property for the Purchase Price (defined below) at any time during the period commencing on the date hereof and ending one hundred and eighty (180) days thereafter (the "Option Period").

2. Exercise of Option. Optionee may exercise the Option granted herein by giving written notice thereof to Optionor at any time during the Option Period, and thereupon this Agreement shall become a valid and legally binding contract for the sale and purchase of the Property. Such notice of exercise shall be deemed sufficiently given if and when the notice is either delivered personally or sent certified or registered mail, postage prepaid, or by telex or telecopier/facsimile by such date to:

Aluminum Company of America
1501 Alcoa Building
Pittsburgh, PA 15219
Facsimile Number: (412) 553-2947
Attn: Manager, Real Estate Division

3. Purchase Price. The purchase price to be paid by Optionee in the event that the Option is exercised pursuant to the terms hereof shall be the sum of One Million Four Hundred Eighty-Seven Thousand Two Hundred and No/100 Dollars (\$1,487,200), subject to the per acre adjustment described in Paragraph 10 hereof (the "Purchase Price"). The Purchase Price is based on the understanding that the Property consists of approximately 18.59 acres of land at a price equal to \$80,000 per acre (the per acre price shall be net to Optionor; all cost and expense as defined herein shall be paid by or for the account of Optionee). Optionee shall pay the Purchase Price at Closing (defined below) in immediately available funds or by wire transfer to be deposited in a bank account designated by Optionor for such purpose.

4. Title Matters. In the event that the Option granted herein is exercised by Optionee, then Optionee shall have thirty (30) days after the exercise date within which to conduct and complete an examination of the title to the Property at Optionee's sole cost and expense. Optionee shall have ten (10) days following the receipt of the preliminary title report within which to notify Optionor, in writing, of any substantial defects as to the title of the property which would render title to the Property uninsurable by reputable title insurance companies at regular rates. Optionor shall have thirty (30) days following receipt of such notification in which to correct such specific defects. In the event that Optionor is unable or unwilling to correct such defects, the Optionee, as Optionee's sole remedy, shall elect to either: (a) revoke its exercise of the option herein granted whereupon the parties shall be relieved of any further obligation hereunder (except for the obligations of confidentiality and non-disclosure contained in Paragraph 6 hereof), or, (b) accept whatever title Optionor actually has to the Property without a reduction or abatement of the Purchase Price.

5. No Representations or Warranties. Optionee understands that Optionor makes no representations or warranties of any kind or character, express or implied, oral or written, with respect to the Property or the condition thereof and Optionee is entering into the transactions described herein without relying in any manner on any representation or warranty by Optionor. Optionee shall take the Property "AS IS, WITH ALL FAULTS" subject to all defects, whether patent or latent, risks or liabilities, including, without limitation, any and all environmental defects, risks, liabilities or conditions.

6. Environmental Due Diligence.

(a) Optionor shall within sixty (60) days of the date hereof complete an environmental transfer assessment (the "Assessment") of the property to determine (i) if any Hazardous Substances (defined below) are present in or on the property (including subsurface) and (ii) if any condition exists in/on the property (including subsurface) about which a government agency would, under applicable law (defined below), require corrective or remedial action. Such Assessment shall, at a minimum, be made in compliance with the specifications therefor described on Exhibit "B" attached hereto and incorporated herein, and shall be performed by the Consultant (defined below). The contract documents used to define the Consultant's engagement will be subject to Optionee's prior review and approval. Optionee shall have the right to require additional testing by the Consultant. The costs attributable to such additional testing shall be paid directly to the consultant by Optionee. The results of said Assessment shall serve as a baseline description of the environmental condition of the property as of the Closing Date. All reports and analyses prepared in connection with said Assessment and all data obtained thereby shall be made reasonably available for inspection by Optionee and its designees at offices in Cuyahoga County, Ohio. Optionee shall have the right to observe and monitor the activities of the Consultant during the course of the Assessment. One copy of each report issued by Consultant endorsed "Proprietary - this report is the property of Aluminum Company of America and is not offered for general circulation," or words of similar import,

shall be promptly delivered to Optionee. Optionee shall have an affirmative duty to keep all information obtained from the assessment confidential, subject to the requirements of applicable law. In the event that said Assessment is not concluded within the sixty day period allotted hereby, then the Option Period shall be and is hereby extended by a period equal to the delay experienced by Optionor in completing said Assessment not to exceed 30 days. Optionee shall fully reimburse Optionor at closing a sum equal to the amount invoiced by the environmental consultant attributable to the performance of said Assessment and related analytic and other fees and expenses up to an aggregate of \$40,000; provided that all services performed and billed by Consultant have received Optionee's specific advance approval.

(b) For purposes of this Agreement, the term "Hazardous Substance" shall mean any substance, chemical, or waste that is listed or defined as hazardous, toxic, or dangerous under applicable law, and any petroleum products.

(c) For purposes of this Agreement, the term "applicable law" shall mean the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. sections 9601 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. sections 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. sections 1251 et seq.; the Clean Air Act, 42 U.S.C. sections 7401, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. sections 1471 et seq.; the Toxic Substances Control Act, 15 U.S.C. sections 2601 through 2629; and the Safe Drinking Water Act, 42 U.S.C. sections 300f through 300j; each as amended from time to time; and any similar state and local laws and ordinances and the

regulations implementing such statutes.

(d) For purposes of the Assessment, Optionor shall retain a reputable environmental consulting firm (the "Consultant") for the purposes of conducting any such investigation. The selection of the Consultant shall be subject to the approval of Optionee, which approval shall not be unreasonably withheld.

(e) Notwithstanding any other provision of this Agreement, Optionee's right to enter the Property for purposes of observing the conducting of the Assessment shall be subject to the following restrictions: (i) Optionee's and the Consultant's activities under this section shall not interfere with normal operation of the Property; (ii) Optionor shall notify Optionee at least forty-eight (48) hours prior to entry onto the Property to conduct such Assessment; (iii) All activities undertaken in connection with the Assessment shall fully comply with applicable law, including other laws relating to worker safety and to proper disposal of any samples taken, and any soil or water generated in the process of taking the samples, and Optionor shall provide Optionee upon delivery of the Assessment with appropriately preserved split samples of all solid, gaseous or liquid samples taken; (iv) Optionee shall be permitted to have a representative present during all such investigations, and to copy the results of on site testing and visual inspections, and shall have complete access to all samples taken, test results, and boring records. Optionee shall indemnify and hold harmless Optionor from and against any and all damages, whether to person or property, arising from or in any way related to Optionee's (and its agents and representatives) acts or omissions while on the Property; (v)

Optionor shall take all actions and implement all protections necessary to ensure that actions taken under this Paragraph 6 and equipment, materials, and substances generated used or brought onto the property pose no threat to the safety or health of persons or the environment, and cause no damage to the Property of Optionor or of any other person; (vi) Optionor shall be solely responsible for the security of the activities, equipment and materials brought on the Property under this Paragraph 6.

7. Optionor's Elections. In the event that the Assessment reveals the existence of Hazardous Substance or any condition about which a governmental agency would require corrective or remedial action in, on, under or about Property and to which the Optionee objects, then, upon written notice of objection by Optionee, Optionor shall elect, in its sole discretion, to either (i) cure any matter so objected to by Optionee prior to Closing and thereafter proceed to Closing without abatement or reduction in the purchase price or (ii) terminate this Agreement and thereby declare it null and void and thereafter the parties shall be relieved of any and all further obligations hereunder (except for the obligation of confidentiality and non-disclosure contained herein). In the event Optionor terminates this Agreement pursuant to subclause (ii) above, Optionee shall not be obligated to reimburse Optionor pursuant to Paragraph 6(a) hereinabove.

8. Closing.

(a) Upon five (5) days prior written notice to Optionor from Optionee given at any time after the exercise of the Option, but in no event later than forty-five (45) days after the receipt by Optionee of the survey report proposed under Paragraph 10 hereof and upon satisfactory fulfillment

of all obligations to be performed by the parties hereunder, delivery of the deed, payment of the Purchase Price and closing of title hereunder ("Closing") shall take place at such time, place and date in the State of Ohio as the parties shall mutually determine (the "Closing Date").

(b) Optionor shall convey the fee simple absolute interest in the Property to Optionee at Closing by special warranty deed in recordable and insurable form subject to all exceptions, reservations, easements, rights of way, restrictions, limitations and encumbrances recorded, including those accepted by Optionee as set forth in Schedule B of Optionee's preliminary title report obtained pursuant to Paragraph 4 hereof.

(c) Optionor shall deliver possession of the Property to Optionee on the Closing Date.

(d) Optionor shall deliver to Optionee on Closing Date all data collected, the results of all analyses and tests performed, and all reports and maps prepared in connection with the Assessment prepared under this Agreement except that, in each instance, Optionor shall retain copies thereof for its records.

9. Taxes and Prorations. All taxes for the year in which the deed is delivered shall be prorated to the date of delivery of the deed. Optionee, at its sole cost and expense, shall pay any state or local transfer or excise taxes. The following items shall be prorated between the parties as of Closing: (i) all real property taxes on the Property, whether or not a lien, assessed or to be assessed, for the tax year in which Closing occurs; and (ii) any and all other applicable assessments for improvements and other items normally and customarily prorated and allocated among buyers

and sellers of real property in the State of Ohio. Real property taxes shall be prorated for the year in which Closing occurs based upon real property taxes levied or estimated to be levied in that year by each taxing body without regard to the date of levy or the fiscal year of the taxing authority.

10. Survey. Optionor, at its sole cost and expense, shall have a boundary survey of the Property prepared by reputable and registered surveyors within thirty (30) days after the exercise of the Option by Optionee. The metes and bounds description prepared from such survey shall be, subject to the terms of this Agreement, incorporated into the deed to be delivered by Optionor to Optionee at Closing. The foregoing to the contrary notwithstanding, prior to including the metes and bounds description prepared from such survey into such deed, the parties shall review said survey and make any changes that may be deemed necessary or appropriate in order to convey the Property in accordance with the terms hereof and the intent of the parties. In the event that the acreage finally determined by Optionor's boundary survey for the Property to be conveyed hereunder is greater than or less than 18.59 acres, then the Purchase Price shall be increased or decreased, as the case may be, pro rata using a per acre price of \$80,000.

11. Right of First Refusal. Optionee agrees that if during Optionee's ownership a third-party offer to purchase any or all the Property is received, Optionee will not accept said offer without first offering the Property to Optionor on the terms and conditions stated in the third party offer. Optionor shall have thirty (30) calendar days to accept said offer and within which to conduct its own environmental transfer assessment. Thereafter, said offer shall be deemed refused and Optionee shall have

fulfilled its obligation to Optionor under this Paragraph. In the event that said offer is refused by Optionor and said third-party offer is accepted by Optionee, but the resulting contract is abandoned or terminated so that no transfer, assignment or conveyance of the Property occurs, then with regard to subsequent offers by third parties, the procedure described in this Paragraph shall be followed.

In the event that this right of first refusal is declared unenforceable by any court of competent jurisdiction, and the Property is transferred, assigned or conveyed to a third party, Optionee then agrees to restrict the use of said transferred, assigned or conveyed land to a use acceptable to Optionor in the deed or agreement of sale. Optionor agrees that a use not more restrictive than light industrial as defined by the zoning laws of the appropriate jurisdiction is acceptable. The parties may file at Closing a mutually acceptable instrument memorializing the aforesaid right of first refusal.

12. Default. In the event that either party shall default in the performance of any of the terms and conditions hereof, the party claiming default may elect to: (i) declare this Agreement to be null and void, whereupon the parties shall be relieved of any further liability or obligation hereunder (except for the obligations of confidentiality and non-disclosure contained in Paragraph 6 hereof), or (ii) institute an action for specific performance and/or damages, including, without limitation, loss of bargain, consequential damages and attorneys', experts' or witness' fees.

13. Brokers and Agents. Optionor and Optionee both represent and warrant to each other that they have no knowledge of any agreement, understanding or fact which would entitle any person, firm or corporation, other than Richard H. Adler Associates to any brokerage fees or commissions, and each party shall indemnify and hold harmless the other party hereto from any loss or liability arising by reason of breach of such representation and warranty. Optionor represents that it has agreed with Richard H. Adler Associates that its fee in connection with this transaction is in the amount of ten percent (10%) of the purchase price if and when a sale is consummated. Optionor represents that fees are not earned nor payable unless and until Optionee accepts ownership of the lands subject to this Option Agreement. Optionee agrees to pay at Closing the fees due Richard H. Adler Associates not to exceed 10% of the purchase price.

14. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

15. No Modification. This Agreement may not be released, discharged, abandoned, changed, altered, amended or modified in any manner except by an instrument in writing signed by a duly authorized officer or representative of each of the parties hereto.

16. Covenant Not To Record. Optionee will not record this Agreement or any summary hereof and any such recording shall constitute a default hereunder by Optionee.

17. Time of the Essence. Time shall be of the essence in the performance of the terms and conditions of this agreement.

18. Notices. All notices permitted or required by this Agreement shall be given in writing and shall be deemed to have been duly given when delivered in person or sent by registered or certified mail, return receipt requested, postage prepaid, or by telex, facsimile or telecopier, to the person or place specifically designated by such party for the purpose of receiving notices hereunder.

19. Expenses. Except as otherwise specifically set forth herein, each party hereto shall bear its respective costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, whether or not such transactions are consummated.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

ATTEST:

Assistant Secretary

ALUMINUM COMPANY OF AMERICA

By: _____

Its: Vice President

WITNESS:

GREATER CLEVELAND REGIONAL
TRANSIT AUTHORITY

By: _____

Ronald J. Tober

Its: General Manager

The legal form and correctness of the within instrument are hereby approved.

Assistant General Manager - Legal