

ORDINANCE 90- 11

AN ORDINANCE APPROVING THE EXECUTION OF AN ADDENDUM TO AGREEMENT BETWEEN THE CITY OF RUSSELLVILLE, THE CITY OF LEWISBURG AND LOGAN ALUMINUM RELATING TO SPA LAKE: WITH SEVERABILITY AND REPEALER CLAUSE: AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS the City of Russellville, the City of Lewisburg and Logan Aluminum (formerly known as Anaconda) previously entered into an Agreement dated June 17, 1981, concerning various matters relating to Spa Lake;

AND WHEREAS, these entities have agreed on certain amendments to the original agreement due to changed circumstances;

NOW THEREFORE: BE IT ORDAINED BY THE CITY OF RUSSELLVILLE, KENTUCKY THAT:

1) The Addendum to Agreement attached hereto and marked as Exhibit "A" is hereby approved.

2) The Mayor and City Clerk of the City of Russellville are hereby authorized and instructed to execute the Addendum to Agreement on behalf of the City.

3) In the event any provision of this Ordinance is invalid for any reason, such invalidity shall not affect the validity of any other provision.

4) All portions of any section of any ordinance or rule or regulation in conflict herewith are hereby repealed to the extent of that conflict only.

5) This Ordinance shall be effective upon its passage and publication according to law.

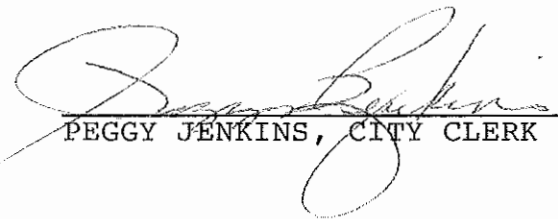
FIRST READING CONDUCTED ON October 2, 1990.

SECOND READING CONDUCTED AND PASSAGE by roll call vote this  
4th day of October, 1990.

AYES:	NAYES:	ABSTAINING	ABSENT:
<u>Jackie Dunlap</u>	<u>None</u>	<u>None</u>	<u>Russell Jones</u>
<u>Jean Hankins</u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
<u>Howard Wren</u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
<u>Pat Basham</u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
<u>Willie Hampton</u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

  
\_\_\_\_\_  
KEN SMITH, MAYOR

ATTEST:

  
\_\_\_\_\_  
PEGGY JENKINS, CITY CLERK

SUMMARY OF ORDINANCE NO. 90- 11

"AN ORDINANCE APPROVING THE EXECUTION OF AN ADDENDUM TO AGREEMENT BETWEEN THE CITY OF RUSSELLVILLE, THE CITY OF LEWISBURG AND LOGAN ALUMINUM RELATING TO SPA LAKE; WITH SEVERABILITY AND REPEALER CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE"

This Ordinance approved and authorized the execution of an Addendum to Agreement between the City of Russellville, the City of Lewisburg and Logan Aluminum that made certain changes to an earlier agreement between them dated June 17, 1981. These changes involve the granting of an easement by Logan Aluminum to the City of Russellville for installation of a water line and a pumping station; the agreement by the City of Russellville to construct the water line and pumping station properly according to approved plans and with all necessary permits, without allowing liens to be filed; the agreement by the City of Russellville to convey two (2) 300 hp motors to Logan Aluminum; the agreement by the City of Russellville to purchase three (3) 200 hp motors and related parts from Logan Aluminum for \$30,000 with the City of Russellville being responsible for the switching of these motors; granting the right to Russellville to use Spa Lake as its primary source of water during the repair of Herndon Lake; specifying the sharing of costs and expenses for the operation of the pump station at Spa Lake; with miscellaneous provisions regarding the granting of notices, indemnification and rights upon abandonment. The Ordinance contained severability and repealer clauses and provided that it would become effective upon its passage and publication. First reading was conducted on October 2, 1990, and second reading and passage was conducted on October 4, 1990 at a special called meeting. All council members that were present,

namely Willie Hampton, Howard Wren, Jean Hankins, Pat Basham and Jackie Dunlap, voted in favor of the Ordinance and the Mayor and City Clerk thereafter signed it on October 4, 1990 on behalf of the City.

This is to certify that the foregoing is a summary of the contents of Ordinance No. 90- // that was prepared by the undersigned, who is an attorney licensed to practice in the Commonwealth of Kentucky.



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J. GRAN CLARK, JR.  
CLARK BUILDING  
P. O. BOX 116  
RUSSELLVILLE, KY 42276

EASEMENT

THIS EASEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 1990, by and between LOGAN ALUMINUM INC., a Delaware corporation, parties of the first part (hereinafter referred to as the "Owner"), and the CITY OF RUSSELLVILLE, Logan County, Kentucky, a municipal corporation existing as a political subdivision under the laws of the Commonwealth of Kentucky, party of the second part (hereinafter referred to as "Russellville");

WITNESSETH: THAT WHEREAS, the City of Russellville is desirous of constructing, operating and maintaining a new water supply line and a new pumping station to be used in conjunction with the water supply line for the citizens of Russellville and Logan County through part of the Owner's land;

AND WHEREAS, the Owner desires to transfer a right of way and easement through and upon the applicable portion of said property for the purposes herein stated and the benefits to be derived from maintenance and operation of the water line and the pumping station by Russellville.

NOW THEREFORE, the Owner does hereby give, grant, bargain, sell and convey unto Russellville, its successors and assigns forever, the permanent right of way and easement to construct, use, operate, inspect, repair, maintain, replace and

EXHIBIT "A"

remove (i) a water line (the "Water Line") over, across and through a strip of land located in Logan County, Kentucky, being more particularly described in the attachment hereto marked as Exhibit "A" which is incorporated herein by reference, said strip of land being approximately \_\_\_\_ feet in length and being 30 feet in width; and (ii) a station for the pumping of water through the Water Line (the "Pumping Station") upon the parcel of land cross-hatched on Exhibit "A" attached hereto and made a part hereof, said parcel of land being approximately \_\_\_\_ feet in width and \_\_\_\_ feet in length.

The Owner's land subject to the easements herein conveyed was conveyed to the Owner by deed dated \_\_\_\_\_, of record in Deed Book \_\_\_\_\_, Page \_\_\_\_\_ in the office of the Clerk of Logan County, Kentucky.

In addition to the permanent easements, the Owner does also grant a temporary right of way for construction of the Water Line and the Pumping Station 40 feet in width along the length of the easements, subject to the obligation of Russellville to restore the surface of the property to its condition prior to the construction.

Any damage to crops, structures, or other property caused by Russellville during the construction, operation, maintenance or repair of the Water Line or the Pumping Station at any time shall be paid by Russellville. Russellville hereby indemnifies

and holds Owner harmless from and against any and all costs, claims, liabilities, or expenses whatsoever, including reasonable attorneys' fees, arising from or in connection with the Water Line or the Pumping Station at any time, including without limitation, claims arising from contract or for personal injury, death or property damage.

The easements and the Water Line and Pumping Station shall be deemed abandoned if Russellville fails to maintain them for a period of five (5) consecutive years. Upon abandonment, the easements shall terminate. Upon the termination of the easements by abandonment or by the express agreement of the parties, their successors or assigns, Russellville shall (i) execute a termination of easement in recordable form, and (ii) remove the Water Line and/or Pumping Station from the Owner's property within a reasonable time after receipt of a written notice from the Owner requesting removal. If the Owner does not require the removal of the Water Line and/or the Pumping Station, the Water Line and/or the Pumping Station shall revert to and become the sole property of Owner.

TO HAVE AND TO HOLD the permanent easement unto Russellville, its successors and assigns forever, and with the warranty and covenant that the Owner is lawfully seized and possessed of its property and has good and lawful title and the right to grant the easements herein described.

IN TESTIMONY WHEREOF, Owner has hereunto subscribed its  
name by its duly authorized officer as of the date first above  
set forth.

LOGAN ALUMINUM INC.  
a Delaware corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
  )SS:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 1990, by \_\_\_\_\_,  
as \_\_\_\_\_ of LOGAN ALUMINUM INC., a Delaware  
corporation, on behalf of the corporation.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

[SEAL]

This instrument was prepared by:

\_\_\_\_\_  
J. Gran Clark, Jr.  
175 West 4th Street  
Russellville, Kentucky 42276



BILL OF SALE  
FROM LOGAN ALUMINUM INC.

FOR VALUE RECEIVED, and in further consideration of the mutual covenants and conditions set forth in that certain Addendum to Agreement dated \_\_\_\_\_, 1990, by and between the CITY OF RUSSELLVILLE, Logan County, Kentucky ("Russellville") and LOGAN ALUMINUM INC. ("Logan"), among others (the "Agreement"), Logan has bargained and sold and by these presents does hereby grant, convey, sell, transfer, and assign unto Russellville, its successors and assigns, the following property:

1.

2.

Logan hereby represents, warrants and covenants that it is the sole and lawful owner of the property described in this Bill of Sale, and each and every part thereof, and has the full right, power and authority to sell and transfer the same.

The property conveyed hereby is conveyed in its "AS IS" condition as of the date hereof.

EXHIBIT "C"

TO HAVE AND TO HOLD unto Russellville, its successors and assigns FOREVER, free and clear from any liens, claims or encumbrances whatsoever.

IN WITNESS WHEREOF, the undersigned have hereunto caused this Bill of Sale to be executed by their duly authorized officers as of the \_\_\_\_ day of \_\_\_\_\_, 1990.

CITY OF RUSSELLVILLE

LOGAN ALUMINUM INC.

By: *Ken Smith*

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

ADDENDUM TO AGREEMENT

THIS ADDENDUM TO AGREEMENT dated as of the \_\_\_\_ day of \_\_\_\_\_, 1990, by and between the CITY OF RUSSELLVILLE, Logan County, Kentucky, a municipal corporation existing as a political subdivision under the constitution and laws of the Commonwealth of Kentucky ("Russellville"), LOGAN ALUMINUM INC., a Delaware corporation ("Logan"), and the CITY OF LEWISBURG, Logan County, Kentucky, a municipal corporation existing as a political subdivision under the constitution and laws of the Commonwealth of Kentucky ("Lewisburg").

WHEREAS, Russellville, Lewisburg and The Anaconda Company, a Delaware corporation ("Anaconda") entered into a certain Agreement dated June 17, 1981 (the "Agreement") establishing the rights and obligations of the parties thereto with respect to the withdrawal of water from a certain flood protection water facility known as Spa Lake located in Logan County, Kentucky ("Spa Lake"); and

WHEREAS, Logan is the assignee of Anaconda's rights and responsibilities under the Agreement; and

WHEREAS, the Agreement sets out the rights and duties of the parties with respect to the withdrawal of water from Spa Lake, including limits on the amount of water that may be withdrawn; and

WHEREAS, the Agreement provides that Russellville will maintain its existing water supply source and will use the water from Spa Lake only as a secondary or supplemental source; and

WHEREAS, on the date of the Agreement, Russellville's existing water supply source was Herndon Lake, located in Logan County, Kentucky ("Herndon Lake"), and Russellville has continued to use Herndon Lake as its sole source of water from the date of the Agreement through the date hereof; and

WHEREAS, Herndon Lake has developed a leak and must be repaired; and

WHEREAS, the repair of the leak at Herndon Lake will require that the lake be drained and will take approximately sixty to ninety days from the date the lake is drained (the "Repair Period"); and

WHEREAS, Russellville must find another source to supply water for its needs while Herndon Lake is being repaired; and

WHEREAS, Spa Lake is expected to have a sufficient volume of water to meet the needs of Lewisburg, Russellville and Logan during the Repair Period; and

WHEREAS, the supply of water from Spa Lake to Russellville would require the construction and maintenance of a water line

across and a pumping station on Logan's property, as well as the installation of larger pumps at Logan's pumping station located at Spa Lake; and

WHEREAS, the parties hereto have agreed that Russellville may use the water from Spa Lake as its primary water supply during the Repair Period, upon the terms and conditions set forth in this Addendum to Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Logan shall grant and convey to Russellville an easement across certain real property owned by Logan for (i) the construction, operation and maintenance of a water line, which easement shall be 30 feet in width (the "Water Line"), as more particularly described in the form of easement attached hereto as Exhibit "A" and made a part hereof, and (ii) the construction, operation and maintenance of a pumping station (the "Pumping Station") to be used in connection with the Water Line easement, as more particularly described in Exhibit "A".

2. Russellville shall construct the Water Line and the Pumping Station in a safe and workmanlike manner, and shall keep them in good condition and repair, all at Russellville's sole cost and expense.

3. If any claim for a mechanic's or materialman's lien shall be recorded against Logan's property or any part thereof arising from the construction, repair, maintenance or operation of the Water Line or the Pumping Station, Russellville shall have such lien released of record no later than thirty (30) days after the date it is recorded.

4. Russellville shall obtain all necessary licenses, permits and approvals for the construction, operation and maintenance of the Water Line and the Pumping Station and for the removal of water from Spa Lake.

5. Russellville shall submit all plans and specifications for the construction of the Water Line and the Pumping Station to Logan for Logan's approval prior to the beginning of construction.

6. Russellville shall execute and deliver a bill of sale substantially in the form attached hereto as Exhibit "B" and made a part hereof conveying two (2) 300 horsepower ("HP") pumps to Logan, the type and condition of which have been approved by Logan, to be installed at Russellville's sole cost and expense at Logan's existing pumping station located at Spa Lake ("Logan's Pumping Station").

7. In consideration of \$\_\_\_\_\_ paid by Russellville to Logan, Logan shall execute and deliver a bill of sale substan-

tially in the form attached hereto as Exhibit "C" and made a part hereof conveying the two (2) 200 HP pumps currently located at Logan's Pumping Station to Russellville.

8. The removal of the 200 HP pumps from and the installation of the 300 HP pumps at Logan's Pumping Station shall be completed by Russellville at its sole cost and expense. Russellville shall coordinate such removal and installation with Logan prior to beginning work thereon, and weekly thereafter, or more frequently if requested by Logan.

9. Russellville shall give Logan ten (10) days written notice prior to the beginning of (i) the construction of the Water Line and Pumping Station, and (ii) the beginning date for withdrawal of water from Spa Lake.

10. Russellville may use Spa Lake as its primary water supply source during the Repair Period and may take away and use up to 2.8 MM gallons of water per day from Spa Lake during such period.

11. Russellville will maintain Herndon Lake as its primary source of water supply for all periods other than the Repair Period, and following this period will draw water from Spa Lake on the basis set forth in the Agreement.

12. Russellville shall give Logan ten (10) days written notice prior to the date Russellville ceases its withdrawal of

water from Spa Lake.

13. Russellville shall pay (i) all costs and expenses in connection with the installation of facilities and equipment necessary for the institution or upgrading of electric service to the pumping stations, (ii) all costs and expenses whatsoever resulting from its use of water from Spa Lake during the Repair Period and thereafter, including incremental operating expenses, (iii) all incremental operating expenses, if any, including without limitation, expenses for depreciation, energy and maintenance, resulting from the switch from 200 HP motors to 300 HP motors at Logan's Pumping Station from and after the Repair Period, and (iv) its share of the direct costs of the repair and maintenance of the system (as defined in the Agreement) and incremental operating expenses at any time it uses water from the system. Logan will periodically compute, no less frequently than quarterly, amounts due it from Russellville under this provision, and forward a statement, including an analysis showing the derivation of the amounts due, to Russellville for payment. Russellville shall pay said amounts within thirty days of the date of such statement, subject to the right of Russellville to audit the books and records of Logan at reasonable times and upon reasonable request, as they pertain to such amounts to verify the accuracy thereof.

14. Russellville shall indemnify and hold Logan harmless



from any and all costs, expense, claim and liability whatsoever, including without limitation, claims arising from contract or for personal injury, death or property damage, from or in connection with the construction, operation, ownership or maintenance of the Water Line or the Pumping Station, or the removal of the 200 HP pumps or the installation of the 300 HP pumps at Logan's Pumping Station, or the removal of water from Spa Lake and supply of same to Russellville during the Repair Period.

15. The parties hereto contemplate that the Repair Period will be ninety (90) days. Provided, however, that the Repair Period may be extended for such additional reasonable period of time as may be necessary to complete the repairs upon the following conditions:

(a) Russellville shall provide Logan and Lewisburg with written notice at least fourteen (14) days prior to the expiration of the Repair Period.

(b) The extension shall be for an additional period of not more than ninety (90) days. "Repair Period" as used herein shall mean the initial repair period of up to ninety days plus any extension thereof under this paragraph 14.

16. The easements and the Water Line and Pumping Station

shall be deemed abandoned if Russellville fails to maintain them for a period of five (5) consecutive years. Upon abandonment, the easements shall terminate. Upon the termination of the easements by abandonment or by the express agreement of Russellville and Logan, Russellville shall (i) execute a termination of easement in recordable form, and (ii) remove the Water Line and/or the Pumping Station from Logan's property within a reasonable time after receipt of a written request from Logan for removal. If Logan does not require the removal of the Water Line and/or the Pumping Station, the Water Line and/or the Pumping Station shall revert to and become the sole property of Logan.

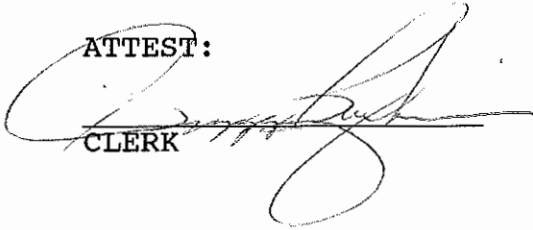
17. Russellville and Lewisburg shall provide Logan with certified copies of ordinances duly adopted and enacted approving the execution of this Addendum to Agreement and the transactions contemplated hereby.

18. The parties hereto ratify and reaffirm each and every provision of the Agreement not inconsistent with the terms of this Addendum. To the extent any inconsistency exists between the Agreement and this Addendum, the terms of this Addendum shall control.

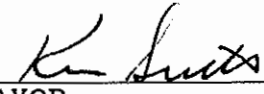
19. This Addendum to Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

CITY OF RUSSELLVILLE

ATTEST:

  
CLERK

BY:

  
MAYOR

CITY OF LEWISBURG

ATTEST:

\_\_\_\_\_  
CLERK

BY:

\_\_\_\_\_  
MAYOR

LOGAN ALUMINUM INC.  
a Delaware corporation

ATTEST:

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

COMMONWEALTH OF KENTUCKY    )  
  )SS:  
COUNTY OF LOGAN                )

The foregoing instrument was acknowledged before me this  
\_\_\_\_ day of \_\_\_\_\_, 1990, by \_\_\_\_\_ and  
\_\_\_\_\_, as mayor and clerk, respectively, of the  
CITY OF RUSSELLVILLE, Logan County, Kentucky, a municipal  
corporation, on behalf of the municipal corporation.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State at Large,  
Kentucky

COMMONWEALTH OF KENTUCKY )  
 )SS:  
COUNTY OF LOGAN )

The foregoing instrument was acknowledged before me this  
\_\_\_\_ day of \_\_\_\_\_, 1990, by \_\_\_\_\_ and  
\_\_\_\_\_, as mayor and clerk, respectively, of the  
CITY OF LEWISBURG, Logan County, Kentucky, a municipal  
corporation, on behalf of the municipal corporation.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State at Large,  
Kentucky

COMMONWEALTH OF KENTUCKY )  
 )SS:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this  
\_\_\_\_ day of \_\_\_\_\_, 1990, by \_\_\_\_\_ and  
\_\_\_\_\_, respectively, of LOGAN ALUMINUM INC., a  
Delaware corporation, on behalf of the corporation.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State at Large,  
Kentucky