

MONROE COUNTY CLERK'S OFFICE
County Clerk's Recording Page

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BOX 93

SOT

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No. Pages 0041

Instrument DECL RESTR COVT

Date : 3/08/2000

Time : 9:56:00

Control # 200003080131

TT#

TT# TT 0000 013954

Employee ID BC

ALCAN ALUMINIUM CORPORATION

ALCAN ALUMINIUM CORPORATION

MORTGAGE TAX

FILE FEE-S	\$	4.75
FILE FEE-C	\$	10.25
REC FEE	\$	123.00
	\$	.00
	\$	.00
	\$	.00
	\$	.00
	\$	.00
	\$	.00
Total:	\$	138.00

MORTGAGE AMOUNT	\$	.00
BASIC MORTGAGE TAX	\$	.00
SPEC ADDIT MTG TAX	\$	.00
ADDITIONAL MTG TAX	\$	.00
Total	\$	.00

STATE OF NEW YORK
MONROE COUNTY CLERK'S OFFICE

TRANSFER AMT

WARNING - THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH.

TRANSFER AMT \$	.00
TRANSFER TAX \$	.00

Maggie Brooks, County Clerk



D092830074

Box 93
(SOT)

DECLARATION OF RESTRICTIONS

WHEREAS, by deeds listed on Exhibit A annexed hereto (collectively the "Deeds"), 860 LINDEN PARK, INC. ("Owner") is the owner in fee simple of certain real property located in the Town of Pittsford, County of Monroe and State of New York ("Property") and being more particularly described on Exhibit A; and

WHEREAS, pursuant to the Agreement of Purchase and Sale between Alcan Aluminum Corporation ("Alcan") and Owner ("Purchase Agreement"), the Deeds contained certain covenants and restrictions regarding the pending negotiations between Alcan and the New York Department of Environmental Conservation ("DEC") for remediation of certain environmental conditions on the property ("Remediation"); and

WHEREAS, a certain unrecorded Consent and Forebearance Agreement ("Forebearance Agreement") dated September 29, 1998 among Alcan, Owner, Northside Salvage Yard, Inc. ("Northside"), John P. Sebastian and Joseph Sebastian (collectively the "Sebastians") contained additional restrictions on the Property pertaining to the Remediation; and

WHEREAS, Paragraph 3 of Schedule B of each of the Deeds reserves to Alcan the right to execute and record in the Monroe County Clerk's Office a revised Declaration of Restrictions as may be required by DEC, without the consent of Owner provided such revised Declaration does not restrict use of the Property in the manner specified in Paragraph 3 of Schedule B ("Consent Restrictions"); and

WHEREAS, the restrictions contained in this instrument do not constitute Consent Restrictions and, accordingly, the consent of Owner is not required; and

WHEREAS, Owner is the current owner of the Property and Northside is the current occupant of the Property; and

WHEREAS, the Property was the subject of an enforcement proceeding brought by DEC pursuant to Article 27, Title 13 of the New York State Environmental Conservation Law; and

WHEREAS, such proceeding was resolved by an Order on Consent dated February 18, 2000 a copy of which is annexed hereto as Exhibit B; and

WHEREAS, pursuant to the terms of such Order on Consent, Alcan is required to undertake certain response activities at the Property, and

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CLERK

RECORDED

WHEREAS, pursuant to the terms of Article ~~IX~~ of the Order on Consent, Alcan is required to file this Declaration of Restrictions with the Monroe County Clerk's Office for the purpose of providing notice of the Order on Consent to all potential future purchasers of any portion of the Property; and

WHEREAS, in addition to recording the Order on Consent, Alcan desires to restate and modify certain restrictions contained in the Deeds, Forebearance Agreement and the Purchase Agreement and to include such restrictions in this Declaration of Restrictions, such that Owner, Northside and future owners and occupants of the Property may rely on this Declaration to guide their use of the Property from the date of recording of this Declaration;

NOW THEREFORE, in consideration of the foregoing and One Dollar (\$1.00) and other good and valuable consideration, Alcan hereby declares that the Property shall be held, sold, and conveyed subject to the covenants, conditions, conditions, and restrictions set forth in the Order on Consent, the obligations under such Order on Consent constituting a covenant running with the land. Such covenants shall be binding on all parties having any right, title, or interest in the Property, their distributees, successors, and assigns. All subsequent owners shall be deemed to covenant by acceptance of a deed, whether or not it shall be expressed in the deed, to be bound by the obligations of the Order on Consent.

Alcan further declares that the Property shall be held, sold and conveyed subject to the additional covenants, conditions and restrictions ("Additional Restrictions") set forth on Exhibit C attached hereto, all of which shall constitute a covenant running with the land and shall supersede and replace the restrictions in the Deeds and Forebearance Agreement. Such covenants shall be binding on all parties having any right, title or interest in the Property, their distributees, successors and assigns. All subsequent owners shall be deemed to covenant by acceptance of a deed, whether or not it shall be expressed in the deed, to be bound by the Additional Restrictions.

IN WITNESS WHEREOF, Alcan has hereunto set its hand and seal on this 1st day of March, 2000.

ALCAN ALUMINUM CORPORATION

By:

William H. Jansch

Its:

Vice President & General Counsel

Declaration of Restrictions

Legal Description of Premises

STATE OF OHIO)
COUNTY OF CUYAHOGA ss:

On the 1st day of March in the year 2000 before me, the undersigned, a Notary Public in and for said State, personally appeared William J. Tinn, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

John C. Tiltman
Notary Public

JOHN C. TILTMAN, ATTORNEY AT LAW
Notary Public - State of Ohio
My Commission Has No Expiration.
Section 147.03 R.C.



Deed dated December 18, 1996 and recorded on December 20, 1996 in Liber 8870 of Deeds, Page 614.

Correction Deed dated February 3, 2000 and recorded on February 9, 2000 in Liber 9173 of Deeds, Page 383.

Exhibit A to

Declaration of RestrictionsLegal Description of Premises

ALL THAT TRACT OR PARCEL OF LAND, being part of Town Lot 3, of the Blake Tract, Township 12, Range 3, Phelps & Gorham Purchase, Town of Pittsford, Monroe County, New York (#88-36)

Commencing at a point on the centerline of Linden Avenue at its intersection with the west line of Town Lot 3; thence (1) $00^{\circ}15'44''$ east and along the east property line of lands now or formerly Alloy Supply Co., Inc., and C.O.M.I.D.A. (Milton Roy Company Analytical Products Division) a distance of 1,461.66' to a point; thence (2) north $88^{\circ}32'57''$ east and along the division line between the Town of Penfield on the north and the Town of Pittsford on the south forming an interior angle of $91^{\circ}42'47''$ with course (1) a distance of 600.20' to a point; thence (3) south $00^{\circ}15'44''$ west and along the west property line of lands now or formerly Beaudell, Inc. forming an interior angle of $88^{\circ}17'13''$ with course (2) a distance of 1,539.34' to a point; thence (4) north $84^{\circ}03'06''$ west and along the centerline of Linden Avenue forming an interior angle of $84^{\circ}18'50''$ with course (3) a distance of 602.90' to the point of beginning. Course (4) forms an interior angle of $95^{\circ}41'10''$ with course (1). Parcel contains 885,278 square feet which equals 20.323 acres to the northerly highway boundary line of Linden Avenue.

Deed dated December 18, 1996 and recorded on December 20, 1996 in Liber 8820 of Deeds, Page 614.

Correction Deed dated February 3, 2000 and recorded on February 9, 2000 in Liber 9273 of Deeds, Page 385.

Exhibit C to
Declaration of Restrictions
**Exhibit B to
Declaration of Restrictions**

Order on Consent

- A. There shall be no activity over the area of the former lagoons on the Property that will breach the surface cap or increase infiltration through the sub-surface soils without prior written approval of the DEC.
- B. There shall be no activity that will increase surface erosion over the area of the former lagoons that will breach the cap and increase infiltration through the surface soils without prior written approval of DEC.
- C. There shall be no activity that will expose soils under the main building on the Property without prior written approval of DEC.
- D. Prior to the completion of the Remedial Program as defined in the Order on Consent there shall be no activity over the area of the former lagoons.
2. In the event DEC, as part of the Remedial Program requires additional restrictions on the Property, Alcan reserves the right to record in the Monroe County Clerk's Office a supplemental Declaration of Restrictions which may or may not include some or all of the restrictions set forth in this Declaration. Owner shall be given notice of any supplemental Declaration of Restrictions, but its consent shall not be required.

Notwithstanding the foregoing, without the prior written consent of Owner not to unreasonably be withheld, any supplemental Declaration of Restrictions may not, subject to the restrictions in this Section 2:

- A. prevent use of the existing buildings on the Property for the permitted use as of the date of the earlier Deed; or
- B. prevent maintenance of existing building or construction of new buildings for the permitted use as of the date of the earlier Deed on more than twenty-five percent (25%) of the Property.

The Declaration of Restrictions to which this Exhibit C is attached does not violate the foregoing and accordingly the consent of Owner is not required.

Exhibit C to
Declaration of Restrictions

Additional Restrictions

1.
 - A. There shall be no activity over the area of the former lagoons on the Property that will breach the surface cap or increase infiltration through the sub-surface soils without prior written approval of the DEC.
 - B. There shall be no activity that will increase surface erosion over the area of the former lagoons that will breach the cap and increase infiltration through the surface soils without prior written approval of DEC.
 - C. There shall be no activity that will expose soils under the main building on the Property without prior written approval of DEC.
 - D. Prior to the completion of the Remedial Program (as defined in the Order on Consent) there shall be no activity over the area of the former lagoons.

2. In the event DEC, as part of the Remedial Program requires additional restrictions on the Property, Alcan reserves the right to record in the Monroe County Clerk's Office a supplemental Declaration of Restrictions which may or may not include some or all of the restrictions set forth in this Declaration. Owner shall be given notice of any supplemental Declaration of Restrictions, but its consent shall not be required.

Notwithstanding the foregoing, without the prior written consent of Owner not to unreasonably be withheld, any supplemental Declaration of Restrictions may not, subject to the restrictions in this Section 2:

- A. prevent use of the existing buildings on the Property for the permitted use as of the date of the earlier Deed; or
- B. prevent maintenance of existing building or construction of new buildings for the permitted use as of the date of the earlier Deed on more than twenty-five percent (25%) of the Property.

The Declaration of Restrictions to which this Exhibit C is attached does not violate the foregoing and accordingly the consent of Owner is not required.

3. Alcan reserves an unlimited right of access to the Property and all improvements thereon for the purpose of implementing the Remedial Program as may be required by Alcan and DEC; provided that Alcan will endeavor to give prior notice of its entry onto the Property and to consult with Owner so as to minimize to the extent reasonably possible interference with the business conducted on the Property by Owner. It is understood, however, that the determination of Alcan in conjunction with DEC as to what access is required shall be conclusive.

4. Until the Remedial Program (including all monitoring requirements) has been completed, Owner and Northside agree to be bound by the following restrictions:

- A. Not to conduct directly or indirectly, nor permit their successors, assigns or affiliates to conduct, directly or indirectly, any salvage activities on the Property other than storage of auto parts (no crushing activities will be conducted on the Property);
- B. No activity will be conducted over the area of the former lagoons or around the cistern and swale;
- C. No activity will be conducted on the Property which might cause soil or groundwater contamination; storage will be conducted on paved surfaces only (excluding the area of the former lagoons); and
- D. No excavation or other activity will be conducted on the Property that might undermine or change the surface drainage pattern developed under the Remedial Program.

5. In the event any activity is to be conducted over the area of the former lagoons after completion of the Remedial Program, Owner and Northside agree to obtain any necessary state approvals and perform any state required modifications at no cost to Alcan and assume Alcan's responsibilities for inspection and maintenance under the Order on Consent (Exhibit C to this Declaration).

6. Owner shall permit Alcan to undertake investigations and install monitoring and/or treatment facilities in, on or under the Property to such extent and for so long as Alcan in its discretion shall require to achieve and implement the Remedial Program.