

RECORDATION NO. 7692 Filed & no. 20

OCT 31 1974 - 8 45 PM

INTERNATIONAL COMMERCE COMMISSION

CERTIFICATION

I hereby certify that Thomas R. Armstrong, President of FOX LEASING COMPANY, and W. J. Evans, General Manager (Purchasing) of ALUMINUM COMPANY OF AMERICA, appeared before me this 3rd day of July, 1974, compared the following copy of the Lease of Railway Cars with the original, and stated the copy to be a true and correct one in all respects.

Terence A. Miss

LEASE OF RAILWAY CARS

THIS AGREEMENT, made and entered into this 3rd day of July, 1974, by and between FOX LEASING COMPANY, a corporation of Ohio, hereinafter called "Fox", as Lessor, and ALUMINUM COMPANY OF AMERICA, a corporation of Pennsylvania hereinafter called "Alcoa", as Lessee,

WITNESSETH THAT:

1. Fox hereby leased to Alcoa the following equipment:

Seven (7) 70-Ton 50'-0" Flat Cars,

and three (3) 70-Ton 60'-0" Flat Cars,

in accordance with Fox's specifications attached hereto, marked Exhibit "A", and hereby made a part hereof, and bearing Alcoa's reporting marks AOCX and numbered as follows:

AOCX 100 thru and including AOCX 109
(Car Numbers)

2. Alcoa covenants and agrees to pay rent to Fox for use of each of said leased cars during the term of this Lease, or any extension thereof, at the rate of One Hundred Eighty Nine Dollars and Thirty Seven Cents (\$189.37) for each seventy (70) ton 50'-0" flat car per calendar month, and agrees to pay at the rate of

Two Hundred Twenty Five Dollars and Eighty Four Cents (\$225.84) per car per month for each seventy (70) ton 60'-0" flat car, beginning on the date of delivery of each car on Alcoa's tracks. During the period cars are being delivered, Alcoa shall pay such rentals to Fox for each calendar month or portion thereof on or before the 10th day of the next succeeding month. After all the cars which will be covered by this Lease have been delivered, Alcoa shall commence to pay rentals in advance to Fox for each calendar month on or before the fifth working day thereof.

3. This Lease shall become effective immediately and, unless otherwise terminated by any other provisions hereof, it shall continue in full force and effect for thirty six (36) calendar months after date of delivery of last one of the cars subject to this Lease, and thereafter shall be automatically renewed for additional successive terms of six (6) calendar months each as shall elapse until Alcoa shall have terminated this Lease by giving notice to Fox, in writing, of its election to terminate this Lease not less than sixty (60) days prior to the expiration of the original term or any six (6) months' extension thereof. The date of delivery of last one of said cars shall be certified by Alcoa to Fox, which certificate shall be attached hereto as "Exhibit B" and made a part hereof.

4. Delivery of the said cars shall be made at Alcoa's tracks in Davenport, Iowa. Fox assumes full responsibility that said cars will be in good serviceable order and condition upon such delivery at Alcoa's tracks.

5. Subject to provisions hereof, Alcoa shall have exclusive use and control of each of the above described cars during the term of this Lease and during any period or extensions thereof as herein above set forth, provided, however, that Alcoa shall not remove such cars nor suffer them to be removed from the STATE of Iowa without first obtaining Fox's consent thereto in writing. During the term of this Lease, or any extension thereof, said leased cars shall carry the name, serial numbers and reporting marks of Alcoa.

6. Fox, during the period of this Lease, or any extension thereof, shall have the right and privilege of showing its ownership of said cars and the existence of this Lease, or any extension thereof, by marks on said cars in the form of stencilled legends or in any other form of the usual size and type for that purpose. In the exercise of its said right and privilege, Fox will initially apply such stencilled legends. Thereafter, Alcoa at its sole expense, will maintain such ownership legends in good and legible condition.

7. Provided Alcoa shall not be in default under any provisions of this Lease, Alcoa shall be entitled to receive and

retain (a) all per diem and other car rentals or charges which may accrue upon or in connection with any of said leased cars while on the rails of any railroad or company, (b) all demurrage and other charges which may accrue on or in connection with any of said cars under the applicable tariffs and (c) all amounts made in payment or settlement for loss or damage to any of said cars caused by others or while cars are in the possession or control of others. Upon failure of Alcoa to cure the breach of any condition or covenant herein by it within thirty (30) days after written notice thereof by Fox to Alcoa, Fox shall become entitled to receive the amounts specified in this paragraph becoming due subsequent to such thirty (30) day period.

8. It is understood that said cars shall be reconditioned used equipment in good serviceable order and condition when delivered to Alcoa, that Alcoa hereby leases each selected car as it stands at the time of selection; and that during the term of this Lease, and any extension thereof, Alcoa shall be solely responsible for all repairs which may be necessary to maintain each of said cars in good serviceable order and condition. It is understood and agreed that at the expiration of this Lease, or any extensions thereof, all of said cars shall be returned to Fox in good, serviceable order and condition, ordinary wear and tear excepted, except as otherwise herein provided. Fox shall have the right and Alcoa agrees to allow Fox to enter any premises occupied by Alcoa at any reasonable time,

for the purpose of inspecting the condition of said cars. No substantial changes shall be made in said cars without Fox's written consent thereto.

9. (A) It is understood and agreed that at the expiration of this Lease, all of said cars shall be returned to Fox as provided below at option of Alcoa:

(1) Return of cars prepaid as long as acceptable to railroad for interchange movement.

(2) If, at the option of Alcoa, cars are desired for permanent use after thirty six (36) calendar months of lease agreement and payments, Alcoa may purchase cars and pay Fox \$2,850.00 per car and dispose of or keep as Alcoa sees fit.

(3) In the event of a termination of this Lease by Alcoa during the initial period of thirty six (36) calendar months, Alcoa will be penalized one-half the remaining lease payments due under the thirty six (36) calendar month period. The cars under this penalty clause will be returned freight prepaid to Ortner.

9. (B) If, during the term of this Lease, any car leased hereunder shall be damaged beyond repair or destroyed, Alcoa shall pay Fox an amount equal to the total amount of the lease for said car, plus the agreed fair market value of \$2,850.00, less the amount paid to-date by Alcoa under this Lease.

10. It is understood and agreed that Alcoa will prepare and file, at its own expense, any and all schedules, reports or statements as required by any local, state or federal taxing or regulating authorities, boards, or commissions, and will otherwise comply with all laws, ordinances, rules and regulations of the above authorities with respect to said leased cars.

11. In addition to the rental hereinabove provided, Alcoa will pay directly, at its own expense, any and all sales, use or other excise taxes of any kind which may accrue or be required to be paid by reason of or in any way growing out of this Lease and, in addition, will pay any and all ad valorem personal property taxes which may be charged or become payable with respect to said leased cars at any time during the continuation of this Lease.

12. It is expressly understood and agreed that as between Fox and Alcoa, Alcoa assumes responsibility for:

- (a) Damage for or destruction of said lease cars or any of them;

12. (continued)

- (b) Damage to or loss of the whole or any part of any shipments carried in any of said cars;
- (c) Any and all claims, costs, expenses, loss, damages or suits arising out of or on account of any damage or destruction of property, or on account of any personal injuries (whether resulting in death or otherwise) to any person, whether or not he is an employee of Alcoa, when such injuries shall have occurred during the term of this Lease or any extension thereof;
- (d) Excess empty mileage claims, switching or other transportation charges of any railroad or terminal company.

Alcoa further agrees that it shall protect, indemnify and save Fox harmless from any such claims, charges, costs, expenses, losses, damages, suits or actions, whether or not due to carelessness, negligence, or improper conduct of Alcoa or its employees, guests or agents.

13. Alcoa shall not pledge, assign, loan, mortgage or otherwise dispose of said cars, and shall suffer no claims or encumbrances or liens to be made thereon.

14. (a) If at the expiration of this Lease or any extension thereof, Alcoa gives proper notice of its election to terminate, or if Alcoa defaults as set out in sub-paragraph (b) hereof, Alcoa shall, on demand of Fox, promptly deliver said leased cars, free and clear of any and all transportation charges, to Fox at the point or points designated within the switching district of Cincinnati, Ohio. If Alcoa shall fail or refuse to deliver said cars as aforesaid, Fox shall have the right, without further notice or demand, to take possession of said cars wherever found and remove them at Alcoa's expense, and Alcoa authorizes Fox to enter any premises occupied by Alcoa for such purpose. In the event of redelivery or repossession of said cars by reason of termination or breach, Alcoa shall remain liable for any and all damages, claims or injuries listed in Paragraph 12 hereof incurred prior to delivery of said cars to Fox at Cincinnati, Ohio, or prior to repossession by Fox as herein provided.

14. (b) If Alcoa defaults in payment of rent for thirty (30) days, or fails to cure its breach of any other condition herein within thirty (30) days after written notice thereof by Fox to Alcoa, Fox may, by written notice, elect to terminate this Lease. Such right is in addition to and shall not constitute a waiver of any other remedy, claim or right hereunder or at law. If Fox, in the event of such default, does not elect to terminate this Lease, it may relet all or any of said cars as agent of Alcoa for the whole or any part of the original term hereof, or any extension thereof; but Fox shall in no event be liable for failure to relet the cars, or, if cars are relet, for failure to collect rent due under such reletting. Alcoa shall, in the event that Fox shall not elect to terminate this Lease, remain liable to Fox for all installments or rents and other charges as they become due for the unexpired portion of this Lease or any extension thereof, in effect at the time of such default, such rent, however, to be reduced by the amount of any rents collected by Fox under any reletting of the cars as provided above.

15. This Lease and the terms, provisions and covenants herein contained, shall extend to and be binding upon, and shall inure to the benefit of, the respective successors and assigns of the respective parties hereto.

16. Fox warrants and represents that it is sole owner of the cars herewith leased and that they are free of all liens and encumbrances. Neither Fox nor its agents have made or make a representation with respect to the said cars except as in this paragraph set forth, and Fox shall not be liable for any claims, costs, expenses, losses, damages or consequential damages arising out of or on account of latent defect in said cars.

IN WITNESS WHEREOF, Fox Leasing Company, Lessor, and Alcoa, Lessee, each pursuant to due corporate authority, have caused these presents to be executed as of the day and year first above written.

Signed and acknowledged

in the presence of:

Attest: T. Robert Armstrong, Secy.
T. Robert Armstrong,
Secretary-Treasurer

Attest: Helen M. Bures

FOX LEASING COMPANY

By: T. R. Armstrong, Pres.
T. R. Armstrong, President

ALUMINUM COMPANY OF AMERICA

By: W. J. Evans
W. J. Evans, General Manager
(Purchasing)

STATE OF OHIO, COUNTY OF HAMILTON, SS:

On this 3rd day of July, 1974, before me personally appeared THOMAS R. ARMSTRONG and W. J. EVANS, to me known to be the persons described in and who executed the foregoing instrument and they acknowledged that they executed the same as their free act and deed, who being duly sworn say that they are respectively the President of FOX LEASING COMPANY and the General Manager (Purchasing) of the ALUMINUM COMPANY OF AMERICA, that the seals affixed to the foregoing instrument are the corporate seals of said corporations, that said instrument was signed and sealed on behalf of said corporations by authority of their Board of Directors, and they acknowledged that the execution of the foregoing instrument is the free act and deed of each of said corporations.

GIVEN under my hand and notarial seal this 3rd day of July, 1974.

Terrence A. Mire

Notary Public

My commission expires _____

TERRENCE A. MIRE, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My Commission has no expiration
date, Section 147.03 R. C.

EXHIBIT "A"

Specifications

70-Ton Flat Cars - 50'-0"

Inside Length	-	50'-0"
Outside Length	-	53'-8-1/8"
Inside Width	-	9'-2"
Extreme Outside Width	-	9'-9-3/4"
Fishbelly Centersill	-	30"
Wood Deck		
Friction Journals	-	6 X 11"
Height From Top Of Rail	-	3'-7-3/4"
Date Built	-	1941

EXHIBIT "A" (continued)

Specifications

70-Ton Flat Cars - 60'-0"

Inside Length	-	60'-0"
Outside Length	-	63'-2"
Inside Width	-	10'-6"
Fishbelly Centersill	-	30"
Wood Deck		
Friction Journals	-	6 X 11"
Height From Rail	-	3'-8"
Extreme Outside Width	-	10'-6"

EXHIBIT "B"

CERTIFICATE OF DATE OF DELIVERY

The undersigned _____,
_____ of _____,
a _____ corporation, does hereby certify, in
accordance with and pursuant to Paragraph 3 of Lease of Railway Cars
dated _____, 197____, between said _____
_____, and Fox Leasing Company, an Ohio corpora-
tion, that the last of the railway cars described in Paragraph 1 and
Exhibit "A" of the above mentioned Lease was delivered to
_____ on _____, 197____.

This Certificate shall be attached to the above mentioned
Lease as "Exhibit B" and made a part thereof in accordance with the
terms of Paragraph 3 thereof.
