

6-278A011  
NOV OCT 4

Date .....  
Fee \$ 50.-

CC Washington, D. C

MERCHANTS INVESTMENT CO.  
105 W. MADISON STREET  
SUITE 1202  
CHICAGO 60602  
FINANCIAL 6-4550

INTERSTATE  
COMMERCE COMMISSION  
RECEIVED

OCT 1 1976

ADMINISTRATIVE SERVICES  
MAIL UNIT

September 28, 1976

Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Sir:

3504  
RECORDATION NO. .... Filed & Recorded  
OCT 4 1976 11 05 AM  
INTERSTATE COMMERCE COMMISSION

RECEIVED  
OCT 1 1 43 PM '76  
FEE OPERATION BR.  
I.C.C.

Pursuant to part 157 of Title 49 of the Code of Federal Regulations, there are enclosed for your recording an original, acknowledged, executed Railroad Equipment Lease and two copies which have attached thereto Notarial Certificates of accurate reproduction. This Lease covers twenty-one covered hopper type railroad cars which are marked CREX 910 through 930 and bear A.A.R. mechanical designation L.O. The parties to this Lease are:

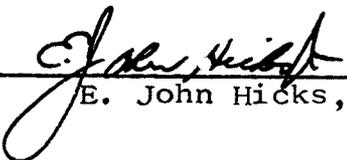
Lessor: Merchants Investment Co.  
Suite 1202  
105 West Madison Street  
Chicago, Illinois 60602

Lessee: Pennsylvania Glass Sand Corporation  
Berkeley Springs, W.Va. 25411

There is also enclosed a check payable to the Interstate Commerce Commission in the amount of \$50.00 to cover the prescribed statutory recording fees.

Upon recordation of the above document, the original executed copy, with proper recording stamps imprinted thereon, and a copy should be returned to the undersigned at the above address.

Sincerely,  
MERCHANTS INVESTMENT CO.

  
E. John Hicks, Jr.

EJHjr/bg  
Encs.

Certified Mail

Contract

**Interstate Commerce Commission**  
Washington, D.C. 20423

October 4, 1976

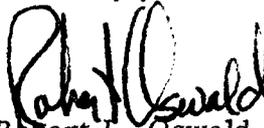
OFFICE OF THE SECRETARY

Mr. E. John Hicks, Jr.  
Merchants Investment Co.  
105 W. Madison Street  
Suite 1202  
Chicago, Ill. 60602

Dear Mr. Hicks:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 10/04/76 at 11:05 a.m. and assigned recordation number(s) 8504

Sincerely yours,

  
Robert L. Oswald  
Secretary

Enclosure(s)

SE-30  
(5/76)

3504  
REGISTRATION NO. .... Filed & Recorded  
SEP 28 1976 11 05 AM  
INTERSTATE COMMERCE COMMISSION

NOTARIAL CERTIFICATE  
OF  
TRUE COPY

I, Bernice T. Gregor, do hereby certify that I am a Notary Public duly qualified in the County of Cook, State of Illinois.

I FURTHER CERTIFY that attached hereto is a copy of a Railroad Equipment Lease dated October 1, 1974 and Riders No. 1 and No. 2 between Merchants Investment Co., the Lessor, and Pennsylvania Glass Sand Corporation, the Lessee, and that I have compared the attached copy with the original document and that the copy is a true and correct copy in all respects.

IN WITNESS WHEREOF, I hereunto set my hand as a Notary Public, and have caused my notarial seal to be hereunto affixed this 28th day of September, 1976.

(SEAL)

Bernice T. Gregor  
Notary Public

My Commission Expires: November 30, 1977

MERCHANTS INVESTMENT CO.

Car Leasing Agreement

THIS AGREEMENT, dated as of the 1st day of October, 1974 by and between MERCHANTS INVESTMENT CO., an Illinois corporation, (hereinafter called "Merchants"), and PENNSYLVANIA GLASS SAND CORPORATION, a Delaware corporation, with its principal place of business at Berkeley Springs, West Virginia (hereinafter called "Lessee"),

WITNESSETH:

1. Merchants agrees to furnish and lease to Lessee, and Lessee agrees to accept and use upon the terms and conditions herein set forth, the cars covered by the riders attached hereto and such additional riders as may be added hereto from time to time by agreement of the parties, and any and all other cars delivered to and accepted by Lessee. Each such rider shall set forth the number of cars, the rental rates, terms of use, car numbers, and other pertinent information that may be desired by both parties. All cars leased pursuant to such riders, or otherwise delivered to and accepted by Lessee, are subject to the terms of this Agreement.

2. Merchants agrees to deliver the cars to Lessee at a point or points designated by Lessee. Merchants' obligation as to such delivery shall be subject to all delays resulting from causes beyond its control. Lessee agrees to use the cars exclusively in its own service, except as hereinafter provided, and none of the cars shall be shipped beyond the boundaries of the United States or Canada except with the prior written consent of Merchants. Lessee agrees that if any of the cars are used outside of Continental United States, Lessee shall reimburse Merchants for any customs duties, taxes, investment tax credit reductions or other expenses resulting from such use.

3. Lessee agrees to pay the rental charges with respect to each of the cars from the date of delivery thereof and until such car is returned to and accepted by Merchants. Such rental charges shall be paid to Merchants at its principal office, 165 West Madison Street, Chicago, Illinois 60602, in advance on the first day of each month, pro-rating, however, any period which is less than a full month.

4. Each of the cars shall be subject to Lessee's inspection upon delivery to Lessee. Failure to report any defect in the car within a reasonable time after delivery of the car or the loading of each such car by Lessee or at its discretion shall constitute acceptance thereof by Lessee, and shall be conclusive evidence of the fit and suitable condition thereof for the purposes of

5. Merchants agrees to keep records pertaining to the movement of the cars, and Lessee agrees to promptly furnish Merchants with complete reports of the car movements, including dates received, loaded and shipped, commodity, destination, and full junction routing, and all information which Lessee may receive from railroad companies or other sources which may be of use to Merchants. Merchants shall collect the mileage earned by the cars, and, subject to all rules of the tariffs of the railroads, Merchants shall credit to Lessee's rental account such mileage as and when received from the railroads, but in no event shall the aggregate amount of mileage credited exceed the aggregate monthly rentals for the term of this Agreement. Mileage earning for all cars covered by this Agreement shall be carried in a consolidated account.

6. Lessee agrees to reimburse Merchants for any payment Merchants may be required to make to any railroad, due to mileage equalization where applicable, resulting from excess empty mileage incurred by the cars on such railroad. For the purpose of this paragraph the railroad mileage and junction reports shall be prima facie evidence of the facts reported therein. In addition, if Merchants is required to make any payments to a railroad resulting from the empty movement of any of the cars while they are in Lessee's service, Lessee agrees to reimburse Merchants for such payments.

7. Lessee shall promptly notify Merchants upon receipt by Lessee of knowledge of any damage to any of the cars. Merchants agrees to pay for the maintenance and repair of the cars, except as hereinafter provided. Lessee shall not repair, or authorize the repair of, any of the cars without Merchants prior written consent, except that running repairs (as specified in the Association of American Railroads Rules for Interchange) may be performed without prior written consent. The amount Merchants will pay for such running repairs shall not be in excess of the basis, in effect at the time the repair is made, provided by the Association of American Railroads. If any car becomes unfit for service and shall be held in car shops for repairs and shall remain therein for a period in excess of five days, the monthly rental with respect to such car shall abate from and after such period of five days until such car is released from the shop or until another car shall have been placed in the service of Lessee by Merchants in substitution for such car.

8. In the event any car is totally damaged or destroyed, the rental with respect to such car shall terminate upon receipt by Merchants of notification thereof, and in the event any car is reported to be bad ordered and Merchants elects to permanently remove such car from Lessee's service rather than have such car taken to a car shop for repairs, the rental with respect to such car shall terminate upon receipt by Merchants of notification that such car was bad ordered. Merchants shall have the right, but shall not be obligated, to substitute for any such car another car of the same type and capacity and the rental in respect to such substituted car shall commence upon delivery of such substituted car to Lessee.

9. In the event that any of the cars, or the fittings, appliances or appurtenances thereto, shall be damaged, ordinary wear and tear excepted, or destroyed either as a result of the acts of any of Lessee's employees, agents or customers or from any commodity or other material loaded therein

or thereon, Lessee agrees to assume financial responsibility for such damage or destruction.

10. Merchants shall not be liable for any loss of or damage to commodities, or any part thereof, loaded or shipped in or on the cars, and Lessee agrees to assume financial responsibility for, to indemnify Merchants against, and to save it harmless from any such loss or damage.

11. Lessee, at its own expense, shall either replace or reimburse Merchants for the cost of replacing any appliance or removable part, if destroyed, damaged, lost, removed or stolen, unless the railroads transporting the cars have assumed full responsibility for such loss or damage, or unless such loss or damage results from the negligence or omission of Merchants, its agents or employees.

12. The application, maintenance and removal of interior protective lining in any of the cars is to be performed by and at the expense of Lessee unless otherwise specifically provided for in the applicable rider.

13. Lessee agrees to indemnify and hold Merchants harmless from and against any loss, liability, claim, damage or expense (including, unless Lessee assumes the defence, the reasonable cost of investigating and defending against any claim for damages) arising out of or in connection with the use of the cars during the term of this Agreement, excepting, however, any loss, liability, claim, damage or expense which accrues with respect to any of the cars (i) while such car is in a repair shop undergoing repairs; (ii) which is attributable to the negligence or omission of Merchants, its agents or employees; or (iii) for which a railroad or railroads have assumed full responsibility, including investigating and defending against any claim for damages.

14. No lettering or marking of any kind shall be placed upon any of the cars by Lessee except with the prior written consent of Merchants.

15. Lessee agrees not to load any of the cars in excess of the load limit stenciled thereon.

16. Lessee shall be liable for any demurrage, track storage or detention charge imposed in connection with any of the cars as well as loss of or damage to any car while on any private siding or track or on any private or industrial railroad or in the custody of any carrier not subject to the Association of American Railroads Rules for Interchange.

17. Lessee shall make no transfer or assignment of its interest under this Agreement in and to the cars without Merchants' prior written consent, except that Lessee may sublease any of the cars to its customers for single trips consistent with its normal merchandising methods; provided, however, that notwithstanding any such sublease, Lessee shall continue to remain liable to Merchants under all conditions and terms of this Agreement. No right, title or interest in any of the cars shall vest in Lessee by reason of

this Agreement or by reason of the delivery to or use by Lessee of the cars, except the right to use the cars in accordance with the terms of this Agreement.

18. If Lessee shall fail to perform any of its obligations hereunder, Merchants at its election may either (a) terminate this Agreement immediately and repossess the cars, or (b) withdraw the cars from the service of Lessee and deliver the same, or any thereof, to others upon such terms as Merchants may see fit. If Merchants shall elect to proceed in accordance with clause (b) above and if Merchants during the balance of the terms of this Agreement shall fail to collect for the use of the cars a sum at least equal to all unpaid rentals hereunder to the stated date of termination hereof plus an amount equal to all expenses of withdrawing the cars from the service of Lessee and collecting the earnings thereof, Lessee agrees to pay from time to time upon demand by Merchants the amount of any such deficiency. It is expressly understood that Merchants at its option may terminate this Agreement in the event that a petition in bankruptcy or a petition for a trustee or receiver be filed by or against Lessee or in the event that Lessee shall make an assignment for creditors.

19. Upon the termination of each rider, Lessee agrees, subject to the provisions of paragraph 8 above, to return the cars to Merchants at the final unloading point or at such other place or places as are mutually agreed to, in the same or as good condition as received, ordinary wear and tear excepted, free from all charges and liens which may result from any act or default of Lessee, and free from all accumulations or deposits from commodities transported in or on the cars while in the service of Lessee. If any car is not returned to Merchants free from such accumulations or deposits, Lessee shall reimburse Merchants for any expense incurred in cleaning such car.

20. Merchants agrees to assume responsibility for and to pay all property taxes levied upon the cars and to file all property tax reports relating thereto. Lessee agrees to assume responsibility for and to pay any applicable state sales, use or similar taxes resulting from the lease or use of the cars.

21. It is understood that some of the cars furnished under this Agreement may, at the time of delivery to Lessee or at some future time during the terms of this Agreement, be subject to the terms of a mortgage, deed of trust, equipment trust, pledge or similar security arrangement. Lessee agrees that the cars may be stenciled or marked to set forth the ownership of any such cars in the name of a mortgagee, trustee, pledgee or security holder and that this Agreement, and Lessee's rights hereunder, are and shall at all times be subject and subordinate to any and all rights of any mortgagee, trustee, pledgee or security holder.

22. This Agreement shall be binding upon the parties hereto, their respective successors, assigns and legal representatives, and shall

remain in full force and effect from the date hereof until the completion of the leasing arrangement shown on attached slides of the last car or cars hereunder, and all such cars are returned to Merchants.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement in two counterparts (each of which shall be deemed an original) the day and year first above written.

MERCHANTS INVESTMENT CO.

By Thomas D. Kiehl

ATTEST:

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PENNSYLVANIA GLASS SAND CORPORATION

By F. D. Marshall

F. D. Marshall  
Vice President-Operations

ATTEST:

Charles V. Bush

Charles V. Bush  
Secretary

RIDER NO. 1  
Forming Part of  
MERCHANTS INVESTMENT CO.  
CAR LEASING AGREEMENT

The cars described herein shall be subject to the terms and conditions of said Agreement during the term of use and for the rental set forth below:

<u>Number of Cars</u>	<u>Type of Car</u>	<u>Monthly Rental Per Car</u>
One (1)	2707cu. ft., 100 Ton capacity Covered Hopper Car for shipment of silica sand (CREX 910)	\$210.00

RIDER NO. 2  
Forming Part of  
MERCHANTS INVESTMENT CO.  
CAR LEASING AGREEMENT

The cars described herein shall be subject to the terms and conditions of said Agreement during the term of use and for the rental set forth below:

<u>Number of Cars</u>	<u>Type of Car</u>	<u>Monthly Rental Per Car</u>
Five (5)	2800 cu.ft., 70 Ton Capacity Covered Hopper Cars for shipment of Silica Sand, Numbered CREX 911-912-913-914-915	\$162.50
Fifteen (15)	1958 cu.ft., 70 Ton Capacity Covered Hopper Cars for shipment of Silica Sand, Numbered CREX 916-917-918-919-920 921-922-923-924-925 926-927-928-929-930	157.50

With respect to the aforesaid cars, Car Leasing Agreement shall be amended as follows:

(a) Paragraph 9 shall read:

"9. In the event that any of the cars, or the fittings, appliances or appurtenances thereto, shall be damaged by any commodity loaded therein or thereon, Lessee agrees to assume financial responsibility for such damage."

(b) There shall be added to Paragraph 13:

"provided, however, that nothing in this Paragraph 13 shall excuse Merchants from its obligation to pay for the maintenance and repair of the cars as provided in Paragraph 7."

The term of use of each of the cars hereinabove described shall commence on the date of delivery thereof to Lessee, and shall continue for a period ending five (5) years from the first day of the month following the average date of delivery of all of the cars to Lessee.

MERCHANTS INVESTMENT CO.

ATTEST:

By: Thomas D. Hicks  
Thomas D. Hicks Vice President