

**HYMAN — MICHAELS COMPANY**

A DIVISION OF AZCON CORPORATION

180 NORTH LASALLE STREET · CHICAGO, ILLINOIS 60601

9-134A092  
MAY 14 1979

Date \_\_\_\_\_

Fee \$ 50.00

ICC Washington, D. C.

RECORDATION NO. 1368 Filed 1425

MAY 14 1979 - 3 55 PM

INTERSTATE COMMERCE COMMISSION

May 10, 1979

Mrs. Mildred Lee  
Interstate Commerce Commission  
Fee & Recordation Unit-Room 2227  
12th and Constitution Avenues  
Washington, D.C. 20423

Dear Mrs. Lee:

I am enclosing the original and two copies of our lease agreement with Virginia Materials Company, Norfolk, Virginia, together with our check in the amount of \$50.00 for the fee for recording per ICC Section 11303.

Please return the original and one copy for our use.

Very truly yours,

HYMAN-MICHAELS COMPANY

*Willard Q. Winters*  
Willard Q. Winters  
General Manager-Equipment Division

WQW/mk  
Encl.

FEE OPERATION BR.  
I.C.C.

MAY 14 3 50 PM '79

RECEIVED

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

5/14/79

**OFFICE OF THE SECRETARY**

**Willard Q Winters**  
**General Manager Equip. Div.**  
**Hyman-Michaels Company**  
**180 North LaSalle Street**  
**Chicago, Illinois 60601**

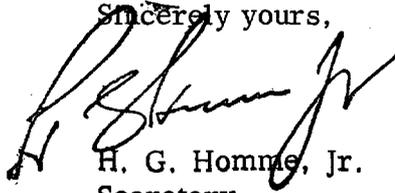
Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C.

11303, on **5/14/79** at **3:55pm**, and assigned recordation number(s).

**10368**

Sincerely yours,



H. G. Homme, Jr.  
Secretary

**Enclosure(s)**

**SE-30**  
**(3/79)**

*Send actual  
stamped copies*

**HYMAN — MICHAELS COMPANY**

A DIVISION OF AZCON CORPORATION  
180 NORTH LASALLE STREET · CHICAGO, ILLINOIS 60601

RECORDATION NO. *10368* Filed 1425

MAY 14 1979 - 3 55 PM

INTERSTATE COMMERCE COMMISSION

July 26, 1979

Mrs. Mildred Lee  
Interstate Commerce Commission  
Fee & Recordation Unit-Room 2227  
12th and Constitution Avenues  
Washington, D.C. 20423

Re: Our letter May 10, 1979  
Recordation of equipment lease

Dear Mrs. Lee:

With reference to our phone conversation today, we have not received the recorded lease copies. Obviously they have been lost in the mail and I am enclosing additional copies of subject lease that you informed me was Recorded on May 14, 1979 at 3:55 PM #10368.

Please stamp and return two copies for our files.

Very truly yours,

HYMAN-MICHAELS COMPANY

*Willard Q. Winters*  
Willard Q. Winters

General Manager-Equipment Division

WQW/mk  
Encl.

AGREEMENT made and entered into this 31st day of March 1979, between HYMAN-MICHAELS COMPANY, a Division of Azcon Corporation, a Maine corporation, (hereinafter called "Hyman-Michaels") and VIRGINIA MATERIALS CORPORATION (hereinafter called "Lessee").

RECITALS

Lessee desires to lease from Hyman-Michaels as Lessor certain railroad cars, hereinafter specifically designated, all upon the rentals, terms and conditions set forth in this lease.

0368

RECORDATION NO. .... Filed 1425

AGREEMENT

MAY 14 1979 - 3 55 PM

It is agreed:

INTERSTATE COMMERCE COMMISSION

1. Lease of Cars. Hyman-Michaels agrees to lease to Lessee and Lessee agrees to and does hereby lease from Hyman-Michaels that number of railroad cars, not to exceed 33 cars, delivered to Lessor prior to April 1, 1979, of the type, construction and such other description (hereinafter referred to as the "Cars") as is set forth in Exhibit "A" attached hereto and by this reference made a part hereof. The cars covered by this Lease are those which shall be delivered to and accepted by Lessee pursuant to Paragraphs 2 and 3 hereof. This lease shall become effective as to any Car immediately upon its delivery pursuant to Paragraph 2 hereof.

2. Delivery of Cars. Hyman-Michaels shall deliver the Cars as promptly as is reasonably possible from time to time but not later than April 30, 1979. Hyman-Michaels' obligations with respect to delivery of all or any of the Cars are hereby made expressly subject to, and Hyman-Michaels shall not be responsible for failure to deliver or delays in delivery Cars due to labor difficulties, fire, delays and defaults of carriers and material suppliers and Car manufacturers, acts of God, governmental acts, regulations and restrictions or any other causes, casualties or contingencies beyond Hyman-Michaels' control; provided, however, that in no event shall Lessee be obligated to accept delivery of Cars after April 30, 1979. Initial delivery shall be f.o.t. C. & O. Railroad. A Car shall be conclusively deemed delivered to the Lessee on the earliest date shown on either of the following: (i) a delivery receipt or other writing acknowledging delivery of a Car signed by the Lessee; or (ii) a bill of lading showing delivery to the C. & O. Railroad, for the account of Lessee.

From and after acceptance of a Car, Lessee shall be liable for, and shall pay or reimburse Hyman-Michaels for all costs, charges and expenses of any kind whatsoever on account of or relating to switching, demurrage, detention, storage, transportation or movement of a Car except freight and switching charges for movement to and from Hyman-Michaels (or other authorized repair shop for Repair Work other than that under 10 (b) for repair and to Hyman-Michaels for retirement and except for such expenses while Hyman-Michaels is in possession of any such car.

3. Condition of Cars - Acceptance. All Cars delivered hereunder shall have been inspected by a duly licensed Railroad and A.A.R. and be in satisfactory condition for movement and use in the normal rail traffic and shall otherwise comply with the description and/or specifications contained in Exhibit "A;" but Lessee shall be solely responsible for determining that Cars are in proper condition for loading and shipment.

4. Use and Possession. Throughout the continuance of this Lease, so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of each Car from the date this Lease becomes effective as to each Car and shall use such Car exclusively in its own service for the transportation of granulated boiler slag (a) on its own property or lines; or (b) upon the lines of all railroads provided, however, that Lessee agrees that the Cars shall at all times be used (i) in conformity with the rules ("Operating Rules") governing use condition, repair and other matters pertaining to their use in freight traffic, adopted and in effect from time to time by the Association of American Railroads ("AAR") and any other organization, association, agency or governmental authority, including the United States Department of Transportation, which may from time to time be responsible for or have authority to adopt Operating Rules; (ii) in compliance with the terms and provisions of this Lease; (iii) in a careful and prudent manner, solely for the purpose, in the service and in the manner for which they were designed; (iv) only within the continental limits of the United States of America or in Canada.

5. Term. (a) This Lease shall be for a term (hereinafter referred to as the "Original Term") which shall commence on the date of delivery by Hyman-Michaels of each Car and shall terminate six (6) years from the date of delivery unless sooner terminated in accordance with the provisions of this Lease. For purposes of this Paragraph, the date on which delivery of a Car shall be deemed to have been made will be the day following delivery of the Car to the Lessee, as specified in Paragraph 2.

(b) The Lessee shall have an option to renew this Lease for two one-year renewal terms. This option shall be exercised by Lessee's giving the Lessor not less than 30 days notice of its intent to extend prior to the expiration of the term or renewal term.

6. Rental. (a) Per Car. During the Original Term of this Lease, Lessee shall pay to Hyman-Michaels for each Car, commencing on the date of delivery thereof a rental of \$10.40 per Car per day and \$6.20 per day for any renewal term.

(b) Mileage Credits. Any mileage payments paid or allowed by railroads on the Cars shall be collected by Hyman-Michaels and credited to Lessee.

7. Payment. Lessee shall make payment of all sums due hereunder to Hyman-Michaels at the address provided in Paragraph 20 hereof, or such other place as Hyman-Michaels may direct. Rental and maintenance payments, as provided below, shall be made on or before the 15th day of each month succeeding the month for which such rental and maintenance costs have accrued.

8. Title. Lessee shall not by reason of this Lease or any action taken hereunder acquire or have any right or title in the Cars except the rights herein expressly granted to it as Lessee.

9. Repairs. (a) Hyman-Michaels. Except as otherwise provided in this Paragraph 9 (a) and (b), Hyman-Michaels shall be responsible for all repairs, maintenance, modifications, additions or replacements required to keep and maintain the Cars in good working order and repair (hereinafter referred to as "Repair Work") in accordance with the requirements of all Operating Rules which are in effect as at the date hereof, or which have been adopted and promulgated as at the date hereof to take effect at a future date. Lessee shall promptly notify Hyman-Michaels of any required Repair Work of which it has knowledge and upon notification, Hyman-Michaels shall promptly take all necessary steps to have the Cars repaired as quickly as possible at the nearest available authorized repair shop. Hyman-Michaels shall have no responsibility hereunder until informed of the need for Repair Work and in no event before the effective date of any presently adopted Operating Rules. Hyman-Michaels will be reimbursed each month for all repair bills paid plus 10% charge for that administrative service in accordance with Hyman-Michaels' letter to Lessee dated March 6, 1979 and designated as quotation number 100-79; provided, however, Lessee shall be furnished paid invoices from the party performing the repairs prior to being required to reimburse Hyman-Michaels for such Repair Work and Lessee shall have a reasonable time after receiving such invoices for inspection and verification thereof.

(b) Lessee. Lessee shall make or cause to be made at its sole cost and expense all Repair Work required by reason of (i) damage or other condition caused by negligence of Lessee, its agents or employees or anyone other than a railroad or other party required to make payment therefor under Operating Rules, (ii) damage or other condition caused by loading or unloading of any commodity other than of the kind or in the manner permitted herein, (iii) damage to equipment except for ordinary wear and tear, or (iv) Operating Rules which have not been adopted or promulgated as of the date hereof.

10. Abatement of Rent. Rental payments of any Car out of service for Repair Work shall abate from the time (1st) day after such Car has been placed in any railroad or car shop for service until such Car is delivered to Lessee; provided, however, that rental shall not abate on any Car out of service by reason of Repair Work for which Lessee is responsible under Paragraph 9(b) hereof. In the event rental is abated, then if Hyman-Michaels so elects and notwithstanding anything contained in Paragraph 5 to the contrary, the Original Term of this Lease, as determined in Paragraph 5, shall be extended for a period of time (but not less than one (1) day) determined by dividing the number of Car days with respect to which rental was so abated by the number of Cars subject to this Lease on what would otherwise have been the last day of the Original Term hereof.

11. Taxes. Lessor shall promptly pay all sales, use, ad volorem or other taxes and assessments and all licenses and fees imposed or required by Federal, State, Municipal or other governmental authorities upon the ownership, possession, leasing, or use of the Cars; provided, however, that Lessor shall be under no obligation to pay any such tax so long as Lessor is contesting same in good faith and by appropriate legal proceeding, and provided such non-payment shall not put a hazard upon the property or rights of Lessee hereunder. Lessee shall reimburse Lessor for such amounts paid (exclusive of any income tax imposed on Lessor) plus 10% for handling upon satisfactory proof or payment to Lessee.

12. Liens. Lessee shall keep the Cars free from any and all encumbrances or liens, in favor of anyone claiming by, through or under Lessee which may be a cloud upon or otherwise affect Hyman-Michaels' title, including, but not limited to liens or encumbrances which arise out of any suit involving Lessee or Lessee's failure to comply with provisions of this Lease, and Lessee shall promptly discharge any such lien, encumbrance or legal process.

13. Indemnities - Patent Covenants. Lessee agrees to indemnify Hyman-Michaels and hold it harmless from any loss, expense or liability which Hyman-Michaels may suffer or incur from any charge, claim, proceeding suit or other event which in any manner or from any cause arises in connection with the use, possession or operation of a Car while subject to this Lease, excepting only any such loss, expense or liability which arises while a Car is in Hyman-Michaels' shop or possession or due to Hyman-Michaels' negligence or willful act. Hyman-Michaels agrees to indemnify Lessee and save it harmless against any charge, loss, claim, suit, expense or liability arising out of or on account of (i) the use or incorporation by Hyman-Michaels upon delivery of a Car, of any invention or the infringement of any patents, except if such invention was used or incorporated by reason of Lessee's specifications (ii) in connection with use, possession or operation of a Car which arises while a Car is in Hyman-Michaels' shop or possession except due to Lessee's negligence or willful act. The indemnities and assumptions of liability herein contained shall survive the termination of this Lease. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against. Hyman-Michaels shall be deemed to be in possession upon delivery to Hyman-Michaels or any authorized repair shop for Repair Work other than that required by 9(b) hereof.

14. Use - Lettering. Except for renewal and maintenance of lettering which exists when a Car is delivered to Lessee and for additional lettering indicating the rights of any assignee of Hyman-Michaels or that the Car is leased to the Lessee, or to a Sub-Lessee in accordance with demurrage tariffs, no lettering or marking shall be placed upon any of the Cars by Lessee except upon the written direction or consent of Hyman-Michaels.

15. Loss, Theft or Destruction of Cars. All risk of loss or damage to the Cars from any cause not otherwise provided for in this Lease, and in the event of loss or destruction or irreparable damage to any of the Cars from any cause, Lessee shall promptly and fully inform Lessor with respect to the same and shall promptly pay Lessor the daily rental from the end of the preceding month to the date of loss, destruction or irreparable damage and a sum of \$18,500 less 40% of all rental paid by Lessee hereunder with respect to such Car. Hyman-Michaels will credit Lessee 50% of any AAR settlement received from handling carrier.

16. Return of Cars. Upon the expiration or upon the termination of this Lease with respect to any Car (other than pursuant to Paragraph 15 hereof) Lessee shall at its sole cost and expense, forthwith surrender possession of such Car to Hyman-Michaels by delivering same to f.o.t. D.T. & I. Railroad, Jackson, Ohio or the equivalent freight credit.

Each Car so surrendered shall be in the same or as good condition, order and repair as when delivered to Lessee, wear and tear from ordinary use and the passage of time excepted, and shall be in need of no repairs of the nature referred to in Section 9(b). Until the delivery of possession to Hyman-Michaels pursuant to this Paragraph 16, Lessee shall continue to be liable for and to pay rental at the rate being paid immediately prior to termination or expiration, and Lessee shall, in addition, make all other payments and keep all obligations and undertakings required of Lessee under any and all provisions of this Lease as though such termination or expiration had not occurred.

17. Default. If Lessee shall fail to make any payment required hereunder within twenty (20) days after same shall have become due or shall default or fail for a period of twenty (20) days, after notice from Hyman-Michaels, in the due observance or performance of any other covenant, condition or agreement required to be observed or performed on its part hereunder, or a proceeding shall have been commenced by or against Lessee under any bankruptcy laws, Federal or State, or other laws for the appointment of a receiver, assignee or trustee of Lessee or its property, or Lessee shall make a general assignment for the benefit of creditors, then and in any of said events Hyman-Michaels may at its election terminate this Lease by written notice to such effect, and retake the Cars and thereafter recover all damages sustained by reason of Lessee's default in addition to all rental unpaid as of said date or may without terminating the Lease repossess the Cars and relet same, and if, after paying all expenses of retaking and reletting the Cars, the amount so realized will not satisfy the rentals reserved in this Lease, Lessee agrees that it will pay any such deficiency from time to time upon demand from Hyman-Michaels. The obligation to pay such deficiency of any sum or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder shall survive the termination of the Lease and the retaking of the Cars.

18. Sublease. Any such Sub-lease shall be upon the terms of this lease.

19. Opinion of Counsel. Upon the request of Hyman-Michaels or its assignee at any time or times, Lessee will deliver to Hyman-Michaels a favorable opinion of counsel for Lessee, addressed to Hyman-Michaels or its assignee, which opinion shall be to the effect that:

(a) Lessee is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation, and has corporate power to and has taken all corporate action necessary to validly enter into this Lease and carry out its obligations thereunder;

(b) This Lease has been duly executed on behalf of Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable in accordance with its terms.

20. Notice. Any notice required or permitted to be given pursuant to the terms of this Lease shall be properly given when made in writing, forwarded registered United States mail, return receipt requested, postage prepaid, addressed to:

Lessor: Hyman-Michaels Company  
180 North LaSalle Street  
Chicago, Illinois 60601

Lessee: Virginia Materials Corporation  
3306 Peterson Street  
Norfolk, Virginia 23509

or at such other address as either party may from time to time designate by such notice in writing to the other.

21. Representations. Lessor has the right to enter into and perform under this Lease and the Cars are not subject to any lien, charge or encumbrance prior to this Lease in favor of anyone claiming by, through or under Lessor.

22. No Warranty. No warranty.

23. Governing Law - Writing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois. The terms of this lease and the rights and obligations of the parties hereto may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

24. Severability - Waiver. If any term or provision of this Lease or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. Failure of Hyman-Michaels to exercise any rights hereunder shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise to such right.

25. Terminology. In construing any language contained in this lease, no reference shall be made and no significance given to paragraph titles, such titles being used only for convenience of reference. Where the context so permits, singular shall include the plural and vice versa.

26. Benefit. Except as otherwise provided herein the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the parties and their successors and assigns (to the extent permitted in Paragraph 18 hereof). Without limiting the generality of the foregoing the indemnities of the Lessee contained in Paragraph 13 hereof shall apply to and inure to the benefit of any assignee of Hyman-Michaels, and, if such assignee is a trustee or secured party under an indenture under which evidence of indebtedness has been issued in connection with the financing of the Cars, then also to the benefit of any holder of such evidence of indebtedness.

27. Recording. Lessee agrees that it will join in the execution of a memorandum or short form of this Lease for the purposes of recordation under Section 20 (c) of the Interstate Commerce Act or such other recordation as Hyman-Michaels deems appropriate. Said memorandum or short form of lease shall describe the parties, the Cars being leased and the term of this Lease including any options to extend and shall incorporate this Lease by reference.

IN WITNESS WHEREOF, Hyman-Michaels and Virginia Materials Corporation have duly executed this Lease as of the day and year first above written.

HYMAN-MICHAELS COMPANY  
A Division of Azcon Corporation

BY Willard Q. Winters  
Willard Q. Winters  
General Manager, Equipment Division

ATTEST:

Vincent J. Brown

My Commission Expires May 23, 1979

VIRGINIA MATERIALS CORPORATION

BY J. D. Edwards, Jr.

ATTEST:

James H. Brown  
My Commission Expires 10-20-1976

EXHIBIT "A"

Type H 150 Open Top Hopper Car

70 Ton Capacity (154,000 Stencilled load limit)

2622 Cu. Ft. Capacity

6" x 11" Friction Bearing Trucks

Inside length 40'8"

Inside width 9'7"

Outside length 44'4"

Outside width Extreme 10'5"

Outside Extreme height 11'9"

Three outlets

<u>OLD CAR NUMBER</u>	<u>NEW CAR NUMBER</u>	<u>DATE BUILT</u>
C&O 106401	HMX 3016	1952
C&O 106443	HMX 3017	1952
C&O 101208	HMX 3012	1951
C&O 102194	HMX 3014	1951
C&O 100027	HMX 3021	1951
C&O 105224	HMX 3020	1951
C&O 100922	HMX 3015	1951
C&O 102798	HMX 3002	1951
C&O 105293	HMX 3000	1951
C&O 101233	HMX 3001	1951
C&O 106645	HMX 3006	1952
C&O 105962	HMX 3003	1951
C&O 101292	HMX 3022	1951
C&O 101663	HMX 3013	1951
C&O 102821	HMX 3005	1951
C&O 108687	HMX 3004	1952
C&O 109016	HMX 3007	1952
C&O 109171	HMX 3025	1952
C&O 107370	HMX 3024	1952
C&O 106045	HMX 3023	1952
C&O 101889	HMX 3026	1951
C&O 100434	HMX 3019	1951
C&O 108707	HMX 3030	1952

OLD CAR NUMBER

NEW CAR NUMBER

DATE BUILT

C&O 105037

HMX 3018

1951

C&O 104428

HMX 3009

1951

C&O 108008

HMX 3010

1952

C&O 106922

HMX 3032

1952

C&O 102025

HMX 3029

1951

C&O 107369

HMX 3028

1952

C&O 107847

HMX 3027

1952

C&O 110288

HMX 3031

1953

C&O 101410

HMX 3008

1951

C&O 100389

HMX 3011

1951