



**Citizens Fidelity Energy Company**

CITIZENS PLAZA • LOUISVILLE, KENTUCKY 40296

GEORGE M. BIGG  
PRESIDENT

No. 3-175A032  
Date JUN 24 1983  
Fee \$ 50.00  
ICC Washington, D. C.

RECORDATION NO. 14075 FILED 1483

June 17, 1983

JUN 24 1983 2 40 PM

INTERSTATE COMMERCE COMMISSION

RECEIVED  
JUN 24 12 33 PM '83  
I. C. C.  
FEE OPERATION BR.

Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Sir:

This letter of transmittal and the enclosed Mortgage and Security Agreement are submitted to you under §1177.2 of 49 C.F.R. for purposes of having the Mortgage and Security Agreement recorded under §11307 of the Interstate Commerce Act.

The enclosed is a Mortgage and Security Agreement covering the rolling stock described below among Mineral Sands, Inc., a Colorado corporation with its principal place of business at 575 Union Boulevard #304, Lakewood, Colorado 80228, Eric Newman, an individual resident of Golden, Colorado and Citizens Fidelity Bank and Trust Company, d/b/a Citizens Fidelity Energy Company, a Kentucky banking corporation.

In accordance with 49 C.F.R. §1177.3, please be advised that the names and addresses of the parties to the enclosed Mortgage are as follows:

Mortagor: Mineral Sands, Inc.  
575 Union Boulevard  
#304  
Lakewood, Colorado 80228

Mortgagee: Citizens Fidelity Bank and Trust  
Company (d/b/a Citizens Fidelity  
Energy Company)  
P. O. Box 33000  
500 West Jefferson Street  
Louisville, KY 40232

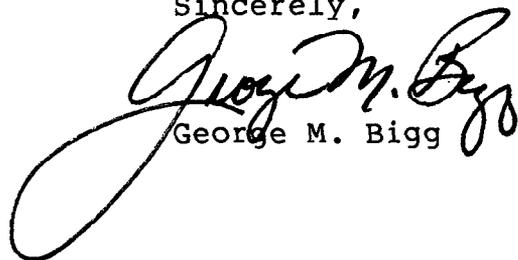
Secretary  
Interstate Commerce Commission  
June 17, 1983  
Page 2

Guarantor:                   Mr. Eric Newman  
                                  12880 Willow Way  
                                  Golden, Colorado 80401

The equipment covered by the enclosed Mortgage consists of fifty-two (52) H 450 open top hopper cars rebuilt and sold to Mortgagor by Midwest Steel & Alloy Corporation and bearing the following American Association of Railways reporting mark and numbers: WPSX Nos. 5001 to 5052 inclusive. These cars were formerly marked and are presently marked as shown on Exhibit A hereto. Once the enclosed Mortgage has been recorded, please return it to the Mortgagee, Citizens Fidelity Bank and Trust Company (d/b/a Citizens Fidelity Energy Company), at its address above.

The undersigned certifies that he is an executive officer of one of the parties to the transaction evidenced by this letter and the enclosed Mortgage and has knowledge of the matters set forth therein.

Sincerely,

  
George M. Bigg

GMB/ma  
Enclosures

CAR NUMBERS

BN 522414 = WPSX 5001  
BN 522425 = WPSX 5002  
BN 522427 = WPSX 5003  
BN 522429 = WPSX 5004  
BN 522435 = WPSX 5005  
BN 522443 = WPSX 5006  
BN 522451 = WPSX 5007  
BN 522456 = WPSX 5008  
BN 522459 = WPSX 5009  
BN 522460 = WPSX 5010  
BN 522492 = WPSX 5011  
BN 522503 = WPSX 5012  
BN 522504 = WPSX 5013  
BN 522523 = WPSX 5014  
BN 522533 = WPSX 5015  
BN 522537 = WPSX 5016  
BN 522538 = WPSX 5017  
BN 522542 = WPSX 5018  
BN 522543 = WPSX 5019  
BN 522549 = WPSX 5020  
BN 522559 = WPSX 5021  
BN 522562 = WPSX 5022  
BN 522564 = WPSX 5023  
BN 522567 = WPSX 5024  
BN 522569 = WPSX 5025  
BN 522571 = WPSX 5026

CAR NUMBERS

BN 522574 = WPSX 5027  
BN 522581 = WPSX 5028  
BN 522582 = WPSX 5029  
BN 522592 = WPSX 5030  
BN 522595 = WPSX 5031  
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BN 522619 = WPSX 5035  
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BN 522668 = WPSX 5046  
BN 522669 = WPSX 5047  
BN 522680 = WPSX 5048  
BN 522681 = WPSX 5049  
BN 522685 = WPSX 5050  
BN 522691 = WPSX 5051  
BN 522695 = WPSX 5052

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

6/24/83

OFFICE OF THE SECRETARY

George M. Bigg, Pres.  
Citizens Fidelity Energy Co.  
Citizens Plaza  
Louisville, Kentucky 40296

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 6/24/83 at 12:40pm, and assigned re-  
recording number(s). 14075

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)

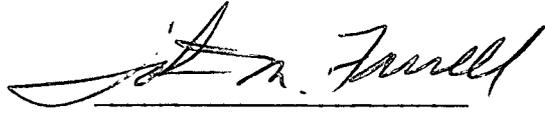
RECORDATION NO. 14075 Filed 1983

JUN 24 1983 4:40 PM

AFFIDAVIT

INTERSTATE COMMERCE COMMISSION

The undersigned, John M. Farrell, Assistant Vice President of Citizens Fidelity Bank and Trust Company, d/b/a Citizens Fidelity Energy Company, being duly sworn deposes and states that he has examined the copy of that certain Mortgage and Security Agreement, dated the 17th of June, 1983, between Mineral Sands, Inc. and Eric Newman and Citizens Fidelity Bank & Trust Company, d/b/a Citizens Fidelity Energy Company, with the original document and found the attached copy to be complete and identical in all respects to the original document.



John M. Farrell

Commonwealth of Kentucky )  
  )  
County of Jefferson )

SS:

Subscribed and sworn to before me by John M. Farrell, being personally known to me, and in testimony thereof, witness my hand and notarial seal.



Jeresa Devellin 6-20-83

Notary Public

Notary Public, State at Large, KY  
My commission expires Nov. 25, 1984

My Commission Expires:

RECORDATION NO. 14075

JUN 24 1983 4:40 PM

INTERSTATE COMMERCE COMMISSION

MORTGAGE AND SECURITY AGREEMENT

This Mortgage and Security Agreement made and entered into this 17<sup>th</sup> day of June, 1983, by and between (i) MINERAL SANDS, INC., a Colorado corporation ("MSI"), (ii) ERIC NEWMAN, an individual resident of Golden, Colorado ("Guarantor"), and (iii) CITIZENS FIDELITY BANK AND TRUST COMPANY (d/b/a Citizens fidelity Energy Company), a Kentucky banking corporation with its principal office and place of business at 500 West Jefferson Street, Louisville, Kentucky 40202 ("Bank").

IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:

1. For good and sufficient value received, MSI hereby pledges, mortgages, assigns, transfers and grants a security interest in the following collateral (the "Collateral") to the Bank, to-wit:

Fifty-two (52) H 450 100 ton open top hopper cars for the rail transportation of coal, such cars having been purchased new from Midwest Steel & Alloy Corporation and bearing American Association of Railroads reporting mark and numbers as follows: WPSX Nos. 5001 to 5052, inclusive and being formerly marked as shown on Exhibit A hereto.

2. This Mortgage and Security Agreement is made and given by MSI in order to afford security to the Bank for the payment in full by MSI of: (i) that certain promissory note (the "Note") of even date herewith from MSI to the Bank in the original face principal amount of Two Hundred Thirty-One Thousand Dollars (\$231,000.00), final payment of which is due on June 17, 1985, (ii) the payment of the sum of Fifty Cents (50¢) per ton (of 2,000 pounds) of coal hauled in the Collateral into an escrow account established with the Bank for the maintenance of the Collateral, and (iii) all other indebtedness, obligations and liabilities of whatever kind of MSI to the Bank, whether created directly or acquired by the Bank by assignment or otherwise, whether now existing or hereafter created or arising, absolute or contingent, joint or several, due or to become due, including but not limited to, all future loans and advances made by the Bank to MSI.

3. MSI and Guarantor hereby jointly and severally warrant and represent to the Bank that:

(a) MSI is a duly incorporated and validly existing corporation, in good standing, under the laws of Colorado and is duly qualified to transact business in all other jurisdictions where its business and applicable law so require.

(b) MSI is the sole and full owner of the Collateral and the Collateral is not subject to any other mortgages, security interests, liens or other encumbrances, other than ad valorem taxes not yet due and payable.

(c) MSI has the right and power to obtain and obligate itself on the loan represented by the Note and to enter into this Mortgage and Security Agreement, and the execution and delivery of the Note and this instrument do not violate any provision of the articles of incorporation or the by-laws of MSI or any term or condition of any contract or agreement to which MSI is a party.

(d) The acquisition of the Collateral, the loan evidenced by the Note and the execution and delivery of this instrument have all been duly and fully authorized by the Board of Directors of MSI and any other necessary parties, and the Note and this instrument when duly executed and delivered will both constitute valid, binding and enforceable obligations of MSI, and the officer executing the Note and this instrument on behalf of MSI has been fully and properly authorized to do so.

(e) Guarantor has the right and power to enter into and obligate himself under the Guaranty of the Note, which Guaranty is appended to the Note and has been executed and delivered by the Guarantor simultaneously herewith.

4. MSI hereby covenants and agrees with the Bank that MSI will:

(a) Use the Collateral within the State of Indiana, where the Collateral will be based and located for a preponderance of the time that the Note remains outstanding and this Mortgage and Security Agreement in effect.

(b) Defend and protect the Collateral against all adverse claims and demands, and promptly notify the Bank in writing of any such claim or demand asserted against any of the Collateral.

(c) Mark each rail car forming part of the Collateral appropriately to show MSI's ownership and with its assigned reporting mark and number in accordance with the rules and regulations of the American Association of Railroads (A.A.R.), and MSI will maintain and cause the collateral to be always so marked while this instrument remains in effect and will not, during such period, cause the Collateral to be always so marked while this instrument remains in effect and will not, during such period, cause or allow the Collateral to be marked so as to indicate ownership in any other party or to be renumbered without the prior written consent of the Bank, nor will MSI allow any of the Collateral to be marked so as to indicate a lien thereon allegedly held by any party other than Bank.

(d) Maintain the Collateral or cause the same to be maintained in good and proper working order throughout the period this instrument remains in effect, and the Collateral shall not be used for any purpose other than normal rail transportation of coal without the prior written consent of the Bank.

(e) Permit the Bank and its agents to inspect the Collateral and the books and records of MSI regarding same at any reasonable time, and from time to time, and will at all times keep track of the location of each piece of the Collateral and will promptly on request by the Bank furnish same a statement setting forth the location and condition of each rail car forming part of the Collateral.

(f) Pay all taxes and other governmental assessments, charges and impositions levied upon the Collateral on or before the respective due dates therefor and prior to the attachment to the Collateral of any penalties or interest for late payment. The Bank shall have the right to demand proof of the timely payment of all such taxes and governmental charges and shall have the right, on the failure of MSI to so pay same, to pay all such taxes and governmental charges itself on behalf of MSI and MSI shall reimburse the Bank therefor, together with interest on the amounts so paid by the Bank at the rate of five percent (5%) per annum in excess of the rate provided in the Note to be paid upon the principal balance of the Note, promptly upon demand by the Bank.

(g) Pay the Note, and all installments of principal and interest thereunder, and all other amounts owed by MSI to the Bank hereunder and otherwise, in full when, as and how due, and the Guarantor does hereby unconditionally guarantee to the Bank the full and punctual payment of all such amounts.

(h) Pay into an escrow account established by the Bank, the sum of Fifty Cents (\$0.50) for each ton (of 2,000 pounds) of coal hauled in the Collateral, for the purpose of maintaining the Collateral in a good, workmanlike, sound and operable condition.

(i) Pay and reimburse the Bank for the expenses, including attorneys' fees, incurred in the preparation of this Mortgage and Security Agreement and other documents pertaining to this transaction, and for the cost of all recording and filing deemed necessary by Bank to perfect its lien on the Collateral.

(j) Promptly notify the Bank in writing in the event any of the rail cars forming the Collateral are substantially damaged or destroyed as a result of any accident, calamity or other occurrence, and will assign and pay to the Bank any compensation as a result of such damage or destruction of the Collateral received under the American Association of Railroads Mechanical Interchange Rules, under any insurance policy or otherwise.

5. MSI hereby covenants and agrees with the Bank that MSI will not:

(a) Permit any other chattel mortgages, security interests, liens or other encumbrances to attach to any of the Collateral;

(b) Permit any of the Collateral to be seized, attached or levied upon under any legal process:

(c) Sell, exchange, transfer or otherwise dispose of any of the Collateral, nor lease any of same to third parties, without the prior written consent of the Bank.

(d) Permit or suffer anything to be done, excluding normal use of the Collateral, that may in any way impair the value of any of the collateral or the security intended to be afforded by this Mortgage and Security Agreement.

6. Guarantor will not sell or dispose of any stock of MSI, nor will MSI issue any additional stock to any person but Guarantor, without the prior written consent of the Bank, while the Note remains outstanding.

7. MSI will not, while the Note remains outstanding and this Mortgage and Security Agreement remains in effect,

become a party to any merger, consolidation or reorganization, nor dissolve, liquidate or sell substantially all of its assets, without the prior written consent of the Bank, which shall not be arbitrarily withheld providing the Bank is adequately assured and satisfied that its position with regard hereto will remain secure, it will receive full payment of the note and all other amounts owned by MSI and the Guarantor, and its lien on the Collateral will not be impaired.

8. (a) Each of the following shall constitute and be deemed an "Event of Default" hereunder:

(i) MSI shall fail to pay in full any installment of principal or interest, or any other amount, due under the Note at the time and in the manner due under the terms of the Note and shall further fail to cure such default within five (5) days of written notice thereof from the Bank;

(ii) MSI shall fail to provide for the payment into escrow of the funds required for the maintenance of the Collateral or described herein.

(iii) MSI shall fail to comply fully with any of the provisions of this Mortgage and Security Agreement, or any of the warranties and representations made by MSI or Guarantor herein or in any other document pertaining to this financing and delivered to the Bank shall prove untrue or misleading, and such default is not cured to the satisfaction of the Bank within twenty (20) days of written notice thereof from the Bank to MSI;

(iv) MSI shall default under the terms of any other indebtedness owed by MSI to the Bank, or its successor as holder of the Note, whether now existing or hereafter arising or acquired; and

(v) MSI or Guarantor is adjudicated as bankrupt or insolvent, or files a voluntary petition in bankruptcy or a petition seeking reorganization or an arrangement with creditors, or requests or suffers the appointment of a trustee, receiver or liquidator for all or a substantial part of this business or assets, or makes a general assignment for the benefit of creditors, or takes advantage of any statute or law, Federal or state, pertaining to relief for debtors.

(b) Upon the Occurrence of any Event of Default as defined in §8(a) above, the Bank may, at its option and without further notice, declare the entire unpaid principal balance

of, and all accrued interest on, the Note, plus all other indebtedness and obligations of MSI to the Bank, to be immediately due and payable in full and proceed to forthwith realize upon the Collateral and all other security for the Note and such indebtedness. On the occurrence of an Event of Default, the Bank shall have all of the rights and remedies in and against the Collateral and otherwise available under Federal law and to a secured party under the Uniform Commercial Code as adopted in Kentucky (or such other jurisdiction where any part of the Collateral may be located) and all other applicable laws, in addition to all rights and remedies provided herein and in the Note, all of which rights and remedies shall be cumulative to the fullest extent permitted by law. Following an Event of Default, the Bank shall have the right to require MSI, at the latter's expense, to assemble the Collateral and make it available to the Bank at such rail points as are feasible and designated by the Bank, and the Bank may immobilize and keep from use all or any part of the Collateral, with or without proceeding to sell the Collateral or any part thereof, and shall also have the right to lease all or part of the Collateral to other parties with or without taking possession thereof. The Bank shall have the right at its discretion to sell the Collateral at public or private sale(s) in one or more lots. MSI will on demand by the Bank pay, as part of the indebtedness and obligations hereby secured, all amounts, including but not limited to attorneys' fees, permitted by law, with interest on all such amounts paid by the Bank at the rate of five percent (5%) per annum in excess of the rate provided for in the Note to be paid upon the principal balance thereof, incurred or paid by the Bank as expenses in taking possession of, preserving and disposing of the Collateral, including any taxes, insurance and maintenance costs incurred during such proceedings. The requirement of reasonable notice of time and place of disposition of the Collateral by the Bank shall be conclusively met if such Notice is mailed, postage prepaid, to MSI's last address as furnished to the Bank at least fifteen (15) days before the sale or disposition. The Bank may bid upon and purchase any or all of the Collateral at any public sale thereof. The Bank may dispose of all or any part of the Collateral in one or more lots and at one or more times and from time to time, and upon such terms and conditions, including a credit sale, as the Bank determines in its sole discretion. The Bank may apply the net proceeds of any such disposition of Collateral or part thereof, after deducting all costs incurred in connection therewith, including the Bank's attorneys' fees and expenses incidental to preparing for sale and sale of the Collateral, and with interest thereon at the rate specified above, in such order as the Bank may

elect, to the indebtedness of MSI secured hereunder, including but not limited to the Note, and any remaining proceeds, after all such indebtedness and other amounts due hereunder are satisfied in full, shall be paid to MSI or other party legally entitled thereto.

9. This Mortgage and Security Agreement shall extend to and include, and MSI hereby grants the Bank a security interest in, any proceeds and products of the Collateral and specifically in all per diem, mileage and other fees payable by third parties with regard to the Collateral and any rental or income derived from leasing any of the Collateral and in and to funds held in the escrow account established with the Bank for maintenance of the Collateral. At the request of the Bank, MSI will furnish the Bank complete information as to the foregoing items and the Bank shall have the right to require that all payments of such items be made directly to the Bank to be credited against the indebtedness hereby secured, and the Bank may advise the parties owing such payments of its rights under this instrument and direct such parties to make their payments to the Bank.

10. MSI and Guarantor consent to the filing of this Mortgage and Security Agreement with the Interstate Commerce Commission in order to perfect the Bank's lien on the Collateral under §20c of the Interstate Commerce Act and MSI also agrees to execute and deliver for filing to the Bank, at the latter's request, all financing statements deemed necessary by the Bank for perfecting a lien on the Collateral under the Uniform Commercial Code in Kentucky, Indiana and other jurisdictions. MSI shall pursuant to §4(i) hereof pay and reimburse the Bank for all fees and charges incurred or necessary for such filing and recording.

11. (a) Time shall be of the essence in the performance by MSI of all its covenants, obligations and agreements hereunder.

(b) This instrument and the agreement evidenced hereby shall, to the extent Federal law is not applicable, be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

(c) This Mortgage and Security Agreement shall be binding upon MSI and Guarantor and their respective heirs, representatives, successors and assigns and shall inure to the benefit of the Bank and its successors and assigns, as applicable. The Bank, without the consent of MSI or Guarantor,

may assign the Note and its rights under this Mortgage and Security Agreement, in which event the Bank's assignee shall succeed to all of the rights of the Bank under the Note and appended Guaranty and hereunder.

IN TESTIMONY WHEREOF, the parties hereto have each caused this Mortgage and Security Agreement to be duly executed on their behalf by their undersigned, properly authorized officers, this day and year first above set forth.

MINERAL SANDS, INC.

ATTEST:

By: *M. Susan Cannon*

By: *E. Newman*

Title: *President*

("MSI")

*E. Newman*  
ERIC NEWMAN

("Guarantor")

CITIZENS FIDELITY ENERGY COMPANY

ATTEST:

By: *Martha Cruise*

By: *A. J. Farrell*

Title: *AJP*

("Bank")

COMMONWEALTH OF KENTUCKY )  
 ) SS:  
COUNTY OF JEFFERSON )

On this 17<sup>th</sup> day of June, 1983, before me personally appeared Eric Newman, to me personally known, who being by me duly sworn, stated that he is the Pres. of Mineral Sands, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and that he had executed the said instrument on behalf of such corporation by authority and with the full approval of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

IN TESTIMONY WHEREOF, witness my hand and notarial seal.

Renee Von Raenn  
Notary Public

My Commission expires: Notary Public, State at Large, KY  
My commission expires Feb. 15, 1987

COMMONWEALTH OF KENTUCKY )  
 ) SS:  
COUNTY OF JEFFERSON )

On this 17<sup>th</sup> day of June, 1983, before me personally appeared Eric Newman, to me personally known to be the person described in and who executed the foregoing instrument, and he acknowledged that he executed the foregoing instrument as his free act and deed.

IN TESTIMONY WHEREOF, witness my hand and notarial seal.

Renee Von Raenn  
Notary Public

My Commission expires: Notary Public, State at Large, KY  
My commission expires Feb. 15, 1987

COMMONWEALTH OF KENTUCKY )  
 ) SS:  
COUNTY OF JEFFERSON )

On this 17<sup>th</sup> day of June, 1983, before me personally appeared John M. Farrell, to me personally known, who being by me duly sworn, stated that he is the Asst Vice Pres. of Citizens Fidelity Bank & Trust Company, d/b/a Citizens Fidelity Energy Company, and that he had executed the said instrument on behalf of such corporation by authority and with the full approval of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

IN TESTIMONY WHEREOF, witness my hand and notarial seal.

Renee Von Raen  
Notary Public

My Commission expires: \_\_\_\_\_ Notary Public, State at Large, KY  
My commission expires Feb. 15, 1987

I certify that I prepared the foregoing instrument.

W. Plumer Wiseman, Jr.  
W. Plumer Wiseman, Jr.

GREENEBAUM DOLL & McDONALD  
3300 First fNational Tower  
Louisville, Kentucky 40202

CAR NUMBERS

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