

THE COMMONWEALTH PLAN, INC.

Suite 200

2655 CAMPUS DRIVE, SAN MATEO, CALIFORNIA 94403

EXECUTIVE OFFICES

August 17, 1979

AREA CODE 415
573-1200

10756

RECORDATION NO. Filed 1425

AUG 20 1979 - 2 55 PM

AUG 20 1979

Date

Fee \$ 50.00

Washington, D. C.

Mrs. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
12th and Constitution Avenues, N.W.
Washington, D.C. 20423

INTERSTATE COMMERCE COMMISSION

Attention: Mrs. Mildred Lee, Room 2227

Dear Madam Secretary:

There are handed to you herewith, for recording in compliance with the provisions of Section 20c of the Interstate Commerce Act, seven original counterparts of the Railroad Car Lease Agreement, dated as of July 2, 1979, together with this Company's voucher in the sum of \$50.00 in payment of the required recording fees.

The following information is set forth in accordance with the provisions of Section 57.4 of the Commission's Order of July 28, 1952, as amended:

Name and Address of Lessor:

The Commonwealth Plan, Inc.
2655 Campus Drive, Suite 200
San Mateo, California 94403

Name and Address of Lessee:

Kaiser Sand & Gravel Co.
3311 Stanley Blvd., P.O. Box 580
Pleasanton, California 94566

Name and Address of Guarantor:

Koppers Company, Inc.
436 - 7th Avenue
Pittsburgh, Pennsylvania 15219

General Description of the Equipment Covered by
Railroad Car Lease Agreement:

Sixty (60) 100 ton, 2300 cubic foot capacity open-top hopper cars

Candy Attorneys - Candy

Interstate Commerce Commission
August 17, 1979
Page Two

AAR mechanical designation HM, and with the
identifying marks:

KG CX 1800 through 1859, inclusive.

When recording of the Railroad Car Lease Agreement
has been completed, will you kindly return six counterparts
of the document with evidence of recording endorsed thereon
to our representative.

Very truly yours,

THE COMMONWEALTH PLAN, INC.



David R. Muhlitner
Counsel

DRM/glj
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

8/20/79

OFFICE OF THE SECRETARY

David R. Muhlthner, Counsel
The Commonwealth Plan, Inc.
2655 Campus Drive
San Mateo, Calif. 94403

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 8/20/79 at 2:55pm , and assigned re-
recording number (s). 10756

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure (s)

10756
 RECORDATION NO. Filed 1425

AUG 20 1979 -2 55 PM RAILROAD CAR LEASE AGREEMENT
 INTERSTATE COMMERCE COMMISSION

Railroad Car Lease Agreement ("Agreement") dated as of the 2nd day of July, 1979, in the City of San Mateo, California, by and between THE COMMONWEALTH PLAN, INC. of San Mateo, California (herein called "Lessor") and KAISER SAND & GRAVEL CO. (herein called "Lessee").

In consideration of the mutual covenants hereinafter contained, Lessor and Lessee agree as follows:

1. Definitions. As herein used:

(a) "Equipment" means the following types of Equipment owned or to be owned by the Lessor and leased by the Lessor to the Lessee or ordered by the Lessor for lease to the Lessee as provided herein:

TYPE: 100 ton, 2300 cubic foot open-top hopper cars

AAR MECHANICAL DESIGNATION: HM

NUMBER OF UNITS: Sixty (60)

MARKED: "Leased from The Commonwealth Plan, Inc. as Owner, and Subject to a Security Interest Recorded with the I.C.C."

SYMBOLS AND NUMBERS: KG CX 1800 through 1859

(b) "Acquisition Cost" of Equipment is an amount equal to the sum of the vendor's delivered price, any excise tax on the Equipment, any sales and use taxes, expenses of installation and freight and other expenses required to effect delivery of the Equipment to the Lessee.

(c) "Individual Leasing Record" is a record with respect to Equipment dated the date of the acceptance for lease of the Equipment by the Lessee and setting forth a full description of the Equipment, and such other details as the parties may desire. The Individual Leasing Record shall contain a short form of lease to be executed by each of the parties reading substantially as follows:

"The undersigned Lessor hereby leases to the undersigned Lessee, and the Lessee acknowledges delivery to it in good condition of and unconditionally accepts the Equipment described above. The covenants, terms and conditions of this lease are those appearing in the Leasing Agreement between the undersigned Lessor and Lessee dated as of July 2, 1979, which covenants, terms and conditions are hereby incorporated by reference.

THE COMMONWEALTH PLAN, INC., Lessor

By _____

KAISER SAND & GRAVEL CO., Lessee

By _____"

(d) "Rent" and "Amortized Value" for each unit of Equipment for each month during the lease term of the Equipment will be dollar amounts bearing the same ratios to the monthly rental and amortized value for such month set forth in Exhibit "A" attached hereto and made a part hereof pertaining to such Equipment as the Acquisition Cost of such Equipment bears to One Thousand Dollars (\$1,000). Lessee agrees to pay interest at the rate of 9-7/8% per annum on the amount of Rent or other sums owing under this Agreement after such amounts are due and payable.

"Rent" for each unit of Equipment after its Amortized Value is zero shall be an amount for each month equal to the then fair rental value of such unit as and if agreed to by Lessor and Lessee.

(e) "Contingent Rent" means the amount by which the proceeds of sale of any unit of Equipment pursuant to Section 11 of this Agreement are less than they would have been but for abuse, damage, extraordinary wear and tear or excessive usage. In the event Lessor and Lessee cannot agree on the amount of Contingent Rent due, if any, they shall appoint a qualified independent appraiser to determine the amount and his decision shall be final; and, if the parties are unable to agree on a single qualified independent appraiser, each shall appoint one qualified independent appraiser and the two so appointed shall, if they are unable to agree on the amount of Contingent Rent, jointly name a third, in which event the decision of a majority of the appraisers as to the amount of Contingent Rent shall be final. All fees and expenses of the appraiser(s) shall be borne by the Lessee.

2. Agreement for Lease of Equipment. Lessor and Lessee agree that on or before December 31, 1979, Lessor shall acquire and lease to Lessee and Lessee shall lease from Lessor Equipment consisting of sixty (60) 100 ton 2300 cubic foot open-top hopper cars having a total aggregate Acquisition Cost not in excess of \$2,225,000, provided that the Equipment can be obtained. Lessor has agreed with Southern Pacific Transportation Company ("SP") that SP will amend its purchase order with Greenville Steel Car Company to release therefrom sixty 100 ton, 2300 cubic foot open-top hopper cars, and Lessor agrees to substitute therefor its own order for the Equipment for delivery expected to begin August 20, 1979. All such leases shall be entered into in the manner and upon the terms and conditions set forth in this Agreement. Lessor and Lessee shall evidence their agreement to lease particular units of Equipment by signing and delivering to each other an Individual Leasing Record describing the Equipment. A request by the Lessee to the Lessor to acquire particular Equipment for lease hereunder shall obligate the Lessee to lease the Equipment from the Lessor upon acceptance of the Equipment by the Lessee.

3. Delivery. Lessor shall not be liable to Lessee for any failure or delay in obtaining Equipment or making delivery thereof. The Equipment shall be delivered to Lessee at the manufacturer's premises at Greenville, Pennsylvania. Lessee's execution of an Individual Leasing Record shall be made in connection with such delivery and shall conclusively establish that, as between Lessor and Lessee, but without limiting or otherwise affecting Lessee's or Lessor's rights, if any, against the manufacturer thereof, each unit of Equipment is acceptable to and accepted by Lessee under this Agreement, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that each such unit of Equipment is in good order and condition and appears to conform to the specifications applicable thereto and to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and to all standards recommended by the Association of American Railroads applicable to new railroad equipment of the character of the Equipment as of the date of this Agreement. The execution and delivery of such Individual Leasing Record shall constitute Lessee's representation that it has no knowledge of any such defect. Upon acceptance for lease of Equipment by Lessee and receipt by Lessor of vendor's invoice for such Equipment approved by Lessee together with an Individual Leasing Record with respect to the Equipment duly executed by Lessee, Lessor shall remit to the vendor a check for the total of the vendor's invoice for such Equipment, provided that the amount paid to the vendor by Lessor

shall not exceed the Acquisition Cost of the Equipment. If the amount paid to the vendor by Lessor is less than the Acquisition Cost of the Equipment, to the extent that delivery costs or costs of additions to the Equipment have been met by Lessee, and do not exceed the Acquisition Cost, Lessor shall reimburse Lessee to the extent of such payment made by Lessee up to the amount of the Acquisition Cost.

4. Lease Term. The lease for each unit of Equipment shall become effective on the date the Equipment is accepted for lease by the Lessee, and the Individual Leasing Record for the Equipment shall be dated such date. The lease term for each unit of Equipment shall be for a period beginning with the effective date thereof and ending one year after the last day of the month in which the effective date of the lease occurs. Thereafter, the lease term shall be extended for an additional 168 months and shall thereupon terminate unless sooner terminated as provided in Sections 11, 12, 13, 15, or 16 or unless further extended from month to month by agreement of Lessee and Lessor at a fair rental value as then agreed to by Lessor and Lessee.

5. Rent. Lessee shall pay daily and monthly Rent monthly in arrears on the 25th day of the current month. Reports from Lessee shall be rendered as close to the first of each month as possible covering the computation of Rent and other payments due hereunder for the month, adjustments on the preceding month's Rent resulting from commencement or termination of individual leases during such month and other appropriate items, if any.

6. Use of Equipment. Lessor and Lessee hereby acknowledge and agree that this Agreement is and is intended to be a lease and that the Equipment leased hereunder shall at all times be the sole and exclusive property of Lessor, and Lessee shall have no right, title or property therein but only the right to use the same as herein provided. Such use shall be confined to the United States. Lessee shall promptly notify Lessor in writing of any change in the location of any unit of Equipment. Lessee shall use and operate Equipment or cause it to be used and operated only by personnel authorized by Lessee and Lessee shall use every reasonable precaution to prevent loss or damage to any Equipment from fire and other hazards. Lessor may inspect any Equipment at any reasonable time, and Lessee will supply Lessor with such information as to the condition of the Equipment as Lessor may request from time to time. Lessee's employees and agents shall cooperate fully with Lessor in the investigation of any claims and suits relating to Equipment. So long as Lessee shall not be in default under this

Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Equipment in the regular course of its business or the business of any subsidiary or affiliate in accordance with the terms of this Agreement in the same manner as similar railroad hopper cars are customarily used in the railroad freight business. Lessee agrees that the Equipment shall at all times be used (i) in compliance with all insurance policy conditions and codes, rules, interpretations, laws or orders governing acquiring, titling, registering, leasing, insuring, and disposing of the Equipment and hire, use, condition, repair and all other matters pertaining to the movement and interchange of freight traffic applicable to the Equipment, adopted and in effect from time to time by the Association of American Railroads ("AAR") and any other organization, association or local, state or federal agency or governmental authority, including the Interstate Commerce Commission and the United States Department of Transportation, which may be responsible for or have authority over the foregoing; (ii) in compliance with the terms of this Agreement; and (iii) in a careful and prudent manner solely in the use, service and manner for which they were designed. Lessee shall not, without the prior written consent of Lessor, voluntarily, directly or indirectly, create, incur or assume any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Equipment or any interest therein or in this Agreement, and shall promptly discharge any such mortgage, pledge, lien, charge, encumbrance, or other security interest or claim. Lessee may sublease any Equipment provided that the sublease is subject to and in conformity with this Agreement, but no sublease shall in any way limit or affect Lessee's obligations and duties hereunder or the obligations and duties of Koppers Company, Inc. ("Koppers") as Guarantor under a Guaranty with Lessor dated as of July 2, 1979 ("Guaranty").

6.A. Assignment by Lessee. Lessee may at any time assign all of its rights, and delegate all of its duties, liabilities and obligations, under this Agreement as a whole either (a) to Koppers, provided that Koppers shall have assumed and become liable directly for all duties, obligations and liabilities of Lessee under this Agreement by an instrument executed and delivered to Lessor and any assignee of Lessor; or (b) to any wholly-owned domestic subsidiary of Koppers, provided that (i) such subsidiary shall have assumed and become liable directly for all duties, obligations and liabilities of Lessee under this Agreement by an instrument executed and delivered to Lessor and any assignee of Lessor, (ii) Koppers shall have consented to such assignment and acknowledged that the Guaranty will apply in full force and effect to all liabilities, obligations and duties

of such subsidiary by an instrument executed and delivered to Lessor and any assignee of Lessor, and (iii) an opinion of counsel satisfactory to Lessor and any assignee of Lessor shall have been provided together with all other documentation (if any) reasonably required by Lessor and any assignee of Lessor to assure that the Guaranty is so effective and applicable. All documentation provided in connection with assignments permitted under this Section 6.A. shall be satisfactory to Lessor and any assignee of Lessor.

7. Improvement and Repair of Equipment. Lessor shall assign or otherwise make available to Lessee all of its rights under any vendor's or manufacturer's warranty on Equipment. Lessee shall pay all costs, expenses, fees and charges incurred in connection with the use and operation of Equipment during the lease thereof. Lessee shall at all times, at its own expense, keep Equipment in first class condition and repair and in good and efficient working order, reasonable wear and tear only excepted, suitable for use in interchange, and will cause to be made any repairs, replacements, additions or improvements to the Equipment which may be required in order to comply with the provisions of Section 6 hereof, but Lessee shall have a reasonable time within which to repair any loss or damage to Equipment from fire or other casualty. This provision shall apply regardless of the cause of damage and all risks with respect thereto are assumed by Lessee. At its own expense, Lessee shall supply and replace all parts to the Equipment and shall supply the necessary power and other items required in the operation of the Equipment. Any replacement parts, improvements and additions to the Equipment shall become and remain the property of the Lessor, except that any improvement or addition made by the Lessee shall remain the property of the Lessee if it can be disconnected from the Equipment without impairing the functioning of the Equipment as originally constituted when first leased hereunder.

8. Identification Markings and Numbering. At or prior to the time of the delivery of any Equipment to the Lessee by the Lessor, the Lessee shall cause to be plainly, distinctly, permanently and conspicuously marked, placed or fastened upon each side of each unit of Equipment the following legend in letters not less than one inch in height:

"Leased From The Commonwealth Plan, Inc. as Owner,
and Subject to a Security Interest Recorded with the I.C.C."

and any other legend requested by the Lessor disclosing the interest of any mortgagee in the Equipment. At or prior to the time of delivery of any Equipment to the Lessee, the Lessee shall cause one of its car reporting marks and

designated car numbers to be assigned to and marked and/or placed on each side of each unit of Equipment delivered, such car reporting marks and designated car numbers to be as follows:

KGCX 1800 through 1859

At all times after delivery the Lessee will cause each unit of Equipment to bear on each side thereof the aforesaid legend and the car number so assigned to it, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of Lessor to the Equipment, its rights under this Agreement and the rights of any assignee of Lessor or mortgagee of Equipment thereunder. Such car reporting marks and designated car numbers shall not be changed by the Lessee without the prior written consent of Lessor and any assignee of Lessor. Lessee agrees to file all necessary and appropriate documents with the Interstate Commerce Commission and/or any other authority as may be required under Federal, state or local law, rules or regulations with respect to any such change in car reporting marks and designated car numbers.

9. Insurance. Lessee shall, at its own expense, with respect to Equipment maintain insurance insuring the respective interests of Lessor, any assignee of Lessor, and Lessee in amounts and against risks customarily insured against by other similar companies on similar equipment and in any event covering (a) physical damage to Equipment in an amount not less than the Amortized Value of the Equipment and (b) personal injury, death and property damage liability resulting from the operation, ownership, use and possession of Equipment as a result of one accident in the amount of no less than \$5,000,000. Lessor and any assignee of Lessor shall be named insureds in all insurance policies required under this Section. All such policies shall be in reputable companies, satisfactory to Lessor and Lessor's assignee and shall provide for at least ten (10) days' written notice to Lessor and Lessor's assignee of any cancellation or material alteration of such policies. Lessee shall furnish Lessor certificates or other evidence satisfactory to Lessor of compliance by Lessee with the provisions hereof, but Lessor shall be under no duty to examine such certificates or to advise Lessee in the event its insurance is not in compliance herewith. Lessee covenants that it will not use or operate or permit the use or operation of any Equipment at any time when the insurance required by this Section is not in force with respect to such Equipment. Lessee's obligation to maintain insurance with respect to any Equipment shall commence on the actual day of delivery of the Equipment and shall continue until the Equipment is sold or the lease of the Equipment terminates, whichever is sooner.

10. Indemnity.

1. Lessee agrees to indemnify and hold harmless the Lessor and any assignee of the Lessor against any and all claims, demands and liabilities of whatsoever nature (except claims, demands and liabilities relating to, or arising out of or as a result of Lessor's sole negligence), and all costs and expenses (including attorneys' fees and litigation expenses) relating to or in any way arising out of or as a result of:

(a) the construction, delivery, possession, registration, re-registration, use, non-use, misuse, operation, transportation, repair, control, disposition or condition (whether defects are latent or discoverable) of Equipment leased or requested by Lessee to be leased hereunder, except to the extent that such costs are included in the Acquisition Cost of such Equipment within the dollar limit provided in Section 2 hereof (or within any change of such limit agreed to in writing by Lessor and Lessee) and except for any general administrative or overhead expenses of Lessor;

(b) any claims for strict liability;

(c) all recording and filing fees, stamp taxes and like expenses with respect to mortgages on the Equipment from the Lessor to any mortgagee;

(d) all costs, charges, damages or expenses for royalties and claims and expenses arising out of or necessitated by the assertion of any claim or demand based upon any infringement or alleged infringement of any patent or other right, by or in respect of any Equipment, provided, however, that Lessor will to the extent permissible make available to Lessee Lessor's rights under any similar indemnification arising by contract or operation of law from the manufacturer of Equipment;

(e) all federal, state, county, municipal, foreign or other fees and taxes of whatsoever nature, including but not limited to license, qualification, franchise, sales, use, gross receipts, ad valorem, business, property (real or personal), excise, and occupation fees and taxes, and penalties and interest thereon, whether assessed, levied against or payable by Lessor or otherwise, with respect to Equipment or the

acquisition, purchase, sale, rental, use, operation, control, ownership or disposition of Equipment or measured in any way by the value thereof or by the business of, investment in, or ownership by Lessor with respect thereto, excepting only net income taxes on the net income of the Lessor determined substantially in the same manner as net income is presently determined under the Federal Internal Revenue Code, and any excise, sales or use taxes included in the Acquisition Cost of the Equipment;

(f) any violation, or alleged violation, by Lessee of this Agreement or of any contracts or agreements to which Lessee is a party or by which it is bound, or any laws, rules, regulations, orders, writs, injunctions, decrees, consents, approvals, exemptions, authorizations, licenses and withholdings of objection, of any governmental or public body or authority and all other requirements having the force of law applicable at any time to Equipment or any action or transaction by Lessee with respect thereto or pursuant to this Agreement.

2. Lessee shall forthwith upon demand reimburse Lessor for any sum or sums expended with respect to any of the foregoing, or shall pay such amounts directly upon request from Lessor. Lessee shall be subrogated to Lessor's rights in the affected transaction and shall have a right to control litigation related to the transaction, and where all of the Acquisition Cost of Equipment is paid by Lessee to Lessor pursuant to this indemnity, Lessor shall convey to Lessee all its right, title and interest in such Equipment. The foregoing indemnity in this Section shall survive the expiration or earlier termination of this Agreement or any lease of Equipment hereunder.

11. Adjustment of Rent on Sale of Equipment. After the lease term of any Equipment has run for twelve months, if such Equipment has become economically or otherwise obsolete or is no longer useful in the Lessee's business, and provided that the lease has not been terminated under some other provision hereof and that there has occurred no event of default under Section 14 hereof, Lessee may arrange for the termination of the lease as to and the sale of the Equipment as hereinafter provided. After written notice to the Lessor or its assignee identifying the Equipment and the proposed price and terms of a proposed sale, the Lessee, on behalf of and in cooperation with the Lessor, shall

proceed directly with negotiating the sale of the Equipment to a third party unrelated to Lessee, and the Lessor shall promptly execute and transmit to the Lessee all title papers needed to effectuate the sale. In arranging for the sale of any Equipment pursuant to this Section 11, the Lessee shall use its best efforts to obtain sale proceeds not less than the Equipment's retail fair market value, delivered to the purchaser, to a purchaser or purchasers unrelated to Lessee, giving due consideration to whether the Equipment's value is higher as an aggregate, or as two or more units of Equipment. Lessee shall promptly transmit to Lessor or its assignee the proceeds of sale of such Equipment. Lessee will supply Lessor with such information as to the condition of such Equipment as Lessor may request. The lease term for each unit of Equipment sold and the Lessee's obligation to pay rent shall continue until the end of the month during which such proceeds of sale are transmitted to Lessor or its assignee and shall thereupon terminate. If the sale proceeds are less than the Amortized Value of the Equipment but equal to or greater than 13% of the Base Amount of the Equipment the Lessee shall at the same time pay the Lessor or its assignee a sum equal to the difference between the amount of the sale proceeds and such Amortized Value. If the sale proceeds are less than 13% of the Base Amount of the Equipment, the Lessee shall at the same time pay the Lessor or its assignee the Amortized Value of the Equipment less 13% of the Base Amount, plus any Contingent Rent due for such Equipment, provided, however, that the amount of any such Contingent Rent will be no greater than the amount by which 13% of the Base Amount exceeds such sale proceeds. Any sale proceeds in excess of the Amortized Value of the Equipment at the date of termination of its lease term as terminated under the provisions of this Agreement will be for the account of the Lessor. The "Base Amount" means, as to any Equipment sold twelve months after the commencement of its lease term, the Acquisition Cost of such Equipment, and as to any Equipment sold more than twelve months after the commencement of its lease term, the Amortized Value of such Equipment at the date of termination of its lease term as terminated under the provisions of this Agreement. The term "sale proceeds" means the gross purchase price paid by the purchaser, without charge or reduction in any manner on account of any costs or expenses of sale, removal, transportation, repair, storage, delivery or similar costs or expenses, and all of such costs and expenses (if any) shall be borne by the Lessee.

11.A. Option to Terminate. Anything in Section 11 of this Agreement to the contrary notwithstanding, upon receipt of the written notice of a proposed sale of any Equipment provided for in Section 11, Lessor shall have the option to

terminate the lease of such Equipment as hereinafter provided. Within thirty (30) days of its receipt of such notice, Lessor may, in its sole discretion, notify Lessee in writing that Lessor intends to terminate the lease of such Equipment. If Lessor does so notify Lessee, Lessee shall promptly surrender the Equipment as provided in Section 13 of this Agreement and, if the sale proceeds of the proposed sale of such Equipment would have been less than the Amortized Value of the Equipment but equal to or greater than 13% of the Base Amount of the Equipment, the Lessee shall pay the Lessor or its assignee a sum equal to the difference between the amount of the sale proceeds and such Amortized Value. If the sale proceeds of such proposed sale would have been less than 13% of the Base Amount of the Equipment, the Lessee shall pay the Lessor or its assignee the Amortized Value of the Equipment less 13% of the Base Amount, plus any Contingent Rent due for such Equipment, provided, however, that the amount of any such Contingent Rent will be no greater than the amount by which 13% of the Base Amount exceeds the amount of sale proceeds that would have been received pursuant to the proposed sale. "Base Amount" has the same meaning it has in Section 11 of this Agreement, and "sale proceeds" and "Contingent Rent" mean the sale proceeds and Contingent Rent, if any, that would have been received in a sale of such Equipment under Section 11 had such sale been consummated. The lease term for each unit of Equipment in respect of which Lessor exercises its option, as provided hereunder, and the Lessee's obligation to pay rent, shall continue until the end of the month in which occurs the later of the surrender of such Equipment as provided in Section 13 of this Agreement or the receipt by Lessor or its assignee of the sum Lessee is required to pay Lessor under this Section 11.A.

12. Loss or Destruction of the Equipment. Lessee hereby assumes all risks of loss or damage to the Equipment howsoever the same may be caused. Lessee shall notify Lessor immediately of any loss or of any substantial damage to any Equipment and shall keep Lessor informed of all developments and correspondence regarding insurance rights and other rights and liabilities arising out of the loss or damage. In the event of total destruction of any of the Equipment or damage beyond repair or the commandeering, conversion or other loss of any of the Equipment, or if the use thereof by the Lessee in its regular course of business is prevented by the act of any third person or persons, or any governmental instrumentality, for an indefinite period or a period exceeding the time then remaining until the Amortized Value of the Equipment would be zero if the Lessee were to continue paying Rent as provided in this Agreement, or if any of the Equipment is attached (other

than on a claim against the Lessor but not the Lessee) or is seriously damaged and the attachment is not removed or the Equipment not repaired, as the case may be, for a period exceeding the time then remaining until the Amortized Value of the Equipment would be zero if the Lessee were to continue paying Rent as provided in this Agreement, then in any such event (a) Lessee shall promptly notify Lessor in writing of such fact, (b) within ten (10) days thereafter the Lessee shall pay to the Lessor, or Lessor's assignee, the higher of the amount prescribed in applicable rules or regulations of the American Association of Railroads ("AAR") or any other governing association, agency or governmental authority for the loss or destruction of such Equipment at the time of payment or the Amortized Value of such Equipment at the time of payment, (c) the lease of such Equipment and Lessee's obligation to pay rent shall continue until such payment has been received by the Lessor or Lessor's assignee and shall thereupon terminate, and (d) upon such payment all of Lessor's title to and rights in such Equipment and any insurance thereon shall automatically pass to the Lessee.

13. Surrender of Equipment. Upon the final termination of the lease as to any Equipment (other than a termination as provided for in Sections 11, 12, 15, or 16), Lessee shall surrender such Equipment to the Lessor, in the condition prescribed in Section 7, at Lessee's place of business or other locations being used as an operating base, such locations to be limited to five (5). Lessee shall reimburse Lessor for any costs it incurs in connection with the deletion of Lessor's markings from the Equipment and for the cost of removing and disposing of the Equipment.

14. Events of Default. The following events of default by the Lessee shall give rise to the rights on the part of the Lessor described in Section 15:

(a) Default in the payment of Rent or any casualty loss beyond ten (10) days following the date the same is due; or

(b) Default in the payment or performance of any other liability, obligation, or covenant of the Lessee or Koppers to the Lessor and the continuance of such default for thirty (30) days after written notice to the Lessee sent by registered or certified mail by the Lessor; or

(c) The Lessee shall make or knowingly permit any unauthorized assignment or transfer of this Agreement, or of possession of the Equipment or any portion thereof; or

(d) Any representation or warranty made (i) by Lessee herein or in any statement or certificate furnished to Lessor or any assignee thereof, pursuant to or in connection with this Agreement, is untrue in any material respect as of the date of issuance or making thereof, or (ii) by Koppers in or pursuant to or in connection with the Guaranty, or in any statement or certificate furnished to Lessor or any assignee thereof, pursuant to or in connection with this Agreement or such Guaranty proves untrue in any material respect as of the date of issuance or making thereof; or

(e) The termination of existence or business failure of, or the making of an assignment for the benefit of creditors by, the Lessee or Koppers; or

(f) The institution of bankruptcy, reorganization, liquidation or receivership proceedings by or against the Lessee or Koppers and, if instituted against the Lessee or Koppers, its or their consent thereto or the pendency of such proceedings for thirty (30) days.

The Lessee also agrees to furnish to the Lessor and any assignee of the Lessor, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an event of default under this Section 14 or which, after notice or lapse of time, or both, would constitute such an event of default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section 14 a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Agreement contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Agreement with respect thereto.

15. Rights of Lessor upon Default of Lessee. Upon the occurrence of any of the events of default described in Section 14 the Lessor may in its discretion do one or more of the following:

(a) Terminate any lease hereunder upon five (5) days written notice to the Lessee sent by ordinary mail;

(b) Whether or not any lease is terminated, (i) take immediate possession of any or all Equipment, including substituted parts, accessories or equipment and/or other equipment or property of the Lessor in the

possession of the Lessee, wherever situated, and for such purpose, enter upon any premises without liability for so doing; (ii) at Lessee's risk and expense promptly surrender possession of the Equipment at the location designated by Lessor; or (iii) at Lessee's risk and expense, place the Equipment in such storage place on Lessee's lines of railroad as Lessor may reasonably designate (or if no such lines are available, upon other railroad lines as may be made available to the Lessee at its expense);

(c) Whether or not any action has been taken under Sections 15(a) and (b) above, sell any Equipment (with or without the concurrence or request of the Lessee) in the manner and with the consequences set forth in Section 11 hereof;

(d) Whether or not any action has been taken under Sections 15(a) and (b) and (c) above, otherwise as owner hold, or use, or lease, sell or otherwise dispose of by public or private proceedings any Equipment or other property of Lessor as Lessor in its sole discretion may decide, subject to such duty to account to the Lessee with respect to any proceeds thereof as may be required by the provisions of this Agreement or applicable law;

(e) Exercise any and all rights and/or remedies available to Lessor in the circumstances under any applicable statute; and/or

(f) Proceed at law or in equity or otherwise to enforce performance by Lessee of this Agreement and/or to recover damages for breach thereof.

None of the foregoing rights and remedies is intended to be exclusive of any one or more other rights or remedies otherwise available to Lessor under this Agreement or under law, all of which shall be available cumulatively.

If, after default, Lessee fails to deliver or converts or destroys any Equipment or other property of Lessor, then at Lessor's option, exercised by written notice to Lessee, Lessee shall be immediately liable to Lessor for all unpaid Rent on such Equipment plus its Amortized Value at that time, together with all losses and damages sustained, and all costs and expenses (including without limitation, reasonable attorneys' fees and legal expenses) incurred, as a result of such conversion, or destruction, or failure to deliver.

If a sale of any Equipment produces net cash proceeds to Lessor less than the Amortized Value of such Equipment plus the sum of all other liabilities and obligations owed by Lessee to Lessor with respect to such Equipment, all as determined at the time such proceeds are received by Lessor, then Lessee shall in any event be liable for, and shall forthwith pay to Lessor, the amount of such deficiency. If any re-lease or rental of Equipment produces for Lessor any monthly rents and other payments in cash which are in amount less than the amounts of monthly rents and other payments which are required by this Agreement with respect to such Equipment, each determined at the time the payment is received by Lessor, then Lessee shall in any event be liable for, and shall pay to Lessor, on each monthly rental due date or on the applicable dates of such other payments (if any), as the case may be, the difference between the cash received by Lessor from such re-lease or rental and the cash amounts, in each instance, required to be paid to Lessor by this Agreement.

In any event of default by Lessee, in addition to and without limitation of any other provision of this Section 15, Lessee shall be immediately liable to Lessor for all losses and damages sustained as a result of Lessee's default, and also for all costs and expenses incurred as a result of Lessee's default or as a result of Lessor's exercise of any right or remedy provided for or contemplated by this Agreement including, without limitation, reasonable attorneys' fees and legal expenses, and expenses of repossession, holding, preparation for sale or other disposition, and sale or other disposition.

If notice to Lessee of any repossession, sale, lease or other disposition is required by applicable law, written notice thereof given not less than ten (10) days prior thereto shall constitute reasonable notice.

The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Agreement, and upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Equipment.

16. Equipment to be and Remain Personal Property. It is the intention and understanding of both Lessor and Lessee that all Equipment shall be and at all times remain personal property. Lessee will obtain and record such instruments and take such steps as may be necessary to prevent any person from acquiring any rights in the Equipment paramount

to the rights of the Lessor, its assignees or mortgagees by reason of such Equipment being deemed to be real property. If, notwithstanding the intention of the parties and the provisions of this Section 16, any person acquires or claims to have acquired any rights in any Equipment paramount to the rights of the Lessor, its assignees or mortgagees, by reason of such Equipment being deemed to be real property, and such person seeks in any manner to interfere with the continued quiet enjoyment of the Equipment by the Lessee as contemplated by this Agreement, then the Lessee shall promptly notify the Lessor in writing of such fact (unless the basis for such interference is waived or eliminated to the satisfaction of the Lessor within a period of ninety (90) days from the date it is asserted) and the Lessee shall within ninety (90) days after such notice pay to the Lessor or Lessor's assignee an amount equal to the Amortized Value of the Equipment at the time of payment. The lease of the Equipment and Lessee's obligation to pay Rent shall continue until such payment has been received by the Lessor or Lessor's assignee and shall thereupon terminate; and upon such payment all of Lessor's title to and rights in such Equipment shall automatically pass to the Lessee.

17. Mileage Allowances. In consideration of the Rent to be paid by Lessee to or for the account of Lessor hereunder, Lessor agrees that, unless an event of default specified under Section 14 shall have occurred and be continuing, it will promptly make available to Lessee in such manner as Lessor and Lessee agree, all mileage allowances, if any, received by or due to Lessor with respect to any Equipment which may be then under lease from Lessor to Lessee; provided, however, no such mileage allowance shall be made available to the Lessee if such action is prohibited by or is illegal under any federal or state law. In the event Lessee believes it is entitled to receive a mileage allowance, and if the Lessor does make available to the Lessee any mileage allowances hereunder, Lessee shall render an annual accounting to Lessor setting forth the total amount of its costs and expenses incident to the leasing of such Equipment (including, without limitation, Rent, maintenance, insurance, operating expenses, taxes, accounting, legal, clerical, supervisory and management expenses and all allocable portions of Lessee's overhead expense with respect to the use of such Equipment) paid or incurred during the accounting period and the amount of the mileage allowances paid to the Lessee during the same period. The Lessee may select the date for the first annual accounting, if any, for any Equipment hereunder and shall thereafter make annual reports as required as of the anniversary date of the first report. Reports may be rendered on a composite basis for all Equipment. At the same time any report is made, Lessee shall make an adjustment of such mileage allow-

ances if required under applicable law. To the extent permitted by applicable law, Lessee's right to receive mileage allowances shall be cumulative during the period covered by this Agreement. Lessee shall in no event set off any amounts received by Lessor as mileage allowances against any Rent or other sums due Lessor or its assignee under this Agreement. As used herein, mileage allowances shall include all sums due from any railroad for the use of Equipment.

The Lessee agrees to use the Equipment so that the Lessor shall not be obligated to make any payment to any railroad company of mileage allowances or other charges as a result of the use of the Equipment over the lines of such railroad company, whether because of the relationship of mileage allowances under load and empty mileage or otherwise, and if the Lessor shall be required to make any such payment to any railroad company, the Lessee agrees to immediately reimburse the Lessor for each such payment. For the purposes of this Section, railroad mileage and junction reports relating to the Equipment shall be prima facie evidence of the facts reported therein.

Notwithstanding anything contained in this Section, the Lessee shall remain liable for the payment of all Rents and all other sums due Lessor or any assignee of Lessor under this Agreement and for the performance and observance of all the other covenants, conditions and agreements of this Agreement.

18. Filing of Agreement. The parties agree that this Agreement shall be filed by the Lessor with the Interstate Commerce Commission in accordance with 49 USC 11303. Upon request by the Lessor, the Lessee will execute, acknowledge and deliver to Lessor one or more supplements to this Agreement describing units of Equipment leased hereunder and Lessor shall execute, acknowledge and file such supplements with the Interstate Commerce Commission. Upon termination of the lease of any unit of Equipment Lessor and Lessee shall execute any appropriate instrument required by the other for filing with the Interstate Commerce Commission as evidence of termination of the lease of such unit of Equipment. Lessee will execute any instruments with respect to the Equipment or this Agreement considered by Lessor to be necessary or desirable under recording or filing requirements of any jurisdiction.

19. Lessee's Representations and Warranties. Lessee represents and warrants that its chief place of business and its chief executive office are located at Pleasanton, California, and that the Equipment is intended for a use related to interstate commerce, and also is intended for other uses.

20. Miscellaneous. This Agreement and all rights hereunder shall be governed by the law of California. Each of the parties hereto acknowledges that the other party shall not by act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder or under any other instrument given hereunder unless such waiver is given in writing and the same shall be binding to the extent therein provided and only upon the parties signing the same. A waiver on any one occasion shall not be construed as a waiver on any future occasion. No executory agreement shall be effective to change, modify or discharge, in whole or in part, this Agreement, or any other instrument given in connection therewith unless such executory agreement is in writing and signed by the party to be charged therewith. All rights, remedies and powers granted herein, or in any other instrument given in connection herewith, shall be cumulative and may be exercised singularly or cumulatively. This Agreement represents the entire agreement of the parties hereto.

21. No Warranties by Lessor. AS BETWEEN LESSOR AND LESSEE, ACCEPTANCE FOR LEASE OF THE EQUIPMENT BY LESSEE AND EXECUTION BY LESSEE OF AN INDIVIDUAL LEASING RECORD WITH RESPECT THERETO SHALL CONSTITUTE LESSEE'S ACKNOWLEDGEMENT AND AGREEMENT THAT THE EQUIPMENT IS IN GOOD ORDER AND CONDITION AND IS OF THE MANUFACTURE, DESIGN AND CAPACITY SELECTED BY LESSEE, THAT LESSEE IS SATISFIED THAT THE SAME IS SUITABLE FOR ITS PURPOSE AND THAT LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE ANY REPRESENTATION, WARRANTY OR COVENANT WITH RESPECT TO MERCHANTABILITY, CONDITION, QUALITY, DURABILITY OR SUITABILITY OF THE EQUIPMENT IN ANY RESPECT OR IN CONNECTION WITH, OR FOR THE PURPOSES OR USES OF LESSEE, OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT OR ANY KIND OF CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT.

22. Assignment by Lessor of Rights Under this Agreement and Mortgages of Equipment to an Assignee. Lessee acknowledges notice that Lessor proposes to finance its acquisition and ownership of the Equipment by borrowing and in that connection may, as security, grant to an assignee chattel mortgages on the Equipment, it being understood, however, that such chattel mortgages shall contain a provision to the effect that as long as Lessee is not in default hereunder or under any lease, it shall be entitled to uninterrupted use of the Equipment on the terms herein provided. Lessee also acknowledges notice of the intended assignment by the Lessor to an assignee of the Rents and all other sums due and to become due hereunder, all as security for obligations of the Lessor to the assignee. After such assignment the terms and provisions of this Agreement may

not be altered, modified or waived without the written consent of such assignee and after such assignment and written notice thereof to the Lessee, the Lessee shall make payment of all Rents and other payments due hereunder directly to the assignee, and such payments shall discharge the obligations of Lessee to Lessor hereunder to the extent of such payments. The assignment by the Lessor to the assignee of rights hereunder shall not transfer to the assignee the general title to Equipment or impose on the assignee any of the duties or obligations of the Lessor hereunder, but in all other respects the assignee shall have all the rights of the Lessor hereunder to the extent necessary to realize upon Rents and other monies payable by the Lessee and to protect the assignee's security interest in Equipment resulting from the chattel mortgage.

23. Right of Lessor to Perform. If the Lessee shall fail to comply with any of its covenants herein contained, either the Lessor or its assignee may, but shall not be obligated to, make advances to perform the same and take such other action as may be necessary to obtain such performance. Any payment so made and all costs and expenses incurred thereby (including reasonable attorneys' fees and expenses) shall be payable by the Lessee to the party making the same upon demand as additional rent hereunder with interest thereon for the period expended and unpaid at the rate of 9-7/8% per annum.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Railroad Car Lease Agreement as of the day and year first above written.

Attest:

James R. Muhlert
Assistant Secretary

THE COMMONWEALTH PLAN, INC.,
Lessor

By *Bernard Goodman*
President Form Approved

OPM
Counsel

Attest:

R. - H. Bond
ASST. SECRETARY

KAISER SAND & GRAVEL CO.,
Lessee

By *R. Arnold Abbott*
PRESIDENT

STATE OF California
COUNTY OF Alameda

} ss:

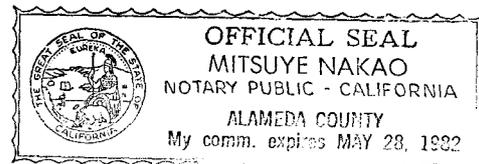
On this 17th day of August, 19 79, before me personally appeared

L. Arnold Abrott, to me personally known, who, being by
me duly sworn, says that he is President of Kaiser

Sand & Gravel Company, that one of the seals affixed to the foregoing
instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said
corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing in-
strument was the free act and deed of said corporation.

Mitsuye Nakao
Notary Public

My Commission Expires:
May 28, 1982



STATE OF CALIFORNIA
COUNTY OF SAN MATEO

} ss:

On this 17th day of August, 19 79, before me personally appeared

Bernard Goldman, to me personally known, who, being by
me duly sworn, says that he is President of _____

The Commonwealth Plan, Inc., that one of the seals affixed to the foregoing
instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said
corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing in-
strument was the free act and deed of said corporation.

Gail L. Erikson
Notary Public

My Commission Expires:
Dec. 12, 1980.



EXHIBIT A

Rent and amortized values for Equipment having an Acquisition Cost of \$1,000.

Daily rent for any partial month: \$ 0.30
 Rent for each full month: \$11.21

<u>END OF PERIOD</u>	<u>AMORTIZED VALUE (after payment of rent for such month)</u>	<u>END OF PERIOD</u>	<u>AMORTIZED VALUE (after payment of rent for such month)</u>	<u>END OF PERIOD</u>	<u>AMORTIZED VALUE (after payment of rent for such month)</u>
1	\$997.75	45	\$875.90	89	\$695.50
2	995.48	46	872.54	90	690.52
3	993.19	47	869.15	91	685.50
4	990.88	48	865.73	92	680.43
5	988.55	49	862.28	93	675.32
6	986.20	50	858.79	94	670.16
7	983.82	51	855.27	95	664.95
8	981.42	52	851.72	96	659.70
9	979.00	53	848.14	97	654.40
10	976.56	54	844.53	98	649.05
11	974.10	55	840.89	99	643.65
12	971.62	56	837.21	100	638.21
13	969.11	57	833.50	101	632.72
14	966.58	58	829.76	102	627.18
15	964.03	59	825.98	103	621.59
16	961.46	60	822.17	104	615.95
17	958.86	61	818.33	105	610.26
18	956.24	62	814.45	106	604.52
19	953.60	63	810.54	107	598.73
20	950.93	64	806.59	108	592.88
21	948.24	65	802.61	109	586.98
22	945.52	66	798.59	110	581.03
23	942.78	67	794.53	111	575.03
24	940.02	68	790.44	112	568.97
25	937.23	69	786.31	113	562.86
26	934.42	70	782.14	114	556.69
27	931.58	71	777.94	115	550.47
28	928.72	72	773.70	116	544.19
29	925.83	73	769.42	117	537.86
30	922.91	74	765.10	118	531.47
31	919.97	75	760.74	119	525.02
32	917.00	76	756.34	120	518.51
33	914.00	77	751.91	121	511.94
34	910.98	78	747.44	122	505.32
35	907.93	79	742.93	123	498.64
36	904.85	80	738.38	124	491.90
37	901.75	81	733.78	125	485.10
38	898.62	82	729.14	126	478.24
39	895.46	83	724.46	127	471.31
40	892.27	84	719.74	128	464.32
41	889.05	85	714.98	129	457.27
42	885.80	86	710.18	130	450.16
43	882.53	87	705.33	131	442.98
44	879.23	88	700.44	132	435.74

<u>END OF PERIOD</u>	<u>AMORTIZED VALUE (after payment of rent for such month)</u>	<u>END OF PERIOD</u>	<u>AMORTIZED VALUE (after payment of rent for such month)</u>
133	\$428.43	157	\$232.02
134	421.06	158	222.89
135	413.62	159	213.68
136	406.12	160	204.38
137	398.55	161	195.00
138	390.91	162	185.54
139	383.20	163	175.99
140	375.42	164	166.36
141	367.57	165	156.64
142	359.65	166	146.83
143	351.66	167	136.94
144	343.60	168	126.96
145	335.47	169	116.89
146	327.27	170	106.73
147	318.99	171	96.48
148	310.64	172	86.13
149	302.21	173	75.69
150	293.71	174	65.16
151	285.13	175	54.53
152	276.47	176	43.81
153	267.74	177	32.99
154	258.93	178	22.08
155	250.04	179	11.07
156	241.07	180	0.00

THE COMMONWEALTH PLAN, INC., Lessor

By Bernard Goodman
President

KAISER SAND & GRAVEL CO., Lessee

By S. Arnold Platt
PRESIDENT