

# THE COMMONWEALTH PLAN, INC.

2655 CAMPUS DRIVE, SAN MATEO, CALIFORNIA 94403

EXECUTIVE OFFICES

RECORDATION NO. 5842 FILE 1988 A

RECORDATION NO. 5842 FILE 1988

AREA CODE 415  
573-1200

SEP 30 1988-2 23 PM

SEP 30 1988-2 23 PM

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

September 28, 1988

RECORDATION NO. 5842 FILE 1988 B

SEP 30 1988-2 23 PM

No. 8-274A087

SEP 30 1988

Date .....

Fee \$ 104.00

ICC Washington, D.C.

MOTOR OPERATING UNIT

SEP 30 2 50 PM '88

100 OFFICE OF  
THE SECRETARY

7

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, D. C. 20423

Attention: Mrs. Mildred Lee, Room 2303

Re: Railroad Car Lease Agreement, dated as of July 2, 1979, by and between The Commonwealth Plan, Inc., as Lessor and Kaiser Sand & Gravel Company, as Lessee.

Dear Mrs. Lee:

Please find enclosed for recording, pursuant to the provisions of Title 49, United States Code, Section 11303, the following documents:

1. One fully executed original plus two copies of a Rail Car Lease, dated as of May 16, 1988, by and between Kaiser Sand & Gravel Company and Railtex, Inc.
2. Three fully executed and acknowledged original copies of an Assignment, dated as of August 31, 1988, assigning the Rail Car Lease referred to in the immediately preceding paragraph from Kaiser Sand & Gravel Company to Citicorp Leasing, Inc.
3. Three fully executed and acknowledged original copies of a Bill of Sale, dated as of September 26, 1988, by and between The Commonwealth Plan, Inc. and Citicorp Leasing Inc. relating to Kaiser Unit Nos. 1800 - 1859.
4. One fully executed and notarized original plus two executed and notarized copies of a Release Letter, dated as of September 26, 1988, by The First National Bank of Boston releasing its security interest in the Railroad Car Lease Agreement, dated as of July 2, 1979, by and between The Commonwealth Plan, Inc. and Kaiser Sand & Gravel Company relating to Kaiser Unit Nos. 1800 - 1859.

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5. One fully executed and notarized original plus one executed and notarized copy of a Release Letter, dated as of September 26, 1988, by The First National Bank of Boston releasing its security interest in the Individual Leasing Record, dated as of August 28, 1979, by and between The Commonwealth Plan, Inc. and Kaiser Sand & Gravel Company relating to Kaiser Unit Nos. 1800 - 1859.
6. One fully executed and notarized original plus two executed and notarized copies of a Release Letter, dated as of September 26, 1988, by The First National Bank of Boston releasing its security interest in the Rider No. 1, dated as of August 31, 1979, amending the Railroad Car Lease Agreement, dated as of July 2, 1979, by and between The Commonwealth Plan, Inc. and Kaiser Sand & Gravel Company.
7. One fully executed and notarized original plus two executed and notarized copies of a Release Letter, dated as of September 26, 1988, by The First National Bank of Boston releasing the Mortgage, dated as of July 2, 1979, by and between The First National Bank of Boston and The Commonwealth Plan, Inc relating to Kaiser Unit Nos. 1800 - 1859.
8. One fully executed and notarized original plus two executed and notarized copies of a Release Letter, dated as of September 26, 1988, by The First National Bank of Boston releasing the Assignment, dated as of July 2, 1979, assigning the Railroad Car Lease Agreement, dated as of July 2, 1979, by and between The Commonwealth Plan, Inc., as lessor and Kaiser Sand & Gravel Company, as lessee, from The Commonwealth Plan, Inc. to The First National Bank of Boston relating to Kaiser Unit Nos. 1800 - 1859.

In connection with the recording of the above referenced documents, please note the following information:

1. Name and address of Seller/Lessor: The Commonwealth Plan, Inc., 2655 Campus Drive, Suite 200, San Mateo, California 94403.
2. Name and address of Buyer: Citicorp Leasing, Inc., 601 Midland Avenue, Rye, New York 10580.

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3. Name and address of Lessee: Kaiser Sand & Gravel Company, 3000 Busch Road, P. O. Box 580, Pleasanton, California 94566.
4. Name and address of Bank/Mortgagee: The First National Bank of Boston, 100 Federal Street, Boston, Massachusetts 02106.
5. General description of equipment covered by Documents: Sixty 100 Ton, 2,330 Cubic Foot, Open Top Hopper Cars, AAR Mechanical Designation HM; Numbered KGCX 1800 - 1859 inclusive.
6. Previous filings with the Interstate Commerce Commission covering the Equipment:

| <u>Document</u>   | <u>Recordation Date</u> | <u>Recordation Number</u> |
|---|-------------------------|---------------------------|
| Railroad Car Lease Agreement, dated as of July 2, 1979, by and between The Commonwealth Plan, Inc., as lessor and Kaiser Sand & Gravel Company, as lessee.  | 8/20/79                 | 10756                     |
| Individual Leasing Record, dated as of August 28, 1979, by and between The Commonwealth Plan, Inc., as lessor and Kaiser Sand & Gravel, as lessee.  | 9/21/79                 | 10756-A                   |
| Rider No. 1, dated as of August 31, 1979, amending the Railroad Car Lease Agreement, dated as of July 2, 1979, by and between The Commonwealth Plan, Inc., as lessor and Kaiser Sand & Gravel Company, as lessee. | 9/21/79                 | 10756-B                   |
| Mortgage, dated as of July 2, 1979, by and between The First National Bank of Boston, as mortgagee and The Commonwealth Plan, Inc., as mortgagor.   | 9/24/79                 | 10839                     |

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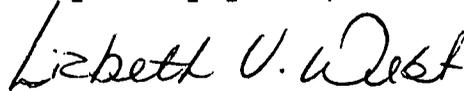
| <u>Document</u>  | <u>Recordation<br/>Date</u> | <u>Recordation<br/>Number</u> |
|--|-----------------------------|-------------------------------|
| Assignment, dated as of July 2, 1979,<br>assigning the Railroad Car Lease<br>Agreement, dated as of July 2, 1979,<br>by and between The Commonwealth Plan,<br>Inc., as lessor and Kaiser Sand &<br>Gravel Company, as lessee, from The<br>Commonwealth Plan, Inc. to The First<br>National Bank of Boston. | 9/24/79                     | 10839-A                       |

Enclosed is our check in the amount of \$104.00 to record the enclosed documents. When the recording of these documents has been completed, please endorse, with the relevant recording information, two copies of each document provided herewith and return them in the enclosed self-addressed envelope.

Please feel free to contact Mr. Curt A. Schultz or the undersigned toll free at (800) 227-6516 if you have any questions in this matter.

Thank you in advance for your assistance.

Very truly yours,



Lizbeth V. West  
Paralegal

lvw;2

Enclosures

cc: William D. Sewall  
Curt A. Schultz

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

19 /4/88

OFFICE OF THE SECRETARY

A. Rossi

Manager

The First National Bank Of Boston

Boston, Massachusetts 02106

Dear Ms. Rossi:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 9/30/88 at 2:55pm, and assigned recordation number(s). 10756-C,10756-D,10756-E, 10839-B & 10839-C

15842,15842-A &  
15842-B

Sincerely yours,

*Narta L. McEwen*

Secretary

Enclosure(s)

REGISTRATION NO. 1 5842

SEP 14 1988 4:24 PM

INTERSTATE COMMERCE COMMISSION

RAIL CAR LEASE

This is an agreement made and entered into this sixteenth day of May, 1988, by and between KAISER SAND & GRAVEL COMPANY, a Delaware corporation with offices at P. O. Box 580, Pleasanton, California 94566, hereinafter called LESSOR, and RAILTEX, INC., a Texas corporation with offices at 3478 Buskirk, Suite 1006, Pleasant Hill, California 94523, hereinafter called LESSEE:

WITNESSETH:

WHEREAS, LESSOR currently has under lease sixty (60), 100 ton, 2300 cubic foot open-top hopper cars from the COMMONWEALTH PLAN, INC. dated August 17, 1979;

WHEREAS, LESSEE desires to lease twenty (20) said cars from LESSOR under the terms hereinafter set forth;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties intending to be legally bound thereby covenant and agree as follows:

1. LEASE AGREEMENT

LESSOR agrees to furnish to LESSEE, and LESSEE agrees to rent from LESSOR, twenty (20), 100 ton, 2300 cubic foot open-top hopper cars identified on the attached Exhibit A, hereto and made a part hereof.

2. TERM AND RENTAL

This agreement shall become effective as the date first above named and shall expire in one (1) year on the fifteenth day of           May          , 1989. LESSEE agrees to pay LESSOR as full rental and compensation for said cars \$260.00 (two hundred sixty dollars) per car per month. This monthly rental would be due to LESSOR until the cars are delivered to LESSOR upon expiration of the lease term. Such rentals shall be paid to LESSOR in Pleasanton, California or such other place as LESSOR may hereafter direct in writing. Bills for rental shall be presented to LESSEE by LESSOR in advance on or about the first (1st) day of each calendar month and payment of said rentals shall be made by LESSEE within ten (10) days from date of billing. Ninety (90) days prior to the expiration of the term hereunder the parties may negotiate any extension thereof. Failure to agree to any extension or renewal will result with cancellation at the expiration of the term.

3. USE OF CARS; ADDITIONAL CHARGES BY RAILROAD

LESSEE agrees to use said cars under the following restrictions: (a) the cars will be used and operated at all times in compliance with all lawful acts, rules, regulations and orders issued by the railroads on which the cars are operated, and government agencies; (b) at the expiration or termination of the rental term LESSEE at its expense shall cause said cars to be returned to LESSOR at a point designated by LESSOR but at no cost to LESSEE greater than the charge for return to Pleasanton, California; (c) the cars shall be

returned to LESSOR in the same, or as good condition in which they were delivered to LESSEE except for ordinary wear and tear; (d) the cars will not be altered by LESSEE in any way without prior written approval of LESSOR; (e) mechanical unloading assistance devices, such as a car shaker, shall be operated only for that period of time necessary to dislodge material from the car. Operation beyond the time the material is dislodged from the car shall constitute unnecessary abuse by LESSEE to the car; (f) LESSEE shall notify LESSOR in writing within five (5) days of each change in routing, origin or destination of the car so as to permit LESSOR to monitor individual car movements. This requirement is not to be construed as limiting in any way movements of the cars other than as set forth in subparagraphs (a) and (h) hereof; (g) the cars are intended for use in carrying aggregate type products, with individual rock segments not to exceed twelve (12) inches in cross section. The use of these cars for any other purpose is not permitted without prior written approval of LESSOR; (h) the cars will be operated only within the United States of America. LESSEE agrees to use the cars, upon each railroad over which the cars shall move, in accordance with the then prevailing tariffs to which each such railroad shall be a party; and if the operation or movements of any of the cars during the term hereof shall result in any charges being made against LESSOR by any such railroad, LESSEE shall pay LESSOR for such charges within the period prescribed by and

at rates and under conditions established by said then prevailing tariffs. LESSEE agrees to indemnify LESSOR against same and shall be liable for any switching, demurrage, track storage or detention charge imposed on any of the cars during the term hereof.

4. REPAIR, MAINTENANCE AND ABATEMENT OF RENTALS

LESSEE agrees to keep the cars in good operating condition and pay all costs of maintenance which may be necessary while such cars are in LESSEE's possession. LESSOR shall make all contractual arrangements for all repairs notwithstanding who is responsible for the costs thereof. LESSOR will permit LESSEE to make repairs when requested by LESSEE so long as such repairs meet AAR Interchange Rules. LESSEE shall notify LESSOR within three (3) full business days following knowledge of any damage to any of the cars. When damaged cars have been forwarded to a shop for repair or maintenance, the excess mileage incurred by deviation from normal routing earned by such car to and from the shop shall be retained by LESSOR. When cars are in a "bad order status" for maintenance or repair, the rental charges on each car shall be suspended. Notwithstanding anything to the contrary contained herein, rental charges will be suspended immediately for repairs necessitated by damage occasioned when the car is not under control of the LESSEE or its agent; and if any repairs are required as a result of the acts or omissions of LESSEE, its consignee, shipper, agent or sublessee, the rental charge shall continue unabated during the rental period.

5. DESTROYED CARS

LESSEE agrees that if by reason of its acts or omissions or those of its consignee, shipper, agent, or sublessee, or while on a railroad that does not subscribe to, or fails to meet its responsibility under, the Interchange Rules of the AAR or on any private siding or track or any private or industrial railroad, any car is completely destroyed or in the opinion of LESSOR such car's physical condition is such that it cannot be economically repaired to be operated in railroad service, LESSEE will pay LESSOR in cash the settlement value of such car within ten (10.) days following a request by LESSOR for such payment. The term "settlement value" as used herein shall mean the valuation of such cars as provided for by Rule 107, as presently promulgated or hereafter amended, of the Interchange Rules of the AAR. LESSOR shall retain ownership of the car if it rebuilds the car. If any of the cars shall be completely destroyed, or if the physical condition of any car shall become such that such car cannot economically be repaired to be operated in railroad service as determined by LESSOR, then LESSOR at its option may cancel the lease as to such car as of the date on which such event occurred, or may substitute an equivalent car within a reasonable period of time. In the event of such substitution, the substituted car shall be held pursuant to all terms and conditions of this Agreement.

6. INDEMNITY

LESSEE will indemnify LESSOR against any loss, damage, claim,

expense (including attorney's fees and expenses of litigation) or injury imposed on, incurred by, or asserted against LESSOR arising directly or indirectly out of LESSEE's, its consignee's, agent's, shipper's, or any sublessee's use, lease, possession or operation of the cars occurring during the term of this Agreement, or by the contents of such cars however occurring, except any loss, liability, claim, damage or expense which is directly attributable to the act or omission of LESSOR, or for which a railroad or railroads have assumed full responsibility and satisfies such responsibility. All indemnities contained in this Agreement shall survive the termination hereof, however, same shall occur.

7. INSURANCE

LESSEE shall, at its own cost and expense, with respect to each car, at all times maintain and furnish LESSOR with evidence of insurance against all risks assumed by LESSEE under paragraph 6 hereof (including, without limitation, physical damage insurance and liability insurance) protecting LESSOR, in such companies, in such amounts, and with such endorsements as LESSOR shall from time to time request. LESSEE's obligation to maintain insurance with respect to each car shall commence on the delivery date of such car and shall continue until the lease term thereof terminates and, if such car is required hereunder to be returned to LESSOR, until such return. LESSEE shall cooperate and, to the extent possible, cause others to cooperate with LESSOR and all companies providing any insurance to LESSEE or LESSOR or both with respect to the cars.

8. DEFAULT

The happening of any of the following events shall be considered an "event of default": (a) nonpayment of LESSEE within ten (10) days after the same becomes due of any installment of rental; (b) failure of LESSEE to comply with, or perform, any of the other terms and conditions of this Agreement within ten (10) days after receipt of written notice from LESSOR demanding compliance therewith, or performance thereof; (c) the appointment of a receiver or trustee in bankruptcy for LESSEE or for any of its property.

9. REMEDIES

Upon the happening of any of the events of default as heretofore defined, the LESSOR or its assignee may then, or at any time thereafter, take possession of the cars and any accessions thereto, whenever same may be, and either: (a) declare the Agreement terminated, in which event all rights of the parties hereunder shall cease except only the obligation of LESSEE to pay accrued rental and other charges to the date of retaking, or; (b) relet the cars as agent of LESSEE, applying the proceeds of such reletting first to the expenses that may be incurred in the retaking and delivery of the cars to the new lessee, then to the payment of the rent and charges due under this Lease. LESSEE shall remain liable for any rents and charges remaining due after so applying the proceeds so realized, and LESSEE agrees to pay said deficit monthly as the same may accrue. LESSEE

shall bear all costs involved in LESSOR's retaking the cars, including transportation costs to Pleasanton, California.

10. REPORTS; MILEAGE

LESSOR shall collect and retain all data necessary for making mileage, per diem and "bad order status" calculations. The railroad reports will serve as prima facie evidence of the facts reported therein. LESSOR shall collect all mileage earned by the cars as and when received from the railroads according and subject to all rules of the tariffs of the railroads, but only to the extent of the aggregate rental charges payable hereunder. The mileage refund will be the current rate as governed by the applicable tariff.

11. LIENS; MARKING OF CARS; SUBLEASING

LESSEE shall keep the cars from any encumbrances of liens which may be a cloud upon or otherwise affect LESSOR's title. LESSEE shall keep all cars subject to this lease free of any markings which might be interpreted as a claim or ownership, nor shall LESSEE change the identifying numbers. LESSEE will not sublease said cars or assign any of its rights hereunder, without written consent of LESSOR.

12. TAXES

During the term of this Agreement, LESSEE shall, in addition to the rentals specified, pay all sales, use rental and excise taxes, personal property taxes, assessment and other governmental charges, whatsoever, whether payable by LESSOR or LESSEE, on or relating to the cars leased hereunder.

LESSEE at its own expense may contest the amount or validity of the imposition of the taxes and other charges described

in this paragraph. However, LESSEE shall promptly pay such imposition unless such proceeding shall operate to prevent or stay the imposition so contested. LESSOR may, at its option and expense, but shall not be required to, join in any such proceedings by counsel of its own choice. In the event LESSEE shall fail promptly to defend or contest any tax or other charge described in this paragraph, LESSOR shall have the right to defend and compromise the same and obtain payment from LESSEE of its reasonable costs and expenses (including reasonable legal fees) incurred in connection therewith, and for any judgments recovered against LESSOR or LESSEE or payments made in settlement.

13. INSPECTION OF CARS; RIGHT OF ENTRY; CAR MODIFICATIONS

Each of the cars shall be subject to LESSEE's inspection before delivery; and the acceptance thereof by LESSEE shall be conclusive evidence (a) of the fit and suitable condition of such car for the purpose of transporting any commodities then and thereafter loaded therein and (b) that it is one of the cars described herein. LESSOR shall have the right to enter the property of LESSEE or its agent, at LESSOR's own cost, and at all reasonable times for the purpose of making car inspections and repairs. LESSOR also has the right to withdraw cars from service for the purpose of making non-safety related modifications, repairs and/or painting upon five (5) days written notice to LESSEE. Rental payments will be suspended whenever a car is withdrawn from service for such purposes, unless LESSOR substitutes an equivalent car therefor.

14. DISCLAIMER OF WARRANTY

LESSOR leases this equipment, as is, in whatever condition it may be, without any agreement, warranty or representation, either expressed or implied, expressly disclaiming any warranty or representation, either expressed or implied, as to: (a) the fitness for any particular purpose of merchantability of any cars including but not limited to their value, condition, design or operation, (b) the design or condition the quality of the material, equipment or workmanship in, the equipment, or (c) any other matter whatsoever, it being agreed that all such risks, as between the LESSOR and the LESSEE are to be borne by LESSEE.

15. NOTICES

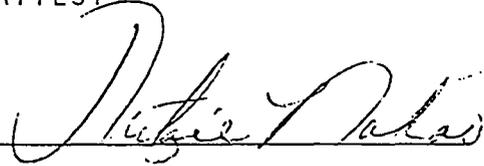
All notices provided for herein, as well as all correspondence pertaining to this Agreement, shall be considered as properly given in writing and delivered personally or sent by registered or certified mail, return receipt requested. The respective addresses for notice shall be the addresses of the parties given in writing at the execution of this Agreement. Such addresses may be changed by either party giving written notice thereof to the other.

16. GOVERNING LAW

The terms of this Agreement and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed and delivered as of the day and year first above written.

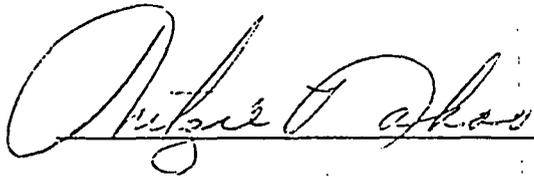
ATTEST

  
\_\_\_\_\_

KAISER SAND & GRAVEL COMPANY

  
\_\_\_\_\_  
PRESIDENT AND GENERAL MANAGER

RAILTEX, INC.

  
\_\_\_\_\_

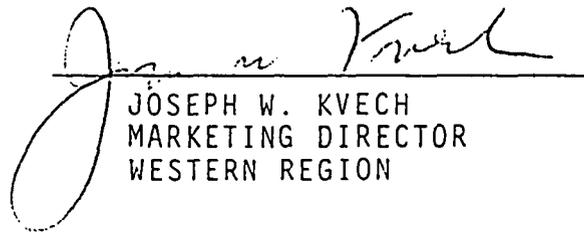
  
\_\_\_\_\_  
JOSEPH W. KVECH  
MARKETING DIRECTOR  
WESTERN REGION

EXHIBIT A

RAILCAR NUMBERS FROM JOE KVECH, RAILTEX

KGCX 1807

1810

1812

1813

1817

1818

1820

1822

1824

1827

1831

1833

1836

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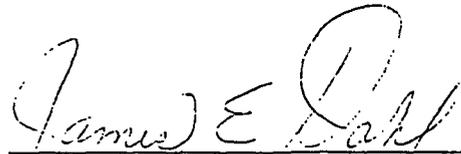
1856

**KAISER**  
SAND & GRAVEL COMPANY  
A Subsidiary of Koppers Company, Inc.

POST OFFICE BOX 580, PLEASANTON, CALIFORNIA 94566 • 415/848-8800

AMENDMENT TO RAILTEX LEASE OF 20 RAILCARS

1. Both parties agree that car rental will commence the date the cars arrive at sublessee's physical location.
2. Both parties agree that car rental will cease on the date cars arrive at the physical location designated by Kaiser Sand & Gravel Company.

  
James E. Dahl, President and  
General Manager

  
Joseph W. Kveck, Marketing  
Director, Western Region.

State of California , On this the 8th day of August 1988, before me.

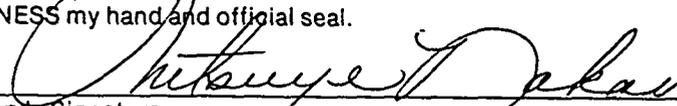
State of California } On this the 8th day of August 1988, before me,

County of Alameda } SS. Mitsuye Nakao

the undersigned Notary Public, personally appeared

Joseph W. Kveck

- personally known to me  
 proved to me on the basis of satisfactory evidence to be the person(s) who executed the within instrument as Marketing Director, RailTex, Inc or on behalf of the corporation therein named, and acknowledged to me that the corporation executed it.  
WITNESS my hand and official seal.

  
Notary's Signature