

42
National City

RECEIVED
SURFACE TRANSPORTATION
BOARD
OCT 22 9 14 AM '97

National City Leasing Corporation
Louisville Office
101 South Fifth Street
Louisville, KY 40233-6040
502 581-5229
Fax 502 581-6488

September 30, 1997

Vernon Williams
Recordations Unit
Surface Transportation Board
Department of Transportation
12th and Constitution Avenue, N.W.
Washington, DC 20423

RECORDATION NO. 20948 FILED

OCT 22 '97 9-14AM

RECEIVED
SURFACE TRANSPORTATION
BOARD
OCT 2 4 25 PM '97

Dear Mr. Williams:

Enclosed are two (2) originals of the Memorandum of Lease of Railroad Equipment, with attachments dated September 30, 1997 between the following parties:

Lessor: National City Leasing Corporation
101 So. Fifth St. 8th Floor
Louisville, KY 40202

Lessee: Koppers Industries, Inc.
436 Seventh Ave.
Pittsburgh, PA 15219-1800

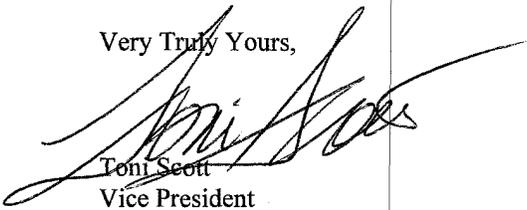
The equipment involved in this transaction is as follows:

Equipment: Forty (40) new 19,390 gallon tank cars equipped with impedance heating systems, built by ACF
Reporting Marks KIIX10000 through KIIX10039

Please file this document and attachments. The filing fee of \$22.00 is enclosed.

\$ 24.00

Very Truly Yours,



Toni Scott
Vice President

Lease #02-107-07168-01-00001

Akron Office, One Cascade Plaza, Akron, OH 44308, 216 375-8105, Fax 216 375-8436
Dayton Office, 6 North Main Street, Dayton, OH 45412, 513 226-2026, Fax 513 226-2058
Pittsburgh Office, 20 Stanwix Street, Pittsburgh, PA 15222-4802, 412 644-8270, Fax 412 261-2453
Columbus Office, 155 East Broad Street, Columbus, OH 43251-0038, 614 463-7434, Fax 614 463-7959
Cleveland Office, 1900 East Ninth Street -10 Floor, Cleveland, OH 44114-3484, 216 575-3265, Fax 216 575-2601
Indianapolis Office, 101 West Washington Street, Suite 200 East, Indianapolis, IN 46255, 317 267-3639, Fax 317 267-7965

RECORDATION NO. 20948 FILED

OCT 22 '97 9-14AM

Annex D

Memorandum Of
Lease Of Railroad Equipment

This Memorandum Of Lease Of Railroad Equipment ("*Memorandum of Lease*") made as of September 30, 1997 is intended to evidence the Lease of Railroad Equipment, dated as of May 9, 1997 (the "*Lease*") between **National City Leasing Corporation**, a Kentucky corporation ("*National City*"), and **Koppers Industries, Inc.**, a Pennsylvania corporation ("*Lessee*"), for the purpose of satisfying the requirements of recordation with the Surface Transportation Board under 49 of U.S.C. §11301. National City has the right to lease the 40 tank cars, more fully described in Exhibit 1 hereto (the "*Units*"). Lessee leased from National City the Units at the rentals and upon the terms and conditions provided in the Lease.

Each Party, pursuant to due corporate authority, has executed this Memorandum of Lease on the date indicated below its signature.

National City

Lessee

National City Leasing Corporation
(a Kentucky corporation)

Koppers Industries, Inc.
(a Pennsylvania corporation)

By: 
Title: N.C.
Date: 9/22/97

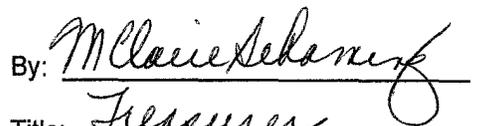
By: 
Title: Treasurer
Date: Sept. 30, 1997

Exhibit 1

To the Memorandum of Lease of Railroad Equipment dated as of May 9, 1997 between **National City Leasing Corporation** and **Koppers Industries, Inc.**

Equipment Description:

40 new 19,390 gallon tank cars equipped with impedance heating systems, built by ACF.

Reporting Mark:

KIIX

Numbers:

10000 through 10039

Lease Of Railroad Equipment

This Lease Of Railroad Equipment ("**Lease**") is made as of MAY 9, 1997 between **National City Leasing Corporation**, a Kentucky corporation (hereinafter called "**National City**"), and **Koppers Industries, Inc.**, a Pennsylvania corporation (hereinafter called "**Lessee**").

Recitals:

- A. National City hereby represents that it has the right to lease the 40 tank railcars more fully described in Annex A hereto (hereinafter called the "**Unit(s)**").
- B. National City desires to lease to Lessee and Lessee desires to lease from National City the Units.

Agreement:

In Consideration Of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by Lessee, National City hereby leases the Units to Lessee upon the following terms and conditions:

- 1. **Lease.** National City agrees to furnish and lease to Lessee, and Lessee agrees to accept and use the Units.
- 2. **Acceptance and Delivery of Units.**
 - (a) National City agrees to furnish the Units in compliance with the Federal Railroad Administration ("**FRA**") and Association of American Railroads ("**AAR**") rules of interchange in effect at the time of delivery. Lessee, at its expense, shall have the right to inspect and accept the Units subject to this Lease prior to Lessee transporting the Units from the manufacturer at ACF Industries, Inc., 2nd & Arch Streets, Milton, Pennsylvania 17847 (the "**Initial Acceptance Point**"). Lessee shall assume control, quiet enjoyment and possession of each Unit on the date such Unit is accepted by Lessee at the Initial Acceptance Point ("**Initial Acceptance Date**"). Each Units will then be moved to Rescar, Inc., Osborne Street, DuBois, Pennsylvania 15801 to be retrofitted with impedance heating systems and Lessee, at its expense shall have the right to inspect and accept the Units (the "**Final Acceptance Point**") from Rescar, Inc. (the "**Final Acceptance Date**"). Lessee shall be responsible for any transportation cost associated with moving the Units from receipt at the Initial Acceptance Point until the Units are returned to National City as provided in Section 20 hereof. Final Acceptance of the Units by Lessee on the Final Acceptance Date ("**Acceptance**") shall be evidenced by a "**Certificate of Acceptance**" in the form set forth in Annex B attached hereto, the execution of which shall constitute conclusive evidence of Acceptance of the Units therein identified.
 - (b) In the event any Unit presented for acceptance to Lessee is not in FRA and AAR interchange condition, then upon written notice of the same by Lessee to National City, National City shall exclude such Unit(s) from this Lease.
- 3. **[Intentionally left blank.]**
- 4. **Term of Lease.**
 - (a) There shall be an interim term under this Lease with respect to each Unit (the "**Interim Term**") which shall commence on the Acceptance Date for such Unit as provided in Section 2 hereof and shall continue until the day preceding the respective Effective Date.

ORIGINAL

The initial term of this Lease ("**Initial Term**") with respect to each Unit shall commence on the first day of the month following the date Lessee executes a Certificate of Acceptance for the last Unit (the "**Effective Date**"), and shall continue in full force and effect for a period of 180 months thereafter.

- (b) Upon the expiration the Initial Term ("**Initial Expiration**") if no event of default has occurred and is continuing under this Lease, Lessee shall have the option to extend the Term of this Lease (as defined hereinbelow) for any or all Units (the "**Extended Term**") as provided in the applicable Rider hereto (unless specified otherwise the Interim Term, Initial Term and Extended Term shall herein collectively be referred to as the "**Term of this Lease**").
- (c) The obligations of Lessee hereunder (including, but not limited to, the obligations of Lessee under Sections 7, 11 through 18 and 20 hereof) shall survive the expiration or sooner termination of this Lease.

5. Rentals.

- (a) Lessee shall pay to National City as rental for the Units the per unit rental amount set forth in Annex A hereto, multiplied by the number of Units leased to Lessee hereunder ("**Rent**"). Rent shall become effective, with regard to each of the Units, upon the Acceptance Date for such Unit, and shall continue in effect, with regard to each of the Units, until such Unit is returned to National City at the end of the Term of this Lease, as hereafter provided in Section 20. Payment of Rent during the Interim Term with respect to each Unit shall be made on the first day of each month in arrears, except that the first Interim Term Rent payment with respect to each Unit shall be made in advance upon delivery and shall be equal to the daily equivalent (based on a 30-day month) of the Rent payments for such Unit payable in arrears after the Effective Date. Payment of Rent during the Initial Term, or any Extended Term, shall be made on the first day of each month in arrears with the first month's Initial Term Rent payment due 30 days after the Effective Date. Payment of Rent shall be made to National City at the address specified in Section 27(a).
- (b) In the event Lessee shall be in default in the payment of any sum of money to be paid under this Lease, whether rental or otherwise, Lessee shall pay National City, as additional rental, to the extent permitted by applicable law, interest on such unpaid sum from its due date to date of payment by Lessee at a rate equal to 18% per annum or the maximum rate permitted by law, whichever is less. Any costs incurred by National City in collecting Rent or any other sum of money due under this Lease wrongfully withheld by Lessee, including, but not limited to, reasonable attorneys' fees, shall be paid by Lessee.
- (c) This Lease is a net lease and Lessee shall not be entitled to any abatement of Rent, reduction thereof or set-off against Rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of Lessee against National City under this Lease or otherwise; nor shall this Lease terminate, or the respective obligations of National City or Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any private person or entity or any government authority, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other payments payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided. To the extent permitted by applicable law,

Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any Units except in accordance with the express terms hereof. Each Rent or other payment made by Lessee hereunder shall be final and Lessee shall not seek to recover all or any part of such payment from National City for any reason whatsoever. The rentals and other sums payable by Lessee hereunder shall be paid without notice, demand, counterclaim, or defense by reason of any circumstance or occurrence whatsoever, except as otherwise provided herein.

6. Identification Marks.

- (a) Lessee shall, at its expense and as directed by National City,
 - (i) mark each Unit to bear the reporting mark and an identifying number as provided in Annex A and
 - (ii) place Automatic Equipment Identification Tags on each Unit.

Lessee will cause each Unit to be kept tagged and numbered with the identifying number as set forth in Annex A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit in letters not less than one inch in height, the words "*Ownership subject to a security agreement filed with the Interstate Commerce Commission*" or other appropriate words designated by National City, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the owner and the rights of National City under this Lease. Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. Lessee will not permit the identifying number of any Unit to be changed without written consent of National City and in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with National City by Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded and deposited.

- (b) Except as above provided, Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership.

7. Taxes.

- (a) Lessee agrees to pay, and to indemnify and hold National City harmless from, all license fees, assessments, and sales, use, property, excise and other taxes and charges (other than federal income taxes and taxes imposed by any other jurisdiction which are based on, or measured by, the net income of National City for reasons other than the ownership or leasing of the Equipment in that jurisdiction) imposed upon or with respect to
 - (i) the Units or any part thereof arising out of or in connection with the shipment of Units or the possession, ownership, use or operation thereof, or
 - (ii) this Agreement or the consummation of the transactions herein contemplated.
- (b) All payments to be made by Lessee hereunder will be free of expense to National City for collection or other charges and will be free of expense to National City with respect to the amount of any United States of America ("*U.S.*") local, state, or federal taxes (other than

the federal income tax payable by National City in consequence of the receipt of payments provided herein and other than state or city income taxes or franchise taxes measured by gross or net income based on such receipts or based on capital employed by National City, except any such tax which is in substitution for or relieves Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments, charges, fines, penalties or licenses (and any charges, fines or penalties in connection with or measured by, this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof) ("**Impositions**"), all of which Impositions Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein.

8. **Risk of Loss, Damage or Destruction.** As between Lessee and National City and any person claiming through National City, Lessee hereby assumes all risk of loss, damage, theft, taking, destruction, confiscation, requisition or commandeering, partial or complete, of or to each Unit, however caused or occasioned (provided that National City shall be responsible for any and all damage and liabilities caused by National City), such risk to be borne by Lessee with respect to each Unit from the Acceptance Date and continuing until such Unit has been returned to National City in accordance with the provisions of Section 20 hereof. Lessee agrees that, except as otherwise provided herein, no occurrence specified in the preceding sentence shall impair, in whole or in part, any obligation of Lessee under this Lease, including, without limitation, the obligation to pay Rent.
9. **Casualty Occurrence.**
- (a) If, during the Term of this Lease, any Unit shall be or become lost, stolen, destroyed or irreparably damaged from any cause whatsoever, or any Unit shall be condemned, confiscated, or seized, or the title to or use of any Unit shall be requisitioned for a period of 90 continuous days (such occurrences being hereinafter called "**Casualty Occurrence(s)**"), Lessee shall on the next succeeding rental payment date after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform National City in regard thereto. On such date Lessee shall pay to National City an amount equal to any accrued rental for such Unit to the date of such payment. Lessee shall also pay National City a settlement value payment as specified in the Casualty Schedule attached hereto as Annex C ("**Casualty Value**"). Upon the making of such Casualty Value payment by Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the Term of this Lease as to such Unit shall terminate and, except in the case of the loss, theft or complete destruction of such Unit, Lessee shall be entitled to ownership and possession of such Unit or the remains thereof. National City has the right, in its sole discretion, to replace any Unit subject to a Casualty Occurrence and any such replacement Unit will be subject to this Lease as if originally a part thereof.
- (b) Except as hereinabove in this Section 9 provided, Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after the Acceptance Date for such Unit.
10. **Report, Inspection and Record Keeping.**
- (a) On or before March 31 in each year, commencing with the calendar year 1998, Lessee will furnish to National City an accurate statement setting forth as of the preceding calendar year end
- (i) the amount, description and numbers of all Units then leased hereunder,
- (ii) the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year and

- (iii) such other information regarding the condition and state of repair of the Units as National City may reasonably request.
 - (b) National City or its agent, at its sole cost and expense, shall have the right to inspect the Units and Lessee's records with respect thereto at such reasonable times as National City may request during the Term of this Lease.
- 11. **Warranties.** National City warrants that National City has the right to lease the Units. National City hereby assigns to Lessee for the Term of this Lease the benefit to which National City is entitled of all warranties and indemnities of the manufacturer, reconditioner, repairer or maintainer of the Units. Otherwise, except for the aforesaid, National City leases the Units **AS-IS, AND LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND RESPECTING THE UNITS WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE UNITS PURSUANT TO THIS LEASE TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF WORKMANSHIP IN THE UNITS, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, ON ACCOUNT OF ANY MANUFACTURER'S DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY UNITS.**
- 12. **Compliance with Laws and Rules.** Lessee agrees, for the benefit of National City, to comply in all respects with all laws of the jurisdictions in which operations involving any Unit subject to this Lease may extend, with the interchange rules of the AAR and with all rules of any legislative, executive, administrative or judicial body exercising any power or jurisdiction over any such Unit, to the extent such laws and rules affect the operations or use of such Unit; and in the event such laws or rules require the alteration or repair of any such Unit, Lessee will conform therewith, and will maintain the same in proper condition or operation under such laws and rules; provided, however, that Lessee may, in good faith contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of National City, adversely affect the property rights, business and operations of National City hereunder.
- 13. **Maintenance; Improvements and Modifications.**
 - (a) Lessee shall at all times during the Term of this Lease, at its own cost and expense, in accordance with the AAR Interchange Rules and FRA Railroad Freight Car Safety Standards, cause each Unit to be maintained, serviced and repaired so as to keep it in as good operating condition, working order, and repair as it was when it first became subject to this Lease, ordinary wear and tear excepted. Lessee shall maintain the Units to a standard of maintenance performed on other similar equipment owned or leased by Lessee and shall not discriminate in its maintenance procedures and practices between the Units and other equipment it may own, lease or operate.
 - (b) At its sole option, Lessee may make improvements, modifications, additions or accessions to one or more Units that Lessee deems appropriate, *provided that* as to each such Unit
 - (i) its Fair Market Value is not decreased;
 - (ii) its utility or useful life is not reduced or
 - (iii) it does not become "limited use property" as defined in Rev. Proc. 76-30.

All such improvements, modifications, additions or accessions that are not readily removable without causing material damage to such Unit, together with all repairs and replacement parts, shall become part of such Unit and the same interest therein shall immediately vest in National City as the interests of National City in such Unit, *provided that* title to the impedance heating systems equipped with each tank car shall at all time be in National City.

14. Insurance.

- (a) Lessee shall, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained:
- (i) all-risk, physical loss or damage insurance with respect to each Unit in minimum amount equal to the Casualty Value (as defined in Section 9);
 - (ii) commercial general liability insurance in a minimum amount of \$12,000,000.00 per occurrence, including, but not limited to, coverages for broad contractual liability, completed products/operations and pollution coverages for accidental overturn, time element and named perils with such insurance companies as are satisfactory to National City;
 - (iii) "gap" insurance with respect to each Unit in a minimum amount equal to the Casualty Value of such Unit (as defined in Section 9); and
 - (iv) workers' compensation coverage at the statutory limit and employer's liability coverage of \$1,000,000.00.

All such coverage shall provide that with respect to National City's interests, the coverage will not be invalidated by any action or inaction of Lessee or any other person and such coverage shall insure the rights and interest of National City, except for any direct act of negligence by National City. Each policy of insurance shall include a waiver by the insurer of all claims for insurance premiums or commissions or, if such policies provide for the payment thereof, additional premiums or assessments against National City. All insurance shall be taken out in the name of Lessee and shall name National City and any assignee of National City as additional insureds and shall also list National City and any assignee of National City as loss-payees as their interests may appear on the insurance policies. Said policies shall provide that any material adverse change therein shall not be effective against National City and any assignee of National City until at least 30 days after receipt by National City of written notice thereof and that any cancellation or non-renewal thereof shall not be effective as to National City until receipt by National City of written notice of cancellation or non-renewal at least 30 days (10 days in case of lapse for nonpayment of premiums) before the effective date of such cancellation or non-renewal. If Lessee fails to place insurance, or that said insurance expires, National City has the right to purchase the insurance described above and Lessee shall pay the cost thereof. With respect to the additional insureds, Lessee's insurance policies shall be primary to any other valid and available insurance ("**Other Insurance**") effected by, or for, the additional insureds. Lessee shall require its insurer specifically to waive subrogation, claim and recovery with respect to any Other Insurance. Any and all deductibles in the described policies shall be paid by Lessee.

- (b) Each policy obtained by Lessee shall be in accordance with the terms and conditions of this Section 14, and such terms and conditions shall be set forth on the Certificate of Insurance provided to National City. Lessee shall furnish to National City concurrently with execution hereof, and within 30 days of receipt of a written request from National City, and at intervals of not more than 12 calendar months from execution hereof,

Certificates of Insurance evidencing the aforesaid insurance. Lessee shall provide National City a Certified Copy of each insurance policy upon written request.

15. **General Indemnification.** Lessee agrees to indemnify, save harmless and defend National City against any charges or claims made against National City, and against any expense, loss or liability (including but not limited to counsel fees and expenses, penalties and interest) which National City may incur in any manner (unless resulting from National City's sole negligence) by reason of entering into or the performance of this Lease or the ownership of, or which may arise in any manner out of or as a result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of, any Unit until such Unit is returned to National City in accordance with the terms of this Lease, and to indemnify and save harmless National City against any charge, claim, expense, loss or liability on the account of any accident (unless resulting from National City's sole negligence) in connection with the operation, use, condition, possession or storage of such Unit resulting in damage to property or injury or death to any person. The indemnities contained in this Section 15 shall survive payment or performance of all other obligations under this Lease or the termination of this Lease.

16. **Tax Matters.**

(a) **Tax Assumptions.** National City shall be entitled to the following Federal income tax benefits (the "**Federal Income Tax Benefits**") under the Internal Revenue Code of 1986, as amended (the "**Code**"):

- (i) Depreciation deductions on 100% of the Unit Cost taken over a seven year period (the "**MACRS Deductions**"), using the 200% declining balance switching to the straight line method of depreciation pursuant to §168(b)(1) of the Code and
- (ii) Deduction for amortization of the transaction expenses as provided in Section 26(d) on a straight-line basis over the Lease Term.

(b) **Income Tax Representations and Warranties.** Lessee hereby represents and warrants to National City that

- (i) neither Lessee nor any affiliate of Lessee
 - (A) will claim any cost recovery deductions with respect to the Units or
 - (B) will claim to be the owner of any Unit,

in either case with respect to any period during the Initial Term or any Extended Term;

- (ii) when delivered and accepted by Lessee, the Units will not require improvements, modifications, additions or accessions in order to be rendered complete for its intended use by Lessee;
- (iii) the Units qualify as "seven-year property", as applicable, within the meaning of §168 of the Code;
- (iv) the Units will not be used in a way that results in the creation of income or deductions derived from or allocable to sources outside the U.S.;
- (v) the Units will not be used in a manner that will cause them to become "tax exempt use property" within the meaning of §168(h)(2) of the Code and

- (vi) the Units will not be used in a manner that will cause them to be "used predominantly outside the United States" within the meaning of §168(g) of the Code.
- (c) **Post-Funding Date Changes in Tax Rate.** Lessee will not indemnify National City for changes in the marginal Federal statutory rate of tax promulgated or enacted on or after the commencement of the Initial Term.
- (d) **Federal Income Tax Indemnity.** Lessee will indemnify and hold National City harmless on an after-tax basis for the net amount of any additional Federal income taxes incurred by National City as a result of the loss of any of the Federal Income Tax Benefits caused directly by any Lessee act, failure to act or the inaccuracy or breach of the Income Tax Representations and Warranties set forth in Subsection 16(b) above (not including any act, or failure to take any action, required or permitted under this Lease or the execution and delivery of this Lease). Without limiting the generality of the foregoing, the this indemnity will not cover
 - (i) the application of §467 of the Code,
 - (ii) any liability of National City for any alternative minimum tax to which it may become subject from time to time, or
 - (iii) any changes in the tax laws.

National City shall be responsible for, and shall not be entitled to indemnity by Lessee hereunder to the extent arising as a direct result of the occurrence of any one or more of the following events:

- (A) the failure of National City to timely and properly claim MACRS Deductions in the tax return of National City (other than changes in the Code or applicable regulations enacted and effective on or before the commencement of the Initial Term), unless in the reasonable opinion of National City's tax counsel such claim would not be proper under the standards of ABA Formal Option 85-352; or
- (B) the failure of National City to have sufficient taxable income before application of the MACRS Deductions to offset the full amount of such MACRS Deductions; or
- (C) any event pursuant to which the Stipulated Loss Value, or any amount calculated by reference thereto, is actually paid by Lessee (other than in connection with an Event of Default); or
- (D) a sale of the Units or this Lease by National City other than pursuant to the exercise of remedies under Section 21 (to the extent not precluded by the preceding clause (C)).

Lessee shall pay any indemnity payment due National City as calculated by National City (which calculation shall be binding on Lessee, absent manifest error evident on its face) within 30 days of National City's request for payment thereof, at Lessee option, but subject to National City's prior consent, either

- (x) in a lump sum payment computed by taking the net present value of all indemnities and reverse indemnities anticipated as the result of an indemnifiable event or
- (y) by an adjustment to the Rent.

- (e) **Federal Income Tax Contests.** Lessee may require National City to contest, at Lessee's expense, any claims which the Internal Revenue Service may assert against National City and for which Lessee would be liable to make an indemnity payment to National City so long as Lessee procures an opinion of independent tax counsel, reasonably acceptable to National City, stating that there is a reasonable basis for such contest. Such contest shall be conducted in the manner and upon the terms as shall be agreed upon by National City and Lessee prior to commencement of such contest. National City shall appeal any adverse determination by any court if Lessee shall procure an opinion of independent tax counsel, reasonably acceptable to National City, to the effect that there is a more likely than not basis for success.
17. **Reports.** Lessee agrees to prepare and deliver to National City within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of National City) any and all mandatory reports of which Lessee has or reasonably should have actual knowledge, except income tax reports, to be filed by National City, with any federal, state or other regulatory authority by reason of the ownership by National City of the Units or the leasing of the Units to Lessee. National City shall notify Lessee of any such reports of which National City has actual knowledge.
18. **Financial Information.** Lessee agrees to furnish to National City
- (a) within 120 days after the close of each of its fiscal years commencing 19___, its certified consolidated balance sheet as of the end of the fiscal year and the related certified consolidated statements of income, retained earnings and changes in financial position for the fiscal year then ended, each prepared in accordance with U.S. generally accepted accounting principles;
- (b) within 45 days after the end of each 6 month period of each fiscal year, its balance sheets as of such period, all of which shall be certified by the president or chief financial officer to be, in his opinion, complete and correct and to present fairly, in accordance with generally accepted accounting principles consistently applied throughout the period involved, its financial position as of the end of such period and the results of operations for the elapsed portion of the fiscal year ended with the last day of such period, in each case on the basis presented and subject only to normal year-end auditing adjustments and
- (c) promptly from time to time, on request, such other information concerning the business, condition and affairs of Lessee as National City shall reasonably request.
19. **Liens.** Lessee will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Units, any Unit or any part thereof, National City's title thereto, or any interest therein, except
- (a) any lien resulting from an independent act of or claim against National City,
- (b) liens for taxes either not yet delinquent or being contested by Lessee in good faith by appropriate proceedings and where, in National City's (and in any assignee of National City's) opinion, there is no danger of the sale, forfeiture or loss of the Units or any part or item thereof and
- (c) materialmen's, mechanics', workmen's, repairmen's, employees', storage or other like liens arising in the ordinary course of business, which are not delinquent or are being contested by Lessee in good faith by appropriate proceedings and where, in National City's (and in any assignee of National City's) opinion, there is no danger of the sale, forfeiture or loss of the Units, or any part thereof.

Lessee, at its own expense, will promptly pay, satisfy and otherwise take such actions as may be necessary to keep the Units free and clear of, and to duly discharge or eliminate or bond in a manner satisfactory to National City (and any assignee of National City), any such lien not excepted above if the same shall arise at any time. Lessee will notify National City (and any assignee of National City) in writing promptly upon becoming aware of any tax or other lien (other than any lien excepted above) that shall attach to the Units or any Unit, and of the full particulars thereof.

20. Return of the Units Upon Expiration of Term.

- (a) As soon as practicable on or after the expiration or earlier termination of the Term of this Lease with respect to any Unit, Lessee shall, at its own cost and expense, at the request of National City, deliver possession of such Unit to National City at nearest railhead. Subject to Section 8, Lessee shall return each Unit to National City
 - (i) in as good condition, order and repair as when delivered to Lessee, including being equipped with an impedance heating system, ordinary wear and tear excepted,
 - (ii) in condition suitable for movement in the interchange system in conformity with all applicable laws and regulations including the AAR Code of Rules and FRA Railroad Freight Car Safety Standards,
 - (iii) free of Rule 95 damage and
 - (iv) free from all accumulations from commodities transported in or on it while in the service of Lessee.

Lessee shall pay reasonable storage fees and the cost of insurance for such for a period not exceeding 30 days ("**Free Storage Period**") after such expiration, and transport such Unit to any reasonable place for shipment, all as mutually agreed upon between National City and Lessee. The movement and storage of such Unit shall be at the expense and risk of Lessee if National City has given movement and storage instructions within the Free Storage Period; provided, however, that if National City instructs Lessee to store any Unit for a period beyond the Free Storage Period, such additional storage shall be at the expense and risk of National City with the exception of any loss, damage or destruction caused by negligence or willful misconduct of Lessee. During any storage period Lessee shall permit National City or any person designated by it, to inspect the same at such reasonable time or times as shall be reasonably acceptable to Lessee.

- (b) The assembling, delivery, storage and transporting of the Units as provided in this Section 20 are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, National City shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Units. If National City shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease National City shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to Lessee and Lessee shall thereupon assume, and hold National City harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice and National City shall transfer title to such Unit to Lessee free and clear of any liens and encumbrances arising by or through National City.

21. **Default.**

- (a) If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called ("***Events of Default***") shall occur;
- (i) failure to make the payment of any part of the Rent provided in Section 5 hereof within 10 days after the due date thereof;
 - (ii) failure to make other payments due hereunder within 10 days after written notice thereof by National City to Lessee;
 - (iii) Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any part thereof;
 - (iv) any representations and warranties made by Lessee in connection herewith shall have been false in any material respect at the time when made, unless the same may be cured within a reasonable time and Lessee is diligently effecting such cure, *provided that* National City's interests are not materially impaired during the period such cure is being effected;
 - (v) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of Lessee contained herein and such default shall continue for 30 days after written notice from National City to Lessee specifying the default and demanding the same to be remedied, or, in the event such failure cannot be remedied with diligent effort during such 30-day period, such longer period as may be reasonably necessary to remedy such failure, *provided* Lessee continues to use diligent efforts to remedy the default during such longer period;
 - (vi) any proceedings shall be commenced by or against Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustment of the obligations of Lessee hereunder), and all the obligations of Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed for Lessee or for the property of Lessee in connection with any such proceedings in such manner that the status of such shall be the same as expense of trustees, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or
 - (vii) Lessee shall fail to maintain insurance as required by Section 14 hereof;

then, in any such case, National City, at its option may:

- (x) proceed by appropriate court action or actions either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or
- (y) by notice in writing to Lessee terminate this Lease, whereupon all rights of Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as herein provided; and thereupon, National City may in a reasonable manner and without damage to the property of Lessee or injury to any person by National City or its agents enter upon the premises of Lessee or other premises where any of the Units may be

and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Units for any purposes whatever; but National City shall, nevertheless, have a right to recover from Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the Rent for any number of days less than a full rental period by multiplying the Rent for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from Lessee

- (A) as representing actual loss incurred by National City, damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit which represents the then present value of all Rent for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the Term of this Lease as to such Unit, such present value to be computed in each case on a basis of a 6% per annum discount, compounded annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated and
 - (B) any damages and expenses, including reasonable attorneys' fees, in addition thereto, which National City shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of Rent, including, without limitation, expenses of sale or re-leasing (including incidental transportation costs incurred by National City).
- (b) The remedies in this Lease provided in favor of National City shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. Lessee hereby waives any and all existing or future claims to any offset against the Rent due hereunder, and agrees to pay Rent regardless of any offset or claim which may be asserted by Lessee or on its behalf except Lessee shall be credited with any present value payments made pursuant to Subsection 21(a)(vii)(A).
- (c) The failure of National City to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

22. Return of Units Upon Default.

- (a) If this Lease shall terminate pursuant to Section 21 hereof, Lessee shall forthwith deliver possession of the Units to National City. The condition of the Units upon such return shall be as required pursuant to Section 20 hereof. For the purpose of delivering possession of any Unit or Units to National City as above required, Lessee shall at its own cost, expense, and risk:
 - (i) forthwith place such Units upon such storage tracks of Lessee as National City reasonably may designate or, in the absence of such designation, as Lessee may select,

- (ii) permit National City to store such Units on such tracks for a period not exceeding 6 months at the risk and expense of Lessee, and
- (iii) transport the same, at any time within such 6 month period, to any place on the lines of railroad operated by Lessee or to any connecting carrier for shipment, all as reasonably directed by National City.

The assembling, delivery, storage and transporting of the Units as provided in this Section 22 are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises National City shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Units.

- (b) Without in any way limiting the obligation of Lessee under the foregoing provisions of this Section 22, Lessee hereby irrevocably appoints National City as the agent and attorney of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of any Unit to National City, to demand and take possession of such Unit in the name and on behalf of Lessee from whosoever shall be at the time in possession of such Unit. In connection therewith Lessee will supply National City with such documents as National City may reasonably request.

23. Assignment; Possession and Use.

- (a) Conditioned upon Lessee performing all of the terms, covenants, and conditions of this Lease, National City, its successors and assigns will not disturb Lessee's peaceable and quiet possession and use of the Units during the Term of this Lease.
- (b) This Lease shall be assignable in whole or in part by National City without the consent of Lessee, but Lessee shall be under no obligation to any assignee of National City except upon written notice of such assignment from National City. All the rights of National City hereunder (including but not limited to the rights under Sections 7, 11 through 18 and 21) shall inure to the benefit of National City's assigns. Whenever the term National City is used in this Lease it shall apply and refer to each assignee of National City. In conjunction with any assignment of this Lease by National City, Lessee hereby agrees to provide any reasonable documentation requested by National City.
- (c) So long as Lessee shall not be in default under this Lease, Lessee may
 - (x) sublease any one or more of the Units or assign this Lease to an affiliate or subsidiary of Lessee or,
 - (y) with prior written consent of National City (which consent shall not be unreasonably withheld), sublease any one or more of the Units or assign this Lease to third parties;

provided, that

- (i) such sublease or assignment shall provide that the subject Units shall be operated and maintained in accordance with the terms hereof;
- (ii) Lessee shall provide National City with 10 days advance notice of any such sublease or assignment and a copy of such sublease or assignment;
- (iii) such sublease shall be subject and subordinate to the terms and provisions of this Lease and the interests of National City and

- (iv) no such sublease or assignment shall relieve Lessee of its obligations hereunder, which shall remain those of a principal and not a surety.
- (d) As security for its obligations hereunder, Lessee hereby assigns to National City, and grants a security interest in favor of National City in and to, all of Lessee's right, title, and interest in and to any and all
 - (i) rents and proceeds from the use of the Units by others, including car hire charges and interline payments made and owed by other railroad companies and rents under subleases permitted by Section 23 hereof and
 - (ii) proceeds of and recoveries from insurance, interline settlements for destruction, payments and compensation from taking or requisitioning authorities, or similar payments from other parties in respect of loss of or damage to any Unit.

If and so long as no Event of Default or event that with the passage of time or giving of notice would become an Event of Default shall have occurred hereunder, Lessee shall be entitled to collect, receive, and apply such amounts, but upon the occurrence of such an Event of Default or event, National City shall be entitled to collect and receive such amounts and apply the same to the obligations of Lessee hereunder, and to exercise all rights and remedies of a secured party with respect to such amounts.

- (e) Lessee shall execute and file and record this instrument or any evidence hereof or financing statement with respect thereto in such manner and in such public offices as shall be requested and provided by National City and shall be necessary or appropriate to perfect and protect the interest of National City under this section.
- (f) So long as Lessee shall not be in default under this Lease, Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but Lessee shall not assign or transfer (except as otherwise permitted by this Section 23) or encumber its leasehold interest under this Lease in the Units. Lessee shall not, without the prior written consent of National City, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provision of Subsection 23(g) below.
- (g) Nothing in this Section 23 shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations hereunder of Lessee) into or with which Lessee shall have become merged or consolidated or which shall have acquired the property of Lessee as an entirety or substantially as an entirety; *provided, however, that*
 - (i) such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease,
 - (ii) such assignee or transferee shall be of a character so that after giving effect to such merger, consolidation or acquisition, the ability of the assignee or transferee to perform the obligations of Lessee hereunder shall not, in the reasonable opinion of National City, be adversely affected and
 - (iii) such assignee or transferee shall execute an assumption agreement expressly assuming all of the obligations of Lessee hereunder.

- (h) Lessee agrees that during the Term of this Lease, Lessee will not assign any Unit to service involving the operation and maintenance thereof outside the U.S.
24. **Options.** National City and Lessee hereby agree that so long as no Event of Default shall have occurred and be continuing Lessee may have such options as are set forth in the applicable Riders attached hereto and by reference therein made a part hereof.
25. **Opinions of Counsel.** Upon National City's request, Lessee will deliver to National City the written opinion of counsel for Lessee, in scope and substance reasonably satisfactory to National City and its counsel, to the effect that:
- (a) Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of its jurisdiction of incorporation, with adequate corporate power to enter into this Lease;
 - (b) this Lease has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms;
 - (c) the execution and performance of this Lease will not contravene or breach or create a material default under any legal, organizational or contractual obligation binding upon Lessee;
 - (d) if this Lease has been duly filed and recorded with the Surface Transportation Board under 49 U.S.C. §11301, then no other filing or recording is necessary to protect in the United States of America and Canada the right, title and interest of National City in and to the Units.
26. **Recording.** Upon full execution of this Lease by both parties, National City will cause a Memorandum of this Lease in the form attached hereto as Annex D to be filed and recorded with the Surface Transportation Board in accordance with 49 U.S.C. §11301. Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, re-register, re-record or redeposit whenever required) any and all further instruments required by law or reasonably requested by National City, including any documents in connection with any sublease or assignment permitted by Section 23 hereof and any such sublease or assignment, for the purpose of proper protection to the satisfaction of National City of its title to the Units or for the purpose of carrying out the intention of this Lease.
27. **Miscellaneous.**
- (a) **Notices.** Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when transmitted and received via telecopy, sent by overnight air courier or deposited in the U.S. mails certified, first-class postage prepaid, addressed as follows:

If to National City:

National City Leasing Corporation
 101 South Fifth Street
 Louisville, Kentucky 40202
 FAX: (502) 581-6488
 ATTN: Vice President - Operations

If to Lessee:

Koppers Industries, Inc.
 436 Seventh Avenue
 Pittsburgh, Pennsylvania 15219-1800
 FAX: (412) 227-2159
 ATTN: M. Claire Schaming, Treasurer

or if sent by telecopy to the FAX numbers set forth above, or addressed to either party at such other address or telecopy number as such party shall hereafter furnish to the other party in writing.

- (b) **Severability.** Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (c) **Effect and Modification of Lease.** This Lease exclusively and completely states the rights of National City and Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for National City and Lessee.
- (d) **Transaction Expenses.** National City shall be responsible for any fees and expenses incurred by National City in connection with this preparation, negotiation and execution of this Lease. Lessee shall be responsible for its own fees and expenses, including the fees and expenses of Lessee's legal counsel.
- (e) **Successors and Assigns.** This Lease will bind and inure to the benefit of the respective successors and permitted assigns of the parties hereto.
- (f) **Execution.** This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.
- (g) **Law Governing.** This Lease shall be construed, and all questions concerning its performance and the rights and remedies of the parties hereunder shall be determined, in accordance with the laws of the U.S. and the Commonwealth of Pennsylvania.
- (h) **Headings.** The headings appearing at the commencement of certain sections or subsections herein are for convenience only, and the content or body of the section(s) or subsection(s) thereunder shall control. The numbering system is also included for convenience only.

MAY 9 Each Party, pursuant to due corporate authority, has caused this Lease of Railroad Equipment dated _____, 1997, to be executed by its authorized representative, and each of the undersigned hereto declare that the foregoing is true and correct and was executed on the date indicated below its signature.

Lessor

National City Leasing Corporation
(a Kentucky corporation)

By: [Signature]
Title: V.P.
Date: 5/12/97

Lessee

Koppers Industries, Inc.
(a Pennsylvania corporation)

By: [Signature]
Title: VP & CFO
Date: 5-9-97

Annex D

**Memorandum Of
Lease Of Railroad Equipment**

This Memorandum Of Lease Of Railroad Equipment ("*Memorandum of Lease*") made as of May 9, 1997, is intended to evidence the Lease of Railroad Equipment, dated as of May 9, 1997, (the "*Lease*") between **National City Leasing Corporation**, a Kentucky corporation ("*National City*"), and **Koppers Industries, Inc.**, a Pennsylvania corporation ("*Lessee*"), for the purpose of satisfying the requirements of recordation with the Surface Transportation Board under 49 of U.S.C. §11301. National City has the right to lease the 40 tank cars, more fully described in Exhibit 1 hereto (the "*Units*"). Lessee leased from National City the Units at the rentals and upon the terms and conditions provided in the Lease.

Each Party, pursuant to due corporate authority, has executed this Memorandum of Lease on the date indicated below its signature.

National City

National City Leasing Corporation
(a Kentucky corporation)

By: 
Title: VP
Date: 5/12/97

Lessee

Koppers Industries, Inc.
(a Pennsylvania corporation)

By: 
Title: VP & CFO
Date: MAY 9, 1997

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Addendum No. A
to
Lease of Railroad Equipment (the "Agreement")
dated MAY 9, 1997
By and Between
National City Leasing Corporation ("National City")
and
Koppers Industries, Inc. ("Lessee")

This Addendum is executed and delivered by National City and Lessee in regard to the Agreement.

Progress Payments and Interim Funding

Lessee has requested that National City purchase from the Supplier(s) certain Units or make progress payments to such Supplier(s) prior to delivery of such Units to Lessee and Lessee's execution and delivery to National City of Lessee's applicable Certificate of Acceptance:

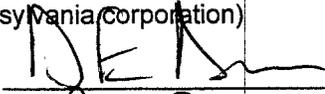
National City shall do so subject to the following understanding and agreement:

1. The Units accepted in the manner described above shall be leased by National City to Lessee under the terms and conditions (including, without limitation, the insurance and indemnity terms) of the Agreement and for a daily rental (the "**Daily Rental**") for the period between the date of payment by National City of each invoice for such Unit (the "**Payment Date**") and the date on which Rent commences for such Unit under the Agreement, based on 30-day months and the number of days elapsed between the Payment Date and said Rent commencement date. The Daily Rental shall be the Unit Cost of such Unit times the then current 30-day LIBOR rate plus 1.50%, which rate shall change to reflect the current LIBOR rate on the first day of each calendar month while this Addendum is in effect, divided by 360. Lessee shall pay the aggregate Daily Rental monthly in arrears as provided in the Note. Funds for payments authorized herein will be provided by National City and will be evidenced by a Commercial Note substantially in the form of Exhibit A attached hereto (the "**Note**"). "**LIBOR**" is defined in the Note.
2. When all of the Units identified above have been delivered to and accepted by Lessee, National City will prepare an Annex A to the Agreement and Certificate of Acceptance regarding such Unit(s). Lessee will execute such Annex A to the Agreement and Certificate of Acceptance and related Lease documentation, pay the first installment of Rent due thereunder as invoiced by National City, together with any remaining unpaid Daily Rental for such Unit(s).
3. In the event, Lessee fails to perform any conditions of the Agreement to National City's reasonable satisfaction, or National City has not received documents which are reasonably necessary to consummate the Lease, in a form reasonably satisfactory to National City, including, but not limited to, waivers, proof of insurance or financing statements, or the Supplier has not delivered the Units by August 15, 1997; then Lessee shall purchase from National City all of the Units which National City has purchased pursuant to the authority of this Rider or for which National City has issued a non-cancelable Purchase Order pursuant to the authority of this Addendum for an amount equal to the total Unit Cost, plus all Daily Rentals up to and including the day of purchase by Lessee. If the Units have not been delivered by the Supplier, National City will assign to Lessee all of National City's claims against the Supplier. If some or all of the Units have been delivered, Lessee will purchase such Units from National City within 30 days after written demand from National City. The Units will be sold by National City to Lessee AS-IS-WHERE-IS, without any warranty whatsoever, except for a warranty against claims or liens against the Units created by National City and which Lessee is not obligated to discharge or satisfy.

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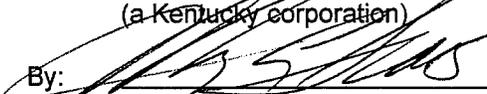
Dated: May 9, 1997.

Koppers Industries, Inc.
(a Pennsylvania corporation)

By: 

Title: VP 1/2 CFO

National City Leasing Corporation
(a Kentucky corporation)

By: 

Title: V.P.

Commercial Note

Amount	City, State	Date	FOR NATIONAL CITY USE ONLY
\$4,388,000.00	Pittsburgh, Pennsylvania	MAY 9, 1997	Obligor #
			Tax I. D. #
			Obligation #
			Office

For Value Received, **Koppers Industries, Inc. ("Borrower")**, a Pennsylvania corporation whose mailing address is 436 Seventh Avenue, Pittsburgh, Pennsylvania 14219-1800, hereby promises to pay **on demand** to the order of **National City Leasing Corporation ("National City")**, a Kentucky corporation having its principal office at 101 South Fifth Street, Louisville, Kentucky 40202, at National City's principal office (or at such other place as National City may from time to time designate by written notice) in lawful money of the United States of America, the principal sum of

Four Million Three Hundred Eighty Eight Thousand and no/100 Dollars

or such lesser amount as may appear on this Note or any allonge hereto, or as may be entered in a loan account on National City's books and records, or both, together with interest, all as provided below. To the maximum extent permitted by law, presentment, protest, and notice of dishonor are waived by all makers and all indorsers of this Note, now or hereafter existing. Any reference to any rate of interest or late charge to be applicable after any notice of demand, the commencement of any Proceeding, or the due date of any interest is made solely for the purpose of determining the rate of interest and late charges applicable under this Note, and shall not diminish or impair National City's right to enforce this Note at any time.

1. **Commitment.** This Note evidences an arrangement whereby, for Borrower's convenience, Borrower may until August 15, 1997, without having to execute and deliver a separate note each time, obtain such loans as Borrower may from time to time request and as National City in its sole discretion may from time to time be willing to make, subject in any case to the condition that the aggregate unpaid principal balance of the loans evidenced by this Note may not exceed the face amount of this Note.
2. **Disbursement.** National City is hereby irrevocably authorized to make an appropriate entry on this Note or any allonge hereto, in a loan account on National City's books and records, or both, whenever Borrower obtains a loan evidenced by this Note. Each such entry shall be prima facie evidence of the data entered, but the making of such an entry shall not be a condition to Borrower's obligation to pay. National City is hereby directed to disburse the proceeds of each such loan to equipment supplier(s) as Borrower may designate. National City shall have no duty to follow, nor any liability for, the application of any proceeds of any such loan.
3. **Interest.** The unpaid principal balance of this Note shall at all times bear interest at a fluctuating rate equal to 1.50% per annum plus LIBOR,

provided, that so long as

- (a) any principal of this Note remains unpaid after National City shall have given Borrower notice of demand for any such principal or after the commencement of any Proceeding with respect to Borrower, or
- (b) any accrued interest on this Note remains unpaid after the due date of that interest, then, and in each such case,

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all unpaid principal of this Note and all overdue interest on that principal (but not interest on overdue interest) shall bear interest at a fluctuating rate equal to 2% per annum above the rate that would otherwise be applicable;

provided further, that in no event shall any principal of or interest on this Note bear interest at any time after the giving of any such notice or the commencement of any such Proceeding, whichever shall first occur, at a lesser rate than the rate applicable thereto immediately after the giving of that notice or the commencement of that Proceeding, as the case may be.

Interest on this Note shall be payable in arrears on June 1, 1997, and on the first day of each month thereafter and on demand

4. **Definitions.** As used in this Note, except where the context clearly requires otherwise,

"Banking Day" means any day (other than any Saturday, Sunday or legal holiday) on which National City Bank's banking office is open to the public for carrying on substantially all of its banking functions;

"Debt" means, collectively, all obligations of Borrower under this Note;

"Eurodollar Banking Day" means any Banking Day on which banks in the London Interbank Market deal in United States dollar deposits and on which banking institutions are generally open for domestic and international business at the place where National City Bank's banking office is located and in New York City;

"LIBOR" means, with respect to a Unit, the rate per annum (rounded upwards, if necessary, to the next higher 1/16 of 1%) determined by National City Bank by dividing

(a) the rate per annum determined by National City Bank to equal the average rate per annum at which deposits (denominated in United States dollars) in an amount similar to the principal and with a one month maturity are offered to National City at 11:00 A.M. London time (or as soon thereafter as practicable) two Eurodollar Banking Days prior to the first day of that month by banking institutions in any Eurodollar market selected by National City Bank

by

(b) the difference of 1.00 less the Reserve Percentage;

"National City Bank" means National City Bank of Kentucky, Louisville, Kentucky, and its successors.

"Note" means this promissory note (including, without limitation each amendment, if any, hereto);

"Person" means an individual or entity of any kind, including, without limitation, any association, company, cooperative, corporation, partnership, trust, governmental body, or any other form or kind of entity;

"Prime Rate" means the fluctuating rate per annum which is publicly announced from time to time by National City Bank as being its so-called "*prime rate*" or "*base rate*" thereafter in effect, with each change in the Prime Rate automatically, immediately, and without notice changing the Prime Rate thereafter applicable hereunder, it being acknowledged that the Prime Rate is not necessarily the lowest rate of interest then available from National City Bank on fluctuating-rate loans;

"Proceeding" means any assignment for the benefit of creditors, any case in bankruptcy, any marshalling of Borrower's assets for the benefit of creditors, any moratorium on the payment of debts, or any proceeding under any law relating to conservatorship, insolvency, liquidation, receivership, trusteeship, or any similar event, condition, or other thing;

"Related Writing" means this Note and any indenture, note, guaranty, assignment, mortgage, security agreement, subordination agreement, notice, financial statement, legal opinion, certificate, or other writing of any kind pursuant to which all or any part of the Debt of Borrower is issued, which evidences or secures all or any part of the Debt of Borrower, which governs the relative rights and priorities of National City and one or more other Persons to payments made by, or the property of Borrower, which is delivered to National City pursuant to another such writing, or which is otherwise delivered to National City by or on behalf of any Person (or any employee, officer, auditor, counsel, or agent of any Person) in respect of or in connection with all or any part of the Debt of Borrower;

"Reserve Percentage" means the percentage (expressed as a decimal) which National City Bank determines to be the maximum (but in any case less than 1.00) reserve requirement (including, without limitation, any emergency, marginal, special, or supplemental reserve requirement) prescribed for so-called "*Eurocurrency liabilities*" (or any other category of liabilities that includes deposits by reference to which the interest rate applicable to LIBOR Units is determined) under Regulation D (as amended from time to time) of the Board of Governors of the Federal Reserve System or under any successor regulation which National City Bank determines to be applicable, with each change in such maximum reserve requirement automatically, immediately, and without notice changing the interest rate thereafter applicable to this Note, it being agreed that this Note shall be deemed a Eurocurrency liability subject to such reserve requirements without the benefit of any credit for proration, exceptions, or offsets;

and the foregoing definitions shall be applicable to the respective plurals of the foregoing defined terms.

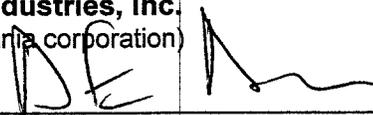
5. **Late Charges.** If any principal of or interest on this Note is not paid within 10 days after National City shall have given Borrower notice of demand for the principal of this Note or within 10 days after the commencement of any Proceeding with respect to Borrower, or if any interest on this Note is not paid within 10 days after the due date of that interest, then and in each such case, National City shall have the right to assess a late charge, payable by Borrower on demand, in an amount equal to the greater of \$20.00 or 5% of the amount not timely paid.
6. **No Setoff.** Borrower hereby waives any and all now existing or hereafter arising rights to recoup or offset any obligation of Borrower under or in connection with this Note or any Related Writing against any claim or right of Borrower against National City.
7. **Indemnity: Administration and Enforcement.** Borrower will reimburse National City, on National City's demand from time to time, for any and all fees, costs, and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred by National City in administering this Note or in protecting, enforcing, or attempting to protect or enforce its rights under this Note. If any amount (other than any principal of this Note and any interest and late charges) owing under this Note is not paid when due, then, and in each such case, Borrower shall pay, on National City's demand, interest on that amount from the due date thereof until paid in full at a fluctuating rate equal to 4% per annum plus the Prime Rate.
8. **Waivers; Remedies; Application of Payments.** National City may from time to time in its discretion grant waivers and consents in respect of this Note or any other Related Writing or assent to amendments thereof, but no such waiver, consent, or amendment shall be binding upon National City unless set forth in a writing (which writing shall be narrowly construed) signed by National City. No course of dealing in respect of, nor any omission or delay in the exercise of, any

right, power, or privilege by National City shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any further or other exercise thereof or of any other, as each such right, power, or privilege may be exercised either independently or concurrently with others and as often and in such order as National City may deem expedient. Without limiting the generality of the foregoing, neither National City's acceptance of one or more late payments or charges nor National City's acceptance of interest on overdue amounts at the respective rates applicable thereto shall constitute a waiver of any right of National City. Each right, power, or privilege specified or referred to in this Note is in addition to and not in limitation of any other rights, powers, and privileges that National City may otherwise have or acquire by operation of law, by other contract, or otherwise. National City shall be entitled to equitable remedies with respect to each breach or anticipatory repudiation of any provision of this Note, and Borrower hereby waives any defense which might be asserted to bar any such equitable remedy. National City shall have the right to apply payments in respect of the indebtedness evidenced by this Note with such allocation to the respective parts thereof and the respective due dates thereof as National City in its sole discretion may from time to time deem advisable.

9. **Other Provisions.** The provisions of this Note shall bind Borrower and Borrower's successors and assigns and benefit National City and its successors and assigns, including each subsequent holder, if any, of this Note. Except for Borrower and National City and their respective successors and assigns, there are no intended beneficiaries of this Note or any loan or arrangement evidenced by this Note. The captions to the sections and subsections of this Note are inserted for convenience only and shall be ignored in interpreting the provisions thereof. If any provision in this Note shall be or become illegal or unenforceable in any case, then that provision shall be deemed modified in that case so as to be legal and enforceable to the maximum extent permitted by law while most nearly preserving its original intent, and in any case the illegality or unenforceability of that provision shall affect neither that provision in any other case nor any other provision. All fees, interest, and premiums for any given period shall accrue on the first day thereof but not on the last day thereof (unless the last day is the first day) and in each case shall be computed on the basis of a 360-day year and the actual number of days in the period. In no event shall interest accrue at a higher rate than the maximum rate, if any, permitted by law. This Note shall be governed by the laws of the Commonwealth of Pennsylvania.
10. **Notices and Other Communications.** Each notice, demand, or other communication, whether or not received, shall be deemed to have been given to Borrower whenever National City shall have mailed a writing to that effect by certified or registered mail to Borrower at Borrower's mailing address (or any other address of which Borrower shall have given National City notice after the execution and delivery of this Note); however, no other method of giving actual notice to Borrower is hereby precluded. Each communication to be given to National City shall be in writing unless this Note expressly permits that communication to be made orally, and in any case shall be given to National City at National City's principal office (or any other address of which National City shall have given notice to Borrower after the execution and delivery this Note). National City shall be entitled to rely on each communication believed in good faith by National City to be genuine.
11. **Jurisdiction and Venue; Waiver of Jury Trial.** Any action, claim, counterclaim, crossclaim, proceeding, or suit, whether at law or in equity, whether sounding in tort, contract, or otherwise at any time arising under or in connection with this Note or any other Related Writing, the administration, enforcement, or negotiation of this Note or any other Related Writing, or the performance of any obligation in respect of this Note or any other Related Writing (each such action, claim, counterclaim, crossclaim, proceeding, or suit, an "**Action**") may be brought in any federal or state court located in Pittsburgh, Pennsylvania. Borrower hereby unconditionally submits to the jurisdiction of any such court with respect to each such Action and hereby waives any objection Borrower may now or hereafter have to the venue of any such Action brought in any such court. **BORROWER HEREBY, AND EACH HOLDER OF THIS NOTE, BY TAKING POSSESSION THEREOF, KNOWINGLY AND VOLUNTARILY WAIVES JURY TRIAL IN RESPECT OF ANY ACTION.**

Borrower:

Koppers Industries, Inc.
(a Pennsylvania corporation)

By: 

Printed Name: DONALD E. DAVIS

Title: VP & CFO

[Assignment of Note follows.]

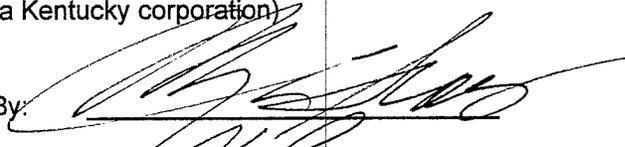
Assignment of Note

For Value Received, National City Leasing Corporation hereby sells, assigns, transfers and sets over unto National City Bank of Kentucky, the Note above set forth, together with all sums of money due and to become due thereon, and further endorses the Note as follows:

**Pay to the order of National City Bank of Kentucky
without recourse or warranty of any kind in law or in
fact.**

National City Leasing Corporation

(a Kentucky corporation)

By: 

Title: _____

Date: 8/12/97

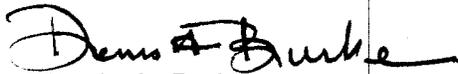
August 27, 1997

Ms. M. Claire Schaming
Treasurer
Koppers Industries, Inc.
K-1750 Koppers Building
Pittsburgh, PA 15219-1800

RE: Addendum No. A and the concomitant Note to Lease of Railroad Equipment
between National City Leasing Corporation and Koppers Industries, Inc. dated,
May 9, 1997.

This letter shall serve to amend the date in the fifth line of paragraph no. 3 in Addendum
No. A and the date in the second line of paragraph no. 1 in the Note, from August 15,
1997 to September 30, 1997.

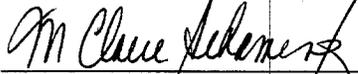
Very truly yours,



Denis A. Burke
Vice President

Accepted and Acknowledged

KOPPERS INDUSTRIES, INC.

By: 

Title: Treasurer

Date: August 27, 1997

cc: David G. Hammer
Toni Scott

Annex A

To the Lease of Railroad Equipment dated as of May 9, 1997 between **National City Leasing Corporation** and **Koppers Industries, Inc.**

Equipment Description:

40 new 19,390 gallon tank cars equipped with impedance heating systems, built by ACF. The cost for each tank car is ~~\$107,266.06~~ (the "Unit Cost")

Rent per Unit: ~~\$107,019.61~~ *MS*

\$818.83 per month, which is .765121% of the Unit Cost.

Reporting Mark: KPIX

Numbers: 10000 through 10039

Annex B

Certificate Of Acceptance

The undersigned, a duly authorized representative of **Koppers Industries, Inc. ("Lessee")**, does hereby certify that he has caused to be inspected and, on the date set out below, has accepted on behalf of Lessee the following described Units of equipment, which Units are in good order, condition and repair and conform in all respects to the terms, provisions, requirements and standards of the certain Lease of Railroad Equipment dated as of May 9, 1997 between **National City Leasing Corporation** and Lessee.

Equipment Description:

Forty (40) new 19,390 gallon tank cars equipped with impedance heating systems, built by ACF.

Reporting Marks:

KIIX 10000
through KIIX 10039

Delivery Date:

September 30, 1997

**Authorized Representative of
Koppers Industries, Inc.:**

By: McClave J. Klemenz
Title: Treasurer
Date: September 30, 1997

Annex C

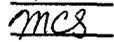
To the Lease of Railroad Equipment dated as of May 9, 1997 between National City Leasing Corporation and Koppers Industries, Inc.

Casualty Schedule

<u>Lease Term Period (Months)</u>	<u>Per Unit Casualty Value</u>
0	107,019.61
1	106,896.55
2	106,771.05
3	106,636.41
4	106,491.10
5	106,343.26
6	106,192.88
7	106,035.91
8	105,870.88
9	105,699.18
10	105,519.37
11	105,336.88
12	105,147.62
13	104,950.21
14	104,750.03
15	104,543.00
16	104,327.74
17	104,109.65
18	103,888.72
19	103,662.99
20	103,431.15
21	103,194.46
22	102,951.63
23	102,705.85
24	102,455.14
25	102,198.24
26	101,938.33
27	101,673.40
28	101,402.25
29	101,128.03
30	100,850.72
31	100,569.86
32	100,284.27
33	99,995.09
34	99,701.16
35	99,404.06

Initial

National City: 

Koppers: 

Annex C

Casualty Schedule

36	99,103.29
37	98,797.74
38	98,488.97
39	98,176.48
40	97,859.15
41	97,538.56
42	97,214.68
43	96,888.11
44	96,557.77
45	96,224.71
46	95,887.86
47	95,547.66
48	95,204.68
49	94,857.88
50	94,507.69
51	94,154.66
52	93,797.78
53	93,437.45
54	93,073.67
55	92,706.99
56	92,336.41
57	91,962.88
58	91,585.44
59	91,204.47
60	90,820.50
61	90,432.59
62	90,041.09
63	89,646.54
64	89,248.00
65	88,845.84
66	88,440.04
67	88,031.11
68	87,618.15
69	87,202.02
70	86,781.83
71	86,357.93
72	85,930.80
73	85,499.58
74	85,064.59
75	84,626.31
76	84,183.91

Initial

National City: *MCS*

Koppers: *MCS*

Annex C

Casualty Schedule

77	83,737.70
78	83,287.65
79	82,835.62
80	82,380.81
81	81,923.99
82	81,464.38
83	81,000.88
84	80,535.32
85	80,066.93
86	79,594.62
87	79,120.21
88	78,642.94
89	78,161.71
90	77,676.50
91	77,190.50
92	76,703.01
93	76,214.71
94	75,724.90
95	75,231.07
96	74,736.42
97	74,240.23
98	73,739.99
99	73,238.89
100	72,736.24
101	72,229.52
102	71,718.70
103	71,206.96
104	70,693.64
105	70,179.37
106	69,663.51
107	69,143.53
108	68,622.56
109	68,099.99
110	67,573.25
111	67,045.50
112	66,516.12
113	65,982.55
114	64,444.77
115	64,905.92
116	64,365.40
117	63,823.79
118	63,280.50
119	62,732.96

Initial 
National City: 
Koppers: MCS

Annex C

Casualty Schedule

120	62,184.30
121	61,633.94
122	61,079.29
123	60,523.49
124	59,965.95
125	59,404.11
126	58,837.94
127	58,270.54
128	57,701.38
129	57,130.98
130	56,558.80
131	55,982.25
132	55,404.42
133	54,827.79 ^H
134	54,240.75
135	53,655.40
136	53,068.22
137	52,476.60
138	51,880.53
139	51,283.07
140	50,683.75
141	50,083.03
142	49,480.43
143	48,873.33
144	48,264.78
145	47,654.34
146	47,039.35
147	46,422.88
148	45,804.49
149	45,181.52
150	44,553.96
151	43,924.84
152	43,293.76
153	42,661.11
154	42,026.47
155	41,387.20
156	40,746.31
157	40,103.41
158	39,455.84
159	38,806.60
160	38,155.33

Initial
National City: 
Koppers: Mes

Annex C

Casualty Schedule

161	37,499.34
162	36,838.63
163	36,176.17
164	35,511.65
165	34,845.37
166	34,177.00
167	33,503.85
168	32,828.89
169	32,151.82
170	31,469.92
171	30,786.18
172	30,100.29
173	29,409.54
174	28,713.91
175	28,022.78
176	27,335.92
177	26,653.61
178	25,975.61
179	25,292.77
180	24,614.51

Termination values are due in addition to any advance or arrears rent due on the same date.

Initial 
National City: 
Koppers:

Rider I
to
Lease Of Railroad Equipment (the "Agreement")
dated May 9, 1997
By and Between
National City Leasing Corporation ("National City")
and
Koppers Industries, Inc. ("Lessee")

This Rider is executed and delivered by National City and Lessee in regard to the Agreement.

Purchase Option.

Provided no event of default has occurred and is continuing under the Agreement, Lessee shall have the option pursuant to Section 24 of the Agreement to purchase any or all of the Units for the lesser of

- (i) a price equal to the then appraised Fair Market Sales Value of the Unit, as determined (at Lessee's expense) by an independent appraiser selected by National City; or
- (ii) 24% of the Unit Cost.

In order to exercise its option Lessee must give National City written notice at least 180 days prior to the expiration of the lease term with respect thereto, and remit the purchase price in cash to National City or its assigns on or before said expiration date. After receipt of the purchase price in accordance herewith, National City will transfer to Lessee all of its right, title and interest in the Unit purchased **as-is, where-is**, without recourse, representation or warranty of any kind, express or implied, except as to title and the absence of liens or encumbrances arising by, through or under National City. "**Fair Market Sales Value**" for the purpose hereof shall be determined on the basis of and be equal in amount to the value that would be obtained in a transaction between an informed and willing buyer and an informed and willing seller, and the cost of moving the Unit from the location of current use shall not be a deduction from such value. In the event National City and Lessee cannot agree as to the Fair Market Sales Value, within 15 days after the date of Lessee's notice to National City an appraiser of recognized standing shall be selected by mutual agreement of National City and Lessee. The appraiser shall reach a decision within 15 days of appoint, which decision shall be binding on National City and Lessee. If the appraiser cannot reach a decision within the 15-day period or if National City and Lessee cannot agree on an appraiser within the 15-day period set forth above, National City and Lessee shall each select an appraiser of recognized standing who together shall select a third appraiser. The appraisers shall have 15 days to reach their decision and the two appraisals which are closest together in dollar amount shall be averaged to determine the Fair Market Sales Value of the Unit(s), which decision shall be binding upon the parties. The appraisal costs shall be borne equally by National City and Lessee.

Dated: September 30, 1997.

Koppers Industries, Inc.
(a Pennsylvania corporation)

By: McClave

Title: Treasurer

National City Leasing Corporation
(a Kentucky corporation)

By: [Signature]

Title: V.P.

Rider II
to
Lease Of Railroad Equipment (the "Agreement")
dated May 9, 1997
By and Between
National City Leasing Corporation ("National City")
and
Koppers Industries, Inc., ("Lessee")

This Rider is executed and delivered by National City and Lessee in regard to the Agreement.

Renewal Option.

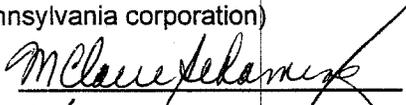
Provided no event of default has occurred and is continuing under the Agreement, pursuant to Section 24 of the Agreement Lessee may with respect to any of all of the Units extend the Term with respect thereto for additional periods as follows:

- (a) successive one year periods at the then Fair Market Renewal Rent or
- (b) an Extended Term commencing at the expiration of the Initial Term with Rent for each Unit during the Extended Term to be equal to 50% of the average actual Rent for each Unit, **provided that** an appraisal shall be obtained, at Lessee's expense, confirming that
 - (i) at the end of the Extended Term, the residual value of each of the Units subject to the Extended Term will equal at least 20% of the original Unit Cost and
 - (ii) the Extended Term will not extend the full term of the Agreement beyond 80% of the useful life of the Units subject to the Extended Term, as reappraised pursuant to such appraisal.

Lessee must give National City written notice of its election of this option at least 180 days prior to the expiration of the lease term with respect thereto. "**Fair Market Renewal Rent**" for the purpose hereof shall be determined on the basis of and be equal in amount to the rental that would be obtained in a transaction between an informed and willing lessee and an informed and willing lessor. In the event National City and Lessee cannot agree as to the Fair Market Renewal Rent, residual value and/or estimated useful life, within 15 days after the date of Lessee's notice to National City an appraiser of recognized standing shall be selected by mutual agreement of National City and Lessee. The appraiser shall reach a decision within 15 days of appoint, which decision shall be binding on National City and Lessee. If the appraiser cannot reach a decision within the 15-day period or if National City and Lessee cannot agree on an appraiser within the 15-day period set forth above, National City and Lessee shall each select an appraiser of recognized standing who together shall select a third appraiser. The appraisers shall have 15 days to reach their decision and the two appraisals which are closest together in dollar amount or estimated useful life, as the case may be, shall be averaged to determine the Fair Market Renewal Rent, residual value or estimated useful life, as the case may be, of the Unit(s), which decision shall be binding upon the parties. The appraisal costs shall be borne equally by National City and Lessee.

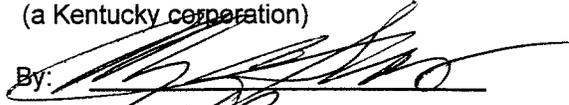
Dated: September 30, 1997.

Koppers Industries, Inc.
(a Pennsylvania corporation)

By: 

Title: Treasurer

National City Leasing Corporation
(a Kentucky corporation)

By: 

Title: VP

Rider III
to
Lease Of Railroad Equipment (the "Agreement")
dated May 9, 1997
By and Between
National City Leasing Corporation ("National City")
and
Koppers Industries, Inc. ("Lessee")

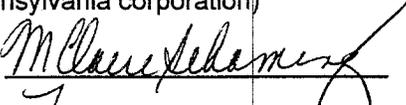
This Rider is executed and delivered by National City and Lessee in regard to the Agreement.

Early Buy-Out Option.

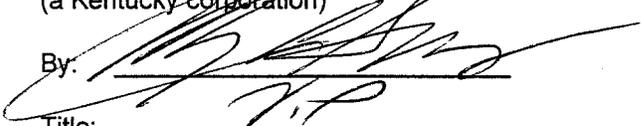
Provided no event of default has occurred and is continuing under the Agreement, pursuant to Section 20 of the Agreement, on or after the 5th anniversary of the Effective Date, Lessee may declare any or all Units as surplus or uneconomic to Lessee's needs. Lessee must give National City written notice of its election of this option at least six months prior to such rental payment date that Lessee wishes to exercise such election. Lessee shall sell said Units, as agent for National City, in a commercially reasonable manner, on or before the day set forth in Lessee's election notice to National City. In connection therewith, Lessee shall pay to National City, on the aforementioned day, an amount equal to the proceeds from the sale of such Unit. In the event Lessee either does not sell such Unit or sells such Unit for a sale price which is less than the then Termination Value for such Unit as set forth in Annex C, Lessee shall pay National City the deficiency, if any, between the sale price and said Termination Value, or if the Unit is unsold, it shall be returned to National City as provided in Section 20 of the Agreement and Lessee shall pay National City the full Termination Value for such Unit. Provided all payments, including, but not limited to rental payments, have been made pursuant to the Agreement up to and including the date of the termination hereunder and after receipt of the purchase price in accordance herewith, National City will transfer to Lessee or its assign all of National City's right, title and interest in the Unit(s) purchased **as-is, where-is**, without recourse, representation or warranty of any kind, express or implied, except as to title and the absence of liens or encumbrances arising by, through or under National City.

Dated: Sept 30, 1997.

Koppers Industries, Inc.
(a Pennsylvania corporation)

By: 
Title: Treasurer

National City Leasing Corporation
(a Kentucky corporation)

By: 
Title: _____