

**MINING LEASE BETWEEN  
WASHINGTON MOTORSPORTS LTD.  
AND CPM DEVELOPMENT CORPORATION**

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# MINING LEASE AND GRANT OF EASEMENT

This lease and easement is made January, 1994, between WASHINGTON MOTORSPORTS LTD., a Washington Limited Partnership, whose address is 101 Hayford Road, Spokane, Washington, 99204, ("Lessor") and CPM DEVELOPMENT CORPORATION, a Washington corporation, whose address is Post Office Box 3366, Spokane, Washington, 99220 ("Lessee").

## RECITALS

A. Lessor is the owner of certain property located in Spokane County, Washington, and more particularly described as follows:

Portion of the Southwest Quarter of Section 13, Township 25 North, Range 41 E.W.M., in Spokane County, Washington, more particularly described as follows:

Commencing at a point 70 feet North of the Southwest Section corner, which shall be the Point of Beginning; thence East 1,584 feet to a point; thence North 1,030 feet to a point; thence West 1,584 feet to the Section line; thence South 1,030 feet to the Point of Beginning.

(hereinafter referred to as the "Leased Premises").

B. Lessee desires to mine and remove from the Leased Premises such sand, gravel, rock, and other materials, all of which are herein referred to as "Materials," as it shall desire. Lessor desires to allow Lessee to mine and remove such Material from the Leased Premises.

C. In addition, Lessor owns the property described below across which Lessor wishes to grant Lessee an Easement for ingress and egress from the Leased Premises to Hayford Road. The property is:

Section 13, Township 25 North, range 41 E.W.M. in Spokane County, Washington, except the South 70 feet of the West half of Section 13.

For purposes of this Easement, such property will hereinafter be referred to as the "Burdened Property".

NOW, THEREFORE, Lessor and Lessee mutually agree as follows:

1. Leasing and Grant of Easement.

1.1 Leasing. Lessor, in consideration of the minimum royalties provided herein, and subject to the terms, conditions, and provisions contained herein, leases to Lessee, the Leased Premises, as described above, for the purpose of quarrying, mining, removing, and marketing therefrom all sand, gravel, rock, and other materials, all of which are herein referred to as "Materials," and also for the purpose of setting up and operating, in Lessee's discretion, such processing equipment as may be desirable, including, without limitation, rock crushing and washing equipment, portable asphalt plant, and portable concrete batch plant. Lessee's rights with respect to the occupancy and operation of the Leased Premises shall be exclusive of use by any other party, except for Lessor's racing operation as described in Paragraph 4 below.

1.2 Grant of Easement. Lessor hereby grants to Lessee for a term equal to the term of this lease plus any extensions thereof, a nonexclusive easement for access, ingress, and egress between the Leased Premises and Hayford Road, over and across that established roadway lying within the Burdened Property. Lessor and its successors agree that they shall not construct any buildings or other improvements on the Burdened Property which will have the effect of denying Lessee or its successors the practical benefit of the access rights contemplated by this Agreement. The above described Easement shall run with the land and shall be binding and enure to the benefit of the successors and assigns of Lessor and Lessee with respect to the Leased Premises and the Burdened Property respectively.

2. Term of Lease; Option to Extend. The initial term of this Lease shall be for seven (7) years, commencing January 1, 1994, and expiring December 31, 2000, unless sooner terminated according to the provisions herein.

Additionally, Lessee is hereby given the exclusive option to extend the term of this Lease on all provisions contained herein, for two (2) additional five (5) year periods, following expiration of the original term, by giving notice of exercise of each option to Lessor at least three (3) months before expiration of the original term and each successive option period.

3. Royalties.

3.1 Minimum Royalty. In consideration for Lessee's use of the Leased Premises, Lessee shall pay to Lessor a minimum annual royalty of Fifteen Thousand Dollars (\$15,000.00), payable in advance by the tenth day of each year during the term hereof.

3.2 Royalty Rate, Including Quantity Discount. Said minimum annual royalty shall be applied against the following general royalty payments to be made by Lessee. Such payments shall apply to all Materials mined and removed from the Leased Premises during the term (or immediately following expiration of the term, in the case of stockpiled Materials), whether such removal is pursuant to sale to a third party or otherwise. The rates are:

- Fifty Cents (50¢) per ton for the first 20,000 tons per year mined and removed from the Leased Premises; and
- Forty Cents (40¢) per ton for all Materials mined and removed each year from the Leased Premises in excess of 20,000 tons.

3.3 Computations and Accounting. Royalties shall be calculated based on sales during each calendar month, and Lessee shall provide a full accounting of all Materials removed from the Leased Premises during each calendar quarter, which report shall be submitted by the fifteenth (15th) day of the following calendar quarter, together with any additional royalties determined to be due. However, Lessee's unused credits for minimum royalty payments shall accrue and shall be carried over from year-to-year.

On or before February 15 following each calendar year, and within fifteen (15) days following the expiration of the lease term, Lessee shall submit an aggregate accounting covering the entire preceding year (or partial year, as the case may be). The annual and final accounting of each calendar year shall consolidate all accounts for the period to which it pertains, with any shortage of royalties being paid in cash immediately.

4. **Operation of Leased Premises.** Lessee shall have the right to occupy and operate the Leased Premises for the purposes described in Paragraph 1 above, subject to the following:

4.1 **Clearing.** Lessee may clear such portions of the Leased Premises as may be reasonably necessary to permit Lessee's contemplated operation, including the mining operation and the location of stockpile areas, temporary improvements, crushing equipment, and one (1) or more batch plants.

4.2 **Roads.** In order to obtain access to the Leased Premises and to carry on its operation hereunder, Lessee shall have the right to make use of all roadways presently leading to and existing on the Leased Premises and shall have the further right to build such additional roads as may be necessary for the production and removal of Materials hereunder in such a manner as will not unreasonably interfere with Lessor's mining operation.

4.3 **Reclamation.** Lessee agrees to acquire, manage, and comply with reclamation requirements set forth on the applicable mining permit and as may otherwise be imposed by any state, federal, or local authority having jurisdiction.

5. **Payment of Taxes and Insurance.**

5.1 **Taxes.** Lessor agrees to pay all real estate taxes levied against the Leased Premises before the same become delinquent.

5.2 **Liability and Property Damage Insurance.** Lessee agrees to carry public liability and property damage insurance with a combined single limit of liability not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence, insuring against all liability of Lessee and its authorized representatives arising out of and in connection with Lessee's use or occupancy of the Leased Premises.

6. **Removal of Improvements and Equipment.** Upon the termination of this Lease, Lessee shall have the right to remove all improvements and equipment placed on the Leased Premises by Lessee. In addition, Lessee may remove any Material which has been mined and stockpiled but not removed as of the date of termination. The removal of such improvements, equipment, and Material mined and stockpiled shall take place within a period of ninety (90) days following the termination of this Lease.

7. **Indemnification of Lessor.** Lessee, during the terms of the Lease, shall indemnify Lessor against all claims and demands, whether for injuries to persons, loss of life, or damage to property occurring within the Leased Premises and arising out of the use and occupancy of the Leased Premises by Lessee, excepting, however, such claims and demands whether for injuries to persons, loss of life, or damage to property caused by acts of omissions of Lessor or its agents, employees, or persons acting on behalf of the Lessor.

8. **Warranty of Title.** Lessor represents and warrants that Lessor has good and marketable title to the Leased Premises, including the unencumbered right to remove the Materials from the Leased Premises according to the terms hereof.

9. **Lessor's Cooperation.** Lessor shall cooperate with Lessee in obtaining all necessary zoning changes, zoning permits, mining licenses, and permits from city, state, or federal governmental units or agencies as necessary to permit mining operations of the Leased Premises by Lessee for the term and according to the provision of this Lease.

10. **Condemnation.** In the event any part of the Leased Premises is taken by public authority, then the Lessor may cancel this Lease upon sixty (60) days written notice to the Lessee, and all damages shall belong to the Lessor; provided however, that Lessee reserves unto itself the right to prosecute its claim for an award upon its leasehold interest for such condemnation or taking without impairing any rights of the Lessor.

11. **Memorandum of Lease.** A memorandum of this Lease shall be executed and acknowledged by both parties and filed with the County Recorder for Spokane County, Washington.

12. **Assignment.** Lessee shall have the right to assign its rights under this Lease, or to sublet portions of the Leased Premises to a person or persons in the mining business, subject only to Lessor's approval, which shall not be unreasonably withheld.

13. **Termination.** Recognizing the particular purpose for which Lessee is leasing the Leased Premises, Lessor agrees that this Lease may be terminated by Lessee, in its discretion, upon the occurrence of the following:

13.1 **Mining Permit.** Lessee's inability obtain an acceptable mining permit (or the termination and inability to renew or extend an acceptable permit),

allowing the mining operation on the entirety of the Leased Premises as contemplated by Lessee.

13.2 Unsuitability of Materials. The Lessee's determination that the Materials have become unsuitable for Lessee's intended purpose. Without limiting the generality of the foregoing, the Materials shall be deemed unsuitable if and as they fail to meet the highway specifications observed from time to time by the Washington Department of Transportation;

Termination under this paragraph shall become effective thirty (30) days following written notice from Lessee to Lessor setting forth the basis for termination and the election of Lessee to terminate this Lease.

14. Compliance with Laws. Lessee shall comply with all applicable Federal, State, and local laws, codes, and regulations, including dust control regulations in regard to its operation on the Leased Premises.

15. Complete Agreement. This constitutes the entire agreement between the parties. Should any action be commenced to enforce the terms of this Agreement, said action shall be brought in Spokane County, Washington, and the prevailing party shall be entitled to attorney's fees and costs.

16. Legal Action. If legal action is required or deemed necessary to enforce or interpret any of the provisions of this Lease, the prevailing party shall be entitled to recover its costs of suit, including a reasonable attorney's fees incurred in connection therewith.

IN WITNESS WHEREOF, the parties have executed this Lease, effective as of the date first above written.

WASHINGTON MOTORSPORTS LTD.,  
A Washington Limited Partnership

By SPOKANE RACEWAY PARK, INC.,  
General Partner

By:

  
Orville Moe

Its: President

