

THIS INSTRUMENT PREPARED BY:
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Inst. # 2001-14857

04/18/2001-14857
09:14 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
007 HB 29.00

NON-DISTURBANCE AND ACKNOWLEDGMENT AGREEMENT

THIS NON-DISTURBANCE AND ACKNOWLEDGMENT AGREEMENT ("Agreement") is made as of March 31, 2001 by and among READY MIX USA, INC., an Alabama Corporation ("Lessee"); ALLOY CAST PRODUCTS, INC., an Alabama Corporation ("Lessor"); and AMSOUTH BANK ("Lender").

RECITALS

A. Lender has heretofore made a loan or loans to Lessor, which loan or loans are secured by Mortgages, dated as of December 30, 1996 and March 1, 1999, and recorded as follows: Instrument Number 1997-00031 and Instrument Number 1999-40423 in the Probate Office of Shelby County, Alabama ("Mortgages"), which Mortgages encumber certain property described on "Exhibit A" hereto (the "Property").

B. Subsequent to the execution and delivery hereof, Lessee and Lessor intend to enter into a lease ("Lease") pursuant to which Lessee will lease certain premises (the "Leased Premises") more particularly described in the Lease and on Exhibit "B", which Leased Premises constitute a portion of the Property.

C. Also subsequent to the execution and delivery hereof, Lessee intends to acquire certain assets currently operated or located on the Leased Premises ("Assets") including, without limitation, ready-mix concrete batch plants, silos, machinery, equipment and inventory.

D. As a condition to Lessee's execution and delivery of the Lease and the acquisition of the Assets, Lessee requires that this Agreement be fully executed and delivered by each of the parties hereto. Accordingly, the parties hereto now desire to set forth their agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and conditions set forth hereinbelow, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. So long as Lessee is not in default (beyond any period given Lessee in the Lease to cure such default) in the payment of rent or additional charges or in the performance of any of the other material terms, covenants or conditions of the Lease on Lessee's part to be performed,

Lessee shall not, during the term of the Lease, or any extension or renewal thereof, be disturbed by Lender in its possession of the Leased Premises and/or access to the Leased Premises as provided in the Lease, or in the enjoyment of its rights under the Lease.

2. In the event that it becomes necessary to foreclose either of the Mortgages, Lender will not terminate the Lease or join Lessee in summary or foreclosure proceedings so long as Lessee is not in default under any of the terms, covenants or conditions of said Lease.

3. Notwithstanding any contrary provision contained in either of the Mortgages, Lender acknowledges that the Assets and any assets, property, equipment, fixtures or improvements placed upon the Leased Premises by Lessee ("Lessee Assets") are not subject to either of the Mortgages and that all of such Assets and Lessee Assets are free and clear of the Mortgages and any liens, claims, or encumbrances created thereby or existing thereunder.

4. This Agreement shall inure to the benefit of and shall be binding upon Lessee, Lessor and Lender, and their respective successors and assigns. This Agreement may not be altered, modified or amended except in writing signed by all of the parties hereto. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

5. This Agreement shall be governed by and construed according to the laws of the State of Alabama.

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IN WITNESS WHEREOF, this Agreement dated on the date above first set forth.

"Lessee"

READY MIX USA, INC.

By: Marc Bryant Tyson
Its: PPCS

STATE OF Alabama §

TUSCALOOSA COUNTY §

I, Kelley Bridges, the undersigned authority, a Notary Public in and for said State, hereby certify that Marc Bryant Tyson, whose name as President, of READY MIX USA, INC., a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and forgoing instrument, he, as such officer and with full authority executed the instrument voluntarily for and as the said corporation on the day the same bears date.

Given my hand and official seal this the 30 day of March, 2001.

Kelley Bridges
Notary Public
My Commission Expires: 12/11/04

"Lessor"

ALLOY CAST PRODUCTS, INC.

By: Jim FosterIts: PRESIDENT

STATE OF ALABAMA)

_____) COUNTY)

I, the undersigned authority, a Notary Public in and for the State of Alabama at Large, do hereby certify that Jim Foster, whose name as President of ALLOY CAST PRODUCTS, INC., an Alabama Business Corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of the said corporation.

GIVEN under my hand and official seal of office on this the 12 day of April, 2001.

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Apr. 2, 2003
BONDED THRU NOTARY PUBLIC UNDERWRITERS

Polly N. Fitzgerald
Notary Public in and for the
State of Alabama at Large

"Lender"

AmSouth Bank

By: Betty A. Sloan
Its: A.P. (Betty A. Sloan)

STATE OF Alabama §
Jefferson COUNTY §

I, Catherine A. Brazier the undersigned authority, a Notary Public in and for said State, hereby certify that Betty A. Sloan, whose name as Asst. Vice President of AMSOUTH BANK, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and forgoing instrument, he, as such officer and with full authority executed the instrument voluntarily for and as the said AMSOUTH BANK on the day the same bears date.

Given my hand and official seal this the 30th day of March, 2001.

Catherine A. Brazier
Notary Public

My Commission Expires: 1/6/2005

EXHIBIT "A"

A tract of land located in the west half of the southeast quarter of Section 23, Township 21 South, Range 1 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the northwest corner of the southwest quarter of the southeast quarter of Section 23, Township 21 South, Range 1 West, thence run south $38^{\circ} 49' 45''$ East along the old George Vasser lot a distance of 591.20 feet to the South margin of a gravel road and the point of beginning, thence continue in the same direction a distance of 22.59 feet to a point on the Northwest right of way of the Southern Railroad; thence turn an angle of $85^{\circ} 06'$ to the left and run along said railroad right of way a distance of 503.08 feet to the P.C. of a curve, thence run along said curve (whose Delta Angle is $7^{\circ} 02' 52''$ to the left, Radius is 2935.75 feet; Tangent is 180.78 feet; Length of Arc is 361.11 feet) to a point on the old line of Barnett lot; thence turn an angle of $63^{\circ} 31' 08''$ to the left from said tangent and run along said old Barnett line a distance of 647.07 feet to a point on the South line of a gravel road, thence turn an angle of $83^{\circ} 28' 59''$ to the left and run along said road a distance of 104.20 feet; thence turn an angle of $23^{\circ} 02' 01''$ to the left and continue along said road a distance of 181.34 feet; thence turn an angle of $25^{\circ} 30'$ to the left and continue along said road a distance of 135.08 feet; thence turn an angle of $17^{\circ} 56'$ to the left and continue along said road a distance of 343.39 feet; thence turn an angle of $2^{\circ} 39'$ to the right and run along said road a distance of 302.35 feet; thence turn an angle of $14^{\circ} 20'$ to the left and continue along said road a distance of 188.19 feet; thence turn an angle of $11^{\circ} 57'$ to the right and run a distance of 86.11 feet to the point of beginning, and containing 9.83 acres, more or less.

EXHIBIT "B"

Commence at a point which lies 225.07 feet North of the Southwest corner of the Northwest 1/4 of the Southeast 1/4 of Section 23, Township 21 South, Range 1 West, Shelby County, Alabama, and run in a Southerly direction along the West line of said 1/4 - 1/4 section a distance of 225.07 feet to the Southerwest corner of said 1/4 - 1/4 section; thence deflect 39 degrees 28' 40" and run to the left in a Southeasterly direction a distance of 614.82 feet to a point on the Northwesterly right-of-way of Norfolk Southern Railroad; thence deflect 84 degrees 24' 27" and run to the left in a Northeasterly direction along said right-of-way a distance of 370.61 feet to the POINT OF BEGINNING of the herein described parcel; thence deflect 86 degrees 00' 58" and run to the left in a Northwesterly direction a distance of 405.76 feet to a point on the Easterly right-of-way of Industrial Drive; thence turn an interior angle of 135 degrees 22' 44" and run to the right in a Northeasterly direction along the Easterly right-of-way of Industrial Drive a distance of 305.95 feet to the PC of a curve to the right; thence run along the arc of said curve to the right having a central angle of 40 degrees 03' 34" and a radius of 320.00 feet in a Northeasterly direction and along said right-of-way a distance of 223.73 feet to a point; thence turn an interior angle of 62 degrees 25' 39" from the tangent of last described curve and run to the right in a Southerly direction a distance of 181.40 feet to a point; thence turn an interior angle of 193 degrees 21' 12" and run to the left in a Southeasterly direction a distance of 534.82 feet to a point on the Northwesterly right-of-way of Norfolk Southern Railroad; thence turn an interior angle of 105 degrees 25' 13" to the tangent of a curve to the right having a central angle of 2 degrees 32' 12" and a radius of 2935.75 feet and run to the right along the arc of said curve and along said right-of-way in a Southwesterly direction a distance of 129.98 feet to a point; thence run tangent to last described curve in a Southwesterly direction and along said right-of-way a distance of 132.47 feet to the point of beginning of the herein described parcel; containing 4.06 acres, more or less.

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