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13 FLOOD CONTROL DISTRICT

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

LOS ANGELES COUNTY FLOOD  
CONTROL DISTRICT,

Plaintiff,

v.

LOS ANGELES BY-PRODUCTS CO.; et al.,  
Defendants.

CASE NO. BC 390776

Sun Valley Watershed-Strathern Wetlands  
Park Project.

Parcel Nos.: 5PP(A.K.A. the Southerly Portion  
of L.A. County Assessor's Parcel Number  
2314-001-001), and 6PP(A.K.A. and  
Coterminous with L.A. County Assessor's  
Parcel Number 2314-001-002).

**STIPULATION FOR INTERLOCUTORY  
JUDGMENT IN CONDEMNATION:  
OVER & OVER READY MIX, INC.**

Assigned to the Hon. Mark V. Mooney,  
Dept. 68

Filing Date: May 13, 2008

It is hereby stipulated and agreed by Plaintiff, LOS ANGELES COUNTY FLOOD  
CONTROL DISTRICT ("District"), through Andrea Ordin, County Counsel, and Paul T. Hanson,  
Deputy County Counsel, and Talin Halabi, Deputy County Counsel, attorneys of record for  
Plaintiff and by Defendant, OVER & OVER READY MIX, INC. ("Over & Over"), by HILL,  
FARRER & BURRILL, LLP, by Kevin H. Brogan, its attorneys of record herein, and by Edward  
A. Borges ("Mr. Borges"), president, principal, and owner of Over & Over, , who represents that  
he is authorized to enter this stipulation for Over & Over and as the party lessee to the subject

1 lease agrees to be himself bound in full by this stipulation, as follows:

2 1. Over & Over is now and at all pertinent times has been, the lessee of a portion of  
3 the subject property of this action in condemnation, Parcels Numbered 5PP and 6PP, described in  
4 the complaint herein (the "Subject Property"). The leasehold is primarily a portion of Parcel 5PP,  
5 which is also known as the southerly portion of L.A. County Assessor's Parcel Number 2314-001-  
6 001. The leasehold is also an adjoining north-westerly portion of Parcel 6PP, which is also known  
7 as and coterminous with L.A. County Assessor's Parcel Number 2314-001-002. The leasehold of  
8 Over & Over is also known as the "concrete processing plant at 8216 Tujunga Avenue, Sun  
9 Valley," which is in the City of Los Angeles. Pursuant to the lease, Over & Over, by Mr. Borges  
10 as lessee, has the right to use the leasehold for the "manufacture, sale and delivery of cement  
11 products, and any other related activity. The lease, by Mr. Borges as lessee and Los Angeles By-  
12 Products Co., a California corporation, as lessor, was executed on April 10, 2002. The map  
13 attached as Exhibit 1 hereto is a map of the leasehold which is the subject of this stipulation. The  
14 area on the map shown within the line called leased premises is the Over & Over leasehold which  
15 is the subject of this stipulation. Other than the leasehold, Over & Over has no other property  
16 right or interest in the subject property of this condemnation action; nor has Mr. Borges. A true  
17 copy of the subject lease, including all pertinent, modifying and supplementing documents, is  
18 attached hereto as Exhibit 2. Mr. Borges through Over & Over is and has been at all pertinent  
19 times operating on the leasehold a business for the manufacture , sale, and delivery of cement  
20 products and related activities.

21 2. The parties stipulate to the entry of the Interlocutory Judgment in Condemnation  
22 Only as to Defendant, Lessee OVER & OVER READY MIX, INC. ("Interlocutory Judgment"),  
23 attached hereto as Exhibit 3, the original of which is being filed concurrently herewith. This  
24 proposed judgment is only intended to dispose of the property rights of Defendant, Over & Over,  
25 not of the other defendants, as to whom, this case will proceed. (Code Civ. Proc., § 579.) Mr.  
26 Borges, as president, principal, and owner of Over & Over, and as party lessee to the lease, agrees  
27 also to be bound by the terms of this stipulation and the Interlocutory Judgment.

28 3. The parties mediated this matter, which mediation started at the offices of JAMS on

1 September 30, 2009, before the neutral Mediator, Hon. Dickran Tevrizian (Ret.). About March 5,  
2 2010, The two parties to this stipulation have reached a settlement agreement the principal terms  
3 of which were recommended by the Mediator, after both District and Over & Over presented  
4 arguments and summarized evidence for him. The terms of the settlement are stated in the  
5 following paragraphs.

6 4. Over & Over will remain on the leasehold, operating the concrete processing plant,  
7 until March 31, 2017, paying the rent due under the lease to District after April 10, 2010, and  
8 performing all other covenants and duties of the lease and under applicable law, until expiration on  
9 March 31, 2017, or termination as stated in No. 6 below. District will not be liable to Over &  
10 Over for the security deposit referred to in the lease.

11 5. When the stipulation is filed and the Interlocutory Judgment is entered District, will  
12 be the lessor under the lease, this stipulation, the Interlocutory Judgment and the Final Order of  
13 Condemnation. The lease will continue to govern the tenancy between Over & Over and District  
14 unless expressly contradicted by provisions of this stipulation, and the Interlocutory Judgment.

15 6. Over & Over may terminate the lease and vacate the leasehold, subject to the lease  
16 notice requirements, prior to March 31, 2017, with no liability to District and no additional  
17 compensation and/or damages or money payments by District.

18 7. At the expiration or termination of the lease, Over & Over may remove any of its  
19 property but is not responsible for demolition and removal of remaining improvements.

20 8. District will pay to Over & Over \$165,000.00, for its attorneys' fees, litigation  
21 expenses, and court costs in this matter. Payment will be by warrant payable to OVER & OVER  
22 READY MIX, INC. and EDWARD G. BORGES to be delivered by attorneys for District to  
23 HILL, FARRER & BURRILL, LLP, and Kevin H. Brogan, attorneys of record herein. After this  
24 Stipulation has been executed and filed herein and after the Interlocutory Judgment has been  
25 entered herein and after District has made the above payment to Over & Over District will be  
26 entitled to entry of a Final Order of Condemnation as to the interest of Over & Over.

27 9. Over & Over is entitled to a rent credit or excused rent or rent reductions ("rent  
28 credit") of \$500,000.00 from District on a "use it or lose it" basis, with rental payments to District

1 being due in the proper monthly amounts under the terms of the lease. This rent credit will be  
2 applied immediately and continuously until it is completely depleted or used. The parties agree  
3 that the annual rent due to District under the lease terms as of April 1, 2010, is \$255,209.06 and  
4 thus the monthly rent payment to District, will be \$21,267.42 and that it may change each year on  
5 that date according to the terms of the lease. The April, 2010, rent to District will be prorated  
6 from April 11, 2010. The parties agree that the amount due to District for April, 2010, because of  
7 the proration, is \$14, 178.28. Over & Over will start using the rent credit as of April 11, 2010, and  
8 the rent credit shall be applied each month on a continuous basis until fully depleted, roughly  
9 estimated to be approximately March 2012. (It is not possible to determine now the precise date  
10 on which the rental credit will be fully depleted and when actual payments to District by Over &  
11 Over will start because the rent may change as of April 1, 2011, according to the term of the  
12 lease.) Over & Over will start paying the rent to District on the first day after the rent credit is  
13 fully used based on the monthly rent according to the terms of the lease, on a prorated monthly  
14 basis, if necessary, for that month, and thereafter on the first of each month. If the \$500,000.00  
15 rent credit is not fully used at the time the lease is terminated, the portion not used will be lost.  
16 Over & Over will have no further right to rental credit or any form of compensation from District  
17 for the loss of the rental credit or any form of compensation or damages, including loss of business  
18 goodwill or relocation assistance.

19           10.     Mr. Edward A. Borges is the principal of Over & Over. He is the lessee on the  
20 subject lease. He has signed the checks drawn on Over & Over's account for the rent for the  
21 leasehold paid to Los Angeles By-Products Co. He agrees also to be bound by the terms of this  
22 settlement agreement with Over & Over. When the term "Over & Over" is used herein, it is  
23 intended by the parties to include Mr. Borges.

24           11.     The parties agree that this is a total settlement. Except as stated herein, Over &  
25 Over waives all claims to greater just compensation, damages of any kind, loss of business  
26 goodwill, relocation assistance, interest, attorney fees, court costs, litigation expenses, expert  
27 witnesses fees and consultants' fees.

28           12.     This Stipulation will be first executed for Over & Over and Mr. Borges. Then, if

1 these terms are accepted by the Board of Supervisors of District, this Stipulation for Interlocutory  
2 Judgment in Condemnation, will be fully executed and filed in the Court and when the original of  
3 the attached Interlocutory Judgment is signed and entered by the Court, District will become the  
4 lessor of Over & Over pursuant to the terms of the existing lease, except as those terms are  
5 expressly modified by this Stipulation and the Interlocutory Judgment, and Over & Over will  
6 become the lessee of Distinct under the terms of the existing lease, except as those terms are  
7 expressly modified by this Stipulation and the Interlocutory Judgment.

8       13.     Lessee will provide to lessor, District, at all pertinent times and whenever requested  
9 certificates of insurance and copies of endorsements which evidence and show that lessor, District,  
10 is an additional insured on the general liability policy of insurance referred to in section 8 of the  
11 lease, which starts at the bottom of page 4, and on lessee's automobile liability policy of insurance  
12 covering its automobiles and trucking fleet. The certificates and endorsements will also show the  
13 amounts of liability coverage under the general liability and automobile liability policies.

14       14.     For purposes of clarification only, the parties agree that in Paragraph 6.4 of the  
15 lease, a reasonable time for notice of a non-emergency inspection is three (3) days.

16       15.     For the purposes of clarification only, the parties agree that in Paragraph 7.3 of the  
17 lease, lessee does not have any right to build new improvements, unless approved in writing by  
18 lessor, District; and, plans for any such proposed improvements shall be submitted by lessee for  
19 approvals and permits to the Construction Division, Permit Section of the Los Angeles County  
20 Department of Public Works. All expenses relative to design and construction for such new  
21 improvements, if approved by lessor, District, and approved and permitted by the Construction  
22 Division, Permit Section of the Los Angeles County Department of Public Works shall be borne  
23 by lessee, Over and Over.

24       16.     As a minor change to paragraph 51 of the addendum to the lease, exhibit 2 which is  
25 necessary because of the District's accounting system, the C.P.I. used to calculate the rental  
26 adjustment in April will be that of the previous January rather than that of April.

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1 DATED: March 9, 2011

ANDREA SHERIDAN ORDIN  
County Counsel

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By Paul T. Hanson  
TALIN HALABI Deputy County Counsel or  
PAUL T. HANSON Principal Deputy County  
Counsel

Attorneys for LOS ANGELES COUNTY FLOOD  
CONTROL DISTRICT

DATED: March 7, 2011

HILL, FARBER & BURRILL LLP  
By KB  
KEVIN H. BROGAN

Attorneys for Defendant,  
OVER & OVER READY MIX, INC.

DATED: March \_\_\_\_ 2011,

EDWARD A. BORGES, President of OVER &  
OVER READY MIX, INC., for Himself and for  
the Company, Authorized to Execute this  
Stipulation for the Company

\_\_\_\_\_  
EDWARD A. BORGES

1 DATED: March \_\_\_\_, 2011

ANDREA SHERIDAN ORDIN  
County Counsel

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By \_\_\_\_\_  
TALIN HALABI Deputy County Counsel or  
PAUL T. HANSON Principal Deputy County  
Counsel

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Attorneys for LOS ANGELES COUNTY FLOOD  
CONTROL DISTRICT

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DATED: March \_\_\_\_, 2011

HILL, FARRER & BURRILL LLP

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By \_\_\_\_\_  
KEVIN H. BROGAN

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Attorneys for Defendant,  
OVER & OVER READY MIX, INC.

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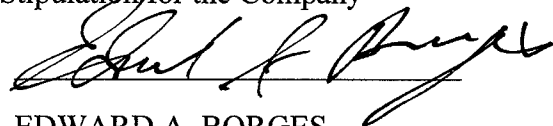
DATED: March 7 2011,

EDWARD A. BORGES, President of OVER &  
OVER READY MIX, INC., for Himself and for  
the Company, Authorized to Execute this  
Stipulation for the Company

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EDWARD A. BORGES

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