

WHEN RECORDED RETURN TO:  
GIBSON DUNN & CRUTCHER  
200 Park Avenue  
New York, NY 10166  
Attn: Richard Ross, Esq.

ENT 35018:2001 PG 1 of 7  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2001 Apr 13 3:56 pm FEE 22.00 BY SS  
RECORDED FOR FOUNDERS TITLE

**MEMORANDUM OF CO-OCCUPANCY AGREEMENT**  
(Leland)

This Memorandum of Co-Occupancy Agreement (this "Memorandum") is made as of the 30th day of March, 2001, by and between **VALLEY ASPHALT, INC.** ("Valley Asphalt"), a Utah corporation, and **JACK B. PARSON COMPANIES** ("Parson"), a Utah corporation.

**W I T N E S S E T H:**

That in consideration of the premises (as defined below), the mutual covenants more particularly set forth in a certain Co-Occupancy Agreement between Valley Asphalt and Parson dated March 30 2001 (the "Co-Occupancy Agreement"), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Valley Asphalt and Parson do hereby covenant, promise, and agree as follows:

1. The Premises. Valley Asphalt does irrevocably grant, convey and transfer to Valley Asphalt and Parson the exclusive right to use, possess, occupy and enjoy as co-occupants the certain real property located in Utah County, Utah as more particularly described in Exhibit A attached hereto and made a part hereof (the "Premises") including, without limitation, the concrete batch plant (the "Concrete Plant") and related facilities, operations and activities on the Real Property (collectively, "Concrete Operations") on the terms and conditions set forth in the Co-Occupancy Agreement.

2. Operating Areas. Pursuant to the Co-Occupancy Agreement, Valley Asphalt has certain rights to use and conduct its operations within the Valley Asphalt Operating Area, and Parson has certain rights to use and conduct its operations within the Parson Operating Area, the general locations of such Operating Areas being shown by circles on Exhibit B attached to and made part of the Co-Occupancy Agreement.

3. Term. The Term of the Co-Occupancy Agreement commenced on March 30, 2001 and shall terminate on March 30, 2100 (the "Term").

4. Rent. Valley Asphalt and Parson acknowledge and agree that all rent payable under the Co-Occupancy Agreement has been pre-paid in full for the entire Term.

5. Concrete Plant. Parson is the sole owner of the Concrete Plant and Valley Asphalt has no right, title, or interest therein of any nature whatsoever.

6. Subdivision. In connection with a proposed Subdivision of the Premises, Valley Asphalt has filed an application for a subdivision waiver with the City of Spanish Fork which would permit the Premises to be subdivided into two (2) separate, legal tax parcels, one of which would encompass the Valley Asphalt Operating Area and certain additional portions of the Premises adjacent thereto, as more fully described on Exhibit C attached to and made a part of the Co-Occupancy Agreement, and one of which would encompass the Parson Operating Area and certain additional portions of the Premises adjacent thereto, as more fully described on Exhibit D attached to and made a part of the Co-Occupancy Agreement. From and after the Subdivision of the Premises and the Effective Date, Parson shall immediately and automatically and without the necessity of any further act, or execution and delivery of any further document, by any party or third party, become the lessee, and Valley Asphalt shall become the lessor, of a lease (the "Lease") of the Parson Legal Parcel, upon the terms and conditions set forth in the Co-Occupancy Agreement.

7. Valley Asphalt's Remedies. Except as set forth in the Co-Occupancy Agreement, Valley Asphalt irrevocably waives all rights of distress or to re-enter or re-possess the Premises or the Concrete Plant or to terminate the Co-Occupancy Agreement or to interfere with Parson's rights of use or possession of the Premises or any Concrete Operations for any Parson's breach or default thereunder.

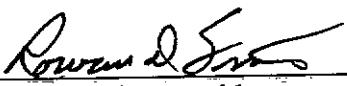
8. Effect of Memorandum. The sole purpose of this instrument is to give notice of the Co-Occupancy Agreement and its terms, covenants and conditions to the same extent as if the Co-Occupancy Agreement were fully set forth herein. This Memorandum shall not modify in any manner the terms, conditions or intent of the Co-Occupancy Agreement and the parties agree that this Memorandum is not intended nor shall it be used to interpret the Co-Occupancy Agreement or determine the intent of the parties under the Co-Occupancy Agreement.

9. Defined Terms. The defined terms used herein with their initial letters capitalized which are specially defined in the Co-Occupancy Agreement shall have the same meanings herein as are set forth in the Co-Occupancy Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Co-Occupancy Agreement as of the day and year first written above.

*(Signatures and Acknowledgments on the following pages)*

**VALLEY ASPHALT, INC.,**  
a Utah corporation

  
\_\_\_\_\_  
Rowan Smith, Vice President

STATE OF NEW YORK

COUNTY OF NEW YORK

On the 30th day of March 2001, personally appeared before me Rowan Smith, who being duly sworn, did say that he is the Vice President of VALLEY ASPHALT, INC., a Utah corporation, and that said instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and said Rowan Smith acknowledged to me that said corporation executed the same.

[SEAL]



Kathie Sirkis  
Notary Public

KATHIE SIRKIN  
Notary Public, State of New York  
No. 01SI4969346  
Qualified in New York County  
Commissioned: July 16, 2002

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

**JACK B. PARSON COMPANIES,**  
a Utah corporation

By:   
Name: J. Rocky Woodruff  
Title: Senior Vice President

STATE OF UTAH

COUNTY OF DAVIS

On the 30<sup>th</sup> day of March, 2001, personally appeared before me J. Rocky Woodruff, who being duly sworn, did say that he is the Senior Vice President of **JACK B. PARSON COMPANIES**, a corporation, and that said instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and said J. Rocky Woodruff acknowledged to me that said corporation executed the same.

Cathleen Barker

Notary Public



EXHIBIT A

## Leland Yard (Spanish Fork)

## Parcel 1:

BEGINNING at a point 25.88 feet East and 1520.47 feet North (based on the Utah State Coordinate System, Central Zone) from the West quarter corner of Section 25, Township 8 South, Range 2 East, Salt Lake Base and meridian; and running thence North 75° 05' 48" East 430.26 feet along a fence; thence North 88° 21' 54" East 872.35 feet along the South side of a canal; thence South 13° 31' 22" East 99.05 feet; thence South 37° 59' 15" East 1877.60 feet along the Southwesterly side of Del Monte Road; thence South 70° 43' 55" West 256.39 feet to the center of a canal; thence South 89° 07' 22" West 601.71 feet along a fence line; thence North 18° 32' 16" West 465.47 feet along a fence line to the center of a canal; thence North 88° 35' 38" West 151.97 feet along the center of a canal; thence North 60° 03' 43" West 205.43 feet along the center of a canal; thence North 62° 14' 28" West 120.07 feet along the center of a canal; thence North 62° 49' 47" West 118.39 feet along the center of a canal; thence North 66° 04' 36" West 74.10 feet along the center of a canal; thence South 86° 26' 53" West 50.30 feet along the center of a canal; thence South 36° 04' 25" West 126.01 feet along the center of a canal; thence South 58° 41' 22" West 74.26 feet along the center of a canal; thence South 43° 15' 07" West 155.78 feet along the center of a canal; thence South 61° 48' 59" West 114.63 feet along the center of a canal; thence South 89° 18' 57" West 55.35 feet along the center of a canal; thence North 12° 43' 40" West 115.89 feet along a fence on the Northeasterly side of Mill Road; thence North 18° 19' 47" West 325.45 feet along a fence on the Northeasterly side of Mill Road; thence North 21° 16' 51" West 790.35 feet along a fence on the Northeasterly side of Mill Road to the point of BEGINNING.

Tax No.: 25:026:0029