

INSTRUMENT PREPARED BY:  
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Inst # 2001-14858  
04/18/2001-14858  
09:14 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
011 MB 87.00

STATE OF ALABAMA

COUNTY OF SHELBY

**LEASE AGREEMENT**

THIS LEASE AGREEMENT (sometimes referred to herein as the "Agreement" or the "Lease") made and entered into effective as of March 23, 2001(the "Commencement Date") by and among **ALLOY CAST PRODUCTS, INC.** (hereinafter referred to as "Landlord") and **READY MIX USA, INC.**, (hereinafter referred to as "Tenant").

**BACKGROUND INFORMATION**

1. Landlord is the owner of that certain real property described on Exhibit "A" attached hereto and incorporated herein by reference (the "Demised Premises").
2. Landlord desires to lease the Demised Premises to Tenant and Tenant desires to lease the Demised Premises from Landlord.
3. The Demised Premises are included as part of a larger tract of real property which is described on Exhibit "B" attached hereto (the "Entire Tract").
4. For purposes hereof, the Demised Premises and the Entire Tract shall be referred to together as the "Real Property".

NOW, THEREFORE, for and in consideration of the sum of Ten and 00/100 (\$10.00) Dollars and other good and valuable consideration, in hand paid by each party hereto to the other, and in further consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of said consideration being herein specifically acknowledged, it is hereby agreed by and between Landlord and Tenant as follows:

1. **DEMISE OF REAL PROPERTY.** During the Lease Term, defined below, Landlord hereby leases the Demised Premises to Tenant and Tenant hereby leases the Demised Premises from Landlord.

2. **TERM:** The term wherein Landlord shall lease the Demised Premises to Tenant pursuant hereto shall commence on the Commencement Date and shall expire upon March 31, 2006 ("Lease Term"). At any time subsequent to December 31, 2001; Tenant, at Tenant's option, may terminate the Lease Term at any time upon providing Landlord with 90 days prior written notice.

3. **RENTAL.** Monthly rental shall be paid by Tenant to Landlord during the Lease Term in advance on the first day of each month. The monthly rental for the first (1st) year of the Lease Term (March 23, 2001- March 31, 2001) shall be \$800.00. At the beginning of the second (2nd) year of the Lease Term (April 1, 2002 - March 31, 2003) and continuing on each April 1 throughout the Lease Term, the monthly rental shall increase by \$50.00 per month (i.e. \$850.00/month for April 1, 2002 - March 31, 2003; \$900.00/month for April 1, 2003 - March 31, 2004, etc.) If the Commencement Date or the expiration or earlier termination of the Lease Term shall occur on a day other than the first (1st) day of a month, the rental for such month shall be prorated.

4. **USE.** The Demised Premises may be used by Tenant for any lawful purpose during the Lease Term hereof.

5. **UTILITIES AND TAXES.**

(a) Tenant shall, commencing on the Commencement Date and continuing during the Lease Term, pay all sewer rents and charges for water, phone, steam, heat, gas, hot water, electricity, light and power, and other service or services, furnished to the Demised Premises or the occupants thereof.

(b) Landlord agrees that all real property ad valorem taxes relating to the Entire Tract shall remain current at all times during the Lease Term. If Landlord fails to do so, Tenant may pay the same and offset Landlord's share thereof against future rent due. Tenant shall reimburse Landlord during the Lease Term, the amount of the real property ad valorem taxes applicable to the Demised Premises. Landlord's written request for such payment shall be accompanied by copies of the applicable tax bill. Inasmuch as the Demised Premises is included as part of the Entire Tract, the real property ad valorem taxes for the Demised Premises shall be determined by multiplying the real property ad valorem taxes applicable to the Entire Tract for the period in question by a fraction, the numerator of which shall be the number of acres contained in the Demised Premises and the denominator of which shall be the number of acres contained in the Entire Tract.

6. **FIXTURES AND PERSONAL PROPERTY.** It is agreed between Landlord and Tenant that Tenant may place trade fixtures, ready mix concrete plants, other equipment and other personal property on the Demised Premises deemed appropriate by

Tenant during the Lease Term (either of a temporary or permanent nature including fixtures and other property affixed to the Demised Premises) all of which will remain the property of Tenant and any or all of which Tenant may remove or replace at any time.

7. **SIGNS.** During the Lease Term, Tenant may install such signs on the Demised Premises as deemed appropriate by Tenant.

8. **INSURANCE.** Tenant shall provide at its expense, and keep in force during the Lease Term, such liability, casualty and other insurance coverage as Tenant shall deem appropriate.

9. **BENEFIT.** This Agreement and all of the covenants and conditions hereof shall inure to the benefit of and be binding upon the heirs, successors and assigns of the parties hereto. Each provisions hereof shall be deemed both a covenant and a condition and shall run with the land.

10. **RIGHT OF FIRST REFUSAL.** Landlord and Tenant agree that for and during the Lease Term, Landlord will not sell, convey or otherwise transfer all or any portion of Landlord's interest in the Real Property unless Landlord shall first obtain a Bona-Fide Offer, defined below, to purchase the Real Property from an unrelated third party. For purposes hereof, a "Bona-Fide Offer": (a) must be acceptable to Landlord; (b) must be in writing and in a form that is legally enforceable against the unrelated third party; (c) shall state the offeror's name and address, the offering price for the Real Property, and all other terms of the offer; and (d) no part of the purchase price of the Real Property shall include any value attributable to any side agreement between the offeror and the Landlord. Upon receipt of any such Bona-Fide Offer, Landlord will give Tenant written notice thereof accompanied by a copy of the Bona-Fide Offer. Landlord shall have the right for ninety (90) days after the receipt of such written notice to purchase the Real Property pursuant to the terms of such Bona-Fide Offer, which right of Tenant shall be paramount to all rights of the third party. Tenant may exercise such right by providing Landlord with written notice of Tenant's desire to purchase the Real Property pursuant to such Bona-Fide Offer whereupon Landlord and Tenant shall close such sale and purchase prior to the expiration of such ninety (90) day period. If Tenant shall fail to notify Landlord of Tenant's intent to purchase the Real Property as provided above within such ninety (90) day period, or if the terms of such Bona-Fide Offer are modified so as to be more favorable to such offeror, the Real Property shall again be subject to Tenant's right of first refusal as provided above.

11. **CAPTIONS.** The captions appearing in this Agreement are for reference only and shall not be considered a part of this Agreement or in any way modify, amend or affect the provisions hereof.

12. **NOTICES.** Any notice, payment, report or demand herein provided for in

this Agreement shall be deemed to have been sufficiently served, delivered or given if sent by certified mail, postage charges prepaid, and addressed as follows:

(a) If to Landlord:

127 Industrial Parkway  
Columbiana, AL 35051

(b) If to Tenant:

Ready Mix USA, Inc.  
2330 University Boulevard  
Suite 814  
Tuscaloosa, Alabama 35401

With a Copy to:

C. Barton Adcox  
Phelps, Jenkins, Gibson & Fowler, L.L.P.  
Post Office Box 020848  
Tuscaloosa, Alabama 35402-0848

13. **APPLICABLE LAW.** The laws of the State of Alabama shall govern the validity, performance and enforcement of this Agreement.

14. **PARTIAL INVALIDITY.** If any term, covenant or condition of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be effected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

15. **OWNERSHIP; QUIET ENJOYMENT.** Landlord represents and warrants that: (a) Landlord is the fee simple owner of the Real Property free and clear of all liens, claims and encumbrances; (b) the Demised Premises are appropriately zoned to permit the operation of a ready-mix concrete plant and (c) the Demised Premises have adequate access for ingress and egress to and from Industrial Parkway; Landlord covenants that Tenant shall quietly enjoy the Demised Premises during the Lease Term without interference by Landlord or by any other person. Landlord acknowledges and agrees that Tenant shall have no obligation or responsibility for any duties, obligations or liabilities of REDI-MIX, Inc. under its existing lease/arrangement with Landlord. The Landlord shall not mortgage or encumber all or any portion of the Demised Premises without first obtaining a non-disturbance agreement

(in a form approved by Tenant) in favor of Tenant from the holder of such mortgage or encumbrance.

16. **EXISTING ENVIRONMENTAL.** For purposes of this Section, "Environmental Laws" shall mean any federal, state, and/or local statute, ordinance, bylaw, code, rule, and/or regulation, now or hereafter enacted, pertaining to any aspect of the environment or human health, including, without limitation, State of Alabama laws and the regulations promulgated by the Alabama Department of Environmental Management ("ADEM"), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq., the Federal Water Pollution Control Act, and the Federal Clean Air Act.

For purposes of this Section, "Hazardous Substances" shall mean any "oil," "hazardous material," "hazardous waste," or "hazardous substance" (collectively referred to herein as "Hazardous Substances"), as the foregoing terms (in quotations) are defined in any Environmental Laws.

For purposes of this Section, "Environmental Conditions" shall mean any "disposal," "release," or "threat of release" of Hazardous Substances on, from, or about the Demised Premises or storage of Hazardous Substances on, from, or about the Demised Premises.

"Costs and Expenses" as used in this Section shall include remedial or response costs, expert consultant fees and expenses, and bodily injury or property damage.

Tenant shall not be responsible for Environmental Conditions that (a) exist as of the commencement of the Lease Term or (b) result from (i) the actions or omissions of Landlord either before the commencement of this Lease, during the Lease Term, or after the termination of the Lease or Term (ii) the actions or omissions of any preceeding or succeeding tenant or owner of the Premises. Landlord further agrees that Tenant shall have no obligation to Landlord under this Lease for Environmental Conditions arising from the actions or omissions of any person or entity who or which is not an agent, employee, or invitee of Tenant.

Landlord shall defend, with counsel reasonably approved by Tenant, all actions against Tenant, with respect to, and pay, protect, indemnify, and save Tenant harmless. Tenant from and against any and all Costs and Expenses of any nature arising out of, or as claimed to be arising out of, any Environmental Conditions to the extent that such (a) exist as of the commencement of the Lease or (b) result from (i) the actions or omissions of Landlord either before the commencement of this Lease, during the Lease Term, or after the termination of this Lease or (ii) the actions or omissions of any preceding or succeeding tenant or owner of the Premises.

17. **WASTE CONCRETE.** On or before the expiration of ninety (90) days of the expiration or earlier termination of the Lease Term, Tenant shall substantially remove such waste concrete, gravel and sand as shall exist on the Demised Premises as a result of Tenant's operations. Landlord grants Tenant the right of access in order to remove same.

18. COMPLETE AGREEMENT. This Agreement contains the complete agreement of the parties with reference to the subject matter hereof. This Agreement may be amended and modified only by an instrument in writing which expressly refers to it and which is executed by both Landlord and Tenant.

19. CONSTRUCTION: This Agreement shall be construed in its entirety according to its plain meaning and shall not be construed against the party who provided or drafted it.

20. TERMINATION BY LANDLORD. If Landlord shall default in any of Landlord's obligations hereunder, or shall breach any of Landlord's covenants hereunder, or if any person, firm or entity shall disturb or interfere with Tenant's tenancy or operations, Tenant may terminate this Lease and/or Tenant may pursue all available remedies against Landlord including, without limitation, specific performance and damages.

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IN WITNESS WHEREOF, Landlord and Tenant have each caused this Agreement to be executed and effective as of the date above first set forth.

"Landlord"

ALLOY CAST PRODUCTS, INC.

By: Jim Foster

Its: PRESIDENT

STATE OF ALABAMA )

Shelby 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 28 day of March, 2001.

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES APR 30, 2003  
BOUNDED BY THE NOTARY PUBLIC UNDERWRITERS

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

"Tenant":

**READY MIX USA, INC.**, an Alabama Business Corporation

By: Marc B. Tyson  
MARC B. TYSON  
Its: President

STATE OF ALABAMA )  
: )  
TUSCALOOSA COUNTY )

I, the undersigned authority, a Notary Public in and for the State of Alabama at Large, do hereby certify that MARC B. TYSON, whose name as President of READY MIX USA, 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 30 day of March, 2001.

My Commission Expires:  
12-11-04

Kellie Bonidge  
Notary Public in and for the  
State of Alabama at Large

## EXHIBIT "A"

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.

## EXHIBIT "B"

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.

RUSS BROOKS

GENNA ~~BANK~~  
POND

205  
326-5313

205  
FAX 801-0164

EXHIBIT "A"

TO

MORTGAGE,  
ASSIGNMENT OF RENTS AND LEASES,  
AND SECURITY AGREEMENT

FINANCING STATEMENT (UCC-1)

SURVEY AFFIDAVIT AND CERTIFICATION

AFFIDAVIT AND AGREEMENT

HAZARDOUS SUBSTANCES INDEMNIFICATION AND WARRANTY AGREEMENT

Mortgagor: ALLOY CAST PRODUCTS, INC.  
Mortgagee: AMSOUTH BANK OF ALABAMA

### DESCRIPTION OF LAND

A parcel of land situated in the West 1/2 of the Southeast 1/4 of Section 23, Township 21 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

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 Southwest corner of said 1/4 - 1/4 section; thence deflect 39° 28' 40" and run to the left in a Southeasterly direction a distance of 586.05 feet to a point on the Easterly right of way of Industrial Drive, said point being the point of beginning of the herein described parcel; thence deflect 23° 45' 10" to the tangent of a curve to the left and run to the left along the arc of said curve having a central angle of 99° 23' 15" and a radius of 915.00 feet and along said right of way in a Northeasterly direction a distance of 149.92 feet to a point of reverse curve; thence run along the arc of a curve to the right having a central angle of 7° 20' 16" and a radius of 1185.00 feet in a Northeasterly direction along said right of way a distance of 151.76 feet to a point; thence run tangent to last described curve in a Northeasterly direction along said right of way a distance of 249.06 feet to a point; thence turn an interior angle of 44° 37' 16" and run to the right in a Southeasterly direction a distance of 405.76 feet to a point on the Northwesterly right of way of Norfolk Southern Railroad; thence turn an interior angle of 93° 59' 02" and run to the right in a Southwesterly direction along the Northwesterly right of way of Norfolk Southern Railroad a distance of 370.61 feet to a point; thence turn an interior angle of 95° 35' 33" and run to the right in a Northwesterly direction a distance of 28.77 feet to the point of beginning of the herein described parcel.

Situated in Shelby County, Alabama.

Inst # 2001-14858

04/18/2001-14858  
09:14 AM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE

011 MB 87.03