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(Above space reserved for recorder)

This Instrument prepared by  
and after recording return to:  
Susan Elliott Rich, Esq.  
Baker, Donelson, Bearman,  
Caldwell & Berkowitz, P.C.  
1800 Republic Centre  
633 Chestnut Street  
Chattanooga, Tennessee 37450-1800

AFFIDAVIT RELATING TO LAND

(Property located in Alabaster, Shelby County, Alabama)

NOTE TO RECORDING OFFICIAL: Please index under Cheney Lime & Cement Company, Inc., a/k/a Cheney Lime Company, the landlord/lessor, in Grantor Index and under Lafarge Building Materials Inc., the tenant/lessee, in Grantee Index.

IN RE: Deed Book 206, Page 253 (Deed into landlord/lessor) Shelby County, Alabama, real estate records.

PRESENT OWNER: CHENEY LIME & CEMENT COMPANY, INC. A/K/A CHENEY LIME COMPANY (landlord/ lessor)

PRESENT LESSEE: LAFARGE BUILDING MATERIALS INC.

PROPERTY: Property described on Exhibit "A" in Shelby County, Alabama which is all or part of the real estate described in the above referenced deed and in the Grand Lease between Cheney Lime & Cement Company, Inc. and The Concrete Company dated November 26, 2002 (the "Lease"), as assigned by The Concrete Company to Lafarge Building Materials Inc. by Lease Assignment, Amendment, and Assumption Agreement dated April 1, 2004 (the "Lease Assignment").

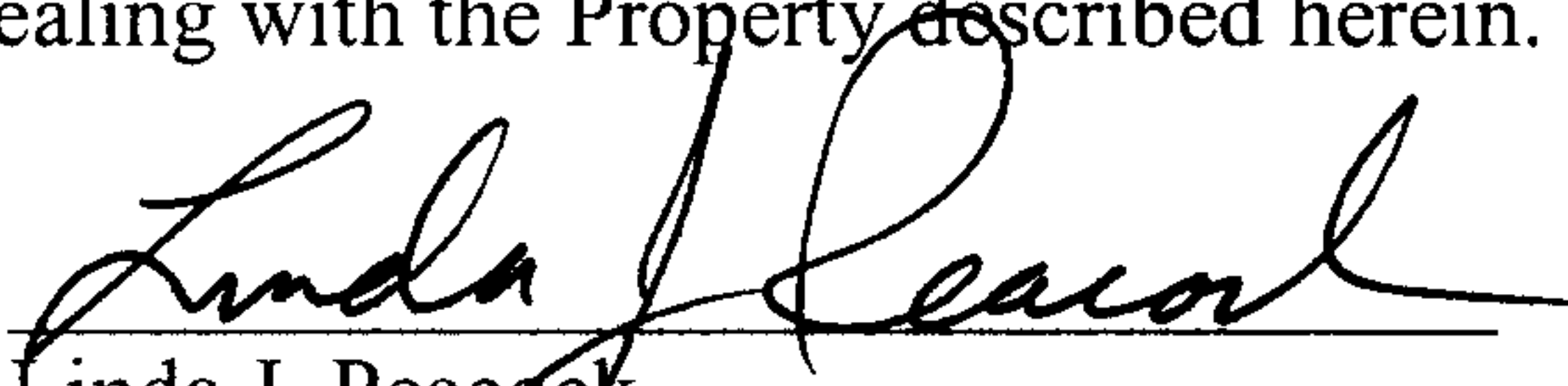
AFFIDAVIT OF LINDA J. PEACOCK

JEFFERSON COUNTY, ALABAMA.

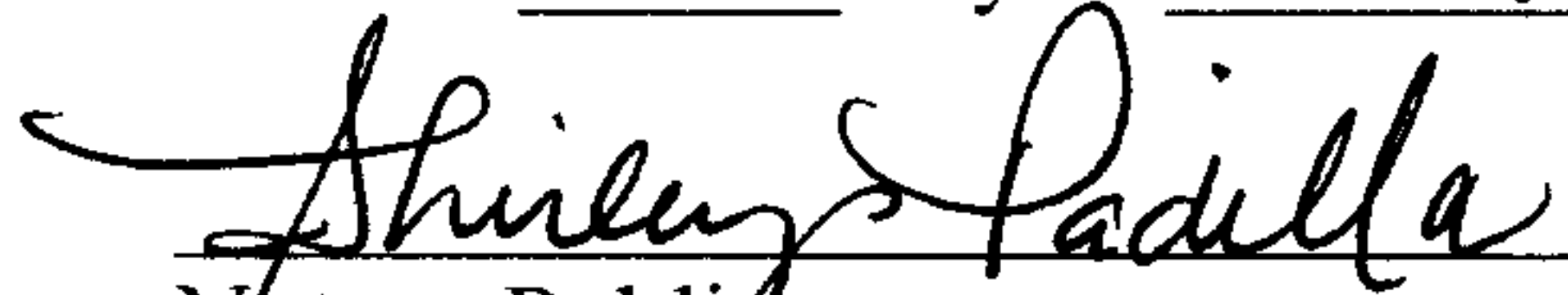
Before me, the undersigned Notary Public, authorized to administer oaths in and for said State and County, personally appeared LINDA J. PEACOCK, who, being first duly sworn, deposes and says as follows:

1. That this Affidavit is made on personal knowledge to be used in connection with leasing of the above described Property described on Exhibit "A" attached hereto.
2. Attached hereto as Exhibit "B" is a true, correct, and complete copy of the original of the Lease Assignment above referenced with the Lease attached.

Affiant's attention has been directed to the fact that the within Affidavit will be relied upon by the title insurance company dealing with the Property described herein.

  
Linda J. Peacock

Sworn to and subscribed before me,  
this the 31<sup>ST</sup> day of AUGUST, 2004.

  
Notary Public

My Commission Expires:

Oct. 4, 2006

(Notarial Seal)



Exhibit "A"  
Legal Description  
[ Alabaster, Alabama ]

All that tract or parcel of land lying and being in Shelby County, Alabama, and being more particularly described as follows: COMMENCE at the southwest corner of Section 12, Township 21 South, Range 3 West, of Shelby County, Alabama; thence South 88 degrees 40 minutes 41 seconds East, along the south line of said Section 12 a distance of 1,341.04 feet to a point; thence North 02 degrees 47 minutes 08 seconds East, crossing Shelby County Highway No. 26 and the CSX Railroad right-of-way, a distance of 180.96 feet to a set rebar corner and the POINT OF BEGINNING of the property herein described; thence North 39 degrees 26 minutes 42 seconds West, along the northerly right-of-way line of the said CSX Railroad, a distance of 388.03 feet to a set rebar corner; thence North 06 degrees 13 minutes 54 seconds West a distance of 196.02 feet to a set rebar corner; thence North 55 degrees 56 minutes 50 seconds East a distance of 557.01 feet to a set rebar corner; thence South 06 degrees 49 minutes 58 seconds East a distance of 163.49 feet to a set rebar corner on the westerly edge of a graveled surfaced roadway; thence South 35 degrees 16 minutes 24 seconds West, along the west side of said graveled roadway, a distance of 213.38 feet to a set rebar corner; thence South 06 degrees 25 minutes 24 seconds West, along the west edge of said graveled roadway, a distance of 392.96 feet to a set rebar corner; thence South 30 degrees 03 minutes 39 seconds West a distance of 91.72 feet to the point of beginning, containing 4.28 acres, more or less.

TOGETHER WITH the right of ingress and egress over and across an existing 20-foot graveled roadway, the centerline of which is more particularly described as follows: COMMENCE at the southwest corner of Section 12, Township 21 South, Range 3 West, of Shelby County, Alabama; thence South 88 degrees 40 minutes 41 seconds East, along the south line of said Section 12, a distance of 1,341.04 feet to a point; thence North 35 degrees 10 minutes 38 seconds East a distance of 137.90 feet to a point on the north edge of the pavement of Shelby County Highway No. 26 and the centerline of an existing 20-foot wide access easement contained within a graveled roadway; thence North 00 degrees 50 minutes 37 seconds West a distance of 168.07 feet to a point; thence North 05 degrees 02 minutes 43 seconds East a distance of 217.93 feet to a point; thence North 09 degrees 56 minutes 06 seconds East a distance of 135.09 feet to a point; thence North 32 degrees 52 minutes 25 seconds East a distance of 170.48 feet to a point; thence North 24 degrees 39 minutes 43 seconds East a distance of 129.70 feet to the end of subject easement.

The above described property and easement are described in accordance with a plat of survey prepared by Conn & Allen dated March 10, 2004.

EXHIBIT "B"

Lease Assignment



**ALABASTER, ALABAMA**

**LEASE AMENDMENT, ASSIGNMENT  
AND ASSUMPTION AGREEMENT**

**THIS LEASE AMENDMENT, ASSIGNMENT AND ASSUMPTION AGREEMENT** (the "Agreement") is made this 1st day of April, 2004, by and between **THE CONCRETE COMPANY, a Georgia corporation ("TCC")**, for the benefit of **LAFARGE BUILDING MATERIALS INC., an Alabama corporation ("Lafarge")**, as agreed and consented to by **CHENEY LIME & CEMENT COMPANY, INC., an Alabama corporation ("Landlord")**.

**WITNESSETH:**

**WHEREAS:**

A. Landlord, is the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference (the "Leased Property"), and TCC, entered into a Ground Lease dated November 26, 2002, a copy of which is attached as Exhibit "B" (the "Lease") pursuant to which Landlord leased to TCC the Leased Property upon the terms and conditions set forth in said Lease.

The leasehold estate created pursuant to the Lease is hereinafter referred to as the "Leasehold Estate".

B. TCC desires to assign its Leasehold Estate, including all its interest in the Lease, effective as of the Effective Date hereinafter defined, to Lafarge, and Lafarge desires to assume the obligations of TCC in the Lease effective as of the Effective Date.

C. Lafarge and Landlord desire to amend the Lease as more particularly set forth below.

**NOW, THEREFORE, FOR AND IN CONSIDERATION** of the sum of Ten Dollars (\$10.00) paid by Lafarge to TCC, and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto have entered into this Lease Amendment, Assignment and Assumption Agreement, effective as of 12:01 a.m. eastern time, (the "Effective Date") on the day of closing of the transactions contemplated by that certain Agreement For Purchase and Sale of Assets, dated March 20, 2004, by and among TCC, certain of its shareholders, TCC's subsidiaries, and Lafarge (the "Asset Purchase Agreement"). This Agreement shall be null and void in the event that the transactions contemplated by the Asset Purchase Agreement are not closed.

1. **ASSIGNMENT OF LEASE.** TCC hereby grants, bargains, sells, conveys, transfers and assigns unto Lafarge the Leasehold Estate created under and pursuant to the Lease, free and clear of all liens, claims, mortgages and other encumbrances, and all of TCC's right, title and interest in, to and under the Lease, together with all of TCC's right, title and interest in the Leased Property and any improvements thereto in which the TCC claims any interest, effective as of the Effective Date.



2. **ACCEPTANCE AND ASSUMPTION.** Lafarge hereby purchases and accepts the foregoing transfer and assignment of the Leasehold Estate as provided in Section 1 above, and specifically assumes and agrees to perform and observe each and every term and condition to be performed or observed by lessee pursuant to the terms and provisions of the Lease effective as of the Effective Date hereof, provided, however, that notwithstanding anything to the contrary contained in Section 13 or any other provision of the Lease, Lafarge shall have no responsibility whatsoever for any conditions, obligations or defaults of TCC under the Lease which shall have accrued or occurred prior to the Effective Date.

3. **TCC'S INDEMNIFICATION.** TCC shall indemnify and hold Lafarge free and harmless from and against any and all loss, cost, liability or expense (including but not limited to attorneys' fees), resulting from (i) any claim that TCC failed to perform or discharge its duties under the Lease at any time prior to the Effective Date; or (ii) any breach of any warranty or agreement herein contained; or (iii) the fact that any representation made herein is not accurate in any material respect.

4. **LAFARGE'S INDEMNIFICATION.** Lafarge agrees to indemnify and hold TCC free and harmless from and against any and all loss, cost, liability, or expense (including, but limited to, reasonable attorneys' fees) resulting from (i) any claim that Lafarge failed to perform or discharge its duties under the Lease from and after the Effective Date; or (ii) any breach of any warranty or agreement herein contained; or (iii) the fact that any representation made herein is not accurate in any material respect.

5. **LANDLORD CONSENT/ESTOPPEL.** Landlord hereby consents to the assignment and assumption of the Lease as provided in this Agreement. Landlord hereby further agrees that, effective simultaneously with TCC's assignment and Lafarge's assumption of the Lease, a complete novation shall occur whereby Lafarge shall be substituted for TCC as lessee under the Lease and TCC shall be released from all liability under the Lease thereafter accruing and TCC thereafter shall not be regarded as a party to the Lease for any purpose whatsoever, provided, however, that all obligations and liabilities of TCC accruing under the Lease prior to the Effective Date shall survive and TCC shall remain fully liable therefor. Landlord agrees that Lafarge shall have no responsibility whatsoever for any obligations of TCC under the Lease which accrued prior to the Effective Date, it being understood that Lafarge shall assume the Lease effective as of the Effective Date, and Landlord shall look to TCC with respect to obligations under the Lease prior to the Effective Date. Landlord represents and warrants to Lafarge that:

(a) The Lease is described above. There are no other or further agreements between Landlord and TCC, oral or written, that in any way alter or modify the Lease.

(b) The Lease is valid, enforceable and in full force and effect, and has not been modified or amended; to the knowledge of Landlord, the Leasehold Estate has not been assigned by TCC.

(c) There are no outstanding notices of default under the Lease, and to Landlord's best knowledge, no condition exists which would with the giving of notice or the passage of time constitute a default.



(d) There are no monetary defaults by or unperformed obligations of TCC under the Lease. TCC has paid to Landlord a security deposit in the amount of \$0 and the fixed monthly rent of \$1,750.00 is current through February 29, 2004 in the payment of all rent and other sums due under the Lease. The initial term of the Lease expires on November 30, 2007.

(e) Landlord is not in default under any of its obligations under and pursuant to the Lease,

(f) To the best of Landlord's knowledge, no hazardous substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 USC § 9601(14), pollutants or contaminants as defined in CERCLA, 42 USC § 9604(A)(2), or hazardous wastes as defined by the Resources Conservation and Recovery Act ("RCRA"), 42 USC § 6903(5), or other similar applicable federal or state laws and regulations including, but not limited to, asbestos, PCBs, urea formaldehyde and bio-hazardous wastes have been generated, released, stored, or deposited over, beneath or on the Leased Property or on or in any structures located on the Leased Property from any source whatsoever by Landlord, its predecessors in interest in the Leased Property, or any other person.

(g) Landlord has the full right and authority to enter into this Agreement and to consummate the transaction contemplated herein; and the person executing this Agreement on behalf of Landlord has all requisite authority and has been duly authorized to bind Landlord.

6. **POSSESSION.** Possession of the Leasehold Estate shall be delivered to Lafarge on the Effective Date, free and clear of any liens, encumbrances or any possessory interest, except as provided hereinabove.

7. **LEASE AMENDMENTS.** The Landlord and Lafarge hereby agree that the Lease is hereby amended as follows:

(a) The Lease is amended in its entirety to replace all references to "Concrete" with the word "Lafarge."

(b) Section 2(a) is hereby amended by deleting the second through sixth sentences thereof and replacing such language with the following: "Lafarge may extend the term of this Lease for up to three (3) additional five (5) year periods upon such terms and conditions as mutually agreed upon by both Lafarge and Landlord."

(c) Section 3(a)(ii) is hereby amended by deleting such Section 3(a)(ii) in its entirety and replacing such Section 3(a)(ii) with the following: 3(a)(ii) Rental for each of the five (5) year renewal terms, if Lafarge and Landlord extend, will be negotiated, however, the rate will not increase or decrease by more than 30% of the rate for the prior five (5) year period.

(d) Section 21 is hereby amended by deleting such Section 21 in its entirety and replacing such Section 21 with the following: "21. No Hiring of Employees. Lafarge, during the term of this lease, will not knowingly hire for employment at Lafarge's operations on the Premises, any person



who is an employee of Cheney at Cheney's operations adjacent to the Premises at the time or who has been O employed by Cheney at Cheney's operations adjacent to the Premises within ninety (90) days prior to the desired dated of employment with Lafarge."

8. **EXHIBITS**. All exhibits attached to this Agreement are fully incorporated herein and are made part of this Agreement whether or not the exhibits are executed by any or all of the parties.

9. **NO THIRD PARTY BENEFICIARIES EXCEPT LANDLORD**. This Agreement is made for the sole benefit of the parties hereto and their successors and assigns; provided, however, that a copy of this Assignment shall be delivered to Landlord, as Lessor under the Lease, who may rely on the Assignment. Except as expressly provided herein, no other person or entity is intended to or shall have any rights or benefits hereunder, whether as third party beneficiaries or otherwise.

10. **NOTICE**. All notices provided for herein or under the Lease (the Lease being hereby amended to replace any notice provisions therein with the following Notice Section) shall be hand delivered or sent by Federal Express or other reputable overnight courier or by certified or registered mail, return receipt requested, addressed to all parties hereto at the address designated for each party below or at such other address as the party who is to receive such notice may designate in writing. Notice shall be deemed completed upon: (i) such hand delivery or courier delivery, or (ii) three (3) days after the deposit of same in a letter box or other means provided for the posting of mail, addressed to the party and with the proper amount of postage affixed thereto. Each party shall promptly notify each other of any change of address.

If to TCC:                      The Concrete Company  
5526 Schatulga Road  
Columbus, GA 31907

with a copy to:              Charles H. Ford, Jr., Esq.  
1043 Third Avenue  
Post Office Box 1199  
Columbus, GA 31902-1199

If to Lafarge:                Lafarge Building Materials Inc.  
12735 Morris Road Ext., Suite 300  
Alpharetta, GA 30004

with a copy to:              Linda J. Peacock, Esq.  
Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.  
420 Twentieth Street North  
Suite 1600, SouthTrust Tower  
Birmingham, Alabama 35203



If to Cheney: Alan Cheney  
Cheney Lime & Cement Co.  
P.O. Box 160  
Allgood, AL 35013

with a copy to: Glenn E. Estess, Jr., Esq.  
Wallace, Jordan, Ratliff & Brandt, L.L.C.  
800 Shades Creek Parkway, Suite 400  
Birmingham, Alabama 35209

11. **GOVERNING LAW; CONSTRUCTION INSTRUMENT.** The laws of the State of Alabama shall govern the interpretation and enforcement of this Agreement. This Agreement is intended to express the mutual intent of the parties. Irrespective of the party preparing or causing the preparation of any document, no rule of construction shall be applied against any party. This Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and assigns.

12. **MODIFICATION AND WAIVER.** No provision of this Agreement shall be amended, waived, or modified except by an instrument in writing signed by the parties hereto.

13. **MATERIALITY; SURVIVAL.** All covenants, agreements, representatives, and warranties made herein shall be deemed to be material and to have been relied on by the parties in entering into this Agreement, and shall survive the execution and delivery of this Agreement.

14. **HEADINGS.** All sections and descriptive headings of sections and subsections in this Agreement are inserted for convenience only, and shall not affect the construction or interpretation hereof.

15. **SEVERABILITY; INTEGRATION: THE OF THE ESSENCE.** Inapplicability or unenforceability of any provision of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement. This Agreement constitutes and embodies the full and complete understanding and agreement of the parties hereto and supersedes all prior and contemporaneous understandings, whether oral or written. Time is of the essence in all matters associated with this Agreement. No representation, promise, inducement or statement or intention has been made by any party hereto which is not embodied in this Agreement, and no party hereto shall be bound by or liable for any alleged misrepresentation, promise, inducement, or statement of intention not so set forth.

16. **ADDITIONAL INSTRUMENTS AND ACTS.** The parties to this Agreement shall execute (with acknowledgment or in affidavit form, if required) any further or additional instruments, and shall perform any acts which are or may become necessary to effectuate and carry out the purposes of this Agreement.

17. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. Any copy or facsimile copy of this Agreement and of any signatures hereon shall be treated as originals for all purposes.

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

**TCC:**

**THE CONCRETE COMPANY**

By: 

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**LAFARGE:**

**LAFARGE BUILDING MATERIALS INC.**

By:  

Name: Todd Cunningham

Its: Authorized Representative

**LANDLORD:**

**CHENEY LIME & CEMENT COMPANY, INC.**

By: 

Name: Alan B. Cheney, Jr.

Its: President



STATE OF Alabama )  
COUNTY Jefferson )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Frank Foley whose name as President of **THE CONCRETE COMPANY**, an Georgia corporation, is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, he/she, as such President and with full authority, executed the same voluntarily for and as the act of said Company.

Given under my hand this the 1st day of April, 2004.

[NOTARIAL SEAL]

Linda J. Leavitt  
Notary Public  
My Commission Expires: **NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Feb 23, 2007  
BONDED THRU NOTARY PUBLIC UNDERWRITERS**

STATE OF Alabama )  
COUNTY Jefferson )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Todd Cunningham whose name as Authorized Representative of **LAFARGE BUILDING MATERIALS INC.**, an Alabama corporation, is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, he/she, as such Authorized Representative and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 1st day of April, 2004.

[NOTARIAL SEAL]

Linda J. Leavitt  
Notary Public  
My Commission Expires: **NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Feb 23, 2007  
BONDED THRU NOTARY PUBLIC UNDERWRITERS**

STATE OF Alabama )  
COUNTY Jefferson )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Alan Cheney whose name as President of **CHENEY LIME & CEMENT COMPANY, INC.**, an Alabama corporation, is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, he/she, as such President and with full authority, executed the same voluntarily for and as the act of said Company.

Given under my hand this the 11th day of March, 2004.

[NOTARIAL SEALS]

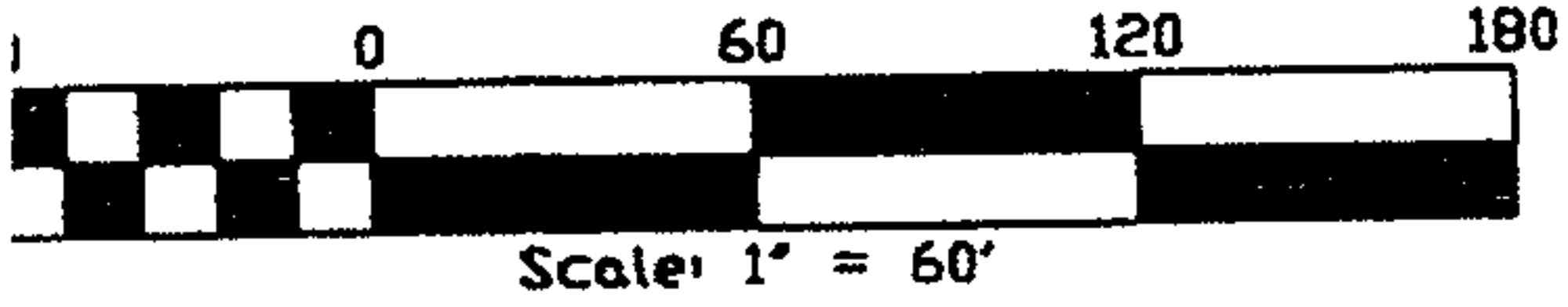
Sharon G. Suttell  
Notary Public  
My Commission Expires: **NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Jan 20, 2007  
BONDED THRU NOTARY PUBLIC UNDERWRITERS**

**EXHIBIT A**

**(SEE ATTACHED)**



File Name: c:\Jobs\9832\9832.dwg



SET 1/2" RED

N 06°13'34" E  
196.02'

428 acres±

SET 1/2" RED

CSX RAILROAD  
100' ROW

N 32°56'42" E  
388.03'

SET 1/2" RED

SET 1/2" RED  
POB

SHELBY COUNTY HWY NO. 26

SV CORNER  
12-21-3 WEST  
SHELBY COUNTY

S 86°40'41" E  
1341.04'

N 02°47'08" E  
180.96'

N 33°10'59" E  
131.69'

SEE BACK OF PLAT FOR LEGAL DESCRIPTION.

SET 1/2" RED

S 06°23'24" E  
992.56'

N 05°20'43" E  
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**CONN & ALLEN**

LAND PLANNERS  
MORTGAGE SURVEYS-PERC TESTS  
TOPOGRAPHICAL BOUNDARIES

JOSEPH E. CONN, JR.

STEVEN M. ALLEN

2850 HIGHWAY 31 SOUTH  
PELHAM, AL 35124

OFFICE: (205) 665-4251  
FAX: (205) 665-7694

EMAIL: LEFTHAIR@CHARTER.NET

STATE OF ALABAMA  
COUNTY OF SHELBY

STATE OF ALABAMA  
COUNTY OF SHELBY

I, S.M. Allen, a licensed land surveyor in the State of Alabama hereby certify that this is a true and correct plat and legal description of my survey as shown and described hereon; That there are no visible structural encroachments of any kind upon the subject property except as shown and noted hereon, excluding utility lines, wires, poles or pipes that serve the subject property only or that are within dedicated easements, or rights of way; That steel capped corners have been found or installed as shown and noted hereon. I further certify that this survey and this plat meet the Standards for the practice of land surveying in the State of Alabama, the correct legal description being as follows:

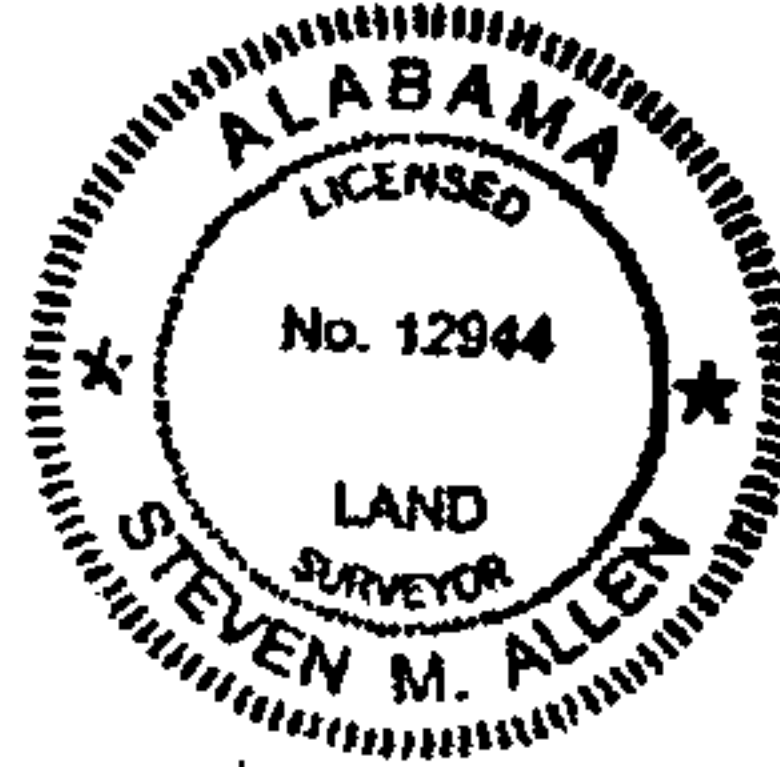
Commence at the southwest corner of Section 12, Township 21 south, Range 3 west, Shelby County, Alabama and run thence South 88 degrees 40 minutes 41 seconds East along the south line of said section a distance of 1,341.04' to a point; Thence run North 82 degrees 47 minutes 08 seconds East a distance of 180.96' to a set rebar corner and the point of beginning of the property being described; Thence run North 39° 26' 42" West along the northeasterly right of way line of the CSX railroad a distance of 388.03' to a set rebar corner; Thence run North 06° 13' 54" West a distance of 196.02' to a set rebar corner; Thence run North 55° 56' 50" East a distance of 557.01' to a set rebar corner; Thence run South 06° 49' 58" East a distance of 163.49' to a set rebar corner; Thence run South 35° 16' 24" West a distance of 213.38' to a set rebar corner; Thence run South 06° 25' 24" West a distance of 392.96' to a set rebar corner; Thence run South 30° 03' 39" West a distance of 91.72' to the point of beginning, containing 4.28 acres, more or less and subject to any and all agreements, easements, rights of way, limitations and / or restrictions of probated record and / or applicable law.

There is a proposed thirty foot wide non exclusive access easement for ingress and egress to this property, the centerline of which is described as follows:

Commence at the southwest corner of Section 12, Township 21 south, Range 3 west, Shelby County, Alabama and run thence South 88 degrees 40 minutes 41 seconds East along the south line of said section a distance of 1,341.04' to a point; Thence run North 35 degrees 10 minutes 38 seconds East a distance of 137.90' to the point of beginning, on the centerline, of the easement being described; Thence run North 00° 50' 37" West a distance of 168.07' to a point; Thence run North 05° 02' 43" East a distance of 217.93' to a point; Thence run North 09° 56' 06" East a distance of 135.09' to a point; Thence run North 32° 52' 25" East a distance of 170.48' to a point; Thence run North 24° 39' 43" East a distance of 129.70' to a point and the end of subject easement.

According to my survey of November 11, 2002

  
S.M. Allen Alabama Licensed PLS NO. 12944





**EXHIBIT B**

**(SEE ATTACHED)**

Alabaster

①

STATE OF ALABAMA )  
:  
SHELBY COUNTY )

PROPERTY ADDRESS:  
\_\_\_\_\_, Alabama

### GROUND LEASE

This Lease Agreement, made as of the 26<sup>th</sup> day of November, 2002, by and between CHENEY LIME & CEMENT COMPANY, INC. ("Cheney") and THE CONCRETE COMPANY, a Georgia corporation ("Concrete"):

### W I T N E S S E T H,

That for and in consideration of the mutual covenants and promises set forth herein, Cheney and Concrete agree as follows;

1. Premises. Cheney hereby leases to Concrete and Concrete hereby leases from Cheney, on the terms and conditions set forth herein, approximately four acres of land in Shelby County, Alabama described on Exhibit "A" attached hereto and made a part hereof and all improvements thereon (the "Premises"). *CONCRETE SHALL HAVE THE RIGHT OF INGRESS & EGRESS TO PREMISES OVER OTHER PROPERTY OWNED BY CHENEY* Ea

2. Term. (a) ① The initial term of this Lease shall be for a period of five years commencing December 1, 2002 ("Commencement Date"), and ending at midnight on November 30, 2007, unless extended as hereinafter provided. ② Concrete may extend the term of this Lease for one five year period upon all of the terms and conditions hereof, if (i) Concrete gives Cheney written notice of extension no later than one (1) month prior to the end of the initial term, (ii) at the time of giving of such notice there exists no default hereunder by Concrete which has not been cured within any applicable cure period, and (iii) Cheney approves the extension. ③ Cheney will not withhold its approval unless it has reasonable cause related to Concrete's conduct as tenant. ④ Should Cheney have such cause not to extend the Lease, Cheney will provide in writing to Concrete a list of grievances along with reasonable remedies 90 days prior to the expiration of the Lease. ⑤ In the event Concrete is unable or unwilling to complete the remedies to the reasonable satisfaction of Cheney, Concrete will be afforded 18 months to vacate the Premises. ⑥ During this time all the provisions of the original Lease will be in effect.

(b) Tenant may terminate this Lease by giving written notice to Landlord at any time on or before March 1, 2003 if (i) Tenant is unable to obtain a building permit from the applicable



governmental agency to build a ready-mix concrete plant, or (ii) Tenant is unable to obtain adequate utilities or other services necessary or convenient to operate a ready-mix concrete plant on the Premises. In such event, Tenant will pay Landlord rent at the rate below, prorated through the termination date.

3. Rent. (a) Amount. Concrete shall pay to Cheney during the term of this Lease rental as follows:

(i) \$1,750.00 per month for the initial five year term;

(ii) Rental for the five year extended term, if Concrete extends, will be negotiated, however the rate will not increase or decrease by more than 30% of the rate for the first five-year period (\$525.00 per month).

(b) Payment. Concrete shall pay rental to Cheney for each month at the address for notice set forth below, on or before the 5th day of the month.

4. Use of Premises; Leasehold Improvements. (a) Use. The Premises may be used by Concrete only for the lawful purpose of production and delivery of ready mix concrete and related industries (i.e., storage of concrete pipe, storage of precast concrete, storage and sales of various related products used in the placement of concrete.) The Premises shall not be used for any illegal purposes, nor in any manner to create any nuisance or trespass, nor in any manner to vitiate the insurance on the Premises. Concrete will keep the Premises free from all liens, claims, demands or actions which may result from the failure, neglect or refusal of Concrete to comply with any and all laws, rules or regulations governing Concrete's use and occupancy of the Premises. Without limiting the generality of the foregoing, Concrete shall comply with all present and future legal requirements that are applicable to Concrete's use and occupancy of the Premises and maintenance of the Leasehold Improvements for the operation of Concrete's business.

(b) Improvements. Concrete may at any time and from time to time to construct on the Premises such buildings and improvements as may be necessary for the conduct of Concrete's business (the "Leasehold Improvements"). Concrete shall have the right to make such alterations to the Premises, including without limitation, elevation changes, grading, construction of drains, driveways, concrete paving, septic systems, storm drains, etc., as may be necessary or advisable in connection with the construction on or



development of the Premises. Concrete shall apply for all approvals and permits legally required in connection with the construction of the Leasehold Improvements, including, without limitation, site plan approvals and building permits, and Cheney shall cooperate with Concrete in the prosecution of any and all such applications, at the expense of Concrete. Concrete, at any time and from time to time, may raze, demolish, repair, replace, and reconstruct any and all of the Leasehold Improvements. All Leasehold Improvements shall be constructed in a good and workmanlike manner, and in compliance with all applicable legal requirements.

4 (c) Removal. ~~Concrete, within sixty (60) days after termination of this lease shall remove all Leasehold Improvements from the Premises and restore the Premises to the condition it is in on the Commencement Date.~~

(d) Relationship of Parties. Nothing contained herein shall constitute Concrete as the agent of Cheney for Concrete's construction, repair, or improvements to the Premises or for Concrete's business operations at the Premises. Cheney shall not in any manner be answerable or accountable for any loss or damage arising from the negligence or the carelessness of Concrete's contractor or of any of its subcontractors, employees, agents, or servants by reason of Concrete's construction, repair, or improvement of the Premises. Concrete will indemnify Cheney and save Cheney harmless from and against all claims and suits for damages to persons or property from defects in material or from the use of unskilled labor or from any negligence caused by Concrete, Concrete's contractors, subcontractors, or any of their employees, agents, or servants during the progress of the work in constructing said improvements or from any faulty construction thereof performed by Concrete or for any actions arising from Concrete's business operations on the Premises.

(e) Liability. Concrete will be liable for any and all acts and omissions, intentional or negligent, committed by its servants, employees, and agents which result in damage to the Premises, to the property of any third party, or any party whatsoever, and/or for personal injury on or about the Premises.

In addition, all personal property, improvements, and equipment belonging to Concrete, its agents, invitees, or customers or property otherwise within the control of Concrete or any occupant of the Premises shall be subject to the control of Concrete and shall be at the risk of Concrete. Cheney shall not be liable or responsible for any injury or loss to such property.



5. Repairs. Concrete shall maintain the Premises in as good a condition as it was in on the Commencement Date.

6. Concrete's Fixtures and Equipment. <sup>①</sup>Concrete's trade fixtures, trade equipment, furniture and other equipment used in the conduct of Concrete's business, including without limitation ready-mix concrete plants, silos, scales, tanks, office trailers, and portable buildings, shall be and remain personal property and not real property even if it is nailed, screwed, or otherwise affixed to the Premises or the Leasehold Improvements. <sup>②</sup>Concrete, at its sole expense, may remove or replace any such items of property at any time during the term of this Lease regardless of whether it is nailed, screwed, or otherwise affixed to the Premises or the Leasehold Improvements. <sup>③</sup>Concrete will maintain any and all improvements placed on the Premises during the Lease term. <sup>④</sup>Concrete, at its sole expense, will remove or replace any such items of property within sixty (60) days after termination of this Lease regardless of whether it is nailed, screwed, or otherwise affixed to the Premises or the Leasehold Improvements. Any damage to the Leasehold Improvements or any portion of the Premises caused by the removal or replacement of Concrete's equipment shall be promptly repaired and replaced by Concrete upon termination of this Lease.

7. Taxes. (a) Cheney. Cheney shall pay directly to the appropriate governmental authority, before they are delinquent, all real estate taxes, charges and assessments, and any and all such other governmental levies and charges, general or special, ordinary or extraordinary, of any nature whatsoever, levied and assessed against, or which may become a lien upon, the Premises, or any part thereof (excluding the Leasehold Improvements and any other improvements now or hereafter thereon), or against Cheney by reason of its ownership of the fee simple title to the Premises underlying this Lease. Such taxes, charges and assessments for the fiscal tax years in which this Lease commences and terminates shall be prorated on the same basis as the number of months of the term hereof within said respective fiscal tax years bears to the total number of months for which such taxes, charges and assessments are payable. Cheney shall promptly deliver to Concrete copies of all notices, bills or statements for such real estate taxes, charges and assessments upon receipt of same by Cheney and shall deliver to Concrete proof of payment of such taxes upon payment of same.

(b) Concrete. Concrete shall pay directly to the



appropriate governmental authority, before they are delinquent, all real estate and personal property taxes, charges and assessments, and any and all such other governmental levies and charges, general or special, ordinary or extraordinary, of any nature whatsoever, levied and assessed against, or which may become a lien upon, the Leasehold Improvements. Concrete shall promptly deliver to Cheney copies of all notices, bills or statements for such taxes, charges, and assessments upon receipt of same by Concrete and shall deliver to Cheney proof of payment of such taxes upon payment of same.

8. Liens. Concrete shall keep the Premises and every part thereof and all buildings and improvements thereon free and clear of any and all recorded mechanics', materialmen's, and other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the operations of Concrete, any alteration, improvement, or repairs or additions which Concrete may make or permit or caused to be made, or any work or construction, by, for, or permitted by Concrete on or about the Premises, or any obligations of any kind incurred by Concrete, and at all times, and whenever and as often as may be necessary, promptly pay or bond and discharge any and all claims on which any such lien may or could be based. Concrete will indemnify and defend Cheney against, and save Cheney harmless from, all claims, suits, demands, costs, and expenses, including reasonable attorney's fees actually incurred, resulting from mechanics', materialmen's, and other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the operations of Concrete, any alteration, improvement, or repairs or additions which Concrete may make or permit or caused to be made, or any work or construction, by, for, or permitted by Concrete on or about the Premises, or any obligations of any kind incurred by Concrete.

9. Utilities. Concrete shall pay all charges for any utility services to the Premises, including without limitation, all charges for water, gas, electricity, fuel, light, heat or power. Cheney shall not be required to furnish any utility services to the Premises, and Concrete shall make its own arrangements for water and sewage services and all other utility services.

10. Insurance. Concrete, at Concrete's cost, will obtain and maintain during the term (a) comprehensive liability



insurance in limits of not less than \$5,000,000 for injury or death arising out of any one occurrence and \$5,000,000 for damage to property in respect of any one occurrence protecting (i) as named insured, Concrete and (ii) as additional insured, Cheney against claims for personal injury, death or property damage occurring in or upon the Premises. All such insurance policies shall contain endorsements providing that (x) such policies may not be materially changed, amended, canceled or allowed to lapse except upon twenty (20) days prior notice to Cheney, and (y) no act or omission of Concrete shall affect or limit the obligations of the insurer with respect to Cheney. At Cheney's request, certificates of such insurance shall be deposited with Cheney.

11. Indemnification. Concrete will indemnify and defend Cheney against, and save Cheney harmless from, all claims, suits, demands, costs, and expenses, including reasonable attorney's fees actually incurred, arising out of damage or injury to person or property caused by or resulting from or related to Concrete's use or occupancy of the Premises at any time ~~during the term of this Lease~~, exclusive of damage resulting solely from negligence of Cheney. Concrete is hereby subrogated to any rights of Cheney against any other parties whomsoever in connection therewith. Cheney shall promptly notify Concrete of any claim asserted against Cheney on account of any such injury or claimed injury to persons or property and shall deliver to Concrete the original or a true copy of each summons or other process, pleading or notice issued in any suit or other proceeding to assert or enforce any such claim, suit other proceeding promptly after Cheney is served with the same. Concrete will defend, at its own cost and expense, any such suit with attorneys of its own selection, but Cheney shall have the right, at Cheney's option and expense, to participate in such defense.

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12. Eminent Domain. (a) Separate Awards. If during the term of this Lease, the Premises or any part thereof shall be condemned or taken by any governmental authority, or by any corporation having the power of eminent domain, Cheney and Concrete agree to request the court in such condemnation proceedings to make separate awards to Cheney and Concrete as to their respective interests. If for any reason the court is unwilling or unable to make separate awards, Cheney and Concrete agree that there shall be an equitable adjustment between them allocating the one award to reflect the respective interests of the two parties.

(b) Total Taking. If the entire Premises are condemned or otherwise taken, or such a substantial portion thereof so that



the remainder of the Premises is not suitable for the operation of Concrete's business, this Lease shall terminate as of the time when such taking occurs. Such termination, however, shall be without prejudice to the rights of either Cheney or Concrete to recover from the condemnor compensation and damage caused by such condemnation or taking.

(c) Partial Taking. If the portion of the Premises remaining after such taking is suitable for the operation of Concrete's business, the rental thereafter payable by Concrete to Cheney shall be reduced to such extent as may be fair and reasonable to Cheney and Concrete under all of the circumstances.

13. Assignment and Subletting. Cheney hereby grants to Concrete the full and complete right at any time, and from time to time, to sublease the whole or any portion of the Premises and to assign this Lease, the leasehold estate created by this Lease, and all or any portion of Concrete's right, title and interest in and to the Premises, subject to the prior consent of Cheney, which Cheney will not unreasonably withhold, condition, or delay; provided, however, that each such sublease and assignment shall be subject to the terms of this Lease; and provided, further, that the assignee must assume in writing due and full performance of all of Concrete's obligations under this Lease. No such sublease or assignment shall relieve Concrete from any of its obligations under this Lease unless Cheney expressly waives such obligation in writing. Any assignee or subtenant shall pay the rental provided for hereunder, and shall perform all obligations and covenants of Concrete herein, and Cheney agrees to accept the same from the assignee or subtenant as if performance were being made by Concrete herein.

14. Concrete's Right to Mortgage. Concrete shall have the right to grant a security title in or mortgage this Lease, Concrete's leasehold estate created by this Lease, and all or any portion of Concrete's right, title and interest in the Premises, including any building or improvements which may be placed or constructed thereon by Concrete; each such mortgage or security title, however, shall be a leasehold mortgage or security title only, and Concrete has no right to grant a security title in or mortgage the fee simple title of the Premises or Cheney's interest in this Lease, and each such mortgage or security title shall be subject to this Lease. If any mortgagee or security title holder notifies Cheney in writing of the existence of such mortgage or security title and the address of the mortgagee or security title holder, Cheney shall thereafter send such



mortgagee or security title holder copies of any notices to Concrete hereunder and, in the event of a default hereunder by Concrete, will permit such mortgagee or security title holder to cure such default on behalf Concrete within the same time provided herein for cure by Concrete.

15. Default. The parties agree that in the event Concrete shall default in the payment of the rent specified herein, when due, and fails to cure said default within thirty (30) days after written notice thereof from Cheney or if Concrete shall be in default in performing any of the other terms or provisions of this Lease, and fails to cure the same within thirty (30) days after written notice thereof from Cheney (or if such default may not reasonably be cured within thirty (30) days, Concrete fails to commence cure within thirty (30) days or fails to diligently complete cure), Cheney may, at Cheney's option, terminate this Lease by written notice to Concrete, whereupon said Lease shall end. No termination of this Lease prior to the normal ending thereof by lapse of time or otherwise shall affect Cheney's right to collect rent for the period prior to termination thereof. In the event of such termination Cheney shall have the right to immediately re-enter and summarily take possession of the Premises and to eject and dispossess Concrete from the use, possession and occupancy of the same, and Concrete shall thereupon be chargeable with and liable to Cheney for such portion of the rent for the balance of the term of the Lease as shall be the difference between the rental provided for herein and the amount which Cheney is able to realize from re-renting the Premises at the best price obtainable by reasonable effort, without advertisement and by private negotiations, and for any term Cheney deems proper.

16. Insolvency. In the event that Concrete is adjudged a bankrupt, makes an assignment for the benefit of its creditors, has its leasehold estate taken upon execution or files a debtor's petition or other proceeding in the nature of a business reorganization under any bankruptcy law, or in the event a petition in bankruptcy is filed against Concrete, Cheney shall have the right to immediately terminate this Lease pursuant to the terms and conditions herein, by providing three (3) days advance notice to Concrete. In the case of insolvency, bankruptcy, or receivership of Cheney, and if as a result thereof Concrete is either required to remit rental to more than one payee, or materially hindered in its use and enjoyment of the Premises, Concrete shall have the right to terminate this Lease at any time on ten (10) days' advance notice to Cheney.



17. Remedies -- Waiver. Any remedy provided in this Lease shall not be exclusive but merely cumulative of those provided by law, and either party's failure to take advantage of any default on the part of the other shall not be construed as a waiver of such default, nor shall any custom or practice of the parties at variance with the terms hereof constitute a waiver by, or lessen the right of, Cheney to insist upon and demand strict compliance with the provisions hereof.

18. Severability. Each provision herein shall be deemed separate and distinct from all other provisions, and if any one of them shall be declared illegal or unenforceable, same shall not effect the legality or enforceability of the other provisions hereof, which shall remain in full force and effect.

19. Quiet Enjoyment. (a) Title. Cheney warrants that Cheney has good and marketable fee simple title to the Premises, free and clear of all restrictions except as herein set forth. Cheney further covenants and agrees that Concrete, upon paying the rent hereby reserved and performing and observing all Concrete's covenants and undertakings hereunder, may peaceably hold and enjoy the Premises and have exclusive control and possession thereof during the full term of this Lease and any renewal or extension thereof, subject to Cheney's rights hereunder.

(b) Use. Cheney represents and warrants that to the best of its knowledge there are no zoning or other restrictions which would limit the use of the Premises for a ready-mix concrete plant.

(c) Environmental Matters; Cheney. warrants that to the best of its knowledge there has not been (i) any release, leak, spill, disposition of, emission, or discharge onto or otherwise contained in, on, or under the Premises at any time of any "Hazardous Substance" (as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980), "Hazardous Waste" (as defined in the Resource Conservation and Recovery Act of 1976), "Recognized Hazard" (as such term is used under the Occupational Safety and Health Act of 1970), petroleum products, asbestos, contaminant, waste, irritant or pollutant, or (ii) any failure to comply with any federal, state, county or local statutes, regulations, ordinances, administrative or judicial judgments or orders applicable to any condition existing at, on, in, or under the Premises, and Cheney represents, warrants, and confirms to Concrete that as of the date of this Lease, the Premises are in compliance with the



foregoing. Cheney agrees to indemnify, defend and hold harmless Concrete, and its directors, officers, shareholders, and employees, from and against all losses, liabilities, damages, interests, deficiencies, penalties, costs and expenses, including, without limitation, claims, suits, and proceedings by federal, state, county, and local governmental authorities, reasonable attorneys fees and disbursements, costs of investigation, costs of clean up and remediation, based upon, arising out of, or otherwise in respect of any breach of the foregoing representations and warranties or any violation of any of the foregoing laws. Cheney's indemnity obligation hereinabove set forth shall survive the expiration and/or termination of this Lease.

by Cheney. *MF* *ly*

(d) Environmental Matters; Concrete.

indemnify, defend and hold harmless Cheney, and its directors, officers, shareholders, and employees, from and against all losses, liabilities, damages, interests, deficiencies, penalties, costs and expenses, including, without limitation, claims, suits, and proceedings by federal, state, county, and local governmental authorities, reasonable attorneys fees and disbursements, costs of investigation, costs of clean up and remediation, based upon, arising out of, or otherwise in respect of any release, leak, spill, disposition of, emission, or discharge onto or otherwise contained in, on, or under the Premises of any "Hazardous Substance" by Concrete or Concrete's agents, representatives, employees, invitees, ~~and/or~~ licensees, *subleasees and/or assigns.* *MF* *yk*

20. No Brokers. Cheney and Concrete hereby warrant and represent, each to the other, that no broker or agent is or has been involved in procuring this Lease, and each party hereby agrees to indemnify and hold harmless the other against any and all claims of any brokers' or agents' fee or commission hereunder which is based on any alleged or actual act, promise or inducement by such indemnifying party.

21. No Hiring of Employees. Concrete, during the term of this Lease, will not knowingly hire as employees any person who is an employee of Cheney at the time or who has been employed by Cheney within ninety (90) days prior to the desired date of employment with Concrete.

22. Notices. Any and all notices required or permitted under this Lease shall be in writing and shall either be (i) personally delivered, (ii) delivered by a reputable messenger service (such as Federal Express, Emery, United Parcel Service, etc.) or (iii) mailed by certified or registered mail, return receipt requested, postage prepaid, to the respective parties at the addresses set



forth below, unless and until a different address has been designated by written notice to the other party in the manner set forth herein. Any such notice shall be deemed to be given on the date (i) personally delivered, (ii) delivered to the recipient by the messenger service, or (iii) on the next date following the date mailed, if mailed.

To Cheney:

Cheney Lime & Cement Company, Inc.  
P.O. Box 160C  
Allgood, AL 35013-0160

To Concrete:

The Concrete Company  
P.O. Box 7877  
Columbus, GA 31908-7877

23. Time of Essence. Time is of the essence of this agreement.

24. Entire Agreement. This Lease contains the entire agreement of the parties and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect.

25. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Alabama.

26. Captions. The captions and headings throughout this Lease are for convenience and reference only, and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction, or meaning of any provision or the scope or intent of this Lease, nor in any way affect this lease.

27. Binding Effect of Lease. This Lease and all of its covenants, conditions and terms shall extend to and be binding on the successors and assigns of Cheney and Concrete.

IN WITNESS WHEREOF, the parties have hereunto set their hands, affixed their seals and delivered these presents in duplicate originals as of the day and year first above written.



CHENEY LIME & CEMENT COMPANY, INC.

By:

Name: Alan B. Cheney, Jr  
Title: President

Carl M. Perry  
Witness

Chandra Amos  
Witness

THE CONCRETE COMPANY

\* By:

Name:  
Title:

Shannah W.D.  
Witness

[Signature]  
Witness

ACKNOWLEDGMENT

STATE OF ALABAMA  
COUNTY OF Jefferson

I, Glenn E. Estess Jr, a notary public in  
and for said county in said state, hereby certify that  
Alan B. Cheney Jr., whose name as  
President of Cheney Lime & Cement Company, Inc., a corporation,  
is signed to the foregoing conveyance, and who is known to me,  
acknowledged before me on this day that, being informed of the  
contents of the conveyance, he or she, as such officer and with  
full authority, executed the same voluntarily for and as the act  
of said corporation.

Given under my hand this November 21, 2002.

Glenn E. Estess Jr  
Notary Public

ACKNOWLEDGMENT

STATE OF  
COUNTY OF Muscoigue

I, Allyne Dault, a notary public in  
and for said county in said state, hereby certify  
that Frank H. III, whose name as  
President of THE CONCRETE COMPANY, a  
corporation, is signed to the foregoing conveyance, and who is  
known to me, acknowledged before me on this day that, being  
informed of the contents of the conveyance, he or she, as such  
officer and with full authority, executed the same voluntarily  
for and as the act of said corporation.

Given under my hand this November 26<sup>th</sup>, 2002.

Allyne Dault  
Notary Public

**My Commission Expires Sept. 12, 2006**



EXHIBIT "A"  
LEGAL DESCRIPTION

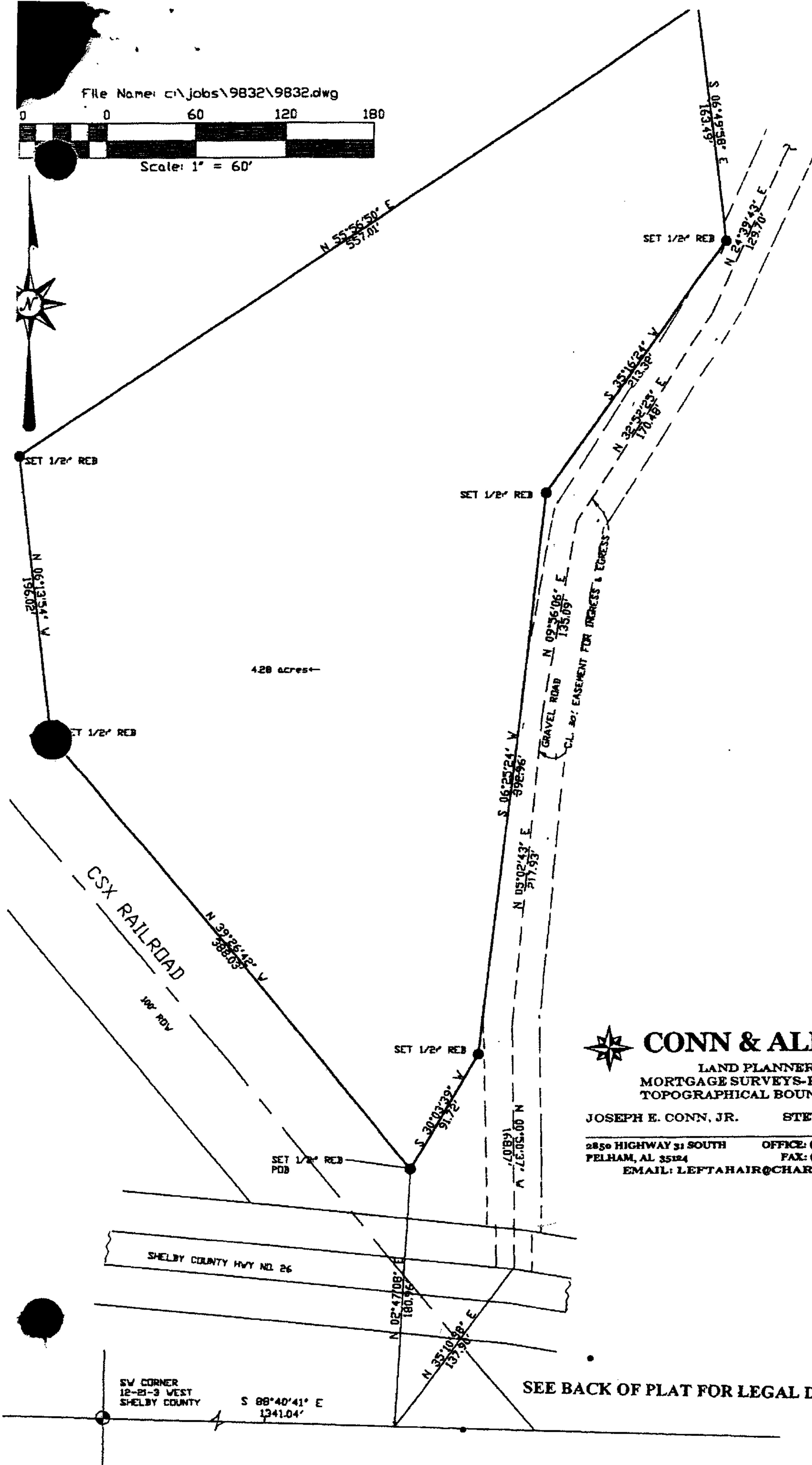
(Survey to be attached)

CHENEY LEASE ALABASTER REV2  
c0593-03  
103002  
CHF

File Name: c:\jobs\9832\9832.dwg

0 0 60 120 180

Scale: 1" = 60'



20041012000563300 Pg 30/30 98.00  
Shelby Cnty Judge of Probate, AL  
10/12/2004 11:20:00 FILED/CERTIFIED



## CONN & ALLEN

LAND PLANNERS  
MORTGAGE SURVEYS-PERC TESTS  
TOPOGRAPHICAL BOUNDARIES

JOSEPH E. CONN, JR.

STEVEN M. ALLEN

2850 HIGHWAY 31 SOUTH  
PELHAM, AL 35124

OFFICE: (205) 663-4251  
FAX: (205) 663-7694

EMAIL: LEFTAHAIR@CHARTER.NET

SEE BACK OF PLAT FOR LEGAL DESCRIPTION