

AFTER RECORDING RETURN TO:

Kevin R. Wallace  
Foster Pepper & Shefelman PLLC  
1111 Third Avenue, Suite 3400  
Seattle, WA 98101



200403100046

Skagit County Auditor

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99749-E  
LAND TITLE OF SKAGIT COUNTY

**QUARRY EASEMENT AND RESTRICTIVE COVENANT**

Grantor: Meridian Aggregates Company, a Delaware limited partnership

Grantee: Jeffrey W. Hammer and Tara Hammer, a married couple

Legal Description: PTN. GOV. LOT 3, 4-33-4 E W.M.  
(Complete description attached as Exhibits 1 and 2)

Assessor's Tax Parcel: 330404-0-003-0000; 330404-0-004-0033;  
330404-0-004-0108

This Quarry Easement and Restrictive Covenant ("Agreement") is made and entered into as of the 10th day of March, 2004, by and between Jeffery W. Hammer and Tara Hammer, a married couple, residing in Skagit County, Washington, (singly and collectively "Grantees") and Meridian Aggregates Company, a Delaware limited partnership with operations in Skagit County, Washington ("Grantor").

BACKGROUND

A. Grantor is the ground lessee of the tract of land located in Skagit County, Washington that is legally described on Exhibit 1 attached hereto and incorporated herein, pursuant to (a) that certain Lease of Real Property dated March 15, 1994 with the City of Mount Vernon, Washington; and (b) that certain Lease dated October 29, 1975 with Allied Aggregates and Asphalt Paving, Inc (the "Quarry Land"). For more than twenty-five (25) years, Grantor and its predecessors have

operated a large limestone quarry and related facilities on the Quarry Land and Grantor expects to use such land as a limestone quarry for many more years.

B. As of the date hereof, Grantor has conveyed to Grantees the tract of land located in Skagit County, Washington, legally described on Exhibit 2 which is attached hereto and by this reference incorporated herein (the "Property"), that is adjacent to the Quarry Land. Grantor has retained the easement which is the subject hereof in order to insure the right of Grantor to continue operations on the Quarry Land and to permit certain effects of the Quarrying Operations (as defined below) on the Quarry Land on, in or near the Property.

C. The Grantees have agreed for themselves and their assigns that certain Quarrying Operations may be continued on the Quarry Land in accordance with the terms and conditions set forth herein.

### EASEMENT RIGHTS

Accordingly, in return for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Grantor and Grantees, and as a material inducement to Grantor to consummate the sale of the Property to the Grantees on the basis agreed between them, the parties hereby agree as follows:

1. Grantor hereby reserves and excepts from the conveyance of the Property to Grantee a perpetual easement over, on, and across the Property, permitting Grantor and its successors and assigns, and other operators of Quarrying Operations on all or any portion of the Quarry Land the right to engage in Quarrying Operations on the Quarry Land (the "Quarry Easement"). It is agreed that this Quarry Easement shall permit certain consequences, impacts or effects (the "Permitted Effects") on the Property of Quarrying Operations on the Quarry Land. It is agreed that this Quarry Easement specifically does not allow Grantor to use the Property for storage of equipment, vehicles or any other items of personal property, or to use any portion of the Property (other than as permitted by the Access Easement) for ingress, egress or utilities.

2. All Quarrying Operations undertaken shall conform to Approved Quarrying Standards (as defined below) and, provided that such standards are met, and the effects on the Property of the Quarrying Operations do not exceed the Permitted Effects, Grantees (acting for themselves as well as their successors or assigns) irrevocably waive, relinquish, release and discharge Grantor and its successors and assigns from, any and all claims or causes of action that may now or hereafter exist to stop or in any way restrict such Quarrying Operations.

3. The obligations of Grantee in Sections 1 and 2 above shall also constitute a restrictive covenant burdening the Property and benefiting the Quarry

Land. Such restrictive covenant touches and concerns the Property and the Quarry Land, and Grantee intends the restrictive covenant to be binding on their successors and assigns.

4. Grantor hereby reserves and excepts from its conveyance of the Property to Grantee, and Grantee hereby grants to Grantor, its successors and assigns, and all other users of or owners of any ownership interest in all or any portion of the Quarry Land, a non-exclusive, perpetual easement in, over, under, across and through the land described in Exhibit 3 hereto and by this reference incorporated herein (the "Access Easement Area"), for the purpose of providing ingress, egress and utilities to the Quarry Land (the "Access Easement"). The scope of the Access Easement shall include all forms of vehicular and pedestrian ingress and egress as are now or may hereafter be useful to the Quarrying Operations on the Quarry Land or any portion thereof, on a 24 hours per day, seven days per week basis, and all utilities as are now or may hereafter be useful to the Quarrying Operations on the Quarry Land. Grantor shall maintain the Access Easement Area in good condition, including any resurfacing and other maintenance and repairs necessary to enable Grantor to use the Access Easement Area in accordance with the purpose and scope of the Access Easement; provided that Grantee shall be liable for any repairs to the Access Easement Area that are due to the negligence or willful acts of Grantee or their agents or invitees.

5. As used in this Agreement, the following terms shall have the following meanings:

"Approved Quarrying Standards" shall mean a standard of conducting Quarrying Operations that conforms to all performance criteria of applicable federal, state or local law, as applicable at the relevant times and that does not violate any local, state or federal law, code, statute, regulation, rule or other restriction in any way applicable to the use of the Quarry Land or the operation of any business or industry on the Quarry Land. Upon any violation of the foregoing provision that continues for more than fifteen (15) consecutive days following Grantor's receipt of written notice thereof from Grantees, Grantor shall be in default hereunder. However, Grantor shall not be in default hereunder even though a violation or alleged violation continues for longer than fifteen (15) consecutive days if Grantor (A) undertakes within such fifteen (15) day period to lawfully contest the fact that a violation has occurred; or (B) undertakes within such fifteen (15) day period a cure for, or other mutually acceptable resolution of, any such violation and provides for the prevention of future violations and completes such cure or resolution within thirty (30) days from the date of its receipt of written notice of the violation.

"Quarrying Operations" shall mean those technologies, processes, activities, operations and uses now or hereafter commonly associated with commercial quarries similar in size to the limestone quarry on the Quarry Land that conform to Approved



Quarrying Standards, including, without limitation, frequent blasting with explosives producing sound and shock waves, and continuous or near continuous excavating, conveying, crushing, washing, stockpiling, producing, distributing, selling and transporting by truck and rail various limestone, concrete, lime, and asphalt materials and other products, the use of rail lines and related equipment, the storing and use of rail cars and fuels, oils, lubricants, blasting agents, additives and other industrial materials, as well as the operation of asphalt plants, ready-mix concrete plants, heavy equipment, equipment shops, settling ponds, the disposal of overburden, the creation of dust and noise at levels common to large commercial limestone quarries, and the placement of signs informing the public of the location and dangers of the quarry and its operations. Without in any way limiting the addition of new technologies, processes, activities, operations or uses in the future, the term "Quarrying Operations" specifically includes, without limitation, all technologies, processes, activities, operations and uses currently conducted at or near the Quarry Land to the extent that they conform to Approved Quarrying Standards.

"Permitted Effects" shall mean such reasonable amounts of vibration, non-toxic dust, noise or other non-hazardous perturbations that may affect or enter onto the Property now or in the future, as a result of Quarrying Operations on the Quarry Land, so long as such vibration, non-toxic dust, noise or other non-hazardous perturbations are not materially increased from such as are evident to Grantees as of the date hereof, do not render the existing dwelling on the Property (or any dwelling that may in the future be erected on substantially the same area of the Property) uninhabitable, and do not include any contamination of the Property, water on or under the Property, or the air in the vicinity of the Property with any Hazardous Substance as hereinafter defined, and do not endanger the life or health of any person residing on, visiting, or in any way using the Property. In interpreting the meaning of the words "Permitted Effects" it is to be understood that the present level of vibration, dust, noise and other perturbations that affect or enter onto the Property are acceptable to the Grantees, and that the parties mutually desire that the Quarrying Operation be allowed to continue on the Quarry Land indefinitely, provided the vibration, dust, noise and other perturbations does not materially increase in the future. Grantor acknowledges that that Grantees have not obtained, and do not have the resources to obtain, professional information as to whether the Quarrying Operation has caused or is causing any contamination of the Property, or of water on or under the Property, or of the air in the vicinity of the Property with any Hazardous Substance or has caused or is causing any endangerment to the life or health of any person, animals or plant life residing on, visiting, or in any way using the Property, and this Easement is in no way intended to permit any such contamination to occur now or in the future, or to release any claim which Grantee or Grantees successors or assigns or any other third parties may have now or have at any time in the future against Grantor, its successors or assigns or any other third parties based on any known or unknown contamination or endangerment.



"Hazardous Substance" shall mean any petroleum product and any chemical, substance or material the purchase, sale, transportation, storage or use of which is subject to regulation by any federal, state or local statute, regulation or ordinance for the purpose of protecting human health and/or the environment, or which is defined, classified, or designated as hazardous, dangerous, toxic, corrosive, explosive, radioactive, or other similar term, or as a hazardous substance, hazardous waste, pollutant, contaminate, or other similar term, by any federal, state or local statute, regulation, or ordinance presently in effect or that may be promulgated in the future, as they may be amended from time to time.

6. GRANTEES ARE AWARE THAT QUARRYING OPERATIONS INVOLVE FREQUENT BLASTING, VIBRATIONS, DUST, NOISE, AND HEAVY COMMERCIAL RAIL AND VEHICULAR TRAFFIC AND ARE FURTHER AWARE THAT CLAIMS HAVE BEEN MADE THAT SUCH FACTORS MAY AFFECT THE USE OR VALUE OF PROPERTY WHICH IS LOCATED IN THE VICINITY OF SUCH OPERATIONS. GRANTEES ACKNOWLEDGE AND AGREE THAT THE MERIDIAN QUARRY IN SKAGIT COUNTY, WASHINGTON IS A RELATIVELY LARGE QUARRY AND THAT THIS QUARRY EASEMENT IS INTENDED TO PERMIT GRANTOR AND ITS AFFILIATES TO CONTINUE OPERATING SUCH QUARRY AT PRODUCTION LEVELS EQUAL TO OR GREATER THAN THOSE AT WHICH ITS HAS OPERATED AT ANY TIME DURING THE PAST FIVE (5) YEARS SO LONG AS THE EFFECTS OF SUCH QUARRYING OPERATIONS ON THE PROPERTY DO NOT EXCEED THE PERMITTED EFFECTS AS DEFINED ABOVE. GRANTEES FURTHER ACKNOWLEDGE AND AGREE THAT THEY ARE FAMILIAR WITH THE PRESENT LEVEL OF SUCH OPERATIONS AND THE READILY APPARENT AND PERCEIVABLE EFFECTS THAT SUCH OPERATIONS HAVE ON THE PROPERTY.

7. It is the intention of the parties that the Access Easement shall encumber and run with the title to all and every part of the Property and be appurtenant to and run with title to the Quarry Land and each and every other part thereof, in perpetuity. It is the intention of the parties that the Quarry Easement shall encumber and run with the title to all and every part of the Property and be appurtenant to and run with title to the Quarry Land and each and every other part thereof until completion of the reclamation of the Quarry, which shall be evidenced by the approval of the reclamation by the Department of Natural Resources or any successor governmental agency having authority over reclamation of the Quarry at that time.

8. The matters described in this Agreement shall be binding upon Grantees and Grantor, and their respective successors and assigns, including, without limitation, all future owners of all or any part of the Property and those possessing or using the Property by, through or under any of them.



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9. No violation of or failure to comply with any matter contained herein shall impair the validity of any mortgage, deed of trust or other similar security instrument hereafter affecting the Property.

10. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Washington, exclusive of its conflicts-of-law provisions.

11. No subsequent agreement amending, supplementing, modifying, waiving or in any way relating to the subject matter of this Agreement shall be effective unless set forth in a written instrument making specific reference to this Agreement signed by the owners of the Quarry Land and the owners of the Property, as of the date of such amendment, and filed of record in Skagit County, Washington. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend any provision of this Agreement.

12. No action taken pursuant to this Agreement, including without limitation, any investigation by or on behalf of Grantor or Grantees, or any of their respective successors-in-interest or assigns (individually, a "Party" and collectively, the "Parties"), shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

13. Each of the Parties agrees that from time to time after the date hereof, upon reasonable request of any other Party, it shall cooperate with the requesting Party, at the requesting Party's cost, and take such further reasonable action and execute, acknowledge and deliver, or cause to be executed, acknowledged, and delivered to the requesting Party such further documents as may be reasonably necessary or appropriate in order to consummate and give full effect to the matters contemplated by this Agreement.

14. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The words "hereof", "hereto", "herein", "hereunder" and other words of similar import shall be deemed to refer to this Agreement as a whole. All persons comprising Grantees shall be jointly and severally liable for the performance of Grantees' obligations under this Agreement.



15. If any provision of this Agreement or the application thereof to any person or circumstance shall be held illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable, but the remainder of this Agreement, and the application of such provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected by such severance, and shall remain in full force and effect. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

16. The parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

17. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. This Agreement is for the sole benefit of the Parties, and no third party is intended to be a beneficiary of or under this Agreement.

18. The Parties have been advised or have had the opportunity to be advised by their legal counsel with respect to the terms of this Agreement and understand and acknowledge the significance and consequence of it.

19. In any action for breach of this Agreement or in any action to enforce any right or obligation under this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees, court costs and collection fees.

20. In addition to the termination of the Quarry Easement upon completion of the reclamation of the Quarry in accordance with the provisions of Paragraph 7 hereof, the Quarry Easement and/or Access Easement shall expire on the earlier of (i) the date upon which the purpose of the Quarry Easement or Access Easement (as applicable) ceases to exist or becomes impossible to perform, or (ii) the date upon which this Agreement is abandoned by Grantor or the then operator of the quarry by instrument filed in the Real Property Records of Skagit County, Washington. Temporary cessation of Quarrying Operations or use of the Access Easement Area, whether voluntary or involuntary, shall not cause the Quarry Easement or Access Easement to terminate or expire. Cessation of Quarrying Operations, whether voluntary or involuntary, which continues for a period of one year or more shall cause this Quarry Easement to terminate.

21. This Agreement shall be enforceable as an easement and/or a restrictive covenant.

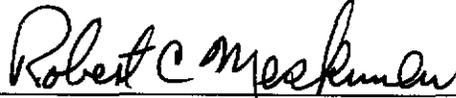


Executed and effective as of the date first written above.

GRANTOR:

MERIDIAN AGGREGATES COMPANY,  
a Delaware limited partnership

BY: MERIDIAN AGGREGATES INVESTMENTS, LLC  
Its: General Partner  
By: MARTIN MARIETTA MATERIALS, INC.  
Its: Managing Member



By: Robert C. Meskinen  
Its: Vice President

GRANTEE:



Jeffrey W. Hammer



Tara Hammer

SKAGIT COUNTY WASHINGTON  
Real Estate Excise Tax  
PAID

MAR 10 2004

Amount Paid \$  
Skagit County Treasurer  
By: Deputy

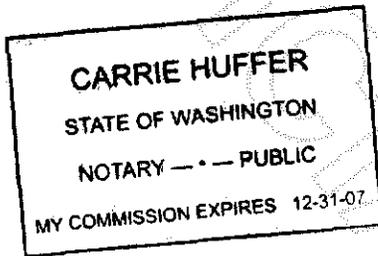


STATE OF WASHINGTON  
COUNTY OF SKAGIT

ss.

On this 10th day of March, 2004, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Jeffrey W. Hammer and Tara Hammer, to me known to be the individuals who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN UNDER my hand and official seal the day and year in this certificate above written.



*Carrie Huffer*

NOTARY PUBLIC in and for the State of Washington

Carrie Huffer

Printed/Stamped Name of Notary

Residing at Burlington

My Appointment Expires: 12/31/2007

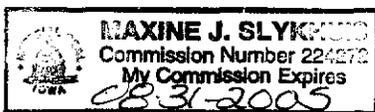
STATE OF Iowa

ss.

COUNTY OF Polk

On this 27th day of February, 2004, before me, the undersigned, a Notary Public in and for the State of Iowa, duly commissioned and sworn, personally appeared Robert C. Meskimen, to me known to be the person who signed as the Vice President of Martin Marietta Materials, Inc., which is the Managing member of Meridian Aggregates Investments, LLC, which is the general partner of Meridian Aggregates Company, the limited partnership that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of such limited partnership for the uses and purposes therein mentioned; and on oath stated that he was authorized to execute the said instrument on behalf of said limited partnership.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.



*Maxine J. Slykhuis*

NOTARY PUBLIC in and for the State of Iowa

*Maxine J. Slykhuis*

Printed/Stamped Name of Notary

Residing at Des Moines IA

My Appointment Expires: 08-31-2005



EXHIBIT 1

LEGAL DESCRIPTION OF QUARRY LAND

City of Mount Vernon Parcel

The East 600 feet of the South 1150 feet of the West ½ of the Southeast ¼ of Section 33, Township 34 North, Range 4 East, W.M., and the South 1700 feet of the East ½ of the Southeast ¼ of that same Section.

Allied Aggregates and Asphalt Paving, Inc. Parcel

Government Lot 2, Section 4, Township 33 North, Range 4 East, W.M., Less the West 260 feet of the North 500 feet thereof.



EXHIBIT 2

LEGAL DESCRIPTION OF PROPERTY

PARCEL "A":

Lot 1 of Short Plat No. 91-081, approved February 18, 1992, recorded February 24, 1992, in Book 10 of Short Plats, page 61, under Auditor's File No. 9202240042, records of Skagit County, Washington, and being a portion of Government Lot 3, Section 4, Township 33 North, Range 4 East, W.M., EXCEPTING from said Lot 1, the most Easterly 250 feet thereof. Situate in the County of Skagit, State of Washington.

PARCEL "B":

That portion of the North 180.00 feet, as measured along the East line, of Government Lot 3, Section 4, Township 33 North, Range 4 East, W.M., lying Easterly of Carpenter Creek, EXCEPT the North 30 feet thereof, ALSO EXCEPT the East 250.00 thereof. Situate in the County of Skagit, State of Washington.

PARCEL "C":

The Northerly 200 feet (as measured along the East line), of that portion of the following described property lying Easterly of the centerline of Carpenters Creek:

Government Lot 3, EXCEPT that portion of the West 660 feet of said Government Lot 3, lying Westerly of the Francis E. Bacon Road, in Section 4, Township 33 North, Range 4 East, W.M.

EXCEPT the North 180 feet thereof;

ALSO EXCEPT that portion lying Southerly of the following described line:

Beginning at the Southeast corner of said Government Lot 3;

Thence North 02°43'19" West 611.96 feet along the East line of said Government Lot 3 to a point that is South 02°43'19" East 724.44 feet from the Northeast corner of said Government Lot 3 and the true point of beginning of this line description;

thence South 73°25'28" West 182.18 feet;

thence South 78°13'21" West 254.28 feet;

thence South 85°40'59" West 136.70 feet;

thence South 81°01'24" West 99.48 feet;

thence South 72°25'51" West 279.58 feet to the Easterly margin of the Frances E. Bacon Road and the terminus of this line description.

EXCEPTING from all of the above, the East 250.00 feet.

Situate in the County of Skagit, State of Washington.



EXHIBIT 3

LEGAL DESCRIPTION OF ACCESS EASEMENT AREA

The North 30.00 feet of Lot 1 of Short Plat No. 91-081, approved February 18, 1992, recorded February 24, 1992, in Book 10 of Short Plats, Page 61, under Auditor's File No. 9202240042, records of Skagit County, Washington, and being a portion of Government Lot 3, Section 4, Township 33 North, Range 3 East, W.M.



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