

# QUARRY PLAT TWO

This information is taken from public records filed with the Lucas County Recorder's Office. Port Lawrence Title and Trust Company assumes no liability for the accuracy or completeness of the information contained herein.

**DECLARATION OF RESTRICTIONS FOR  
THE QUARRY PLAT TWO, A  
SUBDIVISION IN THE TOWNSHIP OF MONCLOVA,  
LUCAS COUNTY, OHIO**

This Declaration of Restrictions ("Declaration") adopted by **CAVALEAR PROPERTIES LIMITED PARTNERSHIP**, an Ohio limited partnership, 6444 Monroe Street, Sylvania, Ohio 43560, hereinafter called ("Developer"), and by **THE QUARRY HOMEOWNERS' ASSOCIATION, INC.**, an Ohio non-profit corporation, hereinafter called ("Association"), as of this 25th day of JANUARY, 1994.

**WITNESSETH THAT:**

WHEREAS, Developer is the record owner of all of the platted lots in the recorded plat of The Quarry Plat Two ("the Plat"), a Subdivision in the Township of Monclova, Lucas County, Ohio, which Plat is recorded in Volume 132, Pages 142, inclusive, of the Lucas County, Ohio Record of Plats (hereinafter said Subdivision is sometimes called "the Subdivision" or "The Quarry"); and

WHEREAS, the Association is an Ohio non-profit corporation formed by Developer whose members shall be all of the owners of all of the lots ("lot or lots") in the Plat as well as any and all lots, that may be created by any previous (Plat One has already established under recording in Volume 132, Pages 99 and 100 of Plats) and/or subsequent plats of The Quarry; and

WHEREAS, The Quarry is intended to be a first-class, quality single-family residential subdivision developed as a community development plan within the meaning of such terms as defined by the Revised Code of Ohio, Lucas County Subdivision Rules and Regulations, and Zoning Resolutions of the Townships of Monclova and Springfield, Lucas County, Ohio.

NOW, THEREFORE, Developer and Association, in consideration of the enhancement in the value of said property by reason of the adoption of the restrictions hereinafter set forth, and in furtherance of the aforesaid development plan, do for themselves and their respective successors and assigns, hereby declare, covenant and stipulate that all property as shown on the Plat shall hereafter be sold, transferred, or conveyed by Developer, its successors and assigns, subject to the following restrictions, covenants and conditions, which restrictions shall to the extent legally permissible, supersede any and all other restrictions heretofore enforced on said property by any other instrument.

**ARTICLE I**

**USE OF LAND**

**1.1 Residential Lots.** All of the lots located and shown on the Plat as the same may be hereafter combined and/or subdivided shall be hereafter sometimes referred to herein as "residential lots" or "residential lot". No structure shall be erected, placed or maintained on any such residential lot other than one (1) single-family residential dwelling, a private garage of not more than four (4) car capacity which shall be made an integral part of the residence dwelling, an attractive appearing garden house, a swimming pool and a tennis court. Such

PARTNERSHIP CERTIFICATE IN COMPLIANCE  
WITH SEC. 1777.02 MICROFICHE NO. 88  
894 A01, FILED 6-29-88  
TUE RHOIX, RECORDER, BY SDY

94 341B03

residence shall be used and occupied solely and exclusively for private residence purposes by a single-family and such family's servants.

**1.2 Lot Use.** The construction of a single family residence on more than one residential lot shall be permitted. Not more than one single family residence shall however be permitted on any residential lot; provided, that individual residential lots may be split and/or combined upon obtaining any requisite governmental approvals and the prior written approval of the Developer; provided, however, under no circumstances shall any lot so approved for splitting result in any lot having less street frontage or square footage than any other lot in the Plat.

**1.3 Use Restrictions.** No building or structure shall be erected and no portion of any residential lot shall be used for any use or purpose other than single-family residential purposes (which is defined herein so as to not include "group homes" or other similar environment in which unrelated parties are living together in a communal type setting). No noxious, offensive or unreasonably disturbing activities shall be carried on upon any part of the Subdivision, nor shall anything be done within the Subdivision which may be or become an annoyance or nuisance in the Subdivision. No use or practice which is an unreasonable source of annoyance to the residents within the Subdivision or which shall interfere with the peaceful possession and proper use of The Quarry lands by its residents shall be permitted. No unreasonably offensive or unlawful action shall be permitted, and all laws, zoning ordinances and regulations of all controlling governmental authorities shall be complied with at all times by the owners of all lots in the Subdivision. No well for gas, water, oil or any other substance shall at any time be erected, placed or maintained on any of the residential lots other than a well for water for recreation or maintenance purposes which shall first have been approved by the Developer as provided under Article II hereof. No lot shall be used for the storage of automobiles, recreational vehicles, trailers, scrap, scrap iron, water, paper, glass or any reclamation products or material except that during the period while a structure is being erected upon any residential lot, building material to be used in the construction of such structure may be stored thereon, provided however, that any building materials not incorporated into said structure within ninety (90) days after its delivery to such residential lot shall be removed therefrom. No outside burning of debris or materials of any kind shall be conducted anywhere within the Subdivision. No wash or laundry shall be hung or dried outside of any structure on any residential lot.

**1.4 Completion of Structures.** Lot owners shall complete all residences within one (1) year following the commencement of construction. No sod, dirt or gravel other than incidental to construction of approved structures shall be removed from residential lots without the prior approval of the Developer as provided under Article II hereof.

**1.5 Pets.** Dogs, cats or other household pets suitably maintained and housed within a residential dwelling may be kept subject to rules and regulations adopted by the Developer or the Association, provided however, that no animal of any sort may be kept, bred or maintained for any commercial purpose, and any pet causing or creating a nuisance or unreasonable disturbance shall be subject to permanent removal and exclusion from the Subdivision in accordance with the rules and regulations adopted by the Developer or the Association. Pit Bulls and other vicious animals are strictly prohibited in The Quarry. All owners shall strictly comply with all applicable leash laws. Without limiting any of the foregoing, no animal owned by (or in the custody of) a lot owner or his tenants or guests shall be permitted on any of the common areas in the Subdivision ("Common Areas") except when it is leashed or carried by hand and is either in an area that the Association has specially designated for walking pets or is being walked or transported directly to or from such area or directly off the Common Areas. The board of the Association may order temporarily or permanently banned from the Common Areas, and/or the Subdivision generally, any animal that is dangerous or that becomes obnoxious by reason of aggressive or intimidating behavior, barking, littering or otherwise. No animal may be kept on the Subdivision for commercial or breeding purposes. No animal may be kept outside of a residence unless someone is present in the residence. Any lot owner shall

pick up and remove any solid animal waste deposited by the pet on the Subdivision lands, except for designated pet-walk areas, if any.

**1.6 Signs.** Except for any and all signs of the Developer or its designee having to do with the marketing and development of the Subdivision, which are expressly permitted, after initial occupation of a residence, no signs of any character other than signs of not more than ten (10) square feet advertising the sale of the residential lot on which such sign is located shall be erected, placed or posted or otherwise displayed on or about any residential lot without the prior written permission of the Developer, and the Developer shall have the right to prohibit, restrict, and control the size, construction, material, wording, location and height of all such signs. During construction of a residence on a particular lot and prior to occupation of any such residence, not more than two (2) signs may be placed on any lot advertising the sale and company constructing the residence, each not more than ten (10) square feet. All permitted signs shall be located at least fifteen (15) feet back from the right-of-way line.

**1.7 Garages.** On all lots 100 feet or wider (at the building line) garages must be sideloading or rear loading. On any lot less than 100 feet in width (at the building line) the Developer reserves the right to require a courtyard side-load garage.

**1.8 Miscellaneous.** Except for trailers of the Developer during initial development of the Subdivision, no trailer, basement, tent, shack, garage, barn, mobile home or other temporary shelter or housing device shall be maintained or used as a residence, temporarily or permanently, in the Subdivision. No dwelling erected in the Subdivision shall be used as a residence until the exterior thereof has been completed in accordance with the detailed plans and specifications approved therefor by the Developer as provided under Article II hereof unless approved by the Developer at which time an alternate completion time will be established. Any truck, boat, bus, tent, mobile home, trailer or other similar housing device, if permitted to be stored on any residential lot in the Subdivision, shall be suitably housed within the attached garage. All rubbish, debris and garbage shall be stored within the garage or an underground container. Each lot owner shall regularly pick up all garbage, trash, refuse or rubbish on the owner's lot. Garbage, trash, refuse or rubbish that is required to be placed at the front of the lot in order to be collected may be placed and kept at the front of the lot after 5:00 p.m. on the day before the scheduled day of collection, and any trash facilities must be moved on the collection day. All garbage, trash, refuse or rubbish must be placed in appropriate trash facilities or bags. Additional regulations for the storage, maintenance and disposal of rubbish, debris, leaves and garbage may from time to time be established by the Developer.

**1.9 Vehicles.** Without limiting any of the foregoing, no vehicle other than a private passenger automobile shall be parked outside any residence for a period of more than 24 hours without the prior written consent of the Association. No vehicle shall be parked outside of a residence overnight without the prior written consent of the Association if commercial lettering or signs are painted to or affixed to the vehicle, or if commercial equipment is placed upon the vehicle, or if the vehicle is a truck, recreational vehicle, camper, trailer, or other than a private passenger vehicle as specified above. A lot owner and residents thereof may not keep more than four vehicles within The Quarry on a permanent basis without the prior written consent of the Association. The foregoing restrictions shall not be deemed to prohibit the temporary parking of commercial vehicles while making delivery to or from, or while used in connection with providing services to the Subdivision. All vehicles parked within the Subdivision must be in good condition, and no vehicle which is unlicensed or which cannot operate on its own power shall remain within The Quarry for more than 24 hours, and no major repair of any vehicle shall be made on any property which constitutes the Subdivision. Motorcycles are not permitted except with the prior written consent of the Association which may be withdrawn at any time, and any permitted motorcycle must be equipped with appropriate noise muffling equipment so that the operation of same does not create an unreasonable annoyance to the residents of The Quarry.

**1.10 Maintenance.** Each lot owner shall maintain his residence and all improvements upon his lot in first class condition at all times. The exterior of all residences including, but not limited to, roofs, walls, windows, patio areas, pools, screenings, and awnings shall be maintained in first class condition and repair and in a neat and attractive manner. All exterior painted areas shall be painted as reasonably necessary, with colors which are harmonious with other residences, and no excessive rust deposits on the exterior of any residence, peeling of paint or discoloration of same shall be permitted. No lot owner shall change the exterior color of his residence without the prior written consent of the Association. All sidewalks, driveways and parking areas within the owner's lot or serving the owner's residence shall be cleared and kept free of debris; and cracks, any rust stains or marks from water usage damaged and/or eroding areas on same shall be removed, repaired, replaced and/or resurfaced.

## ARTICLE II

### ARCHITECTURAL CONTROL

**2.1 Submission and Approval of Plans and Specifications.** The plans and specifications for all dwellings, buildings, landscaping, and other improvements and structures (including, but not limited to, the height of all structures, signs, fences, walls, driveways, hedges, garages, basements, docks, in-ground swimming pools (see Section 2.5 hereof), tennis courts and other enclosures) to be constructed and/or situated within the Subdivision shall be submitted for examination to the Developer and written approval of the Developer to such plans and specifications shall be obtained before any such building, landscaping, structure or improvement shall be constructed or placed upon any residential lot and before any addition, change or alteration may be made to any of same on a residential lot. The Developer shall approve, reject, or approve with modifications all submissions within thirty (30) days after submission of the plans and specifications required hereunder. Failure to so respond within such period shall be deemed to be disapproval of the submission. The plans and specifications to be submitted shall show the size, location, type, architectural design, quality, use, construction materials and color scheme of the proposed building, structure or improvement, the grading plan for the building site and the finished grade elevation thereof. Such plans and specifications shall be prepared by a competent architect or draftsman and two (2) complete sets shall be furnished to the Developer so that the Developer may retain a true copy thereof with its records. No prefabricated, manufactured, or modular homes or residences shall be constructed within the Subdivision unless the plans and specifications for same have been first approved as provided under this Article II.

**2.2 Architectural Standards, Harmonious Plan.** In requiring the submission of detailed plans and specifications as herein set forth, Developer intends to assure the development of The Quarry as an architecturally harmonious, artistic and desirable single-family residential Subdivision, with individual residences to be constructed in such architectural styles, or with such materials, in such colors, and located in such manner as to, in the judgement of the Developer, complement one another and promote the harmony and desirability of the Subdivision taken as a whole. In approving or withholding its approval of any plans and specifications, the Developer shall have the right to consider the suitability of the proposed building or structure and of the materials of which it is to be built to the building site upon which it is to be erected. The Developer will not approve designs which are in conflict with the esthetic standards of the community.

**2.3 Location and Building of Structures and Sprinkler Systems.** No dwelling shall be erected, reconstructed, placed or suffered to remain upon any lot nearer the front or street line or lines than the building set back lines as shown on the Plat, nor nearer to any side line or rear line that shall be determined by Developer in writing at the time of the approval of the plans and specifications for said dwelling. This restriction as to the distances at which said dwelling shall be placed from the front, side and rear lines of said lot, shall apply to and include, porches, verandas, portecochre, and other similar projections of any

RESTRICTED/JRPMISC3  
January 20, 1984  
Our File No. 2174-078

dwelling. Under no circumstances shall any owner or any contractor while in the process of construction on any lot permit the parking of any vehicles and/or the storage of any materials or debris whatsoever on any other lot not owned by such owner whether adjacent or not, and whether said other lot is vacant or not. Any lot owner who violates this just recited prohibition shall be responsible for any damage caused by such unauthorized use of any other lot. All lots shall be serviced by underground automated sprinkler systems giving one hundred (100%) percent lot coverage installed at time of construction and continuously maintained in operating condition thereafter.

**2.4 Window Treatments.** Window treatments shall consist of drapery, blinds, decorative panels, or other tasteful window covering, and no newspaper, aluminum foil, sheets or other temporary window treatments are permitted anywhere in the Subdivision.

**2.5 Swimming Pools and Other Above Ground Improvements or Property.** No above ground swimming pools or radio receiving equipment shall be permitted, installed or maintained on any lot. Without limiting any of the foregoing, the location, lighting, composition, fencing, screening, elevation and all other aspects of any in-ground swimming pool shall be subject to the approval of the Developer. Further, all applicable zoning and/or other governmental laws and regulations shall be complied with by any owner when installing any such pool. No sheds, enclosures, television satellite dishes, or other such removable property of any kind shall be permitted unless first the plans and specifications therefor are submitted to and approved by the Developer in writing.

**2.6 Driveway and Sidewalks.** In addition to the specific recitations contained in the recorded Plat pertaining to the installation of sidewalks, owner of each lot in the Subdivision agrees that he shall be responsible for the installation of public sidewalks within the right-of-way adjacent to any particular lot at such time as a residence is constructed thereupon or at such time as the governing authority or authorities instruct an owner or the Developer to do so. All such sidewalks shall be installed completely through all driveway areas. Each owner who fails to so construct such public sidewalks shall be subject to a lien against the particular lot in question in the Developer's favor for the cost of same in the event the Developer has to construct and pay for such sidewalks due to such failure on the part of the owner. All driveways in the Subdivision shall either be asphalt or some other permanent hard surface approved by the Developer in its sole discretion. The location and design of all driveways, if not now established, shall be determined by Developer in writing at the time of approval of the plans and specifications for any dwelling. Location and specifications for construction of any driveway shall be submitted to Developer and its approval thereof endorsed thereon in writing.

**2.7 Building Lines and Landscaping.** No structure or any part thereof shall be erected, placed or maintained on any lot in The Quarry nearer to the front or street line or lines than the building setback lines as shown on the Plat. Said portion of any lot shall not be used for any purpose other than that of a lawn. Nothing herein contained, however, shall be construed as preventing the use of such portion of any lot for privacy walks, driveways, if otherwise permitted, the planting of trees or shrubbery, the growing of flowers or ornamental plants, or statuary fountains and similar ornamentations, for the purpose of beautifying any lot, but no vegetables, so called, nor grains of the ordinary garden or field variety shall be grown on the front or side yards on such portion thereof; and no weeds, underbrush or other unsightly growths, shall be permitted to grow or remain anywhere upon any lot, and no unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. No fence, hedge, wall or enclosure of any kind for any purpose, shall be erected, placed or suffered to remain upon any lot, nor shall a hedge be erected, placed or suffered to remain upon any lot until the written consent of Developer shall have been first obtained therefor and shall be subject to the terms and conditions of said consent as to its type, height, width, color, upkeep and any general conditions pertaining thereto that said consent may name. No tree greater than six (6) inches in diameter (as measured 3 feet above existing grade) shall be removed from

RESTRIC/JRPMISC3  
January 20, 1994  
Our File No. 2174-008

any lot or destroyed for purposes of construction unless approved in writing by the Developer pursuant to Section 2.1 hereof.

**2.8 Establishment of Grades.** Developer shall have the sole and exclusive right to establish grades, slopes and swales on all residential lots and to fix the grade at which any buildings or structures shall be erected or placed thereon, so that the same may conform to a general plan for the development and use of The Quarry. Deviation of 12" or more from such established grades is strictly prohibited unless approved by the Developer in writing.

Under no circumstances shall contiguous residences have a difference in elevation of more than one (1) foot at any place where situated.

Permanent storm sewer pick-ups/catch basins are located on various residential lots throughout the Subdivision. Such permanent storm sewer pick-ups/catch basins may not under any circumstances be covered over, altered or eliminated by the owners of the residential lots upon which such pick-ups/catch basins are located.

**2.9 Basketball Backboards.** No basketball backboard shall be erected or attached to the front of any residence or garage or beyond the building line as set forth in the Plat and all such basketball backboards whenever or wherever erected shall be approved by Developer in writing.

**2.10 Mailbox and/or Paper Delivery.** The Developer shall have the exclusive right to determine the location, color, composition size, design, lettering and standards and brackets of any mail and paper delivery boxes, provided, however, all mailboxes shall in any event be located per the applicable U.S. Postmaster's directions. The owner of a residential lot shall maintain the mailbox and/or paper delivery box and replace when necessary with a mailbox and/or paper delivery box of exact type, look and quality. A drawing of an approved mailbox is on file at Developer's office for inspection by all lot owners.

**2.11 Fencing.** No fence, hedge, wall or enclosure of any kind, for any purpose shall be erected, placed or suffered to remain upon any lot, nor shall a hedge be erected, placed, or suffered to remain upon any lot until the written consent of the Developer shall have been first obtained therefor, and to be subject to the terms and conditions of said consent as to its type, height (no approved fence shall be more than four (4) feet high), width, color, upkeep and any general stipulations pertaining thereto that said consent may name. It is hereby stipulated split-rail treated hardwood fence is the preferred material for any approved fence. Wire fencing may be attached to any approved split-rail fencing on the lot owners side of the fence with Developer approval. All approved fences shall be located at least fifteen (15) feet back from the building setback line or lines shown on the Plat and five (5) feet from the rear property line.

**2.12 Construction in Violation of Approved Plan.** Developer, its successors and assigns, reserves and is hereby granted the right in case of any violations or breach of any of the restrictions, rights, reservations, limitations, agreement, covenants and conditions herein contained, to enter the any lot or property upon or as to which such violation or breach exists, and to summarily abate and remove, at the expense of the owner thereof, any erection, thing or condition that may be or exists thereon contrary to the intent and meaning of the provisions hereof as interpreted by Developer, or take any and all measures to stop construction on any such lot, and Developer shall not, by reason hereof be deemed guilty of any manner of trespass for such entry, abatement or removal. A failure of Developer to enforce any of the restrictions, rights, reservations, limitations, agreements, covenants and conditions contained herein shall in no event be construed, taken or held to be a waiver therefor to acquiescence in or consent to any continuing further or succeeding breach or violation thereof, and Developer shall at any and all times have the right to enforce the same.

**2.13 Power of Attorney.** Whenever any of the foregoing covenants, reservations, agreements or restrictions provide for any approval, designation, determination, modification, consent or any other action by Developer, any such approval, designation, modification, consent or any other action by any attorney-in-fact authorized to sign deeds on behalf of Developer shall be sufficient pursuant to a recorded power of attorney.

**2.14 The Quarry Homeowners Association, Inc.** The Developer has caused the Association to be incorporated as a not-for-profit corporation under the laws of the State of Ohio named "The Quarry Homeowners Association, Inc.". The owners of lots in The Quarry and all persons who hereafter acquire title to such lots shall be members of the Association. Upon the sale and conveyance by the Developer of all lots in the Plat and all previous or future plats, if any, of The Quarry or earlier upon the election of the Developer, the Developer, by instrument in writing in the nature of an assignment, shall vest in the Association the rights, privileges and powers reserved and retained by the Developer by the terms of this Declaration of Restrictions. The assignment shall be recorded in the Office of the Lucas County, Ohio Recorder. The Association shall have the further right to the collection and disposal of funds as herein provided and shall have the right, from and after such assignment, to enforce all provisions herein with respect to the construction, improvement, maintenance and upkeep of the Plat and future plats, if any, in the manner determined by the Association to be for the best interests of the owners of the lots in the Plat and said future plats, if any.

**2.15 Expansion Rights and Further Associations.** The Developer envisions that possibly the Subdivision will consist of seven hundred (700) or more lots created through the preparation and filing of additional plats to the recorded Restrictions for Plat One of the Subdivision ("Adjacent Property"). Developer therefore expressly reserves the right, power and option to amend these restrictions so as to include and cover all lots which eventually become part of the Subdivision as and if same have been part of the Plat from the date of the execution and recording of the Plat.

**2.16 Maintenance Charges.** Each and every lot in The Quarry shall be subject to a maintenance charge in the amount established by the Association, initially One Hundred Dollars (\$100.00) annually (such assessment shall be on a per lot basis), payment to be made annually at the time of taking title to any lot (appropriately prorated) and then on the first day of January each calendar year for such calendar year commencing January 1, 1994. The Association shall have a lien perpetually upon lots in The Quarry to secure the payment of the annual maintenance charge. In default of the payment of such maintenance charge within sixty (60) days of its due date, a "Notice of Lien" in substantially the following form may be filed and recorded in the lien records at the Office of the Recorder of Lucas County, Ohio:

"Notice of Lien"

Notice is hereby given that The Quarry Homeowners Association, Inc. claims lien for unpaid annual assessments for the year(s) \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ against the following described premises:

(Insert Legal Description)

THE QUARRY HOMEOWNERS'  
ASSOCIATION, INC., an Ohio  
non-profit corporation

By: \_\_\_\_\_, President



RESTRIC/JRPMISC3  
January 20, 1994  
Our File No. 2174-008

STATE OF OHIO, COUNTY OF LUCAS ss:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_, President of The Quarry Homeowners' Association, Inc., an Ohio non-profit corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

In any event any of said annual assessments are not paid when due, the Developer may, when and as often as such delinquencies occur, proceed by law to collect the amount then due by foreclosure of the above described lien, otherwise, and in such event, shall also be entitled to recover and have and enforce against each residential lot a lien for its costs and expenses in that behalf, including attorney fees. No owner may waive or otherwise escape liability for the annual assessments provided for herein by non-use of any common areas or any facilities located thereon or by abandonment of his residential lot. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any residential lot shall not affect the assessment lien; provided, however, that the sale or transfer of any residential lot pursuant to foreclosure of a first mortgage shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. Said charges and assessments shall be levied against all lots in The Quarry and shall be applied only toward payment of the costs of collections, improvements, the expenses of maintenance of the Association, and for any and all other purposes which the Association may determine from time to time to be for the general benefit of the owners of the lots in The Quarry, including the maintenance of boulevard areas, public rights-of-way bordering and within the Subdivision, guard houses, ponding areas, drainage areas, and the management and enforcement of the Association's right and duties under the within Declaration of Restrictions.

### ARTICLE III

#### EASEMENTS

3.1 Reservation of Easement Rights. Developer reserves to itself, and to its successors and assigns, the exclusive right to grant consents, easements and rights of way for the construction, operation and maintenance of electric light, cablevision, telephone and telegraph poles, wires and conduits, including underground facilities, and for drainage, sewers and any other facilities or utilities deemed convenient or necessary by Developer or its successors and assigns for the service of the subdivision on, over, below or under all of the areas designed as "Utility Easements", or with words of similar import, on the Plat, and along and upon all highways now existing or hereafter established and abutting all the residential lots in the subdivision. Developer also reserve to itself, and to its successors and assigns, the right to go upon or permit any public or quasi-public company to go upon the residential lots from time to time to install, maintain and remove such utility line and to trim trees and shrubbery which may interfere with the successful and convenient operation of such equipment. No structures, or any part thereof, shall be erected or maintained over or upon any part of the areas designated as "Utility Easement", or with words of similar import, upon the Plat. The term "structures" as used in the foregoing portion of this paragraph shall include houses, garages, other buildings and swimming pools, but shall not include residential lot improvements such as driveways, paved parking areas, and fences. No owner of any residential lot shall have the right to reserve or grant any easements or rights of way upon or over any of the residential lots without the prior written consent of the Developer, its successors and assigns. The Developer also reserves for the benefit of those residential lots in the Plat which are adjacent to any such lakes or quarries located within the Subdivision or any portion of the Adjacent

RESTRICT/JRPMISC3  
January 20, 1994  
Our File No. 2174-008

Property perpetual non-exclusive easements in favor of the record owners of said lots for the placement of docks within said lakes or quarries provided the composition and placement of such docks are first approved by Developer under the provisions of Article II hereof. Notwithstanding the provisions of Section 2.14, the rights reserved to the Developer in this Section 3.1 shall survive the transfer of the Developer's rights set forth in Section 2.14. The rights granted to the Developer in this Article III, Section 3.1 shall remain exclusively vested in the Developer for a period of twenty (20) years from and after the date hereof, notwithstanding any assignment by the Developer to the Association of the Developer's rights, privileges and powers as provided in Article III, Section 3.1 hereof. Upon the expiration of such twenty (20) year period, or at such earlier time as the Developer may designate, the rights granted to the Developer in this Article III, Section 3.1 shall terminate.

**3.2 Split-Rail Fence Reserved Easement.** In connection with the development of the Quarry as a first-class residential community, the Developer intends to construct and provide a decorative entranceway and landscaped fencing along Salisbury Road and at the Stone Quarry Boulevard access to the Subdivision. Accordingly, Developer hereby reserves a perpetual non-exclusive easement over, across and under those portions of Lot Numbers 36, 37, 38, 39 and 40 of the Plat (which easement shall under no circumstances extend beyond the building or set-back lines for those lots as shown on the Plat) for the purpose of installing and maintaining thereupon mounding, landscaping, sprinkler systems, fencing and such other like general amenities as Developer deems appropriate for purposes of defining or announcing the Quarry ("Amenities"). Developer agrees that all such Amenities installed by Developer shall be maintained by the Developer and/or the Association except for the sprinkling of any mounding or landscaping so installed on the aforesaid Lots, which shall be done by the owners of such lots as part of the watering of their respective properties after construction of a residence thereupon. The owners of Lots 36, 37, 38, 39 and 40 further agree that the required sprinkling systems on those lots shall be engineered so as to water any green space located in the right-of-way adjacent to said lots.

#### ARTICLE IV

##### THE QUARRY HOMEOWNERS' ASSOCIATION

4.1 The Association shall have the following powers and rights:

- (a) To promote and seek to maintain the attractiveness, value and character of the residential lots through enforcement of the terms, conditions, provisions and restrictions set forth in this Declaration, or in any previous and/or subsequent declaration(s) encumbering any previous and/or subsequent plat(s) of The Quarry, or in any rules and regulations which the Association may promulgate pursuant hereto or thereto.
- (b) To promote and seek to maintain high standards of community and neighborhood fellowship, and to provide a vehicle for voluntary social and neighborhood activities, in The Quarry.
- (c) To represent the owners of residential lots before governmental agencies, offices and employees, and to generally promote the common interests of the residential lot owners.
- (d) To collect and dispose of funds as provided in Section 2.16 hereof, and as may be provided in any previous and/or subsequent declaration(s) encumbering any previous and/or subsequent plat(s) of The Quarry.
- (e) If the Association is organized and operating as an Ohio non-profit corporation, to perform all such acts and

- functions as are generally authorized by law to be performed by such corporations.
- (f) To acquire title from the Developer to any common areas (the "Common Areas") which may be designated for the common use and enjoyment of residential lot owners in the recorded plat of The Quarry Plat Two, or any other recorded plat(s) of The Quarry (it being expressly understood and declared that until and unless the Developer elects in writing otherwise under no circumstances will the "beach club" site which is presently located on the Adjacent Property ever be designated as "Common Area", but shall rather at all times be retained by the Developer), and to insure, manage, maintain, improve and repair the Common Areas.
  - (g) To acquire title from the Developer to (i) the following lands in The Quarry Plat Two: none
  - (h) To purchase and maintain fire, casualty and liability insurance to protect the Association and its officers, trustees, managers and/or members from liability incident to the ownership and use of (i) Common Areas, (ii) and any other such areas as the Developer deems appropriate.
  - (i) To pay all real estate, personal property and other taxes levied against the Association or any of the Common Areas, and to discharge any lien or encumbrance for taxes or otherwise against the Association or its assets; and to establish reserves to pay the estimated future costs of any of the items set forth in this Section 4.1.
  - (j) To enforce all provisions herein and in any subsequent declaration(s) encumbering any subsequent plat(s) of The Quarry.
  - (k) Subject to the provisions of this Declaration, to adopt rules and regulations of general application governing the use, maintenance, insurance and upkeep of the Common Areas and of any easement areas created or reserved in this Declaration, or on the Plat, or in subsequent restrictions and/or on subsequent plat(s) of The Quarry.
  - (l) To carry out all other purposes for which it was organized; to exercise all rights which it may be granted or reserved under this Declaration; and to perform all duties which it may be assigned under this Declaration.

4.2 Each member of the Association other than the Developer, its successors and assigns, shall be entitled to one vote in the Association for each residential lot which such member shall own. When more than one person holds an ownership interest in any residential lot, all persons holding such ownership interest shall be members of the Association and in such event the vote for such residential lot shall be exercised as the owners among themselves determine, but in no event shall more than one vote be cast with respect to any residential lot. Where a vote is cast by one of two or more owners of any residential lot, the Association shall not be obligated to look to the authority of the member casting the vote. Notwithstanding the above, so long as the Developer shall hold title to any residential lot(s) in the Plat or in any previous and/or subsequent plat of The Quarry as above described, the Developer shall be entitled to nine (9) votes for each residential lot so owned by it.

#### ARTICLE V

##### USE OF QUARRY AND LAKES

5.1 Presently, an existing large quarry abuts lots ten (10) through seventeen (17) of Plat One ("the Salisbury Quarry"). The Developer also intends to construct and create and/or has constructed and

created various lakes (the "Lakes") on the Adjacent Property, which Adjacent Property may in the future be subjected to a subsequent plat or plats as an extension of the Plat One and the Plat.

5.2 No owner of any residential lot shall permit any discharge or erosion of soil, direct, sediment or other materials from such owner's residential lot into the Lakes, the Salisbury Quarry, or any other pond, lake or body of water in the Quarry, whether before, during or after the construction of any structure or residence dwelling on such residential lot.

5.3 No power boats, motor boats, electric motors, gasoline-powered motors or other motors of any kind shall be permitted on the Lakes, the Salisbury Quarry or any other ponds, lakes or bodies of water.

5.4 Subject to Section 5.3 hereof, any necessary maintenance (as determined by the Lucas County Engineer, or otherwise) of the Lakes, the Salisbury Quarry and any other ponds, lakes and bodies of water located in the Subdivision (including any portions of same as may be located within the boundaries of any lot bordering same) shall be the responsibility of the Association.

5.5 Reasonable rules and regulations governing use of the Lakes, the Salisbury Quarry and other ponds, lakes and bodies of water located in the Subdivision by owners of residential lots may be promulgated from time to time by the Developer, its successors and assigns, and/or the Association, and such rules and regulations shall be strictly observed by all residential lot owners.

#### ARTICLE VI

##### DURATION OF RESTRICTIONS, AMENDMENTS

6.1 Term. These covenants and restrictions shall run with the land and shall be binding upon the Developer, and all persons claiming under or through Developer of the Association until the first day of January, 2010 at which time these covenants and restriction shall be automatically extended for successive periods of ten (10) years.

6.2 Amendments. These covenants and restrictions may be amended or revoked with the approval of the then owners of not less than seventy-five percent (75%) of the residential lots in the Subdivision, which amendment shall become effective from and after the filing with the Recorder of Lucas County, Ohio, of an instrument stating the amendment and signed by all approving residential lot owners with the formalities required by law.

#### ARTICLE VII

##### COMMON AREAS

7.1 Use of Common Areas. Each member of the Association, in common with all other members of the Association as owners of residential lots, shall have the right to use the Common Areas at the Quarry for all purposes incident to the use and occupancy of such member's residential lot as a place of residence and other incidental uses including the non-exclusive easement together with other residential lot owners to the use and enjoyment of the Common Areas and for other incidental uses including but not limited to those uses set forth in this Article VII; provided, however, that such right and non-exclusive easement to use the Common Areas shall not extend to those portions of the Common Areas where the Developer has approved extensions from adjacent residential dwellings of patios, open porches, decks, walkways, driveways, decorative walls, privacy screens, shrubbery and other similar items. All members shall use the Common Areas in such manner as will not restrict, interfere or impede with the use thereof by other members of the Association, except to the extent that the Developer has approved the extension into the Common Area immediately adjacent to residential dwellings erected on a residential lot of patios, open porches, decks,

RESTRIC/JRPMISC3  
January 20, 1994  
Our File No. 2174-008

walkways, driveways, decorative walls, privacy screens, shrubbery and other similar items.

7.2 The boulevard island at the Stone Quarry Boulevard entrance to Plat One, although located within the public right-of-way, is intended to be treated as if such boulevard island is part of the Common Areas. Said boulevard island or islands shall contain landscaping, the Quarry identification signs and such other structures and/or amenities as the Developer deems advisable. The landscaping, the Quarry identification sign and such amenities shall be maintained, repaired and replaced, from time to time, by the Association.

7.3 The Developer, its successors and assigns, hereby reserves the right, at any time and from time to time, to convey fee simple title to all or any portion of the Common Areas in the Plat, or any Common Areas created by the Developer in any subsequent plats of the Adjacent Property to the Association, and in such instance, the Association shall be required to accept delivery of a quit-claim deed for such purpose; provided, however, that the Association shall not be required to accept title to any Common Areas in the Quarry until such time as 50% of the platted residential lots in the Quarry are owned of record by persons or entities other than the Developer.

7.4 Notwithstanding the provisions of Section 4.1 and any designation of Common Areas on the Plat or any subsequent plat(s) of the Adjacent Property, neither the Association nor any owner of any residential lot shall have any ownership interest in or any right to control the use or development of any such Common Areas unless and until the Developer shall convey such Common Areas to or for the benefit of the Association. Thereafter, the owners of the residential lots shall have only those rights with respect to the Common Areas as are granted them hereunder and under the Articles and Code of Regulations, if any, of the Association.

#### ARTICLE VIII

##### ENFORCEMENT OF RESTRICTION, OTHER GENERAL MATTERS

8.1 Violations Unlawful. Any violation attempt to violate any of the covenants or restrictions herein shall be unlawful. Developer, the Association, or any person or persons owning any residential lot may prosecute any proceedings at law, or in equity, against the person or persons violating or attempting to violate any such restrictions to prevent him or them from so doing, to cause the removal of any violation, and/or to recover damages for such violation or attempted violation.

8.2 Saving Clause. The validity of any restriction hereby imposed, or any other provision hereof, or any part of any restriction or provision shall not impair or effect in any manner the validity, enforceability or effect of the rest of such restrictions and provisions. Developer shall indemnify its partners, employees and agents to the fullest extent permitted by law for their good faith actions taken on behalf of and at the direction of the Developer in the enforcement of these provisions and restrictions including defense of their validity.

8.3 Transfers and Leases Subject to Restrictions. All transfers and conveyances of each and every residential lot in The Quarry shall be made subject to these restrictions. All leases of any residence within the Subdivision shall be subject to these Restrictions and all By-Laws, rules and regulations adopted by the Association. No lease of any residence shall be less than six (6) months in duration.

8.4 Notices. Any notice required to be sent to any owner of a residential lot or any part thereof or to Developer or to the Association shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as such owner or to the Developer or to the Association as such address appears on the applicable public record.

RESTRICT/JRPMISC3  
January 20, 1994  
Our File No. 2174-008

**8.5 No Waiver of Violations.** No restrictions imposed hereby shall be abrogated or waived by any failure to enforce the provisions hereof, no matter how many violations or breaches may occur.

**8.6 Waiver of Restrictions by Developer.** Each residential lot owner, by acceptance of a deed or other instrument of conveyance to a residential lot, hereby agrees and consents and shall be deemed to agree and consent for himself and for his heirs, personal representative, successors and assigns, that if, in the opinion of the Developer, the shape, dimensions, number of structures, location of natural features such as trees, or topography of the residential lot upon which a structure or improvement is proposed to be made, is such that a strict construction or enforcement of the requirements of the Plat or of any provision of these restrictions would work a hardship, the Developer may, in writing, grant waivers from these restrictions as to such residential lot so as to permit the erection of such structure or the making of the proposed improvements.

**8.7 Paragraph Headings.** The paragraph headings contained in this Declaration of Restrictions have been inserted for convenience of reference only and are not to be used in the construction and/or interpretation of these restrictions.

**8.8 Warranties.** Each residential lot owner, by acceptance of a deed to a residential lot in the Quarry, acknowledges and agrees and shall be deemed to acknowledge and agree that there are no representations or warranties, express or implied, by the Developer or the Association with respect to (a) the merchantability, fitness or suitability of the residential lots for the construction of residences, (b) the merchantability, fitness or suitability of any improvements within or comprising a part of the Common Areas of the Quarry, or (c) the Quarry generally, other than as expressly stated in writing, (i) by the Developer to the residential lot owner, (ii) in this Declaration, or (iii) in the Articles of Incorporation and Code of Regulations, if any, of the Association.

IN WITNESS WHEREOF, the undersigned parties have hereunto set their hands to this instrument as of the day and year first written above.

WITNESSES:

CAVALEAR PROPERTIES LIMITED  
PARTNERSHIP, an Ohio limited  
partnership

Cavalear Corporation,  
an Ohio Corporation, General Partner

Kathy Brock  
Debra K. Webb

By: Richard J. Smith, Treas.

STATE OF OHIO, COUNTY OF LUCAS, ss:

The foregoing instrument was acknowledged before me this 20th day of JANUARY, 1994, by RICHARD J. SMITH, the TREASURER of Cavalear Corporation, an Ohio corporation, General Partner in Cavalear Properties Limited Partnership, an Ohio limited partnership, on behalf of the partnership.

Kathy Brock  
Notary Public  
KATHY BROCK  
Notary Public, State of Ohio  
Commission Expires June 28, 1996

RESTRIC/JRPMISC3  
January 20, 1994  
Our File No. 2174-008

WITNESSES:

THE QUARRY HOMEOWNERS'  
ASSOCIATION, INC., an  
Ohio non-profit corporation

Sharon M. Bland  
Kathy Brock

By: [Signature]  
Duane A. Ankney, President

STATE OF OHIO, COUNTY OF LUCAS ss:

The foregoing instrument was acknowledged before me this 20th  
day of JANUARY, 1994, by Duane A. Ankney, the President of The  
Quarry Homeowners' Association, Inc., an Ohio non-profit corporation, on  
behalf of the corporation.

[Signature]  
Notary Public  
KATHY BROCK  
Notary Public, State of Ohio  
Commission Expires June 28,

THIS INSTRUMENT PREPARED BY:

Jerome R. Parker, Esq.  
Gressley, Kaplin & Parker  
608 Madison Avenue  
Suite 930  
Toledo, Ohio 43604



620  
RECEIVED & RECORDED

FEB 04 1994

SUE RIOUX  
RECORDER, LUCAS COUNTY, OHIO

303  
PM

94 341C04

10537

AFFIDAVIT

STATE OF OHIO        )  
                                  )  
COUNTY OF LUCAS    )


Duane A. Ankney, being first duly sworn, deposes and states that he is the President of The Cavalear Corporation, an Ohio Corporation:

Affiant further states that said Corporation made application to the Department of the Army for a permit regarding a subdivision known as The Quarry, located on 3255 Stone Quarry Blvd., Maumee, Ohio;

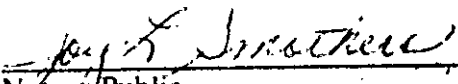
Affiant further states that said permit was approved by a letter dated March 10, 1995, which letter is attached hereto as Exhibit "A";

Affiant further states that the purpose of this affidavit is to file for record the aforementioned permit;

Further this affiant sayeth not.

  
\_\_\_\_\_  
Duane A. Ankney,  
President

Sworn to before me and subscribed in my presence this 23rd day of March, 1995.

  
\_\_\_\_\_  
Notary Public

JOY L. SMOTHERS  
Notary Public, State of Ohio  
My Commission Expires 11-19-96

C

95 0540A03





DEPARTMENT OF THE ARMY  
BUFFALO DISTRICT, CORPS OF ENGINEERS  
1778 NIAGARA STREET  
BUFFALO, NEW YORK 14207-3100

March 10, 1995

REPLY TO  
ATTENTION OF

Regulatory Branch

SUBJECT: Application No. 95-348-2, Nationwide Permit 33 CFR 330,  
Appendix A, Section B, No. (26)

Mr. Duane A. Ankney  
Cavalear Corporation  
6444 Monroe Street, Suite A  
Sylvania, Ohio 43560

Dear Mr. Ankney:

This pertains to your proposed subdivision, The Quarry,  
located on 3255 Stone Quarry Blvd., in the City of Maumee, Lucas  
County, Ohio.

I have reviewed your application, and have determined that  
the impacts associated with your subdivision, The Quarry are  
authorized by the enclosed Nationwide Permit provided that the  
attached conditions are satisfied. Please note that our  
verification of the applicability of this Nationwide Permit is  
valid for two years from the date of this letter unless the  
Nationwide is modified, suspended, or revoked. This verification  
will remain valid if during this two year period the Nationwide  
Permit is reissued without modification. Please note that if you  
commence or are under contract to commence this activity in  
reliance of your Permit prior to the date this Permit expires, is  
suspended or revoked, or is modified such that your activity no  
longer complies with the terms and conditions, you have 12 months  
from the date of Permit modification, expiration, or revocation  
to complete the activity under the present terms and conditions  
of the Permit, unless this Permit has been subject to the  
provisions of discretionary authority.

It is your responsibility to remain informed of changes to  
the Nationwide Permit program. A public notice announcing any  
changes will be issued when they occur. Finally, note that if  
your activity is not undertaken within the two year period or the  
project specifications have changed, you must immediately notify  
this office to determine the need for further approval or  
reverification.

In addition to the general conditions attached to the  
Nationwide Permit, you must also comply with the following  
Special Conditions:

(1)

95 0540A04

Regulatory Branch  
SUBJECT: Application No. 95-348-2, Nationwide Permit 33 CFR 330,  
Appendix A, Section B, No. (26)

1. You must take the actions required to record this permit with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property. Proof of registration shall be forwarded to my District office so it may be incorporated into our file.

2. That the fill created by the discharge shall be properly maintained to prevent erosion and other non-point sources of pollution.

3. That as mitigation for the permanent loss of 4.96 acres of isolated freshwater wetlands you have agreed to contribute \$55,800.00 to The Nature Conservancy. This payment should be by check made payable to The Nature Conservancy and sent to the attention of Ms. Leslie Gillette, Regional Attorney, The Nature Conservancy, 1313 S.E. 5th Street, Suite 314, Minneapolis, MN 55414. These monies will be used by The Nature Conservancy to purchase, restore and maintain approximately 14.88 acres of wetlands and buffer in the Kitty Todd Preserve, Lucas County, Ohio.

4. That you shall provide verification of the transfer of funds to The Nature Conservancy. This verification must be sent to the attention of Ms. Kathleen Ryan, Biologist, Regulatory Branch, U.S. Army Corps of Engineers, Buffalo District, 1776 Niagara Street, Buffalo, New York 14207-3199. This verification must be received prior to any wetland fill on The Quarry project beyond those wetlands previously authorized for fill under Department of the Army Permit No. 94-348-18. This verification should be received by June 15, 1995.

5. That in the event circumstances beyond your immediate control prevent you from submitting verification of the transfer of funds as specified in special condition 4, you may request an adjustment to the submittal date. This request must be written and must be received by June 9, 1995.

6. That you shall provide the U.S. Army Corps of Engineers a copy of a dedication agreement pursuant to Section 1517.05 (H) of the Ohio statute obtained by The Nature Conservancy for any

C

95 0540A05

Regulatory Branch  
SUBJECT: Application No. 95-348-2, Nationwide Permit 33 CFR 330,  
Appendix A, Section B, No. (26)

lands purchased with these funds. In the event that The Ohio Department of Natural Resources does not accept the terms of the articles of dedication provided by The Nature Conservancy, you shall request that The Nature Conservancy provide the U.S. Army Corps of Engineers evidence of reasonable efforts to have the property dedicated. A copy of this request must be submitted to the attention of Ms. Kathleen Ryan, Biologist, Regulatory Branch, U.S. Army Corps of Engineers, Buffalo District, 1776 Niagara Street, Buffalo, New York 14207-3199.

You are encouraged to contact the appropriate state and local governmental officials to insure that your project complies with their requirements.

Lastly, I would like to point out that our verification of the Federal wetland boundary, as shown on the attached drawings, is valid for a period of five (5) years from the date of this correspondence. At the end of this period, a new wetland delineation will be required if the above described work is not completed.

Please verify your agreement to comply with the Special Conditions and the above listed mitigation by signing in the area provided at the bottom of this letter and returning it to this office by April 15, 1995.

A copy of this letter has been forwarded to Ms. Ann Miller, Ever-Green Enterprises and Ms. Jane Prohaska, Acting Regional Director of The Nature Conservancy.

Questions pertaining to this matter should be directed to Ms. Kathleen Ryan, who may be contacted by calling 716-879-4392, or by writing to the above address.

Sincerely,

*Kathleen M Ryan*  
*Walter C. Neitzke*  
Walter C. Neitzke  
Colonel, U.S. Army  
Commanding

Enclosures

C

95 0540A06

Regulatory Branch

SUBJECT: Application No. 95-348-2, Nationwide Permit 33 CFR 330, Appendix A, Section B, No. (26)

I hereby accept the mitigation and Special Conditions of Department of the Army permit No. 95-348-2 on behalf of Cavalear Corporation.)

*DA Ankney*                      3/21/95                      \_\_\_\_\_  
Name                                      Date

*Duane A. Ankney, President, Cavalear Corporation*  
Title

C

95 0540A07

## ACTIVITIES AUTHORIZED UNDER 33 CFR 330, APPENDIX A:

**(26) Headwaters and Isolated Waters Discharges.** Discharges of dredged or fill material into headwaters and isolated waters provided.

- (a) The discharge does not cause the loss of more than 10 acres of waters of the United States;
- (b) The permittee notifies the district engineer if the discharge would cause the loss of waters of the United States greater than one acre in accordance with the "Notification" general condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands (Also see 33 CFR 330.1[e]); and
- (c) The discharge, including all attendant features, both temporary and permanent, is part of a single and complete project.

For the purposes of this nationwide permit, the acreage of loss of waters of the United States includes the filled area plus waters of the United States that are adversely affected by flooding, excavation or drainage as a result of the project. The ten-acre and one-acre limits of NWP 26 are absolute, and cannot be increased by any mitigation plan offered by the applicant or required by the DE.

**Subdivisions** For any real estate subdivision created or subdivided after October 5, 1984, a notification pursuant to subsection b. of this nationwide permit is required for any discharge which would cause the aggregate total loss of waters of the United States for the entire subdivision to exceed one (1) acre. Any discharge in any real estate subdivision which would cause the aggregate total loss of waters of the United States in the subdivision to exceed ten (10) acres is not authorized by this nationwide permit; unless the DE exempts a particular subdivision or parcel by making a written determination that: (1) The individual and cumulative adverse environmental effects would be minimal and the property owner had, after October 5, 1984, but prior to January 21, 1992, committed substantial resources in reliance on NWP 26 with regard to a subdivision, in circumstances where it would be inequitable to frustrate his investment-backed expectations, or (2) that the individual and cumulative adverse environmental effects would be minimal, high quality wetlands would not be adversely affected, and there would be an overall benefit to the aquatic environment. Once the exemption is established for a subdivision, subsequent lot development by individual property owners may proceed using NWP 26. For purposes of NWP 26, the term "real estate subdivision" shall be interpreted to include circumstances where a landowner or developer divides a tract of land into smaller parcels for the purpose of selling, conveying, transferring, leasing, or developing said parcels. This would include the entire area of a residential, commercial or other real estate subdivision, including all parcels and parts thereof.

(Section 404)

### NATIONWIDE PERMIT GENERAL CONDITIONS

**General Conditions:** The following general conditions must be followed in order for any authorization by a nationwide permit to be valid:

1. **Navigation.** No activity may cause more than a minimal adverse effect on navigation.
2. **Proper Maintenance.** Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
3. **Erosion and Siltation Controls.** Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills must be permanently stabilized at the earliest practicable date.
4. **Aquatic Life Movements.** No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.
5. **Equipment.** Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.

6. **Regional and Case-by-Case Conditions.** The activity must comply with any regional conditions which may have been added by the division engineer (see 33 CFR 330.4[e]) and any case specific conditions added by the Corps.

7. **Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status. Information on Wild and Scenic Rivers may be obtained from the National Park Service and the U.S. Forest Service.

8. **Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. **Water Quality Certification.** In certain states, an individual state water quality certification must be obtained or waived (see 33 CFR 330.4[c]).

10. **Coastal Zone Management.** In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived. (See 33 CFR 330.4[d]).

11. **Endangered Species.** No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act,

95 0540408

or which is likely to destroy or adversely modify the critical habitat of such species. Non federal permittees shall notify the district engineer if any listed species or critical habitat might be affected or is in the vicinity of the project and shall not begin work on the activity until notified by the district engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service and National Marine Fisheries Service. (See 33 CFR 330.4(f))

**12. Historic Properties.** No activity which may affect Historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR 325, appendix C. The prospective permittee must notify the district engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places. (See 33 CFR 330.4(g)).

**13. Notification:** (a) Where required by the terms of the NWP, the prospective permittee must notify the District Engineer as early as possible and shall not begin the activity: (1) Until notified by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) If notified by the District or Division engineer that an individual permit is required; or

(3) Unless 30 days have passed from the District Engineer's receipt of the notification and the prospective permittee has not received notice from the District or Division Engineer.

Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)[2]

(b) The notification must be in writing and include the following information and any required fees:

(1) Name, address and telephone number of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s) or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity;

(4) Where required by the terms of the NWP, a delineation of affected special aquatic sites, including wetlands; and

(5) A statement that the prospective permittee has contacted: (i) The USEWS/NMFS regarding the presence of any Federally listed (or proposed for listing) endangered or threatened species or critical habitat in the permit area that may be affected by the proposed project; and any available information provided by those agencies. (The prospective permittee may contact Corps District Offices for USEWS/NMFS agency contacts and lists of critical habitat).

(ii) The SHPO regarding the presence of any historic properties in the permit area that may be affected by the proposed project; and the available information, if any, provided by that agency.

(c) The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PDN and must include all of the information required in (b)(1)-(5) of General Condition 13.

(d) In reviewing an activity under the notification procedure, the District Engineer will first determine whether the activity will result in more than minimal individual or cumulative adverse environmental effects or will be contrary to the public interest. The prospective permittee may, at his option, submit a proposed mitigation plan with the pre-discharge notification to expedite the process and the District

Engineer will consider any optional mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed work are minimal. The District Engineer will consider any comments from Federal and State agencies concerning the proposed activity's compliance with the terms and conditions of the nationwide permits and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. The district engineer will upon receipt of a notification provide immediately (e.g. facsimile transmission, overnight mail or other expeditious manner) a copy to the appropriate offices of the Fish and Wildlife Service, State natural resource or water quality agency, EPA, and, if appropriate, the National Marine Fisheries Service. With the exception of NWP 37, these agencies will then have 5 calendar days from the date the material is transmitted to telephone the District Engineer if they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 10 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects are minimal, he will notify the permittee and include any conditions he deems necessary. If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then he will notify the applicant either:

(1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; or

(2) That the project is authorized under the nationwide permit subject to the applicant's submitting a mitigation proposal that would reduce the adverse effects to the minimal level. This mitigation proposal must be approved by the District Engineer prior to commencing work. If the prospective permittee elects to submit a mitigation plan, the DE will expeditiously review the proposed mitigation plan, but will not commence a second 30-day notification procedure. If the net adverse effects of the project (with the mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant informing him that the project can proceed under the terms and conditions of the nationwide permit.

(e) Wetlands Delineations: Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 30-day period will not start until the wetland delineation has been completed.

(f) Mitigation: Factors that the District Engineer will consider when determining the acceptability of appropriate and practicable mitigation include, but are not limited to:

(1) To be practicable the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of overall project purposes;

(2) To the extent appropriate, permittees should consider mitigation banking and other forms of mitigation including contributions to wetland trust funds, which contribute to the restoration, creation, replacement, enhancement, or preservation of wetlands.

Furthermore, examples of mitigation that may be appropriate and practicable include but are not limited to: reducing the size of the project; establishing buffer zones to protect aquatic resource values; and replacing the loss of aquatic resource values by creating, restoring, and enhancing similar functions and values. In addition, mitigation must address impacts and cannot be used to offset the

95 0540A09

percentage of wetland losses that would occur in order to meet the acreage limits of some of the nationwide permits (e.g. 5 acres of wetlands cannot be created to change a 6 acre loss of wetlands to a 1 acre loss; however, the 5 created acres can be used to reduce the impacts of the 6 acre loss).

#### Section 404 Only Conditions

In addition to the General Conditions, the following conditions apply only to activities that involve the discharge of dredged or fill material and must be followed in order for authorization by the nationwide permit to be valid:

1. **Water Supply Intakes.** No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structure and adjacent bank stabilization.

2. **Shellfish Production.** No discharge of dredged or fill material may occur in areas of discharged shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by nationwide permit 4.

3. **Suitable Material.** No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

4. **Mitigation.** Discharges of dredged or fill material into waters of the United States must be minimized or avoided to the maximum extent practicable at the project site (i.e. on-site), unless the DE has approved a compensation mitigation plan for the specific regulated activity.

5. **Spawning Areas.** Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

6. **Obstruction of High Flows.** To the maximum extent practicable, discharges must not restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

7. **Adverse Impacts From Impoundments.** If the discharge creates an impoundment of water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

8. **Waterfowl Breeding Areas.** Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

9. **Removal of Temporary Fills.** Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

#### Special Conditions

1. You must take the actions required to record this permit with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property. Proof of registration shall be forwarded to my District office so it may be incorporated into our file.

2. That the fill created by the discharge shall be properly maintained to prevent erosion and other non-point sources of pollution.

3. That as mitigation for the permanent loss of 4.96 acres of isolated freshwater wetlands you have agreed to contribute \$55,800.00 to The Nature Conservancy. This payment should be by check made payable to The Nature Conservancy and sent to the attention of Ms. Leslie Gillette, Regional Attorney, The Nature Conservancy, 1313 S.E. 5th Street, Suite 314, Minneapolis, MN

55414 These monies will be used by The Nature Conservancy to purchase, restore and maintain approximately 14.88 acres of wetlands and buffer in the Kitty Fodd Preserve, Lucas County, Ohio

4. That you shall provide verification of the transfer of funds to The Nature Conservancy. This verification must be sent to the attention of Ms. Kathleen Ryan, Biologist, Regulatory Branch, U.S. Army Corps of Engineers, Buffalo District, 1776 Niagara Street, Buffalo, New York 14207-3199. This verification must be received prior to any wetland fill on The Quarry project beyond those wetlands previously authorized for fill under Department of the Army Permit No. 94-348-18. This verification should be received by June 15, 1995.

5. That in the event circumstances beyond your immediate control prevent you from submitting verification of the transfer of funds as specified in special condition 4, you may request an adjustment to the submittal date. This request must be written and must be received by June 9, 1995.

6. That you shall provide the U.S. Army Corps of Engineers a copy of a dedication agreement pursuant to Section 1517.05 (H) of the Ohio statute obtained by The Nature Conservancy for any lands purchased with these funds. In the event that The Ohio Department of Natural Resources does not accept the terms of the articles of dedication provided by The Nature Conservancy, you shall request that The Nature Conservancy provide the U.S. Army Corps of Engineers evidence of reasonable efforts to have the property dedicated. A copy of this request must be submitted to the attention of Ms. Kathleen Ryan, Biologist, Regulatory Branch, U.S. Army Corps of Engineers, Buffalo District, 1776 Niagara Street, Buffalo, New York 14207-3199.

#### OHIO

#### NATIONWIDE PERMIT PROGRAM - FURTHER INFORMATION

The following general conditions, in accordance with the Ohio Environmental Protection Agency Water Quality Certification, have been attached to your Nationwide Permit:

a. Steps must be taken, upon completion of the project, to ensure bank stability. This may include, but is not limited to, the placement of rip-rap or bank seeding.

b. Any damage to the immediate environment of the project by equipment needed for construction or hauling will be repaired immediately.

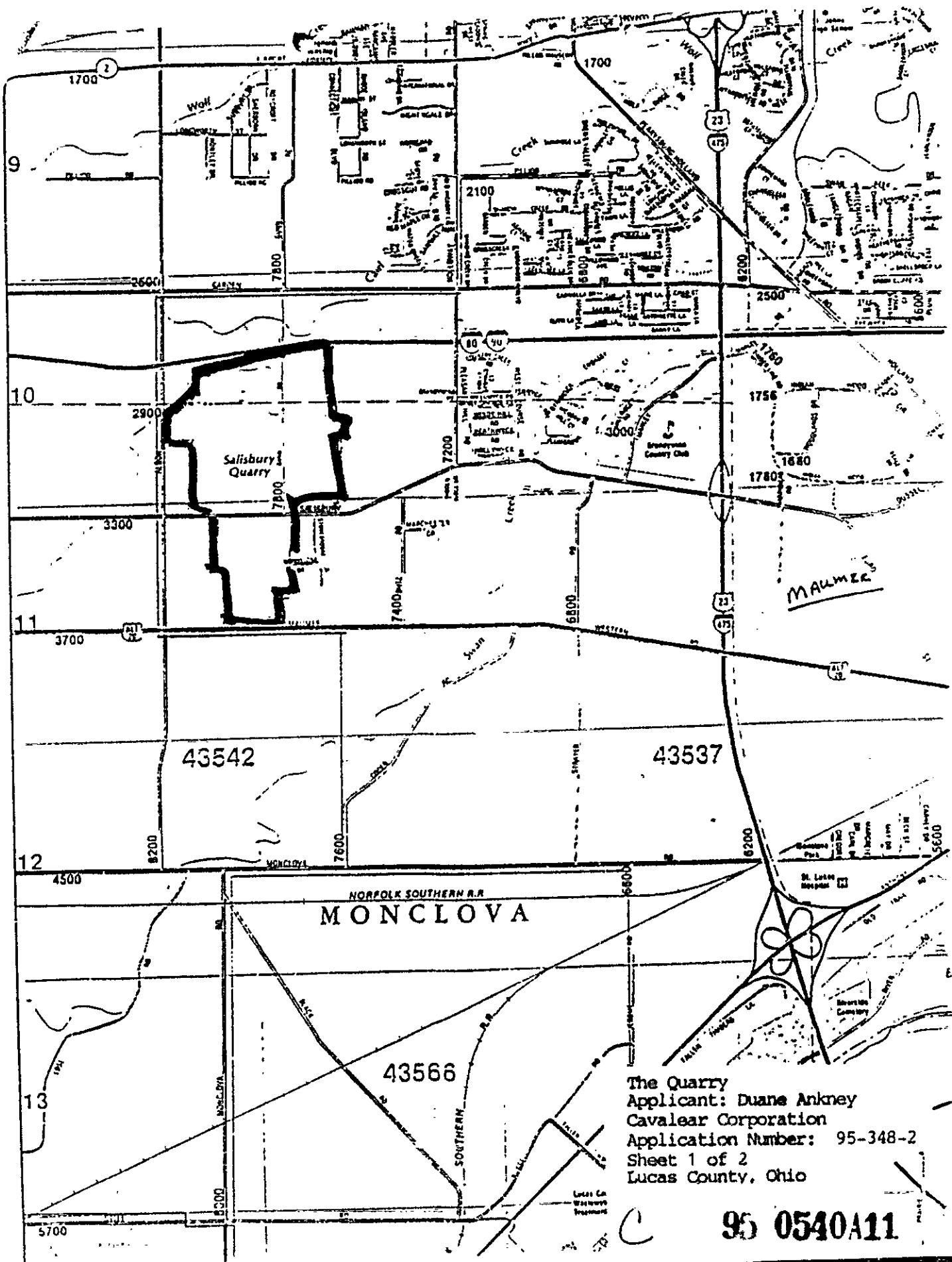
c. Care must be employed throughout the course of this project to avoid the creation of unnecessary turbidity which may degrade water quality or adversely affect aquatic life outside the project area.

d. This Nationwide Permit shall not authorize the discharge of fill material in isolated wetlands and wetlands adjacent to headwater streams where the discharged adversely impacts greater than five acres of any water of the United States.

e. This Nationwide Permit shall not authorize the discharge of fill of any acreage in bogs or fens (as defined in Mitsch, W.J. and J.G. Gosselink, 1986. Wetlands. Van Nostrand/Rheinhold, New York.) or wetlands adjacent to headwater lakes.

f. This Nationwide Permit shall not authorize channelization of natural, previously unmodified, streams where the single and complete project is greater than 1000 feet in length.

95 0540A10



The Quarry  
 Applicant: Duane Ankney  
 Cavalear Corporation  
 Application Number: 95-348-2  
 Sheet 1 of 2  
 Lucas County, Ohio

95 0540A11

C



RECEIVED & RECORDED

MAR 24 1995

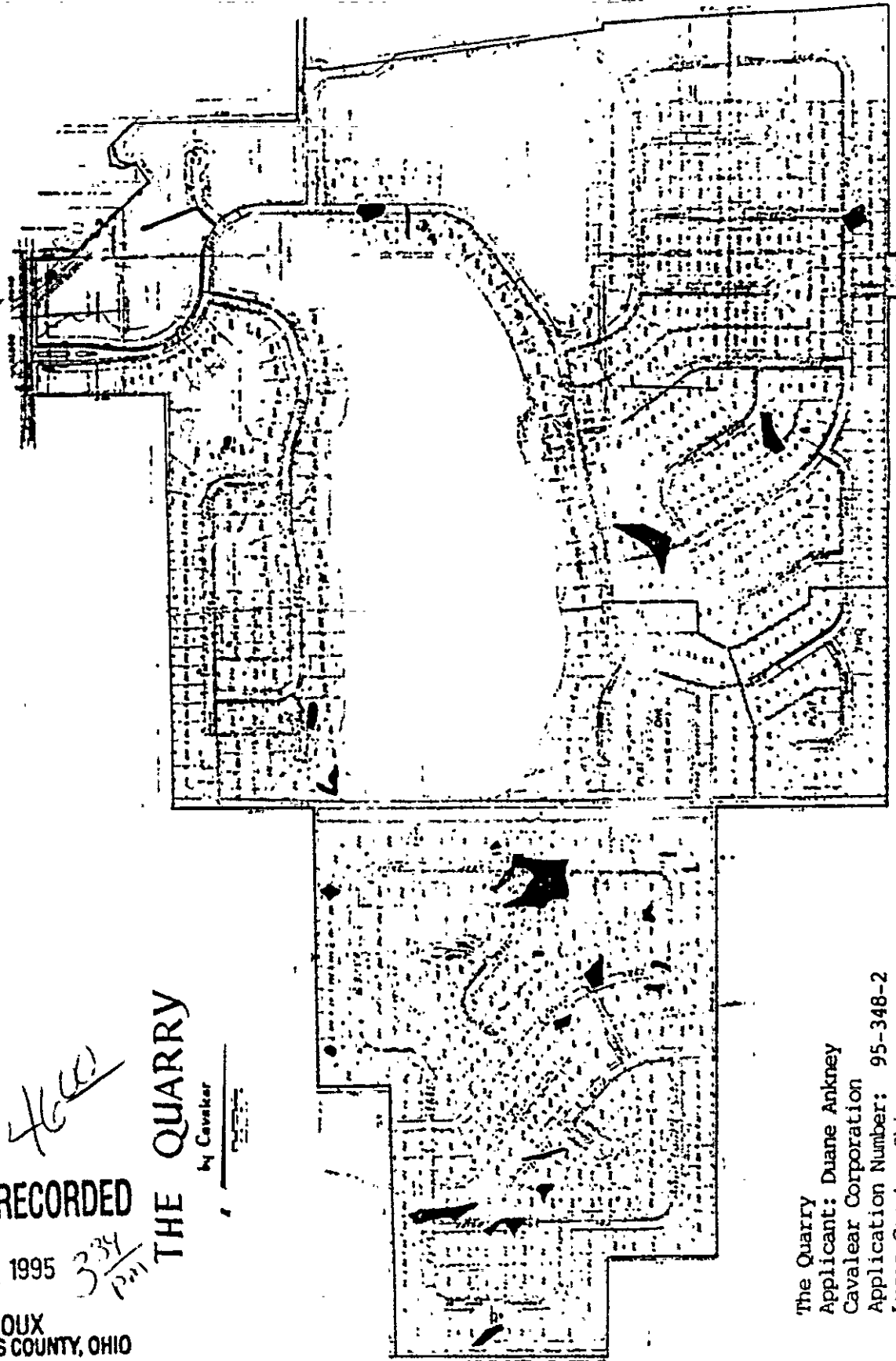
*334*  
*PH*

SUE RIOUX  
RECORDER, LUCAS COUNTY, OHIO

*HCC*

# THE QUARRY

by Cavalier



The Quarry  
 Applicant: Duane Ankney  
 Cavalear Corporation  
 Application Number: 95-348-2  
 Lucas County, Ohio  
 Sheet 2 of 2

Total F.I.R. of Federal Jurisdiction Wetlands/Waters of  
 The United States: 4.96 acres (for entire project)

FELLER, FINCH & ASSOCIATES, INC.  
 ENGINEERS • SURVEYORS  
 1613 Woodland Drive, Columbus, Ohio 43227

95 0540A12