Filed 12/17/08 for the Period Ending 12/11/08

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Telephone 2052983000
CIK 0001396009
Symbol VMC
SIC Code 1400 - Mining & Quarrying of Nonmetallic Minerals (No Fuels)
Industry Construction - Raw Materials
Sector Capital Goods
Fiscal Year 12/31
On December 11, 2008, pursuant to previous Board authorization, Donald M. James, Chief Executive Officer of Vulcan Materials Company (the “Company”) executed amended and restated plans, programs and employee arrangements of the Company (the “Plans”) to comply with the American Jobs Creation Act of 2004, and the regulations issued under Section 409A of the Internal Revenue Service Code of 1986, as amended (“Section 409A”) regulating non-qualified deferred compensation plans. The Compensation Committee of the Board ratified his actions on December 12, 2008. The amended and restated Plans supersede the existing Plans. The only changes made to the Plans were those deemed necessary to amend the timing and payment of the benefits provided by the Plans to bring them into compliance with Section 409A. Where applicable, the Change in Control definition in the Plans was changed to the Section 409A standard definition. Under that definition, a Change in Control occurs upon:

(i) acquisition by any person or group of more than 50 percent of the total fair market value or voting power of the Company’s stock. A transfer or issuance of Company stock is counted only if the stock remains outstanding after the transaction. An increase in stock ownership as a result of the Company’s acquisition of its own stock in exchange for property is counted for purposes of the change in ownership standard.

(ii) (a) acquisition by a person or group during a 12-month period of stock possessing 30 percent of the total voting power of the Company’s stock, or

(b) replacement of a majority of the Board of Directors during any 12-month period by directors not endorsed by a majority of the members of the Board prior to the date of the appointment or election; or

(iii) acquisition by a person or group during a 12-month period of Company assets having a total gross fair market value of 40 percent of the total gross fair market value of the Company’s assets immediately prior to such acquisition. An exception exists for a transfer of Company assets to a shareholder controlled entity, including transfer to a person owning 50 percent or more of the total value or voting power of the Company’s shares.

Also, in certain of the Plans, payments pursuant to the Plans were delayed six months to comply with Section 409A. The foregoing description of the amendments to the Plans is qualified in its entirety by reference to the full text of the Plans, which are filed herewith as Exhibits to this Report and are incorporated into this Report by reference.

(c) Exhibits:

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant had duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Vulcan Materials Company

Date: December 17, 2008

By: /s/ Robert A. Wason IV

Robert A. Wason IV
Vulcan Materials Company
Executive Deferred Compensation Plan
As Amended Through December 11, 2008
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Vulcan Materials Company  
Executive Deferred Compensation Plan  

Article 1. Establishment and Purpose

1.1 Establishment. Vulcan Materials Company, a New Jersey corporation, established, effective as of October 9, 1998, a deferred compensation plan for key management employees as described herein, which is known as the “Vulcan Materials Company Executive Deferred Compensation Plan” (the “Plan”). This restatement shall be effective December 11, 2008 (the “Effective Date”), except as otherwise provided.

1.2 Purpose. The primary purpose of the Plan is to provide eligible employees of the Company with the opportunity to defer a portion of their compensation in a tax-efficient manner. By adopting the Plan, the Company desires to enhance its ability to attract and retain management employees of outstanding competence.

Article 2. Definitions

2.1 Definitions. Whenever used herein, the following terms shall have the meanings set forth below, and when the meaning is intended, the term is capitalized:

(a) “Accrued Rabbi Trust Obligations” means the then current aggregate deferred compensation account balances of all Participants, consisting of each Participant’s deferrals and the net investment gain or loss thereon.

(b) “Annual Bonus” means any incentive award based on an assessment of performance, payable in cash by the Company to a Participant with respect to the Participant’s services during a Plan Year. The Term “Annual Bonus” shall not include incentive awards that relate to a period exceeding one year. An Annual Bonus shall be deemed to be earned when the Participant performs the related services regardless of when it is paid.

(c) “Base Salary” means all regular, basic wages, before reduction for amounts deferred pursuant to the Plan or any other plan of the Company, payable in cash to a Participant for services to be rendered during the Plan Year, exclusive of any Annual Bonus, Long-Term Incentive Awards, other special fees, awards, or incentive compensation, allowances, or amounts designated by the Company as payment toward or reimbursement of expenses.

(d) “Board” or “Board of Directors” means the Board of Directors of the Company.

(e) “Change in Control” means a change in control as defined in regulations or other guidance under Section 409A of the Code.

(f) “CEO” means the Chief Executive Officer of the Company.

(g) “Code” means the Internal Revenue Code of 1986, as amended from time to time.
(h) “Committee” means the Compensation Committee of the Board (or any other committee designated by the Board that is eligible to administer the Plan in accordance with Rule 16b-3 under the Exchange Act).

(i) “Company” means Vulcan Materials Company and also includes any “Employing Company” as such term is defined in the Salaried Retirement Income Plan.

(j) “Company Stock” means the common stock of the Company.

(k) “DSU Participant” means an employee who, as of December 31, 2006, has an outstanding “Deferred Stock Unit Award” under the 1996 Long-Term Incentive Plan. All references in the Plan to a DSU Participant are effective December 31, 2006, except as otherwise stated.

(l) “ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.


(n) “Long-Term Incentive Award” means a compensation vehicle that provides for the accumulation of value over a time period longer than one year, including, but not limited to, stock options, restricted stock, performance shares, and performance units; but the term shall not include this Plan, any other elective deferred compensation plan, or any tax-qualified or nonqualified retirement plan of the Company.

(o) “Participant” means any key management employee of the Company who has been approved by the Committee for participation in the Plan under Section 4.1 and any DSU Participant.

(p) “Payout Year” means the calendar year in which the payout contemplated by Section 5.4 is made or commences.

(q) “Plan Year” means the calendar year.

(r) “Rabbi Trust” means a grantor trust, as described in Section 677 of the Code, that is established by the Company as provided in Article 7.

(s) “Rabbi Trust Agreement” meaning the instrument establishing the Rabbi Trust, as such instrument may be amended from time to time.

(t) “Retirement” means a termination of a Participant’s employment with the Company after attaining age 55.

2.2 Gender and Number. Except where otherwise indicated by the context, any masculine term shall include the feminine, the plural shall include the singular, and the singular shall include the plural.

Article 3. Administration

3.1 The Committee. The Plan shall be administered by the Committee. No event shall any member of the Committee be a Participant.

3.2 Authority of the Committee.

(a) Subject to the terms of the Plan, the Committee shall have full power and discretionary authority (i) to select the employees who are eligible to participate in the Plan, (ii) to determine the terms and conditions of each Participant’s participation in the Plan, (iii) to construe and interpret the Plan and any agreement or instrument entered into under the Plan, (iv) to establish, amend, and waive rules and regulations for the Plan’s administration, (v) subject to the provisions of Article 11, to amend the Plan and any agreement or instrument entered into under the Plan or to terminate the Plan, (vi) to appoint and remove the trustee and the recordkeeper for the Rabbi Trust, and to direct the trustee and the recordkeeper with respect to their duties under the agreements pertaining to the Rabbi Trust, and (vii) to make any other determinations that may be necessary or advisable for the administration of the Plan, provided that the Committee shall not have authority to alter the time or form of payment under the Plan except as permitted under Section 409A of the Code.

(b) To the extent permitted by law, the Committee (i) may delegate any or all of its authority granted under the Plan to one or more executives of the Company (provided that no executive of the Company who is a Participant shall exercise any discretion with respect to his own participation in the Plan) and (ii) may designate one or more individuals who are not Participants (but who may be employees of the Company) to carry out ministerial duties related to the administration of the Plan, except that the Committee shall not delegate responsibility for any matter involving a person subject to Section 16 of the Exchange Act if a decision by the Committee as to such matter would have the effect of exempting a transaction under the Plan from the application of Section 16(b) of the Exchange Act pursuant to Rule 16b-3 or any successor rule thereunder.

3.3 Decisions Binding. All determinations and decisions of the Committee (or of any person to whom the Committee has delegated its authority) under the Plan, including questions of construction and interpretation, shall be final, conclusive, and binding on the employees of the Company, the Participants and their beneficiaries and estates. Whenever the Plan authorizes the Committee or any other person to exercise discretion with respect to any matter, such discretion may be exercised in the sole and absolute discretion of the Committee or such person, subject only to the terms of the Plan and applicable requirements of law.

Article 4. Eligibility and Participation

4.1 Eligibility. Eligibility to participate in the Plan is limited to a select group of management or highly compensated employees consisting solely of (a) key management employees who are nominated to participate in the Plan by the CEO and who are approved by
the Committee, and (b) effective December 31, 2006, all other employees who, on December 31, 2006, have outstanding Deferred Stock Unit Awards under the 1996 Long-Term Incentive Plan but only with respect to the deferral of Deferred Stock Unit Award.

4.2 Participation.

(a) Each employee approved for participation in the Plan by the Committee shall have the opportunity to defer the receipt of compensation otherwise payable to the Participant in accordance with the provisions of Article V. This opportunity shall continue in effect until the Participant is notified by the Committee that he has ceased to be eligible to make such deferrals.

(b) The Committee may at any time and for any reason determine that a Participant (other than a DSU Participant) no longer is eligible to make deferrals under Article V. Upon being notified in writing of the Committee’s decision, such a Participant shall become an inactive Participant that retains all of the rights of a Participant under the Plan, except for the right to make further deferrals. However, no deferral election will be cancelled after it has become irrevocable under Section 409A of the Code (generally after December 31 of the year before the year in which the compensation to be deferred begins to be earned).

(c) A DSU Participant shall have the opportunity to defer payment of Deferred Stock Units by making a deferral election by December 31, 2006, in accordance with the procedures established by the Committee, and the terms of a Participant’s deferral election with respect to performance share units shall be determined by the terms of the Participant’s deferral election forms.

Article 5. Deferral Opportunities

5.1 Amounts Which May Be Deferred.

(a) An eligible Participant may irrevocably elect, prior to any Plan Year, to defer (i) up to 50% of his Base Salary earned during the Plan Year and (ii) up to 100% of his Annual Bonus for the Plan Year.

(b) In the event that a Participant first becomes eligible to participate in the Plan after the beginning of a Plan Year and such Participant was first hired by the Company in such Plan Year, the Committee may allow such Participant to elect to defer up to 50% of his Base Salary earned subsequent to the date on which a valid Deferral Election Form (as described in Section 5.2) is received by the Company from the Participant (and no portion of his Annual Bonus for such Plan Year).

(c) The Committee, in its discretion, also may permit the deferral of Long-Term Incentive Awards in accordance with such rules and regulations as the Committee may establish, and these rules and regulations may provide for payment options that differ from those set forth in this Article V. To the extent that any payment of those awards will be made by the Plan in Company Stock, the Company Stock will be issued under the Plan under which the award was issued.
5.2 Timing of Deferral Elections. Except as provided in the two following sentences, a Participant’s election to defer compensation under the Plan shall be made within 30 calendar days before the beginning of the Plan Year in which the compensation to be deferred is earned. If a Participant is notified during a Plan Year that he is eligible to participate in the Plan for the remainder of the Plan Year and the Participant was first hired by the Company in such Plan Year, such election shall be made within 30 days following the date the Committee approves the Participant’s eligibility for participation in the Plan, subject to Treas. Reg. § 1.409A-2(a)(7) (which limits the ability of a rehired employee to make a deferral election during the year of rehire if the employee has, in the past, been eligible to participate in a deferred compensation plan of the Company). All deferral elections shall be made by means of a “Deferral Election Form” that is executed by the Participant and delivered to the Company. The Deferral Election Form shall provide for the specification by an eligible Participant of:

(a) the amount of compensation to be deferred during the Plan Year in accordance with the terms of Section 5.1;
(b) the length of deferral of such deferred amounts, and the earnings thereon, in accordance with the terms of Section 5.3; and
(c) the form of payout of such deferred amounts, and the earnings thereon, in accordance with the terms of Section 5.4.

5.3 Length of Deferral.

(a) Each Participant who makes a deferral election as to any Plan Year may elect the length of such deferral by designating a Payout Year. Such election shall be irrevocable except as otherwise provided in Section 5.5. The deferral of Base Salary and the deferral of the Annual Bonus in any Plan Year shall be considered separate deferral elections and each may be deferred to a different Payout Year. Deferral elections are subject to the following limitations, unless the Committee permits otherwise:

(i) The Payout Year designated shall be no earlier than the second year following the end of the Plan Year in which the compensation deferred is earned; and
(ii) The Payout Year shall not be later than the year following the Participant’s 65th birthday.

All deferral elections are subject to Section 8(a), which requires an immediate lump-sum payment in the event of a Change in Control.

(b) In the event that a deferral election is made and no Payout Year is designated, the Participant shall be deemed to have elected a deferral until the Payout Year following the Participant’s separation from service. If payment is made on account of a
separation from service, payment shall be no earlier than the seventh month following the Participant’s separation from service.

(c) Notwithstanding the Payout Years designated by a Participant pursuant to this Section 5.3 or the form of payout elected by a Participant pursuant to Section 5.4, if at any time before a Participant’s entire account under the Plan is paid out, a Participant’s employment with the Company is terminated for any reason other than Retirement or the Participant dies, (i) all Payout Years shall be accelerated to the year following the year in which the termination of the Participant’s employment or death occurs, and (ii) all deferred amounts, and the earnings thereon, for all Plan Years shall be paid to the Participant (or beneficiary) in a single lump-sum cash payment in such year. In addition, the payment of a lump sum on account of the Participant’s termination of employment (other than for death) shall not occur earlier than the seventh month following the Participant’s termination of employment.

(d) If the Internal Revenue Service determines that a Participant or beneficiary is subject to federal income tax on an amount credited to the Participant’s account under the Plan before that amount would otherwise become payable under the Plan, the amount that is then required to be included in income shall be paid to the Participant or beneficiary in a single lump-sum cash payment as soon as practicable after the Committee is notified or the Internal Revenue Service’s determination. In addition, the Plan shall accelerate the time of payment to pay the Federal Insurance Contributions Act (FICA) tax imposed under Code Sections 3101, 3121(a), and 3121(v)(2), where applicable, on compensation deferred under the Plan (the “FICA Amount”). Additionally, the Plan shall accelerate the time of payment to pay the income tax at source on wages imposed under Code Section 3401 or the corresponding withholding provisions of applicable state, local, or foreign tax laws as a result of the payment of the FICA Amount, and to pay the additional income tax at source on wages attributable to the pyramiding Code section 3401 wages and taxes. However, the total payment as a result of this acceleration must not exceed the aggregate of the FICA Amount, and the income tax withholding related to such FICA Amount. The payments under this paragraph shall be paid in accordance with subject to Treas. Reg. § 1.409A-3(j)(4)(vi) and (vii) (or any subsequent regulation).

5.4 Form of Payout.

(a) Each participant who makes a deferral election as to any Plan Year may elect as the form of payout either (i) a single lump-sum payment or (ii) up to fifteen approximately equal annual installment payments (such number to be specified by the Participant); provided that all compensation (whether Base Salary or Annual Bonus) deferred to a specific Payout Year (regardless of the Plan Year for which the compensation is deferred) shall be payable in the same form. Such election shall be irrevocable except as otherwise provided in Section 5.5. If no such election is made, then all deferred amounts, and the earnings thereon, shall be paid in the form of a single lump-sum payment. All deferral elections are subject to Section 8(a), which requires an immediate lump-sum payment in the event of a Change in Control.

(b) Lump-sum and installment payments shall be made on the following terms:
(i) **Lump-Sum Payment.** Each payout to be made in the form of a single lump-sum payment shall be made in cash on or before the last business day of March in the Payout Year (except, if paid on account of a termination of employment, payment shall be made in the seventh month following termination of employment, if later).

(ii) **Installment Payments.** The first installment payment of a payout to be made in installments shall be made in cash on or before the last business day of March in the Payout Year (except, if paid on account of a termination of employment, the first installment payment shall be made in the seventh month following termination of employment, if later). The remaining installment payments shall be made in cash each year thereafter, on or before the last business day of March of such year, until the entire balance of such Participant’s applicable account has been paid in full. Earnings shall continue to accrue to the Participant’s account during the payment period. The amount of each installment payment shall be equal to the balance remaining in the applicable account immediately prior to each such payment divided by the number of installment payments remaining (including the installment payment immediately due).

(c) Following the Retirement termination of a Participant, notwithstanding the forms of payout elected by a Participant pursuant to this Section 5.4 for all remaining Payout Years, if, on the date any lump-sum or installment payment is due, the payment to be made would cause the aggregate amount of all of the Participant’s account balances under the Plan to fall below $50,000, then the amount due, and the remaining balance of each of the Participant’s accounts, shall be paid to such Participant on such date in a single lump-sum cash payment.

(d) Notwithstanding the provisions of this Section 5.4, if a Participant is a “covered employee” (within the meaning of Section 162(m)(3) of the Code) when a payment is scheduled to be made under the Plan, any portion of the payment that would be nondeductible under Section 162(m) of the Code (when considered with all other compensation that the Participant is expected to receive in the same taxable year) shall be deferred, and shall be paid on the earliest date on which it would be deductible under Section 162(m). Any delay imposed by this paragraph shall occur in accordance with Treas. Reg. § 1.409A-2(b)(7)(i) (or any subsequent regulation), and any payment that is delayed until on or after the Participant’s termination of employment shall be paid no earlier than in the seventh month following the Participant’s termination of employment.

(e) If the Company fails to make any payment due under the Plan within 90 days after it first becomes due, the Committee shall direct the trustee of the Rabbi Trust to make the payment from the Rabbi Trust (to the extent there are assets in the Rabbi Trust available to make the payment).

5.5 Change in Deferral Election.

(a) **Postponement With Committee Consent.** A Participant may change from the Payout Year he has previously elected to a later Payout Year, or to allow an increase in
the number of payments he has previously elected, or both, subject to the following requirements:

(i) The Participant may make such change only once with respect to Base Salary earned in the same calendar year, and the change must apply to all Base Salary earned in the same calendar year (and related investment returns). Similarly, the Participant may make such change only once with respect to Annual Bonus earned in the same calendar year, and the change must apply to the entire Annual Bonus earned in the same calendar year (and related investment returns). For example, if the Participant initially elects for Base Salary earned in 2009 to be paid in 2012, the Participant may change the Payout Year from 2012 to a later year with respect to all Base Salary earned in 2009, and, after this change, the Participant may not again change the Payout Year for Base Salary earned in 2009.

(ii) Any change under this Section 5.5(a) must be made at least 12 months before January 1 of the scheduled Payout Year.

(iii) The new Payout Year must be at least 5 years after the original Payout Year.

(b) Change As a Result of Financial Hardship. If a Participant establishes, to the satisfaction of the Committee, severe financial hardship, the Committee may:

(i) authorize the cessation of deferrals by such Participant, in which case future deferrals shall be made only pursuant to an election under Section 5.2;

(ii) provide that all or a portion of the amounts previously deferred by the Participant shall immediately be paid in a single lump-sum cash payment.

(c) Hardship Criteria. Severe financial hardship will be deemed to exist in the event of an unanticipated emergency that is caused by the Participant’s long and serious illness, impending bankruptcy, or a similar event that is beyond the control of the Participant and that would result in severe financial hardship to the Participant if cessation of deferrals or modified payments were not permitted. The amount distributed pursuant to Section 5.5(b) shall not exceed that amount which the Committee determines to be reasonably necessary for the Participant to meet the financial hardship at the time of distribution (which may include amounts necessary to pay any Federal, state, local, or foreign income taxes or penalties reasonably anticipated to result from the distribution), taking into account any additional compensation that is available upon a cancellation of a deferral election as a result of the financial hardship.

(d) Other Criteria. The Committee’s decision with respect to the manner, if at all, in which the Participant’s future deferral opportunities shall cease, and/or the manner in which, if at all, the payment of deferred amounts to the Participant shall be modified, shall be final, conclusive, and not subject to appeal. If a Participant is a “covered employee” (within the meaning of Section 162(m)(3) of the Code), any change in the Participant’s payout election shall
be subject to the limitation described in Section 5.4(d). Any distribution made on account of a financial hardship shall comply with Treas. Reg. § 1.409A-3(i)(3)(i) or any subsequent regulation.

Article 6. Individual Accounts and Crediting of Investment Returns

6.1 Participant’s Accounts.

(a) The Company shall establish and maintain a separate bookkeeping account for each deferral made by a Participant, and the earnings thereon. Deferrals shall be credited to a Participant’s account as of the date the amount deferred otherwise would have become due and payable to such Participant. Each Participant shall be furnished a statement of his deferred compensation account balances at least annually.

(b) The establishment and maintenance of such deferred compensation accounts by the Company shall not be construed as entitling any Participant to any specific assets of the Company. The rights of Participants to receive any distribution under the Plan shall be an unsecured claim against the general assets of the Company.

6.2 Investment Returns on Deferred Amounts.

(a) All compensation deferred by a Participant pursuant to Section 5.1 shall be deemed invested, as directed by the Participant, in one or more of the investment alternatives made available from time to time by the Committee. Each such investment election shall be made (i) by means of the execution by the Participant and delivery to the Company of a “New Investment Election Form” or (ii) by means of such other methods as the Committee shall approve. The Committee shall specify the available investment alternatives and may adopt such rules and procedures for the allocation of deferrals among such investment alternatives as the Committee deems necessary or appropriate. An investment election shall be effective for all subsequent deferrals under the Plan until the Participant makes a new investment election.

(b) A Participant shall be permitted, at any time and from time to time, to reallocate his deferred compensation account balances under the Plan among the investment alternatives then available, subject to right of the Committee to impose such restrictions on a Participant’s ability to change investment elections as the Committee deems necessary or appropriate. The election of a Participant to reallocate account balances shall be made by means of a form provided to the Participant by the Committee for such purpose, and shall become effective as soon as practicable after a properly-executed form is received by the Committee from the Participant.

(c) The balances of each Participant’s deferred compensation accounts shall be credited with earning and charged with losses based upon the actual results that would have been achieved had such balances actually been invested pursuant to the investment elections of the Participant.

(d) The Company shall have no obligation to invest the compensation deferred under the Plan, or the earnings thereon, in any of the investment alternatives selected by Participants.

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Notwithstanding any other provision of this Section 6.2, the Committee may provide that payments of Long-Term Incentive Awards that are deferred under this Plan are deemed to be invested solely in Company Stock or in a unitized fund consisting primarily of Company Stock, and the amount of any dividends that would have been paid if these deferred payments had actually been invested in Company Stock will be credited to the Participant’s account in the form of an additional deemed investment in Company Stock or in such unitized fund.

6.3 Charges Against Accounts. All payments made to a Participant under the Plan shall be charged against such Participant’s accounts when and as made.

Article 7. Rabbi Trust

7.1 Establishment of a Rabbi Trust. As soon as administratively practicable following the Effective Date, the Company shall establish an irrevocable Rabbi Trust to accumulate assets that will assist the Company in meeting its obligation under the Plan. The Rabbi Trust shall have an independent trustee that is selected by the Company. The trust agreement with respect to the Rabbi Trust shall provide that the assets of the Rabbi Trust shall at all times be specifically subject to the claims of the Company’s general creditors in the event of the bankruptcy or insolvency (as defined by the Rabbi Trust Agreement) of the Company.

7.2 Funding of the Rabbi Trust. The Company may contribute cash, Company Stock, or any other asset to the Rabbi Trust, as the Company deems appropriate. It is intended that the Rabbi Trust will hold assets with a value approximately equal to the Accrued Rabbi Trust Obligations. However, the funding of the Trust shall comply with Section 409A(b) of the Code, including the restrictions on maintaining assets outside of the United States and on maintaining assets in trust during a restricted period with respect to a single-employer defined benefit plan.

Article 8. Change in Control

8.1 Change In Control. Upon the occurrence of a Change in Control:

(a) The Company shall, within ten business days after the Change in Control, accelerate all deferred amounts to the date of the Change in Control and pay all such deferred amounts, and the earnings thereon, to each Participant or Beneficiary in a single lump-sum cash payment.

(b) The composition of the Committee immediately prior to the Change in Control shall not be changed after the Change in Control, except with the consent of a majority of the Continuing Directors. If, after the Change in Control, a member of the Committee resigns or is unable to serve due to death or disability, the remaining members of the Committee shall appoint a replacement.

(c) The Company promptly shall reimburse a Participant for all legal fees and expenses reasonably incurred in successfully enforcing any right or benefit under the Plan. Any reimbursement of legal fees paid to a Participant pursuant to this paragraph shall be paid no later than the end of the Participant’s taxable year next following the Executive’s taxable year of the
Participant in which the related expense is incurred, and, if paid on account of a separation from service, no earlier than the seventh month following the Participant’s separation from service.

**Article 9. Beneficiary Designation**

9.1 **Designation of Beneficiary.** Each Participant may designate a beneficiary or beneficiaries who, upon the Participant’s death, will receive the amounts that otherwise would have been paid to the Participant under the Plan. All such designations shall be signed by the Participant, and shall be in such form as is prescribed by the Committee. Each designation shall be effective as of the date delivered to the Committee (or to a Company employee appointed by the Committee to receive such designations); provided that the Committee must receive any beneficiary designation or change therein before the Participant’s death. A Participant may change his beneficiary designation at any time and from time to time on such form as is prescribed by the Committee. In the event of the death of the Participant, the payment of all amounts deferred under the Plan, and the earnings thereon, shall be in accordance with the last written beneficiary designation signed and delivered by the Participant and not revoked.

9.2 **Payment to Beneficiary.** If a Participant dies before the Participant’s account has been paid in full to the Participant, the payment of the remaining amounts to the Participant’s beneficiary or beneficiaries shall be made in a single lump-sum cash payment as provided in Section 5.3.

9.3 **Death of Beneficiary.** In the event that all the beneficiaries of a Participant predecease the Participant, all amounts deferred under the Plan, and the earnings thereon, that would have been paid to the Participant under the Plan shall be paid in a single lump-sum cash payment to the Participant’s estate, or to the person or persons designated in writing by the Participant’s estate.

9.4 **Ineffective Designation.** In the event a Participant does not designate a beneficiary, or for any reason such designation is ineffective, in whole or in part, the amounts that otherwise would have been paid to the Participant under the Plan shall be paid in a single lump-sum cash payment to the Participant’s estate.

**Article 10. Withholding of Taxes**

The Company shall have the right to either (i) require Participants to remit to the Company, or any person or entity designated by the Committee to administer the Plan, an amount sufficient to satisfy any applicable federal, state, and local income and employment tax withholding requirements or (ii) to deduct from any payment made pursuant to the Plan amounts sufficient to satisfy such withholding requirements.

**Article 11. Amendment and Termination**

The Company has the right to amend, suspend, or terminate the Plan at any time by action of the Board of Directors, except that (i) no such amendment, suspension, or termination shall, without the written consent of a Participant, change the time or form of any payout under the Plan or otherwise adversely affect, in any material respect, such Participant’s rights with respect to amounts theretofore deferred under the Plan, and the earnings thereon, and (ii)
following a Change in Control, the Company shall not amend Section 5.4(e), Articles 3, 7 or 8, or this Article 11, and shall not amend any other provision of the Plan in a manner that would alter the effect of Section 5.4(e), Articles 3, 7 or 8, or this Article 11.

Article 12. Miscellaneous

12.1 Employment. No provision of the Plan, nor any action taken by the Committee or the Company pursuant to the Plan, shall give or be construed as giving a Participant any right to be retained in the employ of the Company, or affect or limit in any way the right of the Company to terminate his employment.

12.2 Notice. Any notice required or permitted to be given to the Committee or the Company under the Plan shall be sufficient if in writing and hand delivered, sent by registered or certified mail, or deliver in any other manner authorized by the Committee, to the Committee (or to a person designated by the Committee to receive such notices). Such notices, if mailed, shall be addressed to the principal executive offices of the Company. Notice to any Participant shall be given in any manner authorized by the Committee and, if mailed, shall be sent to the Participant’s address as is set forth in the records of the Company.

12.3 Unfunded Plan. This Plan is intended to be an unfunded plan for tax purposes and for purposes of Title I of ERISA. The Plan is intended primarily to provide deferred compensation benefits for “a select group of management or highly compensated employees” within the meaning of Sections 201, 301, and 401 of ERISA, and therefore is further intended to be exempt from the provisions of Parts 2, 3, and 4 of Title I of ERISA. The Committee may terminate the Plan for any or all Participants, subject to Article 11 and the requirements of Section 409A of the Code, in order to achieve and maintain these intended results.

12.4 Successors. All obligations of the Company under the Plan shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect merger or consolidation, the purchase of all or substantially all of the assets of the Company, or otherwise. The provision of the Plan with respect to each Participant shall be binding on such Participant’s heirs, executors, administrators or other successors in interest.

12.5 Nontransferability. The Committee may recognize the right of an alternate payee named in a domestic relations order to receive all or a portion of a Participant’s benefit under the Plan, provided that (i) the domestic relations order would be a “qualified domestic relations order” within the meaning of Section 414(p) of the Code if Section 414(p) were applicable to the Plan, (ii) the domestic relations order does not purport to give the alternate payee any right to assets of the Company or its affiliates, and (iii) the domestic relations order does not purport to give the alternate payee any right to receive payments under the Plan before the Participant is eligible to receive such payments. Except as set forth in the preceding sentence with respect to domestic relations orders, and except as required under applicable federal, state, or local laws concerning the withholding of tax, the rights of any Participant or beneficiary to amounts deferred under the Plan, and the earnings thereon, are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment, or garnishment by creditors of the Participant or any beneficiary, other than by will or by the laws
of descent and distribution. In no event shall the Company make any payment under the Plan to any assignee or creditor of a Participant or beneficiary.

12.6 Severability. In the event any provision of the Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had not been included.

12.7 Costs of the Plan. All costs of implementing and administering the Plan shall be borne by the Company.

12.8 Governing Laws. The Plan shall be governed by and construed in accordance with the laws of the state of New Jersey, without giving effect to any choice or conflict of law provision or rule.

12.9 Section 409A of the Code. The Plan is intended, and shall be construed, to comply with the requirements of Section 409A of the Code. However, the Plan does not transfer to the Company or any entity or other individual liability for any tax or penalty that is the responsibility of the Participant.

(a) For purposes of the Plan, a “termination of employment” refers to a “separation from service” within the meaning of Section 409A(a)(2)(A)(i) of the Code and the regulations thereunder.

(b) To comply with Section 409A of the Code, the following special claims procedures apply in addition to any other claims procedures applicable to the Plan. If a Participant or Beneficiary believes he or she is entitled to have received benefits but has not received them, the Participant or Beneficiary must accept any payment made under the Plan and make prompt and reasonable, good faith efforts to collect the remaining portion of the payment, as determined under Treas. Reg. § 1.409A-3(g). For this purpose (and as determined under such regulation), efforts to collect the payment will be presumed not to be prompt, reasonable, good faith efforts, unless the Participant or Beneficiary provides notice to the plan administrator within 90 days of the latest date upon which the payment could have been timely made in accordance with the terms of the Plan and the regulations under Section 409A of the Code, and unless, if not paid, the Participant or Beneficiary takes further enforcement measures within 180 days after such latest date. In addition, a Participant or Beneficiary must exhaust any other claims procedures established by the plan administrator before initiating litigation.

IN WITNESS WHEREOF, the Company has caused this Vulcan Materials Company Executive Deferred Compensation Plan to be executed for and in its name and its corporate seal to be hereto affixed and attested by its duly authorized Secretary, this 11 th day of December, 2008.
ATTEST:

By: ________________ /s/ Jerry F. Perkins, Jr.  
    Jerry F. Perkins, Jr.  
    Corporate Secretary  

By: ________________ /s/ Donald M. James  
    Donald M. James  
    Chairman and Chief Executive Officer  

CORPORATE SEAL
EXECUTIVE INCENTIVE PLAN
as amended effective December 11, 2008

1. Name and Purpose
   (a) Vulcan Materials Company (“Company”) has established an incentive compensation plan known as the “Vulcan Materials Company Executive Incentive Plan” (“Plan”), as set forth herein and as it may be amended from time to time. The Plan is a successor to the Vulcan Materials Company Management Incentive Plan with respect to any senior executive of the Corporation who participates in the Plan. The purpose of the Plan is to promote the profitability of the Corporation by providing incentives and rewards for those senior executives of the Corporation who contribute to the operating progress and earning power of the Corporation, and who are potentially subject to the deduction limit in Section 162(m) of the Internal Revenue Code of 1986 (“Code”).
   (b) The Plan became effective as of January 1, 2001. This amendment and restatement is effective as of December 11, 2008 (“Effective Date”). The Plan shall remain in effect until the Board amends or terminates the Plan pursuant to Section 15 below.

2. Definitions
   As used in the Plan, unless the context otherwise requires, each of the following terms has the meaning set forth below:
   (a) “Award Percentage” means the maximum percentage of the Incentive Reserve that a Covered Employee may receive for a Year in which the Covered Employee is eligible to participate in the Plan, as determined by the Committee.
   (b) “Balance Sheet” means the consolidated statement of the Corporation’s financial position certified by the Public Accountants and published from year to year in the Corporation’s Annual Report to Shareholders.
   (c) “Board of Directors” or “Board” means the Board of Directors of the Company.
   (d) “Change in Control” means a change in control as defined in the Vulcan Materials Company Change in Control Severance Plan or any successor plan.
   (e) “Code” means the Internal Revenue Code of 1986, as amended from time to time. Any references to a particular section of the Code shall be deemed to include any successor provision thereto.
   (f) “Committee” means the Compensation Committee of the Board of Directors, which consists solely of two or more “outside directors” within the meaning of Section 162(m) of the Code.
   (g) “Common Stock” means the common stock of the Company with a par value of $1.00 per share.
   (h) “Company” means Vulcan Materials Company, a New Jersey corporation.
   (i) “Consolidated Net Earnings” for any Year means the sum of (i) the amount of net earnings (before any deduction for dividends) as reported in the Statement of Earnings, except that items which are classified therein as extraordinary items shall be excluded in the computation of Consolidated Net Earnings and (ii) interest on long-term debt included in Net Capital, such interest to include charges or credits arising out of premium or discount paid or received with respect to such debt, and such interest to be adjusted for the provision for federal and state income taxes attributable thereto.
   (j) “Corporation” means the Company and its Subsidiaries.
(k) “Covered Employee” means any individual who is a “covered employee” within the meaning of Section 162(m) of the Code on the last day of the Company’s taxable year for which the individual is selected to participate in the Plan, and each other senior executive of the Corporation who is designated by the Committee as a Covered Employee for a particular Year.

(l) “Incentive Award” means the amount payable to a Covered Employee under the Plan, as determined by the Committee on or after the end of each Year for which the Covered Employee is eligible to participate in the Plan.

(m) “Incentive Reserve” means the amount determined under Section 5 below that is available for the payment of awards under the Plan for a Year; provided that such amount is established and maintained as a general ledger entry solely for the Company’s convenience and is not intended to be a funding mechanism for awards under the Plan.

(n) “Net Capital” for any Year means the sum of (1) long-term debt (comprising bonds, debentures and promissory notes having a maturity at the time of creation of more than one year), (2) issued capital stock, (3) capital in excess of par value and (4) earnings retained in the business and reserves created by appropriations therefrom, less the cost of treasury stock, all as shown in the Balance Sheet as of the end of the preceding Year, with appropriate prorated adjustment, as approved by the Public Accountants in accordance with the Plan, for any change during the Year arising from increase or decrease of outstanding principal of long-term debt or from original issuance or redemption and retirement of capital stock.

(o) “Public Accountants” means the independent public accountants employed by the Company from year to year for the purpose of submitting an opinion on the Corporation’s Statement of Earnings.

(p) “Statement of Earnings” means the consolidated statement of the Corporation’s earnings certified by the Public Accountants and published from year to year in the Corporation’s Annual Report to Shareholders.

(q) “Subsidiary” means any corporation, the majority of the outstanding voting stock of which is owned, directly or indirectly, by the Company, and that is not itself a publicly-held corporation within the meaning of Section 162(m) of the Code.

(r) “Target Award” means a target annual bonus established by the Committee to be paid pursuant to Section 13 in the event of Change in Control.

(s) “Year” means a fiscal year or period covered by a Statement of Earnings and for which the Plan is in effect.

3. Regulations

The Committee shall have the power to adopt eligibility and other rules and regulations not inconsistent with the provisions of the Plan for the administration thereof, and to alter, amend or revoke any rule or regulation so adopted.

4. The Committee and Its Functions

(a) Subject to the provisions of this Plan, full power and authority to interpret and administer the Plan are vested in the Committee. The Committee shall have the discretionary authority to act with respect to each Covered Employee. The Committee is authorized to conduct such consultations with officers and other executives of the Company as it shall deem necessary or appropriate in the performance of its duties and responsibilities with respect to the Plan. The Committee’s discretion in interpreting and administering the Plan with respect to Covered Employees is specifically subject to the terms and conditions of Section 7 below.
(b) Without limiting the generality of Section 4(a) above, and except as otherwise specifically provided in this Plan, the Committee shall have the exclusive authority to: (i) interpret and administer the Plan and any instrument or agreement relating to the Plan or an Incentive Award; (ii) establish, amend, suspend, or waive rules and regulations for the administration of the Plan; (iii) engage or employ from time to time such counsel, advisers, consultants, accountants, analysts and other persons as it may deem necessary or expedient for the performance of such functions; (iv) appoint such agents as it shall deem appropriate for the proper administration of the Plan; (v) determine the rights of Covered Employees in the event of death, disability, termination, Change in Control and the like; and (vi) make any other determination and take any other action that the Committee deems necessary or desirable for the administration of the Plan. All designations, determinations, interpretations and other decisions by the Committee under or with respect to the Plan or any Incentive Award under the Plan shall be final, conclusive, and binding upon all persons and entities, including the Company, any Subsidiary, any employee of the Corporation, any beneficiary and any shareholder. No determination of the Committee shall be subject to de novo review if challenged in court.

5. Incentive Reserve; Annual Provision; Annual Review of Earnings Factor; Annual Awards

(a) The Corporation shall meet the performance target under the Plan for any Year if Consolidated Net Earnings exceed 6% of Net Capital for the Year. For any Year in which the Corporation meets the performance target, the Committee may establish an Incentive Reserve equal to 4% of Consolidated Net Earnings in excess of 6% of Net Capital.

(b) As promptly as practicable after the end of each Year, the Public Accountants shall determine and certify in a report to the Committee the maximum amount, as determined under Section 5(a) above, available for credit to the Incentive Reserve for the such Year.

(c) As promptly as practicable after its receipt of the report described in Section 5(b) above, the Committee shall certify in writing whether the performance target described in Section 5(a), above, was attained for the Year and, if so, shall certify in writing the Incentive Awards, if any, that will be made to Covered Employees for the Year, pursuant to Section 9 below. The Committee may, in its sole discretion, make no Incentive Awards for a particular Year. If the Committee determines that Incentive Awards shall be made under the Plan for a Year, the Committee shall make and allot such individual Incentive Awards to Covered Employees in accordance with the provisions of Section 9(a) below.

6. Change in Fiscal Year

In the event of a change in the Corporation’s fiscal year, the Plan shall apply, with prorated adjustment of Net Capital, to any intermediate period of less than 12 months, and shall then apply to each subsequent fiscal year.

7. Code Section 162(m) Compliance

It is the intent of the Company that Incentive Awards made to persons who are “covered employees” within the meaning of Section 162(m) of the Code shall constitute “qualified performance-based compensation” satisfying the requirements of Section 162(m) of the Code. Accordingly, the provisions of the Plan shall be interpreted in a manner consistent with Section 162(m) of the Code. However, the Change in Control payments authorized under Section 13 shall be made without regard to whether the payments satisfy the requirements of Section 162(m) of the Code. If any other provision of the Plan or an Incentive Award is intended to but does not comply with, or is inconsistent with, the requirements of Section 162(m) of the Code, such provision shall be construed or deemed amended to the extent necessary to conform to and comply with such requirements.

8. Eligibility

The Committee shall select each senior executive of the Corporation who shall be eligible to participate in the Plan for a particular Year and shall set the Award Percentage for each such senior executive for such Year. The Committee shall also establish a Target Award for each senior executive. No member of the Committee shall be
eligible for an Incentive Award under the Plan. A senior executive who is eligible for an Incentive Award under the Plan for a Year shall not be eligible in the same Year for an incentive award under any other annual incentive plan maintained by the Corporation. A senior executive who is otherwise eligible for an Incentive Award under the Plan for a particular Year shall not be eligible for an Incentive Award under the Plan unless he is an employee of the Corporation on the last day of such year; provided that a senior executive who is otherwise eligible for an Incentive Award under the Plan for a particular Year and who terminates employment with the Corporation during that Year by reason of his or her death, disability, or retirement may, in the discretion of the Committee, be eligible for a prorated Incentive Award.

9. Annual Awards and Time of Payment

   (a) Subject to the provisions of Section 5, above, and the provisions of this Section 9(a), a Covered Employee may be granted an Incentive Award for a particular Year in such individual amount as the Committee, in accordance with the Plan, may in its discretion determine. In selecting Covered Employees, setting Award Percentages, and fixing the amount of any Incentive Awards thereunder, the Committee shall take into consideration the Award Percentage for each Covered Employee and the present and potential contribution of each Covered Employee to the operating progress and earning power of the Corporation.

   (b) If the Committee determines that it will establish an Incentive Reserve for a Year, the Committee shall set forth in writing, during the first ninety days of the Year, (i) which senior executives shall participate in the Plan as Covered Employees for the Year, and (ii) the Award Percentage for each Covered Employee. In no event shall the sum of the Award Percentages of all Covered Employees for a Year exceed 100% of the Incentive Reserve for such Year.

   (c) The Committee may exercise its discretion to reduce (but not to increase) the actual Incentive Award of any Covered Employee to an amount less than the Covered Employee’s Award Percentage for the Year. In no event shall a reduction in the amount awarded to one Covered Employee increase the amount that is available for awards to any other Covered Employee.

   (d) Each Incentive Award payable under the Plan shall be paid no later than two and one-half months after the close of the Year for which such Incentive Award is payable. Incentive Awards shall be paid in accordance with such conditions as the Committee may in accordance with the Plan prescribe.

   (e) The amount of each payment of an Incentive Award shall, when paid, be subject to a deduction for any and all taxes required by any government to be withheld by the Corporation and paid over to such government for the account of the Covered Employee to whom the award was made. The payment to any such government of an amount so withheld shall, for the purposes of the Plan, be deemed a payment thereof to the employee or his or her legal representatives.

10. Awards Payable in Cash

   (a) Incentive Awards under the Plan for any Year shall be paid in cash.

   (b) With respect to each Incentive Award under the Plan, the amount thereof shall be held or provided by the Company or the appropriate Subsidiary (without liability for interest) for payment to the Covered Employee or his or her legal representatives, as the case may be, as provided in Section 9 above.

11. Report of Awards

   As promptly as reasonably practicable after Incentive Awards for a particular Year have been determined in accordance with the Plan, a report shall be prepared listing: (a) the names of the Covered Employees to whom Incentive Awards have been made for such Year and the amount of each such Incentive Award, and (b) if any Incentive Award is to be payable in installments under Section 10(b) above, appropriate orders and directions respecting the payment thereof.
12. **Administrative Expenses**

All costs of the Plan, including such fee, retainer, or other remuneration payment to members of the Committee as may from time to time be authorized by the Board of Directors, and all expenses incurred by the Committee in interpreting and administering the Plan, shall be borne by the Corporation and not charged against the Incentive Reserve.

13. **Change in Control Payments**

(a) In the event of a Change in Control, Covered Employees shall be entitled to receive payment of awards under the Plan in accordance with this Section 13. Awards under this Section 13 are not required to comply with Section 7 of the Plan or with the provisions of Section 162(m) of the Code.

(b) If a Change in Control occurs after Incentive Awards for a particular Year have been determined by the Committee in accordance with the Plan, but before the payment of such awards, then such Incentive Awards shall be paid as promptly as reasonably practicable, but not more than 30 days, after such Change in Control, and no later than two and one-half months after the close of the Year for which such Incentive Award is payable.

(c) If a Change in Control occurs before Incentive Awards for such Year have been determined by the Committee,

   (i) each individual who was a Covered Employee at the end of such Year shall be entitled to receive an award under this Section 13(c)(i) for such Year in an amount at least equal to the greater of (A) the average of such individual’s bonuses under the Company’s Management Incentive Plan and any comparable bonuses under any successor plan thereto (including the Plan) for each Year during the three preceding Years in which the individual participated in such plan, or (B) the Covered Employee’s Target Award, and

   (ii) each individual whose employment terminated during such Year as a result of retirement, disability, or death and who was a Covered Employee at the time of such termination shall be entitled to receive an award under this Section 13(c)(ii) for such partial Year in an amount at least equal to the greater of (A) the average of such individual’s bonuses under the Company’s Management Incentive Plan and any comparable bonuses under any successor plan thereto (including the Plan) for each Year during the three preceding Years in which the individual participated in such plan, or (B) the Covered Employee’s Target Award, multiplied in either case by a fraction the numerator of which is the number of months (whole or partial) in such Year through the date of such termination and the denominator of which is 12.

(d) If such Change in Control occurs before the designation of Covered Employees for such Year, the Covered Employees designated for the previous Year as in effect at the end of such previous Year shall be applicable and shall be used in calculating awards provided for under Section 13(c).

(e) If, after the occurrence of a Change in Control, the Plan is continued in effect without material amendment and the Board of Directors and the Committee confirm that the Plan will be interpreted and administered substantially in accordance with past practices, then payment of awards to which individuals may become entitled under subparagraph (c) of this Section 13 shall be made in accordance with Sections 9(d) and 10 above. If, however, the Plan is terminated, suspended or materially amended, or if the Board of Directors and the Committee do not so confirm after the occurrence of a Change in Control, then payment of awards to which individuals may become entitled under subparagraph (c) of this Section 13 shall be made as promptly as practicable, but not more than 30 days, after such Change in Control, and no later than two and one-half months after the close of the Year for which such Incentive Award is payable.
In the event of a Change in Control, nothing in this Section 13 shall preclude the payment of Incentive Awards under the Plan or otherwise in an amount in excess of the amount required to be paid under this Section 13.

The Company shall promptly reimburse an individual entitled to an Incentive Award or other awards under this Section 13 for all legal fees and expenses reasonably incurred in successfully seeking to obtain or enforce any right or benefit provided under this Section 13. Any reimbursement of legal fees paid to an individual pursuant to this paragraph shall be paid no later than the end of the individual’s taxable year next following the individual’s taxable year in which the related expense is incurred, and, if paid on account of a termination of employment, no earlier than the seventh month following the individual’s separation from service.

14. **Unfunded Plan**

The Plan shall be an unfunded plan. Benefits under the Plan shall be paid from the general assets of the Corporation.

15. **Termination, Suspension and Amendment**

(a) The Board of Directors may at any time and from time to time alter, amend, suspend or terminate the Plan; provided, however, that no provision of the Plan relating to a Change in Control nor any definition of a term used in any such provision may be altered, amended, suspended, or terminated after the occurrence of a Change in Control and further provided that unless the Board of Directors specifically provides otherwise, any revision or amendment that would cause the Plan to fail to comply with the requirements of any applicable law, regulation or rule if such amendment were not approved by the shareholders of the Company shall not be effective unless and until such shareholder approval is obtained.

(b) No amendment, suspension, or termination of the Plan shall adversely affect any right or obligation with respect to an Incentive Award theretofore made, or required to be made after the occurrence of a Change in Control, including without limitation, the right to receive payment of Incentive Awards in accordance with Section 13 above.

16. **No Right to Employment or Participation**

(a) No provision of the Plan nor any action taken by the Committee or the Company pursuant to the Plan shall give or be construed as giving any salaried employee of the Corporation any right to be retained in the employ of the Company or of any Subsidiary, or affect or limit the right of the Company to terminate such employment.

(b) No employee of the Corporation shall have the right to be selected to participate in the Plan.

17. **Legal Construction**

(a) If any provision of the Plan shall be held illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had not been included.

(b) The Plan and all Incentive Awards or other awards under the Plan shall be construed in accordance with and governed by the laws of the State of New Jersey (without regard to legislative or judicial conflict of law rules of any state), except to the extent superseded by federal law.

(c) The Plan is intended, and shall be construed, to comply with the requirements of Section 409A of the Code. However, the Plan does not transfer to the Company or any entity or other individual liability for any tax or penalty that is the responsibility of the employee.
IN WITNESS WHEREOF, the Company has caused this Vulcan Materials Company Executive Incentive Plan to be executed for and in its name and its corporate seal to be hereto affixed and attested by its duly authorized Secretary, this 11th day of December, 2008.

VULCAN MATERIALS COMPANY

ATTEST:

By: /s/ Jerry F. Perkins, Jr. By: /s/ Donald M. James
   Jerry F. Perkins, Jr.       Donald M. James
   Corporate Secretary       Chairman and Chief Executive Officer

CORPORATE SEAL
1. Name and Purpose

The name of this plan is the “Vulcan Materials Company Management Incentive Plan” (the “Plan”), and its purpose is to promote the profitability of the Corporation by providing incentive rewards for those employees who contribute most to the operating progress and earning power of the Corporation. This amendment and restatement is effective as of December 11, 2008 (“Effective Date”).

2. Definitions

As used in the Plan, unless the context otherwise requires:

(a) “Administrative Guidelines” mean the guidelines approved from time to time by the Committee and the chief executive officer setting forth details with respect to the operation and administration of the Plan and the Awards thereunder, which Administrative Guidelines are not inconsistent with the terms of the Plan.

(b) “Annualized Base Salary” means the amount an Eligible Employee is entitled to receive as wages or salary on an annualized basis (based on a 365 day year), excluding all bonus, commissions, overtime, health additive and incentive compensation, payable by a Corporation, as consideration for the Eligible Employee’s services to the Corporation, and including any base salary which has been earned but deferred.

(c) “Award” means the dollar amount payable to an Eligible Employee for a certain Plan Year.

(d) “Board of Directors” means the Board of Directors of the Company.

(e) “Change in Control” means a change in control as defined in the Vulcan Materials Company Change in Control Severance Plan or any successor plan.

(f) “Committee” means the Compensation Committee of the Board of Directors.

(g) “Common Stock” means the common stock, par value $1.00 per share, of the Company.

(h) “Company” means Vulcan Materials Company, a New Jersey corporation, and any successor thereto.

(i) “Consolidated Net Earnings” for any Year means the sum of (1) the amount of net earnings (before any deduction for dividends) as reported in the Statement of Earnings, except that items which are classified therein as extraordinary items shall be excluded in the computation of Consolidated Net Earnings and (2) interest on long-term debt included in Net Capital, such interest to include charges or credits arising out of any premium or discount paid or
received with respect to such debt, and such interest to be adjusted for the provision for federal and state income taxes attributable thereto.

(j) “Corporation” means the Company and its Subsidiaries.

(k) “Disability” means an Eligible Employee’s termination due to a disability entitling him to long-term disability benefits under the applicable long-term disability plan of the Company or a Subsidiary, or, to the extent not eligible to participate in any Company-sponsored plan, under the guidelines of the Social Security Administration.

(l) “Eligible Employee” means a salaried employee of the Corporation who has been designated by the Committee or the chief executive officer as eligible for an Award for a certain Plan Year in accordance with Section 5, other than salaried employees who participate in the Company’s Executive Incentive Plan.

(m) “Incentive Provision” means the annual incentive pool, denominated in dollars, as determined in accordance with Section 4.

(n) “Net Capital” for any Year means the sum of (1) long-term debt (comprising bonds, debentures and promissory notes having a maturity at the time of creation of more than one year), (2) issued capital stock, (3) capital in excess of par value and (4) earnings retained in the business and reserves created by appropriations therefrom, less the cost of treasury stock, all as shown in the Balance Sheet as of the end of the preceding Year, with appropriate prorated adjustments, as approved by the Corporate Internal Audit Department in accordance with the Plan, for any change during the Year arising from the increase or decrease of outstanding principal of long-term debt or from original issuance or redemption and retirement of capital stock.

(o) “Plan Year” means the Year for which Awards are being made.

(p) “Retirement” means a termination of an Eligible Employee’s employment with the Company that entitles such Employee to immediate payment of a pension benefit under the Retirement Income Plan for Salaried Employees of Vulcan Materials Company or any successor plan.

(q) “Statement of Earnings” and “Balance Sheet” mean the consolidated statements of the Corporation’s annual earnings and financial position certified by the Corporate Internal Audit Department and published from year to year in the Corporation’s Annual Report to Shareholders.

(r) “Subsidiary” means any corporation or other entity, the majority of the outstanding voting stock or other ownership interest of which is owned, directly or indirectly, by the Company.

(s) “Target Bonus Amount” means the dollar amount derived by multiplying an Eligible Employee’s Annualized Base Salary and the Eligible Employee’s Target Bonus Percentage.
“Target Bonus Percentage” means the percentage that is used to establish an Eligible Employee’s Target Bonus Amount as set by the Committee or the chief executive officer for a Plan Year in accordance with Section 5.

“Year” means the Corporation’s fiscal year or period covered by a Statement of Earnings.

In addition, certain other terms used herein have the definition given to them in the first place in which they are used.

3. The Committee and Its Functions

(a) Administration. Subject to the terms of the Plan, full power and authority to interpret and administer the Plan are vested in the Committee; provided, however, the Committee may delegate the day-to-day administration of the Plan to an officer of the Company. The Committee shall have the power to adopt eligibility and other rules and regulations not inconsistent with the provisions of the Plan for the administration thereof, and to alter, amend or revoke any rule or regulation so adopted. From time to time during each Plan Year, the Committee shall submit to the Board of Directors preliminary or interim reports to the extent deemed necessary or appropriate by the Committee or upon the request of the Board of Directors.

(b) Binding Authority. Decisions of the Committee made in accordance with the Plan shall be final, conclusive and binding upon all parties, including the Corporation and the employees thereof; provided, however, that the Committee shall rely upon and be bound by the report of the Corporate Internal Audit Department for each Year with respect to the maximum amount available for credit to the Incentive Provision for such Year.

(c) Miscellaneous. No member of the Committee shall be eligible for Awards under the Plan. The Committee is authorized to conduct such consultations with officers and other executives of the Company and to engage or employ from time to time such counsel, advisers, consultants, accountants, analysts and other persons as it may deem necessary or expedient for the performance of the functions and duties authorized hereunder.

4. Incentive Provision

(a) Determination of the Incentive Provision. As promptly as practicable after the end of each Plan Year, the Corporate Internal Audit Department shall determine in accordance with the Plan and certify in a report to the Committee the maximum amount available for credit to the Incentive Provision for such Plan Year, based upon the formula set forth in Section 4(b) below.

(b) Crediting of the Incentive Provision. The Committee or the Board of Directors shall credit to the Incentive Provision for each Plan Year (except for Years in which such credit is prohibited or limited by specific order of the Committee or Board of Directors) an amount that shall not exceed 10% of the Consolidated Net Earnings in excess of 6% of Net Capital for such Plan Year (as determined by the Corporate Internal Audit Department in accordance with Section 4(a) above); provided, however, that the Committee or the Board of Directors may in its
sole discretion credit a lesser amount for any Plan Year. The Committee may, at its discretion, exclude non-recurring non-operating items from the calculation of Consolidated Net Earnings.

5. Eligibility for Participation in the Plan and Target Bonus Percentage

(a) Determination of Eligibility and Target Bonus Percentage. During the first quarter of each Plan Year, the Committee, in its sole discretion, shall determine the eligibility of and establish the Target Bonus Percentage for those salaried employees whose annual base salary is set by the Committee, and the chief executive officer of the Company shall determine the eligibility of and establish the Target Bonus Percentage for all other salaried employees. The designation or non-designation of an employee as an Eligible Employee will be decided by the Committee or the chief executive officer in its or his sole discretion with respect to each Plan Year and without regard to an employee having or not having been designated as an Eligible Employee in any prior Plan Year. Designation as an Eligible Employee in one Plan Year does not create a right or imply that the employee will be designated as an Eligible Employee in any other Plan Year. No members of the Board of Directors, except those who are salaried employees of the Corporation, may be designated as an Eligible Employee under the Plan. An employee who is otherwise an Eligible Employee for a particular Plan Year shall not be eligible for an Award unless he is an employee of the Corporation on the last day of such Plan Year; provided that an Eligible Employee who terminates employment with the Corporation during a Plan Year by reason of his or her death, disability, or retirement may, at the discretion of the Committee, be eligible for a pro-rated Award.

(b) Changes of Prior Determinations. During the Plan Year, the Committee may approve changes in the Eligible Employees and the Target Bonus Percentage of the Eligible Employees whose annual base salary is determined by the Committee, and the chief executive officer may approve changes in the Eligible Employees and the Target Bonus Percentage of all other Eligible Employees of the Corporation.

(c) Report Recommending Award Allocations to Eligible Employees. As promptly as practicable after the end of each Plan Year, the chief executive officer of the Company shall compile and submit to the Committee a report listing the name, position and Target Bonus Percentage of each Eligible Employee (or proposed Eligible Employee) to be considered for allocation of an Award for such Plan Year.

6. Allocation of Awards

(a) Allocation of Awards and Award Pools by the Committee. During the first quarter of the Year following the end of each Plan Year and after the Committee’s receipt of the report referred to in Section 5(c) above, the Committee shall allocate individual Awards (if any) to those Eligible Employees whose annual base salary is determined by the Committee and establish an Award pool to be allocated by the chief executive officer of the Company among all other Eligible Employees. Any such allocations shall be made in the sole discretion of the Committee in accordance with the terms of the Plan; provided, however, that the Committee may, in the exercise of its discretion allocate no Awards or Award pools for a particular Plan Year. The total amount of all Awards and Award pools shall not exceed the total amount
credited to the Incentive Provision for the most recently completed Plan Year, as determined in accordance with Section 4 hereof.

(b) **Allocation of Awards by the Chief Executive Officer.** As soon as reasonably practicable after the establishment by the Committee of any Award pools, the chief executive officer of the Company shall allocate individual Awards, not to exceed the total amount of the Award pools authorized by the Committee, to the Eligible Employees, as the chief executive officer of the Company may in his sole discretion determine in accordance with the terms of the Plan.

(c) **Considerations.** Nothing contained in this Section 6 shall require the Committee or the chief executive officer of the Company to allocate all of the Awards for a Plan Year at one or the same time. Subject to the provisions of Sections 4, 5, and 6, the Eligible Employees for a given Plan Year shall be allocated Awards for such Plan Year in the individual amounts as the Committee or the chief executive officer of the Company in accordance with the Plan may in its or his sole discretion determine. Designation as an Eligible Employee and/or inclusion on the chief executive officer’s report referred to in Section 5(c) does not give an individual a right or entitlement to be allocated an Award.

(d) **Other Incentive Programs.** The amount of any Award allocated to an Eligible Employee for all or part of a particular Year under a sales, production or other similar incentive plan or plans maintained by the Company or any Subsidiary shall be considered in determining the amount of any Award allocated to such Eligible Employee for the same Year under the Plan.

### 7. Distribution of Awards

(a) **General.** Each Award payable under the Plan shall be paid no later than two and one-half months after the close of the Plan Year for which such Award is payable. Awards shall be paid in accordance with such conditions and Administrative Guidelines as the Committee may in accordance with the Plan prescribe.

(b) **Withholding.** No later than the date as of which an amount first becomes includible in the gross income of an Eligible Employee for federal income tax purposes with respect to any Award under the Plan, the Corporation shall withhold any and all taxes required by any governmental authority to be withheld by the Company or a Subsidiary. The payment to any such governmental authority of an amount so withheld shall be deemed a payment of such amount to the Eligible Employee or his legal representatives.

(c) **No Liability for Interest.** Interest shall not be paid, and neither the Company nor the employing Subsidiary shall be liable for interest on, an Award (or portion of an Award) that is allocated, but not distributed.

### 8. Change in Fiscal Year

In the event of a change in the Corporation’s fiscal year, the Plan shall continue, but there shall be a prorated adjustment of Net Capital to take into account the change in the fiscal year to a period of less than (or more than) 12 months. Thereafter, the Plan shall continue in effect and apply to each subsequent full fiscal year of the Corporation.
9. Administrative Expenses

All costs of the Plan, including any fees, retainers or other remuneration paid to members of the Committee as may from time to time be authorized by the Board of Directors, and all expenses incurred by the Committee or the Company in interpreting and administering the Plan, shall be borne by the Company and not charged against the Incentive Provision.

10. Payments in the Event of a Change in Control

(a) General. Notwithstanding any other provision of the Plan, in the event of a Change in Control, Eligible Employees as of the date of such Change in Control shall be entitled to receive payment of Awards in accordance with this Section 10. For purposes of this Section 10, with respect to the applicable Plan Year, each individual whose employment terminated during such Plan Year as a result of Retirement, Disability or death and who was an Eligible Employee at the time of such termination shall be considered an Eligible Employee as of the date of such Change in Control and shall be entitled to a pro-rata Award (as determined under the applicable provisions of this Section 10), to the extent such individual has not previously received an Award with respect to the same period of service.

(b) Change in Control After Allocation of Awards for Plan Year. If a Change in Control occurs after Awards for a Plan Year have been allocated by the Committee or the chief executive officer of the Company in accordance with Section 6, but before the distribution of all or a portion of the Awards for that Plan Year, then such Awards as so allocated (or the unpaid portion thereof) shall be paid as promptly as practicable, but not later than two and one-half months after the close of the Plan Year for which such Award is payable.

(c) Change in Control After Plan Year Ends But Before Allocation of Awards. If a Change in Control occurs after the end of a Plan Year, but before Awards for such Plan Year have been allocated by the Committee or the chief executive officer of the Company in accordance with Section 6, each individual who was an Eligible Employee at the end of such Plan Year shall be paid an Award for such Plan Year at least equal to the greater of (A) the product of (x) the individual’s Target Bonus Percentage multiplied by (y) the individual’s Annualized Base Salary at the rate in effect as of the end of such Plan Year, or (B) the amount equal to the Award allocated to such Eligible Employee as determined in accordance with Sections 4, 5 and 6 of the Plan for such Plan Year based upon the Company’s actual performance for such Plan Year; provided, however, that each individual whose employment terminated during such Plan Year as a result of Retirement, Disability or death and who was an Eligible Employee at the time of such termination shall be paid an Award for such partial Plan Year determined in accordance with the foregoing and pro-rated based on a fraction, the numerator of which is the number of months (rounded to the nearest whole month) in such Plan Year through the date of such termination, and the denominator of which is 12. Awards provided for under this Section 10(c) shall be paid as promptly as practicable, but not later than the two and one-half months after the close of the Plan Year for which such Award is payable.

(d) Change in Control Prior to the End of Plan Year. If a Change in Control occurs prior to the end of a Plan Year, then the following shall apply:

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(1) Eligible Employees Terminated During the Plan Year of the Change in Control Without Cause, for Good Reason or due to Death, Disability or Retirement.

(i) Without Cause or for Good Reason after the Change in Control. Each individual, (A) whose employment is terminated by the Company without Cause (as defined in the Vulcan Materials Company Change of Control Severance Plan) or (B) whose employment is terminated for Good Reason (as defined in the Vulcan Materials Company Change of Control Severance Plan) following the Change in Control and who was an Eligible Employee immediately before the date of the Change in Control, shall be paid, within 90 days following such termination of employment (or within two and one-half months after the close of the Plan Year for which such Award is payable, if earlier), an Award for such Plan Year at least equal to the product of (A) the individual’s Target Bonus Percentage multiplied by (B) the individual’s Annualized Base Salary at the rate in effect immediately before the date of such termination (or, if higher, the Change in Control) and further multiplied by (C) a fraction, the numerator of which is the number of months (rounded to the nearest whole month) in such Plan Year through the date of such termination of employment, and the denominator of which is 12.

(ii) Due to Death, Disability or Retirement Prior to the Change in Control. Each individual, whose employment terminated prior to the Change in Control as a result of Retirement, Disability or death and who was an Eligible Employee at the time of such termination, shall be paid, within 90 days following the date of the Change in Control (or within two and one-half months after the close of the Plan Year for which such Award is payable, if earlier), an Award for such Plan Year at least equal to the product of (A) the individual’s Target Bonus Percentage multiplied by (B) the individual’s Annualized Base Salary at the rate in effect immediately before the date of such termination, and further multiplied by (C) a fraction, the numerator of which is the number of months (rounded to the nearest whole month) in such Plan Year through the date of such termination of employment, and the denominator of which is 12.

(iii) Due to Death, Disability or Retirement after the Change in Control. Each individual, whose employment terminated during the Plan Year after the Change in Control as a result of Retirement, Disability or death and who was an Eligible Employee at the time of such termination, shall be paid, within 90 days following such termination of employment (or within two and one-half months after the close of the Plan Year for which such Award is payable, if earlier), an Award for such Plan Year at least equal to the product of (A) the individual’s Target Bonus Percentage multiplied by (B) the individual’s Annualized Base Salary at the rate in effect immediately before the date of such termination (or, if higher, the Change in Control) and further multiplied by (C) a fraction, the numerator of which is the number of months (rounded to the nearest whole month) in such Plan Year through the date of such termination of employment, and the denominator of which is 12.

(2) Eligible Employees Whose Employment Continues through the end of the Plan Year of the Change in Control. Each individual who was an Eligible Employee immediately before the date of the Change in Control and continues to be employed at
the end of the Plan Year in which the Change in Control occurs shall be paid, within two and one-half months following the end of such Plan Year (whether or not still employed at the time of such payment), an Award for the Plan Year in which the Change in Control occurs at least equal to the greater of (A) the amount equal to the product of (x) the individual’s Target Bonus Percentage multiplied by (y) the individual’s Annualized Base Salary at the rate in effect immediately before the date of such Change in Control, or (B) the amount equal to the Award allocated to such Eligible Employee as determined in accordance with Sections 4, 5 and 6 of the Plan for such Plan Year based upon the Company’s actual performance for such Plan Year.

(3) Change of Control Before the Determination of Eligible Employees and Target Bonus Percentages for the Plan Year.

Notwithstanding anything contained herein to the contrary, if a Change in Control occurs before the Committee or the chief executive officer of the Company has designated the Eligible Employees and Target Bonus Percentages for the Plan Year in accordance with Section 5, the Eligible Employees and Target Bonus Percentages designated by the Committee or the chief executive officer of the Company for the immediately preceding Plan Year shall be deemed to be the Eligible Employees and Target Bonus Percentages for the current Plan Year.

(e) No Duplication of Benefits. Depending upon the date on which a Change in Control occurs, an Eligible Employee may be entitled to receive an Award (or partial Award) under Section 10(b) or Section 10(c) and under Section 10(d). Anything to the contrary notwithstanding, in no event shall an Eligible Employee be paid an Award (or partial Award) under this Section 10, if payment thereof would be duplicative of amounts of annual incentive compensation with respect to the same period of service previously paid or payable to the Eligible Employee, whether pursuant to the terms of this Plan, another plan of the Corporation or an individual employment or severance agreement between the Eligible Employee and the Corporation, and any amounts payable under this Section 10 shall be reduced or offset by any such duplicate payments.

(f) Not a Limitation on Awards. This Section 10 is intended to establish the minimum Awards payable to Eligible Employees in the event of a Change in Control, and nothing in this Section 10 shall preclude the payment of Awards under the Plan that are larger than those guaranteed to be paid under this Section 10.

(g) Legal Fees. The Company shall promptly reimburse an individual entitled to an Award or Awards under this Section 10 for all legal fees and expenses reasonably incurred in successfully seeking to obtain or enforce any right or benefit provided under this Section 10. Any reimbursement of legal fees paid to an individual pursuant to this paragraph shall be paid no later than the end of the individual’s taxable year next following the individual’s taxable year in which the related expense is incurred, and, if paid on account of a termination of employment, no earlier than the seventh month following the individual’s separation from service. The Company’s obligations under this Section 10(g) shall survive the termination of this Plan.
11. Termination, Suspension and Amendment

The Board of Directors may terminate, suspend or amend the Plan at any time; provided, however, that no provision of the Plan or the Administrative Guidelines for the Plan relating to a Change in Control, nor any definition of any defined term used in any provision relating to a Change in Control, may be terminated, suspended or amended after the occurrence of a Change in Control. No such termination, suspension or amendment of the Plan shall adversely affect any right or obligation with respect to an Award theretofore allocated, or, after the occurrence of a Change in Control, an Eligible Employee or a Target Bonus Percentage theretofore designated, including, without limitation, the right to receive payment of Awards in accordance with Section 10 above.

12. Unfunded Plan Status

This Plan is intended to be an “unfunded” plan. All payments pursuant to the Plan shall be made from the general funds of the Corporation, and no special or separate fund shall be established or other segregation of assets made to assure payment. No employee or other person shall have under any circumstances any interest in any particular property or assets of the Corporation as a result of receiving or being eligible to receive an Award under the Plan.

(a) No Liability. No Award shall become an obligation or liability of, or be recourse to, any member of the Committee, the Board of Directors, the chief executive officer of the Company or any other officer or employee of the Corporation.

(b) Employment Status. The Plan shall not constitute a contract of employment, and adoption of the Plan shall not confer upon any employee any right to continued employment, nor shall it interfere in any way with the right of the Corporation to terminate the employment of any employee at any time.

(c) Governing Law. The validity, interpretation, construction and performance of the Plan shall in all respects be governed by the laws of New Jersey, without reference to principles of conflict of law.

(d) Non-Transferable. Awards under the Plan are not transferable, except by will or by laws of descent and distribution.

(e) Successors. This Plan shall bind any successor of the Company, its assets or its businesses (whether direct or indirect, by purchase, merger, consolidation or otherwise), in the same manner and to the same extent that the Company would be obligated under this Plan if no succession had taken place. In the case of any transaction in which a successor would not by the foregoing provision or by operation of law be bound by this Plan, the Company shall require such successor expressly and unconditionally to assume and agree to perform the Company’s obligations under this Plan, in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place. The term “Company,” as used in this Plan, shall mean the Company as hereinbefore defined and any successor or assignee to the business or assets which by reason hereof becomes bound by this Plan.

(f) Section 409A. The Plan is intended, and shall be construed, to comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended. However, the
Plan does not transfer to the Company or any entity or other individual liability for any tax or penalty that is the responsibility of the employee.

IN WITNESS WHEREOF, the Company has caused this Vulcan Materials Company Management Incentive Plan to be hereto affixed and attested by its duly authorized Secretary, this 11th day of December, 2008.

VULCAN MATERIALS COMPANY

ATTEST:

By: /s/ Jerry F. Perkins, Jr.          By: /s/ Donald M. James
   Jerry F. Perkins, Jr.
   Corporate Secretary
   Donald M. James
   Chairman and Chief Executive Officer

CORPORATE SEAL

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Unfunded Supplemental Benefit Plan
for Salaried Employees
Vulcan Materials Company
December 11, 2008
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Vulcan Materials Company
Unfunded Supplemental Benefit Plan for Salaried Employees

Article 1. Establishment and Purpose

1.1 Establishment. Vulcan Materials Company, a New Jersey corporation, hereby amends and restates, effective as of December 11, 2008 (the “Effective Date”), the Vulcan Materials Company Unfunded Supplemental Benefit Plan for Salaried Employees (the “Plan”).

1.2 Purpose. The primary purpose of the Plan is to make up for the reduction in benefits attributable to the tax-qualified plan limits of the Code, including Section 401(a)(17) and Section 415, and as a result of elective deferrals under the Vulcan Materials Company Executive Deferred Compensation Plan.

Article 2. Definitions

2.1 Definitions. Whenever used herein, the following terms shall have the meanings set forth below, and when the meaning is intended, the term is capitalized:

(a) “401(k) Plan” means the Vulcan Materials Company 401(k) and Profit-Sharing Retirement Plan. All references to the 401(k) Plan (including the term “Alternate Profit-Sharing Contribution”) shall be effective beginning July 15, 2007.

(b) “Alternate Matching Contribution” means, with respect to any Participant, an amount equal to (i) the Matching Contribution that would have been made to the Investment Account (as such term is defined in the Thrift Plan and in the 401(k) Plan) of the Participant for a given month were it not for the application of such Limitations, minus (ii) the Matching Contribution made to the Investment Account of such Participant for such month, after application of the Limitations.

(c) “Alternate Profit-Sharing Contribution” means, with respect to any Participant, an amount equal to (i) the Profit-Sharing Contribution that would have been made to the Investment Account (as such term is defined in the 401(k) Plan) of the Participant for a given month were it not for the application of such Limitations, minus (ii) the Profit-Sharing Contribution made to the Investment Account of such Participant for such month, after application of the Limitations.

(d) “Board” or “Board of Directors” means the Board of Directors of the Company.

(e) “Change in Control” means a change in control as defined in regulations or other guidance under Section 409A of the Code.

(f) “CEO” means the Chief Executive Officer of the Company.
(g) “Code” means the Internal Revenue Code of 1986, as amended from time to time.

(h) “Committee” means the Compensation Committee of the Board (or any other committee designated by the Board that is eligible to administer the Plan in accordance with Rule 16b-3 under the Exchange Act).

(i) “Company” means Vulcan Materials Company and also includes any Employing Company (as such term is defined in the Retirement Plan).

(j) “Company Stock” means the common stock of the Company.

(k) “Early Retirement” shall have the same meaning as defined under the Retirement Plan.

(l) “ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.


(n) “Limitations” means:
   (i) the limitations set forth in Section 415 of the Code;
   (ii) the Section 401(a)(17) Limit; and
   (iii) the reduction in the compensation that is taken into account under the Thrift Plan, the 401(k) Plan, and the Retirement Plan (determined without regard to the Section 401(a)(17) Limit) to the extent that the reduction is attributable to the Participant’s election to defer such compensation on a nonqualified basis under Section 5.1 of the Vulcan Materials Company Executive Deferred Compensation Plan, provided that, the Limitation applied in the calculation of Supplemental Retirement Benefits shall be taken into account such deferred compensation only to the extent that such compensation exceeds the Section 401(a)(17) Limit.

(o) “Matching Contribution” shall have the same meaning as defined under the Thrift Plan.

(p) “Normal Retirement Date” shall have the same meaning as defined under the Retirement Plan.

(q) “Participant” means any key management employee of the Company who has been approved by the Committee for participation in the Plan under Section 4.1.

(r) “PBGC” means the Pension Benefit Guaranty Corporation.

(s) “Plan Year” means the period of 12 consecutive months beginning each January 1 and ending December 31.
2.2 Gender and Number. Except where otherwise indicated by the context, any masculine term shall include the feminine, the plural shall include the singular, and the singular shall include the plural.

Article 3. Administration

3.1 The Committee. The Plan shall be administered by the Committee. In no event shall any member of the Committee be a Participant.

3.2 Authority of the Committee.

(a) Subject to the terms of the Plan, the Committee shall have full power and discretionary authority (i) to determine the terms and conditions of each Participant’s participation in the Plan, (ii) to construe and interpret the Plan and any agreement or instrument entered into under the Plan, (iii) to establish, amend, and waive rules and regulations for the Plan’s administration, (iv) subject to the provisions of Article 11, to amend the Plan and any agreement or instrument entered
into under the Plan or to terminate the Plan, (v) to appoint and remove the trustee and the recordkeeper for the Rabbi Trust, and to direct the trustee and the recordkeeper with respect to their duties under the agreements pertaining to the Rabbi Trust, and (vi) to make any other determinations that may be necessary or advisable for the administration of the Plan, provided that the Committee shall not have authority to alter the time or form of payment of a Participant’s Supplemental Thrift Benefits and Supplemental Retirement Benefits except as permitted under Section 409A of the Code.

(b) To the extent permitted by law, the Committee (i) may delegate any or all of its authority granted under the Plan to one or more executives of the Company (provided that no executive of the Company who is a Participant shall exercise any authority with respect to his own participation in the Plan) and (ii) may designate one or more individuals who are not Participants (but who may be employees of the Company) to carry out ministerial duties related to the administration of the Plan, except that the Committee shall not delegate responsibility for any matter involving a person subject to Section 16 of the Exchange Act if a decision by the Committee as to such matter would have the effect of exempting a transaction under the Plan from the application of Section 16(b) of the Exchange Act pursuant to Rule 16b-3 or any successor rule thereunder.

3.3 Decisions Binding. All determinations and decisions of the Committee (or of any person to whom the Committee has delegated its authority) under the Plan, including questions of construction and interpretation, shall be final, conclusive, and binding on the employees of the Company, the Participants and their beneficiaries and estates. Whenever the Plan authorizes the Committee or any other person to exercise discretion with respect to any matter, such discretion may be exercised in the sole and absolute discretion of the Committee or such person, subject only to the terms of the Plan and applicable requirements of law.

Article 4. Eligibility and Participation

4.1 Eligibility. Persons eligible to participate in this Plan shall be limited to full-time, salaried employees of the Company, who are determined to be “key employees” by the CEO and who are approved for participation by the Committee. Further, to be eligible, an employee must be among a select group of management or highly compensated employees of the Company, such that the Plan qualifies for a “top hat” exemption under Title I of ERISA, as further described in Section 12.3 herein.

4.2 Participation. Unless otherwise determined by the Committee, Participants in the Plan shall be eligible to receive both Supplemental Thrift Benefits and, except employees hired by the Company after July 15, 2007, Supplemental Retirement Benefits. Employees who have been approved for participation in the Plan shall be notified in writing of such approval as soon as administratively practicable thereafter.
Article 5. Supplemental Thrift Benefits

5.1 Participant Accounts.

(a) The Company shall establish and maintain a separate bookkeeping account for the Alternative Matching Contributions and Alternative Profit-Sharing Contributions, and the investment returns thereon, of each Participant (a “Supplemental Thrift Benefits Account Balance”). Each Participant shall be furnished with a statement of his account balance at least annually.

(b) The establishment and maintenance of such accounts by the Company shall not be construed as entitling any Participant to any specific assets of the Company. The rights of Participants to receive any distribution under the Plan shall be an unsecured claim against the general assets of the Company.

5.2 Alternative Matching Contributions.

(a) If under the Thrift Plan or 401(k) Plan (as applicable to the Participant) a Matching Contribution to a Participant is reduced by the application of the Limitations, such Participant shall be entitled to have an Alternative Matching Contribution credited to the Participant’s Supplemental Thrift Benefits Account Balance. Such credit shall be made at the same time as the Matching Contribution (as so reduced) is made to the Participant under the Thrift Plan or 401(k) Plan. A Participant’s action or inaction during a Plan Year does not affect the amount of the Participant’s Alternative Matching Contribution because the Participant may not change his or her deferred election for a Plan Year pursuant to the Thrift Plan after the last day of the preceding Plan Year.

(a) If under the 401(k) Plan a Profit-Sharing Contribution to a Participant is reduced by the application of the Limitations, such Participant shall be entitled to have an Alternative Profit-Sharing Contribution credited to the Participant’s Supplemental Thrift Benefits Account Balance. Such credit shall be made at the same time as the Profit-Sharing Contribution (as so reduced) is made to the Participant under the 401(k) Plan.

5.3 Investment Return.

(a) Each Participant’s Supplemental Thrift Benefits Account Balance under the Plan shall be deemed invested, at the Participant’s election, in any investment funds that are available for the investment of the Participant’s Matching Contributions Account under the Thrift Plan. A Participant shall make an investment election (or change a previous election) in writing in a manner acceptable to the Committee, and the Committee may adopt such rules and procedures for the deemed investment of Participants’ Supplemental Thrift Benefits Account Balances as the Committee considers necessary or appropriate. An investment election shall be effective for all amounts subsequently credited to the Participant’s Supplemental Thrift Benefits Account Balance until the Participant makes a new investment election. If a Participant has not made an investment election, the Participant’s Supplemental Thrift Benefits Account Balance shall be deemed invested and reinvested in the same proportions among such investment funds as is the Matching Contributions Account of the Participant under the Thrift Plan, subject to such restrictions and limitations as the Committee may deem necessary or appropriate.
(b) Each Participant shall be entitled to an investment return based on the deemed investment of the Participant’s Supplemental Thrift Benefits Account Balance, which shall be adjusted at such times and in such manner as the Committee deems appropriate to reflect the investment results of the investment funds in which such balance is deemed invested.

(c) The Company shall have no obligation to invest any amounts in the investment funds in which the Supplemental Thrift Benefits Account Balances of Participants are deemed invested.

5.4 Charges Against Accounts. All payments made to a Participant under the Plan shall be charged against such Participant’s Supplemental Thrift Benefits Account Balance when and as made.

5.5 Distributions.

(a) Except as provided in paragraph (b), a Participant’s Supplemental Thrift Benefits Account Balance shall be distributed to the Participant in the form of a single lump-sum cash payment. Such distribution shall be made in the seventh month after the Participant’s Termination of Employment Service.

(b) An individual who is a Participant on December 31, 2006, and whose Supplemental Thrift Benefits do not begin to be paid on or before December 31, 2006, may elect a form of payment and a time of payment with respect to the Participant’s Supplemental Thrift Benefits Account Balance as described in this paragraph. The participant may elect to receive the Participant’s Supplemental Thrift Benefits Account Balance in the form of a single lump-sum payment or annual installments over a period of fifteen years (with each installment payment equal to the Participant’s remaining Supplemental Thrift Benefits Account Balance as of the payment date divided by the number of payments remaining to be made, and this installment option is treated as the entitlement to a single payment for purposes of Treasury Regulation § 1.409A-2(b)(2)(iii)). The Participant may also elect to receive (or begin receiving) such distribution either at the time specified in paragraph (a) or at the later of (i) the time specified in paragraph (a) or (ii) the month of March in a year selected by the Participant. If a Participant is eligible to make an election under this paragraph (b) but fails to do so on or before December 31, 2006, the Participant’s Supplemental Thrift Benefits Account Balance shall be distributed at the time and form of payment as described under paragraph (a), subject to the next sentence. A Participant who is eligible to make an election under this paragraph (b) may change the time or form of payment of his or her Supplemental Thrift Benefits Account after December 31, 2006, provided, however, that the change is made at least 12 months before the distribution is scheduled to begin, and the new distribution date is at least five years after the previously scheduled distribution date.

(c) If the Company fails to make any payment due under this Article 5 within 90 days after it first becomes due, the payment shall be made from the Rabbi Trust (to the extent assets in the Rabbi Trust are available to make the payment).

6.1 Benefit Amount.

If a Participant experiences a Termination of Employment Service after reaching his Vesting Date under the Retirement Plan, such Participant shall be entitled to a Supplemental Retirement Benefit equal to (i) the amount of such Participant’s Vested benefit computed under the Retirement Plan, determined as if the Participant commenced benefits under the Retirement Plan on the first day of the month after the Termination of Employment Service and in the same form as the Supplemental Retirement Benefit is paid, without regard to the Limitations, reduced by (ii) the amount of such Participant’s Vested benefit computed under the Retirement Plan, determined at the same time and in the same form, after application of the Limitations. If, however, the form of payment for the Participant’s Supplemental Retirement Benefit is not available under the Retirement Plan, the amount of the Supplemental Retirement Benefit shall be determined under the preceding sentence as if the Supplemental Retirement Benefit is paid in a single life annuity, and the resulting benefit is converted actuarially into the form of benefit for the Supplemental Retirement Benefit based on a 7% interest rate and the GAM 83 mortality table (95% male/5% female).

6.2 Death.

(a) If a Participant dies after the Participant’s Supplemental Retirement Benefit begins to be paid, payment may continue to be paid to the Participant’s beneficiary in accordance with the Participant’s distribution election (or, if no election has been made, in accordance with the installment payment option). If the Participant has not designated a beneficiary (or the Participant’s designated beneficiary predeceases the Participant), the Participant’s beneficiary will be determined under the provisions of the Retirement Plan pertaining to a failure to designate a beneficiary.

(b) If a Participant dies before the Participant’s Supplemental Retirement Benefit begins to be paid, the Participant’s spouse, if any, will receive the Participant’s Supplemental Retirement Benefit as described in this paragraph. Payment will be made to the spouse in the form of a single life annuity beginning in the month after the Participant’s death, except if paid in a lump sum pursuant to Section 6.3(c) (relating to small lump sums). The amount of the payment shall be equal to (i) the amount of the death benefit that the spouse would be entitled to receive under the Retirement Plan, if paid in the form of a single life annuity beginning in the month after the Participant’s death, without regard to the Limitations, reduced by (ii) the amount of the death benefit that the spouse would be entitled to receive under the Retirement Plan, determined at the same time and in the same form, after application of the Limitations.

6.3 Benefit Payments.

(a) Except as otherwise provided in paragraphs (b) (relating to Participant’s elections) and (c) (relating to small lump sum payments), the payment of a Supplemental Retirement Benefit to which a Participant (or, if the Participant dies after payments begin to be made, such Participant’s beneficiary) is entitled under the Plan shall be distributed to the Participant (or beneficiary) in the form of equal, monthly installments over a period of ten years (which installment option is treated as the entitlement to a single payment for purposes of Treasury Regulation § 1.409A-2(b)(2)(iii)). Such distribution shall begin to be paid in the month following the Participant’s Termination of
Employment Service, provided however, that payments that would otherwise be made in the first six months following the Participant’s Termination of Employment Service will instead be made in a lump sum in the seventh month following the Participant’s Termination and shall include interest from the scheduled payment date to the actual payment date at the rate that is used under the Retirement Plan to satisfy Section 417(e) of the Code for a distribution in the month following the Participant’s Termination.

(b) Subject to paragraph (c), an individual who is a Participant and an employee of the Company on December 31, 2006, may elect a form of payment and a time of payment with respect to the Participant’s Supplemental Retirement Benefit as described in this paragraph. The Participant may elect to receive the Participant’s Supplemental Retirement Benefit in the form described in paragraph (a) or in any other form available under the Retirement Plan. The Participant may also elect to receive (or begin receiving) such distribution either at the time specified in paragraph (a) or at the later of (i) the date specified in paragraph (a) or (ii) the month of March in a year selected by the Participant. If a Participant is eligible to make an election under this paragraph (b) but fails to do so on or before December 31, 2006, the Participant’s Supplemental Retirement Benefit shall be distributed at the time and form of payment as described under paragraph (a), subject to the next sentence. A Participant who is eligible to make an election under this paragraph (b) may change the time or form of payment of his or her Supplemental Retirement Benefit after December 31, 2006, provided, however, that the change is made at least 12 months before the distribution is scheduled to begin, and the new distribution date is at least five years after the previously scheduled distribution date.

(c) The Committee has the discretion to require, in writing and consistent with Treasury Regulation § 1.409A-3(j)(5)(v), the payment to a Participant or Beneficiary of a Supplemental Retirement Benefit of a lump sum equal to the present value of the Supplemental Retirement Benefit when the present value of such Supplemental Retirement Benefit, together with the present value of any benefits that are treated as having been deferred under a single nonqualified deferred compensation plan under Treasury Regulation § 1.409A–1(c)(2) is not greater than the applicable dollar amount under Section 402(g)(1)(B) of the Code. For purposes of the preceding sentence, present value is determined as of the date payment of such Supplemental Retirement Benefit is to be made using the interest and mortality assumptions that are used under the Retirement Plan to satisfy Section 417(e) of the Code.

6.4 Taxability of Benefits Prior to Payment.

(a) If the Plan fails to meet the requirements of Section 409A of the Code, payment of an affected Participant’s benefit under the Plan may be accelerated in accordance with Treasury Regulation § 1.409A-3(j)(vii), provided that such accelerated payment may not exceed the amount required to be included in income as a result of the failure to comply with the requirements of Section 409A of the Code.

(b) Payment of a Participant’s benefit under the Plan may be accelerated in accordance with Treasury Regulation § 1.409A-3(j)(vi) to pay (1) any Federal Insurance Contributions Act tax imposed under Sections 3101, 3121(a), and 3121(v)(2) of the Code, or any Railroad Retirement Act tax imposed under Sections 3201, 3211, 3231(e)(1), and 3231(e)(8) of the Code on benefits under the Plan, and (2) if applicable, the income tax at source on wages imposed under Section 3401 of the
Article 7. Rabbi Trust

7.1 Establishment of a Rabbi Trust. As soon as administratively practicable following the Effective Date, the Company shall establish an irrevocable Rabbi Trust to accumulate assets that will assist the Company in meeting its obligations under the Plan. The Rabbi Trust shall have an independent trustee that is selected by the Company. The trust agreement with respect to the Rabbi Trust shall provide that the assets of the Rabbi Trust shall at all times be specifically subject to the claims of the Company’s creditors in the event of the bankruptcy or insolvency (as defined by the Rabbi Trust Agreement) of the Company. Notwithstanding this Section 7.1, the Rabbi Trust shall be funded only to the extent permissible under Section 409A(b) of the Code.

7.2 Funding of the Rabbi Trust. Except as otherwise provided in Article 8, the Company may contribute cash, Company Stock, or any other asset to the Rabbi Trust when and as the Company deems appropriate.

Article 8. Change in Control

8.1 Funding of the Rabbi Trust. Upon the occurrence of a Change in Control, (i) the Company shall within ten business days thereafter contribute to the Rabbi Trust in cash an amount sufficient to cover all Supplemental Thrift Benefits and Supplemental Retirement Benefits accrued hereunder as of date on which the Change in Control occurs and (ii) the Company, within 30 day after the commencement of each Plan Year thereafter, shall contribute to the Rabbi Trust in cash such additional amounts as shall be necessary to ensure that the assets of the Rabbi Trust are at least sufficient to cover all Supplemental Thrift Benefits and Supplemental Retirement Benefits accrued as of the commencement of such Plan Year. Notwithstanding this Section 8.1, the Rabbi Trust shall be funded only to the extent permissible under Section 409A(b) of the Code.

8.2 Payment of Supplemental Thrift Benefits.

(a) If at any time during the two-year period immediately following the occurrence of such Change in Control a Participant incurs a Termination of Employment Service, then the terminated Participant shall be entitled to receive a lump-sum cash payment equal to: (A) such Participant’s Supplemental Thrift Benefit and (B) the present value (determined using the interest and mortality assumptions that are used under the Retirement Plan to satisfy Section 417(e) of the Code) of the Vested benefit to which such Participant would be entitled pursuant to Section 6.1 if the Accelerating Event constituted a Termination of Employment Service by the Participant after reaching such Participant’s Vesting Date under the Retirement Plan. The Company shall make, or shall cause the Rabbi Trust to make, the payments due under this Section 8.2(a) in the seventh month after the date of the Participant’s Termination of Employment Service

(b) If the Plan and all agreements, methods, programs, and other arrangements that are treated together with the Plan as a single plan under Treasury Regulation § 1.409A-1(c)(2) are terminated at any time during the 30 days preceding or the 12 months following a Change in Control in accordance with Treasury Regulation § 1.409A-3(j)(4)(ix)(B), then each Participant shall be
entitled to receive a lump-sum cash payment equal to: (A) such Participant’s Supplemental Thrift Benefit and (B) the present value (determined using the interest and mortality assumptions that are used under the Retirement Plan to satisfy Section 417(e) of the Code) of the Vested benefit to which such Participant would be entitled pursuant to Section 6.1 if the Accelerating Event constituted a Termination of Employment Service by the Participant after reaching such Participant’s Vesting Date under the Retirement Plan. The Company shall make, or shall cause the Rabbi Trust to make, the payments due under this Section 8.2(b) as soon as practicable, but not more than 30 days following, the date of termination of the Plan and all agreements, methods, programs, and other arrangements that are treated together with the Plan as a single plan under Treasury Regulation § 1.409A-1(c)(2).

8.3 Composition of the Committee. The composition of the Committee immediately prior to the Change in Control shall not be changed after the Change in Control, except with the consent of a majority of the Continuing Directors. If, after the Change in Control, a member of the Committee resigns or is unable to serve due to death or disability, the remaining members of the Committee shall appoint a replacement.

8.4 Reimbursement of Fees and Expenses. Following a Change in Control, the Company promptly shall reimburse a Participant for all legal fees and expenses reasonably incurred in successfully enforcing any right or benefit under the Plan. Any reimbursement of legal fees pursuant to this Section 8.4 shall be paid no later than the end of the individual’s taxable year next following the individual’s taxable year in which the related expense is incurred, except that if such reimbursement is subject to a substantial risk of forfeiture, it shall be paid no later than two and one-half months after it is no longer subject to a substantial risk of forfeiture.

Article 9. Beneficiary Designation — Supplemental Thrift Benefits

9.1 Designation of Beneficiary. Each Participant may designate a beneficiary or beneficiaries who, upon the Participant’s death, will receive the Supplemental Thrift Benefits that otherwise would have been paid to the Participant under the Plan. All such designations shall be signed by the Participant, and shall be in such form as is prescribed by the Committee. Each designation shall be effective as of the date delivered to the Committee (or to a Company employee appointed by the Committee to receive such designations); provided that the Committee must receive any beneficiary designation or change therein before the Participant’s death. A Participant may change his beneficiary designation, at any time and from time to time, on such form as is prescribed by the Committee. In the event of the death of the Participant, the payment of all amounts deferred under the Plan, and the earnings thereon, shall be in accordance with the last written beneficiary designation signed and delivered by the Participant and not revoked.

9.2 Payment to Beneficiary. If a Participant dies before his Supplemental Thrift Benefit has been paid in full, the payment thereof to the Participant’s beneficiary or beneficiaries shall be made in a single lump-sum cash payment on the 30th day following the Participant’s death.

9.3 Death of Beneficiary. In the event that all the beneficiaries of a Participant predecease the Participant, the Supplemental Thrift Benefit that would have been paid to the Participant under the Plan shall be paid in a single lump-sum cash payment on the 30th day following the Participant’s death to the Participant’s estate, or to the person or persons designated in writing by the Participant’s estate.
9.4 Ineffective Designation. In the event a Participant does not designate a beneficiary with respect to his Supplemental Thrift Benefit, or for any reason such designation is ineffective, in whole or in part, the Supplemental Thrift Benefit that otherwise would have been paid to the Participant under the Plan shall be paid in a single lump-sum cash payment on the 30th day following the Participant’s death to the Participant’s estate.

Article 10. Withholding of Taxes

The Company shall have the right to either (i) require Participants to remit to the Company, or any person or entity designated by the Committee to administer the Plan, an amount sufficient to satisfy any applicable federal, state, and local income and employment tax withholding requirements or (ii) to deduct from any payment made pursuant to the Plan amounts sufficient to satisfy such withholding requirements.

Article 11. Amendment and Termination

The Company has the right to amend, suspend, or terminate the Plan at any time by action of the Board of Directors, except that (i) no such amendment, suspension, or termination shall, without the written consent of a Participant, change the time or form of any payout under the Plan or otherwise adversely affect, in any material respect, such Participant’s rights with respect to amounts theretofore accrued under the Plan, and (ii) following a Change in Control, the Company shall not amend Section 5.5 (b), Articles 3, 7 or 8, or this Article 11, and shall not amend any other provision of the Plan in a manner that would alter the effect of Section 5.5(b), Articles 3, 7 or 8, or this Article 11.

Article 12. Miscellaneous

12.1 Employment. No provision of the Plan, nor any action taken by the Committee or the Company pursuant to the Plan, shall give or be construed as giving a Participant any right to be retained in the employ of the Company, or affect or limit in any way the right of the Company to terminate his employment.

12.2 Notice. Any notice required or permitted to be given to the Committee or the Company under the Plan shall be sufficient if in writing and hand delivered, sent by registered or certified mail, or delivered in any other manner authorized by the Committee, to the Committee (or to a person designated by the Committee to receive such notices). Such notices, if mailed, shall be addressed to the principal executive offices of the Company. Notice to any Participant shall be given in any manner authorized by the Committee and, if mailed, shall be sent to the Participant’s address as is set forth in the records of the Company.

12.3 Unfunded Plan. This Plan is intended to be an unfunded plan for tax purposes and for purposes of Title I of ERISA. The Plan is intended primarily to provide deferred compensation benefits for “a select group of management or highly compensated employees” within the meaning of Sections 201, 301, and 401 of ERISA, and therefore is further intended to be exempt from the provisions of Parts 2, 3, and 4 of Title I of ERISA. The Committee may terminate the Plan for any or all Participants, subject to Article 11, in order to achieve and maintain these intended results.
12.4 Successors. All obligations of the Company under the Plan shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect merger or consolidation, the purchase of all or substantially all of the assets of the Company, or otherwise. The provision of the Plan with respect to each Participant shall be binding on such Participant’s heirs, executors, administrators or other successors in interest.

12.5 Nontransferability. The Committee may recognize the right of an alternate payee named in a domestic relations order to receive all or a portion of a Participant’s benefit under the Plan, provided that (i) the domestic relations order would be a “qualified domestic relations order” within the meaning of Section 414(p) of the Code if Section 414(p) were applicable to the Plan, (ii) the domestic relations order does not purport to give the alternate payee any right to assets of the Company or its affiliates, and (iii) the domestic relations order does not purport to give the alternate payee any right to receive payments under the Plan before the Participant is eligible to receive such payments. Except as set forth in the preceding sentence with respect to domestic relations orders, and except as required under applicable federal, state, or local laws concerning the withholding of tax, the rights of any Participant or beneficiary to amounts deferred under the Plan, and the earnings thereon, are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment, or garnishment by creditors of the Participant or any beneficiary, other than by will or by the laws of descent and distribution. In no event shall the Company make any payment under the Plan to any assignee or creditor of a Participant or beneficiary.

12.6 Severability. In the event any provision of the Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had not been included.

12.7 Costs of the Plan. All costs of implementing and administering the Plan shall be borne by the Company.

12.8 Governing Law. To the extent not preempted by federal law, the Plan shall be governed by and construed in accordance with the laws of the state of New Jersey, without giving effect to any choice or conflict of law provision or rule.

12.9 Section 409A of the Internal Revenue Code.

(a) The Plan is intended, and shall be construed, to comply with the requirements of Section 409A of the Code. However, the Plan does not transfer to the Company or any entity or other individual any tax or penalty that is the responsibility of the Participant.

(b) Any payment may be made on any day other than the date on which payment is scheduled to begin under the Plan to the extent that such payment is treated as being paid on the date specified in the previous sentence under Treasury Regulation § 1.409A-3(d), which permits payment to be made within thirty days before the specified date and later within the same calendar year, or, if later, within 2-1/2 months following the specified date, provided that the Participant is not permitted to designate the taxable year of payment.

(c) To comply with Section 409A of the Code, the following special claims procedures apply in addition to any other claims procedures applicable to the Plan. If a Participant or Beneficiary believes
he or she is entitled to have received benefits but has not received them, the Participant or Beneficiary must accept any payment made under the Plan and make prompt and reasonable, good faith efforts to collect the remaining portion of the payment, as determined under Treasury Regulation § 1.409A-3(g). For this purpose (and as determined under such regulation), efforts to collect the payment will be presumed not to be prompt, reasonable, good faith efforts, unless the Participant or Beneficiary provides notice to the plan administrator within 90 days of the latest date upon which the payment could have been timely made in accordance with the terms of the Plan and the regulations under Section 409A of the Code, and unless, if not paid, the Participant or Beneficiary takes further enforcement measures within 180 days after such latest date. In addition, a Participant or Beneficiary must exhaust any other claims procedures established by the plan administrator before initiating litigation.

IN WITNESS WHEREOF, the Company has caused this Vulcan Materials Company Unfunded Supplemental Benefit Plan for Salaried Employees to be executed for and in its name and its corporate seal to be hereto affixed and attested by its duly authorized Secretary, this 11th day of December, 2008.

ATTEST:

By: /s/ Jerry F. Perkins
    Jerry F. Perkins, Jr.
    Corporate Secretary

By: /s/ Donald M. James
    Donald M. James
    Chairman and Chief Executive Officer
1. Eligibility and Purpose

Each member of the Board of Directors (the “Board”) of Vulcan Materials Company (the “Company”) who is not an employee of the Company or its subsidiaries shall be eligible to participate in the Vulcan Materials Company Deferred Compensation Plan for Directors Who Are Not Employees of the Company (the “Plan”). Any member of the Board who elects to participate in the Plan (“Director”) shall thereby defer the receipt of all or any portion of the annual retainer, meeting and committee fees payable by the Company to such Director for serving as a member of the Board or one or more of its committees (the “Deferrable Compensation”).

2. Deferral of Compensation

A Director may elect to defer all or any portion of the Deferrable Compensation by executing a form prescribed by the Secretary of the Company and delivering such form to the Secretary prior to the first day of the calendar year for which the election is to be effective. In the calendar year that a Director first becomes eligible to participate in the Plan, such Director may elect to defer all or any portion of the Deferrable Compensation, provided that the election form is delivered to the Secretary within thirty (30) days after the Director first becomes eligible to participate in the Plan for such year. An election made in this manner will be applicable only to Deferrable Compensation earned after the date of the election. Elections made pursuant to this Section 2 shall be irrevocable. The amount of Deferrable Compensation deferred shall be paid or distributed to the Director in accordance with the provisions of Section 5 or Section 6, below.

3. Deferred Compensation Account

The Company shall establish a deferred compensation account (the “Account”) for the Director. As of the date payments of Deferrable Compensation otherwise would be made to the Director, the Company shall credit to the Account, in cash or stock equivalents, or a combination thereof, as hereinafter provided, that amount of the Deferrable Compensation which the Director has elected to defer.

4. Cash or Stock Election

(a) As of the date payments of Deferrable Compensation otherwise would be made to the Director, the amount due the Director shall be credited to the Account either as a cash allotment or as a stock allotment, or a portion to each, as the Director shall elect at the time the deferral election is made.
If a cash allotment is elected in whole or in part, the Account shall be credited with the dollar amount of the allotment. Interest (at the rate described below) on the Average Daily Balance (computed as described below) shall be credited to the Account as of the last day of each calendar month before and after the termination of the Director’s service and after the Director’s death until the total balance in the Account has been paid out in accordance with the provisions of Section 5 or Section 6, below. The interest rate for each calendar month shall be the composite 30-day offering rate for prime commercial paper placed through dealers (rated A-1 by Standard & Poor’s Corporation or its successor and P-1 by Moody’s Investors Service, Inc., or its successor) for the last business day of the immediately preceding calendar month as published by the Federal Reserve Bank of New York. The “Average Daily Balance” shall be the quotient obtained by dividing the sum of the closing balance in the Account at the end of each calendar day by the number of days in such calendar month.

(c)(1) If a stock allotment is elected in whole or in part, the Account shall be credited with a stock equivalent that shall be equal to the number of full and fractional shares of the Company’s Common Stock, par value $1.00 per share (the “Common Stock”), that could be purchased with the dollar amount of the allotment using the Average Closing Price (as defined below) of the Common Stock for the twenty (20) trading days ending on the day preceding the date the Account is so credited. The “Average Closing Price” of the Common Stock means the average of the daily closing prices for a share of the Common Stock for the applicable twenty (20) trading days on the Composite Tape for New York Stock Exchange — Listed Stocks, or, if the Common Stock is not listed on such Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on which the Common Stock is listed, or, if the Common Stock is not listed on any such exchange, the average of the daily closing bid quotations with respect to a share of the Common Stock for such twenty (20) trading days on the National Association of Securities Dealers, Inc., Automated Quotations System or any system then in use, or, if no such quotations are available, the fair market value of a share of the Common Stock as determined by a majority of the Board; provided, however, that if a Change in Control (as defined below) shall have occurred, then such determination shall be made by a majority of the Continuing Directors (as defined below).

(2) The Account also shall be credited as of the payment date for each dividend on the Common Stock with additional stock equivalents computed as follows: The dividend paid, either in cash or property (other than Common Stock), upon a share of Common Stock to a shareholder of record shall be multiplied by the number of stock equivalents in the Account and the product thereof shall be divided by the Average Closing Price of the Common Stock for the twenty (20) trading days ending on the day preceding the dividend payment date. In the case of dividends payable in property, the amount paid shall be based on the fair market value of the property at the time of distribution of the dividend, as determined by a majority of the Board; provided, however, that if a Change in Control shall have occurred, then such determination shall be made by a majority of the Continuing Directors.

(3) In the event of any change in the Common Stock, upon which the stock equivalency hereunder is based, by reason of a merger, consolidation, reorganization, recapitalization, stock dividend, stock split, combination or exchange of shares, or any other change in corporate structure, the number of shares credited to the Account shall be adjusted in such manner as a majority of the
Board shall determine to be fair under the circumstances; provided, however, that if a Change in Control shall have occurred, then such determination shall be made by a majority of the Continuing Directors.

5. Distribution

(a) At the Director’s election, made at the time that a deferral election is made, the balance in the Account shall be paid out to the Director when:

(1) the Director incurs a “separation from service” with the Company within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”); or

(2) the period of years which the Director specifies has elapsed from the date deferral of Deferrable Compensation.

All elections as to the time at which the payout will commence shall be irrevocable except as otherwise provided in Section 7(b).

(b) The balance in the Account shall be paid either in a lump sum or, at the Director’s election, in approximately equal annual installments over a period of years not to exceed ten (10) years (the “Payout Period”). Such election shall be made by executing a form prescribed by the Secretary of the Company and delivering such form to the Secretary at the time that the deferral election is made. A director may change his election for amounts to be earned in any future calendar year at any time prior to the first day of such calendar year. A director may only modify a payout election with respect to amounts already earned or to be earned during the then-current calendar year in accordance with Section 7(b) below. The amount of each installment shall be determined as of each payment date by dividing the then balance in the Account by the then remaining number of payment dates in the Payout Period. The lump sum or first periodic installment shall be paid by the Company as promptly as is practicable, and in any event within ninety (90) days of the payment event elected by the Director in accordance with the terms of the Plan. If a Director elects to receive payment in installments, for purposes of section 409A of the Code, the designated payment date of each installment after the first installment is January 1 of the calendar year in which it is scheduled to be paid, and payment may be made on any other day during such year to the extent that such payment is treated as being paid on the designated payment date under Treasury Regulation § 1.409A-3(d), which permits payment to be made later within the same calendar year.

(c) In the event of the death of the Director prior to distribution of the entire balance in the Director’s Account, the balance in the Account shall be paid as promptly as is practicable (but no later than ninety (90) days after the date of death) in a lump sum to

(i) the surviving beneficiary (or surviving beneficiaries in such proportions) as the Director may have designated by notice in writing to the Company unrevoked by a later notice in writing to the Company or, in the absence of an unrevoked notice,
(ii) the beneficiary (or beneficiaries in such proportions) as the Director may have designated by will or, if no beneficiary is designated, (iii) the legal representative of the Director’s estate.

(d) The provisions of the Plan shall apply to and be binding upon the beneficiaries, distributees and personal representatives and any other successors in interest of the Director.

(e) Distribution of the cash in the Account shall be made in cash. Distribution of stock equivalents in the Account shall be made in the corresponding number of whole shares of Common Stock. Fractional shares shall be paid in cash.

(f) The Company shall deduct from all distributions hereunder any taxes required to be withheld by the federal or any state or local government.

6. Acceleration of Distribution

(a) “Change in Control” means a change in control as defined in regulations or other guidance under Section 409A of the Code.

(b) Notwithstanding any other provision of the Plan, if a Change in Control occurs and any of the following events occurs:
   (1) the Director incurs a separation from service with the Company within the meaning of section 409A of the Code during the two (2) year period following the Change in Control; or
   (2) the Plan is terminated and the requirements of Treasury Regulation § 1.409A-3(j)(4)(ix) are satisfied;

then the balance in the Account shall be payable in a lump sum (in cash or in shares of Common Stock, as is applicable) to the Director. Such payment shall be made by the Company as promptly as practicable, but not more than thirty (30) days following the date on which the applicable event occurs.

(c) The Company shall promptly reimburse the Director for all legal fees and expenses reasonably incurred in successfully seeking to obtain or enforce any right or benefit provided under this Section 6. To the extent that the right to legal fees under this Section 6(c) is subject to a “substantial risk of forfeiture” within the meaning of Treas. Reg. § 1.409A-1(d), any reimbursement of legal fees under this Section 6(c) shall be paid no later than 2-1/2 months following the end of the Director’s taxable year in which there is no longer a substantial risk of forfeiture; otherwise, any reimbursement of legal fees paid to the Director pursuant to this Section 6(c) shall be paid no later than the end of the Director’s taxable year next following the taxable year of the Director in which the related expense is incurred.
7. Miscellaneous

(a) The election to defer Deferrable Compensation, including the allocation of the amount deferred between the cash allotment and the stock allotment portion of the Account shall be irrevocable as to amounts earned in the calendar year following the year in which the election is made or, in the case of a Director who first becomes eligible to participate in the Plan during the calendar year, for the remaining portion of the year in which the election is made and, also shall be effective as to and irrevocable for any subsequent calendar year, unless a new election form reflecting a change or revocation of the deferral election or a change in the allocation of the amount deferred between the cash allotment and the stock allotment portion of the Account with respect to amounts earned in such subsequent calendar year is delivered to the Secretary of the Company not later than ten (10) days preceding the first day of the calendar year to which such change or revocation is applicable.

(b) A Director may change his election pursuant to Section 5(a) as to the time of payment, subject to the following requirements:

1. the new election must be made at least twelve months before the date when payment would otherwise commence (and the new election shall be ineffective if a subsequent event causes the original payment date to fall within the 12-month period); and

2. the new election must defer the date on which payment will commence by at least five years from the commencement date applicable to the Participant’s previous election. However, a participant may elect to change the number of payments in any given year (i.e., quarterly to annual) without approval of the Board by giving written notice to the Secretary of the Company, provided that any payment previously scheduled to be paid within a calendar year will, after such change, be paid within the same calendar year. In addition, notwithstanding the forgoing, the Company may, in its discretion, permit a Director to change, no later than December 31, 2008, his election as to the time of payment pursuant to the transition rules under section 409A of the Code.

(c) Neither the Director nor any other person shall have any interest in any fund or in any specific asset of the Company by reason of amounts credited to the Account of a Director hereunder, nor the right to exercise any of the rights or privileges of a shareholder with respect to any stock equivalents credited to the Account, nor the right to receive any distribution under the Plan except as and to the extent expressly provided for in the Plan. Distributions hereunder shall be made from the general funds of the Company, and the rights of the Director shall be those of an unsecured general creditor of the Company. The Company may establish a trust pursuant to a trust agreement and make contributions thereto for the purpose of assisting the Company in meeting its obligations hereunder. Any such trust agreement shall contain procedures to the following effect:

(i) In the event of the insolvency of the Company, the trust fund will be available to pay the claims of any creditor of the Company to whom a distribution
may be made in accordance with state and federal bankruptcy laws. The Company shall be deemed to be “insolvent” if the Company is subject to a pending proceeding as a debtor under the Federal Bankruptcy Code (or any successor federal statute) or any state bankruptcy code. In the event that the Company becomes insolvent, the Board and chief executive officer of the Company shall notify the trustee of the event as soon as practicable. Upon receipt of such notice, or if the trustee receives other written allegations of the Company’s insolvency, the trustee shall cease making payments of benefits from the trust fund, shall hold the trust fund for the benefit of the Company’s creditors, and shall take such steps as are necessary to determine within 30 days whether the Company is insolvent. In the case of the trustee’s actual knowledge of or other determination of the Company’s insolvency, the trustee will deliver assets of the trust fund to satisfy claims of the Company’s creditors as directed by a court of competent jurisdiction.

(ii) The trustee shall resume payments of benefits under the trust agreement only after the trustee has determined that the Company is not insolvent (or is no longer insolvent, if the trustee had previously determined the Company to be insolvent) or upon receipt of an order of a court of competent jurisdiction requiring such payment. If the trustee discontinues payment of benefits pursuant to clause (i), above, and subsequently resumes such payment, the first payment on account of a Director following such discontinuance shall include an aggregate amount equal to the difference between the payments which would have been made on account of such Director by the Company during any such period of discontinuance, plus interest on such amount at a rate equivalent to the net rate of return earned by the trust fund during the period of such discontinuance.

No trust established pursuant to this section 7(c), nor any assets set aside in such trust, shall be located or transferred outside of the United States or set aside in connection with a change in the Company’s financial health or during a “restricted period,” as determined under section 409A(b)(2) and (3) of the Code.

(d) The interest of the Director under the Plan shall not be assignable by the Director or the Director’s beneficiary or legal representative, either by voluntary assignment or by operation of law, and any assignment of such interest, whether voluntary or by operation of law, shall be ineffective to transfer the Director’s interest; provided, however, that (i) the Director may designate a beneficiary to receive any benefit payable under the Plan upon death, and (ii) the legal representative of the Director’s estate may assign the Director’s interest under the Plan to the persons entitled to any benefit payable under the Plan upon the Director’s death.

(e) Except as provided in Section 6, above, the Company may amend, modify, terminate or discontinue the Plan at any time; provided, however, that no such action shall reduce the amounts credited to the Account of the Director immediately prior to such action, nor change the time, method or manner of distribution of such amount, including, without limitation, distribution in accordance with Section 6, above.
(f) Nothing contained herein shall impose any obligation on the Company to continue the tenure of the Director beyond the term for which such Director may have been elected or shall prevent the removal of such Director.

(g) This Plan shall be interpreted by and all questions arising in connection therewith shall be determined by a majority of the Board, whose interpretation or determination, when made in good faith, shall be conclusive and binding, unless a Change in Control shall have occurred, in which case such interpretation or determination shall be made by a majority of the Continuing Directors.

(h) The effective date (the “Effective Date”) of this Amendment and Restatement of the Plan shall be December 11, 2008.

IN WITNESS WHEREOF, the Company has caused this Amendment and Restatement of the Vulcan Materials Company Deferred Compensation Plan for Directors Who Are Not Employees of the Company to be executed for and in its name and its corporate seal to be hereto affixed and attested by its duly authorized Secretary, this 11th day of December, 2008.

VULCAN MATERIALS COMPANY

ATTEST:

By: ______________________ /s/ Jerry F. Perkins, Jr.
    Jerry F. Perkins, Jr.
    Corporate Secretary

By: ______________________ /s/ Donald M. James
    Donald M. James
    Chairman and Chief Executive Officer

CORPORATE SEAL
1. Definitions.

As used herein, the following terms shall have the meanings hereinafter set forth:

(a) “Beneficiary” shall mean the individual or entity designated by the Nonemployee Director to receive, upon the death of the Nonemployee Director, undelivered Restricted Shares as to which the applicable restrictions have expired and the balance of the Nonemployee Director’s Account attributable to Deferred Stock Units. If no such designation is made, or if the designated individual predeceases the Nonemployee Director or the entity no longer exists, then the Beneficiary shall be the Nonemployee Director’s estate.

(b) “Board” shall mean the Board of Directors of the Company.

(c) “Change in Control” shall mean a change in control as defined in regulations or other guidance under Section 409A of the Code.

(d) “Code” shall mean the Internal Revenue Code of 1986, as amended.

(e) “Company” shall mean Vulcan Materials Company, a New Jersey corporation.

(f) “Deferred Stock Unit” shall mean the equivalent of one Share, as established pursuant to this Plan.

(g) “Effective Date” shall mean May 14, 2004, provided that the Plan is approved by the Company’s shareholders as described in paragraph 2.


(i) “Fair Market Value Per Share” shall mean the average of the daily closing prices of Shares as reported on the New York Stock Exchange for the twenty (20) trading days prior to the date of determination of the number of shares subject to the grant by the Board in accordance with Section 4 below, or if the Shares are not listed on such exchange, on the principal United States securities exchange registered under the Exchange Act on which the Shares are listed.
The purposes of the Plan are to promote a greater identity of interests between the Company’s Nonemployee Directors and its shareholders through increasing ownership of Company common stock by the Nonemployee Directors and to assist the Company in attracting and retaining qualified individuals to serve as Nonemployee Directors by affording them an opportunity to share in the future successes of the Company.

The Plan was adopted by the Board of Directors on July 18, 1997 and became effective on November 1, 1997. The Plan shall be deemed amended and restated as of the date of its approval by the affirmative vote of the holders of a majority of the Shares of the Company voted in person or by proxy at the next Annual Meeting.

This Plan was frozen immediately following the grants dated June 1, 2005.

2. **Purposes and Effective Date.**

The purposes of the Plan are to promote a greater identity of interests between the Company’s Nonemployee Directors and its shareholders through increasing ownership of Company common stock by the Nonemployee Directors and to assist the Company in attracting and retaining qualified individuals to serve as Nonemployee Directors by affording them an opportunity to share in the future successes of the Company.

The Plan was adopted by the Board of Directors on July 18, 1997 and became effective on November 1, 1997. The Plan shall be deemed amended and restated as of the date of its approval by the affirmative vote of the holders of a majority of the Shares of the Company voted in person or by proxy at the next Annual Meeting.

3. **Eligibility and Shares of Common Stock Available.**

Each director who as of the date of any grant made pursuant to the Plan is not an employee of the Company or any of its subsidiaries shall be eligible to participate in the Plan.

The number of Shares that may be issued pursuant to grants of Restricted Shares or Deferred Stock Units under the Plan shall not exceed 100,000, subject to proportionate adjustment as provided in paragraphs 6(b) and 8(b).

4. **Grants of Restricted Shares.**

At the Annual Meeting of the Board each year the Board shall determine the number of Restricted Shares to be granted to each Nonemployee Director. The Restricted Shares shall be granted on June 1 of each year following such determination date.

5. **Terms and Conditions of Grants of Restricted Shares.**
(a) The terms and conditions set forth in this paragraph shall apply to each grant of Restricted Shares. If required by the Company, each such grant shall be evidenced by a written agreement that sets forth the specific terms of the grant in accordance with the Plan and that is duly executed by or on behalf of the Company and the Nonemployee Director.

(b) At the time of each grant, a share certificate or certificates representing the number of Restricted Shares granted to a Nonemployee Director shall be registered in the Nonemployee Director’s name but shall be held by or on behalf of the Company for the Nonemployee Director’s account. As a condition to receipt of the first award of Restricted Shares, each Nonemployee Director shall execute and deliver to the Company a stock power in blank with respect to all Restricted Shares that may be awarded to such Nonemployee Director in the future. Such stock power shall be held in custody by the Secretary of the Company and shall be used only to effect a transfer of Restricted Shares to the Company in connection with a forfeiture of Restricted Shares by such Nonemployee Director. The Nonemployee Director shall have all the rights and privileges of a shareholder as to such Restricted Shares, including the right to receive dividends and the right to vote such Restricted Shares, subject to the restrictions set forth in subparagraph c and subject to deferrals of dividend payments as provided in paragraph 7.

(c) The Restricted Shares granted to any Nonemployee Director under paragraph 4 shall be subject to the following restrictions:

(i) Such Restricted Shares may not be sold, transferred, assigned, pledged or otherwise encumbered or disposed of until such time as such restrictions have expired as to such Restricted Shares as provided in subparagraph (d).

(ii) A Nonemployee Director shall not be entitled to delivery of a share certificate representing any Restricted Shares until the expiration of such restrictions as to such Restricted Shares.

(d) Except as otherwise provided in clause (ii) below or in paragraph 10, the restrictions applicable to Restricted Shares covered by any grant to any Nonemployee Director shall expire in accordance with the terms of the following clause (i):

(i) Restrictions shall expire as to the Restricted Shares on the date the Nonemployee Director attains age 70; provided, however, that restrictions shall expire as to Restricted Shares only if the Nonemployee Director shall have remained a director of the Company continuously from the date of grant of such Restricted Shares to the scheduled expiration date.

(ii) If a Nonemployee Director ceases to be a director of the Company before attaining age 70 because of death or because he or she is
totally and permanently disabled as determined by a majority of the Board, the restrictions on all Restricted Shares shall expire as of the date the Nonemployee Director ceases to be a director of the Company.

(e) All of the Restricted Shares granted to any Nonemployee Director as to which the restrictions have not previously expired shall be forfeited immediately, and all rights of such Nonemployee Director to such Restricted Shares shall terminate without further obligation on the part of the Company, if the Nonemployee Director shall cease to be a director of the Company before age 70 for any reason other than as set forth in clause (ii) of subparagraph (d) above or in paragraph 10, or as provided in the following sentence. Upon recommendation of the Chief Executive Officer and unanimous approval by the Compensation Committee (except that if the Nonemployee Director whose Restricted Shares are at issue is a member of the Compensation Committee, then that Nonemployee Director will abstain from the decision), the Compensation Committee may waive such restrictions in whole or in part if such waiver would be in the best interest of the Company.

(f) As soon as practicable after the expiration of the restrictions on any Restricted Shares as herein provided, a share certificate for such Restricted Shares shall be delivered, free of all such restrictions, to the Nonemployee Director (or to the Nonemployee Director’s Beneficiary, if applicable) subject to the withholding requirements of paragraph 14(i) (if applicable).

6. Delivery of Restricted Shares.

(a) Shares granted or delivered under the Plan may be authorized but unissued Shares, Shares reacquired by the Company, or a combination of both, as the Board may from time to time determine. Shares granted under the Plan but subsequently forfeited shall continue to be otherwise available for the purposes of the Plan.

(b) In the event of any change in the outstanding Shares upon which the stock equivalency hereunder is based, by reason of a merger, consolidation, reorganization, recapitalization, stock dividend, stock split, combination or exchange of shares, or any other change in corporate structure or in the event of any dividend that is paid in Shares or other property, the number and kind of Restricted Shares which may thereafter be granted under the Plan shall be adjusted and the number and kind of Shares then being held by the Company as Restricted Shares shall be adjusted in such a manner as a majority of the Board shall determine to be fair under the circumstances; provided, however, that if a Change in Control shall have occurred, then such determination shall be made by a majority of the Continuing Directors. Any new or additional Restricted Shares, or stock or other securities substituted therefor, to which an Nonemployee Director may be entitled under this subparagraph shall be subject to all of the terms and conditions of paragraph 5.

(c) The Company shall not be required to deliver any fractional Share but shall pay, in lieu thereof, the fair market value (measured as of the date restrictions lapse) of such
fractional Share to the Nonemployee Director (or the Nonemployee Director’s Beneficiary, if applicable).

7. **Deferred Stock Account.**

The Company shall establish a deferred stock account (an “Account”) for each Nonemployee Director participating in the Plan. A Nonemployee Director shall have no right to immediate payment of dividends on Restricted Shares. On each Dividend Date (as defined below), the Company shall credit the Account with the number of Deferred Stock Units determined in accordance with paragraph 8 below. Distributions from a Nonemployee Director’s Account shall be made in accordance with paragraphs 9 or 10 below. The value of the Deferred Stock Units is dependent upon the actual market value of the Shares on the date the Shares are distributed to the Nonemployee Director, and is therefore subject to market fluctuations in value until such distribution.

8. **Deferred Stock Units.**

(a) There shall be credited to the Account of each Nonemployee Director participating in the Plan Deferred Stock Units on each regular cash dividend payment date (a “Dividend Date”). The number of such Deferred Stock Units shall be determined by (i) multiplying the amount of the dividend by the sum of (x) the total number of Deferred Stock Units (including fractional Deferred Stock Units) credited to such Account immediately prior to the Dividend Date and (y) the total number of Restricted Shares granted to such Nonemployee Director upon which restrictions have not yet lapsed and (ii) dividing the product by the Fair Market Value Per Share as of the day preceding the Dividend Date.

(b) In the event of any change in the outstanding Shares upon which the stock equivalency hereunder is based, by reason of a merger, consolidation, reorganization, recapitalization, stock dividend, stock split, combination or exchange of shares, or any other change in corporate structure or in the event of any dividend that is paid in Shares or other property, the number of Deferred Stock Units credited to the Account shall be adjusted in such a manner as a majority of the Board shall determine to be fair under the circumstances; provided, however, that if a Change in Control shall have occurred, then such determination shall be made by a majority of the Continuing Directors. In the case of dividends payable in property, the amount paid shall be based on the fair market value of the property at the time of distribution of the dividend, as determined by a majority of the Board, or, in the event of a Change in Control, by a majority of the Continuing Directors.

9. **Distribution Attributable to Deferred Stock Units.**

(a) Except as otherwise provided herein, the balance of each Nonemployee Director’s Account shall be paid to the Nonemployee Director, in a lump sum, within ninety (90) days following the date that such director reaches age 72.

(b) In the event of the death of the Nonemployee Director prior to such director’s retirement or prior to the distribution of the entire balance in such director’s Account, the entire
balance in the Account as of the date of the Nonemployee Director’s death shall be paid in Shares in a lump sum, to the director’s Beneficiary within ninety (90) days following such director’s death.

(c) If, while a director of the Company, a Nonemployee Director is determined to be disabled (within the meaning of section 409A(a)(2)(C) and the regulations and guidance thereunder, the entire balance in the Account as of the date of such disability shall be paid to such Nonemployee Director, or his or her personal representative, in a lump sum, within ninety (90) days following the date of such disability.

(d) If a Nonemployee Director incurs a separation from service with the Company within the meaning of section 409A of the Code for any reason other than due to death or disability (as defined in subparagraph (c), above), including, without limitation, the failure of such person to be re-elected as a director of the Company by the shareholders of the Company, the balance of such director’s Account as of the date such person ceases to be a director of the Company shall be paid in a lump sum, to such director within ninety (90) days of the date such person ceases to be a director of the Company.

(e) All distributions of Deferred Stock Units made pursuant to this Plan shall be in an amount equal to the number of Deferred Stock Units held in the Account. On the date of any such distribution, the Company shall cause to be issued and delivered to such Nonemployee Director a stock certificate evidencing the Shares registered in the name of such Nonemployee Director, or such other person as the Nonemployee Director may designate. Deferred Stock Units representing fractional Shares shall be paid in cash.

10. Effect of Change in Control.

(a) Notwithstanding any other provision of the Plan, if a Change in Control occurs and at any time after the occurrence of such Change in Control either of the following events occurs:

(i) the Nonemployee Director ceases for any reason to be a director of the Company; or

(ii) the Plan is terminated;

then the restrictions on all Restricted Shares shall expire. In addition, if the Plan is terminated following a Change in Control (and the requirements of Treasury Regulation § 1.409A-3(j)(4)(ix) are satisfied), the entire balance of the Deferred Stock Unit Account shall be payable in a lump sum to the director in Shares. Such payment shall be made by the Company as promptly as practicable, but not more than thirty (30) days following the date on which the Plan is terminated.

(b) The Company shall promptly reimburse the Nonemployee Director for all legal fees and expenses reasonably incurred in successfully seeking to obtain or enforce any right or benefit provided under this paragraph 10. To the extent that the right to legal fees under this Section 10 is subject to a “substantial risk of forfeiture” within the meaning of Treas.
The Board may amend, suspend or terminate the Plan, in whole or in part, at any time. If applicable laws or exchange listing requirements provide that an amendment must be approved by the shareholders of the Company, such amendment shall not be effective until it receives the necessary shareholder approval. No amendment to the Plan shall materially and adversely affect any right of any Nonemployee Director with respect to any Restricted Shares or Deferred Stock Units theretofore credited without such Nonemployee Director’s written consent.

It is the Company’s intent that the Plan comply with the provisions of Rule 16b-3 under Section 16 of the Exchange Act. To the extent that any provision of the Plan or of any award under the Plan is later found not to be in compliance with Rule 16b-3, such provision shall be deemed to be null and void.

11. Amendment and Termination.

The Board may amend, suspend or terminate the Plan, in whole or in part, at any time. If applicable laws or exchange listing requirements provide that an amendment must be approved by the shareholders of the Company, such amendment shall not be effective until it receives the necessary shareholder approval. No amendment to the Plan shall materially and adversely affect any right of any Nonemployee Director with respect to any Restricted Shares or Deferred Stock Units theretofore credited without such Nonemployee Director’s written consent.

12. Term.

The Plan shall continue in effect until May 13, 2009.

13. Compliance with SEC Regulations.

It is the Company’s intent that the Plan comply with the provisions of Rule 16b-3 under Section 16 of the Exchange Act. To the extent that any provision of the Plan or of any award under the Plan is later found not to be in compliance with Rule 16b-3, such provision shall be deemed to be null and void.


(a) Neither the establishment of the Plan nor the payment of any benefits hereunder nor any action taken hereunder shall be construed as giving any individual any right to continue to serve as a director of the Company or otherwise to be retained in the service of the Company.

(b) No Shares shall be issued hereunder unless and until counsel for the Company shall be satisfied such issuance will be in compliance with applicable federal, state and other securities laws and regulations.

(c) The expenses of the Plan shall be borne by the Company.

(d) Neither the Nonemployee Director nor any other person shall have any interest in any fund or in any specific asset of the Company by reason of amounts credited to the Account of such director, nor the right to exercise any of the rights or privileges of a
shareholder with respect to any Deferred Stock Unit credited to such Account, nor the right to receive distribution under the Plan except as expressly provided herein. Distributions hereunder shall be made from the general funds of the Company, and the rights of the directors shall be those of an unsecured general creditor of the Company.

(e) The Plan, the grant of Restricted Shares and Deferred Stock Units thereunder, and the obligation of the Company to deliver Shares, shall be subject to all applicable federal and state laws, rules and regulations and to such approvals by any governmental or regulatory agency or national securities exchange as may be required. The Company shall not be required to issue or deliver any certificates for Shares prior to the completion of any registration or qualification of such Shares under any federal or state law or any ruling or regulation of any governmental body or national securities exchange which the Company shall, in its sole discretion, determine to be necessary or advisable.

(f) The Plan shall be administered by the Compensation Committee selected by the Board. The Compensation Committee shall have the power to interpret the Plan and, subject to its provisions, to make all determinations necessary or desirable for the Plan’s administration. The Compensation Committee shall have the full discretionary authority to adopt rules and regulations for carrying out the Plan, and to interpret, construe and implement the provisions of the Plan. The Compensation Committee’s determinations on these matters shall be conclusive, except in the event of a Change in Control, in which case such interpretation and determination shall be made by a majority of the Continuing Directors.

(g) No rights or benefits under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, except by will or the laws of descent and distribution, and any attempt thereat shall be void. No such right or benefit shall, before receipt thereof, be in any manner liable for or subject to the recipient’s debts, contracts, liabilities, engagements, or torts.

(h) The provisions of this Plan shall apply to and be binding upon the beneficiaries, distributees, and personal representatives, and any successors in interest of the Nonemployee Director.

(i) The Company shall deduct from all distributions hereunder any taxes required to be withheld by the federal, state or local law. The Company may take any other action it deems necessary or advisable, to enable the Company to satisfy obligations for the payment of any withholding taxes or other tax liabilities that it reasonably determines to be due with respect to any award under the Plan, including requiring payment in cash by the Nonemployee Director of amounts required to be withheld or deducting such amounts from any other payment due to a Nonemployee Director.

(j) The Plan shall be governed by, and construed in accordance with, the laws of the State of Alabama, excluding any choice of law provisions which may indicate the application of the laws of another jurisdiction.
Executed and adopted on November 1, 1997, as approved by the shareholders of the Company at its Annual Meeting on May 14, 2004. The effective date of this Amendment and Restatement of the Plan shall be December 11, 2008. IN WITNESS WHEREOF, the Company has caused this Amendment and Restatement of the Restricted Stock Plan for Nonemployee Directors to be executed for and in its name and its corporate seal to be hereto affixed and attested by its duly authorized Secretary this 11th day of December, 2008.

VULCAN MATERIALS COMPANY

ATTEST:

By: /s/ Jerry F. Perkins, Jr. 
    Jerry F. Perkins, Jr. 
    Corporate Secretary

By: /s/ Donald M. James 
    Donald M. James 
    Chairman and Chief Executive Officer

CORPORATE SEAL
THIS AMENDED AWARD AGREEMENT is between the Company and the Participant, as designated on page one of each previous agreement for an award of Deferred Stock Units provided in 2001, 2002, 2003, 2004, or 2005 (“Prior Agreement”). This Agreement amends and replaces each Prior Agreement (other than page one of the Prior Agreement), as each was previously amended on October 12, 2006, effective with respect to each Prior Agreement as of the Grant Date of the award in that Prior Agreement as if this Agreement were a separate agreement for each such award.

RECITALS:

The Company adopted the 1996 Long-Term Incentive Plan (the “Plan”) in order to provide for a wide array of stock-based incentives for its employees. The Compensation Committee of the Company (the “Committee”) has granted Deferred Stock Units to certain employees, including the Participant, in accordance with the requirements of the Plan to carry out the purposes of the Plan. In consideration of being awarded the Deferred Stock Units, the Participant agrees with the Company as follows:

1. Definitions. All defined terms contained in the Plan are hereby incorporated by reference, except to the extent that any term is specifically defined in this Award Agreement.

2. Grant of Deferred Stock Units; Vesting; Dividend Equivalents; Withholding.
   (A) Grant. Subject to the terms and conditions of the Plan, this Award Agreement, and any applicable deferral election executed by the participant under the Executive Deferred Compensation Plan, the Company hereby grants to the Participant the number of Deferred Stock Units (“DSUs”) designated on page one of the Prior Agreement. The DSUs represent an unfunded and unsecured promise of the Company to issue the same number of Shares at the Payment Date (as defined below) as DSUs granted pursuant to this Section 2(A), or accrued pursuant to Section 2(C), under this Award Agreement. As of the Grant Date, a DSU account is established for the Participant (“Account”), and is credited with the number of DSUs shown on page one of the Prior Agreement. No Shares have been transferred or set aside, or will be transferred or set aside, from the general creditors of the Company to fund this Award. The Participant has no right to vote or receive dividends on the Shares represented by the DSUs until the Shares have been paid on the Payment Date, as explained below.

   (B) Vesting. Except as otherwise provided in Section 3, and subject to the Committee’s discretion set forth in Section 4, the Participant’s right to receive the Shares represented by the DSUs will vest (“Vested Shares”) in installments, as follows: One-fifth of the DSUs will vest on each anniversary of the Grant (an “Anniversary Date”) beginning on the sixth anniversary and ending on the tenth anniversary.

   (C) Dividend Equivalents. Beginning on the 1st Anniversary Date and ending on the Anniversary Date on or immediately before the date on which DSUs are fully paid, the Participant’s Account will be credited with dividend equivalents equal to the dividends paid during the preceding calendar year on the number of Shares represented by the DSUs. The Dividend Equivalents will be converted to
additional DSUs, rounded to the nearest whole number, and credited to the Participant’s Account. The amount of Dividend Equivalents credited on an Anniversary Date to the Participant’s Account will be divided by the Fair Market Value (FMV) on the Anniversary Date of one Share of Vulcan Materials Company Stock, as defined below. In the case of dividends paid in property, the amount credited will be based on the FMV of the property on the Anniversary Date. The FMV of a Share means the average of the reported high and low trading prices for a Share on the Anniversary Date on the Composite Tape for New York Stock Exchange Listed Stocks. If the Anniversary Date falls on a holiday or weekend, then the immediately preceding trading day shall be used. If the Shares are no longer NYSE-listed, then it will be the FMV on the exchange on which it is listed, or the average of the high and low bid quotations if the Shares are listed on NASDAQ. If the Shares are not listed or traded on NASDAQ, the Company will use another method to determine the FMV of a Share. Dividend Equivalents are not considered earned and will not be paid upon termination of employment, in accordance with Section 3 or 4 below, until they are credited to the Participant’s Account on each Anniversary Date.

(D) Withholding. The Company shall have the right to either (i) require the Participant to remit to the Company, or any person or entity designated by the Committee to administer the Plan, an amount sufficient to satisfy any applicable federal, state, and local income and employment tax withholding requirements, or (ii) to deduct from any payment made pursuant to the Plan amounts sufficient to satisfy such withholding requirements.

3. Payment of Deferred Stock Units. The issuance of Shares in settlement of the Participant’s rights under this Award Agreement will be made in a lump sum on the Payment Date as specified in this Section 3. However, if the Participant has made a deferral election under the Executive Deferred Compensation Plan (the “EDCP”), the amount that otherwise would be paid under this Agreement will be credited to the Participant’s account under the EDCP at the time payment would otherwise be made (except, in the case of a payment on account of termination of employment, payment will be credited to Participant’s the EDCP account at the time of termination).

(A) Payments Made for Vested Shares (as defined in Section 2.(B)). Vested DSUs, plus the dividend equivalents attributable to such vested DSUs, shall be paid to the Participant on the Anniversary Date on which they vest as determined in Section 2.(B). Accordingly, vested DSUs (plus the attributable dividend equivalents) shall be paid to the Participant beginning on the sixth Anniversary Date and ending on the tenth Anniversary Date, except as otherwise provided in this Section 3.

(B) Payments Made upon Retirement. If the Participant retires from employment pursuant to the Company’s retirement income plan prior to reaching the age of 62, all DSUs granted under this Award Agreement that have not become vested as of the date of such retirement will be forfeited. If the Participant retires from employment pursuant to the Company’s retirement income plan at age 62 or later, all DSUs which have been held by the Participant for at least one year prior to retirement, whether currently forfeitable or non-forfeitable, will be deemed to be non-forfeitable and will be paid to the Participant in the seventh month following the date of the Participant’s retirement.

(C) Death and Disability. If the Participant dies or if, prior to termination of employment, the Participant becomes Disabled, the remaining balance in the Participant’s Account (as defined in Section 2.(A)) will become non-forfeitable in accordance with the schedule below, and the non-forfeitable amount will (a) upon death, be paid to the Participant’s estate in a lump sum within 30 days of the death and (b) upon Disability, be paid to the Participant within 90 days after the date of the Disability. “Disabled” and “Disability” shall be determined under Section 409A(a)(2)(C) of the Internal Revenue Code of 1986, as amended (the “Code”) and the regulations thereunder.
Date of Death or Disability
Occurs on or After the Following Grant Date Anniversary
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(D) Other Termination. Except as provided in (A), (B), or (C), above, upon termination of employment, all DSUs granted under this Award Agreement that have not become vested as of the date of such termination will be forfeited.

(E) Payments Made upon a Change in Control of the Company. Upon a “Change in Control of the Company,” as defined in regulations or other guidance under Section 409A of the Code, the balance in a Participant’s DSU Account will become non-forfeitable. All non-forfeitable DSUs will be paid in a lump sum to the Participant on the 90th day following a Change in Control of the Company.

(F) Section 162(m) Payments. If a Participant is a “covered employee,” within the meaning of Section 162(m)(3) of the Code, when a payment is scheduled to be made under the Plan, any portion of the payment that would be nondeductible under Section 162(m) of the Code (when considered with all other compensation that the Participant is expected to receive in the same taxable year) shall be deferred and shall be paid on the earliest date on which it would be deductible under Section 162(m), but no later than the calendar year in which the Participant separates from service, provided that if the payment is delayed until separation from service, payment shall be made in the seventh month following separation from service.

4. Committee Discretion. Notwithstanding any other provision of the Plan to the contrary, the Committee may, in its sole discretion, deem that any DSUs granted under this Award Agreement will become non-forfeitable, determine whether a Participant has been terminated for reasons other than death or Retirement, whether the Participant has become Disabled, and whether a payment is to be made upon an unforeseeable emergency as determined under Section 409A of the Code, provided that the Committee’s exercise of discretion shall not change the time and form of payment in a manner that does not comply with Section 409A of the Code. The Committee’s determination will be final and binding on all persons for purposes of the Plan. If the Committee deems that any DSUs become non-forfeitable and the Participant terminates employment for any reason other than death, payment of the non-forfeitable DSUs shall be made to the Participant in the in the seventh month following the date of the Participant’s termination of employment, subject to any deferral election the Participant has made under the EDCP.

5. Section 409A. This Agreement shall be interpreted to comply with Section 409A of the Code. Payments triggered by a termination of employment shall be triggered by a “separation from service” within the meaning of Section 409A of the Code. However, nothing in this Agreement transfers to the Company or any entity or other individual liability for any tax or penalty that is the responsibility of the Participant.
1. **Definitions**. As used in this Award Agreement the following terms shall have the meanings as follows:

(a) “Award Agreement” means this Performance Share Unit Award Agreement.

(b) “Award Period” means the three-year period shown on Schedule A of this Award Agreement, except that in the “Event” of the Participant’s death or a change in control (as defined in regulations or other guidance under Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”), the Award Period will be the period covered by the Award Agreement ending on December 31st of the calendar year in which the Event occurred.

(c) “Company” means Vulcan Materials Company, a New Jersey corporation.

(d) “Committee” means the Compensation Committee of the Board of Directors.

(e) “Disability” means Permanent and Total Disability whereby the Participant is entitled to long-term disability benefits under the applicable group long-term disability plan of the Company or a Subsidiary, or, to the extent not eligible to participate in any Company-sponsored plan, under the guidelines of the Social Security Administration.

(f) “Fair Market Value or “FMV” means the closing stock price for a Share on the business day that immediately precedes the Payment Date as reported on a national securities exchange if the Shares are then being traded on such an exchange or as determined by the Committee if Shares are not so traded.

(g) “Grant Date” means the date of this Award Agreement.

(h) “Participant” means the name of the employee of the Company or its subsidiaries or affiliates appearing on the first page of this Award Agreement.

(i) “Payment Date” means the date on which payment is made under this Award Agreement.

(j) “Performance Share Unit” or “PSU” means the equivalent of one share of Common Stock.

(k) “Plan” means the Vulcan Materials Company 2006 Omnibus Long-Term Incentive Plan, as amended, or any successor plan, as amended.

(l) “Retirement” means a participant who retires or who is eligible to elect to retire in accordance with the Company’s Retirement Income Plan for Salaried Employees of Vulcan Materials Company or any successor plan.
(m) “Share” means a share of Common Stock, par value $1.00 per share, of the Company.

2. **Grant and Vesting of PSUs**
   
   (a) **Grant.** The Participant is awarded the number of PSUs designated on the first page of this Award Agreement.
   
   (b) **Vesting.** Except as otherwise provided in Section 4, and subject to the Committee’s discretion set forth in Section 6, the PSUs will become vested on December 31, at the end of the Award Period.

3. **Payment of Performance Share Units**
   
   (a) **Percentage of Awards Payable.** Utilizing the Performance Share Award Unit Payment Table, Schedule A, the Committee establishes the Percentage of Awards Payable (“Percentage”) for the Award Period. The Percentage is based on Economic Profit (“EP”) and Total Shareholder Return (“TSR”) versus a Comparison Group during the Award Period. The maximum Percentage, as set forth in Schedule A, may be decreased but not increased by the Committee.
   
   (b) **Performance Share Units Payable.** The number of PSUs payable will be determined by multiplying the number of PSUs granted pursuant to this Award Agreement by the Percentage as determined in Section 3(a). Payment will be made in stock.
   
   (c) **The Value of the Stock Issued as Payment for PSUs Earned.** The FMV will be used to determine the basis of the stock payable.
   
   (d) **Withholding.** The Company shall withhold Shares having a Fair Market Value on the date the tax is to be determined equal to the minimum statutory amount for federal, state, local, and employment taxes (“Total Tax”) which could be withheld on the transaction, with respect to any taxable event arising as a result of this Award Agreement.
   
   (e) **Timing of Payment.** Payment will be made to a Participant between January 1 and March 15 of the calendar year after the calendar year in which the Award Period [as defined in Section 1(b)] ends.
   
   (f) **Payment Determination.** The Committee may exercise its discretion to reduce or eliminate payments if the Award Period average TSR is less than or equal to the 25th percentile or the average EP is less than or equal to 25% of Target. For performance levels falling between the values shown on the Payment Table (Schedule A), the Percentages will be determined by interpolation.
SCHEDULE A

Vulcan Materials Company
3-Year Average Economic Profit (As a percent of Target)

PERFORMANCE SHARE UNIT AWARD PAYMENT TABLE
Award Period January 1, 2008 – December 31, 2010

<table>
<thead>
<tr>
<th>Profit (As a percent of Target)</th>
<th>Percentage of Award Payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>175% or &gt;</td>
<td>100</td>
</tr>
<tr>
<td>150%</td>
<td>150</td>
</tr>
<tr>
<td>100%</td>
<td>200</td>
</tr>
<tr>
<td>50%</td>
<td>125</td>
</tr>
<tr>
<td>25% or &lt;</td>
<td>75</td>
</tr>
<tr>
<td>25 th or &lt;</td>
<td>50 th</td>
</tr>
<tr>
<td>75 th or &gt;</td>
<td>100</td>
</tr>
</tbody>
</table>

Company 3-Year Average
Total Shareholder Return Percentile Rank
Relative to S&P 500 Index

4. Termination of Employment.
(a) Retirement, as defined in Section 1(l).
   (i) If a Participant retires from employment at age 62 or later, the PSUs which have been held by the Participant until January 1 st of the calendar year following the year of grant, will be deemed to be non-forfeitable and will be paid in accordance with Section 3; provided however, that the Participant executes a reasonable non-competition covenant with the Company restricting the Participant from competing with the Company in a specified territory for a specified period of time; otherwise, if such covenant is not executed by the Participant, unvested PSUs will be forfeited and vested PSUs not yet paid as of the date of such termination will be paid in accordance with Section 3.
   (ii) If a Participant retires from employment prior to reaching the age of 62, the PSUs will become non-forfeitable in accordance with Schedule B and will be paid in accordance with Section 3; provided however, that the Participant executes a reasonable non-competition covenant with the Company restricting the Participant from competing with the Company in a specified territory for a specified period of time otherwise, if such covenant is not executed by the Participant, unvested PSUs will be forfeited and vested PSUs not yet paid as of the date of such termination will be paid in accordance with Section 3.
SCHEDULE B

If the “prior to age 62” retirement occurs on or after January 1st of the:

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>The percentage of PSUs that will become non-forfeitable is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Calendar year following the Grant Date</td>
<td>33%</td>
</tr>
<tr>
<td>2nd Calendar year following the Grant Date</td>
<td>67%</td>
</tr>
<tr>
<td>3rd Calendar year following the Grant Date</td>
<td>100%</td>
</tr>
</tbody>
</table>

(b) Disability. Upon determination of Disability, as defined in Section 1(e), the PSUs granted under this Award Agreement will become non-forfeitable. All non-forfeitable PSUs will be paid in accordance with Section 3.

(c) Death. Upon the death of the Participant, the PSUs granted under this Award Agreement will become non-forfeitable. All non-forfeitable PSUs will be paid to the Participant’s estate in accordance with Section 3.

(d) Other Termination. Upon voluntary termination for reasons other than retirement, or upon involuntary termination for reasons other than death, Disability, or cause as determined under Section 4(e), unvested PSUs will be forfeited and vested PSUs not yet paid as of the date of such termination will be paid in accordance with Section 3.

(e) Termination for Cause. If a Participant’s employment is terminated for cause, the PSUs will immediately be forfeited, even with respect to vested PSUs which were otherwise non-forfeitable but not yet paid. The Committee shall have complete discretion to determine whether a Participant has been terminated for cause. The Committee’s determination shall be final and binding on all persons for purposes of the Plan and this Award Agreement.

(f) Change in Control of the Company. Upon a Change in Control of the Company, as defined in regulations or other guidance under Section 409A of the Code, the PSUs granted under this Award Agreement will be deemed to be non-forfeitable. All non-forfeitable PSUs will be paid in accordance with Section 3.

5. **Section 16(b) Participants.** Any Participant subject to Section 16(b) reporting shall be governed by same with respect to PSUs.

6. **Committee Discretion.** The Committee may, in its sole discretion, amend this Award Agreement to the extent necessary to comply with any statute, regulation, or other administrative guidance. Notwithstanding any other provision of the Plan or this Award Agreement, the Committee may amend the Plan or this Award Agreement to the extent permitted by their terms deem any units granted under this Agreement non-forfeitable for the events described in Sections 4(a) and 4(d). The Committee shall not make any amendment pursuant to this Section 6 that would cause this Award Agreement, if it is subject to or becomes subject to Section 409A of the Internal Revenue Code, to fail to satisfy the requirements of such Section 409A. The Committee has sole discretion to establish the Comparison Group to be used in evaluating the performance of the Company in accordance with Section 3(a), and may change the Comparison Group from time to time.

7. **Entire Agreement; Amendment.** This Award Agreement, The Memorandum, and the Plan are incorporated herewith and represent the entire understanding and agreement between the Company and the Participant, and shall supersede any prior agreement and understanding between the parties. Except as provided in
Section 6 of this Agreement and subject to any Plan provision, this Award may not be amended or modified except by a written instrument executed by the parties hereto.

8. **Non-Solicitation.** In consideration for this Agreement and notwithstanding any other provision in this Agreement, the Participant agrees to comply with the non-solicitation covenants set forth below:

(a) **Non-Solicitation of Customers.** The Participant acknowledges that while employed by the Company, the Participant will occupy a position of trust and confidence and will acquire confidential information about the Company, its subsidiaries and affiliates, and their clients and customers that is not disclosed by the Company or any of its subsidiaries or affiliates in the ordinary course of business, including trade secrets, data, formulae, information concerning customers and other information which is of value to the Company because it is not generally known. The Participant agrees that during the period of employment with the Company and for a period of two years after the date of termination of employment with the Company, regardless of the reason for termination, the Participant will not, either individually or as an officer, director, stockholder, member, partner, agent, consultant or principal of another business firm, directly or indirectly solicit any customer of the Company or of its affiliates or subsidiaries.

(b) **Non-Solicitation of Employees.** The Participant recognizes that while employed by the Company, the Participant will possess confidential information about other employees of the Company and its subsidiaries or affiliates relating to their education, experience, skills, abilities, compensation and benefits, and inter-personal relationships with suppliers to and customers of the Company and its subsidiaries or affiliates. The Participant recognizes that this information is not generally known, is of substantial value to the Company and its subsidiaries or affiliates in developing their respective businesses and in securing and retaining customers, and will be acquired by the Participant because of the Participant’s business position with the Company. The Participant agrees that during the period of employment with the Company and for two years after the date of termination of employment with the Company, regardless of the reason for termination, the Participant will not, directly or indirectly, solicit or recruit any employee of the Company or any of its subsidiaries or affiliates for the purpose of being employed by the Participant or by any business, individual, partnership, firm, corporation or other entity on whose behalf the Participant is acting as an agent, representative or employee and that the Participant will not convey any such confidential information or trade secrets about other employees of the Company or any of its subsidiaries or affiliates to any other person except within the scope of the Participant’s duties as an employee of the Company.

(c) **Remedies.** If any dispute arises concerning the violation by the Participant of the covenants described in this Section, an injunction may be issued restraining such violation pending the determination of such controversy, and no bond or other security shall be required in connection therewith. If the Participant violates any of the obligations in this Section, this Award Agreement will terminate, if it is outstanding, and, in addition, the Company will be entitled to any appropriate relief, including money damages, equitable relief, and attorneys’ fees.
THIS AGREEMENT, dated as of the Grant Date, which is the date set forth on page one of this Agreement, is between the Company and the Participant, as designated on page one of this Agreement. This Agreement sets forth the terms of the grant described in Section 2 below. In addition, this Agreement amends the deferred stock unit agreements, if any, between the Company and the Participant dated June 1, 2006, and June 1, 2007, by replacing sections 3, 4, and 6 in those agreements with, respectively, Sections 3, 4, and 6, below.

RECITALS:

The Company adopted the 2006 Omnibus Long-Term Incentive Plan (the “Plan”) in order to provide for a wide array of stock-based and other long-term incentives for its employees and members of the Board. The Compensation Committee of the Board (the “Committee”) hereby grants Deferred Stock Units (“DSUs”) to certain nonemployee members of the Board, including the Participant, in accordance with the requirements of the Plan to carry out the purposes of the Plan. In consideration of being awarded the DSUs, the Participant agrees with the Company as follows:

1. Definitions. All defined terms contained in the Plan are hereby incorporated by reference, except to the extent that any term is specifically defined in this Agreement.

2. Grant of Deferred Stock Units; Vesting; Dividend Equivalents.

   (A) Grant. Subject to the terms and conditions of the Plan, this Agreement, and any applicable deferral election form executed by the Participant, the Committee hereby grants to the Participant the number of DSUs designated on page one of this Agreement. The DSUs represent an unfunded and unsecured obligation of the Company to issue the same number of Shares in accordance with Section 3 as DSUs granted pursuant to this Section 2(A), or accrued pursuant to Section 2(C), under this Agreement. As of the Grant Date, an account is established for the Participant (“Deferral Account”), and is credited with the number of DSUs shown on page one. No Shares have been transferred or set aside, or will be transferred or set aside, from the general creditors of the Company to fund this award. The Participant has no right to vote or receive dividends on the Shares represented by the DSUs until the Shares have been paid, as explained below.

   (B) Vesting. Except as otherwise provided in Section 4 or 6, the Participant’s right to receive the Shares represented by the DSUs will become non-forfeitable on the third anniversary of the Grant Date.

   (C) Dividend Equivalents. During the period from the Grant Date to the issuance of Shares in accordance with Section 3 (“Deferral Period”), the Participant’s Deferral Account will be credited with dividend equivalents equal to the dividends paid on the number of Shares represented by the DSUs during the Deferral Period (“Dividend Equivalents”). The Dividend Equivalents will be converted to additional DSUs, rounded to the nearest whole number, by dividing the Dividend Equivalents by the Fair Market Value of one Share on the date the dividend is paid. In the case of
3. **Payment of Deferred Stock Units.** The issuance of Shares in settlement of the Participant’s rights under this Agreement will be made in a lump sum payment during whichever of the following periods ends first:

   (A) the month of March following the calendar year of the Participant’s cessation of Board service, unless the Participant has elected to defer settlement in accordance with the deferral election provisions in Section 5;

   (B) within 90 days of the date of the Participant’s death or disability, as defined under Section 409A of the Code (“Disability”), provided that the Participant does not have the right to designate the taxable year of the payment; and

   (C) within 90 days of the date of a change in control of the Company, as defined in regulations or other guidance under Section 409A of the Code, provided that the Participant does not have the right to designate the taxable year of the payment.

4. **Acceleration of Vesting**

   (A) **Retirement.** Upon attaining the mandatory retirement age (“Retirement”), all DSUs under this Agreement whether then forfeitable or non-forfeitable will become non-forfeitable. All non-forfeitable DSUs will be paid in accordance with Section 3.

   (B) **Disability.** Upon Disability of the Participant, all DSUs granted under this Agreement whether then forfeitable or non-forfeitable will become non-forfeitable. All non-forfeitable DSUs will be paid in accordance with Section 3.

   (C) **Death.** Upon the death of the Participant, all DSUs granted under this Agreement whether then forfeitable or non-forfeitable will become non-forfeitable. All non-forfeitable DSUs will be paid to the Participant’s estate in accordance with Section 3.

   (D) **Other Cessation.** Upon a cessation of service for reasons other than Retirement, Disability, or death, all DSUs granted under this Agreement that have not become non-forfeitable as of the date of such cessation will be forfeited, unless otherwise determined by the Committee in its discretion.

5. **Deferral Elections.**

   (A) **Prior Year Elections.** In a calendar year prior to the year of the Grant Date, the Participant may elect to defer the issuance of Shares in settlement of the Participant’s rights under this Agreement beyond the period established in Section 3(A) in accordance with Subsection (C).

   (B) **Special Elections for 2008.** The Participant may elect before January 1, 2009, to defer the issuance of Shares in settlement of DSUs that would not otherwise be paid before January 1, 2009, beyond the period established in Section 3(A) in accordance with Subsection (C).

   (C) **Deferral Options.** Pursuant to an election under subsection (A) or (B), the Participant may elect to receive settlement in 5 or 10 approximately equal annual installments beginning during the period established in Section 3(A), provided payment is not made under Section 3(B) or 3(C) and subject to subsection (D). The amount of each installment payment will be determined by dividing the number of DSUs in the Participant’s Deferral Account on the payment date by the number of
installments remaining (for example, the number of shares in the first of five installment payments will equal the number of DSUs on the payment date divided by five, and the number of shares in the second of five installments will equal the number of DSUs on the second payment date divided by four). An election made under this Section 5 shall be irrevocable and must be made by executing and submitting the appropriate election form to the Committee.

(D) Death, Disability, or Change in Control During Settlement Period. Upon the Participant’s death or Disability or upon a change in control of the Company, as defined in regulations or other guidance under Section 409A of the Code, during the settlement period, issuance of any remaining Shares in settlement of the Participant’s rights under this Agreement will made in a lump sum payment during the period specified in Section 3(B), in the case of death or Disability, or during the period specified in Section 3(C), in the case of a change in control.

6. Change in Control of the Company.

Upon a change in control of the Company, as defined in regulations or other guidance under Section 409A of the Code, all DSUs granted under this Agreement whether then forfeitable or non-forfeitable will be deemed to be non-forfeitable. All DSUs will be paid to the Participant in accordance with Section 3.

7. Effect of Change in Stock Subject to the DSU.

The Committee shall make appropriate adjustments in the number or class of shares subject to the award in order to prevent dilution or enlargement of benefits to the Participant hereunder in the event of a stock or extraordinary cash dividend or other distribution, recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase or exchange of shares of Common Stock or other securities of the Company, issuance of warrants or other rights or similar corporate transaction or event.