

ORDINANCE NO. 300 OF THE CITY OF WATHENA, KANSAS

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ORDINANCE NO. 300

AN ORDINANCE AUTHORIZING THE CITY OF WATHENA, KANSAS, TO ACQUIRE THE REAL PROPERTY HEREINAFTER DESCRIBED AND TO CONSTRUCT AND PURCHASE BUILDINGS, IMPROVEMENTS, MACHINERY AND EQUIPMENT TO BE LEASED TO AMERICAM CEMENT CORPORATION, AUTHORIZING AND DIRECTING THE ISSUANCE OF \$2,200,000 PRINCIPAL AMOUNT OF INDUSTRIAL REVENUE BONDS, SERIES OF 1973, OF SAID CITY FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COST OF ACQUIRING THE REAL PROPERTY HEREINAFTER DESCRIBED AND TO CONSTRUCT AND PURCHASE BUILDINGS, IMPROVEMENTS, MACHINERY AND EQUIPMENT TO BE LEASED TO AMERICAN CEMENT CORPORATION, PRESCRIBING THE FORM AND AUTHORIZING THE EXECUTION OF A LEASE BY AND BETWEEN SAID CITY AND SAID COMPANY.

WHEREAS, the City of Wathena, Kansas, hereinafter sometimes referred to as the "City," desires to promote, stimulate and develop the general economic and prosperity of the City of Wathena, Kansas, and its environs and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas; and

WHEREAS, pursuant to the provisions of K.S.A. 12-1740 to 12-1749, as amended, said City is authorized to issue industrial revenue bonds of the City, and it is hereby found and determined to be advisable and in the interest and for the welfare of the City and its inhabitants that industrial revenue bonds of the City be authorized and issued, for the purpose of providing funds to pay the cost of acquiring real property and to construct and purchase buildings, improvements, machinery and equipment to be leased to American Cement Corporation, a Delaware corporation, qualified to do business in Kansas, hereinafter sometimes referred to as the "Company"; and

WHEREAS, the City will acquire prior to or concurrently with the issuance of the Bonds herein authorized the real property hereinafter described;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WATHENA, KANSAS:

Section 1. Authority to Acquire Real Property and to Construct and Purchase Facility. The City of Wathena, Kansas, is hereby authorized to acquire the real property described and set forth in Schedule 1 attached hereto and made a part hereof and to construct and purchase buildings, improvements, machinery

and equipment described in said Schedule 1, said real estate, buildings, improvements, machinery and equipment being sometimes hereinafter described as the "Facility," in accordance with the provisions of the Lease dated as of April 1, 1973, between said City and said American Cement corporation, hereinafter sometimes referred to as the "Lease," said Lease being authorized by the provisions of this Ordinance (said real property being referred to in the Lease as the "Land" and said Land, buildings, improvements, machinery and equipment also being referred to in the Lease as the Facility) all at an amount which will not exceed the cost of \$2,200,000 to said City.

Section 2. Authorization of and Security for the Bonds. For the purpose of providing funds to pay the cost of acquiring the real property described in said Schedule 1 and to construct and purchase buildings, improvements, machinery and equipment to be leased to American Cement Corporation, a Delaware Corporation, there shall be issued and hereby are authorized and directed to be issued a series of Industrial Revenue Bonds, Series of 1973, of the City of Wathena, Kansas, in the principal amount of \$2,200,000. Said Bonds herein authorized, hereinafter sometimes referred to as the "Bonds" and all interest thereon shall be paid solely from the money and revenue received from the fees charged and rental received for the use of the Facility and not from any other fund or source. The City hereby pledges the Facility and the net earnings therefrom to the payment of the Bonds and the interest thereon.

Section 3. Description and Details of the Bonds, Designation of Paying Agent. Said Industrial Revenue Bonds, Series of 1973, of the City of Wathena, Kansas, shall consist of 440 coupon Bonds, numbered from 1 to 440, inclusive, each of said Bonds being in the denomination of \$5,000. All of said Bonds shall be dated April 1, 1973, and said Bonds shall become due serially on April 1 in each year, and shall bear interest from date as follows:

<u>NUMBERS</u>	<u>AMOUNT</u>	<u>MATURITY APRIL 1</u>	<u>ANNUAL RATE OF INTEREST</u>
1-110	\$550,000	1978	6 1/2%
111-124	70,000	1979	6 1/2%
125-138	70,000	1980	6 1/2%
139-153	75,000	1981	6 1/2%
154-169	80,000	1982	6 1/2%
170-186	85,000	1983	6 1/2%
187-204	90,000	1984	6 1/2%
205-223	95,000	1985	6 1/2%
224-243	100,000	1986	6 1/2%
244-265	110,000	1987	6 1/2%
266-289	120,000	1988	6 1/2%
290-315	130,000	1989	6 1/2%
316-343	140,000	1990	6 1/2%
344-373	150,000	1991	6 1/2%
374-405	160,000	1992	6 1/2%
406-440	175,000	1993	6 1/2%

In the event the interest on the Bonds is includable in the gross income of the recipient thereof for Federal income tax purposes by reason of the failure of the Bonds to qualify for the exemption provided in Section 103 (c) (6) (D) of the Internal Revenue Code of 1954, then all of the Bonds then outstanding shall mature and be due and payable at the principal amount thereof, plus accrued interest to the maturity date, together with a premium of 4% of the principal amount of the Bonds, on a date of maturity established by the City (the "Accelerated Maturity Date") but in no event shall the Accelerated Maturity Date be later than 120 days after the Internal Revenue Service, the Company or the Fiscal Agent hereinafter designated shall give written notice to the City of failure of the Bonds to qualify for such exemption. The City shall promptly notify the Fiscal Agent of any such Accelerated Maturity Date and the Fiscal Agent shall give notice thereof in the manner provided in Section 5 of this Ordinance with respect to notice of redemption of Bonds prior to maturity.

Said Bonds shall bear interest from date payable semi-annually on April 1 and October in each year, beginning October 1, 1973.

Said Bonds and the interest coupons to be attached thereto shall be payable in lawful money of the United States of America at Security Pacific

National Bank, in the City of Los Angeles, California, hereby designated as the City's paying agent for the payment of the principal of and interest on the Bonds and herein sometimes referred to as the "Paying Agent."

Section 4. Redemption and Payment of Bonds Prior to Maturity. Said Bonds shall be subject to redemption and payment prior to the stated maturity thereof, after the notice specified in Section 5 of this Ordinance, as follows:

A. Each of said Bonds shall be subject to redemption and payment at the option of the City, upon instructions from the Company, on any interest payment date upon any of the following conditions or events, provided all of said Bonds are redeemed and paid according to their terms: (1) if title to, or the use for a limited period of, substantially all of the Facility subject to said Lease be condemned by any authority having the power of eminent domain; (2) if substantially all of the Facility be damaged or destroyed by fire or other casualty; or (3) if as a result of changes in the Constitution of the State of Kansas, or of legislative or administrative action by the State of Kansas or any political subdivision thereof, or by the United States, or by reason of any action instituted in any court, the Lease herein authorized shall become void or unenforceable, or impossible of performance without unreasonable delay, or in any other way, by reason of such change of circumstances, unreasonable burdens or excessive liabilities are imposed on the Company or the City. The redemption price for Bonds redeemed pursuant to this paragraph shall be the principal amount

of Bonds so redeemed, plus accrued interest thereon to date fixed for redemption and payment, without premium.

B. Each of said Bonds maturing in the year 1984 and thereafter shall also be subject to redemption and payment at the option of the City, upon instructions from the Company in whole or in part, on April 1, 1983 or on any interest payment date thereafter at the principal amount thereof plus accrued interest to the redemption date, together with a premium which shall be 4% of the principal amount of Bonds called for redemption on April 1, 1983, which premium shall be reduced by 1/4 of 1% for each full year between said April 1, 1983 and the date said Bonds are called for redemption and payment. Bonds to be redeemed and paid pursuant to this paragraph of this Ordinance shall be redeemed in inverse numerical order, the bond having the highest number being the first bond called for redemption and payment.

Section 5. Notice of Redemption. Notice of any redemption provided for by this Ordinance shall be given in the name of the City by the City, the Company or the Fiscal Agent by United States registered mail to the Paying Agent herein designated and to the original underwriter, or manager of the original underwriters, purchasing Bonds, such notice to be mailed at least 30 days prior to the date fixed for redemption and payment and to specify the numbers of the Bonds to be redeemed and paid. Notice of any such redemption shall also be published once not less than 30 days prior to the date fixed for redemption in some financial journal published and of general circulation in New York, New York.

Notice of any such redemption shall also be given by mail in the manner hereinbefore specified to any bondholder who files his name with the Fiscal Agent pursuant to Section 18 of this Ordinance, provided that the failure to give any notice by mail as herein specified shall not affect the validity of any such call for redemption. Interest shall cease on any of said Bonds so called for redemption and payment as of the redemption date, provided funds are available to pay the same according to their terms. Notice of any redemption as herein provided shall be given upon, but only upon, written instructions from the Company, as long as the Company is not in default in the payment of Basic Rent due under the Lease.

Section 6. Method of Execution of Bonds. Said Bonds and each of them shall be executed for and on behalf of the City by the manual signature of its Mayor and attested by the manual signature of its City Clerk, with the seal of the City affixed. Interest coupons shall be attached to the Bonds representing the interest to mature thereon, and said interest coupons shall bear the facsimile signatures of the Mayor and City Clerk of said City. Said Bonds and each of them shall be registered in the office of the City Clerk which registration shall be registered in the office of the City Clerk which registration shall be evidenced by a certificate on the reverse face thereof bearing the manual signature of the City Clerk. In the event either said Mayor or City Clerk or both of said officers shall cease to hold such office before the Bonds and coupons bearing their signatures shall have been issued and delivered, said Bonds may be issued as though said officers had not ceased to hold office and such signatures appearing on said Bonds, coupons and registration certificates shall be valid and sufficient for all purposes as if they had remained in office until such issuance.

Section 7. Form of Bonds. Each of said Bonds and interest coupons and the certificate attached thereto shall be in substantially the following form:

No.

\$5,000

UNITED STATES OF AMERICA
STATE OF KANSAS
COUNTY OF DONIPHAN
CITY OF WATHENA

INDUSTRIAL REVENUE BOND
SERIES OF 1973

KNOW ALL MEN BY THESE PRESENTS: That the City of Wathena, in the County of Doniphan, State of Kansas, for value received, hereby promises to pay, out of the revenues hereinafter specified, to the bearer, the sum of

FIVE THOUSAND DOLLARS

in lawful money of the United States of America, on the first day of April, 19__, and to pay interest thereon from the date hereof at the rate of six and one half per cent (6 1/2%) per annum, payable semiannually on April 1 and October 1 in each year after the date hereof beginning October 1, 1973, until the said principal sum shall have been paid, upon presentation and surrender of the interest coupons hereto attached, bearing the facsimile signatures of the Mayor and City Clerk of said City as said coupons severally become due, both principal of and interest on this Bond being payable at Security Pacific National Bank, in the City of Los Angeles, California.

THIS BOND is one of an authorized series of Bonds aggregating the principal amount of \$2,200,000 authorized by Ordinance of said City (the Ordinance") for the purpose of providing funds to pay the cost of acquiring real property and constructing and purchasing buildings, improvements, machinery and equipment (hereinafter sometimes referred to as the Facility, said Facility being further identified in the Ordinance) to be leased to American Cement Corporation, a Delaware corporation (the "Company"), pursuant

to a Lease dated April 1, 1973 (the "Lease"), by and between said City and said Company, by the authority of and in conformity with the provisions, restrictions and limitations of the Constitution and statutes of the State of Kansas, including K.S.A. 12-1740 to 12-1749, and all amendments thereof and acts supplemental thereto, and all other provisions of the laws of said State applicable thereto and this Bond and all interest hereon are to be paid by said City of Wathena, Kansas, solely and only from the money and revenue received from the fees charged and rental received for the use of the Facility under said Lease and not from any other fund or source. Pursuant to the provisions of said statute, the governing body of the City has pledged said Facility and the net earnings therefrom to the payment of the series of Bonds of which this Bond is a part and the interest thereon. Reference is hereby made to the Ordinance authorizing the issue of Bonds of which this Bond is one and to the Lease for a description of the Facility and the covenants of the City and the Company with respect to the payment, collection, segregation and application of the money and revenue received from the fees charges and rental received for the use of said Facility, the rights, duties and obligations of the City and the Company with respect thereto and otherwise and the rights of the holders of this Bond.

In the event the interest on this Bond is includable in the gross income of the recipient thereof for Federal income tax purposes by reason of the failure of this Bond to qualify for the exemption provided in Section 103 (c) (6) (D) of the Internal Revenue Code of 1954, then this Bond and the series of Bonds of which this Bond is one then outstanding shall mature and be due and payable at the principal amount thereof, plus accrued interest to the maturity date, together with a premium

of 4% of the principal amount of said Bonds on a date of maturity established by the City (the "Accelerated Maturity Date") but in no event shall such Accelerated Maturity Date be later than 120 days after the Internal Revenue Service, the Company, hereinafter referred to, or the Fiscal Agent designated in the Ordinance shall give written notice to the City of the failure of the Bonds, as hereinafter defined, to qualify for such exemption. The City shall promptly notify the Fiscal Agent of any such Accelerated Maturity Date and the Fiscal Agent shall give notice thereof in the manner hereinafter referred to for notice of redemption of Bonds prior to maturity.

Each of the Bonds of the series of which this Bond is one is subject to redemption and payment prior to maturity on any interest payment date at the option of the City upon the following conditions or events, provided all of said Bonds are redeemed and paid according to their terms: (1) if title to, or the use for a limited period of, substantially all of the Facility be condemned by any authority having the power of eminent domain; (2) if substantially all of the Facility is damaged or destroyed by fire or other casualty; or (3) if as a result of changes in the Constitution of the State of Kansas or of legislative or administrative action by the State of Kansas or any political subdivision thereof, or by the United States, or by reason of any action instituted in any court, the Lease shall become void or unenforceable or impossible of performance without unreasonable delay, or in any other way by reason of such change of circumstances, unreasonable burdens or excessive liabilities are imposed on the Company or the City. The redemption price for Bonds redeemed pursuant to this paragraph shall be the principal amount of Bonds so redeemed, plus accrued interest thereon to and including the

date fixed for redemption and payment, without premium.

Each of the Bonds of the series of which this Bond is one maturing in the year 1984 and thereafter is subject to redemption and payment at the option of the City, in whole or in part, on April 1, 1983, or on any interest payment date thereafter, at the principal amount thereof plus accrued interest to the redemption date, together with a premium which shall be 4% of the principal amount of Bonds called for redemption on April 1, 1983, which premium shall be reduced by 1/4 of 1% for each full year between said April 1, 1983 and the date said Bonds are called for redemption and payment. Bonds to be redeemed pursuant to this paragraph shall be redeemed in inverse numerical order, the bond having the highest number being the first bond called for redemption and payment.

Notice of the City's intention to redeem and pay said Bonds pursuant to any of the redemption provisions aforesaid, specifying the numbers of the Bonds to be redeemed and paid, shall be given by United States registered mail to the Paying Agent named herein not less than 30 days prior to the date fixed for redemption and payment. Notice of any such redemption shall also be published once not less than 30 days prior to the date fixed for redemption in some financial journal published and of general circulation in New York, New York.

AND IT IS HEREBY DECLARED AND CERTIFIED that all acts, conditions and things required to be done and to exist precedent to and in the issuance of this Bond have been properly done and performed and do exist in due and regular form and manner as required by the Constitution and laws of the State of Kansas.

IN WITNESS WHEREOF, the City of Mathena, Kansas, by its

governing body, has caused this Bond to be signed by the manual signature of its Mayor and attested by the manual signature of its City Clerk, and its corporate seal to be hereto affixed and the interest coupons hereto attached to be signed with the facsimile signatures of said officers, and this Bond to be dated this first day of April, 1973.

Mayor

ATTEST:

City Clerk

(FORM OF COUPON)

Coupon
No. _____

All Coupons for 6 Months due
April 1 and October 1

April

On the first day of October, 19__, unless
the Bond to which this coupon is attached be called
for redemption and payment duly made or provided for,
the City of Wathena, Kansas, will pay bearer, solely
from the money and revenue received from the fees
charged and rental received for the use of the Facility
described in the Bond to which this coupon is attached,
and not from any other fund or source, the amount shown
hereon, in lawful money of the United States of
America, at Security Pacific National Bank, in the
City of Los Angeles, California, being interest due on
its Industrial Revenue Bond, Series of 1973, dated
April 1, 1973. No. _____.

City of Wathena,
Kansas

Industrial Revenue
Bond, Series of
1973

(facsimile)
Mayor

ATTEST:

(facsimile)
City Clerk

STATE OF KANSAS)
) SS.
COUNTY OF DONIPHAN)

I, the undersigned, City Clerk of the City of Mathena, Kansas, hereby certify that the within Industrial Revenue Bond, Series of 1973, of the City of Mathena, Kansas, has been duly registered in my office according to law.

WITNESS my hand and official seal this _____ day of _____, 1973.

City Clerk

Section 8. Execution and Delivery of the Bonds, Deposit of Bond Proceeds, Designation of Fiscal Agent. The Mayor and City Clerk are hereby authorized and directed to prepare and execute, in the manner hereinbefore specified, the Bonds herein authorized, and to deliver said Bonds to George K. Baum & Company Incorporated, Kansas City, Missouri, the purchaser thereof, on payment of the purchase price, in accordance with the contract covering the purchase and sale of said Bonds, dated _____, 1973, which contract the Mayor and City Clerk of said City are hereby authorized and directed to execute for and on behalf of said City. The proceeds of said Bonds shall be deposited with Security Pacific National Bank, Los Angeles, California, hereby designated as the City's Fiscal Agent and herein referred to as the "Fiscal Agent," the rights and duties of said Fiscal Agent being further specified in Section 19 of this Ordinance.

Section 9. Construction Fund. There is hereby authorized and ordered to be established in the hands of the Fiscal Agent a separate fund or account designated as "City of Wathena, Kansas, American Cement Corporation Construction Fund," hereinafter referred to as the "Construction Fund." The Fiscal Agent shall, first, promptly pay from the proceeds of the sale of said Bonds into the Principal and Interest Account for Industrial Revenue Bonds, Series of 1973, dated April 1, 1973, hereinafter created, the amount of any accrued interest and premium, if any, received from such sale together with such additional amount as may be necessary to pay the interest on the Bonds on October 1, 1973, representing interest due during the estimated period of construction. The balance of the proceeds of the sale of said Bonds shall be deposited in said Construction Fund. Said Construction Fund shall be used for the purpose of providing funds to pay the cost of acquiring real property and to construct and purchase buildings, improvements, machinery and

equipment to be leased to American Cement Corporation as provided in said Lease. Any moneys not required for said purpose shall, when the Facility is complete as provided in the Lease, be deposited by the Fiscal Agent in said Principal and Interest Account.

Section 10. Principal and Interest Account. There is hereby authorized and ordered to be established in the hands of the Fiscal Agent a separate account to be known as the "City of Wathena, Kansas, Principal and Interest Account for Industrial Revenue Bonds, Series of 1973, dated April 1, 1973," hereinafter referred to as the "Principal and Interest Account." The City covenants and agrees that from and after the delivery of any of the Revenue Bonds herein authorized and continuing so long as any of said Bonds shall remain outstanding, said City will maintain said Account with the Fiscal Agent. All payments of Basic Rent and Additional Rent due under said Lease between the City and the Company intended to pay the principal of and interest on the Bonds shall be applied and allocated by the Fiscal Agent to said Principal and Interest Account. All amounts credited to and deposited in said Principal and Interest Account shall be used by the Fiscal Agent and forwarded to the Paying Agent for the sole purpose of paying the principal of and interest on the Revenue Bonds herein authorized as and when the same become due or are called for redemption and payment. Any balance remaining in said Principal and Interest Account, including interest earned on deposits made into said Account as prepayments of rent due under Article II of said Lease, shall, when said Bonds have been paid, or payment provided for, be paid to American Cement Corporation.

Section 11. Covenant to Redeem Bonds. When moneys accumulated in said Principal and Interest Account shall aggregate an amount sufficient to pay the principal of all of the Bonds then outstanding,

and all interest accrued to date fixed for redemption and payment, and redemption premium, if any, and when said Bonds become subject to redemption, said City shall, upon receipt of instructions from the Company, proceed to give notice of such redemption in the manner herein specified, and said Fiscal Agent shall use such funds for said purpose.

Section 12. Investments. Moneys in the Construction Fund shall, upon instructions from the Company, be invested by the Fiscal Agent in direct obligations of the United States Government, or agencies thereof, becoming due within twelve months from the date of purchase. Moneys allocated and credited to and deposited in the Principal and Interest Account in any amount in excess of the amount necessary to pay the amount of principal and interest next becoming due shall be invested by the Fiscal Agent, upon instructions from the Company, in direct obligations of the United States Government, or agencies thereof, becoming due not later than March 15, 1993. No investment shall be made pursuant to this Section for a period longer than the time the Fiscal Agent shall determine that said funds are not required for the purpose for which they are intended. All interest on investments held in the Construction Fund shall be deposited in the Principal and Interest Account. Interest on investments in any other fund or account shall accrue to and become a part of such fund or account so invested.

Section 13. Particular Covenants of the City. So long as any of the principal of and interest on the Bonds herein authorized remain outstanding and unpaid, or until provisions are made for the payment thereof, the City covenants with each of the holders and owners of said Bonds as follows:

(A) The City will use the proceeds of the

series of Bonds herein authorized as soon as practicable and with all reasonable dispatch for the purpose for which said Bonds are issued as hereinbefore set forth. Said proceeds will not be invested in any securities or obligations except for the temporary period pending such use and said proceeds will not be used directly or indirectly so as to cause all or any part of the Bonds herein authorized to be or become "Arbitrage Bonds" within the meaning of Section 103(d) of the Internal Revenue Code of 1954, as amended. The City further covenants that the proceeds of the series of Bonds herein authorized will not be used to acquire securities or obligations (other than obligations described in Subsection (a) (1) of such Section) that will produce a yield higher than the yield of the Bonds herein authorized unless a statute, regulation of the Treasury Department of the United States, ruling by the Internal Revenue Service of the United States or a decision by a court of ultimate jurisdiction holds that an acquisition of securities or obligations producing a yield higher than said Bonds will not cause said Bonds to be Arbitrage Bonds as defined in said Subsection (d).

(B) The City will comply fully with all the terms, provisions and conditions of the Lease which require performance by, or impose duties on, the City and that it will not permit any default to occur on the part of the City; that it will fully and promptly enforce all of the terms,

provisions and conditions of the Lease which require performance by, or impose duties on, the Company and in the event of the occurrence of a default, as defined in the Lease, will exercise all rights and remedies conferred by the Lease for the full and complete protection of the security and rights of the bondholders and, to the extent permitted by the Lease, will use its best efforts to procure a new tenant or tenants for the leased property under lease provisions which will provide funds sufficient in amount to make the rental payments and other charges which the Company is required to make under the Lease. If the City is unable to procure a new tenant who will enter into such a lease the City may, with the consent of the holders of not less than sixty-six and two-thirds per cent (66 2/3%) of the Bonds herein authorized at the time outstanding, sell the Facility leased at a price not less than the amount of the then outstanding Bonds plus interest then unpaid.

(C) The City will enforce collection of the rental payment and other charges in the amounts and at the time set forth in the Lease authorized hereby and will not reduce or cause or permit to be reduced the rental payments and other charges fixed, established and required by the Lease nor change or alter the time or times when the same are due and payable under the Lease. The City's obligation to pay the expenses of such enforcement

shall be limited to funds made available to it for that purpose by the holders of the Bonds or other interested parties.

(D) Until payment of all the Bonds and interest thereon has been duly made or provided for, the City will not consent to any change, amendment, modification or termination of said Lease, except as provided therein, which will in any manner affect adversely the rights, remedies or interest of the bondholder, nor will it consent to any merger, consolidation, dissolution or liquidation by the Company, except to the extent provided in the Lease.

(E) Any purchase price of the lease property, any proceeds of condemnation awards or insurance proceeds, any of which are received by the City pursuant to the termination of the Lease, or any other funds intended for the purpose of paying the Bonds will be used solely and exclusively to pay the Bonds herein authorized and the interest thereon according to their terms or to redeem and pay any of the Bonds then outstanding and unpaid then subject to redemption and payment. Upon receipt of any such funds, and as soon as the Bonds are subject to redemption and payment, the City shall proceed promptly to call the Bonds for redemption and payment according to their terms and shall give notice, or cause notice to be given thereof, as provided for by the terms of this Ordinance. Such funds shall be deposited with the Fiscal Agent, and the same shall be used solely for the payment of the Bonds herein authorized, accrued

interest thereon, any premium provided for by this Ordinance and the charges of the Paying Agent and the Fiscal Agent for paying the same.

(F) The City will not issue any other obligations payable from payments by the Company, pursuant to the Lease, nor voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance, or any other charge on said payments or on the property subject to said Lease nor will it, unless required by law or by the terms of said Lease, sell or otherwise dispose of the Facility or any part thereof; provided, however, that said City may issue from time to time additional industrial revenue bonds for the purpose of completing the construction or acquisition thereof on the land herein referred to, provided the following terms and conditions are met:

(i) The City shall have entered into a lease or agreement with the Company with rentals or payments at least sufficient to pay the principal of and interest on said additional bonds as the same become due.

(ii) The Company is not in default in the payment of rent due under the Lease.

(iii) The issuance of said additional bonds shall not affect the exemption from Federal income taxation of the interest on the Bonds herein authorized.

In the event of the issuance of any such additional bonds the City may pledge the Facility and the net earnings therefrom to the payment of such additional bonds and the interest thereon, provided the City also pledges the additional construction, fixtures and equipment and the net earnings therefrom, constructed or purchased out of the proceeds of such additional bonds, to the payment of the Bonds herein authorized and the interest thereon.

(G) The City will cause the Company to keep constantly insured all buildings and improvements from time to time constituting a part of the property and premises leased to the Company in the manner provided for by the Lease herein authorized. The City's share of the proceeds of any such insurance policies shall be payable to and deposited with the Fiscal Agent as Insurance Trustee. Any of the proceeds of such policies shall be used and applied in the manner set forth in said Lease.

(H) The City will cause the Fiscal Agent to maintain adequate records and accounts relating to the Facility, separate and apart from all other records or accounts of the City or the Fiscal Agent, and such records and accounts shall be maintained in accordance with generally accepted principles of accounting and shall include complete details of all financial transactions related to the Bonds authorized herein and the leased facilities. Such records and accounts shall be specifically designed and maintained to show whether or not the

provisions of this Ordinance and the Lease referred to herein are being complied with. Such books and records shall be available for inspection by the agents of the Company or any of the holders of the Bonds authorized herein during the regular business hours of the City or the Fiscal Agent.

Section 14. Amendments. The provisions of the Bonds authorized by this Ordinance and the provisions of this Ordinance may be modified or amended at any time by the City with the written consent of the holders of not less than sixty-six and two-thirds per cent ($66 \frac{2}{3}\%$) in aggregate principal amount of the Bonds herein authorized at the time outstanding, provided that no such modification or amendment shall permit or be construed as permitting: (a) the modification of any duties or responsibilities of the Fiscal Agent unless it consents thereto, (b) the extension of the maturity of the principal of any of the Bonds issued hereunder, or the extension of the maturity of the interest on any Bonds issued hereunder, (c) a reduction in the principal amount of any Bonds or the rate of interest thereon, or (d) a reduction in the aggregate principal amount of Bonds, the consent of the holder of which is required for any such amendment or modification. Any provision of the Bonds or of this Ordinance may, however, be modified or amended in any respect with the written consent of the holders of all of the Bonds then outstanding. Amendments to this Ordinance which correct omissions or ambiguities or which add to the security of the bondholders may be made by the City when agreed to by the Company. Every amendment or modification of a provision of the Bonds or of this Ordinance to which the written consent of the bondholders is given as above provided shall be expressed in an ordinance of the City amending or supplementing

the provisions of this Ordinance and shall be deemed to be a part of this Ordinance. It shall not be necessary to note on any of the outstanding Bonds any reference to such amendment or modification, if any. Upon payment of the reasonable cost of preparing the same, a certified copy of every such amendatory or supplemental ordinance, if any, and a certified copy of this Ordinance will be sent by the City Clerk to any such bondholder or prospective bondholder requesting the same.

The Lease herein authorized may be amended by the City and the Company as provided therein, except as to rent or certain other matters which may be made only with the consent of a specified percentage of the holders of the then outstanding Bonds.

Section 15. Enforcement. The provisions of this Ordinance shall constitute a contract between the City and the holders of the Bonds herein authorized, and the holder of any one or more of said Bonds may sue to recover interest or principal which has not been paid according to the terms of said Bond. The holders of twenty-five per cent (25%) of the principal amount of Bonds then outstanding may sue in any action, in mandamus, injunction or other proceedings, either at law or in equity, to enforce or compel performance of all duties and obligations required by this Ordinance to be done or performed by said City or by said Company. Nothing contained in this Ordinance shall, however, be construed to impose on said City and duty or obligation to levy any taxes either to meet any obligation contained herein or to pay the principal of or interest on the Bonds of the City herein authorized.

Section 16. Declaration of Maturity of Bonds in the Event of Default. In the event the principal of or interest on the Bonds herein authorized is not paid according to the terms thereof either on maturity or upon call for redemption, then the holders of twenty-five per cent (25%) of the principal amount of Bonds then outstanding

may by written notice given to the Mayor or City Clerk, declare the principal of all the Bonds herein authorized then outstanding to be due and payable immediately, and upon such declaration given as aforesaid, all of said Bonds shall be immediately due and payable, anything in said Bonds or in the Ordinance contained to the contrary notwithstanding. This provision, however, is subject to the condition that if at any time thereafter, all arrears of interest, except interest accrued but not yet due, and all arrears of principal shall have been paid in full, then in every such case, the holders of a majority in principal amount of the Bonds then outstanding, by written notice to the Mayor or City Clerk, may rescind and annul such declaration and its consequences, but no such rescission or annulment shall extend to or affect any subsequent default or impair any rights consequent thereon.

Section 17. Defeasance. When all of the Bonds of the city herein authorized and all coupons representing interest thereon shall have been paid and discharged, then the requirements contained herein and the pledge of revenues made hereunder and all other rights granted hereby, shall cease and determine. Bonds and coupons shall be deemed to have been paid and discharged within the meaning of this Ordinance and within the meaning of the Lease authorized by this Ordinance when there shall have been deposited with the Fiscal Agent at or prior to the maturity or redemption date of said Bonds and coupons, in trust for and irrevocably appropriated thereto, sufficient moneys for the payment of the principal thereof and interest accrued to the date of maturity or redemption, as the case may be, or if default in such payment shall have occurred on such date, then to the date of the tender of such payment; provided, always, that if any such Bonds shall be redeemed prior to the maturity thereof, the City shall have elected to redeem such Bonds

SCHEDULE 1 TO LEASE DATED APRIL 1, 1973,
BY AND BETWEEN THE CITY OF MATHEWA, KANSAS,
AND AMERICAN CEMENT CORPORATION AND TO
ORDINANCE NO. _____

- (a) Commence at a point on the East line of the Northeast Quarter of Section 34, Township 3, Range 22, which point is at the intersection of the North right-of-way of the St. Joseph & Grand Island Railway Company with the said East line of the Northwest Quarter and which point is 24.1 feet South (South 0 degrees 25 minutes East) of the Northeast corner of the Northeast Quarter, thence North (North 0 degrees 25 minutes West) along the section line 24.1 feet to the corner common to Sections 26, 27, 34 and 35, Township 3, Range 22, thence continuing North (North 0 degrees 25 minutes West) on the East line of the Southeast Quarter of Section 27, Township 3, Range 22, 1225.9 feet, thence West (South 89 degrees 31 minutes West) on a line parallel with the North line of the right-of-way of the St. Joseph & Grand Island Railway Company located in the Northeast Quarter of said Section 34, a distance of 745 feet, thence South (South 0 degrees 11 minutes East) 1218.5 feet to the South line of the Southeast Quarter of the said Section 27, thence continuing South (South 0 degrees 11 minutes East) 31.5 feet to the North right-of-way line of the St. Joseph & Grand Island Railway Company in the Northeast Quarter of the said Section 34, thence East (North 89 degrees 31 minutes East) along the North right-of-way line of the St. Joseph & Grand Island Railway Company 749.8 feet to the point of beginning, Doniphan County, Kansas; and

Commence at a point which is 1225.9 feet North (North 0 degrees 25 minutes West) and 745 feet West (South 89 degrees 31 minutes West) of the Southeast corner of Section 27, Township 3 South, Range 22 East of the 6th P.M., thence South 0 degrees 11 minutes East 1218.5 feet to South line of said Section 27, thence South 0 degrees 11 minutes East 31.5 feet to the North right-of-way line of the St. Joseph & Grand Island Railway Company in the Northeast Quarter of Section 34, Township 3, Range 22, thence West (South 89 degrees 31 minutes West) 75.2 feet, thence North 0 degrees 25 minutes West 32.6 feet to the South line of the Southeast Quarter of the said Section 27, thence West (North 89 degrees 54 minutes West) 419.8 feet, thence North 0 degrees 11 minutes West 1213.6 feet, thence East (North 89 degrees 31 minutes East) 495 feet to the point of beginning, Doniphan County, Kansas.

Subject to: (i) easements, restrictions and reservations now of record, (ii) the rights of the public in and to any part of the premises lying or being in public roads, alleys or highways and (iii) taxes and assessments, general and special, not now due or payable; and

- (b) All buildings and improvements and machinery and equipment constructed or located thereon pursuant to Article IV of said Lease.

and notice of such redemption shall have been given. Any moneys which at any time shall be deposited with the said Fiscal Agent by or on behalf of the City, for the purpose of paying and discharging any of the Bonds or coupons, shall be, and are hereby, assigned, transferred and set over to such Fiscal Agent in trust for the respective holders of the Bonds and coupons, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. If, through lapse of time or otherwise, the holders of said Bonds or coupons shall no longer be entitled to enforce payment of their obligations, then, in such event, it shall be the duty of said bank forthwith to return said funds to the City. All moneys deposited with such Fiscal Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Ordinance.

Section 18. List of Bondholders. To the extent that such information shall be made known to the City under the terms of this Section 18, it will keep on file at the principal office of the Fiscal Agent a list of names and addresses of the last known holders of all Bonds payable to bearer and believed to be held by each of such last known holders. Any bondholder may request that his name and address be placed on said list by filing a written request with the City or with the Fiscal Agent, which request shall include a statement of the principal amount of Bonds held by such holder and the numbers of such Bonds. The Fiscal Agent shall be under no responsibility with regard to the accuracy of said list. At reasonable times and under reasonable regulations, established by the Fiscal Agent, said list may be inspected and copied by the Company or by the holders and/or owners (or a designated representative thereof) of twenty-five per cent (25%) or more in principal amount of Bonds then outstanding, such ownership and the authority of any such designated representative

to be evidenced to the satisfaction of the Fiscal Agent.

Section 19. Provisions Relating to the Fiscal Agent.

(A) Prior to the receipt of the Bond proceeds pursuant to the provisions of Section 8 hereof, the Fiscal Agent shall file with the City Clerk its written acceptance of the duties specified in this Ordinance and in the Lease and its agreement to act in said capacity.

(B) The Fiscal Agent's duties and responsibilities shall be limited to those expressly set forth in this Ordinance and under the Lease.

(C) All resolutions, opinions, certificates and other instruments referred to or provided for herein or in the Lease may be accepted by the Fiscal Agent as conclusive evidence of the facts, opinions and conclusions stated therein and shall be full warrant, protection and authority to the Fiscal Agent for any action reasonably taken pursuant thereto. The Fiscal Agent shall be under a duty to examine any such resolutions, opinions, certificates and other instruments to determine of this Ordinance and the Lease.

(D) The Fiscal Agent shall not be liable with respect to any action taken or omitted to be taken by it in good faith and, if appropriate, upon advice of counsel who may be counsel for the Fiscal Agent or the City or the Company.

(E) No provision contained in this Section shall be construed to relieve the Fiscal Agent

from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that this subsection shall not be construed to limit the effect of subsections (B), (C) and (D) of this Section and the Fiscal Agent shall not be liable for any error of judgment made in good faith unless it shall be proved that the Fiscal Agent was negligent in ascertaining the pertinent facts.

(F) The Fiscal Agent shall have the right to buy, sell, own, deal or trade in the Bonds or the coupons relating thereto without giving notice thereof to the City or the Company or any bondholder and without incurring any liability whatsoever with respect thereto.

(G) The Fiscal Agent may resign by an instrument in writing delivered to the City and the Company to take effect not sooner than 90 days after its delivery, whereupon the City, with the consent of the Company, shall immediately, in writing, designate a successor fiscal agent. Such successor fiscal agent shall be a bank, trust company or national banking association which is a member of the Federal Reserve System and has a capital stock and surplus aggregating at least that of the Fiscal Agent at the time of its designation hereunder. Such successor fiscal agent shall be subject to the same duties and obligations and shall have the same rights, privileges and immunities specified in this Ordinance and in the Lease for the Fiscal Agent. Any such successor fiscal agent shall file an

acceptance in the form referred to in subparagraph (A) hereof with the City Clerk within 10 days of its appointment.

(ii) The Fiscal Agent shall be entitled to payment or reimbursement for reasonable fees for its ordinary services and all advances, counsel fees and other ordinary expenses reasonably and necessarily made or incurred by it in connection with its ordinary services, all such fees and expenses to be paid by the Company as Additional Rent as specified in Article II of the Lease.

Section 20. Election Under Section 103 (c) (6) (D) of the Internal Revenue Code. The City hereby elects that Section 103 (c) (6) (D) of the Internal Revenue Code of 1954, as amended by the Renegotiation Amendments Act of 1963, shall apply to said Bonds and the Mayor and City Clerk are hereby authorized and directed to file evidence of said election with any appropriate officer of the United States, including the Secretary of the Treasury or his delegate, and to take such other action as may be necessary to make effective the election made herein.

Section 21. Authorization of Lease. The tract of land herein referred to and the buildings and improvements to be acquired and constructed thereon pursuant to this Ordinance shall be leased to American Cement Corporation under and pursuant to a Lease dated April 1, 1973 substantially in the form attached to this Ordinance and marked Exhibit A, which Lease the Mayor and City Clerk are hereby authorized and directed to execute for and on behalf of and as the act and deed of the City.

Section 22. Severability. If any one or more of the covenants, agreements or provisions of this Ordinance, or of the Lease,

should be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or should for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions, and shall in no way affect the validity of the other provisions of this Ordinance or of the Bond issued hereunder, or of the Lease.

Section 23. Conveyance of Facility. Upon receipt by the City of the purchase price of the property subject to said Lease, title to said property shall be transferred and conveyed to the Company as provided in the Lease and the Mayor and other appropriate officers of said City are hereby authorized and directed to execute such deeds, bills of sale and other instruments as may be necessary to effect such conveyance and transfer.

Section 24. Effective Date. This Ordinance shall take effect and be in force from and after its passage and publication in the Official City paper.

PASSED AND APPROVED by the governing body of the City of Mathena, Kansas, this 17th day of April, 1973.

Mayor

ATTEST:

City Clerk