

Vulcan in the design and construction of a joint surface drainage and dewatering system.

K. Recreational Trail.

A recreational trail to be located between the berm paralleling 51st Street and Drexel Avenue and 51st Street and Drexel Avenue shall be completed within two years after the last to occur of the following events: occurrence of the effective date of the portions of this Ordinance affecting the Nonextraction Area and a determination of the Common Council, after review and recommendation by the City Parks Commission that it is in the best interest of the City to accept such facility. Such trail shall be made available for public recreational use on such terms and conditions as are mutually agreed upon by and between the Operator and the City, which shall include an agreement by the City to maintain, operate and manage the trail and to defend and hold harmless the Operator from, and against any claims, actions or liability arising out of or relating to public use of the recreational trail. Operator's obligations under this subsection shall lapse and expire unless accepted by the City within five (5) years of the aforesaid effective date.

L. Crushing, Processing and Stockpiling Operations and Facilities.

The Crushing, Processing and Stockpiling Operations and Facilities, as previously defined, shall be relocated to the Floor of the Extraction Area prior to January 1, 2004, provided that the portions of this Ordinance affecting the Extraction Area shall have first become effective. The Crushing, Processing and Stockpiling Operations, west of the Root River and vehicular and equipment crossings across the Root River will also be eliminated following such relocation.

M. Office and Sales Operations and Facilities.

The Office and Sales Operations and Facilities located outside the Property, as previously defined, shall be relocated to a location East of the Root River in the vicinity of Rawson Avenue prior to January 1, 2004, and may subsequently be relocated to the Floor of the Extraction Area, at the operator's discretion, at any

time. Operator shall submit the required detailed plans for the Office and Sales Operations and Facilities.

N. Maintenance and Staging Operations and Facilities.

The Maintenance and Staging Operations and Facilities located outside the Property, as previously defined, shall be relocated to a location East of the Root River in the vicinity of Rawson Avenue prior to January 1, 2004, and may be relocated to the Floor of the Extraction Area at the Operator's discretion at any time. Operator shall submit the required detailed plans for the Maintenance and Staging Operations and Facilities

O. Retail Topsoil Processing and Aggregates Operations and Facilities.

The Retail Topsoil Processing and Aggregates Operations and Facilities, as previously defined, may, at Vulcan's or Operator's discretion, be relocated from time to time, on grade within the Extraction Area (including areas of Vulcan's or Operator's Extraction Area), provided that prior site plan approval is obtained or to the Floor of the Extraction Area.

P. Asphalt Plant Operations and Facilities.

1. The Asphalt Plant Operations and Facilities, as previously defined, may continue at its current location under the terms and conditions approved in Resolution No. 97-4562, dated May 20, 1997.
2. Upon the Effective Date of the portions of this Ordinance affecting the Extraction Area, the requirement under the aforementioned resolutions for a bi-annual renewal of the Asphalt Plant special use approval shall be automatically repealed and eliminated, but the Asphalt Plant Operations and Facilities shall be included in the biannual reporting to the Plan Commission by the Operator pursuant to subsection Z of this Ordinance. All other terms and conditions of the approving special use resolutions shall remain in full force and effect and are incorporated herein by reference. The Operator shall continue to

provide a reasonable easement for ingress and egress to Rawson Avenue for the benefit of the property bearing Tax Key No. 757-9977, as required under the Special Use Resolution No. 97-4562 for the Asphalt Plant Operators and Facilities on the Property without cost to the Owner of such property.

3. When Operator's Extraction activities require the relocation of the Asphalt Plant Operations and Facilities, Operator shall either eliminate such operations and facilities on the Property or relocate them to the Floor of the Extraction Area.

Q. Concrete Ready-Mix Plant Operations and Facilities.

The Concrete Ready-Mix Plant Operations and Facilities, as previously defined, may be established on the Property, at any time after the Effective Date of the portions of this Ordinance affecting the Nonextraction Area. If established on grade, such operations and facilities may be relocated to the Floor of the Extraction Area, provided that those portions of this Ordinance affecting the Extraction Area shall have first taken effect. Prior to establishment of the use under this subsection anywhere on the Property, prior site plan approval shall be obtained from the Plan Commission.

R. Extraction Area Boundaries.

1. The ultimate boundaries of the Extraction Area shall be as follows:
  - a. From current centerline of 51st Street: 650 feet.
  - b. From current centerline of Rawson Avenue (C.T.H. BB): 200 feet.
  - c. From the current centerline of 68th Street: 1,350 feet, except as otherwise limited by the 200 foot setback from the centerline of the Root River.

- d. From the property line separating the Operator's Property from the Vulcan quarry site to the west and south: 0 feet.
  - e. From the centerline of the Root River: 200 feet to the east, except where and only to the extent Extraction has previously taken place, and except for minor Extraction to create an access road into the Extraction Area. There will be no extraction west of the Root River.
  - f. From the centerline of Drexel Avenue: 850 feet
2. Notwithstanding anything to the contrary within this Ordinance, upon the date of adoption of this Ordinance affecting the Nonextraction Area, Operator shall cease all horizontal expansion of the Extraction operations north of the quarry highwall existing on the date of adoption of this Ordinance, within 200 feet from the current center line of Rawson Avenue, regardless of any legal nonconforming use rights which may be vested in the Operator. This prohibition shall remain in effect until the Effective Date of the portions of this Ordinance affecting the Extraction Area or the date upon which such portions of the Ordinance expire and fail to become effective due to the lack of satisfaction or waiver of any condition precedent set forth under subsection FF hereof. Such prohibition shall not be deemed to result in any cessation of use which would serve to terminate any of Operator's nonconforming use rights.
  3. Any Extraction for shoreline contouring that may be required as part of the detailed reclamation plan under subsection S of this Ordinance may take place outside of the Extraction Area boundaries. Further, Stripping Operations may occur outside of the Extraction area boundaries to provide a safety and access shelf, as a safety and access shelf is generally exposed at the top of rock, outside the Extraction limits, and the overburden is sloped upward and outward from the safety and access shelf at a slope generally not steeper than 1-1/2:1.

4. Operator shall not have any right to apply for any future expansion beyond the ultimate Extraction Area boundaries set forth under this subsection R. Operator shall acknowledge this restriction by the execution of a waiver of any present or future right to apply for any permission for extraction use of the property beyond such ultimate extraction area boundaries, as a condition of the approval of this Ordinance. The waiver shall be in recordable form acceptable to the City Attorney and be delivered to the City prior to the effective date of this Ordinance. The waiver shall become effective upon the effective date of the portions of this Ordinance affecting the Extraction Area and the provision of shall run with the land and be the provisions of binding upon Operator's heirs, successors and assigns. Further, such waiver shall also provide that any and all crushing/processing, maintenance/staging, and office/sales or any other quarry Operations or Facilities located west of the Root River, the two river crossings, and the 68th Street access for quarry related uses shall cease and be removed and the area restored prior to January 1, 2004.
5. The Operator shall obtain and deliver to the City annually two prints of an aerial photo of the Property.

S. Detailed Reclamation Plan

1. Within two (2) years after the Effective Date of the portions of this Ordinance affecting the Extraction Area, the Operator shall submit a detailed reclamation plan to the City for review and approval pursuant to Section 13.3(7)(b)(2) of the City Zoning Ordinance. The detailed reclamation plan shall explain and show how the Operator will provide a quarry lake with appropriate public access for recreational purposes and adjacent areas suitably situated and graded for private development. The plan shall include, but not be limited to, the minimum requirements set out in this subsection S. The detailed reclamation plan need not address the Property's ultimate end-use

development but only the activities required to put the land in a condition whereby such development is feasible.

2. Without limitation, the detailed reclamation plan shall include the following: (a) a statement specifying the post-operational maintenance activities Operator will undertake upon the Property, including erosion control and environmental pollution mitigation, if any; (b) a requirement that all buildings, structures, and equipment (but not including ramps) shall be removed from the Property as part of the reclamation process; (c) an itemized estimate of all costs of reclamation obligations required by the plan; (d) a physical reclamation plan providing contours after restoration at two (2) foot intervals (except in the Extraction Area, where approximate spot elevations of the quarry floor shall be denoted) according to City of Franklin datum; (e) an explanation of the methods used for leveling the berms, which shall result in soil of sufficient depth on the non-quarried areas to support plant growth with a minimum of two (2) feet of earth including four (4) inches of top soil; and (f) an explanation of how appropriate public access will be provided to the quarry lake without respect to how long the lake takes to fill.
3. Implementation of the detailed reclamation plan shall be completed within three (3) years after the cessation of Extraction operations.
4. No end-use development proposals shall be implemented prior to the submission of detailed end-use development plans pursuant to then-applicable City ordinance requirements, and the granting of detailed zoning and land use approvals in accordance with then applicable City ordinance requirements.
5. Upon approval by the Common Council, following public hearing and recommendation by the Plan Commission, the detailed reclamation plan shall become part of this Ordinance by reference.
6. This Ordinance may be amended to add any reclamation standards established by the Wisconsin

Department of Natural Resources pursuant to Wis. Stats. § 144.9407 that are more stringent than those initially included in this Ordinance except to the extent such standards would have the effect of reducing the Extraction Area or requiring the relocation or reconfiguration of the berms. By accepting this Ordinance, the Operator consents in advance to any such amendment.

7. Operator shall provide Financial Assurance to secure its obligations under this subsection S.

T. Limits on Blasting

1. Ground vibration resulting from Operator's blasting shall not exceed 0.30 inches per second on at least 85% of its blasts within any single calendar year, measured at the residence or inhabited structure closest to the site of the blast which is not owned or controlled by the Operator. Notwithstanding any other provision in this subsection, the Operator shall not exceed the ground vibration limitation imposed by the Wisconsin Department of Industry, Labor and Human Relations in Figure 7.64 of ch. ILHR 7, Wis. Adm. Code, or 0.65 inches per second, whichever is more restrictive, on any blast.
2. Airblast resulting from Operator's blasting shall not exceed 123 dB on at least 85% of its blasts within any single calendar year, measured at the residence or inhabited structure closest to the site of the blast which is not owned or controlled by the Operator. Notwithstanding any other provision in this subsection, the Operator shall not exceed the airblast limitation imposed by the Wisconsin Department of Industry, Labor and Human Relations in Chapter ILHR 7, Wis. Adm. Code on any blast.
3. Operator shall each month provide to the City Fire Department the recorded ground vibration and airblast levels of blasts conducted during the previous month. These records may be in the form of blasting logs redacted to delete any sensitive proprietary information, provided, however, that appropriate City officials may inspect the

Operator's original blasting logs upon request and may obtain copies of the original blasting logs upon written request and upon undertaking in writing to afford appropriate trade secret protection to such documents.

4. Operator shall cause blasts to occur only between the hours of 8:00 a.m. and 4:00 p.m. on Monday through Friday. Blasting shall not occur on Saturday, Sunday, nor on any of the following holidays: January 1, Memorial Day, July 4, Labor Day, Thanksgiving and December 25.
5. In the event an explosive charge fails to detonate, Operator may detonate the failed charge beyond the 4:00 p.m. blasting limitation if necessary to avoid leaving undetonated explosives in the ground during evening and nighttime hours; provided, however, that Operator shall first notify the City Fire Chief or designee.
6. The limitations on the hours of blasting shall not prevent the Operator from drilling and otherwise making preparations for blasting prior to 8:00 a.m. or after 4:00 p.m., subject to the other time restrictions imposed by this Ordinance.

U. Other Hours of Operation

Quarry-related operations other than blasting, including drilling, crushing, washing and sorting of product, hauling or loading of product, stripping of overburden, construction of berms, and sales of product shall be limited to the hours of 6:30 a.m. to 7:00 p.m., Monday through Friday, and 7:00 a.m. to 4:00 p.m. on Saturday; provided, however, that office activities pumping and other dewatering activities and reasonable maintenance activities shall be permitted at anytime. (It is understood that Operator's employees will begin arriving and preparing for operations approximately half hour before starting time and that Operator's employees will be engaged in closing activities and preparations for start-up the next day for approximately half hour after the close of operations.) No quarry-related operations shall take place on Sunday or the following holidays: January 1, Memorial Day, July 4, Labor Day, Thanksgiving and December 25, excepting pumping and other dewatering

activities and reasonable maintenance activities.  
(These hours of operation set forth in this subsection shall not control operations of the Asphalt Plant Operations and Facilities, which are controlled by the approving resolutions.)

V. Opacity and Air Quality

1. Operator shall not allow dust particles in the air from any Extraction activity or related quarry operations, at any property line (except as provided in this subsection V, greater than 0% opacity or the US EPA PM<sub>10</sub> 24 Hour Standard (150 µg/m<sup>3</sup>); provided, however, that these restrictions shall not apply until after completion of the Operator's and Vulcan's berm-building and landscaping obligations under this Ordinance and the companion Vulcan planned development ordinance, completion by Milwaukee County of the Rawson Avenue expansion project in the vicinity of the Property, and completion by the City of the 51st Street water project.

2. Operator shall be exempt from meeting the maximum opacity and PM<sub>10</sub> Standard levels at property lines adjoining another Extraction activity in a different ownership, provided that the joint contributions do not exceed the limitations at any property line where such limitations apply.

3. The Operator shall provide dust control for its operations at all times, in addition to the landscaped berms, using an appropriate mix, as applicable, of the following methods, among others, to achieve the standards imposed by this Ordinance: water spray (weather permitting), wheel wash (weather permitting), dust curtains on transfer points, adjustable conveyor stackers, screen covers, sweepers and paving of entrance roadway. The Operator shall maintain records of all dust control measures including the time, location of application and quantity of materials used.

W. Access to Property

1. Direct vehicular access to the Property with respect to all Quarry-Related Operations and Facilities shall be by a single entrance/exit from Rawson Avenue, and direct access from any other adjoining right-of-way shall be prohibited;

provided, however, that the Operator may continue to utilize its 68th Street access until such time as it discontinues its Quarry Related Operations west of the Root River.

2. Cross access between the Property and the adjoining quarry property now owned by Vulcan shall be allowed subject to private agreements or understandings of the owners.

X. Operator Enhancements

Operator shall take reasonable steps to eliminate dust, noise and any other potentially negative impacts upon surrounding property owners, utilizing the latest cost-effective technology proven and demonstrated in the Operator's industry, which will not impose an unreasonable financial burden on the Operator, for the duration of the Extraction operations on the Property.

Y. New Property Rights

The City recognizes that it may be advantageous for the Operator to acquire from Vulcan rights to quarry or otherwise use real property which is adjacent to the Property. In the event of such an acquisition, the terms and conditions of the planned development district zoning applicable to such property shall continue in force. The Operator shall promptly notify the City in writing of any such acquisitions of property rights, and thereafter, to the extent of such rights, the Operator shall have the responsibility of compliance with the planned development ordinance governing use of such property.

Z. Biannual Reporting.

To assist the City in the administration of this Ordinance, the Operator shall report to the Plan Commission approximately every two (2) years from and after the effective date of the portions of this Ordinance affecting the Extraction Area.

AA. City Monitoring and Administrative Costs.

The Operator shall be responsible to the City for all reasonable actual costs incurred by the City in the monitoring of Operator's operations hereunder and in

the administration of this Ordinance and review of any plans submitted for approval under this Ordinance. Such actual costs shall be the actual salary and benefit costs incurred for the actual reasonable time spent by City employees on such monitoring, review or administrative activities, and the actual reasonable costs to the City of any independent contractors or consultants hired by the City for such monitoring, review or administrative services, less any related fees paid by the Operator, in a total amount not to exceed \$15,000 each calendar year. Such maximum amount shall be adjusted annually by any increase or decrease in the Consumer Price Index (U.S. City Average -- All Urban Consumers -- All Items), during the prior calendar year, commencing January 1999. No independent contractors or consultants shall be hired by the City, and no unusual monitoring or review projects shall be undertaken by the City, without good cause and without giving the Operator a reasonable opportunity to be heard. The City shall provide an itemized invoice to Operator for such costs quarterly. Upon request by the Operator, the City shall promptly provide supporting documentation. Each such invoice shall be paid within 30 days of presentation.

BB. Special Assessment Acknowledgment

Certain undeveloped lands owned by the Operator adjacent to 51st Street are subject to a substantial special assessment for water service levied pursuant to City of Franklin Common Council Resolution No. 97-4538, which service will help alleviate the City's concern about the potential impact of the expansion of the quarry Extraction Area upon property owners with wells in the vicinity of such expansion. Recognizing that subsection FF of this Ordinance requires the Operator to submit restrictive covenants to maintain such buffer areas as open space until any proposed development may be approved by the City, and that such requirement may substantially diminish the special benefit of the water service to the Operator, the City hereby acknowledges, for the purpose of preventing the Common Council from reconsidering or rescinding this ordinance, that acceptance of such special assessment without challenge shall necessarily vest the Operator's rights under this Ordinance, subject to the restrictions and requirements of this Ordinance. Per request of the City Engineer, add the following: "The terms of this subsection S

and the acknowledgment required hereunder shall also apply to any future special assessment for sanitary sewer to be installed abutting the property on South 51st Street, if any."

CC. Carryover Zoning Restrictions.

1. The M-2 General Industrial District regulations shall continue to apply to those portions of the Extraction Area previously zoned M-2 General Industrial District until the Effective Date of the portions of this Ordinance affecting the Extraction Area.
2. The performance standards of subsection 9.3(6) of the Zoning Code shall continue to be applicable to that part of the Nonextraction Area that was previously zoned M-2 General Industrial District, as shown on Exhibit 4, after the Effective Date of the portions of this Ordinance affecting the Nonextraction Area.
3. Nonquarry Operations and Facilities located on a parcel of land which is partially within and partially without the Property shall comply with all requirements of the zoning district in which they are partially located, subject to valid nonconforming use and structure rights.

DD. Severability.

Should any term or provision of the Ordinance be declared invalid for any reason by a court of competent jurisdiction, such determination shall not affect the validity of the remaining terms and provisions, which shall remain in full force and effect.

EE. Waiver of Nonconforming Use Rights.

Upon the effective date of the portions of this Ordinance affecting the Extraction Area, the Operator waives and relinquishes all nonconforming use rights with respect to the Quarry-Related Operations and Facilities on the Property and on any real property owned by Operator adjoining the Property which predate such effective date.

FF. Effective Date.

1. The provisions of this Ordinance affecting the development of the Nonextraction Area of the Property shall be effective upon adoption of this Ordinance by the Common Council, publication according to law, acceptance of this Ordinance by Operator, in writing, within sixty (60) days after adoption by the Common Council, which acceptance may be conditioned on the continued effect of any provisions of this Ordinance as adopted, and upon satisfaction or waiver by Operator of the following conditions precedent: the acquisition of any property included in the Property not currently owned by the Operator, and the exchange of property with Vulcan to facilitate relocation of its Quarry Related Operations and facilities east of the Root River.
  
2. The provisions of this Ordinance affecting the Extraction Area, including, without limitation, provisions establishing Extraction Area setbacks, establishing hours of operations, limiting blasting resultants, requiring the relocation of the Crushing, Processing and Stockpiling Operations and Facilities to the Floor of the Extraction Area, and imposing reclamation requirements, shall become effective, after adoption of this Ordinance by the Common Council, publication according to law and acceptance of this Ordinance by Operator in accordance with subsection FF1, above, upon satisfaction or waiver by the Operator of all of the conditions precedent set out in subsection FF3, FF4, FF5 and FF6, below; provided that such conditions are satisfied or waived (if applicable) within three (3) years of the date of adoption hereof (unless such time is extended upon good cause shown upon petition to the Common Council within said three (3) years and approval of such extension by the Common Council, in its sole discretion and without regard to any investment or actions undertaken by Operator in reliance hereon prior to that time); and further provided that said period of time shall be automatically extended in the event of litigation regarding the validity or effectiveness of this Ordinance or litigation or quasi-judicial review proceedings regarding the validity or

effectiveness of any of the permits or approvals referenced in this subsection, in which event the Effective Date shall be as otherwise provided in this section or two (2) years after the date of entry of the last final, nonappealable judgment, order or decision regarding such matters, whichever is later.

3. The portions of this Ordinance affecting the Extraction Area shall not take effect until each of the following conditions precedent have been satisfied or waived: the acquisition of any property included in the Property not currently owned by the Operator, and the exchange of property with Vulcan to facilitate relocation of its Quarry-Related Operations and Facilities east of the Root River, the granting or issuance of all local, State and Federal permits or approvals required to accomplish the expansion of the Operator's Extraction operations to the full extent contemplated in this Ordinance, and the relocation of Operator's Crushing, Processing and Stockpiling Operations and Facilities to the Floor of the Extraction Area, in a manner satisfactory to Operator.
4. Without limitation or requirement, and merely by way of illustration, the contemplated permits and approvals might include the following:
  - a. Permits issued under Chapter 30 of the Wisconsin Statutes;
  - b. Permits for wetlands modifications under Wis. Admin. Code ch. NR 103;
  - c. Permits and approvals required under Sections 401 and/or 404 of the Clean Water Act by the U.S. Army Corps of Engineers;
  - d. Permits for surface water removal or collection required under Wis. Admin. Code ch. NR 340;
  - e. Land division approvals under City of Franklin or Milwaukee County authority;

- f. Wisconsin Department of Natural Resources permits for discharge of water into navigable streams.
5. As the Operator and Vulcan share a common boundary within the Planned Development District plans and upon the land, including within the quarry pit and Extraction Area, the effective date of those portions of this Ordinance affecting the Extraction Area shall not occur until the effective date of those portions of the Vulcan Planned Development District Ordinance No. 97-1457 occurs, it being intended that both such ordinances only become effective together.
6. The effective date for those portions of this Ordinance affecting the Extraction Area shall not occur until:
  - a. The fee title acquisition by the Operator of all real property subject to this ordinance.
  - 1 b. Operator shall submit restrictive covenants regulating all areas of land constituting the buffer strip owned by Operator outside of the Property for review and approval by the City Planning and Zoning Administrator. Such restrictive covenants shall provide that the buffer area shall remain open space, except to the extent already developed, and except to the extent that City approvals have already been obtained, and except for potential wetlands mitigation in the area between 51st Street and the Operator's berm near the southern boundary of the Property, until any proposed development may be approved by the City.
7. The Operator shall promptly notify the Common Council, in writing, of the date of timely satisfaction or waiver if applicable of each of the above conditions.
8. Notwithstanding any other provision of this Ordinance, this Ordinance shall be effective from and after its adoption and publication according to law, and acceptance by the Operator, to the limited extent of

being adequate authority for the Common Council, the Plan Commission or any other agency or official of the City of Franklin, or any State or Federal agency or official, to accept, process and act upon (and toll the effective date of any permit or approval, as appropriate, pending the effectiveness of this Ordinance as a whole) of any application or request for any permit or approval to allow or facilitate the activities provided for in this Ordinance. This limited effectiveness of this Ordinance shall not result in any vested rights accruing to the Operator.

GG. Interpretation.

All terms and conditions in this Ordinance shall be interpreted to the benefit of the general public for the mitigation of impacts of the extraction activities on the neighboring community. Except as otherwise specifically provided in this Ordinance, all references to local, state or federal laws in this Ordinance shall mean such laws as amended from time to time to the extent they are applicable.

HH. Noise.

The Operator and all operations, facilities and activities on the Property shall be subject to the terms and provisions of section 10.14 of the Municipal Code pertaining to noise, as it exists on the date of adoption of this Ordinance.

## II. Property Value Guarantee.

Within thirty (30) days after accepting this Ordinance in writing pursuant to Subsection FF1, above, the Operator shall mail by certified mail, return receipt requested, to the record owner of each existing single family or duplex residence with the appropriate Tax Key Number and again approximately sixty (60) days after such acceptance, a copy of the Property Value Guarantee Agreement, the form of which is attached hereto as Exhibit 10, together with an explanatory letter to be approved by the City Attorney, and Operator shall promptly enter into such agreement with any such property owner who signs and returns the agreement to the Operator within ninety (90) days after the Operator's acceptance of the Ordinance. The Operator shall provide Financial Assurance to secure its obligations under this subsection.

## JJ. Well Protection.

1. Department of Natural Resources regulation NR812.13(16) Wis. Adm. Code provides in part that when a quarry is within 1,200 feet of any proposed well, the upper enlarged drill hole and well casing pipe depth requirements shall be referenced from the bottom of the quarry. This regulation substantially increases the depth required and well casing cost to redrill any failed well or to drill a new well as compared to the depth and casing required were the well not located within 1,200 feet of a quarry. Such regulation is silent as to whether the well owner or quarry operator shall bear the increased depth and casing costs. The Extraction Area Boundaries are set forth under subsection B. of this Ordinance increase and expand the lands upon which Operator may mine limestone. The determination of what would otherwise be an acceptable depth for well redrilling or drilling purposes absent the requirements of NR812.13(16), is not susceptible to ready or common calculation, may if determined vary from property to property and would require work and expense in addition to the required redrilling or drilling costs. In order to alleviate the potential increased well drilling and casing costs required to redrill or drill a well upon properties within 1,200 feet of the

Extraction Area and to designate the responsibility for such potential increased costs which would not exist but for the Extraction Area, the Operator shall be responsible for the total costs to redrill any failed existing well or to drill any required new well, or the incremental extra costs of such redrilled or new well as a result of being within 1,200 feet of the Extraction Area plus the costs of determining the amount of such incremental extra costs, subject to all of the following:

- a. The failed well or proposed well is subject to the requirements of NR812.13(6) Wis. Adm. Code as a result of the quarry Extraction activities permitted by this Ordinance;
- b. The property upon which the failed well exists does not have municipal water service available;
- c. Any proposed new well must be necessary to replace any failed existing well which cannot be redrilled or to serve a principal building to be used for human habitation, including residential, commercial, industrial or institutional buildings, provided construction of same has progressed at least through foundation installation as of the date of adoption of this Ordinance;
- d. The well redrilling or drilling shall be made in compliance with all applicable governmental laws, rules, regulations, orders, codes and ordinances, including any necessary licensure of those performing such work; and
- e. The well driller shall be mutually satisfactory to the property owner and to the Operator, and neither shall unreasonably withhold its approval.

2. The Operator shall notify all of said owners of record of their rights under this subsection by certified mail, return receipt requested, within 30 days of the effective date of the provisions of this Ordinance affecting the Extraction Area pursuant to subsection FF hereof, which date shall also be the effective date of Operator's obligations under this subsection.
  
3. The determination as to whether any existing well has "failed" so as to require redrilling or replacement shall be made by a well specialist pursuant to all applicable governmental laws, rules, regulations, orders, codes and ordinances. The determination of whether any failed well is subject to the requirements of NR812.13(6) shall be made by the Wisconsin DNR in the event of any dispute between the property owner and the Operator on such issue.
  
4. The Operator shall provide Financial Assurance to secure its obligations under this subsection.

SECTION .03 The Comprehensive Master Plan, as authorized by section 62.23(7)(b), Stats., is hereby amended to incorporate all of the Exhibits made a part of this Ordinance and the provisions of this Ordinance applicable thereto, as the official Plan Map of the Property.

SECTION .04 All ordinances or parts of ordinances of the City in contravention of this Ordinance are hereby repealed.

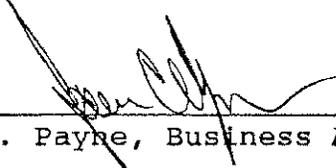
Introduced at a regular meeting of the Common Council on  
this 3<sup>RD</sup> day of JUNE, 1997 by  
Alderman MURRAY.

PASSED AND ADOPTED by the Common Council in the City of  
Franklin on this 3<sup>RD</sup> day of JUNE, 1997.

APPROVED:

  
Frederick F. Klimetz, Mayor

ATTEST:

  
James C. Payne, Business Administrator

AYES 4 NOES 2 ABSENT 0  
(Ald. Mead)  
(Ald. Thomas)

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EXHIBIT 1

LEGAL DESCRIPTION  
FOR THE  
PLANNED DEVELOPMENT DISTRICT  
PAYNE & DOLAN

That part of the Northeast 1/4 and the Southeast 1/4 of Section 10, and the Southwest 1/4 of Section 11, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin, bounded and described as follows:

Beginning at the Northwest corner of said Southwest 1/4; thence Easterly and along the North line of said Southwest 1/4, to a point 300 feet West of the East line of said Southwest 1/4; thence Southerly, to a point on the North line of the South 429 feet of the North 1308.95 feet of the East half of said Southwest 1/4; thence East, on and along said North line, to a point 162 feet East of the East line of said Southwest 1/4; thence Southerly to a point on the South line of said South 429 feet of the North 1308.95 feet of the East half of said Southwest 1/4; thence Westerly, on and along said South line, 105 feet to a point; thence Southerly, 886.22 feet to a point; thence Westerly, to a point on the West line of said Southwest 1/4; thence Northeasterly to a point 472.73 feet North of the South line of said Southwest 1/4; thence Easterly, 102 feet to a point; thence Northeasterly, to a point 700 feet North of said South line; thence Northerly to a point 879.95 feet South of the North line of said Southwest 1/4; thence Westerly to a point 102 feet West of the West line of said Southwest 1/4; thence Southerly, to the centerline of the Root River; thence Northwesterly, on and along said river centerline, to a point that is 1,170.25 feet East of the West line of said Northeast 1/4; thence Northerly, to a point 663.44 feet South of the North line of said Northeast 1/4; thence Easterly, 102 feet to a point; thence Northerly, to a point on the West line of the East 174.24 feet of the West 1343.91 feet of the North 250 feet of said Northeast 1/4, said point being 177 feet South of the North line of said Northeast 1/4; thence Easterly and parallel to said North line, to a point on the West line of the East 544.50 feet of the North 40 acres of said Northeast 1/4; thence Southerly, 908.65 feet to a point; thence Westerly, 515.50 feet to a point; thence Southerly to a point on the Centerline of the Root River, thence Southeasterly, on and along said river, 97.60 feet to a point; thence Easterly, to a point on the East line of said Northeast 1/4; thence Southerly, on and along said East line, to the Northwest corner of said Southwest 1/4 and the point of beginning.

The above described Planned Development District (PDD) zoning limit line is parallel to and offset into said property 102 feet for descriptions where the PDD zoning line is not on and along the property line.

The above described Planned Development District contains 155 acres of land, more or less.

EXHIBIT 2

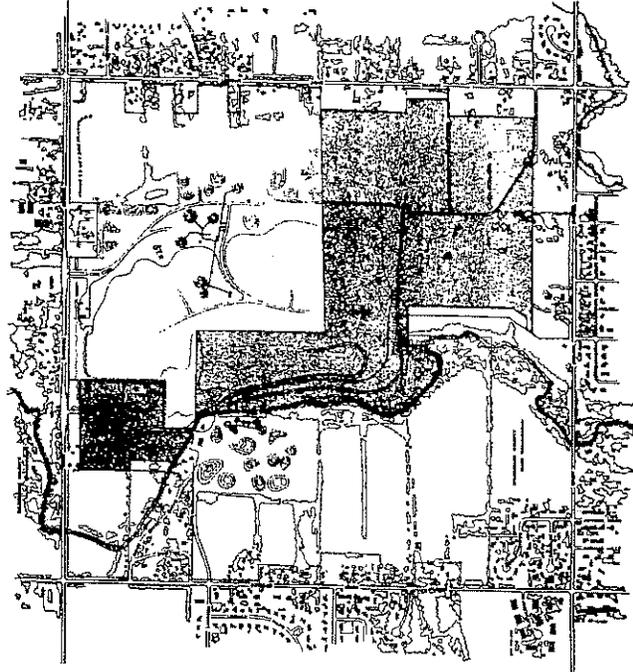
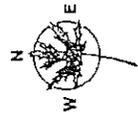
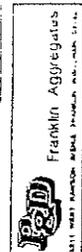


**GRAEF  
ANHALT  
SCHLOEMER**  
CONSULTING INC.  
1000 North Lincoln Avenue  
Suite 200  
Milwaukee, WI 53233  
Phone: 414.224.1100  
Fax: 414.224.1101  
www.graef-anhalt-schloemer.com

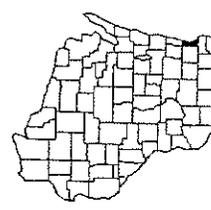
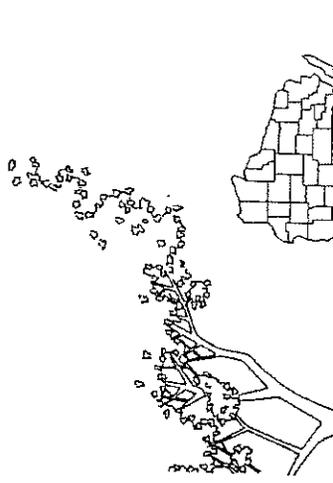
DETAILS OF THE  
QUARRY  
PLANNED  
DEVELOPMENT  
DISTRICT  
CITY OF FRANKLIN WISCONSIN

**INDEX OF EXHIBITS**

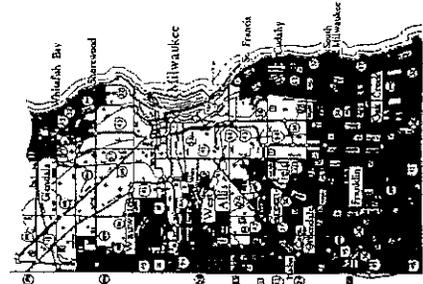
- A TITLE SHEET
- B EXISTING ZONING MAP
- C PLAT OF EXISTING SITE
- D 10-30-06 AERIAL PHOTOGRAPH
- E OVERVIEW OF PDD HIGHLIGHTS
- F 2004 OPERATIONS PLAN
- G CONCEPTUAL RESTORATION PLAN
- H SECTIONS



SECTIONS 10 & 11 - T5N - R21E



MILWAUKEE COUNTY WISCONSIN



REGIONAL MAP

TITLE SHEET





EXHIBIT 5



GRAEF ANHALT SCHLÖßER  
ARCHITECTEN  
PLANUNG  
INGENIEURBÜRO  
FÜR ARCHITECTUR  
UND INGENIEURWESEN  
MAG. DR. GERT GRAEF  
MAG. DR. GERT ANHALT  
MAG. DR. GERT SCHLÖßER  
MAG. DR. GERT GRAEF  
MAG. DR. GERT ANHALT  
MAG. DR. GERT SCHLÖßER

DETAILS OF THE  
QUARRY  
PLANNED  
DEVELOPMENT  
DISTRICT  
100% OF THE QUARRY DEVELOPMENT



10-20-96 AERIAL PHOTOGRAPH





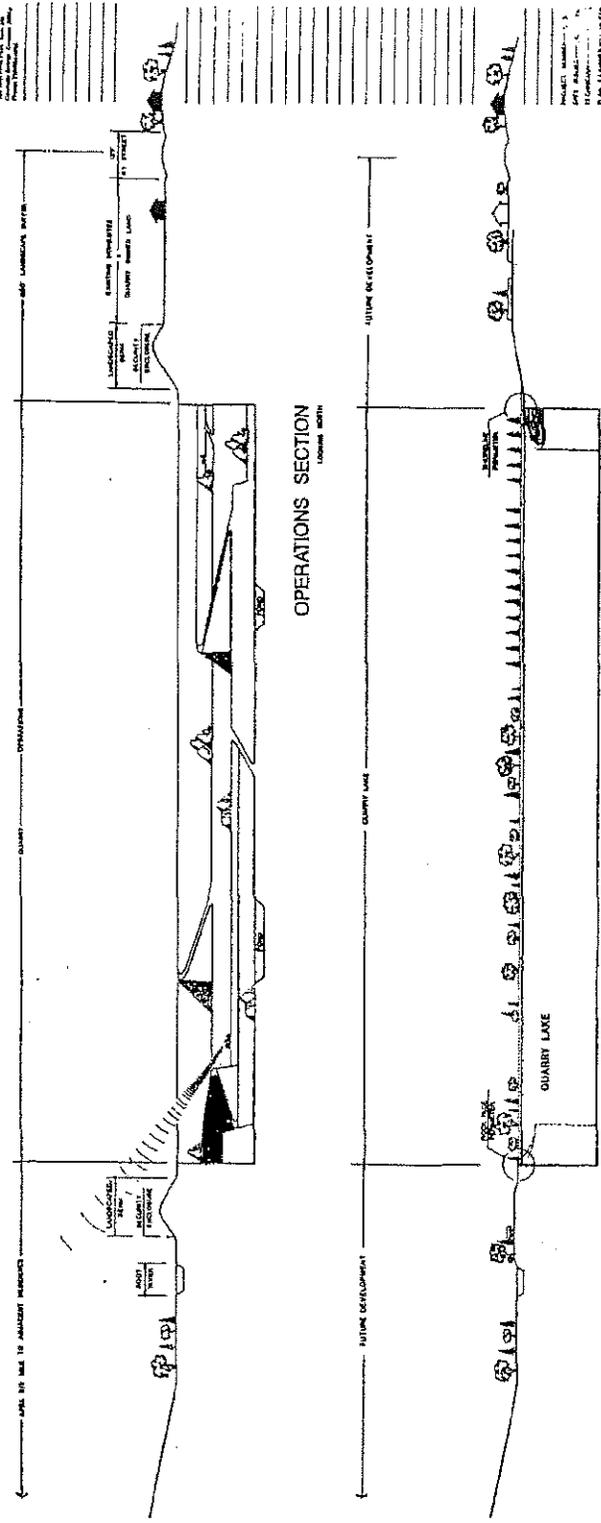


EXHIBIT 9

DETAILS OF THE  
 QUARRY  
 PLANNED  
 DEVELOPMENT  
 DISTRICT  
 CITY OF FRANKLIN WISCONSIN



GRAEF ANHALT SCHLOEMER  
 ENGINEERING, INC.  
 1000 W. WISCONSIN ST.  
 MILWAUKEE, WIS. 53233  
 TEL: 414-224-1100  
 FAX: 414-224-1101  
 WWW: WWW.GASCHLOEMER.COM



PROJECT NUMBER: 13  
 CITY: FRANKLIN, WI  
 DATE: 10/20/2010  
 PROJECT: QUARRY PLANNED DEVELOPMENT DISTRICT



SECTIONS



EXHIBIT 10

PROPERTY VALUE GUARANTEE AGREEMENT

This agreement (hereinafter referred to as the "Agreement") is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 1997, by and between Payne & Dolan, Inc., having its principal offices at P.O. Box 781, Waukesha, WI 53187 (hereinafter referred to as the "Guarantor"), and \_\_\_\_\_ residing at \_\_\_\_\_ (hereinafter individually or collectively referred to as the "Homeowner").

RECITALS

WHEREAS, Homeowner owns real property improved with an existing home located in proximity to the Guarantor's Franklin Quarry, the street address of which is \_\_\_\_\_, the tax key number of which is \_\_\_\_\_, and the legal description of which is attached to this Agreement as Exhibit A and incorporated herein by reference (such property being hereinafter referred to as the "Property"); and

WHEREAS, Guarantor desires to expand the area at its Franklin Quarry in which it can lawfully extract limestone pursuant to a proposed rezoning of Guarantor's real property to a quarry planned development classification (hereinafter referred to as the "Rezoning"); and

WHEREAS, certain individuals have expressed a concern that expansion of the extraction area at Guarantor's Franklin Quarry pursuant to the Rezoning will adversely affect the value of their homes; and

WHEREAS, Guarantor believes it has conclusively demonstrated that its existing quarry operations have not had any adverse impact on the property values of homes in the vicinity of its Franklin Quarry; and

WHEREAS, the Guarantor is confident that the physical improvements mandated by the Rezoning (such as the construction of naturalized and landscaped screening berms, and the relocation of Guarantor's crushing, processing, stockpiling and customer loading operations into the quarry pit to an elevation at least 150 feet below the top of rock by the year 2004), the imposition of very stringent municipal regulation of the quarry operations, and the relinquishment by the Guarantor of its valid nonconforming quarry

use rights, all of which will substantially reduce dust, noise and vibration, substantially improve the appearance of the quarry, and relieve the neighbors' uncertainty about what future conditions will be in the vicinity of the quarry, will more than offset any adverse impacts of expanding the extraction area; and

WHEREAS, Guarantor wishes to assure its neighbors and the City of Franklin that the Rezoning will not adversely affect the property values of homes located proximate to the extraction area expansion; and

NOW THEREFORE, in consideration of the mutual provisions of this Agreement, GUARANTOR AND HOMEOWNER HEREBY AGREED AS FOLLOWS:

1. Effective Date of Agreement. This Agreement shall become effective upon the occurrence of the last to occur of the following events:

- A. Passage of the ordinance adopting the Rezoning (hereinafter referred to as the "Rezoning Ordinance") by the Common Council of the City of Franklin;
- B. Publication of the Rezoning Ordinance within fifteen (15) days of passage in accordance with Wis. Stats. § 62.11(4);

- C. Acceptance of the Rezoning Ordinance by Guarantor in writing within sixty (60) days of passage; and
- D. The signing of this Agreement by Homeowner and Guarantor and the acknowledgement of their respective signatures.

2. Term of Agreement/Early Termination. This Agreement shall remain effective for a period of ten (10) years from and after the date of passage of the Rezoning Ordinance by the City of Franklin Common Council or one (1) year after the completion of the relocation of the Guarantors Crushing, Processing and Stockpiling Operation and Facilities to the quarry pit at least 150 feet below top of rock, whichever occurs first. (hereinafter referred to as the "End Date"); provided, however, that the term of this Agreement shall be extended beyond the End Date, until such time as Guarantor's payment obligations under Paragraphs 5 and 6 of this Agreement, if any, are completed, in the event that Homeowner has given timely notice of intent to exercise the guarantee pursuant to Paragraph 4 of this Agreement and the sale of the Property has not yet been closed; and further provided that this Agreement is subject to termination, prior to the End Date, as follows:

- A. This Agreement shall terminate upon written notice from Guarantor to Homeowner that the extraction provisions of the Rezoning Ordinance will not become effective and that Guarantor will not be expanding its quarry extraction operations into the Expansion Area pursuant to the terms of the Rezoning Ordinance (in the event of such termination, however, Guarantor shall promptly reimburse Homeowner for the cost of any appraisal ordered by Homeowner pursuant to Paragraph 4 of this Agreement prior to the date of termination).
- B. At the option of Guarantor, this Agreement may be terminated by Guarantor in the event that Homeowner breaches Paragraph 3 of this Agreement, upon written notice to Homeowner within thirty (30) days of Guarantor's obtaining knowledge of such breach.
- C. This Agreement shall automatically terminate upon the closing of any sale of the Property pursuant to this Agreement, provided that Guarantor has made any required payment to Homeowner.

3. Consent to Rezoning and Support of Quarry Operations In Accordance with Rezoning. Homeowner hereby waives any right that Homeowner might otherwise have had to protest, challenge, seek judicial or administrative review of, seek a hearing on, appeal or litigate, the Rezoning or the Rezoning Ordinance, the related special use and zoning permits, any governmental permits or approvals contemplated by the Rezoning Ordinance or Guarantor's application for any such permits or approvals, or participate in a sustained campaign against the Guarantor or any of Guarantor's permitted quarry-related activities.

Further, Homeowner shall not commence, file or maintain any legal action, special proceeding, appeal, request for hearing, request for judicial or administrative review, petition or protest with regard to the Rezoning or the Rezoning Ordinance, the related special use or zoning permits, any permits or approvals contemplated by the Rezoning Ordinance or the related special use and zoning permits or Guarantor's application for any such permits or approvals, or any of Guarantor's quarry-related activities which are in accordance and in compliance with the Rezoning Ordinance, the related special use and zoning permits or any permits or approvals contemplated by the Rezoning Ordinance or the related

special use permits, and also shall not participate in a sustained campaign against the Guarantor or any of Guarantor's permitted quarry-related activities.

In the event that Homeowner has commenced or filed any legal action, special proceeding, appeal, request for hearing, request for judicial or administrative review, petition or protest with respect to any of the matters dealt with in this Paragraph 3, Homeowner shall promptly dismiss with prejudice, without costs to any party, any such undertakings.

Nothing in this Paragraph 3 shall be construed to prohibit requests for information by Homeowner from, or expressions of individual concern by Homeowner directly to, any governmental entities or officials, nor to prohibit Homeowner from pursuing any rights or remedies Homeowner might have in the absence of this Agreement with respect to any violation by Guarantor of any of the restrictions or requirements of the Rezoning Ordinance, the related special use and zoning permits, or any of the governmental permits or approvals contemplated by the Rezoning Ordinance or the related special use permits.

4. Exercise of Guarantee. In the event that the Homeowner wishes to exercise the guarantee set out in this Agreement, Homeowner shall notify Guarantor of such intent in writing by certified mail prior to termination of this Agreement. After first reaching agreement with Guarantor on the asking price for the Property, Homeowner shall then attempt to sell the Property for a period of two hundred seventy (270) days in accordance with the requirements of this Agreement. (Such 270-day period shall commence with the publication of the first Sunday advertisement, if Homeowner is attempting to sell the Property without a broker, or upon the effective date of Homeowner's listing contract with a broker, and shall be tolled during the existence of any accepted offer to purchase which fails to close.) The Homeowner's obligation to attempt to sell the Property can be discharged in accordance with the provisions of this Agreement in either of two ways: (1) by advertising and attempting to sell the Property without the employment of a real estate broker, or (2) by entering into a residential listing contract with a licensed real estate broker. In either event, however, the asking price for the Property, as advertised by the Homeowner or as set out in the listing contract, shall be mutually agreed to in writing by the

Homeowner and the Guarantor. If the parties are unable to agree on the asking price for the Property, then the Homeowner shall retain, at Homeowner's expense, a qualified professional real estate appraiser who shall be instructed to determine the fair market value of the Property as follows:

- A. The appraiser shall assume that no quarry-related activities are being conducted at Guarantor's Franklin Quarry.
- B. The appraiser should select sales of comparable properties located a sufficient distance away from Guarantor's Franklin Quarry so that the selling price of such comparables was not, in the opinion of the appraiser, influenced by the presence of Guarantor's Franklin Quarry. (The appraiser shall be instructed, however, that he is free to determine that the quarry had no adverse impact on the selling price of any properties and that sales of property in very close proximity to the quarry are good comparables.)

- C. The use and zoning classification of the Property on the effective date of this Agreement shall be the sole factors to be used by the appraiser in determining the highest and best use of the Property.
- D. The appraisal should be of the form and substance of appraisals customarily used by mortgage lending institutions in the Milwaukee Metropolitan Area (i.e. Fannie Mae 10-25).
- E. The appraisal should be prepared in full compliance with any and all state standards or regulations which pertain to the preparation of an appraisal of the Property, and any and all ethical standards applicable to the appraiser, except those standards and regulations which are specifically preempted by these instructions.
- F. The appraiser shall note the condition of the Property, both interior and exterior, at the time of the appraisal.
- G. The appraiser shall be supplied with copies of the Rezoning Ordinance and the report on property

values prepared by John Raffensperger, M.A.I., dated December 24, 1996, for such use as the appraiser chooses to make of them.

If Guarantor accepts the appraised value, it shall become the agreed upon asking price, and Homeowner shall attempt to sell the Property in either of the two ways described above at such asking price.

If the Guarantor does not accept the first appraised value, it may retain, at its own expense, a qualified professional real estate appraiser who shall be similarly instructed to determine the fair market value of the Property. In such event, Homeowner shall then attempt to sell the Property in either of the two ways described above at an asking price equal to the arithmetic average of the two appraised values.

Notwithstanding the foregoing, if either the Homeowner or the Guarantor refuses to accept the arithmetic average of the first two appraised values, the non-accepting party may instruct the two previously-selected appraisers to choose a third qualified professional real estate appraiser to appraise the Property using the same instructions as previously given to the other appraisers, and the Homeowner shall attempt to sell the Property at an asking

price equal to the arithmetic average of the three appraised values. The appraisal fee for the third appraiser shall be paid by the party seeking the third appraisal.

For the purposes of this Agreement, "qualified professional real estate appraiser" shall mean a person who is unrelated to the parties, licensed as a real estate appraiser by the State of Wisconsin and who is a member of at least one national appraisal association.

If the Homeowner elects to attempt to sell the Property without a broker, the Homeowner shall place a "For Sale" sign on the Property, shall advertise the Property for sale in the Sunday classified section of the Milwaukee Journal/Sentinel each week during the 270-day period and shall use good faith and reasonable best efforts to sell the Property. Guarantor may, at its expense, supplement this advertising and undertake attempts to find a purchaser for the Property during this period.

Alternatively, if the Homeowner elects to use a real estate broker, Homeowner shall give Guarantor notice of the broker with whom Homeowner wishes to list the Property and shall obtain Guarantor's approval of such broker prior to signing the listing contract. Guarantor shall respond promptly, and Guarantor's

approval of a proposed broker not to be unreasonably withheld. If the Guarantor has objections, Guarantor shall state its objections in writing to the Homeowner. The broker shall be licensed in Wisconsin, not related to the Homeowner, and shall be a member of the Board of Realtors Multiple Listing Exchange, unless MLS membership is waived in writing by Guarantor. Both Guarantor and Homeowner shall act in good faith concerning any attempt to determine the fair market value and agreed upon asking price for the Property.

Any listing contract entered into by the Homeowner pursuant to this Agreement shall extend for a term of 270 days (which shall be tolled during the existence of any accepted offer to purchase which fails to close) and shall specifically provide: (1) that the broker shall list the Property in the multiple listing exchange and shall agree to keep the Property so listed until the occurrence of either the sale of the Property or the expiration of the listing contract; (2) that the broker shall not be entitled to any commission or other payments whether for broker's costs or otherwise in the event Guarantor purchases the Property at any time after the expiration of the listing contract, nor with respect to any payment by the Guarantor to the Homeowner pursuant to this

Agreement at any time; and (3) that the broker shall use good faith and reasonable best efforts to sell the Property. The Homeowner shall promptly provide the Guarantor with a copy of any listing contract entered into by Homeowner pursuant to this Agreement. The Homeowner shall cooperate with the broker in obtaining a purchaser pursuant to the terms set out in the listing contract and shall make all reasonable, good faith efforts necessary to conclude a sale pursuant to such terms. No provision hereunder shall be construed to grant Guarantor any option to purchase rights or rights of first refusal as against any potential third-party purchaser during the term of the listing contract.

5. Offers to Purchase. The Homeowner shall promptly provide the Guarantor with a copy of every offer to purchase (including any counteroffer) which Homeowner receives for the Property and shall not accept any such offer until the Guarantor has approved the offer. The Guarantor may approve of an offer to purchase at a price below the agreed upon asking price established by the procedure set out in Paragraph 4 of this Agreement. In such event, however, the Guarantor agrees to pay to the Homeowner, at the closing, the difference in cash between the selling price set

out in the accepted offer to purchase and the asking price established in Paragraph 4.

Similarly, the Guarantor may require that the price set out in the offer to purchase be countered with a specified amount, and, in the event that the potential buyer accepts the required counteroffer, the Guarantor agrees to pay to the Homeowner, at the closing, the difference, if any, in cash between the selling price set out in the accepted counteroffer and the asking price established in Paragraph 4.

6. Guaranteed Purchase After 270 Days. If the Homeowner has attempted to sell the Property under either of the methods provided in Paragraph 4 of this Agreement for a period of at least 270 days, then Homeowner may request, in writing, that the Guarantor purchase the Property.

The Homeowner shall provide Guarantor with proof of advertising for sale satisfying the requirements of this Agreement, or a copy of a listing contract satisfying the requirements of this Agreement, together with an affidavit of a good faith, reasonable-best-efforts attempt to sell the Property. Provided that the Homeowner has complied with the foregoing procedure, the Guarantor shall purchase the Property at the price established by the

procedure set out above in Paragraph 4, subject to the conditions set out below.

7. Evidence of Title. Within fifteen (15) days after making written request for Guarantor to purchase the Property, Homeowner shall provide to the Guarantor a commitment for a title insurance policy to be issued in the name of the Guarantor in the amount of the purchase price as provided above. After receipt of such commitment, the Guarantor shall have thirty (30) days to notify the Homeowner in writing of any defects in title which make the same unmerchantable. Any such defects shall be cured at the expense of the Homeowner. If any defect cannot be cured, and the Guarantor is unwilling to waive such defect, then the Guarantor shall have no obligation to purchase the Property and the Homeowner shall have no obligation to convey the Property.

8. Documents Required For Closing/Prorations/Closing Costs.

In the event that the Homeowner has merchantable title, the closing shall occur within sixty (60) days after Guarantor's receipt of the title commitment, or within sixty (60) days after the Homeowner cures any defects in the title to make it merchantable, whichever occurs first. The Homeowner shall convey the Property to the Guarantor by good and sufficient warranty deed,

free and clear of all liens and encumbrances, except municipal and zoning ordinances, recorded easements, recorded building and use restrictions and covenants, and general taxes levied in the year of closing. The Homeowner shall warrant and represent that Homeowner has neither notice nor knowledge of any:

- A. Planned or commenced public improvements which may result in special assessments or otherwise materially affect the Property.
- B. Government agency or court order requiring repair, alteration or correction of any existing condition.
- C. Underground storage tanks or any structural, mechanical, or other defects of material significance affecting the Property, including but not limited to inadequacy for normal residential use of mechanical systems, waste disposal systems and well, unsafe well water according to state standards, or the presence of any dangerous or toxic materials or conditions affecting the Property.
- D. Wetland and shoreland regulations affecting the Property.

Further, the Homeowner shall pay at closing all conveyancing costs typically paid by a seller, including but not limited to: real estate transfer tax, recording fees and title insurance. The Homeowner shall also execute, at closing, a standard affidavit as to liens and possession and shall provide lien waivers from all contractors, subcontractors and materialmen who have provided services or materials for the Property within six (6) months prior to closing. Real estate taxes for the year of closing shall be prorated based upon the real estate taxes assessed and levied for the prior year, and if the residential Property is a part of a larger tax parcel, then the tax proration shall be based upon the taxes for the improvement, plus the percentage of the taxes which approximates the percentage of the land comprising the Property compared to the total land included in the tax parcel. The Homeowner shall be responsible for and shall pay all utilities through the date of closing. Possession and physical occupancy of the Property shall be given to the Guarantor at closing. Prior to closing, the Homeowner shall give the Guarantor, or its agent, the right to inspect the Property for the purpose of determining the existence of any damage to the premises which may have occurred between the date of the first appraisal and the date of the

closing. The Homeowner shall be responsible for all damage in excess of normal wear and tear, and any claim for such damage shall be presented to the Homeowner prior to closing, or such claim shall be waived. The Homeowner shall repair such damage prior to closing, or the reasonable cost of such repair shall either be deducted from the sale price or, at Homeowner's option, be escrowed from the sales proceeds with a mutually acceptable non-party pending judicial determination of any dispute regarding liability therefore or cost thereof.

9. No Duplication. In the event that Vulcan Materials, which owns and operates a quarry immediately adjacent to the Guarantor's Franklin Quarry, offers to enter into an agreement with the Homeowner similar to this Agreement, and Homeowner does enter into such agreement with Vulcan Materials, Guarantor shall be relieved of making any payment to Homeowner which is a duplication of any payment made or to be made by Vulcan Materials with respect to the sale of the same Property that is the subject of this Agreement.

10. Costs of Curing Deficiencies or Defects in Title. Notwithstanding any other language in this Agreement apparently to the contrary, Guarantor shall not be responsible for paying

Homeowner for the cost of curing or eliminating any physical deficiencies or defects in title not taken account of in establishing the agreed upon asking price.

11. Assignment or Transfer. Neither this Agreement nor the rights under it may be assigned, conveyed or otherwise transferred by the Homeowner. This Agreement between Guarantor and Homeowner is personal, and does not run with the land; provided, however, that this Agreement shall inure to the benefit of and be binding upon the Homeowner, any personal representatives, trustees, guardians or custodians of the Homeowner, while Homeowner owns the Property, and any heirs of Homeowner who take title to the Property by will or intestacy (all of whom shall be deemed to be included in any reference in this Agreement to Homeowner) but, in all events, this Agreement shall terminate in accordance with the provisions of Paragraph 2 of this Agreement.

12. No Implied Waiver/Construction. It is expressly understood and agreed by the parties that by entering into this Agreement, they do not waive any rights they might otherwise have at law or at equity except as expressly stated herein and that as to construction or enforcement of this Agreement, the laws of the State of Wisconsin shall apply.

13. Notice. All notices required by or relating to this Agreement shall be in writing. Each notice shall specifically refer to this Agreement by name ("Property Value Guarantee Agreement"). Any such notice shall be delivered in person to the recipient or shall be mailed to the recipient by first class mail, unless mailing by certified mail, return receipt requested is specifically required by this Agreement. Each notice to Guarantor shall be addressed as follows:

Payne & Dolan, Inc.  
Attn: Franklin Quarry Manager, Wisconsin  
P.O. Box 781  
Waukesha, WI 53187

Each notice to Homeowner shall be addressed as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Each party may change its address (or add addresses for facsimile, electronic mail or other communications media) for purposes of this Agreement by written notice to the other party in accordance with this paragraph. Each such notice shall be effective upon delivery in person, or upon mailing, or upon actual receipt without regard to the method of delivery or transmission, whichever occurs first.

GUARANTOR

PAYNE & DOLAN, INC.

BY: \_\_\_\_\_  
Signature

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Signature

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1997 by \_\_\_\_\_ and \_\_\_\_\_ as \_\_\_\_\_ and \_\_\_\_\_, respectively, of Payne & Dolan, Inc.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

[SEAL]

HOMEOWNER

\_\_\_\_\_  
Signature

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

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

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

Date: \_\_\_\_\_



EXHIBIT 11

PAYNE & DOLAN PROPERTY VALUE GUARANTEE

<i>Northeast 1/4 of Section 10</i>	
757-9975-000	6331 W. Rawson Ave.
757-9978-000	6600 W. Root River Dr.
757-9979-000	6550 W. Root River Dr.
757-9982-000	6545 W. Root River Dr.
757-9984-000	7270 S. Hillside Dr.
757-9985-000	7260 S. Hillside Dr.
757-9986-000	6601 W. Root River Dr.
757-9987-001	6725 W. Root River Dr.
757-9989-000	7228 S. 68th St.
757-9990-000	7236 S. 68th St.
757-9991-000	7242 S. 68th St.
757-9992-000	7261 S. Hillside Dr.
757-9993-000	7270 S. 68th St.
757-9995-000	7410 S. 68th St.
757-9996-000	7430 S. 68th St.
757-9997-000	7460 S. 68th St.
757-9998-000	7470 S. 68th St.
<i>Southeast 1/4 of Section 10</i>	
790-0001-000	7765 S. 66th St.
790-0002-000	7777 S. 66th St.
790-0003-000	7789 S. 66th St.
790-0004-000	6658 W. Robinwood Ln.
790-0005-000	6670 W. Robinwood Ln.
790-0006-000	6682 W. Robinwood Ln.
790-0007-000	6695 W. Robinwood Ln.
790-0008-000	6683 W. Robinwood Ln.
790-0009-000	6669 W. Robinwood Ln.
790-0010-000	6655 W. Robinwood Ln.
790-0011-000	6647-6649 W. Robinwood Ln.
790-0012-000	6633-6635 W. Robinwood Ln.
790-0013-000	6619-6621 W. Robinwood Ln.
790-0014-000	7821-7823 S. 66th St.
790-0015-000	7835-37 S. 66th St.
790-0016-000	6618-6620 W. Charles Ct.
790-0017-000	6632-6634 W. Charles Ct.
790-0018-000	6646-6648 W. Charles Ct.
790-0019-000	6660-6662 W. Charles Ct.
790-0020-000	7818 S. 68th St.

790-0021-000	6674-6676 W. Charles Ct.
790-0022-000	6685-6688 W. Charles Ct.
790-0023-000	6671-6673 W. Charles Ct.
790-0024-000	6657-6659 W. Charles Ct.
790-0025-000	6643-6645 W. Charles Ct.
790-0026-000	6629-6631 W. Charles Ct.
790-0027-000	6615-6617 W. Charles Ct.
790-0028-000	7863-7865 S. 66th St.
790-0029-000	7764 S. 66th St.
790-0030-000	7776 S. 66th St.
790-0031-000	6608 W. Robinwood Ln.
790-0032-000	6600 W. Robinwood Ln.
790-0033-000	7814 S. 66th St.
790-0034-000	7828-7830 S. 66th St.
790-0035-000	7842-7844 S. 66th St.
790-0036-000	7856-7858 S. 56th St.
790-0037-000	7870-7872 S. 56th St.
790-9994-002	7520 S. 68th St.
790-9995-001	7540 S. 68th St.
790-9995-002	7552 S. 68th St.
790-9996-000	7660 S. 68th St.
790-9997-000	7668 S. 68th St.
<i>Southeast 1/4 of Section II</i>	
788-0001-000	7842 Stonebrook Ct.
788-0002-000	7834 Stonebrook Ct.
788-0003-000	7826 Stonebrook Ct.
788-0004-000	7818 Stonebrook Ct.
788-0005-000	7810 Stonebrook Ct.
788-0006-000	7802 Stonebrook Ct.
788-0007-000	7801 Stonebrook Ct.
788-0008-000	7809 Stonebrook Ct.
788-0009-000	7817 Stonebrook Ct.
788-0010-000	7825 Stonebrook Ct.
788-0011-000	7833 Stonebrook Ct.
788-9981-000	7501 S. 49th St.
788-9982-000	7508 S. 51st. St.
788-9983-000	7526 S. 51st St.
788-9984-000	7582 S. 51st St.
788-9985-000	7610 S. 51st. St.
788-9986-008	7716 S. 51st St.
788-9987-000	7630 S. 51st St.

788-9988-000	7636 S. 51st St.
788-9990-000	7770 S. 51st St.
788-9991-000	7812 S. 51st St.
788-9992-006	7852-7856 S. 51st St.
788-9992-007	5066-5070 W. Drexel Ave.
788-9992-008	7830 S. 51st St.
788-9992-009	7846 S. 51st St.
788-9994-000	4802 W. Drexel Ave.
788-9995-000	4720 W. Drexel Ave.
788-9996-009	4714 W. Drexel Ave.
<i>Southwest 1/4 of Section II</i>	
789-9989-000	7575 S. 51st St.
789-9991-002	5704 W. Drexel Ave.
789-9994-000	7801 S. 51st St.
789-9999-000	7877 S. 51st St.
<i>Northwest 1/4 of Section 14</i>	
806-0001-000	5940 W. Allwood Dr.
806-0002-000	5920 W. Allwood Dr
806-0003-000	5910 W. Allwood Dr.
806-0004-000	5832 W. Allwood Dr
806-0005-000	5816 W. Allwood Dr.
806-0007-000	5740 W. Allwood Dr
806-0008-000	5720 W. Allwood Dr.
806-0009-000	5700 W. Allwood Dr
806-0010-000	5670 W. Allwood Dr
806-0011-000	5650 W. Allwood Dr.
806-0012-000	5630 W. Allwood Dr
806-0013-000	5610 W. Allwood Dr.
806-0014-000	5560 W. Allwood Dr
806-0015-000	7947 S. 56th St.
806-0016-000	7967 S. 56th St.
806-0017-000	7981 S. 56th St.
806-0018-000	8001 S. 56th St.
806-0019-000	8013 S. 56th St.
806-0020-000	8027 S. 56th St.
806-0021-000	8043 S. 56th St.
806-0022-000	8057 S. 56th St.
806-0023-000	8071 S. 56th St.
806-0024-000	8087 S. 56th St.
806-0025-000	8088 S. 57th St.

806-0026-000	8072 S. 57th St.
806-0027-000	8058 S. 57th St.
806-0028-000	8044 S. 57th St.
806-0029-000	8028 S. 57th St.
806-0030-000	8014 S. 57th St.
806-0031-000	8000 S. 57th St.
806-0032-000	7982 S. 57th St.
806-0033-000	7966 S. 57th St.
806-0034-000	7946 S. 57th St.
806-0035-000	7947 S. 57th St.
806-0036-000	7969 S. 57th St.
806-0037-000	7985 S. 57th St.
806-0038-000	8001 S. 57th St.
806-0039-000	8017 S. 57th St.
806-0040-000	8031 S. 57th St.
806-0041-000	8047 S. 57th St.
806-0042-000	8061 S. 57th St.
806-0043-000	8075 S. 57th St.
806-0044-000	8091 S. 57th St.
806-0045-000	8090 S. 58th St.
806-0046-000	8074 S. 58th St.
806-0047-000	8060 S. 58th St.
806-0048-000	8046 S. 58th St.
806-0049-000	8030 S. 58th St.
806-0050-000	8016 S. 58th St.
806-0051-000	8000 S. 58th St.
806-0052-000	7984 S. 58th St.
806-0053-000	7968 S. 58th St.
806-0054-000	7946 S. 58th St.
806-0055-000	5801 W. Allwood Dr.
806-0056-000	7967 S. 58th St.
806-0057-000	7981 S. 58th St.
806-0058-000	8001 S. 58th St.
806-0059-000	8013 S. 58th St.
806-0060-000	8027 S. 58th St.
806-0061-000	8043 S. 58th St.
806-0062-000	7957 S. 58th St.
806-0063-000	7971 S. 58th St.
806-0064-000	7987 S. 58th St.
806-0065-000	5860 W. Beacon Hill Dr.
806-0066-000	8072 S. 59th St.
806-0067-000	8058 S. 59th St.

806-0068-000	8044 S. 59th St.
806-0069-000	8028 S. 59th St.
806-0070-000	8014 S. 59th St.
806-0071-000	8002 S. 59th St.
806-0072-000	7982 S. 59th St.
806-0073-000	7966 S. 59th St.
806-0074-000	7942 S. 59th St.
806-0075-000	5911 W. Allwood Dr.
806-0076-000	7969 S. 59th St.
806-0077-000	7985 S. 59th St.
806-0078-000	8001 S. 59th St.
806-0079-000	8017 S. 59th St.
806-0080-000	8031 S. 59th St.
806-0081-000	8047 S. 59th St.
806-0082-000	8061 S. 59th St.
806-0083-000	8075 S. 59th St.
806-0084-000	8091 S. 59th St.
806-0085-000	8090 S. 60th St.
806-0086-000	8074 S. 60th St.
806-0087-000	8060 S. 60th St.
806-0088-000	8046 S. 60th St.
806-0089-000	8030 S. 60th St.
806-0090-000	8016 S. 60th St.
806-0091-000	8000 S. 60th St.
806-0092-000	7984 S. 60th St.
806-0093-000	7968 S. 60th St.
806-0094-000	5937 W. Allwood Dr.
806-0095-000	8103 S. 56th St.
806-0109-000	8102 S. 57th St.
806-0110-000	8101 S. 57th St.
806-0132-000	8100 S. 58th St.
806-0133-000	8103 S. 58th St.
806-0161-000	8102 S. 59th St.
806-0162-000	8101 S. 59th St.
806-0189-000	5937 W. Beacon Hill Dr.
806-0216-000	8070 55th St.
806-0218-000	8040 55th St.
806-0219-000	8028 55th St.
806-0223-000	7936 S. 55th St.
806-0227-000	5536 W. Allwood Dr.
806-0230-000	7980 S. 56th St.
806-0233-000	8034 S. 56th St.

806-0235-000	8060 S. 56th St.
806-0236-000	5538 W. Beacon Hill Dr.
806-0237-000	8071 55th St.
806-0238-000	8057 55th St.
806-0240-000	8029 55th St.
806-0241-000	8015 55th St.
806-0242-000	8001 55th St.
806-0245-000	5521 W. Allwood Dr.
806-9992-001	7909 S. 51st St.
806-9993-001	5123 W. Drexel Ave.
806-9994-001	7909 S. 51st St.
806-9995-002	8051 S. 51st St.
806-9996-000	8021 S. 51st St.
<i>Northeast 1/4 of Section 15</i>	
805-0001-000	6007 W. Allwood Dr.
805-0002-000	6023 W. Allwood Dr
805-0003-000	6039 W. Allwood Dr
805-0004-000	7950 S. 61st St.
805-0005-000	6072 W. Hillside Ct.
805-0006-000	6050 W. Hillside Ct.
805-0007-000	6028 W. Hillside Ct.
805-0008-000	6006 W. Hillside Ct.
805-0009-000	6005 W. Hillside Ct.
805-0010-000	6027 W. Hillside Ct.
805-0011-000	6049 W. Hillside Ct.
805-0012-000	6071 W. Hillside Ct.
805-0013-000	8038 S. 61st St.
805-0014-000	6036 W. Beacon Hill Pl.
805-0015-000	6020 W. Beacon Hill Pl.
805-0016-000	6004 W. Beacon Hill Pl.
805-0017-000	7901 S. 60th St.
805-0018-000	6024 W. Allwood Dr.
805-0019-000	6040 W. Allwood Dr.
805-0020-000	6056 W. Allwood Dr.
805-0021-000	6072 W. Allwood Dr.
805-0022-000	7931 S. 61st St.
805-0023-000	7947 S. 61st St.
805-0024-000	7963 S. 61st St.
805-0025-000	7979 S. 61st St.
805-0026-000	8013 S. 61st St.
805-0027-000	8029 S. 61st St.

805-0028-000	8045 S. 61st. St.
805-0029-000	6083 W. Beacon Hill Pl.
805-0030-000	6067 W. Beacon Hill Pl.
805-0031-000	6051 W. Beacon Hill Pl.
805-0032-000	6035 W. Beacon Hill Pl.
805-0033-000	6019 W. Beacon Hill Pl.
805-0034-000	6003 W. Beacon Hill Pl.
805-0041-000	6073 W. Glen Ct.
805-0042-000	6067 W. Glen Ct.
805-0043-000	6067 W. Glen Ct.
805-0044-000	6055 W. Glen Ct.

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