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STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

ORDINANCE NO. 97- 1456

AN ORDINANCE TO CREATE SECTION 13.26 OF THE ZONING CODE,
ORDINANCE NO. 221, ESTABLISHING
PLANNED DEVELOPMENT DISTRICT NO. 23
(Limestone Quarry and Mixed Use)

AND TO REZONE A PARCEL OF LAND FROM R-6 SINGLE FAMILY RESIDENTIAL
DISTRICT, M-2 GENERAL INDUSTRIAL DISTRICT, M-3 QUARRYING
DISTRICT, FW FLOODWAY DISTRICT, FC FLOODPLAIN CONSERVANCY, FFO
FLOODPLAIN FRINGE OVERLAY DISTRICT, C-1 CONSERVANCY, AND A-1
AGRICULTURAL DISTRICT TO PLANNED DEVELOPMENT DISTRICT NO. 23, FW
FLOODWAY DISTRICT, FC FLOODPLAIN CONSERVANCY, FFO FLOODPLAIN
FRINGE OVERLAY DISTRICT.

PROPERTY LOCATION: 6211 West Rawson Avenue

WHEREAS, the Common Council of the City of Franklin (the
"City") initiated on December 3, 1996 consideration of a rezoning
of property owned by Payne & Dolan, Inc. (the "Operator"), having
corporate offices at N3 W23650 Badinger Road, Waukesha, WI 53187,
to a planned development district (limestone quarry and mixed
use); and

WHEREAS, the Common Council also initiated on December 3,
1996 consideration of a related rezoning of property located
immediately north and east of the Operator's property, owned by
Vulcan Materials Company ("Vulcan"), having regional division
offices at 747 East 22nd Street, Suite 200, Lombard, Illinois
60148, to a planned development district (limestone quarry and
mixed use); and

WHEREAS, the City Plan Commission and Common Council
extensively considered a proposed planned development rezoning of
the properties owned by Operator and Vulcan in 1995;

WHEREAS, the purpose of a planned development zoning district is to provide flexible site design and control and to accommodate different land uses within a single zoning district; and

WHEREAS, a public hearing on the proposed planned development rezoning of the Operator's property and Vulcan's property was held on February 13, 1997 before the City Plan Commission, pursuant to the requirements of Section 62.23 of the Wisconsin Statutes and of the City Zoning Code, Ordinance No. 221 and ordinances supplementary thereto and amendatory thereof; and

WHEREAS, the property of the Operator which is proposed to be rezoned from its present zoning to a planned development district (the "Property") is legally described in Exhibit 1, which is attached hereto and incorporated herein by reference; and

WHEREAS, the City Plan Commission and Common Council have found that a limestone quarry operation has been existent on the Property since at least 1940, and that the number of residential dwelling units in the vicinity of the Property has increased substantially since that time, and have further found that the quarry Operator in recent years has voluntarily imposed on itself restrictive operating guidelines to mitigate any potential negative impacts of the extraction and related quarry operations on the growing residential area in the vicinity of the Property; and

WHEREAS, the City Plan Commission has voted to amend the Comprehensive Master Plan of the City to incorporate Exhibits 6, 7 and 9 of this Ordinance as the official plan map for the Property, conditioned on adoption of this Ordinance by the Common Council; and

WHEREAS, the City Plan Commission has voted to recommend this ordinance and the proposed Planned Development District No. 23 to the Common Council; and

WHEREAS, the City Plan Commission and Common Council have found that this Ordinance No. 97-1456 this "Ordinance") and the proposed Planned Development District No. 23 conform to and

satisfy the standards for approval of a planned development district, as stated in Section 13.3 of Ordinance No. 221; and

WHEREAS, the City Plan Commission and Common Council have found that this Ordinance and the proposed Planned Development District No. 23 impose controls and restrictions on the Operator's extraction and related quarry operations which will provide for and protect the public health, safety and welfare and will satisfactorily mitigate any potential negative impacts of such uses on surrounding properties; and

NOW, THEREFORE, the Common Council of the City of Franklin, does hereby ordain as follows:

SECTION .01 The Official Zoning Map adopted as part of Ordinance No. 221 is hereby amended as follows:

"The Zoning Districts for the Property described on Exhibit 1 are hereby changed from R-6 Single Family Residential District, M-2 General Industrial District, M-3 Quarrying District, C-1 Conservancy District, FW Floodway District, FC Floodplain Conservancy, FFO Floodplain Fringe Overlay District, and A-1 Agricultural District, to Planned Development District No. 23 (Limestone Quarry and Mixed Use). Notwithstanding the Planned Development District classification, the areas of the Property previously zoned FW Floodway District and FFO Floodplain Fringe Overlay District shall continue to be shown as such on the Official Zoning Map, subject to the regulations of section 13.26 of the City Zoning Code, Ordinance No. 221 creating and providing for Planned Development District No. 23."

SECTION .02 The City Zoning Code, Ordinance No. 221, is hereby amended to create Section 13.26 entitled "Planned Development District No. 23," which states as follows:

13.26 PLANNED DEVELOPMENT DISTRICT NO. 23

A. Exhibits

1. The exhibits described below, which are plans and other materials submitted by the Operator with respect to the proposed rezoning, are attached hereto and hereby made part of this Ordinance:
 - a. Exhibit 1: Legal description of the properties rezoned to Planned Development District No. 23.
 - b. Exhibit 2: Title Sheet, prepared by Graef, Anhalt, Schloemer & Associates, Inc., designated by the letter A in the lower right-hand corner.
 - c. Exhibit 3: Existing Zoning Map, prepared by Graef, Anhalt, Schloemer & Associates Inc., designated by the letter B in the lower right-hand corner.
 - d. Exhibit 4: Plat of Existing Site, prepared by Graef, Anhalt, Schloemer & Associates Inc., designated by the letter C in the lower right-hand corner.
 - e. Exhibit 5: October 20, 1996 aerial photograph showing existing conditions, designated by the letter D in the lower right-hand corner.
 - f. Exhibit 6: Overview of Planned Development Highlights prepared by Graef, Anhalt, Schloemer & Associates, Inc., designated by the letter E in the lower right-hand corner.
 - g. Exhibit 7: 2004 Operations Plan, prepared by Graef, Anhalt, Schloemer & Associates, Inc., designated by the letter F in the lower right-hand corner.

- h. Exhibit 8: Conceptual Restoration Plan, prepared by Graef, Anhalt, Schloemer & Associates Inc., designated by the letter G in the lower right-hand corner.
- i. Exhibit 9: Sections, prepared by Graef, Anhalt, Schloemer & Associates, Inc., designated by the letter H in the lower right-hand corner.
- j. Exhibit 10: Property Value Guarantee Agreement.
- k. Exhibit 11: Property Value Guarantee Tak Key Number List of Eligible Properties.

2. The uses and operations on the Property shall conform to the regulations set forth in this Ordinance. The development of the Nonextraction Area shall be in substantial conformance with the location and layout of improvements shown on Exhibit 7, which the City recognizes are conceptual and schematic in nature. The City recognizes that the limestone resource being quarried by the Operator is variable in terms of its thickness, quality, depth of overburden and other geologic and stratigraphic characteristics, and that the projected elevations, locations and arrangements of ramps, benches and other mining structures as are generally and schematically depicted in Exhibit 7 are not exact and are subject to nonmaterial design modifications as detailed mine plan development and actual mining progresses. Except as is otherwise specifically stated in this Ordinance, the development of the Extraction Area and the location and layout of operations and facilities in the Extraction Area shall be at the discretion of the Operator.

B. Definitions. The following definitions shall apply to this Ordinance:

1. Ancillary Operations and Facilities: Operations and facilities on the Property relating to the Quarry-Related Operations and Facilities and/or to the Nonquarry Related Operations and Facilities that are necessary supporting uses not otherwise specifically referred to, such as electric power, water supply, sewerage and drainage systems and the use, construction, installation, alteration, relocation and maintenance of all related accessory structures, equipment and features.
2. Asphalt Plant Operations and Facilities: The operations and facilities on the Property involved in combining and processing raw and/or recycled materials into an asphaltic pavement material and the selling of such product to customers, including the use, construction, installation, alteration, relocation and maintenance of all related accessory structures and equipment, the loading, hauling, dumping, mixing, processing, storage and stockpiling of all related accessory materials and product, and related accessory uses and facilities. The asphalt plant is currently located on grade in the area previously zoned M-3 Quarrying District, pursuant to previously issued special use permits.
3. Berm Building and Maintenance Operations and Facilities: The process of building, landscaping and maintaining berms to screen the Extraction and other Quarry-Related Operations and Facilities, including the use, construction, installation, alteration, relocation and maintenance of all related accessory structures and equipment, and the loading, hauling, dumping, storage, stockpiling of related accessory materials, and the planting and maintenance of landscaping, and related accessory uses and facilities.
4. City: The incorporated municipality of the City of Franklin, Milwaukee County, State of Wisconsin.

5. Concrete Ready-Mix Plant Operations and Facilities: The operations and facilities on the Property involved in the mixing and processing of component materials into a portland cement concrete mixture, and the selling of product to customers, including the use, construction, relocation, alteration, installation and maintenance of all related accessory structures and equipment, the loading, hauling, dumping, mixing, processing, storage and stockpiling of all related accessory materials and product, and related accessory uses and facilities.
6. Crushing, Processing and Stockpiling Operations and Facilities: ~~The Operator's~~ crushing, processing and stockpiling operations and facilities on the Property, including all crushing operations and the use, construction, installation, alteration, relocation and maintenance of all primary, secondary, tertiary, recycling and other crushers, all conveyors involved in processing operations, and all related accessory structures and equipment; all sizing, sorting, mixing, washing, beneficiating and other processing operations, and the loading, hauling, dumping, conveying, storage and stockpiling of extracted and processed material and product, and the use, construction, installation and maintenance of all related accessory structures and equipment; all product recycling operations, and all related accessory loading, hauling, dumping, conveying, sizing, mixing, sorting, washing, beneficiating and other related accessory processing, storage and stockpiling of materials and product, and the use, construction, installation, alteration, relocation and maintenance of all related accessory structures and equipment; and related accessory uses and facilities. Operator's Crushing, Processing and Stockpiling Operations and Facilities do not include the Retail Topsoil Processing and Aggregates Operations and Facili-

ties, or the Asphalt Plant Operations and Facilities, or the Concrete Ready-Mix Plant Operations and Facilities, or the Berm Building and Maintenance Operations and Facilities, or the Stripping Operations and Facilities. Operator's crushing operations and facilities are currently located on and below grade in the area of the Property previously zoned M-3 Quarrying District and outside the Property and west of the Root River in the area zoned A-1 Agricultural District. Operator's processing operations and facilities are currently located on and below grade in the areas of the Property previously zoned M-3 Quarrying District and, west of the Root River in the area zoned A-1 Agricultural District. Operator's stockpiling operations and facilities are currently located on and below grade in the areas of the Property previously zoned M-3 Quarrying District, and west of the Root River in the area zoned A-1 Agricultural District.

7. Extraction: The process of mining and removing the limestone natural resource by any method, including drilling and blasting, excavating and other means.
8. Extraction Area: Location of the permitted Extraction activity on the Property within the setbacks established in subsection R of this Ordinance.
9. Extraction Operations and Facilities: The process of mining and removing the limestone natural resource on the Property by any method, including drilling and blasting, excavating, and other means, and the related accessory use and storage of explosives, the related accessory dewatering of the quarry, the related accessory use, storage and maintenance of equipment and materials, the related accessory loading, hauling, conveyance, dumping and storage of shot rock, and the related accessory use, construction, installation, altera-

tion, relocation and maintenance of accessory related haul roads, ramps, sumps and settling basins, catch benches, conveyors, drain pipes and channels and similar features, structures and equipment, and related accessory uses and facilities.

10. Financial Assurance: The performance bond, letter of credit, demonstration of financial responsibility by meeting net worth requirements, or a combination of any of the such forms of financial assurance, or such other reasonable forms of financial assurance as may be acceptable to the City, conditioned on the faithful performance by the Operator of reclamation requirements prescribed by this Ordinance, and provided to the City by the Operator pursuant to this Ordinance.
11. Floor of the Extraction Area: Any mined level within the Extraction Area that is at least 150 feet below the top of rock.
12. Maintenance and Staging Operations and Facilities:
The Operator's maintenance and staging operations and facilities , which are currently located on grade in the area previously zoned M-3 Quarrying District and outside the Property, in the vicinity of the Root River in the area previously zoned A-1 Agricultural District, and which will be relocated on grade East of the Root River in the vicinity of Rawson Avenue and may be relocated to the Floor of the Extraction Area at the Operator's discretion, at any time , including, without limitation, the following functions and the use, construction, installation, alteration, relocation and maintenance of all related accessory structures, equipment and materials: equipment maintenance, equipment and materials storage, vehicle wash, scale house, product quality control, fuel island, employee locker, washroom and lunchroom, and employee parking, and related accessory uses and facilities.

13. Nonextraction Area: That part of the Property located outside of the Extraction Area.
14. Nonquarry-Related Operations and Facilities: All uses, operations and facilities on the Property, other than Quarry-Related Operations and Facilities, which are existent or approved by the City, including existing residences, recreational trail, approved wetlands mitigation, subject to approval requirements, and related accessory uses and facilities.
15. Office and Sales Operations and Facilities: The office and customer sales operations and facilities of the Operator, which are currently located outside of the Property, on grade in the area previously zoned A-1 Agricultural District, west of the Root River, which will be relocated on grade East of the Root River in the vicinity of Rawson Avenue and may be relocated to the Floor of the Extraction Area in the Operator's discretion, at any time, including the use, construction, installation, alteration, relocation and maintenance of offices of supervisory, sales and clerical personnel, the sale of product to customers, related facilities such as ticket house, scale, and wheel wash, related employee and customer parking and circulation facilities, and the use, construction, installation, alteration, relocation and maintenance of all related accessory structures and equipment, the loading and hauling of product, and related accessory uses and facilities.
16. Operator: Payne & Dolan, Inc., its subsidiaries, successors or assigns, while an owner or operator of the Property.
17. Property: The real property owned or to be acquired by Payne & Dolan, Inc. and included within Planned Development District No. 23, which is legally described on Exhibit 1.

18. Quarry-Related Operations and Facilities: The quarry-related uses, operations and facilities on the Property include all approved uses, operations and facilities on the Property having any relationship with the Operator's limestone quarry, including, without limitation: Stripping Operations and Facilities, Berm Building and Maintenance Operations and Facilities; Extraction Operations and Facilities; Crushing, Processing and Stockpiling Operations and Facilities; Maintenance and Staging Operations and Facilities; Office and Sales Operations and Facilities; Asphalt Plant Operations and Facilities; Concrete Ready-Mix Plant Operations and Facilities; Retail Topsoil Processing and Aggregates Operations and Facilities; Reclamation Operations and Facilities; Ancillary Operations and Facilities; and related accessory uses and facilities.
19. Reclamation Operations and Facilities: The uses, operations and facilities required to make the portions of the Property outside of the quarry suitable for appropriate end-use development and to provide suitable public access to the lake formed by the filling of the quarry, and related accessory uses and facilities.
20. Retail Topsoil Processing and Aggregates Operations and Facilities: The retail topsoil processing and aggregates operations and facilities on the Property, the related accessory selling of product to customers, the related accessory loading, hauling, mixing, processing, storage and stockpiling of materials and product, and the use, construction, installation, alteration, relocation and maintenance of all related accessory structures and equipment, and related accessory uses and facilities. These operations and facilities are currently located on grade near the southeastern corner of Vulcan's property, in the area previously zoned M-2 General Industrial

District, and are currently occupied and operated by Vulcan's tenant.

21. Stripping Operations and Facilities: The process of removing the overburden to gain access to the minable limestone, and the use, construction, installation, alteration, relocation and maintenance of all related accessory structures and equipment, and the loading, hauling, dumping, storage and stockpiling of stripped material, and related accessory uses and facilities.
22. Vulcan: Vulcan Materials Company, its subsidiaries, successors or assigns, while an owner or operator of the quarry property located ~~immediately east and north of the Property~~

C. Purposes and Uses:

1. The purposes of the limestone quarry and mixed uses planned development district established by this Ordinance are to address the existence of a limestone quarry and related accessory land uses adjacent to existing and developing residential land uses and business uses and to recognize the nature of the diminishing asset use amortization over time relatively unique to mineral extraction, requiring reclamation and different future uses of quarried lands, for the purpose of promoting the health, safety and general welfare of the community; to secure safety from panic, fear and other dangers to persons or property; to provide for adequate and safe air and to encourage the protection of groundwater resources; to facilitate the adequate provision of transportation, water, parks and other public requirements; and to provide for limestone quarry or mixed use regulations, considering the character and development history of the area and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land, which regulations will over a period of time, tend

to promote the maximum benefit to the district and to the community from coordinated area site planning, diversified location of structures and mixed compatible uses.

2. The uses authorized under this Ordinance, as defined under subsection B, above, are as follows:
 - a. The Quarry-Related Operations and Facilities on the Property are permitted subject to and in accordance with the provisions of this Ordinance.
 - b. The Nonquarry-Related Operations and Facilities on the Property are permitted subject to and in accordance with the provisions of this Ordinance.
 - c. The Ancillary Operations and Facilities are permitted subject to and in accordance with any applicable provisions of this ordinance.
 - d. The Uses permitted by this Ordinance on grade, outside the quarry pit, shall remain subject to all other applicable ordinances to the same extent as other permitted uses under the City Municipal and Zoning Codes, as amended, i.e., building permit, zoning compliance permit, site plan approval and other applicable regulations. The terms and provisions of this ordinance shall not be construed as a waiver of such other applicable ordinances. The uses permitted by this Ordinance within the quarry pit, in light of the continuing development and movement of operations and facilities, and the protected location of such operations and facilities shall not be subject to such ordinances except as is specifically required by this Ordinance. Notwithstanding any other language of this Ordinance apparently to the contrary, the operator shall not be required to apply for or obtain any such permits or approvals to continue its operations on land where it could lawfully conduct such operations prior to the date of adoption of this Ordinance or to continue using structures or

other facilities which it could lawfully use prior to such date.

D. Compliance With Other Laws.

The Operator shall comply with all State and Federal statutes, rules, regulations, orders, and laws, as amended from time to time, to the extent they are applicable to the Operator's use of the Property and its operations thereon and pertinent to the purposes of this Ordinance. The Operator shall comply with all applicable City ordinances which are not inconsistent with the provisions of this Ordinance.

E. Financial Assurance.

1. Prior to the Effective Date of the portions of this Ordinance affecting the Extraction Area, the Operator shall provide Financial Assurance to the City in the form of a performance bond in the amount of \$200,000, written by a company licensed to write such bonds in the State of Wisconsin and conditioned upon the faithful performance of the Operator's obligations under this Ordinance for which Financial Assurance is specifically required. The performance bond shall remain in effect at all times until the reclamation obligations to be secured by the bond are satisfied. The form of performance bond shall be subject to the approval of the Common Council, which approval shall not be unreasonably withheld.
2. The type and amount of the Financial Assurance required by this Ordinance may be amended by the Common Council after Plan Commission review at the time of approval of the detailed reclamation plan provided for in subsection S of this Ordinance, or in the event of a substantial change of circumstances relating to the Operator or the uses and operations contemplated hereunder, or to ensure that the purchasing power of the Financial Assurance required hereunder has not been materially diluted by the effects of inflation, so that the City shall remain secure at all times that the Operator's secured obligations will be satisfied, or upon petition of the Operator. Operator shall be given reasonable notice and an

opportunity to be heard with respect to any proposed amendment of the required Financial Assurance. Operator shall provide any such amended Financial Assurance within 30 days of its receipt from the City of written notice to do so. Any amendment to the form or amount of Financial Assurance under this Ordinance shall take into account at least the following factors, without limitation: the cost of the obligation to be secured, the time for completion of the obligation, the financial viability of the Operator, and the past performance of the Operator under this Ordinance.

F. Liability Insurance/Hold Harmless.

1. Prior to the Effective Date of the portions of this Ordinance affecting the Extraction Area, Operator shall provide to the City an agreement to defend and hold harmless the City against any claims whatsoever resulting from or arising out of any negligent or intentional and wrongful act or omission of the Operator, its employees, officers, or agents in conducting the Extraction operations on the Property which are regulated by this Ordinance, during the period that the Extraction operations are active and through the date of completion of final reclamation. Said hold harmless agreement shall be signed by the Operator and acknowledged in the presence of a notary public and shall be subject to approval by the City of Franklin Common Council.
2. Upon request of the City, Operator shall present to the City a certificate of general liability insurance coverage in the amount of \$10,000,000. Operator shall maintain such insurance in effect at all times while conducting Extraction or Reclamation activities under this Ordinance and shall obtain the designation of the City of Franklin thereunder as an also insured.

G. Compliance, Enforcement and Penalties:

1. In the event the Operator fails to comply with the provisions of this Ordinance, the City may issue a compliance order, suspension order or order directing the immediate cessation of an activity regulated under this Ordinance until the activity complies with the provisions hereof.
2. The Plan Commission may propose amendments to this Ordinance to require use by the Operator of new methods, processes, procedures, facilities, practices or equipment in its quarry operations that will materially diminish adverse impacts on the community or nearby residents, provided that use of such methods, processes, procedures, facilities, practices or equipment is proven and demonstrated to be effective in the Operator's industry in reducing adverse impacts, is cost effective for such purpose and will not impose an unreasonable financial burden on the Operator. The Plan Commission shall conduct a public hearing on any such proposed amendments, after meeting and consulting with the Operator, and shall then report any such proposed amendments with its recommendations to the Common Council. Such an amendment may be adopted by the Common Council, in accordance with the standard amendment procedure, provided that such amendment satisfies all of the requirements set out above in this subsection.
3. Failure to comply with the provisions of this Ordinance shall subject the Operator to the penalty provisions of Section 18 of the City Zoning Ordinance. In addition, in the event the Operator: (a) repeatedly and flagrantly fails to comply with any provision of this Ordinance, (b) repeatedly fails to comply with any material provision of this Ordinance, or (c) fails to comply with any provision of this Ordinance in a manner which materially and adversely affects the public health or safety, the City may serve written notice upon the Operator describing such

violation or pattern of violations in detail and requiring that such violation(s) be abated and compliance be had within 30 days from the date of such notice, or within such longer period of time as may be reasonably required under the circumstances to correct such violation(s), provided that the Operator shall have promptly taken such steps as are reasonably possible to remedy such violation upon receipt of written notice. As used herein, "repeatedly" shall mean five (5) violations of any specific provision of this Ordinance within any calendar year. If such violation continues beyond said 30 days (or such longer period of time as may be reasonable under the circumstances), the City may either:

- a. obtain injunctive relief from any court of competent jurisdiction, or
- b. the Common Council may direct the Plan Commission to hold a public hearing to consider the cause of the violations and the means of assuring future compliance. The notice of such public hearing shall state the date, time, place, and subject matter of the hearing, and shall be delivered personally to the Operator not less than fifteen (15) days prior to the hearing, mailed to neighboring property owners and residents within 200 feet of the Property and published in the official newspaper of the City as a Class 2 Notice. Within 30 days after the public hearing, the Plan Commission shall report to the Common Council its findings and recommendations. Following public hearing and after considering the Plan Commission report and recommendations, the Common Council shall take such reasonable action as it deems appropriate, including, without limitation, determining that no extraordinary action is warranted or imposing such conditions or requirements as are needed to assure compliance. In the event that the Council determines that the Operator

cannot or, under all the circumstances, will not bring its operation into satisfactory compliance, the Council may, to protect the public health, safety and welfare, order the cessation of specific aspects of the quarry use or the entire quarry use, and, in the event of complete cessation, may require final reclamation of the quarry. If the Common Council does not timely receive the recommendations and report from the Plan Commission, the Common Council may hold a hearing and act without receiving such recommendations. Any reclamation order shall take into account the status of the quarry operations at the time of such reclamation order, shall be reasonable, and shall not require Extraction of an area greater than the then existing mined area.

H. Berms and Landscaping.

1. Within two years after the Effective Date of the portions of this Ordinance affecting the Nonextraction Area, Operator shall construct the berm parallel to Drexel Avenue and complete construction and modification to the existing berm paralleling 51st Street to give it the appearance from 51st Street of a contoured berm.
2. Prior to commencement of the construction and modification of the berm paralleling 51st Street, or the construction of the berm paralleling Drexel Avenue, the Operator shall submit a detailed landscape plan relating to the modified or new externally visible areas of such berms for the review and approval of the Plan Commission. Such plans shall specify the location, species (both biological and common name) and the planting size of all landscape materials to be planted on or near the berms.
3. Prior to commencement of the construction and modification of the berm paralleling 51st Street, or the construction of the berm paralleling Drexel Avenue, the Operator shall submit, for the review and approval by the City Plan Commission, a berm

grading plan, including provisions to mitigate any potential impacts of stormwater run-off or erosion from the modified or new berms. Operator shall obtain a land disturbance permit, or any other permit required by the Engineering Department, prior to commencement of construction of the berm modifications.

4. Material needed for the new and modified berms shall be obtained from areas on the Property previously zoned M-3 Quarrying District, M-2 General Industrial District or R-6 Residential District, as shown on Exhibit 3.
5. Upon completion of the new and modified berms, Operator shall install a six (6) foot security fence, with barbed wire at the option of the Operator, to prohibit public access to the Operator's Extraction Area from the north, east, or south. Said fence shall be installed so as to connect with similar fences installed by Vulcan on its quarry site.

I. River Area Restrictions.

1. The Operator shall not encroach upon any property within the FW Floodway District, as shown on Exhibit 3, with any buildings or structures (other than existing buildings, haul roads, or dewatering and drainage structures, which may be maintained, modified or reconstructed provided that Operator obtains all required permits and approvals), or cause such property to be filled or altered other than in accordance with the FW Floodway District regulations.
2. The regulations of the FFO Floodplain Fringe Overlay District, as shown on Exhibit 3 or as it might be expanded in the future as a result of the Extraction operations, shall not interfere with any Extraction or other Quarry-Related Operations and Facilities, or the provisions of this Ordinance. To the extent that the regulations of the FFO District would otherwise interfere in any respect with the Extraction, Crushing, Processing and Stockpiling or other Quarry-Related Operations and Facilities or the provisions of this Ordinance, they shall be deemed to be suspended

until such time as such operations and the use of such facilities have been completed. By accepting this Ordinance, the Operator accepts any risk of business interruption or damage to its operations and facilities.

3. Prior to horizontal expansion of any existing Extraction operations within 500 feet of the ordinary high water mark of the Root River, the Operator shall obtain any necessary permits from the Wisconsin DNR and any other regulatory agency with authority over the Root River.
4. The rezoning of the Property on the Effective Date of this Ordinance removes all C-1 Conservancy District zoning from the Property.

J. Stormwater Management and Water Quality Plan.

1. Prior to the Operator's expansion of the Extraction operations into the area shown as M-2 General Industrial District or R-6 Residential District on Exhibit 3, Operator shall submit to the City Engineering Department for review and approval a stormwater management and water quality plan for the entire Property. It is the stated interest of the City to reasonably protect the Root River from siltation and other harmful pollution resulting from the quarry dewatering operations or drainage practices.
2. Implementation of all aspects of the stormwater management and water quality plan shall occur in accordance with applicable Wisconsin DNR regulations.
3. Subject to the foregoing approvals, the Operator may modify the surface drainage on the Property and its quarry dewatering practices to accommodate the proposed Extraction operations in that part of the Extraction Area that was previously zoned M-2 General Industrial District, and R-6 Residential District as shown on Exhibit 3. In this regard, subject to the foregoing approvals the Operator may reroute surface drainage and/or the discharge of water from the quarry dewatering operations within the Property and/or may cooperate with

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 PM₁₀ 24 Hour Standard (150 µg/m³); 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 PM₁₀ 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 3rd day of JUNE, 1997 by
Alderman MURRAY.

PASSED AND ADOPTED by the Common Council in the City of
Franklin on this 3rd 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)

ehm\mark\franklin\pdd\6-12-97.doc

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

DETAILS OF THE
 QUARRY
 PLANNED
 DEVELOPMENT
 DISTRICT

CITY OF FRANKLIN WISCONSIN

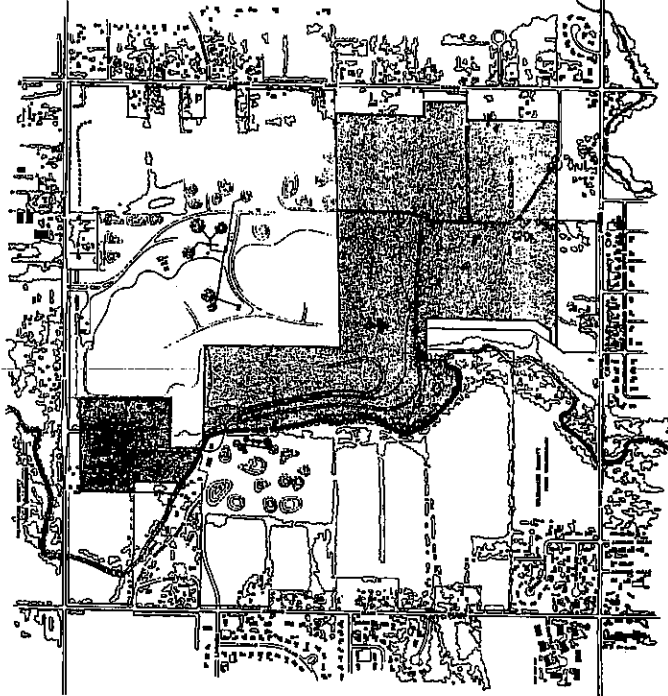
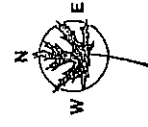


GRAFF ANHALT SCHLOEMER and ASSOCIATES INC.
 CONSULTING ENGINEERS
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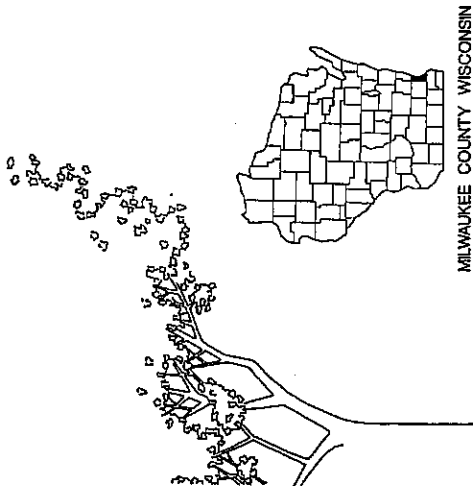
INDEX OF EXHIBITS

- A TITLE SHEET
- B EXISTING ZONING MAP
- C PLAT OF EXISTING SITE
- D 10-20-96 AERIAL PHOTOGRAPH
- E OVERVIEW OF POD HIGHLIGHTS
- F 2004 OPERATIONS PLAN
- G CONCEPTUAL RESTORATION PLAN
- H SECTIONS

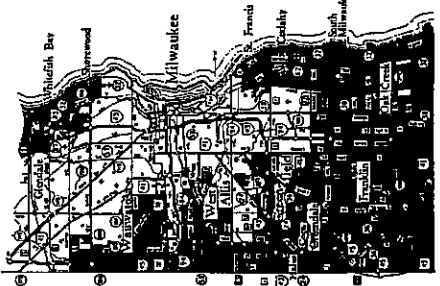
Franklin Aggregates
 8311 WEST JEFFERSON AVENUE, HANCOCK, WISCONSIN 53132



SECTIONS 10 & 11 • T5N • R21E



MILWAUKEE COUNTY WISCONSIN



REGIONAL MAP

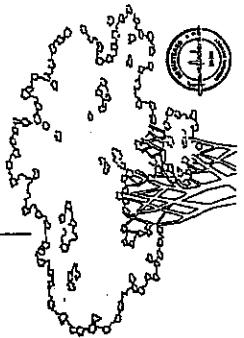


EXHIBIT 3

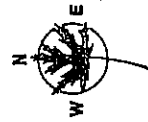


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1000 North Lincoln Street
Chicago, Illinois 60610
1000 North Lincoln Street
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1000 North Lincoln Street
Chicago, Illinois 60610

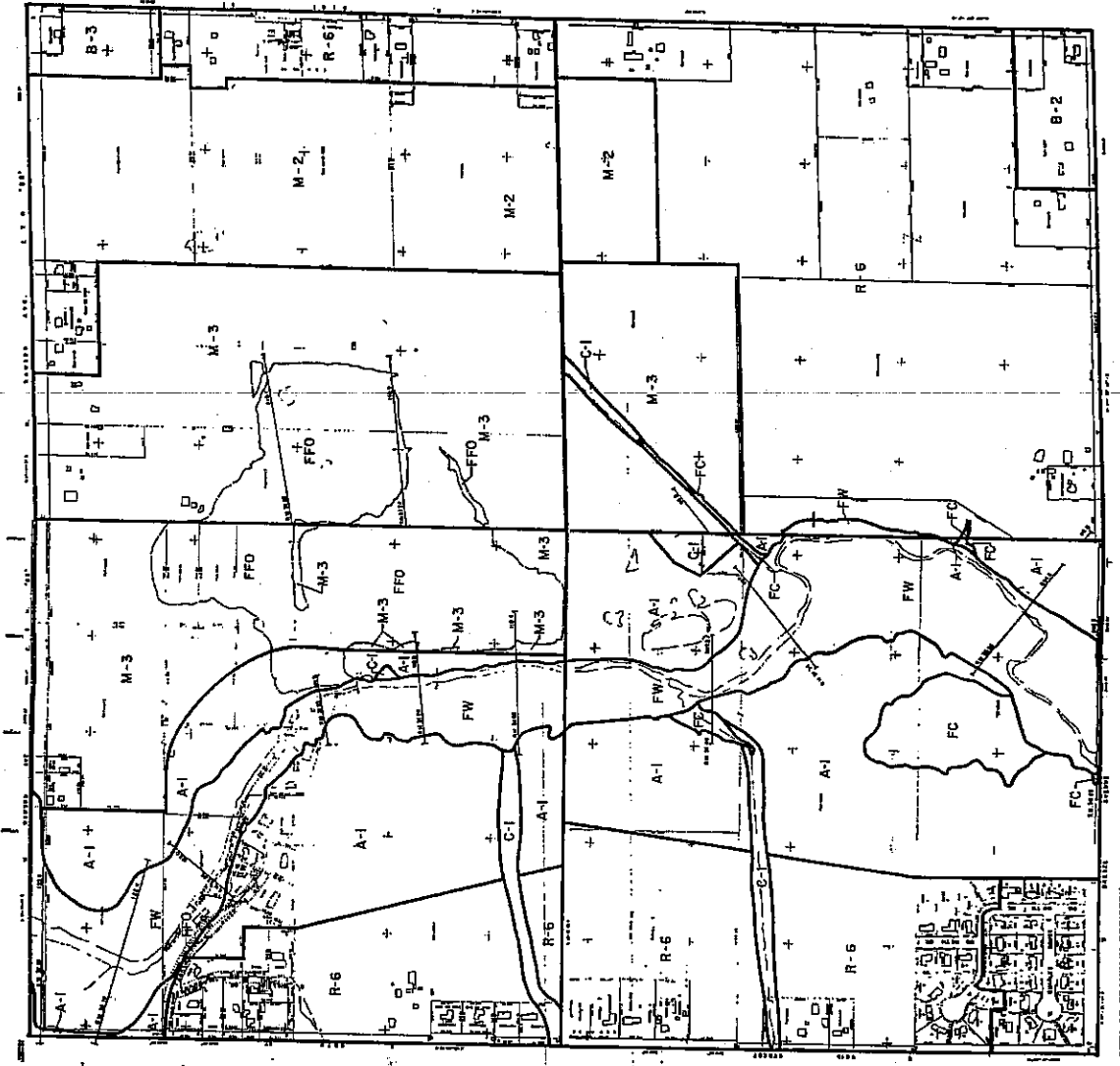
DETAILS OF THE
QUARRY
PLANNED
DEVELOPMENT
DISTRICT
CITY OF FRANKLIN WISCONSIN

Franklin Aggregates
1811 WEST WASHINGTON AVENUE FRANKLIN WISCONSIN 53142

Table with multiple columns and rows, likely a zoning code or project information table.




EXISTING ZONING MAP



CITY OF FRANKLIN REGISTRY





**GRAET
ANHALT
SCHLOEMER**
ASSOCIATES, INC.
CONSULTING ENGINEERS

340 North Park Street
Milwaukee, Wisconsin 53212
Phone: 442-1100
Telex: 442110
Fax: 442-1100

DETAILS OF THE
QUARRY
PLANNED
DEVELOPMENT
DISTRICT
CITY OF FRANKLIN WISCONSIN

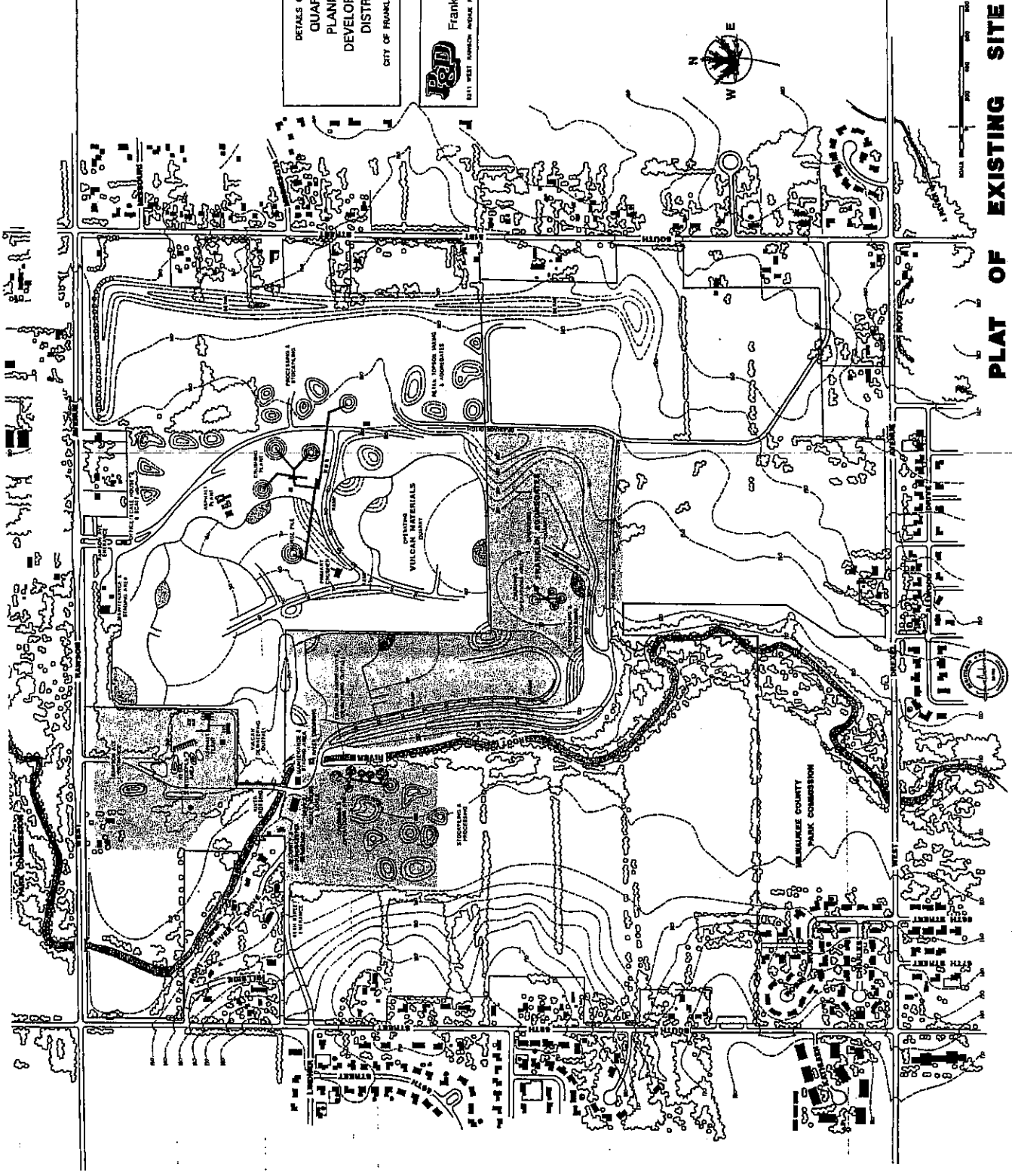


Franklin Aggregates
8411 WEST HANSEN AVENUE FRANKLIN WISCONSIN 53120

PROJECT NUMBER	03-102
DATE SUBMITTED	11/17/94
DATE APPROVED	
PLANNED DISTRICT	
PROJECT NAME	
REVISION	



PLAT OF EXISTING SITE





GRAEF ANHALT SCHLOEMER
 3071 ATTENSHOLE RD.
 WASHINGTON, INDIANA 47394

Mr. [Name] [Address] [City, State, Zip]
 Mr. [Name] [Address] [City, State, Zip]
 Mr. [Name] [Address] [City, State, Zip]
 Mr. [Name] [Address] [City, State, Zip]
 Mr. [Name] [Address] [City, State, Zip]
 Mr. [Name] [Address] [City, State, Zip]
 Mr. [Name] [Address] [City, State, Zip]
 Mr. [Name] [Address] [City, State, Zip]
 Mr. [Name] [Address] [City, State, Zip]
 Mr. [Name] [Address] [City, State, Zip]

DETAILS OF THE
 QUARRY
 PLANNED
 DEVELOPMENT
 DISTRICT
 CITY OF FRANKLIN, INDIANA

P&D
 Franklr, Aggregates
 10000 N. STATE ST. #100
 FRANKLIN, INDIANA 47394



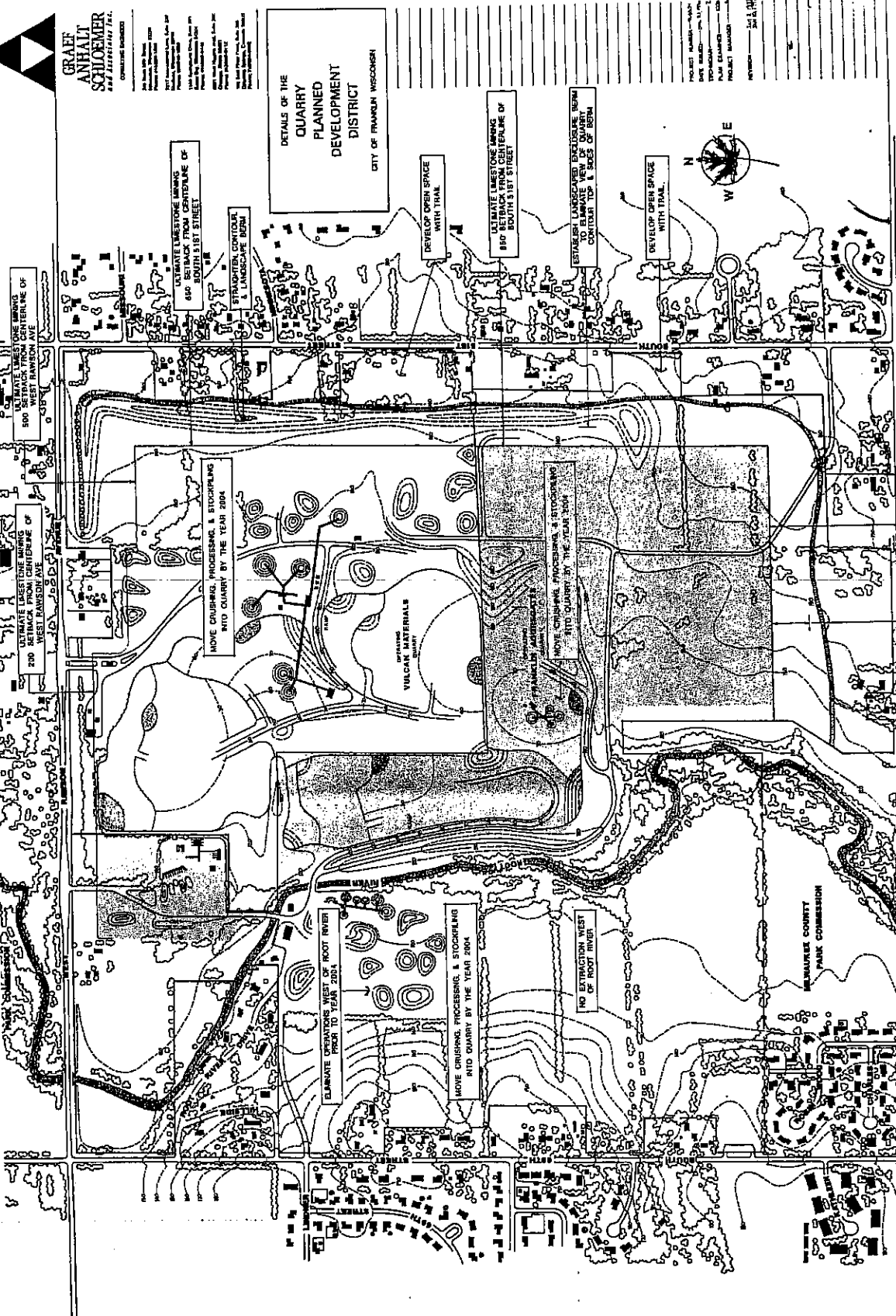
10-20-96 AERIAL PHOTOGRAPH



GRAEFF ANHALT SCHLOEMER
and Associates, Inc.
CONSULTING ENGINEERS

1500 West Park Drive
Franklin, Wisconsin 53120
Telephone: (414) 431-1100
Telefax: (414) 431-1101
E-Mail: info@graeff.com
Website: www.graeff.com

DETAILS OF THE
QUARRY
PLANNED
DEVELOPMENT
DISTRICT
CITY OF FRANKLIN WISCONSIN



E

OVERVIEW OF PDD HIGHLIGHTS

ULTIMATE LIMESTONE MINING 500 SETBACK FROM CENTERLINE OF WEST RAMSWICH AVE
 ULTIMATE LIMESTONE MINING 600 SETBACK FROM CENTERLINE OF SOUTH 51ST STREET
 ULTIMATE LIMESTONE MINING 800 SETBACK FROM CENTERLINE OF SOUTH 51ST STREET
 ESTABLISH LANDSCAPED ENCLAVE BEAM TO REMAIN WITH SLOPE OF BEAM
 DEVELOP OPEN SPACE WITH TRAIL
 ESTABLISH LANDSCAPED ENCLAVE BEAM TO REMAIN WITH SLOPE OF BEAM
 DEVELOP OPEN SPACE WITH TRAIL
 ULTIMATE LIMESTONE MINING 800 SETBACK FROM CENTERLINE OF WEST DRECEL AVE
 ESTABLISH LANDSCAPED ENCLAVE BEAM TO REMAIN WITH SLOPE OF BEAM

SCALE: 1" = 100'

FRANKLIN WISCONSIN

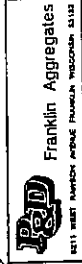
FRANKLIN COUNTY PARK COMMISSION



GRAF
ANHALT
SCHLOEMER
& ASSOCIATES, Inc.
ENGINEERING FIRM

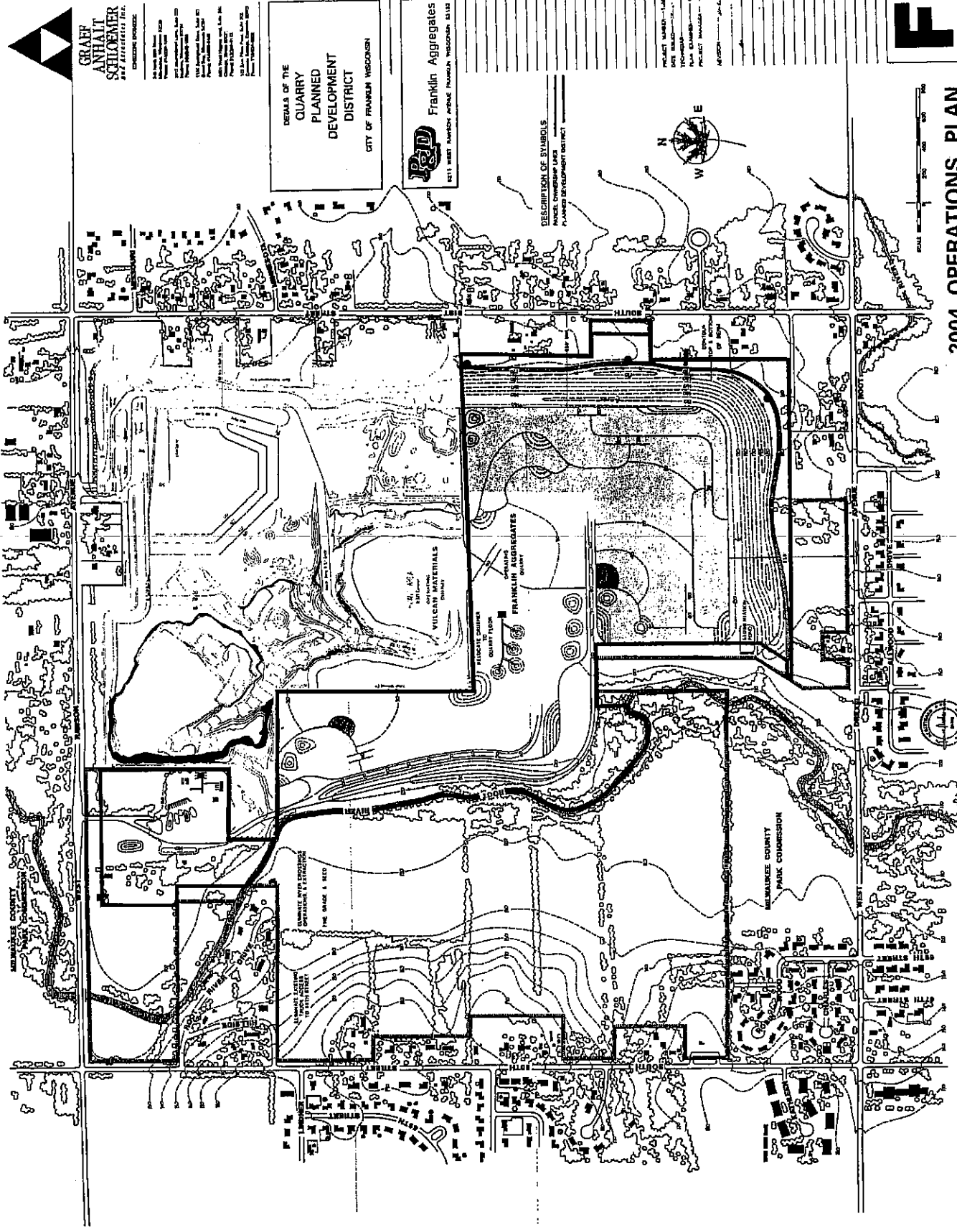
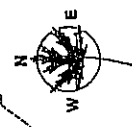
1200 West North Avenue, Franklin, Wisconsin 53132
Phone: (414) 431-1100
Fax: (414) 431-1101
E-mail: gash@graf-anhalt-schloemer.com
1000 West North Avenue, Suite 200
Franklin, Wisconsin 53132
Phone: (414) 431-1100
Fax: (414) 431-1101
E-mail: gash@graf-anhalt-schloemer.com

DETAILS OF THE
QUARRY
PLANNED
DEVELOPMENT
DISTRICT
CITY OF FRANKLIN WISCONSIN



Franklin Aggregates
1011 WEST NORTH AVENUE FRANKLIN WISCONSIN 53132

DESCRIPTION OF SYMBOLS
POLICE JURISDICTION JURIS
PLANNED DEVELOPMENT DISTRICT



MILWAUKEE COUNTY
PARK COMMISSION

PUBLIC ACCESS
RECREATION

PUBLIC ACCESS
RECREATION

PUBLIC ACCESS
RECREATION

QUARRY LAKE

FUTURE
DEVELOPMENT

FUTURE
DEVELOPMENT

MILWAUKEE COUNTY
PARK COMMISSION



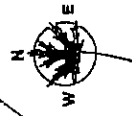
GRAEF
ANHALT
SCHLOEMER
ARCHITECTS
A PROFESSIONAL SERVICE

340 East Lake Street
Milwaukee, WI 53202
Tel: 414.224.1100
Fax: 414.224.1101
www.graef-anhalt-schloemer.com

DETAILS OF THE
QUARRY
PLANNED
DEVELOPMENT
DISTRICT
CITY OF FRANKLIN WISCONSIN



Franklin Aggregates
4111 WEST AMERICAN AVENUE, FRANKLIN, WISCONSIN 53121



CONCEPTUAL RESTORATION PLAN

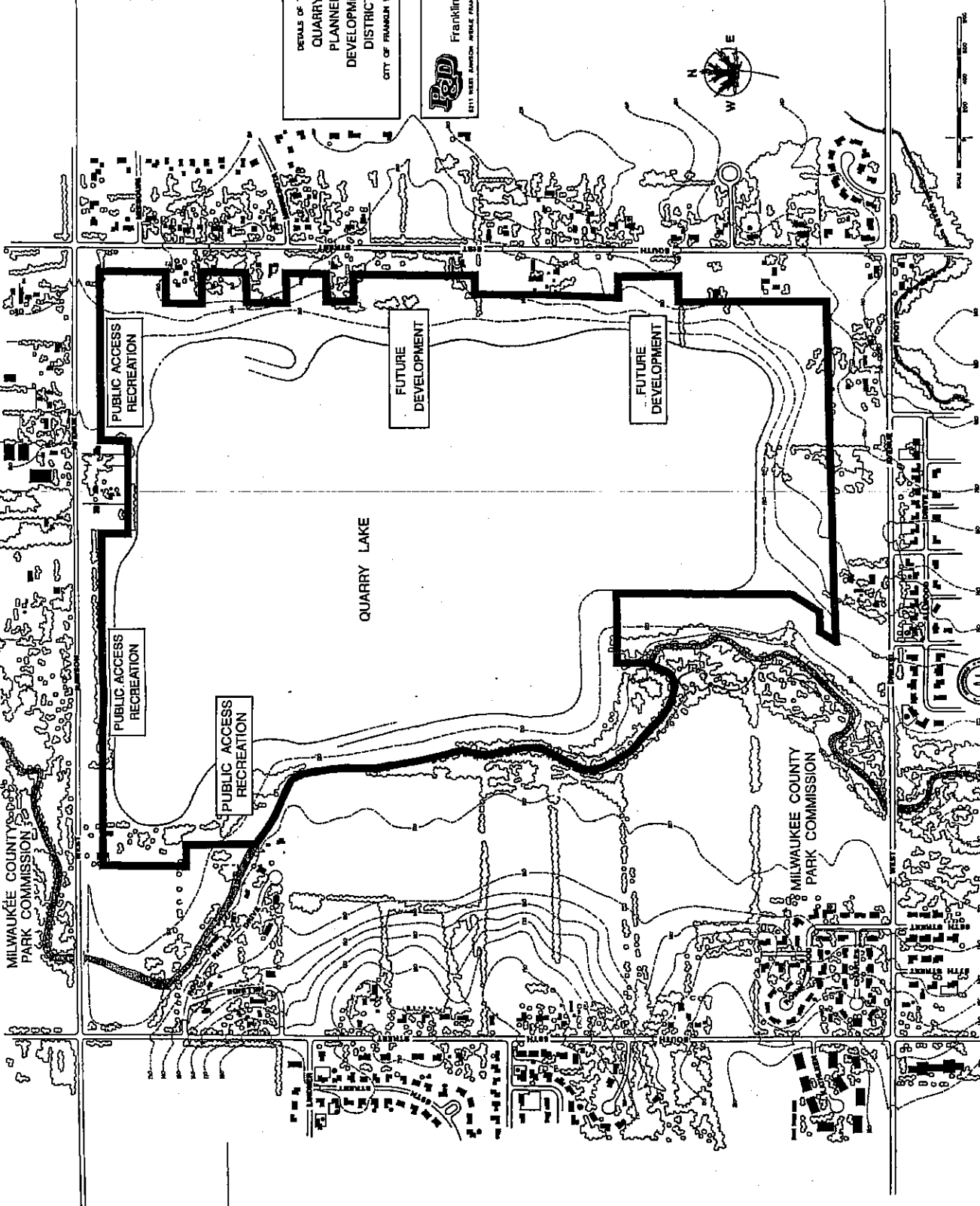


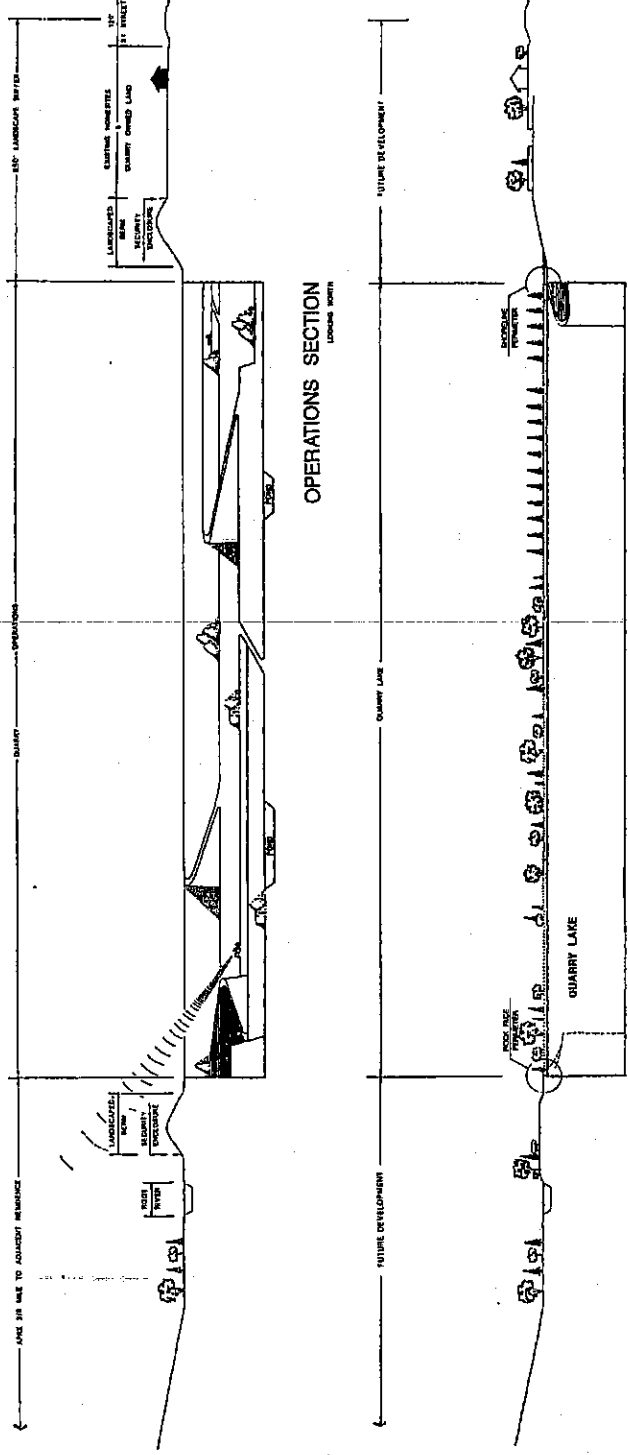
EXHIBIT 9

DETAILS OF THE
QUARRY
PLANNED
DEVELOPMENT
DISTRICT
CITY OF FRANKLIN WISCONSIN



GRAEF ANHALT SCHLOEMER
ENGINEERS ARCHITECTS
1400 Wisconsin Ave., Suite 200
Franklin, WI 53128
Tel: 414-778-1100
Fax: 414-778-1101
www.graef-anhalt-schloemer.com

PROJECT NUMBER: 1-3
DATE: 04/20/2011
PROJECT: QUARRY PLANNED DEVELOPMENT DISTRICT
SHEET: 1 OF 1



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: _____

STATE OF _____)
) SS.
COUNTY OF _____)

This instrument was acknowledged before me this _____ day of
_____, 1997 by _____ and _____.

Notary Public, State of _____
My commission expires: _____

[SEAL]

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.

ehm\mark\franklin\pdd\property.doc

RESOLUTION IMPOSING CONDITIONS AND RESTRICTIONS
FOR APPROVAL OF SPECIAL USE FOR
VULCAN MATERIALS COMPANY
(Relocation of Access and Facilities)

WHEREAS, Vulcan Materials Company, has petitioned the City of Franklin for special use on parcels of land with an address of 5713 West Rawson Avenue for permissions, zoning permits and/or other related permissions for the relocation of Rawson Avenue access, relocation of quarry office, scalehouse, equipment maintenance and storage area and employee facilities, etc., and relocation of access road to asphalt plant; along with other activities related to the relocation of access, several of which are permitted uses and/or accessory to the main use of the property and are part of this Special Use Resolution by reference, and

WHEREAS, the petitioner requests certain special use approval for the property legally described in ~~Exhibit A~~ for uses with underlying M-3 Quarrying District zoning amending a previously granted special use and for properties with underlying M-2 General Industrial District zoning, and

WHEREAS, said petitioner has been duly referred to the Plan Commission of the City of Franklin for a public hearing held on October 10, 1996, thereof pursuant to the requirements of Chapter 62.23 of the Wisconsin Statutes, and

WHEREAS the Plan Commission has recommended to the Common Council that the Special Use be approved subject; however, to the imposition of certain conditions and restrictions upon the proposed relocation of quarry access and relocation of quarry facilities pursuant to the requirements of Section 15.5(8) of Ordinance No. 221, after finding the use conforms to the standards for the granting of a Special Use, and

WHEREAS, the conditions and restrictions for the purpose of the relocation of access and relocation of operations as requested by Vulcan Materials Company within areas zoned as M-2 and M-3, as recommended by the City Plan Commission, are as follows:

1. This Special Use Permit is issued for the following limited uses of facilities to be moved from the M-3 lands owned by Vulcan Materials Company and located and established on the adjacent M-2 lands owned by Vulcan: (1) use of the relocated entrance and internal roadway on and across the M-2 lands by or in connection with the existing asphalt plant located on the M-3 lands--this modifies the access route specified in the existing conditional use permit for the asphalt plant; (2) use of the relocated entrance and internal roadway on and across the M-2 lands by and in connection with the existing quarry operation located on the M-3 lands (e.g., for deliveries of equipment to the quarry); (3) use of the employee parking area on the M-2 lands by

include, but not be limited to detailed engineering of the relocated access road, including the installation of concrete curb and gutter as shown on the aforementioned plans dated October 10, 1996, detailed plans showing parking areas, paving of the entrance drive and parking lot for employees, except for areas surrounding the maintenance building, utility connections to the new buildings, detailed lighting plans, detailed site grading and drainage plan, detailed soil erosion control plan especially prohibiting erosion into the existing wetland which must be preserved, and detailed landscaping plan showing additional plantings on the existing berms on the subject property and on new berms as shown on plans dated October 10, 1996. Failure to timely submit all such plans shall render this Special use Resolution null and void.

- b. Said plans shall be approved or modified by the Plan Commission within nine (9) months after approval of this Special Use Resolution. However, should petitioner not provide information suitable for approval, the denial of the plans shall make this Special Use Resolution null and void.
- c. Within one (1) year of the approval of this Special Use Resolution, construction of the relocated access and the Vulcan Material Company maintenance building shall commence. Should the Plan Commission in its sole discretion decide to extend the time for approval under Paragraph B, the time under this paragraph shall be extended for an equal amount of time.

4. The following conditions shall also apply to site development:

- a. Existing berm system on land zoned M-2 shall remain in at current location, except for regrading of the berm along Rawson Avenue at its western end for the relocated access, and for a matching of the elevations between the Rawson Avenue berm and the 51st Street berm as provided within the plans approved pursuant to Paragraph 3(b).
- b. At no time shall crushing of limestone occur within any lands zoned M-2 as the date of this permit, as defined in Exhibit A.
- c. The existing wetland and existing trees shall be preserved as shown on plans dated October 10, 1996.


BE IT FURTHER RESOLVED that any violations of the terms and conditions of this Resolution shall be considered to be a violation of the Zoning Code and penalty for such violations shall bear a maximum forfeiture of \$200.00 for each violation upon conviction and a maximum sentence of 60 days imprisonment if such forfeiture is not paid. Each day that such violation continues shall be a separate violation.

FAILURE OF THE CITY to enforce any violation is not a waiver of that or any other violation of this permit.


BE IT FURTHER RESOLVED that the City Clerk be, and is hereby directed to record a certified copy of this Resolution with the Register of Deeds for Milwaukee County, Wisconsin.

INTRODUCED this 19th day of November, 1996, by Alderman Murray as recommended by the Plan Commission.

PASSES AND ADOPTED at a regular meeting of the Common Council of the City of Franklin this 19th day of November, 1996.


Mayor Frederick F. Klimetz

ATTEST:


James C. Payne, Business Administrator

AYES 4

NOES 2 (Ald. Mead) (Ald. Thomas)

ABSENT 0

That part of the East one-half (1/2) of North West One-quarter (1/4) of section Eleven (11), in Township Five (5), Range Twenty-one (21) East, in the City of Franklin, which is bounded and described as follows: to-wit: Beginning at a point on the East line of 1/4 section, 177.00 feet, South 0° 13' 12" West from the Northeast corner of said 1/4 Section; continuing thence South 0° 13' 12" West on and along the East line of said 1/4 Section, 437.76 feet to a point; thence South 87° 28' 53" West, 360.40 feet to a point thence South 0° 13' 12" West and parallel to the East line of said 1/4 section, 190.00 feet to a point; thence South 87° 28' 53" West, 951.73 feet to a point on the West line of the East 1/2 of said 1/4 Section; thence north 0° 07' 41" East on and along the West line of the east 1/2 of said 1/4 section, 736.80 feet to a point; thence North 87° 47' 37" East, along a line 75.00 feet Southerly of as measured normal to the North line of said 1/4 Section, 1065.99 feet to a point; thence South 0° 13' 12" West and Parallel to the East line of said 1/4 section, 101.93 feet to a point; thence North 87° 47' 37" East and parallel to the North line of said 1/4 Section, 247.00 feet to the point of beginning.

PROPERTIES ZONED M-3 QUARRYING DISTRICT

The East Fifty (50) acres of the West One-half (1/2) of the North West One-quarter (1/4) of Section Eleven (11) in Township Five (5) North, Range Twenty-one (21) East, in the City of Franklin, except that parcel conveyed by Warranty Deed recorded in Volume 2739 of Deeds at page 287 as Document No. 2937107, bounded and described as follows, to-wit: Commencing at a point in the North line of said 1/4 Section, 909.39 feet East of the North West corner of said 1/4 Section; running thence East along the North line of said 1/4 Section, 403.66 feet to the North East corner of the West 1/2 of said 1/4 Section; thence South along the East line of the West 1/2 of said 1/4 Section, 323.75 feet to a point; thence West and parallel to the North line of said 1/4 Section, 403.66 feet to a point; thence North and parallel to the East line of the West 1/2 of said 1/4 Section, 323.75 feet to the place of commencement, and except that parcel conveyed by Warranty Deed recorded in Volume 3061 of Deeds at page 165, as Document No. 3140110, bounded and described as follows, to-wit; Commencing at a point in the North line of said 1/4 Section, 739.39 feet East of the North West corner of said 1/4 Section; continuing thence East along the North line of said 1/4 Section, 170.0 feet to a point; thence South and parallel to the East line of the West 1/2 of said 1/4 Section, 323.75 feet to a point; thence West and parallel to the North line of said 1/4 Section, 170.0 feet to a point; thence North and parallel to the East line of the West 1/2 of said 1/4 section, 323.75 feet to the place of commencement.

and

That part of the North West 1/4 of Section 11, in Township 5 North, Range 21 East, in the city of Franklin, formerly in the Town of Franklin, bounded and described as follows: Commencing at a point in the North line of said 1/4 Section, 332.39 feet East of the North West corner of said 1/4 Section, running thence East along the North line of said 1/4 Section, 160 feet to the North East corner of the West 3/8 of the West 1/2 of said 1/4 section; thence South along the East line of said West 3/8 of West 1/2, 544.50 feet to a point, thence west and parallel to the North line of said 1/4 Section, 160.0 feet to a point; thence North and parallel to the East line of said 3/8 of West 1/2, 544.50 feet to the place of commencement. Containing in all 2.00 acres of Land, more or less. Excepting therefrom the North 75 feet thereof.

and

TABLE 1

ZONING ANALYSIS OF VULCAN PROPOSAL

Land Use	Relocated (R) Existing (E)	Zoning Use Authority	Other Approvals Potentially Needed
1. Office	R to M-2	M-2 permitted use: "Office-business." § 9.3(1)b52.	More than one principal building on a zoning lot and/or special site review. § 3.7.
2. Stockpiles & Processing/Sales (Vulcan) (Salvert, including various accessory uses)	E in M-2 (Sales R to M-2) E in M-2	M-2 permitted use: "Any production, processing, cleaning, ... or storage of materials, goods or products." § 9.3(1)b. "Building equipment, building materials, lumber, coal, sand and gravel yards." § 9.3(1)b14.	Similar to permitted uses. § 3.12; More than one principal building on a zoning lot and/or special site review. § 3.7.
		"Carting ... or storage yard." § 9.3(1)b19. "Any other manufacturing establishments that can be operated in compliance with the performance standards." § 9.3(1)b86. "Wholesaling..., local cartage ... facilities." § 9.3(1)c.	
3. Scalehouse, scale, ticket booth	R to M-2	M-2 permitted use: See 12, above. Accessory to 12. § 9.3(1)e1.	More than one principal building on a zoning lot and/or special site review. § 3.7
4. Equipment maintenance	R to M-2	M-2 permitted use: "Automobile painting, upholstering, repairing, reconditioning, and body and fender repairing, when done within the confines of a structure." § 9.3(1)b6. "Metal finishing, plating, grinding, sharpening, polishing, cleaning, rust-proofing, and heat treatment." § 9.3(1)b48. "Welding." § 9.3(1)b70.	Similar to permitted uses. § 3.12; More than one principal building on a zoning lot and/or special site review. § 3.7.

TABLE 1 CONT'D

ZONING ANALYSIS OF VULCAN PROPOSAL

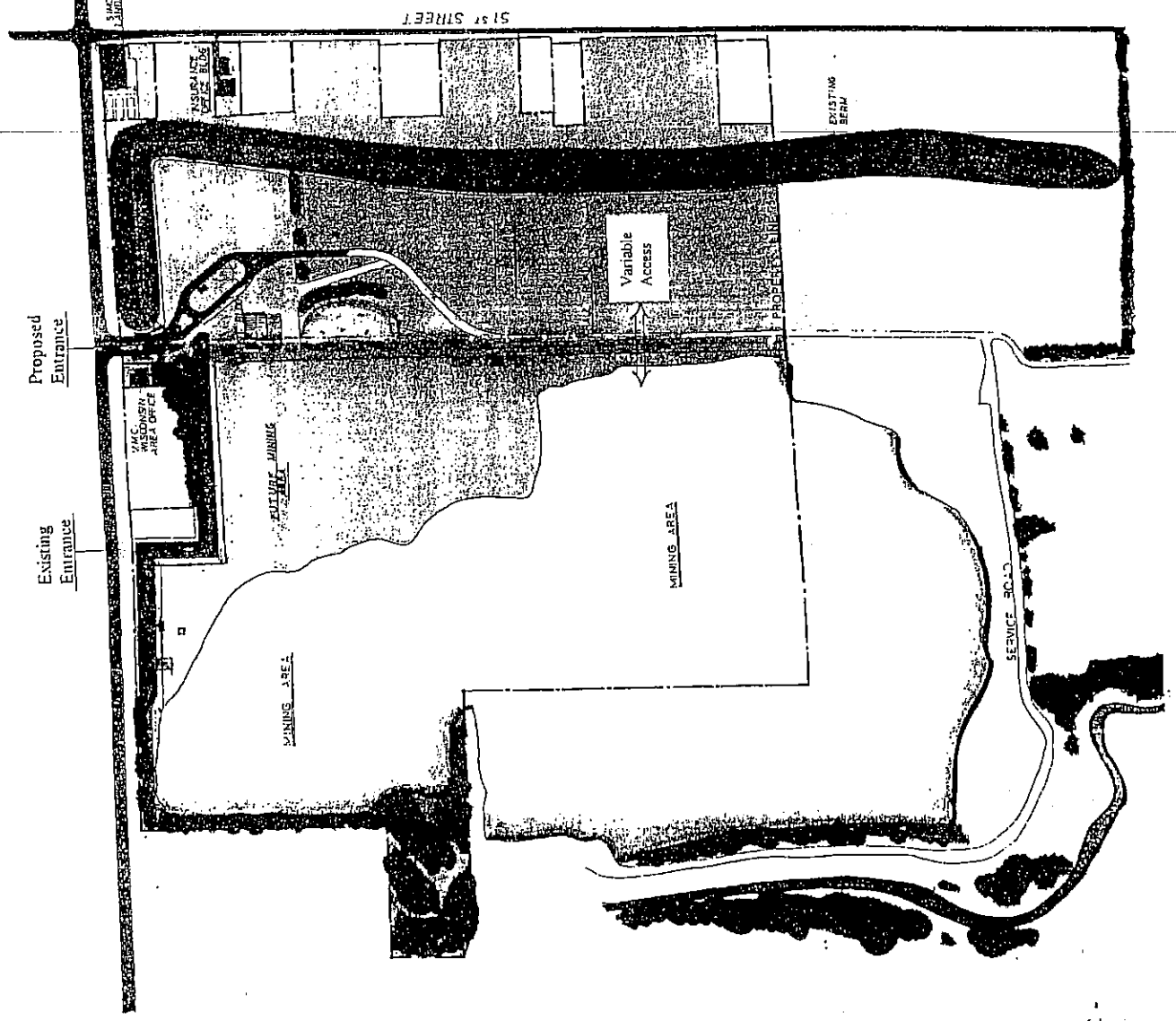
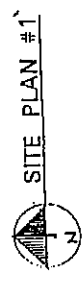
L I Use	Relocated (R) Existing (E)	Zoning Use Authority	Other Approvals Potentially Needed
11. New entrance and internal roadway—for use in connection with: (Vulcan) Office Sales/customers Employees Quarry	R to M-2 R to M-2 R to M-2 R to M-2	Accessory to ¶ 1. § 9.3(1)e1. Accessory to ¶ 1-2. § 9.3(1)e1. Accessory to ¶ 1-8. § 9.3(1)e1. M-2 Conditional use: "Any other manufacturing or related establishment that can be operated in compliance with the performance standards." § 9.3(2)a; § 9.2(2)a43.	Similar to permitted uses. § 3.12; More than one principal building on a zoning lot and/or special site review. § 3.7.
(Selvert) (Paving Mix)	R to M-2 R to M-2	Accessory to ¶ 2. § 9.3(1)e1. Modification of existing M-3 conditional use permit as to access route; M-2 Conditional use: "Any other manufacturing or related establishment that can be operated in compliance with the performance standards." § 9.3(2)a; § 9.2(2)a43.	
12. Wheel Wash	R to M-2	Accessory to ¶ 2. § 9.3(1)e1.	More than one principal building on a zoning lot and/or special site review. § 3.7.
13. Quarry Employee Parking (as distinguished from employee parking associated with ¶ 1-8)	R to M-2	M-2 Conditional use: "Any other manufacturing or related establishment that can be operated in compliance with the performance standards." § 9.3(2)a; § 9.2(2)a43.	More than one principal building on a zoning lot and/or special site review. § 3.7.

Rawson Avenue Entrance Relocation, Facilities, and Berm Enhancement Proposal

SITE KEY AT FRANKLIN

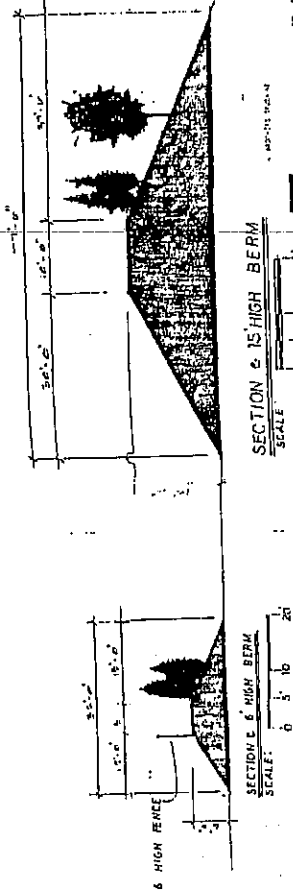
- [White Box] = EXISTING BUILDINGS TO BE REMOVED
- [Black Box] = NEW BUILDINGS OR STRUCTURES
- [Dark Grey Box] = EXISTING BUILDINGS TO REMAIN
- [Cross-hatched Box] = ASPHALT PAVED AREA
- [Stippled Box] = STONE SURFACE AREA
- [White Box with Dotted Border] = FUTURE AREA TO BE ADJINED
- [White Box with Dotted Border] = CURRENT MINING AREA
- [Wavy Line Box] = WETLAND AREA
- [Tree Symbols] = EXISTING TREES AND SHRUBS
- [Tree Symbols] = NEW TREES AND SHRUBS
- [Dashed Line] = PROPERTY LINE

FRANKLIN QUARRY

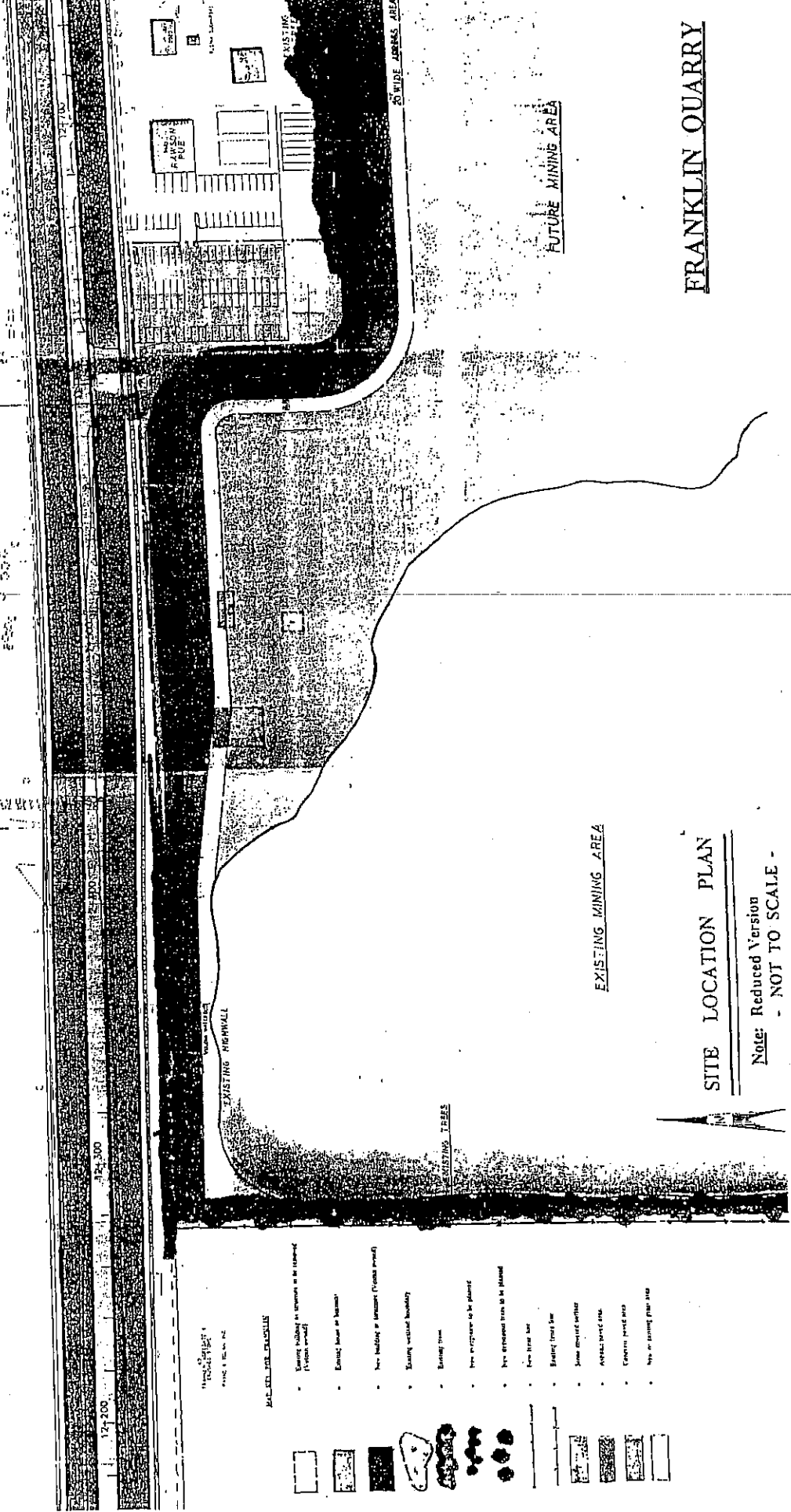


Note: Reduced Version
- NOT TO SCALE -

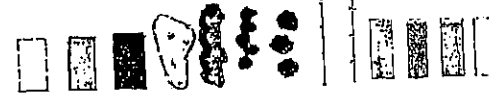
Rawson Avenue Entrance Relocation,
Facilities, and Berm Enhancement Proposal



Existing Entrance



- LEGEND
- Existing building in operation to be retained (hatched symbol)
 - Existing fence or barrier
 - New building or structure (cross-hatched symbol)
 - Existing wetland boundary
 - Existing tree
 - New vegetation to be planted
 - New structure to be retained
 - New fence line
 - Existing fence line
 - New structure to be added
 - Asphalt paved area
 - Concrete paved area
 - New or existing pipe line



EXISTING MINING AREA

SITE LOCATION PLAN

Note: Reduced Version
- NOT TO SCALE -

FRANKLIN QUARRY



City of Franklin

9229 West Loomis Road, P.O. Box 32160, Franklin, Wisconsin 53132-0160 (414) 425-7510

Zoning Permit

Pursuant to your request of the City of Franklin Plan Commission at its meeting of November 14, 1996, the requirements set forth in Section 15.2 of the City of Franklin Zoning Ordinance regarding Zoning Permits and Section 15.8 in regards to Site Plan Review, and other specific requirements of the City of Franklin Zoning Ordinance in general, this Zoning Permit is issued to:

APPLICANT NAME: Vulcan Materials Company, Midwest Division
C/O: Roger Gagliano

TELEPHONE: (414) 421-2330

APPROXIMATE ADDRESS of AFFECTED PROPERTY: 5713 West Rawson Avenue

TAX KEY NO.: (Portion of) 758-9987-001

ZONING of AFFECTED PORTION of PARCEL: M-2 General Industrial Dist.

The applicant hereby agrees to the following specific requirements as specified in the City of Franklin Zoning Ordinance, as well as, all other applicable requirements of that Ordinance which are not listed on this Zoning Permit:

1. This Zoning Permit is issued for the use of the subject property for:

Vulcan Material Company Office, Scalehouse, Scale, Ticket Booth, Equipment Maintenance Facility and Equipment Storage Facility.

Vehicle Wash, Fuel Island, Quality Control Facility, Employee Facility, and Wheelwash facility.

This Zoning Permit is not transferable for other uses on the subject property not stated herein.

2. Prior to any site work or issuance of a Building Permit for the subject property, applicant shall submit for Plan Commission approval all information necessary for Site Plan review, pursuant to Section 15.8 of the Zoning Ordinance. Said Site Plan shall be generally consistent with the plans submitted to the City for this request dated October 10, 1996.

10. The permissions, decisions and determinations set forth herein are granted and made upon the petition of Vulcan Materials Company for the relocation of access and facilities, which petition requests multiple and interrelated land use approvals as part of a total plan of relocating access and facilities and as such, the permissions, decisions and determinations made herein are as parts of such comprehensive plan of relocation of access and facilities submitted by Vulcan Materials Company, all subject to the required approvals of the City of Franklin and are not severable from the required City approval of and the maintenance at all times by Vulcan Materials Company of the berms to be modified and created, the wheelwash facility, the paving of entrance and internal roadway, the 100 foot extraction setback from the northern boundary of the M-3 lands and the prohibition of crushing operation on the M-2 lands, shall be subject to the issuance of the special use modification and permissions and zoning permit approvals as granted upon the petition of Vulcan Materials Company. Further, the permissions, decisions and determinations set forth herein are not intended to nor shall they in any way be interpreted to imply or allow any inference of any approval outside of or in addition to those matters specifically addressed herein.



City of Franklin

9229 West Loomis Road, P.O. Box 32160, Franklin, Wisconsin 53132-0160 (414) 425-7510

Zoning Permit

Pursuant to your request of the City of Franklin Plan Commission at its meeting of November 14, 1996, the requirements set forth in Section 15.2 of the City of Franklin Zoning Ordinance regarding Zoning Permits and Section 15.8 in regards to Site Plan Review, and other specific requirements of the City of Franklin Zoning Ordinance in general, this Zoning Permit is issued to:

APPLICANT NAME: Vulcan Materials Company, Midwest Division
C/O: Roger Gagliano

TELEPHONE: (414) 421-2330

APPROXIMATE ADDRESS of AFFECTED PROPERTY: 7151 South 51st Street

TAX KEY NO.: (Portion of) 758-9987-001

ZONING of AFFECTED PORTION of PARCEL: B-3 Business District

The applicant hereby agrees to the following specific requirements as specified in the City of Franklin Zoning Ordinance, as well as, all other applicable requirements of that Ordinance which are not listed on this Zoning Permit:

1. This Zoning Permit is issued for the use of the subject property for:

Insurance Office

This Zoning Permit is not transferable for other uses on the subject property not stated herein.

2. Prior to any site work or issuance of a Building Permit for the subject property, applicant shall submit for Plan Commission approval all information necessary for Site Plan review, pursuant to Section 15.8 of the Zoning Ordinance. Said Site Plan shall be generally consistent with the plans submitted to the City for this request dated November 14, 1996.

3. The applicant shall comply with all requirements of the City of Franklin B-3 Zoning District and Building Code regulations on file with the Franklin City Clerk, along with Fire Safety Codes, including but not limited to proper placement of property address.

4. Prior to issuance of Building Permit, applicant shall submit to and gain approval of Building Plans by the Franklin Architectural Board.

I accept and shall comply with these specific, as well as, general requirements of the City of Franklin Zoning Ordinance as stated herein.

Applicant(s) Name

Applicant(s) Signature

Date

* Notes to Applicant:

ZONING PERMIT IS NULL AND VOID if issued in error. It is understood that any Zoning Permit issued will not grant any right or privilege to erect any structures or to use any premises for any purpose that is prohibited by the Zoning Ordinance of any other Federal, State or local laws.

CHANGES in the plans or specifications submitted in the original application shall not be made without prior written approval of the Zoning Administrator.

ENFORCEMENT. Failure to comply with Section 15.2 of the City of Franklin Zoning Ordinance relating to Zoning Permits may be enforced pursuant to Section 18 of this Ordinance or any other provision of law including, but not limited to, revocation of the Zoning Permit, injunction or other civil suit.

Any violations of the terms of this resolution shall be considered a violation of the Zoning Code and upon conviction the penalty is up to a maximum forfeiture of \$200.00 and 60 days imprisonment if the forfeiture is not paid. Each day is a separate violation.

Failure of the City to enforce any violation is not a waiver of that or any other violation of this permit.

DATE ISSUED: _____

ISSUED BY: Bruce S. Kaniewski
Zoning Administrator

Signature

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

WHEREAS, at least a portion of the Homeowner's Property is located within 2,000 feet of one or more of the limits of the extraction expansion area, (hereinafter referred to as the

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

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

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.,

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

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

- 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

payment made or to be made by Payne & Dolan 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.

Title: _____

Date: _____

ATTEST: _____
Signature

Name: _____

Title: _____

Date: _____

STATE OF _____)
COUNTY OF _____) SS.

This instrument was acknowledged before me this _____ day of _____, 1997 by _____ and _____ as _____ and _____, respectively, of Vulcan Materials Company, Midwest Division.

Notary Public, State of _____
My commission expires: _____

[SEAL]

**Tax Key Numbers of Properties Eligible to Participate in
Vulcan Materials Property Value Guarantee Agreement**

Northeast 1/4 of Section 11

759-0001-000	4741 W. Rawson Ave.
759-0002-000	4811 W. Rawson Ave.
759-0003-000	4823 W. Rawson Ave.
759-0004-000	7122 S. 49th St.
759-0005-000	7136 S. 49th St.
759-0006-000	7150 S. 49th St.
759-0007-000	7166 S. 49th St.
759-0008-000	7180 S. 49th St.
759-0009-000	7210 S. 49th St.
759-0010-000	7224 S. 49th St.
759-0011-000	4909 W. Rawson Ave.
759-0012-001	4925 W. Rawson Ave.
759-0015-001	7131 S. 49th St.
759-0016-000	7155 S. 49th St.
759-0017-000	7173 S. 49th St.
759-0018-000	7183 S. 49th St.
759-0019-000	7213 S. 49th St.
759-0020-000	7223 S. 49th St.
759-0021-000	7239 S. 49th St.
759-0022-001	7267 S. 49th St.
759-0022-002	7249 S. 49th St.
759-0023-000	4932 W. Minnesota Ave.
759-0024-000	7290 S. 51th St.
759-0025-000	7270 S. 51th St.
759-0026-000	7250 S. 51th St.
759-0027-000	7236 S. 51th St.
759-0028-000	7218 S. 51th St.
759-0029-000	7170 S. 51th St.
759-0030-000	7166 S. 51th St.
759-0031-000	7154 S. 51th St.
759-0032-000	7244 S. 49th St.
759-0033-000	7308 S. 51th St.
759-0034-000	5003 W. Minnesota Ave.
759-0035-000	4909 W. Minnesota Ave.
759-0036-001	7311 S. 49th St.
759-0036-002	7333 S. 49th St.
759-0037-000	4913 W. Minnesota Ave.

**Tax Key Numbers of Properties Eligible to Participate in
Vulcan Materials Property Value Guarantee Agreement**

Northeast 1/4 of Section 11 (cont.)

759-9983-002	7371 S. 49th St.
759-9984-000	7353 S. 49th St.
759-9986-000	7350 S. 49th St.
759-9987-001	7370 S. 49th St.
759-9987-002	7390 S. 49th St.
759-9988-003	4870 W. Madison Ave.
759-9989-001	4871 W. Madison Ave.
759-9989-002	7440 S. 49th St.
759-9990-000	7460 S. 49th St.
759-9991-000	4850 W. Marquette Ave.
759-9992-000	4811 W. Madison Ave.
759-9993-000	4812 W. Madison Ave.
759-9994-000	7375 S. 48th St.
759-9995-000	7353 S. 48th St.

Southeast 1/4 of Section 2

740-9988-001	6950 S. 51st St.
740-9988-002	6980 S. 51st St.

Southwest 1/4 of Section 2

741-9990-000	5130 W. Rawson Ave.
741-9992-000	5308 W. Rawson Ave.
741-9994-000	5320 W. Rawson Ave.
741-9995-000	5336 W. Rawson Ave.
741-9996-000	5430 W. Rawson Ave.
741-9998-000	5610 W. Rawson Ave.

Northwest 1/4 of Section 11

758-9986-001	7201 S. 51st St.
758-9989-001	5525 W. Rawson Ave.
758-9995-003	7301 S. 51st St.
758-9995-004	7283 S. 51st St.
758-9996-000	7351 S. 51st St.