

Document Number

## GRANT OF EASEMENT

1917426

Recorded  
August 04, 2011 10:15 AM  
OUTAGAMIE COUNTY  
JANICE FLENZ  
REGISTER OF DEEDS  
Fee Amount: \$30.00  
Total Pages: 7



THIS AGREEMENT is made and executed as of this 27<sup>th</sup> day of July, 2011 by and among the STATE OF WISCONSIN, acting by and through the DEPARTMENT OF ADMINISTRATION ("State"), the FOX RIVER NAVIGATIONAL SYSTEM AUTHORITY ("FRNSA") and EAGLE FLATS, LLC ("Eagle Flats"),

### RECITALS:

A. The State is the owner of record fee title in and to the real estate described in "Exhibit A" attached hereto (the "Canal Parcel").

B. Pursuant to Chapter 237 of the *Wisconsin Statutes*, the State entered into a certain Lease Agreement with FRNSA dated September 17, 2004 (the "Master Lease Agreement"), pursuant to which FRNSA was granted the right to use, operate and control certain lands which include the Canal Parcel.

C. Eagle Flats is the owner of record fee title in and to Lots 1, 2 and 3 of Outagamie County, Certified Survey Map No. 6241 (the "CSM") and is the holder of record of a certain Right of First Refusal to acquire title to Lot 4 of said CSM by virtue of a certain Memorandum of Right of First Refusal dated as of March 29, 2011 and recorded in the office of the Register of Deeds for Outagamie County, Wisconsin on April 18, 2011, as Document No. 1908256 (said Lots 1-3, hereinafter being referred to as the "Development").

D. By virtue of a certain Declaration of Easements, Covenants and Restrictions dated July 27, 2011 and recorded in the office of the Register of Deeds for Outagamie County, Wisconsin on AUGUST 1, 2011, as Document No. 1916998 (the "Declaration"), Eagle Flats, as the Declarant, has reserved the right to expand the Development to include Lot 4 of said CSM.

E. The Canal Parcel is located to the South of the Development and is contiguous with the South boundaries of Lots 1-4 of the CSM.

F. Pursuant to a certain Lease dated March 23, 2011, and recorded in the office of the Register of Deeds for Outagamie County, Wisconsin on April 4, 2011 as Document No. 1907142, FRNSA granted to Eagle Flats certain rights to improve and use the Canal Parcel (the "Canal Parcel Lease") in conjunction with and as a part of the approved Implementation Plan Document for Planned Development (the "IPD") for the Development, recorded in the office of the Register of Deeds for Outagamie County, Wisconsin on February 10, 2011, as Document No. 1903193.

G. The Canal Parcel Lease, the IPD and the Declaration contemplate the construction of a certain private road for access between the Development and South Lawe Street, portions of which will lie upon the Canal Parcel.

H. Notwithstanding the general grant of leasehold and easement rights to Eagle Flats under the Canal Parcel Lease and those additional rights and benefits conferred by virtue of the joinder of the State and FRNSA to the Declaration, the parties desire to clarify and confirm the grant of right and easement to and for the benefit of Eagle Flats, its lessees, future owners of land within the Development and their respective lessees, sublessees, occupants, permittees and invitees, to construct, maintain and use a private road over and upon portions of the Canal Parcel as hereinafter described and identified.

### Recording Area

#### Name and Return Address

A.J. Griffin III, Esq.  
Griffin Law Office, S.C.  
1041 North Edge Trail  
Verona, WI 53593

PIN: 314-029600 (Partial)



NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties make the following agreement.

1. **Grant of Easement.** The State and FRNSA, together, hereby grant, warrant and convey to and for the benefit of Eagle Flats and all future owners of land included in the Development from time to time, their respective lessees and mortgagees, the perpetual and exclusive right and easement to occupy, construct and maintain upon the Canal Parcel, and thereafter to use and enjoy, together with their respective sublessees, occupants, permittees, invitees and the general public, a certain private right-of-way, to be known as Eagle Flats Parkway (the "Private Road") for the purpose of providing vehicular and pedestrian ingress and egress between the Development and the public right-of-way of S. Lawe Street. The areas of the Canal Parcel burdened by such easement are depicted in the map attached hereto and marked "Exhibit B" (the "Easement Parcel"). The Private Road shall be constructed in a good and workmanlike manner and otherwise in accordance with the requirements and specifications therefor contained in the IPD. The easement herein granted shall include the right from time to time to travel upon and occupy temporarily such portions of the Canal Parcel, other than the Easement Parcel, as reasonably may be required for purposes of constructing, repairing, maintaining and replacing said Private Road.

2. **Maintenance.** At all times after construction of the Private Road has been completed, Eagle Flats shall maintain the surface and subsurface of the Private Road, including all portions thereof which lie upon the Canal Parcel, in the manner required by Article VII of the Declaration and subject to the cost-sharing provisions of Section 7.02 thereof.

3. **Indemnity.** Eagle Flats covenants and agrees to indemnify and to hold harmless the State and FRNSA of and from the claims of all contractors for lien rights with respect to any labor, materials or services furnished by said contractors in connection with the construction, maintenance or repair of improvements upon or within the Easement Parcel pursuant to paragraphs 1 and 2, above, and all claims of its lessees, their sublessees, occupants, agents, contractors, invitees and permittees, utilizing or traveling over or upon the Private Road and/or Easement Parcel from time to time.

4. **Effective Date.** The easements and rights herein granted, assigned and conveyed shall be effective upon the date of execution above written.

5. **Easements, Rights and Obligations to Run with the Land.** The rights and easements herein provided shall run with the Canal Parcel and Lots 1, 2 and 3 of the CSM, and with Lot 4 of said CSM, or such portions thereof as from time to time may be included within the Development, as the same may be expanded in accordance with the Declaration; and the respective rights, duties and obligations hereunder of the parties hereto and of those claiming under each, shall be binding upon, and inure to the benefit of their respective heirs, successors and assigns until the easement and rights herein granted are terminated by written instrument signed by all owners of fee title, all holders of leasehold interests in the real estate included in the Development and the holders of all mortgages of record as to said real estate.

6. **Miscellaneous.**

- (a) **Waiver.** No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party granting such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or a similar nature.
- (b) **Headings.** The heading of each paragraph contained herein is provided for the reader's convenience and is intended to facilitate reference to various portions of this Agreement; and said headings are not intended to be interpreted or construed in any manner which would limit, expand or modify the express terms of the paragraphs to which they apply.
- (c) **Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

- (d) Counterparts. This Agreement may be executed in three (3) or more counterparts, each of which shall be deemed an original and all of which, together, shall constitute one and the same Agreement.
- (e) Applicable Law. This Agreement shall be interpreted, construed and enforced in accordance with the internal laws of the State of Wisconsin.
- (f) Entire Agreement; Amendment. This instrument contains the entire agreement of the parties with respect to the subject matter hereof and is intended to supersede entirely the provisions of any prior agreements, letters or statements of intent, negotiations or understandings, whether written or verbal, between the parties, their agents or representatives. This Agreement may not be modified or amended except by a written document, executed and delivered by the party against whom enforcement of such amendment or modification is sought.


IN WITNESS WHEREOF, the parties have executed this Agreement as of the date given above.

Attachments:

- Exhibit A - Legal Description of the Canal Parcel  
Exhibit B - Map of Easement Parcel

State:

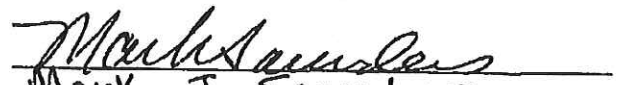
WISCONSIN DEPARTMENT OF ADMINISTRATION

  
Cynthia A. Archer, Deputy Secretary-Administration

ACKNOWLEDGMENT

STATE OF WISCONSIN )  
DANE COUNTY ) ss.

Personally came before me this 27 day of July, 2011, the above-named Cynthia A. Archer, as Deputy Secretary-Administration, to me known to be the person and officer who executed the foregoing instrument and acknowledged the same on behalf of the Wisconsin Department of Administration.

  
Mark J. Saunders  
Notary Public, State of Wisconsin  
My Commission Expires: 15 permanent

FRNSA:

FOX RIVER NAVIGATIONAL SYSTEM AUTHORITY

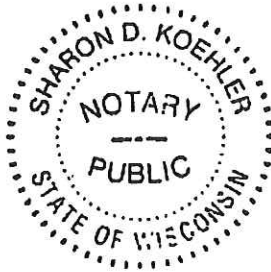
by: \_\_\_\_\_

Harlan Kiesow, CEO

ACKNOWLEDGMENT

STATE OF WISCONSIN )  
                                  ) ss.  
OUTAGAMIE COUNTY )

Personally came before me this 20<sup>th</sup> day of June, 2011, the above-named Harlan Kiesow, as CEO of the Fox River Navigational System Authority, to me known to be the person and officer identified above, who executed the foregoing instrument and acknowledged the same.



Sharon D. Koehler

Sharon D Koehler

Notary Public, State of Wisconsin

My Commission Expires: 6/22/14



Eagle Flats:

EAGLE FLATS, LLC

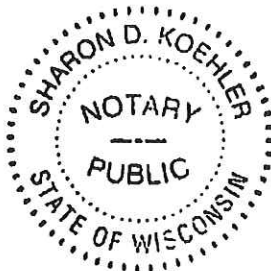
by: \_\_\_\_\_

Randall Stadtmueller, Authorized or Managing Member

**ACKNOWLEDGMENT**

STATE OF WISCONSIN )  
                                  ) ss.  
OUTAGAMIE COUNTY )

Personally came before me this 20<sup>th</sup> day of June, 2011, the above-named Randall Stadtmueller, Authorized or Managing Member of Eagle Flats, LLC, to me known to be the person and officer identified above, who executed the foregoing instrument and acknowledged the same.



Sharon D. Koehler  
Sharon D. Koehler  
Notary Public, State of Wisconsin  
My Commission Expires: 6/22/14

**THIS INSTRUMENT DRAFTED BY  
ATTORNEY A.J. GRIFFIN III, AND  
AFTER RECORDING PLEASE RETURN TO:**

Griffin Law Office, S.C.  
1041 North Edge Trail  
Verona, WI 53593

# EXHIBIT A

## LEGAL DESCRIPTION OF FRNSA PARCEL

### PROPERTY DESCRIPTION:

A part of the United States Canal property located within the Northeast 1/4 of Section 35, Township 21 North, Range 17 East, City of Appleton, Outagamie County, Wisconsin, as bounded on the West by South Olds Oneida Street, on the East by South Lowe Street, on the South by a line located on the Northerly shore of the U.S. Canal at an elevation of 730.27 (NAVD 1988 Datum) that is two (2) feet above the normal high water line of the Upstream side of Canal Lock No. Two (2) including the Lock, and an Elevation of 718.63 (NAVD 1988 Datum) that is two (2) feet above the normal high water line of the Downstream side of the Canal Lock No. Two (2), and bounded on the North by the South line of Certified Survey Map No. 6241 as recorded in Volume 36 of Maps on Page 6241.

dwoodx W:\PROJECTS\00946\000511\62\03-North Bank Lease Area Description Rev12-6-10.dwg 12/09/10 8:10 AM

REvised 12-8-10 DEW

**McMAHON**  
ENGINEERS ARCHITECTS

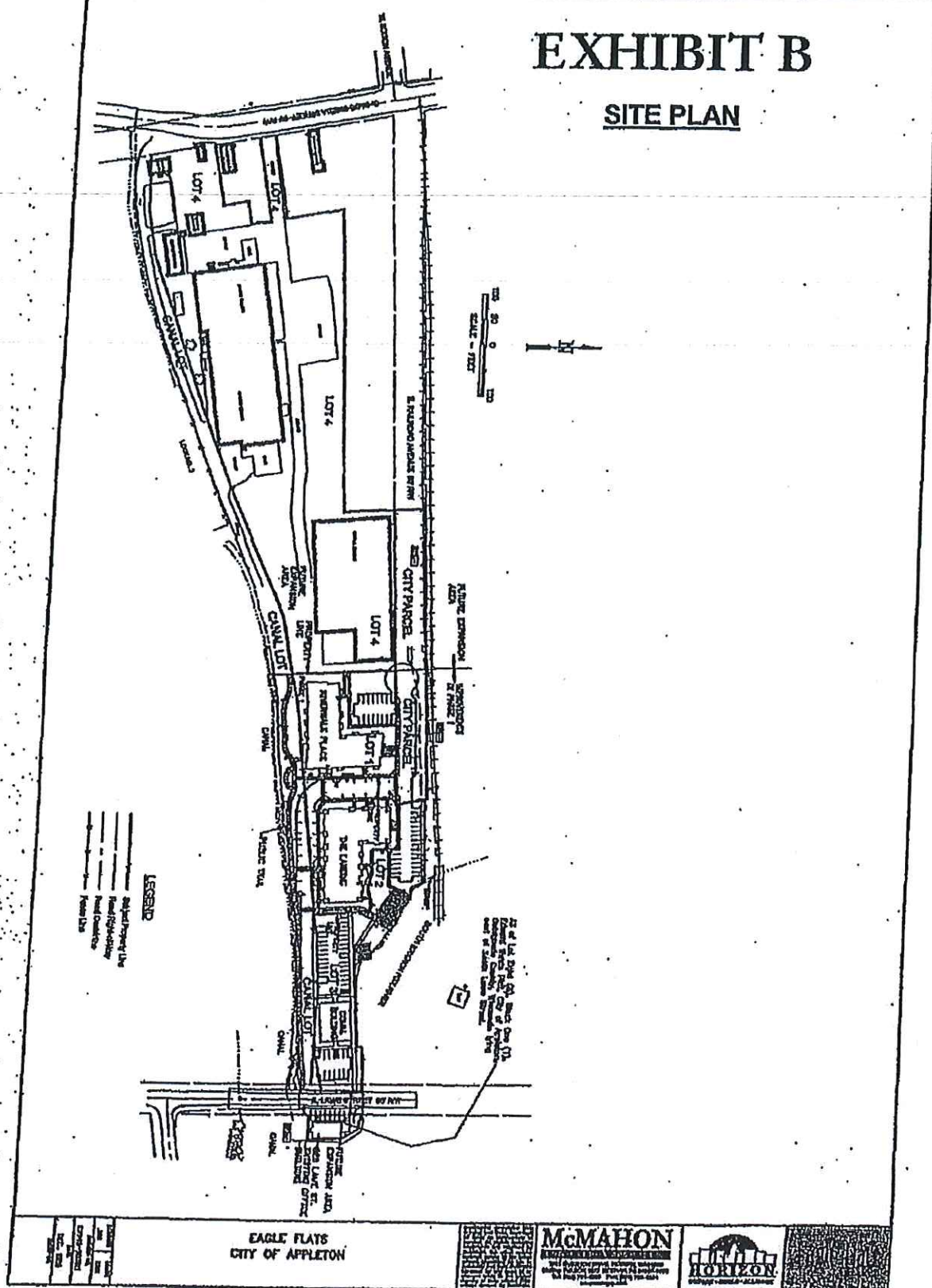
Project No. 00946 00051162 Date OCT. 2010 Scale N/A

Drawn By DEW Field Book Page

1445 McMAHON DRIVE NEENAH, WI 54956  
Mailing P.O. BOX 1025 NEENAH, WI 54957-1025  
Tel (920) 751-4200 Fax (920) 751-4284

8/3  
5/1

## SITE PLAN





Document Number

DECLARATION OF COVENANTS  
AND EASEMENTS FOR  
STORMWATER MANAGEMENT

THIS INSTRUMENT is made and executed as of this 8th  
day of August, 2011 by EAGLE FLATS, LLC, a Wisconsin limited  
liability company (the "Declarant").

RECITALS:

A. Declarant is the owner and holder of record fee title in and to Lots One (1), Two (2) and Three (3) of Outagamie County Certified Survey Map No. 6241 (together, the "Development" and separately "Lot 1", "Lot 2" or "Lot 3").

B. Declarant also is the owner and holder of record fee title in and to a separate parcel of land which lies North of and immediately adjacent to the northernmost boundary of said Lot 2 (the "Drainage Parcel").

C. The Development and the Drainage Parcel are more fully described in "Exhibit A" attached hereto, and they are depicted in the map attached hereto as "Exhibit B".

D. The Declarant proposes to grant a leasehold interest in and to Lot 1 to Riverwalk Place, LLC, a Wisconsin limited liability company, and a leasehold interest in and to Lot 2 to Eagle Flats Apartment Homes, LLC, a Wisconsin limited liability company, pursuant to certain Land Leases; and each lessee intends to improve its respective leased parcel by constructing thereon a multi-family residential apartment complex.

E. In conjunction with the improvements planned for Lot 1 and Lot 2, respectively, the Declarant is required to construct and/or to install upon the Drainage Parcel, a storm sewer and certain related improvements which will collect and transport storm water received from storm sewers on Lot 1 and Lot 2 across the Drainage Parcel to a point of outfall into the Fox River.

F. As a condition precedent to the construction of improvements on Lot 1 and Lot 2, Declarant executes this instrument as evidence of the establishment of said easement for the receipt and transmission of storm water from Lot 1 and Lot 2 across the Drainage Parcel and Declarant's obligation to construct and/or install a storm sewer for such purposes upon the Drainage Parcel.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Declarant states, provides, covenants and agrees as set forth below:

1. Covenant to Construct Storm Sewer. The Declarant shall construct and install upon the Drainage Parcel a storm sewer of adequate size and specifications for the purpose of receiving and transporting storm water from storm sewers located upon Lot 1 and Lot 2, across the Drainage Parcel to a point of outfall into the Fox River. Construction of all improvements required to complete the storm sewer upon the Drainage Parcel shall be constructed and installed prior to the time that a Certificate of Occupancy is issued for the first building to be constructed upon Lot 1 or Lot 2. All costs of construction of the storm sewer shall be paid solely by the Declarant.

1917855

Recorded  
August 10, 2011 11:43 AM  
OUTAGAMIE COUNTY  
JANICE FLENZ  
REGISTER OF DEEDS  
Fee Amount: \$30.00  
Total Pages: 5



RETURN TO: & DRAFTED BY:  
A.J. Griffin III, Esq.  
Griffin Law Office, S.C.  
1041 North Edge Trail  
Verona, WI 53593  
(5)  
ENVELOPE

PIN: See Exhibit A



2. **Drainage Easement.** Declarant hereby establishes, creates, reserves and grants, for the benefit of Lot 1 and Lot 2, the owners, lessees, mortgagees of each and their respective successors and assigns, an easement for the flow and passage of stormwater run-off from Lot 1 and Lot 2 upon, over and across the entirety of the Drainage Parcel through the storm sewer to be constructed thereon by Declarant (the "Drainage Easement"). Declarant warrants to and for the benefit of all owners, lessees and mortgagees of Lot 1 and Lot 2 from time to time that the Declarant has received all required approvals, consents and permits for the construction and operation of said storm sewer upon the Drainage Parcel and for the release of stormwater conveyed thereby into the Fox River, including, without limitation, a permit issued by the Wisconsin Department of Natural Resources pursuant to Chapter 30 of the *Wisconsin Statutes*.

3. **Maintenance.** Declarant agrees to maintain, repair and replace, as necessary, from time to time, the storm sewer and all related improvements to be constructed or installed upon the Drainage Parcel. The cost of all maintenance, repair and replacement of the storm sewer and related improvements by the Declarant shall be divided among, assessed to and paid by, the respective owners or lessees of Lot 1 and Lot 2. Each party's pro rata share of such cost shall be determined by multiplying said cost by a fraction, the numerator of which shall be the total square footage of Lot 1 or Lot 2, respectively, and the denominator of which shall be the total square footage of Lot 1 and Lot 2 combined. Each party shall contribute its pro rata share of such expense promptly within thirty (30) days of its receipt of a request therefor, accompanied by a copy of the statement of all costs of such repairs, maintenance or replacement.

4. **Duration of Easement.** The easement established and created pursuant to paragraph 2, above, shall be perpetual, subject to termination or amendment only as provided in paragraph 7, below.

5. **Effective Date.** The easement and rights herein established, reserved and created shall be effective upon the date of execution of this instrument written below.

6. **Easements, Rights and Obligations to Run with the Land.** The rights and easements herein established shall run with the respective parcels of land, and the respective rights, duties and obligations hereunder of the owners from time to time of Lot 1 and Lot 2, and of those claiming under each, shall be binding upon, and inure to the benefit of their respective heirs, successors and assigns, from the effective date hereof until termination of the easements hereby established and created, as provided in paragraph 7, below.

7. **Termination or Amendment.** This instrument may be terminated, amended or subordinated to a mortgage lien only by the recording of the appropriate document in the office of the Register of Deeds for Outagamie County, Wisconsin, which document must be executed by: (i) all owners and lessees of record of Lot 1 and Lot 2, respectively, and (ii) the respective mortgagees thereof on the date of such document.

8. **Effect of Default; Remedy.** No breach or default by a party hereunder, its successors or assigns, shall work a forfeiture or result in the termination of the easements, rights and obligations herein created or established. In such event the sole remedy hereunder shall be a suit to recover monetary damages, and in the event of a breach or default, the non-breaching party shall provide notice of the alleged breach or default and afford the other party a reasonable opportunity to cure the same, prior to the initiation of any suit to recover damages.

9. **Miscellaneous.**

- (a) **Waiver.** No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party granting such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or a similar nature.

- (b) Headings. The heading of each paragraph contained herein is provided for the reader's convenience and is intended to facilitate reference to various portions of this instrument; and said headings are not intended to be interpreted or construed in any manner which would limit, expand or modify the express terms of the paragraphs to which they apply.
- (c) Applicable Law. This instrument shall be interpreted, construed and enforced in accordance with the internal laws of the State of Wisconsin.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date and year first above written.

Declarant:

EAGLE FLATS, LLC

by:

Randall Stadtmueller, Authorized or Managing Member

ACKNOWLEDGMENT

STATE OF WISCONSIN )  
OUTAGAMIE COUNTY ) ss.

Personally came before me this 8<sup>th</sup> day of August, 2011 the above-named Randall Stadtmueller, to me known or satisfactorily proven to be the Authorized Member or Manager of Eagle Flats, LLC, and executed the foregoing instrument and acknowledged the same.



Notary Public, Outagamie County, State of Wisconsin  
My Commission Expires: 03/08/2015

THIS INSTRUMENT DRAFTED BY  
ATTORNEY A.J. GRIFFIN III, AND  
AFTER RECORDING PLEASE RETURN TO:

Griffin Law Office, S.C.  
1041 North Edge Trail  
Verona, WI 53593



# EXHIBIT A

## LEGAL DESCRIPTION OF DEVELOPMENT

Lots 1, 2 and 3 of a Certified Survey Map recorded in the Office of the Register of Deeds for Outagamie County, in Volume 36 of Certified Survey Maps, Page 6241, as Document No. 1898536 (Certified Survey Map No. 6241), said map being all of Lot 15 and parts of Lots 4, 5, 6, 7, 11, 12, 13, 14, 16 and 17, Block 1, and a part of vacated alleys within Block 1, Edward West's Plat and a part of vacated Onelda Street, according to the recorded Assessor's Map of the City of Appleton, Outagamie County, Wisconsin.

Tax Parcel Nos.: 314-028201 - Lot 1, CSM #6241  
314-028202 - Lot 2, CSM #6241  
314-028203 - Lot 3, CSM #6241

### DRAINAGE PARCEL:

A part of Lot 4, Block 1, according to the recorded Assessor's Map of the City of Appleton, Outagamie County, Wisconsin, containing 6,801 square feet (0.156 acres) of land more or less and described as follows:

Beginning at the Northwest corner of Lot 2 of a Certified Survey Map recorded in the Office of the Register of Deeds for Outagamie County, in Volume 36 of Certified Survey Maps, Page 6241; Thence N10°00'21"W, 58.16 feet along the Westerly line of said Lot 4, Block 1 (of Edward West's Plat) to the South line of property described in Jacket 1036 Image 42; Thence S77°09'24"E, 69.21 feet (recorded as S74°48'E, 77.26') along the South line of Jacket 1036 Image 42; Thence N85°30'58"E (recorded as East), 69.37 feet along said South line to the starting point of a meander line, said point bears S85°30'58"W, 16 feet more or less from the Southwesterly shore of the South Branch of the Fox River; Thence S17°59'00"E, 42.00 feet along said Meander line to the termination point of said meander line, said point bears S86°58'39"W, 25 feet more or less from the Southwesterly shore of the South Branch of the Fox River; Thence S86°58'39"W, 139.68 feet along the North line of said Lot 2 to the point of beginning. Including all those lands lying between the above described meander line and the Southwesterly shore of the South Branch of the Fox River and the respective lot line extended to said shore. Subject to all easements and restrictions of record

Tax Parcel No.: 314-028200

Lot 4 B1K one  
4th ward  
part as doc # 1910488



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TRANSEN W:\PROJECTS\E0946\90051\88\exhibit b.dwg