

Document Number

**DECLARATION OF COVENANTS
CONDITIONS, EASEMENTS
AND RESTRICTIONS**

1916998

Recorded
August 01, 2011 10:17 AM
OUTAGAMIE COUNTY
JANICE FLENZ
REGISTER OF DEEDS
Fee Amount: 930.00
Total Pages: 21



The undersigned **EAGLE FLATS, LLC**, a Wisconsin limited liability company (hereinafter the "Declarant"), as owner of the following described real estate and in order to impose a common plan of restrictions and covenants with respect to said real estate for the mutual benefit of the present and future owners of said real estate and/or divisions thereof, hereby declares and provides that said real estate be, and the same hereby is, subject to the terms of this Declaration which follow:

ARTICLE I

1.01. Description of Real Estate. The real estate subject to the covenants herein set forth is located in the City of Appleton, Outagamie County, Wisconsin and is legally described as follows:

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 Oneida Street, according to the recorded Assessor's Map of the City of Appleton, Outagamie County, Wisconsin.

1.02. Adjacent Lands. The Declarant also has acquired, for the benefit of all Owners, Occupants and Permittees of land included in said Certified Survey Map No. 6241, certain rights to improve and use certain additional lands lying adjacent to and contiguous with the North boundary of Lot 1, and portions of the North and West boundaries of Lot 2, of said Certified Survey Map and those lands lying adjacent to and contiguous with the South boundaries of each of Lots 1, 2 and 3 of said Certified Survey Map, which are owned by the City of Appleton or by the State of Wisconsin (subject to the leasehold interest of the Fox River Navigational System Authority), respectively (together, the "Adjacent Lands"). The Declarant intends to grant, and hereby does grant, to each Owner the license and right from time to time to use and improve said Adjacent Lands, in a manner consistent with the permit(s), lease and related agreements, if any, between the Declarant and the City, the Declarant and the Authority or the Declarant and the State, respectively. The improvement, use and maintenance of the improved areas of said Adjacent Lands at all times also shall be consistent with the requirements of this Declaration.

1.03. Intent: Future Expansion. The Declarant has acquired a certain Right of First Refusal to purchase Lot 4 of said Certified Survey Map No. 6241, a written memorandum of which was recorded in the office of the Register of Deeds for Outagamie County, Wisconsin on April 18, 2011, as Document No. 1908256 (the "Expansion Area"). The Expansion Area is depicted in the Site Plan attached hereto as "Exhibit C" and also on "Exhibit E" attached hereto. In the future Declarant may subject said Expansion Area to the covenants, conditions, easements and restrictions contained in this Declaration. The inclusion of said Expansion Area shall be accomplished by amendment of this Declaration in the manner permitted by Section 12.02 of this Declaration.

ARTICLE II

Definitions

Unless otherwise specified herein or required by the context, the definition and meaning given to each of the

Recording Area

Name and Return Address

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

PIN: SEE "SCHEDULE 1" ATTACHED

following terms shall be as hereinafter set forth in this Article II.

2.01. Authority. The term "Authority" shall mean and refer to the Fox River Navigational System Authority, a body politic existing under and pursuant to the laws of the State of Wisconsin.

2.02. Canal Parcel. The term "Canal Parcel" shall mean and refer to that portion of the Adjacent Lands which is owned by the State, leased to and controlled by the Authority and sub-leased by the Authority to the Declarant 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; said parcel being described in "Exhibit A" attached hereto and depicted in the Site Plan attached hereto and marked "Exhibit C".

2.03. City. The term "City" shall mean and refer to the City of Appleton, Wisconsin, a municipal corporation existing under and pursuant to the laws of the State of Wisconsin.

2.04. City Parcel. The term "City Parcel" shall mean and refer to that portion of the Adjacent Lands which is owned and controlled by the City, as described in "Exhibit B" attached hereto and depicted in the Site Plan attached hereto and marked "Exhibit C". The City Parcel consists entirely of the easternmost 575 feet of the public right-of-way formerly designated E. Railroad Avenue, n/k/a Eagle Flats Parkway. The rights of the Declarant and/or the Owners of Sites within the Entire Parcel to improve the City Parcel in the manner contemplated by this Declaration are derived from a certain permanent Permit to Occupy Public Right-of-Way issued by the City as Permit No. 11-03, dated March 3, 2011 (the "Occupancy Permit").

2.05. Common Utility Facility(-ies). The term "Common Utility Facility" or "Common Utility Facilities" shall mean and refer to those public or private utility improvements or components thereof which provide service to or benefit more than one Site in the Entire Parcel.

2.06. Common Areas. The term "Common Areas" shall mean and include all areas or parts of the real property described in Section 1.01 hereof which from time to time are devoted primarily to parking, approaches, exits, entrances, sidewalks, exterior landscaping, plantings, incidental and interior roadways, loading areas and other similar areas, as depicted on the Site Plan attached hereto as "Exhibit C".

2.07. Declarant Common Area. The term "Declarant Common Area" shall mean and include those portions of the Entire Parcel, the Canal Parcel and the City Parcel which are designated "Declarant Common Area" on "Exhibit D" attached hereto and which, after improvement thereof in the manner contemplated by the Site Plan will be maintained by, and at the expense of, the Declarant pursuant to Article VII of this Declaration.

2.08. Declaration. The term "Declaration" shall mean only this instrument, as amended or supplemented from time to time in accordance with Section 12.02 hereof, and shall refer to the restrictions, reservations, limitations, covenants, easements and conditions herein provided.

2.09. Entire Parcel. The term "Entire Parcel" shall mean and refer to all of the real estate described or referred to in Section 1.01 hereof and to such portions of the Expansion Area which is referred to in Section 1.03 hereof as may be subjected to this Declaration in the future by amendment(s) hereof in the manner described in Section 12.02 hereof, but it does not include the Canal Parcel or the City Parcel.

2.10. Expansion Area. The terms "Expansion Area" shall mean and refer to the parcel described in Section 1.03 hereof and depicted in the Site Plan.

2.11. Improvements. The term "Improvements" shall mean and include buildings, roads, driveways, parking areas, sidewalks, paths, walkways, fences, screening walls, retaining walls, stairs, decks, hedges, windbreaks, plantings, trees and shrubs, poles, signs, loading areas, retention ponds, biofilters, utilities, underground stormwater drainage systems and all other structures, decorative features and landscaping improvements of every type and kind.

2.12. IPD. The term "IPD" shall mean and refer to the Implementation Plan Document for Planned Development for the Entire Parcel, approved by the City on December 1, 2010, executed by the Declarant on January 31, 2011 and recorded in the office of the Register of Deeds for Outagamie County, Wisconsin on February 10, 2011, as Document No. 1903193. The IPD contains development guidelines, conditions, covenants, standards and restrictions applicable to the Entire Parcel and Expansion Area, as well as to the Improvements planned by Declarant for construction or installation upon the Canal Parcel and the City Parcel.

2.13. Occupancy Permit. The term "Occupancy Permit" shall mean and refer to that certain permanent Permit to Occupy Public Right-of-Way issued by the City as Permit No. 11-03, dated March 3, 2011, and pertaining to the City Parcel.

2.14. Occupant(s). The term "Occupant" or "Occupants" shall mean and include any entity or person who, from time to time, shall be entitled to the use and occupancy of buildings or rental units within buildings constructed upon the Entire Parcel or any Site existing therein under any lease, sublease, license, concession agreement, or other instrument or arrangement pursuant to which such rights are acquired, and shall include mortgagees of record.

2.15. Owner(s). The term "Owner" or "Owners" shall mean and include each person or entity who acquires from the Declarant, its successors or assigns, any of the following interests of Record in and to the Entire Parcel or a Site: (a) a fee interest; (b) the equitable interest of a purchaser under Land Contract; or (c) the interest of a land lessee or ground lessee. In addition, the Declarant shall be an Owner of any Site in which Record fee title remains vested in the Declarant and which is not subject to an equitable or leasehold interest described in clause (b) or clause (c), above. The term "Owner", as used in this Declaration, shall not be interpreted or construed to include any of the Authority, the City or the State.

2.16. Permittees. The term "Permittees" shall mean and refer to all Owners, Occupants and all customers, clients, employees, licensees and other invitees of the Owners or Occupants, as well as the Declarant, its employees, licensees and invitees.

2.17. Record; Recorded; Recording. The term "Record", "Recorded" or "Recording" shall mean, with respect to any instrument or document, the recordation of said instrument or document in the Office of the Register of Deeds of the County of Outagamie and State of Wisconsin.

2.18. Restrictions. The term "Restrictions" shall mean and refer to each and every one of the restrictions, reservations, limitations, covenants, easements and conditions set forth in this Declaration, as amended or supplemented from time to time.

2.19. Site(s). The term "Site" or "Sites" shall mean and refer to any subdivided portion(s) of the Entire Parcel from time to time, as depicted in the Site Plan attached hereto as "Exhibit C", and may include the Expansion Area, or such portions thereof as are subjected to this Declaration by any future amendment hereof, pursuant to Section 12.02. Each of the Sites initially included in the Entire Parcel may be referred to separately as "Lot 1", "Lot 2" or "Lot 3", respectively, as delineated on said "Exhibit C".

2.20. Site Plan. The term "Site Plan" shall mean and refer to "Exhibit C" attached hereto, which depicts the manner in which the Entire Parcel, the Canal Parcel and the City Parcel are to be developed and improved by the Declarant and/or Owners from time to time and the location of the Expansion Area.

2.21. State. The term "State" shall mean and refer to the State of Wisconsin, acting by and through the Department of Administration.

ARTICLE III

Common Area Use and Easements

3.01. A nonexclusive easement is hereby reserved and declared to exist for the benefit of the Declarant, all Owners, Occupants and Permittees, over and upon those portions of the Entire Parcel, the Declarant Common Area and each individual Site which from time to time are developed, improved or maintained as Common Areas, for the purposes of: (a) pedestrian and vehicular ingress, egress, passage and traffic in, upon, over, across and through such areas of the Canal Parcel, the City Parcel and the Entire Parcel; (b) the provision of service, maintenance or repair to any Site or any building or improvement situated thereon; and (c) providing access to, from and among the respective Sites and between the Entire Parcel and/or the Canal Parcel and any private access rights-of-way or public streets located adjacent thereto. Insofar as reasonably practicable, vehicular access and traffic upon, across, over and among the respective Sites shall be restricted to the areas designated as "Declarant Common Area" on Exhibit C attached hereto.

3.02. At all times hereafter free access between the respective Sites which comprise the Entire Parcel and between the Entire Parcel and S. Lawe Street, the Canal Parcel or the City Parcel shall not be impeded and shall be maintained; and no wall, fence, barrier, hedge or other obstruction shall be placed, erected or permitted to remain in the Declarant Common Area located on any Site or upon the City Parcel and the Canal Parcel, which may interfere unduly with the exercise and enjoyment of the easements herein granted.

3.03. The Owners and Occupants shall cooperate in the granting of appropriate and proper easements for the installation, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Entire Parcel. Said parties shall use their best efforts to cause the installation of such utility and service lines to be completed prior to paving of the Common Areas and Declarant Common Areas which are

located upon their respective Sites. No such lines, sewers, utilities or services of any Owner or Occupant shall be installed within those areas on the Site Plan which show the location of a proposed building (hereinafter sometimes referred to collectively as the "Building Areas").

3.04. The easements hereby created and established shall not include any grant or reservation of easement, right or license of the Owner, Occupants or Permittees of one Site to park vehicles upon any area dedicated to, or reserved for, parking on any other Site in the Entire Parcel except such areas, if any, as may be designated for parking within a private or public road or right-of-way located upon or within the Entire Parcel, the Canal Parcel or the City Parcel; and each Owner shall maintain adequate parking areas on its Site from time to time consistent with the requirements of Article VI hereof, the Site Plan and applicable Planned Development zoning requirements of the IPD ("PD Zoning").

ARTICLE IV

Utility Easements

4.01. Subject to the provisions of Section 3.02 hereof, the Declarant hereby grants to the Owners of the respective Sites from time to time, for their common use and benefit (and to the applicable public utility companies) with respect to each Site, nonexclusive easements to install, connect to, operate, maintain, remove, repair and replace utility systems, lines, pipes, mains, storm sewers, drainage and other facilities for the provision of water, gas, storm water management, biofilter systems, electricity and telephone services and for sanitary sewers (all such utilities hereinafter referred to collectively as "Utility Facilities") across, under and upon the Sites at such place or places as are designated on the Site Plan attached hereto or at such other place or places within the Entire Parcel as may be mutually agreed by the Owners and Occupants of the dominant and servient Sites. All costs incurred in connection with such extension of Utility Facilities or the connection thereto shall be borne exclusively by the party seeking such extension or connection, including, without limitation, all costs of restoring the surface of the Site of any other party, as well as all costs relating to the installation of said Utility Facilities.

4.02. Each Owner, upon the reasonable request of the Declarant or any other Owner, any utility company or any governmental body having jurisdiction thereof, shall prepare, execute and/or deliver to the requesting party such further instruments, plats or the like as reasonably may be required to locate and/or describe precisely the easements for the Utility Facilities granted hereunder; provided that all costs related thereto shall be borne by the party requesting such instrument or other document or, in the case such request is made by a utility company or governmental body, said costs shall be borne by the Owner whose Site is benefitted thereby.

ARTICLE V

Nature of Easements and Rights Granted

5.01. Each and all of the easements and rights granted or created herein are appurtenances to the affected portions of the Entire Parcel and none of said easements and rights may be transferred, assigned or encumbered except as an appurtenance to the Site to which it pertains. For the purposes of such easements and rights, the Site or particular areas of the Entire Parcel benefitted thereby shall constitute the dominant estate, and the Site or particular areas of the Entire Parcel burdened by such easements and rights shall constitute the servient estate.

5.02. The Restrictions shall constitute covenants running with the land, and the rights, duties and obligations of the Declarant and each Owner hereunder, and of those claiming under or through them, shall be binding upon, and inure to the benefit of their respective heirs, successors and assigns.

ARTICLE VI

Development and Improvement

6.01. It is declared and agreed that Lots 1, 2 and 3, together with such portions of the Expansion Area as from time to time may be added to and included within the Entire Parcel, shall be redeveloped as an integrated and unified mixed use development, including commercial and residential uses, and that each of those Sites shall be improved and utilized in a manner which at all times shall be consistent and in harmony with such concept; provided, however, that until such time as redevelopment work commences on a Site, all existing Improvements and uses upon or of the remaining Sites may be continued. In furtherance hereof, it is agreed that the Entire Parcel and each of the Sites eventually shall be redeveloped and improved in a manner consistent with the provisions of the IPD, this Declaration and the Site Plan attached hereto.

6.02. Concurrent with the commencement of construction on Lot 2, the Declarant, at its sole cost and expense,

shall construct a private road upon and within the Declarant Common Area on Lot 3 and the Canal Parcel in the location and manner which is depicted on the attached Site Plan (the "Private Road") for the purpose of providing access between Lot 1 and Lot 2 and the public right-of-way of S. Lawe Street, including such parking stalls as are depicted as lying within or forming a part of such portion of the Private Road as is required to be constructed by Declarant in accordance herewith and the attached Site Plan. Also concurrent with the construction of Improvements on Lot 2, the Owner of Lot 1, at its sole cost and expense, shall initiate construction of, and thereafter work diligently to complete, those Improvements upon the City Parcel which are contemplated by the Site Plan and for which said Owner is responsible pursuant to Section 6.07 hereof; and the Owner of Lot 2 shall complete the extension of the Private Road, and related parking stalls over and upon Lot 2, to connect with the public right-of-way of E. Railroad Avenue on the City Parcel, all in a manner consistent with the requirements of this Article VI and the attached Site Plan. The Improvements to be constructed or installed upon the City Parcel and the Canal Parcel shall include, without limitation, the extension of all private and public Utility Facilities and all component features required by the Occupancy Permit issued by the City.

6.03. After completion of all Improvements on Lot 1, Lot 2 or Lot 3, the Owner thereof from time to time shall maintain surface and/or subsurface parking areas for Occupants and Permittees, which, together with such parking as is provided within the Private Road right-of-way and the public right-of-way of E. Railroad Avenue, shall provide individual parking spaces of such quantity, size and configuration as to satisfy the requirements of applicable PD Zoning. Areas devoted to parking and parking spaces shall be constructed and maintained at all times in a manner consistent with the Site Plan, applicable PD Zoning and the requirements of this Declaration.

6.04. All parking areas, driveways, entry and exit aprons shall be completed with a surface of asphalt pavement or its equivalent. Off-street loading and receiving areas, if any, space shall not be part of the area designated for parking.

6.05. The exterior elevation of each building constructed on Lot 3 shall be architecturally harmonious and aesthetically compatible with the buildings constructed on Lot 1 and Lot 2. The design and construction of all buildings within the Entire Parcel shall be of high quality and shall incorporate sound construction practices and materials.

6.06. Upon the unanimous agreement of all Owners of Lots 1, 2 and 3, a monument-type sign may be installed near the entry to the Entire Parcel from S. Lawe Street for the purpose of identifying the development and to direct traffic to each building within the Entire Parcel. The size, height, composition and design of said signage shall be subject to local code requirements and all costs and expenses of constructing, installing, repairing and maintaining such signage shall be divided among, assessed to and paid on a pro rata basis by the Owners of Lots 1, 2 and 3. Each party's pro rata share of such expense shall be determined from time to time by multiplying said expense by a fraction, the numerator of which shall be the total square footage of each respective Site and the denominator of which shall be the total square footage contained in the Entire Parcel. 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 for such repair or maintenance work.

6.07. Concurrent with the construction of the initial building upon the Entire Parcel, the Owner of such Site, at its sole expense, shall construct and install upon such Site and upon such portions of the Canal Parcel and the City Parcel as lie adjacent to said Site and which are situated between the imaginary southerly and northerly extensions of the East and West boundaries of the Site, all Common Area Improvements and Declarant Common Area Improvements, in addition to the Private Road, as are depicted on the Site Plan as located upon or within said areas; and the Owner of each remaining Site shall complete the rough grading of said remaining Sites prior to the completion of the construction of said initial building and all related Site improvements. Thereafter, said unimproved Sites shall be planted in grass and maintained in a mowed, neat and orderly condition until improved in the manner contemplated by the Site Plan.

6.08. The buildings constructed upon Lot 1 and Lot 2 shall be devoted to use as multi-family apartment complexes. The building(s) constructed upon Lot 3 may be devoted to use as rental apartments, dormitories, hotel, motel or other commercial and/or retail purposes, including, without limitation, financial institutions, shops of retail merchants and service providers and/or commercial office space. At such time as the Expansion Area or any portion thereof shall be subjected to this Declaration and included within the Entire Parcel, the development, improvement and use thereof shall comply with the requirements of applicable PD Zoning. No building, Improvement or any portion thereof within the Entire Parcel from time to time may be devoted to use as a church, theater, bowling alley, billiard parlor, or adult bookstore.

6.09. The Canal Parcel shall be developed and improved from time to time by the Declarant and/or the Owners of Sites adjacent thereto as required by Sections 6.02, 6.04 and 6.07, above, and in the manner depicted in the Site Plan. Thereafter, portions thereof may be used as a public trail, private roadway and/or parking.

6.10. The City Parcel shall be developed and improved from time to time by the Declarant and/or the Owners of Sites adjacent thereto as required by the Occupancy Permit, Sections 6.02, 6.04 and 6.07 of this Declaration, and in the manner depicted in the Site Plan. Thereafter, said City Parcel shall be used for purposes of a public right-of-way and for parking.

ARTICLE VII

Maintenance of Common Areas and Declarant Common Area

7.01. Except as provided in Section 7.02, below, each Owner, at its sole cost and expense, shall maintain all Common Areas, other than Declarant Common Area, as are located on its respective Site from time to time, together with all Improvements constructed or installed thereon, in a state of good condition and repair. Such maintenance shall include, but shall not be limited to:

- (a) such maintenance, repair and replacement of the surface and subsurface of the Common Areas as is required to maintain the same in a level and smooth condition, utilizing the same type of materials originally used in the construction thereof or such substitutes as are equal to said materials in quality, appearance and durability;
- (b) removal from the Common Areas of debris, ice, snow, refuse and other hazards to persons using the said Common Areas, as reasonably required;
- (c) maintenance of appropriate entrances, exits and directional signs, markers and lighting as reasonably required from time to time to maintain their function, appearance and useful or operable condition;
- (d) such painting and striping as may be required from time to time to maintain the Common Areas and equipment installed thereon in a high quality condition; and
- (e) maintaining, mowing, weeding, trimming and watering all landscaped areas and the replacement of shrubs and other landscaping as reasonably may be required to maintain the neat and attractive appearance of such areas.

7.02. The Declarant shall maintain those areas of the Entire Parcel, Canal Parcel and City Parcel as are designated "Declarant Common Area" on "Exhibit D" attached hereto, including, without limitation, all public or private Utility Facilities as may be installed within said Declarant Common Area and the surface and subsurface of the Private Road, all parking spaces provided therein and any and all sidewalks, paths, trails and walkways, and shall keep the same reasonably free of ice, snow and debris and in an otherwise fully accessible and passable condition and otherwise in a condition which shall be at least equal to the Common Areas of the Sites adjacent thereto. In addition, the Declarant also shall maintain, at its sole cost and expense, the Canal Parcel and the City Parcel, together with such Improvements as are constructed or installed thereon from time to time by the Declarant and/or the Owners of Sites adjacent thereto pursuant to Article VI of this Declaration. The cost of all maintenance, repair and replacement work performed by or on behalf of the Declarant shall be divided among, assessed to and paid by the Owner of each Site in the Entire Parcel. Each party's pro rata share of such cost shall be determined from time to time by multiplying said cost by a fraction, the numerator of which shall be the total square footage of each respective Site and the denominator of which shall be the total square footage contained in the Entire Parcel. 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 for such repair or maintenance work.

7.03. The Declarant shall maintain all Common Utility Facilities, as defined in Section 2.05 of this Declaration, regardless of whether the same may be located or installed upon or within the Declarant Common Area or upon or within other portions of one or more individual Sites. Such maintenance shall include the repair and/or replacement of components thereof as necessary from time to time to ensure their continued and reliable operation. The cost of all maintenance, repair and replacement work performed by or on behalf of the Declarant shall be divided among, assessed to and paid by the Owner of each Site benefiting from the use and operation of said Common Utility Facility (a "Beneficiary Site"). Each party's pro rata share of such cost shall be determined from time to time by multiplying said cost by a fraction, the numerator of which shall be the total square footage of each respective Beneficiary Site and the denominator of which shall be the total square footage contained in all Beneficiary Sites. 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 for such replacement, repair or maintenance work.

7.04. In the event the Declarant shall fail to maintain any of the Declarant Common Area or any Owner shall fail to maintain the remaining Common Areas which each is required to maintain pursuant to the preceding Sections 7.01 through 7.03 of this Article, in the manner required hereunder (such party being hereinafter referred to as the "Defaulting Party"), any other Owner and/or the Declarant, as applicable, who is not responsible for said failure (such party being hereinafter referred to as the "Nondefaulting Party") may send written notice of such failure to the Defaulting Party. Such notice shall contain an itemized statement of the specific deficiencies (hereinafter the "Deficiencies") in the Defaulting Party's performance of its obligation to maintain Common Areas and/or the free flow of pedestrian passage and vehicular traffic over and upon the Entire Parcel, in accordance with this Declaration. The Defaulting Party shall have thirty (30) days after its receipt of said notice in which to correct the Deficiencies, or in which to commence correction thereof in the event correction of the Deficiencies cannot reasonably be completed within the said thirty (30) day period, in which latter case the Defaulting Party thereafter shall proceed diligently to complete the correction of the Deficiencies in a reasonably prompt and timely manner. In the event the Defaulting Party shall fail or refuse, for any reason, within said thirty (30) day period, to correct or to begin to correct the Deficiencies and thereafter to continue diligently until the correction is completed, as the case may be, the Nondefaulting Party may, at its option, correct the Deficiencies. In the event the Nondefaulting Party shall exercise said option and shall correct the Deficiencies, the Defaulting Party, promptly upon receipt from the Nondefaulting Party of an itemized invoice for the costs incurred by the Nondefaulting Party in the correction of said Deficiencies, shall pay or reimburse all such costs to the Nondefaulting Party, together with interest thereon at a rate which shall be two percentage points above the prime rate announced by, or in effect from time to time at, U.S. Bank, National Association, at Madison, Wisconsin, or its successor, from the date of demand for payment or reimbursement. In the event litigation is commenced to enforce or determine the respective rights of the parties hereunder, the prevailing party shall be entitled to recover all costs and attorneys fees reasonably incurred in connection with such litigation, in addition to such other relief as is awarded by the court.

ARTICLE VIII

Enforcement - Injunctive Relief

8.01. In the event of any violation by Declarant, any Owner, Occupant or Permittee of any of the Restrictions provided herein, the remaining parties or their respective successors or assigns, as the case may be, shall have, in addition to the right to collect damages, the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Prior to the commencement of any such action, thirty (30) days' written notice of the violation shall be given to all Owners of Sites within the Entire Parcel, the Declarant, and to the person or entity responsible for such violation or threatened violation. The prevailing party(ies) in any such action shall be entitled to recover all costs and attorneys fees reasonably incurred in connection therewith, in addition to such other relief as is awarded by the court.

8.02. Neither the Declarant nor any Owner, Occupant or Permittee shall be regarded as being in default of any requirement of this Declaration unless such party shall have been served with a written notice specifying the default and thereafter shall fail to cure such default within thirty (30) days after receipt of such notice, or shall fail to commence such cure within such period of time, if the default cannot be cured within the said thirty (30) day period, and thereafter, proceed continuously and diligently to complete the necessary cure.

8.03. No breach of this Declaration shall entitle the Declarant or any Owner to cancel, rescind or otherwise terminate these Restrictions, but this limitation shall not affect, in any manner, any other rights or remedies which may be available by reason of any breach of this Declaration.

ARTICLE IX

Mutual Indemnification

9.01. Each Owner of a Site shall comply with all applicable laws, rules, regulations and requirements of all public authorities and shall indemnify, defend and hold the other Owners, their respective successors, assigns, Occupants and Permittees, harmless from and against any and all claims, demands, losses, damages, liabilities and expenses and all suits, actions and judgments (including, but not limited to, costs and attorneys' fees) arising out of or in any way related to personal injury, death or damage to property occurring upon its Site or relating to the failure by such Owner to maintain its portion of the Entire Parcel in a safe and proper condition. Each Owner shall give each other Owners prompt and timely notice of any

claim made or suit or action commenced which, in any way, could result in indemnification hereunder.

2.02. Each Owner, for and with respect to its Site, shall procure and maintain in full force and effect throughout the term of this Declaration general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its Site, each party's insurance to afford protection to the limit of not less than \$2,000,000.00 for injury or death of a single person, and to the limit of not less than \$2,000,000.00 for any one occurrence, and to the limit of not less than \$1,000,000.00 for property damage. Each party shall provide the others with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance which may cover other property in addition to the property covered by this Declaration. Such insurance shall provide that the same may not be cancelled without thirty (30) days prior written notice to the other parties, including the Declarant.

2.03. At all times during the term of this Agreement, each Owner shall keep improvements on its property insured against loss or damage by fire and other perils and events as may be insured against under the broad form of Uniform Extended Coverage Clause in effect from time to time in the State of Wisconsin, with such insurance to be for the full replacement value of the insured improvements.

2.04. Policies of general public liability insurance provided for in this Article IX shall name the Declarant, each Owner and its respective mortgagee(s) of record as insureds, to the extent of their respective interests; and upon request, each Owner shall provide to the others, and to their respective mortgagee(s) of record, certificates evidencing the fact that such insurance has been obtained and is in force.

2.05. Each Owner, on behalf of itself and its property insurer, shall, and hereby does, release the others, their respective tenants and mortgagees, of and from any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property resulting from or in any way connected with any fire or other casualty, whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party so released or by any agent, associate or employee of the party being released, this release being to the extent that such damage or loss is covered (or would be covered but for the default or failure of the releasing party to comply with the requirements of Section 9.02 or Section 9.03 hereof) by the property insurance which the releasing party is obligated hereunder to carry. The Owners shall further waive and relinquish any and all claims for any loss of rents or profits suffered or incurred as a result of or in relation to any such casualty or occurrence, without regard for whether such loss is covered by insurance maintained by the releasing party. Unless commercially not practicable, all policies of insurance carried by the Owners shall contain waivers of subrogation rights, consistent with the requirements of this Article IX.

2.06. The provisions of Sections 9.01 through 9.05, above, shall apply equally to the Declarant, who, for purposes of this Article IX shall be considered to be the Owner of and with respect to each Site not previously leased nor conveyed by Declarant to a third party in the manner provided in Section 2.15 of this Declaration.

ARTICLE X

Condemnation

If all or any part of the Entire Parcel is condemned or taken by any duly constituted authority for a public or quasi-public use, then that portion of the resulting award attributable to the value of any land and improvements within the Common Areas so taken shall be payable only to the Owner of record title thereto, the Owner(s) of the Site(s) immediately adjacent to the Common Area so taken and their respective mortgagee(s) of record; and no claim thereto shall be made by any other party or the Owner of any remaining portion of the Entire Parcel. The Owner of the Common Areas so condemned or taken shall repair and restore the remaining portion of the Common Areas owned by such Owner promptly and as nearly as practicable to the condition of the same immediately prior to such condemnation or taking and without contribution from any other party.

ARTICLE XI

Notices

All notices required or permitted hereunder shall be in writing and shall be deemed delivered to the party to whom addressed upon personal delivery thereof or when deposited in the U.S. Mail, as certified or registered mail, postage pre-paid and addressed to the appropriate party at its last known business address.

The Declarant and any Owner may change its address for the receipt of notices hereunder by providing written notice thereof to all other parties in the manner herein set forth.

ARTICLE XII

Duration, Termination and Amendment

12.01. The easements and covenants herein granted and made shall be of perpetual duration.

12.02. This Declaration and any covenant, condition, easement or restriction contained herein, may be terminated, extended or amended as to the Entire Parcel or any Site included therein only by Recording an appropriate instrument in the office of the Register of Deeds for Outagamie County, Wisconsin, which instrument must be executed by all Owners of the Entire Parcel as of the date of such document, and by the respective mortgagees of record of such Owners; provided, however, that the Declarant may amend this Declaration unilaterally, and without the approval or joinder of any of the Owners or mortgagees of any other Site or portion of the Entire Parcel, the City or the Authority, for the sole purpose of including all or portions of the Expansion Area within the definition of the Entire Parcel from time to time and thereby subjecting the same to the Restrictions hereby imposed (the "Declarant's Amendment"). The Declarant's Amendment shall contain, *inter alia*, the legal description of the Expansion Area or portion thereof which is subjected to this Declaration, and it shall be effective immediately upon Recording thereof in the office of the Register of Deeds for Outagamie County, Wisconsin.

ARTICLE XIII

No Public Dedication

Nothing contained in this Declaration shall constitute or be deemed to constitute a gift or dedication of any portion of the Entire Parcel to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration will be strictly limited to and for the purposes expressed herein.

ARTICLE XIV

Recording

A fully executed counterpart of this Declaration shall be Recorded in the Office of the Register of Deeds of Outagamie County, Wisconsin.

ARTICLE XV

Benefit

The Restrictions shall inure to the benefit of, and be binding upon, the Declarant, each Owner and Occupant from time to time and their respective heirs, personal representatives, successors and assigns.

ARTICLE XVI

Waiver

No waiver of any breach of any of the Restrictions herein contained shall be construed as, or constitute a waiver of, any other breach of the same or any other provision of this Declaration or any default hereunder, nor shall the same constitute a waiver of, acquiescence in or consent to, any further or succeeding breach of the same or any of the other Restrictions hereunder.

ARTICLE XVII

Separability

If any term or provision of this Declaration shall be held invalid or unenforceable to any extent, the remaining terms and provisions of this Declaration shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

ARTICLE XVIII

Applicable Law

This Declaration shall be construed and enforced in accordance with the laws of the State of Wisconsin.

IN WITNESS WHEREOF, the undersigned Declarant has caused this Declaration to be executed as of this

20th day of June, 2011.

Attachments:

- Schedule 1 - Tax Parcel Numbers
- Exhibit A - Legal Description of Canal Parcel
- Exhibit B - Legal Description of City Parcel
- Exhibit C - Site Plan
- Exhibit D - Common Area Exhibit
- Exhibit E - Expansion Area

EAGLE FLATS, LLC

by: 

Randall Stadtmueller, Authorized or Managing Member

CORPORATE ACKNOWLEDGMENT

Personally came before me, this 20th day of June, 2011, the above-named Randall Stadtmueller, Authorized or Managing Member of the above-named Declarant, to me known (or satisfactorily proven) to be such person and officer who executed the foregoing instrument and acknowledged that he executed the same by its authority, for the purposes therein contained.



Sharon D. Koehler

Notary Public, State of Wisconsin

My Commission Expires: 6/22/14

**ACKNOWLEDGMENT AND ACCEPTANCE
BY STATE, AUTHORITY AND CITY**

The undersigned, in the name and on behalf of the State of Wisconsin, the Fox River Navigational System Authority and the City of Appleton, respectively, do hereby acknowledge, accept and consent to the joinder and inclusion of the Canal Parcel and the City Parcel, respectively, within the preceding Declaration, to the extent and for the purposes therein described, and consent further to the improvement and use thereof by Declarant and/or Owners, Occupants and Permittees of the Entire Parcel in the manner contemplated thereby and otherwise consistent with the respective agreements, leases and/or permits with or between each of the undersigned and the Declarant.

The State:

WISCONSIN DEPARTMENT OF
ADMINISTRATION

by 

name & title: Cynthia Archer, Deputy Sect.

attest: _____

name & title: _____

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
DANE COUNTY)

Personally came before me this 27 ^{July} day of ~~June~~ 2011, the above-named Cynthia Archer,
as Deputy Sect and _____, ss.
~~competently~~, to me known to be the person and officer identified above, who executed the foregoing instrument and
acknowledged the same on behalf of the Wisconsin Department of Administration.



Notary Public, State of Wisconsin

My Commission Expires: 15 permanent

The Authority:

FOX RIVER NAVIGATIONAL SYSTEM
AUTHORITY

by: [Signature]

name & title: Harlan Kiesow, CEO

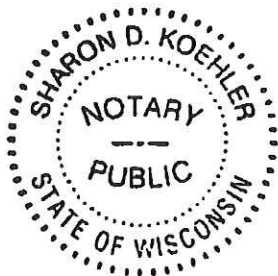
attest: [Signature]

name & title: Ron Van De Hey Chair

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
OUTAGAMIE COUNTY)

Personally came before me this 20th day of June, 2011, the above-named Harlan Kiesow,
as CEO and Ron Van De Hey, as Chair,
respectively, to me known to be the persons and officers identified above, who executed the foregoing instrument and
acknowledged the same on behalf of Fox River Navigational System Authority.



Sharon D. Koehler

Notary Public, State of Wisconsin

My Commission Expires: 6/22/14

The City:

CITY OF APPLETON

by: 

name & title: Timothy M. Hanna, Mayor

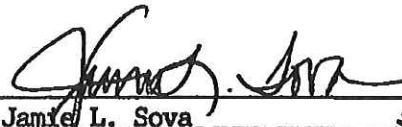
attest: 

name & title: Mary Wendell, Deputy City Clerk

ACKNOWLEDGMENT

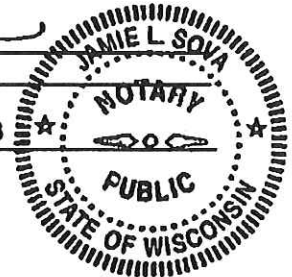
STATE OF WISCONSIN)
) ss.
OUTAGAMIE COUNTY)

Personally came before me this _____ day of June, 2011, the above-named Timothy M. Hanna,
as Mayor and Mary Wendell, as Deputy City Clerk
respectively, to me known to be the persons and officers identified above, who executed the foregoing instrument and
acknowledged the same on behalf of the City of Appleton.


Jamie L. Sova

Notary Public, State of Wisconsin

My Commission Expires: 12/15/13



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

DECLARATION SCHEDULE 1

Tax Parcel Numbers:

314-028210	-	Lot 1, CSM # 6241
314-028220	-	Lot 2, CSM # 6241
314-028230	-	Lot 3, CSM # 6241
314-028240	-	Lot 4, CSM # 6241
314-029600	-	Canal Parcel

DECLARATION EXHIBIT A DESCRIPTION OF CANAL PARCEL

PAGE 3 OF 3

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 Old Oneida Street, on the East by South Lowe Street, on the South by a line located on the Northern 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 718.83 (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 35 of Maps on Page 6241

McMAHON
SURVEYING & ENGINEERING, INC.

Project No. 1000000000 Date 12-10-10 Scale AS SHOWN
Drawn By DEM Field Book Page

1400 LAMAR AVENUE, SUITE 200, APPLETON, WI 54912
PHONE (920) 831-1000 FAX (920) 831-1001
TOLL FREE (800) 747-4200

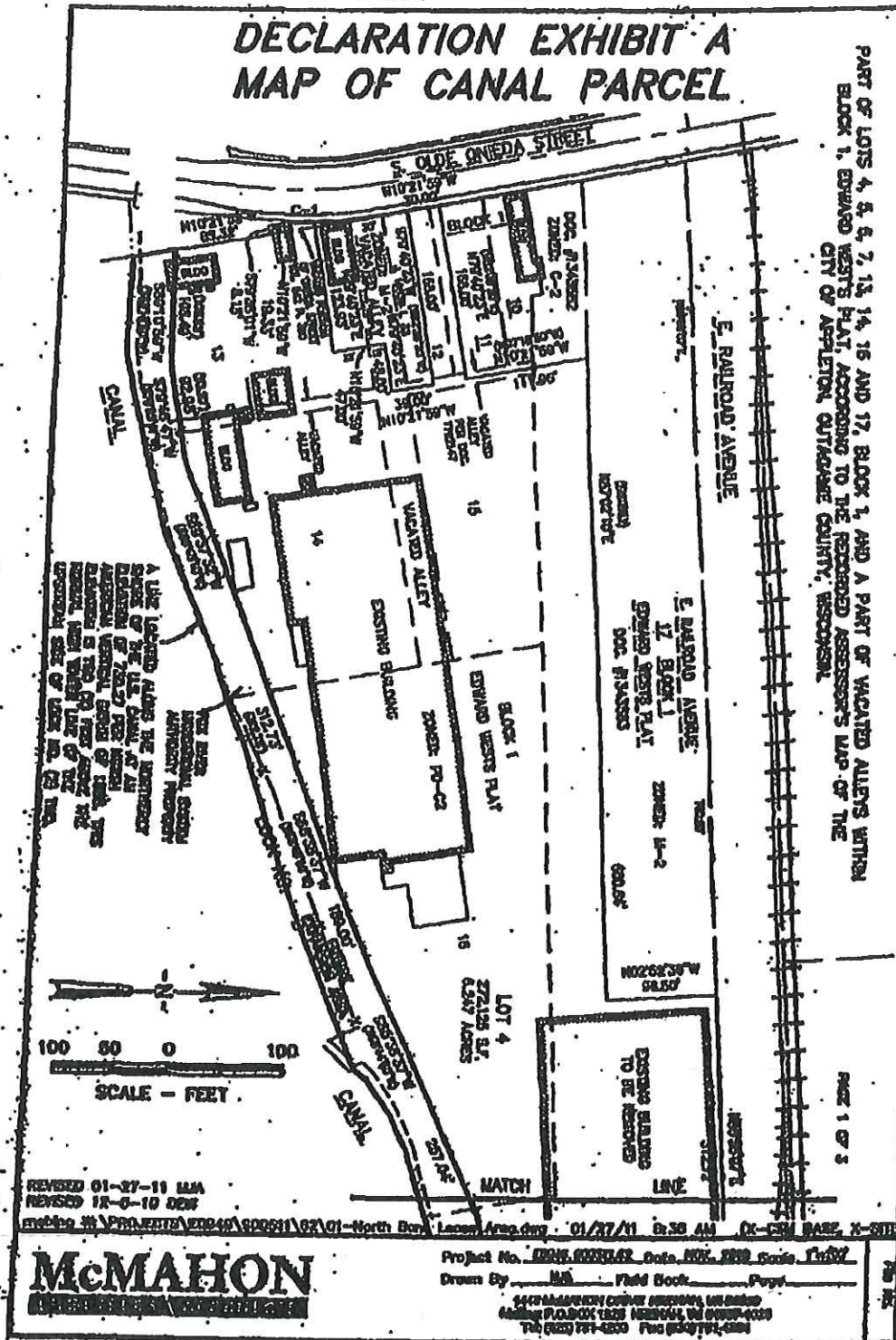
Viewers are advised to ignore the illegible text on this map. It is presented to show spatial relationships only.

Authorized by

PAT KATTE - Agent

DECLARATION EXHIBIT A MAP OF CANAL PARCEL

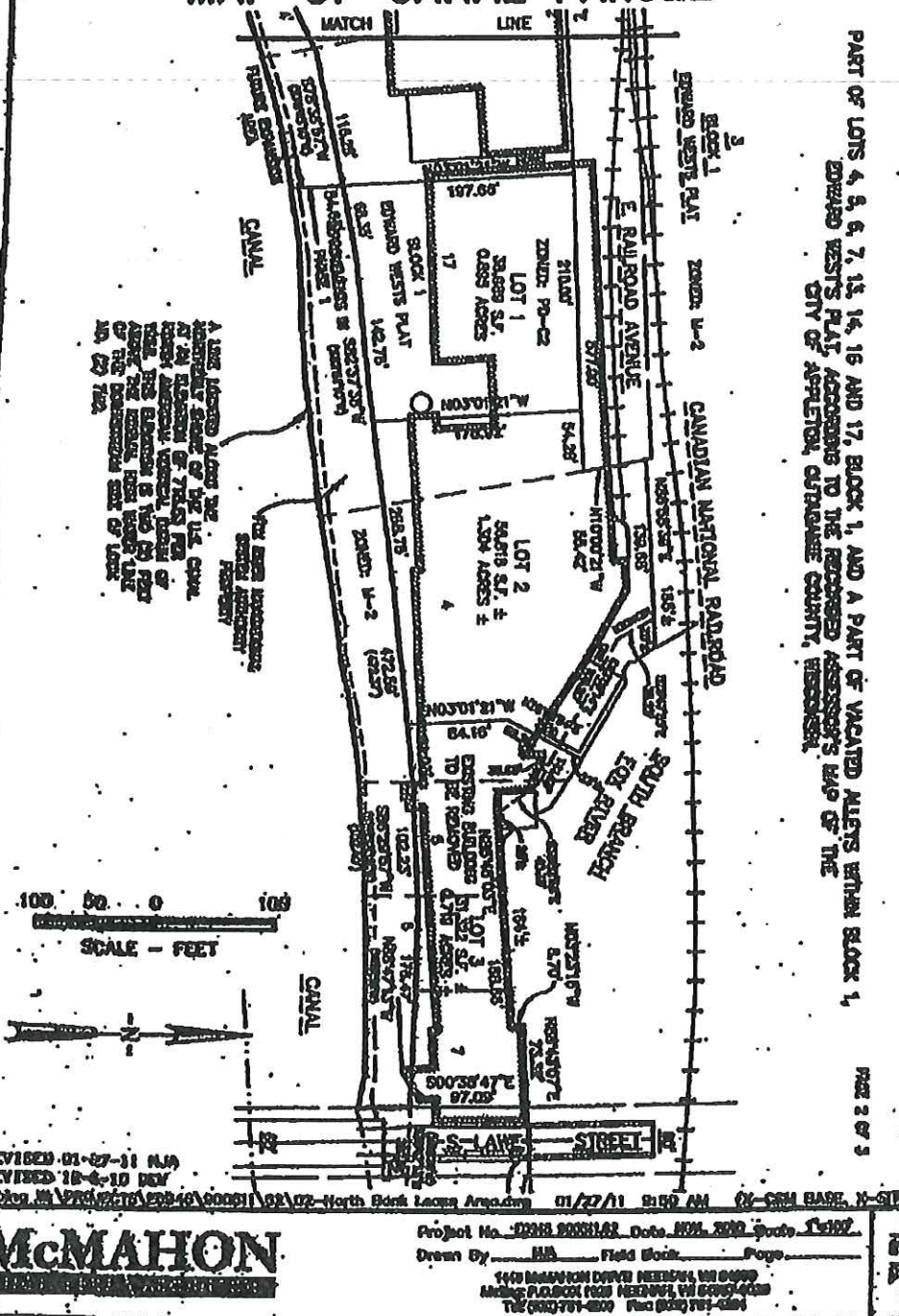
PART OF LOTS 4, 5, 6, 7, 13, 14, 15 AND 17, BLOCK 1, AND A PART OF VACATED ALLEYS WITHIN
BLOCK 1, EDWARD WEST'S PLAT, ACCORDING TO THE RECORDED ASSESSOR'S MAP OF THE
CITY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN.



Viewers are advised to ignore the illegible text on this map. It is presented to show spatial relationships only.

Authorized by: PAT KATZ
PAT KATZ - AGENT

DECLARATION EXHIBIT A MAP OF CANAL PARCEL



Authorized by _____

PAT KATTE-AGENT

A PART OF EAST RAILROAD AVENUE BEING A PART OF LOT SEVENTEEN (17), BLOCK ONE (1), EDWARD WEBB PLAT ACCORDING TO THE RECORDED ASSESSORS MAP OF THE CITY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN.



150 75 0 150
SCALE - FEET

DESCRIPTION OF CITY PARCELS:
THE 1337 SYDNEY STREET OF MILWAUKEE AVENUE, BEING A PART OF
LOT 10000000 (17), BLOCK ONE (1), TRIMMED GREENS PLAT.
ADJACENT TO THE WESTERN ADJACENT MAP OF THE CITY OF
MILWAUKEE, GREENWICH COUNTY, WISCONSIN, CONTAINS 34.63
ACRES FEET (34.63 ACRES) OF LAND.

RECEIVED 03-22-11 LAM
RECEIVED 12-5-10 OCH

Location: W:\PROJECTS\2014\20140501\14\Barnood Ave PDD Data.dwg On 4/27/14 8:40 AM City of Arlington, Tex

McMAHON

Project No. FD-302 (Rev. 1-1-64) Date NOV. 20, 1964 Page 1 of 1

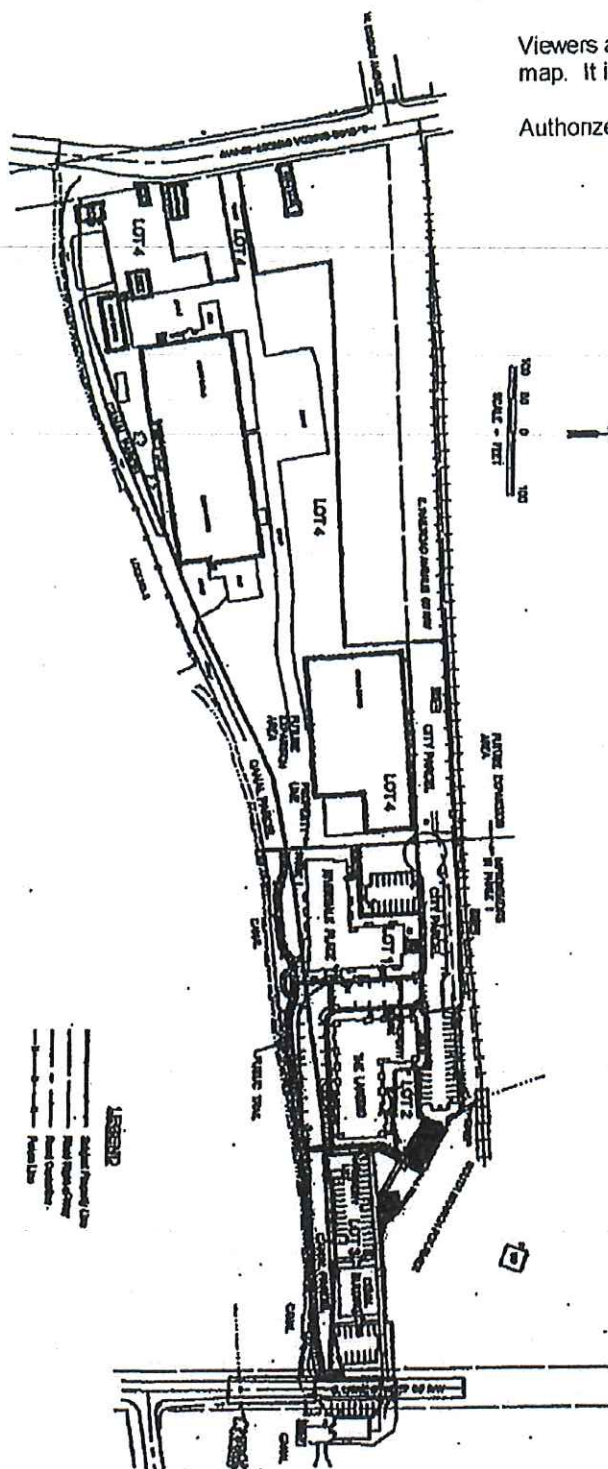
* Drawn By ESB Field Book Page

1440 HIGHWAY DRIVE DEERHALL, WA 98003
 LARRY F. RICH 2000 DEERHALL, WA 98007-0220
 TEL 800 781-4200 Fax 800 781-4204

Authorized by _____

PAT KATTE-AGENT

DECLARATION EXHIBIT C
SITE PLAN



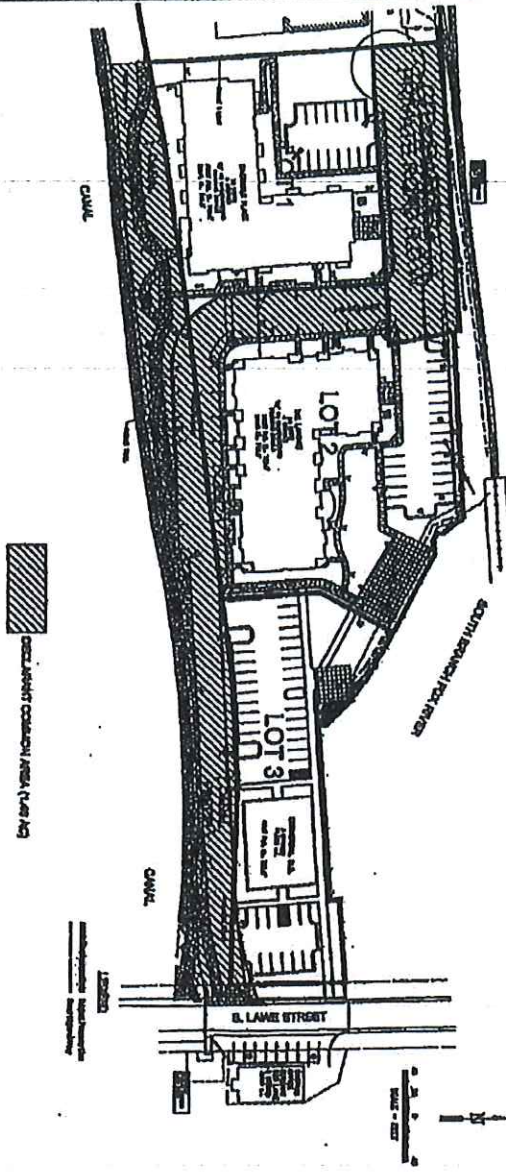
**EAGLE FLATS
CITY OF APPLETON
DECLARATION EXHIBIT C**



McMAHON
 10000 W. 10th Ave., Suite 100
 Denver, CO 80202
 (303) 751-1111



DECLARATION EXHIBIT D COMMON AREA EXHIBIT



Viewers are advised to ignore the illegible text on this map. It is presented to show spatial relationships only.

Authorized by Kate Kille
Kate Kille - Agent

EAGLE FLATS
CITY OF APPLETON
DECLARANT COMMON AREA

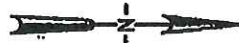
McMAHON
ENGINEERS & ARCHITECTS
1111 W. WISCONSIN AVE.
APPLETON, WI 54911
TEL: 920.833.1111
WWW.McMAHON-ENGINEERS.COM

McMAHON
ENGINEERS & ARCHITECTS
1111 W. WISCONSIN AVE.
APPLETON, WI 54911
TEL: 920.833.1111
WWW.McMAHON-ENGINEERS.COM

DECLARATION EXHIBIT E EXPANSION AREA EXHIBIT

Viewers are advised to ignore the illegible text on this map. It is presented to show spatial relationships only.
Authorized by *Kate Neut*
KATE NEUT

FOR: -EAGLE FLATS, LLC
-RANDY STADTMUELLER
-P.O. BOX 544
-NEEDHAM, MA 01957



BEARINGS ARE REFERENCED TO THE
EAST LINE OF THE NORTHEAST 1/4
OF SECTION 33, T21N, R17E, WHICH
BEARS 80028°24'E PER OUTAGAMIE
COUNTY COORDINATE SYSTEM

100 50 0 100
SCALE - FEET

LEGEND

- () - RECORDED BEARING AND/OR DISTANCE
- S.F. - SQUARE FEET
- CERTIFIED LAND CORNER
OUTAGAMIE COUNTY

REVISED 12-9-10 DEW
REVISED 1-31-11 JAH

McMAHON
SURVEYING & CONSULTING

Project No. EDM 100011 Date NOV. 2010 Scale 1"=100'
Drawn By DEW Field Book Page
1448 McMAHON DRIVE NEEDHAM, MA 02462
Mailing: P.O. BOX 1028 NEEDHAM, MA 02462-1028
Tel: (617) 781-4200 Fax: (617) 781-4206

expense promptly within thirty (30) days of its receipt of a request therefor, accompanied by a copy of the statement for such
~~employment, salary or maintenance work.~~

claim made or suit or action commenced which, in any way, could result in indemnification hereunder.

2.02. Each Owner, for and with respect to its Site, shall procure and maintain in full force and effect throughout the term of this Declaration general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its Site, each party's insurance to afford protection to the limit of not less than \$2,000,000.00 for injury or death of a single person, and to the limit of not less than \$2,000,000.00 for any one occurrence, and to the limit of not less than \$1,000,000.00 for property damage. Each party shall provide the others with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance which may cover other property in addition to the property covered by this Declaration. Such insurance shall provide that the same may not be cancelled without thirty (30) days prior written notice to the other parties, including the Declarant.

2.03. At all times during the term of this Agreement, each Owner shall keep improvements on its property insured against loss or damage by fire and other perils and events as may be insured against under the broad form of Uniform Extended Coverage Clause in effect from time to time in the State of Wisconsin, with such insurance to be for the full replacement value of the insured improvements.

2.04. Policies of general public liability insurance provided for in this Article IX shall name the Declarant, each Owner and its respective mortgagee(s) of record as insureds, to the extent of their respective interests; and upon request, each Owner shall provide to the others, and to their respective mortgagee(s) of record, certificates evidencing the fact that such insurance has been obtained and is in force.

2.05. Each Owner, on behalf of itself and its property insurer, shall, and hereby does, release the others, their respective tenants and mortgagees, of and from any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property resulting from or in any way connected with any fire or other casualty, whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party so released or by any agent, associate or employee of the party being released, this release being to the extent that such damage or loss is covered (or would be covered but for the default or failure of the releasing party to comply with the requirements of Section 9.02 or Section 9.03 hereof) by the property insurance which the releasing party is obligated hereunder to carry. The Owners shall further waive and relinquish any and all claims for any loss of rents or profits suffered or incurred as a result of or in relation to any such casualty or occurrence, without regard for whether such loss is covered by insurance maintained by the releasing party. Unless commercially not practicable, all policies of insurance carried by the Owners shall contain waivers of subrogation rights, consistent with the requirements of this Article IX.

2.06. The provisions of Sections 9.01 through 9.05, above, shall apply equally to the Declarant, who, for purposes of this Article IX shall be considered to be the Owner of and with respect to each Site not previously leased nor conveyed by Declarant to a third party in the manner provided in Section 2.15 of this Declaration.

ARTICLE X

Condemnation

If all or any part of the Entire Parcel is condemned or taken by any duly constituted authority for a public or quasi-public use, then that portion of the resulting award attributable to the value of any land and improvements within the Common Areas so taken shall be payable only to the Owner of record title thereto, the Owner(s) of the Site(s) immediately adjacent to the Common Area so taken and their respective mortgagee(s) of record; and no claim thereto shall be made by any other party or the Owner of any remaining portion of the Entire Parcel. The Owner of the Common Areas so condemned or taken shall repair and restore the remaining portion of the Common Areas owned by such Owner promptly and as nearly as practicable to the condition of the same immediately prior to such condemnation or taking and without contribution from any other party.

ARTICLE XI

Notices

All notices required or permitted hereunder shall be in writing and shall be deemed delivered to the party to whom addressed upon personal delivery thereof or when deposited in the U.S. Mail, as certified or registered mail, postage pre-paid and addressed to the appropriate party at its last known business address.

The Declarant and any Owner may change its address for the receipt of notices hereunder by providing written notice thereof to all other parties in the manner herein set forth.

ARTICLE XII

Duration, Termination and Amendment

12.01. The easements and covenants herein granted and made shall be of perpetual duration.

12.02. This Declaration and any covenant, condition, easement or restriction contained herein, may be terminated, extended or amended as to the Entire Parcel or any Site included therein only by Recording an appropriate instrument in the office of the Register of Deeds for Outagamie County, Wisconsin, which instrument must be executed by all Owners of the Entire Parcel as of the date of such document, and by the respective mortgagees of record of such Owners; provided, however, that the Declarant may amend this Declaration unilaterally, and without the approval or joinder of any of the Owners or mortgagees of any other Site or portion of the Entire Parcel, the City or the Authority, for the sole purpose of including all or portions of the Expansion Area within the definition of the Entire Parcel from time to time and thereby subjecting the same to the Restrictions hereby imposed (the "Declarant's Amendment"). The Declarant's Amendment shall contain, *inter alia*, the legal description of the Expansion Area or portion thereof which is subjected to this Declaration, and it shall be effective immediately upon Recording thereof in the office of the Register of Deeds for Outagamie County, Wisconsin.

ARTICLE XIII

No Public Dedication

Nothing contained in this Declaration shall constitute or be deemed to constitute a gift or dedication of any portion of the Entire Parcel to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration will be strictly limited to and for the purposes expressed herein.

ARTICLE XIV

Recording

A fully executed counterpart of this Declaration shall be Recorded in the Office of the Register of Deeds of Outagamie County, Wisconsin.

ARTICLE XV

Benefit

The Restrictions shall inure to the benefit of, and be binding upon, the Declarant, each Owner and Occupant from time to time and their respective heirs, personal representatives, successors and assigns.

ARTICLE XVI

Waiver

No waiver of any breach of any of the Restrictions herein contained shall be construed as, or constitute a waiver of, any other breach of the same or any other provision of this Declaration or any default hereunder, nor shall the same constitute a waiver of, acquiescence in or consent to, any further or succeeding breach of the same or any of the other Restrictions hereunder.

ARTICLE XVII

Separability

If any term or provision of this Declaration shall be held invalid or unenforceable to any extent, the remaining terms and provisions of this Declaration shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

ARTICLE XVIII

Applicable Law

This Declaration shall be construed and enforced in accordance with the laws of the State of Wisconsin.

IN WITNESS WHEREOF, the undersigned Declarant has caused this Declaration to be executed as of this

20th day of June, 2011.

Attachments:

- Schedule 1 - Tax Parcel Numbers
- Exhibit A - Legal Description of Canal Parcel
- Exhibit B - Legal Description of City Parcel
- Exhibit C - Site Plan
- Exhibit D - Common Area Exhibit
- Exhibit E - Expansion Area

EAGLE FLATS, LLC

by: 

Randall Stadtmueller, Authorized or Managing Member

CORPORATE ACKNOWLEDGMENT

Personally came before me, this 20th day of June, 2011, the above-named Randall Stadtmueller, Authorized or Managing Member of the above-named Declarant, to me known (or satisfactorily proven) to be such person and officer who executed the foregoing instrument and acknowledged that he executed the same by its authority, for the purposes therein contained.



Sharon D. Koehler

Notary Public, State of Wisconsin

My Commission Expires: 6/22/14

**ACKNOWLEDGMENT AND ACCEPTANCE
BY STATE, AUTHORITY AND CITY**

The undersigned, in the name and on behalf of the State of Wisconsin, the Fox River Navigational System Authority and the City of Appleton, respectively, do hereby acknowledge, accept and consent to the joinder and inclusion of the Canal Parcel and the City Parcel, respectively, within the preceding Declaration, to the extent and for the purposes therein described, and consent further to the improvement and use thereof by Declarant and/or Owners, Occupants and Permittees of the Entire Parcel in the manner contemplated thereby and otherwise consistent with the respective agreements, leases and/or permits with or between each of the undersigned and the Declarant.

The State:

WISCONSIN DEPARTMENT OF
ADMINISTRATION

by 

name & title:

Cynthia Archer, Deputy Sect.

attest:

name & title:

ACKNOWLEDGMENT

STATE OF WISCONSIN)

DANE COUNTY)

) ss.

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



Notary Public, State of Wisconsin

My Commission Expires: 15 permanent

The Authority:

**FOX RIVER NAVIGATIONAL SYSTEM
AUTHORITY**

by: _____

name & title: Harlan Kiesow, CEO

attest: _____

name & title: Ron Van De Hey Chair

ACKNOWLEDGMENT

STATE OF WISCONSIN)
OUTAGAMIE COUNTY) ss.

Personally came before me this 20th day of June, 2011, the above-named Harlan Kiesow,
as CEO and Ron Van De Hey, as Chair,
respectively, to me known to be the persons and officers identified above, who executed the foregoing instrument and
acknowledged the same on behalf of Fox River Navigational System Authority.



Sharon D. Koehler

Notary Public, State of Wisconsin

My Commission Expires: 6/22/14

The City:

CITY OF APPLETON

by: Timothy M. Hanna

name & title: Timothy M. Hanna, Mayor

attest: Mary Wendell

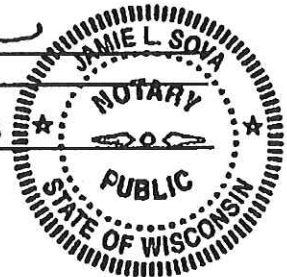
name & title: Mary Wendell, Deputy City Clerk

ACKNOWLEDGMENT

STATE OF WISCONSIN)
OUTAGAMIE COUNTY) ss.

Personally came before me this _____ day of June, 2011, the above-named Timothy M. Hanna,
as Mayor and Mary Wendell, as Deputy City Clerk
respectively, to me known to be the persons and officers identified above, who executed the foregoing instrument and
acknowledged the same on behalf of the City of Appleton.

Jamie L. Sova
Notary Public, State of Wisconsin
My Commission Expires: 12/15/13



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

DECLARATION SCHEDULE 1

Tax Parcel Numbers:

314-028210	-	Lot 1, CSM # 6241
314-028220	-	Lot 2, CSM # 6241
314-028230	-	Lot 3, CSM # 6241
314-028240	-	Lot 4, CSM # 6241
314-029600	-	Canal Parcel

DECLARATION EXHIBIT A DESCRIPTION OF CANAL PARCEL

PAGE 3 OF 3

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 Side Oneida Street, on the East by South Lowe Street, on the South by a line located on the Northern 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 718.93 (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 38 of Maps on Page 6241

REVISED 12-6-10 DEB

Project W:\PROJECTS\20040\200511\25\03-North Bank Lease Area Description Rev12-6-10.dwg 12/06/10 8:10 AM

McMAHON
ENGINEERS & ARCHITECTS

Project No. 0000000000 Date 07/1/2010 Scale AS SHOWN
Drawn By DEB Field Book Page
1400 McMAHON DRIVE, GREENWICH, WISCONSIN
64400 FLORENCE DRIVE, GREENWICH, WISCONSIN
TEL: (920) 761-4200 FAX: (920) 761-4201

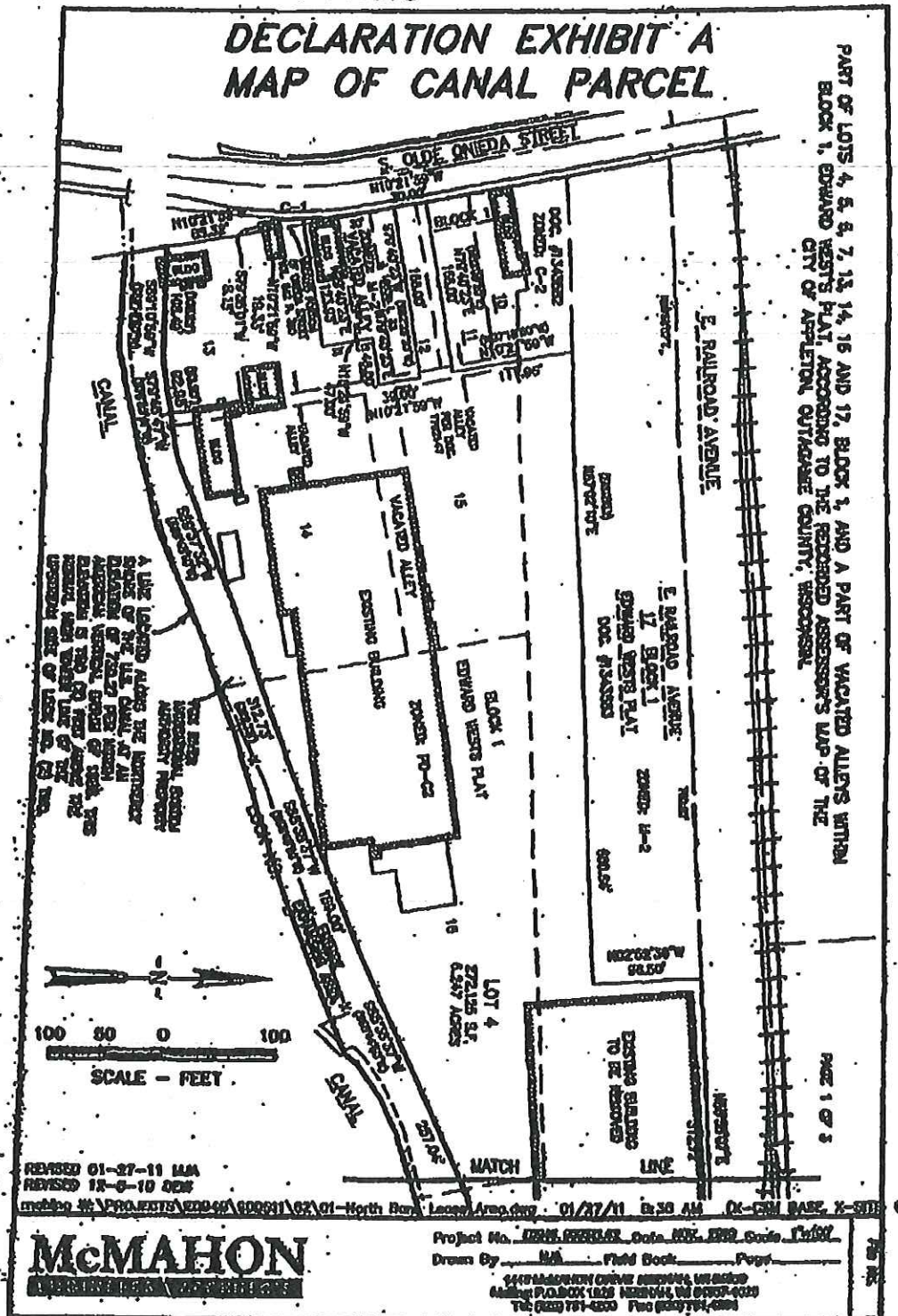
Viewers are advised to ignore the illegible text on this map. It is presented to show spatial relationships only.

Authorized by

PAT KATTE - Agent

DECLARATION EXHIBIT A MAP OF CANAL PARCEL

PART OF LOTS 4, 5, 6, 7, 13, 14, 15 AND 17, BLOCK 1, AND A PART OF VACATED ALLEY WITHIN
BLOCK 1, EDWARD WEST'S PLAT, ACCORDING TO THE RECORDED ASSessor's MAP OF THE
CITY OF APPLETON, OUTASHAW COUNTY, WISCONSIN.



Viewers are advised to ignore the illegible text on this map. It is presented to show spatial relationships only.

Authorized by: *Pat Korte*
PAT KORTE - AGENT

DECLARATION EXHIBIT A MAP OF CANAL PARCEL

PART OF LOTS 4, 5, 6, 7, 13, 14, 16 AND 17, BLOCK 1, AND A PART OF VACATED ALLEYS WITHIN BLOCK 1,
EDWARD REITS PLAT, ACCORDING TO THE RECORDED ASSASSY'S MAP OF THE
CITY OF APPLETON, OUTSHANE COUNTY, WISCONSIN.

PAGE 3 OF 3

A LINE LOCATED ALONG THE
NORTHWEST CORNER OF THE CANAL
AT AN ELEVATION OF 7.15 FEET
BEING THE ELEVATION OF THE
TOP OF THE CANAL BANK AT
THE POINT WHERE THE CANAL
MEETS THE NORTHWEST CORNER
OF THE CANAL PARCEL.

100 0 100
SCALE - FEET



REVISED 01-27-11 (LJA)
REVISED 10-4-10 (LJA)

Project No. 0000000000 Date 01/27/11 8:50 AM (LJA) (LJA) (LJA)

McMAHON
SURVEYING & ENGINEERING

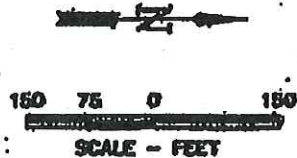
Project No. 0000000000 Date 01/27/11 8:50 AM (LJA) (LJA) (LJA)
Drawn By: LJA Field Book: Page: 3
1400 McMAHON DRIVE, APPLETON, WI 54912
LANDING FLOOR 1000 McMAHON, WI 54912
Tel (920) 791-0000 Fax (920) 791-0000

Viewers are advised to ignore the illegible text on this map. It is presented to show spatial relationships only.

Authorized by Pat Katto
PAT KATTO - AGENT

DECLARATION EXHIBIT B CITY PARCEL EXHIBIT

A PART OF EAST RAILROAD AVENUE BEING A PART OF LOT SEVENTEEN (17), BLOCK ONE (1), EDWARD WEISS PLAT ACCORDING TO THE RECORDED ASSESSORS MAP OF THE CITY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN.



DESCRIPTION OF CITY PARCEL:
THE EAST 575.00 FEET OF RAILROAD AVENUE, BEING A PART OF LOT SEVENTEEN (17), BLOCK ONE (1), EDWARD WEISS PLAT, ACCORDING TO THE RECORDED ASSESSORS MAP OF THE CITY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN, CONTAINING 34,630 SQUARE FEET (0.793 ACRES) OF LAND.

REVISED 01-21-11 MAR
REVISED 12-8-10 GEM

Mobile: 920-233-1114 FAX: 920-233-1114 Railroad Ave PEO Data.dwg 01/27/11 15:49 AM (CITY OF APPLETON, WI)

McMAHON
ENGINEERS & ARCHITECTS

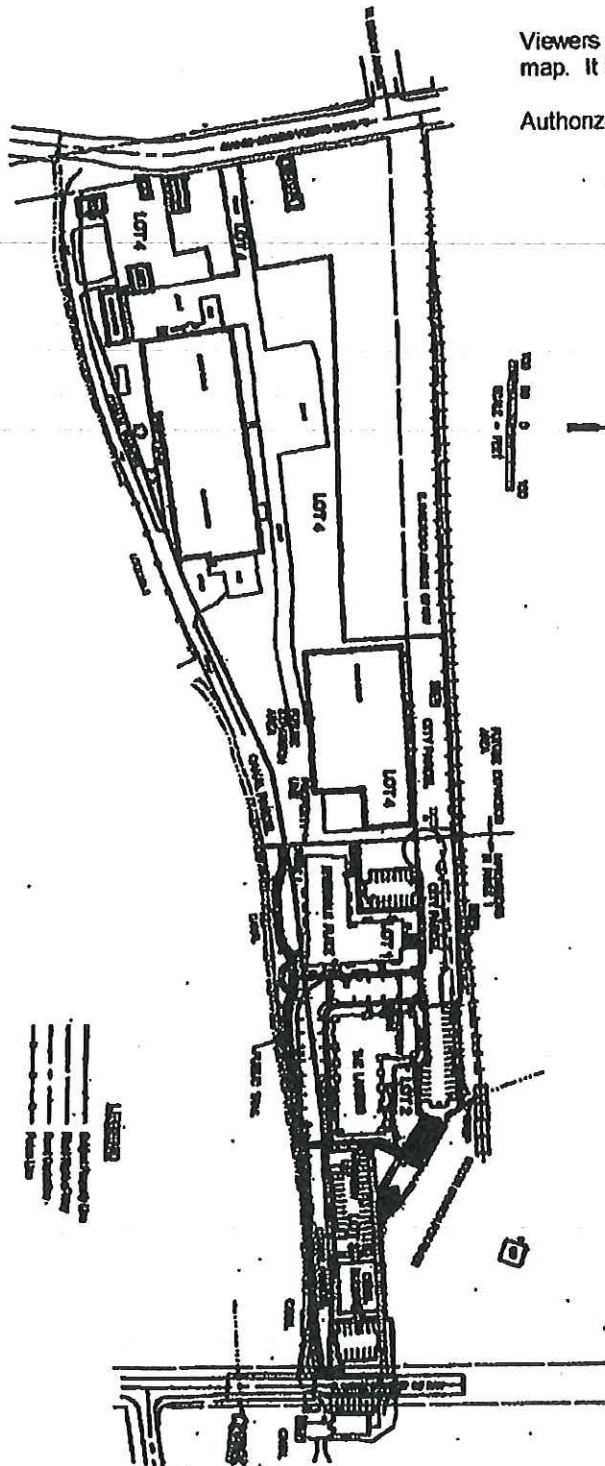
Project No. 1000000000 Date: 01/27/11 Scale: 1"=100'
Drawn By: GEM Field Book: Page: 1
1440 McMAHON DRIVE SUITE 100, APPLETON, WI 54912
LEAHY, P.O. BOX 6200 APPLETON, WI 54912-4200
TEL: (920) 701-4200 FAX: (920) 701-4204

Viewers are advised to ignore the illegible text on this map. It is presented to show spatial relationships only.

Authorized by:

Pat Katte
PAT KATTE - AGENT

DECLARATION EXHIBIT C SITE PLAN



EAGLE FLATS
CITY OF APFLETON
DECLARATION EXHIBIT C

McMAHON

McMAHON

Viewers are advised to ignore the illegible text on this map. It is presented to show spatial relationships only.

Authorized by *[Signature]*

ed by ~~Kat Kille~~
PAT KATIE - AGENT

DECLASSIFY DOCUMENT AREA (LINE NO.)

EAGLE FLATS
CITY OF APPLETON
DECLARANT COMMON AREA

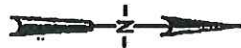
McMAHON

DECLARATION EXHIBIT E EXPANSION AREA EXHIBIT

Viewers are advised to ignore the illegible text on this map. It is presented to show spatial relationships only.

Authorized by: *Kate Abbott*
KATE ABBOTT

FOR: -EAGLE FLATS, LLC
-RANDY STAEDTMUELLER
-P.O. BOX 544
-KEENAH, WI 54987



BEARINGS ARE REFERENCED TO THE
EAST LINE OF THE NORTHEAST 1/4
OF SECTION 33, T21N, R17E, WHICH
BEARS 900'28"24"E PER OUTAGAMIE
COUNTY COORDINATE SYSTEM

100 50 0 100
SCALE - FEET

LEGEND
() - RECORDED BEARING AND/OR DISTANCE
S.F. - SQUARE FEET
⊙ - CERTIFIED LAND CORNER
OUTAGAMIE COUNTY

REVISED 12-9-10 DEW
REVISED 1-31-11 JAH

McMAHON
ENGINEERS & SURVEYORS

Project No. FROM ROSSIER Date NOV. 2010 Scale 1"=100'
Drawn By DEW Field Book Page
1408 McMAHON DRIVE KEENAH, WI 54987
Mailing P.O. BOX 1028 KEENAH, WI 54987-0108
Tel: (920) 761-4200 Fax: (920) 761-4204