

APPROVAL	REQUEST FOR COUNCIL ACTION	MTG. DATE
<i>Slw</i> Reports & Recommendations	<b>SUBJECT:</b> A resolution authorizing acceptance of easements for Avian Estates Subdivision for sanitary sewer, water main, permanent turn around, storm water management and landscape maintenance access and storm drainage at W. Puetz Road and W. Avian Way (NW ¼ Section 22)	6/17/14  <b>ITEM NO.</b> <i>G,12.</i>

Pursuant to the development of the Avian Estates Subdivision, please be advised that it is necessary to accept easements for sanitary sewer, water main, permanent turn around, storm water management and landscape maintenance access and storm drainage.

**RECOMMENDATION**

Motion to adopt Resolution 2014-\_\_\_\_\_, a resolution authorizing acceptance of easements for Avian Estates Subdivision for sanitary sewer, water main, permanent turn around, storm water management and landscape maintenance access and storm drainage at W. Puetz Road and W. Avian Way (NW ¼ Section 22).

ML/db

STATE OF WISCONSIN : CITY OF FRANKLIN : MILWAUKEE COUNTY

RESOLUTION NO. 2014- \_\_\_\_\_

A RESOLUTION AUTHORIZING ACCEPTANCE OF EASEMENTS  
FOR AVIAN ESTATES SUBDIVISION FOR  
SANITARY SEWER, WATER MAIN, PERMANENT TURN AROUND,  
STORM WATER MANAGEMENT AND LANDSCAPE MAINTENANCE ACCESS  
AND STORM DRAINAGE  
AT W. PUETZ ROAD AND W. AVIAN WAY (NW ¼ SECTION 22)

-----  
WHEREAS, easements are required to install, maintain and operate sanitary sewer, water main, permanent turn around, storm water management and landscape maintenance access and storm drainage; and

WHEREAS, Avian Estates, LLC has executed easements to the City of Franklin for the installation and maintenance of sanitary sewer, water main, permanent turn around, storm water management and landscape maintenance access and storm drainage; and

WHEREAS, it would be in the best interests of the City to accept such easements, on that part of the NW 1/4 of Section 22 which is the NE corner of W. Puetz Road and W. Avian Way, in the City of Franklin,

NOW, THEREFORE BE IT RESOLVED by the Mayor and Common Council of the City of Franklin that the Mayor and City Clerk are hereby authorized to accept such easements and therefore the Mayor and City Clerk are hereby authorized and directed to execute the easements accepting them on behalf of the City.

BE IT FURTHER RESOLVED, that the City clerk is directed to record said easement with the Register of Deeds for Milwaukee County.

INTRODUCED at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Alderman \_\_\_\_\_.

PASSED AND ADOPTED by the Common Council of the City of Franklin on the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

APPROVED:

\_\_\_\_\_  
Stephen R Olson, Mayor

ATTEST:

\_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

AYES \_\_\_\_\_  
NOES \_\_\_\_\_  
ABSENT \_\_\_\_\_

SANITARY SEWER EASEMENT

AVIAN ESTATES

**THIS EASEMENT is made by and between** the CITY OF FRANKLIN, a municipal corporation of the State of Wisconsin, hereinafter referred to as "City," and Avian Estates LLC, a limited liability company as owner (including successors and assigns of the City as may become applicable including the heirs, executors, administrators, successors and assigns of above owner(s) as may be or may become applicable), hereinafter called "Grantor," (if more than one grantor is listed above, said language herein referring thereto shall be interpreted in the plural and refer jointly and severally to such grantors).

WITNESSETH

WHEREAS, Grantor is the owner and holder of record Title to certain real property particularly described on Exhibit "A" which is attached hereto and incorporated herein (the Property); and

WHEREAS, the City desires to acquire a non-exclusive easement with the right of entry in and across a portion of the property as the same is more particularly hereinafter described, with the right to build and construct and/or operate, maintain, repair, enlarge, reconstruct, relocate and inspect as may be or may become applicable the following facilities and appurtenances thereto, hereinafter collectively called the "Facilities," in, upon and across said portion of the Property: a sanitary sewer and associated manholes, all as shown on the plan attached hereto as Exhibit "B."

NOW, THEREFORE, in consideration of the grant of the easement hereinafter described and the payment of One Dollar (\$1.00) and other valuable considerations to the Grantor, receipt whereof is hereby acknowledged, said Grantor, being the owner and person interested in the land hereinafter described does hereby grant to the City a permanent easement in the part of the Northwest Quarter (NW ¼) of Section Twenty-two (22), Township Five (5) North, Range Twenty-one (21) East, in the City of Franklin, Milwaukee County, Wisconsin, more particularly described on Exhibit B attached hereto (the "Easement Area").

1. That said Facilities shall be maintained and kept in good order and condition by the City, at the sole cost and expense of the City. Responsibility for maintaining the ground cover and landscaping within the Easement area shall be that of the Grantor (including heirs, executors, administrators, successors, and assigns.).
2. That in and during whatever construction, reconstruction, enlargement or repair work is or becomes necessary in constructing and/or maintaining of said Facilities, so much of the surface or subsurface of the Easement Area on the Property as may be disturbed will, at the expense of the City, be replaced in substantially the same condition as it was prior to such disturbance. However, the City shall indemnify and save harmless the Grantor from and against any loss, damage, claim, cost, injury or liability resulting from negligence or willful acts or omissions on the part of the City, its agents or employees in connection with said work involved in constructing and/or maintaining of said Facilities; provided that if the above loss, claim, cost, damage, injury or liability results from the joint negligence of parties hereto, then the liability therefore shall be borne by them in proportion to their respective degree of negligence; provided further, however, that these provisions are subject to the legal defenses available under law which the City or Grantor are entitled to raise, excepting the defense of so-called "sovereign immunity."
3. That no structure may be placed within the limits of the Easement Area by the Grantor except that improvements such as walks, pavements for driveways and parking lot surfacing may be constructed or placed with the Easement Area.
4. That, in connection with the construction by the Grantor of any structure or building abutting said Easement Area, the Grantor will assume all liability for any damage to the Facilities in the above described Easement Area. The Grantor will also save and keep the City clear and harmless from any claims for personal injuries or property damage caused by any negligence or willful acts or omissions of the Grantor or persons acting on behalf of the Grantor, arising out of the construction by the Grantor of any structure or building abutting the said Easement Area, and shall reimburse the City for the full amount of such loss or damage.
5. That no charges will be made against the property for the cost of maintenance or operation of said Facilities in the property. Whenever the Grantor makes application for a service connection associated with the services provided by virtue of the Facility, the regular and customary service connection charge in effect at the time of the application shall be charged and paid. The Grantor shall be responsible for the routine maintenance of land on which the easement is located.

6. The Facilities shall be accessible for maintenance by the City at all times. The owner shall submit plans for approval to the City Engineer for any underground installation within the Easement Area, which approval shall not be unreasonably withheld, conditioned or delayed.
7. That the Grantor shall submit plans for all surface alterations of plus or minus 0.5 feet or greater within the limits of said Easement Area. Said alterations shall be made only with the approval of the City Engineer of the City of Franklin, which approval shall not be unreasonably withheld, conditioned or delayed.
8. The City and Grantor shall each use, and take reasonable measures to cause their employees, officers, customers, agents, contractors and assigns to use, the Easement Area in a reasonable manner and so as not to obstruct or otherwise use the Easement Area in a manner that would unreasonably interfere with the use thereof by the other party hereto or its employees, officers, customers, agents, contractors and assigns.
9. The City and Grantor each hereby waives all rights of subrogation that either has or may hereafter have against the other for any damage to the Easement Area or any other real or personal property or to persons covered by such party's insurance, but only to the extent of the waiving party's insurance coverage; provided, however, that the foregoing waivers shall not invalidate any policy of insurance now or hereafter issued, it being hereby agreed that such a waiver shall not apply in any case which would result in the invalidation of any such policy of insurance and that each party shall notify the other if such party's insurance would be so invalidated.
10. Either party hereto may enforce this easement by appropriate action, and should it prevail in such litigation, that party shall be entitled to recover, as part of its costs, reasonable attorneys' fees.
11. This easement may not be modified or amended, except by a writing executed and delivered by the City and Grantor or their respective successors and assigns.
12. No waiver of, acquiescence in, or consent to any breach of any term, covenant, or condition hereof shall be construed as, or constitute, a waiver of, acquiescence in, or consent to any other, further, or succeeding breach of the same or any other term, covenant, or condition.
13. If any term or provision of this easement shall, to any extent, be invalid or unenforceable under applicable law, then the remaining terms and provisions of this easement shall not be affected thereby, and each such remaining term and provision shall be valid and enforceable to the fullest extent permitted by applicable law.
14. This easement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.
15. Upon completion of use of the Easement Area for the specific use as a sanitary sewerage lift station, the City shall remove the lift station, manholes, piping and the enclosure and cause the prompt restoration to a smooth surface contour and neat condition restoring the Easement Area into a condition similar to the remaining parcel as described in Exhibit "A".

IN WITNESS WHEREOF, the Grantor has hereunto set its hands and seals

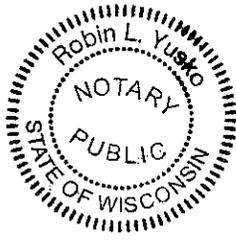
ON THIS DATE OF: June 9, 2014

Avian Estates LLC  
By: MLG Private Fund LLC  
By: MLG PF Manager LLC

By: [Signature]  
Timothy J. Wallen, President

STATE OF Wisconsin  
COUNTY OF Waushara SS

Before me personally appeared on the 9 day of June, 2014, the above named Timothy J. Wallen, President, MLG Private Fund, sole member of Avian Estates LLC to me known to be the person(s) who executed the foregoing Easement and acknowledged the same as the voluntary act and deed of said corporation



[Signature]  
NOTARY PUBLIC  
My commission expires August 28, 2014

CITY OF FRANKLIN  
By: \_\_\_\_\_  
Stephen R. Olson, Mayor  
By: \_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

STATE OF WISCONSIN  
SS  
COUNTY OF MILWAUKEE

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally appeared Stephen R. Olson and Sandra L. Wesolowski who being by me duly sworn, did say that they are respectively the Mayor and City Clerk of Franklin, and that the seal affixed to said instrument is the corporate seal of said municipal corporation, and acknowledged that they executed the foregoing assignment as such officers as the deed of said municipal corporation by its authority, and pursuant to resolution file No. \_\_\_\_\_ adopted by its Common Council on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_

This instrument was drafted by the City of Franklin.

Approved as to contents \_\_\_\_\_  
Date: \_\_\_\_\_ City Engineer  
Approved as to form only \_\_\_\_\_  
Date: \_\_\_\_\_ City Attorney

Exhibit A

Description of the Property

BEING A PART OF LANDS IN THE NORTHWEST ¼ AND THE NORTHEAST ¼ OF THE NORTHWEST ¼ OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.

PARCEL 1 OF CERTIFIED SURVEY MAP NO. 7413, (EXCEPT THE EASTERLY PORTION THEREOF DESCRIBED AS PART OF PHASE I AREA OF AVIAN AT TUCKWAY CONDOMINIUM, DOCUMENT NO. 08812915), AND MORE CLEARLY DESCRIBED AS:

COMMENCING AT THE NORTHWEST CORNER OF SAID ¼ SECTION; THENCE N 89-19'05"E ALONG THE NORTH LINE OF NORTHWEST ¼ OF SAID SECTION, A DISTANCE OF 358.43 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF W. PUETZ ROAD; THENCE CONTINUING N 89-19'05" E ALONG THE NORTH LINE OF SAID ¼ SECTION, A DISTANCE OF 1211.58 FEET TO A POINT ON THE WEST LINE OF PHASE I AREA OF SAID AVIAN AT TUCKAWAY CONDOMINIUM; THENCE S 00-24'36" E ALONG SAID WEST LINE OF PHASE I AREA, A DISTANCE OF 517.15 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF W. PUETZ ROAD; THENCE S 89-19'05" W ALONG THE NORTH LINE OF SAID ROAD, A DISTANCE OF 238.43 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ALONG AN ARC OF A CURVE AND THE NORTH RIGHT-OF-WAY LINE OF SAID ROAD, WHOSE CENTER LIES TO THE NORTH, WHOSE RADIUS IS 681.78 FEET, WHOSE CHORD BEARS N 71-51'26" W 439.99 FEET, A DISTANCE OF 448.00 FEET TO A POINT OF TANGENCY; THENCE N 53-01'57" W ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID ROAD, A DISTANCE OF 419.98 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ALONG AN ARC OF CURVE AND THE NORTH RIGHT-OF-WAY LINE OF SAID ROAD, WHOSE CENTER LIES TO THE SOUTH, WHOSE RADIUS IS 761.78 FEET, WHOSE CHORD BEARS N 62-31'57" W 251.46 FEET, A DISTANCE OF 252.62 FEET TO THE POINT OF BEGINNING.

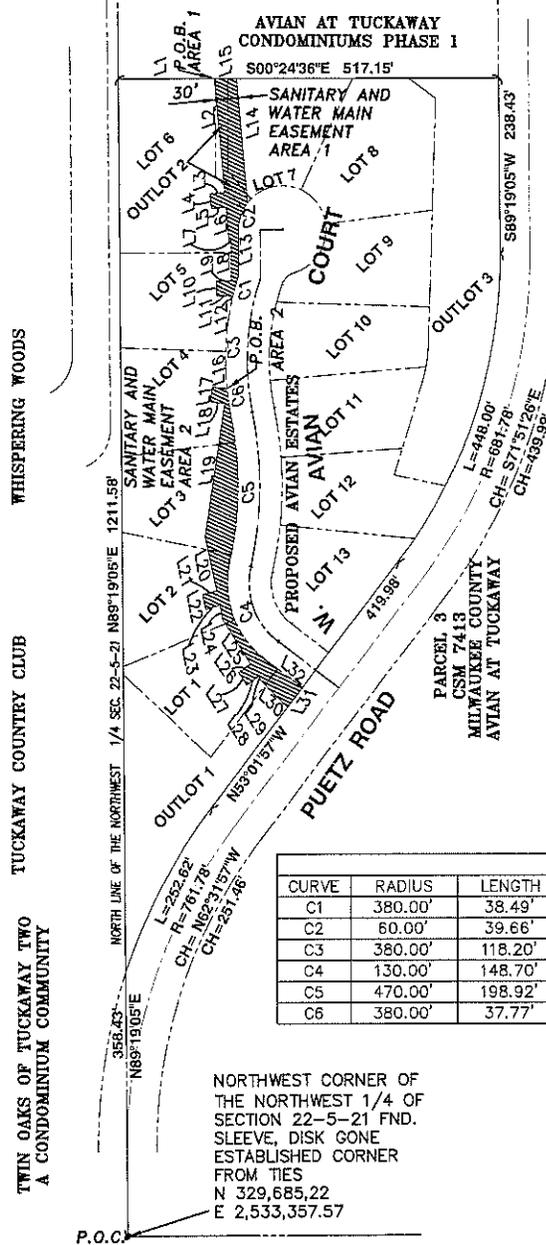
Exhibit B

Legal Description and Depiction of the Facilities

(See Attached)

# EXHIBIT B - SANITARY & WATER MAIN EASEMENT

BEING A PART OF LANDS IN THE NORTHWEST 1/4 AND THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S00°24'36"E	131.07'
L2	S84°35'15"W	154.69'
L3	N05°24'45"W	20.00'
L4	S84°35'15"W	20.00'
L5	S05°24'45"E	20.00'
L6	S84°35'15"W	46.38'
L7	S00°24'36"E	2.92'
L8	S89°35'49"W	53.72'
L9	N00°24'11"W	20.00'
L10	S89°35'49"W	20.00'
L11	S00°24'11"E	20.00'
L12	S89°35'49"W	8.73'
L13	N89°35'24"E	60.56'
L14	N84°35'15"E	168.78'
L15	N00°24'36"W	30.11'
L16	N08°08'39"E	20.00'
L17	N81°51'21"W	20.00'
L18	S08°08'39"W	20.00'
L19	N81°51'21"W	182.52'
L20	S77°45'38"W	75.27'
L21	N12°14'22"W	20.00'
L22	S77°45'38"W	20.00'
L23	S12°14'22"E	20.00'
L24	S77°45'38"W	20.66'
L25	S57°32'27"W	70.60'
L26	N32°27'33"W	20.00'
L27	S57°32'27"W	20.00'
L28	S32°27'33"E	20.00'
L29	S57°32'27"W	6.27'
L30	S45°53'56"W	51.57'
L31	S53°01'57"E	34.23'
L32	N36°58'03"E	63.93'

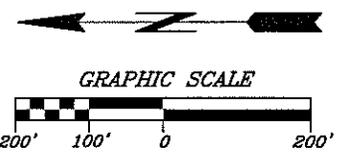
CURVE TABLE					
CURVE	RADIUS	LENGTH	CHORD	BEARING	DELTA
C1	380.00'	38.49'	38.48'	S75°19'52"E	05°48'14"
C2	60.00'	39.66'	38.94'	S71°28'31"E	37°52'10"
C3	380.00'	118.20'	117.73'	N87°08'14"W	17°49'21"
C4	130.00'	148.70'	140.73'	N69°44'11"E	65°32'16"
C5	470.00'	198.92'	197.44'	S89°37'09"E	24°14'58"
C6	380.00'	37.77'	37.76'	N81°06'13"E	05°41'43"

NORTHWEST CORNER OF THE NORTHWEST 1/4 OF SECTION 22-5-21 FND. SLEEVE, DISK GONE ESTABLISHED CORNER FROM TIES  
 N 329,685.22  
 E 2,533,357.57



5417 North 118th Court, Milwaukee, WI, 53225  
 TEL (414)-616-4880 FAX (414)-616-4885

Project: 08-15-13-014



## EXHIBIT B - SANITARY & WATER MAIN EASEMENT

BEING A PART OF LANDS IN THE NORTHWEST  $\frac{1}{4}$  AND THE NORTHEAST  $\frac{1}{4}$  OF THE NORTHWEST  $\frac{1}{4}$  OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.

### SANITARY AND WATER MAIN EASEMENT LEGAL DESCRIPTION

PART OF LANDS IN THE NORTHWEST  $\frac{1}{4}$  AND THE NORTHEAST  $\frac{1}{4}$  OF THE NORTHWEST  $\frac{1}{4}$  OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.

BEING A PART OF AVIAN ESTATES, BEING A RE-DIVISION OF PARCEL 1 OF CERTIFIED SURVEY MAP NO. 7413, (EXCEPT THE EASTERLY PORTION THEREOF DESCRIBED AS PART OF PHASE I AREA OF AVIAN TUCKAWAY CONDOMINIUM, DOCUMENT NO. 08812915), AND MORE CLEARLY DESCRIBED AS:

#### AREA 1

COMMENCING AT THE NORTHWEST CORNER OF SAID  $\frac{1}{4}$  SECTION; THENCE N 89°19'05"E ALONG THE NORTH LINE OF NORTHWEST  $\frac{1}{4}$  OF SAID SECTION, A DISTANCE OF 358.43 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF W. PUETZ ROAD; THENCE CONTINUING N 89°19'05"E ALONG THE NORTH LINE OF SAID  $\frac{1}{4}$  SECTION, A DISTANCE OF 1211.58 FEET TO A POINT ON THE WEST LINE OF PHASE I AREA OF SAID AVIAN TUCKAWAY CONDOMINIUM, SAID POINT ALSO BEING ON THE EAST LINE OF AVIAN ESTATES; THENCE S00°24'36"E ALONG SAID EAST LINE, A DISTANCE OF 131.07 FEET TO THE POINT BEGINNING; THENCE S84°35'15"W A DISTANCE OF 154.69 FEET; THENCE N05°24'45"W A DISTANCE OF 20.00 FEET; THENCE S84°35'15"W A DISTANCE OF 20.00 FEET; THENCE S05°24'45"E A DISTANCE OF 20.00 FEET; THENCE S84°35'15"W A DISTANCE OF 46.38 FEET; THENCE S00°24'36"E A DISTANCE OF 2.92 FEET; THENCE S89°35'49"W A DISTANCE OF 53.72 FEET; THENCE N00°24'11"W A DISTANCE OF 20.00 FEET; THENCE S89°35'49"W A DISTANCE OF 20.00 FEET; THENCE S00°24'11"E A DISTANCE OF 20.00 FEET; THENCE S89°35'49"W A DISTANCE OF 8.73 FEET; TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF W. AVIAN COURT; THENCE SOUTHEASTERLY ALONG AN ARC OF A CURVE AND THE NORTH RIGHT-OF-WAY LINE OF SAID ROAD, WHOSE CENTER LIES TO THE SOUTH, WHOSE RADIUS IS 380.00 FEET, WHOSE CHORD BEARS S75°19'52"E 38.48 FEET, A DISTANCE OF 38.49 FEET TO A POINT; THENCE N89°35'24"E A DISTANCE OF 60.56 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY ALONG AN ARC OF CURVE, WHOSE CENTER LIES TO THE SOUTH, WHOSE RADIUS IS 60.00 FEET, WHOSE CHORD BEARS S71°28'31"E 38.94 FEET, A DISTANCE OF 39.66 FEET TO A POINT; THENCE N84°35'15"E 168.78 FEET TO THE EAST LINE OF AVIAN ESTATES; THENCE N00°24'36"W A DISTANCE OF 30.11 ALONG SAID EAST LINE TO THE POINT OF BEGINNING.  
CONTAINING 7,430 S.F. (0.17 AC.) MORE OR LESS.

#### AREA 2

COMMENCING AT THE NORTHWEST CORNER OF SAID  $\frac{1}{4}$  SECTION; THENCE N 89°19'05"E ALONG THE NORTH LINE OF NORTHWEST  $\frac{1}{4}$  OF SAID SECTION, A DISTANCE OF 358.43 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF W. PUETZ ROAD; THENCE CONTINUING N 89°19'05"E ALONG THE NORTH LINE OF SAID  $\frac{1}{4}$  SECTION, A DISTANCE OF 1211.58 FEET TO A POINT ON THE WEST LINE OF PHASE I AREA OF SAID AVIAN TUCKAWAY CONDOMINIUM, SAID POINT ALSO BEING ON THE EAST LINE OF AVIAN ESTATES; THENCE S00°24'36"E ALONG SAID EAST LINE, A DISTANCE OF 131.07 FEET; THENCE S84°35'15"W A DISTANCE OF 154.69 FEET; THENCE N05°24'45"W A DISTANCE OF 20.00 FEET; THENCE S84°35'15"W A DISTANCE OF 20.00 FEET; THENCE S05°24'45"E A DISTANCE OF 20.00 FEET; THENCE S84°35'15"W A DISTANCE OF 46.38 FEET; THENCE S00°24'36"E A DISTANCE OF 2.92 FEET; THENCE S89°35'49"W A DISTANCE OF 53.72 FEET; THENCE N00°24'11"W A DISTANCE OF 20.00 FEET; THENCE S89°35'49"W A DISTANCE OF 20.00 FEET; THENCE S00°24'11"E A DISTANCE OF 20.00 FEET; THENCE S89°35'49"W A DISTANCE OF 8.73 FEET; TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF W. AVIAN COURT, TO A POINT OF CURVATURE; THENCE WESTERLY ALONG AN ARC OF A CURVE AND THE NORTH RIGHT-OF-WAY LINE OF SAID ROAD, WHOSE CENTER LIES TO THE SOUTH, WHOSE RADIUS IS 380.00 FEET, WHOSE CHORD BEARS N87°08'14"W 117.73 FEET, A DISTANCE OF 118.20 FEET TO THE POINT OF BEGINNING OF AREA 2; THENCE N08°08'39"E A DISTANCE OF 20.00 FEET; THENCE N81°51'21"W A DISTANCE OF 20.00 FEET; THENCE S08°08'39"W A DISTANCE OF 20.00 FEET; THENCE N81°51'21"W A DISTANCE OF 182.52 FEET; THENCE S77°45'38"W A DISTANCE OF 75.27 FEET; THENCE N12°14'22"W A DISTANCE OF 20.00 FEET; THENCE S77°45'38"W A DISTANCE OF 20.00 FEET; THENCE S12°14'22"E A DISTANCE OF 20.00 FEET; THENCE S77°45'38"W A DISTANCE OF 20.66 FEET; THENCE S57°32'27"W A DISTANCE OF 70.60 FEET; THENCE N32°27'33"W A DISTANCE OF 20.00 FEET; THENCE S57°32'27"W A DISTANCE OF 20.00 FEET; THENCE S32°27'33"E A DISTANCE OF 20.00 FEET; THENCE S57°32'27"W A DISTANCE OF 6.27 FEET; THENCE S45°53'56"W A DISTANCE OF 51.57 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF W. AVIAN COURT; THENCE S53°01'57"E, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 34.23 FEET TO THE INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF W. AVIAN COURT; THENCE N36°58'03"E, ALONG SAID RIGHT-OF-WAY LINE OF W. AVIAN COURT, A DISTANCE OF 63.93 FEET, TO A POINT OF CURVATURE, THENCE NORTHEASTERLY ALONG AN ARC OF CURVE AND THE NORTHERLY RIGHT-OF-WAY LINE OF SAID COURT, WHOSE CENTER LIES TO THE SOUTHEAST, WHOSE RADIUS IS 130.00 FEET, WHOSE CHORD BEARS N69°44'11"E 140.73 FEET, A DISTANCE OF 148.70 FEET TO A POINT OF REVERSE CURVATURE; THENCE SOUTHEASTERLY ALONG AN ARC OF CURVE, WHOSE CENTER LIES TO THE NORTH, WHOSE RADIUS IS 470.00 FEET, WHOSE CHORD BEARS S89°37'09"E 197.44 FEET, A DISTANCE OF 198.92 FEET, TO A POINT OF REVERSE CURVATURE; THENCE NORTHEASTERLY ALONG AN ARC OF CURVE, WHOSE CENTER LIES TO THE SOUTH, WHOSE RADIUS IS 380.00 FEET, WHOSE CHORD BEARS N81°06'13"E 37.76 FEET, A DISTANCE OF 37.77 FEET TO THE POINT OF BEGINNING.  
CONTAINING 11,660 S.F. (0.27 AC.) MORE OR LESS.

## WATER MAIN EASEMENT

Avian Estates

**THIS INDENTURE, made by and between** the CITY OF FRANKLIN, a municipal corporation of the State of Wisconsin, hereinafter referred to as "City," and Avian Estates LLC, a limited liability company, owner, (including heirs, executors, administrators, successors and assigns of above owner(s) as may be or may become applicable), hereinafter called "Grantor," (If more than one grantor is listed above, said language herein referring thereto shall be interpreted in the plural and refer jointly and severally to such grantors).

### WITNESSETH

WHEREAS, Grantor is the owner and holder of record Title to certain real property described on Exhibit "A" which is attached hereto and incorporated herein (the Property); and

WHEREAS, the City desires to acquire a permanent easement with the right of entry in and across the property hereinafter described with the right to build and construct and/or operate, maintain, repair, enlarge, reconstruct, relocate and inspect as may be or may become applicable the following facilities and appurtenances thereto, hereinafter called "Facilities," in, upon and across said portion of the property; a water main and associated valves and fire hydrants, all as shown on the plan attached hereto as Exhibit "B"; and

WHEREAS, the initial construction and installation of the Facilities shall be made by Grantor at Grantor's expense and the Facilities shall be the property of the City and be deemed dedicated to the City upon the City's inspection and approval of the Facilities as installed, subject to the terms and conditions set forth below:

NOW, THEREFORE, in consideration of the grant of the easement hereinafter described and the payment of One Dollar (\$1.00) and other valuable considerations to the Grantor, receipt whereof is hereby acknowledged, said Grantor, being the owner and person interested in the land hereinafter described does hereby grant to the City a permanent easement in the part of the Northwest Quarter (NW ¼) of Section Twenty-two (22), Township Five (5) North, Range Twenty-one (21) East, in the City of Franklin, Milwaukee County, Wisconsin, more particularly described on Exhibit B attached hereto (the "Easement Area").

### UPON CONDITION

1. That said Facilities shall be maintained and kept in good order and condition by the City. Responsibility for maintaining the ground cover and landscaping within the easement area shall be that of the Grantor (including heirs, executors, administrators, successors and assigns).
2. That in and during whatever construction, reconstruction, enlargement or repair work is or becomes necessary in constructing and/or maintaining of said Facilities, so much of the surface or subsurface of the property as may be disturbed, will at the expense of the City be replaced in substantially the same condition as it was prior to such disturbance; except that the City will in no case be responsible for replacing or paying for replacing any aesthetic plantings or improvements other than ordinary lawns or standard walks, roadways, driveways and parking lot surfacing which were required to be removed in the course of doing the above work. However, the City shall save harmless the Grantor from any loss, damage, injury or liability resulting from negligence on the part of the City in connection with said work involved in constructing and/or maintaining of said Facilities; provided that if above loss, damage, injury or liability results from the joint negligence of parties hereto, then the liability therefore shall be borne by them in proportion to their respective degree of negligence; provided further, however, that these provisions are subject to the legal defenses with under law the City is entitled to raise excepting the defense of so-called "sovereign immunity."
3. That no structure may be placed within the limits of the easement by the Grantor except that improvements such as walks, pavements for driveways and parking lot surfacing may be constructed or placed within the Easement Area.
4. That, in connection with the construction by the grantor of any structure or building abutting said easement defined limits, the Grantor will assume all liability for any damage to the Facilities in the above described property. The Grantor will also save and keep the City clear and harmless from any claims for personal injuries or property damage caused by any negligence of the Grantor or person other than the Grantor, arising out of the construction by the Grantor of any structure or building abutting the said easement defined limits, and shall reimburse the City for the full amount of such loss or damage.
5. That no charges will be made against said lands for the cost of maintenance or operation of said Facilities in the afore-described property. Whenever the Grantor makes application for a service connection, the regular and customary service connection charge in effect at the time of the application shall be charged and paid. The Grantor shall be responsible for the routine maintenance of land on which the easement is located.

6. All conditions pertaining to the "Maintenance of Water Service Piping" as set forth in Chapter 5.12 of the "Rules and Regulations Governing Water Service" dated and subsequent amendments thereto shall apply to all water services which are within the easement defined limits and also within the limits of any adjoining easements; except that the City of Franklin Water Works, a utility owned by the City of Franklin shall in no case be responsible for maintaining at its expense any portion of said water services outside of the easement defined limits and outside the limits of any adjoining easements regardless of any statement to the contrary in said "Rules and Regulations Governing Water Service."
7. The Facilities shall be accessible for maintenance by the City at all times. The owner shall submit plans for approval to the City Engineer for any underground installation within the easement area, which approval shall not be unreasonably withheld, conditioned or delayed.
8. That the Grantor shall submit plans for all surface alterations of plus or minus 0.5 feet or greater within the limits of said easement. Said alterations shall be made only with the approval of the City Engineer of the City of Franklin, which approval shall not be unreasonably withheld, conditioned or delayed.
9. The City and Grantor shall each use, and take reasonable measures to cause their employees, officers, customers, agents, contractors and assigns to use, the Easement Area in a reasonable manner and so as not to obstruct or otherwise use the Easement Area in a manner that would unreasonably interfere with the use thereof by the other party hereto or its employees, officers, customers, agents, contractors and assigns.
10. The City and Grantor each hereby waives all rights of subrogation that either has or may hereafter have against the other for any damage to the Easement Area or any other real or personal property or to persons covered by such party's insurance, but only to the extent of the waiving party's insurance coverage; provided, however, that the foregoing waivers shall not invalidate any policy of insurance now or hereafter issued, it being hereby agreed that such a waiver shall not apply in any case which would result in the invalidation of any such policy of insurance and that each party shall notify the other if such party's insurance would be so invalidated.
11. Either party hereto may enforce this easement by appropriate action, and should it prevail in such litigation, that party shall be entitled to recover, as part of its costs, reasonable attorneys' fees.
12. This easement may not be modified or amended, except by a writing executed and delivered by the City and Grantor or their respective successors and assigns.
13. No waiver of, acquiescence in, or consent to any breach of any term, covenant, or condition hereof shall be construed as, or constitute, a waiver of, acquiescence in, or consent to any other, further, or succeeding breach of the same or any other term, covenant, or condition.
14. If any term or provision of this easement shall, to any extent, be invalid or unenforceable under applicable law, then the remaining terms and provisions of this easement shall not be affected thereby, and each such remaining term and provision shall be valid and enforceable to the fullest extent permitted by applicable law.
15. This easement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.
16. It is understood that in the event the above described Real Estate may become portions of public streets; in which event, in the proceedings for the acquisition of the property needed for such streets by purchase, dedication or by condemnation, said lands shall be considered the same as though this easement had not been executed or any rights granted thereby exercised.
17. That the Grantor shall submit as-built drawings of the installed facilities on mylar for approval to the City Engineer, which approval shall not be unreasonably withheld, conditioned, or delayed.

IN WITNESS WHEREOF, the Grantor has hereunto set its hands and seals

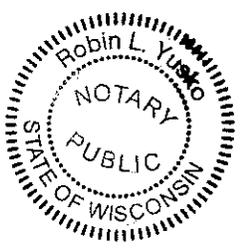
ON THIS DATE OF: June 9, 2014

Avian Estates LLC  
By: MLG Private Fund LLC  
By: MLG PF Manager LLC

By: [Signature]  
Timothy J. Wallen, President

STATE OF Wisconsin  
COUNTY OF Waukesha SS

Before me personally appeared on the \_\_ day of \_\_\_\_\_, 20\_\_, the above named Timothy J. Wallen, President, MLG Private Fund, sole member Avian Estates LLC, to me known to be the person(s) who executed the foregoing EASEMENT and acknowledged the same as the voluntary act and deed of said corporation



[Signature]  
NOTARY PUBLIC  
My commission expires August 29, 2014

CITY OF FRANKLIN  
By: \_\_\_\_\_  
Stephen R. Olson, Mayor  
By: \_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

STATE OF WISCONSIN  
COUNTY OF MILWAUKEE<sup>SS</sup>

On this \_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally appeared Stephen R. Olson and Sandra L. Wesolowski who being by me duly sworn, did say that they are respectively the Mayor and City Clerk of Franklin, and that the seal affixed to said instrument is the corporate seal of said municipal corporation, and acknowledged that they executed the foregoing assignment as such officers as the deed of said municipal corporation by its authority, and pursuant to resolution file No. \_\_\_\_\_ adopted by its Common Council on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_

This instrument was drafted by the City of Franklin.

Approved as to contents \_\_\_\_\_  
Manager of Water Works of Franklin

Date: \_\_\_\_\_  
Approved as to form only \_\_\_\_\_  
City Attorney

Date:

Exhibit A

(Description of the Property)

BEING A PART OF LANDS IN THE NORTHWEST ¼ AND THE NORTHEAST ¼ OF THE NORTHWEST ¼ OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.

PARCEL 1 OF CERTIFIED SURVEY MAP NO. 7413, (EXCEPT THE EASTERLY PORTION THEREOF DESCRIBED AS PART OF PHASE I AREA OF AVIAN AT TUCKWAY CONDOMINIUM, DOCUMENT NO. 08812915), AND MORE CLEARLY DESCRIBED AS:

COMMENCING AT THE NORTHWEST CORNER OF SAID ¼ SECTION; THENCE N 89-19'05"E ALONG THE NORTH LINE OF NORTHWEST ¼ OF SAID SECTION, A DISTANCE OF 358.43 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF W. PUETZ ROAD; THENCE CONTINUING N 89-19'05" E ALONG THE NORTH LINE OF SAID ¼ SECTION, A DISTANCE OF 1211.58 FEET TO A POINT ON THE WEST LINE OF PHASE I AREA OF SAID AVIAN AT TUCKAWAY CONDOMINIUM; THENCE S 00-24'36" E ALONG SAID WEST LINE OF PHASE I AREA, A DISTANCE OF 517.15 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF W. PUETZ ROAD; THENCE S 89-19'05" W ALONG THE NORTH LINE OF SAID ROAD, A DISTANCE OF 238.43 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ALONG AN ARC OF A CURVE AND THE NORTH RIGHT-OF-WAY LINE OF SAID ROAD, WHOSE CENTER LIES TO THE NORTH, WHOSE RADIUS IS 681.78 FEET, WHOSE CHORD BEARS N 71-51'26" W 439.99 FEET, A DISTANCE OF 448.00 FEET TO A POINT OF TANGENCY; THENCE N 53-01'57" W ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID ROAD, A DISTANCE OF 419.98 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ALONG AN ARC OF CURVE AND THE NORTH RIGHT-OF-WAY LINE OF SAID ROAD, WHOSE CENTER LIES TO THE SOUTH, WHOSE RADIUS IS 761.78 FEET, WHOSE CHORD BEARS N 62-31'57" W 251.46 FEET, A DISTANCE OF 252.62 FEET TO THE POINT OF BEGINNING.

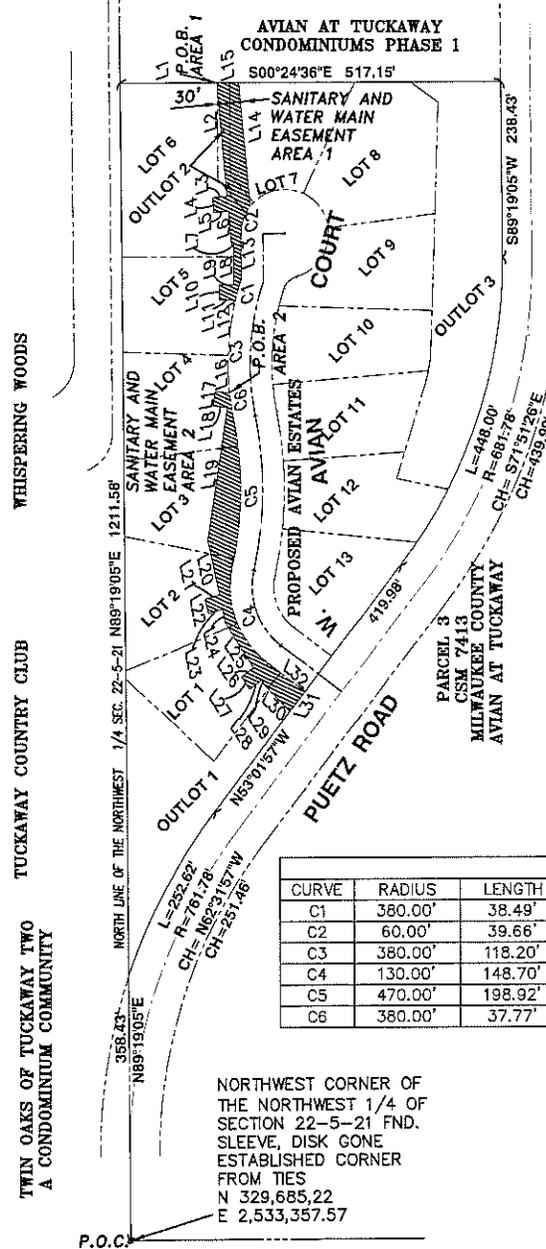
Exhibit B

Legal Description and Depiction of the Facilities

(See Attached)

# EXHIBIT B - SANITARY & WATER MAIN EASEMENT

BEING A PART OF LANDS IN THE NORTHWEST 1/4 AND THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S00°24'36"E	131.07'
L2	S84°35'15"W	154.69'
L3	N05°24'45"W	20.00'
L4	S84°35'15"W	20.00'
L5	S05°24'45"E	20.00'
L6	S84°35'15"W	46.38'
L7	S00°24'36"E	2.92'
L8	S89°35'49"W	53.72'
L9	N00°24'11"W	20.00'
L10	S89°35'49"W	20.00'
L11	S00°24'11"E	20.00'
L12	S89°35'49"W	8.73'
L13	N89°35'24"E	60.56'
L14	N84°35'15"E	168.78'
L15	N00°24'36"W	30.11'
L16	N08°08'39"E	20.00'
L17	N81°51'21"W	20.00'
L18	S08°08'39"W	20.00'
L19	N81°51'21"W	182.52'
L20	S77°45'38"W	75.27'
L21	N12°14'22"W	20.00'
L22	S77°45'38"W	20.00'
L23	S12°14'22"E	20.00'
L24	S77°45'38"W	20.66'
L25	S57°32'27"W	70.60'
L26	N32°27'33"W	20.00'
L27	S57°32'27"W	20.00'
L28	S32°27'33"E	20.00'
L29	S57°32'27"W	6.27'
L30	S45°53'56"W	51.57'
L31	S53°01'57"E	34.23'
L32	N36°58'03"E	63.93'

CURVE TABLE					
CURVE	RADIUS	LENGTH	CHORD	BEARING	DELTA
C1	380.00'	38.49'	38.48'	S75°19'52"E	05°48'14"
C2	60.00'	39.66'	38.94'	S71°28'31"E	37°52'10"
C3	380.00'	118.20'	117.73'	N87°08'14"W	17°49'21"
C4	130.00'	148.70'	140.73'	N69°44'11"E	65°32'16"
C5	470.00'	198.92'	197.44'	S89°37'09"E	24°14'58"
C6	380.00'	37.77'	37.76'	N81°06'13"E	05°41'43"



**McClure**  
Engineering Associates, Inc.

5417 North 118th Court,  
TEL (414)-616-4880

Milwaukee, WI. 53225  
FAX (414)-616-4885

Project: 08-15-13-014

W:\dwg\WI\MEAI WI OFFICE\Franklin\AvlanEstates\0813014AvlanFinalPlot.dwg



GRAPHIC SCALE



## EXHIBIT B - SANITARY & WATER MAIN EASEMENT

BEING A PART OF LANDS IN THE NORTHWEST  $\frac{1}{4}$  AND THE NORTHEAST  $\frac{1}{4}$  OF THE NORTHWEST  $\frac{1}{4}$  OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.

### SANITARY AND WATER MAIN EASEMENT LEGAL DESCRIPTION

PART OF LANDS IN THE NORTHWEST  $\frac{1}{4}$  AND THE NORTHEAST  $\frac{1}{4}$  OF THE NORTHWEST  $\frac{1}{4}$  OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.

BEING A PART OF AVIAN ESTATES, BEING A RE-DIVISION OF PARCEL 1 OF CERTIFIED SURVEY MAP NO. 7413, (EXCEPT THE EASTERLY PORTION THEREOF DESCRIBED AS PART OF PHASE I AREA OF AVIAN TUCKAWAY CONDOMINIUM, DOCUMENT NO. 08812915), AND MORE CLEARLY DESCRIBED AS:

#### AREA 1

COMMENCING AT THE NORTHWEST CORNER OF SAID  $\frac{1}{4}$  SECTION; THENCE N 89°19'05"E ALONG THE NORTH LINE OF NORTHWEST  $\frac{1}{4}$  OF SAID SECTION, A DISTANCE OF 358.43 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF W. PUETZ ROAD; THENCE CONTINUING N 89°19'05"E ALONG THE NORTH LINE OF SAID  $\frac{1}{4}$  SECTION, A DISTANCE OF 1211.58 FEET TO A POINT ON THE WEST LINE OF PHASE I AREA OF SAID AVIAN TUCKAWAY CONDOMINIUM, SAID POINT ALSO BEING ON THE EAST LINE OF AVIAN ESTATES; THENCE S00°24'36"E ALONG SAID EAST LINE, A DISTANCE OF 131.07 FEET TO THE POINT BEGINNING; THENCE S84°35'15"W A DISTANCE OF 154.69 FEET; THENCE N05°24'45"W A DISTANCE OF 20.00 FEET; THENCE S84°35'15"W A DISTANCE OF 20.00 FEET; THENCE S05°24'45"E A DISTANCE OF 20.00 FEET; THENCE S84°35'15"W A DISTANCE OF 46.38 FEET; THENCE S00°24'36"E A DISTANCE OF 2.92 FEET; THENCE S89°35'49"W A DISTANCE OF 53.72 FEET; THENCE N00°24'11"W A DISTANCE OF 20.00 FEET; THENCE S89°35'49"W A DISTANCE OF 20.00 FEET; THENCE S00°24'11"E A DISTANCE OF 20.00 FEET; THENCE S89°35'49"W A DISTANCE OF 8.73 FEET; TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF W. AVIAN COURT; THENCE SOUTHEASTERLY ALONG AN ARC OF A CURVE AND THE NORTH RIGHT-OF-WAY LINE OF SAID ROAD, WHOSE CENTER LIES TO THE SOUTH, WHOSE RADIUS IS 380.00 FEET, WHOSE CHORD BEARS S75°19'52"E 38.48 FEET, A DISTANCE OF 38.49 FEET TO A POINT; THENCE N89°35'24"E A DISTANCE OF 60.56 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY ALONG AN ARC OF CURVE, WHOSE CENTER LIES TO THE SOUTH, WHOSE RADIUS IS 60.00 FEET, WHOSE CHORD BEARS S71°28'31"E 38.94 FEET, A DISTANCE OF 39.66 FEET TO A POINT; THENCE N84°35'15"E 168.78 FEET TO THE EAST LINE OF AVIAN ESTATES; THENCE N00°24'36"W A DISTANCE OF 30.11 ALONG SAID EAST LINE TO THE POINT OF BEGINNING.  
CONTAINING 7,430 S.F. (0.17 AC.) MORE OR LESS.

#### AREA 2

COMMENCING AT THE NORTHWEST CORNER OF SAID  $\frac{1}{4}$  SECTION; THENCE N 89°19'05"E ALONG THE NORTH LINE OF NORTHWEST  $\frac{1}{4}$  OF SAID SECTION, A DISTANCE OF 358.43 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF W. PUETZ ROAD; THENCE CONTINUING N 89°19'05"E ALONG THE NORTH LINE OF SAID  $\frac{1}{4}$  SECTION, A DISTANCE OF 1211.58 FEET TO A POINT ON THE WEST LINE OF PHASE I AREA OF SAID AVIAN TUCKAWAY CONDOMINIUM, SAID POINT ALSO BEING ON THE EAST LINE OF AVIAN ESTATES; THENCE S00°24'36"E ALONG SAID EAST LINE, A DISTANCE OF 131.07 FEET; THENCE S84°35'15"W A DISTANCE OF 154.69 FEET; THENCE N05°24'45"W A DISTANCE OF 20.00 FEET; THENCE S84°35'15"W A DISTANCE OF 20.00 FEET; THENCE S05°24'45"E A DISTANCE OF 20.00 FEET; THENCE S84°35'15"W A DISTANCE OF 46.38 FEET; THENCE S00°24'36"E A DISTANCE OF 2.92 FEET; THENCE S89°35'49"W A DISTANCE OF 53.72 FEET; THENCE N00°24'11"W A DISTANCE OF 20.00 FEET; THENCE S89°35'49"W A DISTANCE OF 20.00 FEET; THENCE S00°24'11"E A DISTANCE OF 20.00 FEET; THENCE S89°35'49"W A DISTANCE OF 8.73 FEET; TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF W. AVIAN COURT, TO A POINT OF CURVATURE; THENCE WESTERLY ALONG AN ARC OF A CURVE AND THE NORTH RIGHT-OF-WAY LINE OF SAID ROAD, WHOSE CENTER LIES TO THE SOUTH, WHOSE RADIUS IS 380.00 FEET, WHOSE CHORD BEARS N87°08'14"W 117.73 FEET, A DISTANCE OF 118.20 FEET TO THE POINT OF BEGINNING OF AREA 2; THENCE N08°08'39"E A DISTANCE OF 20.00 FEET; THENCE N81°51'21"W A DISTANCE OF 20.00 FEET; THENCE S08°08'39"W A DISTANCE OF 20.00 FEET; THENCE N81°51'21"W A DISTANCE OF 182.52 FEET; THENCE S77°45'38"W A DISTANCE OF 75.27 FEET; THENCE N12°14'22"W A DISTANCE OF 20.00 FEET; THENCE S77°45'38"W A DISTANCE OF 20.00 FEET; THENCE S12°14'22"E A DISTANCE OF 20.00 FEET; THENCE S77°45'38"W A DISTANCE OF 20.66 FEET; THENCE S57°32'27"W A DISTANCE OF 70.60 FEET; THENCE N32°27'33"W A DISTANCE OF 20.00 FEET; THENCE S57°32'27"W A DISTANCE OF 20.00 FEET; THENCE S32°27'33"E A DISTANCE OF 20.00 FEET; THENCE S57°32'27"W A DISTANCE OF 6.27 FEET; THENCE S45°53'56"W A DISTANCE OF 51.57 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF PUETZ ROAD; THENCE S53°01'57"E, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 34.23 FEET TO THE INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF W. AVIAN COURT; THENCE N36°58'03"E, ALONG SAID RIGHT-OF-WAY LINE OF W. AVIAN COURT, A DISTANCE OF 63.93 FEET, TO A POINT OF CURVATURE, THENCE NORTHEASTERLY ALONG AN ARC OF CURVE AND THE NORTHERLY RIGHT-OF-WAY LINE OF SAID COURT, WHOSE CENTER LIES TO THE SOUTHEAST, WHOSE RADIUS IS 130.00 FEET, WHOSE CHORD BEARS N69°44'11"E 140.73 FEET, A DISTANCE OF 148.70 FEET TO A POINT OF REVERSE CURVATURE; THENCE SOUTHEASTERLY ALONG AN ARC OF CURVE, WHOSE CENTER LIES TO THE NORTH, WHOSE RADIUS IS 470.00 FEET, WHOSE CHORD BEARS S89°37'09"E 197.44 FEET, A DISTANCE OF 198.92 FEET, TO A POINT OF REVERSE CURVATURE; THENCE NORTHEASTERLY ALONG AN ARC OF CURVE, WHOSE CENTER LIES TO THE SOUTH, WHOSE RADIUS IS 380.00 FEET, WHOSE CHORD BEARS N81°06'13"E 37.76 FEET, A DISTANCE OF 37.77 FEET TO THE POINT OF BEGINNING.  
CONTAINING 11,660 S.F. (0.27 AC.) MORE OR LESS.

## PERMANENT TURN AROUND EASEMENT

Avian Estates

**THIS EASEMENT is made by and between** the AVIAN AT TUCKAWAY CONDOMINIUM ASSOCIATION, Inc., a Wisconsin non-stock corporation, as Grantees (including successors and assigns of Grantees as may be or may become applicable), hereinafter referred to as "Association," and Avian Estates LLC, a limited liability company having offices at 13400 Bishop's Lane, Suite 270, Brookfield, WI 53005 as Owners (including successors and assigns of above Owners as may be or may become applicable), hereinafter called "Grantor", (if more than one Grantor is listed above, said language herein referring thereto shall be interpreted in the plural and refer jointly and severally to such as Grantors).

WITNESSETH

WHEREAS, Grantor is the owner and holder of record Title to certain real property particularly described on Exhibit "A" which is attached hereto and incorporated herein (the "Property"); and

WHEREAS, the Association desires to acquire a non-exclusive easement with the right of entry in and across a portion of the Property as the same is more particularly hereinafter described, with the right of public ingress and egress and to operate, maintain, repair, enlarge, reconstruct, relocate and inspect as may be or may become applicable, a paved vehicular turn around and appurtenances thereto, initially constructed and paid for by Grantor, hereinafter collectively called the "Facilities", in, upon and across said portion of the Property: a permanent turn around easement, as shown on the plan attached hereto as Exhibit "B".

NOW THEREFORE, in consideration of the grant of the easement hereinafter described, the installation and maintenance of the Facilities by the Grantor, and the Association, and the payment of One Dollar (\$1.00) and other valuable consideration to the Grantor, the receipt whereof is hereby acknowledged, said Grantor, being the owner and person interested in the land hereinafter described, does hereby grant unto the Association a perpetual, non-exclusive permanent turn around easement, more particularly described on Exhibit "B" attached hereto (the "Easement Area").

1. That said Facilities shall be constructed by Grantor at Grantor's sole cost and expense pursuant to the Site Plan and Landscaping Plan attached hereto as Exhibit B. Grantor's obligations shall include without limitation obtaining the necessary permits, construction of the permanent turnaround barrier, asphalt, erosion control, signage, extension of utilities as necessary, and landscaping. All construction shall be performed in a good and workmanlike manner in compliance with all state and local codes, and shall be inspected and approved by the City of Franklin. Grantor shall guarantee after final acceptance of the Facilities by the City of Franklin, the improvements against defects due to faulty materials or workmanship, provided that such defects appear within a period of one year from the date of final acceptance. Subject to Grantor's repair and replacement obligations during the one year guarantee period, the completed Facilities shall be maintained and kept in good order and condition by the Association, at the sole cost and expense of the Association.
2. The Association shall indemnify and save harmless the Grantor from and against any loss, damage, claim, cost, injury, or liability resulting from negligence or willful acts or omissions on the part of the Association, its agents or employees in connection with said work involved in maintaining of said Facilities. The Grantor shall indemnify and save harmless the Association from and against any loss, damage, claim, cost, injury, or liability resulting from negligence or willful acts or omissions on the part of the Grantor, its agents or employees in connection with said work involved in constructing said Facilities.; provided that if the above loss, claim, cost, damage, injury or liability results from the joint negligence of parties hereto, then the liability therefore shall be borne by them in proportion to their respective degree of negligence: provided further, however, that these provision are subject to the legal defenses available under law which the Association or Grantor are entitled to raise, excepting the defense of so-called "sovereign immunity".
3. That no structure may be placed within the limits of the Easement Area by the Grantor except that improvements such as walks, pavements for driveways and landscaping may be constructed or placed within the Easement Area.
4. That, in connection with the construction by the Grantor of any structure or building abutting said Easement Area, the Grantor will assume all liability for any damage to the Facilities in the above described Easement Area. The Grantor will also indemnify and hold the Association harmless from any claim for personal injuries or property damage caused by any negligence or willful acts or omissions of the Grantor or persons acting on behalf of the Grantor, arising out of the construction by the Grantor of any structure or building abutting the said Easement Area, and shall reimburse the Association for the full amount of such loss or damage
5. That no charges or liens will be made against the Property for the cost of maintenance, repair, replacement or operation of said Facilities in the Property.

6. The Facilities shall be accessible for maintenance by the Association at all times. The Owner shall submit plans for approval to the Association for any underground installation within the Easement Area, which approval shall not be unreasonably withheld, conditioned, or delayed.

7. That the Grantor shall submit plans for all surface alterations of plus or minus 1 foot or greater within the limits of said Easement Area. Said alterations shall be made only with the approval of the Association, which approval shall not be unreasonably withheld, conditioned, or delayed.

8. The Association and Grantor shall each use, and take reasonable measures to cause their employees, officers, customers, agents, contractors, and assigns to use, the Easement Area in a reasonable manner and so as not to obstruct or otherwise use the Easement Area in a manner that would unreasonably interfere with the use thereof by the other party hereto or its employees, officers, customers, agents, contractors and assigns.

9. The Association and Grantor each hereby waive all rights of subrogation that either has or may hereafter have against the other for any damage to the Easement Area or any other real or personal property or to persons covered by such party's insurance, but only to the extent of the waiving party's insurance coverage; provided, however, that the foregoing waivers shall not invalidate any policy of insurance now or hereafter issued, it being hereby agreed that such a waiver shall not apply in any case which would result in the invalidation of any such policy or insurance and that each party shall notify the other if such party's insurance would be so invalidated.

10. Either party hereto may enforce this easement by appropriate action, and should it prevail in such litigation, that party shall be entitled to recover, as part of its costs, reasonable attorney's fees.

11. This easement may not be modified or amended, except by a writing executed and delivered by the Association and Grantor or their respective successors and assigns.

12. No waiver of, acquiescence in, or consent to any breach of any term, covenant, or condition hereby shall be construed as, or constitute, a waiver of acquiescence in, or consent to any other, further, or succeeding breach of the same or any other term, covenant, or condition.

13. If any term or provision of this easement shall, to any extent, be invalid or unenforceable under applicable law, then the remaining terms and provisions of this easement shall not be affected thereby, and each such remaining term and provision shall be valid and enforceable to the fullest extent permitted by applicable law.

14. This easement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.

15. This permanent easement shall run with the land, and is binding upon the Grantor, its successors and assigns, and any and all future owners of the Property. This easement shall be recorded with the Milwaukee County Register of Deeds.



Exhibit A

(Description of the Property)

BEING A PART OF LANDS IN THE NORTHWEST  $\frac{1}{4}$  AND THE NORTHEAST  $\frac{1}{4}$  OF THE NORTHWEST  $\frac{1}{4}$  OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.

PARCEL 1 OF CERTIFIED SURVEY MAP NO. 7413, (EXCEPT THE EASTERLY PORTION THEREOF DESCRIBED AS PART OF PHASE I AREA OF AVIAN AT TUCKWAY CONDOMINIUM, DOCUMENT NO. 08812915), AND MORE CLEARLY DESCRIBED AS:

COMMENCING AT THE NORTHWEST CORNER OF SAID  $\frac{1}{4}$  SECTION; THENCE N 89-19'05"E ALONG THE NORTH LINE OF NORTHWEST  $\frac{1}{4}$  OF SAID SECTION, A DISTANCE OF 358.43 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF W. PUETZ ROAD; THENCE CONTINUING N 89-19'05" E ALONG THE NORTH LINE OF SAID  $\frac{1}{4}$  SECTION, A DISTANCE OF 1211.58 FEET TO A POINT ON THE WEST LINE OF PHASE I AREA OF SAID AVIAN AT TUCKAWAY CONDOMINIUM; THENCE S 00-24'36" E ALONG SAID WEST LINE OF PHASE I AREA, A DISTANCE OF 517.15 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF W. PUETZ ROAD; THENCE S 89-19'05" W ALONG THE NORTH LINE OF SAID ROAD, A DISTANCE OF 238.43 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ALONG AN ARC OF A CURVE AND THE NORTH RIGHT-OF-WAY LINE OF SAID ROAD, WHOSE CENTER LIES TO THE NORTH, WHOSE RADIUS IS 681.78 FEET, WHOSE CHORD BEARS N 71-51'26" W 439.99 FEET, A DISTANCE OF 448.00 FEET TO A POINT OF TANGENCY; THENCE N 53-01'57" W ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID ROAD, A DISTANCE OF 419.98 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ALONG AN ARC OF CURVE AND THE NORTH RIGHT-OF-WAY LINE OF SAID ROAD, WHOSE CENTER LIES TO THE SOUTH, WHOSE RADIUS IS 761.78 FEET, WHOSE CHORD BEARS N 62-31'57" W 251.46 FEET, A DISTANCE OF 252.62 FEET TO THE POINT OF BEGINNING.



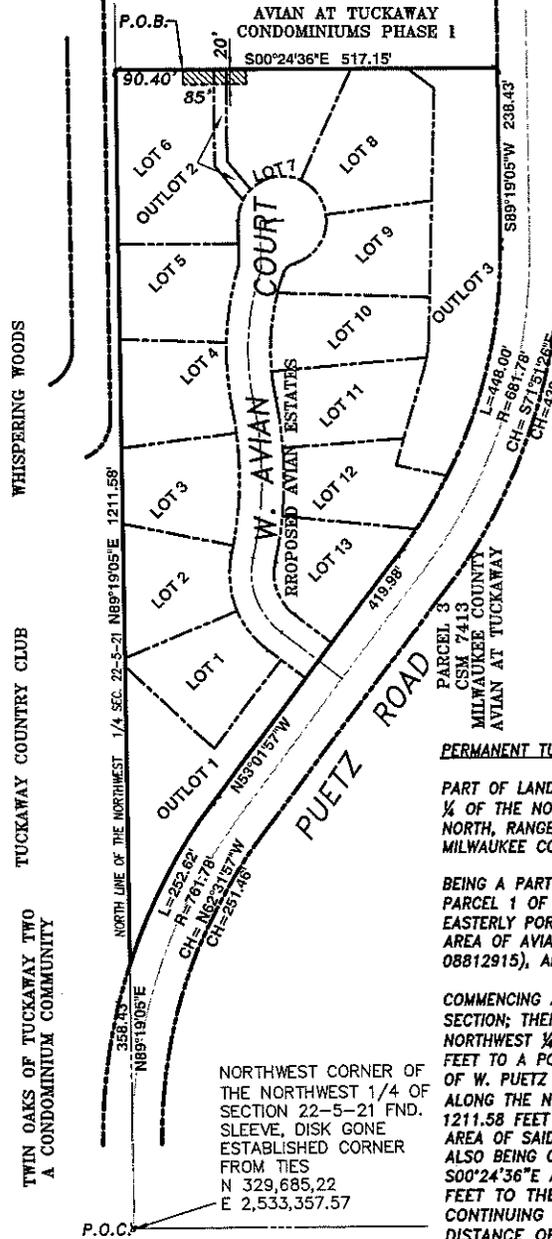
Exhibit B

Legal Description and Depiction of the Facilities

(See Attached)

# EXHIBIT B - PERMANENT TURN AROUND EASEMENT

BEING A PART OF LANDS IN THE NORTHWEST 1/4 AND THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.



### PERMANENT TURN-AROUND EASEMENT LEGAL DESCRIPTION

PART OF LANDS IN THE NORTHWEST 1/4 AND THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.

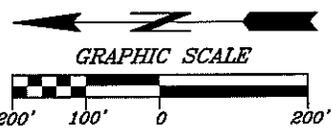
BEING A PART OF AVIAN ESTATES, BEING A RE-DIVISION OF PARCEL 3 OF CERTIFIED SURVEY MAP NO. 7413, (EXCEPT THE EASTERLY PORTION THEREOF DESCRIBED AS PART OF PHASE I AREA OF AVIAN TUCKAWAY CONDOMINIUM, DOCUMENT NO. 08812915), AND MORE CLEARLY DESCRIBED AS:

COMMENCING AT THE NORTHWEST CORNER OF SAID 1/4 SECTION; THENCE N89°19'05"E ALONG THE NORTH LINE OF NORTHWEST 1/4 OF SAID SECTION, A DISTANCE OF 358.43 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF W. PUETZ ROAD; THENCE CONTINUING N 89°19'05"E ALONG THE NORTH LINE OF SAID 1/4 SECTION, A DISTANCE OF 1211.58 FEET TO A POINT ON THE WEST LINE OF PHASE I AREA OF SAID AVIAN TUCKAWAY CONDOMINIUM, SAID POINT ALSO BEING ON THE EAST LINE OF AVIAN ESTATES; THENCE S00°24'36"E ALONG SAID EAST LINE, A DISTANCE OF 90.40 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S00°24'36"E, ALONG SAID EAST LINE, A DISTANCE OF 85.00 FEET; THENCE S 89°19'05" W, A DISTANCE OF 20.00 FEET; THENCE N00°24'36"W, A DISTANCE OF 85.00 FEET; THENCE N89°19'05"E A DISTANCE OF 20.00 FEET, TO THE POINT OF BEGINNING.

NORTHWEST CORNER OF THE NORTHWEST 1/4 OF SECTION 22-5-21 FND. SLEEVE, DISK GONE ESTABLISHED CORNER FROM TIES  
 N 329,685,22  
 E 2,533,357,57



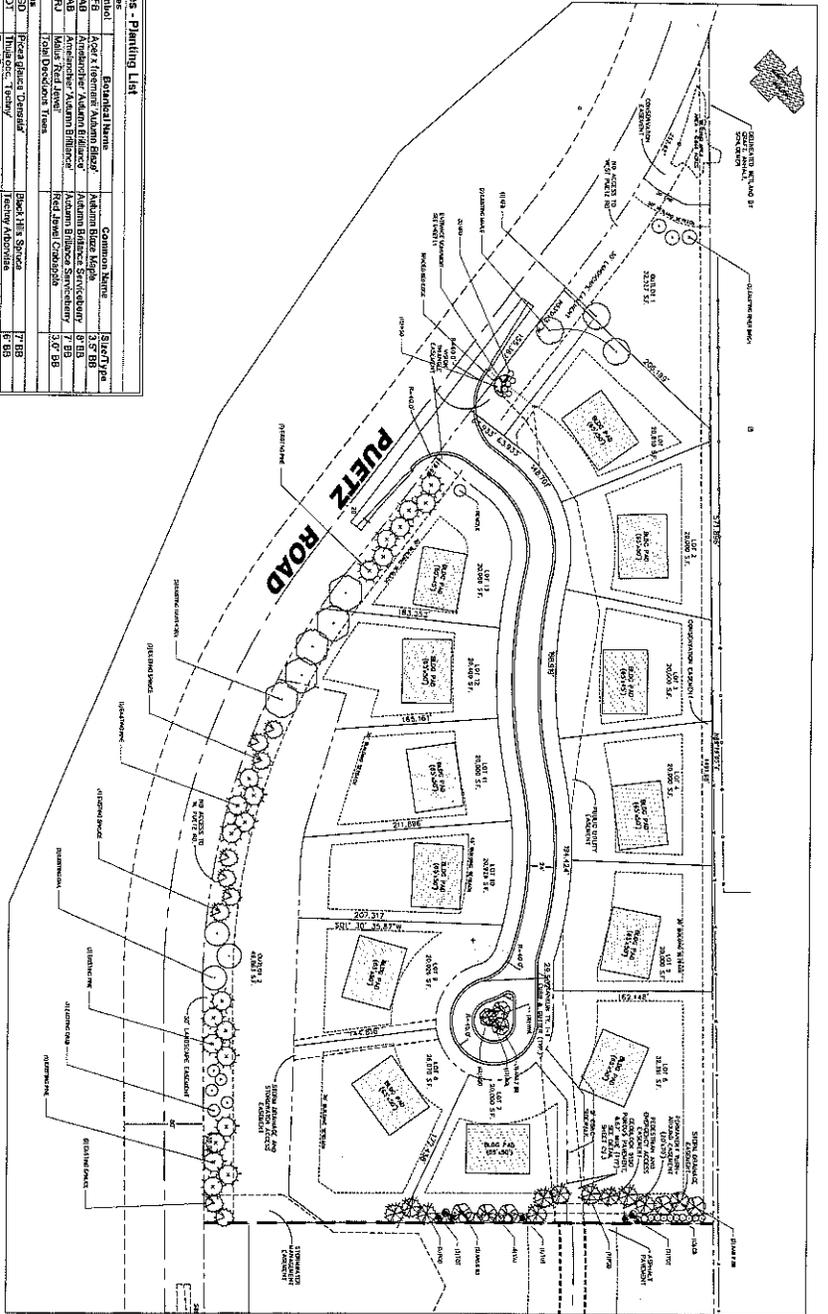
5417 North 118th Court, Milwaukee, WI. 53225  
 TEL (414)-616-4880 FAX (414)-616-4885



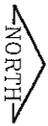
# EXHIBIT B

**Avian Estates - Planting List**

Planting Item	Quantity	Plant Name	Notes
1	1	Common Nettle	3' x 3' 1/2"
2	1	Adiantum	3' x 3' 1/2"
3	1	Adiantum	3' x 3' 1/2"
4	1	Adiantum	3' x 3' 1/2"
5	1	Adiantum	3' x 3' 1/2"
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98	1	Adiantum	3' x 3' 1/2"
99	1	Adiantum	3' x 3' 1/2"
100	1	Adiantum	3' x 3' 1/2"



**1** Landscape Plan  
SCALE: 1" = 50'-0"



DEVELOPER	
PROJECT NAME	AVIAN ESTATES West Puetz Road, Franklin, Wisconsin
SHEET TITLE	LANDSCAPE LAYOUT PLAN
DATE	09/17/2013
DRAWN BY	AMM
CHECKED BY	THOMAS H. EARL, P.L.A.
SCALE	AS NOTED
SHEET NO.	L2

**DURHAM HILL**  
www.durhamhill.com

DURHAM HILL  
3700 WISCONSIN ST.  
FRANKLIN, WI 53146  
414-533-5282

STORM WATER MANAGEMENT AND LANDSCAPE MAINTENANCE ACCESS EASEMENT

Avian Estates

**THIS EASEMENT is made by and between AVIAN ESTATES OWNERS ASSOCIATION**, an unincorporated association, hereinafter called "Association," and the CITY OF FRANKLIN, a municipal corporation of the State of Wisconsin, hereinafter referred to as "City," collectively referred to as "Grantees," and AVIAN ESTATES LLC, a limited liability company, as owner (including successors and assigns of the City as may become applicable including the heirs, executors, administrators, successors and assigns of above owner(s) as may be or may become applicable), hereinafter called "Grantor," (if more than one grantor is listed above, said language herein referring thereto shall be interpreted in the plural and refer jointly and severally to such grantors).

WITNESSETH

WHEREAS, Grantor is the owner and holder of record Title to certain real property described on Exhibit "A" which is attached hereto and incorporated herein (the Property); and

WHEREAS, the City desires to acquire a perpetual, non-exclusive easement with the right of entry in and across a portion of the property as the same is more particularly hereinafter described, with the right to build and construct and/or operate, maintain, repair, enlarge, reconstruct, relocate and inspect as may be or may become applicable the following facilities and appurtenances thereto, hereinafter collectively called the "Facilities," in, upon and across said portion of the Property: a storm water management basin as shown on the plan attached hereto as Exhibit "B." and the landscaping on Outlot 3; and

NOW, THEREFORE, in consideration of the grant of the easement hereinafter described, the initial installation and maintenance of the Facilities by the Grantor, and the Grantees, and the payment of One Dollar (\$1.00) and other valuable considerations to the Grantor, the receipt whereof is hereby acknowledged, said Grantor, being the owner and person interested in the land hereinafter described, does hereby grant unto the City a perpetual, non-exclusive easement on that part of the Northwest Quarter (NW ¼) of Section Twenty-two (22), Township Five (5) North, Range Twenty-one (21) East, in the City of Franklin, Milwaukee County, Wisconsin, more particularly described on Exhibit B attached hereto (the "Easement Area").

1. That said Facilities shall be maintained and kept in good order and condition by the Association, at the sole cost and expense of the Association. The City, at its sole discretion, may assume the rights of the Association to maintain the Facilities.
2. That in and during whatever construction, reconstruction, enlargement or repair work is or becomes necessary in constructing and/or maintaining of said Facilities, so much of the surface or subsurface of the Easement Area on the Property as may be disturbed will, at the expense of the Association, be replaced in substantially the same condition as it was prior to such disturbance. The City, at its sole discretion, may assume the rights of the Association to construct, reconstruct, enlarge, repair, or do whatever is necessary in constructing and/or maintaining such Facilities. However, the Grantees shall indemnify and save harmless the Grantor from and against any loss, damage, claim, cost, injury or liability resulting from negligence or willful acts or omissions on the part of the Grantees, its agents or employees in connection with said work involved in constructing and/or maintaining of said Facilities; provided that if the above loss, claim, cost, damage, injury or liability results from the joint negligence of parties hereto, then the liability therefore shall be borne by them in proportion to their respective degree of negligence; provided further, however, that these provisions are subject to the legal defenses available under law which the Grantees or Grantor are entitled to raise, excepting the defense of so-called "sovereign immunity."
3. That no structure may be placed within the limits of the Easement Area by the Grantor, except that improvement such as walks, pavements for driveways, parking lot surfacing and landscape planting may be constructed or placed within the Easement Area.
4. In connection with the construction by the Grantor of any structure or building abutting said Easement Area, the Grantor will assume all liability for any damage to the Facilities in the above described Easement Area. The Grantor will also save and keep the Grantees clear and harmless from any claims for personal injuries or property damage caused by any negligence or willful acts or omissions of the Grantor or persons acting on behalf of the Grantor, arising out of the construction by the Grantor of any structure or building abutting the said Easement Area, and shall reimburse the Grantees for the full amount of such loss or damage.
5. The Grantor shall be responsible for the routine maintenance of land on which the easement is located.
6. The Facilities shall be accessible for maintenance by the Association at all times. The owner shall submit plans for approval to the City Engineer for any underground installation within the Easement Area, which approval shall not be unreasonably withheld, conditioned or delayed.
7. That the Grantor shall submit plans for all surface alterations of plus or minus 1 foot or greater within the limits of said Easement Area. Said alterations shall be made only with the approval of the City Engineer of the City of Franklin, which approval shall not be unreasonably withheld, conditioned or delayed.
8. The Grantees and Grantor shall each use, and take reasonable measures to cause their employees, officers, customers, agents, contractors and assigns to use, the Easement Area in a reasonable manner and so as not to obstruct or otherwise use the Easement Area in a manner that would unreasonably interfere with the use thereof by the other party hereto or its employees, officers, customers, agents, contractors and assigns.

9. The Grantees and Grantor each hereby waives all rights of subrogation that either has or may hereafter have against the other for any damage to the Easement Area or any other real or personal property or to persons covered by such party's insurance, but only to the extent of the waiving party's insurance coverage; provided, however, that the foregoing waivers shall not invalidate any policy of insurance now or hereafter issued, it being hereby agreed that such a waiver shall not apply in any case which would result in the invalidation of any such policy of insurance and that each party shall notify the other if such party's insurance would be so invalidated.
10. Either party hereto may enforce this easement by appropriate action, and should it prevail in such litigation, that party shall be entitled to recover, as part of its costs, reasonable attorneys' fees.
11. This easement may not be modified or amended, except by a writing executed and delivered by the Grantees and Grantor or their respective successors and assigns.
12. No waiver of, acquiescence in, or consent to any breach of any term, covenant, or condition hereof shall be construed as, or constitute, a waiver of, acquiescence in, or consent to any other, further, or succeeding breach of the same or any other term, covenant, or condition.
13. If any term or provision of this easement shall, to any extent, be invalid or unenforceable under applicable law, then the remaining terms and provisions of this easement shall not be affected thereby, and each such remaining term and provision shall be valid and enforceable to the fullest extent permitted by applicable law.
14. This easement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seals

ON THIS DATE OF: November 15, 2013

Avian Estates LLC  
 By: MLG Private Fund LLC  
 By: MLG PF Manager LLC

By: Timothy J. Wallen, President

STATE OF Wisconsin  
 COUNTY OF Waukesha ss

Before me personally appeared on the 15 day of November, A.D. 2013, Timothy J. Wallen, President, MLG Private Fund, sole member of Avian Estates LLC, to me known to be the person(s) who executed the foregoing EASEMENT and acknowledged the same as the voluntary act and deed of said corporation.

Lynn Maikowski  
 NOTARY PUBLIC Lynn Maikowski  
 My commission expires 11/8/15



CITY OF FRANKLIN

By: \_\_\_\_\_  
 Thomas M Taylor, Mayor

By: \_\_\_\_\_  
 Sandra L. Wesolowski, City Clerk

STATE OF WISCONSIN )  
 ) ss  
 COUNTY OF MILWAUKEE)

On this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 20\_\_ before me personally appeared Thomas M. Taylor and Sandra L. Wesolowski who being by me duly sworn, did say that they are respectively the Mayor and City Clerk of the City of Franklin, and that the seal affixed to said instrument is the corporate seal of said municipal corporation, and acknowledged that they executed the foregoing assignment as such officers as the deed of said municipal corporation by its authority, and pursuant to resolution file No. \_\_\_\_\_ adopted by its Common Council on \_\_\_\_\_, 20\_\_.

Notary Public, Milwaukee County, Wisconsin  
 Print Name \_\_\_\_\_  
 My commission expires \_\_\_\_\_

This instrument was drafted by the City of Franklin.

Approved as to contents

\_\_\_\_\_  
City Engineer

Date:

Approved as to form only

\_\_\_\_\_  
City Attorney

Date:

Exhibit A

(Description of the Property)

BEING A PART OF LANDS IN THE NORTHWEST ¼ AND THE NORTHEAST ¼ OF THE NORTHWEST ¼ OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.

PARCEL 1 OF CERTIFIED SURVEY MAP NO. 7413, (EXCEPT THE EASTERLY PORTION THEREOF DESCRIBED AS PART OF PHASE I AREA OF AVIAN AT TUCKWAY CONDOMINIUM, DOCUMENT NO. 08812915), AND MORE CLEARLY DESCRIBED AS:

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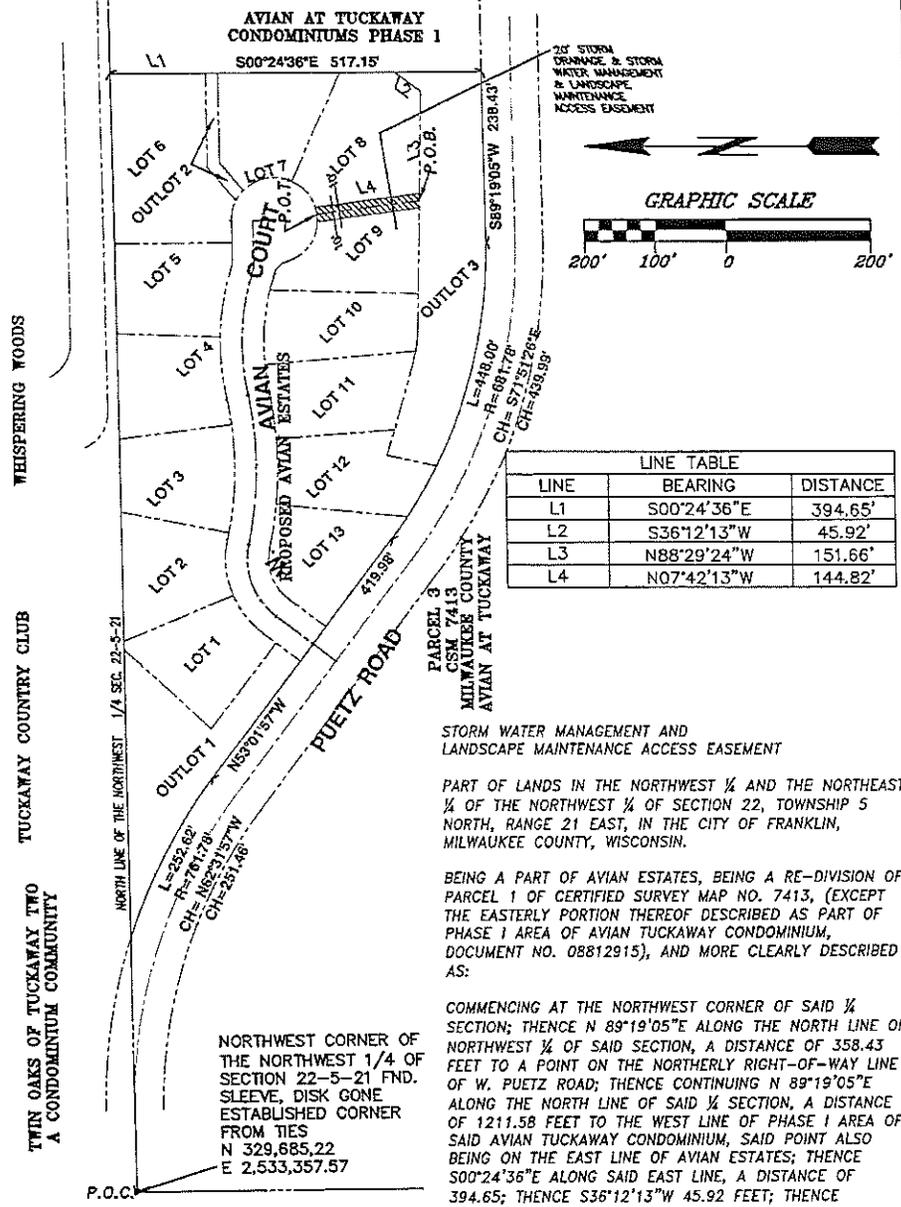
**Exhibit B**

**Legal Description and Depiction of the Facilities**

**(See Attached)**

# EXHIBIT B - STORM WATER MANAGEMENT AND LANDSCAPE MAINTENANCE ACCESS EASEMENT

BEING A PART OF LANDS IN THE NORTHWEST 1/4 AND THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.



LINE	BEARING	DISTANCE
L1	S00°24'36"E	394.65'
L2	S36°12'13"W	45.92'
L3	N88°29'24"W	151.66'
L4	N07°42'13"W	144.82'

## STORM WATER MANAGEMENT AND LANDSCAPE MAINTENANCE ACCESS EASEMENT

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NORTHWEST CORNER OF THE NORTHWEST 1/4 OF SECTION 22-5-21 FND. SLEEVE, DISK GONE ESTABLISHED CORNER FROM TIES  
 N 329,685.22  
 E 2,533,357.57



5417 North 118th Court, Milwaukee, WI. 53225  
 TEL (414)-616-4880 FAX (414)-616-4885

Project: 08-15-13-014

STORM WATER MANAGEMENT AND LANDSCAPE MAINTENANCE ACCESS EASEMENT

Avian Estates

**THIS EASEMENT is made by and between AVIAN ESTATES OWNERS ASSOCIATION**, an unincorporated association, hereinafter called "Association," and the CITY OF FRANKLIN, a municipal corporation of the State of Wisconsin, hereinafter referred to as "City," collectively referred to as "Grantees," and AVIAN ESTATES LLC, a limited liability company, as owner (including successors and assigns of the City as may become applicable including the heirs, executors, administrators, successors and assigns of above owner(s) as may be or may become applicable), hereinafter called "Grantor," (if more than one grantor is listed above, said language herein referring thereto shall be interpreted in the plural and refer jointly and severally to such grantors).

WITNESSETH

WHEREAS, Grantor is the owner and holder of record Title to certain real property described on Exhibit "A" which is attached hereto and incorporated herein (the Property); and

WHEREAS, the City desires to acquire a perpetual, non-exclusive easement with the right of entry in and across a portion of the property as the same is more particularly hereinafter described, with the right to build and construct and/or operate, maintain, repair, enlarge, reconstruct, relocate and inspect as may be or may become applicable the following facilities and appurtenances thereto, hereinafter collectively called the "Facilities," in, upon and across said portion of the Property: a storm water management basin as shown on the plan attached hereto as Exhibit "B." and the landscaping on Outlot 3; and

NOW, THEREFORE, in consideration of the grant of the easement hereinafter described, the initial installation and maintenance of the Facilities by the Grantor, and the Grantees, and the payment of One Dollar (\$1.00) and other valuable considerations to the Grantor, the receipt whereof is hereby acknowledged, said Grantor, being the owner and person interested in the land hereinafter described, does hereby grant unto the City a perpetual, non-exclusive easement on that part of the Northwest Quarter (NW ¼) of Section Twenty-two (22), Township Five (5) North, Range Twenty-one (21) East, in the City of Franklin, Milwaukee County, Wisconsin, more particularly described on Exhibit B attached hereto (the "Easement Area").

1. That said Facilities shall be maintained and kept in good order and condition by the Association, at the sole cost and expense of the Association. The City, at its sole discretion, may assume the rights of the Association to maintain the Facilities.
2. That in and during whatever construction, reconstruction, enlargement or repair work is or becomes necessary in constructing and/or maintaining of said Facilities, so much of the surface or subsurface of the Easement Area on the Property as may be disturbed will, at the expense of the Association, be replaced in substantially the same condition as it was prior to such disturbance. The City, at its sole discretion, may assume the rights of the Association to construct, reconstruct, enlarge, repair, or do whatever is necessary in constructing and/or maintaining such Facilities. However, the Grantees shall indemnify and save harmless the Grantor from and against any loss, damage, claim, cost, injury or liability resulting from negligence or willful acts or omissions on the part of the Grantees, its agents or employees in connection with said work involved in constructing and/or maintaining of said Facilities; provided that if the above loss, claim, cost, damage, injury or liability results from the joint negligence of parties hereto, then the liability therefore shall be borne by them in proportion to their respective degree of negligence; provided further, however, that these provisions are subject to the legal defenses available under law which the Grantees or Grantor are entitled to raise, excepting the defense of so-called "sovereign immunity."
3. That no structure may be placed within the limits of the Easement Area by the Grantor, except that improvement such as walks, pavements for driveways, parking lot surfacing and landscape planting may be constructed or placed within the Easement Area.
4. In connection with the construction by the Grantor of any structure or building abutting said Easement Area, the Grantor will assume all liability for any damage to the Facilities in the above described Easement Area. The Grantor will also save and keep the Grantees clear and harmless from any claims for personal injuries or property damage caused by any negligence or willful acts or omissions of the Grantor or persons acting on behalf of the Grantor, arising out of the construction by the Grantor of any structure or building abutting the said Easement Area, and shall reimburse the Grantees for the full amount of such loss or damage.
5. The Grantor shall be responsible for the routine maintenance of land on which the easement is located.
6. The Facilities shall be accessible for maintenance by the Association at all times. The owner shall submit plans for approval to the City Engineer for any underground installation within the Easement Area, which approval shall not be unreasonably withheld, conditioned or delayed.
7. That the Grantor shall submit plans for all surface alterations of plus or minus 1 foot or greater within the limits of said Easement Area. Said alterations shall be made only with the approval of the City Engineer of the City of Franklin, which approval shall not be unreasonably withheld, conditioned or delayed.
8. The Grantees and Grantor shall each use, and take reasonable measures to cause their employees, officers, customers, agents, contractors and assigns to use, the Easement Area in a reasonable manner and so as not to obstruct or otherwise use the Easement Area in a manner that would unreasonably interfere with the use thereof by the other party hereto or its employees, officers, customers, agents, contractors and assigns.



This instrument was drafted by the City of Franklin.

Approved as to contents

Date:

Approved as to form only

Date:

\_\_\_\_\_  
City Engineer

\_\_\_\_\_  
City Attorney

Exhibit A

(Description of the Property)

BEING A PART OF LANDS IN THE NORTHWEST ¼ AND THE NORTHEAST ¼ OF THE NORTHWEST ¼ OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.

PARCEL 1 OF CERTIFIED SURVEY MAP NO. 7413, (EXCEPT THE EASTERLY PORTION THEREOF DESCRIBED AS PART OF PHASE I AREA OF AVIAN AT TUCKWAY CONDOMINIUM, DOCUMENT NO. 08812915), AND MORE CLEARLY DESCRIBED AS:

COMMENCING AT THE NORTHWEST CORNER OF SAID ¼ SECTION; THENCE N 89-19'05"E ALONG THE NORTH LINE OF NORTHWEST ¼ OF SAID SECTION, A DISTANCE OF 358.43 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF W. PUETZ ROAD; THENCE CONTINUING N 89-19'05" E ALONG THE NORTH LINE OF SAID ¼ SECTION, A DISTANCE OF 1211.58 FEET TO A POINT ON THE WEST LINE OF PHASE I AREA OF SAID AVIAN AT TUCKAWAY CONDOMINIUM; THENCE S 00-24'36" E ALONG SAID WEST LINE OF PHASE I AREA, A DISTANCE OF 517.15 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF W. PUETZ ROAD; THENCE S 89-19'05" W ALONG THE NORTH LINE OF SAID ROAD, A DISTANCE OF 238.43 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ALONG AN ARC OF A CURVE AND THE NORTH RIGHT-OF-WAY LINE OF SAID ROAD, WHOSE CENTER LIES TO THE NORTH, WHOSE RADIUS IS 681.78 FEET, WHOSE CHORD BEARS N 71-51'26" W 439.99 FEET, A DISTANCE OF 448.00 FEET TO A POINT OF TANGENCY; THENCE N 53-01'57" W ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID ROAD, A DISTANCE OF 419.98 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ALONG AN ARC OF CURVE AND THE NORTH RIGHT-OF-WAY LINE OF SAID ROAD, WHOSE CENTER LIES TO THE SOUTH, WHOSE RADIUS IS 761.78 FEET, WHOSE CHORD BEARS N 62-31'57" W 251.46 FEET, A DISTANCE OF 252.62 FEET TO THE POINT OF BEGINNING.

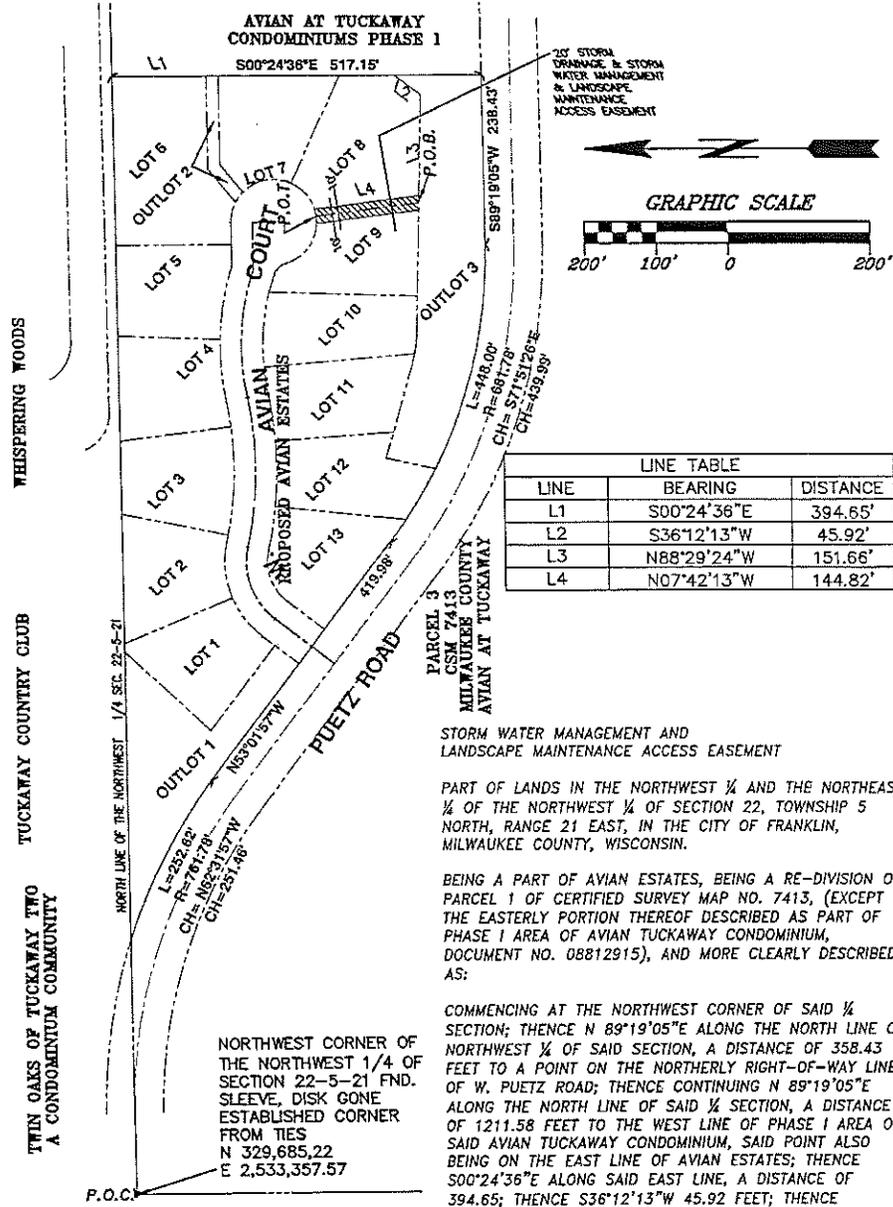
**Exhibit B**

**Legal Description and Depiction of the Facilities**

(See Attached)

# EXHIBIT B - STORM WATER MANAGEMENT AND LANDSCAPE MAINTENANCE ACCESS EASEMENT

BEING A PART OF LANDS IN THE NORTHWEST 1/4 AND THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S00°24'36"E	394.65'
L2	S36°12'13"W	45.92'
L3	N88°29'24"W	151.66'
L4	N07°42'13"W	144.82'

STORM WATER MANAGEMENT AND LANDSCAPE MAINTENANCE ACCESS EASEMENT

PART OF LANDS IN THE NORTHWEST 1/4 AND THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.

BEING A PART OF AVIAN ESTATES, BEING A RE-DIVISION OF PARCEL 1 OF CERTIFIED SURVEY MAP NO. 7413, (EXCEPT THE EASTERLY PORTION THEREOF DESCRIBED AS PART OF PHASE I AREA OF AVIAN TUCKAWAY CONDOMINIUM, DOCUMENT NO. 08812915), AND MORE CLEARLY DESCRIBED AS:

COMMENCING AT THE NORTHWEST CORNER OF SAID 1/4 SECTION; THENCE N 89°19'05"E ALONG THE NORTH LINE OF NORTHWEST 1/4 OF SAID SECTION, A DISTANCE OF 358.43 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF W. PUETZ ROAD; THENCE CONTINUING N 89°19'05"E ALONG THE NORTH LINE OF SAID 1/4 SECTION, A DISTANCE OF 1211.58 FEET TO THE WEST LINE OF PHASE I AREA OF SAID AVIAN TUCKAWAY CONDOMINIUM, SAID POINT ALSO BEING ON THE EAST LINE OF AVIAN ESTATES; THENCE S00°24'36"E ALONG SAID EAST LINE, A DISTANCE OF 394.65; THENCE S36°12'13"W 45.92 FEET; THENCE N88°29'24"W 151.66 FEET TO THE POINT BEGINNING AND THE CENTERLINE OF A 20 FOOT EASEMENT, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF LOT 8 AND THE SE CORNER OF LOT 9; THENCE N07°42'13"W, ALONG THE LOT LINE BETWEEN LOTS 8 AND 9, 144.82 FEET TO THE POINT OF TERMINUS AND THE SOUTHERLY RIGHT-OF-WAY LINE OF W. AVIAN COURT.

NORTHWEST CORNER OF THE NORTHWEST 1/4 OF SECTION 22-5-21 FND. SLEEVE, DISK GONE ESTABLISHED CORNER FROM TIES  
 N 329,685.22  
 E 2,533,357.57

**McClure**  
 Engineering Associates, Inc.

5417 North 118th Court, Milwaukee, WI. 53225  
 TEL (414)-616-4880 FAX (414)-616-4885

Project: 08-15-13-014

## STORM DRAINAGE EASEMENT

### AVIAN ESTATES

**THIS EASEMENT is made by and between** the CITY OF FRANKLIN, a municipal corporation of the State of Wisconsin, hereinafter referred to as "City," and Avian Estates LLC, a limited liability company, as owner (including successors and assigns of the City as may become applicable including the heirs, executors, administrators, successors and assigns of above owner(s) as may be or may become applicable), hereinafter called "Grantor," (if more than one grantor is listed above, said language herein referring thereto shall be interpreted in the plural and refer jointly and severally to such grantors).

### WITNESSETH

WHEREAS, Grantor is the owner and holder of record Title to certain real property described on Exhibit "A" which is attached hereto and incorporated herein (the Property); and

WHEREAS, the City desires to acquire a perpetual, non-exclusive easement with the right of entry in and across a portion of the property as the same is more particularly hereinafter described, with the right to build and construct and/or operate, maintain, repair, enlarge, reconstruct, relocate and inspect as may be or may become applicable the following facilities and appurtenances thereto, hereinafter collectively called the "Facilities," in, upon and across said portion of the Property: a storm drainage system consisting of an open swale (ditch) and/or storm sewers with manholes and catch basins, all as shown on the plan attached hereto as Exhibit "B."; and

WHEREAS, the initial construction and installation of the Facilities shall be made by Grantor at Grantor's expense and the Facilities shall be the property of the City and be deemed dedicated to the City upon the City's inspection and approval of the Facilities as installed, subject to the terms and conditions set forth below:

NOW, THEREFORE, in consideration of the grant of the easement hereinafter described, the initial installation and maintenance of the Facilities by the Grantor, and the City, and the payment of One Dollar (\$1.00) and other valuable considerations to the Grantor, the receipt whereof is hereby acknowledged, said Grantor, being the owner and person interested in the land hereinafter described, does hereby grant unto the City a perpetual, non-exclusive easement on that part of the Northwest Quarter (NW ¼) of Section Twenty-two (22), Township Five (5) North, Range Twenty-one (21) East in the City of Franklin, Milwaukee County, Wisconsin, more particularly described on Exhibit B attached hereto (the "Easement Area").

1. That said Easement Area, including the ground cover and landscaping within the area, shall be maintained by the Grantor (including heirs, executors, administrators, successors and assigns).
2. That in and during whatever construction, reconstruction, enlargement or repair work is or becomes necessary in constructing and/or maintaining of said Facilities, so much of the surface or subsurface of the Easement Area on the Property as may be disturbed will, at the expense of the City, be replaced in substantially the same condition as it was prior to such disturbance; except that the City will in no case be responsible for replacing or paying for replacing any aesthetic plantings, fences, or improvements other than ordinary lawns or standard walks, roadways, driveways and parking lot surfacing which were required to be removed or were otherwise damaged in the course of doing the above work. However, the City shall indemnify and save harmless the Grantor from and against any loss, damage, claim, cost, injury or liability resulting from negligence or willful acts or omissions on the part of the City, its agents or employees in connection with said work involved in constructing and/or maintaining of said Facilities; provided that if the above loss, claim, cost, damage, injury or liability results from the joint negligence of parties hereto, then the liability therefore shall be borne by them in proportion to their respective degree of negligence; provided further, however, that these provisions are subject to the legal defenses available under law which the City or Grantor are entitled to raise, excepting the defense of so-called "sovereign immunity."
3. That no structure, fence, plantings or other improvements may be placed within the limits of the Easement Area by the Grantor, except that improvements such as walks, pavements for driveways, parking lot surfacing, landscape planting and fence may be constructed if drainage swale is enclosed in storm sewer as approved by the City Engineer, which approval shall not be unreasonably withheld, conditioned or delayed.
4. That in connection with the construction by the Grantor of any structure or building abutting said Easement Area, the Grantor will assume all liability for any damage to the Facilities in the above described Easement Area. The Grantor will also save and keep the City clear and harmless from any claims for personal injuries or property damage caused by any negligence or willful acts or omissions of the Grantor or persons acting on behalf of the Grantor, arising out of the construction by the Grantor of any structure or building abutting the said Easement Area,

and shall reimburse the City for the full amount of such loss or damage.

5. That no charges will be made against the property for the cost of maintenance or operation of said Facilities in the property. Whenever the Grantor makes application for a service connection associated with the services provided by virtue of the Facility, the regular and customary service connection charge in effect at the time of the application shall be charged and paid. The Grantor shall be responsible for the routine maintenance of land on which the easement is located.
6. The City of Franklin shall in no case be responsible for maintaining at its expense any portion of said storm drainage services outside of the Easement Area and outside the limits of any adjoining easements.
7. The Facilities shall be accessible for maintenance by the City at all times. The owner shall submit plans for approval to the City Engineer for any underground installation within the Easement Area, which approval shall not be unreasonably withheld, conditioned or delayed.
8. That the Grantor shall submit plans for all surface alterations of plus or minus 0.05 foot or greater within the limits of said Easement Area. Said alterations shall be made only with the approval of the City Engineer of the City of Franklin, which approval shall not be unreasonably withheld, conditioned or delayed.
9. The City and Grantor shall each use, and take reasonable measures to cause their employees, officers, customers, agents, contractors and assigns to use, the Easement Area in a reasonable manner and so as not to obstruct or otherwise use the Easement Area in a manner that would unreasonably interfere with the use thereof by the other party hereto or its employees, officers, customers, agents, contractors and assigns.
10. The City and Grantor each hereby waives all rights of subrogation that either has or may hereafter have against the other for any damage to the Easement Area or any other real or personal property or to persons covered by such party's insurance, but only to the extent of the waiving party's insurance coverage; provided, however, that the foregoing waivers shall not invalidate any policy of insurance now or hereafter issued, it being hereby agreed that such a waiver shall not apply in any case which would result in the invalidation of any such policy of insurance and that each party shall notify the other if such party's insurance would be so invalidated.
11. Either party hereto may enforce this easement by appropriate action, and should it prevail in such litigation, that party shall be entitled to recover, as part of its costs, reasonable attorneys' fees.
12. This easement may not be modified or amended, except by a writing executed and delivered by the City and Grantor or their respective successors and assigns.
13. No waiver of, acquiescence in, or consent to any breach of any term, covenant, or condition hereof shall be construed as, or constitute, a waiver of, acquiescence in, or consent to any other, further, or succeeding breach of the same or any other term, covenant, or condition.
14. If any term or provision of this easement shall, to any extent, be invalid or unenforceable under applicable law, then the remaining terms and provisions of this easement shall not be affected thereby, and each such remaining term and provision shall be valid and enforceable to the fullest extent permitted by applicable law.
15. This easement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.
16. It is understood that at some point in the future all or a portion of the Easement Area may become portions of public streets, in which event, in the City's proceedings for the acquisition of the portion of the property needed for such streets by purchase, dedication or by condemnation, said lands shall be considered the same as though this easement had not been executed or any rights granted thereby exercised.
17. That the Grantor shall submit as-built drawings of the installed facilities on mylar for approval to the City Engineer, which approval shall not be unreasonably withheld, conditioned, or delayed.

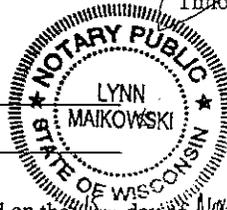
IN WITNESS WHEREOF, the Grantor has hereunto set its hands and seals

ON THIS DATE OF: November 15, 2013

Avian Estates LLC  
By: MLG Private Fund  
By: MLG PF Manager LLC

By: [Signature]  
Timothy J. Wallen, President

STATE OF Wisconsin  
COUNTY OF Waukesha



Before me personally appeared on the 15th day of November 2013, the above named Timothy J. Wallen, President, MLG Private Fund, sole member of Avian Estates LLC to me known to be the person(s) who executed the foregoing Easement and acknowledged the same as the voluntary act and deed of said corporation

[Signature]  
NOTARY PUBLIC Lynn Maikowski  
My commission expires 11/8/15

CITY OF FRANKLIN  
By: \_\_\_\_\_  
Thomas M. Taylor, Mayor  
By: \_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

STATE OF WISCONSIN  
SS  
COUNTY OF MILWAUKEE

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally appeared Thomas M. Taylor and Sandra L. Wesolowski who being by me duly sworn, did say that they are respectively the Mayor and City Clerk of Franklin, and that the seal affixed to said instrument is the corporate seal of said municipal corporation, and acknowledged that they executed the foregoing assignment as such officers as the deed of said municipal corporation by its authority, and pursuant to resolution file No. \_\_\_\_\_ adopted by its Common Council on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_

This instrument was drafted by the City of Franklin.

Approved as to contents

Date: \_\_\_\_\_  
Approved as to form only

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

\_\_\_\_\_  
Manager of Water Works of Franklin

\_\_\_\_\_  
City Attorney

Exhibit A

(Description of the Property)

BEING A PART OF LANDS IN THE NORTHWEST ¼ AND THE NORTHEAST ¼ OF THE NORTHWEST ¼ OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.

PARCEL 1 OF CERTIFIED SURVEY MAP NO. 7413, (EXCEPT THE EASTERLY PORTION THEREOF DESCRIBED AS PART OF PHASE I AREA OF AVIAN AT TUCKAWAY CONDOMINIUM, DOCUMENT NO. 08812915), AND MORE CLEARLY DESCRIBED AS:

COMMENCING AT THE NORTHWEST CORNER OF SAID ¼ SECTION; THENCE N 89-19'05"E ALONG THE NORTH LINE OF NORTHWEST ¼ OF SAID SECTION, A DISTANCE OF 358.43 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF W. PUETZ ROAD; THENCE CONTINUING N 89-19'05" E ALONG THE NORTH LINE OF SAID ¼ SECTION, A DISTANCE OF 1211.58 FEET TO A POINT ON THE WEST LINE OF PHASE I AREA OF SAID AVIAN AT TUCKAWAY CONDOMINIUM; THENCE S 00-24'36" E ALONG SAID WEST LINE OF PHASE I AREA, A DISTANCE OF 517.15 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF W. PUETZ ROAD; THENCE S 89-19'05" W ALONG THE NORTH LINE OF SAID ROAD, A DISTANCE OF 238.43 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ALONG AN ARC OF A CURVE AND THE NORTH RIGHT-OF-WAY LINE OF SAID ROAD, WHOSE CENTER LIES TO THE NORTH, WHOSE RADIUS IS 681.78 FEET, WHOSE CHORD BEARS N 71-51'26" W 439.99 FEET, A DISTANCE OF 448.00 FEET TO A POINT OF TANGENCY; THENCE N 53-01'57" W ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID ROAD, A DISTANCE OF 419.98 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ALONG AN ARC OF CURVE AND THE NORTH RIGHT-OF-WAY LINE OF SAID ROAD, WHOSE CENTER LIES TO THE SOUTH, WHOSE RADIUS IS 761.78 FEET, WHOSE CHORD BEARS N 62-31'57" W 251.46 FEET, A DISTANCE OF 252.62 FEET TO THE POINT OF BEGINNING.

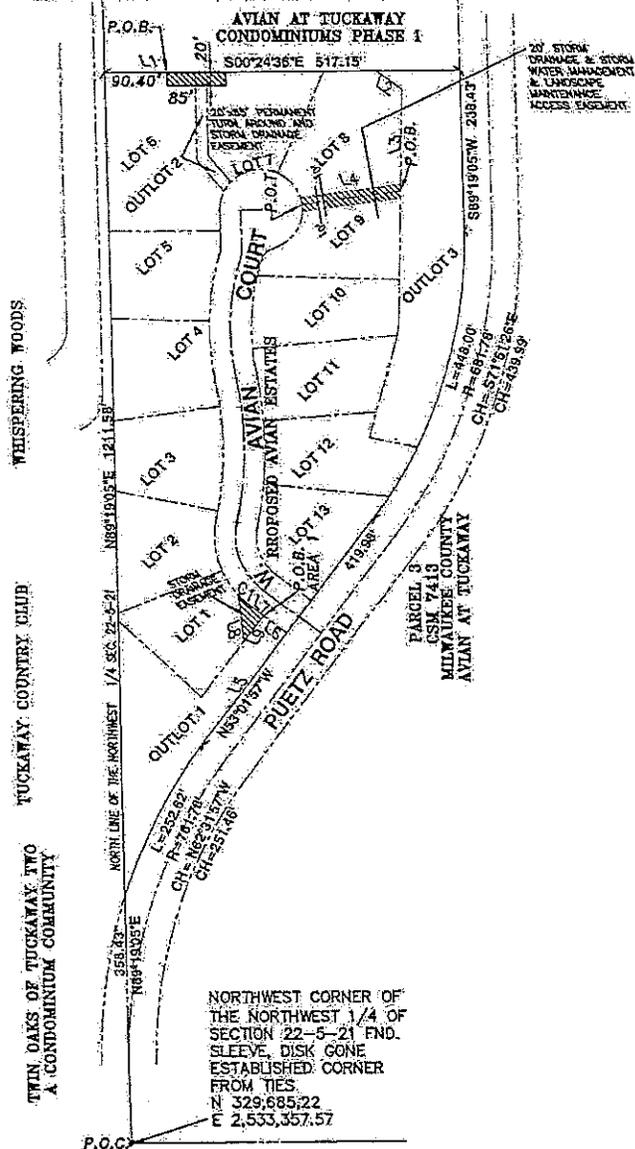
Exhibit B

Legal Description and Depiction of the Facilities

(See Attached)

## EXHIBIT B - STORM DRAINAGE EASEMENT

BEING A PART OF LANDS IN THE NORTHWEST 1/4 AND THE NORTHEAST 1/4  
OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 21 EAST,  
IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.




**McClure**  
 Engineering Associates, Inc.

5417 North 118th Court,  
TEL (414)-616-4880

Milwaukee, WI 53225  
FAX (414)-616-4885

Project: 08-15-13-014

SHEET: 1 OF 2

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## EXHIBIT B - STORM DRAINAGE EASEMENT

BEING A PART OF LANDS IN THE NORTHWEST ¼ AND THE NORTHEAST ¼  
OF THE NORTHWEST ¼ OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 21 EAST,  
IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.

### STORM DRAINAGE EASEMENT LEGAL DESCRIPTION

PART OF LANDS IN THE NORTHWEST ¼ AND THE NORTHEAST ¼ OF THE NORTHWEST ¼ OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.

BEING A PART OF AVIAN ESTATES, BEING A RE-DIVISION OF PARCEL 1 OF CERTIFIED SURVEY MAP NO. 7413, (EXCEPT THE EASTERLY PORTION THEREOF DESCRIBED AS PART OF PHASE 1 AREA OF AVIAN TUCKAWAY CONDOMINIUM, DOCUMENT NO. 08812915), AND MORE CLEARLY DESCRIBED AS:

#### AREA 1

COMMENCING AT THE NORTHWEST CORNER OF SAID ¼ SECTION; THENCE N 89°19'05"E ALONG THE NORTH LINE OF NORTHWEST ¼ OF SAID SECTION, A DISTANCE OF 358.45 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF W. PUETZ ROAD TO A POINT OF CURVE; THENCE SOUTHEASTERLY ALONG AN ARC OF CURVE AND THE NORTHERLY RIGHT-OF-WAY OF SAID ROAD, WHOSE CENTER LIES TO THE SOUTHWEST, WHOSE RADIUS IS 761.78 FEET, WHOSE CHORD BEARS S62°31'57"E 251.45 FEET, A DISTANCE OF 252.62 FEET TO A POINT OF TANGENCY THENCE S53°01'57"E ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID ROAD 205.36 FEET TO THE INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY OF W. AVIAN COURT; THENCE N36°58'03"E ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 42.26 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N36°58'03"E ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 21.68 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG AN ARC OF CURVE AND THE NORTHERLY RIGHT-OF-WAY OF SAID COURT, WHOSE CENTER LIES TO THE SOUTHEAST, WHOSE RADIUS IS 130.00 FEET, WHOSE CHORD BEARS N42°40'55"E 25.93 FEET, A DISTANCE OF 25.93 FEET; THENCE S84°05'18"W 69.71 FEET TO A POINT ON THE SOUTHERLY LINE OF LOT 1; THENCE S53°01'57"E 48.51 FEET ALONG THE SOUTHERLY LINE OF LOT 1, TO THE POINT OF BEGINNING.

#### 20' X .85' PERMANENT TURN-AROUND AND STORM DRAINAGE EASEMENT DESCRIPTION

PART OF LANDS IN THE NORTHWEST ¼ AND THE NORTHEAST ¼ OF THE NORTHWEST ¼ OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.

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#### 20' STORM DRAINAGE, STORM WATER MANAGEMENT AND LANDSCAPE MAINTENANCE ACCESS EASEMENT

PART OF LANDS IN THE NORTHWEST ¼ AND THE NORTHEAST ¼ OF THE NORTHWEST ¼ OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN.

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LINE TABLE		
LINE	BEARING	DISTANCE
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L3	N88°29'24"W	151.66'
L4	N07°42'13"W	144.82'
L5	S53°01'57"E	205.36'
L6	N36°58'03"E	42.26'
L7	N36°58'03"E	21.68'
L8	S84°05'18"W	69.71'
L9	S53°01'57"E	48.51'

CURVE TABLE					
CURVE	RADIUS	LENGTH	CHORD	BEARING	DELTA
C1	130.00'	25.93'	25.89'	N42°40'55"E	11°25'43"

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APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MTG. DATE 6/17/14
Reports & Recommendations	<b>SUBJECT:</b> Release of Escrow Deposits for Riverwood Village (location S. 27th Street & W. Riverwood Drive), River Park Subdivision (location S. 51st Street & W. Preserve Way, Villa's of Franklin (location S. Susanna Ct. & W. Villa Drive), Fountains of Franklin (location 5600 W. Rawson Avenue), People's Choice /Scrub Plus Car Wash (location 7700 W. Rawson Avenue) and Berkshire Add. No. 2 Subdivision (location S. 51st Street & W. Berkshire Drive)	<b>ITEM NO.</b>  <i>G.13.</i>

**BACKGROUND**

The Finance Department has requested that the escrow deposits as contained on the attached special deposits spreadsheet be reviewed and a description be developed for each deposit that relates to subdivision or commercial development. (See attached memo dated May 16, 2014 as prepared by the Engineering Department)

**ANALYSIS**

After reviewing the escrow deposits it was determined that six (6) of the deposits no longer are required to be held as the work has been completed as follows:

4. The Riverwood Village is the commercial development at S. 27th Street and W. Rawson Avenue NW corner. All the items have been completed and the funds can be released.
5. All the items in the River Park Subdivision have been completed and those funds can be released.
6. The funds were deposited by North Shore Bank for the extension at Susanna Court in the Villas of Franklin development. Susanna Court has been completed and these funds can be released.
10. The funds have been deposited to guarantee the ground cover has been planted in the Fountains of Franklin development. Ground cover has been planted and these funds can be released.
13. The funds from Scrub Plus RA LLC, People's Choice is for engineering review and inspection charges for the extension of sanitary sewer and water lateral to the new hotel. The laterals are complete and these funds can be released.
14. The funds for Berkshire No. 2 were funds remaining from the letter of credit. The development is now complete and the escrow deposit can be returned.

**OPTIONS**

Authorize return of the six (6) escrow deposits  
or  
Table

**FISCAL NOTE**

None

**RECOMMENDATION**

Motion to release the escrow deposits for the Riverwood Village Subdivision, the River Park Subdivision, Villas of Franklin development, the Fountains of Franklin development and the People's Choice/Scrub Plus development and Berkshire No. 2 Subdivision as recommended by the Engineering Department.

JMB/db/sr



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MEMORANDUM: FROM ENGINEERING

DATE: May 16, 2014  
TO: Files  
FROM: John M. Bennett, P.E., City Engineer  
SUBJECT: SPECIAL DEPOSITS

The following is a summary of the special deposit accounts as shown on the attached Exhibit "A":

1. The funds have been deposited for the future extension of sidewalk on S. 80th Street in the Stonewood Addition No. 1 Subdivision. This should be held until sidewalks are extended.
2. These funds have been held for Westminster Condos storm water basin until they are certified. Mike Budish has been working with the developer. Continue to hold funds.
3. The funds have been deposited for street tree planting in Forest View Apartments and should be held until the trees are planted.
4. The Riverwood Village is the commercial development at S. 27th Street and W. Rawson Avenue NW corner. All the items have been completed and the funds can be released.
5. All the items in the River Park Subdivision have been completed and those funds can be released.
6. The funds were deposited by North Shore Bank for the extension at Susanna Court in the Villas of Franklin development. Susanna Court has been completed and these funds can be released.
7. The funds are for street tree planting in the Cardinal Heights subdivision and should be held until the trees are planted by the City.
8. The funds are from the escrow deposit for the Villas of Franklin. A portion of sidewalk needs to be installed on W. Villa Drive and should be held until that sidewalk is completed.
9. The funds are for engineering services for the filling of the Mahr property on the east side of W. Loomis Road south of W. Rawson Avenue. These funds should be held until the basin is certified.

10. The funds have been deposited to guarantee the ground cover has been planted in the Fountains of Franklin development. Ground cover has been planted and these funds can be released.
11. The funds have been deposited for the planting of street trees in the Hidden Oaks Subdivision and should be held until the trees have been planted.
12. The funds have been deposited for the development of the Avian at Tuckaway Condominiums and should be held until that development has been completed.
13. The funds from Scrub Plus RA LLC, People's Choice is for engineering review and inspection charges for the extension of sanitary sewer and water lateral to the new hotel. The laterals are complete and these funds can be released.
14. The funds for Berkshire No. 2 were funds remaining from the letter of credit. The development is now complete and the escrow deposit can be returned.
15. The funds for Whispering Woods Subdivision are for the planting of street trees and should be held until the street trees have been planted.
16. The funds for Shadwell Subdivision should be held until the subdivision is completed. The City has included the final lift of asphalt in the local road program for 2014 and a portion of the escrow funds will be utilized for payment of the final lift of asphalt.

JMB/db/sr  
Encl.

JB/Memo File Special deposits 2014

Exhibit "A"

Account	Description	Balance 12/31/2013	TR # Reference	Posting Date	Deduction	Check #	Posting Date	Balance 5/1/2014
** 2000.2311								
Stonewood Associates-Wellston Properties	Stonewood Addition # 1 sidewalk construction (north of Ryan Rd, west of S70th St)	2,900.00	203123	7/5/2001				2,900.00
Wellinski Development	Westminster Condo	7,299.60	20820	9/26/2005				-
	Hold until they complete basins	(1,400.00)						-
	Ruekert & Mielke, Ck 145670, 12/31/12	(70.00)						5,829.60
	JE 011225, admin fee							
Forest View Condos	43 street trees @ \$300	12,900.00	Inv 115058	11/29/2007				
	Hold until trees are planted							
Riverwood Village LLC	Development escrow	61,068.00	48925	9/30/2008				-
	Ck 128020, 12/31/08	(151,068.00)						10,000.00
River Park Partners LLC	River Park Subdivision - Phase 1	66,270.56	50989	1/15/2009				-
	BCF Construction, punch list, 9/1/08 bill	(12,466.78)						-
	Ck 131415, 9/30/09	(7,856.50)						-
	BCF Construction, basin repair, 8/5/09 bill	(1,200.00)						-
	Ck 131439, 9/30/09	(300.00)						-
	Davidson Engineering, pond spillway, 2/28/09 bill	(9,280.13)						-
	Ck 131439, 9/30/09	(25,475.33)						-
	Davidson Engineering, pond spillway, 5/15/09 bill	(668.75)						-
	Ck 131514, 9/30/09	(5,170.43)						-
	Northern Exposure Landscaping, Inv 17500, 11/6/08	4,600.00						-
	Ck 131585, 9/30/09	(5,655.00)						-
	Suburban Asphalt, paving, Inv 1607, 8/20/09	(1,335.00)						1,462.64
	Ck 131454, 9/30/09							
	Payment of invoice 116436, 8/17/09							
	Ck 131826, 10/31/09							
	Payment of invoice 116620, 10/20/09							
	Ck 134431, 6/7/10							
	Icon Development, o/s wim Paymt 5-final, tree escrow							
	Ck 134880, 7/13/10							
	Treescaples Inc, 39 trees							
	Ck 135289, 8/17/10							
	Treescaples Inc, 3 trees							
North Shore Bank/Richter Realty	Villas of Franklin/Susanna Ct asphalt	20,000.00	56271	9/15/2009				-
	Black Diamond, pavement work	(18,540.30)						-
	Ck 131882, 10/31/09	(279.01)						-
	Journal-Sentinel Inc, notice	(241.87)						-
	Ck 131075, 8/31/09	(661.20)						277.62
	Daily Reporter, notice							
	Ck 131437, 10/6/09							
	Graef, engineering service							
Cardinal Heights Subdivision	42 street trees @ \$300 each	277.62						-
	Hold until trees are planted							
	Ck 134431, 6/7/10	(900.00)	Inv 116660	10/27/2009				-
	Purchased 3 trees-Tillman Wholesale Growers, Ck 142728, 5/1/12, Invoice 55961, 4/10/12	(1,200.00)						-
	Purchased 4 trees-Johnson's Nursery, Ck 147036, 5/7/13, Invoice SI-26927, 4/23/13	(1,800.00)						-
	Purchased 6 trees-Arthur Weiler Inc, Ck 147283, 5/21/13, Invoice 30424, 5/21/13							8,700.00
	Balance for street trees (29 x \$300 each)							
Villas Partners LLC	Development escrow	7,825.18	60747	4/30/2010				-
	Hold for sidewalk constn on W. Villa Drive							
Crystal Enterprises-John Kasian	Storm water escrow	5,000.00	62555	7/15/2010				-
	Inv 182170, 9/22/10	(3,262.88)						1,737.12
	Bonestrook-Iverson filling review							
	Hold until Barrin is accepted							
	Ck 136702, 12/31/10							
Mountains of Franklin Subdivision	Subdivision escrow-U S Bank 8/25 wire tsfr	5,000.00	63546	8/31/2010				-
	Release							5,000.00







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<p><b>APPROVAL</b></p> <p><i>Slw</i></p>	<p><b>REQUEST FOR COUNCIL ACTION</b></p>	<p><b>MEETING DATE</b></p> <p><b>June 17, 2014</b></p>
<p><b>REPORTS AND RECOMMENDATIONS</b></p>	<p>Resolution approving Supplemental Agreement No. 6 with HNTB Corporation in an amount not to exceed \$59,164.00 for final design services related to the streetscape elements for the South 27<sup>th</sup> Street corridor reconstruction</p>	<p><b>ITEM NUMBER</b></p> <p><i>G.14.</i></p>

BACKGROUND

The Wisconsin DOT is pushing towards having the final plans for the reconstruction of the South 27<sup>th</sup> Street Corridor. Final plans are set to be completed by August 1, 2014 and construction will begin in 2015. In order to complete the plans within that timeframe so as to allow 2015 construction, HNTB will need to finalize the plan sets for the streetscape elements that have already been approved by the Franklin and Oak Creek Councils.

The attached resolution approves an amendment to the existing contract we have with the HNTB to complete the final design of the streetscape elements for inclusion into WisDOT's final plan set. The existing contract with HNTB contemplated a future amendment to include the final design as such services were not included because the scope of the final design was dependent upon the type and amount of streetscape elements chosen by the communities.

There is also an existing agreement with Oak Creek that the costs of the HNTB contracts are split 50-50 with Oak Creek reimbursing Franklin for it half of the expenditure upon request. There have been no issues with this arrangement, and Oak Creek staff have confirmed that this amendment would be covered by the existing agreement.

FINANCIAL ANALYSIS

The amount of this amendment has already been included in the amounts previously reviewed and approved in an MOU with Oak Creek concerning the total costs of the project approved by the Common Council at the March 18, 2014, meeting. At \$59,164.00, this amendment is below the figure estimated within that MOU (\$84,930.00). Costs for the 27<sup>th</sup> street corridor reconstruction are to be paid for through TID 3, and are included in TID 3 project costs.

**COUNCIL ACTION REQUESTED**

Motion to adopt Resolution No. 2014-\_\_\_\_\_, a Resolution approving Supplemental Agreement No. 6 with HNTB Corporation in an amount not to exceed \$59,164.00 for final design services related to the streetscape elements for the South 27th Street corridor reconstruction.

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

RESOLUTION NO. 2014-\_\_\_\_\_

RESOLUTION APPROVING SUPPLEMENTAL AGREEMENT NO. 6  
WITH HNTB CORPORATION IN AN AMOUNT NOT TO EXCEED \$59,164.00  
FOR FINAL DESIGN SERVICES RELATED TO THE STREETScape ELEMENTS  
FOR THE SOUTH 27TH STREET CORRIDOR RECONSTRUCTION

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WHEREAS, The City of Franklin has an existing contract with the HNTB Corporation (“HNTB”) for the design of the streetscape elements for the reconstruction of the South 27<sup>th</sup> Street Corridor (the “Design Contract”); and

WHEREAS, the existing contract with HNTB contemplated a future amendment to include the final design as such services were not included because the scope of the final design was dependent upon the type and amount of streetscape elements chosen by the communities; and

WHEREAS, the costs of the final design services were included within the Intergovernmental Memorandum of Understanding with the City of Oak Creek adopted by the Common Council by Resolution No. 2014-6974 on March 18, 2014; and

WHEREAS, the costs of the final design services are included in the project costs for TID 3 as part of the South 27<sup>th</sup> Street Corridor reconstruction project; and

WHEREAS, there is an existing agreement with the City of Oak Creek in which Oak Creek reimburses the City of Franklin 50% of the expenditures on the HNTB contract;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of Franklin, Wisconsin, that Supplemental Agreement No. 6 to the HNTB Design Contract be approved in an amount not to exceed \$59,164.00.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized and directed to execute Supplemental Agreement No. 6 with HNTB Corporation.

BE IT FURTHER RESOLVED that the City Finance Department and/or Administration Department are hereby authorized and directed to seek reimbursement from Oak Creek for 50% of all amounts paid by the City of Franklin under Supplemental Agreement No. 6.

Introduced by Ald. \_\_\_\_\_ at a regular meeting of the Common Council of the City of Franklin the 17<sup>th</sup> day of June, 2014.

RESOLUTION NO. 2014-\_\_\_\_\_

Page 2

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 17<sup>th</sup> day of June, 2014.

APPROVED:

\_\_\_\_\_  
Stephen R. Olson, Mayor

ATTEST:

\_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSENT \_\_\_\_\_

## SUPPLEMENTAL AGREEMENT

This Supplemental Agreement, Number 6, to the AGREEMENT FOR PROFESSIONAL SERVICES, dated March 31, 2006 (the Agreement), between the City of Franklin (Owner) and HNTB Corporation (HNTB) is made effective as of July 1, 2014.

1. HNTB shall perform the following Services:

A scope of services for this agreement is provided in ATTACHMENT A.

2. In conjunction with the performance of the foregoing Services, HNTB shall provide the following submittals/deliverables (Documents) to Owner:

HNTB will provide continued services for the Final Design of the streetscape design development documents (the Project), in accordance with the Scope of Services included in ATTACHMENT A of this SUPPLEMENTAL AGREEMENT.

3. HNTB shall perform the Services and deliver the related Documents (if any) according to the following schedule:

The six (6) month project schedule will begin July 1, 2014 and conclude by December 31, 2014. A project schedule is included in ATTACHMENT B.

4. In return for the performance of the foregoing obligations, Owner shall pay to HNTB the cost-plus amount of \$59,164, payable based upon Direct Labor times a multiplier of 3.0, payable according to the terms in ATTACHMENT C of the SUPPLEMENTAL AGREEMENT. The foregoing amount includes Reimbursable Expenses as defined herein.

Except to the extent modified herein, all terms and conditions of the Agreement shall continue in full force and effect.

City of Franklin

HNTB Corporation

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

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

Name: Steve Olson

Name: Mark G. Becherer, P.E.

Title: Mayor

Title: Vice President

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

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

## ATTACHMENT A SCOPE OF SERVICES

### 1.0 Final Design

HNTB will complete final design the S. 27<sup>th</sup> Street Streetscape elements based off the 30% Plans.

#### 1.1 *Electronic Base Mapping*

HNTB will be provided with electronic base map developed by WisDOT's consultant working on the current Corridor Planning Study. The base mapping will be provided to HNTB in Micro Station or AutoCAD.

#### 1.2 *Draft Final Design (PS & E) – 90% Plans*

HNTB will develop 90% Plans for the approved Streetscape Elements in accordance with WisDOT standards and in coordination with the WisDOT Final Design Roadway Plans. The elements included in the plans are:

1. Gateway monument
2. Green screen
3. Signal cabinet – green screen
4. Metal benches (off the shelf)
5. Trash receptacles (off the shelf)
6. Wayfinding signs
7. Gateway median monument
8. Barrier walls for median monument
9. Advanced notice sign (median only)
10. Street trees (terrace)
11. Natural planting seed (terrace)
12. Natural planting seed (median)
13. Perennial plants (median)
14. Tree planting (median)

#### 1.3 *Special Provisions (Specifications)*

Determine specific product, finish, material and performance requirements for the streetscape elements. Those streetscape elements HNTB will develop specifications for include the following:

1. Gateway monument
2. Green screen
3. Signal cabinet – green screen
4. Metal benches
5. Trash receptacles
6. Wayfinding signs
7. Gateway median monument
8. Barrier walls for median monument
9. Advanced notice sign (median only)
10. Street trees (terrace)
11. Natural planting seed (terrace)
12. Natural planting seed (median)
13. Perennial plants (median)
14. Tree planting (median)

Streetscape elements approved and potentially paid for as part of the Memorandum of Understanding (MOU) and agreements with WisDOT, but not designed by HNTB include:

1. Crosswalk special pavement edge
2. Sidewalk entrance special pavement
3. Black traffic signal monotube and mast arms
4. Broomed concrete sidewalk
5. Roadway lighting (Gardco Pureform LED)
6. Advanced notice sign (terrace only)

HNTB will review and provide comment on WisDOT's plans relative to the conformance of the MOU and agreed upon elements.

*1.4 100% Design Cost Estimate*

HNTB will provide unit cost estimates based on similar elements for similar projects and final quantities for the streetscape elements indicated above.

*1.5 Final Revisions(Plans & Specifications)*

HNTB will make one round of final revisions to the Final Design (90% Plans) and Special Provisions from feedback from WisDOT and designated City Staff from Oak Creek and Franklin.

*1.6 Final plan set deliverables*

HNTB will complete 100% Plans for Phase I (W. College Avenue to W. Drexel Avenue) of S. 27<sup>th</sup> Street Streetscape Elements.

*1.7 Structural Design*

HNTB will complete structural design for the following streetscape elements:

1. Gateway monument
2. Green screen
3. Signal cabinet – green screen
4. Wayfinding signs
5. Gateway median monument
6. Barrier walls for median monument
7. Advanced notice sign (median only)

**2.0 Coordination Meetings**

HNTB will meet with WisDOT or their Consultant. This contract does not include meetings for HNTB to participate with the Steering Committee or City Staff. Coordination meetings will consist of:

2.1 Up to two (2) meetings with WisDOT

2.2 Project Management – includes invoicing, communication and internal and external coordination with HNTB (City Staff, WisDOT and the Roadway Design Consultant).

**3.0 Design Assistance during Construction**

HNTB will not conduct design assistance during construction, should the cities determine if it's necessary an amendment or separate contract, scope and fee would be required.

**Deliverables**

The final Deliverables consist of:

1. Two (2) roll plots. One set for each community
2. PDF files of the 100% (Final Design) Streetscape Plan set and Streetscape Specifications

## **Assumptions**

HNTB requires the following information to begin working and to complete the project.

- HNTB will be provided electronic base map developed by WisDOT's consultant working on Final Design.
- Base mapping will be available in Micro Station or AutoCAD.
- Steering Committee will make timely decisions regarding streetscape design to keep project on schedule.
- Bid documents will be developed by WisDOT and/or WisDOT's Roadway Design Consultant.
- The Median Monument barrier design will be a standard monument design adjacent to the monument and not a curb style barrier design encompassing the entire median.

ATTACHMENT B  
SCHEDULE

The design process defined on the previous page will be completed within 60 days following the execution of this agreement.

ATTACHMENT C  
COMPENSATION  
(Cost – plus)

**Section 1 - Basis of Compensation**

- 1.1 The compensation to be paid for performance of the Services identified in ATTACHMENT A - Scope of Services is based upon direct labor times a multiplier of 3.0. Total compensation will not exceed \$59,164 unless mutually agreed to and authorized in writing by the City of Franklin.
- 1.2 The forgoing amount includes Reimbursable Expenses as defined herein.
- 1.3 Adjustment of the upper limit may be made should HNTB establish and the City of Franklin agree that there has been, or is to be, a material change in the: (a) scope, complexity or character of the Services or the Project; (b) conditions under which the Services are required to be performed; or (c) duration of the Services, if a change in the Schedule warrants such adjustment.
- 1.4 If needed, HNTB reserves the right to shift costs between labor, expenses, and tasks.

**Section 2 – Additional Services**

- 2.1 Any services rendered by HNTB beyond those described in ATTACHMENT A - Scope of Services shall be compensated on the same basis set forth in Section 1.
- 2.2 HNTB's estimate of the amount that will become payable for Additional Services is only an estimate. If it becomes apparent that this estimated compensation amount will be exceeded, the City of Franklin shall agree in writing to additional compensation exceeding said estimated amount.

**Section 3 - Other Payment Provisions**

- 3.1 **Timing of Services:** The total compensation is based on the Services being performed according to the approved schedule, and completion by December 31, 2014 with provisions/adjustments for overhead increases yearly. Should the time to complete the Services extend beyond this period, HNTB and the City of Franklin agree to negotiate an equitable change to the compensation maximum or to provide Additional Services on the basis set forth herein.
- 3.2 **Progress Payments:** The City of Franklin shall make monthly periodic progress payments for Services. The amounts due for Additional Services will also be invoiced monthly. Invoices shall be due and payable upon receipt.
- 3.3 **Reimbursable Expense Definition:** Reimbursable expenses include, but are not limited to, transportation, subsistence, reproduction of reports, drawings, specifications, and other Project documents, courier services, materials, supplies, equipment rental and other costs specific to the Project.

Table 1

<b>S. 27th Street</b> <b>Oak Creek and Franklin</b> <b>Final Engineering &amp; Design for S. 27th Street Elements</b> 6/5/2014 <b>Phase I - College Ave to Drexel Ave</b>			
	<b>Tasks</b>	<b>Hours</b>	<b>Costs</b>
<b>1</b>	<b><i>Final Design for Streetscape Elements</i></b>		
1.1	Electronic file management - base map	8	\$747
1.2	Draft Final Design (PS & E) - 90%	128	\$16,213
1.3	Special Provisions (Specifications)	72	\$10,576
1.4	100% Design Cost Estimating	32	\$4,553
1.5	Final Revisions	68	\$8,420
1.6	Final Plan Set Deliverables	42	\$5,728
1.7	Structural Design	36	\$5,529
<b>2.0</b>	<b><i>Coordination Meetings</i></b>		
2.4	Coordination meetings WisDOT (2)	16	\$2,349
2.5	Project Management	24	\$4,120
	<b>Total</b>	<b>426</b>	<b>\$58,234</b>
	Reimbursable Expense		\$930
	<b>Overall Total</b>		<b>\$59,164</b>

Table 2

Tasks	Senior L.A.		Staff L.A.		Project Manager		Structural Engineer		Sign Engineer		Hours	Labor Cost	Expense Amount	Task Cost	Expense Description
	\$154	\$93	\$172	\$169	\$105										
<b>1   Final Design for Streetscape Elements</b>															
1.1	0	8	0	0	0	0	0	0	0	0	8	\$747	\$20	\$767	Reprographics
1.2	24	40	8	24	8	24	32	32	32	32	128	\$16,213	\$50	\$16,263	Reprographics
1.3	24	16	0	32	0	32	0	0	0	0	72	\$10,576	\$100	\$10,676	Reprographics
1.4	16	8	0	8	0	8	8	0	0	0	32	\$4,553	\$10	\$4,563	Reprographics
1.5	12	30	8	8	8	8	10	10	10	10	68	\$8,420	\$50	\$8,470	Reprographics
1.6	8	10	8	8	8	8	8	8	8	8	42	\$5,728	\$600	\$6,328	Reprographics
1.7	16	4	0	16	0	16	0	0	0	0	36	\$5,529	\$50	\$5,579	Reprographics
<b>2.0   Coordination Meetings</b>															
2.1	4	4	4	4	4	4	4	0	0	0	16	\$2,349	\$25	\$2,374	Travel / Repro
2.2	0	0	24	0	24	0	0	0	0	0	24	\$4,120	\$25	\$4,145	Reprographics
<b>Total Hours</b>	<b>104</b>	<b>120</b>	<b>52</b>	<b>100</b>	<b>52</b>	<b>100</b>	<b>50</b>	<b>50</b>	<b>50</b>	<b>426</b>	<b>426</b>	<b>\$88,234</b>	<b>\$930</b>	<b>\$59,164</b>	
<b>Labor Cost</b>	<b>\$15,972</b>	<b>\$11,202</b>	<b>\$8,926</b>	<b>\$16,864</b>	<b>\$8,926</b>	<b>\$16,864</b>	<b>\$5,270</b>	<b>\$5,270</b>	<b>\$5,270</b>	<b>\$58,234</b>	<b>\$58,234</b>			<b>Total Fee</b>	<b>\$59,164</b>

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<p style="text-align: center;"><b>APPROVAL</b></p> <p style="text-align: center;"><i>Slw</i></p>	<p style="text-align: center;"><b>REQUEST FOR COUNCIL ACTION</b></p>	<p style="text-align: center;"><b>MEETING DATE</b></p> <p style="text-align: center;">6/17/14</p>
<p style="text-align: center;"><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p style="text-align: center;"><b>ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TEXT AT §15-10.0102 TO PROVIDE FOR MEMBERSHIP UPON THE PLAN COMMISSION OF THE ASSISTANT CITY ENGINEER IN THE ABSENCE OF THE CITY ENGINEER</b></p>	<p style="text-align: center;"><b>ITEM NUMBER</b></p> <p style="text-align: center;"><i>G.15.</i></p>

At their meeting on June 5, 2014, the Plan Commission recommended approval of an ordinance to amend the Unified Development Ordinance text at §15-10.0102 to provide for membership upon the Plan Commission of the Assistant City Engineer in the absence of the City Engineer.

**COUNCIL ACTION**

A motion to adopt Ordinance No. 2014-\_\_\_\_\_ to amend the Unified Development Ordinance text at §15-10.0102 to provide for membership upon the Plan Commission of the Assistant City Engineer in the absence of the City Engineer.

## ORDINANCE NO. 2014-\_\_\_\_\_

AN ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TEXT  
AT §15-10.0102 TO PROVIDE FOR MEMBERSHIP UPON THE PLAN COMMISSION OF  
THE ASSISTANT CITY ENGINEER IN THE ABSENCE OF THE CITY ENGINEER

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WHEREAS, with the forthcoming retirement of the City Engineer on June 6, 2014, the City having reviewed the membership requirements for the Plan Commission, for which the City Engineer has been a member since entering Office on July 27, 1969 (the definition of "City Engineer" in Franklin common parlance meaning a singular named human being for some nearly 45 years), and having determined that it may be necessary for Engineering Department staff to perform those membership duties for any period of time during which the position of City Engineer may be vacant, and also, in the future, at times when a successor City Engineer, or any person serving in a newly designated position created to fulfill the duties of City Engineer, may be unavailable to attend a Plan Commission meeting; and

WHEREAS, a public hearing was held before the City of Franklin Plan Commission on the 5th day of June, 2014, upon a proposed ordinance to amend the Unified Development Ordinance text at §15-10.0102 to designate the Assistant City Engineer as a Plan Commission member in the absence of the City Engineer; and

WHEREAS, the Common Council having accepted the recommendation of the Plan Commission and having determined that the proposed amendment promotes the public interest in the efficient operation of its government, and thereby the health, safety and welfare of the public.

NOW, THEREFORE, the Mayor and Common Council of the City of Franklin, Wisconsin, do ordain as follows:

SECTION 1: §15-10.0102 of the Unified Development Ordinance of the City of Franklin, Wisconsin, as to the introductory paragraph only, be and the same is hereby amended to add the following to and at the end of the existing text: "In the absence of the City Engineer ("absence" meaning and including, but not limited to the office of City Engineer being vacant), the Assistant City Engineer shall serve in the membership position of the City Engineer on the City Plan Commission."

SECTION 2: The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

ORDINANCE NO. 2014-\_\_\_\_\_

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SECTION 3: All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

SECTION 4: This ordinance shall take effect and be in force from and after its passage and publication.

Introduced at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Alderman \_\_\_\_\_.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

APPROVED:

\_\_\_\_\_  
Stephen R. Olson, Mayor

ATTEST:

\_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSENT \_\_\_\_\_

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<p><b>APPROVAL</b></p> <p><i>Slw</i> </p>	<p><b>REQUEST FOR COUNCIL ACTION</b></p>	<p><b>MEETING DATE</b></p> <p>6/17/14</p>
<p><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p><b>Succession Planning for Building Inspection, including a temporary upgrade of an Assistant Building Inspector to First Assistant Building Inspector</b></p>	<p><b>ITEM NUMBER</b></p> <p>G.16.</p>

When Cal Patterson, the prior Director of Finance and Treasurer, anticipated retiring from the City, the City undertook a proactive succession planning effort that proved to be very beneficial to the City. Succession planning is very common in the private sector, but often overlooked in the public sector. The purpose of succession planning is to provide for the smooth transition in addressing vacancies, particularly related to managerial positions.

Fred Baumgart has served as the City's Building Inspector since September 13, 1976. Although he has not submitted a retirement notice, discussions suggest it would be a reasonable consideration for the City to begin planning for his replacement. In addition to Fred, the department has two full-time Building Inspectors. The First Assistant Building Inspector, the second in command in the department, has been with the City since March of 1990. The remaining full-time Assistant Building Inspector has been with the City since August of 1994. Internal promotions to supervisory positions are not guaranteed, but the employee handbook does indicate that "The City of Franklin believes in promoting employees from within..."(P. 27). Both full-time employees have around 20 years of service and would be appropriate for consideration for the position. Thus, moving the Assistant Building Inspector to First Assistant Building Inspector during the pendency of Fred's eventual retirement would enhance the City's ability to evaluate both internal candidates and provide for a more level playing field in the interim training and supervisory opportunities.

As such, the Mayor and Director of Administration recommend a temporary upgrade of the full-time Assistant Building Inspector to First Assistant Building Inspector. This would enable both individuals to alternate opportunities to supervise the department during any period of Fred's absence. Given that an extended absence is anticipated this summer (for a valid, authorized purpose) acting now would be very timely.

Taking the action at this time could also potentially provide a significant benefit in employee retention while the classification and compensation study is under consideration. The City's most comparable community, Oak Creek, which has a vacancy in their Building Inspection unit, has a salary range of \$60,853 to \$67,597 for a Building Inspector. Franklin's Assistant Building Inspector range is less at \$56,168 to \$61,882. In fact, the Oak Creek Building Inspector range is even more than Franklin's First Assistant Building Inspector range, which is \$58,873 to \$64,825.

In the short term, therefore, pursuing the succession plan not only could help prepare the City for the replacement of a supervisory position but could aid in retention of valuable, experienced employees. Ultimately, when Fred retires, an internal promotion would return staffing levels to having just one First Assistant Building Inspector. If circumstances change and the issue remains open for longer than anticipated, completion of the classification and compensation studies during the period of the temporary upgrade should resolve the potential wage disparity issue with surrounding communities.

Note that a "temporary" upgrade is suggested so that the issue is brought back before the Common Council for consideration in the event that the transition does not occur as anticipated. Given that the employee under consideration will have reached 20 years of experience with the City later this year, if the Common Council wished to simply make this a final action, it is only necessary to remove the deadline from the following action.

Sufficient funding is available within the department's 2014 budget due to the delay in filling the additional approved position for this year.

The item is going before the Personnel Committee at their meeting of 6-16-2014. The Mayor and Director of Administration recommend approval.

### **COUNCIL ACTION REQUESTED**

Motion to authorize a succession plan strategy for the Building Inspection Department with the temporary upgrade of a full-time Assistant Building Inspector position to that of First Assistant Building Inspector for a period not to exceed 24 months and subject to approval of the change of status form by the Mayor, acting as the appointing authority.

<b>APPROVAL</b> 	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> <b>6/17/2014</b>
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>City of Franklin's Community Development Block Grant Program Projects for 2015, including soliciting public input for additional project ideas</b>	<b>ITEM NUMBER</b> <i>G.17.</i>

Completed 2015 Community Development Block Grant Applications must be returned to Milwaukee County by July 14, 2014. Following is background information relative to the CDBG Program, a summary of project requests and considerations, and the recommendation of the Director of Administration. Following the action of the Common Council at this meeting, 2015 CDBG applications will be prepared and submitted to Milwaukee County by their July 14, 2014 deadline.

### 2014 CDBG PROJECT ALLOCATIONS

Background Information: During the past few years, the Milwaukee County CDBG program has had increasing pressure from HUD to ensure approved projects meet the federal requirement that no more than 15% of project dollars go towards Public Service projects, social service type programs not involving construction. At the same time, the County and HUD have become much more stringent in their interpretation as to what qualifies as an allowable Public Service expenditure. In past years, enough Milwaukee County communities had dedicated sufficient funds toward construction projects (as is the focus of the CDBG project according to federal law) such that some communities, such as Franklin, could exceed their public services expenditure cap and the County, as a whole, could still meet the federal standard. That is no longer clearly the case. Nonetheless, our 2014 applications are at 16% Public Service expenditures. The City dropped to the 16% by following the County's recommendation that certain programs should have funding go directly to the provider agency. For example, for 2014 the City provided a letter of support for Southwest Interfaith to receive \$5,000 for "Elderly Persons Home Support Services" instead of the money passing through the City.

Below is a synopsis of the City's CDBG projects over the last 3 years.

USES OF CDBG ALLOCATIONS	2012 Contracts		2013 Contracts		2014 Contracts	
Senior Dining ADA Fire Alarm Project (2014) Clare Meadows 51st Street Handicap Sidewalk	\$37,422		\$80,000		\$45,538	
Senior Citizen Activities	-0-	0%	-0-	0%	-0-	0%
Elderly Persons Home Support Services (SW Interfaith)	3,381	7.2%	3,381	3.8%	Ltr. of Support for \$5,000	
Senior Travel Program	5,883	12.6%	5,883	6.6%	8,643	16%
SUBTOTAL – Public Service Projects	\$ 9,264	19.8%	\$ 9,264	10.4%	\$ 8,643	16%
CDBG TOTAL	\$46,686		\$89,264		\$54,181	
<b>City General Fund Public Service Project Support</b>						
Senior Travel Program	5,750		5,000		5,000	
Senior Citizen Activities	9,250		10,000		10,000	
Total General Fund Support	\$15,000		\$15,000		\$15,000	
% of Total Public Service Funding (below)	61.8%		61.8%		63.4%	
<b>Combined Total Public Service Funding</b>						
Senior Citizens Activities	9,250	38.1%	10,000	41.2%	10,000	42.3%
Elderly Persons Home Support Services	3,381	13.9%	3,381	13.9%	Ltr. of Support for \$5,000	
Senior Citizen Travel Program	11,633	48.0%	10,883	44.9%	13,643	57.7%
TOTAL	\$24,264		\$24,264		\$23,643	

The City currently has two projects that can be considered as serving a Public Service purpose: the Senior Travel Program Transportation Services and the Elderly Persons Home Support Services. As shown in the preceding table, the final CDBG contracts for 2014 were recommended to and approved by the County Board for the following projects and amounts:

Senior Dining ADA Fire Alarm Project	\$45,538
Senior Travel Program	8,643
<u>SW Interfaith Elderly Home Support Services (Letter of Support for \$5,000)</u>	
TOTAL 2014 CDBG MONIES FOR CITY OF FRANKLIN	\$54,181

In 2011, the Senior Citizens Activities program (funding for Franklin Senior Citizens, Inc.) ultimately had to transition its funding entirely to the City portion of the funding for these activities. Again, this is a result of the interpretations as to eligible CDBG expenditures. Note that the City currently budgets \$15,000 in its Recreation budget which will enable Franklin Senior Citizens to still receive its allocation of approximately \$10,000 and for the Senior Travel Program to continue with a budget of approximately \$10,000 (\$5,000 City monies plus \$5,000 via CDBG application).

2015 Project Considerations and Requests: Based upon the formula in the Intergovernmental Agreement, Milwaukee County anticipates the 2015 funding allocation for the City of Franklin to be \$56,923. Milwaukee County also anticipates that some communities may not have projects that use their full allotment and have encouraged us to consider projects in excess of our current allocation, as the City of Franklin successfully did for 2013.

The City is aware of a need and request to continue to fund the current Public Service Projects: Senior Travel Program and to support the Southwest Interfaith Elderly Home Support Services. The project administered by Franklin Senior Citizens, Inc. will remain within the Recreation Program from City funds. As noted above, for 2014, Milwaukee County changed the way municipalities allocated funds to non-profit organizations (i.e., Southwest Interfaith). Instead of a non-profit organization having numerous small contracts with several municipalities, the municipalities now write a letter of support to the non-profit organization for the desired amount of funds to be allocated to them, and the non-profit organization then submits one large contract to Milwaukee County. Thus, if the City recommends the funding allocation for SW Interfaith, the City will then forward a letter of support to SW Interfaith, and SW Interfaith will then proceed to prepare and submit the necessary 2015 application to Milwaukee County. Also, due to more stringent application of HUD policies, the Franklin Travel Program costs will only be eligible if they include some type of educational aspect to the trip; otherwise they will need to be funded from the City Recreation allocated funds. As such, for 2015, staff recommends submitting Public Service Project requests for the Senior Travel Program and a letter of support for the Elderly Home Support Services (Southwest Interfaith). Given the increased allocation to the City, staff anticipates recommending the Southwest Interfaith support to be reinstated approximately to its previous funding level before our cuts the past few years. An increase in the Senior Travel Program CDBG funding will not be required since some of the trips will no longer qualify for application against CDBG resources.

It should be noted that new County staff have identified old CDBG policy resolutions at the County level that set a minimum amount for a public service program that is higher than Franklin, and many other communities, have followed. County staff will be proposing an update to this policy this summer. Any limit, however, may be in conflict with our Intergovernmental Agreement. This potential issue will not impact the Elderly Persons Home Support Services (Southwest Interfaith) program as our allocation will be merged with other allocations. It could, however, impact the Senior Travel Program allocation. City staff will continue to work with the County staff on this matter.

Preliminary Recommendation Summary: Absent any other suggested projects, the Director of Administration anticipates recommending continuing to provide funding for the Senior Travel Program, approximately \$5,000, to the extent that CDBG administrative rules do not prohibit the project due to its overall limited scope. Additionally, the Director of Administration supports continuing to provide a letter of support for at least \$5,000 for an Elderly Persons Home Support Services Project operated by Southwest Interfaith. This recommendation anticipates that the City will continue to allocate \$15,000 from its operating budget to support the Senior Travel Program and the Franklin Senior Citizen Activities Program. This final decision does not have to be made at the time of application for CDBG funds and will be made during our annual budget process, but without the same funding the programs would naturally experience program cuts.

Two other projects that could be considered that address City Hall issues. One possible project is replacing all City Hall signage as necessary to become fully compliant with all related ADA regulations. This project would be estimated at approximately \$10,000 to \$15,000. A second project would be installing the proper roof venting from for the kitchen area serving the Senior meal program to better service the kitchen area and eliminate its impacts throughout City Hall. This project would be estimated at approximately \$20,000. Staff is working with County CDBG staff to investigate participating in senior housing programs that provide low interest loans and small grants for home and roof repairs and water line extensions for low income seniors.

Applications are due the middle of July. Staff will pursue the ideas indicated above and is, hereby, soliciting additional project ideas from the Common Council and from the public. Any additional project ideas that target low income populations should be forwarded to the Director of Administration. Staff will bring a final recommendation on project applications to the Common Council at its meeting of July 1, 2014. In the meantime, absent direction from the Common Council otherwise, staff will work on the Senior Travel Program application and Southwest Interfaith's letter of support.

NOTE: A public hearing by the City of Franklin is not required. The County Board has scheduled to hold a public hearing on all project recommendations on September 15, 2014.

## **COUNCIL ACTION REQUESTED**

Receive and file

- Or -

Provide any guidance or project recommendations to staff as the Common Council determines is appropriate.

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<p><b>APPROVAL</b></p> <p><i>Slw</i> </p>	<p><b>REQUEST FOR COUNCIL ACTION</b></p>	<p><b>MEETING DATE</b></p> <p><b>06/17/2014</b></p>
<p><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p><b>Authorization to Include the Salt Shed Roof Project in the Contract for Roofing Services with Industrial Roofing Services, Inc.</b></p>	<p><b>ITEM NUMBER</b></p> <p><i>G.18.</i></p>

The City is currently working with Industrial Roofing Services (I.R.S.) for replacement of Roof Area A of Franklin City Hall and Roof areas A and B of Fire Station 1, all of which are budgeted, carryover projects scheduled for completion this year. The 2014 budget includes a roof project for the DPW Salt Shed. Jerry Shafer requests that the design and development of roof specifications for the salt shed be incorporated into the existing contract with I.R.S. I.R.S. provides the design specifications, bid documents, bid review, and professional project oversight. The current contract provides for a fee of 7% of the lowest responsible bid. Note that the salt shed project will be bid separately from the other projects due to the nature of the roofing system and the geographic separation.

**COUNCIL ACTION REQUESTED**

Motion to authorize the Director of Administration to prepare and execute an amendment to the professional services agreement with Industrial Roofing Services, Inc. to include the design and contracting services needed for the DPW salt shed roof project.

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<p><b>APPROVAL</b></p> <p><i>Slw</i> </p>	<p><b>REQUEST FOR COUNCIL ACTION</b></p>	<p><b>MEETING DATE</b></p> <p><b>06/17/2014</b></p>
<p><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p><b>Request to Continue with AT&amp;T as the Vendor for Telephone Services at Certain City Facilities, in Accordance with the State of Wisconsin Bid Award, and Authorization for the Director of Administration to Execute and Administer the Five-Year Telephone Service Agreements</b></p>	<p><b>ITEM NUMBER</b></p> <p><i>G.19.</i></p>

Back on November 3, 2008, following a RFP process for telephone services, the Common Council approved a motion that selected AT&T as the preferred vendor for telephone services at certain City facilities, authorized the Director of Administration to negotiate and execute service agreements with AT&T for telephone services covering a period not to exceed 5 years, authorized the Director of Administration to take the necessary steps to migrate the phone system primarily to the digital format (PRI T1), and authorized the Director of Administration to administer and manage the agreements. This 5-year telephone service contract with AT&T expired in February of this year whereby AT&T has now been in contact with the City to enter into a new State of Wisconsin contract for continuation of its current telephone services with AT&T. Since the City's current contract is now expired, the City needs to act soon so as not to be placed on a month-to-month, non-contracted pricing that would be much higher than what we are currently paying via the state contract.

The City facilities that are currently serviced by AT&T for telephone services include City Hall, all three Fire Stations, the Library, Sewer and Water Building, and DPW garage. Back in 2009, when the City entered into the 5-year contract with AT&T, the phone service was transitioned to the PRI (T1) digital technology, using analog Centrex lines only at remote locations and in a limited number at the City Hall as a tertiary level of backup.

While the City was under contract with AT&T, AT&T was successful in being awarded the State contract through a competitive process. Municipalities are allowed to directly participate in the State contract. The new proposed State of Wisconsin contract pricing through AT&T for the City's two (2) ISDN PRI circuits would actually save the City approximately \$214 per month. Current monthly bills run approximately \$1,175. The proposed State contract is set up as a 60-month (5-year) contract but all early termination fees are eliminated after just 3 years. Effectively, the City would have the option of terminating the contract after 3 years if it so wished.

Over the past 5 years, the City has experienced minimal phone service issues with AT&T. Staff is very satisfied with the service provided by AT&T and continues to have a good working relationship with its same AT&T sales representative that we worked with back in 2008/2009.

Staff recommends entering into a new State of Wisconsin contract with AT&T for telephone services for City Hall, the Fire Stations, the Library, Sewer and Water Building, and DPW garage as proposed for 60 months. Contract terms follow the State bid award requirements.

**COUNCIL ACTION REQUESTED**

Motion to authorize the Director of Administration to finalize and execute new 5-year service agreements with AT&T for telephone services, in accordance with the State of Wisconsin bid award, and to authorize the Director of Administration to continue to administer and manage the agreements, including modifying service levels, as he determines is necessary, during the term of the agreements.

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<p><b>APPROVAL</b></p> 	<p><b>REQUEST FOR COUNCIL ACTION</b></p>	<p><b>MEETING DATE</b></p> <p><b>06/17/2014</b></p>
<p><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p><b>An Ordinance Authorizing the City of Franklin to Participate in the "Pet License Amnesty Period" Program of the Milwaukee Area Domestic Animal Control Commission (MADACC) for the Month of August 2014</b></p>	<p><b>ITEM NUMBER</b></p> <p><i>G.20.</i></p>

Chapter 80-5 of the City of Franklin Municipal Code requires that every person residing in the City of Franklin who owns a dog, tiny horse, or cat which is 5 months of age on January 1, or 5 months of age within the license year, shall apply annually for a license. It also states that dog or tiny horse license applications and fees must be made by the last day of March of each year and by the last day of February each year for a cat, or late applications shall be assessed a late charge in addition to the license fee.

The Milwaukee Area Domestic Animal Control Commission (MADACC) is offering a "pet license amnesty period" for the month of August 2014 whereby Milwaukee County residents can license a dog or cat or renew an expired license during the month of August 2014 and the late fees/fines will be waived. MADACC is offering this "August pet license amnesty period" program as a trial and educational opportunity in hopes of increasing animal license compliance rates for Milwaukee County. This issue was brought before the Intergovernmental Cooperation Council of Milwaukee County (ICC) at their June 9th meeting whereby the ICC approved a motion in support of communities participating in MADACC's "pet license amnesty period" program for the month of August 2014.

**COUNCIL ACTION REQUESTED**

Motion to adopt Ordinance No. 2014-\_\_\_\_, "An Ordinance Authorizing the City of Franklin to Participate in the "Pet License Amnesty Period" Program of the Milwaukee Area Domestic Animal Control Commission (MADACC) for the Month of August 2014".

ORDINANCE NO. 2014-\_\_\_\_

AN ORDINANCE AUTHORIZING THE CITY OF FRANKLIN TO PARTICIPATE IN THE "PET LICENSE AMNESTY PERIOD" PROGRAM OF THE MILWAUKEE AREA DOMESTIC ANIMAL CONTROL COMMISSION (MADACC) FOR THE MONTH OF AUGUST 2014

WHEREAS, Chapter 80-5 of the City of Franklin Municipal Code requires that every person residing in the City who owns a dog, tiny horse, or cat which is 5 months of age on January 1, or 5 months of age within the license year, shall apply annually for a license; and

WHEREAS, Chapter 80-5 also requires that dog or tiny horse license applications and fees must be made by the last day of March of each year and for a cat by the last day of February each year or late applications shall be assessed a late charge in addition to the license fee; and

WHEREAS, in hopes of increasing animal licensing compliance rates and as an educational opportunity, the Milwaukee Area Domestic Animal Control Commission (MADACC) is offering a "pet license amnesty period" program for the month of August 2014 whereby residents can license a dog or cat or renew an expired license during the month of August 2014 and the late fees/fines will be waived; and

WHEREAS, the Intergovernmental Cooperation Council of Milwaukee County, at their June 9, 2014 meeting, approved a motion in support of communities participating in MADACC's "pet license amnesty period" program for the month of August 2014.

NOW, THEREFORE, the Mayor and Common Council of the City of Franklin, Wisconsin, do ordain as follows:

SECTION 1: That the requirement of Chapter 80-5 of the City of Franklin Municipal Code that states "Any late application fee for dogs, cats, or tiny horses shall be assessed a late charge in addition to the license fee" shall not be in effect for the month of August 2014 in order for the City of Franklin to participate in MADACC's "pet license amnesty period" program.

SECTION 2: This ordinance shall take effect and be in force from and after its passage and publication.

Introduced at a regular meeting of the Common Council of the City of Franklin this 17th day of June, 2014, by Alderman \_\_\_\_\_.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 17th day of June, 2014.

APPROVED:  
  
\_\_\_\_\_  
Stephen R. Olson, Mayor

ATTEST:  
  
\_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSENT \_\_\_\_\_

City of Franklin, WI  
Tuesday, June 10, 2014

## Chapter 80. ANIMALS

### Article II. Dogs, Tiny Horses and Cats

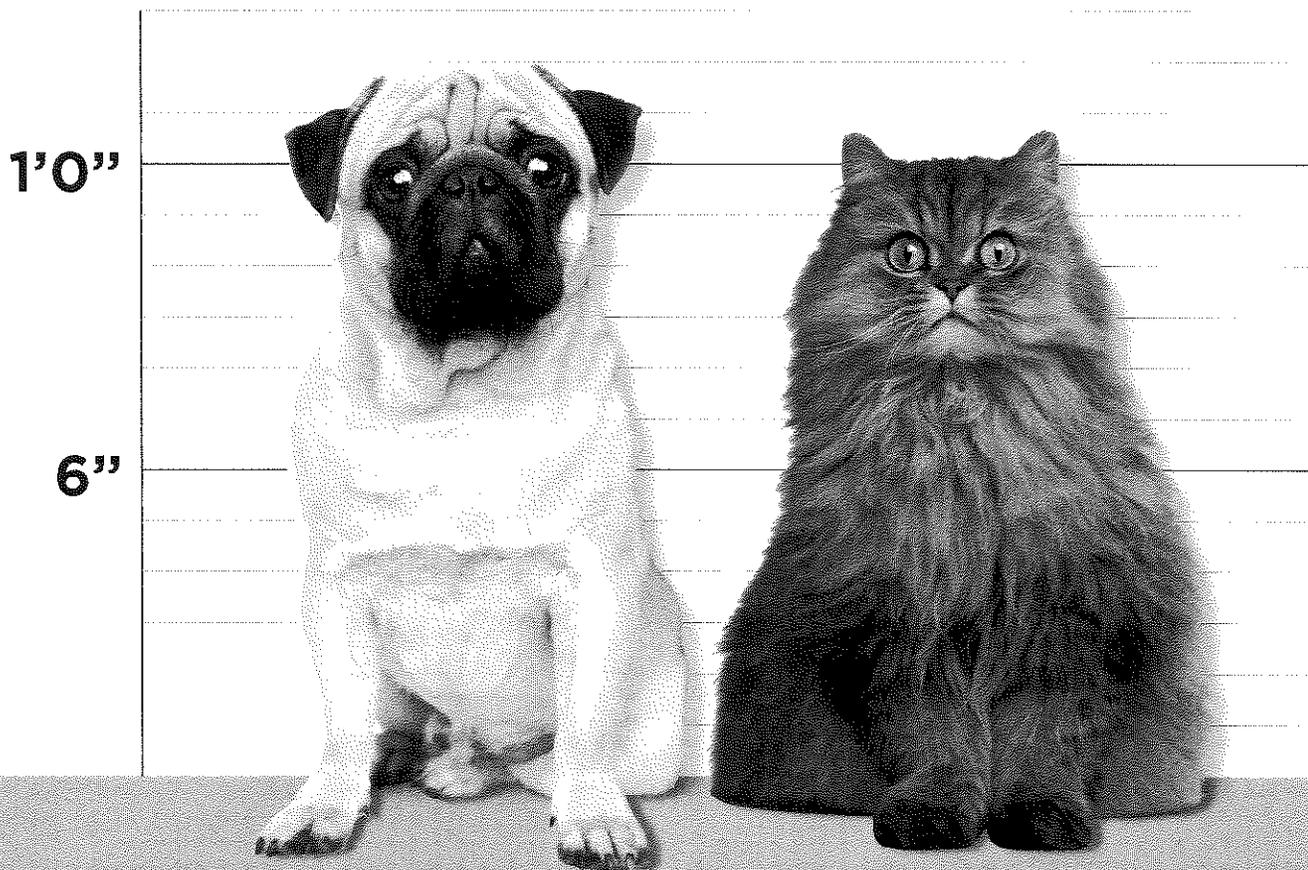
#### § 80-5. License required.

A. All dogs, tiny horses and cats shall be properly licensed. Every person residing in the City who owns a dog, tiny horse or cat which is five months of age on January 1, or five months of age within the license year, shall apply annually for a license. The license applicant for a dog or tiny horse must make application by the last day of March each year and pay an annual license fee as provided in Chapter **169**, Licenses and Permits. The license applicant for a cat must make application by the last day of February each year and pay an annual license fee as provided in Chapter **169**. Any late application fee for dogs, cats or tiny horses shall be assessed a late charge in addition to the license fee.

**[Amended 10-5-2004 by Ord. No. 2004-1817; 11-18-2008 by Ord. No. 2008-1959 Editor's Note: This ordinance also provided that it shall take effect 1-1-2009. ]**

B. No license shall be issued for any dog or cat unless the applicant presents a current certificate of rabies vaccination as provided in § 95.21, Wis. Stats.

# Are you harboring a fugitive?



Make your pet legal.

**PET LICENSE AMNESTY PERIOD**

**August 1 - 31, 2014**

License your dog or cat, renew an expired license, and late fees/fines will be waived.

**madacc**

MILWAUKEE AREA DOMESTIC  
ANIMAL CONTROL COMMISSION

[www.madacc.org](http://www.madacc.org)

## **ICC Animal Licensing Task Force**

### **Task Force Assignment**

The ICC charged the task force with researching our animal license rules and fees to ensure that licensing fees were fair and not cost prohibitive to residents.

### **License Basics**

1. Per WI State Statute 174, and per each Milwaukee County municipality, cats and dogs aged 5-months and older are required to have a current rabies vaccine and current Milwaukee County animal license within 30 days of ownership.
2. WI State Statute requires a higher fee for "intact" or "unaltered" animals (animals that can still reproduce) as a way to encourage responsible ownership and to provide for the many animals that end up in animal control facilities.
3. Licenses are good for one year, valid January through December each year, and are renewable beginning each December, with the expectation of having all licenses renewed by March 31. Late fees become applicable each April 1.

### **Goals of Milwaukee County Licensing Program**

1. To promote responsible companion animal ownership
2. Public health and safety
3. Increase lost/stray animal return to owner rates thereby decreasing euthanasia at MADACC
4. Subsidize animal control program and services

### **Licensing Fees**

Currently, Milwaukee County municipalities have the following licensing schedule:

Altered Dog or Cat (before April 1)	\$12
Altered Dog or Cat (commencing April 1)	\$18
Unaltered Dog or Cat (before April 1)	\$24
Unaltered Dog or Cat (commencing April 1)	\$36

The Task Force studied the licensing fees for other comparable cities (see attached). It was decided that the current fee schedule in Milwaukee County is in line with costs charged in communities of similar size, population and demographics. For the fees listed above, Milwaukee County residents also receive benefits such as:

1. **Fast-Track Return to Owner:** A program where MADACC will call the owner of a licensed animal as soon as ownership is determined.
2. **Free-Ride Home:** A program where once we have contacted owner, we will bring the animal home to owner or meet them at MADACC and return animal without impounding animal. This is for first time "offenders" only

3. Free spay/neuter for pit bull type dogs and all cats for owners that reclaim those animals from MADACC after purchase of a license.

Everyone who licenses in Milwaukee County is essentially “paying it forward” as their fees subsidize MADACC operations and help to provide more positive outcomes for the animals from their community taken in by MADACC each year.

#### **Why is Animal Licensing Compliance Low?**

1. Animal limit laws are the most frequently used reason for not licensing. The fear is that the “government” will know if they are over their limit and require them to give up a beloved companion.
2. Education has been determined to be the single-most important reason that people do not license. There seems to be little knowledge that there are, in fact, laws for companion animal ownership and readily available information on how to comply with those laws. Attached please find a copy of a webpage on the Waukesha County website which clearly and easily provides all the information and links to local ordinances for all Waukesha County municipalities.

#### **How Can We Increase Animal Licensing Compliance Rates?**

1. Education: By coming together with the same message about licensing and making sure residents are regularly reminded about the expectations of companion animal ownership in each municipality, we can begin to increase licensing compliance.
2. Incentives: Advertising to residents that a \$12/\$24 license is far less expensive than a \$120.00 and up animal reclaim fee (taking into account ordinance fees, impound fees, rabies vaccination fee and license fee). The incentives alone are an inexpensive insurance policy to ensure your companion will find its way back home.
3. Providing more opportunities to do license and rabies clinics in the community to bring these services to the residents.
4. Exploring the expansion of licenses offered for purchase at area vet clinics.

#### **Other Item for Discussion and/or Approval:**

1. Animal Licensing late fee “amnesty” month, for August 2014 – a trial program and educational opportunity. This was discussed at the May ICC Meeting previously and will be a June 2014 agenda item.