

PARTIAL EASEMENT ASSIGNMENT WITH CONSENT
(Manitowoc County)

DEC 15 2015

WHEREAS, Central Brown County Water Authority, a Wisconsin joint local water authority and separate municipal corporation ("CBCWA"), was granted an easement for the construction, operation and maintenance of a water pipeline, a fiber optic cable, and related facilities, over certain property in accordance with the terms of the Grant of Access and Easement, recorded by the Manitowoc County Register of Deeds, in Volume 2972, page 384, as Document # 1161609 ("Easement"), attached hereto as Exhibit A; and

WHEREAS, the City of Manitowoc is the current owner of the property described in the Easement and the property is currently leased by Manitowoc Marina, LLC; and

WHEREAS, CBCWA and Brown County C-LEC, LLC, a Wisconsin limited liability company ("Nsight"), entered into a Fiber Asset Purchase Agreement dated as of December 30, 2014 ("Asset Purchase Agreement"); and

WHEREAS, under the terms of the Asset Purchase Agreement, CBCWA agrees to convey to Nsight, CBCWA's right, title, and interest in and to CBCWA's fiber conduit system in accordance with the terms of the Asset Purchase Agreement; and

WHEREAS, pursuant to the Asset Purchase Agreement, CBCWA further agrees to assign to Nsight, CBCWA's interest in those easements necessary for Nsight to operate and maintain the conveyed fiber conduit system assets in their present location, but only to the extent necessary to allow Nsight to continue to operate and maintain the conveyed fiber conduit system assets in their present location, while CBCWA retains all other interests under those easements, including CBCWA's interest in operating and maintaining all of CBCWA's facilities other than the conveyed fiber conduit system;

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises contained in the Asset Purchase Agreement, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged:

1. CBCWA hereby grants, conveys and assigns without covenant or warranty to Nsight, CBCWA's right, title and interest in and to the Permanent Easement Area described in the Grant of Access and Easement, recorded by the Manitowoc County Register of Deeds, in Volume 2972, page 384, as Document # 1161609, attached hereto as Exhibit A, to the limited extent necessary for Nsight to operate and maintain the conveyed fiber conduit system in its present location, while CBCWA retains all other right, title and interest under such Easement, including CBCWA's interest in operating and maintaining all of CBCWA's facilities other than the conveyed fiber conduit system.

2. The terms of the Easement apply to the right, title and interest assigned to Nsight under this Partial Easement Assignment. The rights granted herein are expressly made subject to each and every limitation, restriction or reservation in the Easement affecting the rights.

Name and Return Address
City of Manitowoc
City Clerk's Office
900 Quay Street
Manitowoc, WI 54220

Parcel ID No. (PIN): 052-820-401-011.00

3. Nsight's rights under this Partial Easement Assignment are further subject and subordinate to CBCWA's right to use the Permanent Easement Area for CBCWA's purposes, provided that CBCWA's use of the Permanent Easement Area: (1) is in accordance with the terms and conditions of the Easement, and (2) does not unreasonably interfere with Nsight's operation and maintenance of the conveyed fiber conduit system. CBCWA and Nsight recognize and acknowledge that both CBCWA's water supply facilities and Nsight's fiber conduit system will be located in the same easements and that CBCWA's water supply facilities will typically be located deeper than Nsight's fiber conduit system. If CBCWA requires access to its water supply facilities located in an easement for any reason and Nsight's fiber conduit system is located in the easement area, CBCWA shall notify Nsight of the need for access (in writing and no less than five (5) business days in advance for routine or planned activities and as soon as practicable in emergency situations), and Nsight shall, at its own cost, take the action necessary to protect its fiber conduit system from damage. CBCWA shall not be responsible for any damage to Nsight's fiber conduit system unless CBCWA has failed or refused to provide Nsight with an opportunity to protect its fiber conduit system.

4. All other rights under the Easement not assigned hereunder are reserved to CBCWA, including all rights associated with CBCWA's right to place, maintain, operate, modify and replace all of CBCWA's facilities other than the conveyed fiber conduit system, within the Permanent Easement Area described in the Easement.

5. Nsight accepts this Partial Easement Assignment and assumes, covenants and agrees to fully and faithfully perform and discharge each and every covenant, duty, obligation, liability and term to be performed under the Easement with respect to operating and maintaining the conveyed fiber conduit system in its present location.

6. Nsight hereby indemnifies CBCWA and agrees to hold CBCWA harmless from and against any and all liability, cost, loss or damage, including but not limited to reasonable attorneys' fees, which may be incurred by CBCWA as a result of Nsight defaulting in or failing to perform any of its obligations under this Partial Easement Assignment arising after the date hereof.

7. CBCWA hereby indemnifies Nsight and agrees to hold Nsight harmless from and against any and all liability, cost, loss or damage, including but not limited to reasonable attorneys' fees, which may be incurred by Nsight as a result of CBCWA defaulting in or failing to perform any of its obligations under this Partial Easement Assignment arising after the date hereof.

8. This instrument and the rights and liabilities contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

9. Owner and Lessee consent to the partial assignment of the Easement in accordance with this document.

BROWN COUNTY C-LEC, LLC

By:

Dated: _____

James W. Lienau
Vice President of Corporate Technical Services &
Chief Technical Officer

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
COUNTY OF BROWN)

This instrument was acknowledged before me on _____ by James W. Lienau, Vice President of Corporate Technical Services & Chief Technical Officer of Brown County C-LEC, LLC.

Name: _____
Print Name: _____
Notary Public, State of Wisconsin
My commission expires: _____

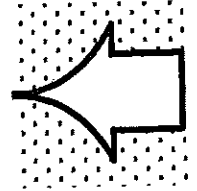
**OWNER CONSENT
CITY OF MANITOWOC, WISCONSIN**

By: _____
Justin Nickels, Mayor

By: _____
Jennifer Hudon, City Clerk

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
COUNTY OF MANITOWOC)



This instrument was acknowledged before me on _____ by Justin Nickels, Mayor, and Jennifer Hudon, Clerk, of the City of Manitowoc, Wisconsin, as the current owner of the property described in the Easement.

Name: _____
Print Name: _____
Notary Public, State of Wisconsin
My commission expires: _____

**STAMP
HERE**

LESSEE CONSENT
MANITOWOC MARINA, LLC
BY:

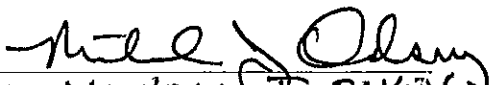
Dated: 9/17/15


Richard M. Larsen, Manager

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
COUNTY OF MANITOWOC)

This instrument was acknowledged before me on 09/17/15 by Richard M. Larsen, Manager, Manitowoc Marina, LLC, as the current lessee of the property described in the Easement.

Name: 
Print Name: MICHAEL J. OSKEY
Notary Public, State of Wisconsin
My commission expires: 01/29/18

This document was drafted by Attorney Lawrie J. Kobza, Boardman & Clark LLP

EXHIBIT A

Doc# 1161609



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GRANT OF ACCESS AND EASEMENT

STATE OF WI - MTWC CO
PRESTON JONES REG/DEEDS
RECEIVED FOR RECORD
10/23/2016 2:57:00 PM

Name & Return Address: CITY OF MANITOWOC
Central Brown County Water Authority
Attn: David Vaclavik, Authority
3160 Eaton Road
Bellevue, WI 54314
CITY CLERK'S OFFICE
900 QUAY ST
MANITOWOC, WI 54220

Parcel Id. No: 052-820-401-011.00

GRANT OF ACCESS AND EASEMENT ("Easement") made by City of Manitowoc ("Owner") and Manitowoc Marina, LLC ("Lessee") to the Central Brown County Water Authority, a Wisconsin joint local water authority and separate municipal corporation located in Brown County, Wisconsin (the "Authority").

Owner is the fee simple owner of the real property described in the attached Exhibit A (the "Property") and Lessee is the current lessee of said property. Owner and Lessee are willing to grant to the Authority a permanent easement, shown in the attached Exhibit B and described in the attached Exhibit C (the "Permanent Easement Area"), over a portion of the Property for the purposes of allowing the placement of certain facilities upon and access to the Permanent Easement Area.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be bound, the parties agree as follows:

1. Grant of Easement. Owner and Lessee hereby grant to the Authority, and the Authority's successors and assigns, a perpetual, non-exclusive easement in, on, under and over the Permanent Easement Area for the construction, installation, reconstruction, replacement, supplementation, operation, repair, maintenance and safeguarding of:

- (a) a subterranean water pipeline and related water supply facilities, and
- (b) a subterranean fiber optic cable.

All of the property described in this paragraph 1 will be called the "Facilities".

2. Right of Access. Owner and Lessee hereby grant to the Authority this Easement with full rights of ingress and egress on and over the Property for the purpose of obtaining access to the Permanent Easement Area. The Authority shall exercise its right of access with the least inconvenience practical to Owner and Lessee.

3. Terms and Conditions. This Easement is made upon the conditions and limitations set forth below:

- a. The Authority and its contractors, invitees, and agents shall have the right to enter upon that part of the Property located outside and adjacent to the Permanent Easement Area, as necessary for



- the purpose of exercising its rights under this Easement, after prior notification of the Owner and Lessee.
- b. The Authority agrees to use the Permanent Easement Area in accordance with all applicable laws, ordinances, rules, regulations, and requirements of all federal, state, and municipal governments. The Authority also agrees to have appropriate traffic control in accordance with the manual on uniform traffic control devices.
 - c. Owner and Lessee, their successors and assigns, agree that any placement of improvements of any kind; planting of trees or other vegetation or storage of goods or products shall be done in a way that (i) protects the Facilities from physical damage; (ii) does not restrict access to the Facilities; and (iii) minimizes the impact to the Authority in their use of the Permanent Easement Area.
 - d. No markings or signage shall be placed on any of the Owner's property before first obtaining approval of the City of Manitowoc Department of Public Works. No markings or signage shall be placed on any of Lessee's property before first obtaining approval of Lessee.
 - e. This Easement or any rights under this Easement shall not be assignable without prior written approval of the Owner and Lessee.
 - f. Notwithstanding any other provision of this agreement, no default under this agreement shall entitle Owner or Lessee to terminate this Easement.
4. Restoration/Repair. The Authority agrees to restore or cause to have restored the Permanent Easement Area and disturbed sections of Owner's land adjacent to the Permanent Easement Area, as nearly as is reasonably possible, to the conditions existing prior to entry by the Authority or its agents.
5. No Merger of Title. The doctrine of merger of title shall not cause termination of this Easement.
6. Covenants Run with Land. All of the terms and conditions in this Easement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by the Owner, Lessee and the Authority and their respective successors and assigns. The grantee of all or any part of the Property, by acceptance of a deed, easement or other conveyance, whether from an original party to this Easement or from a subsequent owner or lessee, shall be conclusively deemed to have assumed and agreed to this Easement.
7. Governing Law. This Easement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.
8. Entire Agreement. This Easement sets forth the entire understanding of the parties and may not be changed except by a written document executed and acknowledged by all parties to this Easement and duly recorded in the office of the Register of Deeds of Manitowoc County.
9. Notices. All notices to either party to this Easement shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the other party at that party's last known address. Either party may change its address for notice by providing written notice to the other party.
10. Invalidity. If any term or condition of this Easement, or the application of this Easement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Easement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.
11. Waiver. It is agreed that the complete exercise of the rights under this Easement may be gradual and not fully exercised until some time in the future. None of the rights granted under this Easement shall be lost by non-use or limited use. No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Easement shall be construed to be a waiver of the



right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms or conditions of this Easement.

- 12. Enforcement. Enforcement of this Easement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Easement, either to restrain or prevent the violation or to obtain any other relief. Either Party shall be entitled to collect from any person that violates or attempts or threatens or intends to violate this Easement its reasonable attorney fees incurred in enforcing or protecting its rights under this Easement.

OWNER:
CITY OF MANITOWOC, WISCONSIN

By:

Justin Nickels
Justin Nickels, Mayor

By:

Jennifer Hudon
Jennifer Hudon, City Clerk

STATE OF WISCONSIN

MANITOWOC COUNTY

)
) ss
)

Personally came before me this 22 day of Oct., 2015, the above-named Justin Nickels and Jennifer Hudon known to me to be the persons who executed the foregoing instrument in the capacities indicated and acknowledged the same.

Deborah A. Neuser
Notary Public, State of Wisconsin. Deborah A. Neuser
My commission: exp: 8-17-18



EXHIBIT A

Parcel No.: 052-820-401-011.00 description:

All of Blocks 53, 54, 112 and 113 of the original plat of the City of Manitowoc, lying East of Maritime Drive, located in the City of Manitowoc, Manitowoc County, Wisconsin.

Description per Volume 107 on Page 459 as Document No. 133833:

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), and Ten (10) in Block No. One Hundred Twelve (112), also Lots One (1), Two (2), Three (3), Four (4), Five (5), and Six (6), in Block No. One Hundred Thirteen (113), all in the City of Manitowoc, Wisconsin.

Description per Volume 135 on Page 434 as Document No. 159562:

situated in the County of Manitowoc and State of Wisconsin, to wit: an undivided one-sixth (1/6) of the following described lots, pieces or parcels of land to wit: Block Forty-nine (49), Block Fifty (50), Block Fifty-one (51), Block Fifty-two (52), Block Fifty-three (53) and Block Fifty-four, and Lots One, Two, Three, Seven, Eight, Ten, Eleven, Twelve, and Fifteen (1, 2, 3, 7, 8, 10, 11, 12 & 15) in Block Fifty-five (55), in the City of Manitowoc, in said County and State.

Description per Volume 136 on Page 12 as Document No. 159563:

situated, lying and being in the County of Manitowoc and State of Wisconsin, to wit: an undivided five-sixth (5/6) of the following described lots, pieces or parcels of land to wit: Block Forty-nine (49), Block Fifty (50), Block Fifty-one (51), Block Fifty-two (52), Block Fifty-three (53) and Block Fifty-four, and Lots One, Two, Three, Seven, Eight, Ten, Eleven, Twelve, and Fifteen (1, 2, 3, 7, 8, 10, 11, 12 & 15) in Block Fifty-five (55), in the City of Manitowoc, in said County and State.

Description per Volume 136 on Page 163 as Document No. 161856:

situated in the County of Manitowoc and State of Wisconsin to wit: Lots Seven (7), Eight (8), Nine (9), and Ten (10) in Block One hundred Thirteen (113) in the original plat of the City of Manitowoc, according to record thereof on file in the office of the Register of Deeds in and for said County.

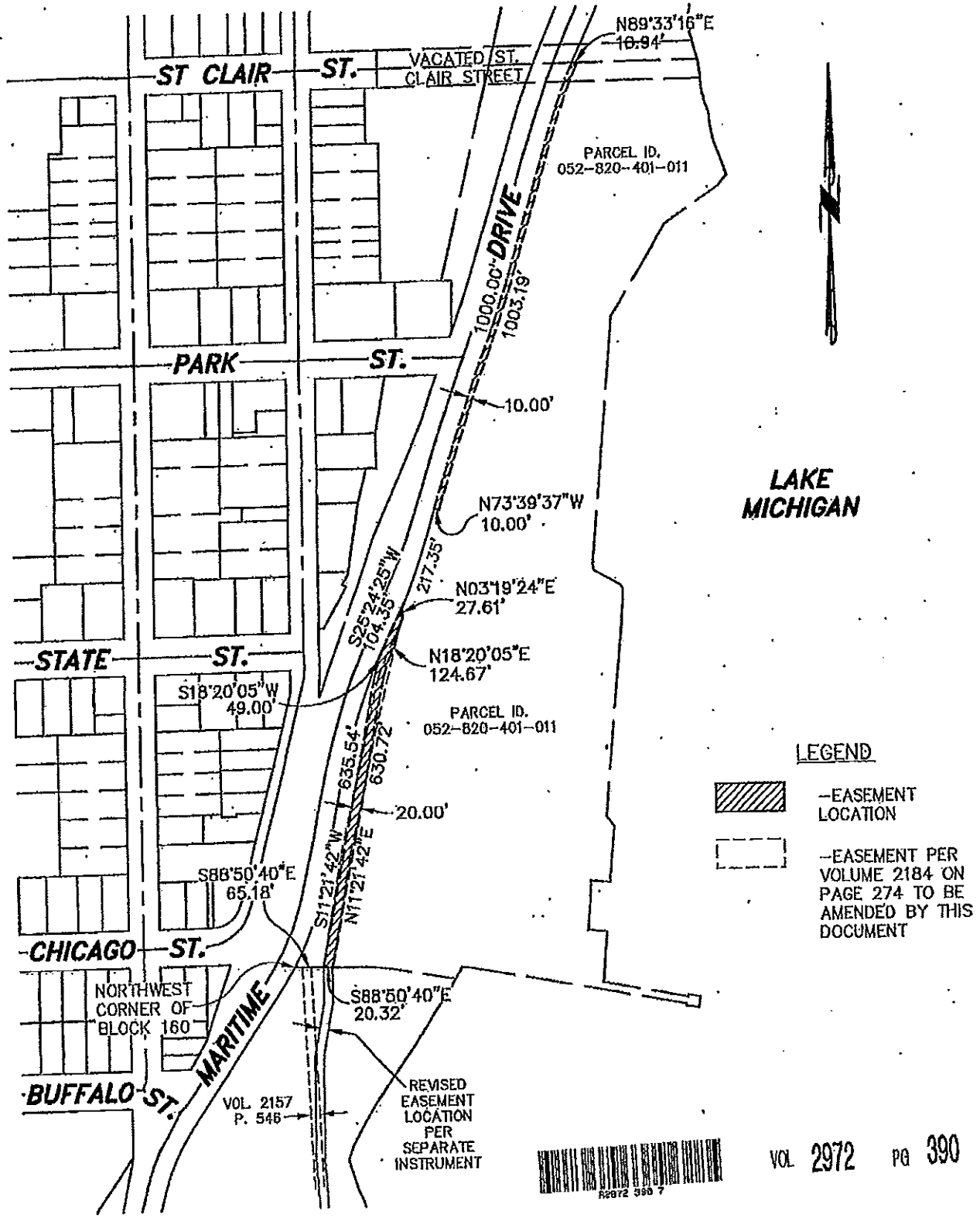
McMAHON
ENGINEERS ARCHITECTS

Project No. C0027 24102.00 Date MARCH, 2015 Scale _____
Drawn By CWK Field Book _____ Page _____
1445 McMAHON DRIVE NEENAH, WI 54956
Mailing: P.O. BOX 1025 NEENAH, WI 54957-1025
Tel: (920) 761-4200 Fax: (920) 761-4284

File No.

EXHIBIT B

c:\projects\00027\240102\00\MANITOWOC COUNTY EXHIBITS\CITY OF MANITOWOC EASEMENT EXHIBITS\EXHIBIT B & C.dwg, model, Plot Date: 9/21/2015 2:39 PM, xref:none



McMAHON
 ENGINEERS ARCHITECTS

Project No. C0027 240102.00 Date JUNE, 2015 Scale 1"=300'
 Drawn By CWK Field Book _____ Page _____
 1445 McMAHON DRIVE NEENAH, WI 54956
 Mailing: P.O. BOX 1025 NEENAH, WI 54957-1025
 Tel: (920) 761-4200 Fax: (920) 761-4284

File No.

EXHIBIT C

DESCRIPTION OF PERMANENT EASEMENT AREA

A part of Blocks 53, 54, 112 and 113 of the Original Plat of the City of Manitowoc, lying East of Maritime Drive, and parts of the vacated portions of Chicago Street, State Street, Lake Street, Park Street and St. Clair Street, located in Government Lots 3 & 4 of Section 20 and the Northeast 1/4 of the Northwest 1/4 of Section 29, all in Township 19 North, Range 24 East, City of Manitowoc, Manitowoc County, Wisconsin more fully described as follows;

Commencing at the Northwest corner of Block 160 of the Original Plat of the City of Manitowoc;

thence S 88° 50' 40" E a distance of 65.18 feet to the point of beginning;
thence S 88° 50' 40" E for a distance of 20.32 feet;
thence N 11° 21' 42" E for a distance of 630.72 feet;
thence N 18° 20' 05" E for a distance of 124.67 feet;
thence N 03° 19' 24" E for a distance of 27.61 feet to the Easterly right-of-way line of Maritime Drive;
thence S 25° 24' 25" W for a distance of 104.35 feet along said Easterly right-of-way line;
thence S 18° 20' 05" W for a distance of 49.00 feet;
thence S 11° 21' 42" W for a distance of 635.54 feet to the point of beginning.

containing 14,941 square feet, more or less.

AND

Beginning at the intersection of centerline of vacated St. Clair Street and the Easterly right-of-way line of Maritime Drive;

thence N 89° 33' 16" E a distance of 10.94 feet;
thence Southerly for a distance of 1003.19 feet along a line that is 10 feet Southeasterly of and at right angles to said Easterly right-of-way line;
thence N 73° 39' 37" W for a distance of 10.00 feet to the said Easterly right-of-way line;
thence Northerly for a distance of 1000.00 feet along said Easterly right-of-way line to the point of beginning.

containing 10,016 square feet, more or less.

Total Easement area = 24,957 square feet, more or less.



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McMAHON
ENGINEERS ARCHITECTS

Project No. C0027 240102.00 Date JUNE, 2015 Scale 1"=300'
Drawn By CWK Field Book Page
1445 McMAHON DRIVE NEENAH, WI 54956
Mailing: P.O. BOX 1025 NEENAH, WI 54957-1025
Tel: (920) 761-4200 Fax: (920) 761-4284

File No.