

**PARTIAL EASEMENT ASSIGNMENT WITH CONSENT**  
(Manitowoc County)

**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 properties in accordance with the terms of the following documents:

- o Grant of Access and Easement, recorded by the Manitowoc County Register of Deeds, in Volume 2972, page 392, as Document # 1161610, attached hereto as Exhibit A;
- o Grant of Access and Easement, recorded by the Manitowoc County Register of Deeds, in Volume 2972, page 362, as Document # 1161606, attached hereto as Exhibit B;
- o Grant of Access and Easement, recorded by the Manitowoc County Register of Deeds, in Volume 2972, page 355, as Document # 1161605, attached hereto as Exhibit C; and
- o Grant of Access and Easement, recorded by the Manitowoc County Register of Deeds, in Volume 2972, page 369, as Document # 1161607, attached hereto as Exhibit D;

The above described documents are hereafter referred to as the "Easements"; and

**WHEREAS**, the City of Manitowoc is the current owner of the properties described in the Easements; 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:

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

Parcel ID Nos. (PIN):  
052-000-222-011.00; 052-820-101-040.00;  
052-820-103-020.00 and 052-820-103-090.00

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 Areas described in the:

- o Grant of Access and Easement, recorded by the Manitowoc County Register of Deeds, in Volume 2972, page 392, as Document # 1161610, attached hereto as Exhibit A;
- o Grant of Access and Easement, recorded by the Manitowoc County Register of Deeds, in Volume 2972, page 362, as Document # 1161606, attached hereto as Exhibit B;
- o Grant of Access and Easement, recorded by the Manitowoc County Register of Deeds, in Volume 2972, page 355, as Document # 1161605, attached hereto as Exhibit C;  
and
- o Grant of Access and Easement, recorded by the Manitowoc County Register of Deeds, in Volume 2972, page 369, as Document # 1161607, attached hereto as Exhibit D;

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 Easements, 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 Easements 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 Easements affecting the rights.

3. Nsight's rights under this Partial Easement Assignment are further subject and subordinate to CBCWA's right to use the Permanent Easement Areas for CBCWA's purposes, provided that CBCWA's use of the Permanent Easement Areas: (1) is in accordance with the terms and conditions of the Easements, 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 Easements 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 Areas described in the Easements.

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 Easements 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 consents to the partial assignment of the Easements in accordance with this document.

12<sup>th</sup> IN WITNESS WHEREOF, the parties have executed this Partial Easement Assignment this day of November, 2015.

**CENTRAL BROWN COUNTY WATER AUTHORITY**

By: *Sarah K. Burdette*  
Sarah K. Burdette, President

Dated: 11/12/2015

*Randy J. Tremel*  
Randy Tremel, Secretary

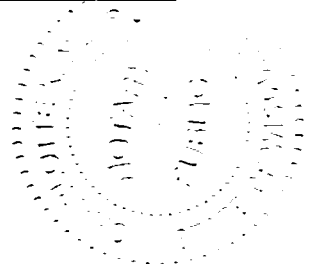
Dated: 11/12/2015

**ACKNOWLEDGMENT**

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF BROWN )

This instrument was acknowledged before me on November 12, 2015 by Sarah K. Burdette, President of Central Brown County Water Authority and Randy Tremel, Secretary of the Central Brown County Water Authority.

Name: *Charlotte K. Nelson*  
Print Name: Charlotte K. Nelson  
Notary Public, State of Wisconsin  
My commission expires: 10-18-2019



6. The assignor hereby represents and warrants that it is the owner of the property described in the instrument and that it has the right to execute and deliver the instrument and that the instrument is not subject to any lien, claim, charge, or other encumbrance, and that the assignor is not a party to any pending litigation involving the property described in the instrument.

7. The assignor hereby represents and warrants that it is the owner of the property described in the instrument and that it has the right to execute and deliver the instrument and that the instrument is not subject to any lien, claim, charge, or other encumbrance, and that the assignor is not a party to any pending litigation involving the property described in the instrument.

8. This instrument shall be binding on the assignor and its heirs, assigns, and personal representatives, and the instrument shall be binding on the assignee and its heirs, assigns, and personal representatives.

9. Certain covenants to the parties assigned to the assignee in the instrument are hereby assigned to the assignee.

WITNESSETH that the parties have executed the instrument in the presence of the undersigned on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
 [Signature]

\_\_\_\_\_  
 [Signature]

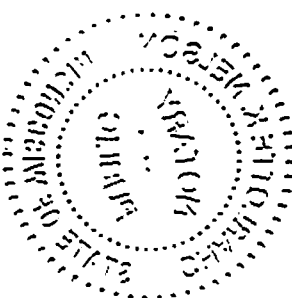
\_\_\_\_\_  
 [Signature]

WITNESSETH that the instrument was duly executed and delivered in my presence on this \_\_\_\_\_ day of \_\_\_\_\_, 2015, at \_\_\_\_\_, Wisconsin, County of \_\_\_\_\_.

\_\_\_\_\_  
 [Signature]

\_\_\_\_\_  
 [Signature]

\_\_\_\_\_  
 [Signature]



**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 properties described in the Easements.

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

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

EXHIBIT A

Doc# 1161610



VOL 2972 PG 392

**GRANT OF ACCESS AND EASEMENT**

STATE OF WI - MTWC CO  
PRESTON JONES REG/DEEDS  
RECEIVED FOR RECORD  
10/23/2015 2:57:00 PM

Name & Return Address: CITY OF MANITOWOC  
~~Central Brown County Water~~ CITY CLERK'S OFFICE  
~~Attn: David Vaclavik, Auth~~ 900 QUAY ST  
~~3400 Eaton Road~~ MANITOWOC, WI 54220  
~~Bellevue, WI 54311~~

Parcel Id. No: 052-000-222-011.00

GRANT OF ACCESS AND EASEMENT ("Easement") made by City of Manitowoc ("Owner") 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"). Owner is 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 hereby grants 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 hereby grants 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.

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.



- 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, its 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.
  - e. This Easement or any rights under this Easement shall not be assignable without prior written approval of the Owner.
  - f. Notwithstanding any other provision of this agreement, no default under this agreement shall entitle Owner 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 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 )  
  ) ss  
MANITOWOC COUNTY )

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



THE AUTHORITY:  
CENTRAL BROWN COUNTY WATER AUTHORITY

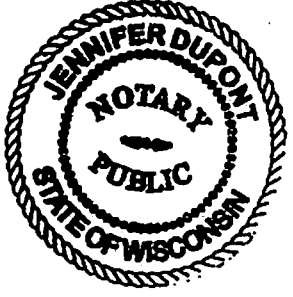
By: Sarah K Burdette  
Sarah Burdette, President

By: Randy Trem  
Randy Trem, Secretary

STATE OF WISCONSIN     )  
  ) ss  
BROWN COUNTY            )

Personally came before me this 20<sup>th</sup> day of August, 2015, the above-named Sarah Burdette and Randy Trem, to me known to be the persons who executed the foregoing instrument in the capacities indicated and acknowledged the same.

Jennifer Dupont  
Notary Public, State of Wisconsin. Jennifer Dupont  
My commission: 5/15/16



This document drafted by Lawrie Kobza, Boardman & Clark LLP



Public Property  
11/15/04  
Street

880641 732  
WARRANTY DEED



Document No.

This space reserved for recording date

By this Deed, The C. Reiss Coal Company, a Wisconsin corporation, Grantor, for good, valuable and sufficient consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to the City of Manitowoc, Wisconsin, a municipal corporation, Grantee, all rights, title and interest in the following described real estate in Manitowoc County, State of Wisconsin:

STATE OF WI - MTWC CO  
PRESTON JONES REG/DEEDS  
RECEIVED FOR RECORD  
12/29/2004 9:58:00 AM

A tract of land located in Government Lot Numbered One (1) of Section Numbered Twenty-nine (29), Township Numbered Nineteen (19) North, Range Numbered Twenty-four (24) East, also being part of the Northeast Quarter of the Northwest Quarter (NE 1/4, NW 1/4) of said Section 29, in the City of Manitowoc, Manitowoc County, Wisconsin, and being accretions to and lying easterly of Blocks 223, 234 and 235 of the Original Plat of said City of Manitowoc, and more particularly described as follows:

Return to: Jennifer Harkin, City Clerk/Deputy Treasurer  
City of Manitowoc  
900 Quay Street  
Manitowoc, WI 54220-4543

000-235-010

Parcel Identification Number (PIN)

23 chg

Commencing at the Southwest corner of Block 222 of the Original Plat of the City of Manitowoc as described in Volume 16, Page 133 of Certified Survey Maps, recorded at the Manitowoc County Register of Deeds Office; thence S. 00° 12' 12" W. (recorded as S. 01° 12' 35" E.) a distance of 24.55 feet; thence N. 84° 58' 15" E. (recorded as N. 83° 35' 02" E.) a distance of 108.60 feet, thence S. 82° 02' 32" E. (recorded as S. 83° 25' 58" E.) a distance of 345.17 feet to the Manitowoc River and the true point of real beginning; thence S. 80° 59' 45" E. a distance of 65.00 feet; thence S. 13° 56' 15" W a distance of 450.50 feet; thence S. 76° 03' 45" E. a distance of 10.00 feet; thence S. 13° 56' 15" W. a distance of 410.65 feet; thence S. 29° 47' 15" W. a distance of 39.52 feet; thence N. 76° 10' 45" W. a distance of 63.58 feet; thence N. 13° 56' 15" E. a distance of 895.04 feet to the true point of real beginning.

Said tract contains 1.43 acres of land more or less, and is shown on the attached map.

Together with all appurtenant rights, title and interests.

This is not homestead property.

Exempt from Transfer Fee and Return, Wis. Stats. §77.25 (2r).

Energy Exclusion Code W-7.

Grantors warrant that the title to the Property is good, indefeasible in fee simple and free and clear of encumbrances.

Said parcel is subject to the covenants and restrictions as attached in Exhibit 1 and are incorporated by reference.

*William Reiss, Jr.*

William Reiss, Jr., President

AUTHENTICATION

ACKNOWLEDGMENT

Signature(s) authenticated this 9th day of November, 2004

STATE OF WISCONSIN )  
MANITOWOC COUNTY )  
Personally came before me, this 9th day of November, 2004, the above named William Reiss, Jr.

TITLE: MEMBER STATE BAR OF WISCONSIN

(If not authorized by 706.06, Wis. Stats.)

This instrument was drafted by

Inanna M. Ruenzel  
Assistant City Attorney  
900 Quay Street  
Manitowoc, WI 54220-4543

to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

Kim M. Blanchard  
Kim M. Blanchard

Notary Public Manitowoc County, Wis.

My Commission is permanent. (If not, State expiration dated: 2/25, 2007.)

(Signatures may be authenticated or acknowledged. Both are not necessary.)



DATE 11/15/04

JOINT RECOMMENDATION OF COMMITTEES ON  
STREETS & SANITATION AND  
PUBLIC PROPERTY & SAFETY

COMMITTEES JOINTLY RECOMMEND refusal to plan  
Commission referral to Plan  
Commission

11-15-04

Kevin Crawford

Streets & Sanitation

Public Property & Safety

T. Frieder T. Frieder  
Gordon Kopetsky Gordon Kopetsky  
Paul R. Tittl Paul R. Tittl  
J. N. Brey J. N. Brey

T. Frieder T. Frieder  
Paul R. Tittl Paul R. Tittl  
Dean W. Graunke Dean W. Graunke  
Raymond T. Geigel Raymond T. Geigel

12/20/04 12/1/04 (10)  
Committee recommends acceptance  
& place on file.

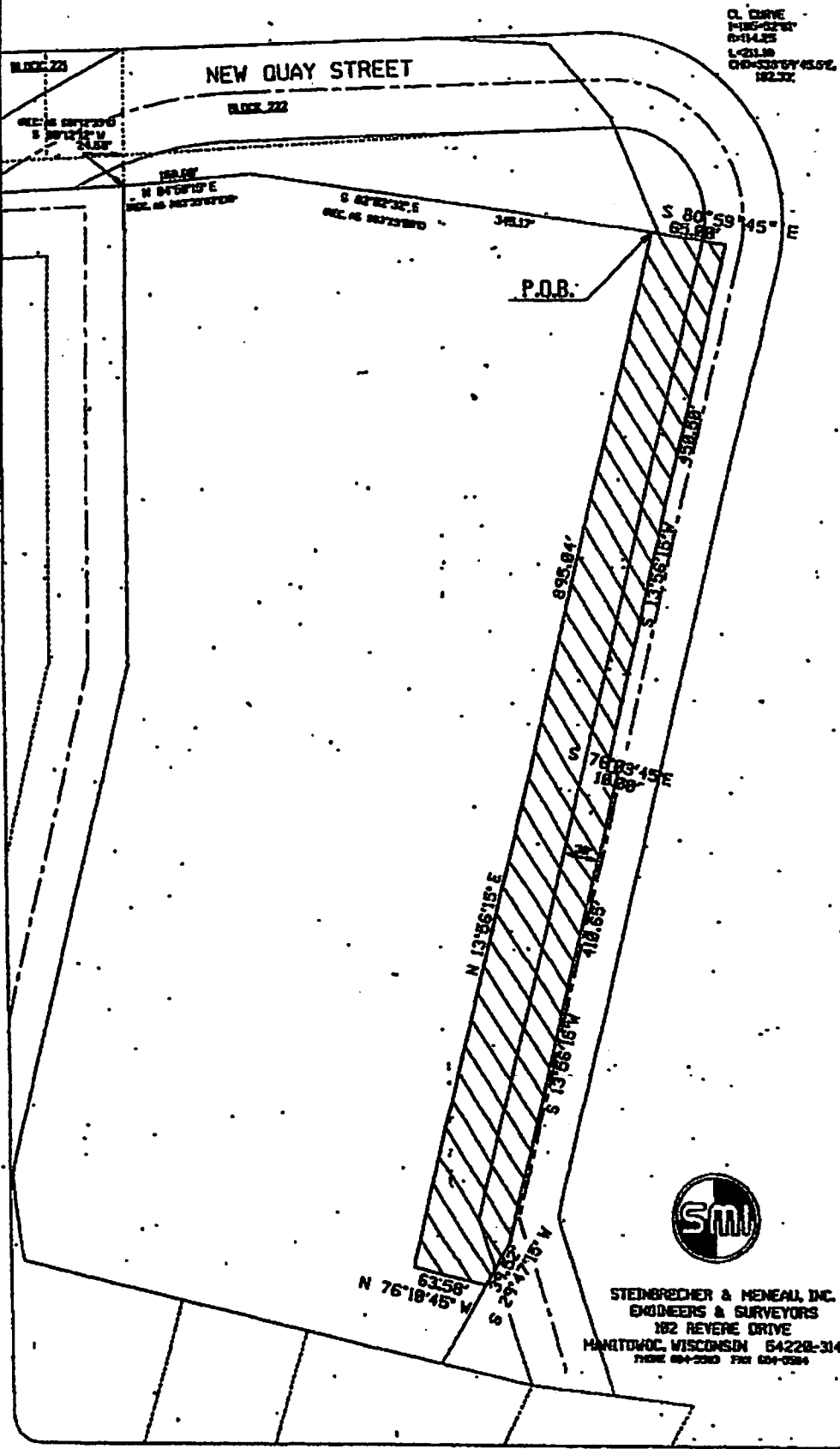
place on file  
Streets & Sanitation

Public Property  
Larry Bergner

J. N. Brey  
Larry Bergner  
Gordon Kopetsky  
Paul R. Tittl  
T. Frieder  
Dean Graunke  
Paul Tittl



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STEINBRECHER & MENEAL, INC.  
ENGINEERS & SURVEYORS  
182 REVERE DRIVE  
MANITOWOC, WISCONSIN 54228-3147  
PHONE 924-3300 FAX 924-3304

**EXHIBIT "1"****RESTRICTIVE COVENANTS**

As a material part of the consideration received by Grantor for the grant, bargain, sale and conveyance of the Property to Grantee pursuant to this Limited Warranty Deed, it is understood and agreed that all future development, use, possession and ownership of the Property shall at all times be subject to the following limitations and restrictions, which shall attach to and run with the land until released or discharged in writing by Grantor, its successors or assigns and thereafter filed of record in the land records office of Manitowoc County, Wisconsin, to-wit:

**COVENANT #1:**

A. No temporary or permanent water or other well shall be constructed, drilled, dug, bored or otherwise placed upon the Property or any part thereof (except for any groundwater monitoring well(s) that may be installed and maintained in accordance with applicable laws and regulations), nor shall any owner or occupant of all or any portion of the Property or any invitee thereof draw, contact or otherwise use groundwater located below the surface of the Property, it being the intention of Grantor and Grantee, their successors and assigns, that the groundwater below the Property shall never be used for drinking, bathing, irrigation or any other domestic, residential, recreational, industrial, commercial or agricultural use, and it being the further intention of Grantor and Grantee that no person shall ever come into physical contact with the groundwater lying beneath the surface of the Property.

B. Grantor, its successors or assigns, including their designated representatives, shall have a continuing right of reasonable access to the Property in areas reasonably designated by the Grantee from time to time for the purpose of conducting sampling, testing, monitoring, analyzing and/or remediating of the groundwater and/or soil and in order to determine the status of any environmental condition existing on the Property from and after the date of this Limited Warranty Deed. Without limitation of any other covenants and agreements set forth in this Limited Warranty Deed, Grantor, its successors and assigns, shall have a continuing right, but not the obligation, to participate in any future environmental investigation, monitoring, evaluation, analysis, planning and/or remediation affecting the Property or any part thereof.

C. The benefits and burdens of this Covenant #1 shall attach to and run with the land and shall be binding upon Grantee, its successors and assigns, including any person or entity claiming any estate or interest in the Property, including, without limitation, any right of ownership, or any right to lease, rent, use, occupy, access or improve the Property or any



part thereof, or any person who may otherwise trespass over, under, across, through or upon the Property.

D. Grantor, including its successors or assigns, the City of Manitowoc, Wisconsin, and the Wisconsin Department of Natural Resources, including their respective successors and assigns, shall each have a non-exclusive and continuing right to enforce the limitations and restrictions in Paragraph A. of this Covenant #1. Grantee, its successors and assigns, shall each have a non-exclusive and continuing obligation to enforce this Covenant #1.

**COVENANT #2:**

A. Grantee, on behalf of itself, its successors and assigns, hereby covenants and agrees that the Property shall not be used for any purpose in the future other than underground utilities, a road, a pedestrian walkway (with benches), public fishing, a bicycle path, or for a dry bulk material handling dock property. Without limiting the foregoing in any manner, Grantee hereby expressly covenants and agrees, on behalf of itself, its successors and assigns, that at no time shall a park or any playground be permitted on the Property. Grantee shall take all necessary or appropriate measures to prevent fugitive dust from occurring as a result of the use of the Property by Grantee, its licensees and invitees, including but not limited to such measures as may be necessary or appropriate to ensure that fugitive dust problems from the use of the Property.

B. Grantee, on behalf of itself, its successors and assigns, hereby covenants and agrees that no residential use whatsoever shall be permitted with respect to the Property.

C. The benefits and burdens of this Covenant #2 shall attach to and run with the land and shall be binding upon Grantee, its successors and assigns, and any person who at any time may claim the right to own, lease, rent, use, occupy, access or improve the Property, or any part or parcel thereof, or who may trespass over, under, across, through or upon the Property.

D. Grantor, its successors and assigns, the City of Manitowoc, Wisconsin, and the Wisconsin Department of Natural Resources, including their respective successors and assigns, shall each have a non-exclusive and continuing right to enforce this Covenant #2. Grantee, its successors and assigns, shall have a non-exclusive and continuing obligation to enforce the limitations and restrictions in Paragraphs A. and B. of this Covenant #2.





**COVENANT #3:**

A. Neither Grantee, nor its successors or assigns, shall use the Property for a purpose or purposes which shall compete with Grantor's business as it is currently constituted or as it may be constituted at the time Grantee's use of the Property may be called into question at a future date.

B. The benefits and burdens of this Covenant shall attach to and run with the land and shall be binding upon Grantee, its successors and assigns, and any other person or entity who at the time may claim any estate or interest in the Property, including, without limitation, any right of ownership, or any right to lease, rent, use, occupy, access or improve the Property or any part thereof, or any person who may trespass over, under, across, through or upon the Property.

C. Grantor, its successors and assigns, shall each have a non-exclusive and continuing right to enforce this Covenant #3. Grantee, and its successors and assigns, shall each have a non-exclusive and continuing obligation to enforce this Covenant #3.

**COVENANT #4:**

A. Any person or entity subject to the restrictions and limitations set forth in Covenants #1, #2, and #3 hereof, who directly or indirectly violates or fails to perform any of such restrictions and limitations, shall indemnify, defend and hold Grantor, its successors and assigns, harmless from and against all claims, causes of action, liabilities, damages, costs and expenses (including reasonable attorneys' fees and expenses) arising out of or in any way connected with any such failure to comply with the restrictions and limitations set forth in Covenants #1, #2 #3 and #4 hereof.

B. The benefits and burdens of this Covenant #4 shall attach to and run with the land and shall be binding upon Grantee, its successors and assigns, and any other person or entity who at any time may claim any estate or interest in the Property, including, without limitation, any right of ownership, or any right to lease, rent, use, occupy, access or improve the Property or any part thereof, or any person who may trespass over, under, across, through or upon the Property.

C. Grantor, and its successors and assigns, shall each have a non-exclusive and continuing right to enforce this Covenant #5. Grantee, and its successors and assigns, shall each have a non-exclusive and continuing obligation to enforce this Covenant #4.