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STANDARD UTILITY EASEMENT CONDITIONS

WHEREAS, in order to allow for the placement, maintenance, replacement and operation of facilities to provide heat, power, electric, telecommunications, cable television, positive surface drainage and other utility services, the City of Manitowoc, Wisconsin, a municipal corporation ("City") accepts the dedication of certain areas reserved for utility and drainage easements as part of its acceptance and approval of subdivision plats and certified survey maps, and

WHEREAS, for the benefit of both Property Owners and the providers of such services it is advisable to clarify the rights which are conveyed through the granting of such easements;

NOW, THEREFORE, the City hereby declares that except as modified in any subdivision plat or certified survey map approved by the City following the execution of these Standard Utility Easement Conditions, the following conditions shall apply to Utility Easements:

1. Definitions. As used herein, the following terms shall have the following meanings:

(a) "Berm" shall refer to a manmade mound of earth which may obstruct any established grade for positive surface drainage.

(b) "Dedicator" shall mean the owner of any real estate as designated on any subdivision plat or certified survey map which includes Utility Easements subject to these Standard Utility Easement Conditions.

(c) "Grantees" shall mean the City of Manitowoc, Manitowoc Public Utilities, and such other utilities or companies furnishing heat, power, electricity, sewer, water, telecommunications, cable television or other public works or utility services who may be franchised by the City or otherwise authorized to provide such services by the City.

(d) "Permanent Structure" shall mean any building, structure or object which is permanently anchored on, over and/or under the ground or placed on a permanent foundation within the Utility Easement.

(e) "Positive Surface Drainage" shall mean that the grade of property does not allow ponding of water, but assures the diversion of storm water to a storm sewer, established drainage ditch, storm water retention basin, or other facility approved by the City for the removal of storm water.

(f) "Property Owner" shall mean the owner of any property subject to a Utility Easement at any point in time, including the Dedicator as well as the Dedicator's successors and assigns.

(g) "Utility Easement" shall mean any area designated on a subdivision plat or certified survey map by the words 'Utility Easement' or similar language. Each such Utility Easement is subject to these Standard Utility Easement Conditions.

2. Easement Privileges Conferred. The Grantees shall be authorized to install, maintain, repair and replace utility facilities over, on and/or under any Utility Easement. The rights granted shall include, subject to the terms and conditions herein, the right to trim, and only when necessary in the good faith judgment of any Grantee, to destroy or remove any trees, shrubs, bushes or other objects of natural growth located on, over and/or under the Utility Easement. The acceptance by the City of any subdivision plat

or certified survey containing Utility Easements shall be deemed the acquisition by all Grantees of the right to perform tree trimming as described in Wis. Stat. §182.017(5) without subjecting any Grantee to the liability described therein, provided, however, that a Grantee shall make a reasonable effort, except in cases of outage or emergency, to notify the Property Owner prior to conducting any tree trimming activity.

3. Duration. The duration of Utility Easements shall be perpetual, and shall be binding upon the Dedicator and all future Property Owners.

4. Property Use Restrictions.

(a) Structures and Berms. Property Owners shall be prohibited from erecting, or permitting others to erect, install or construct any Permanent Structure, building or Berm of any kind on, over and/or under any Utility Easement. Any building or Permanent Structure which is constructed in violation of this restriction shall be removed or relocated by the Property Owner at the Property Owner's sole expense within sixty (60) calendar days from receipt of written notice by any Grantee that such removal or relocation is required, except that a Property Owner shall be entitled to a reasonable extension of this time period for work performed between November 1 and the following March 31 if weather conditions make such removal or relocation impracticable. Should the Property Owner fail to complete such removal, a Grantee or its agents shall be authorized to complete the removal and recover the cost of such removal from the Property Owner.

Any Non-Permanent Structure which is constructed on, over and/or under any Utility Easement shall be removed or relocated at the Property Owner's expense upon request of any Grantee.

(b) **Elevations.** Ground elevation may be altered in a Utility Easement area with approval of both the City of Manitowoc Public Works Director and the applicable Grantee. However, if the alteration requires that a utility be relaid or manholes, handholds, risers or utility boxes be reset, the Property Owner will be responsible for the cost of the alteration.

(c) **Other Obstructions.** Fences, planters, trees, shrubbery, or other vegetative growth shall be permitted on, over and/or under the area of a Utility Easement, provided, that these obstructions do not restrict Positive Surface Drainage within the Utility Easement area. Fences over natural gas utility easements shall be prohibited, unless the Property Owner obtains the prior written consent of the applicable Grantee.

5. **Access to Easement Area.** If any Grantee cannot otherwise reasonably gain access to a Utility Easement area from a public street or other public right-of-way, a Grantee shall be permitted access to a Utility Easement on, over and/or under other property of any Property Owner as follows:

- (a) Single pedestrian access may be gained without any notice to the Property Owner.
- (b) A crew of two or more pedestrians must attempt to notify the Property Owner prior to access, except in the event of emergency.
- (c) Vehicular access shall only be granted if the Grantee first notifies the Property Owner of the need for such access, except in the event of emergency.

Any Grantee exercising the rights granted in this paragraph shall be liable to the Property Owner for any damage caused by the Grantee's occupancy or crossing of the

Property Owner's property.

6. Restoration. All Grantees shall be responsible for the repair, replacement and restoration of any fences, lawns, gardens, shrubbery, driveways, buried utilities or property monuments or walkways disturbed by any permitted acts of the Grantee pursuant to the rights of the Grantee described herein, provided, however, that a Grantee may remove rather than replace any vegetative growth when such removal is necessary, in the good faith judgment of the Grantee for the maintenance of or access to its facilities. The repair, replacement and restoration required herein shall be accomplished within 30 calendar days following the completion of the work, except that a Grantee shall be entitled to a reasonable extension of this time period for work performed between November 1 and the following March 31 where weather conditions require. Restoration work required hereunder shall include resetting property monuments in the event they were disturbed, reburying disturbed utility lines to an appropriate depth, and restoring any disturbed grade to its previous grade, except where the grade was not established in compliance with any applicable plat, site plan, or other approved drainage plan, in which case the Property Owner may be required to make the grade corrections to comply with such requirement.

7. Coordination Among Users. Grantees exercising rights hereunder to install facilities shall follow any applicable City of Manitowoc or Manitowoc Public Utilities recommended or required procedures for coordination. In the case of underground facilities, Grantees are to joint bury whenever possible to minimize adverse effects on the Property Owner.

8. Compliance with Laws. In exercising the rights granted hereunder, all Grantees shall comply with all applicable federal, state and local laws, regulations and

ordinances. The restrictions contained in these conditions shall be in addition to any other conditions or restrictions contained in any site plan approval, conditional use permit, or any other source which may affect the property.

9. Modification or Termination. Any Property Owner seeking to modify any Utility Easement, or modify or terminate the terms and conditions contained herein, may request such modification or termination in writing to the City Clerk. Any such modification or termination may or may not be granted in the sole discretion of the City.

10. Violations. Except as otherwise provided herein, any use made of a Utility Easement by the Property Owner in violation of these use restrictions shall be corrected upon 14 calendar days written notice from either the City or any other Grantee. Failure to correct any such violation within such 30 day period shall entitle any Grantee to commence a court action for specific performance of the terms of these Standard Utility Easement Conditions and any such Grantee shall be entitled to recover any applicable damages plus actual attorney's fees for any such violation. In addition, violation of any of the provisions of these Standard Utility Easement Conditions by any Property Owner may subject the Owner to any penalties contained in the Manitowoc Municipal Code.

11. Notice. This document shall be recorded in the office of the Manitowoc County Register of Deeds. The recording information shall be referenced on each subdivision plat and certified survey approved hereafter for the purpose of providing notice of the contents of this document, but the failure to include such reference shall not invalidate the applicability of these conditions to subsequently approved subdivision plats or certified surveys. To the extent permitted by law, these Standard Conditions shall also apply to utility easements previously accepted by the City, except to the extent these

conditions are inconsistent with any specific conditions of such utility easements.

Dated this 3<sup>rd</sup> day of November, 1997.

CITY OF MANITOWOC

By: [Signature]  
Kevin M. Crawford, Mayor

Attest: [Signature]  
Jennifer Hudon, City Clerk

STATE OF WISCONSIN )  
                                  ) ss.  
MANITOWOC COUNTY )

Personally came before me this 3<sup>rd</sup> day of November, 1997,  
Kevin M. Crawford, Mayor and Jennifer Hudon, City Clerk, to me known to be the persons  
who executed the foregoing instrument, and to me known to be such Mayor and City Clerk  
of the City of Manitowoc and acknowledged that they executed the foregoing instrument  
as such Officers of said City, by its authority.

[Signature]  
James A. Wyss  
Notary Public, Manitowoc County  
My commission is permanent.

VOL 1252 PAGE 498

This instrument drafted by  
Patrick L. Willis, City Attorney

STATE OF WISCONSIN - MANITOWOC COUNTY  
PRESTON JONES, REGISTER OF DEEDS  
RECEIVED FOR RECORD

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