

**CITY OF MANITOWOC TID NO. 19
DEVELOPMENT AGREEMENT WITH
BRIESS INDUSTRIES, INC.**

THIS AGREEMENT (hereinafter called the "Agreement") made as of the __ day of October 2017, by and between The City of Manitowoc (hereinafter called the "CITY") and Briess Industries, Inc. (hereinafter called the "DEVELOPER"). The CITY and DEVELOPER may collectively be referred to as the "PARTIES."

WITNESSETH:

WHEREAS, DEVELOPER seeks to construct the Project defined below on a parcel of land with an address of 605 Washington Street, City of Manitowoc, Manitowoc County Parcel #052-000-237-000.00, more specifically described as and shown on Exhibit A (the "Property"); and,

WHEREAS, DEVELOPER will invest a total of approximately \$16.6 million on the Property including razing the existing building, building an approximately 25,000 square foot new manufacturing building, and constructing and installing fixtures and building equipment, including electrical, mechanicals, and soft costs (the "Project"). The purpose of the Project is to house additional processing and packaging of products that will solidify DEVELOPER's commitment to its Manitowoc location and result in job creation; and,

WHEREAS, the Property is located in proposed Tax Increment Finance District No. 19 ("TID 19"), and planned public investments identified in the Project Plan for TID 19 include site development and development project contributions. The use of Tax Incremental Financing is necessary for the Project to take place as the Project is impacted by extraordinary development costs due to site constraints; and,

WHEREAS, the CITY has targeted the downtown and harbor to support additional development and tax base for the community; and,

WHEREAS, the completed Project is anticipated to result in additional economic activity and increased property values throughout TID 19.

NOW, THEREFORE, in consideration of the promises and obligations set forth, it is mutually agreed between the PARTIES as follows:

- I. **PROPOSED PROJECT SCOPE AND CONSTRUCTION**. DEVELOPER agrees to construct the Project including an approximately 25,000 square foot manufacturing addition and installation of additional processing and packaging equipment to support the business expansion in accordance with this Agreement. The total Project costs will be approximately \$16.6 million with an estimated construction cost of \$10.4 million. The estimated assessed value increase is approximately \$5.7 million upon completion.

- A. The DEVELOPER shall complete the Project (which shall be deemed achieved by the delivery of a certificate of occupancy or occupancy permit for any portion of the building included in the Project and constructed on the Property) by March 31, 2019 (the "Completion Date") in accordance with site and building plans as approved by the CITY.
- B. The CITY will cooperate and use reasonable efforts with respect to any and all permits necessary for completion of the Project.
- C. The DEVELOPER shall comply with all applicable federal, state, and municipal codes throughout the Project, including submitting site plans and obtaining applicable permits.
- D. The Preliminary Concept Plan for the Project (hereinafter "Concept Plan") is attached as Exhibit "B" and is incorporated by reference to this Agreement. By execution of this Agreement, the PARTIES expressly approve the Concept Plan. The CITY or the DEVELOPER may at any time propose modifications to the Concept Plan subject to the agreement of the CITY and the DEVELOPER. All site and building plans are subject to review and approval by the CITY for compliance with federal, state and municipal code requirements.
- E. The time for performance of any term, covenant, or condition of this Agreement shall be extended by any period of unavoidable delays. In this Agreement, "unavoidable delays" means beyond the reasonable control of the party obligated to perform the applicable term, covenant, or condition under this Agreement and shall include, without limiting the generality of the foregoing, delays attributable to adverse environmental conditions (such as contaminated soil or groundwater), adverse weather conditions, acts of God, any other party in this Agreement, strikes, labor disputes, governmental restrictions, court injunctions, riot, civil commotion, acts of public enemy and casualty or delay in obtaining any necessary permit from any governmental agency.

II. FINANCIAL ASSISTANCE

- A. Beginning in 2019 (based on 2018 real estate taxes), CITY shall reimburse the DEVELOPER for 95% of the Annual TIF Increment Revenue paid to TID 19 for the Property. The reimbursement shall be for either a period of 15 years or an amount not to exceed a cumulative value of \$1,625,000 (which is based on the extraordinary development costs to overcome site constraints), whichever comes first. This reimbursement shall be known as the "Annual TIF Payment."
- B. This financial assistance plan includes any and all further improvements to the Property for the 15-year period including any additional building improvements or development on the Property that generates Annual TIF Increment Revenue for TID 19 over the Base Year Taxes.

- C. The Annual TIF Payment shall be 95% of the amount calculated by subtracting the Base Year Taxes from the actual real property taxes paid on an annual basis starting with the December 2018 tax bill. The “Base Tax Value” is the 2017 assessed real estate value for the Property, which is \$3,450,000. The actual taxes paid on the Base Tax Value is defined to be the “Base Year Taxes.” Real property taxes for purposes of this formula, do not include any special assessments, special taxes, or special charges, and personal property taxes are excluded from this calculation. Notwithstanding the dates in paragraph II(A) above, the first of the 15 payments shall be made in the year in which there is substantial increment from the Project; that is, if on January 1, 2018 substantial construction of the Project has not yet begun, which would be reflected in the January 1, 2018 assessment, the December 2018 tax bill and received by the CITY in 2019, then the first payment will be made in 2020, reflecting the substantial commencement of construction of the Project completed as of January 1 of 2019.
- D. Each year, the Annual TIF Payment will be made on August 15 following the CITY receiving proof from DEVELOPER that the annual real estate and personal property tax bills for the Property have been paid in full, whether in one payment or in installments as allowed under City law.
- E. The financial assistance and this entire Agreement are subject to final certification of TID 19 by the Wisconsin Department of Revenue. If TID 19 is not certified, this Agreement is null and void.

III. DEVELOPER’S TRANSFER RESTRICTIONS AND OBLIGATIONS

- A. DEVELOPER shall be prohibited from selling the Property to an entity which is exempt from real estate taxes, without the CITY’s consent.
- B. Until completion of the obligations under the Sections I and II above, there shall be no sale of the Property, nor any assignment of rights or obligations under this Agreement, without CITY consent, which shall not be unreasonably withheld. This statement shall not prohibit mortgages, leases or easements, which leave DEVELOPER liable to CITY under this Agreement.

IV. OTHER RIGHTS AND REMEDIES.

- A. **Termination and Remedies.** Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, such party shall, upon written notice from any other party, proceed promptly to ensure or remedy such default or breach, and, in any event, within sixty (60) days after receipt of such notice unless such default or breach cannot, with reasonable diligence, be cured within such period in which case said defaulting party shall commence such cure within such period and diligently proceed to cure such default. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a

reasonable time, the aggrieved party may institute such proceedings to compel specific performance by the party in default or breach of its obligation.

Completion of the development in accordance with the terms and conditions of this Agreement is the essential and unique consideration for the obligations of the DEVELOPER and the CITY; accordingly, the CITY and the DEVELOPER shall, in the event of legal proceedings, seek remedies to compel the specific performance of the defaulting party as the only adequate remedy and shall not seek damages in lieu of specific performance unless specific performance is legally unavailable, in which event the CITY and the DEVELOPER may seek damages as authorized. No other remedies for the PARTIES to this agreement exist outside of this Agreement.

- B. The CITY and the DEVELOPER shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purpose of this Agreement; provided that any delay in instituting or prosecuting any such actions or proceedings or otherwise asserting such rights, shall not operate as a waiver of such rights to, or deprive it of or limit such rights in any way (it being the intent of this provision that a party should not be constrained, so as to avoid the risk of being deprived of or limited in the exercise of any remedy because of concepts of waiver, laches or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems involved); nor shall any waiver in fact made with respect to any specific default, be considered or treated as a waiver of any rights with respect to other defaults or with respect to the particular default except to the extent specifically waived in writing.
- C. Except as expressly provided otherwise in this Agreement, the rights and remedies of the PARTIES to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by any party of any one or more such remedies shall not preclude the exercise of it, at the same different times, of any other such remedies for any other default or breach by any other party. No waiver made by any such party with respect to the performance or manner of time thereof, of any obligation of any other party or any condition of its own obligation under this Agreement shall be considered a waiver of any rights of the party making waiver with respect to the particular obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver of any other obligations.
- D. No official or employee of the CITY shall have any personal interest in this Agreement, nor shall any such person voluntarily acquire any ownership interest, direct or indirect, in the legal entities which are PARTIES to this Agreement. No official or employee of the CITY shall be personally liable to the DEVELOPER or any successor in interest, in the event of any default or breach by the CITY, or for any amount which becomes due to the DEVELOPER or its successors under this Agreement.

- E. **Applicable Law, Severability and Entire Agreement.** This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin governing agreements made and fully performed in Wisconsin. If any provision of this Agreement, or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then (unless in the judgment of the party or PARTIES thereby adversely affected such provision was a material part of the consideration for their entering into this Agreement, that without it they would not have entered into this Agreement) the remainder of this Agreement or the application of such provision, or portion thereof, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement sets forth the entire understanding between the CITY and the DEVELOPER with respect to its subject matter, there being no terms, conditions, warranties or representatives with respect to its subject matter other than that contained herein. This Agreement shall be binding upon and shall inure to the benefit of the PARTIES hereto, their respective successors and assigns.
- F. **Amendments to Agreement.** This Agreement may not be changed orally, but only by agreement in writing and signed by the PARTIES hereto.
- G. **Third Parties.** Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the PARTIES hereto and not for the benefit of any other persons, as third party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights, expressed or implied, upon any other person.
- H. **No Partnership Created.** This Agreement specifically does not create any partnership or joint venture between the PARTIES hereto, or render any party liable for any of the debts or obligations of any other party.
- I. **Formalities and Authority.** The PARTIES hereto represent and warrant that they are validly existing and lawful entities with the power and authorization to execute and perform this Agreement. The headings set forth in this Agreement are for convenience and reference only, and in no way define or limit the scope of content of this Agreement or in any way affect its provisions.
- J. **Notices and Demands.** A notice, demand or other communications under this Agreement shall be sufficiently given or delivered if it is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested or delivered personally:

To DEVELOPER:

Briess Industries, Inc.
Attn: Cynthia Kopesky
PO Box 229
Chilton, WI 53014-0229

To CITY:

City of Manitowoc
Attention: City Clerk
900 Quay Street
Manitowoc, WI 54220

or to such other address, within the United States, with respect to a party as that party may from time to time designate in writing and forward to the other as provided in this Section. A copy of any notice, demand or other communication under this Agreement given by a party under this Agreement to any other party under this Section shall be given to each other party to this Agreement.

K. Nonmerger and Survival. Any provision in this Agreement which has not been fully performed prior to transfer of possession shall not be deemed to have terminated, but shall, unless expressly waived in writing, survive such transfer of possession and be in force and effect until performed.

IN WITNESS WHEREOF, the PARTIES have executed this Agreement as of the year and date set forth above, and by so signing this Agreement, certify that they have been duly and properly authorized by their respective entities to make these commitments, and intend them to be binding upon their respective entities and to execute this Agreement on their behalf.

BRIESS INDUSTRIES, INC.

By: _____
Ryan O’Toole, President and Chief Operating Officer

By: _____
Cynthia Kopesky, Chief Financial Officer

STATE OF WISCONSIN)
) ss.
MANITOWOC COUNTY)

Personally came before me this _____ day of October, 2017, the above named Ryan O’Toole, and Cynthia Kopesky, to me known be the persons who executed the foregoing instrument as officers of Briess Industries, Inc.

Notary Public, State of Wisconsin
My Commission: _____

Exhibit A
Legal Description of the Property

PARCEL #3 (052-000-237-000.00)

BLKS 237, 277, 278 & LOTS 2-8 OF BLK 236 & ALL OF BLK 276 EXC PT DESC IN V884 P676 & BLK 279 & PART BLK 281 EXT TO LAKE & VAC STREETS ABBUT. DESC V319 P689

Plus:

Land deeded from Arkion Life Science, LLC to Briess Industries, Inc. in deed recorded October __, 2017 as Document No. _____ (which will be added to Tax Parcel 052-000-237-000.00 as of January 1, 2018).

Depiction of the Property

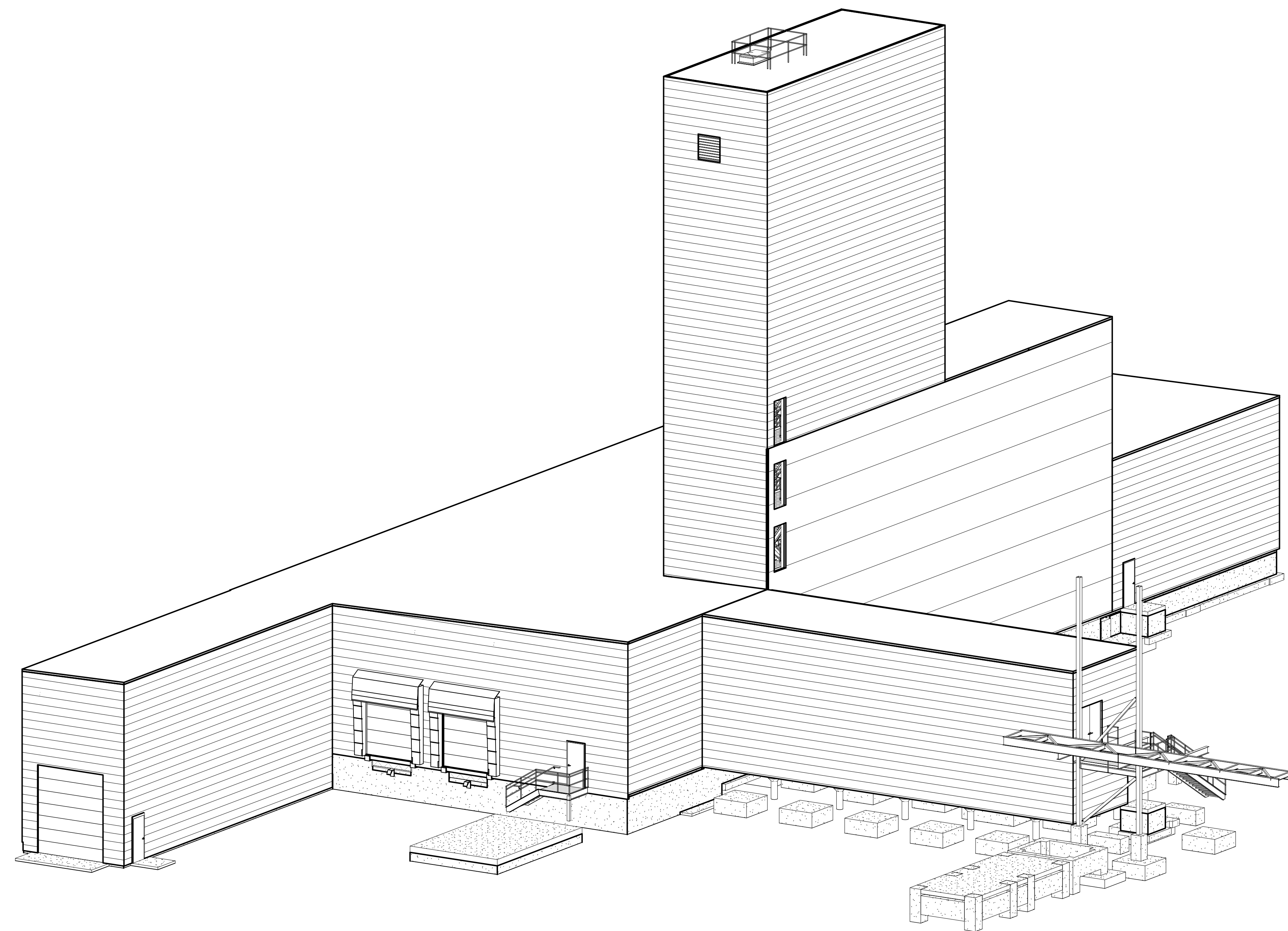
The "Property" is the area outlined in red in the drawing below and marked "3"



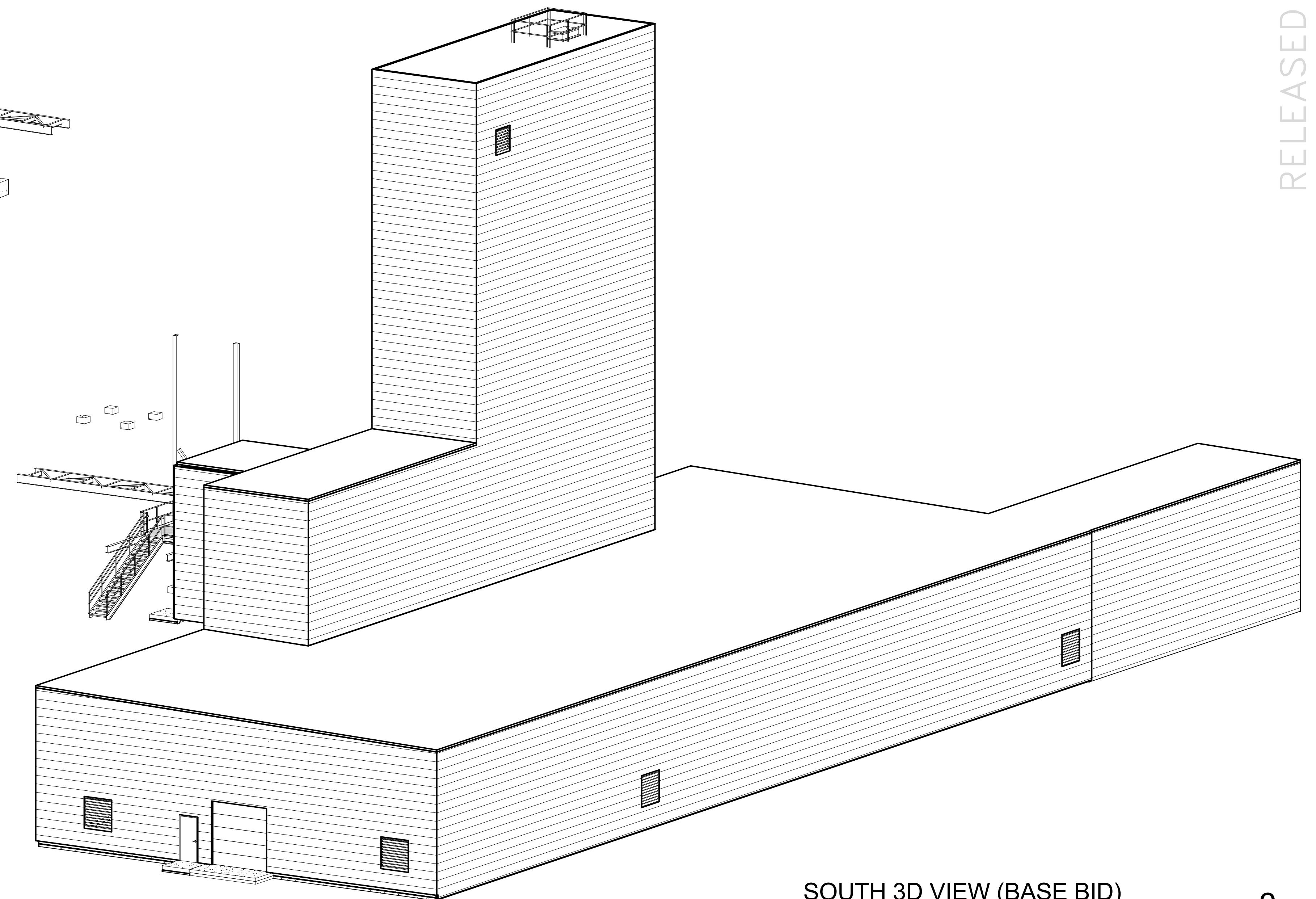
A NEW FACILITY FOR: BRIESS MALT & INGREDIENTS, CO.

MANITOWOC, WI

Exhibit B
Concept Plan



NORTH 3D VIEW (BASE BID)



SOUTH 3D VIEW (BASE BID)

McMAHON
ENGINEERS ARCHITECTS
1000 W. WISCONSIN ST., SUITE 200
MILWAUKEE, WI 53233
Tel: (920) 751-4200 Fax: (920) 751-4284
www.mcmahon.com

McMahon provides this drawing as a concept plan only. It is not intended to be used for construction. All dimensions and materials are approximate. The client is responsible for verifying all information. The client is responsible for obtaining all necessary permits and approvals. The client is responsible for obtaining all necessary utility information. The client is responsible for obtaining all necessary zoning information. The client is responsible for obtaining all necessary environmental information. The client is responsible for obtaining all necessary historical information. The client is responsible for obtaining all necessary archaeological information. The client is responsible for obtaining all necessary geotechnical information. The client is responsible for obtaining all necessary hydrological information. The client is responsible for obtaining all necessary meteorological information. The client is responsible for obtaining all necessary seismic information. The client is responsible for obtaining all necessary soil information. The client is responsible for obtaining all necessary water information. The client is responsible for obtaining all necessary air quality information. The client is responsible for obtaining all necessary noise information. The client is responsible for obtaining all necessary traffic information. The client is responsible for obtaining all necessary utility information. The client is responsible for obtaining all necessary zoning information. The client is responsible for obtaining all necessary environmental information. The client is responsible for obtaining all necessary historical information. The client is responsible for obtaining all necessary archaeological information. The client is responsible for obtaining all necessary geotechnical information. The client is responsible for obtaining all necessary hydrological information. The client is responsible for obtaining all necessary meteorological information. The client is responsible for obtaining all necessary seismic information. The client is responsible for obtaining all necessary soil information. The client is responsible for obtaining all necessary water information. The client is responsible for obtaining all necessary air quality information. The client is responsible for obtaining all necessary noise information. The client is responsible for obtaining all necessary traffic information.

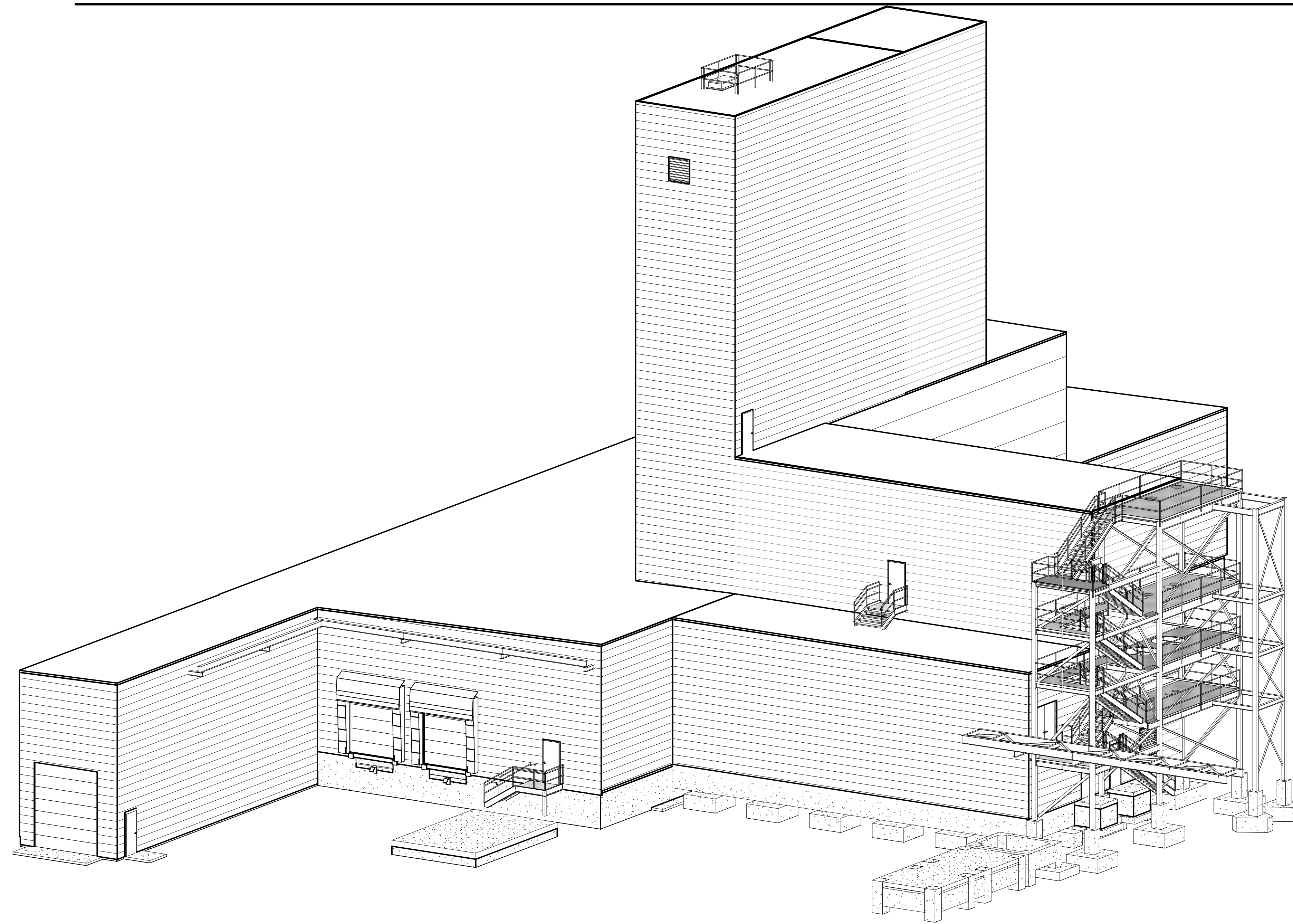
RELEASED FOR BIDDING

A NEW FACILITY FOR:
BRIESS MALT & INGREDIENTS, CO. MANITOWOC, WI
3D VIEWS BASE BID

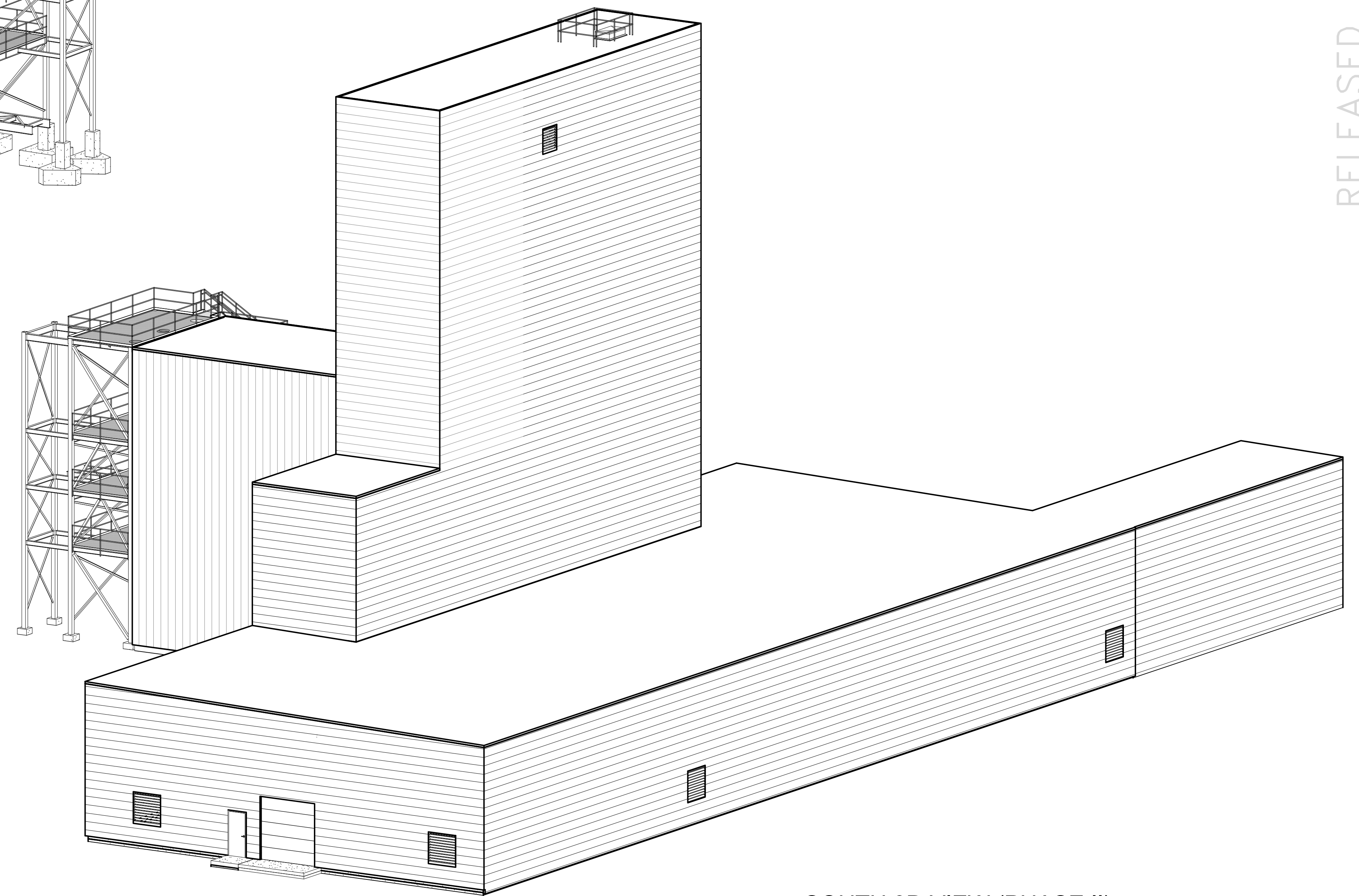
DESIGNED	DRAWN
Designer	Author
PROJECT NO. B0026-9-16-00718	
DATE JUNE 14, 2017	
SHEET NO.	

A NEW FACILITY FOR: BRIESS MALT & INGREDIENTS, CO.

MANITOWOC, WI



NORTH 3D VIEW (PHASE II)



SOUTH 3D VIEW (PHASE II)

RELEASED FOR BIDDING

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NO.	DATE	REVISION

A NEW FACILITY FOR:
BRIESS MALT & INGREDIENTS, CO. MANITOWOC, WI

3D VIEWS PHASE II

DESIGNED	DRAWN
Designer	Author
PROJECT NO. B0026-9-16-00718	
DATE JUNE 14, 2017	
SHEET NO.	

3D 2

