

**DEVELOPMENT AGREEMENT
ONLY C GOOD, LLC EXPANSION PROJECT
1851 S Alverno Road**

THIS AGREEMENT (hereinafter called the "Agreement") made as of the 20th day of April, 2015, by and between THE CITY OF MANITOWOC (hereinafter called the "CITY") and Only C Good, LLC, (hereinafter called the "DEVELOPER"). The CITY and DEVELOPER may collectively be referred to as the "PARTIES."

WITNESSETH:

WHEREAS, DEVELOPER seeks to construct a 19,070 square foot building addition with construction value of \$1.45 million located at 1851 S Alverno Road, City of Manitowoc, Manitowoc County Parcel #449-008-011, more specifically described as Lot 1 of the Certified Survey Map recorded as document #1153668 and shown in Exhibit A (the "Property");

WHEREAS, said construction is required in order to facilitate the addition of approximately 120 new employees over the next three years;

WHEREAS, the Property is located in Tax Increment Finance District No. 17 ("TID 17"), and planned public investments identified in the Project Plan for TID 17 include utility installations and extensions as well as development project contributions;

WHEREAS, the CITY has targeted the Enterprise and Technology Park to support additional development and tax base for the community; and,

WHEREAS, the electrical utility extension costs being supported with TIF funds will potentially facilitate additional development in TID 17.

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 a 19,070 square foot office addition and an additional 47 parking stalls to support the business expansion in accordance with this Agreement ("Project"). The total construction costs will be approximately \$1.45 million with an estimated assessed value of approximately \$1.26 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 constructed on the Project Site) by October 22, 2015 (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 2016 (based on 2015 real estate and personal property taxes), CITY shall reimburse the DEVELOPER for fifty percent (50%) of new incremental taxes for the Property. The reimbursement shall be for either a period of five years or an amount not to exceed a cumulative value of \$35,000 (which is based on the electrical utility extension costs), whichever comes first. This reimbursement shall be known as the Annual TIF Payment.
- B. Each year, the CITY will have the option to provide an Annual TIF Payment of greater than 50% of the incremental taxes paid by Developer if the CITY decides that TID 17 can bear the additional output, and it is advantageous to the CITY to accelerate the payment process to reach the cumulative value of \$35,000 more quickly.
- C. This financial assistance plan includes any and all further improvements to the Property for the five-year period including any additional building improvements or development on the Property that generates tax increment for TID 17.
- D. The Annual TIF Payment shall be calculated by subtracting the actual real and personal property taxes paid on an annual basis from the actual real and personal property taxes paid on the Base Tax Value. The Base Tax Value is the 2014 assessed real estate value for the Property, which is \$1,410,300, plus the 2014 assessed personal property value for the Property, which is \$169,900, for a total of \$1,580,200. Real and personal property taxes do not include any special assessments, special taxes, or special charges.
- E. 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.

III. DEVELOPER'S TRANSFER RESTRICTIONS AND OBLIGATIONS

- A. DEVELOPER shall be prohibited from selling the Property to a non-profit organization 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 without CITY consent, which shall not be unreasonably withheld.

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.

STATE OF WI - MTWC CO
PRESTON JONES REG/DEDS
RECEIVED FOR RECORD
03/23/2015 9:38:00 AM
SM
CIVIL & STRUCTURAL ENGINEERS
102 REVERE DRIVE
MANITOWOC, WI 54220-3147
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SCZYGELESKI
LAW FIRM

DOC# 1153668

VOL 31

PG 309

CERTIFIED SURVEY LOCATED IN THE SW 1/4 OF THE NW 1/4 OF SECTION 34, T.19N., R.23E., CITY OF MANITOWOC, MANITOWOC COUNTY, WISCONSIN, BEING A RESURVEY OF TRACT 1 OF A CERTIFIED SURVEY RECORDED IN VOLUME 26, PAGE 383 AND PART OF LOT 1, BLOCK 8 OF THE MANITOWOC I-43 INDUSTRIAL PARK SUBDIVISION NO. 3

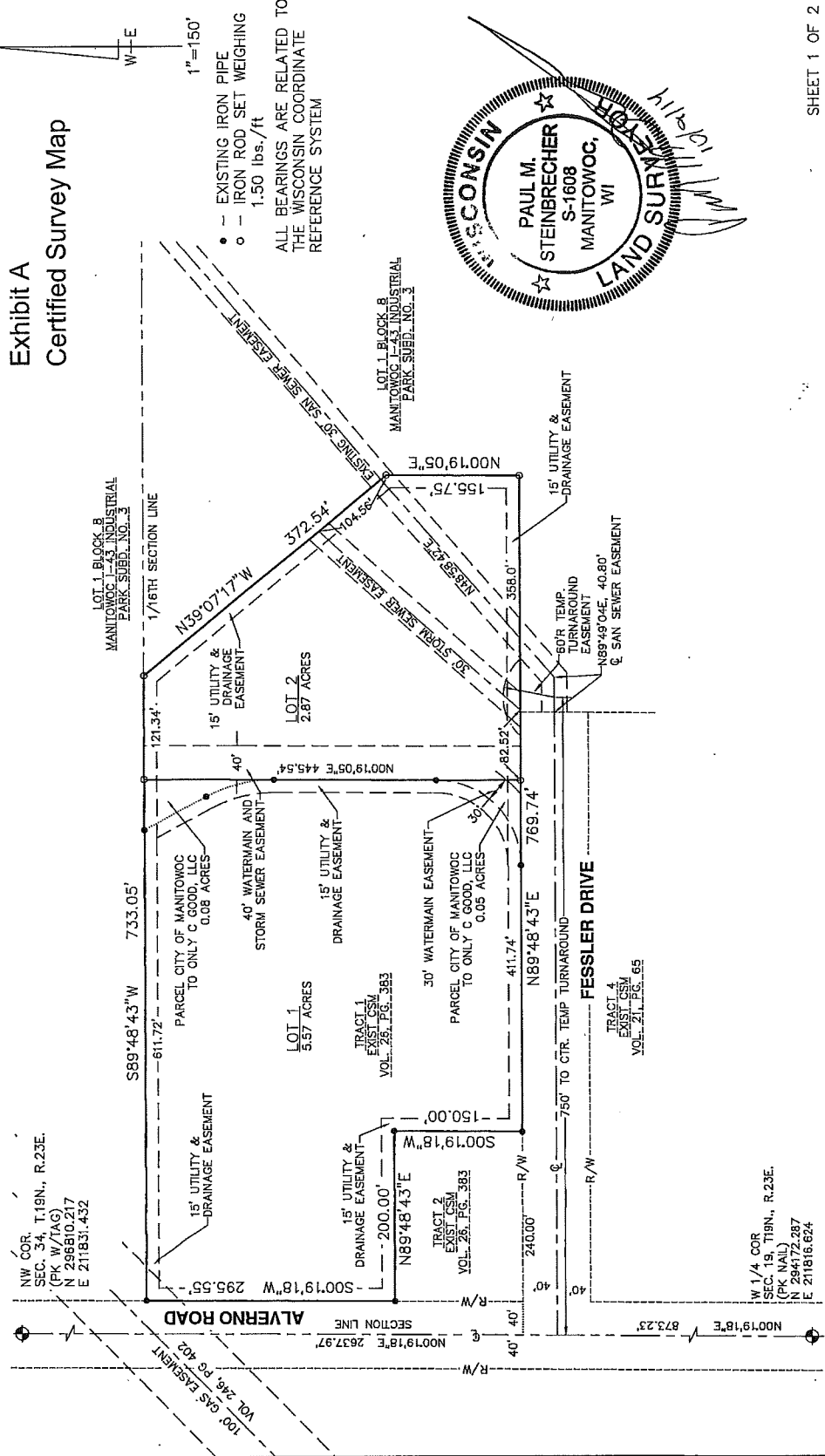
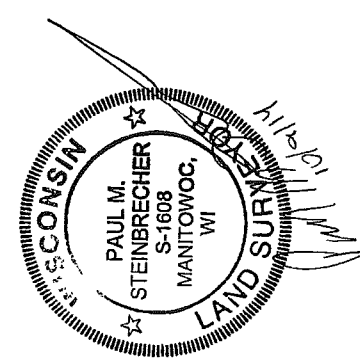


Exhibit A
Certified Survey Map

- - - EXISTING IRON PIPE
 - o - - IRON ROD SET WEIGHING 1.50 lbs./ft
- ALL BEARINGS ARE RELATED TO THE WISCONSIN COORDINATE REFERENCE SYSTEM
- 1"=150'
- W-E



1153668

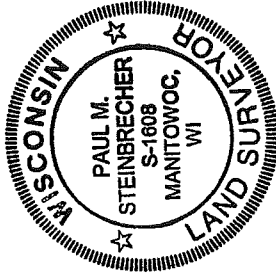
CERTIFIED SURVEY LOCATED IN THE SW 1/4 OF THE NW 1/4 OF SECTION 34, T.19N., R.23E., CITY OF MANITOWOC COUNTY, WISCONSIN, BEING A RESURVEY OF TRACT 1 OF A CERTIFIED SURVEY RECORDED IN VOLUME 26, PAGE 383 AND PART OF LOT 1, BLOCK 8 OF THE MANITOWOC I-43 INDUSTRIAL PARK SUBDIVISION NO. 3

SURVEYOR'S CERTIFICATE

I, Paul M. Steinbrecher, Registered Land Surveyor with SMI do hereby certify that I have surveyed and mapped the following described tract: A tract of land located in the SW 1/4 of the NW 1/4 of Section 34, T.19N., R.23E. City of Manitowoc, Manitowoc County, Wisconsin being a resurvey of Tract 1 of a Certified Survey recorded in Volume 26, Page 383 and part of Lot 1, Block 8 of the Manitowoc I-43 Industrial Park Subdivision No. 3 and described as follows: Commencing at the West 1/4 corner of said Section 34, thence N00°19'18"E along the section line 873.23 feet to the north right of way of Fessler Drive extended to the section line, thence N89°48'43"E along said right of way 240.0 feet to the point of real beginning, thence continue N89°48'43"E along said right of way 769.74 feet, thence N00°19'05"E, 155.75 feet, thence N39°07'17"W 372.54 feet to the 1/16th section line, thence S89°48'43"W 733.05 feet along said 1/16th section line to the east right of way of Alverno Road, thence S00°19'18"W along said right of way 295.55 feet, thence N89°48'43"E 200.0 feet, thence S00°19'18"W 150.0 feet to the point of real beginning.

Said tract contains 8.44 acres. I further certify that the adjacent map is a true representation of said property and correctly shows the exterior boundary lines and correct measurements thereof. Also that I have fully complied with the requirements of Chapter 236.34 of the Wisconsin Statutes and Chapter 21 of the Municipal Code of the City of Manitowoc.

Dated 10/14/14
Paul M. Steinbrecher
Paul M. Steinbrecher
Professional Land Surveyor, S-1608



OWNER'S CERTIFICATE

As owners, we hereby certify that we caused the land described on this map to be surveyed, mapped, divided and dedicated as represented on the map, and that we shall comply with the established drainage plan on file at the Manitowoc City Hall and with the "Standard Utility Easement Conditions" recorded at the Manitowoc County Register of Deeds on November 7, 1997 in Volume 1252, Page 498 of Records, Document No. 798738 and as may be amended from time to time. We hereby consent to the granting of utility, access and drainage easement to the Manitowoc Public Utilities, City of Manitowoc; the Telephone Company and the Cable TV Company if noted on the map of this Certified Survey for the purpose of granting to the applicable firm the right to access, to place, repair and maintain applicable utilities. Said compliance with the drainage and plan easements granted shall run with the land and be binding upon the owners, their successors and assigns.

Dated 10-14-14
Kenlyn R. Gatz
Kenlyn R. Gatz, Member
Justin M. Nickels
Justin M. Nickels, Mayor
City of Manitowoc - Justin Nickels, Mayor
Jennifer Hudson
Jennifer Hudson, Clerk
City of Manitowoc - Jennifer Hudson, Clerk

CERTIFICATE OF PLANNING AGENCY
This certified survey map has been submitted and approved by the City of Manitowoc Plan Commission.

Dated 10/14/14
Paul Braun
Paul Braun, City Planner

1428905

STATE OF WI - MTWOC CO
RECEIVED FOR RECORD
03/23/2015 9:38:00 AM
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