

## DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (the "Agreement") is entered into on this 3 day of June, 2019, (the "Effective Date") by and between MENARD, INC. ("Menard") and the CITY OF GRAND ISLAND, NEBRASKA ("City"). The foregoing are hereinafter sometimes individually referred to as a ("Party") and collectively referred to as the ("Parties").

### RECITALS:

**WHEREAS**, Menard and City entered into a Purchase and Sale Agreement dated December 13, 2017 (the "PSA") for the sale of property identified in the attached Exhibit A (the "Menard Parcel").

**WHEREAS**, City is the owner of a parcel of land identified on the attached Exhibit B ("City Parcel").

**WHEREAS**, as part of the consideration for City selling the Menard Parcel to Menard, Menard has agreed to construct a new fire station building on the City Parcel in accordance with the Development requirements listed in Article II below ("Improvement(s)") pursuant to the terms and conditions of this Agreement.

**WHEREAS**, the Parties now desire to enter into this Agreement in order to establish their respective rights and obligations.

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, the Parties do hereby agree as follows:

### ARTICLE I - INCORPORATION

**SECTION 1.1** All of the above Recitals are incorporated herein by reference in this Paragraph as if fully restated herein.

### ARTICLE II – DEVELOPMENT

**SECTION 2.1 Project Area.** Menard has agreed, at its sole cost unless otherwise specified in this Agreement, to perform and is responsible for constructing the Improvements upon the City Parcel in accordance with the plans, specifications, requirements and timelines established by this Agreement.

**SECTION 2.2 Improvements.** It is understood and agreed by and among the parties that the Improvements shall consist of a new fire station with a split face block exterior, as depicted and specified in the following documents: GEC Plan Sets Dated March 21, 2019; Grand Island Fire Station #4 Construction Specifications dated March 21, 2019; Grand Island Fire Station construction Signed Set dated January 14, 2019; Grand Island Fire Station Specifications PME dated March 21, 2019; and Grand Island Fire Station #4 Site Civil Plans dated April 24, 2018 (collectively, the "Site Improvement Plans"). The foregoing is subject to the receipt of all necessary government approvals.

**2.2.1 City's Due Diligence Materials.** City, at its sole cost, shall deliver to Menard a geotechnical report, Phase I environmental report and a topographical survey of

the City Parcel prior to Menard beginning construction activities on the City Parcel.

**2.2.2 Fire Station Construction.** Menard at its sole cost and expense will design and construct the Improvements on the City Parcel. The construction of the fire station shall be in accordance with the Site Improvement Plans using Menard-provided materials and supplies. Construction of the fire station shall include the construction of the building, the paved drives, the parking areas, utility extensions from the right of way, and the landscaping. Pursuant to and in accordance with a schedule approved by City's Fire Chief, City equipment identified in Exhibit C shall be removed from the Menard Parcel and installed at the Fire Station constructed upon the City Parcel at Menard's sole cost and expense.

**2.2.3 Costs of Construction.** Menard shall be responsible for all charges, fees and expenses in relation to materials, labor, architect fees (excepting those fees relating to City's review of the Menard created plans), utilities, site preparation, and landscaping, excepting that the City shall be responsible for the cost of upgrading the exterior of the Improvements to tan split face block at a cost not to exceed Fifty Two Thousand Seven Hundred Thirty Eight AND NO/100 Dollars (\$52,738.00). Any costs relating to revisions of the plans shall be the sole cost of City. Any costs relating to required expansion of public rights of way, offsite utility extensions, and any other work in addition to those items contained in the Site Improvement Plans shall be completed at the sole cost of City.

**2.2.4 Warranty.** Menard or its contractors shall provide to City a one (1) year warranty from the date Menard completes the work contemplated herein.

**SECTION 2.3 Material Modifications.** In the event the City requires any material modifications to the location, size or character of the Improvements, City shall notify Menard of such changes and the Parties shall work in good faith to modify the plans to accommodate the City's requirements to the reasonable satisfaction of Menard and City. Any increase in the cost of completing the Improvements due to such material modification shall be the sole responsibility of City.

**SECTION 2.4 Project Management.** Menard will undertake typical project management responsibilities for the design and installation of the Improvements and shall oversee the construction of the Improvements. Menard shall comply with all local, state, and federal laws during construction of the Improvements.

**SECTION 2.5 Timing, Completion and Approval.** Menard shall construct the Improvements within 2 years of the date of this Agreement (the "**Construction Deadline**"). If Menard has begun construction of the Improvements, but has not completed the Improvements by the Construction Deadline, Menard shall be allowed to extend the Construction Deadline for a period of sixty (60) days. Upon completion of the construction by Menard, City shall have thirty (30) days to inspect the Improvements for any items that are not in accordance with the Site Improvement Plans (the "**Improvement Review Period**"). If any are found, City shall compile a complete list of items not conforming to the Site Improvement Plans (the "**Improvement Correction List**"); if City fails to deliver the Improvement Correction List within the Improvement Review Period, City shall be deemed to have accepted and approved the Improvements. Upon receipt of the Improvement Correction List, Menard shall have thirty (30) days to correct such deficiencies (the "**Improvement Correction Period**"). Upon Menard's completion of the items outlined on the

Improvement Correction List, City shall have an additional thirty (30) days to review and object to Menard's remedial work (the "**Remedial Review Period**"). City shall not, during the Remedial Review Period, add additional items outside the scope of those outlined on the Improvement Correction List. Menard shall have an additional thirty (30) days, or a mutually agreed upon reasonable amount of time, to correct any further remedial work requested by the City (the "**Remedial Correction Period**"). Upon approval of the Improvements by City, or the conclusion of the Remedial Correction Period, Menard shall turn over possession of the Improvements to City.

**SECTION 2.6 Failure to Construct Improvements.** In the event that Menard fails to construct the Improvements, and has not begun its construction of such Improvements pursuant to this Agreement, the City and Menard shall have the option, upon mutual written agreement, to extend this Agreement for a term of one (1) year. If, upon the expiration of this agreement and any extensions, Menard fails to construct the Improvements, the following shall occur:

- (A) Ownership of the Menard Parcel shall revert back to the City, and, within one hundred fifty (150) days, any warehouse improvements placed on the Menard Parcel pursuant to Section 3.7 below shall be removed at the sole cost and expense of Menard;
- (B) The City shall return the purchase price outlined in the PSA to Menard; and
- (C) All Parties shall thereupon be relieved of any and all responsibilities under this Agreement.

**SECTION 2.7 Licenses For Construction.** City hereby grants to Menard, and its contractors, employees, agents, and representatives, a nonexclusive license for the term of this Agreement to enter upon the City Parcel for the performance of all work required or permitted to be performed by Menard under this Agreement. The License and permit granted hereby is limited to a license for entry upon the City Parcel and does not include the granting of or waiver of any professional licensure, i.e. plumber electrician, etc., required by state or local law or regulation. Menard shall provide City with seven days prior notice before the commencement of construction.

**SECTION 2.8 Insurance and Indemnification.**

**2.8.1 Insurance.** During construction of the Improvements, Menard agrees to provide and maintain, and cause its contractors and subcontractors to provide and maintain throughout the period of construction of the Improvements, general liability insurance in the minimum amounts of:

- \$1,000,000.00 for property damage to any one person;
- \$1,000,000.00 for property damage in any one accident;
- \$1,000,000.00 for personal bodily injury or death to any one person or individual; \$1,000,000.00 for personal bodily injury or death in any one accident.

Said insurance shall name City as an additional insured.

**2.8.2 Liens.** Menard shall not cause (or allow its contractors to cause) any mechanics' lien or any other interest to attach to the City Parcel. In the event of such lien or interest, Menard shall within thirty (30) days' notice from City pay such amount owed and cause the lien to be removed or Menard shall bond over the lien in accordance with common practices for providing such a security prevailing and accepted in the locality of Grand Island, Nebraska.

## ARTICLE III – MISCELLANEOUS PROVISIONS

**SECTION 3.1 Agreement Binding.** Except as set forth below, this Agreement is binding on the parties and neither party may assign or delegate its obligations hereunder (except to a construction company or similar entity for purposes of constructing the Improvements), without the prior written consent of the other party.

**SECTION 3.2 Entire Agreement.** This Agreement embodies the entire agreement and understanding of the Parties relating to the subject matter herein and therein and may not be amended, waived or discharged except in an instrument in writing executed by the Parties.

**SECTION 3.3 Permits.** Menard's obligation to construct the Improvements is subject to Menard receiving, at City's cost, a building permit for its development of the City Parcel and receiving all necessary governmental permits and approvals for the Improvements.

**SECTION 3.4 Severability.** If any part, term, or provision of this Agreement is held by a court to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision, and the rights of the Parties will be construed as if the part, term, or provision was never part of this Agreement.

**SECTION 3.5 Enforceability.** The enforceability of this agreement is contingent upon Menard and the City closing on the Menard Parcel transaction as agreed upon in the PSA.

**SECTION 3.6 Waiver.** No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision, nor constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by the Parties, nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. Also, no delay or omission by any of the parties to exercise any right, privilege or power accruing upon any failure of performance shall impair any such right or privilege or shall be construed a waiver thereof.

**SECTION 3.7 Menard Parcel Construction.** Following closing on the purchase of the Menard Parcel and the commencement of the construction of the Improvements outlined herein, Menard shall have the right to begin construction of warehouse improvements upon the Menard Parcel, so long as such construction does not interfere with the City's continued use and enjoyment of the Menard Parcel until that point in time that the City vacates the Menard Parcel.

**SECTION 3.8 No Partnership.** This Agreement shall not create an association, partnership, joint venture or principal and agency relationship or similar other legal relationship under the laws of any state or the federal government, or to render them liable for the debts or obligations of the others, except as otherwise expressly provided in this Agreement. Any correspondence or other references to "partners" or other similar terms will not be deemed to alter, amend or change the relationship between the Parties hereto unless there is a formal written agreement specifically detailing the rights, liabilities and obligations of the Parties as to a new, specifically defined legal relationship.

**SECTION 3.9 Notice.** Any notice, demand, request or other communication which may or shall be given or served by the Parties shall be deemed to have been given or served on the date the same is deposited in the United States Mail, standard, registered or certified, return receipt requested, postage

prepaid; sent by electronic or facsimile transmission; or given to a nationally recognized overnight courier service for next business day delivery and addressed as follows:

If to the Menard:                      Menard, Inc.  
Attn: Properties Division  
5101 Menard Drive  
Eau Claire, WI 54703  
Phone: (715) 876-2532  
Fax: (715) 876-5998  
Email: properties@menard-inc.com

If to City:                                City of Grand Island  
Attn: Mayor  
100 East First Street  
Grand Island, NE 68802  
Phone: (308) 385-5444

The above addresses may be changed at any time by the parties by notice given in the manner provided above.

**SECTION 3.10 Counterparts; Modification.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument. Signature and acknowledgment pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this Agreement. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

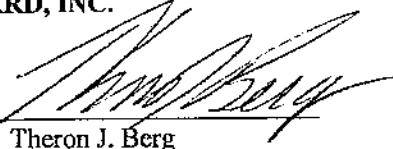
**SECTION 3.11 Governing Law.** This Agreement shall be interpreted and construed in accordance with the laws of the State of Nebraska.

**SECTION 3.12 Captions.** The captions herein are inserted only for reference, and in no way define, limit or describe the scope of this Agreement or the meaning of any provision hereof.

**[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]**

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and agreements herein set forth, the Parties do hereby covenant and agree as follows:

**MENARD, INC.**

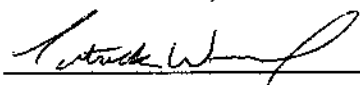
By:   
Theron J. Berg  
Real Estate Manager

Date: May 30, 2019

**ACKNOWLEDGEMENT**

STATE OF WISCONSIN     )  
  )ss.  
COUNTY OF EAU CLAIRE    )

On this 30<sup>th</sup> day of May, 2019, before me a Notary Public within and for this County and State, personally appeared Theron J. Berg to me personally known, who, being by me duly sworn did say that he is the Real Estate Manager of Menard, Inc., the corporation named in the foregoing instrument, and that this instrument was signed on behalf of the corporation and that Theron Berg, Real Estate Manager acknowledged this instrument to be the free act and deed of Menard, Inc.



Notary Public EAU CLAIRE County  
My Commission is permanent



City of Grand Island, Nebraska

By:

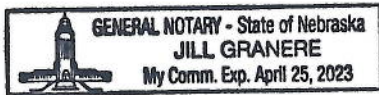
*Roger G. Steele*  
Roger G. Steele, Mayor

Date: June 3, 2019, 2019

**ACKNOWLEDGEMENT**

STATE OF NEBRASKA        )  
  )ss.  
COUNTY OF HALL         )

On this 3rd day of June, 2019, before me a Notary Public within and for said County and State, personally appeared Roger G. Steele to me personally known, who, being by me duly sworn did say that he is the Mayor of City of Grand Island, Nebraska, the entity named in the foregoing instrument, and that the instrument was signed on behalf of the city and Roger G. Steele acknowledged the instrument to be the free act and deed of the city.



*Jill Granere*  
\_\_\_\_\_  
Notary Public

This Instrument Is Drafted by:  
Pat Wewel  
Corporate Counsel Menard,  
Inc.  
5101 Menard Drive  
Eau Claire, WI 54703

**Exhibit A Menard Parcel**

Lot One (1), State Subdivision in the City of Grand Island, Hall County, Nebraska.



**Exhibit B City Parcel**

Lot 1, Hanover Third Subdivision in the City of Grand Island, Hall County, Nebraska.

## **Exhibit C**

Plymovent (vehicle exhaust capture system)

Commercial washer and dryer

Bunker Gear racks

Breathing Air Compressor and bottles

Breathing Air fill station

Communication system: telephone and radio