



# City of Grand Island

Tuesday, November 14, 2017

Council Session

## Item F-5

**#9666 - Consideration of Directing Sale of Fire Station No. 4, 3690  
West State Street to Menards**

Staff Contact: Jerry Janulewicz

# Council Agenda Memo

**From:** Jerry Janulewicz, City Attorney  
**Meeting:** November 14, 2017  
**Subject:** Purchase – Sale Agreement with Menard, Inc.  
**Presenter(s):** Jerry Janulewicz, City Attorney

## Background

After the rejection of all bids for construction of a new 911-Emergency Center at the Fire Station No.1/Fonner Road location, City staff searched for an alternative location for the facility and, in so doing, located land suitable in size and location for this purpose and for relocation of Fire Station No. 4, currently located on State Street at the southwest corner of the Menard's store and yard. The land under consideration is owned by the Meadows Apartment Homes, LLC, and is located at the northwest corner of the intersection of 13<sup>th</sup> Street and North Road. Concurrent with the search for land for the 911-Emergency Center, Menard, Inc., ("Menard") and the City were engaged in discussions concerning Menard's interest in purchasing the real estate presently used by the City as the location of Fire Station No. 4.

## Discussion

The Purchase Sale Agreement (the "Agreement") for council consideration would, if approved by ordinance, authorize the execution of the Purchase Sale Agreement and direct the sale of Lot One in State Subdivision in the City of Grand Island, Hall County, Nebraska, in consideration of \$103,015.00 cash consideration paid at closing. As additional consideration for the sale of the city property, within two years of closing Menard shall construct and convey to City, at Menard's cost, a new fire station pursuant to, and closing contingent upon, the parties' reaching mutual agreement on construction plans and specifications and a development agreement for the new fire station.

Menard will be responsible for the costs of recording the deed, title insurance, and closing costs. Conveyance of the real estate shall be by warranty deed pursuant to the terms and conditions of the Purchase - Sale Agreement between City and Menard. Pending completion of the new fire station, the City will continue to occupy the current Fire Station No. 4.

As provided by law, notice of the sale and the terms of sale are required to be published for three consecutive weeks in a newspaper published for general circulation in the City

of Grand Island. The City Clerk is directed and instructed to prepare and publish said notice.

The electors of the City of Grand Island may file a remonstrance against the sale of the real estate; and if a remonstrance petition against the sale is signed by registered voters of the City of Grand Island equal in number to thirty percent of the registered voters of the City of Grand Island voting at the last regular city election held in the City and is filed with the City Council within thirty days of passage and publication of such ordinance, said property shall not then, nor within one year thereafter, be conveyed.

### **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

### **Recommendation**

City Administration recommends that the Council adopt the Ordinance approving the Purchase Sale Agreement with Menard and directing the sale subject to public remonstrance.

### **Sample Motion**

Move to approve Ordinance No. 9666.

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into by and between the City of Grand Island, Nebraska, a body corporate and politic and a political subdivision of the State of Nebraska, herein referred to as "Seller", and Menard, Inc., a Wisconsin corporation, with offices at 5101 Menard Drive, City of Eau Claire, State of Wisconsin 54703, herein referred to as "Purchaser" with reference to a certain parcel of land located in the City of Grand Island, County of Hall, and State of Nebraska, more fully described as:

Lot One in State Subdivision in the City of Grand Island, Hall County, Nebraska (the "Property"), as depicted on the attached Exhibit A.

In consideration of the mutual covenants herein set forth, the parties agree as follows:

1. **AGREEMENT TO SELL AND PURCHASE:** Seller covenants and agrees to sell, and Purchaser covenants and agrees to purchase the above described property, herein referred to as the "Property", together with all improvements situated thereon together with any and all rights, titles, powers, privileges, easements, licenses, rights-of-way, oil, gas or mineral rights and interests appurtenant to and which benefit the Property and the improvements and the purchase and conveyance contemplated herein will be contingent on and subject to the terms, covenants, conditions and contingencies herein.

2. **PERMITTED ENCUMBRANCES:** The sale of the Property is subject to the following encumbrances (herein referred to as the "Permitted Encumbrances"): building and zoning laws, county and municipal ordinances, state and federal regulations, easements, covenants and restrictions of record accepted in writing by Purchaser.

3. **CONTINGENCIES OF PURCHASER:** Provisions to the contrary herein notwithstanding, performance by the Purchaser is contingent upon satisfaction of all of the following conditions:

- (A) Purchaser obtaining all necessary zoning classifications and variances and the issuance of all necessary permits and approvals to allow construction and operation upon the Property of Purchaser's proposed development.

Seller hereby agrees to make available to Purchaser for Purchaser's review at no additional cost or expense to Purchaser any and all plats, maps, documents and other materials now in Seller's possession which may aid and assist Purchaser in obtaining all necessary zoning and other permits subject to and pursuant to this Agreement.

- (B) Purchaser satisfying itself that the Property has or can be provided with, at reasonable cost of installation, storm sewer or surface drainage (including retention ponds), sanitary sewer, water, electrical, telephone and gas service in sufficient capacities and quantities to provide for the proposed development of the Property by the Purchaser. It shall be at Purchaser's sole discretion, in good faith, as to whether the Property has or can have the above utilities in sufficient

capacities and quantities or whether said utilities can be provided to the Property at reasonable costs of installation.

- (C) Purchaser obtaining geotechnical reports, based upon soil borings and tests, which disclose soil conditions satisfactory to Purchaser for the proposed development of the Property.
- (D) Purchaser obtaining from appropriate authorities permission to erect and operate advertising and informational signs on the Property as Purchaser deems appropriate, the same to be to the satisfaction of Purchaser.
- (E) Purchaser obtaining, in accordance with the provisions of Section 8 herein, at Purchaser's cost and expense, current ALTA boundary and topographical surveys of the Property, which disclose conditions satisfactory to Purchaser for its development of the Property.
- (F) Purchaser inspecting the environmental condition of the Property prior to the Closing Date, including the right to conduct environmental, habitat, wetlands and archeological assessments and other studies on the Property, and finding the results of those studies acceptable. If Purchaser's inspection discloses conditions of Property, which, in Purchaser's sole discretion, are unacceptable to Purchaser, Purchaser may terminate this Purchase Agreement.
- (G) Seller obtaining agreements for the relocation, release, termination and/or extinguishment of such rights-of-way, easements, restrictions, and proposed easements across the Property, as disclosed by the title insurance report or surveys, which in Purchaser's sole opinion, must be relocated, released, modified, terminated and/or extinguished in order to permit Purchaser to develop the Property as a retail lumber and home improvement center. Provided, however, Seller may terminate this Agreement if the cost of obtaining agreements for the relocation, release, termination, and/or extinguishment of such rights-of-way, easements, restrictions, and proposed easements across the Property exceeds or will exceed \$500.00 and Purchaser has not agreed to pay for any excess costs over such \$500.00 amount.

Purchaser may, at its sole option, and at its own expense, enter into agreements to relocate or remove any existing utilities after the Closing Date, but Purchaser shall not be required or obligated to do so.

- (H) Purchaser inspecting the Property, including the right to conduct engineering and mechanical studies of the Property, and finding its condition, structure, amenities and systems acceptable. If Purchaser's inspection discloses conditions of the Property which are unacceptable to Purchaser, Purchaser may terminate this Purchase Agreement.
- (I) Purchaser, at its sole cost and expense, designing and creating mutually agreeable construction plans and specifications for the replacement fire station to be built upon the parcel of land that Seller chooses to replace the Property. The design of

the replacement fire station shall be substantially in accordance with the plan in Exhibit B. Seller may have such plans and specifications reviewed by an independent architect at its sole cost.

- (J) Purchaser and Seller entering into a mutually agreeable development agreement that captures the terms of the proposed development work identified in Section 16 herein.
- (K) Purchaser and Seller entering into the post-closing occupancy agreement substantially in the form of that attached to this Agreement as Exhibit C (the "Post Closing Occupancy Agreement").
- (L) Seller's compliance with the requirements of Neb.Rev.Stat. §16-202 providing for public notice of the proposed conveyance of the Property and completion of statutory notice without any petitions signed by sufficient number of registered voters objecting to the sale of the Property at the date of Closing.

The Contingencies enumerated above are for Purchaser's benefit only, and the non-occurrence of a state of facts sufficient to satisfy any of the Contingencies above may not be used or pleaded by Seller as a defense to the enforceability of this Agreement.

4. CONTINGENCIES OF SELLER. Provisions to the contrary herein notwithstanding, performance by Seller is contingent upon satisfaction of all of the following conditions:

- (A) Purchaser, at its sole cost and expense, designing and creating mutually agreeable construction plans and specifications for the replacement fire station to be built upon the parcel of land that Seller chooses to replace the Property. The design of the replacement fire station shall be substantially in accordance with the plan in Exhibit B. Seller may have such plans and specifications reviewed by an independent architect at its sole cost.
- (B) Purchaser and Seller entering into a mutually agreeable development agreement that captures the terms of the proposed development work identified in Section 15 herein.
- (C) Purchaser and Seller entering into the post-closing occupancy agreement substantially in the form of that attached to this Agreement as Exhibit C (the "Post Closing Occupancy Agreement").
- (D) Seller's compliance with the requirements of Neb.Rev.Stat. §16-202 providing for public notice of the proposed conveyance of the Property and completion of statutory notice without any petitions signed by sufficient number of registered voters objecting to the sale of the Property at the date of Closing.

The Contingencies enumerated above are for Seller's benefit only, and the non-occurrence of a state of facts sufficient to satisfy any of the Contingencies above may not be used or pleaded by Purchaser as a defense to the enforceability of this Agreement.

5. **FAILURE OF CONTINGENCIES:** The expiration of the contingencies listed in Section 3 and 4 shall be One Hundred Fifty (150) days after last execution of this Agreement or in the event the One Hundred Fiftieth (150<sup>th</sup>) day falls on a weekend or holiday the next business day thereafter (the “**Contingency Period**”). In the event any of the contingencies and conditions have not been met or in Purchaser’s or Seller’s opinion will not be met by the expiration of the Contingency Period or extensions thereof, Purchaser and Seller shall have the right and option to waive any contingency or condition, or Purchaser or Seller may declare this Agreement terminated and have the Earnest Money paid by Purchaser, along with any accrued interest, returned to Purchaser forthwith. If Purchaser or Seller exercises its option to declare this Agreement terminated and Purchaser receives a return of the Earnest Money paid by Purchaser, or if this Agreement otherwise becomes terminated, Purchaser and Seller shall have no further obligation or liability under this Agreement. In addition, Seller and Purchaser shall each be solely responsible for and shall hold the other harmless for any expenses, costs, damages, claims, lawsuits and judgments, including and not limited to expenses and attorneys fees, incurred by each of them respectively as a result of this Agreement.

Alternatively, in the event any of the contingencies have not been satisfied or waived by Purchaser and Seller as of the scheduled expiration of the Contingency Period, Purchaser shall have the right to extend the Contingency Period and Closing Date for two (2) thirty (30) day periods upon notice to the other party of its intent to so extend no later than the then expiration of the Contingency Period.

6. **DUE DILIGENCE:** Within fourteen (14) days following the date of last execution of this Agreement, Seller shall deliver to Purchaser true, correct and complete copies of the items concerning the Property listed below, to the extent they exist and are in Seller’s possession (the “**Due Diligence Items**”):

- (A) Any prior title evidence, such as a current abstract or title policy.
- (B) The most recent survey of the Property in Seller’s possession.
- (C) The written results, if any of environmental site assessments, engineering reports, soil boring test samples or other inspections done at or on the Property including testing and certification results from any on-site grading activities completed to date.
- (D) All permits issued by governmental authorities for the Property.
- (E) Copies of all crop or billboard leases, if applicable.
- (F) Copies of utility bills for the most recent 12 months for the Property.
- (G) Copies of all current maintenance service agreements, if any, relating to the Property.
- (H) All warranties covering the Property and its improvements.

7. **SELLER'S WARRANTIES:** Seller states, warrants, guarantees and represents as follows:

- (A) Subject to the requirements of Neb.Rev.Stat. §16-202 providing for public notice of the proposed conveyance of the Property and completion of statutory notice without any petitions signed by sufficient number of registered voters objecting to the sale of the Property at the date of Closing, Seller has and will have on the Closing Date good and marketable fee title to the Property, subject only to the Permitted Encumbrances.
- (B) Subject to the requirements of Neb.Rev.Stat. §16-202 providing for public notice of the proposed conveyance of the Property and completion of statutory notice without any petitions signed by sufficient number of registered voters objecting to the sale of the Property at the date of Closing, Seller has and will have on the Closing Date full right and authority to convey the Property, and in regard thereto to execute this Agreement and to execute and deliver all documents required of Seller for the consummation of this Agreement.
- (C) The persons signing this Agreement on behalf of Seller are duly authorized to do so and their signatures bind Seller in accordance with the terms of this Agreement.
- (D) The Property shall be free of tenancies and bill boards on the Closing Date other than the occupancy by the Seller under the Post Closing Occupancy Agreement.
- (E) No person, firm, corporation or entity has any option, right of first refusal or similar right to acquire the Property, or any part thereof, from Seller.
- (F) Seller has no knowledge of any condemnation proceedings having been instituted or threatened against the Property.
- (G) That Seller is not a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control; that Seller is not listed in the annex to, and is not otherwise subject to the provisions of, Executive Order No. 13224 (the “Executive Order”); and that Seller is not acting on behalf of any Person or entity that is listed in the annex to, or is otherwise subject to the provisions of the Executive Order.
- (H) Seller has received no notice of, nor has Seller any knowledge of, any violations of any federal, state, county or municipal laws, ordinances, orders, regulations or requirements affecting the Property.
- (I) Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code ("IRC"), i.e., Seller is not a nonresident alien, foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the IRC and Income Tax Regulations).



- (J) To the best of Seller's knowledge the Property has not at any time been used as a waste dump, nor has it been used for the manufacture, treatment, storage or disposal of hazardous waste, hazardous substances, petroleum, PCBs, pollutants, contaminants or materials of like import that cause a present or future hazard to the ground water or other parts of the environment, and that the Property is completely free of any and all latent and non-apparent hazards and characteristics which would impair the use of the Property for the Purchaser as contemplated herein, or would cause the Purchaser any liability to any person or persons, natural or corporate, or any governmental body.

The representations and warranties contained in this section shall be true and correct on the Closing Date and shall survive the Closing and continue in full force and effect notwithstanding the Closing and consummation of the transaction contemplated herein, and the obligation of the Purchaser to close this transaction is expressly conditioned upon said representations.

8. **SURVEYS:** Purchaser, at Purchaser's sole cost and expense, shall obtain its own boundary and topographic survey (the "**Survey**").

9. **COMPLIANCE WITH MUNICIPAL OR STATE REGULATIONS:** All violations of law, ordinances or orders of state, county and municipal agencies affecting the Property at the date hereof shall be cured by Seller before the Closing Date, and all notices and warnings of such violation shall be complied with by Seller before that time, and the Property shall be conveyed free of all such notices and warnings. Seller hereby authorizes Purchaser to make and/or have made searches for such violations.

10. **PURCHASE PRICE:** The consideration due from Purchaser to Seller for the Property shall be ONE HUNDRED THREE THOUSAND FIFTEEN AND NO/100 DOLLARS (\$103,015.00) cash upon closing and such additional consideration as set forth in paragraph 16 below (the "**Purchase Price**").

11. **EARNEST MONEY:** The sum of One Thousand Dollars (\$1,000.00), the same representing "**Earnest Money**", will be paid into an interest-bearing escrow account to be established by the Purchaser's title insurance company within ten (10) business days after last execution of this Agreement.

In the event this Agreement is consummated, the Earnest Money, plus interest, shall be applied to and credited against the Purchase Price on the Closing Date or returned to Purchaser at Purchaser's election with the remaining balance to be paid in cash at that time. Notwithstanding the preceding, Purchaser may elect to receive at the Closing a refund of all Earnest Money paid, upon payment to Seller of an equal amount from Purchaser's §1031 account. If this Agreement terminates for failure of satisfaction of a contingency, all Earnest Money, plus interest, shall be returned promptly to Purchaser.

12. **REAL ESTATE TAXES, ASSESSMENTS AND TRANSFER FEES:** Seller hereby warrants that there are no real and personal property taxes associated with the Property, as it is owned by a public entity. Seller shall indemnify Purchaser for any taxes or assessments

levied against the Property prior to the Closing Date. Purchaser shall be responsible for paying all taxes levied on the Property on the Closing Date and for future dates.

Seller shall be responsible for payments arising from recapture agreements or fees against the Property existing on the Closing Date whether or not arising from Purchaser's development of the Property.

Seller shall pay by separate check or credit against the Purchase Price all state, county, and city transfer taxes, deed taxes, rezoning fees, annexation fees, park fees, impact fees, green acres tax, recaptures and/or deed stamps due any governmental agency resulting from the transfer of the Property by Seller to Purchaser or change in zoning or use.

13. **EVIDENCE OF TITLE:** Purchaser shall obtain a commitment for title insurance, including copies of all Schedule B documents, with extended coverage in the amount of the Purchase Price set out herein, naming the Purchaser as the insured, as its interest may appear (the "**Commitment**"), written by Grand Island Abstract, Escrow & Title Co., 704 W. 3<sup>rd</sup> Street, Grand Island, NE 68801 (the "**Title Company**").

Within seven (7) days of approval of this Agreement by Seller's City Council Seller will deliver to Purchaser any prior title evidence it may have, such as a current abstract or title policy, to expedite further examination of title. Purchaser shall after receipt of the last to arrive of the Commitment, the Survey, and legible copies of all Schedule B documents provide to Seller copies of the Commitment, Survey and all Schedule B documents and shall advise Seller in writing of any objections it has to the state of title to the Property shown in the Survey or Commitment. Seller shall have sixty (60) days from the date of Purchaser's notice of such objections to make a good faith effort to cure such objections and to furnish a later report showing the objections cured or removed. If such objections cannot be cured within sixty (60) days after the date of Purchaser's notice of such objection, Purchaser may; (i) declare this Agreement null and void, and in such event receive a refund from Seller of all Earnest Monies paid, plus interest, and neither party shall have any further obligation or liability under this agreement, (ii) at its election, take the title as it then is (with a right to deduct from the Purchase Price for liens or encumbrances of a definite or ascertainable amount), (iii) maintain its objections to the items uncured and extend Seller's time to cure; or (iv) attempt to cure itself. Purchaser retains the right to update title, object to any new items and have the same remedies mentioned above through the Closing Date.

On the Closing Date, when title is transferred to Purchaser, Seller shall cause to be delivered to Purchaser an owner's policy with extended coverage containing a Gap Endorsement, a Survey Endorsement, an Access Endorsement, a Same Land Endorsement, a Restriction, Encroachment, Mineral Endorsement, Contiguity Endorsement, and a PIN Endorsement, guaranteeing Seller's title to be in the condition required by this Agreement. All costs relating to the issuance of the title policy, including, but not limited to, title search and examination fees, policy premiums and the cost for any required endorsements shall be paid for by Purchaser.

14. **POSSESSION:** Subject to the Post Closing Occupancy Agreement, legal possession of the Property shall be delivered to Purchaser on the Closing Date, except as herein provided. On the Closing Date the Property shall be free of trash, debris and refuse free. Purchaser or its agent shall be permitted upon the Property prior to Closing for soil testing,

environmental and/or inspections, surveying or other investigations or functions relating to its purchase of the Property. Purchaser agrees to indemnify and hold Seller harmless from any and all loss, claim, action, demand or liability which may arise against the Seller or the Property by virtue of any of Purchaser's actions pursuant to this Agreement. Notwithstanding the foregoing, Purchaser shall not indemnify or defend Seller against any loss, claim, action, demand, liability, or expense arising out of, or having to do with, the results of Purchaser's inspections, testing or determinations. Upon completion of Purchaser's investigations and tests, Purchaser shall restore the Property as reasonably possible to the same condition as it existed before Purchaser's entry upon the Property.

15. **CLOSINGS:** Unless otherwise agreed to by the parties, this transaction shall be closed at the offices of the Title Company insuring the Property. The "Closing" of the transaction contemplated hereby shall be held on the expiration of the Contingency Period ("Closing Date"). Closing may be held prior to such time upon mutual agreement of the parties. Closing costs and escrow fees, if any, charged by the Title Company to close the transaction, shall be divided equally between the parties.

Seller acknowledges that Purchaser may be providing funds by way of a cashier's check, and that the Title Company may require said check to clear its bank in order for the funds to become available for disbursement. In the event an extension is warranted for delays in Closing or disbursement caused by Title Company, the Closing Date will be automatically extended without having to amend this Agreement, said extension to be one business day after said delay in Closing or disbursement caused by the Title Company has been resolved. Possession of the Property shall be delivered simultaneously with the disbursement of Seller's net proceeds.

At Closing, Seller shall deliver or cause to be delivered to Purchaser each of the following items:

- (A) A Warranty Deed, in recordable form, duly executed and acknowledged by Seller, conveying title to the Property to Purchaser, free and clear of all liens, taxes, restrictions, tenancies, occupancies and encumbrances of every kind and description except:
  - 1) Permitted Encumbrances specified in Section 2 herein;
  - 2) General real estate taxes and assessments which are a lien but which are not due and payable on the Closing Date, and special assessments caused by Purchaser's activities or improvements;
- (B) The title policy in the form specified in Section 13 herein;
- (C) Such evidence or documents as may be reasonably required by the Purchaser or the Title Company evidencing the status and capacity of Seller and the authority of the person or persons who are executing the various documents on behalf of Seller in connection with the sale of the Property;
- (D) A certification in a form to be provided or approved by the Purchaser, signed by Seller under penalties of perjury, containing the following:

- 1) Seller's U.S. Taxpayer Identification Number;
- 2) The home address of Seller (or the business address of Seller if Seller is not an individual); and,
- 3) A statement that Seller is not a foreign person within the meaning of Section 1445 of the IRC i.e., Seller is not a nonresident alien, foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the IRC and Income Tax Regulations).

In the event that Seller fails to deliver such Certification at Closing or Seller delivers such Certification but the Purchaser has actual knowledge that such Certification is false or the Purchaser receives notice that the Certification is false from any agent of the Purchaser or Seller, the Purchaser shall be entitled to withhold from the Purchase Price a sum equal to ten percent (10%) of the total amount which otherwise would have been realized by Seller from such sale, which sum will be paid by the Purchaser to the United States Treasury pursuant to the requirements of Section 1445 of the IRC and the regulations promulgated thereunder.

- (E) Development Agreement described in Section 16
- (F) An affidavit of title warranting that no outstanding mechanic's lien rights exist, that the Property is not subject to any unrecorded interest or encumbrances, adverse claims, possession or occupancies and is not subject to any leases, oral or written, and that all assessments, utility charges and taxes have been paid to the Closing Date.
- (G) Closing Prorations:
  - (i) All adjustments shall be made as of midnight of the day prior to the Closing Date and shall be in accordance with the customs in respect of title closing recommended by the Title Company;
- (H) Post-Closing Occupancy Agreement, if applicable.
- (I) Copies of all utility bills for the Property.
- (J) All additional documents and instruments as in the reasonable opinion of the Purchaser's counsel or the Title Company are necessary to the proper consummation of this transaction.

Unless explicitly stated in this Agreement to the contrary, Seller shall be responsible for all costs related to the production and delivery of the required closing documents. Seller and Purchaser shall exchange draft copies of all proposed closing documents at least five (5) business days prior to the scheduled Closing Date. If such documents are not received in a timely manner either party may extend the Closing Date accordingly.

16. **PURCHASER'S DEVELOPMENT OBLIGATIONS:** Contingent on Seller obtaining or identifying replacement property by the Closing Date, Purchaser hereby covenants and agrees, as additional consideration for the completion of the transaction contemplated in this Agreement, to construct for Seller a new fire station substantially in accordance with the proposed fire station layout attached hereto as Exhibit C. Seller, at its sole cost, shall deliver to Purchaser a geotechnical report, Phase I Environmental Study, and an ALTA and topographical survey of the replacement property prior to Purchaser beginning construction of the fire station. Purchaser will design and construct or cause to be constructed, using Purchaser materials and supplies, the fire station including but not limited to the building, paved drives, and parking areas in substantial conformance with (i) development and building plans approved by Seller and Purchaser; and (ii) the design and construction specifications approved by Seller and Purchaser. Purchaser shall be solely responsible for all charges, fees and expense in relation to the construction of the improvements including materials, labor, architect fees (excepting those fees to review the Purchaser created plans if Seller chooses to have such plans reviewed), utilities, site preparation, and landscaping. Purchaser shall have 2 years from the Closing Date to complete such construction. Seller hereby grants to Purchaser a temporary construction easement over such property until such time as the construction is completed. Seller shall also obtain for Purchaser all necessary permits or approvals to complete the construction of the fire station. Upon Purchaser's completion of the fire station, Purchaser shall provide Seller with a 1 year warranty for the completed work. Purchaser shall solely be responsible for completion of the fire station on the replacement property. Any additional work required as part of the construction of the new fire station (including but not limited to expansion of public rights of way, off site utilities, etc.) shall be completed at the sole cost of the Seller. If the transaction contemplated herein fails to Close, Purchaser's obligation to construct the fire station shall be terminated and no further action shall be required by Purchaser. The terms of Purchaser's obligations shall be further spelled out in a development agreement between Seller and Purchaser to be entered into at Closing (the "Development Agreement").

17. **REAL ESTATE BROKERS AND BROKERAGE COMMISSION:** Seller and Purchaser each hereby represent and warrant to the other that this Purchase and Sale Agreement is made and entered into as a result of direct negotiations between parties hereto without the aid or assistance in any fashion of any broker or other agent and each of the parties hereby represents and warrants to the other that they have entered into no agreement or made any undertaking of any kind or character whatsoever as a result of which any claim could properly be brought against the other for any commission, finder's fee or other form of compensation of a similar character as a result of this transaction. Each party hereby agrees to indemnify and hold the other harmless as a result of any misrepresentation or breach of the warranty contained in this section.

18. **SURVIVAL OF COVENANTS:** Any representation, warranty, covenant or agreement herein of either party to this Agreement whether to be performed before or after the Closing Date shall not be deemed to be merged into or waived by the instruments of closing, but shall expressly survive the Closing and shall be binding upon the party obligated thereby.

19. **PARTIAL INVALIDITY:** If any provisions or portions of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision, or portion



23. **LIQUIDATED DAMAGES:** If Purchaser wrongfully fails to complete the Closing as provided in this Agreement, Seller, at its sole and exclusive remedy, may retain the Earnest Money paid under Section 10 hereof as liquidated damages. Seller has agreed to this liquidated damage provision because of the difficulty of ascertaining Seller's actual damages given the uncertainties of the real estate market, the fact that Seller retains ownership of the Property, fluctuating property values and differences of opinion with respect to such matters. If Seller fails to complete the Closing as provided in this Agreement or otherwise commits a material breach of this Agreement, Purchaser shall be entitled to the prompt return of all Earnest Money and may seek all remedies available at law or in equity including specific performance.

24. **HEADINGS:** The section titles are for convenience only and do not define, limit or construe the contents of such paragraphs.

25. **DATE:** This Agreement shall be dated and effective and binding as of the date of the last execution.

26. **CONSTRUCTION:** Both parties have contributed to the drafting of this Agreement. In the event of a controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this Agreement or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

27. **TAX-DEFERRED EXCHANGE:** Seller acknowledges that Purchaser may elect to receive the Property in connection with the completion of a tax-deferred exchange under Section 1031 of the Internal Revenue Code of 1986. Seller hereby agrees to take such steps as Purchaser may reasonably require, at no cost to Seller, in order to complete the tax-deferred exchange. Therefore, to the extent possible, the provisions of this section shall be interpreted consistently with this intent.

Purchaser may, on or before the Closing Date, assign its rights under this Agreement to a "qualified intermediary", as defined in Treasury Regulation 1.1031(i)-1(g)(4) (the "Accommodator"). Each party agrees to cooperate with the other party and the Accommodator in arranging the exchange. Each party shall execute any and all documents reasonably requested by the other party and the Accommodator to facilitate the exchange as a tax-deferred exchange under Section 1031 of the Code and the Treasury Regulations effective thereunder at the time of the Closing including but not limited to any appropriate amendments to this Agreement and any appropriate escrow instructions; provided, however, that no such document shall adversely affect a party in any respect or change any of the economic terms and conditions of the transaction with respect to Purchaser.

Seller acknowledges that Seller is not relying on any representations of Purchaser or Purchaser's counsel with respect to the federal, state or local income tax treatment of Seller in connection with this transaction. The obligations of the parties under this section shall survive the Closing and the delivery of the deed.

28. **EMINENT DOMAIN:** If prior to the Closing Date, Seller acquires knowledge of any pending or threatened action, suit or proceeding to condemn or take all or any part of the

property under the power of eminent domain, then Seller shall immediately give notice thereof to Purchaser. Upon receipt of such notice Purchaser, at Purchaser's option shall have the right to:

- (A) Terminate this Agreement as to the Property subject to the action or proceeding, whereupon the Purchase Price shall be reduced accordingly; or
- (B) Terminate this Agreement as to the entire Property, whereupon the Earnest Money shall be paid to Purchaser and all parties shall thereupon be relieved of all further liability hereunder.

If Purchaser does not exercise its right to terminate then Purchaser shall be entitled to all of the condemnation proceeds which would have been due Seller, and the parties shall proceed with the Closing otherwise in accordance with, and subject to, the terms hereof.

29. **CASUALTY:** If prior to the Closing Date the Property or any portion thereof, shall be damaged or destroyed by reason of fire, storm, accident or other casualty, then Seller shall immediately give notice thereof to Purchaser. Upon receipt of such notice Purchaser, at Purchaser's option, shall have the right to:

- (A) Terminate this Agreement as to such portion of the Property damaged by the casualty, whereupon the Purchase Price shall be reduced accordingly; or
- (B) Terminate as to the entire Property, whereupon the Earnest Money shall be paid to Purchaser and all parties shall thereupon be relieved of all further liability hereunder.

If Purchaser does not exercise its right to terminate then Purchaser shall be entitled to all of the insurance proceeds which would have been due Seller and Seller will credit Purchase at Closing with an amount equal to the deductible under the applicable insurance policy and any amounts reasonably determined by Purchaser to constitute the difference between the amount of the insurance proceeds, and deductible, and the cost of reconstruction.

30. **OPERATION OF THE PREMISES:** During the period between the date hereof and the Closing Date, Seller shall:

- (A) Comply with the material terms, conditions, and provisions of all liens, leases, mortgages, agreements, insurance policies and other contractual arrangements relating to the Property, make all payments due thereunder and suffer no default therein;
- (B) Without written approval of Purchaser, neither negotiate nor enter into any new contract nor modify any existing contract affecting the use or operation of the Property which cannot be terminated without charge, cost, penalty or premium on or before the Closing Date;
- (C) Operate, manage and maintain the Property in the usual and customary manner for a municipal fire station;



- (D) Not, without Purchaser's prior written consent, enter into, amend or terminate any lease, nor institute any proceeding at law or in equity to enforce any lease;
- (E) Not return to any tenants, directly or indirectly, any security deposits except as required by lease, upon the termination of occupancy; and
- (F) Not market the Property to third parties

31. **COUNTERPARTS; MODIFICATION:** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. The electronic transmission of any signed original counterpart of this Agreement shall be deemed to be the delivery of an original counterpart 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. To aid in the execution of amendments to this Agreement (but not any closing documents), the parties hereby each authorize and empower its attorney employed by such law firm or corporation to execute and deliver any amendments to this Agreement on their respective behalf and (when so executed by their attorney) the amendment shall be binding upon and enforceable against the party represented. Notwithstanding the foregoing, either party may insist upon the execution (or re-execution) of any amendment by the other party itself (and not its attorney) and each party agrees to accommodate such a request.

32. **ENTIRE AGREEMENT:** This Agreement, including the exhibits hereto, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No covenant, representation, or condition not expressed in this Agreement shall be binding upon the parties hereto or shall affect or be effective to interpret, change, or restrict the provisions of this Agreement.

**[Signature to Appear on Following Page(s)]**

IN WITNESS WHEREOF, the parties hereto have executed this instrument.

EXECUTED ON:

SELLER: CITY OF GRAND ISLAND

This \_\_\_\_ day of \_\_\_\_\_, 2017

By: \_\_\_\_\_  
Jeremy L. Jensen  
Mayor

EXECUTED ON:

PURCHASER: MENARD, INC.

This \_\_\_\_ day of \_\_\_\_\_, 2017

by: \_\_\_\_\_  
Theron J. Berg  
Real Estate Manager

THIS INSTRUMENT DRAFTED BY:

Josh Melder  
Corporate Counsel  
5101 Menard Drive  
Eau Claire, WI 54703  
Phone: (715) 876-2309  
Fax: (715) 876-5998

Exhibit A

Property



# Exhibit B

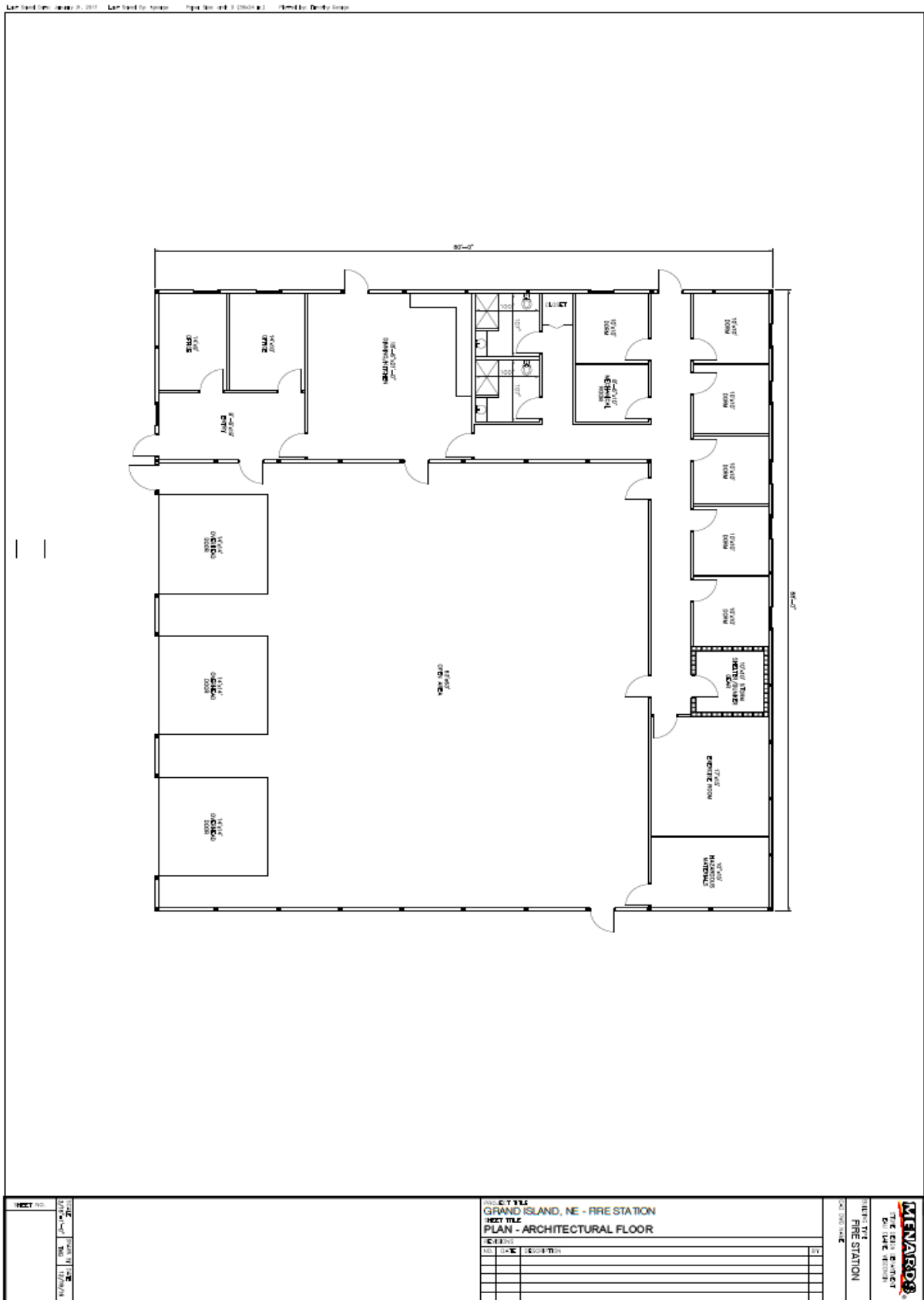


Exhibit C

**POST CLOSING AGREEMENT**

This Post-Closing Agreement (“Agreement”) entered into by and between **the City of Grand Island** hereinafter referred to as (“Seller”), and **Menard, Inc.** hereinafter referred to as (“Purchaser”).

**RECITALS**

WHEREAS, on \_\_\_\_\_, 20\_\_ (“Closing Date”) the parties completed the sale of land located at 2003 Ebony Lane, Grand Island, NE (the “Property”) according to the terms of the Purchase and Sale Agreement between City and Purchaser effectively dated \_\_\_\_\_, 20\_\_, as amended (“Purchase Agreement”).

WHEREAS, as of the Closing Date, Seller needs additional time after the Closing Date to allow for the construction of the new fire station and to fully remove all personal property and themselves from the Property.

WHEREAS, in exchange for Purchaser’s willingness to allow Seller to stay at the Property post-closing, the parties now desire to enter into this Agreement subject to the terms and conditions set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both parties hereto, Seller and Purchaser hereby agree as follows:

1. Recitals. The Recitals hereinabove are true and correct and incorporated herein.
2. Capitalized Terms. All capitalized terms used herein and not otherwise defined herein shall have the same meaning ascribed thereto in the Purchase Agreement.
3. Post-Occupancy. The Seller shall have the right to remain at the Property until 45 days, after Purchaser’s completion of its construction of the new fire station referenced in the Development Agreement between the Parties under the following conditions:
  - a) Seller shall be responsible for any and all costs of continuing occupancy including all real estate taxes, utilities, or other costs of any nature. Seller shall maintain through the term of this Agreement, liability insurance, at-risk insurance and personal property insurance.
  - b) Purchaser shall have no obligation to repair and maintain the premises prior to and during Seller’s occupancy and Seller shall maintain the premises at current levels except for the portion to be used by Purchaser.
  - c) Seller shall remove all personal property by the date specified herein. On the date Seller vacates the Property, the Property shall be free of refuse,

trash and debris and the Improvements shall be in a “broom clean” condition

- d) In the event Seller fails to vacate the premises on or before the date set forth herein, Purchaser shall be entitled to payment for any costs or damages including attorney fees relating to the removal of Seller, its tenants and Seller’s and tenant’s property as required under this Agreement.
- e) At the completion of this Agreement, Seller shall turn over, to Purchaser, all keys, garage door openers, security codes, and all other items that allow access to the premises.

4. Damages. If Seller fails to complete their obligations under this Agreement, Purchaser shall be allowed to collect actual damages, including attorney’s fees, incurred in rectifying such failure from Seller.

5. Indemnity. Seller shall indemnify, defend and hold harmless Purchaser from and against any and all judgments, actions, liens, loss, damages, penalties, fines, liabilities, expenses (including attorneys’ fees) and claims in connection with any activity performed under this Agreement by or at the instance of Seller.

6. Facsimile. Any facsimile, electronic, telecopy or other reproduction of this Agreement may be executed by the parties and shall be considered valid, binding and effective for all purposes. At the request of any party, the parties hereto agree to execute an original of this Agreement as well as any facsimile, email, electronic, telecopy or other reproduction hereof.

7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, all of which together shall constitute one instrument.

8. Effective Date. This Agreement shall become effective as of the date of final execution.

**[Signatures to Appear on Following Pages]**

IN WITNESS WHEREOF, the party hereto has executed this instrument.

EXECUTED ON:

SELLER: City of Grand Island

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_  
Name: Jeremy L. Jensen  
Its: Mayor

EXECUTED ON:

PURCHASER: Menard, Inc.

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_  
Name: Theron J. Berg  
Its: Real Estate Manager

ORDINANCE NO. 9666

An ordinance approving a Purchase - Sale Agreement for the conveyance of property between the City of Grand Island (“City”) and Menard, Inc., a Wisconsin corporation (“Purchaser”); providing for the giving of notice of such conveyance and the terms thereof; providing for the right to file a remonstrance against such conveyance; and providing for publication and the effective date of this ordinance.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

SECTION 1. The Purchase - Sale Agreement between City and Purchaser is hereby approved and authorized with respect to City’s conveyance to Purchaser the following described real estate utilized by the City as Fire Station No.4 located at 3690 West State Street, Grand Island, to wit:

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

SECTION 2. In consideration for such conveyance the Purchaser shall pay \$103,015.00 cash consideration at closing and, as additional consideration, within two years of closing Purchaser shall construct and convey to City a new fire station pursuant to construction plans and specifications and a development agreement as mutually agreed to by City and Purchaser prior to closing. The Purchaser will be responsible for the costs of recording the deed, title insurance, and closing costs. Conveyance of the real estate above described shall be by warranty deed pursuant to the terms and conditions of the Purchase - Sale Agreement between City and Purchaser.

Approved as to Form    ✕ \_\_\_\_\_  
November 9, 2017      ✕ City Attorn



ORDINANCE NO. 9666 (Cont.)

SECTION 3. As provided by law, notice of such conveyance and the terms thereof shall be published for three consecutive weeks in the Grand Island Independent, a newspaper published for general circulation in the City of Grand Island. Immediately after the passage and publication of this ordinance, the City Clerk is hereby directed and instructed to prepare and publish said notice.

SECTION 4. Authority is hereby granted to the electors of the City of Grand Island to file a remonstrance against the conveyance of such within described real estate; and if a remonstrance petition against such conveyance is signed by registered voters of the City of Grand Island equal in number to thirty percent of the registered voters of the City of Grand Island voting at the last regular city election held in such City be filed with the City Council within thirty days of passage and publication of such ordinance, said property shall not then, nor within one year thereafter, be conveyed.

SECTION 5. Contingent upon City and Purchaser mutually agreeing upon construction plans, specifications and a development agreement prior to closing, the conveyance of said real estate is hereby authorized, directed and confirmed; and if no remonstrance be filed against such conveyance, the Mayor may make, execute and deliver to Menard, Inc., a warranty deed for said real estate, and the execution of such deed is hereby authorized without further action on behalf of the City Council.

SECTION 6. Any ordinances or parts of ordinances in conflict herewith be, and hereby are, repealed.

SECTION 7. This ordinance shall be in force and take effect from and after its passage and publication in one issue of the Grand Island Independent as provided by law.

ORDINANCE NO. 9666 (Cont.)

Enacted: November 14, 2017.

\_\_\_\_\_  
Jeremy L. Jensen, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk