



City of Grand Island
Tuesday, May 14, 2019
Council Session/Budget Work Session

Item F-5

#9733 - Consideration of Approving Sale of 0.02 Acres to Menard, Inc. located at the Southeast Corner of Fire Station 4 along State Street

This item also relates to Consent Agenda items G-17 & G-18.

Staff Contact: Jerry Janulewicz

Council Agenda Memo

From: Jerry Janulewicz, City Attorney

Meeting: May 14, 2019

Subject: Resolution regarding Fire Station #4 Development Agreement and Limited License Agreement; Resolution regarding Temporary Easement Permanent Easement; Ordinance regarding Purchase Sale Agreement – 0.02 acres sale to Menard, Inc.

Presenter(s): Jerry Janulewicz, City Attorney

Background

By adoption of Ordinance 9666, Council approved the Purchase Sale Agreement (the “Agreement”) with Menard, Inc., for the sale of Lot One in State Subdivision for \$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 located at the corner of 13th Street and North Road. Closing of the sale is contingent upon approval of a development agreement for construction of the fire station and approval of a limited license agreement to permit the city to continue to occupy the current fire station until the new station is completed.

Following the city’s approval of the Ordinance 9666, Menard sought to obtain from the City a triangular tract of land containing 0.02 acres located near the southeast corner of the fire station property. The three sides are 42.34 feet, 41.85 feet, and 59.96 feet. The tract is depicted in the attached survey. The proposed Ordinance, if adopted, would authorize the sale of this tract subject to the public’s right of remonstrance.

Discussion

City staff reviewed and approved the construction plans and specifications, the development agreement, and the limited license agreement. Upon approval of the same by the City Council and Mayor through approval of the Resolution, closing can proceed for the sale of Lot 1 State Subdivision to Menard, Inc. Pursuant to the Purchase/Sale Agreement and the imited license agreement, existing Fire Station #4 will remain occupied by the City’s Fire Department until construction of the new station is complete. The proposed Resolution, if adopted, approves and authorizes execution of the development agreement and the limited license agreement and authorize the City’s Mayor to take such actions as is necessary to close the real estate transaction.

As discussed above, Menard is also seeking to purchase a small triangle-shaped parcel at the southeast corner of the existing Fire Station property. In exchange for this parcel, Menard is proposing to convey to the city the electric generator that currently services the Fire Station. The proposed ordinance, if adopted, would authorize the sale of this tract of land provided a valid, sufficient remonstrance petition is not received. For background information, in 2004 the city sold to Menard a tract of land east of the fire station containing 0.276 acres for \$27,225, or \$98,641 per acre. At that same rate per acre, the present small tract would have a price of \$1,972. The fire chief advised the value of the electric generator greatly exceeds this amount. The generator would be relocated to another fire station when present Fire Station #4 is vacated by the City.

Finally, Menard is further requesting a temporary construction easement and permanent easement to go upon the City's utility easement area to construct and maintain a wall to be located on Lot 1 State Subdivision following relocation of Fire Station #4.

Council is requested to consider and take action with respect to the following:

1. Resolution approving the development agreement and limited license agreement;
2. Resolution approving the temporary construction easement and permanent maintenance easement; and
3. Ordinance authorizing the sale of the tract of land of approximately 0.02 acres to Menard, Inc., subject to public remonstrance period.

Alternatives

It appears that the Council has the following alternatives concerning each resolution and the ordinance. The Council may:

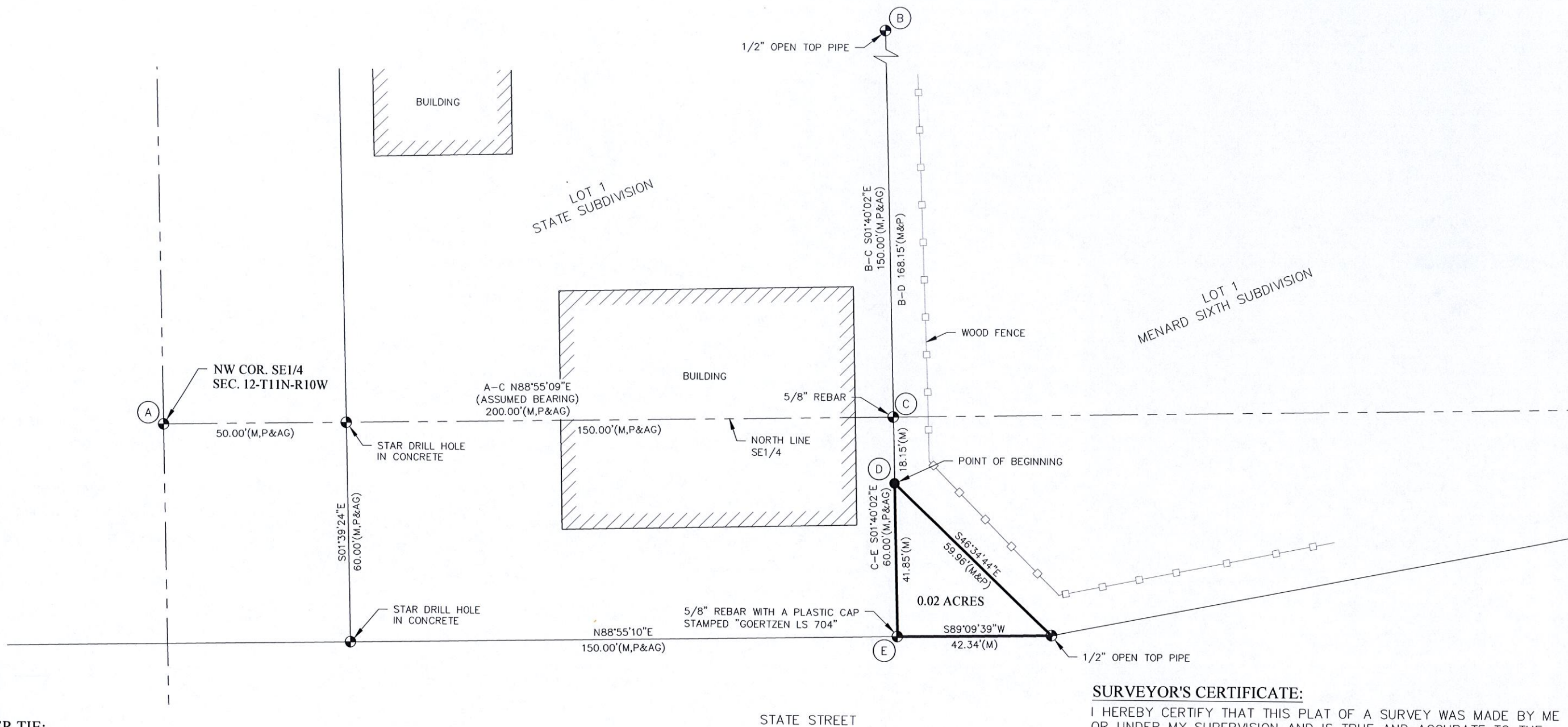
1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council adopt the Resolution (Ordinance).

Sample Motion

Move to approve the Resolutions and Ordinance.



CORNER TIE:

- (A) NW CORNER SE1/4 SECTION 12-T11N-R10W**
 FOUND A 1/2" OPEN TOP PIPE 0.8' DEEP
 SE 0.71' TO A FOUND NAIL "X" IN THE NW FACE OF A POWER POLE (1' ABOVE GROUND)
 N 2.9' TO THE EDGE OF A CONCRETE SPILLWAY
 S 58.15' TO A FOUND P.K. NAIL IN THE WEST FACE OF A POWER POLE (1' ABOVE GROUND)
 SW 72.50' TO A FOUND CHISELED "X" IN THE NE CORNER OF A CONCRETE HEADWALL
 W 90.06' TO A FOUND 1/2" OPEN TOP PIPE (1' DEEP)
 E 50.00' TO A FOUND STAR DRILL HOLE

LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN THE EXISTING RIGHT OF WAY OF STATE STREET, IN THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 11 NORTH, RANGE 10 WEST OF THE SIXTH P.M., HALL COUNTY, NEBRASKA, BEING DESCRIBED AS FOLLOWS: REFERRING TO THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 12; THENCE N88°55'09"E (ASSUMED BEARING) ON THE NORTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 200.00 FEET TO THE WEST LINE OF LOT 1, MENARD SIXTH SUBDIVISION, AS PLATTED IN THE CITY OF GRAND ISLAND, THENCE S01°40'02"E ON SAID WEST LINE, A DISTANCE OF 18.15 FEET TO THE POINT OF BEGINNING; THENCE S46°34'44"E ON SAID WEST LINE, A DISTANCE OF 59.96 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1; THENCE S89°09'39"W, A DISTANCE OF 42.34 FEET TO THE SOUTHEAST CORNER OF LOT 1, STATE SUBDIVISION, AS PLATTED IN SAID CITY OF GRAND ISLAND; THENCE N01°40'02"W ON THE EAST LINE OF SAID LOT 1, A DISTANCE OF 41.85 FEET TO THE POINT OF BEGINNING, CONTAINING 0.02 ACRES, MORE OR LESS.

SURVEYOR'S REPORT:

THIS SURVEY WAS PERFORMED AT THE REQUEST OF MENARD INC. THE PURPOSE OF THIS SURVEY WAS TO ESTABLISH THE PERIMETER AND CREATE A METES AND BOUNDS DESCRIPTION OF A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 11 NORTH, RANGE 10 WEST OF THE SIXTH P.M., HALL COUNTY, NEBRASKA.

EXISTING MONUMENTS OF RECORD WERE FOUND AT LOCATIONS SHOWN ON THIS PLAT. ALL MONUMENTS FOUND ARE DESCRIBED ON THIS PLAT. THE MONUMENT SET IS A 5/8" BY 24" REBAR WITH A PLASTIC CAP STAMPED "GOERTZEN L.S. 704".

ALL LINES WERE PRODUCED AND ANGLES AND DISTANCES MEASURED WITH A TRIMBLE S6 ROBOTIC TOTAL STATION, TRIMBLE R8 GNSS RECEIVER, AND A 100 FOOT STEEL TAPE.

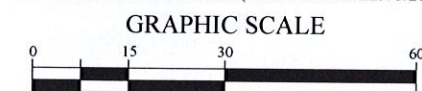
SURVEYOR'S CERTIFICATE:

I HEREBY CERTIFY THAT THIS PLAT OF A SURVEY WAS MADE BY ME OR UNDER MY SUPERVISION AND IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE, AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NEBRASKA.

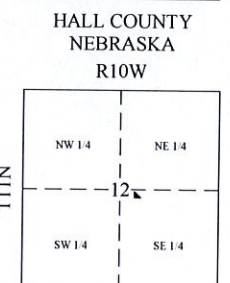
Adam J. Goertzen 4/16/2018
 ADAM J. GOERTZEN, LS 704



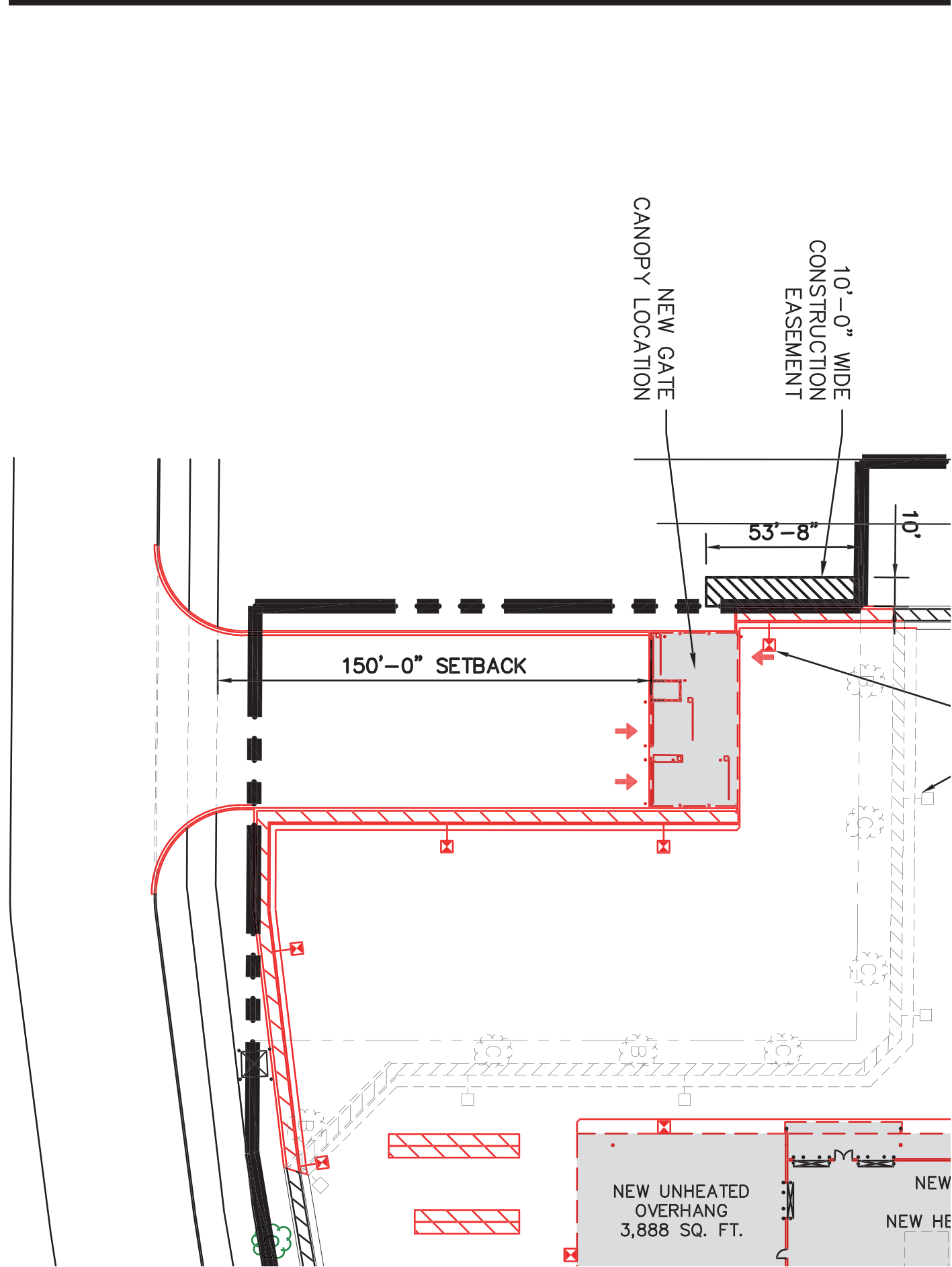
- LEGEND**
 ● MONUMENT FOUND
 ○ MONUMENT SET
 ○ CALCULATED POINT
 D DEEDED DISTANCE
 G GOVERNMENT DISTANCE
 M MEASURED DISTANCE
 P PLATTED DISTANCE
 R RECORDED DISTANCE
 AG RECORDED DISTANCE (ADAM GOERTZEN 3/2018)



VICINITY SKETCH



NOTE: ALL BEARINGS ARE ASSUMED.



DEVELOPMENT AGREEMENT

This **DEVELOPMENT AGREEMENT** (the “**Agreement**”) is entered into on this ___ day of _____, 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

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

LIMITED LICENSE AGREEMENT

This Limited License Agreement (“Agreement”) is made as of this ____ day of _____, 2019, by and between MENARD, INC. (“Licensor”) and the CITY OF GRAND ISLAND, NEBRASKA (“Licensee”). The foregoing are hereinafter sometimes collectively referred to as the (“Parties”)

RECITALS

WHEREAS, Licensor and Licensee have entered into a Purchase and Sale Agreement with an effective date of December 17, 2017, (the “PSA”) for the sale of that certain parcel of land located in the City of Grand Island, Hall County, Nebraska, more fully described as: Lot One in State Subdivision in the City of Grand Island, Hall County, Nebraska (the “Property”).

WHEREAS, Licensee desires to use a portion of the aforementioned parcel (the “Licensed Area”) following the closing on the Property pursuant to the PSA, for the continued operation of a fire station.

WHEREAS, Licensor is willing to grant and Licensee wishes to receive a revocable, limited, exclusive license over the Licensed Area for the benefit of Licensee all as more fully set forth herein.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. The license granted herein to Licensee shall commence on the closing of the Property pursuant to the PSA and terminate on the sooner of the expiration of 30 days following the Licensee’s acceptance of the Improvements outlined in that certain Development Agreement entered into between the Licensor and Licensee with an effective date of _____, 2019 (the “Development Agreement”), or upon the Construction Deadline outlined in the Development Agreement (the “Term”). In the event that this Agreement expires on the Construction Deadline, Licensor and Licensee shall have the option to extend this Agreement for two (2) sixty (60) day periods pursuant to an instrument in writing signed by the Parties.

2. Licensor hereby grants to Licensee an exclusive limited license to enter upon the Licensed Area during the Term solely for the purpose of operating a fire station, and for no other purpose without the prior express written consent of Licensor. Licensee acknowledges and agrees that any and all activities conducted by Licensee or Licensee’s employees, agents, representatives or contractors shall be solely at the risk of Licensee.

3. Throughout the term of this Agreement, Licensee shall solely be responsible for all property bills, maintenance bills, water bills and utility bills associated with the Property; additionally, the foregoing bills shall be paid in full upon termination of this

Agreement. Following Licensee's acceptance of the Improvements outlined in the Development Agreement, and Licensee's vacation of the property, Licensee shall transfer all utilities, property bills and any warranties associated with the Property to the Licensor. Licensee shall additionally turn over any keys, combinations, security codes, garage door openers and equipment manuals related to the improvements existing on the Property. Notwithstanding anything to the contrary herein, Licensor shall be responsible for any and all real estate taxes which first become due and payable after the date on which the Term ends.

4. Licensor shall withhold and place in escrow 10% of the purchase price, as outlined in the PSA, until that time that the Licensee vacates the Property. Upon termination of this Agreement, Licensor shall, within 30 days after receipt of a written request by Licensee, authorize release of the escrowed funds contingent on Licensee fulfilling all obligations of Licensee outlined in Section 3 of this Agreement.

5. Licensee agrees not to cause or permit any lien to be filed against the Licensed Area and shall indemnify and hold Licensor harmless from and against any and all such claims and liens arising out of the activities of Licensee, its employees, agents, representatives or contractors at or upon the Licensed Area.

6. Licensee shall, at its sole cost, obtain and maintain in effect all licenses, permits, consents and authorizations of federal, state and local authorities which may be necessary, required or appropriate for all activities of Licensee and its employees, agents, representatives and contractors at or upon the Licensed Area.

7. **Licensor makes no representations, warranties or covenants of any nature whatsoever regarding the condition of the Licensed Area or its suitability for the activities planned by Licensee, and Licensee accepts the Licensed Area in "as is" condition with all faults latent or apparent. Licensee agrees that Licensor shall not be required to undertake or exercise any duty of care or other safeguards with respect to the Licensed Area or for the safety of persons or for the prevention of damage to property in connection with any activities of Licensee on or about the Licensed Area.**

8. Any equipment or facilities temporarily placed on the Licensed Area by or for Licensee shall be installed, kept and maintained by Licensee in a safe and secure condition and in compliance with all applicable federal, state and municipal laws, regulations, ordinances and orders. All activities of Licensee and its employees, agents, representatives and contractors on and about the Licensed Area shall be conducted in compliance with all applicable federal, state and municipal laws, regulations, ordinances and orders.

9. At all times during the Term, Licensee shall keep the Licensed Area and everything thereon in a clean, safe and orderly condition and shall keep the Licensed Area and its surroundings clean and free from trash, rubbish, waste and debris. **Before expiration of the Term, Licensee shall remove all materials, equipment, personal property and other items of any nature within the Licensed Area; and Licensee shall**

leave and surrender the Licensed Area in the same or better condition as it was at the beginning of the Term. If any repairs or restoration should be necessary in order to return the Licensed Area or any part thereof to such condition, such work shall be promptly performed by Licensee, at its sole cost and to Licensor's satisfaction.

10. Licensee shall not cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in the Licensed Area by Licensee, Licensee's agents, employees, contractors or invitees, without first obtaining Licensor's written consent. If Hazardous Substances other than those approved by Licensor herein are used, stored, generated or disposed of on or in the Licensed Area, or if the premises become contaminated in any manner for which Licensee is liable, Licensee shall indemnify and hold harmless Licensor from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the premises, damages due to loss or restriction of rentable or usable space, or any damages due to adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorney fees, consultant and expert fees) arising during or after the Term and arising as a result of such contamination by Licensee. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by a federal, state or local agency or political subdivision. Without limitation of the foregoing, if Licensee causes or permits the presence of any Hazardous Substance on the Licensed Area and such result in contamination, Licensee shall promptly, at its sole expense, take any and all necessary actions to return the Licensed Area to the condition existing prior to the presence of any such Hazardous Substance on the Licensed Area. Licensee shall first obtain Licensor's approval of any such remedial action. As used herein, "Hazardous Substance" includes any and all material or substances which are classified as "hazardous waste," "extremely hazardous waste," "hazardous materials," "hazardous substance," or any equivalent classification pursuant to state, federal, or local governmental law.

11. At its sole cost, Licensee shall maintain Comprehensive General Liability Insurance and shall maintain it in force and effect throughout the Term of this Agreement. This insurance shall insure Licensor and Licensee from all claims, demands, or actions made by or on behalf of any person or entity arising from, related to, or connected with the conduct and operation of Licensee's business on the Licensed Area. This insurance shall have minimum limits of not less than a Combined Single Limit for Bodily Injury, Property Damage and Personal Injury Liability of \$2,000,000 per occurrence and \$3,000,000 aggregate. This insurance shall be the Primary Policy for any and all claims arising out of or relating to Licensee's use of the Licensed Area. Any insurance held by Licensor shall be used only to cover claim amounts in excess of the required limits of the Primary Policy. **Prior to occupying the Licensed Area, Licensee shall furnish Licensor with certificates showing compliance with this provision and naming Licensor as a primary and non-contributory additional insured.** In addition, throughout the Term Licensee shall maintain any and all worker's compensation insurance required by statute.

12. Licensee shall be liable for, and shall defend, indemnify and hold harmless Licensor, its shareholders, directors, officers, employees and agents (collectively, the

“Indemnitees”), from and against any and all liability, claims, suits, judgments, damages, losses, costs and expenses, which any or all of said Indemnitees may suffer, incur, be exposed to, be responsible for or pay, on account of any injury to or death of any person, or damage to or loss or destruction of any property, to the extent caused by Licensee (or any of its employees, agents, representatives or contractors) and arising out of or in connection with this License or the exercise of any license or privilege herein granted or the conduct of any activity on or about the Licensed Area.

13. This Agreement is an independent agreement between the parties hereto and it shall not be deemed or construed to be an agreement to lease or purchase the Licensed Area.

14. Licensee may not and shall not assign this Agreement or the license and privileges hereunder, or delegate any of the Licensee’s duties and obligations hereunder, without the prior written consent of Licensor and any attempted assignment or delegation without such prior written consent of Licensor shall be void.

15. This Agreement shall not become effective or binding unless and until the Parties close pursuant to the PSA and this Agreement has been signed by or on behalf of each of the parties hereto. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any facsimile or electronic transmission of this Agreement, signed by either or both parties hereto shall be considered to have the same legal effect as the original and shall be treated in all manner and respects as if the original had been delivered at the time of such facsimile or electronic transmission.

16. Any notices, deliveries and other communications required under this Agreement, and any other communication which either Licensor or Licensee may desire to deliver to the other, shall be in writing and shall be sent by either certified mail (return receipt requested), by nationally-recognized overnight courier, or by facsimile transmission provided that the original is immediately sent by another method specified herein, in each instance directed, addressed and transmitted or sent as follows:

If to Licensor: Menard, Inc.
 Attn: Properties Division
 5101 Menard Drive
 Eau Claire, WI 54703
 Facsimile Number: (715) 876-5998
 Phone Number: (715) 876-2532

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

Either party may by like notice at any time and from time to time designate a different address to which notices shall be sent. Such notices, demands or declarations shall be deemed sufficiently served or given for all purposes hereunder at the time they shall be mailed by United States certified mail, overnight courier or facsimile as aforesaid. Notwithstanding the foregoing, at Licensor's option monthly account statements, invoices, and similar correspondence may be delivered to Licensee via email.

17. Licensee shall be in default in the event that Licensee: fails in the payment of utilities or taxes or fails in any other charge hereunder; or fails to comply with any other term or condition of this Agreement; or fails to leave the Licensed Area at the end of the Term in the original or better condition; or permits a lien to be filed against the Licensed Area. In the event of any default Licensor shall, at its option, have the right to terminate this Agreement, in addition to any other remedies which are available to Licensor. Licensor will charge Licensee a monthly delinquency charge of 1/2% per month (6% A.P.R.) on any fees, taxes or other charges to be paid by Licensee under this Agreement that are overdue and such charge will be paid by Licensee.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, each of the parties hereto has caused this Limited License Agreement to be signed and executed on its behalf as of the day and year first above written.

Date: _____, 2019 LICENSEE: CITY OF GRAND ISLAND

By: _____

Name: _____

Its: _____

Date: _____, 2019 LICENSOR: MENARD, INC.

By: _____

Theron J. Berg
Real Estate Manager

**TEMPORARY CONSTRUCTION EASEMENT AND PERPETUAL
MAINTENANCE EASEMENT**

This TEMPORARY CONSTRUCTION EASEMENT AND PERPETUAL MAINTENANCE EASEMENT (this “**Agreement**”) is made effective this ___ day of _____, 2019, by and between the CITY OF GRAND ISLAND, a Nebraska municipal corporation (“**Grantor**”) and MENARD, INC., a Wisconsin corporation (“**Grantee**”), whose principal place of business is located at 5101 Menard Drive, Eau Claire, WI 54703.

WHEREAS, Grantor is the owner of that certain real property located in the City of Grand Island, Hall County, Nebraska, legally described on **Exhibit A** attached hereto (the “**Grantor Property**”);

WHEREAS, Grantee is the owner of that certain real property located in the City of Grand Island, Hall County, Nebraska, legally described on **Exhibit B** attached hereto (the “**Grantee Property**”);

WHEREAS, Grantor has agreed to grant to Grantee (i) a temporary easement for activities related to the construction and development of certain improvements on the Grantee Property and (ii) a permanent easement for the ongoing maintenance of such improvements, over a certain portion of the Grantor Property, which portion is depicted on **Exhibit C** attached hereto (the “**Easement Area**”); and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor and Grantee agree as follows:

1. **Grant of Temporary Construction Easement.** Grantor hereby grants to Grantee and Grantee's employees, agents, consultants, and contractors a non-exclusive easement over, upon, across, within and under the Easement Area for purposes of making cuts, fills and grading, planting grass seed or sod, providing working room, and implementing all other reasonable construction items for the construction of the improvements to be constructed on the Grantee Property, together with the right of ingress and egress over and through adjoining land as may be reasonably necessary to access the Easement Area (the “**Construction Easement**”). The easement rights conveyed hereby shall be exercised in accordance with all applicable laws.

a. **Termination of Construction Easement.** The Construction Easement shall terminate at the expiration of thirty (30) days following the completion of construction by Grantee of the yard expansion improvements.

2. **Grant of Permanent Maintenance Easement.** Grantor hereby grants to Grantee and Grantee's employees, agents, consultants, and contractors a non-exclusive easement over, upon, across, within and under the Easement Area for purposes of continuing maintenance of the improvements constructed on the Grantee Property together with the right of ingress and egress

over and through adjoining land as may be reasonably necessary to access the Easement Area (the “**Maintenance Easement**”).

3. **Non-Disturbance**. The easement rights conveyed hereby shall be exercised in a manner such that activities upon the Easement Area do not unreasonably interfere with the use and operation of the Grantor Property and the overhead and underground public utility facilities located on the Grantor Property. Grantor retains and reserves unto itself, its employees, tenants, invitees, licensees and agents the right to use the Easement Area for any and all purposes not inconsistent with the grant of the Easement herein.

4. **Restoration**. Grantee shall promptly restore the Easement Area to substantially the same physical condition that existed at the time Grantee or its contractors first entered upon the Easement Area, except that the grading of the Easement Area will be changed to the extent necessary to conform to the final grading on the Grantee Property in the areas adjacent to the Easement Area, and Grantee will plant grass seed or sod.

5. **Mechanic’s Liens**. Grantee shall do all things necessary to prevent the filing of any mechanic’s or other liens against the Grantor Property. If any such lien shall at any time be filed in connection with the Grantee’s use of the Easement, Grantee shall cause the same to be vacated and cancelled of record. If Grantee shall fail to vacate or release such lien in the manner aforesaid, then, in addition to any other right or remedy of Grantor resulting from Grantee’s default, Grantor may, but shall not be obligated to, vacate or release the same either by paying the amount claimed to be due or by procuring the release of such lien by law. Grantee shall repay to Grantor, on demand, all sums disbursed or deposited by Grantor pursuant to the foregoing provisions of this section, including Grantor’s cost and expenses and reasonable attorneys’ fees incurred in connection therewith.

6. **Indemnification**. Grantee hereby covenants and agrees to defend, indemnify and hold Grantor harmless, including Grantor’s members, officers, employees, agents, representatives, tenants, successors and assigns, (the “Indemnified Parties”), from and against any and all claims, suits, actions, loss, cost, expense (excluding attorney’s fees), liability or claim of liability that arises out of the following: (i) any default by Grantee under this Agreement; (ii) which occur as a result of the exercise by Grantor of its rights and/or performance of any of Grantee’s obligations hereunder; or (iii) the negligence or willful misconduct of Grantee and/or the employees, agents, contractors, licensees and invitees of Grantee in, on or about the Easement Area. Grantee’s indemnification obligation under this section shall not apply in the event of gross negligence by one or more Indemnified Parties.

7. **Binding Effect**. This Agreement shall run with the land, benefit the Grantee Property, and burden the Grantor Property within the Easement Area. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, and may be modified or amended only in a writing signed by both of the parties hereto, or their successors or assigns, as the case may be.

8. **Counterparts; Recording.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement. A facsimile or scanned copy of an executed counterpart shall have the same legal effect as an original ink-signed counterpart. The parties agree that this Agreement may be recorded with the Hall County, Nebraska Register of Deeds.

9. **Miscellaneous.** This Agreement shall be governed by the laws of the State of Nebraska. If any portion of this Agreement shall be invalid or unenforceable to any extent, the remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law. All recitals and exhibits to this Agreement are incorporated herein by reference.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement to be effective as of the day and year first above written.

GRANTOR:

CITY OF GRAND ISLAND
a Nebraska municipal corporation.

By: _____
Name: Roger G. Steele
Its: Mayor

ACKNOWLEDGMENT

STATE OF NEBRASKA)
) ss.
COUNTY OF HALL)

On this ____ day of _____, 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.

My Appointment Expires:

Print Name: _____
Notary Public in and for said
County and State

GRANTEE:

MENARD, INC.
a Wisconsin corporation.

By: _____
Name: Theron J. Berg
Its: Real Estate Manager

ACKNOWLEDGEMENT

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

On this ____ day of _____, 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 _____ County
My Commission _____

Exhibit A

Exhibit B

Exhibit C

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:

A parcel of land consisting of 0.02 acres more or less in the City of Grand Island, Hall County, Nebraska (the "Property"), as legally described and 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:** 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 7 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 and Seller entering into a mutually agreeable post-closing construction license and grading agreement and perpetual maintenance agreement for Purchaser's development of the adjacent City of Grand Island Fire Station #4 parcel.

- (J) 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 at (A) through (I) 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. The Contingency enumerated at (J) is for the Purchaser's and Seller's benefit.

4. **FAILURE OF CONTINGENCIES:** The expiration of the contingencies listed in Section 3 shall be One Hundred Fifty (150) days after last execution of this Agreement or in the event the One Hundred Fiftieth (150th) 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 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 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.

5. **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.

6. **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.

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

8. **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.

9. **PURCHASE PRICE:** Purchaser shall give to Seller as consideration for the Property the generator servicing Fire Station #4 on the adjacent property (the "**Purchase Price**"). Seller shall be solely responsible for the removal and transportation of the generator from the Purchaser's property.

10. **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.

Purchaser shall pay 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.

11. **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. 3rd 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 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.

12. **POSSESSION:** Subject to the Post Closing Occupancy Agreement by and between the Seller and Purchaser with respect to Lot 1 State Subdivision, the terms of which shall apply with equal force and effect with respect to the Property, 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.

13. **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 paid by the purchaser.

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 11 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).

- (E) 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.
- (F) 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;
- (G) Post-closing construction license and grading easement and perpetual maintenance agreement.
- (H) Copies of all utility bills for the Property.
- (I) 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. Purchaser's obligation to close on the transaction contemplated herein is contingent on the Purchaser closing simultaneously on the adjacent City of Grand Island Fire Station #4 parcel. Purchaser may extend the Closing for any delays in the closing of the City of Grand Island Fire Station #4 parcel so that both transactions close simultaneously. There shall be no material changes to the Property for any period of time Purchaser extends the Closing for a delay in simultaneous closings. Purchaser may terminate this Agreement if there is a failure to close simultaneously on the City of Grand Island Fire Station #4 parcel.

14. **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.

15. **SURVIVAL OF COVENANTS:** Any representation, warranty, covenant or agreement herein of either party to this Agreement whether to be performed before or after the

of competent jurisdiction for Hall County, Nebraska. All parties to this Agreement hereby subject themselves to the jurisdiction of the District Court of Hall County Nebraska.

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

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

22. **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.

23. **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.

24. **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 all parties shall 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.

25. **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 all parties shall 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.

26. **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

27. **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.

28. **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 _____, 2019

By: _____
Jeremy L. Jensen
Mayor

EXECUTED ON:

PURCHASER: MENARD, INC.

This ____ day of _____, 2019

by: _____
Theron J. Berg
Real Estate Manager

THIS INSTRUMENT DRAFTED BY:

Pat Wewel
Corporate Counsel
5101 Menard Drive
Eau Claire, WI 54703
Phone: (715) 876-2164
Fax: (715) 876-5998

Exhibit A

Property

ORDINANCE NO. 9733

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 abutting the southeast corner of Lot 1 State Subdivision (Fire Station No.4) located at 3690 West State Street, Grand Island, to wit:

A parcel of ground in the Southeast Quarter of Section 12 North, Range 10 West of the 6th P.M. in the City of Grand Island, Hall County, Nebraska, being described as follows: Referring to the northwest corner of the Southeast Quarter of said Section 12; thence N88°55'09"E (assumed bearing) on the north line of said Southeast Quarter, a distance of 200.00 feet to the west line of Lot 1, Menard Sixth Subdivision, as platted in the City of Grand Island; thence S01°40'02"E on said west line, a distance of 18.15 feet to the point of beginning; thence S46°34'44"E on said west line, a distance of 59.96 feet to the southwest corner of said Lot 1; thence S89°09'39"W, a distance of 42.34 feet to the southeast corner of Lot 1, State Subdivision, as platted in said City of Grand Island; thence N01°40'02"W on the east line of said Lot 1, a distance of

Approved as to Form	☐ _____
May 10, 2019	☐ City Attorney

ORDINANCE NO. 9733 (Cont.)

41.85 feet to the point of beginning, containing 0.02 acres, more or less.

SECTION 2. In consideration for such conveyance the Purchaser shall convey to City the electric power generator servicing Fire Station #4 on the adjacent property. 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.

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. 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.

ORDINANCE NO. 9733 (Cont.)

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.

Enacted: May 14, 2019.

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk