

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (the "**Agreement**") is made and entered into effective as of the Effective Date (defined below) by and between the **City of Lawrence, Kansas**, a Kansas municipal corporation with an address of P.O. Box 708, Lawrence, Kansas 66044 ("**Seller**"), and **Menard, Inc.**, a Wisconsin corporation with offices at 5101 Menard Drive, Eau Claire, WI 54703 ("**Purchaser**") with reference to a certain parcel of land located in the City of Lawrence, County of Douglas and State of Kansas, more fully described as:

A parcel of land consisting of approximately 90.5 acres, more or less, as more particularly described or depicted on Exhibit A, the same to be more fully described pursuant to the Survey (defined below) as such parcel is replatted or modified by agreement of the Parties.

In consideration of the mutual covenants herein set forth, Purchaser and Seller (individually referred to as "**Party**" as the context may require and collectively referred to as "**Parties**" as the context may require) 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 (i) any and all rights, including all associated mineral and water rights, titles, powers, privileges, easements, licenses, rights-of-way and interests appurtenant to and which benefit the Property and the improvements, if any, owned by Seller (but subject to the Permitted Encumbrances described below), and (ii) all rights, titles, powers, privileges, interests, licenses, and easements appurtenant or incident to any of the foregoing, 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 or deemed accepted or waived as provided elsewhere in this Agreement); all land heretofore conveyed or dedicated for road purposes or right-of-way; liens for state, county and local real estate taxes and special assessments becoming due after Closing (as defined below) and subsequent years.

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 agrees to reasonably cooperate with and to assist Purchaser in applying for such variances, permits and approvals, but Seller shall not be required under this Agreement to grant or agree to any such variances, permits, or approvals. Seller will make available to Purchaser 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 applying for 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. Purchaser, at its sole expense, agrees to repair any damage to the Property caused by any inspections commissioned by Purchaser and to defend, indemnify, and hold harmless Seller against any and all claims, assertions, lawsuits, costs, expenses, and liabilities (including reasonable attorneys' fees) which may arise from any actions or occurrences in connection with the performance of such inspections. However, the forgoing indemnity shall not apply with respect to any claims, damages, liabilities or expenses arising out of the mere discovery by Purchaser, any pre-existing conditions, or any acts or omissions of Seller, its agents, employees, contractors, officers or invitees. Purchaser's obligations under this paragraph shall survive any termination of this Agreement.
- (D) Purchaser obtaining from appropriate authorities permission to erect and operate advertising and informational signs on the Property that comply with and are maintained in accordance with the Code of the City of Lawrence, Kansas, 2015 Ed. and amendments thereto, as Purchaser deems appropriate, the same to be to the satisfaction of Purchaser. Seller shall not be required under this Agreement to grant or agree to any advertising or informational signs on the Property.
- (E) Purchaser obtaining from appropriate authorities access to the Property off O'Connell Road and Venture Park Drive. Such access must be satisfactory to Purchaser at its sole discretion and must coincide with Purchaser's development of the Property.
- (F) Purchaser obtaining, in accordance with the provisions of Section 7 of this Agreement, at Purchaser's sole cost and expense, a current ALTA/ACSM boundary and topographical surveys of the Property, which disclose conditions satisfactory to Purchaser for its development of the Property. Purchaser, at its sole expense, agrees to repair any damage to the Property caused by any survey work commissioned by Purchaser, and to defend, indemnify, and hold harmless Seller against any and all claims, assertions, lawsuits, costs, expenses, and liabilities (including reasonable attorneys' fees) which may arise from any actions or occurrences in connection with the performance of such survey work. However, the forgoing indemnity shall not apply with respect to any claims,

damages, liabilities or expenses arising out of the mere discovery by Purchaser, any pre-existing conditions, or any acts or omissions of Seller, its agents, employees, contractors, officers or invitees.

- (G) Purchaser inspecting the environmental condition of the Property prior to Closing (defined below), including the right to conduct environmental, habitat, wetlands and archeological assessments, review the Consent Order and RCRA Permit (defined in Section 6), and other studies on the Property, and finding the results of those studies acceptable to Purchaser in its sole discretion. Purchaser, at its sole expense, agrees to repair any damage to the Property caused by any inspections commissioned by Purchaser and to defend, indemnify, and hold harmless Seller against any and all claims, assertions, lawsuits, costs, expenses, and liabilities (including reasonable attorneys' fees) which may arise from any actions or occurrences in connection with the performance of such inspections or assessments. However, the forgoing indemnity shall not apply with respect to any claims, damages, liabilities or expenses arising out of the mere discovery by Purchaser, any pre-existing conditions, or any acts or omissions of Seller, its agents, employees, contractors, officers or invitees. Purchaser's obligations under this paragraph shall survive any termination of this Agreement.
- (H) Seller obtaining all necessary approvals for a legal subdivision of the Property from county, local and state authorities to subdivide Property in accordance with Purchaser's development plans. Any such subdivision must be conditionally effective so as to be effective only upon Closing.
- (I) Seller obtaining agreements for the relocation, release, termination and/or extinguishment of such utilities, 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 manufacturing and distribution center. Purchaser may, at its sole option, and at its own expense, enter into agreements to relocate or remove any existing utilities, rights-of-way, easements, restrictions, and proposed easements to be effective after the date of Closing, but Purchaser shall not be required or obligated to do so. Seller shall not be required under this Agreement to grant or agree to any utility relocations, releases, terminations, or extinguishments.
- (J) Purchaser securing from all applicable governmental entities incentive agreements or commitments in such amounts and terms acceptable to Purchaser in Purchaser's sole discretion and opinion as deemed necessary by Purchaser for the viability of its proposed development.
- (K) The Parties executing, at or prior to Closing, a "**Development Agreement**" establishing, among other things, minimum elements and requirements for Purchaser's use and operation of the Property post-Closing, the availability of public incentives, and the requirements of Purchaser in order to be eligible for such incentives. Seller shall not be required under this Agreement to grant or agree to any governmental approvals, incentives, or the Development Agreement.

Further, such Development Agreement shall: (i) identify the Parties' respective infrastructure construction obligations; and (ii) memorialize any utility service agreements required for Purchaser's intended development of the Property.

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. **FAILURE OF CONTINGENCIES:** In the event any of the contingencies and conditions have not been met, or will not be met in Purchaser's judgment, by the Closing Date or extensions thereof, Purchaser shall have the sole right and option to waive any contingency or condition, or to declare this Agreement terminated. Seller shall also have the right to terminate this Agreement if the above-described contingency related to the Development Agreement has not been met, or will not be met in Seller's judgment, by the Closing Date or extensions thereof. If this Agreement is timely and properly terminated by either Party, Purchaser shall have the Earnest Money (defined below) paid by Purchaser, along with any accrued interest, returned to Purchaser immediately. If Purchaser does exercise its option to declare this Agreement terminated and to receive a return of the Earnest Money paid by Purchaser, or if this Agreement otherwise becomes terminated, Purchaser shall have no further obligation or liability under this Agreement, except for those indemnities, defense, and hold-harmless obligations of Purchaser set forth in Section 3 above or as expressly set forth elsewhere in this Agreement as surviving termination of this Agreement. In addition, the Parties 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, except for those indemnities, defense, and hold-harmless obligations of Purchaser set forth in Section 3 above or as expressly set forth elsewhere in this Agreement as surviving termination of this Agreement.

Alternatively, in the event any of the contingencies have not been satisfied as of the closing date Purchaser shall have the right to extend the contingency period and closing date for one (1) sixty (60) day period beyond the scheduled closing date, upon providing notice to Seller of its intent to extend no later than the date set for closing.

5. **DUE DILIGENCE:** Within ten (10) days after the Effective Date of this Agreement, Seller shall deliver to Purchaser copies of the items 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 most recent real estate tax bill(s).
- (D) The written results, if any, of any 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.
- (E) All permits issued by government authorities for the Property.

- (F) Copies of all tenant lease files for the Property, including but not necessarily limited to any tenant leases, equipment leases, lease abstracts, estoppel certificates, lease termination or turnover agreement, along with all material correspondence relating to the tenants that are not subject to confidentiality agreements.
- (G) Any additional documents reasonably requested by the Purchaser. Except for the foregoing subsections 5(A) through (F), Seller shall not be required to provide any document or record not required to be disclosed pursuant to applicable law, including but not limited to the Kansas open records act, as amended, and documents protected by attorney-client privilege or other privilege.

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

- (A) Seller has and will have at time of closing good and marketable title to the Property, subject only to the Permitted Encumbrances.
- (B) Seller has and will have at time of closing 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 on the date of closing, including billboard and crop leases.
- (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) No condemnation proceedings are currently pending or have been threatened against the Property.
- (G) Since its acquisition of fee title to the Property, 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, except for the Consent Order (defined below), the RCRA Permit (defined below), and any matters raised therein.
- (H) 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).
- (I) Seller has provided or, within 10 days after the Effective Date, will provide copies of all environmental assessments, reports, and testing results in its possession including a copy of that certain Kansas Department of Health and Environment

Consent Order dated June 28, 2010, styled *In the Matter of Pollution at Former Farmland Industries, Inc. Nitrogen Manufacturing Plant, Lawrence, Kansas*, case No. 10-E-94 BER , as amended by that certain First Amendment to Consent Order dated April 16, 2014 (the "**Consent Order**"), and that certain permit issued under the Resource Conservation and Recovery Act regarding the Property ("**RCRA Permit**") (all together the aforementioned documents shall be the "**Environmental Documentation**"). Aside from those matters disclosed in the Environmental Documentation, 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 to the best of Seller's knowledge, except for the environmental matters disclosed on the Environmental Documentation, 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.

- (J) Aside from those matters disclosed on the Environmental Documentation, to the best of Seller's knowledge, no aboveground storage tanks or underground tanks are located in or about the Property, or have been located under in or about the Property and have subsequently been removed or filled.
- (K) Seller agrees to indemnify and hold Purchaser harmless in respect to any mechanic's and materialmen's liens against the Property arising out of any work performed or materials furnished by or on Seller's behalf, or requested by Seller on or with respect to the Property.
- (L) Seller shall promptly notify Purchaser of any material change in respect to the Property or any information heretofore or hereafter furnished to Purchaser with respect to the Property.

The representations and warranties contained in this section shall be true and correct on the date of closing 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. **AS-IS, WHERE-IS:** Except as expressly set forth in Section 6 above, Seller makes no warranties, representations or statements about any legal documents, records, files, or information provided to Purchaser, nor any physical items and conditions relating to the Property including, but not limited to any environmental conditions on the Property. No agents, employees, brokers or other persons are authorized to make any representations or warranties for Seller. Purchaser acknowledges that Seller has provided, or will provide within 10 days of the Effective Date, Purchaser with a copy of the Consent Order and the RCRA Permit. By its execution of this Agreement, Purchaser acknowledges that Seller has made no warranties, representations or statements whatsoever concerning any condition or matter relating to the

Property, including such matters as title to the Property, legal status of the Property, use of the Property (including, but not limited to, the operation of the Property for Purchaser's intended purposes), zoning of the Property, availability or cost of utilities, or physical condition of the Property except as set forth elsewhere in this Agreement. Seller has relied upon this acknowledgment as a material inducement to enter into this Agreement. If this transaction closes and Purchaser purchases the Property, Purchaser is purchasing the Property "**AS IS**" and "**WHERE IS**," and it acknowledges and agrees that it relies upon no warranties, representations or statements by Seller or any other persons for Seller in entering into this Agreement or in closing the transaction described in this Agreement, other than those warranties and representations which are specifically set forth in this Agreement.

8. **SURVEYS:** Within sixty (60) calendar days after the Effective Date, Purchaser, at Purchaser's sole cost and expense, shall obtain its own ALTA/ACSM boundary and topographic survey (the "**Survey**").

9. **COMPLIANCE WITH MUNICIPAL OR STATE REGULATIONS:** Except for any matters contemplated or addressed by the Consent Order, all violations of law, ordinances or orders of state, county and municipal agencies affecting the Property on the Effective Date shall be cured by Seller before the date of closing, 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 shall furnish Purchaser with authorization to make and/or have made searches for such violations.

10. **PURCHASE PRICE:** The "**Purchase Price**" for the Property shall be Seven Hundred Ninety Four Thousand, Three Hundred Twenty Nine and 00/100 Dollars (\$794,329.00). Payment shall be made by way of a cashier's check at Closing made out to the Title Company or by wire transfer of immediately available funds.

11. **EARNEST MONEY:** The sum of Ten Thousand and 00/100 Dollars (\$10,000.00), the same representing the "**Earnest Money**", will be paid into an escrow account at Commerce Title Co. in Lawrence, Kansas (the "**Title Company**") within fourteen (14) days after the Effective Date. In the event this Agreement is consummated, the Earnest Money, plus interest, shall be applied to and credited against the purchase price on the date of closing. Notwithstanding the preceding, Purchaser may elect to receive at 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 to Purchaser immediately.

12. **REAL ESTATE TAXES, ASSESSMENTS AND TRANSFER FEES:**

(a) Seller agrees to pay, at or prior to the Closing Date, all property taxes, , if any, on the Property for the years prior to the year of the Closing Date and a pro-rated share of the property taxes, if any, for the year in which Closing occurs. The pro ration shall be made on a daily basis using the actual property taxes levied for the current year, if known, otherwise on 110% of the net taxes for the preceding year. Subject to subsection 12(b) below, Seller shall pay any and all assessments, recaptures and reimbursements, special or otherwise, that are assessed, levied upon or to be levied for improvements either completed or in process on or before the Closing Date, in respect to all or any part of the Property, including but not limited to, any assessments and/or recaptures and/or reimbursements relating to sewer and water and any streets

or highways as well as for any change in use of the Property. For the purposes of this section, a so-called tap fee that has the purpose of paying for improvements, either completed or in process on or before the Closing Date, shall be considered a recapture. Seller will pay any state and county transfer taxes, transfer fees, and fees, if any, due any governmental agency attributable in any way to the transfer of the Property; any local transfer taxes, if any, shall be paid in accordance with the local ordinance.

(b) Notwithstanding the foregoing, at Closing Purchaser shall pay to City the sum of \$1,084,018.00, representing Purchaser's share of all assessments levied, or to be levied, against the Property pursuant to City Resolution No. 7012 (2013), No. 7016 (2013), No. 7046 (2013), and No. 7049 (2013) for infrastructure improvements for the Lawrence VenturePark development. Subject to the terms of the Development Agreement and performance by Purchaser of its obligations thereunder, this amount shall be deemed a full and complete payment for the costs of infrastructure benefiting the Property which has been completed or is in the process of completion or design as of the Closing Date. The foregoing assessment payment shall be memorialized in the Development Agreement. Treatment of taxes and special assessments for periods after Closing shall be further addressed in the Development Agreement.

13. **EVIDENCE OF TITLE:** Within twenty-one (21) calendar days after the Effective Date, Seller shall furnish and deliver to the Purchaser for examination a commitment for title insurance, including complete and legible copies of Schedule B-2 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, written by a mutually agreeable national title insurance company licensed to do business in the State of Kansas which policy shall guarantee Seller's title to be in the condition called for by this Agreement. In addition, Seller will also within ten (10) days deliver to Purchaser any prior title evidence it may have, such as a current abstract or title policy, to expedite further examination of title.

For a period of sixty (60) calendar days after Purchaser's receipt of the last to arrive of the title commitment, legible copies of all exception documents, and the Survey (the "**Title Review Period**"), Purchaser shall have the opportunity to examine the same and to give Seller written notice of any objection or objections thereto that relate to the title. If Seller does not receive a written notice from Purchaser within the Title Review Period setting forth Purchaser's objections, then Purchaser shall be irrevocably deemed to have accepted the state of title as shown on the title commitment and Survey. If Purchaser makes any timely objections, then Seller shall have the option (but not the obligation) to correct such objections at any time prior to the Closing. In the event that Seller opts not to correct any objection of Purchaser prior to the Closing, or Seller is not able to correct any such objection, then Purchaser shall have the option either: (i) to waive such objections and elect to accept such title and title policy as Seller is able to deliver; or (ii) to declare this Agreement to be null and void, and thereupon the Earnest Money shall be returned to Purchaser and this Agreement shall terminate, and neither Party shall have any further obligations hereunder, except as otherwise provided in this Agreement. Matters disclosed by the title commitment or Survey that are not timely objected to by Purchaser, or that are waived or accepted by Purchaser as provided in this Section 13, and those matters set forth in Section 2 above or elsewhere in this Agreement, shall be Permitted Encumbrances.

Purchaser shall have the right to update and review the title commitment from time to time prior to Closing. If any updated title commitment discloses exceptions which were not

included on the previous title commitment, Purchaser shall have the right to have them shown on the Survey and to object to them in the same manner, and within the same time periods, as set forth above.

At Closing, 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. Seller shall use reasonable efforts to cause the policy to be issued with a contiguity endorsement, a same as survey endorsement, an access endorsement, a PIN endorsement, and a restrictions, encroachments, and minerals endorsement guaranteeing Seller's title to be in the condition required by this Agreement; provided, that the inability of Seller to provide such endorsements shall not be an event of default by Seller under this Agreement, and Purchaser's remedies shall be limited to those otherwise set forth above for Seller's inability to correct title objections. All costs relating to the issuance of the title policy, including, but not limited to, title examination fees and policy premiums shall be paid by Seller; provided, that Purchaser shall be responsible for the costs or premiums of any endorsements requested by Purchaser (except for gap coverage, which shall be borne by Seller).

14. **POSSESSION:** Legal possession of the Property shall be delivered to Purchaser on the date of Closing, except as herein provided. Purchaser or its agent shall be permitted upon the Property prior to closing for soil testing, environmental and wetland assessments or inspections, surveying or other investigations or functions relating to its development plans. Purchaser, at its sole expense, agrees to repair any damage to the Property caused by any inspections commissioned by Purchaser and to defend, indemnify, and hold harmless Seller against any and all claims, assertions, lawsuits, costs, expenses, and liabilities (including reasonable attorneys' fees) which may arise from any actions or occurrences in connection with the performance of such inspections, testing, assessments, surveying, or other investigations. However, the forgoing indemnity shall not apply with respect to any claims, damages, liabilities or expenses arising out of the mere discovery by Purchaser, any pre-existing conditions, or any acts or omissions of Seller, its agents, employees, contractors, officers or invitees. Purchaser's obligations under this paragraph shall survive any termination of this Agreement.

15. **CLOSING:** Unless otherwise agreed to by the Parties, this transaction shall be closed (the "**Closing**") at the offices of the Title Company, which will provide title insurance for the Property. Closing of the transaction contemplated herein shall be held two hundred seventy (270) calendar days after the Effective Date (the "**Closing Date**"), or in the event the Closing Date falls on a weekend or holiday, the next business day thereafter. Closing may be held prior to such time at the option of Purchaser, provided, however, that Purchaser must notify Seller at least seven (7) days in advance of such earlier Closing Date. 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.

At Closing, Seller shall deliver or cause to be delivered to Purchaser, at Seller's sole cost and expense, each of the following items:

- (A) A Special 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 as permitted under this Agreement;
 - 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 of this Agreement;
- (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) If required by the Title Company, 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 business address of Seller;
 - 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);
 - 4) A statement that Seller is not to its best knowledge a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control; nor listed in the annex to, and is not otherwise subject to the provisions of the Executive Order; and that Seller is not acting on behalf of any person listed in the annex to, or is otherwise subject to the provisions of, the Executive Order.

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) The Development Agreement and a Memorandum of Development Agreement, which Memorandum shall be recorded at Closing at Purchaser's expense, and which shall be deemed one of the Permitted Encumbrances.
- (F) An affidavit of title, in form and substance reasonably acceptable to Title Company, 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 (except for any Permitted Encumbrances), and that all assessments, utility charges and taxes have been paid to the date of Closing, or such other documentation required by the Title Company to remove the so-called standard or "pre-printed" exceptions from title (excluding any such exception which may require delivery of the Survey, and subject to any Permitted Encumbrances).
- (G) All additional documents and instruments as in the reasonable opinion of Title Company are necessary to the proper consummation of this transaction.

Seller shall provide to Purchaser draft copies of all of Seller's 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 Purchaser may extend the closing date accordingly.

At Closing, Purchaser shall deliver or cause to be delivered to Seller, at Purchaser's sole cost and expense, each of the following items:

- (A) Such evidence or documents as may be reasonably required by the Title Company evidencing the status and capacity of Purchaser and the authority of the person or persons who are executing the various documents on behalf of Purchaser in connection with the sale of the Property;
- (B) A completed and executed Kansas Real Estate Sales Validation Questionnaire;
- (C) If required by the Title Company, a certification in a form to be provided or approved by the Seller, signed by Purchaser under penalties of perjury, containing the following:
 - 1) Purchaser's U.S. Taxpayer Identification Number;
 - 2) The business address of Purchaser;
 - 3) A statement that Purchaser is not a foreign person within the meaning of Section 1445 of the IRC i.e., Purchaser 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);
 - 4) A statement that Purchaser is not to its best knowledge a "specially designated national and blocked person" on the most current list published

P.O. Box 708
Lawrence, Kansas 66044
Email: twheeler@lawrenceks.org

With a copy to: Lathrop & Gage LLP
Attn. David E. Waters
10851 Mastin Boulevard, Suite 1000
Overland Park, Kansas 66210
Email: dwaters@lathropgage.com

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

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

The Parties agree that electronically reproduced signatures such as by facsimile transmission or electronic mail are valid for execution or amendment of this Agreement and that electronic transmission/facsimile is an authorized form of notice as that term is used in this Agreement.

20. **AGREEMENT BINDING:** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and assigns. 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.

21. **CHOICE OF LAWS AND SUBMISSION TO JURISDICTION:** This Agreement shall be deemed to have been made in Douglas County, Kansas, and shall be construed in accordance with the laws of the State of Kansas. All actions or proceedings relating, directly or indirectly, to this Agreement, whether sounding in contract or tort, shall be litigated in the state or federal courts serving Douglas County, Kansas. All parties to this Agreement hereby subject themselves to the jurisdiction of the state and federal courts serving Douglas County, Kansas.

22. **LIQUIDATED DAMAGES:** If Purchaser wrongfully fails to complete the closing as provided in this Agreement, Seller, as its sole and exclusive remedy, may retain the Earnest Money 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.

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

24. **DATE:** This Agreement shall be dated and effective and binding as of the date of the last execution (the "**Effective Date**").

25. **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.

26. **TAX-DEFERRED EXCHANGE:** The Parties hereby acknowledge that either may elect to consummate this transaction as a tax-deferred exchange under Section 1031 of the Internal Revenue Code of 1986 ("**1031 Exchange**"). The Parties shall cooperate with each other in effectuating the 1031 Exchange(s), including signing such documents necessary to accomplish such exchange(s), provided, however, the deadline for Closing hereunder shall not thereby be delayed. The exchanging Party shall pay all extra recording and escrow fees and incidental costs associated with effectuating its own 1031 Exchange.

27. **EMINENT DOMAIN:** If prior to the date of the closing, 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 that portion of 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 the 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.

28. **OPERATION OF THE PREMISES:** From the Effective Date until the Closing (or earlier termination of this Agreement), 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;

- (C) Operate, manage and maintain the Property in the usual and customary manner for similar property;
- (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; and
- (E) Not return to any tenants, directly or indirectly, any security deposits except as required by lease, upon the termination of occupancy.
- (F) Not market the Property to any third parties.

29. **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.

30. **EXISTING LEASES:** Seller agrees to terminate any existing tenancies prior to the date of closing and convey the Property free of all tenancies and occupancies.

END of Agreement containing Thirty (30) numbered Sections, together with Exhibit A.

[Remainder of Page Intentionally Left Blank. Signature Page Follows Directly]

IN WITNESS WHEREOF, Buyer and Seller have duly executed this Contract on the dates set forth below.

SELLER:

CITY OF LAWRENCE, KANSAS

By: _____
Mike Amyx, Mayor

Date: _____

ATTEST:

Brandon McGuire, Acting City Clerk

APPROVED AS TO FORM:

Toni R. Wheeler, City Attorney

PURCHASER:

MENARD, INC.,
a Wisconsin corporation

By: _____

Printed Name: Theron J. Berg

Title: Real Estate Manager

Date: _____

EXHIBIT A

[Legal Description or Depiction of the Property]

Block C, Lot 1, Lawrence VenturePark, City of Lawrence, Douglas County, Kansas (as replatted or modified)

