

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF EYOTA, MINNESOTA

AND

MENARD, INC.

This document drafted by:

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## DEVELOPMENT AGREEMENT

THIS AGREEMENT, made as of \_\_\_\_\_, 2020, by and between the City of Eyota, Minnesota (the "City"), a municipal corporation existing under the laws of the State of Minnesota, and Menard, Inc., a Wisconsin corporation (the "Developer").

WITNESSETH:

WHEREAS, pursuant to Minnesota Statutes, Section 469.124 through 469.133, as amended, the City has heretofore established Municipal Development District No. 1 (the "Development District") and has adopted a development program therefor (the "Development Program"); and

WHEREAS, pursuant to the provisions of Minnesota Statutes, Section 469.174 through 469.1794, as amended (hereinafter, the "Tax Increment Act"), the City has heretofore established, within the Development District, Tax Increment Financing (Economic Development) District No. 1-3 (the "Tax Increment District") and has adopted a tax increment financing plan therefor (the "Tax Increment Plan") which provides for the use of tax increment financing in connection with certain development within the Development District; and

WHEREAS, in order to achieve the objectives of the Development Program and particularly to make the land in the Development District available for development by private enterprise in conformance with the Development Program, the City has determined to assist the Developer with the financing of certain costs of a Project (as hereinafter defined) to be constructed within the Tax Increment District as more particularly set forth in this Agreement; and

WHEREAS, the City believes that the development and construction of the Project, and fulfillment of this Agreement are vital and are in the best interests of the City, the health, safety, morals and welfare of residents of the City, and in accordance with the public purpose and provisions of the applicable state and local laws and requirements under which the Project has been undertaken and is being assisted; and

WHEREAS, the requirements of the Business Subsidy Law, Minnesota Statutes, Section 116J.993 through 116J.995, apply to this Agreement; and

WHEREAS, the City has adopted criteria for awarding business subsidies that comply with the Business Subsidy Law, after a public hearing for which notice was published; and

WHEREAS, the Council has approved this Agreement as a subsidy agreement under the Business Subsidy Law.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I  
DEFINITIONS

Section 1.1. Definitions. All capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

Agreement means this Agreement, as the same may be from time to time modified, amended or supplemented;

Business Day means any day except a Saturday, Sunday or a legal holiday or a day on which banking institutions in the City are authorized by law or executive order to close;

City means the City of Eyota, Minnesota;

County means Olmsted County, Minnesota;

Developer means Menard, Inc., a Wisconsin corporation, its successors and assigns;

Development District means the real property included in Municipal Development District No. 1 heretofore established;

Development Program means the Development Program approved in connection with the Development District;

Development Property means the real property described in Exhibit A attached to this Agreement;

Event of Default means any of the events described in Section 4.1 hereof;

Legal and Administrative Expenses means the fees or expenses incurred by the City in connection with the preparation of this Agreement and the establishment of the Tax Increment District;

Note Payment Date means August 1, 2023, and each February 1 and August 1 of each year thereafter to and including February 1, 2032; provided, that if any such Note Payment Date should not be a Business Day, the Note Payment Date shall be the next succeeding Business Day;

Prime Rate means the rate of interest from time to time publicly announced by U.S. Bank National Association in St. Paul, Minnesota, as its "prime rate" or "reference rate" or any successor rate, which rate shall change as and when that rate or successor rate changes;

Project means the construction of a 100,000 square foot manufacturing facility by the Developer on the Development Property located in the City;

Public Improvements means the construction and installation of a partial street, turn lane(s), and public sewer and water utilities, all to serve the Development Property and Project as generally shown on Exhibit E attached hereto;

Site Improvements means the site improvements undertaken or to be undertaken on the Development Property, more particularly described on Exhibit C attached hereto;

State means the State of Minnesota;

Tax Increments means 90% of the tax increments derived from the Development Property which have been received by the City in accordance with the provisions of Minnesota Statutes, Section 469.177;

Tax Increment Act means Minnesota Statutes, Sections 469.174 through 469.1794, as amended;

Tax Increment District means Tax Increment Financing (Economic Development) District No. 1-3 located within the Development District, a description of which is set forth in the Tax Increment Financing Plan, which was qualified as an economic development district under the Tax Increment Act;

Tax Increment Financing Plan means the tax increment financing plan approved for the Tax Increment District by the City Council on June 11, 2020, and any future amendments thereto;

TIF Note means the Tax Increment Revenue Note (Menard, Inc. Project) to be executed by the City and delivered to the Developer pursuant to Article III hereof, the form of which is attached hereto as Exhibit B; and

Unavoidable Delays means delays, outside the control of the party claiming its occurrence, which are the direct result of strikes, other labor troubles, unusually severe or prolonged bad weather, acts of God, fire or other casualty to the Project, litigation commenced by third parties which, by injunction or other similar judicial action or by the exercise of reasonable discretion, directly results in delays, or acts of any federal, state or local governmental unit (other than the City) which directly result in delays, including any government order, declaration, or law, related to disease, epidemics, pandemics, or other emergency.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the City. The City makes the following representations and warranties:

(1) The City is a municipal corporation and has the power to enter into this Agreement and carry out its obligations hereunder.

(2) The Tax Increment District is an "economic development district" within the meaning of Minnesota Statutes, Section 469.174, Subdivision 12, and was created, adopted and approved in accordance with the terms of the Tax Increment Act.

(3) The development contemplated by this Agreement is in conformance with the development objectives set forth in the Development Program.

(4) To finance certain costs within the Tax Increment District, the City proposes, subject to the further provisions of this Agreement, to apply Tax Increments to reimburse the Developer for a portion of the costs of the acquisition of the Development Property and the construction of certain Site Improvements and Public Improvements incurred in connection with the Project as further provided in this Agreement.

(5) The City makes no representation or warranty, either expressed or implied, as to the Development Property or its condition or the soil conditions thereon, or that the Development Property shall be suitable for the Developer's purposes or needs.

(6) To process all building permits and zoning applications in a timely fashion, and to not unreasonably withhold approvals related to the Project.

(7) To design, bid, and oversee the construction of the Public Improvements.

(8) To apply for various grants, including the Business Development Infrastructure Program, to help pay for the costs of the construction of the Public Improvements, provided that this representation shall not be interpreted as a guarantee of any grants being awarded to the City to assist in the payment of the costs of the construction of the Public Improvements.

Section 2.2. Representations and Warranties of the Developer. The Developer makes the following representations and warranties:

(1) The Developer is a Wisconsin corporation and has the power and authority to enter into this Agreement and to perform its obligations hereunder and doing so will not violate its articles of organization, member control agreement or operating agreement, or the laws of the State or the State of Wisconsin, and by proper action has authorized the execution and delivery of this Agreement.

(2) The Developer shall cause the Project to be constructed in accordance with the terms of this Agreement, the Development Program, and all applicable local, state and federal laws

and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations).

(3) The construction of the Project would not be undertaken by the Developer, and in the opinion of the Developer would not be economically feasible within the reasonably foreseeable future, without the assistance and benefit to the Developer provided for in this Agreement.

(4) The Developer will use its best efforts to obtain, or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed.

(5) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provision of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(6) The Developer will cooperate fully with the City with respect to any litigation commenced with respect to the Project.

(7) The Developer will cooperate fully with the City in resolution of any traffic, parking, trash removal or public safety problems which may arise in connection with the construction and operation of the Project.

(8) Subject to Unavoidable Delays, the Developer will make a good faith effort to substantially complete construction of the Project by December 31, 2022. Failure by the Developer to substantially complete the Project by the aforementioned date shall not be considered an Event of Default under Section 4.1 of this Agreement.

(9) The Developer acknowledges that Tax Increment projections contained in the Tax Increment Financing Plan are estimates only and the Developer acknowledges that it shall place no reliance on the amount of projected Tax Increments and the sufficiency of such Tax Increments to reimburse the Developer for a portion of the costs of the acquisition of the Development Property and the construction of the Site Improvements and Public Improvements as provided in Article III.

## ARTICLE III

### UNDERTAKINGS BY DEVELOPER AND CITY

Section 3.1. Development Property; Site Improvements; Public Improvements. The parties agree that the acquisition of the Development Property and the construction and installation of the Site Improvements and Public Improvements are essential to the successful completion of the Project. The costs of the Development Property and the construction of the Site Improvements and Public Improvements shall be paid by the Developer. The City shall reimburse the Developer for the lesser of (a) \$1,795,810 or (b) the actual costs of the acquisition of the Development Property and the construction of the Site Improvements and Public Improvements actually incurred and paid by the Developer (the "Reimbursement Amount"), as further provided in Section 3.3 hereof.

The Developer shall deposit with the City the estimated amount of the costs to construct the Public Improvements (less anticipated grant amounts related thereto), prior to the City awarding the contract for the construction of the Public Improvements. In the event the deposit made by the Developer is insufficient to pay for the costs to construct the Public Improvements, the City shall specially assess the difference between the actual costs of the construction of the Public Improvements and the deposit made by the Developer therefor (the "Shortfall"). The Developer shall have the option to pay an amount equal to the Shortfall to the City prior to the City making the special assessment. The Developer shall sign a 100% Petition for Improvements regarding the Public Improvements and any special assessments resulting from the Shortfall, the form of which is attached hereto as Exhibit D. Furthermore, the Developer shall waive any right to challenge the validity or amount of any special assessments for the Public Improvements resulting from the Shortfall. The City shall provide for the competitive bidding of the Public Improvements, pursuant to Minnesota Statutes, Chapter 429 and Section 471.345, to control the costs of constructing the Public Improvements. The Developer shall have the opportunity to review the bids at or after the City Council meeting in which the sealed bids are opened publicly and considered by the City Council.

Subject to Unavoidable Delays, the City will make a good faith effort to complete construction of the Public Improvements by December 31, 2022. The City and the Developer agree that construction of the Public Improvements must be completed before the completion of the construction, and the commencement of the operation, of the Project by the Developer. The parties agree to cooperate and communicate in good faith for the successful completion of the Project, especially in light of the current pandemic known as COVID-19 and its potential unforeseen effects.

Section 3.2. Limitations on Undertaking of the City. Notwithstanding the provisions of Section 3.1, the City shall have no obligation to the Developer under this Agreement to reimburse the Developer for the costs identified in Section 3.1, if the City, at the time or times such payment is to be made, is entitled under Section 4.2 to exercise any of the remedies set forth therein as a result of an Event of Default which has not been cured.

Section 3.3. Reimbursement: Tax Increment Revenue Note. The City shall reimburse the Developer for the costs identified in Section 3.1 through the issuance of the City's TIF Note in substantially the form attached to this Agreement as Exhibit B, subject to the following conditions:

(1) The TIF Note shall be dated, issued and delivered when the Developer shall have demonstrated in writing to the reasonable satisfaction of the City that the construction of the Site Improvements has been completed and that the Developer has incurred and paid all costs of acquisition of the Development Property and the construction of the Site Improvements, as described in and limited by Section 3.1 and shall have submitted paid invoices for the costs of construction of the Site Improvements and a settlement statement or other evidence of payment of the costs of the Development Property in an amount not less than the Reimbursement Amount (the costs for the Public Improvements shall automatically contribute to the Reimbursement Amount without any further action from the Developer).

(2) The unpaid principal amount of the TIF Note shall bear simple non-compounding interest from the date of issuance of the TIF Note, at 5.00% per annum. Interest shall be computed on the basis of a 360 day year consisting of twelve (12) 30-day months.

(3) The principal amount of the TIF Note and the interest thereon shall be payable solely from the Tax Increments.

(4) On each Note Payment Date and subject to the provisions of the TIF Note, the City shall pay, against the principal and interest outstanding on the TIF Note, any Tax Increments received by the City during the preceding six (6) months. All such payments shall be applied first to accrued interest and then to reduce the principal of the TIF Note.

(5) The TIF Note shall be a special and limited obligation of the City and not a general obligation of the City, and only Tax Increments shall be used to pay the principal and interest on the TIF Note. If, on any TIF Note Payment Date, the Tax Increments for the payment of the accrued and unpaid interest on the TIF Note are insufficient for such purposes, the difference shall be carried forward, without interest accruing thereon, and shall be paid if and to the extent that on a future TIF Note Payment Date there are Tax Increments in excess of the amounts needed to pay the accrued interest then due on the TIF Note.

(6) The City's obligation to make payments on the TIF Note on any Note Payment Date or any date thereafter shall be conditioned upon the requirements that: (A) there shall not at that time be an Event of Default that has occurred and is continuing under this Agreement and (B) this Agreement shall not have been rescinded pursuant to Section 4.2.

(7) The TIF Note shall be governed by and payable pursuant to the additional terms thereof, as set forth in Exhibit B. In the event of any conflict between the terms of the TIF Note and the terms of this Section 3.3, the terms of the TIF Note shall govern. The issuance of the TIF Note pursuant and subject to the terms of this Agreement, and the taking by the City of such additional actions as bond counsel for the TIF Note may require in connection therewith, are hereby authorized and approved by the City.

Section 3.4. Business Subsidies Act.

(1) In order to satisfy the provisions of Minnesota Statutes, Sections 116J.993 to 116J.995 (the "Business Subsidies Act"), the Developer acknowledges and agrees that the amount of the "Business Subsidy" granted to the Developer under this Agreement \$1,795,810 which is the maximum Reimbursement Amount for the costs of the acquisition of the Development Property and the construction of the Site Improvements and Public Improvements as set forth in Section 3.1(1) and that the Business Subsidy is needed because the Project is not sufficiently feasible for the Developer to undertake without the Business Subsidy. The Tax Increment District is an economic development district and the public purpose of the Business Subsidy is to increase the tax base, create jobs, and encourage the construction of a manufacturing facility in the City. The Developer agrees that it will meet the following goals (the "Goals") in connection with the development of the Development Property: the Developer shall create within the City (and retain within the County) at least 20 full time jobs at an average hourly wage, excluding benefits, of at least \$15.00 per hour, all within the first two years from the "Benefit Date", which is the date the Developer completes the construction of the Project.

(2) If the Goals are not met, the Developer agrees to repay all or a part of the Business Subsidy to the City, plus interest ("Interest") set at the implicit price deflator defined in Minnesota Statutes, Section 275.70, Subdivision 2, accruing from and after the Benefit Date, compounded semiannually. If the Goals are met in part, the Developer will repay a portion of the Business Subsidy (plus Interest) determined by multiplying the Business Subsidy by a fraction, the numerator of which is the number of jobs in the Goals which were not created within the City of Eyota at the wage level set forth above and the denominator of which is 20 (i.e. number of jobs set forth in the Goals).

(3) The Developer agrees to (i) report its progress on achieving the Goals to the City until the later of: (a) the date the Goals are met; or (b) two years from the Benefit Date, or, if the Goals are not met, until the date the Business Subsidy is repaid, (ii) include in the report the information required in Minnesota Statutes, Section 116J.994, Subdivision 7 on forms developed by the Minnesota Department of Employment and Economic Development, and (iii) send completed reports to the City. The Developer agrees to file these reports no later than March 1 of each year commencing March 1, 2022, and within 30 days after the deadline for meeting the Goals. The City agrees that if it does not receive the reports, it will mail the Developer a warning within one week of the required filing date. If within 14 days of the post marked date of the warning the reports are not made, the Developer agrees to pay to the City a penalty of \$100 for each subsequent day until the report is filed up to a maximum of \$1,000.

(4) The Developer agrees to continue its operations on the Development Property within the City for at least five (5) years after the Benefit Date. If the Developer fails to do so, the Developer will repay a portion of the Business Subsidy (plus Interest) determined by multiplying the Business Subsidy by a fraction, the numerator of which is the number of months the Developer's operations continued on the Development Property within the City and the denominator of which is 60.

(5) Other than the various grants referenced in Section 2.1(8), there are no other state or local government agencies providing financial assistance for the Project other than the City.

(6) There is no parent corporation of the Developer.

(7) The Developer certifies that it does not appear on the Minnesota Department of Employment and Economic Development's list of recipients that have failed to meet the terms of a business subsidy agreement.

Section 3.5. Legal and Administrative Expenses. The Developer shall pay for all Legal and Administrative Expenses.

## ARTICLE IV

### EVENTS OF DEFAULT

Section 4.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean whenever it is used in this Agreement any one or more of the following events:

(1) Failure by the Developer to timely pay any ad valorem real property taxes and special assessments levied against the Development Property and all public utility or other City payments due and owing with respect to the Development Property.

(2) Failure by the Developer to cause the construction of the Project to be completed pursuant to the terms, conditions and limitations of this Agreement.

(3) Failure of the Developer to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

(4) The holder of any mortgage on the Development Property or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable mortgage documents.

(5) If the Developer shall:

(a) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended or under any similar federal or state law; or

(b) make an assignment for the benefit of its creditors; or

(c) admit in writing its inability to pay its debts generally as they become due; or

(d) be adjudicated as bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer as bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof; or a receiver, liquidator or trustee of the Developer, or of the Project, or part thereof, shall be appointed in any proceeding brought against the Developer, and shall not be discharged within sixty (60) days after such appointment, or if the Developer, shall consent to or acquiesce in such appointment.

(6) Any knowingly false representation or warranty made herein or hereafter by the Developer to the City, related to the Project, the Site Improvements, the Public Improvements, or this Agreement.

Section 4.2. Remedies on Default. Whenever any Event of Default referred to in Section 4.1 occurs and is continuing, the City, as specified below, may take any one or more of the

following actions after the giving of ninety (90) days' written notice to the Developer, but only if the Event of Default has not been cured within said ninety (90) days from the date of delivery of such notice, or, if such noncompliance cannot reasonably be cured by the Developer within such ninety (90) day period, the Developer has not provided assurances, reasonably satisfactory to the City, that such noncompliance will be cured as soon as reasonably possible:

- (1) The City may suspend its performance under this Agreement and the TIF Note until it receives assurances from the Developer, deemed adequate by the City, that the Developer will cure its default and continue its performance under this Agreement.
- (2) The City may cancel and rescind the Agreement and the TIF Note.
- (3) The City may seek repayment of the Business Subsidy.

Section 4.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 4.4. No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 4.5. Agreement to Pay Attorney's Fees and Expenses. Whenever any Event of Default occurs, the City and the Developer shall cooperate in good faith in the curing or remedying of such Event of Default. If the City should employ attorneys to file litigation for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the Developer herein contained, due to the Developer not cooperating in good faith to cure or remedy the Event of Default, then the Developer agrees that it shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses so incurred by the City due to the filing of said litigation.

Section 4.6. Indemnification of City.

(1) The Developer (a) releases the City and its governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees (collectively, and only for the purposes of this Section 4.6, the "Indemnified Parties") from, (b) covenants and agrees that the Indemnified Parties shall not be liable for, and (c) agrees to indemnify and hold harmless the Indemnified Parties against, any claim, cause of action, suit or liability for loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project or on the Development Property.

(2) Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now

and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Developer (or if other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the City in this Agreement or to any actions undertaken by the City which are not contemplated by this Agreement but shall, in any event and without regard to any fault on the part of the City, apply to any pecuniary loss or penalty (including interest thereon from the date the loss is incurred or penalty is paid by the City at a rate equal to the Prime Rate) as a result of the Project causing the Tax Increment District to not qualify or cease to qualify as an "economic development district" under Section 469.174, Subdivision 12, of the Act and Section 469.176, Subdivision 4c. or to violate limitations as to the use of Tax Increments as set forth in Section 469.176, Subdivision 4c.

(3) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City.

Section 4.7. Indemnification of Developer.

(1) To the extent allowable by law, the City (a) releases the Developer and its officers, agents, including the independent contractors, consultants and legal counsel, servants and employees (collectively, and only for the purposes of this Section 4.7, the "Indemnified Parties") from, (b) covenants and agrees that the Indemnified Parties shall not be liable for, and (c) agrees to indemnify and hold harmless the Indemnified Parties against, any claim, cause of action, suit or liability for loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Public Improvements.

(2) Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, the City agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the City (or if other persons acting on its behalf or under its direction or control) under this Agreement and related to the acquisition, construction, installation, ownership, and operation of the Public Improvements; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the Developer in this Agreement.

## ARTICLE V

### DEVELOPER'S OPTION TO TERMINATE AGREEMENT

Section 5.1. The Developer's Option to Terminate. This Agreement may be terminated by the Developer, if (i) the Developer is in compliance with all material terms of this Agreement and no Event of Default has occurred; and (ii) the City fails to comply with any material term of this Agreement, and, after written notice by the Developer of such failure, the City has failed to cure such noncompliance within ninety (90) days of receipt of such notice, or, if such noncompliance cannot reasonably be cured by the City within ninety (90) days, of receipt of such notice, the City has not provided assurances, reasonably satisfactory to the Developer, that such noncompliance will be cured as soon as reasonably possible.

Section 5.2. Action to Terminate. Termination of this Agreement pursuant to Section 5.1 must be accomplished by written notification by the Developer to the City within sixty (60) days after the date when such option to terminate may first be exercised. A failure by the Developer to terminate this Agreement within such period constitutes a waiver by the Developer of its rights to terminate this Agreement due to such occurrence or event.

Section 5.3. Effect of Termination. If this Agreement is terminated pursuant to this Article V, this Agreement shall be from such date forward null and void and of no further effect; provided, however, the termination of this Agreement shall not affect the rights of either party to institute any action, claim or demand for damages suffered as a result of breach or default of the terms of this Agreement by the other party, or to recover amounts which had accrued and become due and payable as of the date of such termination. Upon termination of this Agreement pursuant to this Article V, the Developer shall be free to proceed with the Project at its own expense and without regard to the provisions of this Agreement; provided, however, that the City shall have no further obligations to the Developer with respect to reimbursement of the expenses set forth in Section 3.2.

## ARTICLE VI

### ADDITIONAL PROVISIONS

Section 6.1. Restrictions on Use. Until termination of this Agreement, the Developer agrees for itself, its successors and assigns and every successor in interest to the Development Property, or any part thereof, that the Developer and such successors and assigns shall operate, or cause to be operated, the Project as an industrial facility (i.e. distribution warehouse) and shall devote the Development Property to, and in accordance with, the uses specified in this Agreement.

Section 6.2. Conflicts of Interest. No member of the governing body or other official of the City shall have any financial interest, direct or indirect, in this Agreement, the Development Property or the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by the Developer or successor or on any obligations under the terms of this Agreement.

Section 6.3. Titles of Articles and Sections. Any titles of the several parts, articles and sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 6.4. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by standard, registered or certified mail, postage prepaid, return receipt requested, and

- (1) in the case of the Developer is addressed to, delivered personally, or emailed to:

Menard, Inc.  
Attention: Properties  
5101 Menard Drive  
Eau Claire, WI 54703  
Email: properties@menard-inc.com

- (2) in the case of the City is addressed to, delivered personally, or emailed to the City at:

City of Eyota, Minnesota  
Attention: City Clerk  
PO Box 328  
38 South Front Street SW  
Eyota, MN 55976  
Email: mknowlton@cityofeyota.com

with a copy to:

Taft Stettinius & Hollister LLP  
Attention: Dan Burns  
2200 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402  
Email: dburns@taftlaw.com

or at such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the other, as provided in this Section.

Section 6.5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 6.6. Law Governing. This Agreement will be governed and construed in accordance with the laws of the State.

Section 6.7. Expiration. This Agreement shall expire on the earlier of (i) February 1, 2032, (ii) the date the TIF Note is paid in full or (iii) the date this Agreement is terminated or rescinded in accordance with its terms.

Section 6.8. Provisions Surviving Rescission or Expiration. Sections 4.5 and 4.6 shall survive any rescission, termination or expiration of this Agreement with respect to or arising out of any event, occurrence or circumstance existing prior to the date thereof.

Section 6.9. Sale of Project or Development Property; Assignability of Agreement. The Project or the Development Property may not be sold or transferred, and this Agreement shall not be assigned, unless the Developer first obtains the written consent of the City, which shall not be unreasonably withheld or conditioned. The TIF Note may only be assigned pursuant to the terms of the TIF Note.

[Signatures to appear on following pages.]

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and on its behalf and the Developer has caused this Agreement to be duly executed in its name and on its behalf, on or as of the date first above written.

CITY OF EYOTA, MINNESOTA

By \_\_\_\_\_  
Its Mayor

By \_\_\_\_\_  
Its Clerk

[This is a signature page to the Development Agreement by and between the  
City of Eyota, Minnesota, and Menard, Inc.]

MENARD, INC.

By \_\_\_\_\_

Name: Theron J. Berg

Its: Real Estate Manager

[This is a signature page to the Development Agreement by and between the  
City of Eyota, Minnesota, and Menard, Inc.]

## EXHIBIT A

### DESCRIPTION OF DEVELOPMENT PROPERTY

Real property located in the City of Eyota, Olmsted County, Minnesota described as follows:

That part of the East Half of the Southeast Quarter of Section 10, Township 106 North, Range 12 West, which lies south of County Road No. 7, as located on July 10, 1978; and that part of the East Half of the Northeast Quarter of Section 15, Township 106 North, Range 12 West, which lies north of the Chicago Northwestern Railway right of way.

All the above also being alternatively described as:

A part of the East Half of the Southeast Quarter of Section 10, Township 106 North, Range 12 West, Olmsted County, Minnesota described as follows: Commencing at the southeast corner of the Southeast Quarter of said Section 10; thence North 89 degrees 49 minutes 44 seconds West, assumed bearing, along the south line of said Southeast Quarter a distance of 4.42 feet to the center line of C.S.A.H. No. 7 for a point of beginning; thence continue North 89 degrees 49 minutes 44 seconds West along said south line 1210.75 feet to the northerly right-of-way line of the Chicago and Northwestern Railroad; thence North 79 degrees 26 minutes 35 seconds West along said right-of-way 104.62 feet to the west line of the East Half of the Southeast Quarter of said Section 10; thence due north along said west line 1113.21 feet to the center line of C.S.A.H. No. 7; thence south 72 degrees 57 minutes 28 seconds East along said centerline 533.06 feet; thence easterly and southerly a distance of 1343.12 feet along said centerline and long a tangential curve, concave to the southwest, delta angle 67 degrees 09 minutes 20 seconds, radius 1145.92 feet, and the chord of said curve bears South 39 degrees 22 minutes 48 seconds East, to the point of beginning; and

A part of the East Half of the Northeast Quarter of Section 15, Township 106 North, Range 12 West, Olmsted County, Minnesota described as follows: Beginning at the northeast corner of said Northeast Quarter; thence North 89 degrees 49 minutes 44 seconds West, assumed bearing, along the north line of said Northeast Quarter 1215.17 feet to the northerly right-of-way line of the Chicago and Northeastern Railroad; thence South 79 degrees 26 minutes 35 seconds East along said right-of-way, 593.70 feet; thence southeasterly 648.34 feet along said right-of-way and along a tangential curve, concave southerly, delta angle 03 degrees 18 minutes 30 seconds, radius 11226.45 feet, and the chord of said curve bears South 77 degrees 47 minutes 20 seconds East, to the east line of said Northeast Quarter; thence North 00 degrees 23 minutes 35 seconds West along said east line 242.23 feet to the point of beginning.

(Abstract Property)

PID #s 621044032672 and 621511032714

EXHIBIT B

FORM OF TIF NOTE

No. R-1

\$1,795,810

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF OLMSTED  
CITY OF EYOTA

TAX INCREMENT REVENUE NOTE  
(MENARD, INC. PROJECT)

The City of Eyota, Minnesota (the "City"), hereby acknowledges itself to be indebted and, for value received, hereby promises to pay the amounts hereinafter described (the "Payment Amounts") to Menard, Inc. (the "Developer") or its registered assigns (the "Registered Owner"), but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided.

The principal amount of this Note shall equal from time to time the principal amount stated above, as reduced to the extent that such principal installments shall have been paid in whole or in part pursuant to the terms hereof; provided that the sum of the principal amount listed above shall in no event exceed \$1,795,810 as provided in that certain Development Agreement, dated as of \_\_\_\_\_, 2020, as the same may be amended from time to time (the "Development Agreement"), by and between the City and the Developer. The unpaid principal amount hereof shall bear interest from the date of this Note at the simple non-compounded rate of five and no hundredths percent (5.00%) per annum. Interest shall be computed on the basis of a 360 day year consisting of twelve (12) 30-day months.

The amounts due under this Note shall be payable on August 1, 2023, and on each February 1 and August 1 thereafter to and including February 1, 2032, or, if the first should not be a Business Day (as defined in the Development Agreement), the next succeeding Business Day (the "Payment Dates"). On each Payment Date the City shall pay by check or draft mailed to the person that was the Registered Owner of this Note at the close of the last business day of the City preceding such Payment Date an amount equal to the sum of the Tax Increments (hereinafter defined) received by the City during the six month period preceding such Payment Date. All payments made by the City under this Note shall first be applied to accrued interest and then to principal. This Note is prepayable by the City, in whole or in part, on any date.

The Payment Amounts due hereon shall be payable solely from 90% of tax increments (the "Tax Increments") from the Development Property (as defined in the Development Agreement) within the City's Tax Increment Financing (Economic Development) District No. 1-3 (the "Tax Increment District") within its Municipal Development District No. 1 which are paid to the City and which the City is entitled to retain pursuant to the provisions of Minnesota Statutes, Sections 469.174 through 469.1794, as the same may be amended or supplemented from time to time (the "Tax Increment Act"). This Note shall terminate and be of no further force and effect following

the last Payment Date defined above, on any date upon which the City shall have terminated the Development Agreement under Section 4.2(2) thereof or the Developer shall have terminated the Development Agreement under Article V thereof, on the date the Tax Increment District is terminated, or on the date that all principal payable hereunder shall have been paid in full, whichever occurs earliest.

The City makes no representation or covenant, expressed or implied, that the Tax Increments will be sufficient to pay, in whole or in part, the amounts which are or may become due and payable hereunder.

The City's payment obligations hereunder shall be further conditioned on the fact that no Event of Default under the Development Agreement shall have occurred and be continuing at the time payment is otherwise due hereunder, but such unpaid amounts shall become payable if said Event of Default shall thereafter have been cured; and, further, if pursuant to the occurrence of an Event of Default under the Development Agreement the City elects to cancel and rescind the Development Agreement, the City shall have no further debt or obligation under this Note whatsoever. Reference is hereby made to all of the provisions of the Development Agreement, including without limitation Section 3.3 thereof, for a fuller statement of the rights and obligations of the City to pay the principal of this Note, and said provisions are hereby incorporated into this Note as though set out in full herein.

This Note is a special, limited revenue obligation and not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications stated or referenced herein. This Note is not a general obligation of the City and neither the full faith and credit nor the taxing powers of the City are pledged to the payment of the principal of this Note and no property or other asset of the City, save and except the above-referenced Tax Increments, is or shall be a source of payment of the City's obligations hereunder.

This Note is issued by the City in aid of financing a project pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including the Tax Increment Act.

This Note may be assigned only with the consent of the City which consent shall not be unreasonably withheld. In order to assign the Note, the assignee shall surrender the same to the City either in exchange for a new fully registered note or for transfer of this Note on the registration records for the Note maintained by the City. Each permitted assignee shall take this Note subject to the foregoing conditions and subject to all provisions stated or referenced herein.

**IT IS HEREBY CERTIFIED AND RECITED** that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to have happened, and to be performed precedent to and in the issuance of this Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; and that this Note, together with all other indebtedness of the City outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the City to exceed any constitutional or statutory limitation thereon.

IN WITNESS WHEREOF, City of Eyota, Minnesota, by its City Council, has caused this Note to be executed by the manual signatures of its Mayor and Clerk and has caused this Note to be dated as of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Mayor

**DO NOT EXECUTE UNTIL PAID INVOICES, A SETTLEMENT STATEMENT OR OTHER EVIDENCE OF PAYMENT FOR LAND ACQUISITION AND SITE IMPROVEMENTS ARE GIVEN TO THE CITY, AND DEVELOPER HAS PAID OR REIMBURSED THE CITY ALL COSTS ASSOCIATED WITH THE PUBLIC IMPROVEMENTS - REFER TO SECTION 3.3(1).**

**CERTIFICATION OF REGISTRATION**

It is hereby certified that the foregoing Note was registered in the name of Menard, Inc., and that, at the request of the Registered Owner of this Note, the undersigned has this day registered the Note in the name of such Registered Owner, as indicated in the registration blank below, on the books kept by the undersigned for such purposes.

<u>NAME AND ADDRESS OF REGISTERED OWNER</u>	<u>DATE OF REGISTRATION</u>	<u>SIGNATURE OF ADMINISTRATOR</u>
Menard, Inc. 5101 Menard Drive Eau Claire, WI 54703	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

## EXHIBIT C

### SITE IMPROVEMENTS

Landscaping, including irrigation

Foundations and Footings

Grading/earthwork

Engineering

Survey

Environmental Testing

Soil Borings

Site Preparation

Onsite Utilities

Storm Water/Ponding

Outdoor Lighting

Onsite Road, Curb, Gutter, Driveway, Sidewalk and Streetscape Improvements

Parking

And any other improvements required by the Conditional Use Permit.

EXHIBIT D

FORM OF 100% PETITION FOR IMPROVEMENTS

We, the undersigned, Menard, Inc., being the owners of all of the real property abutting upon the following street, alley, or public way between the points indicated:

[DESCRIPTION OF STREET, ALLEY, AND/OR PUBLIC WAY]

hereby petition the City Council of the City of Eyota, Minnesota, to undertake without a public hearing under Minnesota Statutes, Section 429.031, the following improvements along said street, alley, or public way:

[DESCRIPTION OF PUBLIC IMPROVEMENTS]

and to assess the entire cost thereof against our property abutting said improvements, with waiver of our right to challenge the validity or amount of such assessments, based on benefits received without regard to cash valuation.

MENARD, INC.

By \_\_\_\_\_

Its \_\_\_\_\_

I hereby certify that I have examined the above petition and appropriate real estate records and find that said petition is in proper form and is signed by all the owners of property abutting said improvements.

WITNESS my hand as such Clerk and the seal of said City this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
City Clerk

City of Eyota, Minnesota

(SEAL)

EXHIBIT E  
PUBLIC IMPROVEMENTS