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DECLARATION OF RECIPROCAL EASEMENTS AND RESTRICTIVE COVENANTS

OMAHA, NEBRASKA

THIS DOCUMENT PREPARED BY
 AND AFTER RECORDING RETURN TO:

Timothy Enyeart
 Corporate Counsel
 Menard, Inc.
 4777 Menard Drive
 Eau Claire, WI 54703

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TA-54695

**DECLARATION OF RECIPROCAL EASEMENTS
AND RESTRICTIVE COVENANTS**

THIS DECLARATION OF RECIPROCAL EASEMENTS AND RESTRICTIVE COVENANTS, hereinafter the "Agreement", is made and entered as of this 26th day of March, 2008, by **MENARD, INC.**, a Wisconsin corporation, having its principal place of business at 4777 Menard Drive, Eau Claire, Wisconsin 54703 (hereinafter referred to as "Menard").

WHEREAS, Menard is the owner in fee of certain parcels of land legally described as Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and Outlot B, in Menards Subdivision (Lots 1 thru 10 inclusive and Outlot "A" and Outlot "B"), part of the SE ¼ of Section 13, T15N, R10E and a replat of Lot 3, Skyline Country 4th Addition to the City of Elkhorn, Douglas County, Nebraska; and Lot 1, Lot 2 and Outlot A, Menards Subdivision Replat 1 (Lot 1, Lot 2 and Outlot "A", inclusive), being part of the SE ¼ of Section 13, T15N, R10E and a replat of Outlot "A", Menards Subdivision, an addition to the City of Elkhorn, Douglas County, Nebraska, hereinafter referred to as the "Shopping Center", generally as depicted on the attached Exhibit A;

WHEREAS, Menard intends to develop and operate the Shopping Center parcels in conjunction with each other as integral parts of a retail shopping complex, and in order to effectuate the common use and operation thereof, Menard desires to establish certain nonexclusive easements in, to, over, under, and across portions of the Shopping Center.

NOW, THEREFORE, Menard, for itself and its successors and assigns, in consideration of the foregoing, and the covenants and declarations as hereafter set forth, declares that the Parcels comprising the Shopping Center shall be sold, transferred, conveyed, improved and developed subject to the following:

**ARTICLE I.
DEFINITIONS**

As used hereinafter in this Agreement, the below terms shall be defined as follows:

A. ACCOUNTING PERIOD: The term "Accounting Period" refers to any period commencing January 1 and ending December 31 of that calendar year. Any portion or portions of the Common Elements Maintenance Cost, as hereinafter defined, relating to a period of time only part of which is included within the last Accounting Period hereto shall be prorated on a daily basis.

B. COMMON ELEMENTS: The term "Common Elements" refers to and means any and all elements, reasonably declared by Menard from time to time, which commonly benefit the Shopping Center, including but not limited to the Detention Pond, landscaping, traffic signals, and Common Utility Lines, constructed upon or for the benefit of the Parcels, excluding the drives and parking within each Parcel.

C. COMMON ELEMENTS MAINTENANCE COST: The term "Common Elements Maintenance Cost" refers to and means the total of all costs and expenses during an Accounting Period paid by the Owner of the Menard Parcel for the operation and management of the Common Elements, including but not limited to the following:

1. All amounts paid for the operation, maintenance, repair and replacement of the Common Elements;

2. Insurance costs, if any, relating to the Common Elements; and
3. Management fees in the amount of ten percent (10%) of the total of the amounts described in Subsection I(D)(1) above.

D. COMMON UTILITY LINES: The term "Common Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to more than one Parcel, excluding city and public utility lines. The storm water collection and distribution facilities shall be deemed to be a Common Utility Line.

E. CONSTANT DOLLARS: The term "Constant Dollars" shall mean the present value of the dollars to which such phrase refers, which shall be adjusted every five (5) years. The first adjustment of Constant Dollars shall occur on January 1, 2013, and Constant Dollars shall be adjusted every five (5) years thereafter. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number.

1. "Base Index Number" shall mean the level of the Index for January, 2008.
2. "Current Index Number" shall mean the level of the Index for the month of December of the year preceding the adjustment year.
3. "Index" shall mean the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, published by the Bureau of Labor Statistics of the United States Department of Labor (base year 1982-84=100), or if publication of the Index is discontinued, a substitute index selected by the approving Parties of comparable statistics computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

F. DETENTION POND: The term "Detention Pond" shall refer to and mean the detention pond located on Outlot A, generally as depicted on Exhibit B. Menard reserves, for itself and future owners of the Menard Parcel, the right to reconfigure and/or relocate the Detention Pond, at its sole discretion, provided such reconfiguration or relocation shall not materially reduce the detention capacity of the pond. Additionally, Menard reserves the right to fill and sell the Detention Pond should alternative storm water management facilities become available for the Outlot Parcels. Any of the above mentioned modifications to the Detention Pond shall be at the sole cost and expense of Menard.

G. EFFECTIVE DATE: The term "Effective Date" refers to and means the date that this Agreement shall become effective, which date shall be the day that this Agreement is recorded in the appropriate recording office in and for Douglas County, Nebraska.

H. LAWS: The term "Laws" shall mean and include all laws, rules, regulations, orders, ordinances, statutes and other requirements of all federal, state, county and municipal authorities having jurisdiction over the Parcels.

I. MENARD PARCEL: The singular term "Menard Parcel" shall refer to that certain parcel of land located in the City of Omaha, County of Douglas, State of Nebraska, legally described as Lot 2 in Menards Subdivision (Lots 1 thru 10 inclusive and Outlot "A" and Outlot "B"), part of the SE ¼ of Section 13, T15N, R10E and a replat of Lot 3, Skyline Country 4th

Addition to the City of Elkhorn, Douglas County, Nebraska, according to the recorded plat thereof.

J. OUTLOT PARCEL: The term "Outlot Parcel" shall refer to those certain parcels of land located in the City of Omaha, County of Douglas, State of Nebraska, legally described as Lots 1, 3, 4, 5, 6, 7, 8, 9, 10, and Outlot B, in Menards Subdivision (Lots 1 thru 10 inclusive and Outlot "A" and Outlot "B"), part of the SE ¼ of Section 13, T15N, R10E and a replat of Lot 3, Skyline Country 4th Addition to the City of Elkhorn, Douglas County, Nebraska; and Lot 1 and Lot 2, Menards Subdivision Replat 1 (Lot 1, Lot 2 and Outlot "A", inclusive), being part of the SE ¼ of Section 13, T15N, R10E and a replat of Outlot "A", Menards Subdivision, an addition to the City of Elkhorn, Douglas County, Nebraska.

K. OWNER: The term "Owner" refers to any Person possessing fee title, by deed or other instrument or arrangement, whereby such Person has acquired title to any portion of any Parcel.

L. PARCEL(S): The term "Parcel" shall refer to a lot identified on Exhibit A, or any division thereof. The term "Parcels" shall refer to any combination of two or more Parcels, or all collectively.

M. PARTY: The term "Party" shall refer to any Person subject to this Agreement, or, subject to notice provided to the other Owners as provided below, their successors or assigns. "Parties" shall refer to any combination of two or more of the above, or all collectively.

N. PERMITTEE: The term "Permittee" shall mean all Owners and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of an Owner insofar as their activities relate to the intended development, use and occupancy of the Shopping Center; provided, however, persons engaged in civic, public or political activities within the Shopping Center, without the express written consent of Menard, including but not limited to the following activities, shall not be considered to be Permittees:

1. Exhibiting any placard, sign or notice;
2. Distributing any circular, handbill, placard or booklet;
3. Soliciting memberships or contributions for private, civic, public or charitable purposes;
4. Parading, picketing or demonstrating; and
5. Failing to follow rules or regulations established by the Parties relating to the use of the Shopping Center.

O. PERSON: The term "Person" refers to and shall include individuals, partnerships, firms, associations, corporations and other forms of business entities. The use of the singular shall include the plural.

P. SEPARATE UTILITY LINES: The term "Separate Utility Lines" shall mean those Utility Lines that are installed to provide the applicable service to one particular Parcel. For the purpose of this Agreement, the portion of a Utility Line extending between a Common Utility Line and a Building or the termination of the line shall be considered a Separate Utility Line.

Q. UTILITY LINES: The term "Utility Lines" shall mean those facilities and systems for the transmission of utility services, including the drainage and storage of storm water.

**ARTICLE II.
USES AND RESTRICTIONS**

A. DEVELOPMENT RESTRICTIONS: Without the prior express written consent of the owner of the Menard Parcel, the Outlot Parcels, or any portion thereof, shall be subject to the following restrictions:

1. No Outlot Owner shall grant any easement for the benefit of any property not within the Shopping Center; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by a Party on its Parcel to governmental or quasi-governmental authorities or to public utilities;
2. Only one building or structure shall be constructed on each Outlot Parcel, exclusive of trash enclosures.

B. PARCEL SIGNAGE: To ensure that the Shopping Center is developed and maintained as a cohesive development and that the development of the Shopping Center does not adversely impact upon the visibility of the Menard Parcel, the Owner of the Menard Parcel reserves the following rights:

1. No freestanding sign shall be permitted within the Shopping Center unless the Owner of the Menard Parcel has approved the design and size, including the panel inserts.
2. No building sign shall be permitted within the Shopping Center unless Menard has approved the design and size, including the panel inserts.
3. Notwithstanding anything contained herein to the contrary, each Party shall be permitted to place the following signs on its Parcel:
 - a. Directional signs or informational signs such as "Handicapped Parking";
 - b. Temporary signs displaying leasing information; and
 - c. One (1) temporary sign identifying each contractor working on a construction job.

The restrictions contained in this Article II shall run with the land for a period of twenty (20) years from the Effective Date, and thereafter be of no further force or effect.

**ARTICLE III.
CONSTRUCTION OF IMPROVEMENTS**

A. GENERAL REQUIREMENTS: All construction activities performed on the Shopping Center shall be performed in compliance with all applicable Laws and be consistent with the following standards:

1. All construction shall use new materials, and shall be performed in a good, safe, workmanlike manner.

2. No construction activities shall:
 - a. Cause any unreasonable increase in the cost of constructing improvements upon another Party's Parcel;
 - b. Unreasonably interfere with construction work being performed on any other part of the Shopping Center;
 - c. Unreasonably interfere with the use, occupancy, or enjoyment of any part of the remainder of the Shopping Center by any other Party or its Permittees; or
 - d. Cause any building, structure, or other improvements located on another Parcel to be in violation of any Law.

B. MECHANIC'S LIENS: All construction activities performed on the Outlot Parcels shall be performed in a manner so as to avoid the filing of mechanic's liens on any portion of the Shopping Center and shall conform to the following:

1. If any mechanic's lien is filed against the Parcel of one Party as a result of services performed or materials furnished for the use or benefit of another Party, the Party permitting or causing such lien to be so filed shall cause such lien to be discharged within fifteen (15) days after the entry of a final judgment (after all appeals) for the foreclosure of such lien and shall Indemnify the other Party and its Parcel against all Claims on account of such lien or claim of lien.
2. Nothing herein shall prevent a Party permitting or causing such lien from contesting the validity thereof in any manner such Party chooses so long as such contest is pursued with reasonable diligence and in good faith. If such contest is determined adversely (allowing for appeal to the highest appellate court), such Party shall promptly pay in full the required amount, together with any interest, penalties, costs or other charges necessary to release such lien.
3. Notwithstanding the foregoing, upon request of the Party whose Parcel is subject to such lien, the Party permitting or causing such lien to be filed shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge, unless such Party delivers to the other an undertaking from a reputable national title insurance company to discharge the lien in accordance with Subsection III(B)(1), above.

C. COMPLETION OF WORK: Construction, reconstruction or alteration of an improvement on any Outlot Parcel shall be completed within twelve (12) months of the date of commencement.

D. RESTORATION: In the event any portion of any Parcel, or improvements thereon, may be excavated, damaged or otherwise disturbed as a result of any construction, reconstruction, or alterations, then said Parcel or improvements which have been excavated, damaged, or otherwise disturbed by said construction, reconstruction, or alterations shall be restored to essentially the same or better condition as existed prior to the commencement of such work, at the sole cost and expense of the Party responsible for such construction, reconstruction, or alteration.

E. DAMAGE TO IMPROVEMENTS: In the event that any structure or facility located on any Outlot Parcel shall be damaged or destroyed, partially or totally, by fire, the elements or any other casualty, the Owner of the Parcel on which the structure or facility is located shall promptly and with due diligence restore the structure or facility to a standard consistent with those set forth in this Agreement and/or in the alternative, raze the non-restored portion of the damaged or destroyed structure or facility, remove debris, and seed the Parcel.

ARTICLE IV. OPERATION AND MAINTENANCE OF IMPROVEMENTS

A. STANDARDS: The Parties shall regularly maintain and mow any undeveloped areas of their Parcel prior to completing construction thereon. From and after the completion of construction of the improvements on their Parcel, the Parties shall operate and maintain the improvements thereon in good order, condition and repair. Without limiting the generality of the foregoing, the Parties, in the maintenance of their Parcels and improvements, shall:

1. Maintain the surface of the parking area and sidewalks in a condition level, smooth, and evenly covered with the type of surfacing material originally installed thereon, or such substitute or repair thereof as shall be in all respects equal thereto in quality, appearance and durability;
2. Remove all papers, debris, filth and refuse from the Parcel and sweep and keep free of snow and ice any paved areas, parking areas, drives and circulation roads;
3. Maintain all buildings and structures as shall be reasonably required and in accordance with the practices prevailing in the operation of similar first-class retail centers in the Omaha, Nebraska area;
4. Repaint striping, markers, signs, etc., as necessary to maintain them in first-class condition; and
5. Maintain landscaping as necessary to keep it in a first-class, thriving condition.

B. MAINTENANCE: Each Party shall be fully responsible for the care and maintenance of the improvements and landscaping on its Parcel (other than Common Elements) and shall have no responsibility whatsoever for the care and maintenance of each other's Parcel, except for the financial obligations relating to the Common Elements described in this Agreement.

C. COMPLIANCE: Each Party covenants and agrees, with respect to its Parcel (other than Common Elements), to comply with the Laws, rules, regulations and requirements of all public authorities and to Indemnify, defend and hold each other harmless against any claims, demands, losses, damages, liabilities and expenses and any suits, actions and judgments, including, but not limited to, costs and reasonable attorney fees, arising out of, or in any way related to, any failure to maintain their respective Parcels (other than Common Elements) in a safe condition. Each Party shall give prompt and timely notice to the other of any claim, suit, or action commenced which may require indemnification under this Agreement.

D. TAXES: Each Party agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities, all real property taxes and assessments levied against its Parcel.

**ARTICLE V.
COMMON EASEMENTS**

A. NONEXCLUSIVE EASEMENTS: The Parties grant the following for their respective use, for the use and benefit of the other Parcels, and for the use of their Permittees, in common with all others entitled to use the same, a perpetual, non-exclusive easement over the Parcels for:

1. Construction, installation, maintenance, and repair of the Common Elements, as set forth in Article VI;
2. The construction, installation or service of utilities from Separate Utility Line to a Common Utility Line or Common Element, subject to Section V(B) below.

B. UTILITIES: Except as otherwise provided herein, the Owner of each Parcel shall, at its sole cost and expense, be responsible for the installation, maintenance, repair, replacement, relocation and removal of all Separate Utility Lines installed upon or serving its Parcel, whether on the Parcel, another Parcel or public roadway. Each Party agrees that:

1. All such installation, maintenance, repair, replacement, relocation and removal shall be performed in a manner that causes no unnecessary discontinuance of any utility service to any other Parcel;
2. Any and all portions of any Parcel which may have been excavated, damaged or otherwise disturbed as a result of such work shall be restored to essentially the same condition as existed prior to the commencement of such work at the sole cost and expense of the Owner of the Parcel benefited thereby;
3. No Party shall have access, except in an emergency, to Common Utility Lines or Common Elements located on another Parcel without fourteen (14) days written notice to such other Parcel Owner describing the need for such access, the proposed location of the work to be performed, nature of service to be provided, proposed commencement and completion dates and a contractor's certificate of insurance as required herein; and
4. Notwithstanding the foregoing, Menard shall have unlimited access to Common Utility Lines and Common Elements for the installation, maintenance, repair, replacement, relocation, and removal thereof.

C. DOMINANT AND SERVIENT ESTATES: Each easement granted pursuant to the provisions hereof is expressly for the benefit of the Parcel of the grantee, and the Parcel so benefited shall be the dominant estate and the Parcel upon which such easement is located shall be the servient estate, but where only a portion thereof is bound and burdened, or benefited by a particular easement, only that portion so bound and burdened, or benefited, as the case may be, shall be deemed to be the servient or dominant estate, as the case may be. Any easement granted pursuant to the provisions of this Article may be terminated by the written agreement of all the Owners of the dominant and servient estates.

**ARTICLE VI.
COMMON ELEMENTS MAINTENANCE**

A. COMMON ELEMENTS – STANDARDS: From and after the date of the completion of their construction, Menard, or the then Owner of the Menard Parcel, shall operate and maintain the Common Elements in what it, in its sole discretion, deems to be good order, condition and repair.

B. COMMON ELEMENTS MAINTENANCE COST - REIMBURSEMENT: Reimbursement for Common Elements Maintenance Cost shall be in accordance with, and determined by, each Parcel's gross area, as referenced on Exhibit A, as a proportion of the whole Shopping Center, exclusive of the Detention Pond, as follows:

1. On the first day of each calendar month, in advance, each Parcel Owner shall pay to the Owner of the Menard Parcel a sum which is estimated by Menard to be equal to one-twelfth (1/12) of the above Common Elements Maintenance Cost for that Party's respective annual obligation for such costs and expenses.

2. Within one hundred twenty (120) days after the end of each calendar year, Menard shall furnish each Party with a statement of the actual amount of its pro rata share of the Common Elements Maintenance Cost for such period. Failure by Menard to provide the required statement does not release the Party from its obligation to pay its pro rata share. Upon request of a Parcel Owner, Menard shall also provide to such Parcel Owner reasonable supporting documentation evidencing the expenditures shown on such statement.

3. Within fifteen (15) days after receipt of the statement of the actual amount, each Party shall pay to Menard or Menard shall credit against the obligations of each Party, as the case may be, the difference between the estimated payments made during the prior period and the Party's correct pro rata share of the Common Elements Maintenance Cost for such period.

4. Menard shall from time to time notify each Party, in writing, of adjustments to its monthly installments due hereunder, and each Party shall adjust its installment payments accordingly.

5. Whenever and as often as one Party shall not have paid any sum payable hereunder to another party within ten (10) days after Menard has given notice to such Party of its failure to pay such sum on or before the due date, such delinquent Party shall pay interest on such amount from the due date to, and including, the date such payment is received by the Party entitled thereto, at a rate of the lesser of twelve percent (12%) per annum or the maximum rate permitted by law.

C. LIENS: It is agreed that the Owner of the Menard Parcel shall have a lien upon any Parcel to secure payment by the Parcel Owner of its pro rata share of the Common Elements Maintenance Cost.

1. The lien shall attach and take effect only upon recordation of a claim of lien in the official real estate records of Douglas County, Nebraska. The claim of lien shall include the following:

a. The name of the lien claimant;

b. A statement concerning the basis for the claim of lien and identifying the lien claimant;

- c. An identification of the owner or reputed owner of the Parcel or interest therein against which the lien is claimed;
- d. A description of the Parcel against which the lien is claimed;
- e. A description of the work performed which has given rise to the claim of lien and a statement itemizing the amount thereof; and
- f. A statement that the lien is claimed pursuant to the provisions of this Agreement, reciting the date of recordation and the recorded document number (or book and page) hereof.

2. The claim of lien shall be duly verified or acknowledged and contain a certificate that a copy thereof has been served upon the Party against whom the lien is claimed pursuant to Section VIII(O). The lien so claimed may be enforced in any judicial proceedings allowed by law, including, without limitation, a suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the Laws of the State of Nebraska. The lien shall be subject and subordinate to any mortgages or deeds of trust which are of record on or before the date on which the claim of lien is placed of record.

D. ACT OF PARTY: In the event that the required maintenance or repair is the result of the actions of a Party, said Party shall be solely responsible for the cost of the maintenance or repair.

ARTICLE VII. INDEMNIFICATION AND INSURANCE

A. COMMERCIAL GENERAL LIABILITY INSURANCE: Each Party shall maintain Commercial General Liability Insurance, in terms consistent with the following:

1. Each Party (as to its Parcel only) shall maintain or cause to be maintained in full force and effect commercial general liability insurance with a combined single limit of liability of not less than Two Million Dollars (\$2,000,000.00) in Constant Dollars for bodily injury, personal injury and property damage arising out of any one occurrence; the other Parties shall be "additional insureds" under such policy as it applies to the insuring Party's Parcel.

2. Each Party shall Indemnify each other Party from and against all claims, losses, liabilities, actions, proceedings, costs and expenses, including reasonable attorneys' fees and costs of suit ("Claims") asserted or incurred in connection with or arising from or as a result of the death of or injury to any Person or loss or damage to the property of any Person which shall occur on the Parcel owned by the Indemnifying Party, except to the extent such claims are caused by the negligence or the willful act or omission of the indemnified Person or its agents or employees.

B. CASUALTY LOSS INSURANCE: Each Party shall maintain casualty insurance, on terms consistent with the following:

1. Effective upon the commencement of construction of any building on its Parcel and so long as such building exists, each Outlot Owner shall carry, or cause to be carried, casualty insurance with "extended" or "all-risk" coverage, in the amount of one hundred percent (100%) of full replacement cost thereof (excluding footings, foundations or

excavations). At a minimum, the insurance coverage required by this Section shall extend to loss or damage by fire, windstorm, cyclone, tornado, hail, explosion, riot, riot attending a strike, civil commotion, malicious mischief, vandalism, aircraft, vehicle, smoke damage and sprinkler leakage.

2. Each Party (the "Releasing Party") hereby releases and waives for itself, and each Person claiming by, through or under it, each other Party (the "Released Party") from any liability for any loss or damage to all property of such Releasing Party located upon any portion of the Shopping Center, which loss or damage is of the type generally covered by the insurance required to be maintained under Subsection VII(B)(1) above, irrespective either of any negligence on the part of the Released Party which may have contributed to or caused such loss, or of the amount of such insurance required to be carried or actually carried, including any deductible or self insurance reserve. Each Party shall use its reasonable efforts to obtain, if needed, appropriate endorsements to its policies of insurance with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release given herein.

3. To the full extent permitted by law, each Party ("Indemnitor") shall Indemnify each other Party ("Indemnitee") from and against all Claims asserted by or through any Permittees of the Indemnitor's Parcel for any loss or damage to the property of such Permittee located upon the Indemnitor's Parcel, which loss or damage is of the type generally covered by the insurance required to be maintained under Subsection VII(B)(1), irrespective of any negligence on the part of the Indemnitee which may have contributed to or caused such loss.

C. INSURANCE POLICY REQUIRMENTS: Each Party shall maintain an insurance policy consistent with the following:

1. All insurance coverage required by this Article VII shall be provided under one or more of the following:

a. An individual policy covering this location;

b. A blanket policy which includes other liabilities, properties and locations of such Person; provided, however, that if a blanket commercial general liability insurance policy contains a general policy aggregate of less than Twenty Million Dollars (\$20,000,000.00) in Constant Dollars, then the insuring Person shall also maintain excess liability coverage necessary to establish a total liability insurance limit of not less than Twenty Million Dollars (\$20,000,000.00) in Constant Dollars;

c. A plan of self-insurance, provided that any Person so self-insuring notifies the other Parties of its intent to self-insure and shall upon request deliver to such other Parties each calendar year a copy of its annual report or Form 10-K that is audited by an independent certified public accountant which discloses that such Person has One Hundred Million Dollars (\$100,000,000.00) in Constant Dollars or more of net current assets. Notwithstanding the foregoing, Menard reserves the right to self-insure without providing proof of net current assets;

d. A plan of self-insurance maintained by such Person's parent company provided that the parent company complies with the requirements of Subsection VII(C)(1)(c) above and guarantees such Person's insurance obligations under this Agreement; or

- e. A combination of any of the foregoing insurance programs.
2. All insurance provided under Subsection VII(C)(1)(a) or Subsection VII(C)(1)(b) shall be procured from companies authorized to issue such insurance in the state in which the Shopping Center is located and shall be rated by Best's Insurance Reports not less than B+/X. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by a Person, such Person shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed Fifty Thousand Dollars (\$50,000.00) in Constant Dollars unless such Person complies with the requirements regarding self-insurance pursuant to Subsection C(1)(c) or Subsection C(1)(d). Each Party shall furnish to any Party requesting the same, a certificate(s) of insurance, or statement of self-insurance, as the case may be, evidencing that the insurance required to be carried by such Person is in full force and effect.
3. The following shall apply to the insurance required pursuant to Section VII(A):
- a. The insurance policy may not be canceled or materially reduced in amount or coverage below the requirements of this Agreement, without at least thirty (30) days prior written notice by the insurer to each insured and to each additional insured;
 - b. The insurance shall provide for severability of interests;
 - c. The insurance shall provide that an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other insureds or additional insureds; and
 - d. The insurance shall provide for contractual liability coverage with respect to the indemnity obligations set forth in this Agreement.

ARTICLE VIII. MISCELLANEOUS

- A. BREACH SHALL NOT PERMIT TERMINATION:** Breach of this Agreement shall not entitle any Party to cancel, rescind or otherwise terminate this Agreement. This limitation shall not affect, in any manner, any other right or remedies, which the Parties may have hereunder by reason of any breach of this Agreement.
- B. CAPTIONS:** The captions of the Articles and paragraphs of this Agreement are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction.
- C. CONSENT:** In any instance in which a Party shall be requested to consent to or approve of any matter with respect to which consent or approval is required by any of the provisions of this Agreement, such consent or approval shall be given in writing, and the same may be given or refused in the sole and absolute judgment of such Party, unless otherwise expressly provided in this Agreement.
- D. BENEFITS:** Each and every provision of this Agreement to be performed by the Parties (whether affirmative or negative in nature) is intended to and shall bind each and every Party,

and their successors and assigns, and shall inure to the benefit of all Parties and their respective successors in title or interest. Each and all of the covenants herein shall run with and against the Parcels and shall bind each and every other Person having any fee, leasehold or other interest in any part of any Parcel derived through the Parties to the extent that such part of a Parcel is affected or bound by the covenants in question. Where the provisions of this Agreement specify that Menard shall be responsible for performing a particular act or obligation, the Owner from time to time of the Menard Parcel shall be responsible for performance of such act or obligation and shall be entitled to reimbursement as set forth elsewhere in the Agreement.

E. GOVERNING LAWS: This Agreement shall be construed in accordance with the laws of the State of Nebraska and any applicable federal laws and regulations.

F. REMEDIES: In the event of any violation or threatened violation by a Party of any of the terms, restrictions, covenants and conditions of this Agreement, the other Party or Parties shall have the right to enjoin such violation or threatened violation, or to seek any other remedy as allowed by law, in a court of competent jurisdiction. Prior to the commencement of any such action, except in an emergency, at least seven (7) calendar days written notice of such violation shall be given to the Party responsible for such violation or threatened violation.

G. PARTNERSHIP: Nothing contained in this Agreement nor any acts of the Parties shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the Parties.

H. NOT A PUBLIC DEDICATION: Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general public for any public purpose whatsoever, it being the intention of the Parties that this Agreement shall be strictly limited to and for the purposes herein expressed. The Parties hereby reserve the right to eject or cause the ejection from their Parcel of any Person or Persons not authorized, empowered or privileged to the use thereof. Additionally, the Parties reserve the right to close off the easements located upon their respective Parcels for such reasonable periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by any third parties; provided, however, that prior to closing off any portion, as herein provided, the Party seeking to close off its portion shall give written notice to the other Parties of its intention, and shall coordinate such closing with the others so that no unreasonable interference with the operation of the Shopping Center shall occur.

I. PAYMENT ON DEFAULT: If pursuant to this Agreement any Party is obligated, compelled or elects on behalf of another Party to pay any sum of money or do any act which requires the payment of money, the Party responsible for said payment shall reimburse the paying Party for such sums within thirty (30) days of demand. All such sums shall bear simple interest from the due date for reimbursement until the date of such reimbursement at a rate of the lesser of twelve percent (12%) per annum or the maximum rate permitted by law. In no event shall any mortgagee or any purchaser of mortgagee's interest at a foreclosure sale or by deed in lieu of foreclosure be obligated to make any payment described in this Subsection accruing prior to the date that such mortgagee forecloses on such Parcel.

J. RELEASE: If any Party shall sell, transfer or assign its Parcel or its interest therein, it shall, except as provided in this Agreement, be released from its future obligations hereunder. It shall be a condition precedent to the release and discharge of any grantor or assignor Party that such grantor or assignor shall give notice to the other Parties to this Agreement of any such sale, transfer, conveyance or assignment concurrently with or immediately following the filing for record of the instrument effecting the same. The granting or assigning Party shall remain responsible for any amounts owing or any other obligation which shall have accrued prior to such sale, transfer, conveyance or assignment.

K. SEVERABILITY: If any term, provision or condition contained in this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement (or the applicable portion of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

L. TIME OF ESSENCE: Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement.

M. WAIVER OF DEFAULT: No waiver of any default by any Party shall be implied from any omission to take any action in respect to such default if such default continues or is repeated. No express waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more waivers of any default in the performance of any term, provision or covenant contained in this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant. The consent or approval of any Party to any act or request does not render unnecessary the consent or approval of any subsequent similar acts or requests. The rights and remedies given to any Party shall be deemed to be cumulative and no one right or remedy shall be exclusive of any of the other, or of any other right or remedy at law or equity which any Party might otherwise have by virtue of a default under this Agreement, and the exercise of one such right or remedy by any such Party shall not impair such Party's standing to exercise any other right or remedy.

N. AMENDMENT: This Agreement may be amended or modified only by recording in the appropriate county recording office for Douglas County, Nebraska, a document executed by all Owners to be bound.

O. NOTICES: All notices, demands, statements and requests ("notices") required or permitted to be given under this Agreement must be in writing delivered to the Party in conformity with the methods set forth in Subsection VIII(O)(1) below:

1. All notices shall be delivered by one of the following methods of delivery:
 - a. Personal service, in which event the notice shall be deemed to have been given upon actual receipt;
 - b. Federal Express, Airborne Express or another nationally recognized overnight courier service, in which event the notice shall be deemed to have been given on the first business day after the notice is deposited with the courier service (or the next business day thereafter if the notice is deposited with the courier service on a day other than a business day);
 - c. United States registered or certified mail, postage prepaid and return receipt requested, in which event the notice shall be deemed to have been given three (3) business days after the notice is deposited with the United States Postal Service;
 - d. United States First Class Mail, in which case notice shall be deemed effective on the date the notice has been received by the Party to whom it was sent; and

e. Facsimile transmission, in which event the notice shall be deemed to have been given upon confirmation of the facsimile transmission, provided that the original counterpart of the notice is sent, in conformance with another subsection of this Section X(O), on the same day.

2. The initial addresses of the Parties shall be:

Menard, Inc.

Attn: Vice President-Real Estate
4777 Menard Drive
Eau Claire, WI 54703
Phone: (715) 876-2776
Facsimile: (715) 876-5960

3. Each Person shall have the right from time to time to change its address for notice purposes to any other address within the United States of America upon at least ten (10) days prior written notice to the other Parties in accordance with the provisions of this Section VIII(O). Refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice hereunder.

4. In the event any party to this Agreement transfers an ownership interest in all or a portion of its Parcel and notifies the second party hereto of the transferee and its address, the parties hereto agree to provide any notices required hereunder to said transferee(s).

P. FORCE MAJEURE: The Parties shall be excused from performing any obligation under this Agreement, except obligations to pay sums of money, in the event and so long as the performance of such obligation is prevented, delayed, retarded or hindered by the following: act of God; fire; earthquake; flood; explosion; action of the elements; war; acts of terror; invasion; insurrection; riot; mob violence; sabotage; inability to procure or general shortage of labor, equipment facilities, materials, or suppliers in the open market; failure of transportation; strike; lockout; action of labor union; condemnation; requisition; law; orders of governmental, civil, military, or naval authorities; or any other cause, whether similar or dissimilar to the foregoing, not within the respective control of the obligated Party. The provisions of this section shall not operate to excuse any Person from the prompt payment of any monies required by this Agreement.

Q. RECORDING: This Agreement, and any amendments hereto, shall be recorded in the appropriate recording office for Douglas County, Nebraska.

R. ESTOPPEL CERTIFICATE: Upon the request of a Party, the other Parties shall execute and deliver, from time to time, a certificate confirming, if such then be the fact, that this Agreement then continues in full force and effect and without amendment (or, if amended, stating the amendments) and that the certifying Party knows of no existing defaults by the other Party (or if such default is known, specifying the same).

S. TERM: This Agreement shall be effective as of the date first above written and shall have a term of twenty (20) years, and shall be automatically renewed thereafter for an infinite number of consecutive ten (10) year renewal periods unless terminated by a recorded written agreement of the Owner of the Menard Parcel and the Owners of the majority of the Outlot Parcel acreage; provided, however, that certain provisions of this Agreement shall expire after twenty (20) years as provided herein, and the Easements referred to in Article V, which are specified as being perpetual or as continuing beyond the term of this Agreement, and the Common Elements Maintenance referenced in Article VI, shall continue in full force and effect.

Upon termination of this Agreement, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Agreement, except as the same relate to the Easements and Maintenance mentioned above, shall terminate and have no further force or effect; provided, however, that the termination of this Agreement shall not limit or affect any remedy at law or in equity that a Party may have against any other Party with respect to any liability or obligation arising or to be performed under this Agreement prior to the date of such termination.

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IN WITNESS WHEREOF, THE UNDERSIGNED HAS EXECUTED THIS DECLARATION OF RECIPROCAL EASEMENTS AND RESTRICTIVE COVENANTS.

EXECUTED ON:

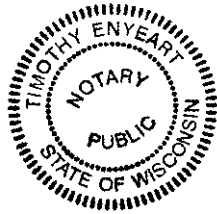
MENARD, INC.,

This 26th day of March, 2008

by: 
Marv Prochaska
Vice President/Real Estate

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

On this 26th day of March, 2008, before me a Notary Public within and for said County and State, personally appeared Marv Prochaska, to me personally known, who, being by me duly sworn, did say that he is the Vice President/Real Estate of Menard, Inc., the corporation named in the foregoing instrument, and that the instrument was signed on behalf of the corporation by authority of its Board of Directors and Marv Prochaska acknowledged the instrument to be the free act and deed of the corporation.



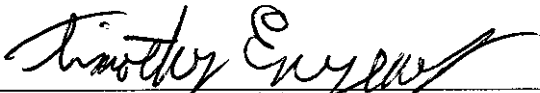
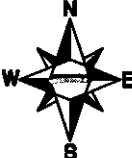
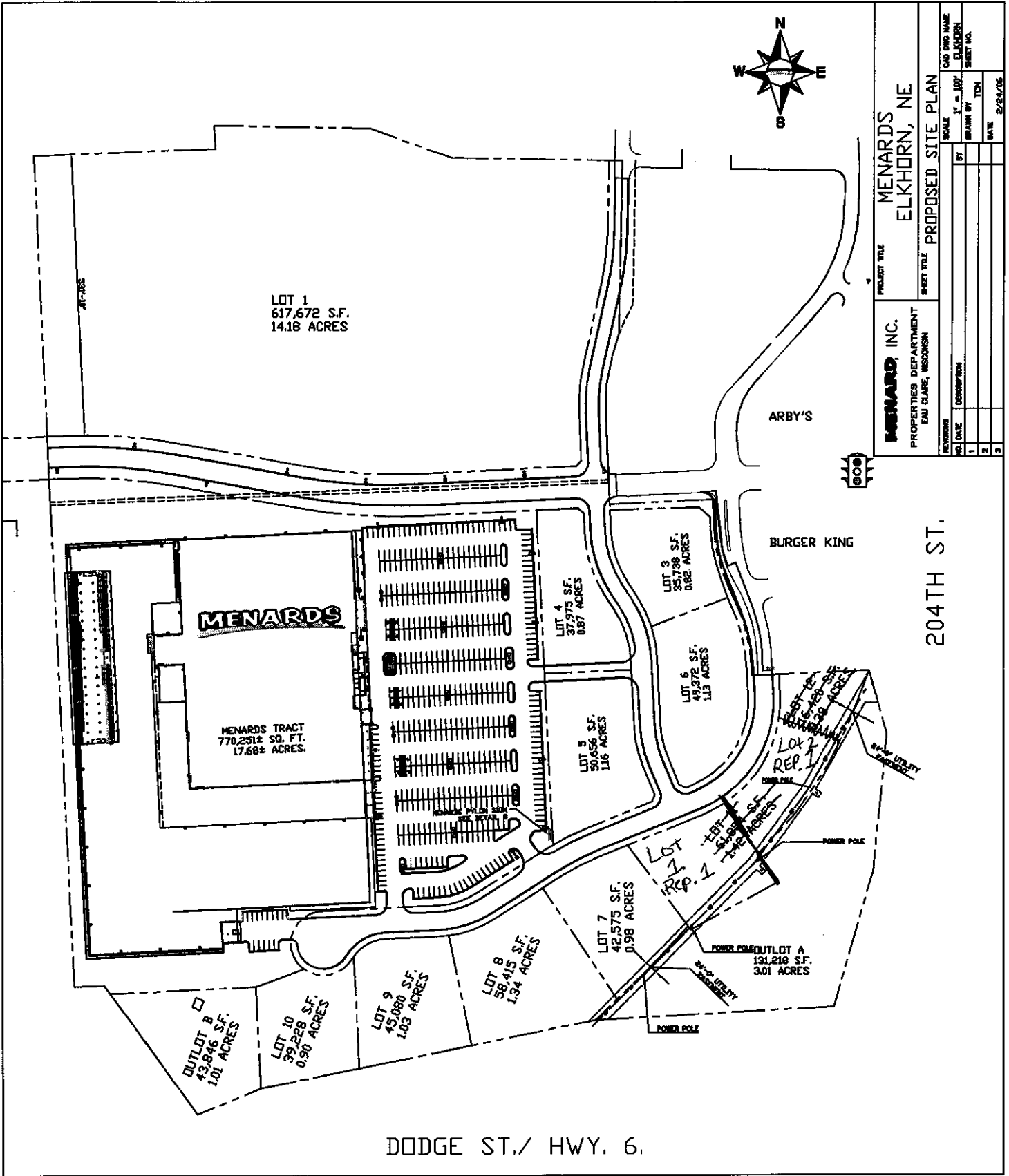

Notary Public, Eau Claire County
My Commission is permanent.

Exhibit A



PROJECT TITLE: **MENARDS, INC. MENARDS ELKHORN, NE**

PROPERTIES DEPARTMENT
EAU CLARE, WISCONSIN

SHEET TITLE: **PROPOSED SITE PLAN**

NO.	DATE	DESCRIPTION	BY	CHKD BY	DATE
1			J. JEB		
2					
3					

SCALE: 1" = 100'

DRAWN BY: TCH

DATE: 2/24/06

CAD DWG NAME: ELKHORN

SHEET NO.