

## LIMITED LICENSE AGREEMENT

This Limited License Agreement (the "Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between MENARD, INC. ("Licensor") and the CITY OF APPLETON, WISCONSIN ("Licensee").

### RECITALS

WHEREAS, Licensor is the fee owner of that certain parcel of land commonly known as 0 E. Express Court, Appleton, Wisconsin.

WHEREAS, Licensee desires to use a portion of the aforementioned parcel (the "Licensed Area"), generally as crosshatched on the attached Exhibit A, for snow storage.

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

### AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. The license granted herein to Licensee shall commence on the date of full execution of this Agreement and terminate on June 1, 2020 (the "Term").
2. Licensor hereby grants to Licensee a non-exclusive limited license to enter upon the Licensed Area during the Term solely for the purpose of snow storage, and for no other purpose without the prior express written consent of Licensor. Licensee acknowledges and agrees that any and all activities conducted by Licensee or Licensee's employees, agents, representatives or contractors shall be solely at the risk of Licensee. **Notwithstanding the foregoing, Licensor has the right to terminate this Agreement without cause on ninety (90) days' prior written notice to Licensee.**
3. On or before July 1, 2020, Licensee shall pay Licensor a license fee equal to one half (1/2) of the ad valorem real estate taxes assessed against Outagamie County, Wisconsin tax parcel 31-4-5568-00 for the year 2019 due and payable in 2020.
4. Licensee shall, without any cost to Licensor, provide all planning and arrangements for, and conduct the due diligence investigations and all of its associated physical preparations and activities for all activities on the Licensed Area. For all activities carried out on the Licensed Area pursuant to this license and this Agreement, Licensee shall provide adequate security, personnel and management so that such activities shall be carried out without material damage to any property (including Licensor's property), injury to persons or impairment to the environment. Licensee shall conduct all activities on the Licensed Area, and shall cause its employees, agents, representatives and contractors to

conduct their activities on the Licensed Area, with due care for the health and safety of persons and the protection of property and the environment.

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

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

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

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

9. At all times during the Term, Licensee shall keep the Licensed Area and everything thereon in a clean, safe and orderly condition and shall keep the Licensed Area and its surroundings clean and free from trash, rubbish, waste and debris. **Before expiration of the Term, Licensee shall remove all materials, equipment, personal property and other items of any nature which were placed or brought upon the Licensed Area by or for Licensee; and Licensee shall leave and surrender the Licensed Area in the same or better condition as it was in at the beginning of the Term, including without limitation fixing any ruts.** If any repairs or restoration should be necessary in order to return the Licensed Area or any part thereof to such condition, such work shall be promptly performed by Licensee, at its sole cost and to Licensor's satisfaction.

10. Licensee shall not cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in the Licensed Area by Licensee, Licensee's agents, employees, contractors or invitees, without first obtaining Licensor's written consent. If Hazardous Substances other than those approved by Licensor herein are used, stored, generated or disposed of on or in the Licensed Area, or if the premises become

contaminated in any manner for which Licensee is liable, Licensee shall indemnify and hold harmless Licensor from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the premises, damages due to loss or restriction of rentable or usable space, or any damages due to adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorney fees, consultant and expert fees) arising during or after the Term and arising as a result of such contamination by Licensee. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by a federal, state or local agency or political subdivision. Without limitation of the foregoing, if Licensee causes or permits the presence of any Hazardous Substance on the Licensed Area and such result in contamination, Licensee shall promptly, at its sole expense, take any and all necessary actions to return the Licensed Area to the condition existing prior to the presence of any such Hazardous Substance on the Licensed Area. Licensee shall first obtain Licensor's approval of any such remedial action. As used herein, "Hazardous Substance" includes any and all material or substances which are classified as "hazardous waste," "extremely hazardous waste," "hazardous materials," "hazardous substance," or any equivalent classification pursuant to state, federal, or local governmental law.

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

12. Licensee shall be liable for, and shall defend, indemnify and hold harmless Licensor, its shareholders, directors, officers, employees and agents (collectively, the "Indemnitees"), from and against any and all liability, claims, suits, judgments, damages, losses, costs and expenses (including costs of defense and reasonable attorney's fees), which any or all of said Indemnitees may suffer, incur, be exposed to, be responsible for or pay, on account of any injury to or death of any person, or damage to or loss or destruction of any property, to the extent caused by Licensee (or any of its employees, agents, representatives or contractors) and arising out of or in connection with this License or the exercise of any license or privilege herein granted or the conduct of any activity on or about the Licensed Area or any act or omission of Licensee (or any of its employees, agents, representatives or contractors).

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

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

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

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

If to Licensor:           Menard, Inc.  
                                  Attn: Properties Division  
                                  5101 Menard Drive  
                                  Eau Claire, WI 54703  
                                  Facsimile Number: (715) 876-5998  
                                  Phone Number: (715) 876-2532  
                                  Email: [properties@menard-inc.com](mailto:properties@menard-inc.com)

If to Licensee:           City of Appleton  
                                  Attn: Paula Vandehey  
                                  100 North Appleton Street  
                                  Appleton, WI 54911  
                                  Phone Number: (920) 832-6482  
                                  Email: [Paula.Vandehey@Appleton.org](mailto:Paula.Vandehey@Appleton.org)

Either party may by like notice at any time and from time to time designate a different address to which notices shall be sent. Such notices, demands or declarations shall be deemed sufficiently served or given for all purposes hereunder at the time they shall be mailed by United States mail, overnight courier, electronic mail, or facsimile as aforesaid.

17. Licensee shall be in default in the event that Licensee: fails in the payment of fees or fails in any other charge hereunder; or fails to comply with any other term or condition of this Agreement; or fails to leave the Licensed Area at the end of the Term in the original or better condition; or permits a lien to be filed against the Licensed Area. In the event of any default Licenser shall, at its option, have the right to terminate this Agreement, in addition to any other remedies which are available to Licenser. In the event that Licensee is in default under any other agreement entered into between Licenser and Licensee, then Licensee shall also be in default under this Agreement and Licenser shall, at its option, have the right to terminate this Agreement, in addition to any other remedies which are available to Licenser.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

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

CITY OF APPLETON, LICENSEE

Witness: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Timothy M. Hanna, Mayor

Witness: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Kami Lynch, City Clerk

Provision has been made to pay the liability that will accrue under this contract.

Approved as to form:

\_\_\_\_\_  
Anthony D. Saucerman  
Director of Finance

\_\_\_\_\_  
James P. Walsh  
City Attorney

Date: \_\_\_\_\_, 2019

LICENSOR: MENARD, INC.

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