

**DEVELOPMENT AGREEMENT, GENERAL DEVELOPMENT PLAN
AND SPECIFIC IMPLEMENTATION PLAN [PHASE I] FOR
MENARD LARGE SCALE RETAIL DEVELOPMENT
Monroe, Wisconsin**

This Agreement is made as of January 15, 2008, between the City of Monroe, a Wisconsin municipal corporation and Menard, Inc., a Wisconsin corporation.

Whereas, Menard has proposed construction of a Menards Store at the Project Location [Figure 1] on the Project Area [Figure 2];

Whereas, Menard owns the right to request rezoning of all property within the Project Area as planned unit development;

Whereas, pursuant to Section 5-10.7-7 of the Monroe City Code, the PUD Application seeks approval for a phased large scale retail planned unit development on the Project Area with the Menards Store being developed as the first phase and the Permitted Outlots being developed as later phases when business occupants are secured;

Whereas, on March 19, 2007, Menard representatives met in a pre-application conference with officers and staff of the City pursuant to Section 5-10.7-5(A) of the Monroe City Code;

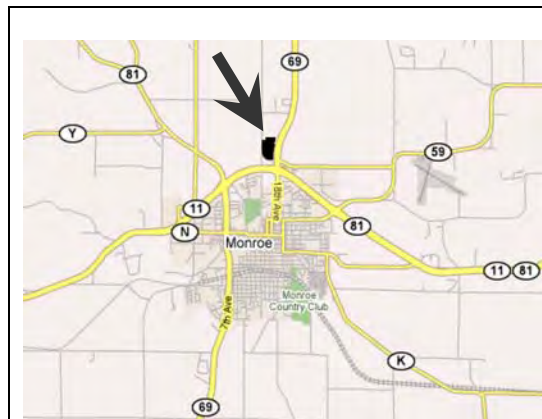
Whereas, Menard has committed to the City that, upon approval of the Project and delivery by Menard of the Menard Election to Proceed, Menard will proceed with the Project;

Whereas, the Project Area has been annexed to the City within 3 years prior to the date of the PUD Application and the Plan Commission has reviewed the comparative site analysis submitted by Menard as required by Section 5-10.7-5(C) 3. of the Monroe City Code and has considered the review comments prepared by Fehr-Graham for such comparative site analysis;

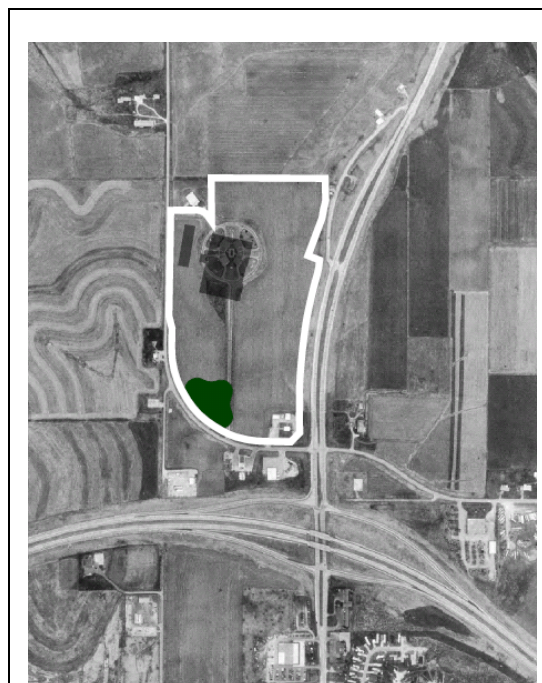
Whereas, the Plan Commission, with the assistance of Fehr-Graham, has reviewed the Project Plans and has followed the procedures required by Chapter 10.7 of Title 5 of the Monroe City Code to process the PUD Application;

Whereas, the Plan Commission has reviewed the economic impact analysis, traffic impact analysis, municipal services impact analysis and neighborhood impact analysis submitted by Menard and has considered the review comments prepared by Fehr-Graham for each such analysis; and

Whereas, Section 5-10.7-5(C) 6. of the Monroe City Code requires that a proposed development agreement be filed prior to action by the Plan Commission recommending rezoning of a large scale retail development to the planned unit development district.



**Figure 1
PROJECT LOCATION**



**Figure 2
PROJECT AREA**

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Now, Therefore, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. **Definitions.** When used in this agreement the following terms shall have the following meanings:

A. **“Building Sign Plans”** means detailed drawings showing signs to be placed on various exterior surfaces of the Menards Store, a reduced version of which is attached hereto as **Exhibit G**, and any additional plans or renderings, including the Façade Rendering and Exterior Elevations, at their original scale showing details of the Building Sign Plans.

B. **“City”** means the City of Monroe, a Wisconsin municipal corporation.

C. **“Comprehensive Plan”** means the City of Monroe Comprehensive Plan prepared with the assistance of the Southwestern Wisconsin Regional Planning Commission and adopted by the Council on November 15, 2005.

D. **“Council”** means the Common Council for the City.

E. **“Exterior Elevations”** means the detailed drawings at original scale of the exterior elevations of the Menards Store, a reduced version of which is attached hereto as **Exhibit F**, and any additional drawings at their original scale showing details of such drawings.

F. **“Exterior Lighting, Bicycle, Trash & Seating Facilities Designs”** means the exterior lighting, bicycle, trash and seating facilities designs pictured on **Exhibit N** attached hereto, and any additional pictures and drawings at their original scale showing details of such designs.

G. **“Façade Rendering”** means the color rendering at original scale of the façade of the Menards Store showing color, texture, protrusions and recesses along the façade, a reduced version of which is attached hereto as **Exhibit D**.

H. **“Fehr-Graham”** means Fehr-Graham Associates, LLC, the City’s consultant for the Project.

I. **“Fire Access Plan”** means a drawing at original scale of the Project Area showing the location of on-site fire hydrants, with shading extending 300 feet in each direction from each such hydrant, and the location of various fire emergency facilities, including the emergency access to the outdoor building products yard, a reduced version of which is attached hereto as **Exhibit M**, and any additional drawings at their original scale showing details of such drawing.

J. **“Highway Intersection Improvements Plans”** means detailed drawings showing improvements to Aebly Road and the intersections with Aebly Road, County Highway DR and the entry and exit ramps for State Highway 11 within the State Highway 69 and North 18th Avenue Corridor, made necessary by the anticipated increase in vehicular traffic as a result of the Project, reduced versions of which are attached hereto as **Exhibits L-1 and L-2**, and any additional drawings at their original scale, or commentary, showing details of the Highway Intersection Improvements Plans.

K. **“Landscape Plan”** means drawings at original scale of the Project Area showing landscaping and plantings associated with the Menards Store, the Permitted Outlots, the Pedestrian Plaza and the Storm Water Detention Basin, reduced versions of which are attached hereto as **Exhibits I-1 through I-4**, and any additional drawings at their original scale showing details of such drawings.

L. **“Mass Grading Plan”** means a drawing at original scale of the Project Area showing finished grade elevations within the Project Area following completion of all grading that is necessary to implement the general development plan and the specific implementation plan for Phase I of the Project, a reduced version of which is

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attached hereto as **Exhibit C-2**, and any additional drawings at their original scale showing details of such drawing.

M. “**Menard**” means Menard, Inc., a Wisconsin corporation, and where appropriate to the context, any other entity lawfully operating under the name “Menard” or “Menards”.

N. “**Menard Election to Proceed**” means a written notice, executed by an authorized agent of Menard, stating that Menard elects to proceed with the Project.

O. “**Menards Store**” means structures proposed by Menard to be constructed on the Project Area as shown on the Site Plan, containing a total of approximately 230,718 square feet under roof, including a main building referred to by Menards as a “Prototype V Store” consisting of 162,340 square feet of heated retail, receiving, warehouse, office and restroom areas and 67,028 square feet of unheated covered space, including 27,648 square feet of unheated garden/shipping center, 12,960 square feet of attached exterior overhang, 26,420 square feet of detached covered drive-thru warehouse space and a yard gate canopy 1,350 square feet in size.

P. “**Minor Change**” as such term is used in Section 5-10.7-8 of the Monroe City Code, when applied to the Project means a change to any part of the Project, the design of which is expressly addressed in this agreement or its exhibits, that meets one or more of the following conditions:

- 1) Is a minor change of color, texture or orientation of any of the Structure Elements.
- 2) Is a minor reorientation of one or more routes of vehicular or pedestrian access to or within the Project Area.
- 3) Is a minor change in location, orientation or design of parking facilities within the Project Area, provided such changes do not materially decrease the total number of parking spaces.
- 4) Is a minor change in the location of improvements on the Project Area made necessary by previously unforeseen natural conditions.
- 5) Is a minor change to any one or more of the Project Plans or in the size or orientation of any design element reflected on any one or more of the Project Plans.
- 6) Other changes to the Project that will not materially alter the final scope or character of the approved Project.

Q. “**Monroe Road**” means that segment of public highway, under the jurisdiction of the Town of Monroe, shown on **Exhibit A** immediately to the northeast of the Project Area and extending in an arc approximately 1,500 feet in length between its north and south intersections with State Highway 69.

R. “**Monument Sign Plan**” means color renderings at their original scale of the monument signs to be erected at the locations reflected on the Site Plan near the southern access to the Project Area [the “South Entrance Monument Sign”] and near the intersection of Monroe Road and the eastern access to the Project area [the “Northeast Entrance Monument Sign”], reduced versions of which are shown on **Exhibit H** attached hereto, and any additional drawings or renderings at their original scale showing details of such renderings.

S. “**MUTCD**” means the Federal Highway Administration publication entitled “Manual on Uniform Traffic Control Devices”, as adopted by WisDOT and as modified by the Wisconsin Supplement to the “Manual on Uniform Traffic Control Devices”.

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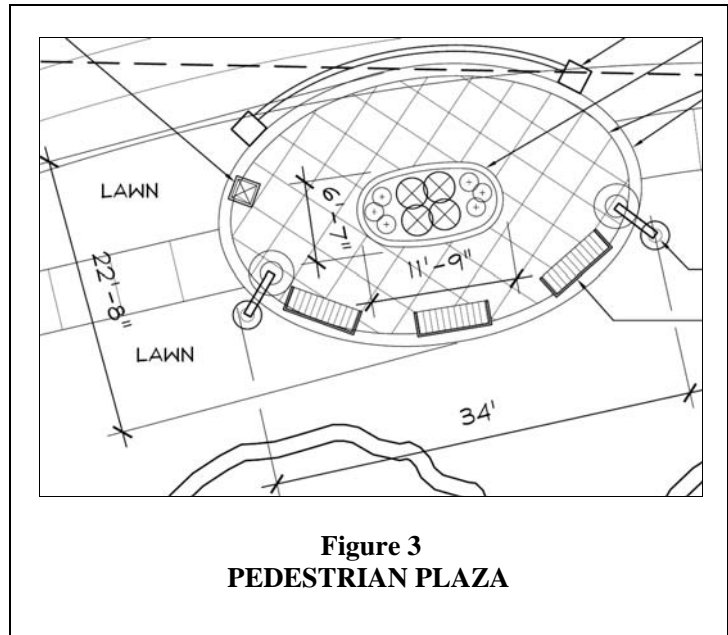
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T. **“On Site Sewer & Water Utilities Route Plan”** means the plan for routing of all on-site sanitary sewer, storm sewer and water utilities serving the Menards Store, the Permitted Outlots and related parking and other improvements, which routes are depicted on **Exhibit K-2** attached hereto, and any additional drawings at their original scale showing construction details of the facilities to be installed pursuant to the On Site Sewer & Water Utilities Route Plan.

U. **“Outdoor Lighting Fixture Design Plan”** means the design of outdoor lighting fixtures substantially similar to the designs reflected on **Exhibit J-2** and **Exhibit N** attached hereto, and any additional drawings at their original scale showing details of such design.

V. **“Pedestrian Plaza”** means a concrete oval shaped area , approximately 650 square feet in size, as depicted on **Figure 3**, overlooking the Detention Pond and designated as “Pedestrian Plaza” on the Site Plan, with a planter in the center, three benches along the eastern perimeter, two decorative lights to the immediate north and south of the benches and a trash receptacle, together with sidewalks running north and south connecting such area to the pedestrian circulation system within the Project Area, and any additional drawings at their original scale showing details of such area, including the “Pedestrian Plaza” detail depicted on **Exhibit I-4**.



W. **“Permitted Outlots”** means at least 4, but not more than 12, separate parcels of real estate located within that part of the Project Area identified as “Future Outlots” on **Exhibit B** attached hereto, and which will be separately described for conveyance and ownership purposes.

X. **“Plan Commission”** means the City’s Plan Commission organized and appointed pursuant to Section 62.23(1) of the Wisconsin Statutes and Chapter 4 of Title 2 of the Monroe City Code, having the responsibility and authority on behalf of the City to review the Project pursuant to Chapter 10.7 of Title 5 of the Monroe City Code.

Y. **“Project”** means the phased planned unit development of the Project Area substantially in the manner shown on the Project Plans, including the planning and construction of those traffic control, pedestrian access, sewer and water facilities that are located outside the Project Area, but are reasonably needed to serve the Menards Store and the Permitted Outlots.

Z. **“Project Area”** means the area enclosed by the solid white line on **Figure 2**, which area is more particularly depicted on **Exhibit A-2** and legally described as follows:

Part of the Southwest Quarter (SW 1/4) of the Northwest Quarter (NW 1/4) and part of the Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4) of Section Twenty-Six (26), Town Two (2) North, Range Seven (7) East, Town of Monroe, Green County, Wisconsin, more particularly described as follows:

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Commencing at the Northwest Corner of said Section 26; thence South 89°58'46" East, 358.80 feet to the point of beginning; thence continuing South 89°58'46" East, 928.92 feet; thence South 01°09'10" East, 185.29 feet to a point of curve; thence Southwesterly 146.22 feet along an arc of curve to the right, having a radius of 1,211.00 feet, the chord which bears South 11°15'02" West, 146.13 feet; thence South 20°59'33" West, 325.17 feet; thence South 77°11'25" East, 27.98 feet; thence South 67°47'22" East, 75.51 feet; thence South 05°41'50" West, 60.46 feet to a point of curve; thence Southwesterly 1,181.31 feet along an arc of a curve to the left, having a radius of 3,949.72 feet, the chord which bears South 07°45'28" West, 1,176.91 feet; thence South 00°55'05" East, 178.79 feet; thence South 45°08'47" West, 105.25 feet to the Northerly right-of-way line of Aebly Road; thence North 88°47'13" West, along said line 227.58 feet to a point of curve; thence Northwesterly 1,188.27 feet along a curve to the right, having a radius of 758.51 feet, the chord which bears North 43°54'27" West, 1,070.44 feet; thence North 00°58'19" East, 147.96 feet; thence North 14°08'10" West, 90.60 feet; thence North 00°46'50" East, 873.51 feet; thence South 89°55'38" East, 216.83 feet to a point of curve; thence Southeasterly 91.36 feet along a curve to the right, having a radius of 100.00 feet, the chord which bears South 63°45'15" East, 88.22 feet; thence South 37°33'44" East, 77.00 feet; thence North 02°08'36" West, 361.82 feet to the point of beginning.

AA. **"Project Location"** means a site located northwest of and abutting the rights-of-way of State Highway 69 and Aebly Road at their intersection as shown on **Figure 1**.

BB. **"Project Plans"** means the Site Plan, Mass Grading Plan, Facade Rendering, Site Vignettes, Exterior Elevations, Landscape Plan, Building Sign Plans, Monument Sign Plan, Site Lighting Plan, Outdoor Lighting Fixture Design Plan, Public Utilities & Sidewalk Route Plan, On Site Sewer & Water Utilities Route Plan, Highway Intersection Improvements Plans, Exterior Lighting, Bicycle, Trash & Seating Facilities Designs, Storm Water Detention Basin Plan and Fire Access Plan.

CC. **"Public Sanitary Sewer and Water Main Easement"** means an easement 40' in width granted to the City for the maintenance, repair or inspection of public sanitary sewer and water mains and related appurtenances, the centerline of which easement shall be the same as the centerline of the ingress and egress easement depicted on the Site Plan, except that such easement shall terminate at the northernmost point shown on the Public Utilities & Sidewalk Route Plan.

DD. **"Public Sidewalk Route"** means the route for a paved pedestrian walk that begins at the southern boundary of the Project Area at a point immediately east of the intersection of Aebly Road and the south entrance road to the Project Area and extends east parallel with Aebly Road, then turning south at a point immediately north of the Aebly Road intersection with State Highway 69 and continuing south within the State Highway 69 and North 18th Avenue Corridor to a point immediately south of the exit ramp for eastbound traffic exiting State Highway 11, the route for which is shown on the Public Utilities & Sidewalk Route Plan.

EE. **"Public Utilities & Sidewalk Route Plan"** means the plan for on-site and off-site routing of all public sewer and water utilities and public sidewalks serving the Menards Store, the Permitted Outlots and related parking and other improvements, which routes are depicted on **Exhibit K-1** attached hereto, and any additional drawings at their original scale showing construction details of the facilities to be installed pursuant to the Public Utilities & Sidewalk Route Plan.

FF. **"PUD Application"** means the application filed with the City by Menard on December 18, 2007, requesting that the Project Area be zoned Planned Unit Development.

GG. **"Site Lighting Plan"** means the Site Lighting Plan of the Project Area at original scale, a reduced version of which is attached hereto as **Exhibit J-1**, and any additional drawings at their original scale showing details of such plan.

HH. **"Site Plan"** means the drawing and related notations at original scale of the Project Area showing the Menards Store, the Permitted Outlots, the Storm Water Detention Basin and the Pedestrian Plaza, together with

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various related improvements, including general notes numbered 1-5, a reduced version of which is attached hereto as **Exhibit C-1**, and any additional drawings at their original scale showing details of such drawing. With respect to a feature expressly required to be indicated on the Site Plan by Chapter 10.7 of Title 5 of the Monroe City Code, additional drawings or notations purporting to show details of the Site Plan shall not be deemed to be a part of the Site Plan with respect to such feature unless the existence, location and approximate dimensions of such feature is clearly shown on **Exhibit C-1** attached hereto.

II. **“Site Vignettes”** means the drawings at original scale showing renderings of the Menards Store with landscaping and plantings from perspectives at locations to the south, east, north, northwest and southwest of the Menards Store, reduced versions of which are attached hereto as **Exhibits E-1** through **E-5**, and any additional drawings at their original scale showing details of such drawings.

JJ. **“State Highway 69 and North 18th Avenue Corridor”** means those segments of State Highway 69 and North 18th Avenue that extend from the southern intersection of State Highway 69 and Monroe Road south beneath the overpass for State Highway 11 to the intersection of North 18th Avenue and the entry and exit ramps for eastbound traffic entering State Highway 11 from North 18th Avenue and exiting State Highway 11 to North 18th Avenue, including related intersection lanes and markings.

KK. **“Store Façade”** means the east facing façade of the Menards Store, a rendering of which is shown on **Figure 4** below and on the Façade Rendering.



**Figure 4
STORE FAÇADE**

LL. **“Storm Water Detention Basin”** means the storm water detention basin constructed pursuant to the Storm Water Detention Basin Plan.

MM. **“Storm Water Detention Basin Plan”** means the plan for a storm water detention basin facility to be constructed within the area designated as “detention basin” on the Site Plan and in accordance with the detailed grading design shown on **Exhibit C-3** attached hereto, and all related excavation, grading, landscaping and structures necessary to fully implement the management of storm water originating from the Project Area as required by federal, state and local codes.

NN. **“Traffic Study”** means the traffic study dated February 13, 2007 prepared by Traffic Analysis Design, Inc., and submitted to the Plan Commission during the traffic impact review portion of the planned unit development review process, including the Technical Memorandum dated July 25, 2007 supplementing such study.

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E. **Design Elements.** The Project shall consist of the following design elements:

1) **Site Design Elements.** The following site elements shall be included in the Project and each such element shall occupy the acreage indicated below and shall be located in the corresponding areas indicated on **Exhibit B** attached hereto [the “Site Elements”]:

Menards Store building, parking & related improvements	17.602 acres
Area dedicated for Storm Water Detention Basin & Pedestrian Plaza	4.222 acres
<i>Storm water detention basin</i>	<i>4.207 acres</i>
<i>Pedestrian Plaza</i>	<i>0.015 acres</i>
Permitted Outlots [“Future Outlots” on Exhibit B]	28.835 acres
 Total area of Site Elements within Project Area	 50.659 acres

2) **Structure Design Elements.** The following structures and improvements shall be constructed in Phase I of the Project on the Project Area and in the locations indicated on the Site Plan and each such structure or improvement shall be designed and constructed with the following square footages [the “Structure Elements”]:

Menards Store:

Total heated space within main structure		162,340 square feet.
<i>Retail product display area</i>	<i>144,107 square feet</i>	
<i>Non-display [office, receiving, etc.]</i>	<i>18,233 square feet</i>	
Total unheated space attached to main structure		40,608 square feet
<i>Garden/shipping center</i>	<i>27,648 square feet</i>	
<i>Attached exterior overhang</i>	<i>12,960 square feet</i>	
Detached covered drive-thru warehouse		26,420 square feet
Yard gate canopy		1,350 square feet

Total - Menards Store **230,718 square feet**

Related Improvements:

Outdoor merchandise yard & drive isles		198,213 square feet
Transformer island		1,114 square feet
Bike rack		174 square feet
Truck dock well		3,240 square feet

Total – related improvements **202,741 square feet**

3) **Minor Changes to the Size of Design Elements.** A change of 10% or less in the acreage of any single Site Element or a change of 10% or less in the square footage of any single Structure Element shall be deemed to be a Minor Change.

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F. **Phased Development.** The Project shall be developed in phases.

1) **Phase I – Menards Store.** The first phase shall be development of the Menards Store and all related improvements and facilities reasonably needed to operate the Menards Store, including parking, landscaping, paving, curbs, road improvements, including turn lanes, traffic control signals, pavement striping and signs and the Storm Water Detention Basin. The Menards Store shall be fully developed during Phase I incorporating in finished form all improvements required in the “Construction of Menards Store and Related Improvements” section of this agreement.

a. **Deadline for Commencing Construction of Phase I.** If Menard shall fail to commence construction of Phase I on or before a date 2 years following the final approval of this agreement by the Council, such approval shall be null and void and construction of the Project may proceed only if the Project is resubmitted for approval and approved by the Council.

b. **Specific Implementation Plan.** This agreement shall be deemed to be the specific implementation plan under Section 5-10.7-7 of the Monroe City Code for Phase I of the Project.

c. **Organizational Structure, Agreements, Covenants, Etc.** Menard will be the sole owner of the Project Area until such time as phases subsequent to Phase I are proposed. Therefore, documents relevant to the requirements of Section 5-10.7-5(B) 3. [*A general outline of intended organizational structure related to property owner's association, deed restrictions and private provision of common services*] and Section 5-10.7-7(A) 7. [*Agreements, bylaws, provisions or covenants which govern the organizational structure, use, maintenance and continued protection of the planned unit development*] of the Monroe City Code do not currently exist, and will not exist in connection with the development of Phase I, but it is anticipated that such documents will be necessary for development of subsequent phases of the Project. Therefore, no such documents shall be required to be submitted to the City in connection with Phase I of the Project, but at the time a specific implementation plan for any one or more of the Permitted Outlots is proposed, appropriate submittals to the City shall be made as required by Section 5-10.7-5(B) 3. and Section 5-10.7-7(A) 7. of the Monroe City Code.

2) **Subsequent Phases – Permitted Outlots.** Development of the Permitted Outlots shall be completed in one or more phases of the Project subsequent to Phase I at such time as one or more of the Permitted Outlots are proposed for development by the owner thereof. No permit shall be granted for construction on any part of the Project Area designated on **Exhibit B** as “Future Outlots” unless a specific implementation plan for the development of such area has been approved by the City. Rules governing the required setbacks and the location and orientation of structures and other improvements placed on the Permitted Outlots shall be established at the time a specific implementation plan for the second phase of the Project is considered by the Plan Commission, or at such other time as the Plan Commission may determine.

G. **Plan Commission Findings Regarding Criteria for Approval.** Approval of this agreement by the Plan Commission shall constitute its findings, pursuant to Section 5-10.7-4 of the Monroe City Code, that:

1) The Project is compatible with the physical nature of the Project Area and its natural features, existing vegetation and topography.

2) The Project adequately provides for the improvement and continuing preservation and maintenance of attractive open space.

3) The Project will be an asset to the community aesthetically and the buildings and uses will be compatible with the surrounding neighborhood.

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4) The Project will not create a traffic or parking demand incompatible with existing or proposed facilities and the width and location of streets, drives, other paving and lighting will be appropriate to the uses proposed and will be constructed to standards that ensure adequate attention to public safety.

5) The Project will not adversely affect the anticipated provision for school or municipal services.

6) The Project is located in the Monroe School District and all plans have been submitted to the Monroe School District.

7) The Project will not adversely affect the economic prosperity of the City or surrounding properties.

8) Suitable assurances have been provided to the City by Menard that each phase of the Project can be completed in a manner which will not result in an adverse effect upon the community as a result of termination at that point and the provisions of this agreement requiring security for completion of public improvements are adequate to assure that such improvements will be completed to the City's standards.

5. **Size Limitation.** The City hereby approves the size of each of the Site Elements and each of the Structure Elements. The City acknowledges that information submitted to the Plan Commission demonstrates that, to achieve Menard's business plan and adequately serve its customers, a store building exceeding 150,000 square feet in size is necessary and the square footage of the Menards Store is the minimum that is reasonably needed to achieve its business plan. Pursuant to Section 5-10.7-5(C) 1. of the Monroe City Code approval of this agreement by the Plan Commission shall constitute its findings that:

A. **Business Plan.** The square footage of the Menards Store exceeding 150,000 is reasonably necessary to accomplish Menard's business plan for the following reasons:

1) The increased square footage will allow for wider aisles which will avoid congestion and create a more pleasing atmosphere for customers.

2) The increased square footage will permit the use of lower shelving for the display of products creating an easier shopping experience and a more pleasing atmosphere for customers.

3) The increased square footage will allow product not displayed on the sales floor to be stored within the Menards Store and associated garden center and on-site warehouse.

4) The increased square footage contained within the covered garden center, covered warehouse and overhang facilities will enhance customer convenience and comfort by shielding customers from the elements when selecting products that competitors often display in facilities that expose the customer to the elements.

B. **Mitigating Design Features.** The Menards Store and related Structure Elements include features that mitigate, to the extent reasonably possible, adverse impacts resulting from their size including the following:

1) **Landscaping.** Extensive landscaping is planned for the Project Area as shown on the Landscape Plan.

2) **Color, Texture and Architectural Features.** Changes in the color and texture of materials and construction of architectural ribs and bays and other features will interrupt the expanse of the Store Façade as reflected on the Site Plan, Exterior Elevations, Façade Rendering and Site Vignettes.

3) **Community Space.** The Pedestrian Plaza will provide an aesthetically pleasing feature that will tend to mitigate the large scale of the Menards Store.

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C. **Economic Benefits.** The Menards Store and related Structure Elements can reasonably be expected to produce economic benefits for the City and its citizens which exceed the benefits that can be expected to accrue if the Menards Store were less than 150,000 square feet in size.

1) **Benchmark Comparison.** Construction of the Menards Store and related improvements will result in new jobs, increased annual property tax revenues, increased annual sales and annual sales tax revenues, estimates of which are as follows:

	150,000 sf. Benchmark Store	230,718 sf. Proposed Store
Employees [full time]	75	90
Employees [part time]	70	85
Employees [total]	145	175
Annual Property taxes	\$190,235	\$248,010
Annual sales	\$20,000,000	\$25,000,000
Annual sales tax paid to Green Co.	\$100,000	\$125,000

2) **Capture of Leakage.** In addition to the foregoing estimates, the Menards Store and related improvements can reasonably be expected to attract a significant number of customers from outside the City who do not currently shop in the City for the products and services that will be offered at the Menards Store as well as customers from the City and surrounding area who shop at Menard facilities in other jurisdictions and these added customers can reasonably be expected to produce secondary economic benefits for businesses other than the Menards Store.

6. **Impact Analysis.** Pursuant to Section 5-10.7-5(C) 2. of the Monroe City Code Menard has submitted to the Plan Commission analysis of the economic, traffic, municipal services and neighborhood impacts of the Project and the Plan Commission has reviewed the analysis submitted and considered the review comments provided by Fehr-Graham. Approval of this agreement by the Plan Commission shall constitute its findings that:

A. **Economic Impact.** Development of the Project is consistent with the City's goal of maintaining and enhancing its standing as a major regional economic center. The Project can reasonably be expected to produce economic benefits for the City as a whole, but will also likely exert economic pressures on some competing businesses within and outside the City, which benefits and pressures are summarized as follows:

1) **Job Creation.** The Menards Store is expected to generate 175 new jobs, of which 90 are projected to be full time jobs and 85 are projected to be part-time jobs, annual property taxes of approximately \$248,010 and annual sales taxes for the County of Green of approximately \$125,000.

2) **Competitive Pressures.** Development of the Project can be expected to intensify some competitive pressures on some existing businesses in the City and such pressures may cause one or more existing businesses to change their marketing strategies. Such pressures are not new in the City and are not unique to any new retail development, whether large scale or otherwise, as is evidenced by a number of significant changes in various segments of the City's economy in recent history. It is not appropriate or good public policy for the City to approve or disapprove the Project based on its potential competitive impact on individual businesses as opposed to the Project's impact on the City's business districts or the community as a whole.

3) **Downtown Business District.** The Menards Store is not expected to compete directly in the markets served by the majority of retail businesses in the City's downtown business district. To help foster the mutually beneficial economic relationship between the downtown business district and the Menards Store it is appropriate that an area be designated within the Menard Store for the display of promotional materials about the downtown business district. This, combined with the increased customer draw to the City by virtue

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of construction of the Menards Store, will likely produce additional economic activity in the downtown business district.

4) **Costs to City.** There are no projected significant net long term costs to the City related to installation of public improvements to serve the Project or increased demands on municipal services generated by the Project.

B. Traffic Impact. The Project is situated at the intersection of Aebly Road and State Highway 69. At this location State Highway 69 is a 4 lane divided highway. The Plan Commission reviewed all potential impacts of the Project on the City's traffic circulation system and the review comments thereon provided by Fehr-Graham. Approval of this agreement by the Plan Commission shall constitute its finding that, if improvements in the traffic circulation and control systems in and around the Project Area are constructed as reflected on the Highway Intersection Improvements Plans and as otherwise required by this agreement, the Project will not have significant adverse impacts on the City's traffic circulation system.

C. Municipal Services Impact. The Plan Commission reviewed all potential impacts of the Project on the City's municipal services system, including sanitary sewer, storm sewer, water, fire protection and police protection services, and the review comments thereon provided by Fehr-Graham. Approval of this agreement by the Plan Commission shall constitute its finding that if constructed as proposed, the Project will not have significant adverse impacts on municipal services.

D. Neighborhood Impact. The Project Area is an area that is designated as a proposed development area on the Town of Monroe Comprehensive Plan and is substantially undesignated on the City's Comprehensive Plan. The Project Area is bounded on the south and west by Aebly Road, on the east by State Highway 69, and on the north by lands that are currently in agricultural use and not designated on the Comprehensive Plan. With the exception of the north boundary, the entire Project Area will be surrounded by the right-of-way for public streets or highways. The grade separation between the Menards Store and property to the north and the highway rights-of-way surrounding the Project Area on all remaining sides will constitute a significant buffer between the Menards Store and future development for areas on all sides of the Project Area. The Plan Commission has reviewed all potential impacts of the Project on the City's existing and planned neighborhoods in the vicinity of the Project and has also considered the review comments thereon provided by Fehr-Graham. Approval of this agreement by the Plan Commission shall constitute its finding that:

- 1) The Project will be compatible with, and will not have significant adverse impacts on, existing and planned land uses in the general vicinity.
- 2) The architecture and site design of the Project blends harmoniously with the existing and anticipated architectural design and site characteristics of adjoining properties.
- 3) The relationship of the Project to abutting zoning districts or anticipated land uses abutting the Project, as identified in the Comprehensive Plan and the Town of Monroe Comprehensive Plan, show that the Project will be compatible with the existing and planned development in the area.

7. **Comparative Site Analysis.** The business plan for the Menards Store requires a site approximately 20 acres in size with direct access to and visibility from a state trunk highway and reasonable compatibility with adjoining land uses. Menard retained the service of local real estate broker, Marshall D. Zwuygart, who in a report dated March 30, 2007, stated that he had completed an extensive search of the City looking for a parcel of land containing the minimum acreage required to build a Menards Store and was unable to locate a parcel or combination of parcels of sufficient size and characteristics to accommodate a Menards Store. Mr. Zwuygart concluded that no such parcel exists within the City limits. After reviewing the report of Mr. Zwuygart and independently analyzing potential sites within the City for the Menards Store, Fehr-Graham concluded in a report dated May 28, 2007, that a suitable site may be available in the City's north business and industry park, but acknowledged that this site does not fulfill the business

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plan for the Menards Store with respect to visibility from a state trunk highway. Fehr-Graham concluded that the chosen site within the Project Area is a suitable site. Approval of this agreement by the Plan Commission shall constitute its finding that sites located wholly within the City other than the Project Area were seriously considered by Menard for the Menards Store and no sites exist that achieve the business plan for the Menards Store.

8. **Construction of Menards Store and Related Improvements.** Menard shall design and build the Menards Store and related improvements in the following manner:

A. Aesthetic character.

1) **Store Façade and Exterior Walls.** Menard shall design and build the Store Façade and other exterior walls of the Menards Store in accordance with the Site Plan, Façade Rendering, Building Sign Plans, Exterior Elevations and Site Vignettes.

2) **Detail Features.** Pursuant to Section 5-10.7-5 (C) 6. (a) 2. a. of the Monroe City Code, Menard elects to use the following horizontal and vertical detail features in the Store Façade:

a. **Horizontal Detail.** Menard elects to use (a) color change, (b) texture change and (c) material module change as the 3 elements of the required repeating pattern on the horizontal plane of the Store Façade. The City approves such election.

b. **Vertical Detail.** Menard elects to use color change as the required repeating pattern on the vertical plane of the Menards Store Façade. The City approves such election.

3) **Roofs.** Pursuant to Section 5-10.7-5 (C) 6. (a) 3. of the Monroe City Code, Menard elects to construct the Menards Store using parapets and eaves as the 2 required roof features for the Menards Store. The City approves such election. The City accepts the design of eaves as reflected on the Project Plans, notwithstanding that such eaves do not extend around the entire perimeter of the Menards Store.

B. Entryways. Pursuant to Section 5-10.7-5 (C) 6. (b) of the Monroe City Code, Menard elects to construct the Menards Store using 1) canopies or porticos, 2) display windows and 3) recesses or projections as the 3 required entryway features for the Menards Store. The City approves such election.

C. Site Design. Through the planned unit development review process, the City and Menard have reached consensus concerning the site design features set forth in Section 5-10.7-5 (C) 6. (c) of the Monroe City Code and the consensus reached during such process for site design features is incorporated into the Project Plans. The City and Menard each accepts the treatment in such Project Plans of 1) building entrances, 2) parking facilities, 3) back sides, 4) connectivity, and 5) natural features.

D. Pedestrian Circulation. Through the planned unit development review process, the City and Menard have reached consensus concerning pedestrian circulation features and facilities set forth in Section 5-10.7-5 (C) 6. (d) of the Monroe City Code and, except as expressly set forth herein, the consensus reached during such process is incorporated into the Site Plan. The City and Menard each accepts the treatment of 1) sidewalks and 2) on-site pedestrian walkways reflected on the Site Plan.

E. Bicycle Parking Facilities. Through the planned unit development review process, the City and Menard have reached consensus concerning bicycle parking facilities addressed in Section 5-10.7-5 (C) 6. (e) of the Monroe City Code and the consensus reached during such process is incorporated into the Site Plan. The City and Menard each accepts the treatment of the number and location of bicycle parking spaces and facilities reflected on the Site Plan. A minimum of 10 bicycle parking spaces shall be provided to serve the Menards Store.

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F. **Outdoor display areas.** Through the planned unit development review process, the City and Menard have reached consensus concerning the treatment of outdoor display areas set forth in Section 5-10.7-5 (C) 6. (f) of the Monroe City Code and the consensus reached during such process regarding the number, size, location and management of outdoor display areas is incorporated into the Site Plan. The City and Menard each accepts the treatment of outdoor display areas reflected on the Site Plan. No outdoor display of merchandise shall be permitted except in those areas clearly indicated on the Site Plan.

G. **Outdoor Storage, Loading or Unloading Equipment and Facilities.** Through the planned unit development review process, the City and Menard have reached consensus concerning the size, use and location of outdoor storage, loading or unloading equipment and facilities addressed in Section 5-10.7-5 (C) 6. (g) of the Monroe City Code and the consensus reached during such process is incorporated into the Site Plan. The City and Menard each accepts the size, use and location of outdoor storage, loading or unloading equipment and facilities reflected on the Site Plan. No outdoor storage, loading or unloading equipment or facilities shall be permitted except as is clearly shown on the Site Plan. No delivery, loading, unloading, trash removal or compaction activity shall be permitted between the hours of 10:00 p.m. and 5:00 a.m. unless sound barriers are provided that effectively reduce noise emissions from such operations to a level of 60 db or lower, as measured at the lot line of any adjoining property. Pallet racking surrounding the outdoor merchandise yard and drive isles, if constructed to the height of 14' as noted on the Site Plan, is a sufficient means of screening for such area.

H. **Central Features and Community Space.** Through the planned unit development review process, the City and Menard have reached consensus concerning the design of central features and community space addressed in Section 5-10.7-5 (C) 6. (h) of the Monroe City Code and the consensus reached during such process is incorporated into the design of the Pedestrian Plaza in the location reflected on the Site Plan. Menard elects to construct 1) a patio or seating area and 2) a pedestrian plaza with benches as the 2 required central features and community space for the Project, both of which are incorporated into the Pedestrian Plaza. The City approves such election.

I. **Parking.** Through the planned unit development review process, the City and Menard have reached consensus concerning the design of parking facilities serving the Menards Store and related improvements addressed in Section 5-10.7-5 (C) 6. (i) of the Monroe City Code and the consensus reached during such process is incorporated into the Site Plan. The City and Menard each accepts the treatment of parking facilities serving the Menards Store reflected on the Site Plan.

J. **Outdoor Lighting.** Through the planned unit development review process, the City and Menard have reached consensus concerning the design and placement of outdoor lighting to be installed in conjunction with the Project and the consensus reached during such process is incorporated into the Site Lighting Plan and the Outdoor Lighting Fixture Design Plan. The City and Menard each accepts the treatment of outdoor lighting reflected in the Site Lighting Plan and the Outdoor Lighting Fixture Design Plan.

K. **Landscaping.** Through the planned unit development review process, the City and Menard have reached consensus concerning landscaping for the Project Area addressed in Section 5-10.7-5 (C) 6. (k) of the Monroe City Code and the consensus reached during such process is incorporated into the Landscape Plan. The City and Menard each accepts the treatment of landscaping on the Project Area as reflected on the Landscape Plan.

L. **Signs.** Through the planned unit development review process, the City and Menard have reached consensus concerning signage for the Project addressed in Section 5-10.7-5 (C) 6. (l) of the Monroe City Code and the consensus reached during such process is incorporated into the Monument Sign Plan, Building Sign Plans, Site Plan, Façade Rendering and Exterior Elevations. The City and Menard each accepts the treatment of signs for the Project as reflected on the Monument Sign Plan, Building Sign Plans, Site Plan, Façade Rendering and Exterior Elevations. All signs shall be designed, constructed and placed in substantial conformity with the size, color and placement reflected on the Monument Sign Plan, Building Sign Plans, Site Plan, Façade Rendering and Exterior Elevations.

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M. Storm Water Detention Basin. The Storm Water Detention Basin shall be constructed pursuant to the Storm Water Detention Basin Plan and in accordance with all applicable local, state and federal laws. Landscape plantings shall be placed and continuously maintained surrounding the Storm Water Detention Basin that are of a size and density that effectively discourages a person from entering the Storm Water Detention Basin. The Storm Water Detention Basin, including all landscape plantings, shall at all times be maintained in a safe and attractive manner consistent with the dual purpose of the Storm Water Detention Basin serving as a facility to control storm water runoff and as the central feature and community space required by Section 5-10.7-5 (C) 6. (h) of the Monroe City Code. Menard shall enter into an agreement with the City, in a form that is satisfactory to the City Attorney, that provides for the continued maintenance by Menard, at no cost to the City, of the storm water collection, conveyance and retention systems on the Project Area, including the Storm Water Detention Basin.

N. Post-Construction Storm Water Infiltration. The storm water infiltration standards contained in Section NR 151.12(5)(c) of the Wisconsin Administrative Code are hereby adopted as the storm water infiltration standards applicable to the Project Area as of the date of approval by the Council of the general development plan set forth herein. The storm water infiltration standards contained in Section 5-18-7(B) of the Monroe City Code shall be inapplicable to the Project Area to the extent they are more stringent than the corresponding standards contained in Section NR 151.12(5)(c) of the Wisconsin Administrative Code. Notwithstanding the foregoing, if the Council shall adopt new or different storm water infiltration standards subsequent to the date of approval by the Council of the general development plan set forth herein, then the rules and regulations made applicable to the Project Area pursuant to this instrument shall for all purposes be treated as a prior code amended by such new code.

O. Public Improvements. As part of the Project, Menard shall construct the following public improvements:

1) **Water.** Menard shall, at no cost to the City and according to City requirements, design and construct public water mains within the Project Area in the locations shown on the Public Utilities & Sidewalk Route Plan together with the public water main running between the Project Area and the City's public water main located at the eastern terminus of the public water main shown on the Public Utilities & Sidewalk Route Plan. All public water mains installed pursuant to this subparagraph shall be 12" in diameter. The City shall be allowed to inspect and perform routine tests to assure that such public water mains are properly installed according to City standards. Menard shall reimburse the City for all costs associated with such inspection and testing. Menard shall be entitled to utilize the existing 16" casing previously installed by the City under State Highway 69. For the privilege of utilizing such casing Menard shall pay the City the total sum of \$50,000 payable as follows: \$30,000 shall be paid upon delivery by Menard of the Menard Election to Proceed; \$10,000 shall be paid upon the sale or development, or a combination of sale and development, of 50% or more of the Permitted Outlots; \$10,000 shall be paid upon the sale or development, or a combination of sale and development, of 100% or more of the Permitted Outlots. Determination of the percentage of Permitted Outlots that have been sold or developed shall be by measured acres, or fractions thereof, rounded to the nearest one hundredth of an acre. Grass or landscaped grounds surrounding structures shall be considered developed if such grass or landscaping is integrated into the design of the structure and grounds for such development. Notwithstanding the foregoing, all sums due the City for the privilege of utilizing such casing shall be paid on or before a date 15 years following the first day that the Menards Store is open for business to the general public. No interest shall be computed on unpaid sums due pursuant to this subparagraph, provided however, that sums not paid when due shall draw simple interest at the rate of 1.5% per month. Sums payable pursuant to this subparagraph shall be paid within 10 days following delivery of a written notice by the City to Menard stating that such sum is due. Menard shall grant and convey to the city an easement allowing access by City employees to any fire hydrant or other fire protection facility located on the Project Area, whether such hydrant or facility is City or privately owned, for the purpose of inspecting or testing such hydrant or facility.

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2) **Sanitary Sewer.** Menard shall, at no cost to the City except as expressly set forth in this subparagraph, and according to City requirements, design and construct public sanitary sewer mains within the Project Area in the locations shown on the Public Utilities & Sidewalk Route Plan together with the sanitary sewer main shown on the Public Utilities & Sidewalk Route Plan lying outside the Project Area running between the Project Area and the City's sanitary sewer main located at the southern terminus of the sanitary sewer route shown on the Public Utilities & Sidewalk Route Plan. All sanitary sewer mains installed within the Project Area pursuant to this subparagraph shall be at least 8" in diameter. All sanitary sewer mains installed outside the Project Area pursuant to this subparagraph shall be sized according to City specifications. The City shall be allowed to inspect and perform routine tests, including televising, to assure that such sanitary sewer mains are properly installed according to City standards. Menard shall reimburse the City for all costs associated with such inspection and televising. The City shall reimburse Menard for the difference in the actual cost of materials for mains exceeding 8" in diameter that are installed pursuant to this subparagraph, as compared to the actual cost of materials if such mains had been 8" in diameter, together with the actual cost of materials and labor to acquire and install wye fittings and laterals along that segment of the sanitary sewer extending south from Aebly Road.

3) **Highway Improvements.** Menard shall, at no cost to the City and according to City standards and, where applicable, WisDOT standards, complete the following work with respect to highway improvements related to the Project:

a. **Relocation of Monroe Road.** During Phase I of the Project, Menard shall dedicate to the public that portion of **Figure 6** that is shaded in dark grey and then, at no cost to the City or the Town of Monroe and according to Town of Monroe requirements, relocate the southern segment of Monroe Road to create an intersection with the east entrance road to the Project Area as shown on **Figure 6**. Menard shall further during Phase I of the Project install such markings and traffic control signs at the intersection of the relocated Monroe Road and the east entrance to the Project Area as may be reasonably required by the City or the Town of Monroe. Menard shall perpetually maintain, at no cost to the City or the Town of Monroe, that segment of the relocated Monroe Road extending west from its intersection with State Highway 69 to the eastern boundary of the Project Area and identified with cross-hatching on **Figure 6**.

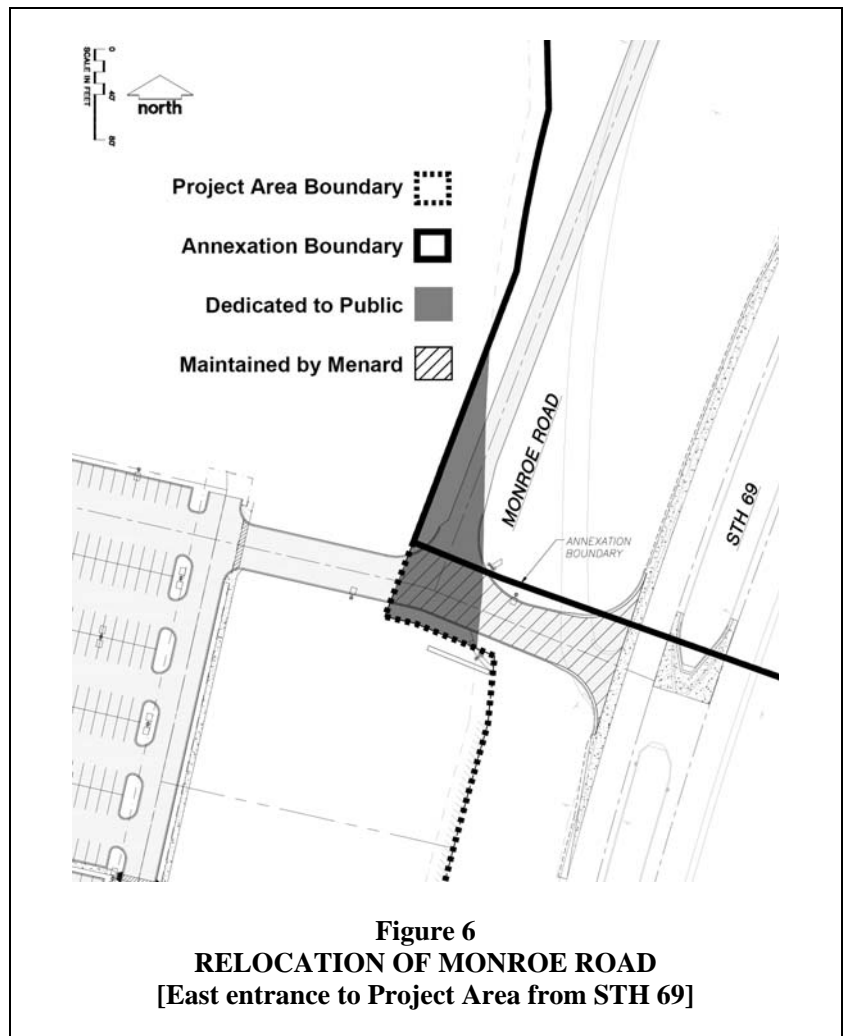


Figure 6
RELOCATION OF MONROE ROAD
[East entrance to Project Area from STH 69]

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b. **Intersection Improvements at Aebly Road and County DR.** Traffic control signals and turn lanes, as are generally depicted on the Highway Intersection Improvements Plans, shall be installed during Phase I of the Project at the intersection of State Highway 69, Aebly Road and County Highway DR.

c. **Plans and Infrastructure for Traffic Control Signals.** Menard shall cause to be prepared and submitted to WisDOT for review, at no cost to the City, plans for traffic control signals for the entrance and exit ramps at the intersection between State Highway 11 and the State Highway 69 and North 18th Avenue Corridor. Underground infrastructure and other appropriate infrastructure for traffic control equipment shall be installed as part of Phase I of the Project pursuant to such plans and at no cost to the City.

d. **Plans for Approaches, Acceleration Lanes and Turn Lanes.** Menard shall cause to be prepared, in accordance with WisDOT requirements, and submitted to WisDOT for review and approval, plans containing designs for approaches, acceleration lanes and turn lanes, as are generally depicted on the Highway Intersection Improvements Plans, for the entrance and exit ramps for State Highway 11 within the State Highway 69 and North 18th Avenue Corridor, all at no cost to the City.

e. **Traffic Control Signal Needs Study.** The City shall cause a Traffic Control Signal Needs Study to be completed in accordance with Chapter 4-C of the MUTCD at such time as the City determines that a need exists for an update of the Traffic Study, but in no event more than 2 years after all phases of the Project have been completed, to determine if traffic signalization is needed on Aebly Road or within the State Highway 69 and North 18th Avenue Corridor. The Traffic Control Signal Needs Study shall be prepared by a licensed traffic engineer following WisDOT guidelines [the "Traffic Control Signal Needs Study"].

f. **Highway Improvements not Installed during Phase I of the Project.** If, after review of the Traffic Control Signal Needs Study, the City or WisDOT reasonably determines that a need exists for installation of signalization or other traffic control facilities on Aebly Road or within the State Highway 69 and North 18th Avenue Corridor, then the signals and facilities reasonably determined to be necessary shall be installed by the City and Menard shall pay that percentage of the cost, that is not otherwise required to be paid wholly by Menard under this Agreement, of designing, acquiring and installing such signals and facilities on Aebly Road or within the State Highway 69 and North 18th Avenue Corridor that are attributed to developments located on the Project Area as compared to all developments that generate the need for such improvements. Traffic counts used in the Traffic Study shall be excluded from the calculation for the purpose of such apportionment. Such percentage shall be determined by the Traffic Control Signal Needs Study or by such other means as the City may reasonably employ. Menard shall further reimburse the City, in the same percentage, for the cost of the Traffic Control Signal Needs Study or such other studies or analysis as the City has reasonably employed to determine the apportionment of costs between the Project Area and other developments.

4) **Storm Water Runoff from Project Area.** Storm water discharged from the Storm Water Detention Basin shall be conveyed across adjoining private property south of the Project Area, within easements previously granted to the City for storm water conveyance, by means of either a drainage ditch or an underground storm sewer. The design and construction of facilities for the conveyance of storm water discharged from the Storm Water Detention Basin shall conform to all federal, state and local codes.

5) **Pedestrian Crossing of State Highway 11.** If within 10 years following delivery to the City of the Menard Election to Proceed, the City extends a sidewalk from the south along either side of North 18th Avenue from a then existing City sidewalk that links to the City's overall sidewalk system to the south terminus of the new public sidewalk depicted on the Public Utilities and Sidewalk Route Plan, then Menard shall construct, at no cost to the City, a sidewalk as indicated on the Public Utilities & Sidewalk Route Plan,

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running between the sidewalk terminating at the south entrance to the Project Area and the City's sidewalk. Construction of the sidewalk shown on the Public Utilities & Sidewalk Route Plan shall be required only if the conditions stated herein are met and the required construction is approved by all necessary governmental authorities, including WisDOT. Construction of such sidewalk shall not be made a condition for approval of any phase of the Project.

6) **Temporary Construction Easements.** The City shall grant any and all necessary temporary construction easements upon the property owned or controlled by the City that are reasonably required in order for Menard to construct the public improvements required by this agreement. Menard shall, at its sole cost and expense, restore the affected portion of the City's property to the same condition that existed prior to the commencement of such work.

7) **Permits.** Necessary permits shall be obtained for all work. The City shall fulfill obligations for timely review and assistance in obtaining permits with outside agencies. Easements required for public use and interest shall be provided to the City.

8) **Warranty of Improvements.** Menard hereby warrants all improvements dedicated to the public pursuant to this agreement against defects due to faulty materials or workmanship which appear within 12 months from the date of acceptance of the dedication of such improvements as provided for in this agreement [the "Warranty Period"]. If a condition is discovered that in the opinion of the City is covered by the warranty, then the City shall provide to Menard a written notice stating the nature of the defect and the anticipated action necessary to correct such defect. Menard shall have a period of 30 days following delivery of such notice in which to commence good faith efforts to cure such defect. Menard shall pay for all damages to City property or easements and all other costs incurred by the City as a result of such defect.

9) **Letter of Credit.** Prior to issuance of any City permit required for the Project, Menard shall file with the City an irrevocable letter of credit, acceptable to the City, in an amount approved by the City Attorney that will reasonably compensate the City for the cost of completing all public improvements in the event that Menard fails to complete the public improvements as set forth in this agreement. The letter of credit shall be in an amount which is 125% of the City's reasonable estimate of the cost of completion of the required improvements.

a. **Reduction of Letter of Credit.** The amount of the letter of credit shall be reduced from time to time in amounts equal to the value of improvements which have been installed, completed and approved by the City, or shall be increased in the event of delay in the installation of improvements resulting in the escalation of costs. At no time shall the amount of the letter of credit be reduced below 125% of the aggregate total estimated cost of the improvements not yet installed or accepted. When the improvements undertaken by Menard have been installed and accepted by the City, the letter of credit may be reduced to 25% of the aggregate total cost of the improvements completed by Menard. The letter of credit shall terminate upon expiration of the Warranty Period.

b. **Draw on Letter of Credit.** The draw down of any letter of credit as set forth in this agreement shall be made only with the approval of the City Attorney and only after Menard has been given at least 30 days prior written notice of the reason for the draw down and has failed to commence good faith efforts to cure such reason. Notice of anticipated draw down and opportunity to cure shall be given to Menard in the manner and at the address for notices set forth in this agreement.

c. **Form of Letter of Credit.** Irrevocable letters of credit shall be in a form approved by the City Attorney. Letters of credit shall be payable to the City and shall be conditioned upon the non-performance by Menard of its obligations under this agreement. As an alternative to irrevocable letters of credit, Menard may deliver to the City a performance bond or bonds issued on behalf of Menard's contractors in an amount equal to the amount of the otherwise required letter of credit.

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d. **Liability Not Released.** All letters of credit shall be given as security only and shall not be construed as a limitation of the liability of Menard to the City.

e. **Reservation of Assessment Rights.** In the event that any letter of credit provided to the City by Menard does not provide sufficient funds to complete the necessary improvements or if Menard fails to pay when due sums payable to the City pursuant to this agreement, including sums payable for the privilege of using the existing 16" casing beneath State Highway 69, or if the City exercises a right expressly granted by this agreement to perform a covenant on behalf of Menard under circumstances where the City is granted a right to reimbursement from Menard, then the City shall have the option to assess that portion of the Project Area that remains in private ownership, exclusive of the Permitted Outlots, for the full amount of any such sum due the City. Menard agrees that the amount of such shortage or reimbursement may be treated as a special charge levied against that portion of the Project Area that remains in private ownership, exclusive of the Permitted Outlots, for benefits conferred upon the Project Area by municipal work or improvement. Menard hereby consents to the imposition of such special assessments exclusively against privately owned property within the Project Area, but excluding the Permitted Outlots. Menard further stipulates that for the purpose of such special assessments the privately owned property within the Project Area, exclusive of the Permitted Outlots, is the only property that will benefit from such special assessments. Such assessments shall be levied and collected pursuant to the provisions of Sections 66.0701-0733 of the Wisconsin Statutes. Failure to levy a special assessment in any year shall not be deemed to be a waiver by the City of its right to levy a special assessment in a later year. If Menard contests the imposition of such special assessments and the City prevails in whole or in part, Menard shall reimburse the City for its costs, including reasonable attorneys fees, incurred in connection with such proceeding, provided however, if the City prevails only as to part of such claimed assessments, then Menard shall reimburse the City pro-rata in the same proportion that the ultimate assessment bears to the original claimed assessment.

10) **Dedication and Maintenance of Public Improvements.** Menard shall, without charge to the City, upon installation of all of the public sanitary sewer and public water mains, valves, hydrants, and any other appurtenances described herein, unconditionally give, grant and fully dedicate such sanitary sewer and public water mains, valves, hydrants, and any other appurtenances including without limitation all such facilities that are located within the Public Sanitary Sewer and Water Main Easement, to the City, free and clear of all monetary encumbrances, together with easements, including without limitation the Project Area Easement, as may be reasonably necessary for the operation and maintenance of such sanitary sewer and public water mains, valves, hydrants and other appurtenances. After such dedication and acceptance thereof by the City, said sanitary sewer and public water mains, valves, hydrants and other appurtenances shall thereafter for all purposes be under the jurisdiction of, and shall be maintained by, the City.

a. **Acceptance by the City.** Dedication of public improvements shall not constitute acceptance of any such improvements by the City. All public improvements will be accepted by the City at such time as said improvements are in acceptable form and according to City specifications. Acceptance of the dedication of any improvements does not constitute a waiver by the City of the right to draw funds under the irrevocable letter of credit on account of any defect in or failure of the improvements, or failure to pay the cost thereof, that is detected or occurs during the warranty period running after acceptance of the improvements by the City.

b. **Certificate of Acceptance.** Promptly after completion of construction of the public improvements described herein, submittal of as-built documents, and upon written request of Menard to the City, the City, following proper inspection, testing, approval and acceptance, shall execute and deliver to Menard a certificate of acceptance. The certificate of acceptance shall be the City's conclusive determination that the construction of such improvements has been completed in accordance with this agreement. If the City refuses or fails to issue its certificate of acceptance within 30 days of the City's receipt of Menard's letter requesting acceptance, then the City shall, within 30 days after written request by Menard, provide Menard with a written statement indicating, in adequate detail, what Menard has

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failed to adequately complete, or how Menard is believed to otherwise be in default, and what measures or steps will be necessary for Menard to perform in order to obtain such certificate of acceptance. Said certificate of acceptance shall not be unreasonably withheld by the City.

11) **Indemnification.** Menard shall indemnify, defend and hold harmless, the City, its departments, boards, commissions, officers, agents, employees and consultants, from any and all claims or liability in any way arising from the negligence of Menard, its agents, successors, assigns, contractors or employees in connection with the construction of the public improvements to be dedicated to the City pursuant to this agreement. The City shall indemnify, defend and hold harmless, Menard, its directors, members, officers, agents, employees and consultants, from any and all claims or liability in any way arising from the negligence of the City, its agents, successors, assigns, contractors or employees in connection with the construction of the public improvements to be dedicated to the City pursuant to this agreement.

12) **Contractor Insurance.** Contractors engaged by Menard to perform the public improvements work required by this agreement shall, prior to commencing such work, submit to the City acceptable written proof of insurance.

a. **Amount of Required Coverage.** Insurance coverage required by this subparagraph shall be in the following minimum amounts:

- Unemployment and workers compensation insurance which is in strict compliance with state laws.
- Comprehensive personal and public liability insurance with policy limits that are not less than \$5,000,000.
- Comprehensive property damage insurance with policy limits that are not less than \$5,000,000.
- Comprehensive automobile liability and property damage insurance for operations of all hired and non-hired motor vehicles with policy limits that are not less than \$1,000,000.
- Fire and extended coverage which shall insure against losses and damages to incomplete and completed work, materials or equipment covering the improvements to be dedicated to the City until the same have been accepted by the City, with policy limits that are not less than \$1,000,000.

b. **Self-funded Coverage.** Menard may, in its sole discretion, provide the contractors insurance coverage required by this paragraph through a self-funded program administered and maintained by Menard, but only if Menard maintains a net worth of at least \$10,000,000.

c. **Proof of Insurance.** Written proof of insurance required by this subparagraph shall contain a provision that the coverage afforded under the policies will not be canceled until at least 10 days written notice has been given to the City. Menard shall file a certificate of insurance provided by Menard's contractors showing the City as an additional insured and acknowledging the required 10 day notice to the City of cancellation.

P. **Compliance with Codes.** All construction required herein shall be completed in full compliance with all local, state and federal codes.

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9. **Future Vacation of Menards Store.** Menard represents that it has no present plan to vacate the Menards Store in the foreseeable future. However, in order to promote community values and mitigate any perceived negative impact of a vacant store, the City and Menard acknowledge and agree as follows:

A. **Reuse.** The City acknowledges that the following features of the Menards Store design and Site Plan will facilitate reuse of the Menards Store if it is ever vacated by Menard:

1) **Menards Store Design.** The Menards Store structure is designed with a large unobstructed interior sales floor accessed by two primary entrances and with perimeter walls that will be constructed in a manner that will permit the development of other prominent entrances to the Menards Store should it become necessary to provide additional entrances.

2) **Outdoor Merchandise Yard & Drive Isles.** The outdoor merchandise yard and drive isles area associated with the Menards Store could be used for parking facilities serving additional entrances along the western side of the Menards Store.

3) **Flexibility for Reuse.** The foregoing features provide design flexibility enabling future renovation of the Menards Store for reuse by multiple businesses if the Menards Store is vacated by Menard.

B. **Marketing and Maintenance of Menards Store.** If Menard vacates the Menards Store in the future Menard shall market for reuse and maintain the Menards Store as follows:

1) **Marketing.** Menard shall actively undertake efforts to market the Menards Store for sale or occupancy by a new tenant.

a. **Cooperation with City and Local Business Development Agencies.** Menard shall cooperate in all reasonable ways with the City, the Green County Development Corporation and the Monroe Area Chamber of Commerce and Industry in marketing the Menards Store.

b. **Marketing Materials.** Menard shall develop, at its expense, quality and informative marketing brochures and other materials and shall distribute such materials to local and national retailers and commercial developers.

c. **Sign.** Menard shall install at least 1 professionally designed sign at the front of the Menards Store advertising the Menards Store for sale or lease. Such sign shall include contact information for the real estate sales agent retained by Menard or contact information for Menard if an outside real estate sales agent is not retained.

d. **Reports.** Menard shall, upon written request by the City, provide written reports to the City regarding the status of the marketing of the Menards Store, provided however, Menard shall not be required to disclose in such reports any information which is confidential in nature as determined by Menard in its sole discretion.

e. **Inspections.** Menard shall allow access to the Menards Store by agents of the City at least quarterly and at such other times as the City may reasonably request for the purpose of inspecting the Menards Store to assure that Menard is complying with the requirements of this agreement.

2) **Maintenance of Menards Store Building and Grounds.** Menard shall continue to maintain the Menards Store as follows:

a. **Menards Store Grounds.** Menard shall maintain the exterior grounds of the Menards Store in a clean, safe and attractive condition.

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b. **Storage.** No exterior storage shall be placed or maintained on the grounds of the Menards Store, except storage of construction materials that are directly related to renovation or repair of the Menards Store and then only at such times as such construction materials are needed for renovation or repairs that are underway, or are soon to be commenced, at the time such storage is on the site.

c. **Menards Store Building Surfaces and Structures.** Menard shall exercise reasonable care to keep the Menards Store building, parking lot and other related improvements and fixtures in a condition substantially similar to the condition existing while the Menards Store was still fully operational as a Menards large scale retail store. "Reasonable care" as the term is used in this subparagraph, shall include, but shall not be limited to, replacing damaged or worn exterior building materials, maintaining the roof and repairing damage to roof surfaces to stop or prevent the infiltration of water, removing weeds within the parking lot and sealing and resurfacing of the parking lot, all as may be reasonably necessary from time to time.

d. **Mechanical Equipment.** All mechanical equipment serving the Menards Store shall be maintained in working order.

e. **Accumulation of Refuse.** Menard shall exercise reasonable care to prevent trash, garbage, litter or other refuse from accumulating on or around the Menards Store. "Reasonable care" as the term is used in this subparagraph, shall include but shall not be limited to inspecting the Menards Store, at least weekly, and at such time removing trash, garbage, litter or other refuse that may have accumulated.

f. **Landscaping.** Menard shall exercise reasonable care to maintain the vegetation, trees, shrubs, sod and other landscaping as may exist at the time the Menards Store is vacated or ceases to be operated as a large scale retail store. "Reasonable care" as the term is used in this subparagraph, shall include watering, fertilizing, trimming, mowing and replacing dead vegetation, trees, shrubs, sod and other landscaping.

g. **Snow Removal.** Accumulated snow shall be promptly removed from the driving surfaces immediately adjacent to the Menards Store building sufficient to allow for uninhibited response to the Menards Store by police and fire protection vehicles and personnel.

h. **Lighting.** All exterior lighting on the grounds of the Menards Store shall remain functional and such lighting shall be operated to the extent necessary to maintain a reasonable level of security lighting on the site.

i. **City Right to Perform.** If in the opinion of the City, Menard has failed to adequately perform the covenants of this subparagraph, the City may provide a written notice stating the nature of the failure and the anticipated action necessary to correct such failure. Menard shall have a period of 30 days following delivery of such notice in which to commence good faith efforts to cure such failure. If Menard fails within such period to commence good faith efforts to cure such failure, then the City shall have the right enter upon the Menards Store to perform any covenant of this subparagraph on behalf of Menard. Menard shall reimburse the City for the cost of any materials, labor or hired services that are reasonably necessary to perform such covenants. Menard hereby grants to the City, and its agents, full power and authority to enter the Menards Store to perform any action that must reasonably be performed in furtherance of the rights granted herein.

10. **Waiver.** The Plan Commission hereby finds that various provisions of the City's regulations related to large scale retail developments and large scale retail stores, if interpreted literally, would place unreasonable burdens on the developer of a large scale retail development or a large scale retail store and, if applied literally such regulations would have the effect of discouraging the very development that the regulations are intended to permit. The Plan Commission met to review the Project on May 23, 2007, June 13, 2007, July 11, 2007, July 25, 2007, August 1, 2007,

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August 29, 2007, October 17, 2007, November 14, 2007, and January 9, 2008, and the cumulative total meeting time devoted to such review process exceeded 6 hours. During such review process the Plan Commission carefully considered the extensive written comments provided by Fehr-Graham and finds that the project design, as reflected on the Project Plans, fully complies with the spirit and intent of the City's regulations related to large scale retail developments and large scale retail stores. Therefore, pursuant to Section 5-10.7-5 (C) 6. (q) of the Monroe City Code, the Plan Commission hereby finds that a literal interpretation of every regulation would result in unnecessary hardship and would not further the interests of the City. Therefore, the Plan Commission hereby accepts the Project Plans as submitted and, if the Project is developed in accordance with the Project Plans and this agreement, a waiver is hereby granted as to any provision of the City's large scale retail development and a large scale retail store regulations that may be interpreted as being in conflict with the Project as built.

11. **Promotion of Downtown Business District.** Menard shall cooperate with the Main Street program by providing a reasonably prominent location within the Menards Store where promotional materials for the City's downtown business district may be displayed.

12. **Menard Election to Proceed.** This agreement shall not be effective and may not be enforced against Menard until Menard delivers to the City the Menard Election to Proceed.

13. **Notices.** Notices required by this agreement shall be sent to the following addresses:

To Menard:

Thomas O'Neil
Menard, Inc.
4777 Menard Drive
Eau Claire, Wisconsin 54703-9625

With copy to:

Michael R. Christopher
DeWitt Ross & Stevens S.C.
2 E. Mifflin Street # 600
Madison, Wisconsin 53703-2865

To City:

Carol J. Stamm, City Clerk
City of Monroe
1110 18th Avenue
Monroe, Wisconsin 53566

With copy to:

Rex A. Ewald
Voegeli, Ewald & Bartholf Law Offices, S.C.
1750 10th Street
P.O. Box 56
Monroe, Wisconsin 53566

14. **Binding Effect.** This agreement shall bind and inure to the benefit of the successors and assigns of the parties hereto and the covenants herein shall be deemed to be covenants which run with the land. Each party executing this instrument states that 1) He or she is fully authorized to execute this instrument and bind the entity for which he or she is signing; that 2) each covenant contained herein has been thoroughly reviewed and is fully understood by the signor and that; 3) each covenant contained herein that affects the use of the Project Area may be enforced as a zoning regulation under Title 5 of the Monroe City Code, including any covenant that was modified subsequent to the approval of this instrument by the Council pursuant to the authority granted to the City Attorney in the ordinance entitled "Special Ordinance #130 Adopting General Development Plan and Specific Implementation Plan for Phase I of Menard Large Scale Retail Development and Rezoning Property."

15. **Assignment.** This agreement may be assigned by either party, but only if the assignee executes an instrument expressly assuming liability for the covenants of the assignor pursuant to this agreement. The assignment shall not release the assignor from liability for performance of the covenants of this agreement.

16. **Choice of Law.** This agreement shall be governed by and construed under the laws of the State of Wisconsin.

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17. **Paragraph Headings.** The various paragraph headings are inserted for convenience of reference only, and shall not affect the meaning or interpretation of this agreement or any section thereof.

18. **Severability.** If any provision of this agreement is held to be unenforceable, in whole or in part, by a court of competent jurisdiction, the remaining provisions, or portions thereof, shall not be affected thereby and effect shall be given to the intent manifested by the provisions, or portions thereof, held to be enforceable.

19. **Force Majeure.** If performance of any covenant to be performed hereunder by either party is delayed as a result of circumstances which are beyond the reasonable control of such party, which circumstances may include but are not limited to, acts of God, war, civil disobedience, harsh weather, strikes or similar acts, the time for such performance shall be extended by the amount of time of such delay.

20. **Recording Abridgment.** An abridgment of this agreement, containing an accurate description of the Project Area and reciting that a printed copy of this agreement may be examined at the office of the City Clerk, may be recorded at the office of the Green County Register of Deeds. If such abridgment is recorded, it shall be deemed to be sufficient compliance with the recording requirements of Section 5-10.7-7 (C) of the Monroe City Code as they relate to this agreement.

In Witness Whereof, the parties have hereunto set their hands and seals as of the date first above written.

CITY OF MONROE

By: _____ [Seal]
Ronnie G. Marsh, Mayor

By: _____ [Seal]
Carol J. Stamm, City Clerk

Countersigned: _____
Cathy Maurer, Comptroller

MENARD, INC.

By: _____ [Seal]
Marv Prochaska, Vice President