

**FIRST AMENDMENT TO LIMITED USE AGREEMENT
(MENARD, INC.)**

THIS FIRST AMENDMENT TO THE LIMITED USE AGREEMENT (“Amendment”) is made and entered into on this ____ day of _____, 2024 by and between the City of Baxter, a Minnesota municipal corporation hereinafter referred to as the "City" and Menard, Inc., a Wisconsin Corporation, , hereinafter referred to as the “Developer”.

WITNESSETH:

WHEREAS, the Developer is the owner of Lot 1, Block 1 of MENARD THIRD ADDITION in the City of Baxter, Crow Wing County, Minnesota according to the plat thereof on file with the Crow Wing County Recorder,

hereinafter called the "Property"; and

WHEREAS, the Developer at the above Property wishes to discharge stormwater into the City stormwater system on Whispering Woods Lane adjacent to the Developer’s Property; and

WHEREAS, the City Council approved the Developer’s discharge of stormwater into the Whispering Woods Lane storm sewer system "Improvements" adjacent to Whispering Woods Lane right of way on September 20, 2022 subject to an agreement duly approved in form by the City Attorney; and

WHEREAS, the Parties entered into a Limited Use Agreement dated August 11, 2023 (“LUA”) and recorded with the Crow Wing County Recorder on September 15, 2023 as Document No. 988685, describing Developer’s discharge of stormwater from the Property into the Whispering Woods Lane right of way; and

WHEREAS, purpose of the LUA is to memorialize the understanding and duties of the Parties for the Developer’s discharge of stormwater into the City stormwater system on Whispering Woods Lane right of way adjacent to the Developer’s property; and

WHEREAS, the Parties wish to amend the LUA to memorialize additional storm sewer connections to Whispering Woods Lane right of way that will take place as a result of Developer’s project;

WHEREAS, the Developer plans to construct a five foot wide concrete sidewalk within the City’s right-of-way of Whispering Woods Lane and Pearl Drive; and

WHEREAS, except as amended in this Amendment, all other terms, provisions and conditions contained in the LUA shall remain in full force and effect and are not modified except as specifically amended herein.

NOW, THEREFORE, it is stipulated and agreed by and between the parties hereto that the LUA shall be amended as follows:

1. Paragraph 1 of the LUA is deleted in its entirety and replaced with the following:

1. **Term.** Developer will install and maintain Improvements on City right of way. The design and location of said Improvements shall be as set forth in **Attachment A-1**. Said Improvements shall be maintained the same until the removal is directed by the City per Paragraph 3 of the LUA entitled "Termination". Nothing shall be placed within City right of way other than as depicted on said Attachments or as otherwise approved by the City.

2. Paragraph 2 of the LUA is deleted in its entirety and replaced with the following:

2. **Maintenance.** Developer shall, at all times, keep and maintain the Improvements described in **Attachment A-1** in a good state of repair and agrees to indemnify and hold harmless the City, its officers, agents and employees from any claim for personal injury, property damage or death occasioned by the location or maintenance of the encroachments on the City property. Developer shall, at all times ensure the Improvements are in compliance with applicable state and federal regulations including but not limited to the Americans with Disabilities Act. Developer also waives and releases the City from any claims which Developer may have against the City for damage to the encroachments resulting from activities conducted by the City on the City right of way except for such gross negligence or willful acts of the City which cause damage to the Improvements for which the City would be (according to then applicable municipal or state laws) otherwise liable to similarly suited property owners. Nothing in this agreement shall be construed as a waiver by the City of any immunity, defenses, or other limitations on liability to which the City is entitled by law, including but not limited to the minimum monetary amounts on liability established by Minnesota Statutes Chapter 466.

3. The five foot wide concrete sidewalk shown on Attachment A-1 shall be included in the definition of Improvements.

4. Attachment A of the LUA shall be deleted in its entirety and replaced with Attachment A-1 hereto which is incorporated herein by reference.

IN TESTIMONY WHEREOF, the parties hereto have caused this Amendment to be executed as of the day and year first above written.

CITY OF BAXTER:

By: _____
Darrel Olson
Its Mayor

By: _____
Kelly Steele
Its Assistant City Administrator/Clerk

STATE OF MINNESOTA)
)ss
COUNTY OF CROW WING)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by Darrel Olson and Kelly Steele, the Mayor and Asst. City Administrator/Clerk, respectively, of the City of Baxter, a Minnesota Municipal corporation on behalf of the City.

Notary Public

OWNER:

MENARD, INC.

By: _____
Its: General Manager Properties

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by Theron J. Berg, the General Manager Properties of Menard, Inc., a Wisconsin Corporation on behalf of the Corporation.

Notary Public
My commission expires: _____

Attachment A-1 – Plans