

SETTLEMENT AGREEMENT

Agreement made effective as of the ____ day of August, 2017 by and between Menard, Inc. ("Plaintiff") and the City of Waukesha, Wisconsin ("City").

RECITALS

1. The Plaintiff is the owner of certain real property located at 2315 Bluemound Rd., Waukesha, Wisconsin more particularly described as Parcel 1 of Certified Survey Map No. 10470 recorded in Volume 100 of Certified Survey Maps on Page. 7 as Document No. 3437887 being part of the Southwest ¼ of Section 30, Township 7 North, Range 19 East ("the Property");

2. Plaintiff commenced an action against the City which is pending in the Circuit Court for Waukesha County, entitled *Menard Inc. v. City of Waukesha* Case No. 16 CV 1277 ("the Action");

3. In the Action, the Plaintiff makes claim against the City for an excessive tax assessment against the Property and for declaratory judgment regarding Estimated Fair Market Value of the property for the tax year 2016.

4. Plaintiff and the City have arrived at a settlement of the Action, subject to review and approval by the Common Council of the City.

NOW, THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. **Assessed Value.** The total assessed value of the Property for the tax year 2016 shall be \$14,000,000.00, including land and improvements. The total assessed value

of the property for the tax year 2017 shall be \$14,000,000.00, including land and improvements.

2. **Refund.** The City shall make payment to Menard, Inc. in the amount of \$41,120.78 as a refund of property taxes previously paid by the Plaintiff based on the property tax assessment of the Property for the tax year 2016. Such payment shall be made within thirty (30) days of the approval of this Settlement Agreement by the Common Council of the City.

3. **Waiver of Costs.** Each party waives all claims for costs.

4. **Dismissal of Action.** Not later than 10 days after Plaintiff receives payment in full of the refund of taxes as provided in Section 2 of this Agreement, the parties shall, through their attorneys, enter into a stipulation for the dismissal of the Action with prejudice and without costs to either party, and file the stipulation with the Circuit Court for Waukesha County.

5. **Attorney Fees.** Each party shall be solely responsible for the fees of its attorney.

6. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of each of the parties and their respective heirs, successors and assigns.

7. **Governing Law.** This Agreement shall be governed and interpreted by laws of the State of Wisconsin.

8. **No Assignment or Transfer.** Plaintiff represents and warrants that it has not assigned or transferred to anyone and will not assign or transfer to anyone any of the claims made by it in the Action.

9. **No Admission of Liability.** This Agreement is the settlement of disputed claims. By entering in this Agreement, the City does not admit any liability to Plaintiff for any of the claims asserted in the Action or Plaintiff's objection to the assessments, and payment made under this Agreement shall not be construed an admission of such liability. In addition, this Agreement and none of the agreed upon values or assessments set forth in this Agreement shall be admissible in any proceeding or assessment challenge in any tax year after 2017.

10. **Reliance.** Each party acknowledges that it has been represented throughout all negotiations leading up to this Agreement by attorneys of its choice. Each party represents that in entering into the Agreement, the party has relied on its own judgment and on the advice of its attorneys and that no statements or representations made by the other party or any of its agents, except those expressly made in this Agreement, have influenced or induced the party to sign this agreement.

11. **Entire Agreement.** This agreement constitutes the entire agreement of the parties concerning its subject matter and supersedes all prior or contemporaneous agreements, written or oral, representations, negotiations and discussions concerning its subject matter.

12. **Amendments.** This Agreement may not be amended, modified or altered in any manner whatsoever except by further written agreement duly authorized and signed by the parties.

13. **Waiver.** No waiver of any breach of this Agreement shall be deemed a continuing waiver of that breach or a waiver of any other breach of this Agreement.

14. **Authorization.** Each person signing this agreement on behalf of either party represents and warrants that the person holds the position indicated beneath the person's signature and that the person has all authority required to sign this Agreement on behalf of the party.

15. **Approval.** This Agreement is subject to the approval of the Common Council of the City of Waukesha. If it is not approved, it shall be null and void.

Dated this 18th day of August, 2017.



CHRISTOPHER L. STROHBEHN
Attorneys for Menard, Inc.

Dated this _____ day of August, 2017.

JOHN M. BRUCE
Attorney for City of Waukesha