

SITE CONSTRUCTION CONTRACT

THIS AGREEMENT is made this _____ day of _____, 2012 between MENARD, INC. hereinafter referred to as "OWNER" and _____, hereinafter referred to as "CONTRACTOR". The parties agree to the following:

ARTICLE 1: THE WORK -

CONTRACTOR agrees to perform all work set forth in the following documents (hereinafter "Work"):

(all documents listed above hereinafter collectively referred to as "Contract Documents").

CONTRACTOR shall carefully study the Contract Documents prior to executing the Agreement and shall report to OWNER at once any error, inconsistency, ambiguity, omission or deviation from applicable building codes which CONTRACTOR may discover. If, after executing the Agreement, CONTRACTOR should discover any such error, inconsistency, ambiguity, omission or deviation, any work done by CONTRACTOR after such discovery shall be done at CONTRACTOR'S sole cost, expense and risk.

ARTICLE 2: CHANGES IN THE WORK -

OWNER, without invalidating this Agreement, may, at any time, order changes in the Work within the general scope of the Agreement. **CONTRACTOR, subcontractors, sub-subcontractors, materialmen and suppliers shall not perform any extra or additional work or changes or provide any extra or additional materials or supplies that differ from the work and/or materials and/or supplies that the Contract Documents require unless previously authorized in writing by a Change Order, as such is defined in Attachment A. Any Change Order must be signed by the General Manager Store Planning/Design/Construction. Portions of work contained in said Change Order shall be subject to merchandise credit check.** CONTRACTOR understands and acknowledges that OWNER'S project managers are not authorized to approve changes in the Work.

Any Change Order submitted by CONTRACTOR to OWNER for changes in the Work shall be in accordance with the specific terms and conditions of **ATTACHMENT A – Pricing of Change Orders** attached hereto and incorporated fully herein by reference.

ARTICLE 3: WARRANTY -

CONTRACTOR warrants to OWNER that all materials, equipment and work furnished under this Agreement will be new and of good workmanlike quality, free from faults and defects and in conformance with all of the Contract Documents. **CONTRACTOR agrees to remedy and correct any problems which arise, at any time up to and including (2) two years after acceptance of the Work and Final Payment by OWNER to CONTRACTOR for the Work ("Warranty Period"), as a result of any materials, equipment and/or labor that is found to be in non-compliance with this Agreement and furnish to OWNER in a timely manner any and all performance, surety and/or insurance policy as specified in the Agreement.** CONTRACTOR agrees to perform all warranty work within seven (7) days from notification by OWNER unless a valid reason is demonstrated and accepted in writing by OWNER. In case of an emergency and OWNER cannot

give notice, CONTRACTOR agrees to reimburse owner for lost incurred for performing warranty work provided cost and within industry standards. CONTRACTOR agrees to provide OWNER a Guaranty in form identical to **Exhibit D** attached hereto, and also to provide OWNER with Products and Completed Operations Insurance coverage to cover Work during Warranty Period as provided for in Article 12 herein.

OWNER shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding that the time for completing the entire Work or such portions of Work may not have expired; but such taking possession and use shall not deemed any acceptance of any portions of Work not completed in accordance with the Contract Documents.

ARTICLE 4: TIME OF COMMENCEMENT AND COMPLETION -

The work to be performed hereunder shall be commenced by _____, 2012 and completed on or before _____, 2012 ("Agreement Period"). CONTRACTOR agrees that TIME IS OF THE ESSENCE and that the above stated dates shall not be modified unless the modification is in writing and signed by the OWNER and CONTRACTOR. Inclement weather shall not be considered as a cause for an extension of time for completion of the Work.

ARTICLE 5: INDEMNIFICATION -

CONTRACTOR shall indemnify and hold harmless OWNER, its agents and its employees from any and all liability, damages, expenses, claims, demands, actions or causes of action, including attorney fees, arising out of the performance of the Contract Documents, Agreement and/or Work hereunder, whether such liability, damages, expenses, claims, demands, actions or causes of action are caused by CONTRACTOR, its subcontractors, or lower tiered contractors, or their agents or employees, OWNER, its agents and its employees, or any persons acting on their behalf of OWNER and/or CONTRACTOR. In the event of failure by CONTRACTOR to defend OWNER against any such claim upon ten (10) days written notification of OWNER requesting that CONTRACTOR do so, OWNER shall be entitled to directly settle any such claim. CONTRACTOR waives any right to dispute the amount of any settlements made by OWNER under this provision and acknowledges that OWNER is entitled to deduct the full amount of any such settlements from the Contract Sum as defined below. If Final Payment, as defined herein, has already been made by OWNER to CONTRACTOR, CONTRACTOR agrees to reimburse OWNER the full amount of any settlement within ten (10) days after receipt of invoice from OWNER.

ARTICLE 6: CONTRACT SUM

OWNER shall pay CONTRACTOR for the performance of the Work as stated in the Contract Documents and for performance under this Agreement, the sum of _____ Dollars (\$_____), of which \$_____ will be in the form of a merchandise credit check valid at any Menard store (collectively referred to herein as "Contract Sum").

The Contract Sum shall include the cost to the OWNER for all labor, materials and services, and completion of the Work, and shall include all applicable sales taxes. Contract billings are to set forth the amount of sales tax being charged or, if contract billings do not set forth the amount of sales tax being charged, shall state that sales tax is included in the amount charged.

The CONTRACTOR shall indemnify and hold the OWNER harmless from and against any and all claims asserted against the OWNER relating to the liability for sales tax and/or use tax

(including penalties and interest and, in the event of litigation, all reasonable expenses, including attorney's fees and accountant's fees incurred by the OWNER in connection therewith).

ARTICLE 7: PROGRESS SCHEDULE – SCHEDULE OF VALUES –

CONTRACTOR, within ten (10) business days after execution of this Agreement, shall prepare and submit for OWNER'S approval an estimated progress schedule for the Work, indicating the dates for the starting and completion of the various stages of construction and completion of the Work ("Time Schedule"). In addition, CONTRACTOR shall submit to OWNER a schedule of percentage values of the various portions of the Work completed as set forth in Time Schedule ("Percentage Schedule"). The Time Schedule and Percentage Schedule shall be utilized in part as the basis for CONTRACTOR'S Application for Payment as defined in Article 9 herein.

ARTICLE 8: LIST OF SUBCONTRACTORS -

CONTRACTOR, within fourteen (14) days after execution of the Agreement, shall furnish to OWNER in writing, a list of all subcontractors, sub-subcontractors, materialmen and suppliers known to CONTRACTOR at the time, which will be performing labor or furnishing materials for the Work. CONTRACTOR agrees to supplement the list immediately in writing as soon as additional subcontractors, sub-subcontractors and materialmen and/or suppliers become known. Subcontractors shall notify the CONTRACTOR of any sub-contractors they plan to use on the Work and of any related-party relationships the subcontractor may have with the lower-tier subcontractors, which information CONTRACTOR shall provide to OWNER. Any relationship(s) between CONTRACTOR, subcontractor, sub-subcontractors, materialmen and suppliers to any other subcontractor(s), sub-subcontractor(s), materialmen and/or supplier(s) shall be disclosed at the time the bids are accepted.

CONTRACTOR, subcontractors and sub-subcontractors shall be required to submit the labor rates they plan to use for Change Orders on the Work along with their bid prior to the commencement of Work. The labor rates shall be forwarded to OWNER for review. Actual wages and benefits shall be used in calculating costs for Change Order(s). CONTRACTOR shall be required to fill out a labor rate exhibit in substantially similar format as the document attached as Exhibit A. CONTRACTOR shall provide documentation to support the rates CONTRACTOR, subcontractors and sub-subcontractors charge, including, by way of example, but not limited to union contracts and workers compensation rates. OWNER retains the right to adjust excessive charges for labor rates prior to commencement of work. OWNER and CONTRACTOR agree that under no circumstances shall OWNER be required to pay for labor rates charged in excess of the reasonable, customary and prevailing rate in the industry pertaining to the geographic area in which the work is performed in the event that CONTRACTOR fails to submit the required information to OWNER prior to the commencement of Work.

CONTRACTOR is responsible to OWNER for the acts and deficiencies of his subcontractors, sub-subcontractors, materialmen and suppliers, and of their direct and indirect employees, to the same extent CONTRACTOR is responsible for the acts and deficiencies of CONTRACTOR'S employees. Notwithstanding anything to the contrary contained herein, neither this Agreement nor Contract Documents shall be construed as creating any contractual relationship between OWNER and any subcontractor, sub-subcontractor, materialman, or supplier. **CONTRACTOR agrees that before any payment by OWNER to CONTRACTOR occurs, CONTRACTOR will submit to OWNER a Subcontractor Acknowledgement Form, an example of which is attached hereto as**

Exhibit B for every subcontractor, sub-subcontractor, materialman and supplier that CONTRACTOR utilizes to complete the Work.

ARTICLE 9: PAYMENT -

Section A - Application for Payment: CONTRACTOR shall, on the last day of each month, submit to OWNER, AIA Document G702 "Application and Certification For Payment" along with AIA Document G703 "Continuation Sheet" supported by any such substantiating data as OWNER may require including, but not limited to, original lien waivers from CONTRACTOR, subcontractors, sub-subcontractors, materialmen and suppliers together with affidavits from each stating any contract balance remaining after receipt of payment ("Application of Payment"). Such Application for Payment shall be only for the labor actually performed or materials actually delivered and incorporated into the Work or suitably stored at the job site as of the last day of the month. An Affidavit in the form of Exhibit C may be substituted for the AIA Documents upon prior consent by OWNER, providing that all supporting data and documents meet OWNER'S approval.

Section B - Payment Approval: OWNER shall examine the Work together with the CONTRACTOR'S completed AIA Document G702 "Application and Certification For Payment" and completed AIA Document G703 "Continuation Sheet" or Affidavit if accepted by Owner pursuant to Article 9 Section A herein, and if the work has progressed to the point indicated by the CONTRACTOR'S Affidavit and the quality of the Work is in accordance with the Contract Documents, OWNER shall, within twenty-five 25 days after the receipt of the Application for Payment, issue payment made payable jointly to CONTRACTOR and subcontractor, sub-subcontractor, materialman or supplier less a retained percentage of 10%.

Section C – Final Payment: When the CONTRACTOR determines that the Work is complete and ready for final inspection and acceptance by OWNER, and the job site is clean to the acceptance of OWNER, CONTRACTOR shall make application for final payment in the form of a "Final Contractor's Affidavit". OWNER shall promptly inspect the Work and if it is acceptable under the Contract Documents and the Agreement is fully performed, and upon CONTRACTOR showing to the satisfaction of OWNER that all invoices for labor and materials have been paid by CONTRACTOR, and upon delivery by CONTRACTOR to OWNER of a properly executed "Guaranty" in the form "Exhibit D and Final Lien Waivers" from CONTRACTOR and each subcontractor, sub-subcontractor, materialmen, and after providing to OWNER a Certificate of Insurance evidencing a policy of Products and Completed Operations Insurance as required in Article 12 herein, then OWNER shall issue payment made payable jointly to CONTRACTOR and subcontractor, sub-subcontractor, Materialman or supplier the entire unpaid balance ("Final Payment"). In the event it is determined that the Work is substantially complete, yet there remains "punch list" items to be corrected or completed, OWNER shall make final payment less the retained percentage which shall be held pending completion of the Work ("Substantial Completion"). Upon completion of the "punch list" items by CONTRACTOR, OWNER shall pay to CONTRACTOR the percentage retained when the Substantial Completion determination was made by OWNER. At such time as OWNER pays to CONTRACTOR the retained percentage, OWNER shall be deemed to have made and CONTRACTOR the deemed to have received Final Payment for the Work. OWNER reserves the right to refuse to accept or pay any invoices from CONTRACTOR related to the Agreement, Contract Documents, Work, or Change Orders, all as defined herein, received later than ninety (90) days after Final Payment has been made by OWNER to CONTRACTOR.

If, at the request by OWNER, the CONTRACTOR incurs costs after the Final Payment has been made or after Substantial Completion of the Work, and such costs are not to correct defective or non-conforming Work and not considered warranty costs, the OWNER shall reimburse the

CONTRACTOR for such costs and an appropriate CONTRACTOR'S fee as defined in **Attachment A – Pricing of Change Orders**.

Section D – Payment Not Acceptance: No payment made hereunder shall constitute an acceptance by OWNER of any portion of Work not performed in accordance with the Contract Documents.

Section E - Payment Withheld: OWNER may withhold payment from CONTRACTOR because of:

- (1) Defective work not remedied;
- (2) Third party claims filed or reasonable evidence indicating probable filing of such claims;
- (3) Failure of CONTRACTOR to make payments properly to subcontractors or for labor, materials or equipment;
- (4) Reasonable doubt that the uncompleted Work can be completed for the unpaid balance of the Contract Sum;
- (5) Damage to another CONTRACTOR;
- (6) Reasonable indication that the Work will not be completed within the Agreement Period; or
- (7) Unsatisfactory prosecution of the Work by the CONTRACTOR.

Section F - Condition Precedent to Payment; Right to Offset: The parties agree that OWNER may withhold payments to CONTRACTOR if CONTRACTOR owes any money to OWNER on any account or contract. If at the time for any payment CONTRACTOR owes any money to OWNER or is in default under any other contract with OWNER, OWNER shall be entitled to setoff against the payment or withholds funds to secure the payment of any amounts which CONTRACTOR owes to OWNER.

Section G – Right to Audit: Contractor's Records, as defined below, shall be open to inspection and subject to audit and/or reproduction by OWNER at any time beginning with the execution of the Agreement until the expiration of the Warranty Period or longer if required by law. In the event OWNER should choose to audit Contractor's Records, OWNER shall provide reasonable notice to CONTRACTOR and said inspection, audit and/or reproduction shall occur at CONTRACTOR'S place of business or job site during normal business working hours. Such audits may be performed by an OWNER'S representative or an outside representative engaged by OWNER.

“Contractor's Records” as referred to in this Agreement shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, project logs, daily reports, superintendent reports, drawings, receipts, vouchers and memoranda and any and all other agreements, sources of information and matters that in OWNER'S judgment may pertain to the Agreement, Work, any Change Order or work performed under the warranty during the Warranty Period. Such records shall include (in hard copy and computer readable format if available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposal of successful and unsuccessful bidders; bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements);

backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts; insurance and bond rebates and dividends; and any other CONTRACTOR records which may have a bearing on matter of interest to the OWNER in connection with the CONTRACTOR'S dealings with the OWNER (all foregoing hereinafter referred to as "Records") to the extent necessary to adequately permit evaluation and verification of: a) CONTRACTOR'S compliance with Agreement's requirements; b) compliance with OWNER'S business ethics policies; and c) compliance with provisions for Change Orders, invoices or claims submitted by the CONTRACTOR or CONTRACTOR'S payees (examples of payees include subcontractors, insurance agents, material supplies, etc.)

CONTRACTOR shall require all payees to comply with the provisions of this Article 9(g) by incurring the requirements hereof in a written contract agreement between CONTRACTOR and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also include but not limited to subcontractors and sub-subcontractors, materialmen, and suppliers. CONTRACTOR will cooperate fully and will cause related parties and all of CONTRACTOR'S subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to OWNER from time to time, whenever requested in an expeditious manner, any Records.

OWNER'S authorized representative or designee shall have reasonable access to the CONTRACTOR'S facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement and shall be provided reasonable work space in order to conduct audits in compliance with this Article 9(g).

If an audit or examination in accordance with this Article 9(g), discloses overpricing or overcharges (of any nature) by the CONTRACTOR to the OWNER in excess of one-half of one percent (.5%) of the total contract billings, the reasonable actual cost of the OWNER'S audit shall be reimbursed to the OWNER by the CONTRACTOR. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the CONTRACTOR'S Records shall be made within ninety (90) days from presentation of OWNER'S findings to CONTRACTOR.

ARTICLE 10: RELEASE OF LIENS AND CLAIMS –

Should at any time during the course of construction or after substantial completion and occupancy a claim be made or lien or personal liability notice filed against the OWNER or the property of the OWNER or project in question by any subcontractor, supplier, laborer, or materialman of the CONTRACTOR or CONTRACTOR'S sub-contractor, claiming that funds are owed to that party by the CONTRACTOR as a result of work performed or material supplied on this project or otherwise, CONTRACTOR hereby agrees to immediately defend and hold harmless OWNER from all such claims, demands or lien applications and take all actions necessary to defend and otherwise protect the OWNER and its property from such claims and liens, including but not limited to the immediate removal of any liens from title to the property by securing said liens with a cash deposit, property bond, or commercial surety bond.

The cost of any such lien removal or defense of claims made against the OWNER or its property shall be at the expense of the CONTRACTOR, including all costs of any such bond, or legal fees, accounting fees or other expenses associated with defense of these claims.

In addition, in the event a lien or personal liability is filed against the property by a subcontractor, supplier, laborer or materialman for any portion of Work covered by an Application for Payment and such lien is not released or bonded within ten (10) days after OWNER provides written notice to CONTRACTOR, OWNER, without obligation to do so and without prejudice to any other remedy it may have, may at its option make payment directly to such subcontractor, materialman, supplier, or laborer for Work covered by an Application for Payment by CONTRACTOR and pay only the balance of the amount represented on the Application for Payment to CONTRACTOR after deducting the amounts paid to such subcontractor, materialman, supplier, or laborer.

In the event a lien, or personal liability is filed against the property by a subcontractor, materialman, supplier, or laborer for any portion of Work not identified by a pay request from the CONTRACTOR, and such lien or personal liability notice is not released or bonded within ten (10) days after OWNER provides written notice to CONTRACTOR, OWNER, without obligation to do so and without prejudice to any other remedy it may have, may at its option make direct payment to settle the lien, or personal liability notice, with the subcontractor, supplier, laborer or materialman. CONTRACTOR waives any right to dispute the amount of any settlements made by OWNER under this provision and acknowledges that OWNER is entitled to deduct the full amount of any settlements from the Contract Sum.

ARTICLE 11: NON-CONFORMING WORK -

In the case of faulty or defective work, OWNER shall have the option, in addition to any other remedy it may have, to accept the faulty or non-conforming work and take an appropriate reduction in the Contract Sum.

ARTICLE 12: INSURANCE -

The CONTRACTOR shall not commence any Work, nor shall it permit any subcontractor or sub-subcontractor to commence any Work until CONTRACTOR obtains, at its own expense, all insurance required by this Agreement and has provided Certificates of Insurance evidencing said insurance coverage to OWNER. Such insurance must have the approval of the OWNER as to limit, form, and amount and shall be issued by a responsible carrier or carriers acceptable to the OWNER, OWNER shall be named as an "additionally insured on a primary, noncontributory basis" with under each policy of insurance required to be obtained by CONTRACTOR or any of its subcontractors under this contract. The CONTRACTOR will not permit any subcontractor or sub-subcontractor to commence work on this project until the same insurance requirements have been complied with by such subcontractor or sub-subcontractor.

(a). Types and Term: The types of insurance the CONTRACTOR is required to obtain and maintain for the full period of the Agreement will be primary and noncontributory policies of the following: Workers' Compensation Insurance; Comprehensive General Liability Insurance "All-Risk" Builder's Risk Insurance; Auto Insurance; and Employers' Liability Insurance. In addition,

CONTRACTOR shall also carry primary and noncontributory Products and Completed Operations Coverage which policy shall continue for the complete term and duration of the Warranty Period.

(b). Evidence: The CONTRACTOR agrees to deliver to the OWNER, within ten (10) days of the date of the Agreement and prior to bringing any equipment or personnel onto the project site, certified copies of all insurance policies required herein. As evidence of compliance with the insurance coverage required herein, the OWNER may, in lieu of actual policies, accept Certificates of Insurance issued by the insurance carrier showing such policies in force and effect for the specified period. Each policy or certificate will bear an endorsement or statement waiving right of cancellation or reduction in coverage without thirty (30) days written notice to be delivered by registered mail to the OWNER. Should any policy be cancelled before Final Payment by the OWNER to the CONTRACTOR and the CONTRACTOR fails immediately to procure another insurance policy meeting the requirements of coverage stated herein, the OWNER reserves the right to procure such insurance and to deduct the cost thereof from any sum due the CONTRACTOR under this Agreement. With regard to the Products and Completed Operations Coverage, CONTRACTOR shall provide said insurance for the duration of the Warranty Period which policy shall not be revocable by CONTRACTOR. OWNER may, at its discretion, allow CONTRACTOR to cancel said insurance if CONTRACTOR provides, to OWNER'S satisfaction, evidence in the form of a complete policy or Certification of Insurance, of an alternate policy for Products and Completed Operations Coverage, which shall be specified as continuing in term for the duration of the Warranty Period.

(c). Coverage Amounts: CONTRACTOR shall provide insurance that provides the coverage's set forth in the Attachment B – Schedule of Insurance, attached hereto and incorporated fully herein by reference. All such insurance shall be written on an occurrence basis. Included in such insurance will be contractual coverage sufficiently broad to insure the provisions of Article 5 of this Agreement.

(d). Expiration and Renewal: When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, the CONTRACTOR shall furnish to OWNER Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, the CONTRACTOR shall also furnish the OWNER with the certified copy of the renewal or replacement policy unless the OWNER provides the CONTRACTOR with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the OWNER and written by carriers acceptable to the OWNER.

(e). Waiver of Subrogation Clause: CONTRACTOR shall provide a waiver of subrogation by endorsement in all insurance policies as required herein. Said waiver shall be evidenced on each policy or Certificate of Insurance. CONTRACTOR shall require the same waiver of subrogation by each subcontractor and sub-subcontractor, regardless of tier.

(f). No Waiver of Insurance Requirements: In no event shall any failure of the OWNER to receive certified copies of policies or Certificates of Insurance evidencing such policies or to demand receipt of such certified copies of policies or Certificates of Insurance prior to the CONTRACTOR commencing the Work be construed as a waiver by the OWNER of the CONTRACTOR'S obligation to obtain insurance required by this Agreement.

(g). Damages: Nothing contained in these insurance requirements is to be construed as limiting the extent of the CONTRACTOR'S responsibility for payment of damages resulting from CONTRACTOR'S operations under this Agreement.

ARTICLE 13: TERMINATION OF CONTRACT BY OWNER -

OWNER may terminate CONTRACTOR'S employment under this Agreement, without prejudicing any of its other rights or remedies granted by law, if any of the following events occur:

- (a) CONTRACTOR is adjudged a bankrupt;
- (b) CONTRACTOR makes a general assignment for benefit of CONTRACTOR creditors;
- (c) A receiver is appointed on account of CONTRACTOR insolvency;
- (d) OWNER believes that CONTRACTOR has not supplied enough properly skilled workmen or proper materials required to satisfy CONTRACTOR'S obligations under this Agreement;
- (e) CONTRACTOR fails to make prompt payment to its subcontractors or for materials or labor;
- (f) CONTRACTOR persistently disregards the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or
- (g) CONTRACTOR is otherwise guilty of a substantial violation of a provision of this Agreement.

If any of the events stated in Article 13 (a) – (g) above occur during the Agreement Period, and OWNER has provided CONTRACTOR written notice to correct said event(s), and if CONTRACTOR has not corrected the problems within seven (7) days from the date of the written notice, then OWNER may, at OWNER'S option, terminate the CONTRACTOR'S employment under the Agreement, take possession of the site and, to the extent allowed by law, take possession of all materials, equipment, tools, construction equipment and machinery on the site owned by the CONTRACTOR in order to finish the Work, which OWNER may do in whatever method it deems expedient. After the Contract Work has been completed, OWNER will return to CONTRACTOR, CONTRACTOR'S tools, construction equipment and machinery that was used to finish the Work. If the CONTRACTOR'S employment has been terminated by OWNER, sue to the occurrence of an event listed in Article 13 (a) – (g) and CONTRACTOR has not complied with written notice from OWNER to correct the problem, then CONTRACTOR shall not be entitled to receive any further payment under the Agreement until all of the Work has been completed.

Additionally, OWNER may terminate the Agreement for the OWNER'S convenience and without cause without prejudicing any of OWNER'S other rights or remedies granted by law upon OWNER'S written notification of termination to CONTRACTOR. Upon receipt of such notice, CONTRACTOR will receive instructions from OWNER to take any actions the OWNER may require protecting and preserving the work completed and notifying all existing subcontractors, sub-subcontractors, materialmen and suppliers of the Agreement's termination. Further, upon receipt of such notice CONTRACTOR shall cease operations in furtherance of any Work under the Agreement. OWNER recognizes CONTRACTOR'S right to receive payment for the portion of the Work completed and reasonable and necessary costs incurred as a result of OWNER'S termination of the Agreement. OWNER acknowledges that CONTRACTOR may have ordered equipment or specially fabricated materials prior to the date of termination that have been specifically designed for this particular project and are unusable elsewhere and for which the order placed cannot be cancelled and/or for which cancellation charges will accrue. OWNER will accept application for payment from CONTRACTOR for all such order charges caused by the termination upon submission of proof that the materials and equipment or specially fabricated materials or other items, services, and materials contained in such application for payment subsequent to the date of termination shall thereafter become property of OWNER.

ARTICLE 14: NO DAMAGE FOR DELAY

Notwithstanding anything to the contrary in the Contract Documents, in the event that OWNER should choose to grant an extension in any time allowed for completion of any stage of construction as set forth in the Progress Schedule to be provided by CONTRACTOR pursuant to Article 7, or if OWNER should choose to make any changes to the Agreement Period in order to allow CONTRACTOR more time to complete the Work, said extension, if granted, shall be the sole and exclusive remedy of the CONTRACTOR for any: (1) delay in the commencement, prosecution or completion of the Work; (2) hindrance or obstruction in the performance of the Work; (3) loss of productivity; or (4) other similar claims (collectively referred to in this Article as "Delays") whether or not such Delays are foreseeable. In no event shall the CONTRACTOR be entitled to any compensation or recovery of any damages, lost opportunity, costs impact damages, or other similar remuneration. The OWNER'S exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling or correction of the Work or terminating this agreement for its convenience), regardless of the extent of OWNER'S exercise of such rights or remedies, shall not be construed as active interference to the CONTRACTOR'S performance of the Work.

ARTICLE 15: SOLICITATION OF EMPLOYMENT BY CONTRACTOR

CONTRACTOR agrees to not employ nor solicit, either directly or indirectly, the employment of any of OWNER'S project managers or CAD operators, or other individuals performing the duties of project manager regardless of the title actually held by such individual for CONTRACTOR or for any related person, affiliate or subsidiary corporation, partnership or other business organization affiliated with CONTRACTOR for a period of one (1) year after Final Payment is made. Notwithstanding anything to the contrary contained elsewhere in this Agreement, the provisions of this Article 15 shall not apply to any subcontractor, sub-subcontractor, materialman or supplier of the CONTRACTOR.

CONTRACTOR agrees that a breach of this covenant would result in immediate and irreparable damage to OWNER. CONTRACTOR expressly consents to and waives any objection to OWNER obtaining immediate injunctive relief in a court of competent jurisdiction in the event CONTRACTOR breaches this covenant. Such injunctive relief shall be in addition to any other remedies that may be available to OWNER under this Agreement, or by law.

CONTRACTOR understands and agrees that upon a breach of this covenant by CONTRACTOR, OWNER will be damaged, and CONTRACTOR agrees to pay OWNER the sum equivalent to ten (10%) of the Contract Sum as liquidated damages and not as a penalty. CONTRACTOR understands and agrees that these liquidated damages are to compensate OWNER for damages and injury which OWNER sustains by reason of the breach of this covenant. Because it is impossible to accurately ascertain the exact cost, damage, or injury which OWNER may sustain, CONTRACTOR also understands and agrees that this amount of liquidated damages is a good faith estimate of the injury that OWNER will suffer, and is not a penalty.

If a final judicial determination is made by a Court having jurisdiction that any provision of this Article 15 is unenforceable, against public policy or void, the provisions of this Article 15 shall not be rendered void, but shall be deemed amended to apply as to such maximum time and to such other extent as such court may judicially determine or indicate to be reasonable. Alternatively, if the court referred to above finds that any restriction cannot be amended so as to make it enforceable;

such findings shall not affect the enforceability of any of the other restrictions contained in this Agreement.

ARTICLE 16: CHOICE OF LAWS AND SUBMISSION TO JURIDICTION –

This Agreement shall be deemed to have been made in Eau Claire, Wisconsin, and shall be construed in accordance with the laws of the State of Wisconsin. All actions or proceedings relating, directly or indirectly, to this Agreement, whether sounding in contract or tort, shall be litigated only in the circuit court located in Eau Claire County, Wisconsin. All parties to this Agreement hereby subject themselves to the exclusive jurisdiction of the circuit court for Eau Claire County, Wisconsin.

ARTICLE 17: PARTIAL INVALIDITY OF CONTRACT –

The parties to this contract agree that if any of the provisions of the contract shall contravene or be invalid under the laws of the State of Wisconsin such a contravention or invalidity shall not invalidate the entire contract, but it shall be construed as if not containing the particular provision or provisions held to be invalid, and the rights and obligations of the parties shall be construed and enforced accordingly.

IN WITNESS WHEREOF, the parties hereto have executed this instrument.

OWNER: MENARD, INC.

CONTRACTOR:

by: _____

by: _____

its: General Manager – Store Planning/Design/Construction

Social Security # _____

Federal I.D. # _____

Are you incorporated?

Yes _____ No _____

Direct all invoices and inquires to:
Menard, Inc.
Store Planning/Design/Construction Department
5101 Menard Drive
Eau Claire, WI 54703

List of Attachment:

Attachment A – Pricing of Change Orders

Attachment B – Schedule of Insurance Requirements

List of Exhibits:

Exhibit A – Labor Rate Exhibit

Exhibit B – Subcontractor Acknowledgement Form

Exhibit C – Sworn Statement for Payment

Exhibit D – Guaranty

Attachment A – Pricing of Change Orders

It is understood that these provisions in Attachment A will govern the pricing and administration of all change order proposals (“Change Order” or “Change Orders” to be submitted by the CONTRACTOR and/or subcontractors and/or all other lower tier sub-subcontractors (collectively referred to only in this Attachment A as “CONTRACTOR”). In the event of a conflict between the other contract documents used for the project and this Attachment A, the change order pricing contract provisions in this Attachment A shall govern.

CONTRACTOR agrees that it will incorporate the provisions of this Attachment A into all agreements with lower tier contractors. It is understood that these Change Order pricing provisions apply to all types of contracts and/or subcontracts specifically including lump sum (or fixed price contract), unit price contracts, and/or cost plus contracts with or without a guaranteed maximum. It is further understood that these change order provisions will apply to all methods of change order pricing specifically including lump sum change order proposals, unit price change order proposals, and cost plus change order proposals.

Whenever Change Order to adjust the Contract Sum become necessary, the OWNER will have the right to select the method of pricing to be used by the CONTRACTOR in accordance with the pricing provisions found in this Attachment A. The options will be: (1) lump sum change order proposal; (2) unit price change order proposal; or (3) cost plus change order proposal as defined in the following provisions:

- I. **Lump Sum Change Order Proposals:** The CONTRACTOR will submit a properly itemized Lump Sum Change Order Proposal covering the additional work and/or the work to be deleted; this proposal will be itemized for the various components of work and segregated by labor, material, and equipment in a detailed format satisfactory to OWNER. The OWNER will require itemization on all Change Orders from the CONTRACTOR. Details to be submitted include detailed line item and related labor pricing information and extensions (by line item or by drawing as applicable).
- II. **Labor:** Estimated labor cost to be included for self-performed work shall be based on the actual cost per hour paid by the CONTRACTOR for those workers or crews of workers that the CONTRACTOR reasonable anticipates will perform the Change Order work. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the change orders work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the Markup Percentage Fee as outlined in Paragraphs VI and VII of this Attachment A. Note: No separate allowances for warranty expense will be considered to be covered by the Markup Percentage Fee as outlined in paragraphs VI and VII of this Attachment A.
- III. **Labor Burden:** Labor burden allowable in Change Orders shall be defined as CONTRACTOR’S net actual cost of payroll taxes (FICE, Medicare, SUTA, FUTA), net actual cost for CONTRACTOR’S cost of benefits (or other usual and customary fringe benefits and net actual cost to CONTRACTOR for worker’s compensation

insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc. CONTRACTOR shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes. (An estimated percentage for labor burden may be used for Change Orders. However, the percentage used for labor burden to price Change Orders will be examined at the conclusion of the project and an adjustment to the approved change orders will be processed if it is determined that the actual labor burden percentage should have been more or less than the estimated percentage used.

- IV. **Material:** Estimated material change order cost shall reflect the CONTRACTOR'S reasonably anticipated net actual cost for the purchase of the material needed for the Change Order work. Estimated material costs shall reflect cost reductions available to the CONTRACTOR due to "non-Cash" discounts, trade discounts, free materials credits, and/or volume rebates. "Cash" discounts (i.e. prompt payment discounts of 2% or less) available on material purchased for Change Order work shall be credited to OWNER if the CONTRACTOR is provided funds by OWNER in time for CONTRACTOR to take advantage of any such "Cash" discounts. The portion of any "Cash" discounts greater than 2% will not be considered a "non-Cash" discount for purposes of this contract clause. Price quotations from material suppliers must be itemized with unit prices for each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail.

- V. **Equipment:** Allowable Change Order estimated costs might include appropriate amounts for rental of major equipment specifically needed to perform the Change Order work (defined as tools and equipment with an individual purchase cost of more than \$750). For CONTRACTOR owned equipment, the "bare" equipment rental rates allowed to be used for pricing change order proposals shall be 75% of the monthly rate listed in the most current publication of the AED Green Book divided by 176 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the Change Order work. Further, for CONTRACTOR owned equipment the aggregate equipment rent charges for any single piece of equipment used in all Change Order work shall be limited to 50% of the fair market value of the piece of equipment when the first Change Order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered as a separate direct cost with the Change Order work.

- VI. **Maximum Markup Percentage on Self-Performed Work:** With respect to Change Orders, the maximum markup percentage fee to be paid to any CONTRACTOR (regardless of tier) on self-performed work shall be a single markup percentage not-to-exceed five percent (5%) of the net direct cost of: (1) direct labor and allowable labor burden costs applicable to the Change Order; (2) the net cost of material and installed

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equipment incorporated into the Change Order; and, (3) net rental cost of major equipment and related fuel costs necessary to complete the Change Order (“Markup Percentage Fee”).

- VII. **Maximum Markup Percentages Allowable on Work Performed by Lower Tier CONTRACTORS:** With respect to pricing the portion of Change Orders involving work performed by lower tier CONTRACTORS, the maximum Markup Percentage Fee allowable to the CONTRACTOR supervising the lower tier CONTRACTOR’S work shall not exceed two and a half (2.5%) of the net of all approved Change Order work performed by all subcontractors combined for any particular Change Order.

The markup computed using the above formula shall be considered to be allocated two-thirds (2/3) to cover applicable overhead costs directly attributable to the field overhead costs related to processing, supervising, and performing the Change Order work, and the remaining one-third (1/3) to cover home office overhead costs and profit.

- VIII. **No Markup on Bonds and Liability Insurance Costs:** Change Order adjustments due to increases or decreases in bond or insurance costs (if applicable) shall not be subject to any Markup Percentage Fee.

- IX. **Direct and Indirect Costs Covered by Markup Percentages:** As a further clarification, the agreed upon Markup Percentage Fee is intended to cover the CONTRACTOR’S profit and all indirect costs associated with the Change Order work. Items intended to be covered by the Markup Percentage Fee include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents; general foremen; estimating; engineering; coordinating; expediting; purchasing; detailing; legal; accounting; data processing or other administrative expenses; shop drawings; permits; auto insurance and umbrella insurance; pick-up truck costs; and warranty expense costs. The cost for the use of small tools is also to be considered covered by the Markup Percentage Fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase cost less than seven hundred and fifty dollars (\$750.00).

- X. **Deduct Change Orders and Net Deduct Changes:** The applications of the markup percentages referenced in the preceding paragraphs will apply to both additive and deductive change orders. In the case of a deductive change order, the credit will be computed by applying the sliding scale percentages as outlined in the Paragraphs VI and VII of this Attachment A so that a deductive change order would be computed in the same manner as an additive change order. In those instances where a change involves both additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the net amount.

- XI. **Contingency:** In no event will any lump sum or percentage amounts for “contingency” be allowed to be added as a separate line item in Change Orders. Unknown attribute to labor hours will be accounted for then estimating labor hours

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anticipated performing the work. Unknowns attribute to material scrap and waste will be estimated as part of material costs.

- XII. **Change Order Proposal Time and Change Directive:** The CONTRACTOR'S proposal for changes in the Contract Sum or Agreement Period shall be submitted within seven (7) calendar days of the OWNER'S request, unless the OWNER extends such period of time due to the circumstances involved. Change Orders necessitated by the terms and conditions of this Attachment A shall be authorized in a signed writing by OWNER and CONTRACTOR. CONTRACTOR understands that OWNER shall not be required to pay any cost increase pursuant to a change in the Work which is not set forth in an authorized Change Order. If such proposals are not received in a timely manner, or if the proposals are not acceptable to OWNER, or if the changed work should be started immediately to avoid damage to the project or costly delay, the OWNER may direct the CONTRACTOR to proceed with the changes without waiting for the CONTRACTOR'S proposal or for the formal change order to be issued. In the case of an unacceptable CONTRACTOR proposal, the OWNER may direct the CONTRACTOR to proceed with the changed work on a cost-plus basis with an agreed upon "not-to-exceed" price for the work to be performed. Such directions to the CONTRACTOR by the OWNER shall be confirmed in writing by a "Notice to Proceed on Changes" letter within seven (7) calendar days. The cost or credit, and/or time extensions will be determined by negotiations as soon as practical thereafter and incorporated in a Change Order to the Agreement.

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Attachment B – Schedule of Insurance Requirements

It is understood that these provisions in Attachment B will govern the types and amounts of coverage of insurance required to be carried by CONTRACTOR during the Agreement Period, except for the Products and Completed Operations Coverage, which shall be required to be in effect until the end of the Warranty Period.

CONTRACTOR agrees that it will incorporate the provisions of this Attachment B into all agreements with lower tier contractors.

- I. **Workers Compensation Insurance:** CONTRACTOR and all subcontractors and sub-subcontractors shall obtain full Workers' Compensation Insurance coverage for all persons whom they employ or may employ in carrying out the Work under this Agreement, and also including any work covered by any Change Order or work completed by CONTRACTOR, subcontractor, and sub-subcontractor pursuant to the warranty requirements during the Warranty Period. All Workers Compensation Insurance shall be provided in strict accordance with the requirements of the most current and applicable workers compensation insurance laws in the state where the Work is occurring.

- II. **Comprehensive General Liability Insurance:** CONTRACTOR shall obtain for the duration of the Agreement, and also while performing any work covered by any Change Order or work completed by CONTRACTOR, subcontractor, and sub-subcontractor pursuant to the warranty requirements during the Warranty Period, Comprehensive General Liability Insurance. Said policy shall apply to this project only. An umbrella policy may be used to supplement the underlying coverage to meet the minimum limits required. Such insurance shall name as Additional Named Insured on a primary, noncontributory basis: the OWNER and each of OWNER'S officers, employees and agents. This coverage shall provide for Bodily Injury, Property Damage, and Personal and Advertising Coverage with limits as defined below.
 - a. Bodily Injury: the Bodily Injury portion shall include coverage for injury, sickness or disease, and death, arising directly or indirectly out of, or in connection with, the performance of Work under this Contract, and shall provide for a limit of not less than one million dollars (\$1,000,000.00) for all damages arising out of bodily injury, sickness or diseases to or death of one person, and a total limit of two million dollars (\$2,000,000.00) for damages arising out of bodily injury, sickness or disease and death of two or more persons in any one occurrence.
 - b. Property Damage: the Property Damage portion will provide for a limit of not less than one million dollars (\$1,000,000.00) for all damages arising out of injury to or destruction of property of others arising directly or

indirectly out of or in connection with the performance of Work under this Contract and in any one occurrence including, but not limited to fire, explosion, collapse and underground exposure.

- c. Personal and Advertising Injury: the Personal and Advertising Injury coverage will provide for a limit of not less than one million dollars (\$1,000,000.00) for all damages occurring if a statement made in the course of advertising activities for Work that causes loss to another person or business by libel, slander, defamation, violation of a right to privacy or misappropriation of ideas, or infringement of copyright, trademark, title or slogan.

III. **“All-Risk” Builders Risk Insurance:** CONTRACTOR shall obtain for the duration of the Agreement, and also while performing any work covered by any Change Order or work completed by CONTRACTOR, subcontractor, and sub-subcontractor pursuant to the warranty requirements during the Warranty Period, “All-Risk” Builders Risk Completed Value Insurance coverage (including but not limited to Fire, Flood, Earthquake, Vandalism and/or acts of God) which policy shall be in an amount sufficient to cover the value of the entire project and including completed portions of Work and Work in progress and including the value of any and all materials supplied by OWNER, or any other suppliers to the project. For purposes of this section, the value of materials supplied by OWNER shall be considered to be one million dollars (\$1,000,000.00) and shall be included in the value of the entire project. Such insurance shall name as Additional Named Insured on a primary, noncontributory basis: OWNER and each of OWNER’S officers, employees and agents.

IV. **Auto Insurance:** CONTRACTOR shall obtain for the duration of the Agreement, and also while performing any work covered by any Change Order or work completed by CONTRACTOR, subcontractor, and sub-subcontractors pursuant to the warranty requirements during the Warranty Period, Auto Insurance coverage which policy shall provide for a limit of not less than one million dollars (\$1,000,000.00) for all damages arising out of bodily injury sickness or disease to or death arising per occurrence. Such insurance shall name as Additional Named Insureds on a primary, noncontributory basis: OWNER and each of OWNER’S officers, employees and agents.

V. **Employers’ Liability Insurance:** CONTRACTOR shall obtain for the duration of the Agreement, and also while performing any work covered by any Change Order or work completed by CONTRACTOR, subcontractor, and sub-subcontractors pursuant to the warranty requirements during the Warranty Period, Employers’ Liability Insurance coverage which shall provide coverage for liability for bodily injury to employees occurring within the scope of their employment, but outside the coverage of workers compensation insurance.

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Said Employers' Liability Insurance coverage shall provide for a limit of not less than one million dollars (\$1,000,000.00) per occurrence. Such insurance shall name as Additional Named Insured's on a primary, noncontributory basis: OWNER and each of OWNER'S officers, employees and agents.

- VI. **Products and Completed Operations Insurance:** CONTRACTOR shall obtain for the duration of the Warranty Period, and also while performing any work covered pursuant to the warranty requirements during the Warranty Period, Products and Completed Operations Insurance with a general aggregate of two million dollars (\$2,000,000.00) , which shall cover OWNER from liability incurred CONTRACTOR as a result of improperly performed work, both construction or installation, after the Final Payment has been made. Such insurance shall name as Additional Named Insureds on a primary, noncontributory basis: OWNER and each of OWNER'S officers, employees and agents.

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Instructions for Completing the Labor Rate Exhibit:

List the occupation and the period the rates are valid at the top of the form. Use copies of this form for each labor classification.

Occupations – are to include superintendent, foreman, journeyman, apprentices, etc. Include one labor exhibit for each labor classification. If the contractor is affiliated with a union, then wage components and worker classification are to be in accordance with prevailing union labor agreements. Note: Subcontractor is to attach a copy of the Wage Rate and Fringe Benefit provisions to the Exhibit.

Rates are to be developed as itemized below:

Base Rate: shall be the actual wage rate paid to the labor classifications per the mutual agreement.

Vacation Allowance: shall be the hourly rate per the mutual agreement

Insurance: indicate the percent of the total taxable hourly wage. Provide a copy of the rate sheets from the worker compensation and general liability policies.

Taxes: use 7.65% of the Total Taxable Wages for FICA, Federal Unemployment Tax equals the annual tax of \$56 divided by 2,080 hours, or 3 cents per hour. State Unemployment Tax equals the contractor's state tax rate multiplied by the state taxable wage limit divided by 2,080 hours.

Exhibit B

Subcontractor Acknowledgment Form

I _____, as subcontractor, sub-subcontractor, materialman or supplier doing business as _____ acknowledge that I am under contract with _____, CONTRACTOR, and read and understand what is required in order for payments to be processed under Article 9 Payments in the CONTRACTOR'S contract with OWNER.

I also acknowledge that this Subcontractor Acknowledgement Form shall not be construed as creating any contractual relation between any subcontractors, sub-subcontractors, materialmen or supplier and OWNER and that I have read the specifications, plans and visited the _____ site.

Name of Company _____

Address _____

Phone _____

Signature _____

Exhibit D

GUARANTY

We hereby guaranty to Menard, Inc. that the _____ which we have installed at the Menard retail lumber and home improvement store located at _____, which Work was done pursuant to that certain Agreement dated _____, 2012, by and between Menard, Inc. and _____ has been done in strict accordance with the Contract Documents and specifications and that the Work performed by us will fulfill the requirements of those plans and specifications.

We agree to repair or replace or cause to be repaired or replaced any or all work which may prove to be defective in workmanship or materials, together with any adjacent work which requires repair or replacement because of defective work, within a period of two (2) years from date of final acceptance by Menard, Inc.

If we fail to commence to comply with the above paragraph within seven (7) days after receipt of written notice from Menard, Inc. to do so or fail to pursue such compliance with diligence, we do hereby authorize Menard, Inc. to proceed to have the defects repaired and made good at our sole expense, and we will promptly honor and pay the costs and charges for it together with interest at the maximum rate permitted by law upon demand. If we fail to fulfill the preceding obligations, and if Menard, Inc. brings an action to enforce this guaranty, we agree to pay Menard, Inc. reasonable attorneys' fees incurred in connection therewith.

Dated _____, 2012
WITNESS _____

by: _____
its: _____