

Item #3:

Resolution Approving Amendments To Menards Recapture Agreement

VILLAGE OF LONG GROVE

RESOLUTION NO. 2011-R-__

**RESOLUTION APPROVING AN AMENDED RECAPTURE AGREEMENT
BETWEEN THE VILLAGE AND MENARD, INC.**

WHEREAS, Menard, Inc. ("**Owner**") is the owner, subdivider, and developer of the real property located at the northeast corner of Illinois Route 53 and Lake Cook Road, Long Grove, Illinois ("**Property**"); and

WHEREAS, pursuant to an Annexation and Development Agreement between the Village of Long Grove ("**Village**"), Lake Cook, L.L.C., and Owner dated 26 April 2005, Owner was required to construct and install sanitary sewer improvements on the Property and on other land near the Property within the corporate boundaries of the Village ("**Improvements**"); and

WHEREAS, the Improvements were designed and constructed not only to serve the Property, but also to serve other properties in the vicinity of the Property (collectively, the "**Benefited Properties**"); and

WHEREAS, the Village and Owner have previously entered into a Recapture Agreement dated 12 February 2007 ("**Recapture Agreement**") providing for the allocation of the cost of constructing the Improvements between the Property and the Benefited Properties and setting forth terms and conditions for assessment of a recapture fee upon Benefited Properties that are connected to the Improvements and payment of the collected recapture fees to the Owner; and

WHEREAS, the service area for the Improvements is depicted in Exhibit 2 to the Recapture Agreement ("**Service Area**"), and the Benefited Properties are identified by street address and PIN in Exhibit 3 to the Recapture Agreement; and

WHEREAS, the Village has determined that two parcels that were included in the depicted Service Area, and were intended to be included as Benefited Properties, were omitted from the list of Benefited Properties as a result of a scrivener's error; and

WHEREAS, the Village and Owner have discussed specific changes to the Recapture

Agreement to correct such scrivener's error and to otherwise clarify the Recapture Agreement as set forth in the Amended Recapture Agreement in the form attached as **Exhibit A** to this Resolution ("**Amended Agreement**"); and

WHEREAS, the Village has determined that approving the Amended Agreement will advance the objectives of the Recapture Agreement and is in the best interests of the Village and its residents.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LONG GROVE, COUNTY OF LAKE, STATE OF ILLINOIS, as follows:

SECTION ONE: **Recitals.** The foregoing recitals are incorporated into and made a part of this Resolution as if fully set forth in this Section One.

SECTION TWO: **Approval of Amended Agreement.** The Amended Agreement is hereby approved in the form attached to this Resolution as **Exhibit A**, and the Village President and Village Clerk are hereby authorized to execute and attest the Amended Agreement on behalf of the Village. The Village Clerk is authorized and directed to record the Amended Agreement with the Office of the Lake County Recorder upon its full execution.

SECTION THREE: **Effective Date.** This Resolution will be in full force and effect upon its passage and approval in the manner provided by law.

PASSED THIS ___th DAY OF OCTOBER, 2011.

AYES: ()

NAYS: ()

ABSENT: ()

APPROVED THIS ___th DAY OF OCTOBER, 2011.

Village President

ATTEST:

Village Clerk

EXHIBIT A
AMENDED RECAPTURE AGREEMENT

**THIS DOCUMENT
PREPARED BY AND AFTER
RECORDING RETURN TO:**

Betsy L. Gates
Holland & Knight LLP
131 S. Dearborn Street
30th Floor
Chicago, Illinois 60603

This space reserved for Recorder's use only.

AMENDED RECAPTURE AGREEMENT

THIS AMENDED RECAPTURE AGREEMENT ("**Amendment**") is made as of the _____ day of _____, 2011, between the VILLAGE OF LONG GROVE, an Illinois municipal corporation ("**Village**"), and MENARD, INC., ("**Owner**").

In consideration of the recitals and mutual covenants and agreements set forth below, the parties hereby agree as follows:

SECTION 1

RECITALS

A. This Amendment amends that certain Recapture Agreement (the "Agreement") dated 12 February 2007 by and between the Village and Owner. The terms used in this Amendment are the same terms as used in the Agreement, unless otherwise expressly provided in this Amendment or unless context otherwise requires.

B. Owner is the owner, subdivider, and developer of the Property, as defined in the Agreement.

C. In connection with Owner's development of the Property, Owner constructed and installed sanitary sewer Improvements on the Property and on other land near the Property and within the corporate boundaries of the Village.

D. The sewer improvements were designed and constructed not only to serve the Property, but also to serve the Benefited Properties identified in the Agreement, which are other properties in the vicinity of the Property that are anticipated to require sewer service for future development.

E. The service area for the Improvements is depicted in Exhibit 2 to the Agreement ("Service Area"), and the Benefited Properties are identified by street address and PIN in Exhibit 3 to the Agreement.

F. The Service Area, as depicted in Exhibit 2 to the Agreement, includes two parcels that were omitted from the list of Benefited Properties identified in Exhibit 3 to the Agreement as a result of a scrivener's error.

G. The Village and Owner intended to include these two parcels as Benefited Properties.

H. The Village and Owner also intended that the Improvements would benefit properties within the corporate limits of the Village, and intended that the Village would have discretion to approve or deny any request for connection to the Improvements.

SECTION 2

AMENDMENTS TO AGREEMENT

The Agreement shall be and is hereby amended in the following respects:

A. Amendment to Section 4, "Right to Connect." The first paragraph of Section 4 shall hereafter be and read as follows:

Requirements for Connection. A Benefited Property shall only be allowed to connect to the Improvements if (i) the Benefited Property is located within the corporate limits of the Village at the time of its connection or is developed pursuant to an annexation, pre-annexation, or other development agreement with the Village; (ii) the connection is made in accordance with the Village Code and all applicable ordinances, rules, and regulations of the Village relating to that connection, including without limitation the payment of any costs and charges ordinarily imposed by the Village; (iii) the connection is approved by the Village in writing; and (iv) the Recapture Fee is paid in accordance with this Agreement. The Village agrees that none of the Benefited Properties shall be entitled to connect to the sanitary sewer system except through the Improvements. Each of the Benefited Properties shall be entitled to no more than one point of connection to each of the Improvements, unless otherwise approved by the Village Engineer. This Agreement shall not obligate the Village to approve any request for connection to the Improvements.

B. Amendment to Exhibit 3, "Benefitted Properties." Exhibit 3 to the Agreement shall be amended to add the following parcels to the end of the P.I.N. List for Sanitary Sewer Service Area:

No.	P.I.N.	Property Address
371	14-35-200-022	20691 N. Knoll Dr.
372	14-35-200-023	2748 IL Route 53

SECTION 3

GENERAL PROVISIONS OF THIS AMENDMENT

A. Effective Date of Amendment. This Amendment shall be deemed effective as of the date it is executed by the duly authorized representatives of the Parties.

B. Entire Agreement. The Agreement, as modified by this Amendment, constitutes the entire agreement between the parties, and the provisions of this Amendment supersede any and all prior agreements and all contrary provisions in the Agreement.

C. Exhibits. In the event of a conflict between an exhibit to the Agreement and this Amendment, the Amendment shall control.

D. Recordation. The Village shall cause this Amendment to be recorded against the Property following its effective date.

IN WITNESS WHEREOF, the parties hereto have caused their respective duly authorized representatives and officers to execute this Agreement.

ATTEST:

Karen Schultheis, Village Clerk

VILLAGE OF LONG GROVE, an Illinois
municipal corporation

By: _____
Maria Rodriguez, Village President

ATTEST:

MENARD, INC.

By: _____
Its: _____