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Date June 22, 2009

WHEREAS, on May 4, 2009 by Roll Call No. 09-765 the City Council of the City of Des Moines gave final approval of an ordinance requested by Menard, Inc. to rezone property at 1201 East Diehl Avenue from R1-60 One-Family Low Density Residential District and C-2 General Retail and Highway Oriented Commercial to Limited C-2 General Retail and Highway Oriented Commercial District, as amended with the consent of the property owner to reduce the size of the area to be rezoned; and

WHEREAS, the ordinance approved by Roll Call No. 09-765 contained an incorrect legal description of the property; and

WHEREAS, Menard, Inc. is now the titleholder and sole property owner and has given its written consent to an Acceptance of Rezoning Ordinance which includes the correct legal description of the property to be rezoned, including the reduction in area to be rezoned; and

WHEREAS, the rezoning ordinance approved by Roll Call No. 09-765 is subject to the following conditions which will continue to be applied unchanged in the ordinance containing the corrected and amended legal description:

1. The westernmost 100 of the subject property shall remain zoned "R1-60" One-Family Low-Density Residential District. (Any commercial development must provide the minimum required 10-foot rear yard setback from this zoning boundary.)
2. The following uses of structures and land shall be prohibited upon the Property:
 - a. Vehicle display lots, including but not limited to used car sales lots;
 - b. Adult entertainment businesses;
 - c. Taverns and nightclubs;
 - d. Off-premises advertising signs; and
 - e. Package goods stores for the sale of alcoholic beverages.
3. Any commercial development on the site shall be setback at least 40 feet from the north side property line.
4. Any commercial development on the site shall be screened with a continuous 14-foot tall solid wall that is setback at least 40 feet from the north side property line. The bottom 4 feet shall be constructed of a masonry material the upper 10 feet may be constructed of 2-inch by 8-inch vertical treat lumber with not spacing between boards.
5. No outdoor storage of merchandise in the outdoor display area shall be stacked higher than the perimeter fencing.
6. Any external lighting on the site shall have a maximum height of 14 feet in height and shall be down-directed cut-off fixtures.

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7. Any commercial use of the Property shall be in conformance with an approved site plan that shall:
 - a. Contain a landscape plan and building elevations demonstrating general conformance with the site sketch submitted by the applicant incident to this rezoning, to the satisfaction of the Community Development Director. (This includes providing 8 evergreen trees and 4 overstory trees per 100 lineal feet along the north property line.); and
 - b. Provide landscaped bufferyards and open space in conformance with the City's adopted landscape standards.
8. Any commercial expansion onto the property shall be subject to the entire commercial development being brought into conformance with the current storm water management requirements.
9. All necessary permits shall be obtained for the construction of any building or wall upon the Property.
10. Prior to issuance of the Certificate of Occupancy for any commercial use of the Property, the professional who signed the site plan shall submit a letter to the Community Development Director certifying that the Property has been improved in substantial conformance with the approved site plan.

The subject property is more specifically described as follows:

The West 590.20 feet of the South 100.90 feet of the North 1/2, of the Northeast 1/4, of the Southeast 1/4 of Section 27, Township 78 North, Range 24 West of the 5th P.M., all now included in and forming a part of the City of Des Moines, Polk County, Iowa

WHEREAS, the sole purpose of the hearing herein is to approve the rezoning ordinance as described above with the corrected legal description and reduction in the area of the property to be rezoned.

WHEREAS, on June 8, 2009 by Roll Call no. 09-981 the City Council set the date of hearing to correct the legal description and reduce the area of the property to be rezoned for June 22, 2009 at 5:00 p.m. in Council Chambers, City Hall, Des Moines, Iowa; and

WHEREAS, due notice of the hearing was published in the Des Moines Register on June 12, 2009, setting forth the time and place for hearing on the proposed application to correct the legal description and to reduce the size of the area to be rezoned; and

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WHEREAS, pursuant to the published notice those interested in the proposed rezoning have been given the opportunity to be heard and have presented their views to the City Council.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa that upon due consideration of the facts and statements of interested persons and arguments of counsel, the hearing is closed and the application to rezone the above correctly described property to a Limited C-2 district classification is hereby APPROVED.

MOVED by _____ to adopt.

FORM APPROVED:



 Michael F. Kelley
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ City Clerk