

SETTLEMENT AGREEMENT, WAIVER AND RELEASE

THIS SETTLEMENT AGREEMENT, WAIVER AND RELEASE (“Agreement”) is made by and between HOME DEPOT USA, INC. (“Plaintiff”) and the CITY OF WEST ALLIS (“City”).

WHEREAS, The Plaintiff filed a lawsuit against the City entitled *Home Depot USA, Inc. v. City of West Allis*, Milwaukee County Case No. 2020CV4822, for the partial refund of property taxes previously paid, on the basis that their 2020-2021 property tax assessments were excessive; and

WHEREAS, the Plaintiff has a similar dispute in regard to the pending 2022 assessment; and

WHEREAS, the parties wish to resolve this matter without the expense and disruption of further litigation between them by amicably entering into this full and final settlement as to all claims the Plaintiff may have against the City in connection with their 2020, 2021, and 2022 assessments;

NOW, THEREFORE, for good and valuable consideration, the parties stipulate and agree as follows:

1. Approval. This Agreement is subject to approval in its entirety by the Common Council and the Mayor of the City of West Allis. It shall be deemed null and void, and have no force, effect, or admissibility in the event it is not so approved in its entirety.

2. Definitions. In this Agreement:

(a) The “Property” means the land and improvements located at 11071 West National Avenue within the City of West Allis, Wisconsin and identified as tax parcel numbers 520-9965-035 and 520-9965-032.

(b) “Case” means the action pending in the Milwaukee County Circuit Court titled *Home Depot USA, Inc. v. City of West Allis*, Milwaukee County Case No. 2020CV4822.

(c) “Court” means the Circuit Court of Milwaukee County.

(d) A “tax year” means the year in which an assessment is made as of January 1, 2020, January 1, 2021, and January 1, 2022, with taxes based on the assessment payable in the year following the tax year.

3. Refund of Taxes. In consideration of the stipulation to dismiss the Case provided in Section 7, and the release of all claims provided in Section 8, and upon the approval of Common Council and the Mayor, the City shall remit a refund, strictly for settlement purposes with no admission as to the fair market value of the Property for tax years 2020-2021, pursuant to Wis. Stat. § 74.37, in the total sum of \$26,260.95 payable to Michael Best &

Friedrich LLP Client Trust Account for the benefit of the Plaintiff and representing partial refunds of property taxes previously paid by Plaintiff based on the property assessments of the Property for tax years 2020-2021. The parties agree that no portion of this amount constitutes interest.

4. 2022 Assessment. The parties agree that the 2022 assessment of the Property shall reflect a total assessed value not to exceed \$9,303,600. In the event the 2022 assessment as indicated on the 2022 tax bill for the Property exceeds the above amount, the City shall be liable to Plaintiff for a refund of any taxes imposed on the Property with respect to the 2022 assessment of the Property in excess of the tax that would have been imposed on the Property if the Property had been assessed at the amount identified above (“2022 Refund”) and the City shall pay such 2022 Refund to Plaintiff within forty-five (45) days after receipt of notice from Plaintiff that a 2022 Refund is owed.

5. Waiver of Costs. Each party waives all claims for costs.

6. Time of Payment. The City shall pay the refund provided in Section 3 of this Agreement in full no later than April 15, 2022.

7. Interest. No interest is to be paid to Plaintiffs.

8. Stipulation for Dismissal. No later than the 10th business day following Plaintiffs’ receipt of the Refund of Taxes described in Section 3 of this Agreement, the parties shall take the following actions:

(a) With respect to the Case, the parties shall enter into a stipulation substantially identical to **Exhibit A** to this Agreement, signed by their respective attorneys, for the dismissal of the Case (including but not limited to, all claims asserted in the Complaint in the Case) on the merits, with prejudice and without costs to either party; and

(b) File the stipulation described in paragraph 7(a) with the Court.

9. Release. In exchange for the Refund of Taxes, 2022 Assessment and dismissal contemplated by this Agreement, the Plaintiff hereby terminates, waives and discharges any further claims, demands, or actions which it might assert or bring in the future or have brought to date, whether mature or not, currently actionable or not, and any suits, appeals, objections, administrative actions and legal proceedings whatsoever against the City with respect to its assessments for tax years 2020, 2021 and 2022 with respect to the Property, and hereby releases, discharges and acquits the City, its officers, board members, employees, agents and contractors, for any claims, causes of action, alleged injuries, or damages, of any kind, character or nature whatsoever, which have been, could have been, or might be asserted against the City or any officer, employee, agent or contractor acting on its behalf, arising out of the assessments of the Property for tax years 2020, 2021 and 2022.

10. Responsibility for Fees and Expenses of Attorneys and Experts. Each party

shall be solely responsible for the fees of its attorneys and experts.

11. No Representations. Each party acknowledges and agrees that no representation or promise not expressly contained in this Agreement has been made by the opposing party or any of its employees, attorneys, agents, or representatives. Each party acknowledges that it is not entering into this Agreement on the basis of any such representation or promise, express or implied.

12. Binding on Successors. This Agreement shall be binding upon and inure to the benefit of each of the parties and their respective heirs, successors, and assigns.

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

14. Interpretation of Agreement. The parties acknowledge that this Agreement is the product of joint negotiations. If any dispute arises concerning the interpretation of this Agreement:

- (a) Neither party shall be deemed the drafter of this Agreement for purposes of its interpretation; and
- (b) The parties shall attempt in good faith to resolve the dispute.

The parties agree that the Court retains jurisdiction to enforce this Agreement and that a party may ask the Court to enforce this Agreement by filing a motion in the Case and serving the same on the other party.

15. Representation By Counsel; Reliance. Each party acknowledges that it has been represented throughout all negotiations leading up to this Agreement by attorneys of its choice and that its attorneys have approved this Agreement. Each party represents that in entering into this 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 statements or representations expressly made in this Agreement, have influenced or induced the party to sign this Agreement.

16. No Assignment or Transfer. Plaintiff hereby represents and warrants that it is the sole and lawful owner of all claims, matters and causes of action they are releasing or dismissing pursuant to this Agreement. 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 in the Case.

17. Entire Agreement. This Agreement states and 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, including but not limited to, all agreements (written or oral), representations, negotiations, and discussions made in the course of negotiation of the Case.

18. Use of this Agreement. This Agreement shall not be filed with the Court in this Case or in any other case or proceeding, except for the sole purpose of enforcing this Agreement. This Agreement and any part of this Agreement shall not be admissible in any future judicial or administrative proceeding, except for the sole purpose of enforcing this Agreement.

19. No Admissions of Liability or Concerning Assessments or Fair Market Value. This Agreement is the settlement of disputed claims. By entering into this Agreement, the City does not admit any liability to Plaintiff for any of the claims asserted in the Case or Plaintiff's objections to the assessments. Further, the payment made under this Agreement, and/or the reduction of the Property's assessed value shall not be construed as an admission of any such liability. Neither party makes an admission about the assessments or the fair market value of the Property as of January 1, 2020, January 1, 2021, or January 1, 2022. In addition, neither (a) the 2020-2022 assessments of the Property, nor (b) any changes to the 2020-2022 assessments of the Property that may occur as a result of the implementation of this Agreement, nor (c) any other putative values of the Property for any of the years 2010-2022 derived from the assessments or from the refund amount due under this Agreement, shall be admissible in any proceeding or assessment challenge regarding the assessment of the Property in any subsequent year, except for the purpose of enforcing this Agreement.

20. 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.

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

22. Authorization to Sign Agreement. 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 the requisite corporate or other authority to sign this Agreement on behalf of the party. Each party represents that entry into this Agreement is not in contravention of any agreement or undertaking to which the party is bound.

23. Reading of Agreement. Each person signing this Agreement on behalf of either party acknowledges that the person has read this Agreement, that the person understands the terms and conditions of this Agreement, that the person (if other than an attorney for the party) has been advised by legal counsel concerning this Agreement, and that the person freely and voluntarily signs this Agreement.

24. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

Dated: _____, 2022.

HOME DEPOT USA, INC.

BY: Michael Best & Friedrich LLP
790 N. Water Street, Suite 2500
Milwaukee, Wisconsin 53202

Nicholas J. Boerke
Wisconsin Bar No. 1083217

Dated: _____, 2022.

CITY OF WEST ALLIS

BY: KAIL DECKER
City Attorney
7525 West Greenfield Ave.
West Allis, WI 53214

Rebecca Monti
Principal Assistant City Attorney
Wisconsin Bar No. 1065869

EXHIBIT A

STATE OF WISCONSIN
CIRCUIT COURT
MILWAUKEE COUNTY

HOME DEPOT USA, INC.,

Plaintiff,

v.

Case No. 2020CV4822

CITY OF WEST ALLIS,

Defendant.

STIPULATION AND ORDER FOR DISMISSAL

IT IS STIPULATED by the parties, through their respective counsel, as follows:

1. This action involves the City of West Allis' (the "City") 2020-2021 assessments of 11071 West National Avenue (tax keys 520-9965-035 and 520-9965-032) ("Property").
2. This action shall be dismissed with prejudice and without costs and fees to any party.
3. The parties have entered into a separate Settlement Agreement resolving, among other things, the claims raised in this action. This Court shall retain jurisdiction and competency over the issues presented in the Settlement Agreement. Any party may reopen this matter by motion to this Court in the event of a violation or alleged violation of this Stipulation or of the Settlement Agreement.

IT IS FURTHER STIPULATED that an Order to this effect may be entered immediately, without further notice to either party.

Dated: _____, 2022.

HOME DEPOT USA, INC.

BY: Michael Best & Friedrich LLP
790 N. Water Street, Suite 2500
Milwaukee, Wisconsin 53202

Nicholas J. Boerke
Wisconsin Bar No. 1083217

Dated: _____, 2022.

CITY OF WEST ALLIS

BY: KAIL DECKER
City Attorney
7525 West Greenfield Ave.
West Allis, WI 53214

Rebecca Monti
Principal Assistant City Attorney
Wisconsin Bar No. 1065869

STATE OF WISCONSIN
CIRCUIT COURT
MILWAUKEE COUNTY

HOME DEPOT USA, INC.,

Plaintiff,

v.

Case No. 2020CV4822

CITY OF WEST ALLIS,

Defendant.

ORDER FOR DISMISSAL

IT IS HEREBY ORDERED that the Stipulation signed by the parties on _____, 2022 shall stand as the Order of the Court in each and every respect.