

Financed
8-21-17

17-0848

SETTLEMENT AGREEMENT

This Agreement is between Lowe's Home Centers, LLC (Lowe's), a corporation organized and existing under the laws of the State of North Carolina, and the City of Manitowoc (the City), a municipal corporation organized and existing under the laws of the State of Wisconsin (collectively, the Parties).

1. Definitions. In this Agreement:

(a) The "Property" means the land and improvements located at 4401 Dewey Street, Manitowoc, Wisconsin, identified by the City as Parcel No. 835-101-666, as more particularly described in Exhibit A.

(b) "Case" means the action pending in the Manitowoc County Circuit Court, Wisconsin entitled *Lowe's Home Centers, LLC v. City of Manitowoc*, Manitowoc County Circuit Court Case No. 16-CV-367.

(c) "Court" means Manitowoc County Circuit Court.

(d) "Tax Year" means a year in which an assessment is made as of January 1, with taxes based on the assessment payable in the year following the tax year.

(e) "Agreed Assessment Amount" means the dollar amount resulting from the multiplication of \$5,400,000 by the assessment ratio set by the Wisconsin Department of Revenue applicable to the City for 2017.

2. Refund of Taxes. The City shall issue a refund payable to Fredrikson & Byron, P.A. Trust Account or to another account designated by Lowe's in writing, pursuant to Wis. Stat. § 74.37 in the amount of \$44,019.12. This amount is being paid as a partial refund for property taxes paid by Lowe's based on the property tax assessment of the Property for Tax Year 2016. The Parties agree that no portion of the refund constitutes interest.

3. Waiver of Costs and Interest. Each party waives all claims for costs and/or interest.

4. Time of Payment. The City shall issue the refund amount described under Section 2 of this Agreement within 45 days of the date this Agreement is executed by both Parties.

5. Obligation to Assist. Lowe's shall cooperate with the City and provide reasonable assistance, as needed, to enable the City to charge back a portion of the refund amounts pursuant to Wis. Stat. § 74.41.

6. Stipulation for Dismissal. No later than ten days after Lowe's receives the final tax bill reflecting the 2017 Agreed Assessment Amount the Parties shall jointly (a) enter into a stipulation, signed by their respective attorneys, for the dismissal of the Case, including, but not limited to, all claims that were or could have been asserted in any complaint in the Case, on the merits, with prejudice, and without costs or interest to either party; and (b) file the stipulation with the Court.

7. 2017 Assessment. The Parties agree that the fair market value of the property for tax year 2017 is \$5,400,000 and it is from that amount that the 2017 Agreed Assessment Amount is calculated.

(a) If the City or its agent notifies both Lowe's and Lowe's legal counsel identified below as a signatory to this Agreement in writing on or before August 24, 2017 that the 2017 assessment of the Property is equal to or less than the Agreed Assessment Amount and that the final tax bill shall reflect as much, Lowe's agrees that it will not object to, challenge, contest or otherwise appeal the 2017 assessment of the Property in any forum or in any manner. Such written notice may be conveyed by email, fax, regular or express mail, or hand-delivery.

(b) If, and only if, the City or its agent fails to notify Lowe's on or before August 24, 2017 in the manner specified in Section 7.a that the 2017 assessment is less than or equal to the Agreed Assessment Amount, Lowe's is entitled to take such steps as it deems necessary to object to, challenge, contest or otherwise appeal the 2017 assessment of the Property in any forum and in any manner.

(c) If Lowe's objects to, challenges, contests or otherwise appeals the 2017 assessment of the Property pursuant to subsection 7.b., Lowe's agrees that it will dismiss with prejudice, withdraw and/or abandon its objection, challenge, contest or appeal (collectively, challenge), upon receipt of written notice by the City or its agent, delivered by the issuance of the final 2017 property tax bill indicating that the 2017 assessment is equal to or less than the Agreed Assessment Amount and that the final bill will reflect as much. If the City or its agent provides the 2017 property tax bill indicating that the 2017 assessment is equal to or less than the Agreed Assessment Amount, Lowe's agrees that it will, at a minimum, take the following steps to withdraw, dismiss or abandon any challenge:

- i. Within ten days after receiving the notice referred to in Section 7.c, enter into a stipulation jointly with the City, signed by their respective attorneys, for the dismissal of any litigation pending in any forum objecting to, challenging, contesting or appealing the 2017 assessment, on the merits, with prejudice and without seeking costs or interest to either party, and shall file the stipulation with the Court.
- ii. If no court action has been filed by the time of the Section 7.c. notice, but Lowe's has filed a challenge to the 2017 assessment with the Manitowoc Board of Review and that challenge is still pending, Lowe's agrees that it will not take any further action in support of its challenge and will inform the Clerk of the Board of Review on the next business day after the Section 7.c. notice is given pursuant to Section 7.c that Lowe's is withdrawing its challenge to the 2017 assessment of the Property.

8. Waiver of Rights Under Wis. Stat. § 70.365. Except as reflected in Section 7.a., Lowe's waives its right to receive notice at least 15 days prior to the Manitowoc Board of Review meeting on August 29, 2017, of any change to the 2017 assessment that results in an assessment equal to or less than the Agreed Assessment Amount.

9. **Breach of this Agreement.** Any breach of this Agreement, including but not limited to, failure to issue the refund amount described under Section 2, shall give rise to a cause of action for breach. In the event of any litigation, including appeals, in connection with the breach, enforcement, or interpretation of this Agreement, the prevailing party shall recover all reasonable attorneys' fees and costs incurred in connection with such litigation.

10. **Responsibility for Fees and Expenses of Attorneys and Experts.** Each party shall be solely responsible for the fees of its attorneys and experts accrued as part of the Case.

11. **No Representations.** Each party acknowledges and agrees that no representation or promise not expressly contained in this Agreement has been made by the Parties 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 and the rights and obligations in this Agreement shall run with the Property and are binding upon and inure to the benefit of each of the Parties and their respective grantees, heirs, successors, and assigns.

13. **No Assignment or Transfer.** Lowe's represents and warrants that it has not assigned or transferred to anyone or any entity any of the claims in this Case and will not do so.

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

15. **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 prior to initiating any court action.

16. **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.

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 mediation 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 purpose of enforcing this Agreement. This Agreement and any part of this Agreement shall not be admissible in the lawsuit or in any future judicial or administrative proceeding and shall not be offered as evidence or presented by any Party in the Lawsuit or any future judicial, quasi-judicial or administrative proceeding,

except for the 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 Lowe's for any of the claims asserted in the Case or Lowe's objections to the assessments, and the payments made under this Agreement 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, 2016 or January 1, 2017, or any other date nor any other admission concerning the assessment of the Property.

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 executed 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.

Dated: _____, 2017.

**LOWE'S HOME CENTERS,
LLC**

BY: Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402-1425

IT'S: Attorneys and Agents in Fact

Name: _____
State Bar No. _____
Attorney for Lowe's Home Centers,
LLC

Subscribed and sworn to before me
this ____ day of _____, 2017.

Notary Public, State of Wisconsin.
My commission expires: _____

Dated: _____, 2017.

APPROVED AS TO FORM:

BY: Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402-1425

Name: _____
State Bar No. _____
Attorney for Lowe's Home Centers,
LLC

Dated: _____, 2017.

CITY OF MANITOWOC

BY: _____

IT'S: _____

ATTEST: _____
City Clerk

Subscribed and sworn to before me
this ____ day of _____, 2017.

Notary Public, State of Wisconsin.
My commission expires: _____

Dated: _____, 2017.

APPROVED AS TO FORM:

BY: Stafford Rosenbaum LLP
222 W. Washington Ave., Suite 900

Meg Vergeront
State Bar ID No. 1020971
Attorney for City of
Manitowoc

This document drafted by:

Meg Vergeront
Stafford Rosenbaum LLP

Thomas Wilhelmy
Fredrikson & Byron, P.A.

EXHIBIT A
Legal Description

Parcel I:

All of Lot 24-1A of Certified Survey Map executed in Volume 24, Page 329, being a redivision of Lot 24-1 of Certified Survey Map recorded in Volume 23, Page 201, located in the NE 1/4 of Section 35, Township 19 North, Range 23 East, City of Manitowoc, Manitowoc County, Wisconsin.

Parcel II:

Non-Exclusive Easement for the benefit of Parcel I created by the Easement, Covenants, Conditions and Restrictions dated December 21, 2004 and recorded December 28, 2004 in Volume 2046, Page 391, as Document No. 980555.