

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (hereinafter "Agreement") is entered into between petitioner H & E Bros., Inc. dba H & E Do-It-Yourself Centers (hereinafter "H & E"), respondent City of Redlands (hereinafter the "City") and real party in interest Lowe's Companies, Inc. (hereinafter "Lowe's"). Lowe's is incorrectly identified as Lowe's Company, Inc. in the first amended petition identified herein. H & E, the City and Lowe's are at times referred to individually in this Agreement as a "Party" and collectively as the "Parties".

RECITALS

A. WHEREAS, on or about July 1, 1999, H & E filed a petition for writ of mandate (hereinafter the "petition") against the City, Lowe's and real parties in interest Glorious Redland Investment Partnership (hereinafter "Glorious Redland") and Great Redlands Investment Partnership (hereinafter "Great Redlands") in San Bernardino Superior Court Case No. SCVSS 58528 (the "Action"). On or about August 11, 1999, H & E filed a first amended petition for writ of mandate (hereinafter the "first amended petition"). The Action seeks to set aside the City's mitigated negative declaration and approval number 702 for the Project.

B. WHEREAS, Lowe's is planning to develop and construct a home improvement warehouse facility and outdoor garden center on the southwest corner of Redlands Boulevard and Iowa Street in the City of Redlands (hereinafter the "Project"), as more fully described in the mitigated negative declaration and approval number 702 for the Project which was approved by the City on June 1, 1999.

C. WHEREAS, the Parties by this Agreement desire to avoid further litigation and to settle all legal claims and disputes between H & E, the City and Lowe's, upon the terms and conditions in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and the mutual covenants and conditions set forth in this Agreement which are acknowledged by each Party to be good, valuable and adequate consideration, each Party does hereby promise and agree as follows.

1. Offer to Compromise. This Agreement shall be considered an offer to compromise, pursuant California Evidence Code § 1152, made without admission of liability, to settle the Action.

2. Obligations of H & E, Lowe's and the City. H & E, Lowe's and the City agree to do the following:

(a) Within five days of execution of this Agreement by the City and Lowe's, H & E shall cause its attorneys to file and serve a dismissal with prejudice of the City and Lowe's from the Action

(b) Within five days of execution of this Agreement by the City and Lowe's, H & E shall cause its attorneys to file and serve a dismissal without prejudice of Glorious Redland and Great Redlands from the Action.

(c) From the date of execution of this Agreement by H & E until the date of the issuance of the certificate of occupancy of the Project, including the opening day of the Project, the City shall provide to H & E and/or its representatives such non-privileged information as reasonably requested by H & E and/or its representatives as to the status of planning, development and construction of street and/or traffic improvements/mitigation measures in the vicinity of the areas commonly known as Alabama Avenue and Redlands Boulevard, California Street and Redlands Boulevard and California Street and the Interstate 10 freeway.

(d) The City and Lowe's agree they will confer and coordinate in their reasonable discretion to implement transportation/mitigation measures to temporarily reduce substantial traffic impacts caused by the opening day or days of the Lowe's Project as reasonably requested by H&E or its representatives. Examples of such temporary mitigation measures include but are not limited to temporary physical barriers, temporary changes to the timing of traffic signals and security to direct traffic.

3. Release of Claims.

(a) Except as specifically provided otherwise in this Agreement, H & E hereby releases and discharges the City and Lowe's, and each of them, and any of their present and former partners, stockholders, parent and subsidiary corporations, affiliates, agents, representatives, predecessors and successors and assigns, employees, attorneys, accountants, consultants, officers, directors, political subdivisions, boards, counsels, office holders, officials, and each of them, from any and all claims, debts, liabilities, demands, damages, losses, costs, expenses, attorneys' fees, experts' fees, consultants' fees, actions and causes of action that H & E may now have or may have in the future against the City and Lowe's by reason of any acts, failures to act, cause, matter, condition, circumstance or event whatsoever, as stated in and arising from the claims and facts alleged in the Action.

(b) Except as specifically provided otherwise in this Agreement, the City and Lowe's and each of them, hereby release and discharge H & E and any of its present and former partners, stockholders, parent and subsidiary corporations, affiliates, agents, representatives, predecessors and successors and assigns, employees, attorneys, accountants, consultants, officers, directors, and each of them, from any and all claims, debts, liabilities, demands, damages, losses, costs, expenses, attorneys' fees, experts' fees, consultants' fees, actions and causes of action that the City and Lowe's, and each of them, may now have or may have in the future against H & E by reason of any acts, failures to act, cause, matter, condition, circumstance or event whatsoever, as stated in and arising from the claims and facts alleged in the Action.

(c) Each Party is hereby apprised of all rights that may be granted to each or all Parties pursuant to section 1542 of the Civil Code of State of California which that section reads in part as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

Having being so apprised, each Party nevertheless elects to and does, with regard to and to the extent of the release set forth in this Agreement, hereby waive any and all rights and benefits which each Party now has, or in the future may have, under section 1542 of the California Civil Code. Each Party understands and acknowledges that the significance and consequence of this waiver of California Civil Codes § 1542 is that even if the Party suffers future damages arising out of or resulting from items from which a release is provided as described above, each Party will not be able to make any claims for damages against the released entities, individually or collectively. Furthermore, each Party acknowledges that each of them intends to bear these consequences for any such claims which may exist now and/or as of the effective date of the release but which each of them does not know exists or might exist and, which, if known would materially affect each Party's decision to execute this Agreement regardless of whether there is a lack of knowledge, ignorance, oversight, negligence, error or any other cause. Each Party agrees that the facts on which the foregoing release is based may hereafter turn out to be other than or different from the facts now known or believed to be true in respect to matters referred to above. Nevertheless, each Party expressly accepts and assumes the risk that such facts may turn out to be different and agrees that the terms, conditions, and releases contained herein, shall be in all respects be effective and not subject to termination, decision, modification by any such difference in the facts.

4. Cooperation. Each Party agrees, at that Party's own costs, to reasonably cooperate with the other Parties, to perform such acts and to prepare, execute and file any documents or stipulations, as reasonably required to give full force and effect to this Agreement.

5. Prior Assignment of Claims. Each Party represents and warrants for the benefit of the others that the Party has not assigned any right, title or interest in or to any of its claims or causes of action which are released pursuant to this Agreement.

6. Authority. Each party represents and warrants for the benefit of the others that such Party and its signatories hereto as applicable are authorized and empowered to enter into this Agreement.

7. Party Has Read Agreement. Each party represents and warrants for the benefit of the others that in agreeing to the terms of this Agreement, the Party has read the Agreement, has had the opportunity to have the Agreement explained to the Party by counsel of the Party's choice, and the Party is aware of the content and legal effect of this Agreement.

8. No Reliance. Each Party represents and warrants for the benefit of the others that the Party is not relying on any representation, warranty, promise, statement or

information made or provided by any other Party or any of the employees, agents, representatives, accountants, consultants or attorneys of any other Party, or any of them, except as expressly set forth in this Agreement.

9. No Admission. The Parties agree that nothing in this Agreement shall be construed as an admission of liability or wrongdoing by the Parties or any of them.

10. Modification/Waiver. No modification or waiver of any term or condition of this Agreement shall be valid unless in writing and signed by the Parties and such modification shall be binding upon the Parties despite any lack of legal consideration.

11. Successor and Assigns. The rights and obligations of the Parties under this Agreement shall be binding on and inure to the benefit of their respective executors, successors and assigns.

12. No Construction Against Drafting Party. Each Party agrees that the Agreement has been prepared by the Parties and each of them, and shall not be construed against any of them by virtue of a Party having authored any version or provisions of this Agreement.

13. Section Headings. The section headings in this Agreement are inserted for convenience of reference only, and are not intended to and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

14. No Assignment. The Parties have not assigned any right, title or interest in or to any claim or cause of action which may presently exist or may have existed in the past, or may exist in the future, against any entity or individual, that is a Party to this Agreement or their assigns and related and affiliated persons and entities.

15. No Suit In Derogation. The Parties and their agents, employees and attorneys agree and covenant not to institute any lawsuit except as otherwise provided herein, which is based on any claim released or resolved by this Agreement or which is in derogation of this Agreement.

16. Each Side to Bear Own Fees. Except as expressly provided herein, the Parties shall bear their own legal fees and costs resulting from the preparation, negotiation and execution of this Agreement and the Action. Lowe's may be obligated to indemnify or reimburse the City for the City's attorneys' fees and costs incurred in this Action, and Lowe's shall have no right to reimbursement from H & E or the City.

17. Time is of the Essence. Time is of the essence in this Agreement.

18. Entire Agreement. This Agreement contains the entire agreement between the Parties and supercedes any prior Agreements whether written or oral.

19. Enforcement. This Agreement shall be construed under the Laws of the State of California, and each party agrees to any action relating to enforcement of this Agreement shall be instituted and prosecuted in the County of San Bernardino, State of California. Each Party consents to the personal jurisdiction of the courts of the County of San Bernardino, State of

California and waives the right to change venue. In the event any judicial action or proceeding is commenced for interpretation enforcement or breach of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs incurred therein.

20. Survival. The promises conditions, acknowledgements, representations, warranties and other obligations in this Agreement shall survive its execution and its performance.

21. Severability. If any provision of this Agreements becomes or is held by any court of competent jurisdiction to be illegal, null or void or against public policy, such provision shall be construed and amended in the manner which would permits its enforcement, but no event shall such provision affect, impair or invalidate any other provisions hereof.

22. Duplicate Counterparts. This Agreement may be signed by the parties in different counterparts and the signature pages combined to create document bonding in all parties.

IN WITNESS WHEREOF, the Parties have caused the Agreement to be duly executed by their respective authorized officers.

DATED: October 13, 1999

H & E BROS., INC. dba H & E DO-IT-YOURSELF CENTERS

By: E. M. Stein
Its: PRESIDENT

DATED: October 19, 1999

CITY OF REDLANDS

ATTEST: Lorrie Poyzer
Lorrie Poyzer
City Clerk

By: William E. Cunningham
Its: William E. Cunningham, Mayor

DATED: October 28, 1999

LOWE'S COMPANIES, INC.

By: JA Hellman
Its: Senior Vice President

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APPROVED AS TO FORM:

By: _____

Loeb & Loeb, LLP

Brant Dveirin, Attorneys for H & E Bros. Inc. dba
H & E Do-It- Yourself Center

By: _____

Daniel J. McHugh

City Attorney for City of Redlands

By: _____

Higgs, Fletcher & Mack, LLP

Charles Berwanger, Attorney for Lowe's Companies Inc.