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8/13/2014

SETTLEMENT AGREEMENT

This Agreement is between Sears Holdings Corporation ("Sears"), a corporation organized and existing under the laws of the State of Illinois and registered and authorized to conduct business in the State of Wisconsin, and the City of Racine, Wisconsin (the "City"), a municipal corporation organized and existing under the laws of the State of Wisconsin.

1. Definitions. In this Agreement:

(a) The "Property" means the land and improvements located at 5600 Durand Avenue, within the City of Racine, Wisconsin.

(b) "Case" means the action pending in the circuit court for Racine County, Wisconsin titled *Sears Holdings Corporation v. City of Racine*, Case No. 13-CV-1451.

(c) "Court" means the Circuit Court for Racine County.

(d) A "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.

2. Refund of Taxes. The City shall issue a refund payable to Reinhart Boerner Van Deuren S.C. Trust Account, or to another account designated by Sears in writing, pursuant to Wis. Stat. § 74.37, in the amount of \$110,198 for 2012 and \$95,549 for 2013 for a total refund of \$205,748 as a refund of property taxes previously paid by Sears based on the property tax assessment of the Property for the tax years 2012 and 2013. The parties agree that no portion of this amount constitutes interest.

3. 2014 Assessment. The parties agree that the 2014 assessment of the Property will reflect an assessed value of \$4,500,000. In the event the 2014 assessment exceeds this amount, then Sears shall have the right to file a claim for refund for any taxes paid with respect to the assessment in excess of this number, and the City shall grant any such claim for refund.

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

5. Timing of Payments. The City shall pay the refund of taxes provided in Section 2 of this Agreement as follows: one half of the refund amount (\$102,874) shall be paid no later than February 27, 2015. The remaining one half (\$102,874) shall be paid no later than June 15, 2015.

6. Interest. Sears waives interest under Wis. Stat. § 74.37(5). However, if the City fails to make any payment as set forth in Section 5, interest shall immediately accrue on the unpaid balance at the rate of 1% per annum.

7. Stipulation for Dismissal. Upon execution of this Agreement, the parties shall enter into a stipulation to remove the trial date from the Court's calendar. No later than 14 days after Sears receives payment in full of the refund of taxes provided in Section 2 of this Agreement, the parties shall (a) enter into a stipulation, signed by their respective attorneys, for

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the dismissal of the Case (including, but not limited to, all claims asserted in the Complaint in the Case) on the merits, with prejudice, with the Court retaining jurisdiction to enforce this Agreement, and without costs to either party; and (b) file the stipulation with the Court

8. Responsibility for Fees and Expenses of Attorneys and Experts. Each party shall be solely responsible for the fees of its attorneys and experts.

9. 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.

10. 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.

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

12. 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.

13. 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.

14. No Assignment or Transfer. Sears 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.

15. 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.

16. 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

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any Party in the Case or any future judicial or administrative proceeding, except for the purpose of enforcing this Agreement.

17. 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 Sears for any of the claims asserted in the Case or Sears' 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, 2012, January 1, 2013 or any other date nor any other admission concerning the assessment of Sears' property. In addition, none of the agreed upon values or assessments as of January 1, 2012, and January 1, 2013 shall be admissible in any proceeding or assessment challenge in any subsequent year.

18. 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.

19. 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.

20. 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.

21. 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: _____, 2014.

SEARS HOLDINGS CORPORATION

BY: Reinhart Boerner Van Deuren s.c.
22 East Mifflin Street, Suite 600
Madison, WI 53703

Don M. Millis
State Bar No. 1015755
Jessica Hutson Polakowski
State Bar ID 1061368
Joshua D. Taggatz
State Bar ID 10814778

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Dated: _____, 2014.

CITY OF RACINE

By: _____
Its: _____

Dated: _____, 2014.

APPROVED AS TO FORM:

BY: Hankel, Bjelajac & Kallenbach, LLC
601 Lake Avenue
P.O. Box 38
Racine, WI 53401-0038

Robert E. Hankel
State Bar ID No. 01015341
Attorney for the City of Racine

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