

1 LATHAM & WATKINS LLP
James L. Arnone (Bar No. 150606)
2 Damon P. Mamalakis (Bar No. 184489)
Benjamin J. Hanelin (Bar No. 237595)
3 633 West Fifth Street, Suite 4000
Los Angeles, California 90071-2007
4 Telephone: (213) 485-1234
Facsimile: (213) 891-8763
5 E-mail: james.arnone@lw.com
damon.mamalakis@lw.com
6 benjamin.hanelin@lw.com

7 Attorneys for Petitioner and Plaintiff
THE HOME DEPOT U.S.A., INC.

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11
12 THE HOME DEPOT U.S.A., INC.,

13 Petitioner and Plaintiff,

14 v.

15 THE CITY OF LOS ANGELES, a municipal
corporation; THE CITY COUNCIL OF THE
16 CITY OF LOS ANGELES, its governing
body; and DOES 1 through 100, inclusive,

17 Respondents and Defendants.
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CASE NO. BS 111954

[Assigned to Dept. 85]

**STIPULATION AND [PROPOSED] ORDER
STAYING LITIGATION WHILE PERMIT
APPLICATION IS PROCESSED**

Writ Trial Date: None Set

[Petition/Complaint Filed Nov. 8, 2007]

1 WHEREAS, on November 9, 2007, Petitioner and Plaintiff The Home Depot
2 U.S.A., Inc. (“Home Depot”) filed this action challenging the actions of Respondents and
3 Defendants the City Council of the City of Los Angeles and the City of Los Angeles (together,
4 the “City”) in revoking a remodeling building permit for a proposed Home Depot store at 8040
5 Foothill Boulevard in the Sunland-Tujunga area of the City of Los Angeles (“Site”);

6 WHEREAS, Home Depot and the City have reached a conditional agreement as
7 set forth in this Stipulation pursuant to which this litigation shall be stayed for a limited period of
8 time during which the following shall occur: (1) Home Depot shall apply for a new discretionary
9 permit for a store to be opened at the Site; (2) the City shall process that application
10 expeditiously, in compliance with applicable City rules, and without prejudice or
11 predetermination; and (3) the City shall facilitate discussions between Home Depot and Sunland-
12 Tujunga community leaders under the auspices of the City Attorney’s community mediation
13 program to act as a forum for constructive discussion as the settlement process moves forward;

14 WHEREAS, if as a result of the foregoing the City issues an approval for a Home
15 Depot store to be opened at the Site, and if no litigation prevents Home Depot from opening a
16 store at the Site, and if Home Depot or the City do not otherwise lift the litigation stay, then
17 Home Depot shall dismiss this litigation with prejudice thereby conserving the time and
18 resources of this Court and of the parties; and

19 WHEREAS, if, however, the City does not issue such a permit, or if any
20 subsequent litigation prevents a store from opening, or if Home Depot or the City otherwise
21 determines that the stay shall not be continued, then either the City or Home Depot may
22 determine that the stay of this litigation shall be lifted and this litigation shall proceed for
23 adjudication.

24 THEREFORE, IT IS HEREBY STIPULATED by and between the City and
25 Home Depot, through their respective counsel of record who represent that they have been duly
26 authorized to stipulate to the terms herein, that:

1 (1) this litigation is hereby stayed and shall remain stayed until the earlier of: (a)
2 Home Depot filing a request for dismissal of this litigation; or (b) the City or Home Depot filing
3 a notice of the lifting of the litigation stay;

4 (2) there shall be no discovery or briefing during the litigation stay, however the
5 City shall continue to prepare the administrative record pursuant to and within the time limit set
6 in Code of Civil Procedure 1094.6(c);

7 (3) neither this stay nor anything in this Stipulation shall prejudice any party's
8 legal position, prejudice any future discovery rights, or be deemed or implied to be a concession
9 of any disputed fact or legal issue;

10 (4) Home Depot shall apply to the City in March 2008 for a project permit
11 compliance review pursuant to Los Angeles Municipal Code Section 11.5.7.C seeking the City's
12 approval for a Home Depot store at the Site;

13 (5) the City shall facilitate discussions between Home Depot and Sunland-
14 Tujunga community leaders under the auspices of the City Attorney's community mediation
15 program to act as a forum for constructive discussion as the settlement process moves forward;

16 (6) the City shall expeditiously process Home Depot's application for a project
17 permit compliance review, with a maximum processing time not to exceed five months from the
18 application being submitted to the City through to the Planning Department's written
19 determination with all findings and conditions;

20 (7) the City shall follow its customary practices for similarly situated matters to
21 determine the level of environmental review required under the California Environmental
22 Quality Act;

23 (8) in the event the Planning Department approves the store and no
24 administrative appeal is filed thereto, the City shall issue any ministerial permits required to
25 implement that approval within five working days after submittal of final plans with all
26 corrections approved by the Department of Building and Safety;

27 (9) in the event the Planning Department approves the store and an administrative
28 appeal is filed thereto, the City shall process that appeal expeditiously, with a maximum

1 processing time not to exceed two months, and in compliance with applicable City rules;
2 thereafter, in the event the store approval is upheld on appeal, the City shall issue any ministerial
3 permits required to implement that approval within five working days after the commission vote
4 and submittal of final plans with all corrections approved by the Department of Building and
5 Safety;

6 (10) in all events, the City is preserving all of its lawful rights and discretion and
7 is not prejudging any permit application or level of environmental review;

8 (11) if as a result of the foregoing the City issues a final, nonappealable approval
9 for a Home Depot store to be opened at the Site, and if the stay is not lifted as provided in
10 Paragraph 1 above, and if litigation is filed challenging that City approval, Home Depot shall
11 defend, indemnify, and hold harmless the City, its agents, officers, or employees from any claim,
12 action, or proceeding against the City or its agents, officers, or employees to attack, set aside,
13 void or annul that approval which action is brought within the applicable limitation period; the
14 City shall promptly notify Home Depot of any claim, action, or proceeding and the City shall
15 cooperate fully in the defense; if the City fails to promptly notify Home Depot of any claim,
16 action, or proceeding, or if the City fails to cooperate fully in the defense, Home Depot shall not
17 thereafter be responsible to defend, indemnify or hold harmless the City;

18 (12) if as a result of the foregoing the City issues a final, nonappealable approval
19 for a Home Depot store to be opened on the Site, and if the stay is not lifted as provided in
20 Paragraph 1 above, and if no litigation is filed challenging that City approval, Home Depot shall
21 dismiss this litigation with prejudice, in full, and as to all parties within fourteen days after the
22 running of the applicable statutes of limitations;

23 (13) if as a result of the foregoing the City issues a final, nonappealable approval
24 for a Home Depot store to be opened on the Site, and if the stay is not lifted as provided in
25 Paragraph 1 above, and if any litigation challenging that City approval is resolved in favor of the
26 City and Home Depot, Home Depot shall dismiss this litigation with prejudice, in full, and as to
27 all parties within fourteen days after the litigation challenging that City approval is finally
28 resolved in favor of the City and Home Depot; and

1 (14) the time periods set forth in this stipulation are subject to extension or
2 modification pursuant to the mutual written agreement between the City and Home Depot.

3
4 IT IS SO STIPULATED.

5 For the City of Los Angeles and the City Council of the City of Los Angeles:

6 Dated: February 28, 2008

ROCKARD J. DELGADILLO,
Los Angeles City Attorney

7
8 By _____
9 Tayo Popoola
10 Attorneys for Respondents and Defendants the
11 City of Los Angeles and the City Council of the
12 City of Los Angeles

13 For The Home Depot U.S.A., Inc.:

14 Dated: February 28, 2008

LATHAM & WATKINS LLP
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Damon P. Mamalakis
Benjamin J. Hanelin

15
16 By _____
17 James L. Arnone
18 Attorneys for Petitioner and Plaintiff
The Home Depot U.S.A., Inc.

19 * * * * *

20 **GOOD CAUSE APPEARING, IT IS SO ORDERED.** This above Stipulation is
21 approved. This action is hereby stayed as provided above.

22 Dated: March __, 2008

23
24
25 _____
Superior Court Judge

26 LA\1817416.10

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2 modification pursuant to the mutual written agreement between the City and Home Depot.

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