

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

The parties to this Mutual Release and Settlement Agreement are: (1) The Weitz Company, Inc., (WEITZ); (2) State of Iowa, Department of General Services (THE STATE); and (3) Brown, Healey, Stone, & Sauer, P.C., and Herbert M. Stone (BHS).

WHEREAS, the parties to this Mutual Release have been parties to an action pending in Polk County, Iowa, District Court entitled The Weitz Company, Inc., Plaintiff vs. State of Iowa, Department of General Services, Defendant; State of Iowa, Department of General Services, Third-Party Plaintiff vs. Brown, Healey, Stone, & Sauer, P.C., f/k/a Brown, Healey, Bock, P.C., and Herbert M. Stone, Third-Party Defendants, Case No. CL091-53928 ("the LAWSUIT"), wherein WEITZ filed a claim against THE STATE and THE STATE filed a claim against BHS relating to BHS design and WEITZ's construction of the ceramic tile system at the Iowa State Historical Building.

WHEREAS, the parties to this Mutual Release have agreed to settle all potential and existing disputes and claims presented in the LAWSUIT and relating to the design and construction of the ceramic tile system at the Iowa State Historical Building.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. THE STATE and BHS agree to pay WEITZ within 10 days of the date of Weitz's execution of this agreement the amount of Six Hundred Twenty Thousand Dollars (\$620,000.00), in full, complete and final settlement of the claims alleged in the LAWSUIT.

2. Upon exchange of the sum of Six Hundred Twenty Thousand Dollars (\$620,000.00), WEITZ, THE STATE and BHS hereby irrevocably release, acquit and forever discharge each other, their predecessors and successors in interest and their directors, officers, shareholders, employees, agents, attorneys, representatives, affiliates, subsidiaries, heirs and assigns and all thereof and from any and all manner of actions, suits, claims, damages, judgments, levies, executions, demands, costs, expenses and liabilities, liquidated or unliquidated, fixed or contingent, direct or indirect, whether in contract, tort or otherwise, whether existing by virtue of any federal, state or local statute or regulation, known or unknown (collectively hereinafter referred to as "Claims") arising out of any matter including without limitation any Claims that any one of the parties ever had or have asserted or could be asserted against any one of the other parties for, upon or by reason of any matter, fact or thing arising out of or in any way related to the design and construction of the ceramic paver tile system at the Iowa State Historical Building, the efforts to repair

the system, the replacement of the system, and all matters arising from or related to the system, including but not limited to all claims asserted in the LAWSUIT.

3. Regarding their respective shares of the total settlement, THE STATE agrees to pay WEITZ the amount of Two Hundred Thousand Dollars (\$200,000.00) and BHS to pay WEITZ Four Hundred and Twenty Thousand Dollars (\$420,000.00) in full, complete and final settlement of all claims and the mutual releases contained herein.

4. The aforementioned consideration is accepted by WEITZ in full and complete satisfaction of all alleged damages arising out of any disputes and claims related to the design and construction of the ceramic paver tile system at the Iowa State Historical Building, the efforts to repair the system, the replacement of the system, and the matters arising from or related to the system, including but not limited to all claims asserted in the LAWSUIT. It is expressly understood and agreed that the terms of this Agreement are contractual and not mere recitals, and that the agreements herein contained and the consideration transferred is to compromise doubtful and disputed claims, avoid litigation, and buy peace, and that no statement contained in this Agreement should be deemed to be an admission against interest by WEITZ, THE STATE or BHS or a concession as to a claim or defense, nor shall any party be deemed of admitting any liability to any third party, which liability is expressly denied.

5. This Mutual Release discharges and releases claims, demands, causes of action, damages, losses, or expenses related to the design and construction of the ceramic paver tile system at the Iowa State Historical Building, including but not limited to all claims asserted in the LAWSUIT and covers any other dispute or potential claim related to the paver tile system which is known, suspected or discovered as of the date of the signing of this Release, including but not limited to all claims asserted in the LAWSUIT.

6. Except as specifically contained in this Agreement, no representation, promises, or statements have been made by WEITZ, THE STATE, or BHS or by any of its directors, officers, shareholders, employees, agents, attorneys, representatives, affiliates, subsidiaries, successors, heirs and assigns to the other parties nor have WEITZ, THE STATE or BHS or any of its respective directors, officers, shareholders, employees, agents, attorneys, representatives, affiliates, subsidiaries, successors, heirs and assigns influenced the other parties in making and executing this Agreement.

7. None of the parties has assigned, pledged or otherwise in any manner whatsoever sold or transferred, either by instrument in writing or otherwise, any rights, title, interest or claims which they possess or may possess against any other party to this Agreement related to the design and construction of the ceramic paver tile system at the Iowa State Historical Building, including but not limited to all claims asserted in the lawsuit.

8. WEITZ shall pay the court costs of the LAWSUIT. Each party shall bear all of its attorney fees and expenses, including deposition costs. The parties further agree that no claims will be made to the court or to any party for reimbursement for these costs. Each party shall pay their own experts for deposition testimony or any other charges incurred.

9. WEITZ will cause to be dismissed with prejudice the LAWSUIT against THE STATE.

10. THE STATE will cause to be dismissed with prejudice the cross petition against BHS in the LAWSUIT.

11. WEITZ and BHS agree they will use their best efforts to ensure that the terms and conditions of this Mutual Release and Settlement Agreement are confidential. If WEITZ or BHS is contacted regarding the terms of the settlement entered into herein, each shall state that the LAWSUIT was resolved amicably among the parties. THE STATE shall not be subject to the confidentiality provision because of the applicable statutes regarding public access to its records.

12. Any provision in this Agreement which is prohibited or unenforceable in any jurisdiction shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

13. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, all of which shall constitute one and the same instrument and shall become effective when each of the Parties hereby have delivered to the others this Agreement duly executed by each of the parties hereto.

BROWN HEALEY STONE & SAUER, P.C.,
d/b/a Brown Healey Bock, P.C.

By *Robert M. Stone*

Title *Vice-President*

Date *1/24/94*

STATE OF IOWA)
)ss:
COUNTY OF LINN)

On this *24th* day of *January*, 1994, before me, personally appeared *Robert M. Stone*, to me personally known, who, being by me duly sworn, did say that s/he is the *Vice President* of Brown Healey Stone and Sauer, P.C., and that the foregoing instrument was executed on behalf of Brown Healey Stone and Sauer, P.C., by authority vested in him/her by law, and s/he acknowledged the instrument to be the free act and deed of Brown Healey Stone and Sauer, P.C.

Sue West
Notary Public - State of Iowa

