

COMPROMISE SETTLEMENT AND RELEASE AGREEMENT

THIS COMPROMISE SETTLEMENT AND RELEASE AGREEMENT (“Agreement”) is made and entered into as of June __, 2017 (the “Effective Date”) by and between the Forney Economic Development Corporation (“FEDC”) and HP Forney 548 Partners, LP (“HP”) (each a “Party” and collectively the “Parties”). The Parties hereby agree as follows:

Recitals

WHEREAS, this Agreement arises from that certain Economic Incentive and Performance Agreement dated as of December 13, 2011 by and between the Parties (the “Performance Agreement”), which provided financial incentives for the development of property consisting of approximately forty (40) acres of land located at the northwest corner of U.S. Highway 80, and F.M. 548 within the City of Forney, Kaufman County, Texas (the “Property”);

WHEREAS, HP acquired the portion of the Property described on Exhibit A hereto (the “Phase I Property”) and developed a Kroger Store thereon (the “Kroger Store”), but HP did not acquire the remainder of the Property described on Exhibit B hereto (“Phase II Property”);

WHEREAS, a dispute exists between the Parties regarding the performance of certain incentives tied to development of the Property under the Performance Agreement known as the “Eligible Occupancies” (the “Dispute”);

WHEREAS, to avoid the expense and inconvenience of litigation and other related expenses, the Parties make this Agreement to compromise and settle the Dispute. Without admission of fault of either Party, and for the sole purpose of preventing the cost of any impending litigation, the Parties desire to enter into this Agreement;

WHEREAS, the Parties understand and agree that this Agreement is a compromise, is not an admission of any liability, and the Parties being released have consistently denied any and all liability; and

NOW, THEREFORE, for an in consideration of the recitals set forth above, the covenants, terms, conditions and releases herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties warrant, represent and agree to the following terms:

Article I Settlement

1.1 Payment. FEDC shall pay HP the total sum of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) (the “Settlement Proceeds”) within twenty-one (21) days after the Effective Date by delivering to HP a check made payable to “HP Forney 548 Partners, LP” for the amount of the Settlement Proceeds. HP’s timely receipt of such check, and the clearing of such check, are conditions to HP’s obligations under this Agreement.

1.2 Amendment of Performance Agreement. Upon execution of this Agreement, the Performance Agreement entered into by the Parties shall continue in full force and effect but shall be deemed amended to: (a) delete the Phase II Property from the Property covered by the Performance Agreement; and (b) clarify that the Kroger Store existing on the Effective Date constitutes the “Base Development” under the Performance Agreement even though the Kroger Store consists of more than 80,000 gross square feet. The Parties acknowledge that, as a result of the foregoing amendments: (i) HP

will not be entitled to receive any sales tax reimbursements as a result of the development of any improvements on the Phase II Property; (ii) Section 5(a)(1)(A)(i-iii) of the Performance Agreement shall effectively set forth the maximum percentages and duration of the sales tax reimbursements to HP for the remainder of the Performance Agreement for the Phase I Property if no Eligible Occupancies are constructed on the Phase I Property in addition to the Kroger Store as it exists on the Effective Date; and (iii) HP shall be entitled to additional sales tax reimbursements under Section 5(a)(1)(B) of the Performance Agreement if Eligible Occupancies are constructed on the Phase I Property in addition to the Kroger Store as it exists on the Effective Date.

Article II Release

2.1 Release. Upon HP's receipt of the Settlement Proceeds, each Party does hereby release and discharge the other Party and its officers, directors, members, attorneys, affiliates, owners, partners, guarantors, employees, agents, representatives, successors and assigns from any and all accounts, claims, actions, demands, rights, suits, damages, costs, expenses or attorney's fees of any nature arising out of or related to the Performance Agreement prior to the Effective Date; provided, however, no Party will be released from its obligations under this Agreement or from its obligations under the Performance Agreement arising on or after the Effective Date.

Article III Miscellaneous

3.1 No Assignment and Transfer. The Parties represent and warrant that they have not assigned or transferred all or part of the claims, demands, actions, or causes of action arising from or in any way relating to the circumstances and conditions made the basis of this action, to any person, firm, or corporation.

3.2 Ownership. The Parties represent and warrant that they are the full and sole owners of the claims, demands, actions, or causes of action arising from or in any way relating to the circumstances and conditions made the basis of this Agreement.

3.3 Attorney Fees. All attorney fees and other costs associated with this matter shall be borne by the Party incurring same.

3.4 Governing Law. This Agreement was negotiated in and shall be governed by the laws of the State of Texas.

3.5 Authorization. Each Party represents that it has the right and authority to execute this Agreement, and that it has not sold, assigned, transferred, conveyed or otherwise disposed, in whole or in part, of any of the claims, demands, obligations or causes of action referred to in this Agreement.

3.6 Entire Agreement. This Agreement contains the entire agreement between the Parties with regard to the matters set forth herein. This Agreement supersedes any prior, contemporaneous, or subsequent oral agreements or understandings of the Parties and shall be binding upon and enure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of the Parties. No variations, amendments, modifications or changes to this Agreement shall be binding upon any of the Parties unless in writing and duly and fully executed by all Parties. The Parties agree that this Agreement contains the integrated whole of all agreements and understandings between the Parties.

3.7 Successors and Assigns. This Agreement shall be binding upon and enure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each Party.

3.8 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received as sent by courier or otherwise hand delivered.

If intended for FEDC, to:

Forney Economic
Development Corporation
P.O. Box 826
101 E. Main St.
Forney, Texas 75126
Attn: Warren Ketteyman
Tele: (972) 564-7376
Fax: (972) 564-0950

With a copy to:

City Attorney
City of Forney
P.O. Box 826
101 E. Main St.
Forney, Texas 75126
Attn: Jon Thatcher
Tele: (972) 564-7310
Fax: (972) 564-7349

If intended for HP, to:

HP Forney 548 Partners, LP
c/o Hunt Properties, Inc.
8235 Douglas Avenue, Suite 1300
Dallas, Texas 75225
Attn: Jeff Williams
Tele: (214) 360-9600
Fax: (214) 706-3251

With a copy to:

Munsch Hardt Kopf & Harr, P.C.
500 N. Akard Street, Suite 3800
Dallas, Texas 75201
Attn: William T. Cavanaugh, Jr.
Tele: (214) 855-7536
Fax: (214) 978-4371

3.9 Remedies. If either Party breaches this Agreement, the other Party must give written notice of breach and thirty (30) days to cure such breach. In the event the breaching party fails to cure within such time period, the other Party may exercise any remedies available to it at law or equity, including, without limitation, injunctive relief and mandamus.

3.10 Severability. Should any portion of the Agreement be rendered illegal, invalid or void by a court of competent jurisdiction such section(s) shall be severed from this Agreement still maintaining the intent of the Agreement and all remaining sections shall remain in full force and effect.

3.11 Counterparts. This Agreement may be executed in multiple counterparts, with the same effect as if all Parties hereto had signed the same counterpart. All counterparts shall be construed together and shall constitute one agreement.

3.12 No Reliance. Neither Party is relying on any promise, undertaking or understanding not expressly set forth herein.

3.13 Compromise Not an Admission. The Parties are entering into this Agreement solely for the purpose of avoiding the burdens, inconveniences, and expenses of further disputes and litigation between themselves, and this Agreement shall not be construed or deemed to be an admission of concession by any party as to the merits of any claim or defense or an admission or concession of any wrongdoing, liability, or culpability which is expressly denied.

3.14 Understanding. The Parties represent that they fully understand this Agreement and its terms, and, with this full understanding, voluntarily enter into this Agreement as evidenced by signing it below.

3.15 Legal Competence. The Parties hereto expressly represent and warrant that they are legally competent to execute this Agreement and that they do so of their own free will and accord without reliance on any representations of any kind or character not expressly set forth herein.

3.16 No Duress. The Parties expressly represent and warrant that this Agreement has been freely and voluntarily entered into and they did not execute this Agreement under duress of any kind, from any Party or person, regardless of whether they are a signatory hereto.

3.17 Joint Efforts. This Agreement has been prepared by the joint efforts of the Parties or the attorneys for the Parties and each Party acknowledges and agrees that the general rule of contract construction providing that the provisions of a contract are to be strictly construed against the drafter of the agreement is hereby waived.

3.18 No Waiver. No waiver of any of the terms of this Agreement shall be binding unless in writing and signed by all Parties hereto. No waiver of any terms of this Agreement shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

3.19 Further Instruments. The Parties expressly covenant and agree that they will each execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out this Agreement.

3.20 Electronically Transmitted Signatures. Signatures to this Agreement, any amendment hereof, delivered electronically via facsimile, .pdf, .jpeg, .TIF, .TIFF or similar electronic format shall be deemed an original signature and fully effective as such for all purposes.

[Signature Pages to Follow]

EXECUTED this the ____ day of _____, 2017.

FORNEY ECONOMIC DEVELOPMENT CORPORATION

By: _____

Name: _____

Title: _____

Sworn to or affirmed and subscribed before me this the ____ day of _____, 2017,
by _____, who is personally known or produced _____
as identification.

[Seal]

Notary Public, State of Texas

Approved as to Form:

Jon Thatcher, City Attorney

EXECUTED this the ____ day of _____, 2017.

HP FORNEY 548 PARTNERS, LP,
a Texas limited partnership

By: HP Forney 548 GP, LLC
a Texas limited liability company,
its General Partner

By: Hunt Properties, Inc.,
its sole manager

By: _____
Jeff Williams, Vice President

Sworn to or affirmed and subscribed before me this the ____ day of _____, 2017,
by _____, who is personally known or produced _____
as identification.

[Seal]

Notary Public, State of Texas

Approved as to Form:

Munsch Hardt Kopf & Harr, P.C.

By: _____
William T. Cavanaugh, Jr.

Exhibit A

The Phase I Property

Exhibit B

The Phase II Property