

TRAFFIC FEE REFUND AGREEMENT

This TRAFFIC FEE REFUND AGREEMENT (this "Agreement") is made this 7th day of July 2014, by and between this County of Placer, a political subdivision of the State of California ("County") and Northstar Iron Horse, LLC and Northstar Big Horn, LLC ("Developer").

RECITALS

WHEREAS, Developer has developed various projects in eastern Placer County including Northstar Village (SUB 416); and

WHEREAS, Developer's entitlements and environmental mitigation measures (MM 4.4.14) required that they contribute fair share contributions for various improvements including the widening of Northstar Drive (SR267 to Basque Drive); and

WHEREAS, Developer has contributed \$655,200 towards the widening of Northstar Drive; and

WHEREAS, a large portion of the improvements have been constructed; and

WHEREAS, the County has established the Tahoe Region Traffic Mitigation Fee District ("Tahoe Region District") and has adopted a Capital Improvement Plan for the Tahoe Region District (the "CIP") that was amended in December 2013 to include future needed improvements to Northstar Drive; and

WHEREAS, a portion of the amount paid by Developer will no longer be needed; and

WHEREAS, the parties have agreed that Developer's complete refund for the fair share contribution is \$250,000.

WHEREAS, County and Developer wish to enter into an agreement by which Developer agrees and accepts a refund of a portion of a fair share contribution on the terms and conditions stated herein; and

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

ARTICLE 1. REFUND

1.1 **Refund Amount.** Developer is entitled to a refund in accordance with the terms of this Agreement in an amount of Two Hundred Fifty Thousand Dollars (\$250,000) (hereinafter the "Refund Amount") which is agreed to be the final refund amount and constitutes full compensation associated with the fair share contributions for various improvements paid by the Developer.

1.2 **Sources for Reimbursement.** Nothing in this Agreement shall be construed to create an obligation of, or be attributable to, County's general or special funds, County Service Area accounts, or any other funds in the hands of County or its accounts now and in the future, except as otherwise expressly provided herein. County's obligation hereunder to provide a refund is limited to the availability of previously paid fair share contributions being held by the County.

1.3 **Timing of Reimbursement and Interest.** The County will pay the Developer the total amount within 30 days of both parties executing the agreement.

ARTICLE 2. MISCELLANEOUS

2.1 **Indemnification.**

a. **Indemnification by Developer.** Subject to the provisions of this Section 2.1, Developer agrees and covenants to, and shall fully indemnify, defend and hold harmless County and its elective and appointive boards, commissions, officers, employees and agents, from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the County Counsel), causes of action, claims, or judgments (collectively,

"Claims") arising by reason of any death, bodily injury, personal injury, property damage or violation of any law or regulation to the extent arising from any actions or omissions in connection with the design, construction, or repair of the Improvements by any of the following: Developer, any of Developer's creditors, engineers, contractors or subcontractors, or any other person or entity employed by or acting on behalf of or as the authorized agent for Developer, or any of Developer's creditors, engineers, contractors or subcontractors. Provided, however, that Developer shall not be liable hereunder to indemnify, defend or hold harmless County and its elective and appointive boards, commissions, officers, employees and agents against Claims alleging sole and active negligence of County in its functions of design review, approval or construction inspection in connection with the Improvements; provided further, that nothing in this Agreement shall be construed as a waiver by County of any immunity or defense it may have relating to any such Claim, including without limitation immunity or defenses relating to design review and/or approval and/or construction inspection.

b. Duration of Indemnification Obligations. The indemnification and hold harmless agreement made by Developer in Section 2.1.a above, with respect to the refund shall not expire and shall remain in effect with respect to any Claims which are made, initiated, claimed, filed or assessed at any time as allowed by law, or which relate to (directly or indirectly) any such Claims.

2.2 Entire Agreement. This Agreement represents the entire agreement of the parties relating to the subjects covered by this Agreement. No oral or written statement, representation, or agreement not included within this Agreement shall be of any force or effect whatsoever, and shall be deemed to have been superseded by the terms hereof.

2.3 Notices. Each notice, request, offer, approval, consent or other communication required or permitted to be given by or on behalf of either party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (e.g., Federal Express or UPS), or United States certified mail (return receipt requested with postage fully prepaid), addressed to the appropriate party as follows:

If to County: Placer County
 Department of Public Works
 3091 County Center Drive, Ste 220
 Auburn, California 95603
 Attention: Public Works Director

If to Developer: Northstar Iron Horse, LLC
 Northstar Big Horn, LLC
 PO Box 2537
 Truckee, CA 96160

Or at such other address as may be specified from time to time in the manner required herein. All such notices shall be deemed to have been given on the date personally delivered, the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given, or the next business day if delivered by an overnight courier service permitted by the terms of this Section 2.3.

2.4 Effective Date. This Agreement shall become effective upon its execution by all parties.

2.5 Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or default are due to war, insurrection, strikes, walkouts, riots, terror, floods, drought, rain, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, or similar bases for excused performance. If written notice of such delay is given to County, within thirty (30) days of the commencement of such delay, an extension of

time for such cause shall be granted for the period of the enforced delay, or longer as may be mutually agreed upon.

2.6 **Jurisdiction and Venue.** This Agreement shall be governed by the laws of the State of California. Initial venue for any action shall be Placer County, California. Each party waives federal court removal and/or original jurisdiction rights it may have.

2.7 **Authority to Sign.** Each individual signing this Agreement represents and warrants that he or she has the power and authority to bind the entity or individual on behalf of whom he or she is signing.

COUNTY:

NORTHSTAR:

COUNTY OF PLACER,
A political subdivision of the

NORTHSTAR IRON HORSE
a Limited Liability Corporation/
NORTHSTAR BIGHORN
A Limited Liability Corporation

By: _____

By: Edward Morgan III

Name: _____

Name: Edward Morgan

Title: _____

Title: Vice President

ATTEST:
Clerk of the Board of Supervisors

APPROVED AS TO FORM:
County Counsel

Brian D. Hall

DEPUTY COUNTY COUNSEL