

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (this "Agreement") is made and entered into by Northstar Mountain Properties, LLC ("NMP") and the Prosecution Team of the California Regional Water Quality Control Board, Lahontan Region ("Prosecution Team") (collectively, the "Parties") with reference to the following facts:

RECITALS

A. On or about October 5, 2007, the Prosecution Team contacted representatives of NMP to inform them that the Prosecution Team's Administrative Civil Liability investigation determined that NMP allegedly violated (1) waste discharge requirements prescribed by the statewide general permit for storm water discharges associated with construction activity (State Water Resources Control Board Order No. 99-08-DWQ), (2) waste discharge prohibitions specified by the *Water Quality Control Plan for the Lahontan Region*, (3) terms and conditions of a Clean Water Act section 401 Water Quality Certification, and (4) Cleanup and Abatement Order No. R6T-2006-0049. The Prosecution Team alleges that the above-referenced permit, regulations, certification, and order were violated as a result of construction activities conducted on the following project areas:

1. Northstar Village, WDID No. 6A31C325917;
2. Northstar Intercept Lots, Phase I, WDID No. 6A31C335494;
3. Northstar Employee Housing / Sawmill Heights, WDID No. 6A31C335581;
4. Northstar Highlands View Drive / Highway 267 Interchange - WDID No. 6A31C333755;
5. Northstar Drive Roundabout - WDID No. 6A31C333754;
6. Northstar Trailside Townhomes - WDID No. 6A31C339949;
7. Northstar Highlands - Village Run Fill Site - WDID No. 6A31C342716;
8. Northstar Drive/Basque Road Improvements - WDID No. 6A31C329713;
9. Northstar Schaffer's Camp Restaurant - WDID No. 6A31C324687;
10. Northstar Highlands Drive – WDID No. 6A31C333756; and
11. Northstar Highlands Resort Hotel – WDID No. 6A31C339910.

The Alleged Violations and Summary Table (the "Violation Summary") detailing the alleged violations at each of the above project areas is provided as Attachment A to the February 2, 2009, Proposed Administrative Civil Liability Order No. R6T-2009-(PROPOSED) (the "Proposed ACL Order"), which is attached hereto as Exhibit "A" and is incorporated herein by reference.

B. Since October 2007, the Parties have conferred for the purpose of settling the matter and the allegations described herein without issuing an Administrative Civil Liability Complaint and conducting a formal hearing. NMP, therefore, enters into this Agreement and the Proposed ACL Order without the admission of any fact or the adjudication of any issue in this matter.

C. On or about May 21, 2008, the Parties entered into a Settlement Agreement and Mutual Release for the alleged violations detailed in the Violation Summary and Recital A above. The Parties desire to terminate the May 21, 2008, Settlement Agreement and Mutual Release and to enter into this new Settlement Agreement and Mutual Release under the terms set forth herein.

D. The Parties, through their respective representatives, have reached a revised settlement agreement for the alleged violations detailed in the Violation Summary and Recital A above. The Prosecution Team has agreed to recommend the Proposed ACL Order for adoption at the California Regional Water Quality Control Board, Lahontan Region's ("Lahontan Water Board") **March 11-12, 2009**, meeting, or the next available regular or special meeting in or near South Lake Tahoe. This Proposed ACL Order and settlement is subject to approval by the Lahontan Water Board after the public is provided with notice and an opportunity to comment on the proposed settlement as provided below.

E. The general terms of the settlement are that NMP will, in exchange for a full and final release of all claims arising out of all known and unknown storm water program violations for the project areas listed in Recital A, above, prior to December 31, 2007, including those detailed in the Violation Summary, this Agreement, and the Proposed ACL Order, (1) pay an administrative civil liability of \$500,000 to be distributed between the State Water Resources Control Board's (State Water Board) Cleanup and Abatement Account (\$400,000) and the Waste Discharge Permit Fund (\$100,000), and (2) undertake the *Waddle Ranch/Northstar Watershed Improvement Program* (SEP) at a cost of \$2,250,000, in accordance with the specific terms and conditions of the SEP detailed in the Proposed ACL Order.

F. As a material condition of this Agreement, NMP represents and warrants that the SEP is not and was not previously contemplated, in whole or in part, by NMP or any related entity for any other purpose, except to partially satisfy NMP's obligations as may be ordered in response to the alleged violations detailed in the Violation Summary attached to the Proposed ACL Order, and that the SEP would not be undertaken by NMP or any related entity in the absence of this enforcement action. NMP also affirms that, to the best of its knowledge, NMP, its officers, directors, shareholders, and their family members, will not receive any direct or indirect financial benefit from the SEP and will not use the SEP to satisfy any legal obligation other than that in this Agreement.

G. In order to facilitate the approval of the proposed settlement, and to carry out its terms, the Parties desire to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, in exchange for their mutual promises and for other good and valuable consideration specified herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Parties agree to support, advocate for, and promote the adoption of the Proposed ACL Order at the Lahontan Water Board's **March 11-12, 2009** meeting, or the

next available regular or special meeting in or near South Lake Tahoe, following public notice and comment subject to NMP's option in Section 9 below. The Proposed ACL Order is an indivisible component of this Agreement and the Parties' settlement. For this reason, if the Lahontan Water Board fails to adopt the Proposed ACL Order without modification (unless the modifications are for minor changes agreed to by NMP or are specifically agreed upon by both Parties) or the Proposed ACL Order is challenged by a third party and is overturned, this Agreement is void.

2. NMP covenants and agrees that it will not contest or otherwise challenge this Agreement, which incorporates the Proposed ACL Order, before the Lahontan Water Board, the State Water Board, or any court. The Assistant Executive Officer likewise covenants and agrees that the Prosecution Team will not contest or otherwise challenge this Agreement before the Lahontan Water Board, the State Water Board, or any court.

3. NMP agrees to provide payment in cash in the amount of \$500,000 to be distributed between the State Water Board's Cleanup and Abatement Account (\$400,000) and the Waste Discharge Permit Fund (\$100,000). A total of \$250,000 of this payment must be made **within twenty (20) days** of receiving written notice from the Lahontan Water Board that the State Water Board has not received any petitions for the Proposed ACL Order within the time provided in Water Code section 13320 and that no judicial challenge has been made within the time provided in Water Code section 13330, or that such challenges were received, but all claims contained therein have been resolved in favor of the Lahontan Water Board such that the Proposed ACL Order remains unchanged and effective. Provided the conditions for the first \$250,000 payment are met, NMP must make an additional payment of \$250,000 to be distributed between the State Water Board's Cleanup and Abatement Account (\$200,000) and the Waste Discharge Permit Fund (\$50,000). This second payment is due to the Lahontan Water Board by close of business (5:00 p.m.) **one (1) year from the date** payment is required for the first payment set forth above. If the conditions for the first \$250,000 payment are met, NMP also agrees to make quarterly payments over a five year period into the SEP Fund established as required by Order No. 3 of the Proposed ACL Order. The payments must meet or exceed the amounts specified in the Proposed ACL Order and the payments must be submitted in accordance with or prior to the payment schedule provided therein. In NMP's sole discretion, it may pre-pay into the SEP Fund, provided, however, that in no instance shall NMP's total payments to the SEP Fund exceed \$2,250,000. Upon full payment of the \$2,250,000 to the SEP Fund as described in this Agreement and the Proposed ACL Order, NMP shall have no further responsibility to contribute any monies to the SEP Fund, the State Water Board's Cleanup and Abatement Account, or the Waste Discharge Permit Fund.

NMP shall provide the Prosecution Team with assurance that it will meet its financial responsibility for paying the liability proposed herein by providing a suitable assurance instrument satisfactory to the Assistant Executive Officer within **thirty (30) days** of receiving written notice from the Lahontan Water Board that the State Water Board has not received any petitions for the Proposed ACL Order within the time provided in Water Code section 13320 and that no judicial challenge has been made within the time provided in Water Code section 13330, or that such challenges were received, but all claims contained therein have been resolved in favor of the Lahontan Water Board such that the Proposed ACL Order remains unchanged and effective. The assurance

instrument may be in the form of a bond, guarantee, assignment of funds, letter of credit, or similar assurance instrument that is acceptable to the Assistant Executive Officer, which acceptance shall not be unreasonably or untimely withheld. The assurance instrument (i) shall be greater than or equal to the outstanding amount owing by NMP to the SEP Fund under Order No. 3.a, (ii) may be reduced at NMP's discretion as payments are made by NMP to the SEP Fund to cover only the remaining payment NMP owes to the SEP Fund under Order No. 3.a, and (iii) shall not expire until a suitable replacement assurance instrument is established for the outstanding amount that NMP owes toward the SEP Fund.

The Parties agree that any permit fees and costs borne by NMP related to the implementation of the SEP, including, but not limited to, 401 Water Quality Certification, county application processing fees, CEQA compliance costs (including costs associated with the preparation of CEQA documents and studies), and the like, shall be paid by NMP from funds designated for use in implementation of the SEP. NMP and the Lahontan Water Board agree to use best efforts to coordinate with other entities affected by the SEP (e.g., the Truckee Tahoe Airport District and Truckee Donner Land Trust for the Waddle Ranch land) to minimize permit fees and to maximize leverage of other funding sources for watershed and water quality improvements to the extent practicable.

4. In the event that the Lahontan Water Board's Executive Officer or his delegee and NMP agree (i) that the SEP will not proceed for reasons beyond NMP's control, or (ii) that the SEP requires an amendment to better achieve its intended purposes, the Parties shall meet and confer to discuss resolution. Following the meet and confer, if the SEP will not proceed for reasons beyond NMP's control or requires minor amendments, the Parties may agree upon an alternative supplemental environmental project(s) (Alternative SEP) to be approved by the Executive Officer or his delegee, but shall require the approval of the Lahontan Water Board if the Executive Officer determines that the amendments or Alternate SEP constitute substantial or significant changes to the original SEP. Funds deposited into the SEP Fund per the Proposed ACL Order will be devoted to the Alternative SEP. In the event that no Alternative SEP is agreed upon by the Parties and/or approved by the Lahontan Water Board within one year of the Parties agreeing that the SEP is not viable, then funds already in the SEP Fund and funds required to be paid to the SEP Fund in the future will be deposited into the State Water Board's Cleanup and Abatement Account (80%) and the Waste Discharge Permit Fund (20%) under the payment schedule set forth in Order No. 3.a. of the Proposed ACL Order.

5. All SEP Fund monies shall be distributed before June 30, 2014, unless the schedule for the SEP is extended as provided below. Any funds remaining in the SEP Fund as of June 30, 2014, or the time for completion of the SEP as extended below, will be paid to the State Water Board's Cleanup and Abatement Account (80%) and the Waste Discharge Permit Fund (20%) (or other fund(s) that the applicable California Water Code section(s) directs payment to at the time). NMP may make a written request to the Executive Officer to extend any SEP deadline by up to one year for good cause. The Executive Officer may approve extensions of the SEP of up to one year, which approval shall not be unreasonably withheld. The Lahontan Water Board may in its

discretion approve an extension of more than one year for implementation of the SEP, if requested in writing by NMP.

6. NMP and its respective successors and assigns, employees, officers, shareholders, agents, attorneys, members, managers, affiliate entities, and representatives hereby release and discharge the Lahontan Water Board, including its agents, attorneys, employees, officers, board members and representatives, from any and all claims, demands, actions, causes of action, obligations, damages, penalties, liabilities, debts, losses, interest, costs, or expenses of whatever nature, character, or description, that they may have or claim to have against one another by reason of any matter or omission arising from any cause whatsoever relating to the Proposed ACL Order and this Agreement.

7. Upon NMP's performance of its obligations under this Agreement, the Lahontan Water Board, including its agents, attorneys, employees, officers, board members and representatives, shall release and discharge NMP and its respective successors and assigns, employees, officers, shareholders, agents, attorneys, members, managers, affiliate entities, and representatives from any and all claims, demands, actions, causes of action, obligations, damages, penalties, liabilities, debts, losses, interest, costs, or expenses of whatever nature, character, or description, that it may have or claim to have against NMP by reason of any matter or omission arising from any cause whatsoever relating to the Proposed ACL Order and this Agreement. The Parties understand that this release and discharge shall apply to all storm water claims and violations, including unknown or unsuspected claims or violations, regarding the Violation Summary or storm-water related violations existing up to and including December 31, 2007. Notwithstanding this section, however, the Lahontan Water Board expressly retains authority to enforce any and all prospective violations and reserves its rights regarding non-storm water related violations occurring prior to December 31, 2007.

8. NMP agrees that, if NMP, or any related entity, publicizes the SEP or the results of the SEP, it will state in a prominent manner that the SEP is being undertaken as part of the settlement of this enforcement action by the Lahontan Water Board. NMP and the Prosecution Team agree to work in good faith and use best efforts to collaborate on a joint press release publicizing the Proposed ACL Order, the Agreement and the SEP, which shall be published immediately upon the approval by the Lahontan Water Board of the Agreement, the Proposed ACL Order and the SEP.

9. Upon execution of this Agreement by NMP and the Prosecution Team, the Prosecution Team shall promptly publish in the *Reno Gazette-Journal* and/or the *Sierra Sun*, newspapers of general circulation in the Truckee, Tahoe and Reno areas, the availability of the Agreement for the purpose of accepting public comments on the Agreement for a period of thirty (30) days. It is the intent of NMP and the Prosecution Team that notice be published in both newspapers, but it is understood that circumstances may prohibit the timely publication in both. The Lahontan Water Board will consider public comments received prior to adopting the Proposed ACL Order and retains discretion to approve or reject the settlement. NMP shall have the opportunity to review and comment to the Prosecution Team on the public's comments to the Proposed ACL Order, the Agreement or the SEP, which NMP responsive comments

shall be included wholesale in the Lahontan Water Board agenda packet or incorporated into the Lahontan Water Board staff's comments in the agenda packet or presented at the Water Board meeting to the extent reasonable and practicable. However, within five (5) days of the close of public comments, NMP reserves the right to terminate this Agreement by written notice to the Prosecution Team subject to the approval of the Assistant Executive Officer, which approval shall not be unreasonably withheld. In the event NMP exercises this right, the Agreement shall be of no further force or effect and this matter shall proceed as set forth in Section 10 below.

10. In the event that this Agreement does not take effect, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing for the Lahontan Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions, including this Agreement, the Proposed ACL Order, and the SEP, will not be admissible as evidence in the hearing. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to, objections related to prejudice or bias of any of the Lahontan Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting the contested evidentiary hearing. NMP enters into this Agreement and Proposed ACL Order without the admission or denial of any fact or the adjudication of any issue set forth therein.

11. This is an integrated Agreement. This Agreement is intended to be a full and complete statement of the terms of this Agreement between the Parties, and expressly supersedes any and all prior oral or written agreements, covenants, representations, and warranties (express or implied) concerning the subject matter of this Agreement.

12. Each person executing this Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf he or she executes the Agreement.

13. This Agreement shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared this Agreement and any uncertainty and ambiguity shall not be interpreted against any one party.

14. If any portion of this Agreement is ultimately determined not to be enforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

15. This Agreement shall not be modified by any of the Parties by oral representation made before or after the execution of this Agreement. All modifications must be in writing and signed by the Parties.

16. Each party to this Agreement shall bear all attorneys' fees and costs arising from that party's own counsel in connection with the matters referred to herein.

17. The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

18. This Agreement may be executed as duplicate originals or counterpart signatures, each of which shall be deemed an original Agreement, and all of which shall constitute one agreement.

19. This Agreement is made and entered into for the sole benefit and protection of the Parties hereto and their respective successors and assigns. No person or entity other than the Parties hereto and their respective successors and assigns shall have any right of action under this Agreement or any right to enforce the terms and provisions hereof.

20. All Recitals set forth above, the Proposed ACL Order, and all attachments thereto are incorporated into this Agreement by reference as if fully set forth herein.

21. Any notice required under this Agreement shall be made by both certified first class United States mail and electronic mail to all the following parties:

NMP: Northstar Mountain Properties, LLC
Attn: Blake Riva
P.O. Box 2537
Truckee, CA 96160
email: briva@ewptahoe.com

With a copy to: Porter Simon
Attn: James L. Porter, Jr.
40200 Truckee Airport Road
Truckee, CA 96161
email: porter@portersimon.com

Prosecution Team: Lahontan Regional Water Quality Control Board
Attn: Robert Dodds
2501 Lake Tahoe Boulevard
South Lake Tahoe, CA 96150
email: rdodds@waterboards.ca.gov

With a copy to: Office of Enforcement
State Water Resources Control Board
Attn: Jorge Leon, Senior Staff Counsel
1001 I. Street
Sacramento, CA 95814
email: jleon@waterboards.ca.gov

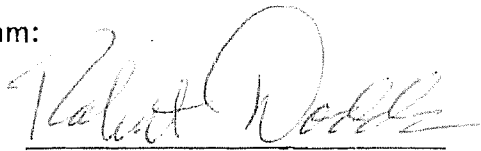
All notices required under this Agreement shall be in writing and shall be deemed given when deposited in the mail, certified, and postage prepaid and when given by electronic mail. Any party hereto may designate a different address or electronic mail address by following the procedures for notice set forth in this Section 21.

This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.


IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set forth below.

For the Lahontan Water Board's Prosecution Team:

Date: February 2, 2009

By: 
Robert Dodds
Assistant Executive Officer

Approved as to Form:


Jorge Leon
Counsel to Prosecution Team

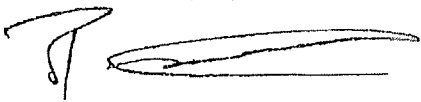
For the NORTHSTAR MOUNTAIN PROPERTIES, LLC,
a Delaware limited liability company

By: NMP HOLDINGS, LLC,
a Delaware limited liability company, its Manager

By: EAST WEST RESORT DEVELOPMENT V, L.P., L.L.L.P.,
a Delaware limited partnership registered as a limited liability
limited partnership, its member and Manager

By: HF HOLDING CORP.,
a Colorado corporation, its sole General Partner

Date: 2/2/09

By: 
Blake L. Riva
Vice President

Approved as to Form:

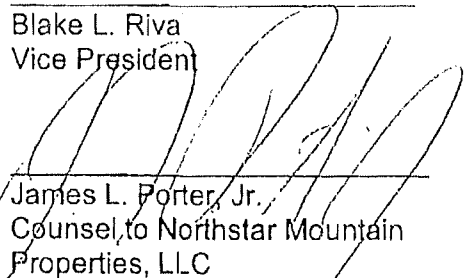

James L. Porter, Jr.
Counsel to Northstar Mountain
Properties, LLC

Exhibit A

February 2, 2009

**Proposed Administrative Civil Liability Order No.
R6T-2009-(PROPOSED)**