

RECORDING REQUESTED BY

Office of the County Counsel  
County of Nevada

WHEN RECORDED MAIL TO

NAME Office of the County Counsel  
County of Nevada

STREET ADDRESS 950 Maidu Avenue, Suite 240

CITY, STATE, ZIP Nevada City, CA 95959

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment, Assumption and Novation Agreement (“Assumption Agreement”) is made and is effective as of \_\_\_\_\_, 2019 (“Effective Date”), by and between the County of Nevada, a political subdivision of the State of California (“County”), KKP-Lake of the Pines, LLC, a California limited liability company, (“KKP”), and North State Grocery, Inc. a California corporation, (“North State”), with respect to that certain Infrastructure Reimbursement Agreement, as amended (“Reimbursement Agreement”) executed on \_\_\_\_\_, 2019, between County and KKP. All parties are collectively referred to as “the Parties.” This Agreement is made with reference to the following facts:

RECITALS

WHEREAS, KKP is the developer of unimproved property commonly known as the Higgins Marketplace Center, State Highway 49 & Woodridge Court (APN 57-260-17), located in the unincorporated area of Nevada County (the “Property” or “Project Site”); and,

WHEREAS, on April 13, 2010, the Nevada County Board of Supervisors approved an Environmental Impact Report (EIR04-001) (“EIR”) and a Conditional Use Permit (U04-019) (“CUP”) for the Higgins Marketplace project, an approximately 75,710 sf commercial center (collectively the “Project”); and,

WHEREAS, the Project consists of four stand-alone commercial buildings, anchored by Parcel 1, an approximately 50,000 sf grocery store (which includes expansion area) as more fully described in Exhibit A, attached hereto and incorporated herein by this reference; and,

WHEREAS, The County and KKP entered into the above-referenced Reimbursement Agreement related to the Developer obligations to install certain off-site road and sewer improvements to serve the Project and other properties and to mitigate certain impacts, a copy of which is attached hereto and incorporated herein as Exhibit B; and

WHEREAS, Paragraph 5 of said Reimbursement Agreement allows an assignment and assumption of some or all of KKP’s duties and obligations under the Reimbursement Agreement; and

WHEREAS, KKP desires to assign, delegate, transfer, and convey to North State all of KKP’s right, title, obligations, and interest in, to and under the Reimbursement Agreement as to Parcel 1 during the term of the North State Lease as the same may be extended, and KKP’s obligations to (a) design, LOP Novation 6-25-19.doc

construct and occupy the portion of the Project to be located on Parcel 1; and (b); reimburse County for the portion of the "Sewer Costs" attributable to Building 1 ; and (c) reimburse County for the "Net Road Improvement Reimbursement" in the event of a default, all as defined and set forth in Paragraphs 1 through 4 of the Reimbursement Agreement; and (d) pay all fees associated with Building 1 including, without limitation, the Local Traffic Mitigation Fees, the Regional Traffic Mitigation Fees, and the fees associated with the connection of Building 1 to the Lake of the Pines Wastewater Treatment Plant including the per EDU sewer connection/capacity fee, and (e) comply with certain Representations and Warranties contained in Paragraph 12.a. of the Reimbursement Agreement as more particularly set forth in paragraph 1 below (the "Assignment"); and

WHEREAS, North State has leased Parcel 1 from KKP ("North State Lease") for an initial term of 25 years, subject to further extension as provided in the North State Lease; and

WHEREAS, North State desires to accept such Assignment and assume those rights, duties and obligations under the Reimbursement Agreement that are contained in said Assignment; and

WHEREAS, North State, by execution of this Assumption Agreement agrees to substitute KKP with respect to all obligations and liabilities under the Reimbursement Agreement as to Parcel 1 and with respect to all obligations set forth in Paragraph 1, below; and

WHEREAS, County has duly evaluated the creditworthiness of North State and now desires to consent to the assignment and assumption of the Reimbursement Agreement between KKP and County as provided herein and to the release of KKP from liability with respect to those obligations contained in the Assignment; and

WHEREAS, KKP shall retain all right, title and interest in, to and under the Reimbursement Agreement as to Parcels 2-4 other than those contained in the Assignment.

NOW, THEREFORE, in consideration of the mutual covenants of the parties herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Assignment by KKP. KKP hereby fully and forever assigns, delegates, transfers, and conveys to North State all of KKP's right, title, obligations, and interest in, to and under the Reimbursement Agreement as to Parcel 1 during the term of the North State Lease as the same may be extended, and KKP's obligations to (a) design, construct and occupy the portion of the Project to be located on Parcel 1; and (b) reimburse County for the "Sewer Costs" attributable to Building 1; and (c) reimburse County for "Net Road Improvement Reimbursement" in the event of a default, all as defined and set forth in Paragraphs 1 through 4 of the Reimbursement Agreement; and (d) pay all fees associated with Building 1 including, without limitation, the Local Traffic Mitigation Fees, the Regional Traffic Mitigation Fees, and the fees associated with the connection of Building 1 to the Lake of the Pines Wastewater Treatment Plant including the per EDU sewer connection/capacity fee. As of the Effective Date, North State represents that it holds a leasehold interest in Parcel 1 of the Project Site, it is a California

corporation in good standing, and it makes the same representations and warranties as Developer as are contained in Paragraph 12.a.iii. of the Reimbursement Agreement. All other terms, conditions, and obligations of the Reimbursement Agreement shall remain in full force and effect as to KKP.

2. Acceptance and Assumption by North State. North State hereby agrees to and accepts the Assignment and delegation, and expressly assumes and agrees to assume, keep, perform, discharge, and fulfill those terms, covenants, conditions and obligations required to be kept, discharged, performed and fulfilled by KKP under the Reimbursement Agreement pursuant to the Assignment from and after the Effective Date of this Agreement (“Assumption”).

3. Consent and Release by County. Pursuant to Paragraph 5 of the Reimbursement Agreement, the County hereby consents to this Assignment and Assumption Agreement, and the delegation of the duties and obligations hereunder, and hereby releases KKP from these assigned and delegated obligations during the term of the North State Lease, as the same may be amended, as of the Effective Date.

4. Notices. Any and all notices permitted or required to be given to North State under the Reimbursement Agreement shall be sent to North State at the address indicated below or to any other address as North State may designate from time to time.

Name: North State Grocery Inc., Attn Chief Financial Officer

Address: 20803 Front Street (Courier only), PO Box 439, Cottonwood, CA 96002

Phone: 530-377-7137

Fax: 530-350-2626

4. Governing Law. This Agreement is made and entered into in the State of California and shall be interpreted, construed and enforced in accordance with the laws of the State of California without resort to choice of law principles. Venue for any legal action arising out of this Agreement shall be in the County of Nevada, State of California.

5. Covenants to Run with the Land. Commencing on the date KKP acquires fee title to the Property, this Agreement shall be recorded and shall constitute a covenant and obligations running with the land described in Exhibit A, in addition to personal obligations of KKP and North State as set forth herein. All rights and obligations under this Assumption Agreement shall be binding upon all successors in interest to the parties to this Agreement and, once recorded, shall be binding upon all successors in interest to the Property or any portion thereof. Notwithstanding the foregoing, KKP shall have no liability with respect to the obligations contained in the Assignment during the term of the North State Lease, as the same may be extended. It is the intent of the Parties that, during the term of the North State Lease, the covenants contained in the Assignment shall run with the tenant’s interest in the North State Lease.

6. Binding Effect. This Agreement shall apply to, bind, and inure to the benefit of the Parties, and their respective heirs, legal representatives, successors and assigns.

7. No Third Party Beneficiaries. This Agreement creates rights and duties only between the Parties hereto, and no other party, or third party, is intended to have or be deemed to have any rights under the Agreement as an intended third party beneficiary.

8. No Other Modifications. All of the rights, duties and obligations of the County, KKP and North State, and all other terms and conditions of the Reimbursement Agreement, shall be and remain in full force and effect as and to the extent provided for in the Agreement. This Assumption Agreement shall not diminish, modify, or otherwise affect any other duty or obligation of the County, KKP or North State with respect to the Reimbursement Agreement except as expressly modified by the terms of this Agreement, all rights, duties and obligations of the County and North State shall remain in full force and effect as provided for in the Reimbursement Agreement.

9. Execution of Assignment, Assumption and Novation Agreement. Each party has been represented by counsel or had the opportunity to be represented by counsel in the negotiation and execution of this Agreement. This Agreement was executed voluntarily without any duress or undue influence on the part of or on behalf of the parties. The parties acknowledge and agree that they have read and understood this Agreement and its legal effect.

10. Entire Agreement. This Agreement and all exhibits hereto constitute the entire agreement and understanding between the parties relating to the subject matter hereof. All prior or contemporaneous negotiations, agreements, and understandings, oral or written, are revoked, cancelled, and rescinded, and are all merged herein and superseded hereby. To the extent this Agreement modifies and provisions of the Reimbursement Agreement, the terms of this Agreement shall prevail. No amendment, modification, or supplement to this Agreement will be binding on any of the parties unless it is in writing and signed by the parties in interest at that time.

11. Finality of Substitution. The substitution made by this Agreement shall be final, except as otherwise provided by law.

12. Attorneys' Fees. Should any action, arbitration, or proceeding be commenced to enforce the terms of this Assumption Agreement or declare rights thereunder, the prevailing party in such action shall be entitled to its reasonable attorneys' fees and litigation costs to be paid by the losing party as fixed by the court or arbitrator. The attorneys' fees award shall also include attorneys' fees incurred in enforcing or collecting any judgment, settlement, or award as provided by California law.

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13. Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or party thereof will be stricken from this Agreement, and such provisions will not affect the legality, enforceability, or validity of the remainder of this Agreement.

IN WITNESS WHEREOF, this Assumption Agreement has been executed as of the date first above written.

COUNTY OF NEVADA

KKP, LLC

By: \_\_\_\_\_  
Richard Anderson, Chair  
Nevada County Board of Supervisors

By: \_\_\_\_\_  
\_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

North State

By: \_\_\_\_\_  
Julie Patterson-Hunter  
Clerk of the Board

By: \_\_\_\_\_  
\_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Alison A. Barratt-Green, County Counsel

Exhibit A – Legal Description of Parcel 1  
Exhibit B – Reimbursement Agreement

EXHIBIT A

Parcel 1 of Parcel Map No. 04-020 recorded on \_\_\_\_\_, 2019 in Book \_\_\_\_\_ of Parcel Maps at Page \_\_\_\_\_, Official Records of Nevada County, California.

EXHIBIT B

Infrastructure Reimbursement Agreement  
(to be attached)