

SETTLEMENT, DEFENSE AND INDEMNITY AGREEMENT

This Settlement, Defense and Indemnity Agreement (“Settlement Agreement”) is entered into between AKT Development Corporation, a California corporation (“AKT”), and the County of El Dorado, a political subdivision of the State of California (“County”).

RECITALS

WHEREAS, on or about December 12, 2000 AKT and County entered into that certain Advance Funding and Reimbursement Agreement Green Valley Road Improvements (“Reimbursement Agreement”) which provided in part for AKT to advance certain improvements to Sophia Parkway (“Sophia Parkway Improvements”) subject to reimbursement pursuant to terms and conditions set forth in Section 5.02 of the Reimbursement Agreement;

WHEREAS, in late 2010 and continuing through the present, a dispute arose between the parties as to the timing of the County’s reimbursement obligations: AKT alleged that pursuant to Section 5.02 reimbursement should have commenced on January 20th, 2011 and that if reimbursement did not start in 2011, AKT was allegedly entitled to accrued interest; County alleged that under the terms of Section 5.02 County’s obligation to commence reimbursement would start on January 20th, 2012 and that AKT was not entitled to accrued interest in year 2011;

WHEREAS, the parties wish to resolve and compromise their dispute over the language and intent of the Reimbursement Agreement as it relates to the timing of commencement of reimbursement; and

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Compromise of Disputed Claims

This Settlement Agreement consists of a compromise and settlement of all AKT’s claims regarding any and all initial reimbursement timing issues related to and arising from the interpretation of Section 5.02 of the Reimbursement Agreement, inclusive of the dispute over what year the first January 20th reimbursement payment of \$600,000 is due under Section 5.02 and all disputes over the accrual of interest in year 2011.

2. Reimbursement and Waiver of Interest

Within 30 calendar days of the effective date of this Settlement Agreement, County will pay to AKT the sum of \$600,000 in a single lump sum reimbursement payment from the EDH TIM fund. Thereafter future reimbursements from the EDH TIM fund will be made on the 20th of January of each year commencing with January 20, 2012, subject to and in

accordance with the terms and conditions of the Reimbursement Agreement until AKT is fully reimbursed.

AKT hereby expressly waives any and all rights to claim accrued interest on the aforementioned lump sum payment for 2011.

3. Limitation of Settlement

Except with respect to the timing of the initial reimbursement and AKT's waiver of claim for accrued interest for 2011 arising therefrom, which are the subject of this Settlement Agreement, the parties expressly agree that all other terms and conditions of the Reimbursement Agreement shall remain in full force and effect. Except as provided herein, this Settlement Agreement shall not be deemed to constitute a waiver or release of any of the parties' other rights and obligations under the Reimbursement Agreement.

4. No Payment of Attorneys Fees

All parties to this Settlement Agreement agree to assume their own attorney's fees and costs. AKT will not seek attorneys' fees and/or costs from the County related to or arising from the negotiation, drafting and execution of this Settlement Agreement or any other fees related to or arising from this matter.

5. Defense and Indemnification

To the fullest extent allowed by law, AKT shall defend, indemnify and hold County, its officers, employees and agents, harmless against and from any and all claims, suits, losses, demands, damages, costs, charges, expenses including reasonable attorney fees, and liability of every name, kind and descriptions, including economic or consequential losses, which are claimed to or in any way arise from or are connected with the timing of the initial reimbursement of AKT and/or the application, implementation, operation, or performance or enforcement of this Settlement Agreement. Without limiting the foregoing, AKT shall indemnify and defend the County from claims or actions: (1) involving the timing or interpretation of the initial reimbursement under Section 5.02 of the Reimbursement Agreement; and (2) brought by third party holders or their successors of existing EDH TIM reimbursement agreements, existing at the time of the effective date of this Settlement Agreement. The obligation to indemnify shall also include reasonable compensation for the time expended by County staff in defending any action or claim. This duty of AKT to indemnify and save County harmless expressly includes the duties to defend.

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6. **Rights with Respect to Claims**

County may settle, adjust, or compromise any claim, suit, or judgment for which indemnity is owed by AKT under this Settlement Agreement after written notice to AKT unless AKT notifies County that it desires to litigate or contest any such claim, suit or judgment, and AKT defends such claim, suit, or litigation and simultaneously deposits with County collateral security sufficient to pay any judgment rendered, together with interest, costs and expenses. County's right to defense and indemnification under this Settlement Agreement shall extend to money paid in furtherance of and/or settlement or compromise of any such claim, suit and judgment in good faith under notice to AKT, inclusive of costs and expenses for mediation and arbitration.

7. **Rights with Respect to Litigation**

If any suit, action, or other proceeding the subject of this indemnification hereunder is brought against County by a holder or successor of an existing EDH TIM reimbursement agreement in connection with its/their rights of reimbursement under that EDH TIM reimbursement agreement, County may, after notice to AKT, select counsel mutually agreeable to AKT and County to defend County at AKT's sole cost and expense. AKT shall promptly reimburse County for any and all legal expenses incurred by County in connection herewith, inclusive of mediation and arbitration, and/or in enforcing the indemnity provided for in this Settlement Agreement. AKT shall further pay and satisfy any judgment or decree that may be rendered against County, its officers, employees or any of them arising out of any such claim covered under this Settlement Agreement.

8. **No Admissions of Liability**

This Settlement Agreement is the result of a good faith compromise of a disputed claim and shall never be at any time or for any purpose considered an admission of the correctness of the claims advanced by either party, or of liability or responsibility by any party. This Agreement is not, and shall not be construed as, an admission of liability, fault, or wrongdoing of any kind by the County or AKT.

9. **Cooperation**

During the pendency of this Settlement Agreement, the parties hereto shall fully cooperate with each other in providing all necessary and reasonable documents, writings, and other information, excepting communications protected by the attorney-client privilege, relating to any claim, action or proceeding the subject of this indemnity.

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10. Notices

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested, with a copy thereof sent by electronic transmission to the email addresses provided below. Notices to County shall be in duplicate and addressed as follows:

County of El Dorado with a copy to
Department of Transportation
2850 FairLane Court
Placerville, CA 96667
Attn: Director of Transportation

County of El Dorado
Board of Supervisors
330 Fair Lane
Placerville, CA 95667
Attn: Clerk of the Board

And a copy to:

County of El Dorado
County Counsel
330 Fair Lane
Placerville, CA 95667
Attn: County Counsel

Or to such other location as the County directs.

Notices to AKT shall be addressed as follows:

AKT Development Corporation
7700 College Town Drive, Suite 101
Sacramento, CA 95826
Attn: Angelo K. Tsakopoulos

Or to such other location as AKT directs.

11. Contract Administrator

The County officer or employee with responsibility for administering this Settlement Agreement is the Director of Transportation, Jim Ware, or successor.

12. Assignment

The obligations under this Settlement Agreement are personal to AKT, and therefore this Settlement Agreement may not be assigned by AKT without the prior written consent of the County.

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13. Changes to Agreement

This Settlement Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto. This represents the entire agreement between the parties pertaining to the subject matter of this Settlement Agreement.

14. Authorized Signatures

The parties to this Settlement Agreement represent that the undersigned individuals executing this Settlement Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein. In the event any part of this Settlement Agreement should be found invalid, unenforceable, or nonbinding, the remaining portion will remain in force and fully binding.

15. Governing Laws

This Settlement Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of California.

16. Construction

This Settlement Agreement shall be construed as a whole, the captions being for the convenience of the parties only and not intended to describe or define the provisions in the portions of the agreement to which they pertain. Each party hereto acknowledges and agrees that each has had independent counsel review and participate in the drafting of the Settlement Agreement and each party fully waives the application of any law, statute, or rule of construction or interpretation to the effect that any ambiguities are to be resolved against the drafting party.

17. Execution in Counterparts

This Settlement Agreement may be executed in counterparts and be as valid and binding as if each party signed the same copy. The original executed document shall be maintained by the County's Board of Supervisors.

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