shall be due within thirty (30) days after conclusion of the review and receipt from the County of the bill for such costs.

Upon not less than thirty (30) days' written notice by the County, Master Owner shall provide such information as may be reasonably requested and deemed to be required by the Planning director in order to ascertain compliance with this Agreement.

In the same manner prescribed in Article 8, the County shall deposit in the mail to Master Owner a copy of all staff reports and related exhibits concerning contract performance and, to the extent practical, at least ten (10) calendar days prior to any such periodic review. Master Owner shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before the Board of Supervisors, or if the matter is referred to the Planning Commission, before the Planning Commission.

If County takes no action within thirty (30) days following the hearing required under this Section 6.2, Master Owner shall be deemed to have complied in good faith with the provisions of this Agreement.

- 6.3 Remedies Upon Default by Master Owner. No Subsequent Entitlements or building permits shall be approved or issued or applications for Subsequent Entitlements or building permits accepted for any improvement to or structure on the Property if the applicant owns and controls any property subject to this Agreement, and if such applicant or entity or person controlling such applicant is in default of the terms of this Agreement.
- 6.4 Permitted 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, floods, drought, earthquakes, fires, casualties, acts of God, acts of terrorism, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state of federal laws or regulations, new or supplementary environmental regulation, litigation, or similar bases for excused performance ("Permitted Delay"). 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 in writing for the period of the Permitted Delay, or longer as may be mutually agreed upon.
- 6.4.1 <u>Permitted Extensions by County</u>. In addition to any extensions to the time for performance of any obligation due to a Permitted Delay, the County, in its sole discretion (acting through the County Executive Officer or designee) may extend the time for performance by Master Owner of any obligation hereunder. Any such extension shall not require an amendment to this Agreement, so long as such extension

only involves the time for performance thereof and does not change the obligations to be performed by Master Owner as a condition of such extension.

6.5 Legal Action; No Obligation to Develop; Specific Enforcement. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation; provided, however, that the Donor, its successors and assigns hereby waive any and all claims for monetary damages against County arising out of this Agreement at any time, except for monetary claims for any refunds of any credits or payments of any reimbursements otherwise payable to Master Owner hereunder. All legal actions shall be initiated in either the Superior Court of the County of Placer or County of Sacramento, State of California, or in the Federal District Court in the Eastern District of California.

By entering this Agreement, Master Owner shall not be obligated to develop the Property, and, unless Master Owner seeks to develop the Property, Master Owner shall not be obligated to install or pay for the costs to install any Common Infrastructure, Parcel Specific Infrastructure, any Performance Driven Infrastructure, or Public Facilities, or to otherwise perform any obligation under this Agreement.

- event of default of Master Owner or for any other reason, such termination shall not affect the validity of any building or improvement within the Property which is completed as of the date of termination, provided that such building or improvement has been constructed pursuant to a building permit issued by the County. Furthermore, no termination of this Agreement shall prevent Master Owner from completing and occupying any building or other improvement authorized pursuant to a valid building permit previously issued by the County that is under construction at the time of termination, provided that any such building or improvement is completed in accordance with said building permit in effect at the time of such termination.
- 6.7 <u>Applicable Law and Attorneys' Fees</u>. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by either party for breach of this Agreement, or to enforce any provisions herein, the prevailing party to such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the Court.

### ARTICLE 7. HOLD HARMLESS AND COOPERATION

7.1 <u>Hold Harmless</u>. Donor and its successors-in-interest and assigns, hereby agrees to, and shall defend and hold County, its elective and appointive boards, commissions, officers, agents, and employees harmless from any costs, expenses, damages, liability for damages or claims of damage for personal injury, or bodily injury

including death, as well as from claims for property damage which may arise from the operations of Master Owner, or of Master Owner's contractors, subcontractors, agents, or employees under this Agreement, whether such operations be by Master Owner, or by any of Master Owner's contractors or subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for, Master Owner or Master Owner's contractors or subcontractors, unless such damage or claim arises from the negligence or willful misconduct of County. The foregoing indemnity obligation of Donor shall not apply to any liability for damage or claims for damage with respect to any damage to or use of any public improvements after the completion and acceptance thereof by County.

In addition to the foregoing indemnity obligation, Donor agrees to and shall defend, indemnify and hold County, its elective and appointive boards, commissions, officers, agents and employees harmless from any and all lawsuits, claims, challenges, damages, expenses, costs, including attorneys fees that may be awarded by a court, or in any actions at law or in equity arising out of or related to the processing, approval, execution, adoption or implementation of the Project, the Entitlements, this Agreement, or the environmental documentation and process associated with the same, exclusive of any such actions brought by Master Owner, its successors-in-interests or assigns. The County shall retain the right to appear in and defend any such action or lawsuit on its own behalf regardless of any tender under this provision. Upon request of County, Donor shall execute an indemnification agreement in a form approved by County Counsel.

7.2 <u>Cooperation in the Event of Legal Challenge</u>. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending said action.

#### ARTICLE 8. GENERAL

- 8.1 <u>Enforceability</u>. The County agrees that unless this Agreement is amended or canceled pursuant to the provisions of this Agreement and the Adopting Ordinance, this Agreement shall be enforceable according to its terms by any party hereto notwithstanding any change hereafter in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance or building regulation adopted by County, or by initiative, which changes, alters or amends the rules, regulations and policies applicable to the development of the Property at the time of approval of this Agreement, as provided by Government Code Section 65866.
- 8.2 <u>County Finding</u> The County hereby finds and determines that execution of this Agreement is in the best interest of the public health, safety and general welfare and is consistent with the General Plan.

- 8.3 <u>Third-Party Beneficiaries</u>. This Agreement is made and entered into for the sole protection and benefit of Donor and County and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.
- 8.4 <u>Project as a Private Undertaking</u>. It is specifically understood and agreed by and between the parties hereto that the subject project is a private development. No partnership, joint venture or other association of any kind is formed by this Agreement.
- 8.5 <u>Notices</u>. All notices required by this Agreement, the enabling legislation, or the procedure adopted pursuant to Government Code Section 65865, shall be in writing and delivered in person or sent by certified mail, postage prepaid.

Notice required to be given to the County shall be addressed as follows:

Planning Director County of Placer 3091 County Center Drive Auburn, CA 95603

With a copy to:

County Executive Officer County of Placer 175 Fulweiler Ave. Auburn, CA 95603

Notice required to be given to the Donor shall be addressed as set forth as follows:

KT Communities

Attn: Kyriakos Tsakopoulos 2251 Douglas Blvd., Suite 110

Roseville, CA 95661

With a copy to:

Hefner, Stark & Marois, LLP

Attn: Timothy D. Taron

2150 River Park Drive, Suite 450

Sacramento, CA 95833

Any of the parties may change the address stated herein by giving notice in writing to the other parties, and, thereafter, notices shall be addressed and delivered to the new address.

- 8.6 Severability. Except as set forth herein, if any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law; provided, however, if any provision of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a party hereto of an essential benefit of its bargain hereunder, then such party so deprived shall have the option to terminate this entire Agreement from and after such determination.
- 8.7 <u>Construction</u>. This Agreement shall be subject to and construed in accordance and harmony with the Placer County Code, as it may be amended, provided that such amendments do not impair the rights granted to the parties by this Agreement.
- 8.8 Other Necessary Acts. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.
- 8.9 Estoppel Certificate. Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (i) this Agreement is in full force and effect and a binding obligation of the parties, (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature of such default. The party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. County acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees of Master Owner.
- 8.10 Mortgagee Protection. The parties hereto agree that this Agreement shall not prevent or limit Master Owner, in any manner, at Master Owner's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property, except as limited by the provisions of this Section. County acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Master Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. County will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or

modification is consistent with the intent and purposes of this Agreement. Any lender or other such entity (a "Mortgagee") that obtains a mortgage or deed of trust against the Property shall be entitled to the following rights and privileges:

- (a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.
- (b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee has submitted a request in writing to County in the manner specified herein for giving notices, may request to receive written notification from County of any default by Master Owner in the performance of Master Owner's obligations under this Agreement.
- (c) If County receives a timely request from a Mortgagee requesting a copy of any notice of default given to Master Owner under the terms of this Agreement, County shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Master Owner. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed to Master Owner under this Agreement.
- (d) Any Mortgagee who comes into possession of the Property, or any part thereof, by any means, whether pursuant to foreclosure of the mortgage deed of trust, or deed in lieu of such foreclosure or otherwise, shall take the Property, or part thereof, subject to the terms of this Agreement. Provided, however, notwithstanding anything to the contrary above, any Mortgagee, or the successors or assigns of such Mortgagee, who becomes an owner of the Property through foreclosure shall not be obligated to pay any fees or construct or complete the construction of any improvements, unless such owner desires to continue development of the Property consistent with this Agreement and the Land Use Entitlements, in which case the owner by foreclosure shall assume the obligations of Master Owner hereunder in a form acceptable to the County.
- (e) The foregoing limitation on Mortgagees and owners by foreclosure shall not restrict County's ability pursuant to Section 6.5 of this Agreement to specifically enforce against such Mortgagees or owners any dedication requirements under this Agreement or under any conditions of any other Entitlements.
- 8.11 <u>Assignment</u>. From and after recordation of this Agreement against the Property, Donor, and Donor's successors in interest, shall have the full right to assign this Agreement as to the Property, or any portion thereof, in connection with any sale,

transfer or conveyance thereof, and upon the express written assignment by Donor, or its successors in interest, as applicable, and assumption by the assignee of such assignment in the form attached hereto as <a href="Exhibit 8.11">Exhibit 8.11</a>, and the conveyance of Donor's interest in the Property related thereto, Donor shall, subject to the County's approval not to be unreasonably withheld, conditioned, or delayed, be released from any further liability or obligation hereunder related to the portion of the Property so conveyed and the assignee shall be deemed to be the (i) "Master Owner," if the portion of the Property being transferred is the entire Property; (ii) a "Community Developer," if the portion of the Property being transferred is the Community Property or a portion thereof; or (iii) the "University Property Owner," if the portion of the Property being transferred is the University Property; with all rights and obligations related thereto, with respect to such conveyed property.

8.12 Entire Agreement. This Agreement is executed in two duplicate originals, each of which is deemed to be an original. This Agreement, inclusive of its Recitals and Exhibits, constitutes the entire understanding and agreement of the parties. This Agreement may be signed in identical counterparts, and the signature pages and consents, together with appropriate acknowledgments, may be removed from the counterparts and attached to a single counterpart, which shall all be considered a fully-executed original for all persons and for purposes of recordation hereof.

IN WITNESS WHEREOF, the County of Placer, a political subdivision of the State of California, has authorized the execution of this Agreement in duplicate by its Chair, and attested to by the Board Clerk under the authority of Ordinance No. \_\_\_\_\_, adopted by the Board of Supervisors on the 4th day of November 2008.

COUNTY OF PLACER, a political subdivision	
By:  Jim Holmes  Chair, Board of Supervisors	# 1 
ATTEST:	
B	de
By: Ann Holman Board Clerk	

APPROVED AS TO FORM:
By:
Scott H. Finley
Supervising Deputy County Counsel
APPROVED AS TO SUBSTANCE:
49
By:
Michael Johnson
Planning Director

DONOR SIGNATURE PAGE:
DONOR:
PLACER 2780, a California limited partnership
By: AKT Development Corporation, a California corporation, General Partner
By:
ANGELO K. TSAKOPOULOS
WILLIAM C. CUMMINGS

# REGIONAL UNIVERSITY DEVELOPMENT AGREEMENT

# LIST OF EXHIBITS

Exhibit A-1	Placer 2780 Property Legal Description
Exhibit A-2	Tsakopoulos/Cummings Property Legal Description
Exhibit A-3	Property Map
Exhibit 2.2	Property Specific Land Use Plan and Table of Permitted Uses
Exhibit 2.9	Map Depicting Abandonment of Right of Way located within Country Acres Road
Exhibit 3.4.1	Map Depicting Offsite Detention Basin
Exhibit 3.11.1(a)	Baseline/Watt Intersection Improvements (6-lanes)
Exhibit 3.11.1(b)	Baseline Watt Intersection Improvements (4-lanes)
Exhibit 3.11.2.1	Baseline/Locust Intersection Improvements
Exhibit 3.11.2.2	Baseline/Brewer Intersection Improvements
Exhibit 3.15.2.2	Public Facilities with Timing Thresholds
Exhibit 3.15.4.2(a)	Park Facilities Map
Exhibit 3.20	Map Depicting Proposed School Boundary Adjustment
Exhibit 8.11	Form of Assignment

#### **EXHIBIT A-1**

### REGIONAL UNIVERSITY SPECIFIC PLAN

## PLACER 2780 PROPERTY LEGAL DESCRIPTION

All that certain real property situated in the County of Placer, State of California, being a portion of Sections 21, 22 and 27, Township 11 North, Range 5 East, Mount Diablo Meridian, and being more particularly described as follows:

Parcels 2 and 3 as shown on Parcel Map No. DPM 20080287 recorded in Book of Parcel Maps, at Page \_\_\_\_\_, Official Records of Placer County.