

MEDIATED SETTLEMENT AND RELEASE AGREEMENT

THIS MEDIATED SETTLEMENT AND RELEASE AGREEMENT (together, this "Agreement") is entered into this 14th day of September, 2015, between **WILLOWBROOK CONDOMINIUM ASSOCIATION, INC.** (the "Association") and **KB HOME Tampa LLC, KB HOME Fort Myers LLC, and KB HOME Orlando LLC** (collectively referred to as "KB"), in regards to claims raised by the Association. The Association and KB will collectively be referred to as the "Parties."

RECITALS

WHEREAS, KB and the Association entered into Settlement and Release Agreements dated October 22, 2012 and May 5, 2015;

WHEREAS, Paragraph 7 of that Settlement and Release Agreement dated October 22, 2012, required KB to maintain a balance of no less than \$500,000 in escrow until such time as all Construction Defect repairs contemplated by that Agreement were completed;

WHEREAS, the Association and KB are parties to an Escrow Agreement, dated October 22, 2012 (the "Escrow Agreement");



WHEREAS, all work contemplated by the Settlement and Release Agreement dated October 22, 2012 has been completed to the satisfaction of the Association; and

WHEREAS, KB and the Association desire to amicably resolve all issues and claims that arose during the repairs being performed pursuant to the Settlement and Release Agreement dated October 22, 2012 and any and all other disputes and/or claims that may exist between the Parties;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The Recitals set forth above are true and correct and are, by this reference, made a part of this Agreement.
2. **Screen Enclosures.** KB hereby waives its claim and any rights to repayment of the \$55,281.45 referenced in the Settlement and Release Agreement dated May 5, 2015, and KB and Association hereby agree that the Settlement and Release Agreement dated May 5, 2015 has been fully complied with.
3. **Escrowed Funds, Settlement Amount and Payment Terms.** KB and the Association hereby direct the Escrow Holder under the Escrow Agreement to disburse all Escrowed Funds remaining in escrow pursuant to Paragraph 7 of the Settlement and Release Agreement dated October 22, 2012 and the Escrow Agreement as follows: (a) in full and final settlement of all issues, disputes and/or claims the Association has or may have against KB, the Escrow Holder shall disburse the sum of Two Hundred Twenty Thousand and No/100ths Dollars (\$220,000.00) to the Association, and (b) the Escrow Holder shall simultaneously disburse all of the remaining Escrowed Funds being held pursuant to Paragraph 7 of

the Settlement and Release Agreement dated October 22, 2012 and the Escrow Agreement to KB. Such disbursements shall be made within fifteen (15) days of the ratification of this Agreement by the Association's Board of Directors (as described below). The disbursement of the \$220,000.00 to the Association shall be by check payable to "Becker & Poliakoff, P.A. Trust Account," which shall be delivered to the Association's attorneys, Becker & Poliakoff, P.A., Attention: Sanjay Kurian, Esq., 12140 Carissa Commerce Court, Suite 200, Fort Myers, FL 33966. Upon the disbursement of all of the Escrowed Funds as described above, the Escrow Agreement shall be deemed cancelled and terminated and the Escrow Holder shall be relieved of all further duties and obligations pursuant thereto.

5. **Satisfaction of KB's Obligations.** The Association acknowledges and agrees that KB has satisfied all payment and performance obligations to the Association pursuant to that Settlement and Release Agreement dated October 22, 2012. To the extent it has not already done so, the Association agrees to properly execute an Acceptance of Work for each of the fifty-one (51) buildings, pursuant to Paragraph 9 of the Settlement Agreement and Release dated October 22, 2012, on or before September 30, 2015.
6. **Release.** Except for the obligations of this Agreement, which are not hereby released and which shall survive the execution hereof, the Association for itself and its members to the fullest extent provided or allowed under Rule 1.221 Florida Rules of Civil Procedure and section 718.111 (3), Florida Statutes, hereby remises, releases, acquits, waives, satisfies and forever discharges KB, its parent and affiliated companies, their officers, directors, shareholders, members, employees, agents, servants, representatives and insurers, and the respective personal representatives, heirs, successors and assigns of all of them, of and from all manner of action and actions, cause and causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, guarantees, warranties (whether express or implied, and whether based on statute, common law or otherwise), third-party claims, bad faith claims, additional insured claims, subrogation claims, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, whether arising in tort, by contract, by virtue of statute, or otherwise, and whether in law or in equity, regardless of whether the same are known or unknown, suspected or unsuspected, patent or latent, or have yet accrued or not accrued, provided the same are based upon any act or omission that occurred or failed to occur prior to the date hereof.
7. **Authority to Execute and Bind; Board Ratification.** (a) Each Party to this Agreement stipulates, covenants, represents and agrees that the persons executing this Agreement on behalf of such Party are fully vested with all required authority to execute this Agreement and make it fully binding on the Party on whose behalf they are executing this Agreement, and that all requisite actions have been duly taken to bestow such authority. Each of the signatories represents and warrants that he or she has the authority to so act on the respective party's behalf and to bind him, her, or it to the Agreement.


- (b) All other provisions of this Agreement to the contrary notwithstanding, this Agreement is expressly subject to and conditioned upon the Association's Board

of Directors ratifying this Agreement at a duly noticed meeting of the Association's Board of Directors. The Association shall hold such a meeting as soon as reasonably possible. The Association's counsel shall notify counsel for KB of the result of the meeting upon its conclusion.

8. **Governing Law.** The Agreement shall be construed under, and in accordance with, the laws of the State of Florida. Venue and exclusive jurisdiction over any dispute concerning the Agreement shall be proper only in and exclusive to a State or Federal court of competent jurisdiction in Manatee County, Florida. The Agreement is performable in Manatee County, Florida.
9. **Informed Execution.** Each Party to this Agreement hereby declares that it has read this Agreement in its entirety, and has received advice of its or his legal counsel with respect thereto, and that such Party fully understands all terms of this Agreement and voluntarily accepts such terms. It is the intent of the Parties that the terms of this Agreement, and the obligations undertaken hereunder, shall survive the execution hereof.
10. **Negotiated Agreement.** Each party to this Agreement hereby stipulates, covenants and agrees that each and every term of this Agreement was fully negotiated and agreed to by the Parties hereto, and consequently neither this Agreement nor any provision hereof shall be construed in favor of or against any of the Parties.
11. **No Reliance On Representations – Entire Agreement.** In making this Agreement, no Party is relying upon any representations (whether affirmative or negative, actual or implied, or spoken, written, or inferred from silence) made by any other Party or its representatives, agents, employees, or attorneys, except as such representations may be contained in this Agreement, and only to the extent that such representations are explicitly and affirmatively stated herein. All prior statements, discussions, negotiations, offers and counteroffers are merged herein.
12. **Voluntary Agreement.** The Parties hereto represent and warrant to each other that they are executing this Agreement of their own free will and that they are not doing so as the result of any duress or coercion by the other party hereto. The Parties further agree that each term, representation, and warranty contained in this Agreement is negotiated, bargained for, and contractual, and is not a mere recital. Additionally, the Parties agree that each term, representation, and warranty contained in this Agreement survives the execution of this Agreement and that the Parties understand that in participating in this settlement and entering into this Agreement, that the Parties are relying on each term, representation, and warranty contained in this Agreement.
13. **Unenforceable Terms of This Agreement.** The Parties agree that, if any term or terms of this Agreement are later found to be void, voidable, or ineffective, then that finding shall have no effect on the remaining terms of this Agreement, and those remaining terms shall remain in full force and effect.
14. **Execution In Counterparts.** This Agreement may be separately executed in one or more counterparts (including facsimile, emailed, and PDF copies), each of which shall be deemed an original, but all of which shall collectively constitute

one and the same instrument. This Agreement may be executed by facsimile, electronic, or PDF signatures, which shall be deemed to be the equivalent of originals for all purposes.

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A handwritten signature in blue ink, consisting of a circled initial 'E' followed by a stylized name.

IN WITNESS WHEREOF, the Parties have set their respective hands and seals hereto,
on this 14th day of September, 2015.

<p>WILLOWBROOK CONDOMINIUM ASSOCIATION, INC.</p> <p><i>[Signature]</i></p> <hr/> <p>Print: <u>JOHN HIRBERT</u></p> <p>Its <u>DIRECTOR</u></p>	<p>KB HOME Tampa LLC</p> <p><i>[Signature]</i></p> <hr/> <p>Print: <u>Ivanis W. Carr</u></p> <p>Its <u>VP & Senior Regional Counsel</u></p>
	<p>KB HOME Fort Myers LLC</p> <p><i>[Signature]</i></p> <hr/> <p>Print: <u>Ivanis W. Carr</u></p> <p>Its <u>VP & Senior Regional Counsel</u></p>
	<p>KB HOME Orlando LLC</p> <p><i>[Signature]</i></p> <hr/> <p>Print: <u>Ivanis W. Carr</u></p> <p>Its <u>VP & Senior Regional Counsel</u></p>