

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into this ___ day of August, 2012, 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."

WHEREAS, KB was the developer and general contractor in connection with the original development, design and construction of the Willowbrook Condominium, consisting of fifty-one (51) buildings and two hundred and seventy (270) units (collectively, the "Property"); and

WHEREAS, the Association, acting on its own behalf and also on behalf of the unit owners/members as to the common elements and matters of common interest as described in section 718.111(3), Florida Statutes, alleges the existence of construction defects at the Property, as set forth in the Association's notice of claim, dated November 30, 2011 and attaching a Karins Engineering Group report dated November 21, 2011, sent to KB pursuant to chapter 558, Florida Statutes, (the "Dispute"); and

WHEREAS, KB desires to amicably resolve the Dispute by ensuring that defects are timely and properly remedied; and

WHEREAS, the Parties have retained design and/or construction consultants who have investigated the claims presented in the Dispute; and

WHEREAS, KB is prepared to pay for an independent third-party contractor to make repairs necessary to ensure that any verified defects alleged in the Dispute are remedied; and

WHEREAS, the Association has the irrevocable right of access to each unit, pursuant to the authority contained within Section 718.111(5), Florida Statutes and the Declaration of Condominium, when necessary for the maintenance, repair, or replacement of the common elements, or as necessary to prevent damage to the common elements or to a unit or units;

WHEREAS, the parties are entering into this Memorandum of Understanding as a step towards the execution of a final settlement agreement which will resolve all issues between the parties and incorporate the Scope of Work as defined below;

NOW THEREFORE, 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 MOU.
2. **KB Pays for Repairs with Warranty; \$2,000,000.00 Escrowed.** KB will pay for an mutually agreed upon independent third-party contractor to make repairs, with a labor and materials warranty for all work done of at least 2 years, necessary to ensure that any verified defects alleged in the Dispute are remedied consistent with the Agreed Upon Scope of Work, as defined in Paragraph 3 below. The contract with the independent third-party contractor shall ensure that the contractor provides bonding, insurance, indemnifications and warranties that are

acceptable to the Association. The Parties acknowledge that after execution of this MOU, the Parties will endeavor to agree upon (i) the necessary scope of work, (ii) the contractor(s) that will perform and provide a warranty for that scope of work, and (iii) the total cost of performing that scope of work. As a demonstration of its goodwill and commitment towards resolving the Dispute amicably and expeditiously, KB has deposited Two Million Dollars (\$2,000,000.00) with an escrow agent (the "Escrowed Funds"). The escrow agent is Carlton Fields P.A.. Although KB has escrowed these funds, it shall be responsible for all costs of repairing the verified defects alleged in the Dispute even if such costs exceed the escrowed amount. The Escrowed Funds shall be replenished as necessary to maintain a balance of no less than \$500,000 until such time as the work set forth in the Agreed Upon Scope of Work is completed .

3. **Scope of Work.** The Parties and their consultants shall meet within seven (7) business days of the date on which this MOU is executed and delivered by all Parties in order to develop a mutually agreed upon scope of work, including identification of verified defects, as well as a protocol for supervising, inspecting, and approving the work while in progress and upon completion, and decide on a mutually agreed upon contractor to perform that work and further provide a warranty (collectively, the "Agreed Upon Scope of Work").

4. **Use of the Escrowed Funds.** The Escrowed Funds shall be used to repair verified defects alleged in the Dispute, including, but not limited to the exterior balconies within the Property, consistent with the Agreed Upon Scope of Work. The Association agrees that time is of the essence with respect to the repair of those balconies that may be in an unsafe condition as determined by local building officials or otherwise, and accordingly, agrees that these balconies will be repaired as soon as reasonably possible and before all others. The Escrowed Funds shall be disbursed in monthly draws subject to the approval of the draws by the engineer of record and KB, which approval shall not be unreasonably withheld. If any Escrowed Funds are unused after completion of the Agreed Upon Scope of Work, or if the Parties cannot agree upon an Agreed Upon Scope of Work, the Escrowed Funds or the remaining unused balance, as applicable, shall be returned to KB. The Escrowed Funds shall also be used for payment of an engineering firm of the Association's choice to perform all reasonably necessary contract administration necessary to ensure performance of the Agreed Upon Scope of Work. The scope and extent of the engineering firm's contract administration responsibilities shall be mutually agreed upon and set forth in the Agreed Upon Scope of Work. The Escrowed Funds shall also be used to pay for any testing reasonably necessary to ensure completion and acceptance of the work as set forth in the Agreed Upon Scope of Work. KB shall pay for all reasonable contract administration and testing costs even if such costs exceed the escrowed amount. The Escrowed Funds shall be replenished as necessary to maintain a balance of no less than \$500,000 until such time as the work set forth in the Agreed Upon Scope of Work is completed.
5. **Release.** Upon completion and acceptance of the Agreed Upon Scope of Work, the Association, for itself and its unit owners/members, to the extent allowed

under section 718.111(3), Florida Statutes, releases KB and its affiliated entities from any and all claims or causes of action related to defects alleged in the Dispute.

6. **Assignment of Claims.** The Association will assign to KB all of the Association's rights, title, interest and remedies with respect to any and all claims, defenses, actions and causes of action it has against KB's subcontractors and material suppliers, and their respective insurers and sureties, whether arising out of the negligence, breach of contract, breach of warranties or any other basis of liability owed to the Association, to the extent such claims arise out of or relate to the Dispute. The Association further agrees to reasonably cooperate with KB in any litigation efforts against KB's subcontractors and material suppliers.
7. **Individual Unit Owner/Member Claims.** The Parties acknowledge and agree that they will cooperate with each other as necessary to attempt to resolve individual unit owners/members claims for property damage allegedly caused to the interior of their units by water intrusion through the exterior building envelope.
8. **Cooperation.** The Parties agree that in order to reach a final settlement, it will be necessary for them to engage in a series of activities in the coming weeks. Among other things, the Parties agree that it will be necessary to negotiate the Agreed Upon Scope of Work. The Parties agree to cooperate with each other to carry out the intent of this MOU, and to secure all of the approvals and consents that may be necessary. If a final settlement is not reached, then KB's only recourse will be return of the Escrowed Funds.
9. **Authority to Execute and Bind.** The Association further represents that it will comply with Chapter 718, Florida Statutes, and the governing documents of the Association, and take all necessary and appropriate actions as it pertains to approving this MOU. The Association represents to KB that it will pass all appropriate resolutions, and take all reasonable steps necessary, to enable its Board of Directors to grant or obtain all necessary access in order for the independent third-party contractor to complete the Agreed Upon Scope of Work.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties have set their respective hands and seals hereto, on this 27th day of August, 2012.

WILLOWBROOK CONDOMINIUM
ASSOCIATION, INC.

KB HOME Tampa LLC

Kurt Austerman
Print: Kurt Austerman
Its Interim Acting President

Print: _____
Its _____

KB HOME Fort Myers LLC

Print: _____
Its _____

KB HOME Orlando LLC

Print: _____
Its _____

ACTIVE: 4050409_3

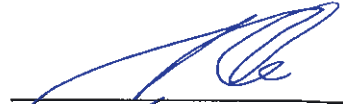
ACTIVE: 4050409_4

IN WITNESS WHEREOF, the Parties have set their respective hands and seals hereto, on this 24th day of AUGUST, 2012.

WILLOWBROOK CONDOMINIUM
ASSOCIATION, INC.


Print: _____
Its _____

KB HOME Tampa LLC



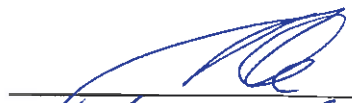
Print: GEORGE GLANCE
Its PRESIDENT

KB HOME Fort Myers LLC



Print: GEORGE GLANCE
Its PRESIDENT

KB HOME Orlando LLC



Print: GEORGE GLANCE
Its PRESIDENT