

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS GRANTING INITIAL ACCEPTANCE OF SUBDIVISION IMPROVEMENTS AND AUTHORIZING REDUCTION IN PENAL SUM OF SUBDIVISION IMPROVEMENT BOND**

**WHEREAS**, certain subdivision improvements were installed in Tract No. 9698 Terra Serena, Project 3160, under and pursuant to the provisions of a subdivision improvement agreement between the City of Milpitas, a municipal corporation of the State of California and KB Home South Bay, Inc., Subdivider; and

**WHEREAS**, said Subdivider, as principal, and Arch Insurance Company, bond SU5017242, as surety, executed a certain faithful performance bond conditioned upon the faithful performance of the provisions of said subdivision agreement and upon the faithful performance of all improvement work required thereunder; and

**WHEREAS**, said subdivision improvements have been completed, but the improvement agreement provides that the bond shall extend for a period of one year after the date of said acceptance of said subdivision improvements to cover the warrantee period of said improvements under said agreement; and

**WHEREAS**, the City Council is willing to consent to a reduction in the penal sum of said bond during said one-year period;

**WHEREAS**, the City Engineer of the City of Milpitas has made a final inspection of said improvements and recommends that the City Council of the City of Milpitas accept the same as constructed in accordance with the approved plans and Specifications.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Milpitas as follows:

1. That those certain subdivision improvements installed in Tract No. 9698 Terra Serena, Project 3160, further identified as: Establishment of 61 Elm Trees in O’Toole Elms Park under the Delayed Item Agreement, dated April 15, 2008, be and are hereby accepted as constructed in accordance with the approved plans and Specifications upon recommendation of the City Engineer of the City of Milpitas.
2. That the penal sum of that certain faithful performance bond furnished by the above named subdivider, as principal, and the above named surety in connection with that certain subdivision improvement agreement for the above designated subdivision, may be reduced to the sum of \$77,420.00, upon request of said principal and surety, said penal sum as reduced to apply from the date of completion and acceptance of said improvements and to extend for the balance of the term of said bond.
3. Provided, however, that nothing herein contained shall in any way be deemed to be a waiver, release or relinquish by City of any obligations imposed upon the subdivider or his surety, or sureties, by law or by the above referred to subdivision improvement agreement, save and accept as expressly set forth herein.

PASSED AND ADOPTED this \_\_\_ day of \_\_\_\_\_, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**DELAYED ITEM AGREEMENT****(SECURED BY EXISTING PERFORMANCE BOND)**

This Agreement executed this April 15, 2008, in Milpitas, California, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "City"), and KB Home South Bay, Inc. (hereafter referred to as "Contractor"). In consideration of the mutual covenants and conditions herein contained, the parties agree as follows:

1. Contractor has heretofore executed an agreement with City hereafter referred to as "Contract" in which Contractor is required to make certain improvements further identified as Tract 9698 Terra Serena, Project No. 3160. A portion of said improvements has been completed and a portion of said improvements is not yet completed. Contractor requests City to accept completed improvements. City will accept completed improvements in accordance with the provisions of said Contract and with this Agreement Re Partial Improvements.
2. The improvements listed on Exhibit A following this Agreement and made a part hereof by reference are not yet completed. Said improvements will be completed in accordance with said Contract on or before the end of the one year warranty period. If said improvements have not been completed by the date, City, at its election may:
  - a. Extend the Contract and this Agreement for such time as it may elect;
  - b. Complete said improvements and, for that purpose, may expend or resort to any portion of the security provided in the Contract; if the cost of said improvement shall exceed the amount of security, City shall bill Contractor for the amount of such excess and Contractor agrees to pay City therefor within 30 days of dispatch of said bill;
  - c. Exercise any right or remedy which City may have pursuant to law or contract to require the completion of said improvements;
  - d. The remedies herein shall be in addition to such other remedies as the law allows.
3. The acceptance of improvements by the City is upon the express condition precedent that said improvements have been made in accordance with the requirements of all applicable ordinances, resolutions, regulations, rules, conditions, permits or orders of City or contracts with City. Contractor understands and agrees that the final acceptance of all improvements cannot take place until all improvements listed on Exhibit A have been completed.



EXHIBIT A

1) Establishment of 61 Elm Trees in O'Toole Park	\$91,500.00
2) Creek bank repair on Abel Street caused broken water line and grading.	\$908,500.00
TOTAL	\$1,000,000.00