

SUBDIVISION AGREEMENT

TR 5353

This Subdivision Agreement (this "Agreement") is made and entered into this _____ day of _____ 2008, by and between the CITY OF FILLMORE, a municipal corporation, in the County of Ventura, State of California (the "City"), and KB Home Greater Los Angeles Inc. (the "Developer"), pursuant to the following facts:

A. The Contractor represents that the Contractor is the owner of real property in the City known as Tract No. 5353 (the "Tract"), a copy of the map of the Tract is on file in the office of the City Clerk and is made a part of this Agreement by this reference.

B. The City and the Contractor desire to enter into an agreement for the construction of certain improvements in the Tract as described herein.

THE PARTIES AGREE THAT:

1. The Developer shall engage the services of a licensed contractor (the "Contractor") to perform the work described herein. Pursuant to an agreement (the "Contractor Agreement") between the Developer and the Contractor, which Contractor Agreement shall include terms at least as protective of the City as the terms of this Agreement, the Developer, at the Developer's sole cost and expense, shall or shall cause the Contractor, for and in consideration of the acceptance by the City Council of the streets offered for dedication in the Tract, perform all acts and comply with all the covenants and conditions set forth herein, and shall furnish all equipment, labor, materials and all required easements necessary to perform and complete within TWENTY FOUR (24) months from the date hereof unless some other time is specifically indicated, the following:

(a) Construction of concrete curbs, gutters, sidewalks, approaches, grading, paved streets; storm drain system, sanitary sewers and appurtenances, gas mains and appurtenances, all water mains, laterals, meters, fire hydrants and underground electrical mains, telephone, telecommunication, and television cables, all in accordance with the plans and specifications approved by City pursuant to paragraph 2;

(b) Landscaping, including but not limited to, all landscaping shown on the approved landscaping plan and street tree planting;

(c) Street lighting system to the satisfaction of the Public Works Director, upon and about the streets offered for dedication in the Tract, according to plans and specifications and special conditions submitted or to be submitted by the Developer and approved by the City of Fillmore and filed in the office of the City Clerk; and

(d) Such other works, performances and conditions as may be set forth in any rider, addendum or annex made a part of this Agreement, which may include the work specified in the improvement plans and the conditions and requirements of Planning Commission and City Council resolutions referred to herein.

2. Further detailed plans and specifications may be submitted for the approval of the City. The work shall be done pursuant only to plans and specifications approved by and to the satisfaction of the City and shall not be deemed complete until approved and accepted as complete by the City Council. The Developer warrants that the work to be performed pursuant to said plans and specifications shall be performed in a professional and workmanlike manner, in accordance with all laws, ordinances, regulations, rules, and accepted construction practices.

3. The estimated cost of said improvements is the sum of TWO MILLION THIRTEEN THOUSAND FOUR HUNDRED DOLLARS (\$2,013,400).

4. The Developer agrees to make or cause to be made at the Developer's sole expense, soils and other reports as may be required by the City.

5. Neither the City, nor any officer or employee thereof, shall be liable or responsible for any accident, loss or damage happening or occurring to the works or materials required by this Agreement, including, without limitation, on account of the negligence of the City, nor shall the City, or any officer or employee thereof, be liable for any persons or property injured or damaged by reason of said work. All such liabilities are hereby assumed by the Developer. The Developer shall indemnify, defend, save and hold harmless City, its officers, agents, employees and volunteers from all damages, costs or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury that arise out of, pertain to, or relate to, directly or indirectly, the acts, omissions, including negligence, of the Developer, any of the Developer's employees, the Contractor, or any subcontractor. The Developer further agrees to indemnify, protect, defend and hold the City, and the officers and employees thereof, harmless from any and all liability or claim because of, or arising out of, the use of any patent or patented article in the performance of the work hereunder. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Developer under the terms of this indemnification obligation. The terms of this paragraph 5 shall survive the expiration or termination of this Agreement.

6. Before causing, allowing, or authorizing any work to be performed pursuant to this Agreement, the Developer shall present proof satisfactory to the City Attorney that the following insurance is in force either by the Developer or the Contractor and shall cause such insurance to be maintained throughout the performance of this Agreement:

(a) Worker's Compensation Insurance or legally authorized self-insurance covering all employees of Contractor and every contractor and subcontractor involved in performing work pursuant to this agreement (Lab.C.Sec. 3800).

(b) Comprehensive general liability insurance with a combined limit of not less than \$1,000,000 for each occurrence, or not less than \$1,000,000 for bodily and personal injury and \$500,000 for property damage for each occurrence.

(c) Contractual liability insurance with a limit of not less than that applicable to the comprehensive general liability insurance, insuring against liability assumed under contract. The insurance to be provided and maintained as required herein shall provide coverage for the liability claims against which Contractor is obligated to defend and indemnify City pursuant to this Agreement.

(d) All such insurance required by this paragraph 6 shall include an endorsement naming City as an additional insured and stating that coverage is provided in compliance with the requirements of this Agreement. Proof of such insurance shall require a certificate of insurance and if requested by the City Attorney a copy of the policy for each separate coverage or policy maintained. Such insurance shall not be subject to cancellation or reduction of coverage except upon 60 days prior written notice to each insured including City.

7. The Developer shall or shall cause the Contractor at all times from the acceptance by the City Council of the streets offered for dedication in said Tract up to the completion and acceptance of said work or improvements by the City Council, give good and adequate warning to the public of each and every dangerous condition existent in said works, and protect the public from such defective or dangerous conditions until the completion of all improvements herein agreed to be performed. Each of said streets not accepted as improved shall be under the charge of the Developer for the purposes of this Agreement, and with the prior written permission of the City, the Developer may or may permit the Contractor to close all or a portion of any street wherever it is necessary to protect the public or the surface of the streets during the making of the improvements herein agreed to be made. The Developer shall pay for such inspection of streets as may be required by the Public Works Director.

8. The Developer shall or shall cause the Contractor to at all times take every possible precaution to prevent the deposit of earth, dust, mud, storm or construction waters, paving materials or other undesirable matter upon adjacent streets or other areas outside the subdivision, and should such deposition occur, the Developer or the Contractor shall immediately clean and repair the contaminated area to the satisfaction of the Public Works Director. The Developer shall or shall cause the Contractor to provide means to abate airborne dust to the extent that no dust shall be deposited on areas adjacent to the subdivision. All streets within the subdivision shall be cleaned and made free of all extraneous matter to satisfaction of the Public Works Director before acceptance of the work by the City Council. The Developer's failure to cause the Contractor to comply or the Contractor's failure to comply with the terms of this paragraph shall constitute a material breach of this Agreement.

If the Developer or the Contractor shall fail, for any reason whatsoever, to perform pursuant to the terms of this paragraph, the City shall have the right to take or cause to be taken such precautions to prevent the deposition of earth, dust, mud, storm or construction waters, paving materials or other undesirable matter upon adjacent streets or other areas outside the subject subdivision, and should such deposition occur, the City may clean and repair the contaminated area and may provide or cause to be provided means to abate air-bone dust to the extent that no dust is deposited on areas adjacent to the subdivision. The City shall thereafter transmit to the Developer a written statement of actual costs of such work done or caused to be done by the City, plus a reasonable charge (not Less than 15%) for administrative overhead expense. The Developer shall pay the sum within thirty (30) days of the date of said statement. No final inspection or recommendation of acceptance of the subdivision improvements described herein will be made by the Public Works Director until the actual costs of such work shall have been paid by the Developer.

9. The Developer represents and warrants that it has filed with the City, good and

sufficient bonds, each in amounts not less than 100% of the estimated cost of said work and improvements guaranteeing payment for labor and materials and the faithful performance of the terms and conditions of this Agreement. Each such bond is attached hereto. Should the sureties on said bonds, or any of them, become insufficient, the Developer agrees to renew said bonds with good and sufficient sureties, within ten (10) days after receiving notice that the sureties are insufficient.

10. Time is of the essence of this Agreement. It is further agreed by and between the parties hereto, including the surety or sureties on the bonds attached to this Agreement, that in the event it is deemed necessary to extend the time of performance of the obligations contemplated to be done by the Developer under this Agreement said extension may be granted by the City Council and shall in no way affect the validity of this Agreement or release the surety or sureties on the bonds attached hereto.

11. The Developer hereby warrants all work performed by or on behalf of the Developer for the period ending one year after the date of final acceptance of the work by the City Council. Incident thereto, the Contractor guarantees the repair and replacement, if necessary, of the improvements specified in paragraph 1, hereinabove, as may be required from time to time from any cause whatsoever during the warranty period, including routine maintenance and ordinary wear and tear experienced at any time between the commencement of the work and its acceptance by the City Council. The bonds referred to in paragraph 9, hereinabove, shall not be exonerated until a bond guaranteeing performance of the requirements of this paragraph in the amount not less than 10% of the sum mentioned in paragraph 9 is accepted by the City Attorney.

12. The terms "City Council," "City Clerk", and "Public Works Director," when used herein, refer respectively to the City Council, City Clerk, and Public Works Director of the City of Fillmore.

13. In the event that either the City or the Developer shall commence legal action to enforce or interpret the covenants, conditions and provisions of this Agreement, the losing party shall pay the reasonable attorney's fees of the prevailing party.

14. No waiver of the breach of any of the covenants, agreements, restrictions, or conditions of this Agreement by the City shall be construed to be a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement. No delay or omission of the City in exercising any right, power or remedy herein provided in the event of default shall be construed as a waiver thereof, or acquiescence therein.

15. The Developer shall not assign this Agreement, in whole or in part, without the City's prior written consent, and any and all attempted assignments of this Agreement by operation of law or otherwise, in whole or in part, without such written consent shall be void.

16. This Agreement shall be binding upon the agents, representatives, heirs, executors, administrators, successors and assigns of the Developer, subject to the provisions of paragraph 15, above.

17. This Agreement shall be construed and enforced in accordance with the laws of the State of California, the Municipal Code of the City of Fillmore, and the ordinances and

regulations enacted or promulgated pursuant to such Code, including any amendments. Venue for any legal action relating to this Agreement shall lie exclusively in any state court sitting in the County of Ventura.

18. In connection with the performance of work under this Agreement, the Contractor Agreement shall include an agreement by the Contractor not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability.

19. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

20. The Developer represents and warrants to the City that the Developer has the right, power and authority to enter into this Agreement and to perform its obligations hereunder. The person executing this Agreement on behalf of the Developer has the right, power and authority to bind the Developer to this Agreement. This Agreement constitutes the legal, valid and binding obligation of the Developer enforceable against the Developer in accordance with its terms.

[signature page follows]

IN WITNESS WHEREOF, the parties have hereunto set their hand and seals the day and year first above written.

CITY OF FILLMORE
250 Central Ave.
Fillmore CA 93015
(805) 524-1500

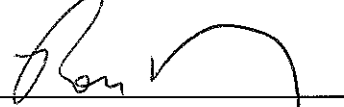
CITY OF FILLMORE:

By: 
Mayor


ATTEST:

By: _____
Deputy City Clerk

DEVELOPER:

By: 
Ron Mentrrel
KB HOME Greater Los Angeles, Inc.

APPROVED AS TO FORM:



Theodore J. Schneider, City Attorney