

RESOLUTION NO. 2006- 281

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, ACCEPTING AN EASEMENT FOR UTILITIES FOR WATER AND SEWER SERVICE TO NORTH TUSCANY VILLAGE SUBDIVISION AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE EASEMENT.

RECITALS

WHEREAS, KB Home Jacksonville, LLC, a Delaware limited liability company, has executed and presented to the County an Easement for Utilities, attached hereto as Exhibit "A", incorporated by reference and made a part hereof, for water and sewer service to North Tuscany Village Subdivision; and

WHEREAS, St. Johns County Utility Department has reviewed and approved the document mentioned above, as stated in a memo attached hereto as Exhibit "B", incorporated by reference and made a part hereof; and

WHEREAS, it is in the best interest of the County to accept this Easement for the health, safety and welfare of the citizens in the subdivision.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above recitals are incorporated by reference into the body of this Resolution and such recitals are adopted as findings of fact.

Section 2. The Board of County Commissioners accepts the above described Easement for Utilities and authorizes the County Administrator to execute the Easement.

Section 3. The Clerk of the Circuit Court is instructed to record the original Easement for Utilities in the Public Records of St. Johns County, Florida.

PASSED AND ADOPTED this 22nd day of August, 2006.

**BOARD OF COUNTY COMMISSIONERS
ST. JOHNS COUNTY, FLORIDA**

By: James E. Bryant
James E. Bryant, Chairman

ATTEST: Cheryl Strickland, Clerk

By: Patricia DeGrande
Deputy Clerk

RENDITION DATE 8-24-06

Exhibit A to Resolution

Prepared by and return to:
John R. (B.J.) Ibach
Rogers Towers, P.A.
1301 Riverplace Blvd. Suite 1500
Jacksonville, Florida 32207

EASEMENT FOR UTILITIES

THIS EASEMENT executed and given this 24th day of JULY, 2006 by KB HOME JACKSONVILLE LLC, a Delaware limited liability company, with an address of 10475 Fortune Parkway, Suite 100, Jacksonville, Florida 32256, hereinafter called "Grantor" to ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida, whose address is 4020 Lewis Speedway, St. Augustine, Florida 32084, hereinafter called "Grantee."

WITNESSETH:

That for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor agrees as follows:

1. Grantor does hereby grant, bargain, sell, alien, remise, release, convey and confirm unto Grantee a non-exclusive permanent easement and right-of-way to install, construct, operate, maintain, repair, replace and remove pipes and mains constituting the underground water distribution system and sewer collection system (including lift stations if applicable) and all other equipment and appurtenances as may be necessary or convenient for the operation of the underground water and sewer utility services (hereinafter referred to as "Utility Lines and Associated Equipment") over and upon the rights of way located on the real property described on Exhibit A attached hereto, and across the easement areas as indicated and reserved on the plat of the real property known as NORTH TUSCANY VILLAGE, according to plat thereof recorded in Map Book 58, pages 9 through 12, of the public records of St. Johns County, Florida (collectively, the "Easement Area"); together with rights of ingress and egress on and over the Easement Area as necessary for the use and enjoyment of the easement herein granted. This easement is for water and sewer utility services only and does not convey any right to install other utilities such as cable television service lines.

The easement herein granted is subject to covenants, restrictions, easements, liens and encumbrances of record.

(a) Grantor reserves the right and privilege to use and occupy and to grant to others the right to use and occupy (i) the surface and air space over the Easement Area for any purpose which is not inconsistent with the rights herein granted to Grantee, including parking, driveways, roadways, landscaped areas, fencing and such other uses that do not materially obstruct the Grantee from using the Easement Area for the purposes described herein above; and (ii) subsurface of the Easement Area for other utility services or other purposes which do not

SCANNED

interfere with the rights herein granted to Grantee, including, without limitation, the right to install, construct, operate, maintain, repair, replace and remove telecommunications, telephone, telegraph, electric, gas and drainage facilities and foundations, footing and/or anchors for surface improvements.

(b) All Utility Lines and Associated Equipment will be installed, operated and maintained at all times beneath the surface of the Easement Area provided that the same may be temporarily exposed or removed to the surface when necessary or desirable for the purpose of repairing and/or replacing the same. Provided, however, that Associated Equipment that is customarily installed above ground may be installed above ground subject to the right of Grantor, consistent with good engineering practices to approve the location of such above ground installation in its reasonable discretion.

(c) The easement granted by this instrument may be relocated to a location acceptable to the Grantee at any time upon Grantor's request provided that Grantor bears the cost of relocating the underground water and sewer utility lines and facilities located within the Easement Area. At Grantor's request, and upon relocation of such lines at Grantor's expense, Grantee and Grantor shall execute an instrument in recordable form relocating the easement hereby granted to the new Easement Area designated by and in the title of the Grantor.

(d) Grantee shall exercise the easement rights conveyed herein in a manner which will not unreasonably interfere with use and occupancy of residential or commercial improvements constructed upon the adjacent property owned by Grantor.

2. Grantee, by acceptance of this Easement, hereby agrees to maintain sewer force mains and gravity sewer lines located within the Easement Area. The Grantee's maintenance of gravity sewer lines shall extend "manhole to manhole," but shall not include a responsibility for maintenance of sewer service laterals. The Grantor or Grantor's successors and assigns shall be responsible for the maintenance of such sewer service laterals. Grantor hereby specifically indemnifies and holds Grantee harmless from and against costs and expenses associated with installation, maintenance, repair or replacement of sewer service laterals. The Grantee shall maintain all water mains and other elements of the water distribution system up to and including the water meter or meters. Grantor or Grantor's successors and assigns shall be responsible for maintaining any water lines between the water meter and the improvements served by the utility system.

3. Grantee covenants and agrees to provide to Grantor, upon the completion of construction of any facilities or improvements constructed by Grantee within the Easement Area, a copy of Department of Public Utilities foreman's reports or equivalent documents which sufficiently describe the location of all such improvements so constructed by Grantee within the Easement Area.

4. Grantee shall comply with all governmental or quasi-governmental laws, ordinances, rules, regulations of every kind pertaining to the Easement Area or to the use and occupancy thereof, including, without limitation, any such law, ordinance, rule or regulation regarding or relating to environmental protection, pollution, sanitation or safety. The Grantee will not commit or suffer any waste at the Easement Area and will not sue or permit any use of

the Easement Area for any illegal purpose or in such a way as to constitute a public nuisance or in any way so as to violate or breach any law, rule, regulation or ordinance to which the Easement Area is subject.

5. After any installation, construction, repair, replacement or removal or any utility lines or equipment as to which easement rights are granted, Grantee shall refill any holes or trenches in a proper and workmanlike manner to the condition existing prior to such installation, construction, repair, replacement or removal, but Grantee shall not be responsible for restoration of sod, landscaping, planting, pavement or other surface improvements which are required to be removed in connection with installation, construction, repair, replacement or removal of utility lines or equipment. To the extent permitted by law, Grantee shall be responsible for damage to improvements that are caused by Grantee's negligence.

6. This Grant of Easement shall inure to the benefit of and be binding of and be binding upon Grantee and its successors and assigns.

7. Whenever a transfer of ownership of any portion of the Easement Area takes place, liability of the transferor for any breach of any covenant hereunder occurring thereafter automatically terminates.

8. In the event of any default under this instrument, the party not in default shall be entitled to any and all remedies available at law or in equity, including but not limited to an injunction or specific performance. Any party which prevails in any such litigation to enforce the provisions hereof shall recover as part of its costs a reasonable attorney's fee together with such other costs and expenses as the court deems appropriate.

9. This Agreement shall be construed and enforced according to the laws of the State of Florida.

10. The rule of strict construction does not apply to this grant. This grant shall be given a reasonable construction so that the intention of Grantor to confer a usable right of enjoyment of the easement is carried out.

11. The address of Grantor and Grantee is as set forth in the initial paragraph. Either party may give written notice of change of address with the other. All notices shall be sent by U.S. mail to the addresses provided for in this paragraph and shall be deemed given when placed in the mail. The affidavit of the person depositing the notice in the U.S. post office receptacle shall be evidence of such mailing.

12. The easements granted herein are granted only for the benefit the Grantee, and are not intended for the use or benefit of any other real property nor is it for the use or benefit of any person or entity other than as set forth herein. The Grantee herein may terminate this instrument by recording a release in recordable form, with directions for delivery of same to Grantor at his last address given pursuant hereto, whereupon all rights, duties, and liabilities hereby created shall terminate. For convenience, such instrument may run to "the owner or owners and parties interested" in the Easement Area.

13. The parties hereto agree that the entire agreement between the parties with respect to the Easement Area is set forth in this instrument. This Agreement may be amended only by an instrument in writing and signed by the persons who are the then owners of the fee simple title to the Easement Area and by the Grantee.

14. No waiver of any of the provisions hereof shall be effective unless it is in writing and signed by the party against whom the waiver is asserted. Any such written waiver shall be applicable only to the specific instance to which it relates and shall not be deemed to be a continuing waiver or waiver of any future matter.

15. For the purposes of the terms and conditions of this Grant of Easement, "Grantor" means the owner from time to time of the Easement Area or any part thereof.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed by its duly authorized officer and its corporate seals to be hereunto affixed as of the day and year first above written.

Signed, sealed and delivered
In the presence of:

**KB HOME JACKSONVILLE LLC,
a Delaware limited liability company**

William S. Neff
Witness

By: [Signature]
Its: Director of Land

WILLIAM S. NEFF
Print Name

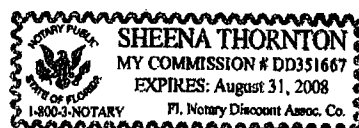
[Signature]
Witness

MICHAEL S. HOGGETT
Print Name

State of Florida
County of St. Johns

The foregoing instrument was acknowledged before me this 24th day of July, 2006, by James HISSON, the Dir. of Land of KB Home Jacksonville LLC, a Delaware limited liability company, on behalf of the company. He is personally known to me or has produced _____ as identification.

[Signature]
Notary Public



Signed, sealed and delivered
In the presence of:

ST. JOHNS COUNTY, FLORIDA
a political subdivision of the State of
Florida

Witness

By: _____
Its: _____

Print Name

Witness

Print Name

State of Florida
County of St. Johns

The foregoing instrument was acknowledged before me this ____ day of _____, 2006, by _____, the _____ of St. Johns County, Florida, a political subdivision of the State of Florida, on behalf of the political subdivision. He is personally known to me or has produced _____ as identification.

Notary Public

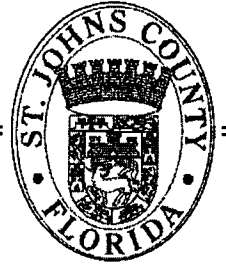
EXHIBIT A TO EASEMENT
LEGAL DESCRIPTION FOR THE SUBDIVISION

That certain real property known as NORTH TUSCANY VILLAGE, according to plat thereof recorded in Map Book 58, pages 8 through 12, of the public records of St. Johns County, Florida

Exhibit B to Resolution

ST. JOHNS COUNTY, FLORIDA

Board of County Commissioners



P.O. Box 3006
St. Augustine, Florida 32085-3006
Phone: (904) 471-2161 • Toll Free: 1-877-837-2311
Administrative Fax: (904) 461-7619
Billing Dept. Fax: (904) 461-3995

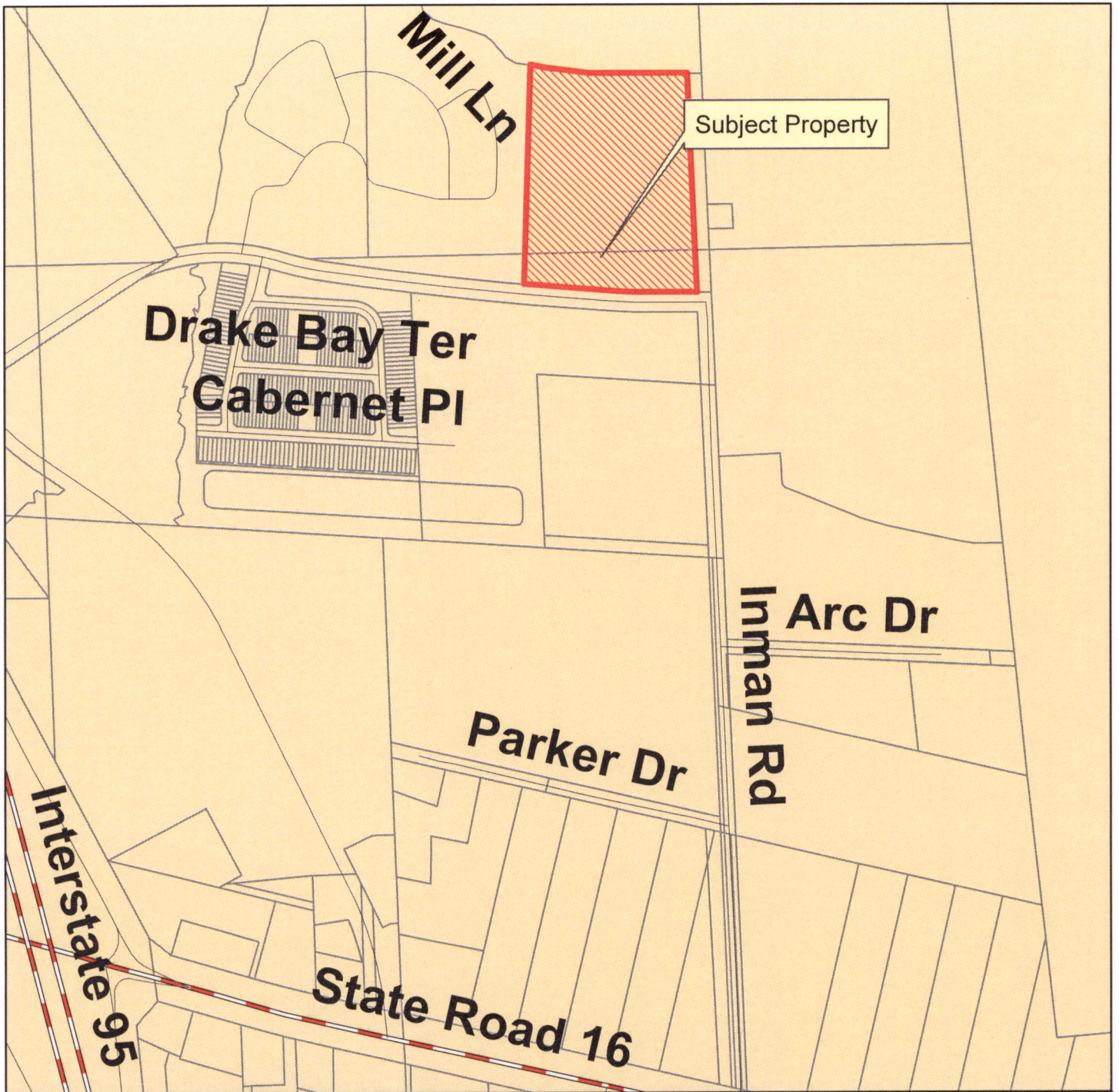
INTEROFFICE MEMORANDUM

To: Nanette Bradbury, Real Estate Coordinator
From: Samuel T. Ramirez, Utility Development Manager
Subject: North Tuscany Village
Date: August 1, 2006

Please present the easement documents to the Board of County Commissioners (BCC) for final approval and acceptance of North Tuscany Village.

After acceptance by BCC, please provide the utility department with a copy of the executed resolution and a recorded copy of the Easement for the utilities for our files.

Your support and cooperation as always are greatly appreciated.



**GENERAL
LOCATION MAP**



Map Prepared: 8/7/2006

*Depicts General Project Boundary

**NorthTuscany
Village**

Utility Easement

File:



St. Johns County
Land Mgmt. Systems
Real Estate