

**Lee County Board Of County Commissioners  
Agenda Item Summary**

**Blue Sheet No. 20060484**

**1. ACTION REQUESTED/PURPOSE:** Approve the Landscape Maintenance and Hold Harmless Agreement between Lee County, KB Home of Fort Myers, LLC, and the Tortuga Reserve Community Association, Inc., allowing the installation and maintenance of landscape material within public right-of-way.

**2. WHAT ACTION ACCOMPLISHES:** Board approval is necessary to finalize agreement. Allows for the installation and maintenance of landscape material within the public right-of-way that serves as the entrance road to the Tortuga Reserve Subdivision from Island Park Road north to the entrance of the subdivision.

**3. MANAGEMENT RECOMMENDATION:** Approve agreement.

**4. Departmental Category:** **C9A** **5. Meeting Date:** **06-20-2006**

<b>6. Agenda:</b>		<b>7. Requirement/Purpose: (specify)</b>		<b>8. Request Initiated:</b>	
<input checked="" type="checkbox"/> Consent		<input type="checkbox"/> Statute		<b>Commissioner</b>	
<input type="checkbox"/> Administrative		<input type="checkbox"/> Ordinance		<b>Department</b>	<b>Transportation</b>
<input type="checkbox"/> Appeals		<input type="checkbox"/> Admin. Code		<b>Division</b>	
<input type="checkbox"/> Public		<input checked="" type="checkbox"/> Other		<b>By:</b>	
<input type="checkbox"/> Walk-On				<b>Scott Gilbertson, P.E.,</b>	
				<b>Director</b>	

**9. Background:**  
The proposed agreement provides that KB Homes of Fort Myers, LLC, and the Tortuga Reserve Community Association, Inc., will be responsible for the installation and ongoing maintenance of landscaping improvements within public right of way, which serves as the entrance road to the Tortuga Reserve Subdivision. In addition, the parties agree to indemnify and hold the County harmless in connection with the installation and ongoing maintenance of these landscape material.

County Staff has reviewed the agreement and recommends Board approval.

Attachment: Landscape Maintenance and Hold Harmless Agreement (KB Home of Fort Myers, LLC, and Tortuga Reserve Community Association, Inc.)

**10. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services			County Manager/P.W. Director
Scott Gilbertson	N/A	N/A	N/A	<i>[Signature]</i>	Analyst	Risk	Grants	Mgr.
<i>[Signature]</i>	<i>[Signature]</i>			<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>
								6-7-06

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

RECEIVED BY COUNTY ADMIN: *[Signature]*  
6/8/06 10:35 AM  
COUNTY ADMIN FORWARDED TO: *[Signature]*  
6/8/06 3 PM

Rec. by CoAtty  
Date: 6/8/06  
Time: 8:30 AM  
Forwarded To: *[Signature]*  
6/8/06 10:30

**LANDSCAPE CONSTRUCTION MAINTENANCE AND  
HOLD HARMLESS AGREEMENT**

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between Lee County, a political subdivision of the State of Florida, whose address is Post Office Box 398, Fort Myers, Florida 33902-0398 ("County") and KB Home Fort Myers, LLC, a Delaware Limited Liability Company authorized to conduct business in Florida ("Developer"), whose address is 4470 Fowler Street, Fort Myers, Florida 33901, and Tortuga Reserve Community Association, Inc., a Florida not-for-profit corporation, whose address is 12601 World Plaza Lane, Building 52, Suite 2, Fort Myers, Florida 33907 ("Association").

WHEREAS, Developer is the owner and developer of certain property described as: The East ½ of the Northwest ¼ of Section 12, Township 46 South, Range 24 East, Lee County, Florida ("Property"); and

WHEREAS, Developer is constructing the Tortuga subdivision on the Property; and

WHEREAS, the County owns the fee title to a portion of the 50 foot wide right-of-way that will serve as the entrance road to the Tortuga subdivision and has an ingress and egress easement for the remainder of the entrance road as described in attached Exhibit "A" (hereinafter referred to as the "Tortuga Entrance Road"); and

WHEREAS, the North 30 feet of the Tortuga Entrance Road Right-of-Way lies within an existing Iona Drainage District Canal right-of-way ("IDD Canal"); and

WHEREAS, Developer desires to construct a **LOCAL** road and associated landscaping improvements in the public right-of-way for the Tortuga Entrance Road; and

WHEREAS, Developer has received development approval from the County to construct the Tortuga Entrance Road within the public right-of-way, including roadway, drainage, and sidewalks, in accordance with development order #2004-00155 on the Property; and

WHEREAS, Developer ~~has or~~ will install landscaping within the public right-of-way known as Tortuga Entrance Road as depicted and identified on attached Exhibit A2; and

WHEREAS, **SUBJECT TO REVIEW AND APPROVAL OF THE PROPOSED LANDSCAPE PLAN**, the County ~~has agreed to~~ **WILL** allow ~~the identified~~ landscaping to be installed and remain within the public right-of-way to be known as the Tortuga Entrance Road, provided that the landscaping and other improvements are maintained and replaced as necessary by the Developer or his successors in interest at no cost to the County; and

WHEREAS, the Developer is desirous of maintaining and replacing as necessary the roadside landscaping and improvements in accordance with the terms and provisions of this Agreement, provided the cost of the landscaping and improvements are paid by the Developer.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein and Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **SUBJECT TO REVIEW AND APPROVAL OF THE PROPOSED LANDSCAPE PLAN.** The County authorizes the landscaping of the county right-of-way for the Tortuga Entrance Road commencing at Island Park Road and continuing to the **north WEST** for 1400 feet to the entrance to the Tortuga Subdivision, in accordance with the project application submitted by the Developer and approved by the County.

2. The Developer agrees to bear the cost of landscaping the roadside and median areas within the Tortuga Entrance Road Right-of-Way, including but not limited to the sodding and installation of plant materials within the public right-of-way. The Developer will prevent the creation of obstructions or conditions that may become dangerous to the traveling public within the county right-of that will serve as the Tortuga Entrance Road.

3. The Developer assumes all risk and responsibility for any loss or injury to property or persons occasioned by the neglect or accident of Developer, its agents or employees during the progress of work until the landscape project is complete and obtains County approval. The Developer agrees to repair **IN ACCORDANCE WITH APPLICABLE COUNTY STANDARDS AND REGULATIONS** any damage that may occur to adjoining buildings, structures, utility easements, roadways or private property during the course of the work.

4. The Developer accepts the sole responsibility to obtain all appropriate federal, state and local permits necessary to install and maintain the public right-of-way landscape project. At minimum, a Lee County Right-of-way permit must be obtained for work within the right-of-way that will obstruct or otherwise affect use of the roadway by the traveling public. The Developer also agrees to give all required notices associated with work on the project, including those outlined in Lee County Administrative Code 11-11. (Lee County Roadway Landscape Policy.)

5. In accordance with the responsibilities assumed by each party to the agreement, the Developer and its successors and assigns agrees to indemnify, hold harmless and defend the County, its employees and agents, from and against all claims, losses, demands, payments, actions, judgments and liabilities, including litigation costs and attorney's fees, due to any act or omission by the Developer, its employees, agents, or subcontractors, that arise from the placement, replacement or maintenance of landscaping contemplated by this agreement. The minimum insurance requirements are set forth in Exhibit "B". Ten days prior to the commencement of work under this agreement, the developer will provide to the Risk Manager for Lee County a Certificate of Insurance for review and approval. This certificate must name "Lee County, a Political Subdivision and Charter County of the State of Florida, its agents, employees and public officials" as an "Additional Insured" on the general liability policy.

Lee County must be given 30 days notice prior to cancellation or modification of the stipulated insurance. The notification must be in writing, sent by registered mail, return receipt requested and addressed to Lee County Risk Management, P.O. Box 398, Fort Myers, FL 33902-0398. In addition, when maintenance responsibility is transferred to the Tortuga Reserve

Community Association, Inc., (TRCA) it will be the responsibility of TRCA to provide evidence of insurance consistent with the terms of this paragraph.

6. The Developer agrees to maintain all landscaping, including plant materials, sod, lighting and other items incidental to the landscaping (including the replacement of dead sod or plant materials) in accordance with the project application submitted to and approved by the County (D.O. #2004-00155) and in a manner that will prevent the creation of obstructions or conditions that may become dangerous to the traveling public within the county right-of-way that will serve as the Tortuga Entrance Road.

7. The Developer has the right to replant, alter or change the landscaping scheme and the number, species or location of plant material within the public right-of-way provided that the Developer first obtained a Lee County Right-of-Way Permit and any alteration complies with the landscaping scheme and location of plant material approved by Lee County Department of Transportation. The Developer's exercise of this right will not diminish the Developer's responsibility to maintain the landscaping in accordance with this agreement.

8. The Developer assumes the risk and responsibility for loss or injury to property or persons occasioned by the failure to properly maintain the landscaped area or due to neglect or accident during the maintenance process. The Developer agrees to repair **IN ACCORDANCE WITH APPLICABLE COUNTY STANDARDS AND REGULATIONS** damage that may occur to any adjoining building, structure, utility easement, roadway or private property during the course of the maintenance work.

9. The Developer agrees that if the County undertakes to provide maintenance of the IDD Canal within the public right-of-way that will serve as the Tortuga Entrance, the Developer must remove any landscaping and associated improvements that interfere with the County's maintenance upon 30 days' written notice. The removal of landscape material and other improvements will be at no cost to the County. The parties agree that the Developer **OR THE ASSOCIATION** will be responsible for the cost of replacing the landscaping removed as a result of such maintenance.

10. The parties agree that upon completion of the landscape improvements, all obligations of Developer under this Agreement will become the obligations of the Association, and the Developer will be released from liability under this Agreement, but only after the Association submits evidence that the Association has secured a liability insurance policy with respect to the landscaping sufficient to meet the indemnification requirements set out in Paragraph 5. **THE ASSOCIATION WILL ASSUME ALL RESPONSIBILITY OF THE DEVELOPER SET FORTH IN THIS AGREEMENT INCLUDING BUT NOT LIMITED TO THE REMOVAL AND REPLACEMENT OF LANDSCAPE MATERIALS DESCRIBED IN PARAGRAPH 9.**

11. This agreement will continue in full force and effect until the subject right-of-way is closed, abandoned, vacated, discontinued or reconstructed, or written notice of the intent to terminate the agreement is delivered to each party, their successors or assigns. If the Developer or the Association terminates this agreement, the County has the option to require the terminating party to remove the landscaping improvements at no cost to the County.

12. This instrument is binding upon and enures to the benefit of the parties' heirs,

executors, successors and assigns.

13. This agreement is intended to be construed in accordance with the laws of the State of Florida.

14. This agreement is the entire agreement between the parties and can not be amended or modified except by written instrument executed with the same formality.

In Witness Whereof, the parties have signed below.

KB HOME FORT MYERS, LLC,  
a Delaware Limited Liability Company

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

By: \_\_\_\_\_  
Rod Benson, Vice President, Land

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2006 by Rod Benson, as Vice President, Land of KB Home Fort Myers, LLC, a Delaware Limited Liability Company, that is authorized to conduct business in Florida, on behalf of the corporation, who is personally known to me or who has produced \_\_\_\_\_ as Identification.

\_\_\_\_\_  
Notary Public  
Printed name:

TORTUGA RESERVE COMMUNITY  
ASSOCIATION, INC.,  
a Florida not-for-profit corporation

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

By: \_\_\_\_\_  
Dan Edwards, President

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2006 by Dan Edwards, as President of Tortuga Reserve Community Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation, who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
Printed name:

ATTEST:  
CHARLIE GREEN, CLERK

By \_\_\_\_\_  
Deputy Clerk

LEE COUNTY, FLORIDA  
BOARD OF COUNTY COMMISSIONERS

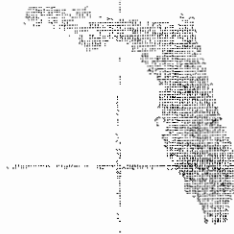
By: \_\_\_\_\_  
Chairwoman

APPROVED AS TO FORM

\_\_\_\_\_  
Office of County Attorney

Exhibits:

- A1. Description of Tortuga Entrance Road
- A2. Sketch
- B. Minimum Insurance Requirements



# METRON

SURVEYING & MAPPING, LLC  
LAND SURVEYORS • PLANNERS

LEGAL DESCRIPTION  
OF A PARCEL LYING IN  
SECTION 12, TOWNSHIP 46 SOUTH, RANGE 24 EAST,  
LEE COUNTY, FLORIDA

A TRACT OF LAND LYING IN THE STATE OF FLORIDA, COUNTY OF LEE, IN SECTION 12, TOWNSHIP 46 SOUTH, RANGE 24 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

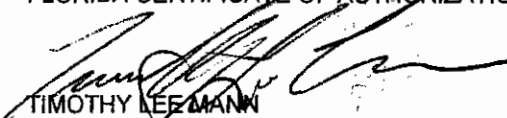
COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 12; THENCE N.88°27'11"E. ALONG THE NORTH LINE OF SAID SECTION 12 FOR A DISTANCE OF 1,322.86 FEET; THENCE S.01°32'49"E. LEAVING SAID SECTION LINE FOR A DISTANCE OF 2,644.96 FEET; THENCE N.88°26'25"E. FOR A DISTANCE OF 1,205.43 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE N.88°26'25"E. FOR A DISTANCE OF 89.86 FEET TO A POINT ON A NON TANGENT CURVE TO THE LEFT WITH A RADIUS OF 125.00 FEET, A CHORD BEARING OF S.87°56'01"E. A DISTANCE OF 15.81 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°15'08" AN ARC LENGTH OF 15.82 FEET; THENCE N.88°26'25"E. FOR A DISTANCE OF 1,309.75 FEET TO THE WESTERLY RIGHT OF WAY LINE OF ISLAND PARK ROAD; THENCE S.00°46'23"E. ALONG SAID RIGHT OF WAY FOR A DISTANCE OF 38.00 FEET; THENCE S.88°26'25"W. LEAVING SAID RIGHT OF WAY FOR A DISTANCE OF 1,309.22 FEET TO A POINT OF A NON TANGENT CURVATURE TO THE RIGHT HAVING A RADIUS OF 166.39 FEET, A CHORD BEARING OF N.71°17'50"W. A DISTANCE OF 112.61 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 39°33'28" AN ARC LENGTH OF 114.88 FEET TO THE NORTH LINE OF OFFICIAL RECORDS BOOK 2235, PAGE 2263 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA AND THE POINT OF BEGINNING.

TOTAL PARCEL LYING WITHIN 50' ROAD EASEMENT GRANTED TO LEE COUNTY AS RECORDED IN OFFICIAL RECORDS BOOK 2235 AT PAGE 2263 OF THE PUBLIC RECORDS OF LEE COUNTY. PARCEL CONTAINS 1.21 ACRES, MORE OR LESS.

PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN)

BEARINGS ARE BASED ON THE WESTERLY RIGHT OF WAY OF ISLAND PARK ROAD AS BEARING S.00°46'23"E.

METRON SURVEYING & MAPPING, LLC  
FLORIDA CERTIFICATE OF AUTHORIZATION LB# 7071



TIMOTHY LEE MANN  
PROFESSIONAL SURVEYOR AND MAPPER  
FLORIDA CERTIFICATE NO. 5838

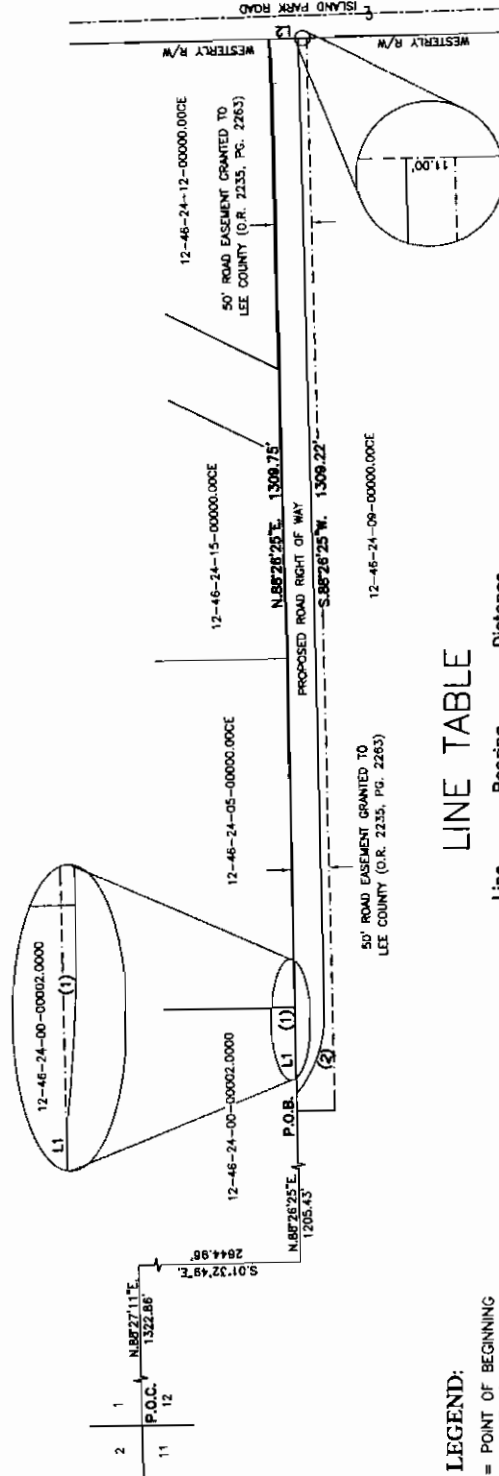


# SKETCH TO ACCOMPANY DESCRIPTION

\* SEE SHEET 1 OF 2 FOR LEGAL DESCRIPTION \*

## CURVE TABLE

NO.	RADIUS	DELTA	ARC	TANGENT	CHORD	CHORD BEARING
1	125.00'	07°15'08"	15.82'	7.92'	15.81'	S.87°56'01"E.
2	166.39'	39°33'28"	114.88'	59.83'	112.61'	N.71°17'50"W.



## LEGEND:

- P.O.B. = POINT OF BEGINNING
- P.O.C. = POINT OF COMMENCEMENT
- R/W = RIGHT-OF-WAY
- O.R. = OFFICIAL RECORDS
- PG. = PAGE

\* THIS IS NOT A SURVEY \*

## SKETCH OF DESCRIPTION



**METRON**  
SURVEYING & MAPPING  
LAND SURVEYORS-PLANNERS  
L.B.# 7071

10970 SOUTH CLEVELAND  
AVENUE, UNIT #605  
FORT MYERS, FLORIDA 33907  
PHONE: (239) 275-8575  
FAX: (239) 275-8457  
www.metronfl.com

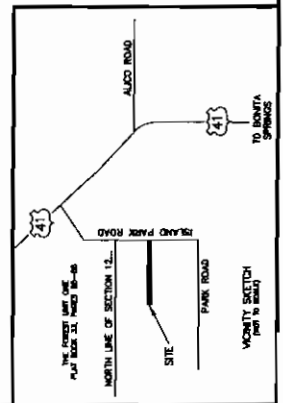
FILE NAME	3262KB.DWG	PROJECT NO.	3262	SHEET	2 OF 2
FIELD BOOK/PAGE	N/A	CHECKED BY:	TLM	(S-1-R)	12-46-24
SKETCH DATE	1-27-06	SCALE:	1" = 200'	DRWN BY:	RY

BY: *[Signature]*  
TIMOTHY LEE MARKS  
PROFESSIONAL SURVEYOR AND MAPPER  
FLORIDA CERTIFICATE NO. LS# 5836

DATE SIGNED: *[Signature]*

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A  
FLORIDA LICENSED SURVEYOR AND MAPPER.

- REVISED: TO CORRECT SCRIVERNER'S ERROR 3-20-06 RY
- REVISED: TO CORRECT SCRIVERNER'S ERROR 3-10-06 RY
- REVISED: TO CORRECT SCRIVERNER'S ERROR 2-01-06 RY



## EXHIBIT "B"

### Minimum Insurance Requirements

a. Workers' Compensation - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this agreement to apply to all owners, officers, and employees regardless of the number of employees. Individual employees may be exempted per State Law. Employers' liability will have minimum limits of:

\$100,000 per accident  
\$500,000 disease limit  
\$100,000 disease limit per employee

b. Commercial General Liability - Coverage must apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability exposures with minimum limits of:

\$1,000,000 bodily injury per person (BI)  
\$1,000,000 bodily injury per occurrence (BI)  
\$1,000,000 property damage (PD) or  
\$1,000,000 combined single limit (CSL) of BI and PD

c. Business Auto Liability - The following Automobile Liability will be required and coverage must apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$1,000,000 bodily injury per person (BI)  
\$1,000,000 bodily injury per occurrence (BI)  
\$1,000,000 property damage (PD) or  
\$1,000,000 combined single limit (CSL) of BI and PD

***\*The required limit of liability shown in Standard Contract: 1.a; 1.b; 1.c; may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."***

It is the responsibility of the contractor to ensure that all subcontractors comply with all insurance requirements.