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\$ 44.00 Recording  
\$ .70 Documentary Stamps  
\$ \_\_\_\_\_ Intangible Tax

**Exhibit "A"**  
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BARBARA T. SCOTT, CLERK  
CHARLOTTE COUNTY  
OR BOOK 02514  
PGS 0678-0682 (5 Pg(s))  
FILE NUMBER 1232984  
RECORDED 07/19/2004 04:41:40 PM  
RECORDING FEES 44.00  
DEED DOC 0.70

★  
This instrument prepared by  
and should be returned to:  
Geri L. Waksler, Esq.  
Moore and Waksler, P.L.  
1107 W. Marion Ave., Suite 112  
Punta Gorda, FL 33950

**CONSERVATION EASEMENT**

THIS CONSERVATION EASEMENT is made this 16th day of April, 2004, by KB HOME FORT MYERS LLC, 12535 New Brittany, Building #28, Fort Myers, Florida 33907 ("Grantor"), in favor of CHARLOTTE COUNTY, FLORIDA, a political subdivision of the State of Florida, 18500 Murdock Circle, Port Charlotte, Florida 33948 ("Grantee").

**WITNESSETH:**

WHEREAS, Grantor owns in fee simple certain real property in Charlotte County, Florida, more particularly described in Exhibit "A" attached hereto and incorporated by this reference (the "Property"); and

WHEREAS, Grantor desires to transfer the density from the property pursuant to Section 3-5-432, et. seq., of the Charlotte County Code of Ordinances (the "TDR Code"); and

WHEREAS, the TDR Code requires that the Grantor preserve wetlands and/or uplands on the Property; and

WHEREAS, Grantor, in consideration of the approval by Charlotte County of a transfer of development rights from the Property to that certain real property in Charlotte County, Florida, more particularly described in Exhibit "B" attached hereto and incorporated by this reference, is agreeable to granting and securing to Grantee a perpetual conservation easement as defined in Section 704.06, Florida Statutes (2003), over the Property.

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the provisions of Section 704.06, Florida Statutes, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth (the "Conservation Easement"). Grantor fully warrants title to said Property, and will warrant and defend the same against the lawful claims of all persons whomsoever.

1. Purpose. The purpose of this Conservation Easement is to assure that the Property will be retained forever in its existing natural condition and to prevent any use of the Property that will impair or interfere with the environmental value of the Property.

2. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- a. Construction or placing of buildings, roads, billboards or other advertising, utilities or other structures on or above the ground.
- b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials.

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- c. Removing or destroying of trees, shrubs or other vegetation except as part of land management activities intended to preserve or enhance the functions and values of the native communities found on the subject property.
- d. Excavating, dredging or removing loam, peat, gravel, soil, rock or other material substances in such a manner as to affect the surface.
- e. Surface use, except for purposes that permit the land or water area to remain predominantly in its natural condition.
- f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation or fish and wildlife habitat preservation.
- g. Acts or uses detrimental to such retention of land or water areas.
- h. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

3. Reserved Rights. Grantor reserves for itself and its successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement. Grantor may utilize the subject property as mitigation for off-site impacts to scrub-jay habitats or other natural resources as may be allowed by the appropriate regulatory agencies, including but not limited to the U.S. Fish and Wildlife Service, Florida Fish and Wildlife Conservation Commission, Florida Department of Environmental Protection, or the Southwest Florida Water Management District (SWFWMD), provided that Grantor or its successors or assigns shall be responsible for any and all maintenance, monitoring, and management requirements associated with the use of the subject property for mitigation activities. Nothing herein shall be construed to allow Grantor or its successors or assigns the right to destroy any scrub communities found on the subject property for the purpose of creating wetlands or other non-scrub upland communities for mitigation purposes. Grantor shall initiate management of the scrub communities found in the Sending Zone within three years of approval of the Resolution which includes this conservation easement. If Grantor does not initiate management within this time-frame, Grantee shall assume management of the scrub communities. In the event Grantee assumes management of the scrub communities found in the Sending Zone, Grantee is authorized to use said communities as mitigation for Grantee's projects which result in off-site impacts to scrub communities.

4. Taxes. Grantor shall pay, before delinquency, all taxes, assessments, fees and charges, of whatever description, levied on or assessed against the Property by competent authority (collectively, "taxes"), including any taxes imposed upon, or incurred as a result of this Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

5. Rights of Grantee. To accomplish the purposes stated herein, Grantor conveys the following rights to Grantee:

- a. To enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if Grantor or its successors and assigns are complying with the covenants and prohibitions contained in this Conservation Easement.
- b. To proceed at law or in equity to enforce the provisions of this Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and require the restoration of areas or features of the Property

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that may be damaged by any activity inconsistent with the Conservation Easement.

- c. Nothing in this section shall be construed to obligate Grantee to conduct management activities on the subject property unless Grantor has allowed Grantee use of the subject property as mitigation for off-site impacts to scrub or other native communities in which case Grantee shall have the right to enter upon the Property in a reasonable manner and at reasonable times in order to maintain the functions and values of the habitats within the Property, including, but not limited to, removal of invading exotics and the use of prescribed fire or mechanical vegetation control.

6. Grantee's Discretion. Grantee may enforce the terms of this Conservation Easement at its discretion, but if Grantor breaches any term of this Conservation Easement and Grantee does not exercise its right under this Conservation Easement, Grantee's forbearance shall not be construed to be a waiver by Grantee of such term, or of any subsequent breach of the same, or any other term of this Conservation Easement, or of any of the Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. Grantee shall not be obligated to Grantor, or to any other person or entity, to enforce the provisions of this Conservation Easement.

7. Grantee's Liability. Grantor will assume all liability for any injury or damage to the person or property of third parties which may occur on the Property arising from Grantor's ownership of the Property. Grantee, as a political subdivision defined in Section 768.28, Florida Statutes, agrees to be fully responsible to the limits set forth in such statute for its own negligent acts or omissions, and agrees to be liable to the statutory limits for any damages proximately caused by said acts or omissions. Nothing contained in this section shall be construed to be a waiver by Grantee of any protections under sovereign immunity, Section 768.28, Florida Statutes, or any other similar provision of law. Nothing contained herein shall be construed to be a consent by Grantee to be sued by third parties in any matter arising out of this or any other agreement.

8. Acts Beyond Grantor's Control. Nothing in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from natural causes beyond Grantor's control, including, without limitation, fire, flood, storm and earth movement, or from any necessary action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

9. Recordation. Grantor shall record in the Official Records of Charlotte, County, Florida, this Conservation Easement within 30 days from receipt of the Final Detail Plan Approval for application Z-03-11-41as provided in Section 3-9-49, Code of Laws and Ordinances of Charlotte County (hereinafter the "County Code"), and shall rerecord it at any time Grantee may require to preserve its rights. Grantor shall pay all recording costs and taxes necessary to record this Conservation Easement in the public records. Grantor will hold Grantee harmless from any recording costs or taxes necessary to record this Conservation Easement in the public records.

10. Successors. The covenants, terms, conditions and restrictions of this Conservation Easement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

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IN WITNESS WHEREOF, Grantor has executed this Conservation Easement on the day and year first above written.

Witnesses:

Karen D. Myre  
Printed Name: KAREN D. MYRE  
Joan L. Reese  
Printed Name: JOAN L. REESE

KB HOME FORT MYERS, LLC

By: [Signature]  
Print Name: CHRIS J. STEPHENS  
Title: DIR OF LAND

STATE OF FLORIDA  
COUNTY OF Charlotte

The foregoing Conservation Easement was acknowledged before me this 16<sup>th</sup> day of April, 2004, by Chris J. Stephens as Dir. of Land of KB Home Fort Myers, LLC, who is personally known to me or who has produced \_\_\_\_\_ as identification.

[Signature] NOTARY  
PUBLIC - STATE OF ANGELA M. DEES  
Printed Name: \_\_\_\_\_  
My Commission Expires: July 16, 2005

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**EXHIBIT "A"**

**PROPERTY**

Lots 60A, 61 and 62, Block 3, HARBOUR HEIGHTS, Section 1, Revised Part 2, according to the plat thereof, as recorded in Plat Book 3 Pages 75, of the Public Records of Charlotte County, Florida;

Lots 19 and 20, Block 6; Lots 7, 8, 9, 10 and 11, Block 10, HARBOUR HEIGHTS, Section 1, Revised, according to the plat thereof, as recorded in Plat Book 3 Pages 21A through 21D, of the Public Records of Charlotte County, Florida;

Lots 10, 11, 12 and 13, Block 54, HARBOUR HEIGHTS SECTION THREE, according to the plat thereof recorded in Plat Book 3, Pages 82A, 82B and 82C, of the Public Records of Charlotte County, Florida.

Lots 32, 33, 34, 35, 36, 37, 38, 39, 40, 47, 48, 57, 58, 59, 60, 61, 62 and 63, Block 129; Lots 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74 75, 76, and 77, Block 130, HARBOUR HEIGHTS, Section 6, according to the plat thereof, as recorded in Plat Book 3, Pages 82A, 82B and 82C, of the Public Records of Charlotte County, Florida;

Lots 62, 63, 67, 68 and 69, Block 141, HARBOUR HEIGHTS, Section 7, according to the plat thereof, as recorded in Plat Book 3, Pages 83A, 83B and 83C, of the Public Records of Charlotte County, Florida

Lots 35 and 36, Block 182; Lots 11, 12 and 13, Block 258; Lots 18 and 19, Block 260; Lots 26, 27 and 28, Block 261; Lots 9, 10, 56 and 57, Block 262, HARBOUR HEIGHTS, Section 10, Part 1, a subdivision according to the plat thereof, as recorded in Plat Book 4, Pages 42A through 42D, of the Public Records of Charlotte County, Florida

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40, Block 178; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and Tract A, Block 178A; Lots 4, 5, 6 and 7, Block 187A; Lots 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 16 and 17, Block 187B; Lots 4, 5, 6, 7, 10, 11, 12, 13, 20, 21, 26, 27, 28, Block 187C; Lots 1, 2, 5, 6, 9, 10, 13, 14, 15, 16, 17, 18, 21, 22, 25, 26, 27 and 28, Block 187D; Lots 1, 2, 3, 4, 5, 6, 10, 11, 18 and 19, Block 190, HARBOUR HEIGHTS, Section 11, a Replat of a portion of Part 2, according to the plat thereof, as recorded in Plat Book 6, Pages 13A through 13D, of the Public Records of Charlotte County, Florida;

Lots 17, 18, 19 20 and 21, Block 221; Lot 5, 6, 7, 10, 11, 24, 25 and 26, Block 222; Lots 11, 12, 40 and 41, Block 224, HARBOUR HEIGHTS, Section 11, Part 3, according to the plat thereof, as recorded in Plat Book 4, Pages 49A through 49E, of the Public Records of Charlotte County, Florida;

Lots 13, 14, 19, 20, 25, 26, 34, 35, 38, 39, 40 and 41, Block 232; Lots 3, 4, 11, 12, 17, 18, 21, 22, 45, 46, 49, 50, 51, 52, 55, 56, 59, 60, 61 and 62, Block 233; Lots 10, 11, 12, 13, 14, 15, 16, 17, 47 and 48, Block 235; Lots 5, 6, 13 and 14, Block 236A, HARBOUR HEIGHTS, Section 11-A, Partial Replat of Part 3, according to the plat thereof, as recorded in Plat Book 6, Pages 38A and 38B, of the Public Records of Charlotte County, Florida