

61. — Recording

\$ .70 Documentary Stamps

cc 7.5  
1.50

**Exhibit "B"**  
**Page 1 of 7**

BARBARA T. SCOTT, CLERK  
CHARLOTTE COUNTY  
OR BOOK 02718

PGS 1200-1206 (7 Pg(s))

FILE NUMBER 1396242

RECORDED 06/02/2005 01:52:16 PM

RECORDING FEES 61.00

DEED DOC 0.70

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7825  
★  
**RETURN TO  
MOORE AND WAKSLER, P.L.**

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 1<sup>st</sup> day of June, 2005, by KB HOME FORT MYERS LLC, 4470 Fowler Avenue, Fort Myers, Florida 33901 ("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 units 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.

IMAGED IN PG

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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.
- 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

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(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, adjacent flatwoods and wetlands 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, adjacent flatwoods and wetlands. In the event Grantee assumes management of the scrub communities, adjacent flatwoods and wetlands 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, flatwoods and/or wetlands.

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 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.

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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 this Conservation Easement in the Official Records of Charlotte, County, Florida, as provided in the TDR 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:

[Signature]  
Printed Name: Jessha Davis  
[Signature]  
Printed Name: Julie Papke

KB HOME FORT MYERS LLC

By: [Signature]  
Print Name: Charles Cook  
Title: PRESIDENT

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing Conservation Easement was acknowledged before me this \_\_\_\_ day of June 1, 2005, by Charles Cook as President of KB Home Fort Myers LLC, who is personally known to me or who has produced Florida Drivers Liscence as identification.



Lisa Jaeger  
MY COMMISSION # DD290123 EXPIRES  
February 12, 2008  
BONDED THRU TROY FAIN INSURANCE, INC.

[Signature]  
NOTARY PUBLIC - STATE OF FLORIDA  
Printed Name: Lisa Jaeger  
My Commission Expires: 2/12/2008

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**Exhibit A**

**Tuscany Isles TDR Lots**

Lots 31 and 32, Block 5, HARBOUR HEIGHTS SECTION ONE, according to the plat thereof recorded in Plat Book 3, Pages 21A through 21D, of the Public Records of Charlotte County, Florida.

Lots 9, 10 and 11, Block 56; Lots 17, 18 and 19, Block 57, HARBOUR HEIGHTS SECTION THREE (REVISED), according to the plat thereof recorded in Plat Book 2, Page 78, of the Public Records of Charlotte County, Florida.

Lots 37 and 38, Block 121, HARBOUR HEIGHTS SECTION SIX, according to the plat thereof recorded in Plat Book 2, Pages 82A, 82B and 82C, of the Public Records of Charlotte County, Florida.

Lots 3, 4, 5 and 6, Block 139; Lots 9 and 10, Block 140; Lots 14, 15, 18, 19 and 20, Block 142; Lots 3, 4, 5, 24, 25 and 26, Block 143; Lots 27, 28, 29 and 30, Block 144, HARBOUR HEIGHTS SECTION SEVEN, according to the plat thereof recorded in Plat Book 3, Pages 83A, 83B and 83C, of the Public Records of Charlotte County, Florida.

Lots 21 and 22, Block 188; Lots 9, 10, 19, 20 and 21, Block 192, HARBOUR HEIGHTS SECTION ELEVEN PART TWO, according to the plat thereof recorded in Plat Book 4, Pages 48A through 48G, of the Public Records of Charlotte County, Florida.

Lots 38 through 48, Block 197; Lots 3 through 13, 52, 53, 56 through 63, Block 198; Lots 5, 6, 9 through 16, 55, 56, 61 through 74, Block 199, Lots 1 through 14, Block 200, HARBOUR HEIGHTS SECTION 13, according to the plat thereof recorded in Plat Book 5, pages 32A and 32B, of the Public Records of Charlotte County, Florida.

## DESCRIPTION

(AS PER CHICAGO TITLE INSURANCE COMPANY COMMITMENT NO. 240400368)

BEGINNING AT A CONCRETE MONUMENT MARKING THE NORTHWEST CORNER OF LOT 1, SCENIC VIEW ESTATES, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 15, PAGES 20A AND 20B, OF THE PUBLIC RECORDS OF CHARLOTTE COUNTY, FLORIDA, RUN NORTH 48°33'33" EAST ALONG THE NORTHWESTERLY BOUNDARY LIMIT OF SAID PLAT A DISTANCE OF 441.36 FEET TO A CONCRETE MONUMENT; THENCE SOUTH 89°04'50" EAST ALONG THE NORTH BOUNDARY LIMIT OF SAID PLAT A DISTANCE OF 1615.72 FEET TO A CONCRETE MONUMENT MARKING THE NORTHEAST CORNER OF SAID PLAT AND THE EAST LINE OF THE SOUTHWEST 1/4 OF SECTION 16, TOWNSHIP 41 SOUTH, RANGE 23 EAST, THENCE NORTH 00°18'54" WEST, ALONG THE EAST LINE OF THE SOUTHWEST 1/4 A DISTANCE OF 1290.38 FEET TO A CONCRETE MONUMENT MARKING THE NORTHEAST CORNER OF THE SOUTHWEST 1/4 THENCE SOUTH 89°47'07" WEST ALONG THE NORTH LINE OF THE SOUTHWEST 1/4 A DISTANCE OF 1636.62 FEET TO A CONCRETE MONUMENT, THENCE SOUTH 03°33'32" WEST A DISTANCE OF 1278.00 FEET TO A CONCRETE MONUMENT THENCE SOUTH 48°45'28" WEST A DISTANCE OF 599.51 FEET TO A CONCRETE MONUMENT AND THE NORTHERLY RIGHT-OF-WAY LINE OF TAYLOR ROAD (STATE ROAD #765A) THENCE SOUTH 41°35'38" EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 59.54 FEET TO AN IRON ROD MARKED #6579, THENCE NORTH 48°44'15" EAST A DISTANCE OF 250.00 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH A 30 FOOT INGRESS AND EGRESS EASEMENT, DESCRIBED AS FOLLOWS: A 30 FOOT INGRESS AND EGRESS EASEMENT OVER AND ACROSS A PORTION OF THE SOUTHWEST 1/4 OF SAID SECTION 16, TOWNSHIP 41 SOUTH, RANGE 23 EAST, CHARLOTTE COUNTY, FLORIDA, LYING 15 FEET EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: FROM THE PREVIOUSLY DESCRIBED POINT OF BEGINNING, RUN SOUTH 48°44'15" WEST A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 41°35'40" EAST PARALLEL WITH AND 15 FEET SOUTHWESTERLY OF SAID LOT 1 OF SCENIC VIEW ESTATES, A DISTANCE OF 370.11 FEET TO THE NORTHWESTERLY RIGHT-OF-WAY LINE OF SCENIC VIEW DRIVE AND THE POINT OF TERMINUS.