

# **FLORIDA-FRIENDLY COVENANTS, CONDITIONS AND RESTRICTIONS**



Prepared for  
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“A Guide to Florida-Friendly Landscaping” Florida Yards & Neighborhoods

## I. Overview

As more people move to Florida each day, continued land development is inevitable. It is imperative that Floridians find a way to coexist with their natural environment or face the possibility of forever losing valuable resources such as pristine waters and native species. To protect Florida's fragile environment, developers, homeowners, and homeowner associations must understand and address the environmental impact of their land use decisions. The positive cumulative acts of these individuals and organizations will make a big difference in improving the health of Florida's natural waters and maintaining native flora and fauna.<sup>1</sup>

A Florida-friendly landscape is one where the right plants are in the right place, watering is done efficiently, fertilizing is done appropriately, mulch is used, wildlife is attracted, yard pests are managed responsibly, yard waste is recycled, stormwater runoff is significantly reduced, and the waterfront is protected from pollutants.<sup>2</sup> Currently, developers interested in incorporating these practices into their community's documents and plans have no concise guidelines or certainty as to their enforcement throughout the lifetime of the project. Adding these provisions into the community's declaration of covenants gives them the force of law. Therefore, a developer acquires a fair amount of certainty that a project intended to be marketed and sold as "Florida-friendly" will retain many of the environmental characteristics that attracted buyers in the first place.<sup>3</sup>

This document is a result of a joint project between Florida Yards & Neighborhoods and the Conservation Clinic at the University of Florida's Levin College of Law. It contains a practical framework of model conservation restrictive covenants, which developers or associations may selectively insert in the governing documents of their community associations. The model language offered is intended to be used by developers as guiding principles in the writing process of their own restrictive covenants or, as they are commonly known, the Declaration of Covenants, Conditions and Restrictions "CCRs."

This document only provides sample language for landscaping provisions and language for other provisions that establish a system to effectively enforce these standards. By no means is it to be considered a complete CCR or substituted for formal legal advice. A lawyer should always be consulted in the drafting of this important document and changes are encouraged to accommodate specific site conditions. Drafters should also consult specific county or state laws which prevail over any language set forth here. Any language included in a CCR which goes against law or public policy is immediately held to be invalid.<sup>4</sup>

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<sup>1</sup> FL Yards & Neighborhoods Handbook, *A Guide to Environmentally Friendly Landscaping*, 2 (2<sup>nd</sup> ed. 2003).

<sup>2</sup> FL Yards & Neighborhoods Handbook 3<sup>rd</sup> Edition, *A Guide to Florida-Friendly Landscaping* (3<sup>rd</sup> ed. 2006).

<sup>3</sup> *But see* Patrick A. Randolph, Jr., *Symposium: Common Interest Development Communities: Part II: Changing the Rules: Should Courts Limit the Power of Common Interest Communities to Alter Unit Owners' Privileges in the Face of Vested Expectations?*, 38 Santa Clara L. Rev. 1081, 1105 (1998) (noting that courts do not protect an expectation that a development within a subdivision will remain unchanged, only protect homeowners so that the changes will be uniform).

<sup>4</sup> Patrick Rohan, *Real Estate Transactions: Home Owner Associations and PUDs – Law and Practice*, §8.00-8.28, volume 6A (Matthew Bender, 1977). **CHECK**

The annotations and footnotes serve to guide the reader by giving background information or explanations that clarify certain provisions. The goal of achieving environmental impact reductions by using sound practices will be achieved as more communities incorporate provisions such as the ones provided in this document into their own CCRs. Also, a key aspect to achieving this goal is homeowner education by the developer or by the community's association.

Given the complexity of the subject and the possibility of new technical data and government regulation in the field of water conservation, Florida-friendly landscaping and pollution prevention, the language in this document might quickly become outdated. The Florida Yards and Neighborhoods extension office at the University of Florida works diligently to keep up with the latest trends in these fields and can be contacted for more information. The Florida Yards & Neighborhoods also has offices in counties around the state which can be located on the web at [www.solutionsforyourlife.org](http://www.solutionsforyourlife.org) or contacted at (352) 392-1831 Ext. 220. Also, homeowners wishing to obtain additional recommendations for a specific region in Florida may check updated versions of other University of Florida's IFAS publications.

## II. **Enforceability and Amendability of CCRs**

According to newly enacted legislation, homeowners' association documents may not prohibit the inclusion of "Xeriscaping" or "Florida-friendly landscaping" provisions.<sup>5</sup> The main concern for developers or homeowners who are interested in conserving water and protecting the environment would be the ability to enforce and amend these provisions in their community's declarations of covenants. The reality of the matter is that since this topic is fairly new, not much case law can be found on the subject. Therefore, inferences have to be made from cases that deal with amending or enforcing restrictive covenants in subjects unrelated to water conservation or landscaping.

First, rules included in the declaration of covenants are presumed to be valid since each purchaser had adequate notice of these before buying a lot and voluntarily choose to purchase lots encumbered by restrictions.<sup>6</sup> Therefore, some provisions included in the declarations do not necessarily have to be deemed reasonable since the court will uphold them as long as they are not "clearly 'ambiguous,' applied arbitrarily, or violative of public policy or a fundamental constitutional right."<sup>7</sup> In Florida, only those rules pertaining to the use of common elements, common areas, and recreational facilities on the property encumbered by the restrictive covenants must be reasonable in order to be legally enforceable.<sup>8</sup>

The reasonableness standard does come into play when the court is asked to review the appropriateness of amendments to restrictive covenants. Generally, courts are more generous when it comes down to reviewing amendments voted on by property owners rather than

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<sup>5</sup> Fla. Stat. §720.3075(4) (2005).

<sup>6</sup> *Hidden Harbour Estates v. Basso*, 393 So. 2d 637, 639 (Fla. Dist. Ct App. 1981).

<sup>7</sup> Zelica M. Grieve, *Note and Comment: Latera v. Isle at Mission Bay Homeowners Ass'n: The Homeowner's First Amendment Right to Receive Information*, 20 Nova L. Rev. 531, 542 (1995) (quoting in part from *Constellation Condominium Ass'n v. Harrington*, 467 So. 2d 378, 381 (Fla. Dist. Ct. App. 1985) and citing to *Hidden Harbour Estates v. Basso*, 393 So. 2d 637 at 640).

<sup>8</sup> *Fla. Stat. Ann.* 718.123(1) (West 1988 & Supp. 1998).

unilateral amendments done by the homeowners association or an equivalent representative group.<sup>9</sup> The only discernible limitation placed on any covenant amendment seems to be that it must preserve the “basic expectations created in the original scheme” of development.<sup>10</sup> Also, developers may retain a limited amount of power to amend the restrictions before turnover, but it must be exercised in a reasonable manner and must preserve the original scheme of development.<sup>11</sup> Some states have an additional judicial limitation on amendments to the restrictive covenants which provides that all property owners have to be affected equally by any modification.<sup>12</sup>

There are two areas that deserve special attention from people concerned about enforcing and maintaining a “Florida-friendly” community. One is the possibility of some restrictions to become null and automatically cancelled due to changes that occur outside the restricted community. This incident happened in Shalimar Park Subdivision in Florida where the court held that the changes in zoning and uses of the immediate neighboring properties were so drastic that they nullified the protections of the restrictive covenants within this community since there was no detrimental effect on other property owners.<sup>13</sup> Another issue arises if a community does not diligently enforce violations to the provisions in its CCRs because it might show others acquiescence by the homeowners to allow these violations. In an Osceola County case the court held that the occasional use of a property as an access road by a property owner could not be expanded to mean acquiescence by other property owners to build a public road on such land.<sup>14</sup> The court explained that the other property owners only intended to tolerate the violation by the owner who used this property as an access road for over 20 years but this violation could not be expanded to tolerate a public access road to a new subdivision.<sup>15</sup> Therefore, home owner associations should be aware of what occurs in the immediate vicinity to their community and should diligently enforce violations to the restrictions.

### III. Purpose

The construction of community developments is still on the rise. In 2005, the number of new residential building permits issued in Florida was 280,463—a 9% increase from the previous year and almost double the number issued in 2000.<sup>16</sup> This document is aimed at reducing the environmental impact of these new communities. Our goal is to inform the community associations of easy conservation methods and to increase the number of associations who follow these methods.

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<sup>9</sup> See *Hidden Harbour Estates*, 393 So. 2d 637 (board adopted lawn watering and well building restriction to control water salinity problem in community); *Nelle v. Loch Haven Homeowners' Ass'n, Inc.*, 413 So. 2d 28 (Fla. 1982)

<sup>10</sup> See supra note 3 at 1119.

<sup>11</sup> *Nelle*, 413 So. 2d at 29.

<sup>12</sup> See supra note 3 at 1103.

<sup>13</sup> *Crissman v. Dedakis*, 330 So. 2d 103, 104 (Fla. Dist. Ct. App. 1976).

<sup>14</sup> *Siering v. Bronson*, 564 So. 2d 247, 249 (Fla. Dist. Ct. App. 1990).

<sup>15</sup> *Id.*

<sup>16</sup> Florida Research & Economic Database, Annual Building Permits data in Florida, at <http://fred.labormarketinfo.com/analyzer/locpermitsdata.asp?geo=1201000000&cat=ECO&session=LOCPERMITS&subsession=99&areaname=Florida&tableused=BLDING&defaultcode=&roll=&rollgeo=04&time=20050100:20040100:20030100:20020100:20010100:20000100&currsubsessavail=&sgltime=0&siclevel=3&naicslvl=6> (last visited March 31, 2006).

The Clinic researched legal process of including these CCRs in association documents. Since the governing documents—the articles of incorporation, the bylaws, and the declaration of covenants—of community associations establish the rights of owners, the state regulates the amendment of these documents. Once a developer has turned over control to the community association, changes to the governance structure become very difficult. The developer may no longer make unilateral amendments<sup>17</sup> and the association may only amend the governing documents if: (1) a certain percentage of Owners—usually 30%—are present at a noticed meeting, and (2) a certain percentage of these Owners present—usually 66%—vote in favor of the amendment at a noticed meeting.<sup>18</sup> However, prior to turnover, a developer may reserve the right to reasonably amend the documents without the consent of the association.<sup>19</sup> Thus, a developer may easily influence communities to comply with manageable conservation practices from their inception by asking their lawyer to include these model conservation CCRs in the community’s governing documents at the beginning stages of the project.

The Clinic also researched the most appropriate conservation methods available within the parameters of Florida Yards and Neighborhoods. In researching water conservation methods and Florida-friendly landscaping, the Clinic reviewed the CCRs of other communities, spoke with conservation professionals, and examined current Florida law. Even though there are different, effective conservation methods for the various regions of Florida, the Clinic decided upon a state-wide approach when choosing what type of CCRs to include. After drafting the first version, the Clinic sought the advice of various developers and conservationists across the State concerning the practical application of these CCRs. The final document offered here reflects the points and concerns of these professionals.

However, by providing this document, the Clinic offers only a practical guide to creating conservation CCRs. It is not our purpose to give developers or associations an extensive set of CCRs for community associations. These CCRs are based on current Florida law and current scientific data.<sup>20</sup> As the law changes and new scientific data emerges, this document will also need to be revised. A lawyer should review any clauses to be inserted into an association’s formal documents and amend them as necessary to account for conflicting law or any unique constraints within the association.

Developers and associations should also bear in mind that the model CCRs in this document are only one approach to increasing conservation in Florida. There are many effective conservation methods available and should be considered. Florida Yards and Neighborhoods brochures may be requested for additional information on the latest conservation methods and ideas.

#### **IV. Model Landscaping and Water Conservation Language for The Declaration of Covenants, Conditions and Restrictions for a Florida-Friendly Development**

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<sup>17</sup> Fla. Stat. §720.3075(1)(a) (2005).

<sup>18</sup> Fla. Stat. §720.306(1) (2005).

<sup>19</sup> *Nelle*, 413 So. 2d at 29.

<sup>20</sup> The data in this document is based on 2005 Florida law and information in the 2006 edition of the Florida Green Industries Best Management Practices handbook and the Florida Green Industries BMPs handbook

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR FLORIDA-FRIENDLY DEVELOPMENT**

THIS DECLARATION, made on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, by \_\_\_\_\_, hereinafter referred to as “Declarant,”

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain property in the \_\_\_\_\_ in \_\_\_\_\_ County, Florida which Declarant intends to develop into \_\_\_\_\_ to be referred to as FLORIDA-FRIENDLY DEVELOPMENT, and

WHEREAS, Declarant intends to develop the Property subject to those protective covenants, conditions, and restrictions as hereinafter set forth in this Declaration.

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold, conveyed, leased, mortgaged and otherwise dealt with subject to the covenants, conditions, and restrictions as hereinafter set forth, all of which are for the purpose of preserving certain portions of the Property in perpetuity while others are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. Such covenants, conditions, and restrictions shall run with the Property, and shall be binding upon all parties having or acquiring any right, title or interest in any part of the Property described herein or in any part thereof, and shall inure to the benefit of each and every person or entity, from time to time, owning or holding a fee simple interest in the Property or a mortgage lien thereon.

**ARTICLE I  
DEFINITIONS**

- A. **“A Guide to Florida-Friendly Landscaping Handbook”** means the most current version of the handbook produced by the Florida Yards & Neighborhoods of the University of Florida’s IFAS Cooperative Extension Service.
- B. **“Association”** means the FLORIDA-FRIENDLY DEVELOPMENT Homeowners Association, Inc, a Florida not for profit corporation, or its successors and assigns.
- C. **“Certified Professional”** means a person who possesses a special registration or certification in Florida Green Industries Best Management Practices training obtained through the University of Florida’s IFAS Extension, the Green Industries Institute, or the Florida Nursery, Growers and Landscape Association.
- D. **“Common Areas”** includes any areas owned, under the control of and managed by the Home Owner Association.

- E. **“Declarant”** and **“Developer”** means the FLORIDA-FRIENDLY DEVELOPMENT COMPANY, a Florida limited liability company, or its successors and assigns.
- F. **“Declaration”** shall mean this Declaration of Covenants, Conditions, and Restrictions of the FLORIDA-FRIENDLY DEVELOPMENT, as amended from time to time.
- G. **“Development”** means the FLORIDA-FRIENDLY DEVELOPMENT as a planned community.
- H. **“Environmental Landscaping Review Board”** and **“The Board”** means a duly appointed board made up of Homeowners with delegated authority from the Association to enforce certain parts of this Declaration and who advise the Association on overall environmental protection policy and enforcement issues. (CHECK)
- I. **“Florida-Friendly Landscaping”** or **“Xeriscape”** means quality landscapes that conserve water and protect the environment and are adaptable to local conditions and which are drought tolerant. The principles of Xeriscape include planning and design, appropriate choice of plants, soil analysis which may include the use of solid waste compost, efficient irrigation, practical use of turf, appropriate use of mulches, and proper maintenance. *See* F.S. §373.185.
- J. **“Florida Green Industries Best Management Practices”** include those practices defined in the Florida Green Industries Best Management Practices for Protection of Water Resources in Florida.
- K. **“Homeowner”** means the record title holder of a platted lot as shown on the plat of FLORIDA-FRIENDLY CLUSTER SUBDIVISION PHASE 1 or subsequent phase or other portion of the FLORIDA-FRIENDLY DEVELOPMENT which may be platted by Declarant in the future.
- L. **“Managed Areas”** includes any areas managed but not owned by the Home Owner Association.<sup>21</sup>
- M. **“Property”** or **“Properties”** means the real property subject to this declaration and such additional properties in the FLORIDA-FRIENDLY DEVELOPMENT as may become subject to this Declaration in the future.

ARTICLE II  
**HOMEOWNER’S RIGHTS & DUTIES**

A. *Compliance by Homeowners*

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<sup>21</sup> In some communities, privately owned areas are managed by the Home Owner Association. This definition lets the reader know that there is a distinction between common areas and areas not owned but managed by the Home Owner Association.

Every Homeowner shall comply with the covenants set forth in this Declaration and with any amendments or revocations to the Declaration by Declarant, the Association or the Association.

*B. Homeowner's Right of Notice*

Except in case of emergency, the Declarant or Association shall give the Homeowner a seven (7) day notice of the failure to comply with a covenant in this Declaration before entering the Homeowner's property to cure the non-compliance or fining the Homeowner for non-compliance. The Homeowner shall not hold the Association liable for any alleged property damage or injury from entry by the Association.

*C. General Maintenance by Homeowner*

Homeowner shall keep all private property, including landscaping and structures, in good order and repair. Declarant and the Association may adopt minimum maintenance standards in addition to those in this Declaration.

*D. Florida-Friendly Landscaping*

The Association may not prohibit any Homeowner from implementing Florida-friendly landscape or Xeriscape on the Homeowner's private property.<sup>22</sup>

*E. Compost Bins*

The Association may not prohibit any Homeowner from installing compost bins on the Homeowner's private property.

ARTICLE III

**FLORIDA-FRIENDLY DEVELOPMENT'S HOMEOWNER'S ASSOCIATION**

*A. Purpose*

The primary purpose of the Association is to manage, maintain and repair the Common and Managed Areas and to enforce the covenants as set forth in this Declaration.

*B. Membership*

The membership of the Association shall consist of Declarant until turnover of power to the Association, and every Homeowner. Membership in the Association is compulsory.

*C. Powers*

The Association shall have the powers set forth in the Articles and Bylaws and granted by Florida law. The Association shall have the power to adopt a budget and to assess Homeowners to pay for the Association's expenses as set forth in the governing documents.

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<sup>22</sup> Fla. Stat. §720.3075(4).

Except as provided in the governing documents, the Board of Directors may act in all instances on behalf of the Association.

*D. Transfer of Control of Association*

Declarant shall transfer control of the Association to the Homeowners upon the first to occur of: (i) that date which is three (3) months after Declarant shall have conveyed ninety (90) percent of parcels to Homeowners other than Declarant, or (ii) such earlier date as Declarant shall determine at its sole option.

*E. Association Services<sup>23</sup>*

In addition to the powers granted under its governing documents, the Association shall provide the following services:

- (a) Maintenance of all Common and Managed Areas and all County, Water Management District or other governmental properties located within the Property to the extent permitted by governmental authority.
- (b) Maintenance of any real property located within the Property upon which the Association has accepted an easement for maintenance.
- (c) The Association's maintenance of the Common Area and Managed Area shall specifically include, but shall not be limited to, the ponds, and the stormwater management system , to the extent permitted by the \_\_\_\_\_  
\_\_\_\_\_Water Management District.
- (d) Insect, pest and aquatic control to the extent that it is necessary or desirable in the judgment of the Association to supplement the service provided by the state and local governments, which shall include without limitation the Association's maintenance of a contract for continued inspection, maintenance, and treatment for subterranean termites.
- (e) Publishing and enforcing amendments to the Declaration.

*F. Association Assessments<sup>24</sup>*

**1) Initial Working Capital Fund.**

- (a) Initial Capital. The Declarant shall establish an initial working capital fund for the initial operation of the Association by collecting an amount, not greater than two (2) months assessment for such parcel, from each parcel purchaser at the time of conveyance. Amounts paid into such fund shall not be considered as advance payments of regular, special or individual assessments.
- (b) Reserve for the Stormwater Management System. Ten (10%) of the initial working capital fund shall be set aside for any future repair of the stormwater management system. The amount shall only be used to address issues relating to the stormwater management system.

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<sup>23</sup> This clause is not comprehensive and does not take into account such services as the maintenance of common structures, roofs, roads, etc.

<sup>24</sup> This clause is not comprehensive and does not address priority, special or individual assessments, financial reports, all budgeting procedures.

(c) Turnover to Association. Upon turnover of control to the Association, the working capital account shall also be turned over to the Association.

**2) Reserve Funds for the Stormwater Management System**

When determining the reserve funds in the annual operational budget and in addition to 1(b) above, the Association shall set aside an amount equal to or greater than one (1) percent of the prior years' budget for the exclusive use of repairing any defects to the stormwater management system.

ARTICLE IV  
**GENERAL PROVISIONS**

A. Amendments to Declaration

**1) Amendments by Declarant**

Prior to turnover of control of the Development to the Association as set forth in Florida Statute §720.307(1), the Declarant and its successors may amend or revoke any or all of the covenants contained in this Declaration without the consent of the Homeowners or the Association. The Declarant shall ensure that any amendment or revocation is in harmony with the general scheme of the Development as set forth in the original Declaration. The Declarant will provide written notice to Homeowners on or before thirty (30) days after the date of the amendment or revocation.

**2) Amendments by Association**

The Association may amended the Declaration at any time provided that two-thirds (2/3) of the Homeowners present at a duly-called meeting vote in favor of the proposed amendment. The Association shall give Notice on or before thirty (30) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the Homeowners as set forth above, the Association shall execute an Amendment to this Declaration, notify all Homeowners of the new amendment, and record the amendment in the Public Records of \_\_\_\_\_ County, Florida. Any amendment affecting the Stormwater Management System must have the prior approval of the \_\_\_\_\_ Water Management District.

B. Enforcement of Declaration<sup>25</sup>

**1) Right to Enforce**

Declarant, the Association, or any Homeowner may enforce the covenants in this Declaration against any person violating such covenant, either to restrain violation or to recover damages. The Association reserves the right to enforce or have enforced any covenant in this Declaration at the Homeowner's expense. Failure to enforce any covenant in the Declaration by the Declarant, the Association, or any Homeowner is not deemed a waiver of the right to enforce the same covenant at a later time.

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<sup>25</sup> This clause is not comprehensive and does not address the appeal process or collection policy.

1) **Right of Entry**

The Declarant or Association shall have the right to enter any portion of the Property, including the Homeowner's private property, for the purposes of determining whether any maintenance is necessary or to ascertain Homeowner's compliance with this Declaration, so long as the entry is made at reasonable times and the Homeowner is given seven (7) days notice. In case of emergency, the Association shall have the right of entry for performing an maintenance or repair so long as a reasonable notice is given.

2) **Fines for Violation of the Declaration**

In the event of a violation of any covenant in this Declaration, the Declarant or Association may suspend the rights of the Homeowner to use Common Areas for a reasonable time. Upon giving a seven (7) day notice to the Homeowner, the Declarant or Association may also levy a reasonable fine, not to exceed \$100 per day per violation (not to exceed \$1000 in the aggregate), against the Homeowner.

3) **Other Sactions for Violation of the Declaration**

Non-compliance with the Declaration shall be grounds for legal action which may include damages, injunctive relief, court costs, and attorneys' fees.

C. Easements<sup>26</sup>

1) **Utility Easements**

There shall be a non-exclusive perpetual easement upon, over, under and across all portions of the Property where utilities are installed. This easement allows any authorized agent the right of ingress and egress over the Property and any easement areas, at a reasonable time and in a reasonable manner, for the purpose of operation, maintenance, or repair.

2) **Easements for Stormwater Management**<sup>27</sup>

There shall be a non-exclusive perpetual easement upon, over, under and across all portions of the Property utilized for the surface water or stormwater management system. This easement allows any authorized agent the right of ingress and egress over the Property and any easement areas, at a reasonable time and in a reasonable manner, for the purpose of operation, maintenance, or repair as required by the \_\_\_\_\_

Water Management District. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire surface water or stormwater management system. No person shall alter the drainage flow of the surface water or stormwater management system, including buffer areas or swales, without the prior written approval of the \_\_\_\_\_ Water Management District.

3) **Easements for Public Services**

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<sup>26</sup> This clause is not comprehensive and does not include easements for general maintenance, fence or wall maintenance, service contracts, drainage, etc.

<sup>27</sup> This clause is taken from the 'Recommended Language for Declaration of Covenants and Restrictions' document provided by the St. Johns River Water Management District.

Declarant grants the right of ingress and egress over the Property for fire, police and other public services.

*D. Covenants Running with the Land*

All parties affected by this Declaration intend the covenants in this Declaration to run with the land and with title to the Property. If any clause or covenant of this Declaration prevents this Declaration from running with the land, such clause or covenant shall be judicially modified and enforced so that the covenants in this Declaration run with the land.

*E. Severability*

If any covenant or clause of this Declaration are found unenforceable for any reason, the remainder of the Declaration continues in full force.

*F. Choice of Law*

The laws of the State of Florida govern this Declaration. Should any conflict arise from conflict between present and future law, Florida law according to the Florida Homeowner's Association Statute at the time of recording this Declaration shall be applied.

*G. Venue*

The venue for any action at law shall be in \_\_\_\_\_, Florida.

ARTICLE V  
**LANDSCAPE MONITORING**

*A. Environmental Landscaping Review Board*

**1) General Duties**

The Board shall approve in writing any proposed changes to a Property's landscaping or irrigating plans to ensure that they conform with the design concept for this Development. Such approval or rejection shall be given within 30 days of submission of such plans to the Environmental Landscaping Review Board and if rejected, will include a short explanatory statement. The Board will make available, within a reasonable amount of time, to homeowners, any document relating to the landscaping and pesticide application in the Common and Managed Areas. The Board will manage the irrigation systems within the Development as stated in this Declaration and will follow all the current guidelines in the Florida Green Industries Best Management Practices for Protection of Water Resources in Florida ("Florida Green Industries BMPs handbook"). The current version of the Florida Green Industries Best Management Practices for Protection of Water Resources in Florida is attached and incorporated by this reference.

2) **Irrigation Plan & Operation Manual**

The Board shall develop an irrigation plan for the Development that includes, but is not limited to, irrigation layout of the system that includes the location of all components of the irrigation system, irrigation times, maximum irrigation application rate per lawn, (WHAT ELSE?). The Board shall make the irrigation plan and the operation manual for all irrigation systems available to all Homeowners. Local water regulations prevail over any regulations provided in the irrigation plan.

3) **Irrigation Scheduling**

The Board, for any Development which does not employ innovative technology such as soil moisture sensors or ET Controllers, will follow the UF/IFAS Florida Yards & Neighborhoods irrigation scheduling recommendations for all Managed Areas and Common Areas managed by the Association, to the extent they comply with applicable local law. The Irrigation Schedule shall take into account plant water requirements, recent rainfall, recent temperature extremes, and soil moisture (HOW OFTEN? Seasonally? Where to get this info?). The Board shall manage the irrigation systems in the Common Areas and Managed Areas according to the Irrigation Schedule.

4) **Preventative Maintenance Program**

For Common Areas and Managed Areas, the Board will implement a preventative maintenance program that includes but is not limited to the following:

- (a) replacing worn or broken components,
- (b) identifying leaks,
- (c) identifying broken or faulty sprinkler heads,
- (d) identifying system malfunctions,
- (e) periodically calibrating irrigation system to determine proper watering time,
- (f) periodically monitor water bodies to detect sudden increase in algae growth, and
- (g) performing weekly visual inspections to identify excessive runoff or puddles.

5) **Environmental Landscaping Violations**

If the Board has knowledge that a Property is not complying with the water conservation, landscaping, fertilizing, or pesticide application parts of this Declaration the Board will notify the Homeowner and give \_\_\_\_\_ days to cure the problem. If the Homeowner does not cure the problem within the allotted time frame, the Board may take reasonable measures to correct this problem and bill the Homeowner for the work performed on the Homeowner's Property to cure such problem and take any other enforcement actions as provided by this Declaration.

6) **Pesticide Records for Common Areas**

The Board shall obtain from the certified pesticide application company or from the Association accurate pesticide application records including records for any restricted use pesticides used in the Common Areas and Managed Areas as may be required by Florida

law.<sup>28</sup> The Board will maintain these pesticide records for 2 years from the application date or as may be required for pesticide applicators by Florida law.<sup>29</sup>

C. Certification Requirements

Only those employees of landscaping, fertilizing, or pesticide application companies who have a current certificate of completion of training in Florida Green Industries: Best Management Practices for Protection of Water Resources in Florida from the UF/IFAS Extension Service will be allowed to service Properties, Common Areas and Managed Areas in the Development. The Board will maintain an updated list of Certified Professionals who may perform landscaping, pesticide or fertilizing services within the Development and shall update this list every 6 months. Homeowners not using the for-hire contractors included in the Board's Certified Professionals list shall obtain written permission from the Board before any services are performed in a Homeowners property.

ARTICLE VI  
WATER EFFICIENT LANDSCAPING

A. Pre-landscape Installation

Before landscape installation starts and for every lot where the Developer intends to install landscaping, the Developer shall obtain soil analysis information from a reputable soil testing lab or the University of Florida/IFAS Cooperative Extension facility to assess soil conditions such as soil type and texture, pH, and estimated soil infiltration rate.<sup>30</sup> The Developer will make this information available to the Association and to all purchasing Homeowners. **If after turnover of control to the Association, the Association intends to install new landscaping in the Common or Managed Areas it may only do so if the soil testing information on file for that lot is less than 3 years old. If the soil tests on file for the lot where new landscape will be installed are more than 3 years old, the Association shall obtain soil analysis information from a reputable soil testing lab or the University of Florida/IFAS Cooperative Extension facility. Homeowner's are strongly encouraged to follow the soil analysis information of a reputable soil testing lab or the University of Florida/IFAS Cooperative Extension facility when installing new landscape on the Homeowner's Property.**

B. Plant/Turf Selection and Design

The Developer will select turfgrass and landscape plants that are suited to the soil and other site characteristics as described in the soil analysis referred to in VI (A) and to the most current version of the Florida Yards & Neighborhoods Plant List or the applicable Water Management District's Water Wise Guide. The Developer will design the landscape so that

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<sup>28</sup> Florida pesticide law requires certified applicators to keep records for 2 years of all restricted use pesticides applied. *See* Fla. Stat. §487.160 (2005).

<sup>29</sup> The Florida Yards & Neighborhoods program recommends that pesticide records should be kept longer than 2 years for the successful implementation of an Integrated Pest Management program.

<sup>30</sup> For soil testing recommendations and information see the Soil and Water Science Department, Florida Cooperative Extension Service, University of Florida/IFAS at <http://edis.ifas.ufl.edu/SS156> (last visited 4/10/2006).

plants serve particular functions such as cooling, screening for privacy, shade for comfort, aesthetic, wildlife habitat, or to direct traffic flow onto and within the Development. **In the Development, the Association and the Homeowners shall only use plants referred to in the most current version of the Florida Yards & Neighborhoods Plant List or the applicable Water Management District's Water Wise Guide.**

C. Plant Installation

All plant installation performed in the Development will follow the most current version of the Florida Green Industries BMPs handbook guidelines.

D. Mulching

Mulch may not be directly placed against the trunks of trees or against the stems of landscape plants.

E. Fertilizer Use

1) **Selection and Application**

Homeowners are strongly encouraged to follow the fertilizing recommendations of the most current version of the Florida Yards & Neighborhoods Guide to Florida-Friendly Landscaping when fertilizing on their own. However, **all** fertilizing companies hired to service a Homeowners lawn shall follow Florida Green Industries BMPs and have a valid certification as prescribed in Article V(B).

2) **Definition of "Water Bodies"**

The Water Bodies referred to in this section include any creeks, lakes, ponds, rivers, streams, lagoons or stormwater retention areas (**CHECK**) not under the Water Management District jurisdiction, or those delegated to the Association by the Water Management District.

3) **Buffer Zones Near Bodies of Water**

Fertilizers and pesticides may not be applied within 10 feet from the edge of any water body.<sup>31</sup>

F. Mowing

Mowing in Common Areas and Managed Areas shall be done according to the most current version of the Florida Green Industries BMPs handbook and by certified landscaping contractors as prescribed in Article V(B). Homeowners are strongly encouraged to follow the suggested mowing recommendations in the most current version of the Florida Yards & Neighborhoods Guide to Florida-Friendly Landscaping. However, **all** landscaping contractors performing any type of landscaping services such as lawn maintenance,

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<sup>31</sup> Community Associations may wish to establish a buffer zone or low impact zone at a greater distance. Some local governments may have more restrictive ordinances. See **LOOK UP CITE**

fertilizing, or pesticide application in a Homeowners property shall follow Florida Green Industries BMPs and have a valid certification as prescribed in Article V(B).

*G. Disposal of Landscape Material*

**1) Turf Clippings**

To recycle nutrients, clippings from mowing in Common Areas and Managed Areas shall be left on turf areas or composted on-site except when the turf is diseased. Any clippings or landscape material that falls on impervious surfaces such as sidewalks, driveways, or roads shall be swept onto turf areas or composted.

**2) Composting**

Homeowners may compost their yard wastes and other materials on their property. The Association may regulate the aesthetics and siting of composting. Any person discarding any plant material shall follow all applicable state and local ordinances.

**ARTICLE VII  
WATER CONSERVATION**

*A. Irrigation Systems*

**1) Installation & Design**

All irrigation systems in The Development shall be installed according to Florida Irrigation Society Standards and shall meet or exceed all local regulations. The irrigation systems of any areas that do not have local irrigation regulations shall, at a minimum, meet current Florida Irrigation Society standards. The irrigation system shall be designed so as to not overlap with water coverage zones, not to water impervious areas and not to irrigate within 3 feet of the building foundation. The irrigation design will separate turf irrigation areas from landscape bed irrigation areas. All irrigation systems will meet current Best Management Practices as established by the most current version of the Florida Green Industries BMPs handbook.<sup>32</sup> Before and during construction, the designer of the Irrigation System shall approve in writing any changes to the irrigation design.

**2) Maintenance**

Irrigation systems shall be continuously maintained in working order so that the application rate of water to landscape and grass does not exceed the ability of the soil to absorb and retain water applied during one application. Homeowners shall comply with the requirements of this Article and shall maintain the irrigation systems within their Property boundaries. The Board will inspect and calibrate all automatic irrigation systems within the Common Areas and Managed Areas once every year, and reset the irrigation controllers or timers seasonally to account for plant growth requirements and local climatic conditions. The irrigation rules of the controlling Water Management District prevail over any provision in this Declaration. If the Board observes that a

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<sup>32</sup> This sentence should refer to the most current version of the Florida Green Industries BMPs manual and not to a specific set of guidelines since new editions of the BMPs manual will eventually come out.

Homeowner's irrigation system is not functioning properly the Board may correct this problem as stated in Article V(B)5 of this Declaration.

**B. Rain Shut-off Devices or Soil Moisture Sensors**

**1) Installation**

Rain shut-off devices or soil moisture sensors shall be installed and operational for all in-ground irrigation systems.<sup>33</sup>

**2) Maintenance**

Homeowners will maintain the shut-off devices or soil moisture sensors within their property boundaries if these are not managed by the Association. The Board will maintain rain shut-off devices or soil moisture sensors in all the Common Areas and Managed Areas.

**C. Homeowner Education**

The Association shall create a Florida-Friendly educational package which includes, but is not limited to, any relevant water conservation and Florida-Friendly landscaping information which it will provide to all new Homeowners who purchase Property in the Development. The Association will provide to all new and future Homeowners a copy of the Irrigation Plan and Schedule and operating manuals, including any warranties, for the following:

- (1) irrigation systems,
- (2) rain shut-off devices,
- (3) soil moisture sensors, and
- (4) any other mechanical or electronic device implemented in the Irrigation Plan.

The Association will ensure that Homeowners who sell their Property provide the buyer with a copy of the operating manuals and any applicable warranties as stated above in this Article. The Association should conduct an educational program on Florida-Friendly landscaping to educate all Homeowners and Association members at least \_\_\_\_ a year.<sup>34</sup>

**ARTICLE VIII  
PEST CONTROL**

**A. Pesticide Application**

Preventive blanket applications of pesticides are prohibited. All pesticide applications in Common Areas shall be done by a Certified Professional and in accordance with the most current version of the Florida Green Industries BMPs handbook. Homeowners are strongly

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<sup>33</sup> Rain shut-off devices are required by Florida law for all lawns that have automatic irrigation systems. *See* Fla. Stat. §373.62

<sup>34</sup> This is strongly suggested to ensure Homeowner compliance with these Florida-Friendly CCRs and may be also done through an informational community website or bulleting board.

encouraged to use alternative methods for controlling pest problems and to follow the most current version of the Florida Yards & Neighborhoods Guide to Florida-Friendly Landscaping. However, **all** pest control companies servicing a Homeowner's property shall have valid state and county licenses, follow Integrated Pest Management as prescribed in the Florida Green Industries BMPs handbook and have a valid certification as prescribed in Article V(B).

## ARTICLE IX AREAS MANAGED BY THE ASSOCIATION

### A. Maintenance

The Board will maintain the irrigation systems, soil moisture sensors or rain shut-off devices in the Common Areas and Managed Areas. The Board will carefully monitor all pesticide applications, landscaping services, and fertilizer applications performed in the Common Areas and in the Managed Areas to ensure they follow Florida Green Industries BMPs. Only Certified Professionals will be allowed to perform any type of services or work in the Common Areas and in the Managed Areas.

### B. General Use of Common Areas

Homeowners will refrain from any acts that negatively impact the environment and wildlife in Common and Managed Areas.

## ARTICLE X WILFIRE PREVENTION<sup>35</sup>

### A. Wildfire Prevention Board

Upon turn over by the Developer, the Association shall appoint or elect a Wildfire Prevention Board to carry out the wildfire prevention duties set forth in this article.

### B. General Duties of the Wildfire Prevention Board

#### 1) **Application to Become a FireWise Community**<sup>36</sup>

Upon initial appointment by the Association, the Wildfire Prevention Board shall contact a FireWise representative and apply to become a FireWise Community. If recognized, the Board shall renew their status annually. If not recognized, the Board shall address the recognized problems and shall submit a new application annually.

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<sup>35</sup> This Article is not necessary for communities in areas of Florida that are not prone to wildfires. The Division of Forestry (FDOF) maps areas prone to wildfires, see [http://www.fl-dof.com/wildfire/wf\\_fras.html](http://www.fl-dof.com/wildfire/wf_fras.html).

<sup>36</sup> Administered by FDOF, Firewise Communities/USA is program which recognizes communities that help prevent and reduce losses to wildland/urban interface fire. To become a Firewise Community, a community or neighborhood must submit an application, available at <http://www.firewise.org/usa/>.

2) **Wildfire Hazard Assessment of the Community**

The Wildfire Prevention Board shall employ a wildland/urban interface specialist, or a comparative professional, to complete a wildfire hazard assessment and use the assessment to create a Wildfire Hazard Plan that identifies locally agreed-upon solutions that the community can implement.

3) **List of Recommended Plants**

The Wildfire Prevention Board shall maintain a list of plants resistant to wildfire.<sup>37</sup>

3) **Public Workshops**

The Wildfire Prevention Board shall hold a public workshop at least once a year to educate Homeowners about wildfires and preventative maintenance.

C. Fire-Wise Landscaping

1) **Landscaping by the Developer**

The Developer shall install landscaping that mitigates the change of wildfires and shall avoid the use of fire-prone flora.

2) **Replacement Landscaping**

Any Homeowner replacing landscaping or installing new landscaping on private property shall consider the wildfire implications. Any new or replacement landscaping done in Common Areas and Managed Areas should be in accordance with the Wildfire Hazard Plan maintained by the Wildfire Prevention Board. The Board may hire a qualified prescribed fire and fuel reduction specialist for assistance when considering large landscape projects.

3) **Recommended Trees and Shrubs**

The Wildfire Prevention Board will maintain a list of recommended plants resistant to wildfires. Homeowners are strongly encouraged to select plants from this list when installing new flora.

D. Prescribed Burning

A Homeowner shall not perform a prescribed burn without the written approval of the Wildfire Prevention Board. A landscape contractor shall not perform a prescribed burn in Common Areas and Managed Areas without the written approval of the Wildfire Prevention Board. Any prescribed burning shall be in compliance with federal, state, and local regulations.

E. Preventative Maintenance by Homeowners

In addition to other preventive measures, Homeowners are encouraged to:

- (a) Keep trees and shrubs properly pruned,

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<sup>37</sup> A FireWise plant list is available at <http://www.firewise.org/usa/>.

- (b) Remove leaf clutter and dead branches,
- (c) Dispose of cuttings and debris properly and promptly, according to Association and government restrictions,
- (d) Store firewood away from the house,
- (e) Maintain the irrigation system, and
- (f) Store and use flammable materials in a proper manner.

## ARTICLE XI STORMWATER

### A. Runoff

The Developer shall not divert roof or structure runoff to drain onto impervious surfaces<sup>38</sup>. Homeowners shall not alter roof or structure drainage in any manner that channels runoff onto impervious surfaces.<sup>39</sup>

### B. Construction and Renovations

During the construction or renovation of a dwelling, the Homeowner or the Homeowner's builder shall control erosion and sedimentation during and after construction, stabilize cleared areas, limit stockpiles, protect stormwater inlets during construction, remove temporary control systems after construction, and limit the placement of gutters and drains.<sup>40</sup> The Homeowner's builder shall comply with the local government and Water Management District requirements for erosion and sediment control.<sup>41</sup>

### C. Stormwater Retention Areas

Any stormwater ponds managed by the Association will follow any regulations or recommendations stipulated by local government, the local Water Management District, and any other applicable agency.<sup>42</sup>

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<sup>38</sup> Gainesville's current storm water management ordinance states impervious surfaces include but are not limited to driveways, parking lots, patios, decks, walkways, athletic courts, and other similar surfaces: See Ch. 27, Art. V, §27-237—Definitions.

<sup>39</sup> Allowing stormwater to drain onto the adjacent landscape reduces the amount of irrigation that is needed to sustain that landscape.

<sup>40</sup> Gainesville's development code ordinance on design standards lists precautions to control erosion and sedimentation problems: See Ch. 30, Art II, Subdivision II, 9 §30-27.

<sup>41</sup> See Gainesville Ordinance Ch. 30, Article VIII

<sup>42</sup> In general, Water Management Districts do not allow homeowner associations to manage or maintain stormwater ponds unless the association applies for, and meets certain permit criteria. Water Management Districts prefer that local government stormwater utilities manage and maintain stormwater systems if the local government body is willing to take on the monitoring and maintenance of the stormwater pond: See F.A.C. Ch 40C-42.027(1)(2)(4). If an Association does take on the monitoring and maintenance of a stormwater system, then the Water Management District dictates guidelines for permit qualification and maintenance: See F.A.C Ch40C-42.027 and .029. Moreover, many Water management Districts set forth recommended language for covenants and restrictions concerning stormwater maintenance. See Appendix "A" "Recommended Language For Declaration of Covenants and Restrictions" available at <http://www.sjrwmd.com/programs/regulation/rules/pdfs/oprmaint.pdf>.

ARTICLE X  
**PETS AND WILDLIFE**

A. Protecting Wildlife

All pets shall be confined on a leash, held by and under the physical control of a responsible person at all times when they are outside a Property in the Development. Pets may not harass wildlife attracted to the Development.

B. Pet Waste

Pet owners shall pick up after their pets in the Development and appropriately dispose of such wastes. All local pet ordinances will apply.