

FLORIDA-FRIENDLY LANDSCAPING COVENANTS, CONDITIONS AND RESTRICTIONS



Prepared for
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TABLE OF CONTENTS

- I. OVERVIEW
- II. ENFORCEABILITY AND AMENDABILITY OF CCRs
- III. PURPOSE
- IV. EXHIBIT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FLORIDA-FRIENDLY DEVELOPMENT

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. By minimizing their adverse impacts on the environment, these individuals and organizations can make a positive difference in preserving Florida's natural resources.¹ Accordingly, to encourage the implementation of low impact land use strategies at the homeowner level, this document recommends that developers, homeowners, and homeowner associations place Florida-friendly landscaping restrictive covenants on their properties.

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.² 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.³

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 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 a substitute 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 relevant municipal and state

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

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

³ *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, but rather only assure that the changes will be uniform in application).

laws which prevail over any language set forth herein. Any language included in a CCR which goes against law or public policy is immediately held to be invalid.⁴

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 best 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 FloridaYards.org or www.SolutionsForYourLife.org/fyn or contacted at (352) 392-1831 Ext.243 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 at <http://edis.ifas.ufl.edu/> or www.SolutionsForYourLife.com.

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.⁵ 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 chose to purchase lots encumbered by restrictions.⁶ 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

⁴ 6A Patrick Rohan, *Real Estate Transactions: Home Owner Associations and PUDs* – Law and Practice, §8.00-8.28, (1977).

⁵ Fla. Stat. §720.3075(4) (2005).

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

constitutional right.”⁷ To be legally enforceable, rules regulating the use of property must be reasonable.⁸

The reasonableness standard comes into play where a court is asked to review the appropriateness of amendments to restrictive covenants. Generally, courts are more generous when reviewing amendments voted on by property owners rather than unilateral amendments done by the homeowners association or an equivalent representative group.⁹ 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.¹⁰ 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.¹¹ 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.¹²

Two areas deserve special attention from people concerned about enforcing and maintaining a “Florida-friendly” community. First is the possibility of some restrictions to judicially nullified due to changes that occur outside the restricted community. This occurred 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.¹³ Second, failure of a community to diligently enforce violations to the provisions in its CCRs may result in the future inability of the community to enforce on the specific violation.¹⁴

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 2000.¹⁵ This document is aimed at reducing the environmental impact of these new communities. Our goal is to inform the

⁷ 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).

⁸ *Fla. Stat. Ann.* 718.123(1) (West 1988 & Supp. 1998).

⁹ 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)

¹⁰ See Randolph, *supra* note 3 at 1119.

¹¹ *Nelle*, 413 So. 2d at 29.

¹² See Randolph, *supra* note 3 at 1103.

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

¹⁴ See, e.g. *Siering v. Bronson*, 564 So. 2d 247 (Fla. Dist. Ct. App. 1990). But also see *Mizell v. Deal* 654 So.2d 659 (Fla. Dist. Ct. App.1995) (finding that failure to complain of a restriction on mobile home placement in a community for one and half years *did not* amount to a waiver of the right to enforce the restrictions).

¹⁵ Florida Research & Economic Database, Annual Building Permits data in Florida, at <http://fred.labormarketinfo.com/analyzer/locpermitsdata.asp?geo=1201000000&cat=ECO&session=LOCPERMITTS&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).

community associations of simple conservation methods and to increase the number of associations who follow these methods.

The University of Florida Levin College of Law's Conservation Clinic (Clinic) researched the 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 amendments¹⁶ and the association may only amend the governing documents if: (1) a certain percentage of Owners are present at a noticed meeting, and (2) a certain percentage of these Owners present vote in favor of the amendment at a noticed meeting.¹⁷ However, prior to turnover, a developer may reserve the right to reasonably amend the documents without the consent of the association.¹⁸ 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 applicable Florida laws. 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.¹⁹ 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.

¹⁶ Fla. Stat. §720.3075(1)(a) (2005).

¹⁷ Fla. Stat. §720.306(1) (2005).

¹⁸ *Nelle*, 413 So. 2d at 29.

¹⁹ 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

IV. Sample Exhibit to Declaration of Covenants, Conditions and Restrictions for a Florida-Friendly Development

**DECLARATION EXHIBIT
FLORIDA-FRIENDLY DEVELOPMENT
COVENANTS, CONDITIONS
AND RESTRICTIONS**

1. PURPOSE.

The Florida-Friendly provisions in this Exhibit provide a framework to establish minimum standards for the development, installation, and maintenance of low-impact yards for communities who wish to reduce their ecological footprint in Florida. The wildlife provisions, address measures that communities can take to positively coexist with animals that will be attracted to the community by the Florida-Friendly landscape.

2. DEFINITIONS.

2.1 “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.

2.2 “Certified Professional” means a person who possesses a certificate under Section 3.3 below in Florida Green Industries Best Management Practices.

2.3 “Environmental Landscaping Review Committee” means a duly appointed committee made up of Certified Professionals 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.

2.4 “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. (Ref. §373.185 F.S.).

2.5 “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.

2.6 “Managed Areas” includes any areas managed but not owned by the Home Owner Association.²⁰

3. **FLORIDA-FRIENDLY LANDSCAPING**

3.1 Areas Managed by the Association²¹

3.1.1 Association Services. 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.

(i) 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 and other governmental authorities.

(ii) 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.

(b) Maintenance. The Environmental Landscaping Review Committee (the “Committee”) shall carefully monitor all pesticide applications, lawn and landscaping services, and fertilizer applications performed in the Common Areas and in the Managed Areas to ensure that Florida Green Industries’ BMPs are followed.

(c) General Use of Common Areas. Homeowners shall refrain from any acts that negatively impact the environment and wildlife in Common and Managed Areas.

3.2 Environmental Landscaping Review Committee.

3.2.1 General Duties. The Committee shall design, manage, and maintain the environmental landscape for the development. The Committee shall make all environmental landscaping decisions within the development in accordance with the guidelines set forth in the most current edition of the Florida Green Industries Best Management Practices for Protection of Water Resources in Florida (“Florida Green Industries BMPs handbook”). Environmental landscaping decisions includes, but is not limited to, decisions connected to landscaping,

²⁰ In some communities, privately owned areas are managed by the Homeowners 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.

²¹ In a situation where there is a Community Development District in addition to, or rather than, a Homeowner’s Association, the definition of Association may be amended to include the Community Development District.

irrigation, pesticide application, fertilization, water conservation, and wildlife conservation. If a Homeowner desires to make an environmental design change to their property including changes to their landscape or irrigation system, the Homeowner shall, prior to making any change, seek approval for such design change by submitting a design change application to the Committee. No later than 30 days after the date on which the Homeowner submits a design change application to the Committee, the Committee shall provide written notice to the Homeowner approving or denying the proposed design change. The Committee shall not approve any proposed design change that fails to conform to the development's design concept. No approval shall be required for design changes involving the planting of annuals, planting of pre-approved plants or trees, or for the removal of deceased or diseased trees. The Committee shall keep, account, and maintain records for all environmental landscaping management and maintenance decisions made by the Committee. If a Homeowner submits a written request for documents relating to the management and maintenance of the development's environmental landscaping, the Committee shall, within a reasonable time after the date on which it received the request, submit such documents to the Homeowner. The Florida Green Industries Best Management Practices for Protection of Water Resources in Florida is attached and incorporated by this reference as attachment "A"

3.2.2 Irrigation Plan & Operation Manual. The Committee shall develop an irrigation plan for the Development that includes, but is not limited to, an irrigation system layout identifying the location of the irrigation system components, irrigation times and maximum irrigation application rate per lawn, area, or zone.²² The irrigation plan shall meet or exceed state and local water regulations. Subject to the limitations under Section 3.2.1, the Homeowners may request and the Committee shall provide a copy of materials including, but not limited to, the irrigation plan and the operation manual for all irrigation systems.

3.2.3 Irrigation Scheduling. The Committee shall create an irrigation schedule. If the Committee does not employ innovative technology including, but not limited to, soil moisture sensors or ET Controllers, the Committee shall, for all Managed Areas and Common Areas managed by the Association, create an irrigation schedule consistent with the UF/IFAS Extension irrigation scheduling recommendations to the extent that they meet or exceed state and local law. In developing an irrigation schedule, the Committee shall take into account seasonal plant water requirements, recent rainfall, recent temperature extremes, and soil moisture. The Committee shall, in accordance with the Irrigation Schedule, manage the irrigation systems used in the Common Areas and Managed Areas. The Committee shall account for and exempt newly installed landscaping in the irrigation schedule.

3.2.4 Irrigation Preventative Maintenance Program. For Common Areas and Managed Areas, the Committee shall implement a preventative maintenance program that includes but is not limited to the following:

- (a) replacing worn or broken components,
- (b) identifying and repairing leaks,

²² Other requirements may be added depending on how broad the developer or association wishes the irrigation plan to be but the drafter should always be cautious and aware of local irrigation laws or rules. The plan should include exceptions for newly installed landscaping which usually requires longer irrigation timing.

- (c) identifying and repairing broken or faulty sprinkler heads,
- (d) identifying and repairing 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 including standing water.

3.2.5 Pesticide Records for Common Areas. The Committee 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.²³ The Committee shall maintain these pesticide records for 2 years from the application date or as may be required for pesticide applicators by Florida law.²⁴

3.2.6 Solar Power. The Association may not prohibit any Homeowner from installing solar power or water heating systems on the Homeowners' private property. The Association may regulate the aesthetics and construction of such systems.

3.2.7 Environmental Landscaping Violations. If the Committee has knowledge that a Property is not complying with the water conservation, landscaping, fertilizing, or pesticide application parts of this Declaration the Committee shall notify the Homeowner and give ____ days to cure the problem. If the Homeowner does not cure the problem within the allotted time frame, the Committee may take reasonable measures to correct this problem, 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.

3.3 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 and who demonstrate that the company's principles follow these Best Management Practices shall be allowed to service Homeowners' properties, Common Areas and Managed Areas in the Development. The Committee shall 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 Committee's Certified Professionals list shall obtain written permission from the Committee before any services are performed in a Homeowners property.

²³ Florida pesticide law requires certified applicators to keep records for 2 years of all restricted use pesticides applied. *See* Fla. Stat. §487.160 (2005).

²⁴ 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.

3.4 Florida-Friendly Landscaping. The Association may not prohibit any Homeowner from implementing Florida-friendly landscape or Xeriscape on the Homeowner's private property.²⁵

3.4.1 Pre-landscape Installation. Before landscape installation starts and for every lot where the Developer intends to install landscaping, the Developer shall, after final grade, 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, and pH.²⁶ The Developer shall 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 ____ years old. If the soil tests on file for the lot where new landscape will be installed are more than ____ 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 recommendations of a soil analysis from a reputable soil testing lab or the University of Florida/IFAS Cooperative Extension facility when installing new landscape on the Homeowner's Property.

3.4.2 Plant/Turf Selection and Design. In accordance with the most current version of the UF IFAS Florida Yards & Neighborhoods Plant List or the Water Management District's Water Wise Guide, the Developer shall select turfgrass and landscape plants suited to the soil and other site characteristics described under Section 3.4.1 above. The Developer shall design the landscape so that plants serve environmentally friendly functions including, but not limited to, cooling, privacy screening, shade, aesthetics, wildlife habitat, runoff pollution prevention, and directing traffic flow onto and within the Development. The Association and the Homeowners shall use plants listed in a plant palette approved by the Committee or refer to the most current version of the UF IFAS Florida Yards & Neighborhoods Plant List or the Water Management District's Water Wise Guide.

3.4.3 Plant Installation. All plant installations shall be conducted in accordance with the most current version of the Florida Green Industries BMPs handbook guidelines.

3.4.4 Mulching. All mulching shall be conducted in accordance with the most current version of the Florida Green Industries BMPs handbook guidelines. Organic mulch shall be placed at least 3-4" from the trunks of trees or the stems of landscape plants and shall be maintained at a depth of 2 - 3." Organic mulch may require weeding and replenishment once or twice a year to maintain a total depth of 2 - 3." Mulch shall be applied to a tree's drip line or beyond at least an 8' diameter around the tree. Organic mulch and recycled mulch including leaves, pine needles, grass, and shrub clippings are recommended. The use of Cypress mulch is prohibited.

3.4.5 Fertilizer Use.

²⁵ Fla. Stat. §720.3075(4).

²⁶ An analysis of soil infiltration rate is also recommended but implies extra costs. 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).

(a) 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. All fertilizing companies hired to service a Homeowners lawn shall follow Florida Green Industries BMPs and have a valid certification as prescribed in Section 3.2. Fertilizers and pesticides may not be applied within a minimum of 10 feet from the edge of any water body.²⁷ For the purposes of this section, water body includes, but is not limited to, creeks, lakes, ponds, rivers, streams, lagoons or stormwater retention areas not under the Water Management District jurisdiction, or those delegated to the Association by the Water Management District.

3.4.6 Mowing. Mowing in Common Areas and Managed Areas shall be done in accordance with the most current version of the Florida Green Industries BMPs handbook and by certified landscaping contractors as prescribed in Section 3.2. 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. All landscaping contractors performing environmental landscaping services on a Homeowners property shall act in accordance with the most current version of the Florida Green Industries BMPs handbook and have a valid certification as prescribed in Section 3.2. Mowing adjacent to swales or water bodies shall be performed such that no clippings are deposited into any swales or water bodies.

3.4.7 Disposal of Landscape Material.

(a) Turf Clippings. Unless the turf is diseased, turf clippings shall be left on turf areas or composted on-site to recycle nutrients. Any clippings or landscape material that fall on impervious surfaces such as sidewalks, driveways, or roads shall be swept onto turf areas or composted. Turf clippings or landscape material shall not be deposited in any swales or water bodies.

(b) Composting. The Committee shall not prohibit any Homeowner from installing compost bins on the Homeowner's private property. The Committee may regulate the aesthetics and siting of composting activities. Any person discarding any plant material shall follow all applicable state and local ordinances.

3.5 Water Conservation.

3.5.1 Irrigation Systems.

(a) Installation & Design. All irrigation systems in the Development shall be installed according to the state Standards for Landscape Irrigation in Florida and shall meet or exceed all state and local regulations. The irrigation systems of any areas that do not have local irrigation regulations shall, at a minimum, meet the state Standards for Landscape Irrigation in Florida. 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 three (3) feet of the building foundation. The irrigation design shall separate turf irrigation areas from landscape bed irrigation areas. All irrigation systems shall meet current Best Management Practices as

²⁷ 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* TAMPA, FLA., CODE § 13-163 (2006).

established by the most current version of the Florida Green Industries BMPs handbook, including the uniform distribution of water throughout all zones.²⁸ Before and during construction, the designer of the Irrigation System shall approve in writing any changes to the irrigation design. A copy of the state Standards for Landscape Irrigation in Florida is attached and incorporated by this reference as attachment “B.”

(b) 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 Association shall within the Common Areas and Managed Areas, make monthly inspection of all automatic irrigation systems for operating defects, periodically calibrate all automatic irrigation systems, and seasonally reset the irrigation controllers or timers to account for changes in plant growth and local weather conditions. The irrigation system shall meet or exceed the rules of the State, the controlling Water Management District and the local government. If a Homeowner’s irrigation system does not function properly, the Committee may correct this problem as provided under Section 3.1.5 above.

3.5.2 Rain Shut-off Devices or Soil Moisture Sensors.

(a) Installation. Rain shut-off devices or soil moisture sensors shall be installed and operational for all in-ground irrigation systems. Rain shut-off devices shall be placed in open areas to prevent incorrect readings. Flow meters, tensiometers, and other irrigation tools may be used to help make good irrigation management decisions.²⁹

(b) Maintenance. The Association shall maintain rain shut-off devices or soil moisture sensors in all the Common Areas and Managed Areas. The Homeowners shall maintain the shut-off devices or soil moisture sensors within their property boundaries if such devices are not managed by the Association.

3.5.3 Homeowner Education. The Association shall create a Florida-Friendly educational package that includes, but is not limited to, a copy of the Association’s CCRs as well as any other relevant water conservation and Florida-Friendly landscaping information. The Association shall provide a copy of this educational package to all subsequent purchasers. The Association shall recommend that Homeowners consult with local, county, or state FYN extension offices when appropriate.

3.5.4 The Association shall ensure that all subsequent purchasers receive a copy of the Irrigation Plan and Schedule and operating manuals, including any warranties, for the following:

- (a) irrigation systems,

²⁸ 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.

²⁹ Pursuant to Fla. Stat. §373.62, any person who purchases and installs an automatic lawn sprinkler system after May 1, 1991, shall install, and must maintain and operate, a rain shut-off device or switch that will override the irrigation cycle of the sprinkler system when adequate rainfall has occurred.

- (b) rain shut-off devices,
- (c) soil moisture sensors, and
- (d) any other mechanical or electronic device implemented in the Irrigation Plan.

When a Homeowner sells their home, the Homeowner shall notify the Association of the transfer and the Association shall provide the new Homeowner with a copy of the operating manuals and any applicable warranties as stated above in this Exhibit. The Association may conduct an educational program on Florida-Friendly landscaping to educate all Homeowners and Association members at least once a year.³⁰

3.6 Pest Control

3.6.1 Pesticide Application. Preventive³¹ blanket applications of pesticides are prohibited, except for termite prevention. 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 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 Section 3.2.

3.7 Stormwater

3.7.1 Reserve Funds for the Stormwater Management System. _____% of the initial working capital fund shall be set aside for maintenance and any future repair of the stormwater management system. The amount shall only be used to address issues relating to the stormwater management system.

3.7.2 Runoff. The Developer shall not divert roof or structure runoff to drain onto impervious surfaces³². Homeowners shall not alter roof or structure drainage in any manner that channels runoff onto impervious surfaces³³ and shall comply with the local government, FDEP, and Water Management District requirements for erosion and sediment control.

3.7.3 Construction and Renovations. During the construction or renovation of a dwelling, the Homeowner or the Homeowner's builder shall control erosion and sedimentation

³⁰ This is strongly suggested to ensure Homeowner compliance with these Florida-Friendly CCRs and may be also done through an informational community website or bulletin board.

³¹ Preventative applications are those which are done regardless of whether there are pest problems or not. Blanket applications may be used when necessary to cure an existing pest problem.

³² 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.

³³ Allowing stormwater to drain onto the adjacent landscape reduces the amount of irrigation that is needed to sustain that landscape.

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.³⁴ The Homeowner's builder shall comply with the local government, FDEP, and Water Management District requirements for erosion and sediment control.³⁵ The Association shall not prohibit the following structures and activities including, but not limited to, cisterns, rain barrels, rain gardens, washing cars on lawns and other pervious surfaces, and the use of low-impact development (LID) designs including, but not limited to, curb cuts and swales. Where possible, all construction and renovation shall use LID designs and practices that reduce stormwater runoff. LID designs and practices that reduce stormwater runoff includes, but is not limited to, designs and practices creating curb cuts that direct the flow of runoff to depressional areas and designs and practices adding depressional areas such as rain gardens and swales, including pervious surfaces.

3.7.4 Stormwater Retention Areas. Any stormwater ponds managed by the Association shall follow all regulations or recommendations stipulated by local government, the local Water Management District, and any other applicable agency.³⁶

3.7.4 General Stormwater Pollution Prevention. The Association shall not prohibit the following structures and activities including, but not limited to, cisterns, rain barrels, rain gardens, washing cars on lawns and other pervious surfaces, and the use of LID designs including, but not limited to, curb cuts and swales. Where possible, the Association and the Homeowner shall use low-impact development (LID) designs and practices that reduce stormwater runoff. The Association and the Homeowners shall not sweep organic debris, such as leaves or grass, into storm drains or curbs. LID designs and practices that reduce stormwater runoff includes, but is not limited to, designs and practices creating curb cuts that direct the flow of runoff to depressional areas and designs and practices adding depressional areas such as rain gardens and swales, including pervious surfaces.

Pets and Wildlife [Optional]. This section applies to pets and to human treatment of all wild animals anywhere within the Development on both private and common property.³⁷

3.8.1 Pets. All pets shall be confined on a leash, held by and under the physical

³⁴ 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.

³⁵ See Gainesville Ordinance Ch. 30, Article VIII

³⁶ 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.sjrwm.com/programs/regulation/rules/pdfs/oprmaint.pdf>.

³⁷ Wildlife portions of this section have been taken from the Draft Community Covenants for Harmony, FL. HSUS/Wildlife.- © Harmony Institute 2001.

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

3.8.2 Hunting and Trapping. Hunting or trapping of any animal is prohibited.

3.8.3 Attracting and Taming Wildlife. Homeowners may not tame, acquire, keep, or confine any form of wildlife. Young or injured wild animals found or acquired cannot be kept or reared, and must be surrendered to a professional rehabilitative care center. Homeowners may attract wildlife by providing habitat that offers cover, water, and food for wildlife. Subject to limitations by the Association, Homeowners may provide the following habitats including native vegetation, bird feeders, nesting boxes, sheltering boxes, garden ponds, and bird baths. Artificial shelters and nesting boxes shall be maintained in good repair and not placed or distributed so as to create conflicts by harboring non-native species or attracting wildlife in such numbers as to be in conflict with humans. Nest boxes shall be constructed so that they can be cleaned and disinfected at least annually. Garden ponds and birdbaths shall be maintained in good order to prevent the proliferation of noxious insects (such as mosquitoes), toxigenic blue-green algae, bacterial pathogens, or wildlife that could present a problem for people if present in such numbers or places where conflict would occur. Garden ponds and birdbaths shall also be designed child safe in order to prevent accidental drowning by children. For more information on these topics, Homeowners are encouraged to visit the University of Florida's Wildlife Extension Web site at <http://www.wec.ufl.edu/extension>.

3.8.4 Killing or Harming Wildlife. Wild animals shall not be purposefully injured. Under some conditions, aversive conditioning (training animals to avoid a conflict situation through the use of unpleasant stimuli) may be used as part of a nuisance control program but never in such a way as to cause or sustain suffering of the animal. Wild animals may be humanely killed to relieve their suffering due to critical injury or illness. The recommended means by which this should be accomplished is euthanasia administered according to veterinary medical standards as established by the American Veterinary Medical Association (AVMA) in their most current guidelines, or other guidelines that have been sanctioned by The Humane Society of the United States (HSUS). Situations of extreme emergency in which human safety or the immediate relief of animal suffering is at issue could warrant exceptions to this requirement. Control of commensal rodents (rats and mice) where federal, state, or local regulation and standards rule; where human health and safety concerns are threatened; and to limit the growth and spread of a population due to human causes could also warrant exceptions to this requirement. Lethal control of commensal rodents may be conducted by homeowners or registered pesticide applicators, but must be done in strict accordance to Association guidelines and state laws. The use of glueboard traps under any circumstances is expressly prohibited.

3.8.5 Feeding Wildlife. Except as provided by Section 3.8.3 above, feeding wildlife is prohibited. Homeowners recognize that wildlife may be placed at risk by feeding that habituates animals to humans resulting in diminution of an animals' fear or normal caution around humans; by abnormally concentrating animals; by increasing risk of contact between wild

animals, humans or pets, and other similar situations. Wildlife may not be indirectly fed by leaving food out for companion animals. Feeding must not lead to conflicts between animals and humans. The Association may recommend proper foods and feeding schedules. The Association may also suspend all bird feeding during any period of increased nuisance wildlife activity. Bird feeders should be limited in type and number. Feeders and human-supplied water sources, including birdbaths, shall be kept clean so that disease is not transmitted. Feeders should be protected from raiding by mammals such as raccoons.

3.8.6 Wildlife Conflicts. Resolutions to conflict between humans and wild animals shall first be attempted using non-lethal means, except under extreme and immediate circumstances where human safety or the safety of a companion animal is imminently threatened. Wildlife control, including nonlethal actions, shall not be conducted simply because a homeowner considers the mere presence of a wild animal to be a “pest” or “nuisance.” The approach to wildlife conflict resolution shall follow a series of steps.

- (a) The conflict is identified,
- (b) The species causing it is determined and, if possible, the individual animal is identified,
- (c) Methods to resolve the conflict ranging from least to most invasive and injurious are identified, and
- (d) An action plan that ensures the least injurious and invasive approach suitable is evaluated and undertaken before other measures are considered.

Preferably, human-wildlife conflicts should be resolved by changing human practices (such as trash management and securing stored food), modifying habitats (changing plantings or managing landscapes), and/or structural modifications (fencing or other methods to exclude animals). Whenever practicable, the cause of human-wildlife conflict shall be sought and the conditions or circumstances that led to the conflict shall be removed.

3.8.7 Wildlife Management Plan for Controlling Wildlife Populations. Circumstances may arise where the community has evaluated a conflict situation and agreed to the need to intervene in and control a local population of wild animals (not merely an individual wild animal or small number of wild animals). Substantial and significant need must be demonstrated for human intervention to be considered, and regulations and guidelines established by the Florida Fish and Wildlife Conservation Commission shall be consulted. Alternatives to control including altering human practices (such as waste handling and landscaping) and methods to exclude or repel animals should be undertaken before control measures are considered. Control measures must be undertaken through a wildlife management plan that carefully evaluates the best methods for controlling the specific species of concern and seeks the most humane long-term solution. Plans that require multiple control measures should also include long-term strategies to prevent the recurrence of the need for control measures. Control measures may include humane animal capture and relocation to other natural habitats on the property or as allowed by state permitting authorities, reproductive intervention (such as

immunocontraception for mammals or egg addling for birds), and other measures reviewed and agreed to be humane by the Association.

3.8.8 Nests and Dens. Nests of native or migratory birds shall not be taken, moved or interfered with in any manner as stipulated under applicable state and federal law. No wild animal den or nest of unprotected bird species may be disturbed, moved, or altered except as part of a planned conflict abatement program (described under Wildlife Conflict or Controlling Wildlife Populations), or under compelling circumstances of human health, safety, or security needs. Young shall not be taken or moved from dens or nests but allowed to mature until they naturally disperse, except where the conditions listed above merit more urgent response. In these circumstances, the family integrity should be maintained by methods to prevent orphaning.

3.9 Wildfire Prevention [Optional]³⁸

3.9.1 Wildfire Prevention Committee. The Environmental Landscape Review Committee shall either act as a Wildfire Prevention Committee or shall appoint a separate Committee to carry out the wildfire prevention duties set forth in this Section.

3.9.2 General Duties of the Wildfire Prevention Committee.

(a) Application to Become a FireWise Community.³⁹ Upon initial appointment by the Association, the Wildfire Prevention Committee shall contact a FireWise representative and apply to become a FireWise Community. If recognized, the Committee shall renew their status annually. If not recognized, the Committee shall address the recognized problems and shall submit a new application annually.

(b) Wildfire Hazard Assessment of the Community. The Wildfire Prevention Committee 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.

(c) List of Recommended Trees and Shrubs. The Wildfire Prevention Committee shall maintain a list of recommended plants resistant to wildfires. Homeowners are strongly encouraged to select plants from this list when installing new flora within 30 feet of a structure.⁴⁰

³⁸ 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.

³⁹ Administered by the FDOF, Firewise Communities/USA is program in which communities help prevent losses due to wildland/urban interface fire through community education and preventative practices. To become a FireWise Community, a community or neighborhood must submit an application, available at <http://www.firewise.org/usa/>.

⁴⁰ A plant list is available from IFAS at hort.ufl.edu/fyn/list.pdf. or at <http://www.firewise.org/usa/> or

(d) Public Workshops. The Wildfire Prevention Committee shall hold a public workshop at least once a year to educate Homeowners about wildfires and preventative maintenance.

(e) Educational Information. The Association shall provide wildfire prevention information to new and future Homeowners.

3.9.3 Fire-Wise Landscaping.

(a) Landscaping by the Developer. The Developer shall install landscaping that mitigates the chance of wildfires and shall avoid the use of fire-prone flora.

(b) 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 Committee.

3.9.4 Prescribed Burning. Before any prescribed burning, the Homeowner shall notify the Wildfire Prevention Committee and the Homeowner's neighbors. The Homeowner shall comply with federal, state, and local regulations, including obtaining a permit from the Florida Division of Forestry.

3.9.5 Preventative Maintenance by Homeowners. In addition to other preventive measures, Homeowners are encouraged to:

- (a) Keep trees and shrubs properly pruned,
- (b) Remove leaf clutter and dead branches if not used for mulching
- (c) Dispose or compost cuttings and debris properly and promptly, according to Association and government restrictions,
- (d) Store firewood away 30 feet away from the house,
- (e) Maintain the irrigation system,
- (f) Store and use flammable materials in a proper manner, and
- (g) Keep gutters clean of debris build-up.

4. **ASSESSMENTS**

4.1 Florida-Friendly Landscaping Capital Fund. The Declarant shall establish a Florida-Friendly Landscaping capital fund for the initial operation of the Committee by collecting a _____% of _____ or \$_____ assessment from each Unit/Lot purchaser at the time of conveyance. Amounts paid into such fund shall not be refundable nor considered as advance payment of regular, special or individual assessments.

4.2 Resale Florida-Friendly Landscaping Capital Contribution. Subsequent to the initial sale of a Unit/Lot, upon the conveyance of a Unit/Lot from one person to another, the purchaser of the Unit/Lot shall pay to the Association a "Resale Florida-Friendly Landscaping Capital Contribution." This sum shall be used and applied as a working capital fund, and shall not be refundable or applied as a credit against the Unit Owner's payment of Assessments. The Board shall set the amount of the Resale Florida-Friendly Landscaping Capital Contribution from time to time, but the amount of the Resale Florida-Friendly Landscaping Capital Contribution shall be consistent for the Units/Lots in the Development.

5. AMENDMENT PROCEDURES.

The Association may amend the Florida-Friendly Landscaping Declaration at any time provided that changes are duly announced and posted _____ days in advance of the meeting, and two-thirds (2/3) of the Homeowners present at a duly-called meeting vote in favor of the proposed amendment. [Any amendment affecting the Stormwater Management System must have the prior approval of the _____ Water Management District or any applicable governmental entity.]

6. FINES FOR VIOLATION OF THE FLORIDA-FRIENDLY LANDSCAPING 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.

7. 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 any maintenance or repair so long as a reasonable notice is given.