FLORIDA-FRIENDLY LANDSCAPING
COVENANTS, CONDITIONS AND RESTRICTIONS

Prepared for
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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 loosing 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.¹

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 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

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, only protect homeowners so that the changes will be uniform).
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 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. 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. 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.” 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.

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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unilateral amendments done by the homeowners association or an equivalent representative group.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{12}

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.\textsuperscript{13} 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.\textsuperscript{14} 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.\textsuperscript{15} Therefore, homeowner 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.\textsuperscript{16} This document is aimed at reducing the environmental impact of these new communities. Our goal is to inform the community associations of simple conservation methods and to increase the number of associations who follow these methods.

\textsuperscript{9} See \textit{Hidden Harbour Estates}, 393 So. 2d 637 (board adopted lawn watering and well building restriction to control water salinity problem in community); \textit{Nelle v. Loch Haven Homeowners’ Ass’n, Inc.}, 413 So. 2d 28 (Fla. 1982)

\textsuperscript{10} See supra note 3 at 1119.

\textsuperscript{11} \textit{Nelle}, 413 So. 2d at 29.

\textsuperscript{12} See supra note 3 at 1103.


\textsuperscript{15} Id.

The 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 amendments\(^\ref{footnote17}\) 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.\(^\ref{footnote18}\) However, prior to turnover, a developer may reserve the right to reasonably amend the documents without the consent of the association.\(^\ref{footnote19}\) 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.\(^\ref{footnote20}\) 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.

\(^{19}\) Nelle, 413 So. 2d at 29.
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.


2.2 “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.

2.3 “Environmental Landscaping Review Committee” means a duly appointed committee 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.

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.).

2.6 “Managed Areas” includes any areas managed but not owned by the Home Owner Association.21

3. **FLORIDA-FRIENDLY LANDSCAPING**

3.1 **Areas Managed by the Association**

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.

   (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 Committee 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.

(c) **General Use of Common Areas.** Homeowners will 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 approve in writing any proposed changes to a Property’s landscaping that will change over ____% of the original landscape or proposed changes to the irrigating plans to ensure that they conform with the design concept for this Development. No approval shall be required for planting of annuals, planting of pre-approved plants or trees, or for the removal of deceased trees if they are immediately replaced with the same species of tree. 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 Committee will make available, within a reasonable amount of time, to homeowners, any document relating to the landscaping and pesticide

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21 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.
application in the Common and Managed Areas. The Association 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.

3.2.2 Irrigation Plan & Operation Manual. The Committee 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 and maximum irrigation application rate per lawn. The Committee 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.

3.2.3 Irrigation Scheduling. The Committee, for any Development that does not employ innovative technology such as soil moisture sensors or ET Controllers, will follow the UF/IFAS Extension 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 seasonal plant water requirements, recent rainfall, recent temperature extremes, and soil moisture. The Committee shall manage the irrigation systems in the Common Areas and Managed Areas according to the Irrigation Schedule. The irrigation schedule shall account for and exempt newly installed landscaping.

3.2.4 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 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.

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.

23 An exception for newly installed landscaping may also be included in this section.
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. 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.

3.2.6 **Solar Power.** The Association may not prohibit any Homeowner from installing solar power systems on the Homeowner’s 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 will be allowed to service Properties, Common Areas and Managed Areas in the Development. The Committee 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 Committee’s Certified Professionals list shall obtain written permission from the Committee before any services are performed in a Homeowners property.

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.

3.4.1 **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, and pH. 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](http://edis.ifas.ufl.edu/SS156) (last visited 4/10/2006).

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

25 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.


27 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](http://edis.ifas.ufl.edu/SS156) (last visited 4/10/2006).
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. 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 3.3.1 and to the most current version of the Florida Yards & Neighborhoods Plant List or the Water Management District’s Water Wise Guide. The Developer will design the landscape so that plants serve particular functions such as cooling, screening for privacy, shade for comfort, aesthetics, wildlife habitat, or to direct traffic flow onto and within the Development. In 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 Florida Yards & Neighborhoods Plant List or the Water Management District’s Water Wise Guide.

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

3.4.4 Mulching. Mulch shall be placed at least 3-4” from the trunks of trees or the stems of landscape plants.

3.4.5 Fertilizer Use.

(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. However, 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.

(b) Definition of “Water Bodies”. The Water Bodies referred to in this section include any 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.

(c) Buffer Zones Near Bodies of Water. Fertilizers and pesticides may not be applied within 10 feet from the edge of any water body.\(^\text{28}\)

3.4.6 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

\(^{28}\) 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).
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. However, all landscaping contractors performing any type of landscaping services such as lawn maintenance, fertilizing, or pesticide application in a Homeowners property shall follow Florida Green Industries BMPs and have a valid certification as prescribed in Section 3.2.

3.4.7 Disposal of Landscape Material.

(a) 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.

(b) Composting. The Association may not prohibit any Homeowner from installing compost bins on the Homeowner’s private property. The Association may regulate the aesthetics and sitting of composting. 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 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 three (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. Before and during construction, the designer of the Irrigation System shall approve in writing any changes to the irrigation design.

(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 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 Association or Committee observe that a Homeowner’s irrigation system is not functioning properly the Committee may correct this problem as stated in Section 3.1.5 of this Exhibit.

29 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.
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.\(^{30}\)

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

3.5.3 Homeowner Education. The Association shall create a Florida-Friendly educational package that 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 shall ensure that all new and future Homeowners receive a copy of the Irrigation Plan and Schedule and operating manuals, including any warranties, for the following:

(a) irrigation systems,

(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 will 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 should conduct an educational program on Florida-Friendly landscaping to educate all Homeowners and Association members at least once a year.\(^{31}\)

3.6 Pest Control

3.6.1 Pesticide Application. Preventive\(^{32}\) 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

\(^{30}\) Rain shut-off devices are required by Florida law for all lawns that have automatic irrigation systems. See Fla. Stat. §373.62

\(^{31}\) 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.

\(^{32}\) 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.
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 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 surfaces. Homeowners shall not alter roof or structure drainage in any manner that channels runoff onto impervious surfaces.

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 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. The Homeowner’s builder shall comply with the local government and Water Management District requirements for erosion and sediment control.

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

3.8 Pets and Wildlife

This section applies to pets and to human treatment of all wild animals anywhere within the Development on both private and common property.

33 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.
34 Allowing stormwater to drain onto the adjacent landscape reduces the amount of irrigation that is needed to sustain that landscape.
35 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.
36 See Gainesville Ordinance Ch. 30, Article VIII
37 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.
38 Wildlife portions of this section have been taken from the Draft Community Covenants for Harmony, FL. HSUS/Wildlife.- © Harmony Institute 2001.
3.8.1 **Pets.** 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. Pet owners shall pick up after their pets in the Development and appropriately dispose of such wastes. All local pet ordinances shall apply.

3.8.2 **Hunting and Trapping.** Recreational and/or commercial hunting and recreational and/or commercial trapping of any animal are prohibited.

3.8.3 **Attracting and Taming Wildlife.** Taming or making pets of wild animals is prohibited. Young wild animals found or acquired cannot be kept and reared, but must be surrendered to professional rehabilitative care. Free-roaming acclimated and partly habituated wild animals that come and go at will are accepted. Keeping a native wild animal in confinement as a captive is prohibited. Subject to limitations by the Association, Homeowners may provide habitat that offers cover, water, and food for wildlife such as native vegetation, bird feeders, nesting and sheltering boxes. 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 are allowed and encouraged but must 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. Homeowners are encouraged to visit the University of Florida's Wildlife Extension Web site at [http://www.wec.ufl.edu/extension](http://www.wec.ufl.edu/extension) for information on these topics.

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.** Feeding wild mammals, except squirrels and chipmunks, and feeding wild birds, except songbirds and hummingbirds, is prohibited except on an emergency basis as determined by the Association. Feeding any wildlife when this activity places wildlife at risk is prohibited. Wildlife may be placed at risk by feeding that habituates
animals to human, resulting in diminution of 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 wild songbirds and hummingbirds is allowed in moderation. 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 and squirrel 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 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. 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 wild 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

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. 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.

(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.

39 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.
40 Administered by the FDOF, Firewise Communities/USA is program in which communities help prevent losses due to wildland/urban interface fire though 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/.
41 A plant list is available at http://www.firewise.org/usa/ or from IFAS at hort.ufl.edu/fyn/list.pdf.
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.

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,

(c) Dispose of 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 $500 assessment from each Unit/Lot purchaser at the time of conveyance. Amounts paid into such fund shall not be considered as advance payments 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 amended the Florida-Friendly Landscaping 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. [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.