

Prepared by:
Lalit Lalwani, Civil Engineer III
Alachua County Public Works
5620 NW 120th Lane
Gainesville, FL 32653

RESILIENT FLORIDA PROGRAM
Project Number: 22FRP79
DEP Grant Agreement Number: 22FRP79
Project Name: Hills of Santa Fe Drainage Improvements

Dedication to Public Use
and
Declaration of Restrictive Covenants

This Dedication to Public Use and Declaration of Restrictive Covenants (“DDRC”) is made by Alachua County, Florida, by and through its Board of County Commissioners (“Declarant”). As used herein, the term “Declarant” shall include any and all heirs, successors, or assigns of the Declarant, and all subsequent owners of the “Property” (as hereinafter defined), and the term “Agency” shall mean the Florida Department of Environmental Protection (collectively, the “Parties”) and any subsequent successors or assigns.

Recitals

WHEREAS, the Declarant is the sole owner, in fee simple, of real property located in the “Hills of Santa Fe” area in Alachua County, Florida located at 10002 NW 25th Pl., and 10012 NW 25th Pl., Gainesville, Alachua County, Florida (the “Property”), also identified as Parcels #06236-002-000 and 06236-003-000, as more particularly described in Exhibit “A” (with the legal description) and shown in Exhibit “B” (with a survey of the Property) attached hereto and incorporated herein by reference; and

WHEREAS, Grant Agreement No. 22FRP79 (“Agreement”), for Project titled *Alachua County Hills of Santa Fe Drainage Improvements* was entered into by and between the Declarant and the Agency on 6th day of February, 2024, provides funding for certain activities that could affect wetlands or other surface waters in or of the State of Florida pursuant to the Resilient Florida Program, Section 380.093, Florida Statutes; and

WHEREAS, it is the purpose of this DDRC, and it is the Parties’ intent, to dedicate the Property to public use and place restrictions, covenants, and conditions on the Property to retain land or water areas in their natural condition, or in an enhanced, restored, or created condition; and to prevent the use or development of the Property for any purpose or in any manner that would conflict with the maintenance of the Property in its natural condition, or in accordance with an enhanced, restored, or created condition; and

WHEREAS, the Declarant, in consideration of the project authorization and State funding granted by the Agreement and other good and valuable consideration provided to the Agency, is agreeable to placing and does voluntarily place these restrictions, covenants, and conditions over the Property in perpetuity.

NOW THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Article 1. Required Uses and Prohibited Activities

1.1 Declarant hereby imposes on the Property the following requirements collectively referred to as “*allowed uses*.”

- a. Stormwater Basin and otherwise, to retain land or water.
- b. Maintenance of Stormwater Basin, which includes, but is not limited to, operations, construction of basin, reconstruction of basin, mowing and removal of vegetation necessary to construct the basin or access the Property, and efforts to upkeep, improve or repair the basin and its system, facilities, and the natural areas for the intended purposes.

1.2 The following activities, collectively referred to as the “disallowed activities,” shall also be expressly prohibited in or on the Property, unless authorized by 1.1 above or the Agreement:

a. Construction or placing of buildings, roads, signs, billboards, or other advertising, utilities, or other structures on or above the ground, excepting signs for the purpose of preventing trespassing or illegal entry;

b. Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;

c. Removing, destroying, or trimming trees, shrubs, or other vegetation, except:

i. The removal of dead trees and shrubs or leaning trees that could cause damage or poses an unacceptable risk to persons or property is authorized;

ii. The destruction and removal of noxious, nuisance, or exotic invasive plant species as listed on the most recent Florida Exotic Pest Plant Council’s List of Invasive Species is authorized;

iii. Activities authorized by the Agreement or otherwise approved in writing by the Agency are authorized; and

iv. Activities conducted in accordance with a burn authorization timely granted by the Florida Forest Service are authorized. No later than seven (7) days before commencing any activities to implement a burn, Declarant shall notify the Agency in writing of its intent to seek a burn authorization from the Florida Forest Service and commence burning activities, including the time period in which such burning activities will be completed. All such activities may only be completed during the time period approved by the Florida Forest Service and must be conducted in accordance with Chapter 590, *Florida Statutes*, and Chapter 5I-2, *Florida Administrative Code*, as applicable;

d. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface, excepting the construction activities authorized in the Agreement and activities taken to restore, enhance or create natural areas;

e. Surface use, except for purposes that permit the land or water area to remain predominately in its natural or enhanced condition;

f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation including, but not limited to, ditching diking, and fencing, except where fencing is found warranted by the Declarant for security, safety, or to prevent illegal entry, risks, or prohibited uses;

g. Acts or uses detrimental to such aforementioned retention of land or water areas;

h. Acts or uses which are detrimental to the preservation of the structural integrity or physical appearance of sites or properties having historical, archaeological, or cultural significance; and

i. If archaeological or historic sites are located on the Property, the Declarant must comply with Chapter 267, *Florida Statutes*. The collection of artifacts from the Property or the disturbance of archaeological and historic sites on the Property are prohibited unless prior written authorization has been obtained from the Department of State, Division of Historical Resources.

1.3 The Declarant will take reasonable steps to prevent the unauthorized use of the Property or any use that does not comply with this DDRC.

1.4 All buildings, structures, improvements, land alterations, and signs not authorized by this DDRC will require prior written approval by the Agency and, if approved, an amendment to this DDRC pursuant to Article 6.3.

Article 2. Transition

2.1 Upon acquisition of the Property by the Declarant, if the Property will temporarily remain subject to any of the disallowed activities, the Declarant will provide notice to the Agency, either in this DDRC or as provided for in Article 6.8 below, within thirty (30) calendar days of the closing date, as well as provide a timeline to the Agency of when all such disallowed activities will cease and when restoration, if necessary, will begin.

2.2 The following disallowed activities are either currently known to exist on the Property or will be taking place on the Property upon closing.

a. N/A

2.3 The Declarant will cease all disallowable activities either currently taking place on the Property or that will be taking place on the Property upon closing within (6) months, unless otherwise approved in writing by the Agency, and will restore the Property, if necessary, according to the following timelines

a. N/A

Article 3. Transfer of the Property or any Interest Therein

3.1 If the Declarant seeks to transfer title to the Property, the Declarant must inform the potential buyer of this DDRC and give the Agency prior notice in writing of the potential sale as provided for in Article 6.8 below at least ninety (90) days before closing.

3.2 If the Property is transferred, in order to ensure the perpetual nature of this DDRC, these restrictions must be referenced in any subsequent lease or deed of conveyance, including the recording book and page of record of this DDRC.

3.3 If the Declarant seeks to enter a lease for management or use of the Property, the Declarant shall provide a copy of the draft lease or management plan to the Agency as provided for in Article 6.8 below at least thirty (30) calendar days prior to entering into that agreement.

3.4 The Declarant cannot use the interest acquired by it in the Property as security for any of the Declarant's debt.

3.5 If title to the Property, or any part thereof, is taken by a governmental body through the exercise or the threat of the exercise of the power of eminent domain, the Declarant must deposit the condemnation award with the Agency. The Declarant must begin immediately to rebuild, replace, repair, or restore the Property consistent with this DDRC. The Agency will make the condemnation award available to the Declarant to provide funds for restoration work. If the Declarant fails to timely initiate or complete the rebuilding, repair, or restoration of the Property, the Agency has the right, in addition to any other remedies at law or in equity, to use those proceeds to repair, restore, or rebuild the Property to prevent the occurrence of a default.

Article 4. Corrective Action, Enforcement, Termination, and Remedies

4.1 **Corrective Action Plan:** If the Declarant violates any term or condition of this DDRC, the Agency will notify the Declarant of the violation by written notice given by personal delivery, registered mail, or registered expedited service as provided for in Article 6.8 below. The Declarant will immediately act to cure the violation and must complete the cure within thirty (30) days after receiving notice of the violation. If the situation cannot reasonably be cured within thirty (30) days, the Declarant will submit a timely written request to the Resilient Florida Program Manager for additional time. This request shall include the current status of the violation, the reasons for the delay, and a time frame for completing the cure. The Agency will approve or deny the request in writing within thirty (30) days of receiving the request. Any violation must be resolved within one hundred twenty (120) days of the Declarant's receiving notice of the violation unless the Declarant can demonstrate extenuating circumstances to justify a greater extension of time.

4.2 **Loss of Future Project Funds:** If the Declarant fails to timely correct violations of this DDRC or uses the Property for other than the purposes specified herein or allows a third party to do so, the Declarant, after notice from the Agency, will become ineligible for future project funding via the Resilient Florida Program unless the Agency waives such ineligibility in writing.

4.3 **Enforcement:**

a. The terms and conditions of this DDRC may be enforced by the Agency and its assigns at law or equity, at the Agency's reasonable discretion, to prevent the occurrence of any of prohibited uses or disallowed activities set forth herein, and to require the restoration of such areas or features of the Property that may be damaged by any activity or use that is inconsistent with this DDRC. Any forbearance on behalf of the Agency to exercise its rights in the event of the Declarant to comply with the provisions of this DDRC shall not be deemed or construed to be a waiver of the Agency's rights hereunder in the event of any subsequent failure of the Declarant to comply. The Agency shall not be obligated to the Declarant, or any other person or entity, to enforce the provisions of this DDRC.

b. In addition to all other rights and remedies at law or in equity, the Agency has the right to seek temporary and permanent injunctions against the Declarant for any disallowed activities or uses conducted on the Property contrary to the requirements of Articles 1.1 and 1.2. The Agency has the right to seek specific performance of any of the covenants and restrictions of this DDRC concerning the construction and operation of the Property.

4.4 Termination; Release. This DDRC is binding until a release is executed by the Agency Secretary (or designee) and is recorded in the public records of the county in which the Property is located. To receive prior approval from the Agency to remove or amend any requirement herein, including full release of this DDRC, the Declarant must request written approval for such removal or amendment from the Agency in writing as provided for in Article 6.8 below, including the Declarant's reasoning for making the request. This DDRC may be modified in writing only pursuant to Article 6.3.

Article 5. Access and Duration

5.1 Access. Declarant and its successors and assigns shall hereby grant site access to the Agency or its successors and assigns, with any necessary equipment or vehicles to inspect the entire Property, for the purpose of determining compliance with this DDRC. The Agency will notify the Declarant as provided for in Article 6.8 below at least twenty-four (24) hours prior to accessing the Property. This DDRC does not convey to the public the right to enter the Property for any purpose whatsoever. If the Property does not abut a publicly-dedicated right-of-way allowing the Agency access to the site, the Declarant or its successors or assigns shall draft and record an access easement to the benefit of the Agency in the public records of the county where the Property is located within thirty (30) days of closing.

5.2 Duration. It is the intention of this DDRC that the Property (as more fully described in Exhibit A) be hereby dedicated in perpetuity to the use of the general public for the purposes specified in Article 1, along with other related uses necessary for the accomplishment of those purposes. The restrictions contained in this DDRC shall run with the land and with the title to the Property until terminated as set forth in this DDRC and shall apply to and be binding upon and inure to the benefit of the successors and assigns of Declarant and to any and all parties hereafter having any right, title, or interest in the Property or any part thereof.

Article 6. Miscellaneous

6.1 **Owner's Rights.** The Declarant, its successors and assigns, reserves all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein and are consistent with the intent and purposes of this DDRC.

6.2 **Taxes.** When perpetual maintenance of the Property is required by the Agreement, Declarant shall pay, before delinquency, any and all taxes, assessments, fees, and charges of whatever description levied on by competent authority on the Property, and shall furnish the Agency with satisfactory evidence of payment upon request.

6.3 **Modification.** Either Party may request modification of the provisions of this DDRC at any time. The Agency will review any changes requested by the Declarant to ensure that the requested changes will not violate the statutes, rules, or other regulations governing the Resilient Florida Program. Changes that are mutually agreed upon will be valid only when reduced to writing, signed by the current owner of the Property and the Agency, and recorded in the public records of Alachua County, Florida.

6.5 **Entire Agreement.** This instrument sets forth the entire agreement of the Parties with respect to this DDRC.

6.6 **Severability.** If any provision of this DDRC or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this DDRC shall not be affected thereby, as long as the purpose of the DDRC is preserved.

6.7 **Terms and Restrictions.** The Declarant shall insert the terms and restrictions of this DDRC in any subsequent deed or other legal instrument by which the Declarant divests itself of any interest in the Property.

6.8 **Notice and Contact.** All notices, consents, approvals, or other communications hereunder shall be in writing and shall be deemed properly given if sent by electronic mail, hand delivery, or first class, United States certified mail, return receipt requested, addressed to the appropriate party specified below. The Agency will consider that the notice is received on the date of delivery if by electronic mail or personal delivery or upon actual receipt if sent by registered mail.

Agency: Resilient Florida Program
Florida Department of Environmental Protection
2600 Blair Stone Road, MS #235
Tallahassee, Florida 32399
(850) 245-7600
ResilientFloridaGrants@FloridaDEP.gov

Declarant: Alachua County
Attn: Alachua County Public Works Director
5620 NW 120th Lane
Gainesville, FL 32653
(352) 548-1214
RGavarrete@alachuacounty.us

If the Declarant's address or representative changes after execution of this DDRC, the Declarant must notify the Agency of the change as provided above.

6.9 **Recording.** Upon execution by the Parties hereto, the Declarant shall record and file this instrument in the official public records of Alachua County, Florida, either within thirty (30) days of execution of this DDRC if the Property was acquired prior to execution of this DDRC or concurrent with full acquisition (i.e., closing) of the Property if the Property has not been acquired prior to execution of this DDRC. The Declarant shall pay all fees and charges incurred in connection therewith.

6.10 **Applicable Law and Venue.** This DDRC shall be construed under the laws of the State of Florida, and venue for any actions arising out of this DDRC shall lie in the Florida county where the Property is located.

6.11 **Counterparts.** This DDRC may be executed in two or more counterparts, each of which together will be deemed an original, but all of which together will constitute one and the same instrument.

6.12 **Electronic Signatures.** In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature will create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such electronic signature page were an original.

6.13 **Binding Effect.** The terms, conditions, restrictions, and purposes imposed with this DDRC shall be binding upon Declarant and shall run with the Property until the termination of the Agreement.

6.14 **Declarant’s Certification.** The Declarant certifies that it is lawfully seized of the Property described herein in fee simple; that the Property is free and clear of all encumbrances that are inconsistent with the terms of this DDRC (or that such parties have joined this DDRC, subordinated their interests to this DDRC, or been informed of the existence and execution of this DDRC, as appropriate); that all mortgages and liens on the Property, if any, have been subordinated to this DDRC; and that the Declarant has good right and lawful authority to make this DDRC.

Exhibit A

Parcel #06236-002-000

LOT TWO (2) OF HILLS OF SANTA FE, a Planned Unit Development, as per plat thereof recorded in Plat Book "J", Page 24 of the Public Records of Alachua County, Florida.

AND

Parcel #06236-003-000

LOT THREE (3) OF HILLS OF SANTA FE, a Planned Unit Development, as per plat thereof recorded in Plat Book "J", Page 24 of the Public Records of Alachua County, Florida.

Exhibit B

A Boundary Survey will be conducted once the grant is finalized and forwarded to the Department within thirty (30) days of the Grantee's receipt of the finalized survey.

IN WITNESS WHEREOF, the Parties hereto have duly executed this document of their own accord, as of the latest date written below.

DECLARANT:

BOARD OF COUNTY COMMISSIONERS
ALACHUA COUNTY, FLORIDA

By: _____

Mary C. Alford, Chair
Board of County Commissioners

Date: _____

ATTEST:

APPROVED AS TO FORM

J.K. "Jess" Irby, Esq., Clerk
(SEAL)

Alachua County Attorney's Office

Approved as to form by the Florida Department of Environmental Protection, Office of General Counsel _____.

IN WITNESS WHEREOF, the Florida Department of Environmental Protection has executed this instrument, this _____ day of _____, 20_____.

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

{{Printed name of signatory}}
{{Title of signatory}}
{{Mailing Address}}

Signed, sealed and delivered in the presence of:

Witness: _____ Date: _____
Print Name: _____

Witness: _____ Date: _____
Print Name: _____

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 20_____, by _____ as representative for the Florida Department of Environmental Protection.

Personally Known _____ OR Produced Identification _____.
Type of Identification Produced _____.

Signature of Notary Public

Print Name of Notary Public

Commission No. _____

Commission Expires: _____