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# DECLARATION OF RESTRICTIVE COVENANTS—Insert

(For use when Developer wants to include a conservation easement in a Declaration)

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ARTICLE \_\_\_\_\_ (insert article number) - **CONSERVATION EASEMENTS**

**Section 1 – CONSERVATION EASEMENT AREA.**

Pursuant to the provisions of Section 704.06, Florida Statutes (“F.S.”), \_\_\_\_\_ (insert name of Declarant, typically fee simple owner who is the Developer) (hereinafter referred to as “Grantor” in this Article) hereby voluntarily grants and conveys to \_\_\_\_\_ (insert name of WMD or DEP) (hereinafter referred to as “Grantee” in this Article) a conservation easement in perpetuity over the Conservation Easement Area (the “Conservation Easement”). Grantor grants this Conservation Easement as a condition of permit number \_\_\_\_\_ (the Permit) issued by Grantee, to offset or prevent adverse impacts to natural resources, fish and wildlife, and wetland functions. In consideration of the consent granted by the Permit or other good and valuable consideration provided to Grantor, Grantor hereby covenants with Grantee that Grantor is lawfully seized of said Conservation Easement Area in fee simple; that the Conservation Easement is free and clear of all encumbrances that are inconsistent with the terms of this Conservation Easement; all mortgages and liens on the Conservation Easement area, if any, have been subordinated to this Conservation Easement; that Grantor has good right and lawful authority to convey this Conservation Easement; and that it hereby fully warrants and defends record title to the Conservation Easement Area hereby conveyed against the lawful claims of all persons whomsoever.

**1.1. Purpose.** The purpose of this Conservation Easement is to retain land or water areas in their existing, natural, vegetative, hydrologic, scenic, open or wooded condition and to retain such areas as suitable habitat for fish, plants, or wildlife in accordance with Section 704.06, F.S. Those wetland and upland areas included in this Conservation Easement which are to be preserved, enhanced, restored, or created pursuant to the Permit (or any modification thereto) and any Management Plan attached hereto as Exhibit “\_” (insert exhibit number) (“Management Plan”) which has been approved in writing by the Grantee, shall be retained and maintained in the preserved, enhanced, restored, or created condition required by the Permit (or any modification thereto).

**1.2. Prohibited Uses.** Except for activities that are permitted or required by the Permit (or any modification thereto) (which may include restoration, creation, enhancement, maintenance, and monitoring activities, or surface water management improvements) or other activities described herein or in the Management Plan (if any), any activity on or use of the Conservation Easement Area inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities are expressly prohibited in or on the Conservation Easement Area:

- a. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;
- b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;
- c. Removing, destroying, or trimming trees, shrubs, or other vegetation, except:
  - i. The removal of dead trees and shrubs is authorized;
  - ii. The removal of noxious 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 Permit or described in the Management Plan or otherwise approved in writing by the Grantee are authorized; and

iv. Activities conducted in accordance with a wildfire mitigation plan that has been approved in writing by the Grantee are authorized. No later than thirty (30) days before commencing any activities to implement the approved wildfire mitigation plan, Grantor shall notify the Grantee in writing of its intent to commence such activities. All such activities may only be completed during the time period for which the Grantee approved the plan.

d. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;

e. Surface use except for purposes that permit the land or water area to remain in its natural or restored/enhanced/created 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, clearing, and fencing;

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

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.

**1.3. Responsibilities.** Grantor, and its successors and assigns, shall be responsible for the periodic removal of trash and other debris which may accumulate in the Conservation Easement Area.

**1.4. Reserved Rights.** Grantor reserves unto itself, and its successors and assigns, all rights accruing from its ownership of the Conservation Easement Area, including the right to engage in or permit or invite others to engage in all uses of the Conservation Easement Area that are not prohibited herein and are not inconsistent with the Permit (or modification thereto), Management Plan, or the intent and purposes of this Conservation Easement.

**1.5. Grantee's Rights.** To accomplish the purposes stated herein, Grantor conveys the following rights to Grantee:

a. To enter upon the Conservation Easement Area at reasonable times with any necessary equipment or vehicles to inspect, determine compliance with the covenants and prohibitions contained in this easement, and to enforce the rights herein granted in a manner that will not unreasonably interfere with the use and quiet enjoyment of the Conservation Easement Area by Grantor at the time of such entry; and

b. To proceed at law or in equity to enforce the provisions of this Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and to require the restoration of such areas or features of the Conservation Easement Area that may be damaged by any activity or use that is inconsistent with this Conservation Easement.

**1.6. No Dedication.** No right of access by the general public to any portion of the Conservation Easement Area is conveyed by this Conservation Easement.

**1.7. Grantee's Liability.** Grantee's liability shall be limited as provided in subsection 704.06(10) and section 768.28, F.S. Additionally, Grantee shall not be responsible for any costs or liabilities related to the operation, upkeep, restoration, or maintenance of the Conservation Easement Area.

**Section 2 – ACCESS, ENFORCEMENT, REMEDIES, DURATION, and MISCELLANEOUS.**

**2.1. Enforcement.** Enforcement of the terms, provisions and restrictions of this Conservation Easement shall be at the reasonable discretion of Grantee, and any forbearance on behalf of Grantee to exercise its rights hereunder in the event of any breach hereof by Grantor, shall not be deemed or construed to be a waiver of Grantee's rights hereunder. Grantee shall not be obligated to Grantor, or to any other person or entity, to enforce the provisions of this Conservation Easement.

**2.2. Taxes.** When perpetual maintenance is required by the Permit, Grantor shall pay before delinquency any and all taxes, assessments, fees, and charges of whatever description levied on or assessed by competent authority on the Conservation Easement Area, and shall furnish the Grantee with satisfactory evidence of payment upon request.

**2.3 Assignment.** Grantee will hold this Conservation Easement exclusively for conservation purposes. Grantee will not assign its rights and obligations under this Conservation Easement except to another organization or entity qualified to hold such interests under the applicable state laws.

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

**2.5. Terms and Restrictions.** Grantor shall insert the terms and restrictions of this Conservation Easement in any subsequent deed or other legal instrument by which Grantor divests itself of any interest in the Conservation Easement.

**2.6 Written Notice.** All notices, consents, approvals, or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest.

**2.7. Recordation.** Grantor shall record this Conservation Easement (as part of the Declaration) in timely fashion in the public records of \_\_\_\_\_ County, Florida, and Grantor, and its successors and assigns, shall rerecord this Conservation Easement at any time Grantee may require to preserve its rights. Grantor shall pay all recording costs and taxes necessary to record this Conservation Easement in the public records. Grantor will hold Grantee harmless from any recording costs or taxes necessary to record this Conservation Easement in the public records.

**2.8. Modification or Termination.** This Conservation Easement shall not be modified or terminated without the prior written approval of the Grantee, which shall be filed in the public records of \_\_\_\_\_ County, Florida. Grantee's written approval is only required to amend provisions of the Declaration relating to this Conservation Easement or other provisions relating to the operation, repair, or maintenance of a surface water or stormwater management system. The Declaration for this Conservation Easement shall be automatically renewed by Grantor, or its successors and assigns, and no inaction by them will render this Conservation Easement unenforceable.

**2.9. Successors and Assigns.** The covenants, terms, conditions and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of the parties hereto and their successors and assigns and shall continue as a servitude running in perpetuity with the Conservation Easement Area.

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**\*\*\* Please also add the following to the Definitions section of the Declaration \*\*\***

**A. If Conservation Easement Area referenced by Plat**

“Conservation Area” or “Conservation Easement Area” shall mean and refer to all such property so designated as Tract(s) \_\_\_\_\_ upon any recorded Subdivision Plat or Plats of the Properties. Declarant reserves the right to add lands to the Conservation Easement Area.

*If the plat has not yet been recorded, please also provide a preliminary plat with the following note added to the face of the plat:*

Tracts \_\_\_\_\_ are subject to a Conservation Easement in favor of \_\_\_\_\_ pursuant to Section 704.06, Florida Statutes.

OR

**B. If Conservation Easement Area referenced by Legal Description**

“Conservation Area” or “Conservation Easement Area” shall mean and refer to all property described in the legal description attached hereto as Exhibit \_\_\_\_\_ [Note: *this is the land to be preserved, not the entire project site*]. Declarant reserves the right to add lands to the Conservation Easement Area.