

MERRILL HILLS

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

WHEREAS, the Merrill Hills Owners Association, Inc. was originally organized in December 1995 and the original Merrill Hills Declaration of Covenants, Conditions and Restrictions was recorded in the Public Records of Duval County, Florida as Bk: 8266 Pages 347-368; and

WHEREAS, the Developers of the Merrill Hills Subdivision have completed their work and have deeded the Common Elements to the Merrill Hills Homeowners Association, Inc. as recorded in the Public Records of Duval County and

WHEREAS, the Merrill Hills property owner's desire documents which eliminate the developer language and more clearly reflect the current operation and procedures of the Association. Now therefore, this restatement and amended revision of the Declaration of Covenants, Conditions and Restrictions of the Merrill Hills Homeowners Association, Inc. is made by the owners for themselves, their successors, grantees and assigns for the purpose of restating the original Declaration and incorporating all amendments thereto in one document and for the purpose of future Merrill Hills conveyances and encumbrances it shall only be necessary to make reference to this one document.

NOW THEREFORE, each and every Lot located within the Merrill Hills Subdivision lying and being situated in Duval County, Florida recorded in the Public Records of Duval County in Plat Book 49 Pages 76 through 76D inclusive, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of protecting the value and desirability of and which shall run with the land and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

1. **ASSOCIATION:** “Association” shall mean and refer to Merrill Hills Owners Association, Inc., a Florida corporation not-for-profit, its successors and assigns.
2. **OWNER:** “Owner” shall mean and refer to the owner of record, whether one or more persons or entities, of a fee simple title to any Residential Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
3. **PROPERTY:** *“Property” shall mean and refer to the real property described in Article I paragraph 6 and such other real estate as may hereafter be brought within the jurisdiction of the Association.*
4. **COMMON AREA:** “Common Area” shall mean and refer to all real property *and improvements located thereon of the real property dedicated and owned from time to time by the Association for the common use and enjoyment of the Owners as described on the attached Exhibit “B”.*
5. **RESIDENTIAL DWELLING UNIT:** “Residential Dwelling unit” shall mean and refer to any part of the Property which has been improved for use as a single-family dwelling, including, without limitation, any single family detached dwelling, garden home, patio home or attached townhome.
6. **RESIDENTIAL LOT:** “Residential Lot” shall mean and refer to *the Lots and Tracts of land in Duval County, Florida recorded in the Public Records of Duval County, Florida in Plat Book 49, Pages 76 through 76D inclusive.*
7. **ARTICLES:** “Articles” shall mean and refer to the Articles of Incorporation of the Association.
8. **BOARD:** “Board” or “Board of Directors” means and shall refer to the Board of Directors of the Association.
9. **BYLAWS:** “Bylaws” means and shall refer to the Bylaws of the Association.
10. **DECLARATION:** “Declaration” means and shall refer to this Declaration of Covenants, Conditions and Restrictions applicable to the Property.
11. **VA:** “VA” means and shall refer to the Veterans Administration and its successors and assigns.
12. **FHA:** “FHA” means and shall refer to the Federal Housing Administration and its successors and assigns.
13. **MORTGAGEE:** “Mortgagee” means and shall refer to any institutional holder of a first mortgage encumbering a portion of the Property as security for the performance of any

obligation, including a bank, savings and loan association, insurance company, any real estate or mortgage investment trust, and insurers or guarantors of mortgages, including, without limitation, the Federal National Mortgage Association, the VA, the FHA or any lender generally recognized as an institutional type lender.

14. **UNIT:** “Unit” used without qualifying language includes Residential Lots and Residential Dwelling Units.
15. **SURFACE WATER OR STORMWATER MANAGEMENT SYSTEM:** “Surface Water or Stormwater Management System” shall mean and refer to a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapters 40C-4, 40C-40, or 40C –42, .A.C.
16. **MEMBER:** *“Member” shall mean and refer to every person or entity who holds membership in the Association pursuant to the provisions of this instrument, the Articles of Incorporation and the Bylaws of the Association.*
17. **SUBDIVISION:** *“Subdivision” shall mean and refer to all the real estate described above and the property in its entirety known as the Merrill Hills Subdivision in the Official Records of Duval County, Florida.*

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS

1. **Right to Membership.** Every owner of a Residential Lot, which is subject to this Declaration, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Residential Lot.
2. **Membership votes.** Each member shall be entitled to one (1) vote for each Residential Lot owned.
3. **Multiple Owners.** When any Residential Lot is owned of record in the name of two (2) or more persons or entities, whether fiduciaries or in any other manner of joint or common ownership, only one of such persons, who shall be designated by such joint owners, shall become the member entitled to vote. Such vote shall be exercised as they among themselves determine but in no event shall more than one (1) vote be cast with respect to any such Residential Lot. Where a partnership, corporation or other entity is a member, such member may designate one representative of such partnership or such corporation or other entity to be the member entitled to vote.

ARTICLE III

COVENANT OF MAINTENANCE ASSESSMENTS

1. **Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Residential Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual

assessments or charges and special assessments, such assessment to be established and collected as hereinafter provided. The annual and special assessments, together with interest, cost, late charges and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Residential Lot against which each such assessment is made. Each such assessment, together with interest, costs, late charges and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Residential Lot at the time when the assessment fell due. In the case of Co-Owners, each Co-Owner shall be jointly and severally liable for the entire amount of the assessment. The personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor in title.

2. **Purpose of Annual Assessments.** The annual assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Property and for the improvement, maintenance and operation of the Common Areas as described by Exhibit B. In addition, the assessments shall be used for the maintenance and repair of the Surface Water or Stormwater Management Systems including, but not limited to, work within retention areas, drainage structures and drainage easements.
3. **Maximum Annual Assessment.**
 - (a) From and after January 1 of each year the maximum assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.
 - (b) From and after January 1 of each year the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3rd) of members who are voting in person or by proxy, at a meeting duly called for this purpose.
 - (c) The Board shall fix the annual assessment at an amount not in excess of the maximum.
 - (d) The Board, in determining the common expenses, may establish and maintain a reserve fund for the periodic maintenance, repair and replacement of the Common Areas or for such other purposes as the Board deems prudent for the operation of the Association.
4. **Special Assessments.** In addition to the annual assessments authorized above, the Board may levy, in any assessment year, a special assessment applicable to that year provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of all members at a meeting duly called for this purpose.

In addition, the Board may assess a special assessment against an Owner for the cost to repair any damage or injury to the Common Areas caused by the Owner's negligence or for such other amount as determined by the Board due to on Owner's failure to comply with the provisions of this Declaration as hereinafter provided.
5. **Notice and Quorum for any action authorized under Paragraphs 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under paragraphs 3 and 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such meeting, the presence of members or of proxies entitled to cast a majority of the votes shall constitute a quorum.
6. **Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Residential Lots (except special assessments specifically assessed

against an Owner for cost incurred solely on account of his/her negligence or failure to comply herewith).

7. **Date of Commencement of Assessments; Due Dates.** The annual assessments provided for herein shall commence as to all Residential Lots conveyed to an Owner on the first day of the month following the conveyance to the Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The annual assessment shall be payable at the times and in the manner determined the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Residential Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Residential Lot is binding upon the Association as of the date of its issuance.
8. **Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessment not paid by its due date shall be subject to a late charge of ten percent (10%) of the amount of the payment due and shall bear interest from the due date at the rate of fifteen percent (15%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Residential Lot. No Owner may escape liability for the assessments provided herein by abandonment of his/her Residential Lot. The Board may suspend the voting rights and right to use common areas of a member during any period in which such member shall be in default of any assessment levied by the Association.
9. **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Residential Lot shall not affect the assessment lien. However, the sale or transfer of any Residential Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Residential Lot from the lien thereof. Any such delinquent assessments which were extinguished pursuant to the forgoing may be reallocated and assessed against the remaining Residential Lots as a common expenses or special assessment.

ARTICLE V

ARCHITECTURAL CONTROL

1. **Design Criteria.** It is the intent of Merrill Hills Homeowners Association, Inc. to create and maintain subdivision in harmony with its surroundings and the natural elements of the Property. The Residential Dwelling Units constructed or to be constructed on the property have been or will be designed to be compatible with each other and to establish a level of construction standards. No owner is permitted to make any changes to the exterior of any Residential Dwelling Unit or other improvement on the Property without the prior *written* approval of the Architectural Review Committee of the Association (hereinafter referred to as the "ARC").
2. **Necessity of Architectural Review and Approval.** No Residential Dwelling Unit, building, fence, wall or other structure, which is visible from outside any Residential

Dwelling Unit, shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change in alteration, including, without limitation, a change in the exterior color, be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the ARC. In the event the ARC fails to approve or disapprove such design and location within (30) days after the plans and specifications have been submitted to them, approval will not be required and this Article will be deemed to have been fully complied with.

3. **Architectural Review Committee.** The ARC shall be appointed by a majority vote of the Board at a meeting duly called for such purpose or by resolution executed by a majority of the members of the Board. The majority of the ARC shall constitute a quorum to transact business at any meeting.

ARTICLE VI

USE OF PROPERTY

In order to provide for congenial occupancy of the Property and for the protection of the value of the Residential Dwelling Units, the use of the Property shall be in accordance with the following provisions so long as the Property is subject to the Declaration.

1. **Common Areas.** The Common Areas shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Owners. There shall be no obstruction or alteration of, nor shall anything be stored, altered or constructed in, or removed from, the Common Areas without the prior written consent of the Board.
2. **Insurance.** No use shall be made of the Common Areas, which will increase the rate of insurance upon the Property without the prior consent of the Board. No Owner shall permit anything to be done or kept on the Common Areas which will result in cancellation of insurance on any part of the Common Areas or which will be in violation of any law. No waste shall be committed in the Common Areas.
3. **Nuisances.** No obnoxious or offensive activity shall be allowed upon the Common Areas, nor any use or practice which is the source of annoyance or nuisance to Owners or guest or which interferes with the peaceful possession and proper use of the Common Areas by Owners. The Board shall have the power to adopt reasonable rules and regulations governing the use of the Common Areas and the personal conduct of the members and their guests thereon, and to establish fines for the infraction thereof as hereinafter provided. In addition, the Board may also suspend the right of a member to use the Common Areas, after notice and hearing for a period not to exceed (60) days, as a result of such members infraction of such published rules and regulations.
4. **Lawful Use.** No immoral, improper, offensive or unlawful use shall be made of the Common Areas or any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies pertaining to maintenance,

replacement, modification or repair of the Common Areas shall be the same as is elsewhere herein specified.

5. **Surface Water or Stormwater Management System.** The Association shall be responsible for the maintenance, operation and repair of the surface Water or Stormwater Management System(s). Maintenance of the Surface Water or Stormwater Management System(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the St. Johns River Water Management District. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the Surface Water or stormwater Management System shall be permitted, or if modified, as approved by the St. Johns River Water Management District.

ARTICLE VII

LAKES

1. **Water level and use.** With respect to the lakes now existing or which may hereafter be erected within the Property, only the Association shall have the right to remove any water from such lakes for the purpose of irrigation or other use or to place any matter or object in such lakes. The Association shall have the sole and absolute right to control the water level of all lakes and to control the growth and eradication of plants, fowl, reptiles, animals, fish and fungi in and on such lake. No dock, moorings, pilings, boat shelters or other structure shall be erected on or over the lakes without the approval of the ARC. No gas or diesel driven boat shall be permitted to be operated on any lake. Canoes and small, noncombustion powered boats will be permitted. All permitted boats shall be stored, screened from public view, and shall be stored either within existing structures on the Owner's Residential Lot, in designated areas within the planned development or behind landscaping approved by the ARC.
2. **Lake Embankments.** The lake embankments shall be maintained by the Owner owning the lake bottom. The embankments shall be maintained by each applicable Owner so that the grass, planting or other lateral support shall prevent erosion of the embankment of the lake and the height, grade and contour of such embankments, shall not be changed without the prior written consent of the ARC. If the Owner required to maintain the embankment fails to maintain such embankment as part of his/her landscape maintenance obligations in accordance with the foregoing, the Association and its agent or representative shall have right, but not the obligation, to enter upon such Owner's property to perform such maintenance which may be reasonably required, all at the expense of the appropriate Owner.
3. **Easement for Access and Drainage.** The Association shall have a perpetual, non-exclusive easement over all areas of the Surface Water or Stormwater Management Systems for access to operate, maintain or repair such systems. This easement shall provide the Association with the right to enter upon any portion of a Residential Lot which is adjacent to or a part of the Surface Water or Stormwater Management System, at a reasonable time and in a reasonable manner, to operate, maintain or repair the same as required by the St. Johns River Water Management District permit. In addition, the Association shall have a perpetual, non-exclusive easement for drainage over the entire

Surface Water or Stormwater Management System. No person shall alter the drainage flow of the Surface Water or Stormwater Management System, including the buffer areas or swales, without prior written approval of the St. Johns River Water Management District.

ARTICLE VIII

EASEMENTS

1. **Drainage Easements.** Owners shall not obstruct or divert flow from drainage easements. Except as provided herein, the existing drainage system shall not be altered so as to divert the flow of water onto an adjacent property or into sanitary sewer lines.

ARTICLE IX

RIGHTS OF MORTGAGEES

1. **Rights of Mortgagees.** Upon written request to the Association identifying the name and address of a mortgagee, such mortgagee will be entitled to timely written notice of:
 - (a) Any condemnation loss or casualty loss which affects a material portion of the Property or any Residential Dwelling Unit on which there is a first mortgage held, insured or guaranteed by such mortgagee.
 - (b) Any delinquency in the payment of the assessments or charges owed by an Owner of Residential Dwelling Unit subject to a first mortgage held, insured or guaranteed by such mortgagee, which remains due but unpaid for a period of sixty (60) days.
 - (c) Any lapse, cancellation or material modification of any insurance policy, fidelity bond or other bond maintained by the Association
 - (d) Any proposed action which would require the consent of a specified percentage of the mortgage holders.

ARTICLE X

RECONSTRUCTION OR REPAIR AFTER CASUALTY

1. **Restoration and Repair.** In the event that any portion of the Common Areas is damaged or destroyed by casualty, it shall be repaired or restored to substantially the condition prior to the damage or destruction by the Association.
2. **Insurance Proceeds.** Repair or reconstruction of the Common Areas shall be substantially in accordance with the plans and specifications pursuant to which the same was originally constructed. All insurance proceeds shall be applied to the restoration and repair. If the insurance proceeds are insufficient, the deficit shall be assessed against all Owners a special assessment. If there is a surplus of insurance proceeds, it shall become the property of the Association.

ARTICLE XI
RESTRICTIONS AFFECTING RESIDENTIAL LOTS

1. **Residential Use.** Each of the numbered lots in the subdivision shall be Residential Lots used for single family dwellings only. No business or commercial building may be erected on any Residential Lot and no business may be conducted on any part thereof.
2. **Location of Structures.** The location of all structures (including building, fences and walls) and shrubbery placed upon any Residential Lot shall comply with the requirements of all zoning and building ordinances applicable thereto.
3. **Sheds, Shacks or Trailers.** No shed, shack, mobile home, trailer, tent or other temporary or movable building or structure of any kind shall be erected or permitted to remain on any Residential Lot ***unless approved in writing by the ARC or Board of Directors.*** (approved by membership June 18, 2001)
4. **No Offensive Activities.** No illegal, obnoxious or offensive activity nor any nuisance whatever shall be permitted or carried on in any part of the Property, nor shall anything be permitted therein which will become an annoyance to the neighborhood. No trash, garbage, rubbish, debris, waste material or other refuse shall be deposited or allowed to accumulate on any part of the Property.
5. **Exterior Maintenance.** Each Owner shall be responsible for the maintenance of the lawn, landscaping and exterior of all buildings and structures on the Residential Lot Owned by such Owner, all of which shall be maintained in a neat and orderly manner with the lawns cut, landscaping trimmed and the exterior of the improvements painted and in good repair.
6. **Trash.** *By 9am the day after garbage pickup, all trash cans, trash containers, recycle bins or other waste containers shall be removed from view of any street.* (approved by membership June 18, 2001)
7. **Pets.** No animals or birds shall be kept on the Property for any commercial or breeding purpose. Not more than two (2) domestic animals may be kept on a Residential Lot for the pleasure of the occupants of the Residential Dwelling Unit built on such lot without the prior written approval of the Board. If, in the opinion of the Board, any animal becomes dangerous or an annoyance or destructive of wildlife, the Association shall have the right to require that such offending animal be removed from the Property. Birds and rabbits shall be kept caged at all times.
8. **Clotheslines.** No clothes or laundry shall be hung where the same is visible from any street or Residential Lot.
9. **Parking.** No vehicle shall be parked on any Residential Lot or street on the Property unless such vehicle is operable on the highways of the State of Florida and has a current license tag. No repair work shall be performed on any vehicle except minor repairs, which are completed with a two (2) hour duration. No boat, recreation vehicle, ***commercial*** truck or other commercial vehicle shall be parked on a Residential Lot except in areas completely screened in view from the streets and all other Residential Lots.

10. **Garages.** No garages or outbuildings shall be used as a residence or converted in to living space.
11. **Signs.** No signs shall be displayed on any Residential Lot except “For Rent” or “For Sale” signs, which signs may refer only to that particular premise for sale or for rent and shall be of materials, size, height and design approved by the ARC. The Association may enter upon any Residential Lot and summarily remove any signs which do not comply with the provisions of this paragraph.
12. **Easements.** The Owners of the Residential Lots subject to the privileges, rights and easements referred to in the paragraph shall acquire no rights, title, and interest in and to wires, cables, conduits, pipes, mains, lines or other equipment or facilities placed on, over or under the property subject to such privileges, rights and easements. No structure, pavement or other improvement shall be erected on any part of any easement and, in the same shall be removed upon request of the Association at the cost of the Owner of such Residential Lot upon which such easement and improvement are located.

ARTICLE XII

GENERAL PROVISIONS

1. **Legal Action and Violation.** If any Owner violates or attempts to violate any of these covenants and restrictions (hereinafter referred to as the “Offending Owner”), the Association may, upon ten (10) days written notice to the Owner of the offending Residential Lot, prosecute proceedings at law for the recovery of damages against the Offending Owner for the purpose of preventing or enjoining all or any such violation or attempted violation. If any improvement exists on any Residential Lot which has not been approved by the ARC or if any condition exists which is in violation of these covenants and restrictions, the Association shall have the right, but not the obligation, to enter upon the Residential Lot where such violation exist and summarily to abate, correct or remove the same, all at the expense of the Offending Owner, and/or the Board may assess a reasonable fine against such Offending Owner, which expense or fine (herein called “Special Assessment”) shall be payable by such Owner to the Association on demand. Any entry, abatement, correction or removal shall not be deemed a trespass or make the Association liable for any damages on account thereof. The remedies contained in this paragraph shall be cumulative of all other remedies now and hereinafter provided by law and equity.
2. **Waiver.** The failure of the Association to enforce any covenant, restriction, obligation, right, power, privilege, authority or reservation herein contained, however long continued, shall not be deemed a waiver of the right to enforce the same thereafter as a breach or violation hereof.
3. **Attorneys Fees.** Any Owner found to be in violation of these restrictions shall be obligated to pay the reasonable attorneys fees of the Association in any action seeking to enforce or prevent, correct or enjoin such violation or seeking damages for the breach of these restrictions.

4. **Severability.** All regulations herein contained shall be several and independent. The invalidity of one or more or any part of one shall in no way impair the remaining restrictions or any part thereof.
5. **Amendment.** The covenants and restrictions of the Declaration shall run with and bind with the land. This Declaration may be amended from time to time by the Association in the manner as provided by the Articles.
Notwithstanding this or any other provision of this Declaration, any amendment to this Declaration which alters the Surface Water or Stormwater management System, beyond maintenance in its original condition, including the water management portion of the Common Areas, must have the prior approval of the St. Johns River Water Management District.
6. **Enforcement.** The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the Surface Water or Stormwater Management System.
7. **Conflict.** In the event of any conflict between the provisions of this Declaration, the Articles and the Bylaws, the provisions of the Declaration shall control and prevail.

IN WITNESS WHEREOF, we, being all of the directors of the Association have hereunto set our hands this _____ day of _____, 2003