FLORIDA-FRIENDLY LANDSCAPING™ MODEL COVENANTS, CONDITIONS AND RESTRICTIONS FOR NEW AND EXISTING COMMUNITY ASSOCIATIONS

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Revised September 2010

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I. Introduction and Overview

Residential development has been a major factor in Florida's economy for decades, and much of that development has taken the form of master-planned communities administered by a mandatory homeowners' association ("HOA") and set of documents promulgated by the developer or the HOA that may include a declaration of covenants, conditions, and restrictions ("CCRs"); articles of incorporation; bylaws; rules and restrictions; and architectural standards (collectively, "HOA Documents"). Millions of Floridians currently live in such communities,[1] and most new residential development is likely to take the same form. Unfortunately, HOA Documents that govern both new and existing communities rarely contain restrictions that reflect and permit sustainable approaches to the establishment and maintenance of landscapes.

Recognizing the importance of permitting sustainable landscaping in these communities, the Florida legislature enacted a series of provisions in 2009 that updated the definition of "Florida-friendly landscaping" and authorized the use of such landscaping—even when it has the potential to conflict with existing HOA Documents. Accordingly, it is in the best interests of developers, HOA boards, and homeowners alike to incorporate Florida-Friendly Landscaping™ principles into HOA Documents as they are created or amended to provide clear guidance about permitted landscaping in the community. This report provides background information about Florida-Friendly Landscaping™, explores legal issues related to the 2009 legislative enactments, and discusses several concerns related to implementing Florida-Friendly Landscaping™ principles in HOA Documents. Two sets of model provisions are provided—one for new communities and one for existing communities.

This report is the result of a joint project between the University of Florida's Institute of Food and Agricultural Sciences ("IFAS") and the Florida Department of Environmental Protection ("FDEP"). It was drafted and revised by the Conservation Clinic at the University of Florida's Levin College of Law ("Conservation Clinic"), with contributions by Carlton Fields, P.A., FDEP and the Florida-Friendly Landscaping™ Program's Florida Yards & Neighborhoods Program. This report is not intended to confer legal advice. Developers, HOAs, and homeowners should consult with an attorney before adopting the model provisions provided herein or adapting their landscaping practices in reliance on the 2009 legislation described in this report.

II. Background

A. Residential Development and Conservation

Given the tremendous population explosion in Florida over the past half-century and the inevitability of continued land development in the state, it is imperative for Floridians to find a way to coexist with the natural environment. The alternative is permanent loss of valuable resources such as pristine waters and native species. To protect Florida's fragile environment, developers, HOAs, and homeowners must understand and address the environmental impact of

[1] Florida does not regulate HOAs and there is no central repository for information in regards to their numbers. However, a 2007 Florida Senate report used National data to estimate that 4 to 6 million Florida Homeowners live in approximately 27,000 HOAs. OPPAGA issued a report in February 2010 concluding that there are at least 14,300 Mandatory HOAs within the state (Report 10-20)

their land use decisions. By minimizing their adverse impacts on the environment, these individuals and organizations can make a positive difference in preserving Florida's natural resources.[2]

As discussed in the introduction to this document, millions of Floridians already live in communities governed by an HOA, and that number is likely to continue to grow. Research has shown that few conservation-oriented provisions exist within existing HOA Documents, perpetuating the practices of unnecessary irrigation, and excessive fertilizer use that contribute to water quantity and quality problems.[3] Specifically, one recent study shows that there is a strong link between HOA landscaping practices and nutrient pollution in stormwater.[4]

By incorporating Florida-Friendly Landscaping™ principles into HOA Documents, developers, HOAs, and homeowners can begin addressing these environmental concerns and bring those documents into compliance with the recent legislative changes discussed in more detail in the following section. Moreover, this can be accomplished without comprising values such as aesthetics and uniformity that are the basis of HOA landscaping standards. This report provides model provisions to achieve that goal for new developments, as well as for older developments that do not have environmentally sustainable landscaping and related provisions in their original documents. By informing HOAs of simple conservation methods that can be incorporated into their documents, the authors hope that the number of associations that adopt and follow these methods will increase.

HOAs may use all or part of the model Covenants, Conditions and Restrictions. To be considered "Florida-Friendly," communities must use maintenance contractors whose employees are trained in the Green Industries Best Management Practices program,[5] have maintenance contracts that reflect Green Industries Best Management Practices, and provide education to their property managers and residents about Florida-Friendly Landscaping™ design and maintenance practices at regular intervals—at least once per year. In addition, new communities must address the issues in sections 3 – 6 (Section V) in their CCRs, and existing communities must address the issues in sections 2-4 (Section VI). Existing communities may have only their common and managed areas certified as Florida-Friendly if they are unable to amend their CCRs, provided they have contracts, bylaws or written policies in place to require the practices.[6]

B. Statutory Changes to Encourage Florida-Friendly Landscaping™

Florida law defines the term "Florida-Friendly Landscaping"™ in Section 373.185(1)(b), Florida Statutes:

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[2] Florida Yards & Neighborhoods Handbook, *A Guide to Environmentally Friendly Landscaping*, 2 (2010).

[3] Using Science to Influence Policy: Spatial Analysis Comparing Residential Lawn Care Practices and Localized Water Pollution, Leesa Souto, UCF Stormwater Academy

[4] Id.

[5] Maintenance companies do not become certified, only individual employees. Under the minimum requirement, the following certification is required: All supervisors and fertilizer/agrichemical applicators must be certified and all employees should be trained in the BMPs, but laborers that do not apply any chemicals, including fertilizer, need not pass the written examination and may work under the direct supervision of a certified person.

[6] Florida-Friendly Landscaping™ Program policy, based on Fla. Stat. §403.9337, §403.9338 FS, and FDEP Florida-Friendly Landscaping™ Model Ordinance (2010).

> "Florida-friendly landscaping" means quality landscapes that conserve water, protect the environment, are adaptable to local conditions, and are drought tolerant. The principles of such landscaping include planting the right plant in the right place, efficient watering, appropriate fertilization, mulching, attraction of wildlife, responsible management of yard pests, recycling yard waste, reduction of stormwater runoff, and waterfront protection. Additional components include practices such as landscape planning and design, soil analysis, the appropriate use of solid waste compost, minimizing the use of irrigation, and proper maintenance.

This statutory definition mirrors the principles of the Florida-Friendly Landscaping™ Program, which states that 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.[7]

Perhaps more importantly, Section 720.3075(4)(b), Florida Statutes ("FF HOA Law") was enacted in 2009 and provides:

> Homeowners' association documents, including declarations of covenants, articles of incorporation, or bylaws, may not prohibit or be enforced so as to prohibit any property owner from implementing Florida-friendly landscaping, as defined in s. 373.185, on his or her land or create any requirement or limitation in conflict with any provision of part II of chapter 373 or a water shortage order, other order, consumptive use permit, or rule adopted or issued pursuant to part II of chapter 373.

Therefore, existing communities with potentially conflicting landscaping requirements should revise their documents to ensure that applicable provisions do not violate the FF HOA Law—and more importantly, do not cause confusion for homeowners about landscaping requirements for their lot.

C. Introduction to Model Declaration Provisions

The previous version of this report outlined the first concise guidelines to developers interested in incorporating Florida-Friendly Landscaping™ practices into site plans and HOA Documents. Adding these provisions into the community's declaration of covenants makes them enforceable as the "law" of the community, and that creates certainty throughout the lifetime of the project. Therefore, a developer and the homeowners may have confidence 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.[8]

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[7] Florida Yards & Neighborhoods Handbook 3rd Edition, *A Guide to Florida-Friendly Landscaping* (3rd ed. 2006). The Florida Yards & Neighborhoods Handbook 4th Edition. (4th ed. 2009)

[8] *But see* Patrick A. Randolph, Jr., *Symposium: Common Interest Development Communities: Part II: Changing the Rules: Should Courts Limit the Power of Common Interest Communities to Alter Unit Owners' Privileges in the Face of Vested Expectations?*, 38 Santa Clara L. Rev. 1081, 1105 (1998) (noting that courts do not protect an expectation that a development within a subdivision will remain unchanged, but rather only assure that the changes will be uniform in application).

In drafting the model provisions included in this document, the Conservation Clinic researched the most appropriate conservation methods available within the parameters of the Florida Yards and Neighborhoods program of Florida-Friendly Landscaping™. In researching water conservation methods and Florida-Friendly Landscaping™ techniques, the Conservation Clinic reviewed the CCRs of various 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 Conservation Clinic decided upon a statewide approach when choosing what type of CCRs to include. After drafting the first version, the Conservation Clinic sought the advice of various developers and conservationists across the state concerning the practical application of these CCRs. The model provisions offered in this final document reflect the points and concerns of these professionals.

These model provisions may be used by developers or HOAs to incorporate Florida-Friendly Landscaping™ principles into the HOA Documents that govern their communities. The updated model language is divided into two forms to make these model provisions more accessible to both new and existing communities. The first form, found in Part V of this document, is intended to be used by developers as guiding principles when drafting initial restrictive covenants or, as they are commonly known, the Declaration of Covenants, Conditions and Restrictions ("CCRs"). The second form, found in Part VI of this document, is intended for associations that wish to modify their existing landscaping provisions to be consistent with the FF HOA Law, which now has retroactive application.

III. Legal Issues

A. Retroactive Application and the Contract Clause of the Florida Constitution

The FF HOA Law purports to have retroactive applicability such that no HOA Document—regardless of when it was created—may prohibit a homeowner from installing Florida-Friendly Landscaping™. The express or implied retroactivity of a statute always requires a careful scrutiny from the standpoint of constitutionality. The Florida Constitution, Article I, Section 10 prohibits the passing of laws "impairing the obligation of contracts" ("Contract Clause"). Therefore, Florida laws may be declared invalid if they impair the rights of those who have made existing contracts—which can be problematic for laws that have retroactive reach. Although courts have strictly applied the restriction on the impairment of contracts in the past, they have also exempted laws when there is an "overriding public necessity for the state to exercise its police powers."[9] So, the Contract Clause does not "prohibit the state from enacting legislation with retroactive effect,"[10] but rather, courts must look at the purpose of the law. Legislation that restricts the right to contract will not be invalid if the restriction is intended as "reasonable and necessary to serve an important public purpose,"[11] which may include protection of the "public's health, safety or welfare."[12]

Accordingly, when laws that may impair existing contracts are passed, courts have attempted to reach a compromise between individual rights and public welfare.[13] Courts have

[9] *Park Benziger & Co. v. Southern Wine & Spirits, Inc.,* 391 So2d 681 (Fla. 1980)
[10] *Yellow Cab C. v. Dade County*, 412 So2d 395 (Fla. 3rd DCA 1982), petition den. 424 So2d 764 (Fla. 1982)
[11] Id.
[12] *Khoury v Carvel Homes South, Inc.,* 403 So2d 1043 (Fla. 1st DCA 1981), petition den. 412 So2d 467 (Fla.1981)
[13] *Pomponio v Claridge of Pompano Condominium, Inc.,* 378 So2d 774 (Fla. 1979)

applied this compromise as a balancing test, weighing the "nature and extent of the impairment is constitutionally tolerable in light of our important state objective, or whether it unreasonably intrudes into the parties' bargain to a degree that is necessary to achieve the objective."[14]

In the FF HOA Law, the Florida Legislature noted that the "use of Florida-Friendly Landscaping and other water use and pollution prevention measures to *conserve or protect the state's water resources serves a compelling public interest* and that the participation of homeowners' associations and local governments is *essential to the state's efforts in water conservation and water quality protection and restoration.*"[15] Because the legislature has found that water conservation through appropriate landscaping technologies serves a compelling public purpose, retroactive application of the FF HOA law appears to be constitutionally appropriate insofar as the prohibition on impairment is concerned. As a result, any HOA that properly amends its governing documents in accordance with the requirements of the HOA Documents and the applicable statutes should be protected from challenges based on impairment of contracts.[16]

B. Reasonableness and Judicial Review

Florida-Friendly Landscaping™ provisions of HOA Documents (both new and amended) must be drafted in such a way that they are legally enforceable. Since the FF HOA law is relatively new, courts have not had the opportunity to interpret its meaning. Analogies may be drawn, however, from cases that deal with amending or enforcing restrictive covenants in subjects unrelated to water conservation or landscaping.

Rules included in CCRs at the time a purchaser purchased his or her property are presumed to be valid since the purchaser had adequate notice of HOA Documents before buying a lot and voluntarily chose to purchase lots encumbered by the restrictions in those HOA Documents.[17] Therefore, some provisions included in HOA Documents 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."[18]

When dealing with amendments to HOA documents enacted after a purchaser acquired his or her property, however, the reasonableness standard comes into play. Generally, courts are more generous when reviewing amendments voted on by property owners rather than unilateral amendments enacted by the HOA or an equivalent representative group.[19] 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.[20] Developers may also have retained some power to make unilateral amendments to HOA Documents before control of the HOA is

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[14] *Park Benziger*, 684-5
[15] Fla. Stat. §373.185(3)(a) (2010) (emphasis added)
[16] Id.; See also Park Benziger *supra* note 9; See also Yellow Cab *supra* note 10.
[17] *Hidden Harbour Estates v. Basso*, 393 So. 2d 637, 639 (Fla. Dist. Ct App. 1981).
[18] Zelica M. Grieve, *Note and Comment: Latera v. Isle at Mission Bay Homeowners Ass'n: The Homeowner's First Amendment Right to Receive Information*, 20 Nova L. Rev. 531, 542 (1995) (quoting in part from *Constellation Condominium Ass'n v. Harrington*, 467 So. 2d 378, 381 (Fla. Dist. Ct. App. 1985) and citing to Hidden Harbour Estates *v. Basso,* 393 So. 2d 637 at 640).
[19] *See Hidden Harbour Estates*, 393 So. 2d 637 (board adopted lawn watering and well building restriction to control water salinity problem in community); *Nelle v. Loch Haven Homeowners'Ass'n, Inc.*, 413 So. 2d 28 (Fla. 1982)
[20] *See* Randolph, *supra* note 3 at 1119.

turned over to homeowners, but such power must be exercised in a reasonable manner and must preserve the original scheme of development.[21] Some states have an additional judicial limitation on amendments to the restrictive covenants that requires all property owners have to be affected equally by any modification.[22]

C. Aesthetic Regulation by Homeowner Associations

HOAs have expressed concern that the FF HOA Law will limit the ability of the HOA to provide aesthetic regulation of the landscaping and yards within the community. It is the position of FDEP and IFAS, that the FF HOA Law does not eliminate the ability of the HOAs to create and enforce aesthetic standards related to landscaping, so long as those decisions or regulations do not violate the accepted practices, procedures and materials outlined in the FF HOA law and mirrored in the Florida-Friendly Landscaping™ Program. It is the hope of FDEP and IFAS, however, that existing HOAs will take advantage of the model provisions included in this document and proactively amend their HOA Documents where necessary in order to promote sustainable landscapes. Such proactive steps can reduce community conflict by providing all homeowners with clear guidance as to Florida-Friendly Landscaping™ principles, while promoting consistency and property values within the community.

IV. Implementing Florida-Friendly Landscaping™ in HOA Documents

Education is the key step in making a good decision—whether you are a Developer, HOA, or homeowner. With the knowledge that comes from education on the relevant issues, informed decisions can be made. This section provides a guideline to the information and further research that may be necessary during the process of creating a CCR document. Finally, it is important to keep timing in mind, as it is much simpler to make changes at some times than at others. All of these elements must be evaluated during this process, in order to create the most effective and flexible document that is easy for all parties to understand, as well as associations to enforce.

A. Education

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 management practices will be achieved as more communities incorporate provisions such as the ones provided in this document into their own CCRs. A key aspect to achieving this goal is homeowner education in regards to protecting water quality, water savings and other financial savings related to conservation and Florida-Friendly Landscaping™ 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, landscaping, and pollution prevention, the information provided in this report may need to be supplemented. The IFAS extension office at the University of Florida works diligently to keep up with the latest trends in these fields and should be contacted for more information. UF/IFAS also has offices in counties around the state, which can be located on the web at http://fyn.ifas.ufl.edu or http://FloridaYards.org or

[21] *Nelle*, 413 So. 2d at 29.
[22] *See* Randolph, *supra* note 3 at 1103.

www.SolutionsForYourLife.org/fyn or contacted at (352) 245- 4518. Also, homeowners wishing to obtain additional recommendations for a specific region in Florida may check updated versions of other University of Florida's IFAS publications at http://edis.ifas.ufl.edu/ or www.SolutionsForYourLife.com.

B. Selecting Provisions to Incorporate

Developers, HOAs, and homeowners should bear in mind that the model Florida-Friendly Landscaping™ provisions in this document are only one approach to enhancing the sustainability of landscaping in Florida. There are many additional effective conservation methods available, and the educational resources described in the previous section may be consulted for additional information on the latest conservation methods and ideas.

This document provides sample language for community landscape regulation that, taken together, establishes a system to effectively implement and enforce Florida-Friendly Landscaping™. 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 important governing documents and changes necessary to accommodate specific site conditions and documents requirements. Drafters should also consult relevant municipal and state laws, which prevail over any of the model language set forth herein. Any language included in a CCR that goes against law or public policy will be deemed invalid.[23]

C. Timing

Inclusion of Florida-Friendly Landscaping™ provisions is most easily accomplished when HOA Documents are initially drafted by the developer's counsel, and it may also allow the provisions to be coordinated with other environmentally-friendly planning and design efforts by the developer. Inclusion of such provisions may also be accomplished easily prior to turnover of control of an HOA to the homeowners if the developer reserved the right to unilaterally amend the HOA Documents to incorporate such provisions.[24]

Once a developer has turned control of the HOA over to the community's homeowners making changes to HOA Documents becomes significantly more difficult. Following turnover, a developer is prohibited from making unilateral amendments if they had that right initially in the HOA Documents.[25] Unless otherwise provided in the HOA Documents, by statute the HOA may only amend the HOA Documents if a quorum is obtained at a properly noticed meeting and a certain percentage of these owners present vote in favor of the amendment at that meeting.[26] It is important for an HOA to consult with an attorney to determine what action will be necessary for the board vs. the members of the HOA to enact Florida-Friendly Landscaping™ provisions.

In any event, whenever Florida-Friendly Landscaping™ provisions are incorporated into HOA Documents after the initial drafting—whether by the developer or the HOA—it is important

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[23] 6A Patrick Rohan, *Real Estate Transactions*: *Home Owner Associations and PUDs* – Law and Practice, §8.00-8.28, (1977).ui6
[24] *Nelle*, 413 So. 2d at 29.
[25] Fla. Stat. §720.3075(1)(a) (2010)
[26] Fla. Stat. §720.306(1) (2010)

to seek input from homeowners, for it is homeowners that must adhere to the provisions on a daily basis and homeowners that make up the Landscaping Committee that will eventually enforce the provisions. There are many methods to solicit homeowner input, but it may be most effective to use an inclusive, cooperative approach such as a charrette or similar method. Charrettes allow all of the parties to work together in order to design a CCR document that would be accepted by the majority of participants.[27]

[27] For more information on the charrette method, please see the National Charrette Institute website at http://www.charretteinstitute.org/

V. Model Provisions for a New Communities

DECLARATION EXHIBIT
FLORIDA-FRIENDLY DEVELOPMENT
COVENANTS, CONDITIONS
AND RESTRICTIONS

1. Definitions

(Note: The drafter will need to check any existing definitions in the Declaration for consistency with definitions)

1.1 "**Association**" means the corporate entity responsible for operating and maintaining the Common Areas of the Community.

1.2 "**Certified Professional**" means a person who possesses a certificate of completion in the Florida Green Industries Best Management Practices.

1.3 "**Florida-Friendly Landscaping™**" means quality landscapes that conserve water, protect the environment, are adaptable to local conditions, and are drought tolerant. The principles of such landscaping include planting the right plant in the right place, efficient watering, appropriate fertilization, mulching, attraction of wildlife, responsible management of yard pests, recycling yard waste, reduction of stormwater runoff, and waterfront protection. Additional components include practices such as landscape planning and design, soil analysis, the appropriate use of solid waste compost, minimizing the use of irrigation, and proper maintenance.[28]

1.4 "**Florida Green Industries Best Management Practices**" includes those practices defined in the most recent version of the Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries.

1.5 "**Homeowner**" includes an owner of a Lot or Parcel.

1.6 "**Low Impact Development**" or "**LID**" is development that utilizes stormwater control techniques to control rainfall runoff by utilizing decentralized controls (such as pervious pavement, green roofs, vegetated swales, and infiltration trenches) by allowing water to infiltrate, filter, store, evaporate, percolate and detain, as appropriate, in place using biophysical characteristics of a property.

1.7 "**Managed Areas**" includes any areas managed but not owned by the Association.[29]

1.8 "**Surface Water Management System**" or "**SWMS**" is defined as the system, which is in place to regulate and control the flow of surface water. The SWMS incorporates

[28] Fla. Stat. §373.185(1)(b) (2010)

[29] In some communities, the Homeowners Association manages privately owned areas. 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.

methods and facilities to reduce impervious surface, disconnect impervious surfaces, infiltrate, convey, collect, store, retain, detain, absorb, inhibit, treat, use and/or reuse storm water to prevent flooding, overdrainage, environmental degradation and water pollution. The SWMS includes land, easements, improvements, facilities, Low Impact Development elements, and appurtenances.

1.9 "**University of Florida Institute for Food and Agricultural Sciences**" or "**UF/IFAS**" is a federal-state-county partnership dedicated to developing knowledge in agriculture, human and natural resources, and the life sciences, and enhancing and sustaining the quality of human life by making that information accessible. UF/IFAS maintains a website at http://www.ifas.ufl.edu and at the website "Solutions for Your Life" at http://solutionsforyourlife.ifas.ufl.edu/.

2. Landscaping Committee[30] [31]

2.1 **Definition**. "Landscaping Committee" means a duly appointed committee with delegated authority from the Association to enforce certain parts of this Declaration. The Landscaping Committee will advise the Association on overall environmental protection policy and enforcement issues.

2.2 **Establishment of Landscaping Committee**. The Association will establish a Landscaping Committee. The Landscaping Committee will be made up of Association Members and include at least one Certified Professional. If no Association Member is a Certified Professional willing to serve on the Landscaping Committee, a non-Member Certified Professional may be appointed to the Landscaping Committee by the Association.

2.3 **Appointment of Landscaping Committee Officers**. The Board of Directors of the Association will appoint three members of the Landscaping Committee to serve as officers of the Landscaping Committee. At least one officer must be certified for Florida Green Industries Best Management Practices.[32]

2.4 **Term of Office**. Upon establishing the Landscaping Committee, the Association will appoint one officer for a term of one year, one Officer for a term of two years, and one officer for a term of three years. All future appointments will be for a term of three years except for appointments to fill an unexpired term left vacant by the previous appointee. Such appointments will be for the unexpired duration of the term being filled.[33]

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[30] According to Florida Statutes Section 720.305 (2010), a design authority must be specifically stated or reasonably inferred from the written covenants or other published guidelines and standards authorized by the Declaration of Covenants. Therefore, only a new community will be able to establish a Committee if a committee with power to address landscaping. It is important to consult with an attorney to determine the scope of the existing powers of the HOA for these issues.

[31] This section was modified from the Model Conservation Declaration of Covenants, Conditions and Restrictions, University of Florida Conservation Clinic, May 2008

[32] This ensures that the committee is aware of appropriate resources available to the development. In the event that no officer with professional knowledge can be found, or the hiring of an officer is not financially feasible, the Committee should work with their local UF/IFAS Extension to ensure that the officers understand the requirements and responsibilities in this document. A list of all of Local UF/IFAS Extensions can be found at: http://solutionsforyourlife.ufl.edu/map/index.html.

[33] Staggering the terms of office ensures that at least two officers will always have experience dealing with the affairs of the Landscaping Committee.

2.5 **Compensation and Liability**. An Association Member who serves as a member or officer on the Landscaping Committee will not receive compensation but may be reimbursed for expenses incurred in conjunction with his or her service on the Landscaping Committee. A non-Association Member, appointed to the Landscaping Committee as a Certified Professional pursuant to Section 2.2, is, however, eligible for reasonable compensation for service on the Landscaping Committee, in addition to reimbursement for expenses incurred in conjunction with his or her service on the Landscaping Committee. No member of the Landscaping Committee (whether Association Member or otherwise) will be liable for claims, causes of action, or damages arising out of services performed as a member or officer of the Landscaping Committee.

2.6 **General Duties**.

2.6.1 The Landscaping Committee will design, manage, and maintain the landscape for the development taking into consideration environmental attributes of the development. The Landscaping Committee will make all landscaping and maintenance decisions within the development in accordance with the guidelines set forth in the most current edition of the Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries ("Florida Green Industries BMPs handbook"). Environmental landscaping design and maintenance considerations include, but are not limited to, decisions connected to landscaping, irrigation, pesticide application, fertilization, water conservation, and wildlife conservation.

2.6.2 If a Homeowner desires to make a design change to their property including changes to their landscape or irrigation system, the Homeowner will, prior to making any change, seek approval for such design change by submitting a design change application to the Landscaping Committee. No later than 30 days after the date on which the Homeowner submits a design change application to the Landscaping Committee, the Landscaping Committee will provide written notice to the Homeowner approving or denying the proposed design change. If the Landscaping Committee does not send a response, then the proposed design change is deemed denied. The Landscaping Committee will not approve any proposed design change that fails to conform to the development's design concept.

2.6.3 No approval will be required for design changes involving the planting of annuals, planting of pre-approved plants or trees, or for the removal of deceased or diseased trees in accordance with the current version of the UF/IFAS Florida-Friendly Landscaping™ Plant Selection Guide or pre-approved plant list adopted by the Landscaping Committee from time-to-time (the "Landscaping Committee Approved Plant List"), if applicable.[34]

2.6.4 The Landscaping Committee will keep, account, and maintain records for all environmental landscaping management and maintenance decisions made by the Landscaping Committee. If a Homeowner submits a written request for documents relating to the management and maintenance of the development's environmental landscaping, the Landscaping Committee will, within a reasonable time after the date on which it received the request, submit such documents to the Homeowner. The most recent version of the Florida-Friendly Landscaping™

[34] A community may want to regulate removal of dead trees, also known as snags, allowing them to remain on the property so long as they do not endanger the house or other structures. Snags may provide habitat for and attract birds and other wildlife.

Green Industries Best Management Practices for Protection of Water Resources is incorporated by this reference.[35]

2.6.5 The Landscaping Committee will manage invasive exotic plant species within Common Areas and Managed Areas.

2.7 **Environmental Landscaping Violations**. If the Landscaping Committee has knowledge that a Property is not complying with the water conservation, landscaping, fertilizing, or pesticide application parts of this Declaration the Landscaping Committee will notify the Homeowner and give _____ days to cure the problem. If the Homeowner does not cure the problem within the allotted time frame, the Landscaping 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. Landscaping

3.1 **Florida-Friendly Landscaping™**. The Association may not prohibit any Homeowner from implementing Florida-Friendly Landscaping™ on the Homeowner's private property in accordance with Florida Statutes Section 373.185 (2010). [36] [37]

3.2 **Site Preparation: Soil Testing.**

3.2.1 Common Area or Managed Area

(a) **Topsoil**. For all newly developed areas, the Developer or the Association, as applicable, will keep existing topsoil onsite, making sure that it is not buried under additional fill but spread on top of imported fill where possible throughout the development.

(b) **Soil Testing**. Before landscape installation starts on all areas on which the Developer, or Association, as applicable, intends to install landscaping, the Developer or Association, as applicable, will, after site preparation and final grading, 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.[38] The Developer will make this information available to the Association as part of the Association Official Records.

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[35] This document is available at www.dep.state.fl.us/water/nonpoint/pubs.htm

36 Fla. Stat. §720.3075(4)(b) (2010)

37 HOAs may use all or part of the model Covenants, Conditions and Restrictions. To be considered "Florida-Friendly," communities must use maintenance contractors whose employees are trained in the Green Industries Best Management Practices program, have maintenance contracts that reflect Green Industries Best Management Practices, and provide education to their property managers and residents about Florida-Friendly Landscaping™ design and maintenance practices at regular intervals—at least once per year. In addition, new communities must address the issues in sections 3 – 6 (Section V) in their CCRs. Maintenance companies do not become certified, only individual employees. Under the minimum requirement, the following certification is required: All supervisors and fertilizer/agrichemical applicators must be certified and all employees should be trained in the BMPs, but laborers that do not apply any chemicals, including fertilizer, need not pass the written examination and may work under the direct supervision of a certified person.

[38] 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.

If after turnover of control to the Association, the Association intends to install new landscaping in the Common Areas 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 will obtain soil analysis information from a reputable soil testing lab or the University of Florida/IFAS Cooperative Extension facility.

3.2.2 **Lot Soil Testing**. Prior to installation of initial landscaping on a Lot, the Lot Owner, whether Homeowner, Developer or other party, must obtain soil analysis information from a reputable soil testing lab or the UF/IFAS Cooperative Extension facility to assess soil conditions such as soil type and texture, and pH.[39]

3.3 Design and Layout for Common Areas and Managed Areas

3.3.1 **Florida-Friendly**. The Florida-Friendly Landscaping™ concept of right plant, right place will be used. The Developer or Association, as applicable, will ensure that the design the landscape so that plants will serve environmentally friendly functions including, but not limited to, cooling, privacy screening, shade, aesthetics, wildlife habitat, runoff pollution prevention, and directing traffic flow onto and within the Community.[40]

3.3.2 **Existing Native Vegetation**. The Association will preserve and enhance host and nectar vegetation that attracts pollinators and provides food, shelter and habitat for a variety of wildlife.[41] The Association will preserve and enhance existing butterfly host vegetation located in preserves, easements, roadsides, undeveloped lots, vegetative buffers, around stormwater ponds, retention areas, Common Areas, and Managed Areas.

3.3.3 **Landscaping Selection**. In accordance with the relevant local government landscaping ordinances and the most current version of the UF/IFAS Florida-Friendly Landscaping™ Guide to Plant Selection and Landscape Design, the Developer or Association, as applicable, will ensure the selection of landscape plants suited to the soil and other site characteristics utilized by the Florida-Friendly Landscaping™ concept. The Community must have at least ten species of plants within its Common Areas or Managed Areas. The Association and the Homeowners will use plants listed in the most current version of the UF/IFAS Florida Friendly Landscaping™ Guide to Plant Selection and Landscape Design or Landscaping Committee Approved Plant List for suggestions. The UF/IFAS plant list is not all-inclusive, and many plants not listed may be Florida-Friendly as long as they match site conditions and are not

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[39] Id.

[40] Please see UF IFAS Florida-Friendly Landscaping™ Design and Plant Selection Guide (2010); For more information, please see "Adopting a Florida-Friendly Landscape: Steps for Converting a Typical Development Landscape to a Florida-Friendly Landscape", Hansen, et al. 2009. This document is ENH1135, one of a series of the Environmental Horticulture Department, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida. Original publication date, September 2009. Visit the EDIS Web site at http://edis.ifas.ufl.edu. Written by: Gail Hansen, assistant professor, Environmental Horticulture Department; Jennifer Ramos, courtesy extension agent I, E.A. Felter, extension agent II, and Celeste White, courtesy extension agent I, Orange County, Orlando, FL, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL.

[41] For more information, please see, "Community Butterfly*Scaping*: Community Butterfly*Scaping: Move beyond butterfly gardening to create a large-scale butterfly habitat."* available at http://fyn.ifas.ufl.edu/pdf/Butterfly_FlyerPrint_may_2010.pdf

invasive exotics. By the same token, many plants that are listed may be unsuitable in some locations. Where doubt exists, the Landscaping Committee should refer the matter to the UF/IFAS County Extension Service Florida Yards & Neighborhoods agent or the Commercial Horticulture agent for assistance. However, the role of these agents is strictly educational, and all final decisions about plantings are to be made by the Association.

3.3.4 **Turfgrass**.

(a) Association will follow the University of Florida Institute for Food and Agricultural Sciences and Florida Department of Environmental Protection Green Industries Best Management Practices recommendations for turfgrass, including (i) selection of grasses that may be maintained through use of the low end of the maintenance recommendations for irrigation and fertilizer for the particular type of turf selected and (ii) use of Integrated Pest Management (IPM) in selection of pesticides. Turfgrasses shall be allowed to develop deep roots and enter a dormancy stage during the winter or drought periods. Turfgrass maintenance will be taken in terms of survival, not just maintaining a green appearance.

(b) Functional turfgrass areas, such as buffers for landscape beds and to hold mulch into place, along with use of turf as a filtration buffer for runoff from organically mulched areas, will be allowed. Grassed swales will be allowed.

3.4 Design and Layout for Homeowners

3.4.1 **Florida-Friendly**. The Florida-Friendly Landscaping™ concept of right plant, right place will be used. The Homeowner will design the landscape so that plants serve a number of functions including, but not limited to, cooling, privacy screening, shade, aesthetics, wildlife habitat, runoff pollution prevention, and directing traffic flow onto and within the property.[42]

3.4.2 **Existing Native Vegetation**. Homeowners will retain and incorporate existing native vegetation into the landscape whenever feasible.

3.4.3 **Landscaping Selection**. In accordance with the relevant local government landscaping ordinances and the most current version of the UF/IFAS Florida-Friendly Landscaping™ Plant Selection Guide, the Developer, Association or Homeowner, as applicable, will select landscape plants suited to the soil and other site characteristics utilized by the Florida-Friendly Landscaping™ concept. The Homeowner should have at least five species of plants in the yard, consistent with the new homeowner Florida-Friendly Landscaping™ recognition checklist.[43] The Association and the Homeowners will use plants listed in the most current version of the UF/IFAS Friendly Landscaping™ Guide to Plant Selection and Landscape Design or Landscaping Committee Approved Plant List for suggestions. The UF/IFAS plant list is not all-inclusive, and many plants not listed may be Florida-Friendly as long as they match site conditions and are not invasive exotics. By the same token, many plants that are listed may be unsuitable in

[42] Please see UF IFAS Florida-Friendly Landscaping™ Design and Plant Selection Guide (2010);
For more information, Please see Hansen et al, 2009. "Adopting a Florida-Friendly Landscape: Steps for Converting a Typical Development Landscape to a Florida-Friendly Landscape". Available at http://edis.ifas.ufl.edu/ep396
[43] Checklist available at http://fyn.ifas.ufl.edu/materials/FYN_Yard_Recognition_Checklist_2010.pdf

some locations. Where doubt exists, the Landscaping Committee should refer the matter to the UF/IFAS County Extension Service Florida Yards & Neighborhoods agent or the Commercial Horticulture agent for assistance. However, the role of these agents is strictly educational, and all final decisions about plantings are to be made by the Association.

3.4.4 **Community Butterfly*Scaping***. Homeowners will preserve and enhance existing butterfly host vegetation on their properties.[44]

3.4.5 **Turfgrass**. Homeowners will follow the University of Florida Institute for Food and Agricultural Sciences and Florida Department of Environmental Protection Green Industries Best Management Practices recommendations for turfgrass, including (a) selection of grasses that are appropriate for the location and that may be maintained through use of the low end of the maintenance recommendations for irrigation and fertilizer for the particular type of turf selected and (b) use of IPM in selection of pesticides.[45] Turfgrasses shall be allowed to develop deep roots and enter a dormancy stage during the winter or drought periods. Turfgrass maintenance will be taken in terms of survival, not just maintaining a green appearance.

3.4.6 **Appurtenances.** Homeowners are encouraged to use rain barrels, cisterns, rain gardens, and compost bins, as needed, within the Florida-Friendly Landscaping™ design concept. The Association may not prohibit these items, but the Association may regulate the aesthetics of these items, including but not limited to placement.[46]

3.5 **Plant Installation**.

3.5.1 **Association Installation**. All plant installations will be conducted in accordance with the most current version of the Florida Green Industries BMPs handbook guidelines.

3.5.2 **Homeowner Installation**. All Homeowner plant installations will be conducted in accordance with the most current version of the Florida Yards and Neighborhoods Manual.

3.6 **Mulching**.[47]

3.6.1 **Florida Green Industries Best Management Practices**. All mulching will be conducted in accordance with the most current version of the Florida Green Industries BMPs handbook guidelines.

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[44] For more information, please see, "Community Butterfly*Scaping*: Community Butterfly*Scaping: Move beyond butterfly gardening to create a large-scale butterfly habitat."* available at http://fyn.ifas.ufl.edu/pdf/Butterfly_FlyerPrint_may_2010.pdf

[45] This allows the right plant-right place concept to come in to place, so that the least drought tolerant grasses are not selected for areas where irrigation needs would be much greater than for other grasses, or that shaded areas do not receive full sun only grasses.

[46] See Fla. Stat. § 720.3085 (2010)

[47] This section was modified from the Model Conservation Declaration of Covenants, Conditions and Restrictions, University of Florida Conservation Clinic, May 2008

3.6.2 **Placement**. Mulch will be placed in a thickness of 3–4 inches and not piled around the trunks of trees or the stems of landscape plants. Several inches of clearance around tree trunks and plant stems are required. Mulch settles after initial application and will be maintained at a depth of 2–3 inches. Large mulched areas that slope to impervious surfaces or water bodies will be bordered by a turf or other groundcover to slow and absorb nutrient-laden runoff from the mulched area.

3.6.3 **Organic Mulch**. Organic mulch may require weeding and replenishment once or twice a year to maintain a total depth of 2–3 inches. Mulch will be applied to extend to at least a tree's drip line, or beyond, or to at least an 8-foot diameter around the tree. Organic mulch and recycled mulch (including leaves, pine needles, grass, and shrub clippings) are recommended.

3.6.4 **Cypress Mulch**. Cypress mulch is often made from waste wood generated in manufacture of these products, but it may also be produced from whole trees cut from wetlands. The use of cypress mulch is not recommended, as its origins may be difficult to determine.

3.6.5 **Inorganic Mulch**. Shell, crushed stone, or pebbles can be used as mulch but will not contribute to the soil's nutrient and organic content or water-holding capacity. Limestone and shell both raise soil pH and reflect heat, increasing the water needs of plants. If these products are used, they must be installed over top of a woven or other pervious ground cloth to keep them from sinking in sandy soils. These mulches last a long time, but will need to be cleared of debris to look their best.

3.6.6 **Surface Below Mulch**. Impervious surfaces, including plastic sheeting, will not be placed below mulch.[48] This does not prohibit the use of woven or other pervious ground cloth.

3.6.7 **Other Prohibited Ground Coverings**. White gravel, shells, and other similar light colored materials are prohibited as major landscape ground coverings in lieu of vegetation. [49] However, such materials may be used as porous surfaces for walkways, patios or drives, for erosion control, mulches, or as landscaping accents. The Association may regulate the aesthetics of such materials. Use of artificial turf is not consistent with Florida-Friendly Landscaping™ and is not recommended.

3.7 Maintenance Activities for Common Area or Managed Area

3.7.1 **Fertilizer Use**.[50]

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[48] Placing plastic sheeting or any other impervious substance below mulch prevents water from being absorbed into the ground and can increase flooding.

[49] These materials increase the need for herbicide use, have no habitat value, reflect rather than absorb heat, and do not produce oxygen like plants. UF/IFAS, FDEP, et al., Guidelines for Model Ordinance Language for Protection of Water Quality and Quantity Using Florida Friendly Lawns and Landscapes, 2009, available at http://www.dep.state.fl.us/water/nonpoint/pubs.htm.

[50] This section was modified from the Model Conservation Declaration of Covenants, Conditions and Restrictions, University of Florida Conservation Clinic, May 2008

(a) **Definition**. Fertilizers are defined as any substance that contains one or more recognized plant nutrients and promotes plant growth; controls soil acidity or alkalinity; provides other soil enrichment; or provides other corrective measures to the soil.

This definition does not include unmanipulated animal or vegetable manures, peat, or compost that makes no claims as described in the above definition.[51]

(b) **Scheduling and Quantities**. Fertilization scheduling and quantities will not exceed the "low maintenance" recommendations of the University of Florida Cooperative IFAS Extension Service. The Landscaping Committee may grant a written exception for a period not to exceed 90 days for specific applications to diseased or damaged plants, confirmed nutrient deficiencies, or other justifiable reasons.

(c) **Reclaimed Water**. If reclaimed water is used for irrigation in the Community, the Landscaping Committee will obtain reclaimed water nutrient content reports from the utility provider at least quarterly, and will disseminate those reports to all Homeowners and landscape contractors working in the Community. Landscapers and Homeowners will reduce nitrogen fertilizer applications appropriately. Unless tissue testing confirms a phosphorus deficiency, applications of fertilizer to turfgrass irrigated with reclaimed water will be limited to a grade of zero phosphate.

(d) **Application**. Fertilizers and pesticides may not be applied within a minimum of 10 feet from the edge of any water body, except as specifically permitted by the pesticide label and state law for aquatic pest control.[52] For the purposes of this section, water body includes, but is not limited to, creeks, lakes, ponds, rivers, streams, lagoons or stormwater retention areas not under the Water Management District jurisdiction, or those delegated to the Association by the Water Management District. All fertilizer spills or granules that may have been deposited on impervious surfaces will be collected or swept back into the vegetated area.

3.7.2 **Mowing**. Mowing in Common Areas and Managed Areas will be done in accordance with the most current version of the Florida Green Industries BMPs handbook and by certified landscaping contractors.[53] Mowing adjacent to swales or water bodies will be performed such that no clippings are deposited into any swales or water bodies. All clippings that may have been deposited on impervious surfaces will be swept back into the vegetated area.

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[51] Fla. Stat. § 576.011(12) (2010)

[52] 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. The removal of aquatic weeds from state waters requires an aquatic plant removal permit from FFWCC (additional information is available at http://myfwc.com/nonnatives/InvasivePlants/index.htm).

[53] Homeowner Associations may use all or part of the model Covenants, Conditions and Restrictions but at a minimum to be a Florida-Friendly, they must use maintenance contractors who are certified in the Green Industries Best Management Practices program, have maintenance contracts that reflect Green Industries Best Management Practices, and provide continuous education to their residents about Florida-Friendly Landscaping™ design and maintenance practices at regular intervals. Maintenance companies do not become certified, only individual employees. Under the minimum requirement, the following certification is required: All supervisors and fertilizer/agrichemical applicators must be certified and all employees should be trained in the BMPs, but laborers that do not apply any chemicals, including fertilizer, need not pass the written examination and may work under the direct supervision of a certified person.

3.7.3 **Disposal of Landscape Material**. Turf Clippings. Unless the turf is diseased, turf clippings will be left on turf areas or composted on-site to recycle nutrients. Any clippings or landscape material that fall on impervious surfaces such as sidewalks, driveways, or roads will be swept onto turf areas or composted. Turf clippings or landscape material will not be deposited in any swales or water bodies.

3.8 **Homeowner Maintenance**. Each Homeowner will conduct routine maintenance including fertilizer use, if needed, and mowing in accordance with the most current version of the Florida Yards & Neighborhoods Guide to Florida-Friendly Landscaping™. Mowing adjacent to swales or water bodies will be performed such that no clippings are deposited into any swales or water bodies. All clippings that may have been deposited on impervious surfaces will be swept back into the vegetated area. Unless the turf is diseased, turf clippings will be left on turf areas or composted on-site to recycle nutrients. Any clippings or landscape material that fall on impervious surfaces such as sidewalks, driveways, or roads will be swept onto turf areas or composted. Turf clippings or landscape material will not be deposited in any swales or water bodies. Homeowners are encouraged to compost their vegetation for use on landscaped areas.

3.9 **Landscape Maintenance Contracts**.

3.9.1 All lawn maintenance contracts will follow the University of Florida Institute for Food and Agricultural Sciences and Florida Department of Environmental Protection Green Industries Best Management Practices manual, and if needed, irrigation, fertilizer and pesticide applications must be at the low end of the maintenance recommendations contained in the most recent copy of the manual.

3.9.2 All contractors must employ Green Industries Best Management Practices-certified supervisors and applicators of fertilizer or pesticides. At least one certified person must be on site when work is being performed.[54]

3.9.3 **Reduced Fees**.[55] Installation of Florida-Friendly Landscaping™ should reduce the need for water, fertilizer and other maintenance on a yard and has been shown to reduce maintenance needs and costs in many communities across Florida. Homeowners who have installed a Landscaping Committee-approved Florida-Friendly Landscape in their yard, utilizing techniques that reduce the maintenance needs of the yard and pest control services, may qualify for a reduced or eliminated maintenance fee. Upon final installation, the Landscaping Committee may inspect the yard to ensure that the landscape meets some minimal requirements and approve the reduced or eliminated fee. A secondary contract outlining this agreement between the Homeowner and Association will be initiated.

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[54] Maintenance companies do not become certified, only individual employees. Under the minimum requirement, the following certification is required: All supervisors and fertilizer/agrichemical applicators must be certified and all employees should be trained in the BMPs, but laborers that do not apply any chemicals, including fertilizer, need not pass the written examination and may work under the direct supervision of a certified person.

[55] This provision will not properly operate unless there is a separate landscaping component of the assessment. Please carefully examine the applicable assessment structure for enabling language.

4. Irrigation

4.1 **Necessity of an Irrigation System**. Irrigation systems are not required.

4.2 **Design**.

4.2.1 **Lawns not requiring Irrigation Systems**. Where a Homeowner has designed and installed a lawn in accordance with Florida-Friendly Landscaping™ practices, if the Homeowner's property is irrigated only through a properly maintained and operated micro-irrigation system or by hand watering by hose, rain barrels or cisterns, the Homeowner may in certain circumstances be exempt from additional irrigation system requirements throughout the Homeowner's Association documents. Upon final installation, the Landscaping Committee may inspect the yard to ensure that the landscape meets relevant local government ordinances and some minimal requirements and determine which irrigation system requirements from which the Homeowner will be exempt.

4.2.2 **Irrigation Design**. Where necessary, all irrigation systems will meet or exceed all state and local regulations. The irrigation systems of any areas that do not have local irrigation regulations will, at a minimum, meet the state Standards for Landscape Irrigation in Florida. The irrigation system will be designed so as to not overlap with water coverage zones, not to water impervious areas, and not to irrigate within 3 feet of the building foundation. The irrigation design will separate turf irrigation areas from landscape bed irrigation areas. All new irrigation systems shall meet the more stringent of the current requirements of Standards for Landscape Irrigation in Florida[56] and all current Water Management District (WMD) and local government requirements, in addition to current Best Management Practices as established by the most current version of the Florida Green Industries BMPs handbook, including the uniform distribution of water throughout all zones.[57] Before and during construction, the designer of the Irrigation System will approve in writing any changes to the irrigation design. A copy of the state Standards for Landscape Irrigation in Florida is available from Florida Department of Environmental Protection (FDEP) or the local Water Management District.[58]

4.3 **Irrigation Plan & Operation Manual**.[59]

4.3.1 The Landscaping Committee will develop an irrigation plan for the Community Managed Areas or Common Areas that includes, but is not limited to, an irrigation

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[56] See Fla. Stat. § 373.228 (2010) Available: http://www.dep.state.fl.us/water/waterpolicy/land_irr.htm; Please also see Florida Irrigation Society Standards and Specifications, publication available for purchase at http://fisstate.org/publications.html

[57] This sentence should refer to the most current version of the Standards and Florida Green Industries BMPs manual and not to a specific set of guidelines since new revisions of the Standards and the BMPs manual will eventually come out.

[58] The standards for landscape irrigation can be found at the FDEP website at: www.dep.state.fl.us/water/waterpolicy/land_irr.htm

[59] Where possible, Florida-Friendly Landscaping™ may not dictate a need for irrigation systems for individual Homeowners. In these instances, HOAs may want to eliminate this provision.

system layout identifying the location of the irrigation system components, irrigation times and maximum irrigation application rate per lawn, area, or zone.[60]

4.3.2 The irrigation plan will meet or exceed state and local water regulations.

4.3.3 Subject to the limitations under Section 2.3.2(e), the Homeowners may request and the Landscaping Committee will provide a copy of materials including, but not limited to, the irrigation plan and the operation manual for all irrigation systems.

4.4 **Installation**

4.4.1 All irrigation systems in the Community will be installed according to the state Standards for Landscape Irrigation in Florida and will meet or exceed all state and local regulations. The irrigation systems of any areas that do not have local irrigation regulations will, at a minimum, meet the state Standards for Landscape Irrigation in Florida.

4.4.2 **Rain Shut-off Devices or Soil Moisture Sensor Installation**. Any person who purchases and installs an automatic landscape irrigation system is required by Florida law[61] to properly install, maintain, and operate technology that inhibits or interrupts operation of the system during periods of sufficient moisture. [62] Rain shut-off devices, evapotranspiration-based (ET) controllers, or soil moisture sensors will be installed and operational for all in-ground irrigation systems. Rain shut-off devices will be placed in open areas to prevent incorrect readings. Flow meters, tensiometers, and other irrigation tools may be used to help make good irrigation management decisions.

4.4.3 **Plant Irrigation Upon Installation**. The irrigation will match the new space, and landscape beds and turf zones will be separate. Landscape beds are established with temporary micro-irrigation or are irrigated by limited-handwatering or micro-irrigation only.

4.5 **Scheduling**.

4.5.1 The Landscaping Committee will create and publish an irrigation schedule. If the Landscaping Committee does not employ innovative technology including, but not limited to, soil moisture sensors or ET Controllers, the Landscaping Committee will, for all Managed Areas and Common Areas managed by the Association, create an irrigation schedule consistent with the UF/IFAS Extension irrigation scheduling recommendations to the extent that they meet or exceed state and local law.

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[60] 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 more frequent irrigation timing.

[61] Fla. Stat. §373.62 (2010)

[62] Pursuant to Fla. Stat. §373.62(1) (2010); Any person who purchases and installs an automatic landscape irrigation system must properly install, maintain, and operate technology that inhibits or interrupts operation of the system during periods of sufficient moisture.

4.5.2 In developing an irrigation schedule, the Landscaping Committee will take into account seasonal plant water requirements, recent rainfall, recent temperature extremes, and soil moisture.

4.5.3 The Landscaping Committee will, in accordance with the Irrigation Schedule, manage the irrigation systems used in the Common Areas and Managed Areas. The Landscaping Committee will account for and exempt newly installed landscaping in the irrigation schedule.

4.5.4 If reclaimed water is used for irrigation in the Community, the Landscaping Committee must comply with the requirements of Section 3.7.1(c) and incorporate the results of the water nutrient content reports into irrigation schedules as necessary to achieve appropriate reductions in nitrogen fertilizer application.

4.6 **Preventative Maintenance Program**. For Common Areas and Managed Areas, the Landscaping Committee will implement a preventative maintenance program that includes but is not limited to the following:

4.6.1 replacing worn or broken components,

4.6.2 identifying and repairing leaks,

4.6.3 identifying and repairing broken or faulty sprinkler heads,

4.6.4 identifying and repairing system malfunctions,

4.6.5 periodically calibrating irrigation system to determine proper watering time,

4.6.6 periodically monitor water bodies to detect sudden increase in algae growth, and

4.6.7 performing weekly visual inspections to identify excessive runoff, including standing water.

4.7 **Irrigation System Maintenance**.

4.7.1 Irrigation systems will be continuously maintained in working order so that the application rate of water, including reclaimed water, to landscape and grass does not exceed the ability of the soil to absorb and retain water applied during one application.

4.7.2 Homeowners will comply with the requirements of this Article and will maintain the irrigation systems within their Property boundaries.

4.7.3 The Association will within the Common Areas and Managed Areas, make monthly inspection of all automatic irrigation systems for operating defects, periodically calibrate all automatic irrigation systems, and seasonally reset the irrigation controllers or timers to account for changes in plant growth and local weather conditions.

4.7.4 The irrigation system will meet or exceed the rules of the State, the controlling Water Management District and the local government.

4.7.5 If a Homeowner's irrigation system does not function properly, the Landscaping Committee may correct this problem.

4.7.6 **Rain Shut-off Devices or Soil Moisture Sensor Maintenance**.

(a) The Association will maintain rain shut-off devices or soil moisture sensors in all the Common Areas and Managed Areas.

(b) The Homeowners will maintain the shut-off devices or soil moisture sensors within their property boundaries if such devices are not managed by the Association.

(c) A licensed contractor who installs or performs work on an automatic landscape irrigation system must test for the correct operation of each inhibiting or interrupting device or switch on that system. If such devices or switches are not installed in the system or are not in proper operating condition, the contractor must install new ones or repair the existing ones and confirm that each device or switch is in proper operating condition before completing other work on the system. [63]

5. Surface Water Management; Stormwater; and Low Impact Design[64]

5.1 Stormwater/Low Impact Development Design.

5.1.1 **Runoff**. All buildings, structures and infrastructure in the Community will be designed and constructed to avoid roof or structure runoff, or diversion, onto directly connected impervious areas (DCIA).[65] Once constructed, no alterations are permitted that will alter roof or structure drainage in any manner that channels runoff onto impervious surfaces.[66] Construction and alterations of existing building, structures and infrastructure will comply with the local government, FDEP, and Water Management District requirements for stormwater management including proper erosion and sediment control.

5.1.2 Surface Water Management System Easements

(a) **Basic Drainage Easement**. A non-exclusive perpetual easement will be created, declared, granted and reserved for the benefit of the Developer, the Association,

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[63] Pursuant to Fla. Stat. §373.62(2)(2010); A licensed contractor who installs or performs work on an automatic landscape irrigation system must test for the correct operation of each inhibiting or interrupting device or switch on that system. If such devices or switches are not installed in the system or are not in proper operating condition, the contractor must install new ones or repair the existing ones and confirm that each device or switch is in proper operating condition before completing other work on the system.

[64] Several of the following CCRs were modified from the Model Conservation Declaration of Covenants, Conditions and Restrictions, University o Florida Conservation Clinic, May 2008

[65] Directly Connected Impervious Areas (DCIAs) are impervious surfaces that discharge to a stormwater system or water body. It should be noted that small, incidental areas such as patios, etc. that direct water to adjacent vegetated landscapes for infiltration are permissible, as they are not directly connected areas.

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

the County, the Water Management District (WMD), and all Homeowners[67] for the purpose of storm water collection, retention, detention, treatment and drainage over, upon and within all drainage easements and drainage easement areas, if any, shown on the Plats or otherwise created, declared, granted or reserved by Developer pursuant to this Document, together with an easement and license to enter upon such Drainage Easements and Drainage Easement areas for the purposes of constructing, installing inspecting, operating, maintaining, repairing and replacing any and all storm water drainage, SWMS and LID elements, improvements and facilities from time to time located therein or thereon in accordance with and as required by the permit(s) for the SWMS issued by the WMD. Notice of the Drainage Easement will appear in the deed of each Lot in the Community according to the SWMS plan approved by the WMD. Developer also reserves, for the benefit of itself, the Association, the County, the WMD, and all Homeowners drainage easements over any and all other portions of the Community which may be reasonably required in order to provide storm water drainage for the Community, provided that such additional easements will not unreasonably interfere with a Homeowner's use and enjoyment of Homeowner's Lot. The Drainage Easements include the construction of all storm water drainage improvements and facilities shown on the plans of the SWMS for the Community as approved by the County and the _____ Water Management District pursuant to the WMD's Permit #_____ as modified and amended from time to time, and any replacement or supplemental permits, including, without limitation, construction permits, issued by the WMD, and such additional or supplemental facilities as may reasonably be required to provide adequate storm water drainage and surface water management to all portions of the Community. Easements also include reasonable access from the nearest public road or Common Area of the Community.

(b) **Emergency Drainage Easement**. A non-exclusive perpetual easement over and upon all Drainage Easements and Drainage Easement areas comprising and appurtenant to the SWMS will be created to and for the benefit of the County and the WMD, for the purpose of undertaking emergency maintenance and repairs to the SWMS in the event that inadequate maintenance and repairs to the SWMS in the event that inadequate maintenance or repair of the SWMS by the Association creates a hazard to public health, safety or general welfare. If the County and/or WMD will undertake any emergency maintenance and repairs to the SWMS because of the inadequate maintenance and repair of the SWMS by the Association, the County and/or the WMD will have a lien upon the Common Property comprising the SWMS as security for the payment by the Association of the reasonable costs and expenses incurred by the County and/or WMD. The creation of this easement does not impose any obligation, burden, responsibility, or liability to enter the Community and take any action to maintain or repair the SWMS.

5.1.3 Stormwater/Low Impact Development: Operation and Maintenance of the Surface Water Management System

(a) **Delegation of Operation and Maintenance**. Unless otherwise determined by the WMD or a local ordinance, the Association will operate and maintain the SWMS, including any LID elements.

[67] The parties listed here may change depending on which entities have SWMS permit requirements. The purpose of these CCRs is to fulfill all of the permit requirements.

(b) **Failure of Contractor to Comply with Professional Standards**. If it is discovered that a contractor hired by the Association to service the SWMS has not properly complied with established professional standards in operation and maintenance or reporting, the Association will immediately terminate all of the Association's contracts with the offending contractor and issue no future contracts to the contractor for at least 5 years.[68]

5.1.4 **Homeowner's Interaction with Surface Water Management System Elements**.

(a) **Notification of Low Impact Development Elements on Homeowner's Lot**. At such time as the Association receives notice that a Lot has been conveyed to a new Homeowner, the Association will notify that new Homeowners of the LID Elements located on such Lot. Upon request from Homeowner, the Association will go to Homeowner's Lot as soon as reasonably possible and show Homeowner the location of all LID Elements on Homeowner's Lot.[69]

(b) **Homeowner's Interference with Surface Water Management System Elements**. Homeowner will not interfere with any SWMS Elements on Homeowner's Lot so as to preclude the function of the element. This includes LID elements, which are incorporated into the SWMS. Florida-Friendly Landscaping™ plantings, including Community Butterfly*Scaping* practices and preservation and planting of related vegetation, along with minimal mowing, are allowed as long as they do not preclude the function of the element.[70] Check with WMD offices prior to any alteration of the SWMS, per Section 2.1.5(e) below.

(c) **Altering Flow of Surface Water Drainage**. Homeowner will not alter, change or obstruct the flow of any surface water drainage in a SWMS Element on Homeowner's Lot.

(d) **Homeowner's Use of Area of Lot Subject to Surface Water Management System Easement**. Homeowner may use any portion of Homeowner's Lot subject to a SWMS Easement so long as Homeowner's use is not inconsistent with the SWMS Easement.

5.1.5 **Alteration of the Surface Water Management System**. No alterations of the SWMS and its facilities and appurtenances will be permitted without the prior written consent and approval of the WMD.

5.1.6 **Standing to Enforce the Provisions in this Section**. The Water Management District, County, Association, and all Homeowners are beneficiaries of Section 2.1.5; therefore the Water Management District, County, Association, and all Homeowners will have standing to enforce any of the provisions in this section.

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[68] Since no certification in operating and maintaining a SWMS currently exists, this section attempts to create some sort of accountability for contractors. In the event that a training course became available, this restriction would be changed to require that all contractors who work on the SWMS are certified and properly apply the training they received.

[69] Alerting Homeowners to SWMS Elements on their Lots will hopefully prevent Homeowners from interfering with the elements.

[70] This prevents Homeowners from filling in swales or wetlands on their Lot.

5.1.7 **Engineering Map of Surface Water Management System Elements**. A comprehensive, detailed, engineering map of all SWMS elements, including LID elements, and the maximum allowable impervious surface for each Lot has been attached to this Document as Exhibit _____.[71]

5.1.8 **Construction and Renovations**.

(a) **Erosion and Sedimentation Control**. During the construction or renovation of a dwelling, the Homeowner or the Homeowner's builder will control erosion and sedimentation during and after construction, stabilize cleared areas, limit stockpiles, protect stormwater inlets during construction, remove temporary control systems after construction, de-compact soils where construction activity has compacted pervious areas, and limit the placement of gutters and drains. The Homeowner's builder will comply with the local government, FDEP, and Water Management District requirements for erosion and sediment control, where applicable.

(b) **Impervious Cover**. The amount of impervious cover allowed on the lot is outlined by the local government and WMD permits and will not be increased by the Homeowner unless consistent with local government permits, WMD permits, and other of this Declaration.

5.1.9 **Stormwater Management Areas**. Any stormwater systems managed by the Association will follow all regulations or recommendations stipulated by local government, the local Water Management District, and any other applicable agency. [72]

5.1.10 **General Stormwater Pollution Prevention**.

(a) **Stormwater Structures**. The Association will allow the following structures and activities including, but not limited to, cisterns, rain barrels, rain gardens, washing cars on lawns and other pervious surfaces, and the use of LID designs including, but not limited to, curb cuts and swales. The Landscaping Committee may regulate the aesthetics and siting of such activities provided safety is maintained and functionality is not significantly inhibited.

(b) **Low Impact Development**. Where possible, the Association and the Homeowner will use low-impact development (LID) designs and practices that reduce stormwater runoff. The Association and the Homeowners will not sweep, nor allow contractors or laborers to sweep, organic debris, such as leaves or grass, into storm drains or curbs. LID

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[71] Attaching the engineering map to the Declaration will provide notice of the SWMS elements to all Homeowners.

[72] 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.

designs and practices that reduce stormwater runoff includes, but is not limited to, designs and practices creating curb cuts that direct the flow of runoff to depressional areas and designs and practices adding depressional areas such as rain gardens and swales, including pervious surfaces.

5.1.11 **Washing of Vehicle**. Homeowner may wash a vehicle on a pervious surface on Homeowner's Lot provided that Homeowner does not use any harmful chemicals or antibacterial substances.

5.1.12 **Aquatic Plants.** Source control is the best way to limit nutrients going into water bodies, but native aquatic plants should be maintained at the ponds edge, in the littoral zone, a portion of the littoral zone, or on floating mats to provide additional protection against excessive nutrients.

5.2 **Maintenance of Areas Managed by the Association**[73]. Maintenance Practices within the Community will be consistent with the University of Florida Institute for Food and Agricultural Sciences and Florida Department of Environmental Protection Green Industries Best Management Practices manual, and if needed, irrigation, fertilizer and pesticide applications must be at the low end of the maintenance recommendations contained in the most recent copy of the manual.

6. Pest Control

6.1 Pesticide Application.

6.1.1 Preventive[74] blanket applications of pesticides are prohibited, except those performed as part of an IPM program in accordance with the most current version of the Florida Green Industries BMPs handbook or for termite prevention.

6.1.2 All pesticide applications in Common Areas will be done by a Certified Professional and in accordance with the most current version of the Florida Green Industries BMPs handbook.

6.1.3 Homeowners will use Integrated Pest Management for controlling pest problems and follow the most current version of the Florida Yards & Neighborhoods Guide to Florida-Friendly Landscaping™.

6.1.4 All pest control companies servicing a Homeowner's property must have valid state and county licenses, follow Integrated Pest Management as prescribed in the Florida Green Industries BMPs handbook, and have a valid certification.

6.2 Certification Requirements.

6.2.1 Only those employees of landscaping, fertilizing, or pesticide application companies who have a current certificate in Florida-Friendly Best Management Practices for

[73] In a situation where there is a Community Development District in addition to, or rather than, a Homeowner's Association, the definition of Association may be amended to include the Community Development District.
[74] 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.

Protection of Water Resources by the Green Industries from the UF/IFAS Extension Service (or an equivalent program approved per 403.9338 F.S.) and who demonstrate that the company's principles follow these Best Management Practices will be allowed to service Homeowners' properties, Common Areas and Managed Areas in the Community.

6.2.2 The Landscaping Committee will maintain an updated list of Certified Professionals who may perform landscaping, pesticide or fertilizing services within the Community and will update this list every 6 months. Homeowners not using the for-hire contractors included in the Landscaping Committee's Certified Professionals list will obtain written permission from the Landscaping Committee before any services are performed in a Homeowners property.

6.2.3 Laborers who do not apply fertilizer or other chemicals may work only under the direct physical supervision of a certified employee. All fertilizer or agrichemical applicators will display appropriate documentation of licensure or certification required by the Florida Department of Agriculture and Consumer Services before work in performed.

6.3 **Pesticide Records for Common Areas**. The Association will obtain from the certified pesticide application company 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.[75] The Association will maintain these pesticide records for 2 years from the application date or as may be required for pesticide applicators by Florida law.[76]

7. Pets & Wildlife

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

7.2 **Pets**.[77]

7.2.1 **Local Ordinances**. All local pet ordinances apply to the Community.

7.2.2 **Excrement**. Pet wastes contain not only lots of nutrients, but also many harmful bacteria.[78] Both the nutrients and bacteria may have a negative impact on the local landscaping as well as regional water quality. Pet owners will pick up after their pets in the Community and appropriately dispose of such wastes in a trash receptacle.

7.2.3 **Harassment of Wildlife**. All pets will 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 Community. Pets may not harass wildlife attracted to the Community.

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[75] Florida pesticide law requires certified applicators to keep records for 2 years of all restricted use pesticides applied. *See* Fla. Stat. §487.160 (2010).

[76] 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.

[77] This section was modified from the Model Conservation Declaration of Covenants, Conditions and Restrictions, University of Florida Conservation Clinic, May 2008

[78] For more information, please see Green Industries, Best Management Practices manual, p. 48

7.2.4 **Cats**. Cats should be kept indoor(s) when not on a harness or leash, unless Homeowner attaches a bell or some other noisemaking device to the cat's collar. Attaching a noisemaking device to a cat's collar can prevent the cat from sneaking up and killing birds, squirrels, lizards, and other animals.

7.2.5 **Aquariums**. Homeowner will not allow any organic matter from Homeowner's aquarium to enter any waterbody or Element of the SWMS. This prohibition includes both plant and animal matter.[79]

7.3 **Hunting and Trapping**. Hunting or trapping of any animal is prohibited.

7.4 **Attracting and Taming Wildlife**.

7.4.1 Homeowners may not tame, acquire, keep, or confine any form of wildlife. Young or injured wild animals found or acquired cannot be kept or reared, and must be surrendered to a professional rehabilitative care center.

7.4.2 Homeowners are encouraged to attract wildlife to their Lot by providing habitat that offers cover, water, and food for wildlife. Subject to limitations by the Association, Homeowners may provide the following habitats including native vegetation, bird feeders, nesting boxes, sheltering boxes, garden ponds, and bird baths. Artificial shelters and nesting boxes will 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 will be constructed so that they can be cleaned and disinfected at least annually.

7.4.3 Garden ponds and birdbaths will be maintained in good order to prevent the proliferation of noxious insects (such as mosquitoes), toxigenic blue-green algae, bacterial pathogens, or wildlife that could present a problem for people if present in such numbers or places where conflict would occur. Garden ponds and birdbaths will also be designed child safe in order to prevent accidental drowning by children. For more information on these topics, Homeowners are encouraged to visit the University of Florida's Wildlife Extension Web site at http://www.wec.ufl.edu/extension.

7.5 **Killing or Harming Wildlife**.

7.5.1 Wild animals will 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.

7.5.2 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

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[79] Many exotic invasive plants and animals are introduced into Florida's environment by dumping aquatic plants and animals into waterbodies. For examples of species which were introduced in this way see: Mark A. Mossler and Ken A. Langeland, *Florida Crop/Pest Management Profile: Aquatic Weeds,* 2006, available at http://edis.ifas.ufl.edu/PI175, and Florida Fish and Wildlife Commission, *Florida's Exotic Freshwater Fishes*, 1999-2008, available at http://myfwc.com/fishing/fishes/non-native.html.

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.

7.5.3 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.

7.6 **Feeding Wildlife**.[80]

7.6.1 Except as provided by Section 2.1.6(d) above, feeding wildlife is prohibited. Wildlife may not be indirectly fed by leaving food out for companion animals. Feeding must not lead to conflicts between animals and humans.

7.6.2 The Association may recommend proper foods and feeding schedules. The Association may also suspend all bird feeding during any period of increased nuisance wildlife activity. Bird feeders should be limited in type and number. Feeders and human-supplied water sources, including birdbaths, will be kept clean so that disease is not transmitted. Feeders should be protected from raiding by mammals such as raccoons.

7.7 **Wildlife Conflicts**.

7.7.1 Resolutions to conflict between humans and wild animals will 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.

7.7.2 Wildlife control, including nonlethal actions, will not be conducted simply because a Homeowner considers the mere presence of a wild animal to be a "pest" or "nuisance."

7.7.3 The approach to wildlife conflict resolution will follow a series of steps, including:

(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

[80] Homeowners recognize that wildlife may be placed at risk by feeding that habituates animals to humans resulting in diminution of an animals' fear or normal caution around humans; by abnormally concentrating animals; by increasing risk of contact between wild animals, humans or pets, and other similar situations.

(d) An action plan that ensures the least injurious and invasive approach suitable is evaluated and undertaken before other measures are considered.

7.7.4 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 will be sought and the conditions or circumstances that led to the conflict will be removed.

7.8 **Wildlife Management Plan for Controlling Wildlife Populations**.

7.8.1 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).

7.8.2 Substantial and significant need must be demonstrated for human intervention to be considered, and regulations and guidelines established by the Florida Fish and Wildlife Conservation Commission will be consulted.

7.8.3 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.

7.8.4 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.

7.8.5 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.

7.9 **Nests and Dens**.

7.9.1 Nests of native or migratory birds will 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.

7.9.2 Young will 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.

7.10 **Wildlife Corridor Maintenance**[81]

7.10.1 **Wildlife Corridor Designation Map**. The Association will maintain a map showing all of the wildlife corridors in the Community at the Association office. Any Homeowner may request to inspect the map.[82]

7.10.2 **Conservation Easement**. A conservation easement was recorded, pursuant to Florida Statute § 704.06, to protect the wildlife corridors in the Community in Official Records Book _____, Page _____ of the Public Records of _____ County. (Note: Any such easement should be recorded prior to the covenants – attached as Exhibit ___ is a form easement that may be used for this purpose).

7.10.3 **Encroachment**. Neither the Association nor a Homeowner will mow, prune or in any way encroach within 30 feet of a designated wildlife corridor. This restriction applies regardless of whether the area within 30 feet of the corridor is located on a Homeowner's Lot.

7.10.4 **Lighting**. Homeowner will not allow any light on Homeowner's Lot to shine directly into or within 30 feet of a designated wildlife corridor.

7.10.5 **Buffers**. Homeowner will not interfere with any vegetative or man-made buffer separating Homeowner's Lot from a wildlife corridor regardless of whether the buffer is located on Homeowner's Lot.

8. Wildfire Prevention[83]

8.1 **Design**.

8.1.1 **Wildfire Prevention Committee**. The Landscaping Committee will either act as a Wildfire Prevention Committee or will appoint a separate committee to carry out the wildfire prevention duties set forth in this Section.

8.1.2 **General Duties of the Wildfire Prevention Committee**.

(a) **Application to Become a FireWise Community**.[84] Upon initial appointment by the Association, the Wildfire Prevention Committee will contact a FireWise representative and apply to become a FireWise Community. If recognized, the Wildfire Prevention

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[81] This section was modified from the Model Conservation Declaration of Covenants, Conditions and Restrictions, University of Florida Conservation Clinic, May 2008

[82] A wildlife corridor is a strip of habitat connecting wildlife populations separated by human activities such as roads or housing. Wildlife corridors help combat the effects of inbreeding by allowing an exchange of individuals between populations. Wildlife corridors are susceptible to edge effects, a much lower habitat quality along the edge of the habitat when compared to the inner portions. Limiting human interference near the boundary of the wildlife corridors can help lessen the edge effect.

[83] 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.

[84] 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/.

Committee will renew their status annually. If not recognized, the Wildfire Prevention Committee will address the recognized problems and will submit a new application annually.

(b) **Wildfire Hazard Assessment of the Community**. The Wildfire Prevention Committee will 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 will 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. [85]

8.2 **Installation**.

8.2.1 **Landscaping by the Developer**. The Developer will ensure installation of landscaping that mitigates the chance of wildfires and will avoid the use of fire-prone flora.

8.2.2 **Replacement Landscaping**.

(a) Any Homeowner replacing landscaping or installing new landscaping on private property will consider the wildfire implications.

(b) 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.

8.3 **Maintenance**

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

8.3.2 **Preventative Maintenance Landscaping by Homeowners**. In addition to other preventive measures, Homeowners are encouraged to:

(a) Keep trees and shrubs properly pruned,

(b) Remove leaf clutter and dead branches if not used for mulching,

(c) Dispose or compost cuttings and debris properly and promptly, according to Association and government restrictions,

(d) Store firewood away 30 feet away from the house,

(e) Maintain the irrigation system,

[85] A plant list is available from IFAS at hort.ufl.edu/fyn/list.pdf or at http://www.firewise.org/usa/

(f) Store and use flammable materials in a proper manner, and

(g) Keep gutters clean of debris build-up.

9. Lighting[86]

9.1.1 **Dark Sky Lighting**. All outdoor lighting will be of low intensity and conform to "Dark Sky" standards of downward projection.[87]

9.1.2 **Motion Sensors/Timers**. All outdoor lighting will be connected to a motion sensor or timer that limits the amount of time the lighting is activated.

9.1.3 **Holiday Lighting**. The preceding sections are not intended to prohibit the use of festive lighting during the holidays, so long as the festive lighting is not excessive.

10. Energy Efficiency; Renewable Energy.

10.1 A Homeowner is permitted to install s a solar collector, clothesline, or other energy device using renewable resources on the Homeowners' private property in accordance with Florida Statutes Section 163.04.

10.2 The Association may regulate the aesthetics and construction of such systems.

11. Homeowner Education

11.1 **Educational Package**. The Association will create a Florida-Friendly educational package that includes, but is not limited to, a copy of the Association's CCRs as well as any other relevant water conservation and Florida-Friendly Landscaping™ information. The Association will provide a copy of this educational package to all subsequent Homeowners. The Association recommends that Homeowners consult with local, county, or state FYN extension offices when appropriate.

11.2 **Subsequent Homeowner**. The Association will ensure that all subsequent Homeowners receive a copy of the Irrigation Plan and Schedule and operating manuals, including any warranties, for the following:

11.2.1 irrigation systems,

11.2.2 rain shut-off devices,

11.2.3 ET or soil moisture sensors, and

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[86] This section was modified from the Model Conservation Declaration of Covenants, Conditions and Restrictions, University of Florida Conservation Clinic, May 2008

[87] Use of "Dark Sky" lighting can help cut down light pollution. Light pollution disrupts ecosystems, causes adverse health effects in humans, and obscures vision of stars and other celestial bodies. More information on "Dark Sky" lighting can be found on the website for the International Dark Sky Association at http://www.darksky.org/mc/page.do.

11.2.4 any other mechanical or electronic device implemented in the Irrigation Plan.

11.3 When a Homeowner sells their home, the Homeowner will notify the Association of the transfer and the Association will provide the new Homeowner with a copy of the operating manuals and any applicable warranties as stated above in this Exhibit.

11.4 The Association will conduct an educational program on Florida-Friendly Landscaping™ to educate all Homeowners and Association members at least once a year.[88] This should include conveying information in regards to protecting water quality, water savings, and other financial savings related to conservation and Florida-Friendly Landscaping™.

11.5 Wildfire Prevention and FireWise Landscaping

11.5.1 **Public Workshops**. The Wildfire Prevention Committee will hold a public workshop at least once a year to educate Homeowners about wildfires and preventative maintenance.

11.5.2 **Educational Information**. The Association will provide wildfire prevention information to new Homeowners.

[88] 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.

VI. Model Provisions for Existing Communities

DECLARATION EXHIBIT
FLORIDA-FRIENDLY DEVELOPMENT
COVENANTS, CONDITIONS
AND RESTRICTIONS

1. Definitions

(Note: The drafter will need to check any existing definitions in the Declaration for consistency with definitions)

1.1 "**Association**" means the corporate entity responsible for operating and maintaining the Common Areas of the Community.

1.2 "**Certified Professional**" means a person who possesses a certificate of completion in the Florida Green Industries Best Management Practices.

1.3 "**Florida-Friendly Landscaping™**" means quality landscapes that conserve water, protect the environment, are adaptable to local conditions, and are drought tolerant. The principles of such landscaping include planting the right plant in the right place, efficient watering, appropriate fertilization, mulching, attraction of wildlife, responsible management of yard pests, recycling yard waste, reduction of stormwater runoff, and waterfront protection. Additional components include practices such as landscape planning and design, soil analysis, the appropriate use of solid waste compost, minimizing the use of irrigation, and proper maintenance.[89]

1.4 "**Florida Green Industries Best Management Practices**" includes those practices defined in the most recent version of the Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries.

1.5 "**Homeowner**" includes an owner of a Lot or Parcel.

1.6 "**Low Impact Development**" or "**LID**" is development that utilizes stormwater control techniques to control rainfall runoff by utilizing decentralized controls (such as pervious pavement, green roofs, vegetated swales, and infiltration trenches) by allowing water to infiltrate, filter, store, evaporate, percolate and detain, as appropriate, in place using biophysical characteristics of a property.

1.7 "**Managed Areas**" includes any areas managed but not owned by the Association.[90]

1.8 "**Surface Water Management System**" or "**SWMS**" is defined as the system, which is in place to regulate and control the flow of surface water. The SWMS incorporates methods and facilities to reduce impervious surface, disconnect impervious surfaces, infiltrate,

[89] Fla. Stat. §373.185(1)(b) (2010)
[90] In some communities, the Homeowners Association manages privately owned areas. This definition lets the reader know that there is a distinction between common areas and areas not owned but managed by the HOA.

convey, collect, store, retain, detain, absorb, inhibit, treat, use and/or reuse storm water to prevent flooding, overdrainage, environmental degradation and water pollution. The SWMS includes land, easements, improvements, facilities, Low Impact Development elements, and appurtenances.

1.9 "**University of Florida Institute for Food and Agricultural Sciences**" or "**UF/IFAS**" is a federal-state-county partnership dedicated to developing knowledge in agriculture, human and natural resources, and the life sciences, and enhancing and sustaining the quality of human life by making that information accessible. UF/IFAS maintains a website at http://www.ifas.ufl.edu and at the website "Solutions for Your Life" at http://solutionsforyourlife.ifas.ufl.edu/.

2. Landscaping

2.1 **Florida-Friendly Landscaping™**. The Association may not prohibit any Homeowner from implementing Florida-Friendly Landscaping™ on the Homeowner's private property in accordance with Florida Statutes Section 373.185 (2010). [91] [92]

2.2 **Site Preparation: Soil Testing.**

2.2.1 Common Area or Managed Area

(a) **Topsoil**. For all newly developed areas, the Developer or the Association, as applicable, will keep existing topsoil onsite, making sure that it is not buried under additional fill but spread on top of imported fill where possible throughout the development.

(b) **Soil Testing**. Before landscape installation starts on all areas on which the Developer, or Association, as applicable, intends to install landscaping, the Developer or Association, as applicable, will, after site preparation and final grading, 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.[93] The Developer will make this information available to the Association as part of the Association Official Records. If after turnover of control to the Association, the Association intends to install new landscaping

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[91] Fla. Stat. §720.3075(4)(b) (2010)

[92] Homeowner's Association may use all or part of the model Covenants, Conditions and Restrictions. To be considered "Florida-Friendly," communities must use maintenance contractors whose employees are trained in the Green Industries Best Management Practices program, have maintenance contracts that reflect Green Industries Best Management Practices, and provide education to their property managers and residents about Florida-Friendly Landscaping™ design and maintenance practices at regular intervals—at least once per year. In addition, Existing communities must address the issues in sections 2 – 4 (Section VI) in their CCRs. Existing communities may have only their common and managed areas certified as Florida-Friendly if they are unable to amend their CCRs, provided they have contracts, bylaws or written policies in place to require the practices. Maintenance companies do not become certified, only individual employees. Under the minimum requirement, the following certification is required: All supervisors and fertilizer/agrichemical applicators must be certified and all employees should be trained in the BMPs, but laborers that do not apply any chemicals, including fertilizer, need not pass the written examination and may work under the direct supervision of a certified person.

[93] 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.

in the Common Areas 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 will obtain soil analysis information from a reputable soil testing lab or the University of Florida/IFAS Cooperative Extension facility.

2.2.2 **Lot Soil Testing**. Prior to initial installation of landscaping on a Lot, the Lot Owner, whether Homeowner, Developer, or other party, must obtain soil analysis information from a reputable soil testing lab or the UF/IFAS Cooperative Extension facility to assess soil conditions such as soil type and texture, and pH.[94]

2.3 Design and Layout for Common Areas and Managed Areas

2.3.1 **Florida-Friendly**. The Florida-Friendly Landscaping™ concept of right plant, right place will be used. The Developer and Association, as applicable, will ensure that the design the of the landscape so that plants will serve environmentally friendly functions including, but not limited to, cooling, privacy screening, shade, aesthetics, wildlife habitat, runoff pollution prevention, and directing traffic flow onto and within the Community.[95]

2.3.2 **Existing Native Vegetation.** The Association will preserve and enhance host and nectar vegetation that attracts pollinators and provides food, shelter and habitat for a variety of wildlife.[96] The Association will preserve and enhance existing butterfly host vegetation located in preserves, easements, roadsides, undeveloped lots, vegetative buffers, around stormwater ponds, retention areas, Common Areas, and Managed Areas.[97]

2.3.3 **Landscaping Selection.** In accordance with the relevant local government landscaping ordinances and the most current version of the UF/IFAS Florida-Friendly Landscaping™ Guide to Plant Selection and Landscape Design, the Developer or Association, as applicable, will ensure that the selection of landscape plants suited to the soil and other site characteristics utilized by the Florida-Friendly Landscaping™ concept. The Community must have at least ten species of plants within its Common Areas or Managed Areas. The Association and the Homeowners will use plants listed in the most current version of the UF/IFAS Florida Friendly Landscaping™ Guide to Plant Selection and Landscape Design or Landscaping Committee Approved Plant List for suggestions. The UF/IFAS plant list is not all-inclusive, and many plants not listed may be Florida-Friendly as long as they match site conditions and are not

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[94] Id.

[95] Please see UF IFAS Florida-Friendly Landscaping™ Design and Plant Selection Guide (2010); For more information, please see "Adopting a Florida-Friendly Landscape: Steps for Converting a Typical Development Landscape to a Florida-Friendly Landscape", Hansen, et al. 2009. This document is ENH1135, one of a series of the Environmental Horticulture Department, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida. Original publication date, September 2009. Visit the EDIS Web site at http://edis.ifas.ufl.edu. Written by: Gail Hansen, assistant professor, Environmental Horticulture Department; Jennifer Ramos, courtesy extension agent I, E.A. Felter, extension agent II, and Celeste White, courtesy extension agent I, Orange County, Orlando, FL, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL.

[96] For more information, please see, "Community Butterfly*Scaping*: Community Butterfly*Scaping: Move beyond butterfly gardening to create a large-scale butterfly habitat."* available at http://fyn.ifas.ufl.edu/pdf/Butterfly_FlyerPrint_may_2010.pdf

[97] Id.

invasive exotics. By the same token, many plants that are listed may be unsuitable in some locations. Where doubt exists, the Landscaping Committee should refer the matter to the UF/IFAS County Extension Service Florida Yards & Neighborhoods agent or the Commercial Horticulture agent for assistance. However, the role of these agents is strictly educational, and all final decisions about plantings are to be made by the Association.

2.3.4 Turfgrass

(a) Association will follow the University of Florida Institute for Food and Agricultural Sciences and Florida Department of Environmental Protection Green Industries Best Management Practices recommendations for turfgrass, including (i) selection of grasses that may be maintained through use of the low end of the maintenance recommendations for irrigation and fertilizer for the particular type of turf selected and (ii) use of Integrated Pest Management (IPM) in selection of pesticides. Turfgrasses shall be allowed to develop deep roots and enter a dormancy stage during the winter or drought periods. Turfgrass maintenance will be taken in terms of survival, not just maintaining a green appearance.

(b) Functional turfgrass areas, such as buffers for landscape beds and to hold mulch into place, along with use of turf as a filtration buffer for runoff from organically mulched areas, will be allowed. Grassed swales will be allowed.

2.4 Design and Layout for Homeowners

2.4.1 **Florida-Friendly**. The Florida-Friendly Landscaping™ concept of right plant, right place will be used. The Homeowner will design the landscape so that plants serve a number of functions including, but not limited to, cooling, privacy screening, shade, aesthetics, wildlife habitat, runoff pollution prevention, and directing traffic flow onto and within the property.[98]

2.4.2 **Existing Native Vegetation**. Homeowners will retain and incorporate existing native vegetation into the landscape whenever feasible.

2.4.3 **Landscaping Selection**. In accordance with the relevant local government landscaping ordinances and the most current version of the UF/IFAS Florida-Friendly Landscaping™ Plant Selection Guide, the Developer, Association, or Homeowner, as applicable, will select landscape plants suited to the soil and other site characteristics utilized by the Florida-Friendly LandscapingTM concept. The Homeowner should have at least five species of plants in the yard, consistent with the new homeowner Florida-Friendly Landscaping™ recognition checklist.[99] The Association and the Homeowners will use plants listed in the most current version of the UF/IFAS Friendly Landscaping™ Guide to Plant Selection and Landscape Design or Landscaping Committee Approved Plant List for suggestions. The UF/IFAS plant list is not all-inclusive, and many plants not listed may be Florida-Friendly as long as they match site conditions and are not invasive exotics. By the same token, many plants that are listed may be unsuitable in

[98] Please see UF IFAS Florida-Friendly Landscaping™ Design and Plant Selection Guide (2010);
For more information, Please see Hansen et al, 2009. "Adopting a Florida-Friendly Landscape: Steps for Converting a Typical Development Landscape to a Florida-Friendly Landscape". Available at http://edis.ifas.ufl.edu/ep396
[99] Checklist available at http://fyn.ifas.ufl.edu/materials/FYN_Yard_Recognition_Checklist_2010.pdf

some locations. Where doubt exists, the Landscaping Committee should refer the matter to the UF/IFAS County Extension Service Florida Yards & Neighborhoods agent or the Commercial Horticulture agent for assistance. However, the role of these agents is strictly educational, and all final decisions about plantings are to be made by the Association.

2.4.4 **Community Butterfly*Scaping*.** Homeowners are encouraged to preserve and enhance existing butterfly host vegetation on their properties.[100]

2.4.5 **Turfgrass.** Homeowners will be allowed to follow the University of Florida Institute for Food and Agricultural Sciences and Florida Department of Environmental Protection Green Industries Best Management Practices recommendations for turfgrass, including (a) selection of grasses that may be maintained through use of the low end of the maintenance recommendations for irrigation and fertilizer for the particular type of turf selected and (b) use of IPM in selection of pesticides. Turfgrasses shall be allowed to develop deep roots and enter a dormancy stage during the winter or drought periods. Turfgrass maintenance will be taken in terms of survival, not just maintaining a green appearance.

2.4.6 **Appurtenances**. Homeowners are encouraged to use rain barrels, cisterns, rain gardens, and compost bins, as needed, within the Florida-Friendly Landscaping™ design concept. The Association may not prohibit these items, but the Association may regulate the aesthetics of these items, including but not limited to placement.[101]

2.5 Plant Installation.

2.5.1 **Association Installation**. All plant installations will be conducted in accordance with the most current version of the Florida Green Industries BMPs handbook guidelines.

2.5.2 **Homeowner Installation**. All Homeowner plant installations will be conducted in accordance with the most current version of the Florida Yards and Neighborhoods Manual.

2.6 **Mulching.**[102]

2.6.1 **Florida Green Industries Best Management Practices.** All mulching will be conducted in accordance with the most current version of the Florida Green Industries BMPs handbook guidelines.

2.6.2 **Placement.** Mulch will be placed at least 3–4 inches from the trunks of trees or the stems of landscape plants and will be maintained at a depth of 2–3 inches. Large mulched areas that slope to impervious surfaces or water bodies will be bordered by a turf or other groundcover to slow and absorb nutrient-laden runoff from the mulched area.

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[100] For more information, please see, "Community Butterfly*Scaping*: Community Butterfly*Scaping: Move beyond butterfly gardening to create a large-scale butterfly habitat."* available at http://fyn.ifas.ufl.edu/pdf/Butterfly_FlyerPrint_may_2010.pdf

[101] See Fla. Stat. § 720.3085 (2010)

[102] This section was modified from the Model Conservation Declaration of Covenants, Conditions and Restrictions, University of Florida Conservation Clinic, May 2008

2.6.3 **Organic Mulch.** Organic mulch may require weeding and replenishment once or twice a year to maintain a total depth of 2–3 inches. Mulch will be applied to a tree's drip line or beyond at least an 8-foot diameter around the tree. Organic mulch and recycled mulch (including leaves, pine needles, grass, and shrub clippings) are recommended.

2.6.4 **Cypress Mulch.** Cypress mulch is often made from waste wood generated in manufacture of these products, but it may also be produced from whole trees cut from wetlands. The use of cypress mulch may not be recommended, as its origins may be difficult to determine.

2.6.5 **Inorganic Mulch**. Shell, crushed stone, or pebbles can be used as mulch but will not contribute to the soil's nutrient and organic content or water-holding capacity. Limestone and shell both raise soil pH and reflect heat, increasing the water needs of plants. If these products are used, they must be installed over top of a woven or other pervious ground cloth to keep them from sinking in sandy soils. These mulches last a long time, but will need to be cleared of debris to look their best.

2.6.6 **Surface Below Mulch**. Impervious surfaces, including plastic sheeting, will not be placed below mulch.[103] This does not prohibit the use of woven or other pervious ground cloth.

2.6.7 **Other Prohibited Ground Coverings.** White gravel, shells, and other similar light colored materials are prohibited as major landscape ground coverings in lieu of vegetation. [104] However such materials may be used as porous surfaces for walkways, patios or drives, for erosion control, mulches, or as landscaping accents. The HOA may regulate the aesthetics of such materials. Use of artificial turf is not consistent with Florida-Friendly Landscaping™ and is not recommended.

2.7 Landscape Maintenance Activities for Common Areas or Managed Areas

2.7.1 **Fertilizer Use.**[105]

(a) **Definition**. Fertilizers are defined as any substance that contains one or more recognized plant nutrients and promotes plant growth; controls soil acidity or alkalinity; provides other soil enrichment; or provides other corrective measures to the soil.

This definition does not include unmanipulated animal or vegetable manures, peat, or compost that makes no claims as described in the above definition.[106]

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[103] Placing plastic sheeting or any other impervious substance below mulch prevents water from being absorbed into the ground and can increase flooding.

[104] These materials increase the need for herbicide use, have no habitat value, reflect rather than absorb heat, and do not produce oxygen like plants. UF/IFAS, FDEP, et al., Guidelines for Model Ordinance Language for Protection of Water Quality and Quantity Using Florida Friendly Lawns and Landscapes, 2009, available at http://www.dep.state.fl.us/water/nonpoint/pubs.htm.

[105] This section was modified from the Model Conservation Declaration of Covenants, Conditions and Restrictions, University of Florida Conservation Clinic, May 2008

[106] Fla. Stat. § 576.011(12) (2010)

(b) Scheduling and Quantities. Fertilization scheduling and quantities will not exceed the "low maintenance" recommendations of the University of Florida Cooperative IFAS Extension Service.

(b) **Reclaimed Water**. If reclaimed water is used for irrigation in the Community, the Landscaping Committee will obtain reclaimed water nutrient content reports from the utility provider at least quarterly, and will disseminate those reports to all Homeowners and landscape contractors working in the Community. Landscapers and Homeowners will reduce nitrogen fertilizer applications appropriately. Unless tissue testing confirms a phosphorus deficiency, applications of fertilizer to turfgrass irrigated with reclaimed water will be limited to a grade of zero phosphate.

(c) **Application.** Fertilizers and pesticides may not be applied within a minimum of 10 feet from the edge of any water body, except as specifically permitted by the pesticide label and state law for aquatic pest control.[107] For the purposes of this section, water body includes, but is not limited to, creeks, lakes, ponds, rivers, streams, lagoons or stormwater retention areas not under the Water Management District jurisdiction, or those delegated to the Association by the Water Management District. All fertilizer spills or granules that may have been deposited on impervious surfaces will be collected or swept back into the vegetated area.

2.7.2 **Mowing.** Mowing in Common Areas and Managed Areas will be done in accordance with the most current version of the Florida Green Industries BMPs handbook and by certified landscaping contractors. Mowing adjacent to swales or water bodies will be performed such that no clippings are deposited into any swales or water bodies. All clippings that may have been deposited on impervious surfaces will be swept back into the vegetated area.

2.7.3 **Disposal of Landscape Material.** Turf Clippings. Unless the turf is diseased, turf clippings will be left on turf areas or composted on-site to recycle nutrients. Any clippings or landscape material that fall on impervious surfaces such as sidewalks, driveways, or roads will be swept onto turf areas or composted. Turf clippings or landscape material will not be deposited in any swales or water bodies.

2.8 **Homeowner Maintenance.** Homeowners are encouraged to conduct routine maintenance including fertilizer use, if needed, and mowing in accordance with the most current version of the Florida Yards & Neighborhoods Guide to Florida-Friendly Landscaping™. Mowing adjacent to swales or water bodies will be performed such that no clippings are deposited into any swales or water bodies. All clippings that may have been deposited on impervious surfaces will be swept back into the vegetated area. Unless the turf is diseased, turf clippings will be left on turf areas or composted on-site to recycle nutrients. Any clippings or landscape material that fall on impervious surfaces such as sidewalks, driveways, or roads will be swept onto turf areas or composted. Turf clippings or landscape material will not be deposited in any swales or water bodies. Homeowners are encouraged to compost their vegetation for use on landscaped areas.

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[107] 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). The removal of aquatic weeds from state waters requires an aquatic plant removal permit from FFWCC (additional information is available at http://myfwc.com/nonnatives/InvasivePlants/index.htm).

2.9 Landscape Maintenance Contracts.

2.9.1 All lawn maintenance contracts will follow the University of Florida Institute for Food and Agricultural Sciences and Florida Department of Environmental Protection Green Industries Best Management Practices manual, and if needed, irrigation, fertilizer and pesticide applications must be at the low end of the maintenance recommendations contained in the most recent copy of the manual.

2.9.2 All contractors must employ Green Industries Best Management Practices-certified supervisors and applicators of fertilizer or pesticides. At least one certified person must be on site when work is being performed.[108]

3. Pest Control

3.4 **Pesticide Application**.

3.4.1 Preventive[109] blanket applications of pesticides are prohibited, except those performed as part of an IPM program in accordance with the most current version of the Florida Green Industries BMPs handbook or for termite prevention.

3.4.2 All pesticide applications in Common Areas will be done by a Certified Professional and in accordance with the most current version of the Florida Green Industries BMPs handbook.

3.4.3 Homeowners will use Integrated Pest Management for controlling pest problems and follow the most current version of the Florida Yards & Neighborhoods Guide to Florida-Friendly Landscaping™.

3.4.4 All pest control companies servicing a Homeowner's property must have valid state and county licenses, follow Integrated Pest Management as prescribed in the Florida Green Industries BMPs handbook, and have a valid certification.

4. Irrigation

4.1 **Necessity of an Irrigation System**. Irrigation systems are not required.

4.2 **Design**.

4.2.1 **Lawns not requiring Irrigation Systems**. Where a Homeowner has designed and installed a lawn in accordance with Florida-Friendly Landscaping™ practices, if the Homeowner's property is irrigated only through a properly maintained and

[108] Maintenance companies do not become certified, only individual employees. Under the minimum requirement, the following certification is required: All supervisors and fertilizer/agrichemical applicators must be certified and all employees should be trained in the BMPs, but laborers that do not apply any chemicals, including fertilizer, need not pass the written examination and may work under the direct supervision of a certified person.

[109] 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.

operated micro-irrigation system or by hand watering by hose, rain barrels or cisterns, the Homeowner may in certain circumstances be exempt from additional irrigation system requirements throughout the Homeowner's Association documents.

4.2.2 **Irrigation Design**. Where necessary, all irrigation systems will meet or exceed all state and local regulations. The irrigation systems of any areas that do not have local irrigation regulations will, at a minimum, meet the state Standards for Landscape Irrigation in Florida. The irrigation system will be designed so as to not overlap with water coverage zones, not to water impervious areas, and not to irrigate within 3 feet of the building foundation. The irrigation design will separate turf irrigation areas from landscape bed irrigation areas. All new irrigation systems shall meet the more stringent of the current requirements of Standards for Landscape Irrigation in Florida[110] and all current Water Management District (WMD) and local government requirements, in addition to current Best Management Practices as established by the most current version of the Florida Green Industries BMPs handbook, including the uniform distribution of water throughout all zones.[111] Before and during construction, the designer of the Irrigation System will approve in writing any changes to the irrigation design. A copy of the state Standards for Landscape Irrigation in Florida is available from Florida Department of Environmental Protection (FDEP) or the local Water Management District.[112]

4.3 **Irrigation Plan & Operation Manual**.[113]

4.3.1 The Landscaping Committee will develop an irrigation plan for the Community Managed Areas or Common Areas that includes, but is not limited to, an irrigation system layout identifying the location of the irrigation system components, irrigation times and maximum irrigation application rate per lawn, area, or zone.[114]

4.4 **Installation**

4.4.1 New irrigation systems in the Community will be installed according to the state Standards for Landscape Irrigation in Florida and will meet or exceed all state and local regulations. The irrigation systems of any areas that do not have local irrigation regulations will, at a minimum, meet the state Standards for Landscape Irrigation in Florida.

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[110] See Fla. Stat. § 373.228 (2010) Available: http://www.dep.state.fl.us/water/waterpolicy/land_irr.htm; Please also see Florida Irrigation Society Standards and Specifications, publication available for purchase at http://fisstate.org/publications.html

[111] This sentence should refer to the most current version of the Standards and Florida Green Industries BMPs manual and not to a specific set of guidelines since new revisions of the Standards and the BMPs manual will eventually come out.

[112] The standards for landscape irrigation can be found at the FDEP website at: www.dep.state.fl.us/water/waterpolicy/land_irr.htm

[113] Where possible, Florida-Friendly Landscaping™ may not dictate a need for irrigation systems for individual Homeowners. In these instances, HOAs may want to eliminate this provision.

[114] Other requirements may be added depending on how broad the 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 more frequent irrigation timing.

4.4.2 **Rain Shut-off Devices or Soil Moisture Sensor Installation**. Any person who purchases and installs an automatic landscape irrigation system is required by Florida law[115] to properly install, maintain, and operate technology that inhibits or interrupts operation of the system during periods of sufficient moisture. [116] Rain shut-off devices, evapotranspiration-based (ET) controllers, or soil moisture sensors will be installed and operational for all in-ground irrigation systems. Rain shut-off devices will be placed in open areas to prevent incorrect readings. Flow meters, tensiometers, and other irrigation tools may be used to help make good irrigation management decisions.

4.4.3 **Plant Irrigation Upon Installation**. The irrigation will match the new space, and landscape beds and turf zones will be separate, when feasible. Landscape beds will be established with temporary micro-irrigation or irrigated by limited-handwatering or micro-irrigation only.

4.5 **Scheduling**.

4.5.1 The HOA will create and publish an irrigation schedule. If the Association does not employ innovative technology including, but not limited to, soil moisture sensors or ET Controllers, they will, for all Managed Areas and Common Areas managed by the Association, create an irrigation schedule consistent with the UF/IFAS Extension irrigation scheduling recommendations to the extent that they meet or exceed state and local law.

4.5.2 In developing an irrigation schedule, the Association will take into account seasonal plant water requirements, recent rainfall, recent temperature extremes, and soil moisture.

4.5.3 The Association will, in accordance with the Irrigation Schedule, manage the irrigation systems used in the Common Areas and Managed Areas. The Association will account for and exempt newly installed landscaping in the irrigation schedule.

4.5.4 If reclaimed water is used for irrigation in the Community, the Association must comply with the requirements of Section 2.9.1(c) and incorporate the results of the water nutrient content reports into irrigation schedules as necessary to achieve appropriate reductions in nitrogen fertilizer application.

4.6 **Preventative Maintenance Program**. For Common Areas and Managed Areas, the Association will implement a preventative maintenance program that includes but is not limited to the following:

4.6.1 replacing worn or broken components,

4.6.2 identifying and repairing leaks,

4.6.3 identifying and repairing broken or faulty sprinkler heads,

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[115] Fla. Stat. §373.62 (2010)

[116] Pursuant to Fla. Stat. §373.62(1) (2010); Any person who purchases and installs an automatic landscape irrigation system must properly install, maintain, and operate technology that inhibits or interrupts operation of the system during periods of sufficient moisture.

4.6.4 identifying and repairing system malfunctions,

4.6.5 periodically calibrating irrigation system to determine proper watering time,

4.6.6 periodically monitor water bodies to detect sudden increase in algae growth, and

4.6.7 performing weekly visual inspections to identify excessive runoff, including standing water.

4.7 **Irrigation System Maintenance**.

4.7.1 Irrigation systems will be continuously maintained in working order so that the application rate of water, including reclaimed water, to landscape and grass does not exceed the ability of the soil to absorb and retain water applied during one application, and to prevent irrigation of impervious surfaces.

4.7.2 Homeowners will comply with the requirements of this Article and will maintain the irrigation systems within their Property boundaries.

4.7.3 The Association will within the Common Areas and Managed Areas, make monthly inspection of all automatic irrigation systems for operating defects, periodically calibrate all automatic irrigation systems, and seasonally reset the irrigation controllers or timers to account for changes in plant growth and local weather conditions.

4.7.4 The irrigation system will meet or exceed the rules of the State, the controlling Water Management District and the local government.

4.7.5 If a Homeowner's irrigation system does not function properly, the Association may correct this problem.

4.7.6 **Rain Shut-off Devices or Soil Moisture Sensor Maintenance**.

(a) The Association will maintain rain shut-off devices or soil moisture sensors in all the Common Areas and Managed Areas in accordance with state law.

(b) The Homeowners will maintain the shut-off devices or soil moisture sensors within their property boundaries in accordance with state law, if such devices are not managed by the Association.

(c) A licensed contractor who installs or performs work on an automatic landscape irrigation system must test for the correct operation of each inhibiting or interrupting device or switch on that system. If such devices or switches are not installed in the system or are not in proper operating condition, the contractor must install new ones or repair the existing ones

and confirm that each device or switch is in proper operating condition before completing other work on the system. [117]

[117] Pursuant to Fla. Stat. §373.62(2)(2010); A licensed contractor who installs or performs work on an automatic landscape irrigation system must test for the correct operation of each inhibiting or interrupting device or switch on that system. If such devices or switches are not installed in the system or are not in proper operating condition, the contractor must install new ones or repair the existing ones and confirm that each device or switch is in proper operating condition before completing other work on the system.