

Model Conservation Declaration of Covenants, Conditions, and Restrictions

May 2008

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Introduction

Historically the road to minimizing the environmental impacts of development was through regulation by state the state or local government. A growing “green” awareness of homebuyers, builders, and developers suggests that the “covenants, conditions, and restrictions” of a homeowners’ association may serve as useful tools to minimize the environmental impact of new development.

Homeowners’ association (HOAs) are governed by Chapter 720 of the Florida Statutes and are organizations comprised of the property owners within the boundaries of the HOA. A defining feature of HOAs are the covenants, conditions, and restrictions (CCRs) that create limitations on what property owners may do with and on their private property. While CCRs may be infamous for restrictions on things like posting a “For Sale” sign, parking a pick-up in the driveway, leaving a garage door open, or painting a house the wrong color, they can also be used to protect the environment from development impacts. CCRs, can limit irrigation use or prohibit it all together; require use of native and appropriate low-maintenance plants (and limit or prohibit turfgrass that is not in the “excellent” category for drought tolerance);¹ require energy efficient appliances; require low-flow fixtures; require compact fluorescent lighting; preserve undisturbed, natural areas; protect wildlife; or any number of other measures that diminish the environmental footprint of new development.

HOA CCRs have some distinct advantages over typical regulation in their ability to protect the environment when the CCRs are properly conceived and crafted.

First, they can sometimes accomplish what regulation cannot. For example, local governments cannot regulate the time and manner of use of irrigation systems since exclusive authority for this resides with Florida’s water management districts. But if a local government is concerned about the water use of a proposed development, the developer might offer CCRs limiting irrigation to decrease water use.

Second, since purchase of property in an HOA signifies that the purchaser agrees to be bound by the CCRs, this private, voluntary acceptance of CCRs allows their restrictions to go beyond restrictions that state or local government would have the authority to impose on property owners. In other cases, it may be possible for government to regulate an impact, but the political process to regulate may be lagging behind awareness. In such cases, CCRs can provide developers an opportunity to assure local governments and the public that the development will minimize its impact on the environment.

Third, the current fiscal crisis in Florida has cut budgets, and thus also the staff and resources to monitor and enforce conditions for environmental protection which are

¹ See, e.g. L.E. Trenholm and J.B. Unruh, *New and Not So New Lawn Grasses for Florida* (Document #ENH1033), University of Florida Institute for Food and Agricultural Sciences (2006), available at <http://edis.ifas.ufl.edu/pdf/ep/ep28800.pdf>.

placed on developments. CCRs can assist as they essentially amount to privately-monitored and enforced regulations. While use of CCRs does not eliminate the need of state or local government to monitor or enforce conditions placed on development, it can shift some cost for these activities to the developments that create the cost.

The model HOA CCRs here demonstrate many of the possible environmental considerations that may be included in CCRs, and many of the provisions were taken directly or slightly modified from existing HOA CCRs (this is typically indicated by a footnote). However, the CCRs here may not be adopted as the entirety of an HOA's CCRs since they are far from complete; these model environmental CCRs do not include important administrative and governance provisions necessary for CCRs. Rather, these CCRs intend to present to developers, local governments, and local activists examples of some of the environmental protections possible through CCRs. The document contains footnotes that may contain commentary on the text and additional resources.

One final note: HOA CCRs are legal documents that may be very complex. Incorporating parts of these model CCRs without fully reading and understanding both the model document and the CCRs to which the provisions are added can result in confusion and contradiction in the CCRs. Please consult a qualified attorney if you require CCRs for an HOA.

We hope you find these model CCRs informative and useful. Please let us know if you have any suggestions for improvement or if you incorporate any of these provisions into your CCRs.

Section 1: General Definitions²

1.1 Landowner³

Landowner is defined as the entity which is the record owner of fee simple title to any Lot, parcel, or tract of land within the Development, including the HOA, and Developer and its successors and assignees. Landowner also includes any entity currently leasing a Lot in the Development. Landowner does not include an entity which has an interest in a Lot, parcel, or tract of land within the Development merely as security for the payment of a debt or the performance of an obligation.

1.2 Lot⁴

Lot is defined as a separate single family residential homesite or building lot within the Development as described pursuant to the Plats. Lot also includes all improvements located on the Lot.

1.3 Low Impact Development Elements

Low Impact Development (LID) emphasizes using natural on-site features and conservation-friendly methods to manage surface water run-off. LID Elements include, but are not limited to, rain barrels, cisterns, rain gardens, swales, and above- or below-ground exfiltration tanks. LID Elements may be located on individual lots or common property. LID Elements on located on private property are nonetheless part of the SWMS.

1.4 Improvements⁵

Improvements are defined as any buildings, outbuildings, structures, driveways, walkways, swimming pools, patios, decks, fences, walls, landscaping, and any and all other appurtenances, facilities, or impervious surfaces developed, constructed, erected, placed, installed or located on the Lot, or any replacement, addition, or alteration to an existing Improvement

² Always make sure that the pertinent definitions are included whenever restrictions from this document are incorporated into a Declaration. Failure to include a definition could completely change the meaning of a restriction.

³ This definition is taken from the *Declaration of Covenants, Conditions, Restriction, Easements, and Reservations for Clarcona Reserve (Clarcona)*. Clarcona Reserve is located in the city of Apopka in Orange County, Florida.

⁴ Clarcona.

⁵ Clarcona.

1.5 New Resident

New Resident is defined as any Landowner who has purchased or leased a Lot in the Development, or is planning to, and has not attended a New Resident Class.

1.6 Surface Water Management System (SWMS)

The Surface Water Management System (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, 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, LID Elements, and appurtenances.⁶

1.7 University of Florida Institute for Food and Agricultural Sciences

The University of Florida Institute for Food and Agricultural Sciences (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 a the website “Solutions for Your Life” at <http://solutionsforyourlife.ifas.ufl.edu/>.

Section 2: Home Owner’s Association, Architectural Review Board, and Environmental and Landscape Review Committee⁷

2.1 Optional Element: Environmental and Landscape Review Committee⁸

⁶ *Clarcona.*

⁷ This section presupposes that the declaration already has provisions for a Home Owners Association (HOA) and Architectural Review Board (ARB). This section grants new rights and powers for these organizations as well as establishing the Environmental and Landscape Review Committee.

⁸ The Environmental and Landscape Review Committee would assume many of the duties of the ARB and the HOA. If a CCR would fall under the auspices of the Environmental Landscaping Review Committee “ELRC” will appear at the beginning of the CCR’s footnotes. When reading those sections, replace the word “HOA” or “ARB” with “ELRC.” The idea of using an ELRC was used extensively in *Florida – Friendly Landscaping Covenants, Conditions and Restrictions* (FFLCCR). University of Florida Conservation Clinic, *Florida – Friendly Landscaping Covenants, Conditions and Restrictions*, 2006, available at http://www.law.ufl.edu/conservation/pdf/florida_friendly.pdf. Establishment of the ELRC is only listed as optional because it might be too cost prohibitive for small developments.

- a. Establishment of Committee. The HOA shall establish an Environmental Landscaping Review Committee “ELRC.”
- b. Appointment of Committee Officers. The Board of Directors of the HOA shall appoint three Officers to the ELRC by a vote of the Board of Directors. Officers do not need to be members of the HOA or reside within the Development. At least one Officer shall have a professional knowledge and understanding of the subject matter in this document, i.e. Florida Best Management Practices, Florida WaterStar, EnergyStar.⁹ Appointment of at least one Officer who resides outside the Development, is highly recommended.
- c. Term of Office. Upon establishing the ELRC, the HOA shall 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 shall be for a term of three years except for appointments to fill an unexpired term left vacant by the previous appointee. Such appointments shall be for the unexpired duration of the term being filled.¹⁰
- d. Compensation of Committee Officers. Upon establishing the ELRC, the HOA shall determine how much compensation, if any, Officers shall receive. The HOA may alter its decision regarding the necessity and amount of compensation for a committee Officer upon the appointment of that Officer. If a new Officer shall receive higher compensation than existing Officers, the HOA shall increase the compensation of all existing Officers to that of the new Officer.¹¹
- e. Duties of the ELRC. The ELRC shall make all environmental and landscaping regulations within the Development. Environmental and landscaping decisions include, but are not limited to, irrigation, pesticide application, fertilization, water conservation, and wildlife conservation. Any Landowner desiring to make an environmental design change to their Lot, including changes to landscaping, irrigation, or use of certain pesticides and chemicals,¹² shall seek approval by submitting a design change application to the ELRC. The ELRC shall provide written notice

⁹ 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 ELRC 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>.

¹⁰ Staggering the terms of office ensures that at least two officers will always have experience dealing with the affairs of the ELRC.

¹¹ This allows the HOA to alter compensation without unfairly affecting the officers who are already serving.

¹² Sections 6, 7, and 8 of this document.

of approval or denial of the application to the Landowner on or before the thirtieth day after receiving the application. In case the Landowner has not received written approval or denial of within 30 days, Landowner's application shall be considered approved. If this section is contradicted by other sections in this document, the more specific section shall control.

2.2 List of Certified Professionals¹³

- a. Maintenance of List.¹⁴ The HOA shall maintain an updated List of Certified Professionals who may perform landscaping, pest control, fertilizing, or other services within the Development. The HOA shall update this list at least once every six months. Only contractors who have a current certificate of completion of training in Florida Green Industries: Best Management Practices for Protection of Water Resources in Florida¹⁵ from the UF/IFAS Extension Service and demonstrate that they follow these Best Management Practices shall be allowed to perform services for-hire in the Development.¹⁶
- b. Dissemination of List. The HOA shall make a current copy of the List of Certified Professionals available in the HOA office for Landowners to examine. The HOA shall provide a copy of the List of Certified Professionals to all Landowners annually. The HOA shall provide all New Residents with a copy of the List of Certified Professionals on or before the seventh day after the New Resident has purchased a lot or has begun their lease.¹⁷
- c. Use of a non-Listed Contractor. The HOA shall not hire any contractor who is not on the List of Certified Professionals. Landowners using for-hire contractors who are not included in the HOA's List shall obtain written permission from the HOA before the contractor may perform any service on Landowner's Lot. The HOA shall only approve the contractor if the contractor qualifies for inclusion on the List, in which case the HOA shall add the contractor to the List. The HOA may fine a Landowner fifty

¹³ ELRC. The following CCRs were taken and modified from the *Declaration of Covenants, Conditions and Restrictions for Madera Development* (Madera). The development of Madera is located in the city of Gainesville in Alachua County, Florida.

¹⁴ *Madera.*

¹⁵ For more information on these practices see: *Florida Green Industries: Best Management Practices for Protection of Water Resources in Florida*, 2002, available at <http://ipm.ifas.ufl.edu/pdf/bmp-final.pdf>.

¹⁶ A schedule listing the time and location of Green Industries Best Management Practices Training Sessions can be found at: <http://yourfloridalawn.ifas.ufl.edu/index.html>.

¹⁷ Providing all Landowners and New Residents with copies of the List makes it easier for the Landowners and New Residents to know and use the certified contractors.

dollars (\$50.00) for every service performed by a non-approved, for-hire contractor.

2.3 Education of New Residents¹⁸

- a. New Resident Class.¹⁹
 - i. *Option 1:* At least once every six months, the HOA shall conduct a class for New Residents explaining the purpose and effect of each environmental CCR which affects Landowners. The HOA may elect not to conduct a class if no New Residents currently reside in the Development.
 - ii. *Option 2:* The HOA shall meet with each New Resident prior to the New Resident's purchase of a Lot or commencement of their Lease and conduct a class explaining the purpose and effect of each environmental CCR which affects Landowners in the Development.
- b. Mandatory Attendance. Attendance at the New Resident Class by New Residents is mandatory. The HOA shall notify each New Resident of the New Resident Class, in writing, on or before the fourteenth day prior to conducting the class. If a New Resident fails to attend the class without first receiving written permission from the HOA, the New Resident forfeits the New Resident's rights and privileges to access Common Property until the New Resident completes a New Resident Class.

2.4 Easements²⁰

- a. Granting of Easement. The HOA and its authorized agents are granted a non exclusive perpetual appurtenant easement over all Lots in the Development for the purpose of inspecting whether the lot in question

¹⁸ *ELRC.* This section expands upon the Homeowner Education requirement in *FFLCCR*. Section 9.3 explains the procedure through which the HOA or ELRC becomes aware of a New Resident.

¹⁹ The following options provide two different methods for explaining to New Residents how the environmental CCRs affect them. The first option is much more cost effective because it allows the HOA or ELRC to explain the CCRs to a large group of New Residents at the same time. On the other hand, the New Residents might reside in the Development for as long as six months before receiving any explanation of the CCRs. The second option educates the New Residents before they begin residing in the Development, but places much larger time and economic burdens on the HOA or ELRC since they now need to meet with each New Resident individually.

²⁰ The HOA and ELRC can use this easement to inspect private Lots for potential and correct violations of the CCRs in this document. This easement is in addition to the SWMS Easements in § 5.1.

complies with the CCRs in this Document. The HOA may use this easement to remedy any violations of the CCRs in this document.

- b. Notice. The HOA shall provide the Landowner of the Lot with reasonable notice before using the easement. In the event that the HOA must use the easement during an emergency, the HOA shall provide notice to the Landowner as soon as reasonably possible.²¹

Section 3: Assessments, Penalties and Fines²²

3.1 Establishment of Assessments

In order to provide for and assure the availability of the funds necessary to pay for the Common Expenses associated with the ownership, administration, management, regulation, care, maintenance, repair, restoration, replacement, preservation and protection of the Common Property, specifically including the SWMS and such additional Common Expenses as may be associated with and otherwise necessary for the HOA to perform its duties and obligations pursuant to and in accordance with the CCRs in this document, each Lot and each Landowner of such Lot shall, by the acceptance of a deed or other conveyance of title to a Lot, whether or not it shall be expressly stated in any such deed or other conveyance, and whether or not reference to this Declaration shall be made in such deed or other conveyance, be obligated for and be deemed to have covenanted and agree to pay to the HOA all Assessments, whether Regular Assessments, Capital Expenditure Assessments, Special Assessments or Individual Lot Assessments, established, levied, made and imposed by the HOA pursuant to this Declaration. All such Assessments shall be established, levied, made, imposed, enforced and collected pursuant to the provisions of this Declaration and the Articles of Incorporation, By-Laws and Regulations of the HOA.

3.2 Common Expenses

²¹ The definition of notice is intentionally vague so that either oral or written notice is permitted during an emergency.

²² These assessments are not comprehensive. They only represent the assessments needed for the purposes of this document and are meant to merely compliment, not replace, the standard assessments found in declarations. They do not include any provisions detailing the collection of the assessments. The provisions in this section are taken, with small changes, from *Clarcona* unless otherwise indicated in the footnotes.

The Common Expenses for which Assessments shall be established, made, levied, imposed, enforced and collected by the HOA pursuant to this Declaration shall be all costs and expenses incurred by the HOA in the discharge and performance of the duties and obligations for the HOA pursuant to this Declaration. These include, but are not limited to:

- a. Surface Water Management System.²³ Expenses incurred in connection with the ownership, administration, operation, management, regulation, care, maintenance, repair, restoration, replacement, improvement, preservation or protection of the surface water management system (SWMS) and its related easements, and all its facilities, structures, and appurtenances, including drainage, retention, detention, LID elements, and treatment areas, whether on public property, private Lots, or Common Property. Such expenses include, but are not limited to, the costs of maintaining an effective contract with an independent consultant certified by UF/IFAS as knowledgeable and proficient in the methods of properly monitoring, operating, and maintaining LID elements per current certification by UF/IFAS and who uses methodologies approved and recommended by UF/IFAS in the monitoring, operation, and maintenance of LID Elements for monitoring, maintenance, and operation of the SWMS, as required by the _____ Water Management District, maintenance and repair costs and capital expenditures for replacement of any portion of the Surface Water Management System. Reasonable reserves of no less than \$_____ shall be maintained for the operation of, repairs to, and replacement of the SWMS and its related easements, and all its facilities, structures, and appurtenances, including drainage, retention, detention, LID elements, and treatment areas, whether on Public Property, private Lots, or Common Property.²⁴
- b. Funding of Architectural Review Board and Environmental and Landscape Review Committee. Expenses incurred by the Architectural Review Board (ARB) and the ELRC in the performance of their duties and obligations pursuant to the CCRs in this document, including, without limitation, the fees or other compensation paid to consultants to the ARB or ELRC, including but not limited to architects, landscape architects, engineers and attorneys.²⁵

²³ See § 5 for more SWMS restrictions.

²⁴ As of May 2008, it is currently impossible to fulfill this requirement because no standards or certification for contractors exists to ensure that contractors are knowledgeable and proficient in the monitoring, operation, and maintenance of LID elements. Establishment of a training and certification program could help convince Florida's Department of Environmental Protection and the water management districts to allow HOAs to manage surface water management systems that include low-impact development elements in the stormwater system.

²⁵ If an ELRC has not been created, this section would only provide funding for the ARB.

- c. Enforcement of Provisions. Expenses incurred in connection with the enforcement of the provisions of the CCRs in this document, including the fees, costs and expenses of any attorney retained or employed by the HOA or ELRC for that purpose.
- d. Landowner Education. Expenses incurred in the education of Landowners regarding the significance and importance of the SWMS on the Common and Private Property and the Environmental CCRs in this Declaration.²⁶

3.3 Use of Assessment Funds

The funds received and derived from any and all Assessments made by the HOA shall be used exclusively for the performance of the duties and obligations of the HOA pursuant to the CCR under which it was levied and the operation and administration expenses reasonably necessary for that performance.

3.4 Lien for Assessments

All Assessments, together with interest, late charges, costs and expenses, including attorney's fees associated with the collection thereof (whether suit be brought or not), shall be a charge upon each Lot against or with respect to which it is made or levied and, upon compliance with the provisions of Section _____,²⁷ shall become and thereafter constitute a continuing lien and encumbrance on such Lot until satisfied of record.

3.5 Personal Liability for Assessments

In addition to the foregoing lien for such Assessments, each such Assessment, together with interest, late charges, costs and expenses, including attorneys' fees associated with the collection thereof (whether suit be brought or not), as aforesaid, shall also be the personal obligation and liability of the Landowner of the Lot against or with respect to which it is made, levied or imposed at the time it is so made, levied or imposed. The personal liability for Assessments made, levied or imposed prior to the sale, transfer or other conveyance of a particular Lot shall not, by virtue of any such sale, transfer or other conveyance, pass to such Landowner's successor or successors in title unless such personal liability of

²⁶ This section provides funding for §§ 2.3 and 5.5(a).

²⁷ When applying §3.4, make sure to enter the section number of the provision in the declaration detailing the notice that the HOA must provide a Landowner before declaring a lien delinquent.

the Landowner shall be expressly assumed as the personal obligation of such successor or successors in title; provided, however, that no such assumption of personal liability by such successor or successors in title shall relieve any Landowner otherwise personally liable for payment of Assessments from the personal liability and obligation for the payment of the same.

3.6 Types of Assessments

The HOA is hereby authorized and empowered to establish, make, levy, impose, enforce and collect those Regular Assessments, Capital Expenditure Assessments, Special Assessments and Individual Lot Assessments for which provision is hereinafter made in this Declaration.

3.7 Regular Assessments

The HOA shall be and is hereby authorized, empowered and directed to establish, levy, make, impose, enforce and collect during each calendar year a Regular Assessment in order to provide funds required for the payment of Common Expenses to be incurred by the HOA during such calendar year in the performance of its duties and obligations pursuant to this Declaration. Such Regular Assessments shall be established, made, levied, imposed, enforced, collected and otherwise governed by the following provisions, to wit:

- a. Initial Regular Assessments. The initial or first Regular Assessment shall be in such amount as shall be determined by the Board of Directors of the HOA in its reasonable discretion, taking into account its estimate of the amount of Common Expenses to be incurred by the HOA during the portion of calendar year remaining following the recordation of this Declaration.
- b. Rate of Regular Assessments. The amount of the Regular Assessment for each calendar year subsequent to 20__ shall be established and determined by the Board of Directors of the HOA on or before the thirtieth (30th) day prior to the beginning of each calendar year. The Board shall establish the Regular Assessment for each calendar year based upon a pro forma operating statement or estimated budget for such calendar year which in turn shall be based, among other things, upon an estimate of the total Common Expenses likely to be incurred by the HOA during such calendar year, taking into account previous operating history and any surplus funds, not including required reserves, held by the HOA, and the establishment of reasonable reserves for monitoring, maintenance, repair, and replacement of the SWMS. The HOA shall, on or before the thirtieth (30th) day prior to the establishment of a Regular Assessment, provide to each Landowner a copy of the pro forma operating statement or estimated

budget to be used by the HOA in the establishment of such Regular Assessment. The total amount of the Common Expenses so estimated shall be divided by the total number of platted Lots within the Subject Property then subject to and encumbered by this Declaration in order to determine the amount of the Regular Assessment for each Lot for such calendar year.

- c. Notice of Regular Assessments. On or before the fifteenth (15th) day prior to the beginning of each calendar year the HOA shall provide written notice to each Landowner of the amount of the Regular Assessment for the next succeeding calendar year and the dates upon which such Regular Assessment or installments for the same shall become due payable.
- d. Commencement of Regular Assessments. Regular Assessments shall commence as to all Lots which become a part of the Development from time to time at such time as shall be determined by the Board of Directors of the HOA.
- e. Insufficient Regular Assessments. In the event that the HOA shall determine during any calendar year that the Regular Assessment established for such calendar year is or will become inadequate or insufficient to meet all Common Expenses for such calendar year, for whatever reason, the Board of Directors of the HOA shall be entitled to immediately determine the approximate amount of the deficiency or inadequacy of the Regular Assessment for such calendar year, issue a supplemental estimate of Common Expenses to all members of the HOA and within thirty (30) days thereafter levy and collect a supplemental or revised Regular Assessment for such calendar year.
- f. Limitation on Increases. After the HOA's first full calendar year of operation the HOA shall not establish, make, levy, impose, enforce and collect any Regular Assessment which is increased over the amount of the Regular Assessment for the immediately preceding calendar year at a rate greater than ten percent (10%) per year, cumulatively, since the initial establishment of or latest increase in the Regular Assessment without the prior approval of a majority of all Landowners who are voting in person or by proxy at a meeting of the HOA duly called for such purpose and of which written notice specifying the amount of a proposed increase in the Regular Assessment over the Regular Assessment for the prior fiscal year is sent to each member of the HOA on or before the thirtieth (30th) day prior to such meeting. This section does not apply to Regular Assessments levied under Section 3.7(e).
- g. Payment of Assessments. Regular Assessments shall be due and payable in advance in monthly or quarterly installments as determined by the

Board of Directors of the HOA, in its reasonable discretion. Such installments shall be due and payable without any further notice other than that notice specified in Section 3.7(c).

- h. Developer Option. Notwithstanding anything to the contrary set forth in this Declaration, unless more than _____% of the Development has been sold, Developer may either: (a) pay the Regular Assessment with respect to each Lot owned by Developer from time to time, or (b) pay the difference between (i) the aggregate amount of all Common Expenses (including budgeted reserves) actually incurred by the HOA during a particular calendar year and (ii) the aggregate amount of Assessments levied against and collected by the HOA (and paid by Landowners other than Developer) from and with respect to all Lots not owned by Developer during such calendar year.
- i. Reserves. The Assessments shall include reasonable amounts, as determined by the Board of Directors of the HOA or the Officers of the ELRC, to be collected and held as reserves against and for the future periodic maintenance, repair or replacement of all or any portion or portions of the Common Property, including, without limitation, common recreational facilities and Common Property landscaping, or for such other purpose or purposes as shall be determined by the Board of Directors of the HOA, in order to maintain compliance with the CCRs in this Document. Regular assessments shall also include reasonable amounts, as determined by the Board of Directors of the HOA, to be collected and held as reserves against and for the future periodic maintenance, repair or replacement of any portion of the SWMS, whether located on Public Property, Common Property, or Residential Property. Such portion of Regular Assessments representing amounts collected as reserves, whether established pursuant to this Section 3.X(i) or otherwise, shall be deposited by the HOA in a separate interest bearing bank account, certificate(s) of deposit or in United States Treasury Bonds of appropriate maturity, to be held in trust by the HOA until used for the purpose or purposes for which the same are established and shall be segregated from and not commingled with the general funds or any other funds of the HOA.

3.8 Capital Expenditure Assessments

The HOA shall be and is hereby authorized and empowered to establish, make, levy, impose, enforce and collect from time to time Capital Expenditure Assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction or the unexpected repair or replacement of any capital improvement to or upon the Common Property or element of the Surface Water Management System regardless of whether the element is located on Common Property or a Private Lot, or the cost of the initial purchase or any

subsequent unexpected repair or replacement of any fixtures, equipment or personal property purchased, repaired or replaced by the HOA in furtherance of the discharge of its duties and obligations pursuant to this Declaration; provided, however, that any such Capital Expenditure Assessment, unless the Assessment is being levied for the purpose of fulfilling an obligation or duty which the Developer or HOA incurred as part of a permitting process,²⁸ shall have the prior approval of two-thirds (2/3) of Members voting in person or by proxy at a meeting of the HOA of which written notice specifying the nature of the proposed capital expenditure and the amount of the proposed capital expenditure and the amount of the proposed Capital Expenditure Assessment is sent to all members of the HOA at least thirty (30) days in advance of such meeting. Capital Expenditure Assessments for the purpose of fulfilling an obligation or duty which the Developer or HOA incurred as part of a permitting process shall be assessed without a vote as needed. All sums collected as Capital Expenditure Assessments shall be used by the HOA only for the capital improvements or purchases or other capital expenditures for or with respect to which such Capital Expenditure Assessment has been approved and such sums shall be deposited by the HOA in a separate interest bearing bank account, certificate(s) of deposit or in United States Treasury Bonds of appropriate maturity, not commingled with any other funds of the HOA, to be held in trust by the HOA until used for such purposes.

3.9 Special Assessments

The HOA shall be and hereby is authorized and empowered to establish, make, levy, impose, enforce and collect from time to time Special Assessments for any purpose directly related to the discharge of its duties and obligations pursuant to the Environmental CCRs with the prior approval of two-thirds (2/3) of Members voting in person or by proxy at a meeting of the HOA of which written notice specifying the nature and amount of the proposed Special Assessment is sent to all members of the HOA at least thirty (30) days in advance of such meeting. Special Assessments for the purpose of maintaining the reserve for the operation and maintenance of the SWMS are required by the permit from _____ WMD and shall be assessed without a vote as needed. All sums collected as Special Assessments shall be used only for the purpose for which such Special Assessment is established, made, levied, imposed, enforced and collected and shall be deposited in a separate interest bearing bank account, certificate(s) of deposit or in United States Treasury Bonds of appropriate maturities, not commingled with any other funds of the HOA, and held in trust by the HOA until used for such purpose.

²⁸ For example, Capital Expenditure Assessments for the purpose of repairing or replacing elements of the SWMS would fall under this exception.

3.10 Individual Lot Assessments

- a. Enforcing Provisions of the Declaration. The HOA shall be and hereby is authorized and empowered to establish, make, levy, impose, enforce and collect against and from a particular Lot and Landowner of such Lot an Individual Lot Assessment for all costs and expenses incurred by the HOA in bringing a particular Lot or the Landowner of such Lot into compliance with the provisions of this Declaration, including any action taken or cost or expense incurred by the HOA to cure and eliminate any violation of or noncompliance with the provisions of this Declaration, following the failure of such Landowner, on or before the thirtieth (30th) day after receiving written notice from the HOA of the nature of the violation of or non-compliance with this Declaration, to cure or remedy such violation or non-compliance. If the HOA cures Landowner's violation of or noncompliance with the provisions, the HOA may assess an additional Premium of _____% of the cost the HOA incurred while remedying the violation. The Premium shall be treated as a fine. The Premium shall only be used for the costs of inspecting for and remedying violations of the CCRs in this document or funding the operational expenses of the ELRC, if an ELRC has been created. The HOA shall not use funds from the Premium for any other purpose.²⁹
- b. Damage to the Surface Water Management System. The HOA shall be and hereby is authorized and empowered to establish, make, levy, impose, enforce and collect against and from a particular Lot and Landowner of such Lot an Individual Lot Assessment for all costs and expenses incurred by the HOA for any repair, maintenance, replacement, or other work necessary to remedy any harm, damage, or decrease in functionality of the Surface Water Management System that is occasioned by an intentional activity of a Landowner or the Landowner's invitee or lessee.
- c. Attorney's Fees. The HOA shall be and hereby is authorized and empowered to establish, make, levy, impose, enforce and collect against and from a particular Lot and Landowner of such Lot an Individual Lot Assessment for costs and expenses, including reasonable attorneys' fees, whether suit be brought or not, incurred by the HOA in the enforcement of the provisions of this Declaration again a particular Lot or the Landowner of such Lot.
- d. Expenses Associated with Assessments. The HOA shall be and hereby is authorized and empowered to establish, make, levy, impose, enforce and collect against and from a particular Lot and Landowner of such Lot an

²⁹ Using the proceeds generated from the Premium to fund the ELRC and enforcement of the CCRs can reduce the need for Special Assessments.

Individual Lot Assessment for reasonable overhead expenses of the HOA associated with any Individual Lot Assessment in an amount not to exceed fifteen percent (15%) of the actual costs and expenses incurred by the HOA for any Individual Lot Assessment.

3.11 Quorum for Action Authorized Under Sections 3.7(f), 3.8 and 3.9

The quorum required at any meeting of the HOA for any action authorized pursuant to Sections 3.7(f), 3.8 and 3.9 of this Document shall be (i) at the first meeting called for the purpose of taking any such action the presence, in person or by proxy, shall be 50% of members of the HOA entitled to cast votes and (ii) if the required quorum is not forthcoming at such first meeting, and the required quorum at any subsequent meeting shall be one-half (½) of the required quorum at the first meeting.

3.12 Assessment of Combination/Fractional Portions of Lots

In the case of the combination, development and improvement of two (2) or more contiguous Lots or one (1) Lot and a portion or portions of another contiguous Lot or Lots which are owned of record by the same Landowner as a single unified homesite, the same shall be deemed, for Assessment purposes, to be multiple Lots (or fractional portions thereof) each of which shall be subject to the Regular Assessment; provided, however, that a fractional portion of a Lot shall be subject to a fractional Regular Assessment in the same proportion that such fractional portion of a Lot bears to the whole of the platted Lot of which it is a part.

3.13 Uniformity of Assessments

- a. General Uniformity of Assessments. Except for Individual Lot Assessments and Assessments for the SWMS, all Assessments (by type of Assessment) shall be uniformly fixed at an equal amount per Lot, regardless of the size of a Lot, and shall be collected on a uniform basis from the Landowner of each Lot or fractional portion of a Lot.
- b. Alternative: Surface Water Management System Assessments.³⁰

³⁰ This alternative would give a tangible benefit to Landowner's with SWMS Elements on their Lots. These Landowners, in turn, would be less likely to modify or interfere with the Elements. On the other hand, individually calculating each Landowner's assessment places a much higher administrative burden on the HOA. This might benefit Community Development Districts though, who, due to their quasi-public nature, are required to assess Landowners proportionately according to the benefit received by each Lot.

The HOA shall modify the Basic SWMS Assessment for each individual Lot using the following formula:

$X = (\text{Stormwater generated by Lot}) - (\text{Stormwater mitigated by SWMS Elements located on Lot})$

If $X < 0$, Landowner shall receive a credit on Landowner's assessment.

If $X > 0$, Landowner shall be charged extra on Landowner's assessment.

A comprehensive, detailed, engineering map of all SWMS elements has been attached to this Document as Exhibit _____.

3.14 Subordination of Assessment Lien

The lien of and for all Assessments provided for in Section 3.4 of this Document shall be and is hereby made junior, inferior, subordinate and subject in all respects to the line of any bona fide first mortgage held by an Institutional Lender upon a particular Lot. The sale, transfer or conveyance of title to a particular Lot shall not affect the effectiveness, viability or priority of any Assessment lien or the personal liability of the Landowner of such Lot for the payment of any Assessment; provided, however, that the sale, transfer or conveyance of title to a Lot pursuant to judicial proceedings in foreclosure of a bona fide first mortgage on such Lot held by an Institutional Lender shall extinguish the lien of such Assessments (but not the personal liability of the Landowner of such Lot) as to payments on account thereof which became due and payable prior to such foreclosure sale, transfer or conveyance.

3.15 Certificate of Assessments Due

The HOA shall, upon the request of any Landowner or any other interested party, furnish a certificate executed by its President, Secretary, Treasurer or any other officer or agent thereunto duly authorized, setting forth whether Assessments payable with respect to a particular Lot have been paid, the amount of the delinquency, if any, and the amounts of any outstanding and unpaid interest, late charges, penalties, costs of collection, including attorneys' fees and court costs, if any, associated with any such delinquent Assessments. Such certificate shall be binding upon the HOA as conclusive evidence of the status of the payment of any Assessment therein stated to have been paid or to be delinquent as of the date of the issuance of such certificate. The HOA shall be entitled to charge and collect a reasonable fee as a condition precedent to the issuance of any such certificate.

3.16 No Defenses or Offsets

All Assessments shall be payable in the amounts and at the times specified in any Notice of Assessment and no defenses or offsets against the payment of such amount shall be permitted for any reason whatsoever, including, without limitation, any claim by a Landowner that (i) the HOA is not properly exercising its rights and powers or performing or discharging its duties and obligations under or as provided in this Declaration or in its Articles of Incorporation or By-Laws; (ii) the Landowner and his family has elected to make no use of the Common Property; (iii) the Landowner and his family have otherwise waived or elected to waive their membership in the HOA ; or (iv) the HOA has suspended the right, privilege, license and easement of such Landowner and his family to use the Common Property as provided in Section _____³¹ of this Declaration.

3.17 Fine for Violating CCRs³²

The HOA shall levy a one hundred dollar (\$100.00) fine against a Landowner for violating any of the provisions in Sections 4, 5, 6, 7, 8, and 9. Upon giving Landowner a seven (7) day notice to correct the violation, the HOA shall levy an additional fine of seventy-five dollars (\$75.00) against the Landowner for each subsequent day Landowner fails to correct the violation.

3.18 Suspension of Common Property Privileges

The HOA shall have the right to suspend a Landowner's right to access Common Property during any time in which the Landowner has failed to pay an Assessment or Fine levied by the HOA against the Landowner and the Landowner's Lot on or before the thirtieth (30th) day after the HOA had levied the Assessment or Fine. Notwithstanding this section, the HOA shall not have the right to suspend or otherwise unreasonably interfere with the right, privilege, license and easement of any Lot or the Landowner to use the SWMS for its intended purpose.

Section 4: Construction³³

³¹ Enter the number of the section granting the Landowner the right to use and access Common Property here.

³² FFLCCR.

³³ Section 4 is only meant to supplement existing construction restrictions. For example, Section 4 does not cover building height or setback restrictions. Developers and their attorneys should make sure to cover these restrictions in their declarations.

4.1 Responsibility for Contractors

Landowner shall be liable for any violations of this Section committed by Landowner's contractors.

4.2 Approval of Construction of Improvements³⁴

- a. Approval by Home Owners Association.³⁵ The HOA must approve all plans for construction of Improvements before Landowner may commence construction on Landowner's Lot. The HOA shall only approve plans which ensure that Landowner's construction or placement of Improvements will not (a) interfere with the integrity of the SWMS, especially its LID elements; (b) complies with limitations on impervious surfaces listed in Section 5.6, if relevant; (c) complies with any limitations on impervious surface in the stormwater permit issued by the _____ Water Management District; and (d) will not overburden the existing SWMS.³⁶
- b. Approval by Architectural Review Board. The Architectural Review Board (ARB) must approve all plans for construction of Improvements before Landowner may commence construction on Landowner's Lot. The ARB shall consider whether Landowner has accounted for the requirements in this Section when determining whether to grant approval.
- c. Deviation from this Section. If Landowner can show that complying with a requirement would cause Landowner to suffer an unreasonable hardship, the ARB may allow Landowner to deviate from a requirement in this section. If the ARB allows Landowner to deviate from a requirement, this deviation shall apply only to the instant Landowner and exist only for a specific amount of time determined by the ARB. Should Landowner fail to act on the deviation within the specified time period, Landowner must reapply to the ARB for the deviation. Any grant of a deviation shall in no way be construed to act as a waiver on future claims petitioning for the same or a similar deviation. The ARB shall not allow any deviation from a requirement related to the SWMS.
- d. Definition of Nonconforming. Any work performed without first receiving proper approval from the HOA or ARB shall be considered nonconforming.

³⁴ Subsection a. is taken from *Clarcona* while the remaining subsections are from *Madera*.

³⁵ *Clarcona*.

³⁶ See Section 5 for more information on the SWMS.

- e. Removal of Nonconforming Improvement. Upon written request of the HOA or ARB, Landowner shall, at Landowner's own cost and expense, remove any nonconforming Improvement and restore the Lot to substantially the same condition as the Lot existed prior to construction of the nonconforming Improvement.³⁷
- f. Failure to Remove Nonconforming Improvement. Should Landowner fail to remove the nonconforming Improvement on or before the thirtieth (30th) day after receiving a written request from the HOA or ARB, the HOA or ARB shall have the right to enter Landowner's Lot and restore the Lot to substantially the same condition as the Lot existed prior to the nonconforming work. The HOA or ARB may levy an assessment against the Lot equal to the actual costs the HOA or ARB incurred while removing the nonconforming Improvement from the Lot plus a _____% Premium.³⁸

4.3 Florida Green Home Designation

Landowner shall ensure that each home built by Landowner in the Development will exceed the minimum Florida Green Home Designation under this program.³⁹

4.4 Clearing of Lot⁴⁰

- a. Trees. No trees shall be cut down or otherwise destroyed or removed from any Lot without the prior written consent of the ARB. As used herein the term "trees" shall mean and be defined as any tree four (4) inches or greater in diameter as measured one (1) foot above ground level.⁴¹
- b. Construction Near Protected Trees. When construction within the critical root zone of trees designated as protected is unavoidable, Landowner shall take every reasonable effort to limit the construction activities to one side of and no more than thirty-three percent (33%) of the root zone. Landowner shall use the trunk diameter method to determine the critical

³⁷ The draconian nature of applying this provision will hopefully prevent the necessity of its use.

³⁸ The Premium covers costs the HOA or ARB incurred, but are not easily rendered to a monetary amount, e.g. lost time.

³⁹ More information on the Florida Green Home Designation can be found on the website for the Florida Green Building Coalition at <http://www.floridagreenbuilding.org/db/?q=node/5360>.

⁴⁰ *ELRC*

⁴¹ This section is the exact same as § 6.2(a). It is repeated here in case a Developer chooses to apply Section 4 but does not Section 6. This section does not apply to any government agent who is authorized to enter and remove a tree pursuant to Florida Statute § 581.031(15)(a).

root zone of a tree.⁴² A tree is designated as protected if the ARB has not granted permission to cut down, destroy, or remove that tree.

- c. Trees and Shrubs. Landowner shall chip, on site, any non-invasive trees or shrubs which were removed during construction. The mulch from the chipping shall be used on site for Soil Stabilization or landscaping. The ARB or ELRC may waive this requirement if Landowner can show that chipping would be infeasible or cost prohibitive.⁴³ Invasive trees or shrubs shall be disposed of offsite and, if feasible, composted offsite for a soil amendment or mulch.
- d. Non-Native Invasive Plants. Prior to construction, Landowner shall remove all non-native, invasive plants from the Lot. Landowner shall ensure that all non native invasive plants removed from the Lot are properly disposed of in order to prevent the plants from spreading.⁴⁴

4.5 Construction Materials

- a. Determining Selection of Materials. Landowner shall give the Guidelines presented in the “Green Materials Selection Criteria” section of *Build Green and Profit* priority when selecting all building materials for homes.⁴⁵
- b. Insulated Windows and Doors. Landowner shall install insulated windows and insulated doors when the window or door is part of an exterior wall.⁴⁶

⁴² The critical root zone is the minimum necessary portion of a tree’s roots which are needed for the tree to stay healthy and stable. The trunk diameter method states that the critical root zone expands 1-1.5 feet of space from the trunk for every inch of trunk diameter at 4.5 feet above the soil.

⁴³ See § 4.10(c) for more information on Soil Stabilization.

⁴⁴ The Florida Department of Environmental Protection (DEP) defines a native plant as a species whose natural range included Florida at the time of European contact (1500 AD). DEP provides a list of non-native plant species that are restricted by federal, state or local law at: <http://www.dep.state.fl.us/lands/invaspec/2ndlevpgs/pdfs/list.pdf>. The University of Florida Institute of Food and Agricultural Sciences has a webpage that assesses invasive and exotic plants; it is available at <http://plants.ifas.ufl.edu/assessment>. Identification aides are available from the University of Florida’s Center for Aquatic and Invasive Plants at <http://aquat1.ifas.ufl.edu/>. In addition, the Florida Exotic Pest Plant Council also provides a list of invasive species at <http://www.fleppc.org/>.

⁴⁵ *Build Green and Profit*, University of Florida Energy Extension, University of Florida, 2000.

⁴⁶ The U.S. Department of Energy states that installing insulated windows and doors can lessen the amount of heat entering the house, thus cutting the air conditioning cooling load and energy costs. U.S. Department of Energy, EERE: Energy Savers Home Page, *Energy Savers: Tips on Saving Energy and Money at Home*, (2006), available at <http://www1.eere.energy.gov/consumer/tips/>.

- c. Treatment of Wood.⁴⁷ During construction, Landowner shall treat all wood that will be protected from the weather after construction with a sodium borate-based or other approved termite resistance treatment.⁴⁸
- d. Paints, Stains, and Other Coatings. Landowner shall only use paints, stains, and other coatings of high quality. Landowner shall apply paints, stains, and other coatings according to the manufacturer recommendations.⁴⁹

4.6 Energy Efficiency

- a. Energy Star. Landowner shall construct all homes in the Development to meet or exceed the standards for Energy Star homes as determined by on-site evaluation and testing. All Landowners are strongly encouraged to maintain their homes to at least Energy Star standards, especially when replacing major appliances.⁵⁰
- b. Lighting. Compact fluorescent lamps or LEDs (light-emitting diodes) shall be installed in place of incandescent lighting whenever reasonably possible.⁵¹
- c. GridPoint. Landowner shall install a GridPoint system. Landowner shall authorize Landowner's utility company to use the GridPoint system. GridPoint systems allow utility companies to control individual energy consumption during peak hours.⁵²

4.7 HVAC System (Heating, Ventilation, and Air Conditioning)

- a. Location of HVAC. All air-conditioned buildings in the Development shall be designed with the HVAC system located in conditioned space.⁵³

⁴⁷ *Madera.*

⁴⁸ Insecticides/fungicides composed mainly of borax (sodium borate) exhibit a relatively low toxicity compared to other pesticides.

⁴⁹ See § 4.8(b) for more restrictions on paints.

⁵⁰ For more information on EnergyStar, see the EnergyStar website at: http://www.energystar.gov/index.cfm?c=about.ab_index.

⁵¹ Fluorescent and LED lighting use less electricity than incandescent lighting. Fluorescent and LED lighting also last far longer (30,000+ hours) than incandescent bulbs (1000 - 2000 hours).

⁵² For more information concerning GridPoint see <http://www.gridpoint.com>.

⁵³ Placing HVAC systems in conditioned can significantly increase energy efficiency. Studies have show that HVAC systems placed outside conditioned spaces lose 20-35% of their energy on account of outside air temperatures. ToolBase Services, *HVAC Equipment and Duct Installation in Conditioned*

- b. Sizing of HVAC. HVAC equipment shall be sized according to the actual projected heating and cooling load of the home. Over sizing of HVAC equipment is prohibited.

4.8 Indoor Air Quality⁵⁴

- a. Standards of Air Quality. Landowner shall ensure that all habitable Improvements meet comfort and indoor air quality standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE).⁵⁵
- b. Low VOC Paints. Landowner shall only use zero or low VOC (volatile organic compound).⁵⁶

4.9 Water Conservation

- a. Florida Water Star Program. Landowner shall construct all new houses to meet or exceed Florida Water Star Standards. All Landowners are strongly encouraged to maintain their homes to at least Florida Water Star Standards when replacing plumbing, fixtures, and appliances.⁵⁷
- b. Standard Fixtures and Appliances. All standard fixtures and appliances installed by Landowner in a new home shall be identified by the manufacturer as “water-conserving.” Indoor plumbing shall score at least forty (40) points on the Florida Water Star Program Basic Qualifications Point List.⁵⁸

Space, (2001-2008), available at <http://www.toolbase.org/Technology-Inventory/HVAC/hvac-in-conditioned-space>.

⁵⁴ *Madera*.

⁵⁵ ASHRAE 62-1989.

⁵⁶ VOCs are organic chemical compounds which have high enough vapor pressures under normal conditions to significantly vaporize and enter the atmosphere. VOCs are considered a factor in “sick building syndrome.” See § 4.6(d) for more restrictions on paints.

⁵⁷ The Florida Water Star Program was created by the St. John’s Water Management District to promote water efficiency. Information on the Florida Water Star Program can be found at: <http://www.floridawaterstar.com>.

⁵⁸ The Florida Water Star Program Basic Qualifications Point List can be found at http://www.floridawaterstar.com/pdfs/registration_form-point_list.pdf.

- c. Dual Waterline System. All Lots with irrigation systems shall be designed with dual piping to separately supply and meter potable water for household use and non-potable water for landscape irrigation.⁵⁹

4.10 Sediment and Erosion Control⁶⁰

- a. Practices Employed. Landowner shall employ exemplary erosion and sediment control practices during construction. All practices must exceed local minimum standards.⁶¹
- b. Erosion Control. Landowner shall employ erosion control through Soil Stabilization throughout the home construction process. Sediment control measures shall be used in addition to, not in lieu of, erosion control.⁶²
- c. Definition of Soil Stabilization. ‘Soil Stabilization’ refers to measures that protect soil from erosive forces of raindrop impact and flowing water. Applicable practices include vegetative establishment; thick, float resistant mulching; and the early application of gravel on future roads and parking areas. Landowner should select Soil Stabilization measures appropriate for the time of year, site conditions, weather conditions, and the anticipated duration of use.

4.11 Renewable Resource Devices

- a. Permission to Install. Nothing in this Declaration shall be deemed to prohibit the installation of renewable resource devices (including solar panels) provided that the devices shall be installed only in accordance with the reasonable standards promulgated by the ARB.
- b. Preset for Solar Power. Landowner shall ensure that all new houses are preset for solar power.

⁵⁹ The use of reclaimed water for landscape irrigation purposes can help manage drinking water supplies and costs.

⁶⁰ *Madera*.

⁶¹ The Florida Department of Environmental Protection published a listing of erosion and sediment control practices in the Florida Erosion and Sediment Control Inspector’s Manual. Florida Department of Environmental Protection, Florida Erosion and Sediment Control Inspector’s Manual, 2002, available at <http://www.dep.state.fl.us/water/nonpoint/docs/erosion/chapter4.pdf>.

⁶² Erosion control prevents the displacement of soil particles by wind or water. Sediment control prevents eroded soil particles from becoming suspended in the water or air. Florida Department of Environmental Protection, Florida Erosion and Sediment Control Inspector’s Manual, 2002, available at <http://www.dep.state.fl.us/water/nonpoint/docs/erosion/chapter1.pdf>.

4.12 Construction Waste Management⁶³

Landowner shall make a reasonable effort to recycle Landowner's Construction Waste. Construction Waste is defined by Florida Administrative Code 62-701.200 as: cardboard, metals, concrete, brick, asphalt, land clearing debris, beverage containers, clean dimensional wood, plastic, glass, gypsum board, carpet, rigid foam insulation, and engineered wood products.⁶⁴

4.13 *Alternative: Construction Manual*

The ARB shall maintain a Manual listing the building requirements for the Development. All construction in the Development shall comply with the requirements in the Manual. The ARB shall make the Manual available to Landowner upon request.⁶⁵

Section 5: Surface Water Management System⁶⁶

5.1 Surface Water Management System Easements

- a. Basic Drainage Easement. A non-exclusive perpetual easement shall be created, declared, granted and reserved for the benefit of the Developer, the HOA, the County, the Water Management District (WMD) and all Landowners⁶⁷ 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,

⁶³ *Madera*.

⁶⁴ Construction and demolition waste account for nearly 25% of Florida's total municipal solid waste stream. The Florida Department of Environmental Protection has set up a website at <http://www.dep.state.fl.us/waste/categories/recycling/pages/canddextra.htm> listing information on what types of construction waste can be recycled and how to schedule a pick up for the recyclables.

⁶⁵ Using a manual instead of specific CCRs, allows the ARB to change the requirements for the Development without the need for amending the Declaration. Therefore it is much easier for the ARB to mandate use of the most current environmental practices and materials.

⁶⁶This section draws heavily from *Clarcona*.

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.

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 shall appear in the deed of each Lot in the Development according to the SWMS plan approved by the WMD. Developer also reserves, for the benefit of itself, the HOA, the County, the WMD, and all Landowners drainage easements over any and all other portions of the Development which may be reasonably required in order to provide storm water drainage for the Development, provided that such additional easements shall not unreasonably interfere with a Landowner's use and enjoyment of Landowner'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 Development 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 Development. Easements also include reasonable access from the nearest public road or Common Area of the development.

- 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 shall 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 HOA creates a hazard to public health, safety or general welfare. If the County and/or WMD shall undertake any emergency maintenance and repairs to the SWMS because of the inadequate maintenance and repair of the SWMS by the HOA, the County and/or the WMD shall have a lien upon the Common Property comprising the SWMS as security for the payment by the HOA 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 Development and take any action to maintain or repair the SWMS.

5.2 Operation and Maintenance of the Surface Water Management System

- a. Delegation of Operation and Maintenance. Unless otherwise determined by the WMD, the HOA shall operate and maintain the SWMS, including any LID elements.

- b. Maintenance of Reserve. The HOA's responsibility to reserve funding for the operation and maintenance of the SWMS is covered in Section 3.2(a). In addition to Regular Assessments, the HOA may also levy Special Assessments for the purpose of maintaining the reserve.⁶⁸
- c. Failure of Contractor to Comply with Professional Standards.⁶⁹ If it is discovered that a contractor hired by the HOA to service the SWMS has not properly complied with established professional standards in operation and maintenance or reporting, the HOA shall immediately terminate all of the HOA's contracts with the offending contractor and issue no future contracts to the contractor for at least 5 years.⁷⁰

5.3 Landowner's Interaction with Surface Water Management System Elements

- a. Notification of Low Impact Development Elements on Landowner's Lot. The HOA shall notify all New Residents of all LID Elements located on the New Residents' Lot by writing, on or before the fourteenth day prior to the New Resident moving into the Development. Upon request from Landowner, the HOA shall go to Landowner's Lot as soon as reasonably possible and show Landowner the location of all LID Elements on Landowner's Lot.⁷¹
- b. Landowner's Interference with Surface Water Management System Elements. Landowner shall not interfere with any SWMS Elements on Landowner's Lot. This includes LID elements which are incorporated into the SWMS.⁷²
- c. Altering Flow of Surface Water Drainage. Landowner shall not alter, change or obstruct the flow of any surface water drainage in a SWMS Element on Landowner's Lot.⁷³

⁶⁸ See Section 3 for information on the levying of assessments.

⁶⁹ *Madera.*

⁷⁰ Since no certification in operating and maintaining a SWMS currently exists, Section 5.2(c) 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.

⁷¹ Alerting Landowners to SWMS Elements on their Lots will hopefully prevent Landowners from interfering with the elements.

⁷² This prevents landowners from filling in swales or wetlands on their Lot.

⁷³ Although the same as § 5.4, this restriction is also placed in the Landowner specific section so that a Landowner who might skim the portions of Section 5 will see it.

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

5.4 Alteration of the Surface Water Management System

No alterations of the SWMS and its facilities and appurtenances shall be permitted without the prior written consent and approval of the WMD.

5.5 Standing to Enforce the Provisions in this Section

The Water Management District, County, HOA, and all Landowners are beneficiaries of Section 5; therefore the Water Management District, County, HOA, and all Landowners shall have standing to enforce any of the provisions in this section.

5.6 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 _____.⁷⁴

Section 6: Landscaping⁷⁵

6.1 Pre-landscape Installation⁷⁶

Before landscape installation starts and for every Lot where the Developer intends to install landscaping, the Developer shall obtain soil analysis information from a reputable soil testing lab to assess soil conditions such as soil type and texture, and pH; assistance with interpretation of soil analysis results is available from the local County Cooperative Extension office.⁷⁷ Developer shall also secure an

⁷⁴ Attaching the engineering map to the Declaration will provide notice of the SWMS elements to all Landowners.

⁷⁵ All landscaping decisions will fall under the direction the ELRC, if an ELRC has been created.

⁷⁶ *FFLCCR*.

⁷⁷ 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>.

estimated soil infiltration rate.⁷⁸ The Developer will make this information available to the HOA and to all purchasing Landowners. If after turnover of control to the HOA, the HOA intends to install new landscaping in the Common Property it may only do so if the soil testing information on file for that lot is less than 3 years old. If the soil tests on file for the lot where new landscape will be installed are more than 3 years old, the HOA shall obtain soil analysis information from a reputable soil testing lab or the UF/IFAS Cooperative Extension facility. Landowners are strongly encouraged to follow the soil analysis information of a reputable soil testing lab or the UF/IFAS Cooperative Extension facility when installing new landscape on the Landowner's Lot.

6.2 Removal of Trees

- a. Trees. No trees, including citrus trees, shall be cut down or otherwise destroyed or removed from any Lot without the prior written consent of the ARB or ELRC. As used herein the term "trees" shall mean and be defined as any tree four (4) inches or greater in diameter as measured one (1) foot above ground level.⁷⁹
- b. Bird Nests and Mammal Dens.⁸⁰ No trees or shrubs containing a bird's nest with eggs or chicks, or a mammal's den with young, may be cut down, destroyed, or pruned.

6.3 Non-Native Plants

- a. Growing Non-Native Plants. Non-native ornamental plants may only be planted in the Development if the non-native plants are not barred by federal, state, or local laws.⁸¹

⁷⁸ Soil infiltration rate must be calculated through on-site testing. For information on soil infiltration testing, see Choosing Suitable Trees for Urban and Suburban Sites: Site Evaluation and Species Selection, document #ENH1057, page 5, available at <http://edis.ifas.ufl.edu/pdf/ep31000.pdf>.

⁷⁹ This section is the exact same as § 4.2(a). It is repeated here in case a Developer chooses to apply Section 6 but does not Section 4. This section does not apply to any government agent who is authorized to enter and remove a tree pursuant to Florida Statute § 581.031(15)(a).

⁸⁰ This restriction is taken from the *Harmony Residential Properties Declaration of Covenants, Conditions and Restrictions* (Harmony). Harmony is located in the city of Harmony in Osceola County, Florida.

⁸¹ The Florida Department of Environmental Protection (DEP) defines a native plant as a species whose natural range included Florida at the time of European contact (1500 AD). DEP provides a list of non-native plant species that are restricted by federal, state or local law at: <http://www.dep.state.fl.us/lands/invaspec/2ndlevpgs/pdfs/list.pdf>. The Florida Exotic Pest Council also provides a complete list of such species at <http://www.fleppc.org/>. Identification aides are available from the University of Florida's Center for Aquatic and Invasive Plants at: <http://aquat1.ifas.ufl.edu/>.

- b. Non-Native Invasive Plants. Landowner shall remove, at Landowner's expense, all non-native invasive plants located on Landowner's Lot regardless of whether Landowner planted them. The HOA shall remove all non-native invasive plants located on Common Property.

6.4 Landscaping Design⁸²

- a. Informal Layouts. Informal layouts of plant materials in groupings and locations appropriate to native and natural species requirements and relationships shall be used. Grouping and massing of plants are preferred over straight-line arrangements. Grouping and massing of plants should take into account the relative water requirements of each plant species.
- b. Existing Native Vegetation. Existing native vegetation shall be retained and incorporated into the landscape whenever feasible.

6.5 Turf Grass

- a. Type of Turfgrass Permitted.⁸³ Only turfgrass listed as 'low-maintenance turf' shall be installed in the Development.⁸⁴
- b. Maximum Green Space Allocated to Turfgrass. A maximum of fifty percent (50%) green space may be planted with turfgrass configured with a permanent irrigation system. Turfgrass planted in excess of this limitation shall not have a permanent irrigation system. Green space is defined as the entire parcel less any Improvement footprints, driveways, vehicle use areas, and other impervious areas. Storm water management systems and wetland conservation areas are excluded in the calculation of green space area.⁸⁵

⁸² *Madera*.

⁸³ *FFLCCR*.

⁸⁴ 'Low-maintenance turf' only needs to be fertilized once or twice a year and doesn't necessarily require irrigation. For a list of 'low-maintenance turf' see *Selecting a Turfgrass for Florida Lawns*. L.E. Trenholm, J.B. Unruh, and J.L. Cisar, *Turfgrass for Florida Lawns*, 2001, available at <http://edis.ifas.ufl.edu/LH005>. This document is not available as of October 2008 as it is being rewritten. Until this document is again available, bahiagrass and centipedegrass should be used as "low-maintenance turf" per the publication L.E. Trenholm and J.B. Unruh, *New and Not So New Lawn Grasses for Florida* (Document #ENH1033), University of Florida Institute for Food and Agricultural Sciences (2006), available at <http://edis.ifas.ufl.edu/pdf/ep/ep28800.pdf>.

⁸⁵ Several Florida counties, including Hillsborough and Pasco, have already passed local ordinances setting the maximum lot area allocated to turf grass at fifty percent.

- c. Turf Clippings.⁸⁶ Unless the turf is diseased, turf clippings shall be left on turf areas or composted on-site to recycle nutrients. Clippings that fall on impervious surfaces such as sidewalks, driveways or roads shall be swept onto turf areas or composted. Clippings shall not be allowed to enter any waterbody or Element of the SWMS.

6.6 Mulching

- a. Florida Green Industries Best Management Practices.⁸⁷ All mulching shall be conducted in accordance with the most current version of the Florida Green Industries Best Management Practices handbook guidelines.⁸⁸
- b. Organic Mulch.⁸⁹ The use of organic mulch and recycled mulch, including leaves, pine needles, grass, and shrub clippings, is recommended.⁹⁰
- c. Placing Mulch.⁹¹ Mulch shall be placed at least 3-4” from the trunks of trees or the stems of landscape plants and shall be maintained at a depth of 2-3”. Organic mulch may require weeding and replenishment once or twice a year to maintain a total depth of 2-3”. Mulch shall be applied to a tree’s drip line or beyond at least an 8’ diameter around the tree.⁹²
- d. Cypress Mulch.⁹³ The use of Cypress mulch is prohibited.⁹⁴

⁸⁶ FFLCCR.

⁸⁷ Madera.

⁸⁸ *Florida Green Industries: Best Management Practices for Protection of Water Resources in Florida*, 2002, available at <http://www.dep.state.fl.us/central/Home/MeetingsTraining/FLGreen/FLGreenIndustries.htm>.

⁸⁹ FFLCCR.

⁹⁰ Use of organic mulch can improve soil structure and tilth (the ability of soil to sustain plant growth). Robert J. Black, Edward F. Gilman, Gary W. Knox and Kathleen C. Ruppert, *Mulches for the Landscape*. 2003, available at <http://edis.ifas.ufl.edu/MG251>.

⁹¹ FFLCCR.

⁹² Applying mulch too close to the stems or trunks of plants can cause the plant to suffer from stem rot and die. Robert J. Black, Edward F. Gilman, Gary W. Knox and Kathleen C. Ruppert, *Mulches for the Landscape*. 2003, available at <http://edis.ifas.ufl.edu/MG251>.

⁹³ FFLCCR.

⁹⁴ Most cypress mulch now comes from immature cypress trees. The wood from these trees does not generally have the insect and rot repellent qualities that most gardeners prize in cypress mulch. Furthermore, the continued harvesting of cypress trees can turn coastal wetlands into open waters and change the entire ecology of the surrounding area. Louisiana alone has lost more than one million acres of wetland in this way.

- e. Surface Below Mulch.⁹⁵ Impervious surfaces, including plastic sheeting, shall not be placed below mulch.⁹⁶
- f. Other Prohibited Ground Coverings.⁹⁷ White gravel, shells, and other similar light colored materials are prohibited as major landscape ground coverings or mulch.⁹⁸

6.7 Irrigation

- a. Necessity of an Irrigation System. Irrigation systems shall not be required.
- b. Florida-Friendly Landscapes. “Florida Friendly Landscapes” are allowed and encouraged.⁹⁹ “Florida Friendly Landscapes” are defined in *A Guide to Florida-Friendly Landscaping*.¹⁰⁰
- c. Use of Irrigation Systems. All irrigation systems shall meet or exceed federal, state, and local requirements.
- d. Irrigation Preventive Maintenance.¹⁰¹ If an irrigation system is installed, the party who owns the system shall implement a preventive maintenance program that includes but is not limited to the following: (1) replacement of worn or broken components, (2) identifying and repairing leaks in the system, (3) identifying and repairing broken or faulty sprinkler heads, (4) identifying and repairing system malfunctions, (5) periodically calibrating the irrigation system to determine proper watering time, and (6)

⁹⁵ *Madera.*

⁹⁶ Placing plastic sheeting or any other impervious substance below mulch prevents water from being absorbed into the ground and can increase flooding.

⁹⁷ *Madera.*

⁹⁸ 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*, 2003, available at <http://fyn.ifas.ufl.edu/materials/fdep%20model%20ordinance%20language%20for%20florida%20friendly%20landscapes.pdf>.

⁹⁹ Pursuant to Florida Statute §373.185(3), deed restrictions and local government ordinances enacted after October 1, 2001, may not prohibit xeriscaping.

¹⁰⁰ *A Guide to Florida-Friendly Landscaping* defines a “Florida Friendly Landscape” as a landscape 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. FL Yards & Neighborhoods Handbook 3rd Edition, *A guide to Florida Friendly Landscaping* (3rd ed. 2006).

¹⁰¹ *FFLCCR.*

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

- e. Rain Shut-off Devices and Soil Moisture Sensors.¹⁰²
1. Necessity of Irrigation Sensor. If an irrigation system is installed, rain shut-off devices and soil moisture sensors shall be installed and incorporated into the system.¹⁰³
 2. Installation. Rain shut-off devices shall be installed in open areas to prevent incorrect readings. Flow meters, tensiometers, and other irrigation tools may be used to help make good irrigation management decisions.
 3. Maintenance. The HOA shall maintain rain shut-off devices and soil moisture sensors in the Common Property. The HOA may elect to maintain the rain shut-off devices and soil moisture sensors on private Lots in the Development. Landowner shall maintain the shut-off devices or soil moisture sensors within Landowner's Lot if such devices are not maintained by the HOA.

6.8 Fertilization

- a. Fertilizers are defined as any substance which
1. Contains one or more recognized plant nutrients and promotes plant growth, or
 2. Controls soil acidity or alkalinity, or
 3. Provides other soil enrichment, or
 4. Provides other corrective measures to the soil.
- This definition does not include unmanipulated animal or vegetable manures, peat, or compost which makes no claims as described in 1-4.¹⁰⁴
- b. Scheduling and Quantities. Fertilization scheduling and quantities shall not exceed the "low maintenance" recommendations of the University of Florida Cooperative IFAS Extension Service. Slow release fertilizers are recommended if Landowner chooses to fertilize.¹⁰⁵

¹⁰² FFLCCR.

¹⁰³ Florida Statute § 373.62 requires installation, maintenance, and operation of rain shut-off devices in all irrigation systems installed after May 1, 1991.

¹⁰⁴ This definition of fertilizer is taken from Florida Statute 576.011(12) (2008).

¹⁰⁵ UF/ IFAS "low maintenance" recommendations can be found in Table 3 of *Fertilization and Irrigation Needs for Lawns and Landscapes*. L.E. Trenhol, E.F. Gilman, G.W. Knox, and R.J. Black, *Fertilization and Irrigation Needs for Lawns and Landscapes*, 2002, available at <http://edis.ifas.ufl.edu/ep110>.

- c. Fertilization Near Water Bodies. Fertilizer shall not be applied within fifteen feet of a water body or Element of the SWMS, such as drains or gutters.¹⁰⁶
- d. *Optional*: Fertilization of Established Landscapes. No fertilization shall be applied to any established landscapes.¹⁰⁷

6.9 Outdoor Lighting

- a. Dark Sky Lighting.¹⁰⁸ All outdoor lighting shall be of low intensity and conform to “Dark Sky” standards of downward projection.¹⁰⁹
- b. Motion Sensors/Timers.¹¹⁰ All outdoor lighting shall be connected to a motion sensor or timer that limits the amount of time the lighting is activated.
- c. 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.

6.10 Yard Waste

¹⁰⁶ The Southwest Florida Water Management District recommends applying fertilizer a minimum of ten feet from a water body. By requiring fifteen feet, this restriction ensures that a Landowner will not accidentally apply fertilizer within the ten foot zone. Southwest Florida Water Management District, *What You Need to Know About Fertilizing and Watering Your Lawn and Landscape to Protect Florida's Springs*, available at <http://www.swfwmd.state.fl.us/publications/files/fertilizingwatering.pdf>.

¹⁰⁷ This option is necessary for certain springs-protection areas where fertilization is already not permitted. It is to be expected that as the Clean Water Act’s “total maximum daily load” or “TMDL” program is implemented in Florida, more areas may severely restrict or ban fertilizer usage. While planning for development, care should be taken to protect native soils whenever possible, minimize compaction, and amend disturbed soils as these steps will yield healthier plants even in the absence of fertilizer. *Fertilization and Irrigation Needs for Florida Lawns and Landscapes* (available at <http://edis.ifas.ufl.edu/EP110>) from IFAS explains the amount of time it takes for different plants to become established.

¹⁰⁸ *Harmony*.

¹⁰⁹ 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>.

¹¹⁰ This CCR was taken from the *Declaration of Protective Covenants and Restrictions, Woodbine*. Woodbine is small community located in Alachua County, Florida.

Yard waste, provided it contains no exotic invasive plant material, should be chipped and used as mulch whenever possible.

6.11 Compost Bins

Landowner may have a compost bin so long as the compost bin is not visible from the street or a neighbor's deck or patio.

6.12 Clothes Lines

Landowner may have an outdoor clothes line.¹¹¹

Section 7: Pesticides and Chemicals¹¹²

7.1 Prohibition of Certain Chemicals¹¹³

No avicides or predacides shall be applied in the Development. Avicides and predacides are any substances, usually chemicals, which can be used to kill birds and predatory animals respectively. Predacides are predominantly used to kill predatory mammals, such as wolves or coyotes, which attack livestock.

7.2 Integrated Pest Management

All pesticide application in the Development shall follow the principals of Integrated Pest Management. Integrated Pest Management is defined in Florida Statute Section 482.021(14) as the selection, integration, and implementation of multiple pest control techniques based on predictable economic, ecological, and sociological consequences, making maximum use of naturally occurring pest controls, such as weather, disease agents, and parasitoids, using various biological, physical, chemical, and habitat modification methods of control, and using artificial controls only as required to keep particular pests from surpassing intolerable population levels predetermined from an accurate assessment of the

¹¹¹ Permitting outdoor clothes lines only in specific locations would drastically limit the use of clothes lines.

¹¹² If an ELRC has been created, the ELRC would enforce the provisions of Section 7.

¹¹³ *Harmony*.

pest damage potential and the ecological, sociological, and economic cost of other control measures.¹¹⁴

7.3 Household Pesticide Use

- a. Definition. “Household Pesticide” is defined as any pesticide which a consumer can purchase without a license or special training.
- b. Use of Household Pesticides. Landowner shall apply and dispose of all Household Pesticides in a manner consistent with the pesticides’ labeling.

7.4 Non-Household Pesticides

Only exterminators who are on the List of Certified Professionals may apply non-Household Pesticides.¹¹⁵

7.5 Preventative Applications of Pesticides

- a. Blanket Applications. No blanket preventive applications of pesticides shall be applied in the Development.¹¹⁶
- b. Exception. The previous section does not apply to blanket applications for the purpose of preventing termite infestation
- c. (Optional exception) Exception.
 1. The Development utilizes appropriate integrated pest management strategies (IPM),¹¹⁷ and
 2. The blanket application chosen is the least toxic appropriate option.

¹¹⁴ UF/IFAS provides information on Integrated Pest Management at <http://ipm.ifas.ufl.edu/>.

¹¹⁵ See § 2.2.

¹¹⁶ Blanket pesticide applications can result in environmental contamination, pest resistance, and the destruction of beneficial insects. Environmental friendly alternatives to blanket pesticide applications can be found at <http://livinggreen.ifas.ufl.edu/landscaping/ipm.html>.

¹¹⁷ Information on integrated pest management strategies may be found on the University of Florida Institute of Food and Agricultural Sciences Integrated Pest Management website at <http://ipm.ifas.ufl.edu/community/landscape/noncommercial/index.shtml>.

7.6 Application of Chemicals and Pesticides Near Waterbodies

No chemicals or pesticides shall be applied on a pervious surface which drains into a waterbody or Element of the SWMS. In addition, chemicals and pesticides shall not be applied within fifteen feet of a water body or Element of the SWMS.¹¹⁸

7.7 Substances with Anti-Bacterial Residue¹¹⁹

No substances with anti-bacterial residue shall be applied on any pervious surface, water body, or Element of the SWMS. No substances with anti-bacterial residue shall be allowed to move from an impervious surface to a pervious surface, water body, or element of the SWMS.

7.8 Drainage of Fluids

Landowner shall not allow any harmful fluids, including oil, anti-freeze, or gasoline, to drain onto any paved area, pervious surface, water body, or Element of the SWMS.

Section 8: Wildlife and Pets¹²⁰

8.1 Native Animals

- a. Definition of Native Animal. 'Native Animal' is defined as any non arthropod species of animal, including mammals; reptiles; amphibians; and birds, which are not listed on the Florida Fish and Wildlife Conservation Commission's list of non-native species.¹²¹

¹¹⁸ The Southwest Florida Water Management District recommends applying fertilizer a minimum of ten feet from a water body. By requiring fifteen feet, this restriction ensures that a Landowner will not accidentally apply fertilizer within the ten foot zone. Southwest Florida Water Management District, *What You Need to Know About Fertilizing and Watering Your Lawn and Landscape to Protect Florida's Springs*, available at <http://www.swfwmd.state.fl.us/publications/files/fertilizingwatering.pdf>.

¹¹⁹ *Harmony*.

¹²⁰ The ELRC, if it has been created, would be responsible for enforcing these provisions.

¹²¹ The Florida Fish and Wildlife Commission maintains a list of non-native species in Florida at <http://myfwc.com/nonnatives>.

- b. Interaction with Native Animals. Native Animals located within the Development shall not be harassed, harmed, pursued, fed, hunted, tamed, shot, wounded, killed, trapped, captured or collected.
- c. Feeding Birds and Squirrels.¹²² Landowner may feed birds and squirrels so long as the feeding does not create a nuisance or provide non-native birds species an advantage over native species. Bird food containing seeds of potentially invasive non-native plants may not be used. The HOA may revoke this right at any time for good cause.
- d. Fishing. The HOA or ELRC may allow fishing in waterbodies located on Common Property by posting signs outside the waterbodies. Landowner may only fish on Landowner's own Lot and in areas designated by the HOA or ELRC. All fishing shall be conducted in accordance with local, state, and federal laws.

8.2 Conflicts between Humans and Native Animals

- a. Initial Action. When conflicts between humans and Native Animals arise, the initial action should be to change human behavior in an attempt to eliminate the conflict.¹²³
- b. Removal of Native Animal. Should Landowner's initial action fail to remedy the human - Native Animal conflict, Landowner may file a written petition to the HOA requesting permission to remove the Native Animal. The HOA shall notify Landowner in writing whether Landowner's petition is granted on or before the twenty-first day after receiving the petition, otherwise Landowner's petition shall be considered to be granted. If Landowner's petition is granted, Landowner, at Landowner's expense, may pay a licensed professional to remove the Native Animal provided that the licensed professional releases the animal to suitable habitat. Removal does not include harming the Native Animal in any way.

¹²² *Madera.*

¹²³ For example, a resident could change the location of their trash can to prevent a raccoon from rummaging through it.

- c. Harming or Killing of a Native Animal. A Native Animal may only be harmed or killed if the Native Animal is posing a direct and immediate threat to a human or pet.
- d. Rats. Landowner may use traps to kill rats on Landowner's Lot. Landowner shall place all rat traps in a manner which does not threaten other wildlife (e.g. squirrels) or pets. Traps shall not contain any poisonous substance.

8.3 Wildlife Corridor Maintenance

- a. Wildlife Corridor Designation Map. The HOA shall maintain a map showing all of the wildlife corridors in the development at the HOA office. Any Landowner may request to inspect the map.¹²⁴
- b. Conservation Easement. A conservation easement shall be established, pursuant to Florida Statute § 704.06, to protect the wildlife corridors in the Development. The document establishing the conservation easement has been attached as Exhibit _____.
- c. Encroachment. No landowner shall 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 landowner's lot.¹²⁵
- d. Lighting.¹²⁶ Landowner shall not allow any light on Landowner's Lot to shine directly into or within 30 feet of a designated wildlife corridor.
- e. Buffers.¹²⁷ Landowner shall not interfere with any vegetative or man-made buffer separating Landowner's Lot from a wildlife corridor regardless of whether the buffer is located on Landowner's Lot.

8.4 Pets

¹²⁴ 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.

¹²⁵ *Harmony.*

¹²⁶ *Woodbine.*

¹²⁷ *Madera.*

- a. Excrement. Landowner shall dispose of all excrement from Landowner's pet in a proper location. Under no circumstances shall Landowner allow excrement from Landowner's pet to enter any part of the Surface Water Management System.
- b. Harassment of Wildlife. Landowner shall ensure that Landowner's pet does not harass or harm any Wild Animal.
- c. Cats. Landowner shall keep Landowner's cat(s) indoors when not on a harness or leash, unless Landowner 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.
- d. Aquariums. Landowner shall not allow any organic matter from Landowner's aquarium to enter any waterbody or Element of the SWMS. This prohibition includes both plant and animal matter.¹²⁸

Section 9: Miscellaneous Restrictions

9.1 Trash Maintenance¹²⁹

- a. Household Waste Disposal. Landowner shall dispose of all Household Waste in a proper and timely manner. Landowner shall place trash receptacles out for collection no earlier than on or before the twenty-fourth (24th) hour prior to collection. Landowner shall remove trash receptacles on or before the fourteenth (14th) hour after collection.¹³⁰
- b. Securing of Trash Receptacles. All trash receptacles shall be properly secured so that wildlife cannot access them.

9.2 Washing of Vehicle

¹²⁸ 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>.

¹²⁹ *ELRC*.

¹³⁰ Household Waste is defined in RCRA at 40 C.F.R. 261(b)(1).

Landowner may wash a vehicle on a pervious surface on Landowner's Lot provided that Landowner does not use any harmful chemicals or antibacterial substances.

9.3 Sale or Lease of Lot¹³¹

- a. *Alternative I:* Prior to selling or leasing Landowner's Lot, Landowner shall provide the HOA with a certificate in recordable form, stating that: (1) all assessments are current; (2) the date of the closing of the sale, or the date the lease begins; and (3) the name and daytime telephone number of the person who is either buying or leasing the Lot. The HOA shall provide this information to the ELRC if an ELRC has been created.
- b. *Alternative II:* The HOA reserves right of first refusal to any sale or lease of a Lot in the Development. Any Landowner who receives a bonafide offer to purchase their Lot, which that Landowner plans to accept, shall give Notice of the offer by certified mail to the HOA. Notice shall include the name, phone number, and address of the entity who intends to purchase Landowner's Lot as well as the terms and conditions of the sale. If the HOA does not exercise their right of first refusal, under the same terms as the bonafide offer, within seven (7) days of receiving the Notice, Landowner's sale or lease may proceed.¹³²

9.4 Carbon Credits¹³³

- a. Right to Accruing Carbon Credits. The HOA shall have the right to all carbon credits that may accrue in the Development unless less than _____% of the Development has been sold, in which case Developer shall have the right to all accruing carbon credits.
- b. Use of Carbon Credit Income. As long as developer holds control of the HOA, developer shall have the authority to use income from carbon credits at developer's sole discretion. Upon full transfer of responsibility

¹³¹ In addition to allowing the HOA to know who currently lives in the community, this provision also provides a checkpoint which alerts the HOA or ELRC to which members need to attend a New Resident Class.

¹³² It is not contemplated that the HOA would ever actually exercise its right of first refusal. The real purpose of this provision is to alert the HOA to sales of property within the Development, thus allowing the HOA to comply with its responsibilities regarding education of new residents. One problem with this option is that the HOA does not receive notice of any new lessees.

¹³³ See *Climate Change, Peak Oil, and Greenhouse Gas Emissions Reductions: Mitigating the Convergence Via Energy Efficiency in the Built Environment* for more information on carbon credits, including a model contract for the sale of carbon credits. Hal Knowles and Christine Manning, *Climate Change, Peak Oil, and Greenhouse Gas Emissions Reductions: Mitigating the Convergence Via Energy Efficiency in the Built Environment*, 2008, available by request from the Conservation Clinic at the Levin College of Law at the University of Florida,

to the HOA, the HOA shall use carbon credit income to offset administrative and other costs of the HOA, thus reducing landowner assessments.

- c. Release of Utility Bills. Landowner agrees, understands, and shall takes all steps necessary to grant the holder of carbon credits the right to access all of Landowner's utility bills for the purpose of determining Landowner's total energy use and the validity of the carbon credits. Landowner shall grant Landowner's utility companies permission to release Landowner's utility bills to the holder of carbon credits generated by the HOA.
- d. Assignment of Rights to Landowner. Landowner may sell Landowner's carbon credits if Landowner receives a written assignment from the HOA or Developer, as appropriate, which holds rights to the carbon credits. The HOA or Developer shall not assign any carbon credits to a landholder unless the carbon credits have gone unsold for at least two years and the HOA or Developer is not in negotiations to sell carbon credits.

9.5 FireWise

The HOA shall maintain FireWise Community status.¹³⁴

9.6 Liability of Landowner

Landowner and Landowner's Lessee are jointly and severally liable for Lessee's failure to follow any of the restrictions in this document.¹³⁵

¹³⁴ More information on FireWise Communities can be found at <http://www.firewise.org/usa/about.htm> .

¹³⁵ This ensures that Landowner takes an active interest in ensuring that Landowner's Lessees follow all of the environmental CCRs.