

of the gates. The declaration, or amendment thereto, shall be recorded simultaneously with the subdivision plat. The terms of the declaration, or amendment thereto, shall be to the city's satisfaction, legally sufficient and enforceable to, at a minimum, accomplish, provide or otherwise ensure or disclose the provisions of this division. An existing executed and recorded declaration for a subdivision shall be amended, in a form acceptable to the city attorney, to come into compliance with the current version of this division as condition to a final plat approval covering any phase of a subdivision to be platted after the execution and recording of the original declaration, so that an amended declaration incorporating the current requirements of this division governs previously platted phases, current and future phases. Notwithstanding the foregoing, the exclusion of said provisions within the declaration, or amendment thereto, shall not operate as a condition precedent to city's ability to enforce the requirements of this chapter. Further, nothing in this section shall preclude the declaration, or amendment thereto, from addressing other matters so long as the substance of each part of the declaration, or amendment thereto, is not inconsistent with the requirements of this chapter or any other applicable code reference or state law. The declaration, or amendment thereto, shall, as applicable:

- (1) Establish the point at which the developer must turn over control of the HOA consistent with definition of same provided in section 110-56.
- (2) Provide for the preparation of an initial community subdivision infrastructure report and compliance with the provisions of section 110-155, including developer's requirements prior to turnover.
- (3) Provide for the preparation of a subsequent community subdivision infrastructure report and compliance with the provisions of section 110-156.
- (4) Include the following or similar statement: "Property owners within the subdivision shall receive no discount in property taxes or any other tax or fee because

of the retention or private ownership of the community subdivision infrastructure."

- (5) Include the following or similar statement: "The City of Winter Garden shall have the right, but not the obligation, to access, maintain, repair, replace and otherwise care for or cause to be cared for, any and all private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts _____; and _____; and the improvements thereon. In the event any or all of the said areas, systems, improvements, properties or areas are not maintained, repaired, or replaced in accordance with the standards of the City of Winter Garden Code of Ordinances, good engineering practices, or become a nuisance or in the event the City of Winter Garden exercises its aforementioned right, each of the lot owners of the subdivision are hereby ultimately responsible for payment of the cost of maintenance, repair, replacement and care provided by the City of Winter Garden or its contractors and agents, plus administrative costs and attorneys' fees and costs incurred by the City of Winter Garden. If said costs are not paid within 15 days of invoicing, then said costs shall constitute a lien on the property of the owners which fail to pay such costs and may be enforced, without limitation, by foreclosure, special assessments, or as may otherwise be permitted by law. This right, and the City of Winter Garden's exercise of said right, shall not impose any obligation on the City of Winter Garden to maintain, repair, replace, or otherwise care for said private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise

dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts _____; and _____; and the improvements thereon."

- (6) Provide for the consequences resulting from a default with the provisions of the declaration, or amendment thereto, or the provisions of this chapter by the HOA or developer as set forth in section 110-159.
- (7) Provide that any transfer of any portion or component of the community subdivision infrastructure (including the property on which the said community subdivision infrastructure is located) to the city or other governmental entity is prohibited without the concurrence of the city or governmental entity and the owners of two-thirds (or such higher percentage as the declaration may provide) of the platted lots.
- (8) Require the establishment, funding and maintenance of an HOA account for annual routine maintenance and repair of the community subdivision infrastructure (referred to in this division as the "routine-community subdivision infrastructure-maintenance account"), and impose the restrictions and requirements set forth in section 110-157 regarding that account. Provide for the developer's obligation to ensure adequate funding of HOA routine-community subdivision infrastructure-maintenance account required by section 110-157 until turnover of the HOA. Provide that developer/declarant shall continue to have responsibility to ensure proper maintenance of the community subdivision infrastructure until turnover occurs.
- (9) Require the establishment, funding and maintenance of an HOA account for major capital repair and replacement of the subdivision's roads, curbing, sidewalks, stormwater drainage systems, and walls, etc. (referred to in this division as the "capital-community subdivision infrastructure reserve account"), and impose the

restrictions and requirements set forth in section 110-157 regarding that account. Provide for the developer's obligation to ensure adequate funding of HOA capital-community subdivision infrastructure reserve account required by section 110-157 until turnover of the HOA.

- (10) Include the following or similar statement: "The association and the lot and unit owners are responsible for assessing, collecting and reserving sufficient funds to operate, maintain, repair and replace common properties and subdivision infrastructure improvements. The City of Winter Garden shall not be liable or responsible for the maintenance, repair and replacement of private subdivision property and infrastructure improvements."
- (11) Include the following or similar statement: "It is prohibited to alter the grade of or original drainage plan for any parcel, lot or tract, or change in the direction of, obstruct, or retard the flow of surface water drainage, or alter or remove of any berm, pipe, ditch, weir, manhole, swale, and stormwater collection, storage and conveyance system unless expressly authorized by the City of Winter Garden. This provision shall be considered a restrictive covenant in favor of and enforceable by the City of Winter Garden and in the event of a violation of this provision, the City of Winter Garden shall have the right to obtain injunctive relief, seek damages, and assess fines and liens in the amount of the cost to remedy the prohibited action (including administrative costs and attorneys' fees and costs) against the violating person or entity and any property owned by such violating person or entity; provided however, such right shall not limit the City of Winter Garden's other available enforcement actions permitted by law or equity."
- (12) For subdivisions with private roads or alleys, include the following or similar statement: "There is hereby created, granted and reserved for the benefit of the City of Winter Garden and other public

service and emergency service providers, a non-exclusive easement over, under and through the private subdivision roads and alleys for vehicular and pedestrian ingress and egress access for the purpose of providing public and emergency services to the common property and lots, including but not limited to, postal, fire protection, police protection, emergency medical transportation, code enforcement, garbage, utilities and other public and emergency services."

- (13) Provide that the HOA may not be dissolved and that no portion of the declaration, or amendment thereto, pertaining to the requirements of this chapter may be amended without the written consent of the city.
- (14) Shall not contain any provisions that would circumvent the purpose and intent of any requirement of this chapter, any condition of a development order issued by the city, or any other applicable ordinance as determined by the city manager or his/her designee, including without limitation, any statement of protest of provisions required by this division or any provision impeding or restricting the HOA or the city's access to courts or rights and remedies against the developer in the event of developer's (or declarant's) default of its obligations and responsibilities under this chapter or to the HOA or city (or any combination thereof). This subsection does not prohibit the incorporation by reference of applicable statutes of limitation set forth in Florida Statutes, if any, or voting requirements as may be expressly required of the HOA by Florida Statutes, if any.
- (15) Shall not contain any provision providing for a mandatory pre-litigation claims process, arbitration proceeding, or pre-suit mediation procedure in order for the city, the HOA, or any lot owner to make or bring claims, lawsuits or administrative proceedings against the developer (or declarant) or any home builder, except for the incorporation of any provision that is specifically set forth in and required by Florida Statutes.
- (16) Shall not contain, unless expressly required by Florida Statutes, any provision providing for: (i) HOA to make payments or reimbursements to the developer (or declarant); (ii) the assessment of lot owners for the benefit or reimbursement of the developer (or declarant); or (iii) lot owners to make payments to pay for, in whole or part, the original construction cost of community subdivision infrastructure improvements required to be constructed by the developer (or declarant) or its successors and assigns as set forth in any development order or permit. This subsection does not prohibit provisions concerning the assessment of lot owners by the HOA concerning the cost to operate, maintain, reconstruct, repair, replace or remodel community subdivision infrastructure improvements.
- (17) Shall not contain any provision prohibited by Florida Statutes.
- (18) Shall not contain any provision reserving upon the developer (or declarant) or the HOA the authority to restrict individual lot owners' choice of utility service provider(s), including by way of example, but not limitation, through the reservation of the right to sell, lease, or grant licenses, permits or franchises over, under and through the subdivision property to utility service providers for service to the lots. This subsection does not prohibit provisions allowing for the HOA to select utility service providers to service common areas and common properties owned by the HOA.
- (19) Provide that the declaration provisions required by this division, referencing the city, or required as a condition of any development order issued by the city shall not be removed or amended without the prior written consent of the city manager or his/her designee. Provide that the declaration shall not be amended to add any

provisions prohibited by this division without the written consent of the city manager or his/her designee. Provide that declaration provisions required (or prohibited) by this division or required as a condition of any development order issued by the city shall be considered a restrictive covenant in favor of and enforceable by the city.

- (20) Provide that tracts owned by the city within the subdivision are exempt from the provisions of the declaration, and that the city shall not be subject to enforcement, regulation or assessment under the declaration or by the HOA, declarant, or any owner by virtue of the city's ownership of tracts or easements conveyed or dedicated to the city, or for any other basis. Provide that no provision of the declaration shall restrict or prohibit the city or any other applicable government authority from enforcement of their respective laws, ordinances, rules and regulations (as they may be amended from time to time) against the declarant, HOA, any lot owner or others.
- (21) Provide for other such terms as may be required as a condition of any development order issued by the city, including by way of example but not limitation, provisions relating to HOA maintenance of retaining walls, drainage swales and improvements or other improvements on a lot(s) benefiting more than that lot(s).

(Ord. No. 13-12, § 2, 3-14-13; Ord. No. 14-29, § 4, 7-24-14)

Sec. 110-155. Initial community subdivision infrastructure report/turnover requirements.

(a) Prior to the point in time in which certificates of occupancy have issued for 70 percent of the platted lots within the project and before turnover, whichever occurs first, the HOA must retain the services of a Florida registered engineer experienced in subdivision construction to inspect the community subdivision infrastructure and prepare a report evaluating the community subdivision infrastructure's economic life, recom-

mending the amount of scheduled maintenance and unscheduled repair for the subsequent five years that likely will be needed for each component of the community subdivision infrastructure (specifically, at a minimum and as may be applicable, providing for the roads, street lights, sidewalks and drainage system (which includes, without limitation, the stormwater detention/retention areas and underdrains)) which recommends the amounts of money that should be deposited each year in the routine-community subdivision infrastructure-maintenance account and the capital-community subdivision infrastructure reserve account, determining whether the existing capital-community subdivision infrastructure reserve account balance is adequate to provide for restoration or replacement of the infrastructure by the end of its estimated economic life, and determining what repairs, if any, are needed prior to turnover of the HOA. The HOA shall pay the cost associated with the preparation of the initial community subdivision infrastructure report, and the HOA may pay such cost from the routine-community subdivision infrastructure-maintenance account. The report must be signed and sealed by the engineer, certified to the HOA and provided to the city and to all owners of lots, blocks, and tracts within the subdivision within 15 days after its completion. In the event turnover occurs more than 1 year after the initial community subdivision infrastructure report is prepared, then before the occurrence of the turnover an update of the initial community subdivision infrastructure report shall be obtained and provided in the same manner as the initial community subdivision infrastructure report. Any needed repairs or replacements identified by the report(s) shall be completed by the developer, at the developer's sole expense, prior to turnover.

(b) Prior to turnover, the developer shall fund or cause the funding of the routine-community subdivision infrastructure-maintenance account and capital-community subdivision infrastructure reserve account to cover any deficiencies in account balances. Not sooner than 15 days and not more than 45 days prior to turnover, the developer shall submit a sworn affidavit along with supporting documentation to the HOA and the city evidencing developer's compliance with the requirements of this section.

(c) Prior to turnover and prior to the issuance of certificates of occupancy for 90 percent of the platted lots within the project, developer shall execute and deliver to the city a two-year warranty guarantee agreement with the city along with security in the form of a bond, irrevocable letter of credit or cash deposit covering the private community subdivision infrastructure improvements, in a form approved by the city attorney, and naming the city as primary beneficiary and the applicable homeowners association as a third party beneficiary. The warranty guarantee shall provide for the developer's guarantee of all such improvements, including its materials, workmanship, structural integrity and functionality, and require developer's repair, replacement and correction of damage and defects to such improvements found within the warranty period. The warranty guarantee period shall commence from the estimated date of turnover and end two years thereafter. The maintenance bond or irrevocable letter of credit shall be in an amount equal to 20 percent of the then current estimated costs to construct the community subdivision infrastructure improvements, which amount shall be subject to city engineer review and approval.

(d) If turnover occurs and the foregoing requirements of subsections (a), (b) and (c) have not been fulfilled, the rights of the city, the HOA, any of the HOA's members, and any and all owners of land within the subdivision to enforce these requirements against the developer shall survive the turnover, with the prevailing party to be entitled to attorneys' fees and costs against the non-prevailing party. Notwithstanding the foregoing and without limiting the city's remedies, the city shall be entitled to withhold the issuances of certificates of occupancy and building permits for improvements within the subdivision until such time as the provisions of this section are met. (Ord. No. 13-12, § 2, 3-14-13)

Sec. 110-156. Subsequent community subdivision infrastructure reports and maintenance.

The HOA shall obtain an inspection and written report of the community subdivision infrastructure, by a Florida registered engineer experienced in subdivision construction at least once

every five years after the initial engineer's inspection required by section 110-155. Using good engineering practice or in accordance with such other standards as may be adopted from time to time by the HOA, or in accordance with such standards as the HOA's engineer may determine to be appropriate, the inspection shall determine and the written report shall document the level of maintenance and repair (both scheduled and unscheduled) needed, the amounts of funding needed each year for the next five years in the routine-community subdivision infrastructure-maintenance account to pay for such maintenance and repair, and any repairs then needed and determining whether the existing capital-community subdivision infrastructure reserve account balance is adequate to provide for restoration or replacement of the infrastructure by the end of its estimated economic life. The report must be signed and sealed by the engineer, certified to the HOA, and provided to the city and to all owners of lots, blocks, and tracts within the subdivision within 15 days after its completion. Within 180 days of receipt of each five-year report, the HOA shall complete all remedial work identified and recommended by the engineer. A completion report, signed, sealed and certifying that said remedial work has been completed, shall be submitted to the HOA, to the city, and to all owners of lots, blocks, and tracts within the subdivision 90 days thereafter. The HOA and the lot and unit owners of the subdivision are responsible for assessing, collecting and reserving sufficient funds to operate, maintain, repair and replace common properties and subdivision infrastructure improvements. The city does not have and will not assume any duty, liability or obligation concerning the operation, maintenance, repair and replacement of common properties and subdivision infrastructure improvements arising out of or relating to any provision of this chapter, including but not limited to, the city's collection of, evaluation of and response to the reports submitted pursuant to section 110-155 and this section.

(Ord. No. 13-12, § 2, 3-14-13)

Sec. 110-157. Homeowners association required accounts for maintenance, repair and reserves.

At a minimum, the requirements, restrictions, terms, conditions, and limitations provided for in

this section with respect to the accounts required for the maintenance and repair of the community subdivision infrastructure and the monies on deposit in those accounts shall be established and maintained by each HOA.

- (1) *Required HOA asset accounts.* The HOA must create, deposit monies into, retain in perpetuity, and replenish from time to time the following accounts, which are referred to in this article collectively as the "required HOA accounts":

- a. A routine-community subdivision infrastructure-maintenance account; and
- b. A capital-community subdivision infrastructure reserve account.

Each of the foregoing accounts must be asset accounts kept separate and apart from all other funds and accounts of the HOA, and for accounting purposes the HOA may not commingle these accounts, either with each other or with other funds and accounts of the HOA. However, notwithstanding the foregoing, the monies in the above accounts may be commingled with monies in other HOA accounts for banking and investment purposes, and may be pooled with other HOA monies in a common investment program, so long as the financial books and records of the HOA account for these monies separately and apart from all other HOA monies and keep such monies earmarked for the purposes set forth below. All earnings from the investment of monies in the required HOA accounts shall remain in their respective accounts and shall follow their respective principal.

- (2) *Use of accounts.*

- a. *Routine-community subdivision infrastructure-maintenance account.* Monies on deposit in the routine-community subdivision infrastructure-maintenance account, including any investment earnings, shall be used by the HOA, or by the developer with the written consent of the board of directors of the HOA, only

for scheduled maintenance and for unscheduled repair of the roads, drainage system, including, but not limited to, the stormwater detention/retention areas and underdrains, sidewalks, street lights, curbing, bike paths, traffic-control signage and other HOA infrastructure appurtenant to the private roads and drainage systems. If allowed by the declaration, the monies on deposit in the account may also be used for scheduled maintenance and unscheduled maintenance and repair of the entrance and exit gates and their related facilities, but the declaration shall require that the roadways and drainage-system maintenance and repair take priority over the maintenance and repair of the gates and related facilities.

- b. *Capital-community subdivision infrastructure reserve account.* Monies on deposit in the capital-community subdivision infrastructure reserve account, including any investment earnings, shall be used by the HOA for: (i) resurfacing and related reconstruction of the roadways, including alleys, in the subdivision; (ii) major repair, replacement and reconstruction of drainage systems, including, but not limited to, the stormwater detention/retention areas, control structures, underdrains and conveyance systems; and (iii) major repair, replacement and reconstruction of sidewalks, bike paths, curbing, walls, subdivision signage, gates, community clubhouses and pools, and other community subdivision infrastructure improvements of the subdivision. Under no circumstances may the monies in the account be expended before the developer conveys the community subdivision infrastructure to the HOA.

- (3) *Required funding; required assessments.*

- a. *Routine-community subdivision infrastructure-maintenance account.*

The HOA must deposit each year into the routine-community subdivision infrastructure-maintenance account an amount of money sufficient to perform all scheduled maintenance and unscheduled repair of the roads, drainage system, and other community subdivision infrastructure during the subsequent year. The amount deposited, when added to investment earnings, must be no less than the amounts estimated under subsection (5) until the reports required under sections 110-155 and 110-156 are prepared, and thereafter the amount deposited must be no less than the amount recommended by the applicable engineer's report required pursuant to sections 110-155 and 110-156. If the declaration allows maintenance and repair of the entrance and exit gates and their related facilities to be paid from the routine-community subdivision infrastructure-maintenance account, then the deposits each year must be increased by amounts sufficient to cover those costs.

- b. *Capital-community subdivision infrastructure reserve account.* The HOA must deposit each year into the capital-community subdivision infrastructure reserve account an amount sufficient for: (i) the private roads and alleys to be resurfaced and, as related to the resurfacing, reconstructed no less frequently than every 12 years; (ii) the restoration and repair or replacement of the drainage systems, including, but not limited to, the stormwater detention/retention areas control structures, underdrains and conveyance systems, no less frequently than once every ten years; and (iii) the restoration and repair or replacement of all other community subdivision infrastructure, no less frequently than once every 50 years. The amount to be deposited each year into the ac-

count must be estimated by the developer and approved by the city prior to issuance of a certificate of completion for the subdivision infrastructure. Deposits to the account must begin in the year in which the city issues its certificate of completion. At the end of each five-year community subdivision infrastructure reporting period pursuant to section 110-156, the HOA shall revise and update the estimated cost to restore, repair and replace community infrastructure improvements taking into consideration actual costs incurred and expected increases in costs, and shall adjust the amount of its annual deposits to the account accordingly.

- c. *Required assessments.* The obligation to collect and pay assessments shall commence as of the date on which the city issues its certificate of completion for the infrastructure improvements for the subdivision. However, if no plat has been recorded as of that date, the obligation to collect and pay assessments shall commence as of the date the plat is recorded in the public records of Orange County, Florida. In the case of the conversion of an existing subdivision to a gated community, the city shall determine the appropriate commencement dates on a case by case basis. The HOA shall impose and collect assessments against each plat-ted lot in the subdivision, including lots owned or controlled by the developer and by any builder, without exception. The assessments must be uniform and equitable and must be imposed and collected in amounts sufficient, when added to investment earnings and other available revenues of the HOA, if any, to make all required deposits to each of the required HOA accounts.

Notwithstanding the foregoing, if in the opinion of the city engineer the community subdivision infrastructure has substantially deteriorated at the time a plat is approved, the city may require an additional payment of assessments by the developer to address the loss of useful life of the deteriorated community subdivision infrastructure.

- (4) *Financial reports and other requirements.* Each year the HOA shall cause a financial report of the required HOA accounts to be performed and prepared, and a copy of the report shall be submitted to each owner of property in the subdivision and the city within the time frame required under the "financial reporting" requirements of F.S. ch. 720. At a minimum, the report shall confirm the existence of each of the required HOA accounts and report the amounts of deposits into and expenditures from the account during the period year, along with an itemization of the expenditures from the required HOA accounts. Finally, the financial report shall disclose whether any of the required HOA accounts has on deposit less than the amount required under the declaration.
- (5) *Initial account funding and developer's obligations.* From the recording of the plat and up to the point in time when turnover of control of the HOA occurs, the developer and its successors in interest, shall remain personally obligated to ensure that adequate funding of the HOA accounts required by this section is provided, that the financial reporting requirements of this section are met and that the community subdivision infrastructure is being properly maintained. Prior to the issuance of a certificate of completion for the community subdivision infrastructure, the developer shall be required to fund the capital-community subdivision infrastructure reserve account in an amount sufficient to cover two-year's estimated deposits for such account and fund the routine-community subdivision infrastructure-maintenance account in an

amount sufficient to cover one-year's estimated deposits for such account. For purposes of establishing deposits by the developer required under this subsection, deposit amounts shall be supported by a licensed engineer's evaluation of the community subdivision infrastructure's economic life and cost estimate for maintenance and replacement of such infrastructure provided to the city at the developer's expense and such is subject to the review and approval by the city engineer.

- (6) *Original construction costs.* Developer and home builders and their respective successors and assigns in interest are prohibited from using HOA funds or the assessment of lot owners in order to finance, fund, or make reimbursements concerning the original construction cost of community subdivision infrastructure required to be constructed as set forth in any development order(s) or permit(s). This subsection does not prohibit the assessment of lot owners by the HOA concerning the cost to operate, maintain, reconstruct, repair, replace or remodel community subdivision infrastructure improvements after their original construction and completion as determined by the city pursuant to applicable certificate(s) of completion, certificate(s) of occupancy or other form of inspection approval(s).

(Ord. No. 13-12, § 2, 3-14-13; Ord. No. 14-29, § 4, 7-24-14)

Sec. 110-158. Indemnification.

In the event the community subdivision infrastructure, or any component thereof, including, but not limited to, any and all private areas, drainage systems (including without limitation, the retention/detention areas and underdrains), common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the city, are not maintained, repaired, replaced, or cared for in accordance with the standards of the city code, good engineering practices, or such become a nuisance, or HOA accounts relating to the