

- whose signature would be required to convey the record fee simple title to the lands being dedicated in the same manner in which deeds are required to be executed. All mortgagees having a record interest in the lands subdivided shall execute, in the same manner in which deeds are required to be executed, either the dedication contained on the plat or a separate instrument joining in, consenting to, and ratifying the plat and all dedications and reservations thereon.
- m. Each plat shall show a description of the lands subdivided, and the description shall be the same in the title certification. The description must be so complete that from it, without reference to the plat, the starting point and boundary can be determined.
 - n. In all cases, the letter size and scale used shall be of sufficient size to show all detail. The scale shall be both stated and graphically illustrated by a graphic scale drawn on every sheet showing any portion of the lands subdivided. The name of the plat shall be shown in bold legible letters, as stated in F.S. § 177.051. The name of the subdivision shall be shown on each sheet included. The name of the professional surveyor and mapper or legal entity, along with the street and mailing address and phone number, must be shown on each sheet included. A prominent "north arrow" shall be drawn on every sheet included showing any portion of the lands subdivided. The bearings or azimuth reference shall be clearly stated on the face of the plat in the notes or legend, and, in all cases, the bearings used shall be referenced to some well-established and monumented line. The date of preparation shall be provided on the face of the plat.
 - o. When a subdivision provides screening walls, landscaping, sidewalks, or other amenities within the public right-of-way and such is acceptable to the city in the city's sole discretion, a license agreement shall be required between the city, the developer and/or the homeowners association and such license agreement shall be referenced on the plat. Such license agreement shall be reviewed by the city as part of the preliminary plat process. Unless otherwise provided for in the license agreement, the developer and the HOA, jointly and severally, shall be responsible for the maintenance and repair of any such amenities constructed in the public right-of-way, and in no event shall the city be prohibited from removing such amenities within the public right-of-way in its sole and absolute discretion (such removal being at the cost of the developer and HOA, jointly and severally).
 - p. A statement of approval of the plat by the city.
 - q. The section, township, and range shall appear immediately under the name of the plat on each sheet included, along with the name of the city, county, and state.
 - r. As applicable, the following statements shall appear on the face of the plat in the "notes" section:
 - 1. "The homeowners association, as owner of the subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, common properties, and amenities, and the individual lot owners to extent of their interest in the foregoing, shall release, defend, indemnify and hold the City of Winter Garden, other governmental entities and public utilities harmless from any and all

- costs, expenses, suits, demands, liabilities, damages, injuries (including death), or otherwise including attorney's fees and costs of suit, in connection with the reasonable use of said subdivision infrastructure, common areas, or amenities, or said parties' maintenance thereof, or said parties' exercise of rights permitted in the declaration of the homeowners association, this plat, or as otherwise permitted by law."
2. "The lots within this subdivision are governed by a mandatory homeowners association requiring the payment of fees and with the power to assess the lots. The homeowners association is the owner of and/or responsible for the maintenance, repair, and replacement of 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. Every lot owner within this subdivision must be a member of the homeowners association. Failure to pay such fees or assessments shall result in the attachment of a lien on the property of the owner which fails to pay such fees or assessments by the homeowners association, which may result in the foreclosure of said property."
 3. "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."

4. "All platted utility easements shall also be easements for the construction, installation, maintenance, and operation of cable television services; provided, however, no such construction, installation, maintenance, and operation of cable television services shall interfere with the facilities and services of an electric, telephone, gas, or other public utility. In the event a cable television company damages the facilities of a public utility, it shall be solely responsible for the damages. This paragraph shall not apply to those private easements granted to or obtained by a particular electric, telephone, gas, or other public utility. Further, such construction, installation, maintenance, and operation shall comply with the National Electrical Safety Code as adopted by the Florida Public Service Commission."
5. "NOTICE: This plat, as recorded in its graphic form, is the official depiction of the subdivided lands described herein and will in no circumstances be supplanted in authority by any other graphic or digital form of

the plat. There may be additional restrictions that are not recorded on this plat that may be found in the public records of this county."

6. If applicable: "The homeowners association shall enter into a license agreement with the city, where additional right-of-way has been dedicated or right-of-way will be utilized for the purpose of providing landscaping, additional areas for sidewalks, walls, or other amenities, and shall be responsible for the installation and maintenance of all landscape areas that are located in the public right-of-way."
7. For subdivisions with private roads or alleys, then the following, or substantially similar statement: "There is hereby granted and dedicated to the City of Winter Garden and other public service and emergency service providers, a non-exclusive easement over and through Tract _____ (Private Right-of-Way) and any other privately owned internal roads, alleys, paved areas and sidewalks for vehicular and pedestrian ingress and egress access for the purpose of providing public and emergency services to the subdivision, including but not limited to, postal, fire protection, police protection, emergency medical transportation, code enforcement, garbage, utilities and other public and emergency services."
- (2) A certificate shall be issued by the city engineer certifying that the subdivider has complied with one of the following alternatives:
 - a. All improvements have been installed in accord with the require-

ments of this section and with the action of the planning and zoning board giving conditional approval of the preliminary plat; or

- b. An original performance guarantee as described in subsection (7) has been delivered to the city.
- (3) When the subdivider proposes to regulate land use within the subdivision or when required pursuant to this chapter, an executed original declaration, or amendment thereto, in recordable form, providing for the requirements of this chapter shall be required and subject to review by the city attorney for compliance with the provisions of this article.
- (4) An original "Affidavit Certifying an Absence of Reserve Strips," in recordable form, executed by the developer and preparing surveyor.
- (5) Unless provided for on the plat, an original joinder and consent to dedication, in recordable form, executed by all mortgage holders and such other parties, having a record interest in the land to be platted. Said joinder and consent must be executed in the same manner in which deeds are required to be executed, joining in, consenting to and ratifying the plat and all dedications, reservations, restrictions and covenants thereon.
- (6) An original joinder and consent to the declaration, in recordable form, executed by all mortgage holders and such other parties having a record interest in the land to be platted. Said joinder and consent must be executed in the same manner in which deeds are required to be executed, joining in, consenting to and ratifying the declaration and all dedications, reservations, restrictions and covenants therein.
- (7) If applicable, an original performance guarantee in the form of a bond or a performance guarantee agreement secured by an irrevocable letter of credit or cash deposit in favor of and acceptable to the city. Said guarantee shall, at a minimum,

be in the amount of 120 percent of the construction cost of the required subdivision improvements to be completed and guarantee the proper and timely completion of all unfinished public and private infrastructure improvements, including, but not limited to, its materials, workmanship, structural integrity, and functionality to the satisfaction and approval of the city.

- (8) An original maintenance guarantee in the form of a bond or a maintenance guarantee agreement secured by an irrevocable letter of credit or cash deposit in favor of and acceptable to the city. Said maintenance guarantee may be provided after final plat approval if the plat is approved based on the delivery of the performance guarantee under subsection (7). Said maintenance guarantee shall, at a minimum, be in the amount of 20 percent of the construction cost of (i) the required subdivision improvements to be dedicated or conveyed to the city, (ii) the offsite public infrastructure improvements constructed or installed by the developer, and (iii) the private community subdivision infrastructure improvements. The maintenance 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 for at least a period of two years from the date of final acceptance by the city. The developer's delivery to the city of the maintenance guarantee shall occur prior to the city engineer's issuance of a certificate of completion for such improvements, unless otherwise agreed to by the city engineer, but in no event shall any certificate of occupancy be issued until such maintenance guarantee is provided. Further, prior to the city engineer issuing a certificate of completion for such improvements, the developer shall cause the design engineer of record to provide a signed and sealed certification to the city that all subdivision improve-

ments to be dedicated or conveyed to the city, offsite public infrastructure improvements, and private community subdivision infrastructure improvements constructed or installed by the developer have been completed in accordance with approved design and construction plans. The city engineer may allow segments of internal sidewalks adjacent to each lot to be constructed as a precondition to the issuance of a certificate of occupancy for each individual dwelling unit, provided that prior to and as a pre-condition of turnover of the Association, the developer shall fully complete all sidewalks within the subdivision.

- (9) An original "Statement of Lien Settlement - Requirement For Current Year Of Payable Taxes, Tax Sale, and Capital Improvements" from the Orange County Property Appraiser's Office showing that all due taxes have been paid in full and all tax certificates, if any, against the land have been redeemed.
- (10) As may be applicable, executed original instruments of conveyance in recordable form as to such property and improvements which are required to be conveyed to the HOA and the city from the developer, along with executed partial release of mortgages. Fee simple ownership of all rights-of-way, lift station tracts and other lands to be used for public purposes, but excluding dedicated easements, should be conveyed to the city by warranty deed, unless otherwise specified by the city. Fee simple ownership of all common area tracts should be conveyed to the applicable homeowners association by quit claim deed, unless otherwise specified by the city. Mortgagees shall execute partial release of mortgages concerning all tracts and lands conveyed in fee simple either to the homeowners' association or the city and such partial releases shall be recorded in the public records concurrently with the recording of the corresponding deeds.
- (11) A title opinion of an attorney at law licensed in Florida or a certification by an abstractor or a title company, along with referenced documents, showing that record title to the land as described and shown on the plat is in the name of the persons, persons, corporation, or entity executing the dedication. The title opinion or certification shall also show all mortgages, easements, or encumbrances not satisfied or released of record nor otherwise terminated by law. An update of said title opinion or certification, certified to the city and the offices of the city attorney and the city surveyor, must be provided within 30 days of final plat recording. All documents referenced in said title opinion or certification, and update thereof, shall also be provided for review by the city.
- (12) A construction cost estimate shall be submitted, which provides the estimated cost of installing all improvements. Such estimates shall be based upon recent bid information. As an alternative, bids of two reputable contractors, or a copy of an executed contract, for the installation of the improvements may be submitted.
- (13) Payment of required recording costs, fees, deposits and costs as may be applicable or required pursuant to the code, and other applicable laws, ordinances, and regulations.
- (14) A phase I environmental site assessment (ESA) must be conducted in accordance with the latest edition of the American Society for Testing and Materials (ASTM) standard E-1527 (Phase I ESA Process). The city will require a specified minimum off-site search distance of one-quarter mile. The minimum search distance may include areas outside the adjoining properties and shall be measured from the nearest property boundary. The ESA must be performed and signed by a Florida registered professional engineer or geologist who is able to demonstrate competence (i.e., education and previous experience) in producing ESA reports. A previous phase I ESA may be used if it meets or exceeds the requirement of ASTM

E-1527 (except as modified herein) and if the conditions of the property and area surrounding the property are not likely to have changed materially since the previous phase I ESA. Should more than one year have passed since the completion of the last phase I ESA, a current site reconnaissance and records review will be required at a minimum. All supplemental phase I ESA documents must also be signed by a Florida licensed engineer or geologist.

The results shall be provided to the city prior to acceptance of any lands to be dedicated to the city. Should environmental conditions requiring any remedial activity, monitoring or regulatory action be identified as a result of the ESA(s), the city will not accept any dedications of such land until the conditions on the land are fully addressed to the satisfaction of the city and all applicable regulatory agencies.

- (15) Such other agreements, certificates, endorsements, affidavits, documentation, engineering drawings, and data as may be deemed necessary to ensure conformity with the requirements of this chapter, the code, and other applicable laws, ordinances, and regulations.

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

DIVISION 5. HOA AND COMMUNITY SUBDIVISION INFRASTRUCTURE RESPONSIBILITY*

Sec. 110-153. Homeowners association.

(1) Prior to final plat approval and, in the case of a gated community, prior to the closure or operation of the gates, a residential subdivision or commercial subdivision which is subject to the

***Editor's note**—Ord. No. 13-12, § 2, adopted March 14, 2013, amended division 5 in its entirety to read as herein set out. Former division 5, §§ 110-153—110-162, pertained to similar subject matter, and derived from Ord. No. 04-19, § 2(Exh. A), 6-10-04; Ord. No. 06-08, §§ 7, 8, 3-9-06; Ord. No. 08-33, §§ 2—6, 6-12-08.

provisions of this division shall establish a mandatory homeowners' (or property owners') association in accordance with the requirements of this division, and a declaration (or in the event of an existing recorded declaration, an amendment thereto) must be approved by the city. The city manager has the authority to waive the property owner's association requirement for non-residential subdivisions having five or fewer lots provided the intent of this division, including section 110-154, can be satisfied through alternative means. A certificate of good standing or such other evidence to determine the status of the HOA shall be submitted to the city as part of the final plat approval process.

(2) Unless otherwise approved by the city, simultaneous with the recording of the plat the developer shall cause to be conveyed to the HOA such land and improvements for which the HOA shall have the responsibility for maintaining and repairing, including the community subdivision infrastructure.

(3) A residential subdivision or commercial subdivision (or any combination thereof) shall be subject to the provisions of this division when:

- a. The responsibility to maintain certain areas or community subdivision infrastructure within the subdivision is to be shared by the lot owners, or where common areas will exist; or
- b. Any of the community subdivision infrastructure is to be owned or maintained privately; or
- c. A gated community is sought to be established.

As long as one or more of the matters set forth in subsections (a), (b) or (c) exists, this division applies to the subdivision regardless of whether such subdivision has public or private roads, or is gated or un-gated.

(Ord. No. 13-12, § 2, 3-14-13; Ord. No. 14-29, § 4, 7-24-14; Ord. No. 19-32, § 6, 6-27-19)

Sec. 110-154. Declaration.

A declaration, or an amendment thereto, which, at a minimum, sets forth the responsibilities and obligations for the maintenance, repair and

replacement of the community subdivision infrastructure, common areas and private amenities and such other matters as provided in this division shall be required and submitted to the city prior to final plat approval and, in the case of a gated community, prior to the closure or operation

