



# Orange County Government

Orange County  
Administration Center  
201 S Rosalind Ave.  
Orlando, FL 32802-1393

## Legislation Text

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**File #:** 25-540, **Version:** 1

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### Interoffice Memorandum

**DATE:** March 19, 2025

**TO:** Mayor Jerry L. Demings and County Commissioners

**THROUGH:** N/A

**FROM:** Joseph C. Kunkel, P.E., Director, Public Works Department

**CONTACT:** Dale V. Mudrak, P.E., Manager

**PHONE:** (407) 836-7974

**DIVISION:** Development Engineering Division

**ACTION REQUESTED:**

Approval and execution of Developer's Agreement pertaining to Approval of a Gated Community by and between M/I Homes of Orlando, LLC and Orange County and acknowledged and joined in by Solace at Corner Lake Homeowners Association, Inc. for Solace at Corner Lake Preliminary Subdivision Plan. District 5. **(Development Engineering Division)**

**PROJECT:** N/A

**PURPOSE:**

M/I Homes of Orlando, LLC is developing a property known as Solace at Corner Lake, which is generally located west of Chuluota Road and south of Lake Pickett Road. The 47-lot subdivision was approved as a Gated Community by the Board on August 8, 2023.

This Developer's Agreement, pertaining to Approval of a Gated Community for the subject development must be approved, executed, and recorded in order to comply with the requirements of Chapter 34, Article VIII, of the Orange County Code.

**BUDGET:** N/A

BCC Mtg. Date: April 8, 2025

Instrument prepared by and Return to:  
Lindsey Grubbs, Esq.  
Holland & Knight LLP  
50 N. Laura Street, Suite 3900  
Jacksonville, Florida 32202

NOTICE: THIS DOCUMENT WAS ACCEPTED BY ORANGE COUNTY, FLORIDA, A GOVERNMENTAL ENTITY, AS PART OF, OR AS A CONDITION OF, A DEVELOPMENT PERMIT, DEVELOPMENT ORDER, OR OTHER LAW, REGULATION, OR REGULATORY APPROVAL AND IS NOT SUBJECT TO ALTERATION OR INVALIDATION BY THE FLORIDA MARKETABLE RECORD TITLE ACT. (See Section 712.04, Florida Statutes)

## DEVELOPER'S AGREEMENT PERTAINING TO APPROVAL OF A GATED COMMUNITY

This Developer's Agreement Pertaining to Approval of a Gated Community ("the Agreement"), effective as of the last date of execution below (the "Effective Date"), is made by and between **M/I HOMES OF ORLANDO, LLC**, a Florida limited liability company ("Developer"), and **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida ("County"), and acknowledged and joined in by **SOLACE AT CORNER LAKE HOMEOWNERS ASSOCIATION, INC.**, a Florida not-for-profit corporation ("Association"), pertaining to Developer's request for County approval of a gated community. County, Association, and Developer may sometimes be referred to individually as "Party" and collectively as "Parties."

### WITNESSETH:

**WHEREAS**, Developer is seeking County's approval of the **SOLACE AT CORNER LAKE** project ("Project") as a gated community; and

**WHEREAS**, the legal description of the Project is attached hereto and incorporated herein by this reference as **Exhibit "A"**; and

**WHEREAS**, the public's interest is served only if gated communities and the accompanying private streets, sidewalks, drainage systems, and any other gated community infrastructure (collectively, "gated community infrastructure"), are allowed as a privilege, and not as a right, of the Developer, the Association, and subsequent property owners; and only if such gated community infrastructure complies with the minimum standards of the County's subdivision regulations and is maintained in a manner consistent with the existing standards established for similar facilities that are maintained by the County for the public good; and

**WHEREAS**, to provide for such maintenance, gated communities in Orange County, Florida, are subject to and governed by Chapter 34, Article VIII, Orange County Code, as it may be amended from time to time (the "Gated Communities Ordinance"), a copy of which is attached hereto as **Exhibit "B"** and incorporated herein by this reference; and

**WHEREAS**, the Gated Communities Ordinance is an aid to ensure the financial ability of the Association to maintain and repair the gated community infrastructure and, therefore, requires developers to create and fund, and thereafter, the homeowners association to retain and replenish certain accounts entitled, "Homeowner's Association Asset Accounts" ("HOA Accounts") for the maintenance of the gated community infrastructure in perpetuity; and

**WHEREAS**, the HOA Accounts provide funding for the maintenance and repair of the gated community infrastructure; and

**WHEREAS**, the HOA Accounts are, from time to time, defined and described by developers as reserve accounts; and

**WHEREAS**, in 2021, the Florida Legislature passed Senate Bill 630, that amended Section 720.303(6), *Florida Statutes*, to provide that while a developer is in control of a homeowners association, the developer is not required to include reserves in the budget or to contribute to reserve accounts for expenditures and maintenance as required by any state or local law; and

**WHEREAS**, Section 720.303(6), *Florida Statutes*, also provides that a homeowner's association is not required to include reserve accounts in the homeowners association budget, and that a homeowners association has the option to provide for no reserves or to reduce funding of reserve accounts; and

**WHEREAS**, Developer desires to establish Project as a gated community; to establish and fund HOA Accounts, in accordance with the requirements of the Gated Communities Ordinance; and to waive Developer's rights pertaining to reserve accounts and the payment of certain expenses and assessments, as such rights are described in Section 720.303(6), *Florida Statutes*; and

**WHEREAS**, Association desires to manage Project as a gated community in accordance with the requirements of the Gated Communities Ordinance and to waive certain rights of the Association to terminate, reduce, or waive funding for reserve accounts, as such rights are described in Section 720.303(6), *Florida Statutes*;

**NOW, THEREFORE**, for and in consideration of the mutual promises and obligations set forth in this Agreement, and other good and valuable mutual consideration, the receipt of which is hereby mutually acknowledged, the Parties agree as follows:

**Section 1. Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference.

**Section 2. Waiver of Developer's Statutory Rights.** Developer hereby expressly waives any rights that may exist under Section 720.303(6)(i), *Florida Statutes*, as well as any other similar rights that currently exist or might exist in the future under comparable federal or state laws, rules, and or regulations that would permit Developer to waive compliance with the requirements of the Gated Communities Ordinance to create and fund HOA Accounts and to pay operating expenses and other assessments related to the Developer's parcels; and to waive compliance with any other requirement of the Gated Communities Ordinance. Section 720.303(6)(i), *Florida Statutes*, provides as follows:

**Section 3. Waiver of Association's Statutory Rights.** Association hereby expressly waives any rights that may exist under Section 720.303(6), *Florida Statutes*, as well as any similar rights that currently exist or might exist in the future under comparable state or federal law, rules, or regulations that would permit Association to waive compliance with the requirements of the Gated Communities Ordinance that pertain to funding and retaining of the HOA Accounts or any other requirement of the Gated Communities Ordinance.

**Section 4. Developer's Agreement to Abide by Gated Communities Ordinance.** Developer acknowledges that gated communities are a privilege not a right; and, as such, approval of this Project as a gated community by the County constitutes a contract between the Developer, Association, and County, the consideration for which is comprised of Developer's understanding, acknowledgement, and agreement that Developer shall create and maintain the required HOA accounts as set forth in, and in accordance with, the Gated Communities Ordinance. Such agreement includes, notwithstanding Section 720.303(6)(i), *Florida Statutes*, the requirement that Developer make the initial contributions under Section 34-291(c)(6) of the Gated Communities Ordinance to help ensure the financial ability of its successors and assigns to maintain the gated community's infrastructure after the turnover of control of the Association and/or transfer of control of the infrastructure.

**Section 5. Association's Agreement to Abide by Gated Communities Ordinance.** Association acknowledges that gated communities are a privilege not a right; and, as such, approval of this Project as a gated community by the County constitutes a contract among the Developer, Association, and County, the consideration for which is comprised of Association's understanding, acknowledgement, and agreement that Association shall retain and continue to fund the required HOA Accounts. Such agreement includes, notwithstanding certain provisions of Section 720.303(6), *Florida Statutes*, the requirement that Association retain and fund the required HOA Accounts as required by the Gated Communities Ordinance after Developer turns over to the Association control of the Association and/or transfer of control of the infrastructure.

**Section 6. Term.** The term of this Agreement shall commence on the Effective Date and continue for so long as the Project is subject to the Gated Communities Ordinance.

**Section 7. Recording.** Within thirty (30) days after the Effective Date, this Agreement shall be recorded in the Public Records of Orange County, Florida, at developer's expense.

**Section 8. Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit and burden of the Parties hereto and their respective heirs, successors, and assigns and shall run with title to the real property subject to the Project and be binding upon any person, firm, corporation, or other entity acquiring any interest in all or any portion of such real property.

**Section 9. Disclaimer of Third Party Beneficiaries.** This Agreement is solely for the benefit of the formal parties hereto and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party not a formal party hereto. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions



hereof, other than the Parties hereto and their respective representatives, heirs, successors, and assigns.

**Section 10. Applicable Law and Venue.** This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida. Venue for any actions initiated under or in connection with this Agreement shall be in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

**Section 11. Interpretation.** This Agreement shall not be construed more strictly against one party than against the others merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that all parties have contributed substantially and materially to the matter that is the basis for the preparation hereof. Captions and section headings in this Agreement are provided for convenience only and shall not be deemed to explain, modify, amplify, or aid in the interpretation, construction, or meaning of this Agreement.

**Section 12. Attorneys' Fees.** Each Party to this Agreement agrees to bear its own attorneys' fees and costs in connection with all actions to be undertaken in compliance with, and enforcement of, this Agreement.

**Section 13. Amendment.** No amendment, modification, or other change to this Agreement shall be binding upon the Parties unless in writing and formally executed in the same manner as this Agreement.

**Section 14. Authority to Contract.** The execution of this Agreement has been duly authorized by the appropriate body or official of each party hereto.

**Section 15. Entire Agreement.** This Agreement, including all Exhibits attached hereto, constitutes the entire understanding and agreement pertaining to this Agreement among the Parties and may not be changed, altered, or otherwise modified except when reduced to writing and executed in the same manner and with such formality as the original.

**Section 16. Notice.** Any notice required or permitted hereunder shall be delivered by hand-delivery, express courier, or certified mail, return receipt requested, and shall be effective upon receipt of the same. Notice shall be delivered to each of the Parties at the following addresses or at such other addresses as specified by written notice in compliance with the terms of this paragraph.

**As to County:**

Orange County Administrator  
201 South Rosalind Avenue, 5th Floor  
Orlando, Florida 32801

**Copy to:**

Orange County Attorney's Office  
201 South Rosalind Avenue, 3rd Floor  
Orlando, Florida 32801

**As to Developer:**

M/I Homes of Orlando, LLC  
Attn: Rob Reynolds, Vice President  
400 International Parkway #470  
Lake Mary, Florida 32746

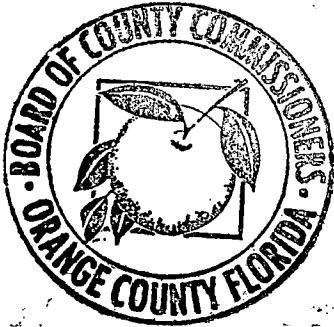
**As to Association:**

Solace at Corner Lake Homeowners  
Association, Inc.  
Attn: Diana Cabrera, President  
400 International Parkway #470  
Lake Mary, Florida 32746

**Section 17. Severability.** If any sentence, phrase, paragraph, provision or portion of this Agreement is held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be considered an independent provision and the finding shall have no effect on the validity of the balance of this Agreement.

***[Signatures on Following Pages]***

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective duly authorized representatives on the dates set forth below.



**ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida

By: Board of County Commissioners

By: Brynn W. Brooks  
for Jerry L. Demings  
Orange County Mayor  
201 South Rosalind Avenue  
Orlando, FL 32801

Date: 8 April 2025

ATTEST: Phil Diamond, CPA, County Comptroller  
As Clerk of the Board of County Commissioners

By: [Signature]  
Deputy Clerk

Print name: DAVID ROONEY

*[Remaining Signatures on Following Pages]*

**M/I HOMES OF ORLANDO, LLC**, a Florida  
limited liability company

BY: [Signature]

NAME: ROBERT REYNOLDS

TITLE: Vice President

DATE: 02/24/2025

WITNESS:

BY: [Signature]

PRINT NAME: Elizabeth A. [Signature]  
AND ADDRESS 400 International Pkwy  
St. Mary, FL 32746

WITNESS:

BY: [Signature]

PRINT NAME: Angele G. Galati  
AND ADDRESS 400 International Pkwy  
St. Mary, FL 32746

STATE OF Florida  
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me by means of ☐ physical presence  
or ☐ online notarization, this 24 day of February, 2025, by Robert Reynolds, as Vice  
President of M/I Homes of Orlando, LLC a Florida Limited Liability Company, on behalf of such  
M/I Homes of Orlando, LLC, who ☒ is personally known to me or ☐ has produced  
\_\_\_\_\_ as identification..

(Notary Stamp)



**Andrea Eggleston**  
Notary Public  
State of Florida  
Comm# HH155882  
Expires 7/20/2025

[Signature]  
Signature of Notary Public  
Print Name: Andrea Eggleston  
Notary Public, State of Florida  
Commission Expires: 7/20/25

**[Remaining Signatures on Following Page]**

**SOLACE AT CORNER LAKE  
HOMEOWNERS ASSOCIATION, INC., a  
Florida not-for-profit corporation**

BY: [Signature]

NAME: DIANA CABRERA

TITLE: President

ADDRESS: 400 International Parkway #470  
Lake Mary FL 32746

DATE: FEB 24, 2025

WITNESS:

BY: [Signature]

WITNESS:

BY: [Signature]

PRINT NAME: Elizabeth Higgins  
AND ADDRESS: 400 International Parkway  
Lake Mary FL 32746

PRINT NAME: Angele G. Galt  
AND ADDRESS: 400 International Parkway  
Lake Mary FL 32746

STATE OF FLORIDA  
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this 24 day of February, 2025, by Diana Cabrera, as President of Solace at Corner Lake Homeowners Association, Inc., a Florida not-for-profit corporation, on behalf of such corporation, who ☒ is personally known to me or ☐ has produced \_\_\_\_\_ as identification.

(Notary Stamp)



Andrea Eggleston  
Notary Public  
State of Florida  
Comm# HH155882  
Expires 7/20/2025

[Signature]  
Signature of Notary Public  
Print Name: Andrea Eggleston  
Notary Public, State of Florida  
Commission Expires: 7/20/25



**EXHIBIT "A"**

**LEGAL DESCRIPTION**

A PARCEL OF LAND LYING IN THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 22 SOUTH, RANGE 32 EAST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF THE SOUTHWEST 1/4 OF SAID SECTION 9; THENCE RUN NORTH 89°53'46" WEST ALONG THE SOUTH LINE OF SAID SOUTHWEST 1/4 FOR A DISTANCE OF 345.63 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF COUNTY ROAD 419 (CHULUOTA ROAD) AS RECORDED IN RIGHT OF WAY MAP BOOK 1, PAGES 3 THROUGH 7 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND THE POINT OF BEGINNING; THENCE RUN NORTH 89°53'46" WEST ALONG SAID SOUTH LINE FOR A DISTANCE OF 2383.08 FEET TO THE SOUTHWEST CORNER OF SAID SOUTHWEST 1/4; THENCE RUN NORTH 00°22'26" WEST ALONG THE WEST LINE OF SAID SOUTHWEST 1/4 FOR A DISTANCE OF 1011.68 FEET TO A POINT LYING ON THE SOUTH LINE OF THE NORTH 305.00 FEET OF THE WEST 383.00 FEET OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 9; THENCE RUN NORTH 89°49'36" EAST, ALONG SAID SOUTH LINE FOR A DISTANCE OF 383.00 FEET TO A POINT LYING ON THE EAST LINE OF THE WEST 383.00 FEET OF THE NORTH 305.00 FEET OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 9; THENCE RUN NORTH 00°22'26" WEST ALONG SAID EAST LINE FOR A DISTANCE OF 275.00 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF LAKE PICKETT ROAD (COUNTY ROAD 420) PER ROAD BOND PROJECT 29-A AS RECORDED IN ROAD BOOK 2, PAGE 17 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN ALONG SAID SOUTH RIGHT OF WAY LINE THE FOLLOWING COURSES AND DISTANCES: NORTH 89°49'36" EAST FOR A DISTANCE OF 2215.94 FEET TO THE POINT OF CURVATURE OF A CURVE, CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 133.05 FEET, WITH A CHORD BEARING OF SOUTH 64°08'24" EAST, AND A CHORD DISTANCE OF 116.79 FEET; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 52°04'01" FOR A DISTANCE OF 120.91 FEET TO A POINT OF COMPOUND CURVATURE OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 138.46 FEET, WITH A CHORD BEARING OF SOUTH 25°27'37" EAST, AND A CHORD DISTANCE OF 60.63 FEET; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 25°17'32" FOR A DISTANCE OF 61.12 FEET TO A POINT ON THE SAID WEST RIGHT OF WAY LINE OF CHULUOTA ROAD (COUNTY ROAD 419) BEING A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 2824.93 FEET, WITH A CHORD BEARING OF SOUTH 12°54'25" WEST, AND A CHORD DISTANCE OF 458.96 FEET; THENCE RUN THE FOLLOWING TWO (2) COURSES AND DISTANCES ALONG SAID WEST RIGHT OF WAY LINE; SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 09°19'09" A DISTANCE OF 459.47 FEET TO THE POINT OF TANGENCY; THENCE RUN SOUTH 17°34'00" WEST FOR A DISTANCE OF 782.27 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND LIES IN ORANGE COUNTY, FLORIDA AND CONTAINS 74.19 ACRES MORE OR LESS.

**EXHIBIT "B"**

***ARTICLE VIII. GATED COMMUNITIES***

***DIVISION 1. GENERAL***

**Sec. 34-280. General.**

- (a) The Orange County Comprehensive Policy Plan (CPP) and Subdivision Regulations promote interconnectivity of streets and roadways to allow for vehicular and pedestrian mobility within the county. Although Orange County recognizes that there is a market demand for subdivision communities having limited access by the public through the utilization of entryway gates, such limited access communities may interfere with interconnectivity and vehicular and pedestrian mobility. However, Orange County recognizes that "gated communities" may be appropriate in certain locations in certain limited circumstances. Some locations and/or circumstances in which gated communities may be appropriate are:
  - (1) Where the parcel of land on which the subdivision is located is physically isolated or separated from other parcels of land by water bodies, wetlands, limited access highways, or other physical barriers such that interconnectivity would be impracticable to achieve;
  - (2) Where the parcel of land on which the subdivision is located is surrounded by existing development such that interconnectivity would be impracticable to achieve; or
  - (3) Where the subdivision is a phase of a larger subdivision where an earlier phase or phases have already been approved as gated communities, and it would be impracticable to separate the drainage of the new subdivision and/or interconnectivity in the new subdivision would be impracticable to achieve.
- (b) Gated communities will be specifically prohibited:
  - (1) In areas designated in the CPP or chapter 38 of the Orange County Code as Village PD;
  - (2) In areas designated in the CPP or chapter 38 of the Orange County Code for new urbanism development; and
  - (3) In areas designated in the CPP or chapter 38 of the Orange County Code for transit-oriented development.
  - (4) Where retained and/or detained stormwater from the private drainage system would be commingled with retained and/or detained stormwater from any public streets, other public facilities, or other private facilities not governed by the same homeowners' or master property owners' association.
- (c) The use of gates as a means of limiting access by the public necessitates that streets and drainage systems for a gated community be privately owned and maintained. However, the public's interest is served only if gated communities and the accompanying private streets and drainage systems are allowed as a privilege, not a right, of the developer and subsequent property owners, and only if the improvements within a gated community comply with the minimum standards of the subdivision regulations and are maintained in a manner consistent with the existing standards established for similar facilities maintained by Orange County for the public good. Therefore, this article acts as a contract among the developer, the HOA (both as hereinafter defined), and Orange County, by which Orange County allows a developer to create a gated community and allows the developer and the HOA to keep the subdivision as a community with gates that restrict access by the public, so long as the developer and the HOA substantially comply with the requirements of this article. Substantial compliance with the requirements of this ordinance gives the developer the contract right to create

a gated community and gives the developer and the HOA the contract right to keep the subdivision as a community with gates that restrict access by the public.

- (d) This article applies to all subdivisions for which a gated community was requested by a developer, not by an existing homeowners' association, and approved by the board of county commissioners prior to platting. This article applies to gated communities requested by existing homeowners associations and approved by the board of county commissioners after the subdivision plat was recorded, but only if and to the extent required by the resolution of the board of county commissioners vacating the rights-of-way or by other instruments relating to the vacation of rights-of-way.
- (e) For the purposes of this article, "developer" is defined as (i) the person or entity that is the original declarant which records the declaration and/or plat for a gated community or (ii) the person or entity that succeeds to the rights and liabilities of the person or entity which is the original declarant, or (iii) in the absence of a written assignment of developer rights recorded in the public records of Orange County, Florida, the person or entity that materially or substantially exercises the rights and liabilities of the original declarant including, but not limited to controlling the board of directors of the HOA as hereinafter defined.
- (f) For the purposes of this article, "turnover of control of the HOA" (also referred to as "turnover") is defined as that point in time that members of the HOA (other than the developer, builders, contractors, or others who purchase property in the subdivision for the purpose of constructing improvements thereon for resale) are entitled to elect at least a majority of the board of directors of the HOA, and such election has occurred.

For the purposes of this article, "transfer of control of subdivision infrastructure" is defined as that point in time that maintenance and repair of the subdivision infrastructure as hereinafter defined becomes the responsibility of the HOA. Except as otherwise provided in this article, turnover of control of the HOA and transfer of control of subdivision infrastructure shall occur simultaneously.

- (g) For the purposes of this article, "HOA" shall mean a mandatory community association in which the owners of all lots, blocks, and tracts in the subdivision are required by the terms of the declaration to be members, as contemplated by section 720.301(7), Florida Statutes (2002), with the ability and duty to impose and collect on assessments.
- (h) For the purposes of this article, "project" shall mean all real property that is or will be subject to the declaration and will ultimately be operated by the HOA.
- (i) For the purposes of this article, "subdivision infrastructure" means those roadways, improvements, and other items which should otherwise be dedicated to the use of the public and/or the county in a typical subdivision, but which are retained for private use by the HOA or owners of lots in the gated community; however, subdivision infrastructure as used herein specifically excludes private amenities including, but not limited to entrance and exit gates, walls, swimming pools, clubhouses, parks and other recreation areas.

(Ord. No. 2002-22, § 1, 12-10-02; Ord. No. 2009-04, § 2, 2-24-09)

Editor's note(s)—Ord. No. 2002-22, § 1, adopted Dec. 10, 2002, repealed § 34-280 in its entirety and enacted new provisions to read as herein set out. Prior to amendment, § 34-280 pertained to similar subject matter and derived from Ord. No. 2000-14, § 1, adopted June 27, 2000.

**Secs. 34-281—34-289. Reserved.**

## ***DIVISION 2. REQUIREMENTS***

## **Sec. 34-290. Requirements.**

From time to time, the board of county commissioners may grant to a developer the privilege of platting and developing a residential subdivision as a "gated community" in which the subdivision infrastructure may be located on privately controlled easements or tracts, not public rights-of-way. The privilege of having a gated community runs with the land, but is subject to forfeiture for failure to comply with any of the following requirements. Upon a forfeiture of the privilege, the county may prohibit the closure of gates. Thereafter, if and when the subdivision rights-of-way are dedicated or otherwise conveyed to the county, the county shall assume responsibility for street and drainage-system maintenance.

All gated communities approved by the board of county commissioners must comply with the following:

- (a) Streets and stormwater detention/retention areas must be platted as separate tracts.
- (b) Streets and stormwater detention/retention areas must be owned and maintained by an HOA.
- (c) Access-easement rights over the platted roadway right-of-way tracts must be dedicated or otherwise granted to the owners of each lot within the subdivision and to all their successors in interest.
- (d) The developer shall construct the streets and drainage systems to county standards and shall comply with the provisions of Orange County Code sections 34-203 and 34-204 regarding letters of credit, certificates of completion and approval for maintenance as if the subdivision infrastructure were "public improvements," except that letters of credit required under sections 34-203 and 34-204 shall be payable to the board of county commissioners for the benefit of the HOA.
- (e) Entryway gates must be equipped with an audio (siren) override device to allow emergency access to the subdivision by fire/rescue, sheriff and other emergency-response personnel. The audio-override device must be submitted to the fire and rescue department for inspection, and the entrance gates may not be closed unless and until the department determines that the device is acceptable and in good working order.
- (f) The entryway gate must include a box, labeled "Orange County," with a master-keyed padlock, and the box must contain a key, a card-key, a code, a remote-control device, or some other means by which mosquito control, animal control, code enforcement, environmental protection and utility workers may gain access to the subdivision. The means of access must be approved by the mosquito control division, and if the subdivision is served by county utilities, the utilities department and the box must be installed prior to the county's issuance of the certificate of completion for the subdivision infrastructure. Any other utilities serving the subdivision must have similar access, and the names of such utilities must be on the outside of the box containing the means of access.
- (g) Prior to recording of the plat, a traffic law enforcement agreement pursuant to section 34-290(h)(15) between Orange County and the owner of the private streets within the gated community must be executed and approved by the board of county commissioners.
- (h) Simultaneous with the recording of the subdivision plat, the developer must record in the public records of Orange County, Florida, a document or documents (referred to in this article as the "declaration"). The declaration shall govern all platted lots within the subdivision, shall impose requirements and restrictions that run with the land, and shall address the responsibilities for the ongoing maintenance and repair of the subdivision infrastructure. The terms of the declaration shall be, to the county's satisfaction, legally sufficient and enforceable to accomplish or otherwise ensure, at a minimum, the following:
  - (1) Require the establishment and maintenance of an HOA account for annual routine maintenance and repair of the streets, sidewalks, and drainage system, including stormwater detention/retention areas (referred to in this article as the "routine-infrastructure-maintenance account"), and impose the restrictions and requirements set forth in section 34-291 regarding that account.



- (2) Require the establishment and maintenance of an HOA account for major capital repair and replacement of the subdivision's streets (referred to in this article as the "capital-repair/streets account"), and impose the restrictions and requirements set forth in section 34-291 regarding that account.
- (3) Require the establishment and maintenance of an HOA account for major capital repair and replacement of the subdivision's stormwater retention/detention facilities (referred to in this article as the "capital-repair/drainage pond account") and impose the requirements and restrictions set forth in section 34-291 regarding that account.
- (4) Require the establishment and maintenance of an HOA account for major capital repair and replacement of other subdivision infrastructure such as sidewalks, stormwater conveyance systems, curbing, bike paths, etc., (referred to in this article as the "capital-repair/other infrastructure account") and impose the requirements and restrictions set forth in section 34-291 regarding that account.
- (5) Require the establishment and maintenance of an HOA account for storm debris clean-up and removal, such as clearing downed trees, landscape, and other storm-created debris from the subdivision's streets, sidewalks and drainage facilities, (referred to in this article as the "storm debris removal account") and impose the requirements and restrictions set forth in section 34-291 regarding that account.
- (6) Establish the point at which the developer must turn over control of the HOA. Turnover may occur no sooner than the point in time at which certificates of occupancy have been issued for seventy (70) percent of the platted lots in the project, and must occur no later than the point in time at which certificates of occupancy have been issued for ninety (90) percent of the platted lots in the project. Notwithstanding the foregoing, if a project contains individually-platted subdivisions, each with its own HOA and declaration (which may also be a part of a master association under a master declaration), different turnover dates may be established in the declaration for each separate HOA.
- (7) Establish the point at which the developer must turn over control of the subdivision infrastructure. Where a phased project contains individually-platted subdivisions which are subject to a common declaration and/or HOA, the date of transfer of control of subdivision infrastructure for each individually-platted subdivision may occur no sooner than the point in time at which certificates of occupancy have been issued for seventy (70) percent of the platted lots in the subdivision, and must occur no later than the point in time at which certificates of occupancy have been issued for ninety (90) percent of the platted lots in the subdivision.
- (8) Provide that:
  - a. Until turnover of the HOA and/or transfer of control of subdivision infrastructure, all maintenance and repair of streets, sidewalks and the drainage system, including stormwater detention/retention areas, is the responsibility of the developer;
  - b. Prior to turnover of the HOA and/or transfer of control of subdivision infrastructure, the developer may expend monies in the routine-infrastructure-maintenance account for such maintenance and repair, but only with the written consent of the board of directors of the HOA; and
  - c. Insufficiency of monies in the routine-infrastructure-maintenance account shall not act to relieve the developer of any responsibility to maintain and repair the streets, sidewalks, and drainage system (including stormwater detention/retention areas) properly prior to turnover of the HOA and/or transfer of control of subdivision infrastructure.
- (9) Require that:
  - a. No earlier than one hundred eighty (180) days before turnover of the HOA and/or transfer of control of subdivision infrastructure, the HOA must retain the services of a Florida



registered engineer experienced in subdivision construction (other than the engineer of record for the subdivision as of the date of the county's approval of the subdivision infrastructure construction plans, and engineers who are principals of, employed by, or contractors of the same firm as the engineer of record) to inspect the streets, sidewalks and drainage system, including stormwater detention/retention areas in accordance with the existing approved plans, and prepare a report recommending the amount of scheduled maintenance and unscheduled repair that likely will be needed each year for the streets, sidewalks and drainage system (including stormwater detention/retention areas), in accordance with standards that may be established and revised from time to time by the County Engineer or his or her designee, which recommends the amounts of money that should be deposited each year in the routine-infrastructure-maintenance account, and determining what repairs, if any, are needed prior to turnover of the HOA;

- b. The report be signed and sealed by the engineer;
  - c. The HOA pay the cost of this initial engineer's report, and the HOA may pay such cost from the routine-infrastructure-maintenance account;
  - d. A copy of the initial engineer's report be provided to all owners of lots, blocks, and tracts in the subdivision and to the County Engineer within fifteen (15) days after it is completed;
  - e. Any needed repairs or replacements identified by the report be completed by the developer, at the developer's sole expense, prior to either the developer's turnover of the HOA to the property owners of the subdivision or transfer of control of subdivision infrastructure to the HOA, whichever occurs first; and
  - f. If turnover of the HOA and/or transfer of control of subdivision infrastructure occurs and the foregoing requirements have not been fulfilled, the rights of the HOA, any of its members, and any and all owners of land in the subdivision to enforce these requirements against the developer shall survive the turnover of the HOA, with the prevailing party to be entitled to attorneys' fees and costs.
- (10) Require that, after turnover of control of the HOA, or turnover of control of the subdivision infrastructure:
- a. The HOA obtain an inspection of the streets, sidewalks and drainage systems, including stormwater detention/retention areas, by a Florida-registered engineer experienced in subdivision construction no less frequently than once every three (3) years after the initial engineer's inspection; and
  - b. Using good engineering practice, and in accordance with standards that may be established and revised from time to time by the County Engineer or his or her designee, 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 determine the level of maintenance and repair (both scheduled and unscheduled) needed, the amounts of funding needed each year for the next three (3) years in the routine-infrastructure-maintenance account to pay for such maintenance and repair, and any repairs then needed;
  - c. That the inspection be written in a report format; and
  - d. A copy of each engineering report be provided to each owner of property in the gated community within fifteen (15) days of completion of the report; and
  - e. Within one hundred eighty (180) days of receipt of each tri-annual engineering report, the HOA complete all remedial work identified and recommended by the engineer.
- (11) The developer (so long as the developer retains control of the board of directors of the HOA) and the HOA expressly indemnify and hold Orange County and its officers and employees harmless

from any cost of maintenance, repair, and reconstruction of, or tort liability or award of damages related to or arising in connection with, the streets, sidewalks, drainage system (including stormwater retention/detention area), and/or any other subdivision infrastructure.

- (12) Expressly declare that property owners receive no discount in property or other taxes because of private streets or drainage system.
- (13) Require that each initial purchaser of a residential lot in a gated subdivision for the personal or family use of the purchaser receive a copy of the declaration at or prior to the time the sales contract is executed, together with the current budget for the HOA, including a schedule disclosing the then-existing amounts of the periodic assessments for each of the HOA accounts required by section 34-291 and a copy of the most recent year-end financial statement for the HOA, and if none are then existing, a good faith estimate of the HOA operating budget, along with a form to be signed by such initial purchaser acknowledging receipt of a copy of the declaration, budget, financial statement or good faith estimate, and that the original of the form acknowledging receipt of a copy of the declaration is to be attached to the sales contract as an exhibit or appendix. In addition, the declaration shall conspicuously set forth the ten (10) disclosures provided in the disclosure statement required in section 34-290(k).
- (14) Declare that upon any default by the HOA or the developer in any requirements of either this article or the declaration required under this article, the county, at its option and after due notice of its declaration of a default and a reasonable time to cure, may prohibit closure of the gates and, upon dedication or conveyance of the rights-of-way to the county, assume responsibility for maintenance, using all HOA monies on deposit in the routine-infrastructure-maintenance account and the several capital-repair accounts or, if no monies exist or if an insufficient amount exists, using such other revenues or financing methods as the county may elect, including (but not limited to) special assessments against the subdivision lots, blocks, and tracts.
- (15) Require that the HOA carry an insurance policy insuring itself from liability for damages related to or arising in connection with the streets, sidewalks, drainage system (including detention/retention areas). The minimum amount of insurance required shall be established by resolution of the board of county commissioners.
- (16) Require that enforcement of traffic laws within the gated community, as requested by the HOA, shall be by the sheriff and that all costs of enforcement incurred by the sheriff shall be paid by the HOA.
- (17) Provide a procedure for nonbinding mediation in the event of a dispute between any homeowner and the developer, or between the HOA and the developer, with respect to the repair and maintenance of the streets, sidewalks, and drainage system and/or funding for such maintenance and repair.
- (18) Provide that:
  - a. The HOA, any member of the HOA, and any and all owners of land in the subdivision shall have the right jointly and severally to enforce against the developer the requirements of this article and the provisions of the declaration required hereunder, with the prevailing party being entitled to attorney's fees and costs;
  - b. Any member of the HOA and any and all owners of land in the subdivision shall have the right to enforce against the HOA the requirements of this article and the provisions of the declaration required hereunder, with the prevailing party being entitled to attorneys' fees and costs; and
  - c. Venue for any such enforcement action shall be in the Ninth Judicial Circuit of Florida, in Orange County.

- (19) Provide that, if and when the subdivision is annexed to a municipality, the rights and privileges inuring to the county's benefit under this article shall be deemed assigned to the municipality and shall inure automatically to the municipality's benefit.
  - (20) Require that at the time of sale to the initial homebuyer, a schedule disclosing the then-existing amounts of the periodic assessments for the HOA accounts required by section 34-291. Such schedule must also state that the periodic assessments for the HOA accounts required by section 34-291 do not include assessments for either the routine maintenance of or the capital repair and replacement of HOA facilities not related to subdivision infrastructure (such as common area landscaping, entrance and exit gates, walls, swimming pools, clubhouses, parks, other recreation areas, etc.).
  - (21) Provide that any transfer of subdivision infrastructure (including the property on which the subdivision infrastructure is located) to Orange County or other governmental entity is prohibited without the concurrence of the owners of two-thirds ( $\frac{2}{3}$ ) (or such higher percentage as the declaration may provide) of the platted lots.
- (i) The declaration setting forth the gated community requirements in this article must be in form acceptable to the county and in substance consistent with and in compliance with the minimum requirements of this article. The declaration must be submitted for review by the county prior to plat recording. Nothing in this article precludes the declaration from addressing other matters so long as the substance of each part of the declaration is not inconsistent with the requirements of this article.
  - (j) This article does not require the establishment of accounts for either the routine maintenance or the capital repair and replacement of private amenities not related to subdivision infrastructure, including, but not limited to common area landscaping, entrance and exit gates, walls, swimming pools, clubhouses, parks, other recreation areas, etc., but such accounts may be required by the declaration or may be established at the discretion of the HOA.
  - (k) No contract for the sale and purchase of a residential lot or home in a gated subdivision shall be effective until a gated community cost disclosure statement ("disclosure statement") in substantially the following form has been provided to and executed by such purchaser:

**Gated Community Cost  
Disclosure Statement**

If you are buying a lot or home in a private gated community in Orange County you should know these basic facts:

1. Orange County is prohibited from paying to maintain the roads, sidewalks and drainage and may not be permitted to remove storm debris in this community because the roads, sidewalks, and drainage are private property and the general public cannot access the community.
2. Although the cost of properly maintaining and repairing roads, sidewalks and drainage systems can be very high, only the owners of homes and lots in this community will share these expenses. Tax dollars will not be used. The members must also pay for the cost of liability insurance and traffic enforcement on the community's roads.
3. Under Florida law, no reduction in your tax burden will result from living in this community.
4. Members of this community, through their mandatory homeowners' association, must set aside adequate reserves to pay for storm debris removal in the event of tornado, hurricane, or other major storm event, to properly maintain, repair and replace the roads, sidewalks, and drainage system, and must have a professional engineer regularly inspect the roads, sidewalks and drainage system and report what work is necessary to maintain and/or repair them. The mandatory homeowners' association is obligated to do the necessary work reported and the members of the homeowners' association pay for the work through their assessments.

5. The extra expenses you incur to maintain the roads, sidewalks and drainage in your community are in addition to other expenses charged by your homeowners association to pay for private recreational, security and other amenities and services the community may offer, including the community's gates.
6. As with any assessment, the failure or inability to pay may lead to a lien being placed on your home. If a lien is placed and foreclosed, you could lose your home.
7. The homeowners association is also required to maintain liability insurance adequate to pay claims for injuries and property damage arising on the private roadway, sidewalks, drainage ponds, and other common areas in the neighborhood.
8. If Orange County determines that the community is not meeting its obligations, it may revoke the community's privilege to close its gates so that the roads in the community become available for public use.
9. If the community fails to maintain its roads, sidewalks and drainage system, the county may require that the gates be removed. In the event the gates are removed, and the HOA dedicates the roads and other infrastructure to the county, all costs and expenses which Orange County incurs for such maintenance are recoverable from the community. Funds which have been set aside by the community may become the property of Orange County, and the roads in your community shall permanently become open to the public. Orange County will not maintain your recreational, security and other amenities under any circumstances.
10. Before you sign a contract be sure that you receive written information about the costs of living in this community.

I have read and understand the disclosures provided in this disclosure statement prior to execution of a contract to purchase any lot in the [insert name of development] subdivision.

[signature of purchaser]    [signature of purchaser]

[print name of purchaser]    [print name of purchaser]

The disclosure statement shall be in conspicuous type and shall be contained in a single document which shall be provided to the purchaser separately from the contract for purchase and sale and the other documents required by section 34-290(h)(12). The disclosure type shall be conclusively deemed conspicuous if it is all uppercase letters and typed in at least twelve-point typeface. In the case of sale and purchase of multiple lots to a single purchaser in a gated subdivision, execution of a single disclosure statement is sufficient, provided that all lots are listed on the disclosure statement either by legal description or by street address.

(Ord. No. 2002-22, § 1, 12-10-02; Ord. No. 2009-04, § 2, 2-24-09)

Editor's note(s)—Ord. No. 2002-22, § 1, adopted Dec. 10, 2002, repealed § 34-290, in its entirety and enacted new provisions to read as herein set out. Prior to amendment, § 34-290 pertained to conditions of approval and derived from Ord. No. 2000-14, § 1, adopted June 27, 2000; and Ord. No. 2002-08, § 1, adopted June 25, 2002.

## **Sec. 34-291. HOA accounts for maintenance and repair.**

In addition to the several requirements of section 34-290(h)(1)—(21), (i) and (k), the declaration for each subdivision approved as a "gated community" shall provide, at a minimum, the following requirements, restrictions, terms, conditions, and limitations with respect to the accounts required for the maintenance and repair of the streets, drainage, and other infrastructure for the subdivision and the monies on deposit in those accounts.

- (a) *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":
  - (1) A routine-infrastructure-maintenance account;
  - (2) A capital-repair/streets account;
  - (3) A capital-repair/drainage pond account;
  - (4) A capital-repair/other infrastructure account; and
  - (5) A storm debris removal account.

Each of these 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.

- (b) *Use of accounts.*
  - (1) *Routine-infrastructure-maintenance account.* Monies on deposit in the routine-infrastructure-maintenance account, including any investment earnings, may 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 streets, drainage system, including the stormwater detention/retention areas, sidewalks, 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 streets and drainage-system maintenance and repair take priority over the maintenance and repair of the gates and related facilities.
  - (2) *Capital-repair/streets account.* Monies on deposit in the capital-repair/streets account, including any investment earnings, may be used by the HOA only for resurfacing and related reconstruction of the streets in the subdivision, generally every twelve (12) years after issuance by the county of the certificate of completion for the streets. The monies on deposit in the account may not be expended earlier than the twelfth anniversary of the issuance of the certificate of completion without the consent of no less than a simple majority of the owners of platted lots (excluding the developer) in the subdivision, which consent may consist of written consent and/or voting consent at a meeting called in accordance with the bylaws of the HOA, and the consents will be valid only



if obtained after turnover of the subdivision infrastructure to the HOA. Under no circumstances may the monies in the account be expended before the developer turns over control of the subdivision infrastructure to the HOA.

- (3) *Capital-repair/drainage pond account.* Monies on deposit in the capital-repair/drainage pond account, including any investment earnings, may be used by the HOA only for major repair and reconstruction of the stormwater detention/retention areas of the drainage system, generally every ten (10) years after issuance by the county of the certificate of completion for the stormwater-drainage system. The reconstruction and repair of the detention/retention areas will include, but not be limited to, dredging and sediment removal. The monies on deposit in the account may not be expended earlier than the tenth anniversary of the issuance of the certificate of completion without the written consent of no less than a simple majority of the owners of platted lots (excluding the developer) in the subdivision, which consent may consist of written consent and/or voting consent at a meeting called in accordance with the bylaws of the HOA, and the consents will be valid only if obtained after turnover of the subdivision infrastructure to the HOA. Under no circumstances may monies in the account be expended before the developer turns over control of the subdivision infrastructure to the HOA.
  - (4) *Capital-repair/other infrastructure account.* Monies on deposit in the capital-repair/other infrastructure account, including any investment earnings, may be used by the HOA only for major repair, reconstruction, resurfacing, and replacement of the other parts of the infrastructure related to the private streets and drainage systems, such as the stormwater conveyance systems, sidewalks, curbing, and bike paths. If allowed by the declaration, the monies on deposit in the account may also be used for the major repair, reconstruction, and replacement of the entrance and exit gates and related facilities, but the declaration must require that the repair, reconstruction, and replacement of the former items of infrastructure take priority over the repair, construction, and replacement of the entrance and exit gates and their related facilities.
  - (5) *Storm debris removal account.* Monies on deposit in the storm debris removal account, including any investment earnings, may be used by the HOA only for the costs of storm debris clean-up and removal, such as clearing downed trees, landscape, and other storm-created debris from HOA-owned streets, sidewalks, and drainage facilities (including stormwater detention/retention areas), and removing such debris to a landfill or other county-provided drop-off site.
- (c) *Required funding; required assessments.*
- (1) *Routine-infrastructure-maintenance account.* The HOA must deposit each year into the routine-infrastructure-maintenance account an amount of money sufficient to perform all scheduled maintenance and unscheduled repair of the streets, drainage system, and other infrastructure during the subsequent year. The amount deposited, when added to investment earnings, must be no less than the amounts recommended by the engineer's report required in paragraphs (8)a. and (9)b. of section 34-290(h). If the declaration allows maintenance and repair of the entrance and exit gates and their related facilities to be paid from the routine-infrastructure-maintenance account, then the deposits each year must be increased by amounts sufficient to cover those costs.
  - (2) *Capital-repair/streets account.* The HOA must deposit each year into the capital-repair/streets account an amount sufficient for the streets to be resurfaced and, as related to the resurfacing, reconstructed no less frequently than every twelve (12) years, and the amount must be estimated by the developer and approved by the county prior to issuance of a certificate of completion for the streets. Deposits to the account must begin in the year in which the county issues its certificate of completion and must be completed no later than the year of the twelfth anniversary of the

issuance of the certificate. The amount deposited by the HOA must be no less than one-twelfth ( 1/12) of the estimate approved by the county. However, after turnover of the HOA the schedule of deposits may be altered such that one (1) or more annual deposits is less than one-twelfth ( 1/12) of the estimate, but only if a simple majority or more of all owners of platted lots in the subdivision consent in writing and/or by voting at a meeting called in accordance with the bylaws of the HOA to approve the altered schedule. If the property owners in the subdivision consent in writing to a different schedule of deposits, the revised schedule must result in the aggregate amount of deposits during the twelve-year period being equal to or in excess of the estimate approved by the county. At the end of each twelve-year period, the HOA shall revise and update the estimated cost of resurfacing and, as related to the resurfacing, reconstructing the streets at the end of the next twelve-year period, taking into consideration actual costs incurred and expected increases in road construction costs, and shall adjust the amount of its annual deposits to the account accordingly. If for any reason expenditures are made from the account prior to the end of the twelve-year period, the amount of deposits to the account in the remaining years shall be adjusted so as to ensure that the account contains an amount sufficient at the end of the twelve-year period to pay the costs of all expected repair and/or reconstruction and resurfacing requirements.

- (3) *Capital-repair/drainage pond account.* The HOA must deposit each year into the capital-repair/drainage pond account an amount sufficient for the stormwater detention/retention areas in the drainage system to be restored and repaired no less frequently than once every ten (10) years, and the amount must be estimated by the developer and approved by the county prior to the issuance of a certificate of completion for the drainage system. Deposits to the account must begin in the year of which the county issues its certificate of completion for the drainage system and must be completed no later than the year of the tenth anniversary of the issuance of the certificate. The amount deposited each year by the HOA must be no less than one-tenth ( 1/10) of the estimate approved by the county. However, after turnover of the HOA, the schedule of deposits may be altered such that one (1) or more annual deposits is less than one-tenth ( 1/10) of the estimate, but only if a simple majority or more of all owners of platted lots in the subdivision consent in writing and/or by voting at a meeting called in accordance with the bylaws of the HOA to approve the altered schedule. If the property owners consent to a different schedule of deposits, the revised schedule must result in the aggregate amount of deposits during the ten-year period being equal to or in excess of the estimate approved by the county. At the end of each ten-year period, the HOA shall revise and update the estimate of the cost of restoring and repairing the stormwater detention/retention areas at the end of the next ten-year period, taking into consideration actual costs incurred and expected increases in drainage-system construction costs and shall adjust the amount of its annual deposits to the account accordingly. If for any reason expenditures are made from the account prior to the end of the ten-year period, the amount of deposits to the account in the remaining years will be adjusted so as to ensure that the account contains an amount sufficient at the end of the ten-year period to pay the costs of all expected restoration and repair requirements.
- (4) *Capital-repair/other infrastructure account.* The HOA must deposit each year into the capital-repair/other infrastructure account an amount sufficient for other subdivision infrastructure related to the streets and drainage system, such as stormwater conveyance systems, sidewalks, curbing, and bike paths, to be reconstructed and/or repaired no less frequently than once every fifty (50) years, and the amount must be approved by the county prior to issuance of a certificate of completion for those improvements. Deposits to the account must begin in the year in which the county issues its certificate of completion for the improvements and must be completed no

later than the fiftieth anniversary of the issuance of the certificate. The amount deposited each year by the HOA must be no less than one-fiftieth ( 1/50) of the estimate approved by the county. However, after turnover of the HOA, the schedule of deposits may be altered such that one (1) or more annual deposits is less than one-fiftieth ( 1/50) of the estimate, but only if a simple majority or more of all owners of platted lots in the subdivision consent in writing and/or by voting at a meeting called in accordance with the bylaws of the HOA to approve the altered schedule. If the property owners consent to a different schedule of deposits, the revised schedule must result in the aggregate amount of deposits during the fifty-year period being equal to or in excess of the estimate approved by the county. At the end of each fifty-year period, the HOA shall revise and update the estimate of the cost of reconstructing and/or repairing the improvements, taking into consideration actual costs incurred and expected increases in reconstruction and repair costs, and shall adjust the amount of its annual deposits to the account accordingly. If for any reason expenditures are made from the account prior to the end of the fifty-year period, the amount of deposits to the account in the remaining years will be adjusted in a manner to ensure that the account contains an amount sufficient at the end of the fifty-year period to pay the cost of all expected reconstruction and/or repair requirements.

- (5) *Storm debris removal account.* The developer must deposit an initial amount into the storm debris removal account equal to two hundred fifty dollars (\$250.00) per acre of land in the platted subdivision (excluding wetlands, conservation areas, and natural waterbodies). The HOA must deposit each year into the account, an amount equal to one-fifth (1/5) the initial amount, until the storm debris account is equal to double the initial amount plus the annual Engineering News Record construction cost index. Subsequently, the HOA must make deposits at least annually into the storm debris removal sufficient to maintain the balance at double the initial amount plus the annual Engineering News Record construction cost index. Any time the HOA must expend funds in the storm debris removal account after a storm event, the HOA shall replace such funds (by special assessment, if necessary) within three (3) years of such expenditure sufficient to bring/restore the balance of the storm debris removal account to the balance prior to the expenditures, plus the annual Engineering News Record construction cost index.
- (6) *Developer's required contribution.* To help ensure the financial ability of the HOA to maintain the infrastructure after turnover of the infrastructure, the five (5) required accounts must be created and funded by the developer, in the initial amount required for the storm debris removal account in section 34-291(c)(5), and for the other four (4) required accounts, in an amount equal to one (1) year of assessments prior to plat recording or issuance of certificate of completion for the streets, drainage, or other related improvements for the subdivision. Such initial assessments are in addition to any other assessments required to be paid by the developer under section 34-291(c)(7).
- (7) *Required assessments.* The obligation to collect and pay assessments shall commence as of the date on which the county issues its certificate of completion for the streets, drainage system, and other related 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. The HOA shall impose and collect assessments against each platted 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 County Engineer the subdivision infrastructure has substantially deteriorated at the time a plat is approved, the county may require an additional payment of assessments by the developer to address the loss of useful life of the deteriorated subdivision infrastructure.

- (d) *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 within the time frame required under the "Financial Reporting" requirements of chapter 720 of the Florida Statutes. 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.

(Ord. No. 2002-22, § 1, 12-10-02; Ord. No. 2009-04 , § 2, 2-24-09)