

ARTICLE VII: INSTALLATION AND MAINTENANCE OF IMPROVEMENTS

SECTION 7.1 GENERAL REQUIREMENTS

- A. **Relationship to the Comprehensive Plan.** These Installation and Maintenance requirements implement the Comprehensive Plan regarding the goals, objectives and policies contained in the Capital Improvements Element. In general, these requirements shall insure that community facilities and services are available to support development in a manner that is concurrent with the impact of such development.
- B. **Purpose of Installation and Maintenance Requirements.** The requirements of this Article are intended to provide standards and procedures for the installation and maintenance of improvements required by the Land Development Regulations. These requirements are intended to ensure that all improvements will be installed in a timely and efficient manner which protects the public health, safety and welfare, and that, where improvements will be retained in private ownership, they will be maintained permanently in accordance with the requirements of the Land Development Regulations.
- C. **Applicability.** These requirements apply to all development proposals requiring Subdivision Plan approval, Site Plan approval and Planned Development Project Plan approval as set forth in the Land Development Regulations. In addition, these requirements apply to any improvement that is to be maintained and/or dedicated to a public entity. No Final Plat, Improvement Plan or Engineering Plan shall be approved unless assurance is provided that required improvements will be installed in accordance with these requirements.
- D. **General Requirements.** All improvements required by the Land Development Regulations shall be built to the standards and specifications of the Land Development Regulations and in accordance with any additional requirements and policies of the Administrative Official. All required improvements shall be installed by, and at the expense of the developer/builder, except as specifically provided by these requirements.
- E. **Professional Engineer Required.** A Florida registered Professional Engineer shall be employed to design and certify the installation of all required improvements to be dedicated to a public entity. Said Professional Engineer shall prepare all plans for such improvements. All plans for such improvements shall be approved by the Administrative Official prior to construction.

SECTION 7.2 IMPROVEMENTS DEDICATED TO THE CITY

- A. **Applicability.** The requirements of this section shall apply to all improvements to be dedicated to the City of Sanford or any other public entity.
- B. **Alternative Procedures.** The owner shall choose to either:

1. Guarantee the installation of required improvements by providing a performance guarantee in the manner prescribed in these regulations, or;
2. Install required improvements prior to recording of a Final Plat or dedication of the improvements in question in the manner prescribed in these regulations.

C. **Performance Guarantee.** The performance guarantee shall be filed with the City in accordance with this Section for the installation of required improvements. The owner or his legally authorized representative shall be responsible to ensure that the improvements have been guaranteed. A performance guarantee shall be provided in a manner and form acceptable to the Administrative Official. In addition, such performance guarantee shall comply with requirements of the law and shall be approved as satisfactory by the City Attorney as to form and manner of execution.

1. **Acceptable Types of Guarantees.** The performance guarantee shall consist of a performance bond, equivalent cash deposit with the City, certificate of deposit or irrevocable letter of credit by a Florida bank, a cashier's check or a certified check upon a Florida bank.
2. **Amount of Guarantee.** The minimum amount of the performance guarantee shall be 110% of the current construction costs of improvements in question. Such amount shall be subject to approval by the Administrative Official.
3. **Effective Period.** The effective period of the performance guarantee shall not exceed one year from the date of approval of the Final Plat or Engineering Plan. After the expiration date, the guarantee amount shall be considered as a new submittal and shall be reissued based on current construction costs.
4. **Extensions and Substitutions.** The City Commission shall have the authority to grant extensions for a one year effective period of the performance guarantee for good cause shown. The applicant shall apply to the Administrative Official for such extension. The Administrative Official shall review the performance guarantee and shall have the authority to require renegotiation of the amount of guarantee and impose other reasonable conditions upon such guarantee. The City Commission shall have the authority at any time during the Effective Period to accept a substitution of principal, sureties or other parties, upon recommendation by the City Attorney.
5. **Default.** Whenever the required improvements have not been installed according to the terms of the performance guarantee and no extension or substitution has been granted, the City Manager shall declare, upon thirty (30) days' written notice to the parties to the instrument, the performance guarantee to be in default and exercise the City's rights thereunder. Upon default, no building permits or other approvals shall be granted for the development until the City Manager determines that adequate progress has been made toward completion of the remaining improvements.

- D. **Installation Before Recording of Final Plat.** If required improvements are to be installed prior to recording of the Final Plat or dedication of such improvements to a public entity, the following procedures shall apply:
1. **Subdivision Plan Review.** The Preliminary Subdivision Plan, the Improvement Plans and the Final Plat shall be approved in accordance with the procedures set forth in Article VI of the Land Development Regulations.
 2. **Conditional Final Plat Approval.** City Commission approval of the Plat shall be conditioned upon the completion of the required improvements within one year of such conditioned approval in full conformance with the approved Improvement Plans and any other conditions or stipulations.
 3. **Retention of Plat by City Clerk.** The approved Final Plat shall not be recorded, but shall instead be retained by the City Clerk. Upon recommendation of the Administrative Official, the City Manager shall notify the City Clerk upon issuance of a Certificate of Completion for the Improvements whereupon the City Clerk shall be authorized to execute the recording of the Final Plat in accordance with provisions set forth in the Land Development Regulations and in the manner prescribed by law.
 4. **Compliance with All Requirements.** Installation of the required improvements shall be subject to all applicable requirements of this Section pertaining to the construction, inspection, completion and acceptance of such improvements.
 5. **Building Permits Prohibited.** No building permits shall be issued for any building site within the proposed development until the required improvements have been accepted by the City Manager or other applicable public body and the Final Plat has been recorded.
 6. **Acceptance of the Required Improvements.** Upon issuance of a Certificate of Completion for all required improvements by the Administrative Official, the City shall accept responsibility for the maintenance of the improvements, subject to the provisions of the Maintenance Guarantee.
- E. **Construction and Inspection of Improvements.** The developer shall notify the Administrative Official at least forty-eight (48) hours prior to commencement of construction. The Administrative Official shall carry out inspections and tests of all required improvements during construction and following the completion of each stage of construction, in accordance with accepted construction and testing practices, to ensure compliance with approved plans and advise the City Manager whether or not the improvements being constructed appear to qualify for acceptance by the City. The Administrative Official shall be authorized to execute all actions deemed necessary to determine compliance with specifications and requirements of the Land Development Regulations. If the Administrative Official finds that actions to determine such compliance are beyond and additional to customarily required inspections and tests, the Administrative Official shall have the authority to require the owner to pay for the expense of any such action incurred by the Administrative Official. All required

improvements shall be installed, inspected and approved prior to acceptance by the City Manager or other applicable public entity.

F. **Inspection Fees.** The owner shall pay to the City, for engineering and inspection services provided by the City, a fee to be established in the manner prescribed in the Land Development Regulations. The fee shall be due upon issuance of a site development permit, provided that the Administrative Official shall have the authority to establish an alternative method of payment of such fee. However, in all cases such fee shall be due prior to final acceptance of improvements by the City Manager or other applicable public body.

G. **Completion and Acceptance of Improvements.**

1. **Submittal of As-Built Drawings.** Upon completion of any required improvements, the owner shall submit to the Administrative Official As-Built Drawings prepared and certified by the engineer of record, showing the actual installation of such improvements. As-Built drawings shall be provided in reproducible form.

2. **Posting of Maintenance Guarantee.** Prior to acceptance of the required improvements by the City Manager or other applicable public body, the owner shall provide a Maintenance Guarantee for the repair or correction of material defects or failures of the improvements for a period of two years following acceptance. The Maintenance Guarantee shall be in an amount equal to 10% of the actual construction cost of all the improvements, and shall consist of a performance bond, equivalent cash deposit with the City, construction loan agreement with a recognized lending institution, certificate of deposit or irrevocable letter of credit by a Florida bank, a cashier's check or a certified check upon a Florida bank. Upon default, the City Commission or other applicable public body may exercise its rights upon ten (10) days written notice by certified mail, return receipt requested, to the parties to the instrument.

3. **Certificate of Completion.** The Administrative Official shall issue a Certificate of Completion and the City Manager shall be empowered to accept responsibility for maintenance and operation of the required improvements, upon determination of compliance with all of the following requirements:

- a. Completion of satisfactory final inspections for the improvements in question;
- b. Submission and approval of a certification by the engineer of record that the required improvements have been installed and completed in accordance with submitted and approved As-Built Drawings; and,
- c. Posting and approval of the required maintenance guarantee.

4. **Reduction By Phase or Release of the Performance Guarantee.** Upon issuance of the Certificate of Completion for an approved phase of the required

improvements, the Administrative Official shall be authorized to reduce the amount of the Performance Guarantee for such improvements by the amount of the original cost estimate for the improvements covered by the Certificate. Where the Certificate covers all required improvements, the Performance Guarantee shall be fully released.

SECTION 7.3 IMPROVEMENTS RETAINED IN PRIVATE OWNERSHIP

- A. **Applicability.** The following requirements shall apply wherever improvements required by the Land Development Regulations shall be retained in private or common ownership, and will not be dedicated to the City of Sanford or another public entity.
- B. **Construction and Inspection of Improvements.** Prior to the approval of any Certificate of Completion or Certificate of Occupancy, all improvements required by the Land Development Regulations shall be installed according to plans approved in the manner prescribed in the Land Development Regulations and in accordance with the requirements set forth in the Land Development Regulations. The Administrative Official shall inspect all improvements during and after construction and shall conduct and/or approve all tests of materials to insure compliance with all applicable requirements of the Land Development Regulations.

All proposed modifications of the City approved plans shall require written request to and approval by the Administrative Official prior to installation.

- C. **Certificate of Completion.** The engineer, architect or landscape architect of record shall submit a certification that the required improvements have been installed and completed in accordance with approved plans for the premises in question.
- D. **Performance Guarantee for Certain Improvements.** The Administrative Official has the authority to determine that the installation of the certain improvements may be delayed without substantial detriment to the public health, safety, or welfare or where necessary to coordinate such improvements with publicly financed capital improvements or improvements of adjacent premises, the Administrative Official may permit the owner to provide performance guarantee and a recordable agreement to install such improvements at a later specified date. Such certain improvements may include but not be limited to the following:
 - 1. Improvements within public rights-of-way.
 - 2. Installation of sidewalks and bikeways.
 - 3. Improvements to major drainageway.

The performance guarantee and agreement shall be provided prior to the issuance of any Certificate of Occupancy, and, except for the effective period, shall be subject to all of the performance guarantee requirements set forth in Section 7.2, Paragraph C of the Land Development Regulations. Improvements installed in this manner shall be subject

to all of the requirements of the Land Development Regulations pertaining to the construction, inspection and completion of such improvements.

- E. **Completion and Acceptance of Improvements.** Upon completion of any required improvements, the owner shall submit to the Administrative Official as-built drawings prepared and certified by the engineer of record, showing the actual installation of such improvements.

SECTION 7.4 MAINTENANCE OF COMMON AREAS, FACILITIES AND IMPROVEMENTS

This section is intended to assure that adequate ownership, management and maintenance responsibilities and measures will be established to protect and perpetually maintain such common areas, facilities and improvements that will be maintained and owned in a manner other than by under a single unified ownership. In addition, this section is intended to ensure continued availability and utility of common areas, facilities and improvements and prevent such facilities from becoming an unnecessary burden or nuisance to the general public or surrounding property. Nothing in this section shall be construed as creating any obligation or liability upon the City to maintain such facilities or improvements or otherwise ensure their availability and condition.

- A. **Applicability.** This section shall apply to all common areas, facilities and improvements which are identified and/or designated in approved plans to be owned and/or maintained under a common entity. The following types of areas, facilities and improvements shall not be subject to these requirements:
1. **Lands, Facilities and Improvements Dedicated to the Public.** Any lands or improvements to be dedicated or conveyed to the City or other applicable public entity, for designated or general public use.
 2. **Private Areas, Facilities and Improvements.** Common areas, facilities or improvements to be owned and maintained under the same unified ownership as for the entire premises in question, such as but not limited to parking areas or recreational amenities for multiple-family development projects or community shopping centers.
 3. **Condominiums and Cooperatives.** Any lands or improvements to be owned and maintained under a condominium or cooperative, which shall be established and regulated in the manner prescribed by law.
- B. **Establishing Common Ownership and Management.** Draft documents to establish common ownership and management responsibilities, entities, procedures and related considerations shall be approved by the City prior to the commencement of installation of facilities and improvements in question. City approval of such documents shall be accomplished in a manner that complies with applicable procedures and requirements of the Land Development Regulations which may include but not be limited to review and approval procedures involving conditional use permits, planned development project plan approval, development plan review and subdivision plan review. Such documents shall

establish a means of common ownership and management of all common areas, open space, facilities and improvements. Such documents shall also establish an organization or entity to own and manage the common areas, facilities and improvements in question, setting forth membership and responsibilities, including maintenance and fiscal programs and providing procedures for conducting business and activities of the organization or entity. Furthermore, certification that such required and approved documents are established, incorporated and recorded in the office of the Clerk of the Circuit Court shall be provided to the Administrative Official prior to issuance of a Certificate of Completion.

1. **Funding Mechanism Required.** The documents establishing common ownership and management shall establish a funding mechanism for the maintenance of the common areas, facilities and improvements. A method for the organization or entity to assess the property owners having beneficial use of common areas, facilities and improvements shall be set forth in such documents. The method of assessment shall provide the legal right for the organization or entity to impose liens against those properties for which payment of any assessment is not made. Collection of assessments and enforcing the payment thereof shall be the responsibility of the organization or entity and shall not be the responsibility of the City of Sanford. The assessments imposed by the organization or entity shall not relieve property owners from any taxes, fees, charges or assessments imposed by the City or any other governmental agency.
 2. **Notice to Buyers.** The documents establishing common ownership and managements shall also provide for notice to purchasers and prospective purchasers of properties that the organization or entity shall have the authority to make assessments and impose liens as provided in this Section.
- C. **Failure to Maintain Common Areas, Facilities and Improvements.** Failure to maintain common areas, facilities and/or improvements in accordance with the requirements of the Land Development Regulations shall be considered a violation of the Land Development Regulations subject to provisions applicable to violations, remedies and penalties prescribed in the Land Development Regulations. In the case of such a violation, the organization or entity and all property owners, occupants and lessees having beneficial use of or legal interest in the common areas, facilities and improvements in question shall be subject to applicable remedies and penalties. The City shall not be required or obligated in any way to construct or maintain, or participate in any way in the construction or maintenance of the common areas, facilities and/or improvements.

SECTION 7.5 VARIANCES

Any applicant may request a variance from the requirements of Schedules M, N, O, and P. Such request for a variance shall comply with the requirements and procedures set forth in this section.

- A. **Application to Administrative Official.** Applications for a variance shall be submitted to the Administrative Official. The Administrative Official shall have the authority to

require that submittal of such application be coincident with any other related application or request set forth in the Land Development Regulations including, but not limited to, Development Plan Review and Subdivision Plan Review. The form of the request shall be acceptable to the Administrative Official and shall comply with the following requirements:

1. The request shall be in written form.
2. The request shall accompany the proposed plan in question.
3. The request shall identify the requirement or provision that is proposed to be modified and shall fully explain the reasons that such variance should be permitted.
4. The Administrative Official has the authority to accept or reject such request based on reasonableness.

B. Administrative Official Action Upon Technical Questions. Upon acceptance of a request by an applicant as set forth above, the Administrative Official shall have the authority to act upon a request for a variance when such request is primarily of a technical nature. Such request must involve a technical specification or requirement such as, but not limited to, the type of materials, type or manner of application of materials, installation sequence, material performance, construction technique or requirement for specific construction feature. Further, the variance must not constitute a policy question. Copies of all granted variances shall be provided to the City Commission, City Manager and the Planning and Zoning Commission.

In granting a variance, the Administrative Official must make specific affirmative findings respecting each of the matters specified in Subsection 7.5 C. and may prescribe appropriate conditions and safeguards, including requirements in excess of those otherwise required by the Land Development Regulations, which shall become a part of the terms under which a Site Development Permit and Certificate of Completion shall issue.

The Administrative Official may refer any request for a variance to the Development Review Team for recommendation. The Administrative Official may decline to rule upon a variance application and process the application in accordance with the provisions relating to policy decisions.

C. Standards for Consideration of a Variance. Before any variance may be granted, the following findings shall be determined:

1. That the literal interpretation of the provisions of the Land Development Regulations would deprive the applicant of rights commonly enjoyed by other properties located in the immediate area of subject property under the terms of the Land Development Regulations and would work unnecessary and undue hardship on the applicant.

2. That granting the variance will not confer upon the applicant any special privileges denied by the Land Development Regulations to other lands, buildings or structures located in the immediate area of the subject property.
3. That the variance provides for equal or better performance than the stated requirement in the Land Development Regulations. The Administrative Official may require a performance guarantee in the manner set forth in the Land Development Regulations and/or engineering under signature and seal of a licensed Professional Engineer in the State of Florida to insure such performance.
4. That the granting of the variance will be in harmony with the general intent and purpose of the Land Development Regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the short-term or long-term public interest or welfare.
5. That the granting of the variance will be consistent with the Comprehensive Plan and will not adversely impact the established level of service for any facilities or services set forth in said Comprehensive Plan.

D. **Administrative Official Action and Referral Upon Policy Question.** If the request for a variance involves a requirement or provision that is not determined to be a technical requirement by the Administrative Official, such a request for a variance shall be regarded as a policy question. The Administrative Official shall have the authority to refer requests for a variance regarding a policy question to the Planning and Zoning Commission and/or the City Commission for action.

1. **Referral To Planning and Zoning Commission.** When the request for a variance does not involve improvements that are dedicated, owned or maintained by a public entity, the Administrative Official has the authority to transmit such request for a variance to the Planning and Zoning Commission for action in conjunction with the subject plan or application involved in the request for a variance.
2. **Referral To City Commission.** When the request for a variance involves improvements that are to be dedicated, owned or maintained by a public entity, the Administrative Official has the authority to transmit such request for a variance to the City Commission for action in conjunction with the subject plan or application involved in the request for a variance. Action upon a request for a variance involving improvements to be dedicated to the public must be by action of the City Commission.
3. **Action Upon Variance.** In granting such request for a variance, the Planning and Zoning Commission and/or the City Commission must make specific affirmative findings respecting each of the matters specified in Subsection 7.5 C., and may prescribe appropriate conditions and safeguards, including requirements in excess of those otherwise required by the Land Development Regulations, which shall become a part of the terms under which a Site Development Permit and Certificate of Completion shall issue.