ARTICLE IV
ZONING AMENDMENTS, PLANNED DEVELOPMENT AND UNIQUE PROJECTS

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SECTION 1.0 PURPOSE, INTENT, LAWFULNESS, AND BEST PRACTICES

A. Purpose and Intent.

It is the purpose and intent of this Article to provide specific processes and procedures for the development of master planned communities, the amending of City *LDRs* and *Comprehensive Plan* goals, policies, and objectives, the rezoning of properties, the transfer of development rights, and other supplementary processes. It is necessary for these development tools to be clearly defined as they are the processes that have the ability to implement large scale changes that can significantly impact the community's character and living conditions for significant areas of the City. While some of these processes are governed by State law, their specific processes have been included within this Article to provide easier access and clarify their connection to other processes; provided, however, as to statutory processes, they control over their recitation in this Article.

B. Lawfulness.

Any deviation from the provisions of this Article, unless specifically stated herein or allowed by other provisions of the *LDR*, the Administrative Official, or as granted in a development order, is prohibited and unlawful.

C. Best Practices.

All reviews and determinations of the provisions within this Article by the Administrative Official shall be to implement the Purpose and Intent of this Article together with sound and generally accepted land use planning practices and principles.

SECTION 2.0 ANNEXATION

The City has the authority to annex any contiguous parcel, lot, or tract in accordance with Chapter. 171, *Florida Statute*. Annexations result in the change in the municipal boundary through the increase in land areas by either voluntary annexation or the annexation of enclaves and the reduction of land area through the process of contraction. Annexations may be privately initiated as prescribed in the City Code. All annexation applications are provided by the City Clerk and complete annexation applications must be submitted to the City Clerk.

SECTION 3.0 TEXT AMENDMENTS TO COMPREHENSIVE PLAN OR LDR

Amendments to the text of the *LDRs* may occur pursuant to Section 166.041, *Florida Statutes*. Prior to consideration by the City Commission for enactment, such ordinances shall be submitted to the Planning and Zoning Commission, as the City's local planning agency, for review and recommendation as to whether the ordinance is consistent with the City's *Comprehensive Plan* in accordance with Section 163.3174, *Florida Statutes*; provided, however, that if the Planning and Zoning Commission fails to make a recommendation after the matter has been agendized twice before the body, the City Commission may take action without a recommendation.

SECTION 4.0 REZONING

The Zoning District Map may be amended to change the zoning district assigned to a parcel, lot or property within the City in accordance with the following procedures:

A. Standard District.

A parcel, lot or property may be rezoned to a district that is consistent with the future land use designation assigned to the property as well as the entirety of the *Comprehensive Plan*. Rezonings may be initiated by either the public through a formal application or by the City Commission.

1. Origination of Proposed Amendments.

Proposed amendments to the Zoning District Map may originate by vote of the City Commission, the Planning and Zoning Commission or by application of the owners of 51 percent or more of the land area involved in the proposed change; provided, however, that dissenting owners shall be deemed to have standing for any challenger to or of any decision.

a. Initiated by City Commission.

Proposals originating with the City Commission, or the Planning and Zoning Commission must be reflected in an appropriate resolution of the originating body and a copy of such resolution, upon adoption, shall be filed with the Administrative Official.

b. Initiated by Private Owner.

Proposals originating with the owners of 51 percent or more of the land area involved in the proposed change shall be in the form of an application required and provided by the Administrative Official and shall be submitted to the Administrative Official together with the fee. Such application shall be signed by the owners of 51 percent or more of the land area involved in the proposed change and described in the application or by the authorized agent of such owner or owners. Written authority authorizing a person other than the property owner, or 51 percent or more of the owners of the land area involved, to sign an application shall be attached to such application.

2. Formal Application.

Any application for the rezoning of any standard zoning district to another zoning district shall be submitted in accordance with the provisions of Article I, Section 7.0.

3. Planning and Zoning Commission Action

a. Referral to the Planning and Zoning Commission.

Any proposal for a rezoning shall, upon receipt by the Administrative Official, be referred to the Planning and Zoning Commission for consideration and recommendation to the City Commission.

b. Hearing By Planning and Zoning Commission.

The Planning and Zoning Commission shall hold a hearing in accordance with Article I, Section 7.0.C.6. The Planning and Zoning Commission shall recommend adoption or denial of the application to the City Commission provided, however, that in the case of a proposed planned development master plan, the Planning and Zoning Commission shall recommend adoption, adoption with modifications or conditions or denial of the application to the City Commission. Recommendations for denial must state a collective basis for the recommendation and it shall be presumed that the basis for denial or approval was stated in the staff report, but an alternative or supplemental basis may also be stated.

4. City Commission Action.

Following a hearing by the Planning and Zoning Commission, the Administrative Official shall submit the proposed amendment to the Zoning District Map, with the recommendation of the Planning and Zoning Commission, to the City Commission for consideration in accordance with Article I, Section 7.0.C.7. and the following:

a. The City Commission shall consider and act upon such application and the recommendation of the Planning and Zoning Commission in the manner prescribed by law for the adoption of ordinances and thereafter approve or deny such proposed amendment.

b. In acting upon a proposal to amend the Zoning District Map, the City Commission may approve a more restrictive, less dense or intense, zoning district than the district proposed, including, but not limited to, applications relating to planned development; provided, however, the conditions relating to approval of a planned development must be accepted by all property owners in order to implement such an approval.

5. Rezoning Limitation.

It shall be presumed at a quasi-judicial proceeding that a proposal to rezone property to a zoning district different than the abutting property would be incompatible unless all of the following are proven to exist:

a. The parcel has a minimum of 75' of street frontage,

b. The parcel has a minimum of 10,000 square feet.

c. The parcel is being rezoned to be added to an existing Zoning District of an adjacent property of any size or frontage.

6. Finality of Decision.

Whenever the City Commission has taken action to deny an application of a proposed amendment to the Zoning District Map, no application shall be received for a period of one year consistent with the provisions of Article I, Section 7.0.C.5.a.3)a).

B. Planned Development District.

Approval of planned development district shall constitute and thereby require an amendment to the Zoning District Map. Planned development projects shall be subject to the regulations of Schedule D. The procedure for review of planned development project plans shall be as follows:

1. Formal Application.

Any application for the rezoning of any zoning district to a planned development district shall be submitted in accordance with the provisions of Article I, Section 7.0. A paster plan shall be required and all plans shall be submitted in accordance with Section 5.0. of this Article.

2. Planning and Zoning Commission Action.

a. Referral to the Planning and Zoning Commission.

Any proposal for a rezoning pursuant to this Section shall, upon receipt by the Administrative Official, be referred to the Planning and Zoning Commission for consideration and the formulation of a recommendation to the City Commission.

b. Hearing By Planning and Zoning Commission.

The Planning and Zoning Commission shall hold a hearing for recommendation to the City Commission in accordance with Article I, Section 7.0.C.6. The Planning and Zoning Commission shall recommend adoption, adoption with modifications and/or conditions or denial of the application to the City Commission.

4. City Commission Action.

Following a hearing by the Planning and Zoning Commission, the Administrative Official shall submit the proposed amendment to the Zoning District Map, with the recommendation of the Planning and Zoning Commission, to the City Commission for consideration in accordance with Article I, Section 7.0.C.7. The City Commission shall consider and act upon such application and the recommendation of the Planning and Zoning Commission in the manner prescribed by law for the adoption of Ordinances by the City Commission and thereafter adopt or refuse to adopt such proposed amendment.

5. Zoning Map by Ordinance and Development Order.

a. The Zoning District Map shall be amended by ordinance enacted by the City Commission.

b. All zoning map amendments that include planned development projects shall be approved, in supplementation to the enacted ordinance, by a non-statutory development agreement in the form specified in Article I, Section 7.0.C.9.

6. Extension of Time Limits.

The City Commission may prescribe requirements in excess of those otherwise required by the *LDRs*, as a condition to approval of such proposed master plan, subject to the following.

a. The approval may specify time limits within which all or specified portions of the development contemplated shall be commenced or completed.

b. Only the City Commission may grant a time extension to an approval with specified time limits. Such extension shall not exceed six months and may only be granted within the original period of validity.

c. If the City Commission does not specify a time limit, the planned development project approval shall expire three years from the effective date of the approval and all work must be completed within the three-year time frame.

d. The Administrative Official may grant an extension of time not to exceed six months and only within the original period of validity to the time limit when the City Commission specifies no time limit. An extension of more than six months may be granted by the City Commission.

7. Expiration of a Planned Development.

If an approved master plan for a planned development or a development order extending the time expires without compliance with such order, the action of the City Commission approving the master plan shall be automatically rescinded without City Commission action and the zoning district shall revert to the prior zoning district or to a district consistent with the future land use designation assigned to the property as determined by the Administrative Official.

8. Master Plan.

If, after approval of a master plan for a planned development the owner of any property within the subject properties of the master plan may apply to amend the plan pursuant to Section 5.0. of this Article. If approved, all owners must execute the non-statutory development agreement.

9. Finality of Decision.

Whenever the City Commission has taken action to deny a rezoning application, no application for the same rezoning shall be accepted by the City for a period of one year consistent with the provisions of Article I, Section 7.0.C.5.a.3)a) .

SECTION 5.0 MASTER PLAN REVIEW AND REQUIREMENTS

A master plan is a comprehensive, long-term dynamic document that provides a conceptual framework for growth and provides design guidelines for the physical development of the subject area. It includes the entire parcel(s) proposed for development.

A. General.

A master plan covering the entire parcel(s) proposed to be developed or subdivided is required prior to, or in conjunction with, a development plan or subdivision plan, whichever is applicable, that covers the specific portion of the entire parcel proposed to be developed or subdivided. A master plan constitutes the controlling document used and required for all planned development projects covering the entire parcel(s) in question. Any modifications or amendments to a master plan shall also follow these procedures.

1. Formal Application.

The procedure for submission, review and approval of a proposed master plan shall be submitted subject to Article I, Section 7.0.

a. The proposed master plan shall be transmitted to the Historic Preservation Board for appropriate action if required by Schedule S, Section 4.0.

b. The proposed master plan shall be transmitted to the Airport Zoning Commission for appropriate action if required by Schedule R, Section 9.0.

2. Sufficient Capacity.

No final development order shall be granted for a proposed master plan until there is a finding that all public facilities and services have sufficient capacity at or above their adopted level-of-service (LOS) to accommodate the impacts of the development including, but not limited to, traffic impacts, or that improvements necessary to bring facilities up to their adopted LOS will be in place concurrent with the impacts of the development, as defined in Schedule Q, Concurrency Management of these *LDRs*.

3. Recording.

One copy of the master plan shall, when approved, shall be signed and dated by the Mayor.

a. The approved and signed master plan shall be filed with the Administrative Official and constitute the basis for preparation and submittal of future development plans or subdivision plans for the parcel in question.

b. No site development permit and/or certificate of completion shall be issued on the basis of an approved Master Plan until an Engineering Plan or Subdivision Improvement Plan for the specific land or water area in question has been approved and recorded by the Administrative Official in conformity with the provisions of the *LDRs*.

B. Requirements.

All master plans and supplementary material shall cover the entire parcel(s). All master plans shall contain at least that data and information prescribed below:

1. Master Plan Sheet Format.

Master Plans shall be drawn at a scale of 200’ to the inch or larger. The maximum sheet size for master plans shall not exceed 24” by 36”. Multiple sheets may be used provided each sheet is numbered and the total number of sheets is indicated on each sheet. Cross referencing between sheets shall be required. Necessary notes and symbol legends shall be included. Abbreviations should be avoided but if used they shall be defined in the notes.

2. General Information.

The master plan shall include, at a minimum, the following general information:

a. The identification "Master Plan" on each sheet.

The master plan shall conform to the naming convention guidelines.

b. Legend.

The legend shall include the following:

1) Name of Development.
2) Proposed Street Address.
3) Acreage.
4) Scale.
5) North Arrow.
6) Preparation/Revision Date.
7) Tax Parcel No. (Seminole County Property Appraiser).

c. Name, Address and Phone Number.

A name, address and phone number shall be provided for the following:

1) Owner.
2) Owner's Authorized Agent.
3) Engineer.
4) Surveyor.
5) Others involved in application.

d. Vicinity Map.

The vicinity map shall show relationship of site to surrounding streets and public facilities at a scale of 1":2000' or larger.

e. Legal Description of the subject parcel.

The legal description shall be provided in word document format.

3. Existing Conditions and Proposed Development.

The master plan shall show the existing and proposed location and general dimensions of the following:

a. Streets.

Streets shall be shown both on and adjacent to the site including:

1) Name.
2) Location.
3) Right-of-Way Width.
4) Driveway Approaches.
5) Medians and Median Cuts.
6) An analysis of the traffic circulation and related impacts based on requirements in Schedule Q, Concurrency Management.

b. Easements.

Easements shall be shown indicating location, dimensions, purpose, and maintenance responsibility.

c. Utilities.

Indicate the utility provider and capacity.

d. Zoning Districts.

The zoning district assigned shall be provided for the subject property.

e. On-Site Improvements and Uses.

The following on-site improvements and uses shall be shown:

1) Residential areas including acreage, housing types, maximum height, densities, and maximum number of dwelling units by type, phase, and total parcel.
2) Nonresidential areas including acreage, maximum square footage, maximum height, and type of use.
3) General areas of permanent open space, recreation or buffers including acreages.
4) General areas, including acreages, to be reserved or dedicated for public parks, playgrounds, schools, or other public uses.
5) Boundaries of areas proposed for subdivision including their designated purpose and/or use, provided, however, the subdivision of such areas shall be subject to all provisions and requirements of the City's subdivision regulations.
6) Boundaries and numerical sequence of proposed development phasing.

f. Adjacent Improvements, Uses and Zoning.

All improvements, uses, and zoning shall be shown a minimum of 50’ beyond the subject property boundaries.

g. Topography.

As delineated by U.S. Geological Survey Maps or other competent expert evaluation and extending 50' beyond the property boundaries. All elevations shall be based on mean sea level datum and referenced to the United States Geodetic Survey or its equivalent.

h. Soil Type(s).

As identified in the Soil Survey, Seminole County, Florida, U.S.D.A. Soil Conservation Service, or other competent expert evaluation. When soil suitability limitations are indicated for the proposed development, the City Engineer may require a preliminary soil analysis by a qualified soils engineer.

i. 100-year Floodplain.

The 100-year floodplain shall be indicated as identified on Map I-1, Water Resources of the *Comprehensive Plan*.

j. Drainage.

Depict existing drainage characteristics and proposed stormwater management concept.

k. Surface Water.

Indicate the approximate normal high-water elevation or boundaries of existing surface water bodies, streams, and canals, both on and within 50 feet of site.

l. Wetlands.

Indicate all wetlands as identified by the Future Land Use Map of the *Comprehensive Plan*, designated as Resource Protection (RP), St. Johns River Water Management District Wetlands Mapping or other competent evaluation.

m. Natural Vegetation and Landscape.

Indicate general location, size and type of existing upland wildlife habitats as identified on Map I-9, Vegetative Communities of the *Comprehensive Plan* and identify general location, size and type of proposed vegetation including trees.

n. Wellfield Protection Zones.

Indicate whether the parcel is located within a wellfield protection zone as identified by the Wellfield Protection Zone Maps on file in the Department of Engineering and Planning.

o. Aquifer Recharge Area.

Indicate all aquifer recharge areas as identified on Map I-1, Water Resources of the *Comprehensive Plan.*

p. Potable Water and Wastewater.

Indicate required potable water and wastewater capacity, available capacity, and provider.

q. Fire Protection.

State method of fire protection.

r. Reclaimed Water.

Include a statement regarding the use of the City's reclaimed water system including the amount of reclaimed water to be utilized and method of disposal on the site.

s. Solid Waste Disposal.

Include a statement regarding the proposed provider, projected amount, and method of solid waste disposal. Explain hazardous waste disposal if applicable.

C. Special Master Plan Condition.

When a master plan covers the entire parcel proposed for development, no site development permit or certificate of completion shall be issued for a lot, tract, phase, or other increment of development which covers only a portion of the entire parcel proposed for development when the effect of action would result in a violation of the *LDRs*.

SECTION 6.0 ZONING IN PROGRESS

During the period of time that the City Commission is considering either a text amendment to the *Comprehensive Plan*, an amendment to the *LDRs* or a change of zoning district, no development permit or development order of any kind will be issued if issuance would result in the nonconforming or unlawful use of the subject property should the *Comprehensive Plan* amendment, *LDRs* text amendment or zoning district change be finally enacted by the City Commission. The period of time in which the aforementioned freeze of development permitting shall be in effect shall be known as the period of zoning in progress.

A. Starting Date.

The zoning in progress period of time shall begin on the earlier of the following:

1. The date the City Commission instructs the City Manager to cause the publication of a notice of a public hearing before the City Commission to consider a resolution declaring zoning in progress; or
2. The date the Planning and Zoning Commission held its initial public hearing on the text amendment or zoning district change.
3. The date the City Commission grants a resolution declaring a zoning in progress that was prepared and presented by the Administrative Official.

B. Time in Effect.

The period of time that the zoning in progress is in effect shall not exceed six months after notice of a public hearing before the City Commission for a text amendment to the *Comprehensive Plan*, an amendment to the *LDRs* or a change of zoning district has been published.

1. The City Commission may extend the zoning in progress by up to six additional months if deemed necessary for the public health, safety and welfare;
2. If final action by the City Commission is not taken on the proposed change within the timeframe prescribed in this section, the development permit or development order shall be issued if it is consistent with existing permitted land uses, land development regulations and zoning district requirements.

SECTION 7.0 ZONING VERIFICATION LETTERS

Zoning verification letters are typically requested by an applicant, agent, or owner to obtain either limited or in-depth information about a specific parcel or development or for the general zoning district or future land use designation. Depending on the information requested, PRS will administratively gather and provide all available or applicable documentation of approvals or denials, code regulations, current and past applications, development orders, and ordinances for a zoning interpretation letter as issued by the Administrative Official. The documentation, as requested, will be provided along with a letter summarizing the gathered information about the subject property.

SECTION 8.0 VESTED RIGHTS

A. Definitions.

For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

1. **Applicant.**

   Means any person, partnership, corporation, or other legal entity having an ownership interest in a parcel of real property in the City, or his/her/its designated lawful attorney-in-fact, who applies for a determination pursuant to this section.

2. **Date of notice of a change in a land development regulation.**

   Means the date on which a notice of a public hearing on a proposed change to the *LDRs* was first published in a newspaper of general circulation.

3. **Development order.**

   Means any order granting, with or without conditions, a permit for development including, any building permit, zoning permit, rezoning, subdivision approval, site plan approval, special exception, conditional use, variance, or any other official action of the City.

4. **Investment-backed expectation.**

   Means the expenditure of substantial sums of money by the applicant which cannot be recovered by the applicant, or an irreversible and substantial change of position that imposes on the applicant an obligation to expend sums of money in the future.

5. **Land development regulation.**

   Means a regulation in the *LDRs* that controls the development of property including, but not limited to, regulations for: zoning, land development, utilities, building, life safety, fire and others that affect the use, density, or intensity of land use.

6. **Newspaper of general circulation.**

   Means the same as set forth in the *Florida Statutes*.

B. Development Order.

1. Upon application and after review as provided herein, the City Commission may authorize as a development order an exception to the otherwise applicable provisions of the currently effective City *Comprehensive Plan* or the *LDRs*. The special permit shall be a development order for a specific type, level, nature, density, intensity, or other form of development of a specifically described parcel of real property. The special permit may be granted upon a finding by the City Commission that the applicant has demonstrated, pursuant to the standards set forth in this section, that the applicant has a preexisting vested right to commence, maintain, and complete a specific level, type, nature, density, intensity, or other form of development. The development order may be granted with or without conditions as may be appropriate considering the evidence drawn up and reviewed before the City Commission.
2. The development order is not transferable, in whole or in part, to any other parcel of real property or to any other person, corporation, or other legal entity.

C. Considerations for Determination of Permit; Demonstration of Vested Rights.

1. **Permit Determination Criteria.**

   In determining whether a right to commence, maintain, and complete construction of a specific level, type, nature, density, intensity, or other form of development has been vested, the following factors shall be considered:

   a. Whether there has been an act or omission to act by the City;
   b. Whether a City official acted or omitted to act and the personnel rank, official position and authority of that official;
   c. Whether the City official acted or omitted to act within the course and scope of his/her personnel rank, authority and official position;

d. The nature of the act committed and date thereof, or the nature of the omission to act and approximate date thereof;

e. Whether the applicant made a substantial change in position, or has an investment backed expectation, based upon the City's act or omission to act;

f. The nature of the applicant's change in position or investment-backed expectation, including expenditure of money or obligation to expend funds, amounts thereof, dates of expenditures; or incurrence of the obligation to incur expenditures, acts committed which represent a change in position, and dates thereof;

g. The good faith of the applicant in substantially changing his/her position, or the incurring of extensive obligations and expenses based upon the City's actions or omissions to act;

h. Any legally permitted acts of the applicant and the specific dates thereof associated with physical improvements on the land or for the design of specific buildings and improvements to be constructed on the site;

i. The extent to which the applicant has secured building permits for, and commenced in whole or in part, but not completed, the construction of physical improvements on the land, utility infrastructure or other public improvements or buildings germane to a phased development that was contemplated to extend over a period of months or years;

j. Whether the applicant prior to or on the date of notice of a change in a land development regulation has made contractual commitments to complete structures and deliver titles thereto or occupancy thereof, and the dates of and amounts of money involved in those commitments;

k. Whether prior to, or on, the date of notice of change in a land development regulation for the currently effective *Comprehensive Plan*, *LDRs*, or applicable section of either document, the applicant incurred financial obligations to a lending institution, which, despite a thorough review of alternative solutions, the applicant will be unable to meet, or it would be inequitable and unjust to require the applicant to meet, unless permitted to proceed with the previously permitted specific level, type, nature, density, intensity, or other form of development;

l. Whether enforcement of the terms of the currently effective C*omprehensive Plan* or *LDRs* will expose the applicant to substantial monetary liability to third persons, or will leave the applicant completely unable, after thorough review of alternative solutions, to earn a reasonable return on investment in the property;

m. Whether the right of the applicant to commence, maintain, and complete the proposed development, or a specific level, type, nature, density, intensity, or other form of development has been vested only with respect to an identifiable and discreet portion of the applicant's property; and

n. Any other information relevant to understanding the applicant's claim to vested rights to develop his/her/its real property in a particular manner that may be pertinent under State or Federal law.

2. Development Order Demonstration Standards.

The right of the applicant to commence, maintain, or complete construction of a development or to a specific level, type, nature, density, intensity, or other form of development on his/her/its parcel of real property, or a portion thereof, is vested if the applicant can demonstrate that:

a. The applicant owned the parcel of real property proposed to be developed on the date of notice of a change in a land development regulation, and that the specific level, type, nature, density, intensity, or other form of development proposed for the parcel of real property was lawful and legally permitted at that time;

b. The applicant has continuously owned the parcel of real property since the date of notice of a change in a land development regulation until the date of the public hearing before the City Commission on the special permit application;

c. The most current legislated City *Comprehensive Plan* or *LDRs,* or portion thereof, cited by the applicant as being counter to the applicant's vested right to commence, maintain, and complete construction of a specific level, type, nature, density, intensity, or other form of development, has a material and adverse effect upon the applicant's vested right to develop the subject parcel or continue the use of real property as contemplated;

d. By application of the considerations set out in this Section, the applicant in good faith upon some act or omission of the City has made such a substantial change in position it has an investment-backed expectation that would make it inequitable and unjust to destroy the right of the applicant to commence, maintain, and complete a specific level, type, nature, density, intensity, or other form of development upon all or a portion of the applicant's parcel of real property; and

e. The requirement that the applicant's property be developed in accordance with the currently effective City *Comprehensive Plan* or *LDRs*, will deprive the applicant of a reasonable rate of return on investment or effectuate a substantial change in position, given the substantial change in position of the applicant or the creation of an investment-backed expectation prior to or on the date on which the most current City *Comprehensive Plan* or *LDRs,* was subject to a notice of a change. In determining the reasonableness of the projected rate of return, the following categories of expenditures shall not be included in the calculation of the applicant's investment:

   1) Expenditures for professional services that are unrelated to the design or construction of the contemplated improvements proposed;
   2) Expenditures for taxes, except for any increases in tax expenditures which result from issuance of a development order which would now be contrary to the currently existing City *Comprehensive Plan* or *LDRs*; and
   3) Expenditures which the applicant would have been obligated to incur as ordinary and necessary business expenses including, but not limited to employees' salaries, equipment rental, chattel mortgage payments.

f. The fact that the property has been or is in a particular zoning district or *Comprehensive Plan* classification under the currently effective City *Comprehensive Plan* or *LDRs*, or any prior City *Comprehensive Plan* or zoning ordinance of the City, shall not, in and of itself, establish that an applicant's right to commence, maintain, and complete construction of a specific level, type, nature, density, intensity, or other form of development has been vested.

D. Application process.

1. Application Deadline.

Any person, partnership, corporation, or other legal entity having an ownership interest in a parcel of real property may file an application for a special permit within six months of the effective date of the amendatory ordinance that rezones, changes the land use of the property, or otherwise materially and adversely affects the applicant's parcel of land (or portion thereof) so as to prohibit the specific level, type, nature, density, intensity, or other form of development, in whole or in part, or vested rights shall be deemed to have been waived.

2. Application Requirements.

The application shall be filed with the Administrative Official who shall, upon receipt of the same, stamp the application with the date and time. The application shall contain:

a. A concise and complete recital of the facts, including dates of expenditures or obligation to expend funds, dollar amounts, the nature of expenditures or obligation to expend funds, and other factors which are claimed to support the claim to a vested right to commence, maintain, and complete a specific level, type, nature, density, intensity, or other form of development;

b. A legal description of the parcel of real property and a survey, if available, thereof upon which the applicant claims to have vested development rights;

c. The applicant's name, address, and telephone number, email address and fax number;

d. The name, address, and telephone number, email address and fax number of any attorney or agent who is or will be representing the applicant;

e. A title opinion by a Florida licensed attorney or a complete abstract of title or other evidence acceptable to the City demonstrating that the applicant has continuously held title to the real property described in the application from the date of the notice of a change in amendatory ordinance in question until the date of application for the development order;

f. A complete description of the extent and quality of ownership of the real property during that period;

g. An affidavit under penalty of perjury executed by the applicant before a notary public attesting to the truth, accuracy, and veracity of the application based on the applicant's personal knowledge and all attachments thereto; and

h. Such other information relevant to the standards and matters germane to this section as the director of planning and development services may specify.

3. Application Review.

Applications shall be submitted in accordance with Article I, Section 7.0 with the following exceptions to the process.

a. Within 14 days of submission, the Administrative Official will determine whether the petition is technically complete and will accept it or request corrections. A technically incomplete application shall be returned to the applicant with written notification of the deficient items. The applicant shall be granted 14 additional calendar days to complete this application. If a response is not submitted to the Administrative Official within the time specified, the application shall be deemed abandoned.

b. Within 30 calendar days of determining that an application is technically complete, the City Manager shall schedule a public hearing before the City Commission to review the application and the City Commission makes a final determination as to whether or not vested rights have been clearly and convincingly demonstrated.

c. Within seven calendar days after making a final determination of vested rights status, the City Commission shall provide the applicant with written notification of the determination of vested rights status. If the City Commission determines that vested rights exist the applicant shall have the right to rely upon such written determination and the determination shall be final.

4. Public Notice.

In addition to published notice in a newspaper of general circulation, actual notice of any hearing before the City Commission for recognition of vested rights status shall be mailed to the applicant and all persons who are required to be so noticed with regard to applications for a major conditional use.

5. Term of Approval Validity.

Any determination by the City Commission with respect to vested rights and the issuance of a development order under this Section shall expire and be of no further force or effect, unless construction is commenced on the parcel of real property within one year of the date that the development order is filed with the City Clerk. For good cause shown by the applicant, the City Commission may, in its legislative discretion, extend the foregoing one-year period by a time period of up to an additional year.

E. Application fee.

The City Commission shall establish the required application fee by resolution, per Article VII. The fee shall cover the cost of processing the special permit application, advertising and the preparation and mailing of notices as well as related administrative costs of the City. All fees shall be paid in full prior to any vesting determination being considered valid.

SECTION 9.0 TRANSFER OF DEVELOPMENT RIGHTS (TDR) – DENSITY BONUS

A. Purpose and Intent.

The purpose of this Section is to provide for a program authorizing the transfer of development rights (TDR), including the establishment of a TDR bank, to facilitate both the protection of environmentally sensitive lands (ESL) and to promote orderly growth in the City. This is accomplished by allowing development rights to be severed from environmentally sensitive, public, and agricultural lands assigned a future land use (FLU) designation of SE, PSP, PRO, and RP and be transferred to sites where additional development can be accommodated. The TDR Program is designed to redistribute population densities, or development potential, to encourage the most appropriate and efficient use of resources, services, and facilities.

Further, it is the purpose and intent of this Section to provide an alternative to the development of environmentally sensitive lands by establishing a mechanism to seek economic relief from the limitation of development imposed on these lands. TDR can mitigate inequities in the valuation of land by providing a means of compensating landowners whose property is restricted, by permitting the sale of development rights, and making landowners in more intensively developed areas pay for the right to develop beyond the existing density, by purchasing development rights.

The TDR program allows a property Owner to achieve a density bonus by purchasing the increase in density from the City TDR bank, or from a property Owner with land in a designated sending area, without going through the land use designation amendment process. In order to increase density, the site must meet the requirements to become a designated receiving area and follow the procedures as described in this Section. After development rights have been transferred from the sending area to the receiving area, an appropriate conservation or preservation easement shall be attached to the sending area and recorded in the official Records of Seminole County, restricting future development potential.

B. Applicability.

This Section shall apply to property in the City, which is located within designated sending areas, as defined in Section 9.0.E, TDR sending areas. Development rights may be transferred from sending areas pursuant to the procedures contained in this Section, to property which meets the qualifications to receive such density according to Section 9.0.F, and the standards contained herein.

The use of TDR shall be allowed in all residential zoning districts and shall be approved pursuant to this Section. TDR units may be utilized for all housing types.

C. Previous Approvals.

All previously approved TDRs, as long as they remain in force, shall remain valid and shall not be affected nor changed by subsequent revisions to the TDR Program.

D. Administration.

1. General.

Except as otherwise specified, the TDR program shall be administered by the Administrative Official.

2. Responsibilities.

The Administrative Official of the City shall be responsible for:

a. Establishing, administering, and promoting the City's TDR program;

b. Establishing and administering the TDR bank;

c. Ensuring the orderly and expeditious processing of TDR applications under this Section;

d. Executing contracts for sale and purchase of TDR units being purchased from the City's TDR bank, including related escrow or similar bonding agreements, and TDR deeds as part of the approval process;

e. Ensuring the contracts for sale and purchase of development rights are executed, and all deeds and conservation easements are recorded;

f. Ensuring that the Property Appraiser's office is notified of all TDRs;

g. Ensuring that the densities approved through the TDR program are placed on appropriate maps within the City with notations following approval of the TDR sending and receiving areas; and,

h. Ensuring that all appropriate maps are amended by a City initiated land use designation amendment to reflect an appropriate future land use designation for land acquired by the City whose units are placed in the TDR bank.

E. TDR Sending Areas.

1. General.

Sending areas represent those areas of the City that are designated as environmentally sensitive, including wetland, floodplain, and conservation areas, the City Commission determine warrant protection. Sending areas may also be non-environmentally sensitive lands that are determined by the Administrative Official as meeting the eligibility standards. The owner of property in a designated sending area may transfer the development rights to a parcel of land in a designated receiving area, subject to the provisions of this Section.

2. Eligible Sending Areas.

a. Private or publicly owned lands assigned the PSP, PRO, RP, LDR, MDR, HDR, or SE future land use designations;

1) Site that have been approved by the City Commission as an environmentally sensitive land; or,

2) Site that are approved by the Administrative Official, through application, verifying the area meets one of the following criteria:

a) Rarity in City of native ecosystems present on the site.

b) Diversity of the native ecosystems present on site.

c) Presence of species listed as endangered, threatened, rare, or of special concern by the U.S. Fish and Wildlife Service, the Florida Fish and Wildlife Conservation Commission, or another agency of Florida government.

d) Significant wetland or floodplain presence on the site that may not feasibly be mitigated.

e) Presence of historic or archaeological significance.

f) Cannot be located contiguous or adjacent to the receiving area parcel.

b. The City Commission may also designate any areas worthy of protection, provided that the sites:

1) Further the purpose of the TDR Program in keeping with the criteria listed above; or

2) Further other City goals, objectives, and policies. At such a time that the City Commission determines that a parcel of land is either environmentally sensitive, or preservation of the site is in the public interest, the parcel is eligible to become a sending area.

3. Transfer Rate.

The owner of land which is designated as a sending area may elect to transfer development rights as provided in this Section. Development rights may be transferred from sending areas according to the following schedule.

a. Development rights may be transferred from all eligible sending areas at a rate which equals the maximum density permitted by the future land use designation for the gross acreage of the property, as determined by the Administrative Official. The City Commission may reduce the total transferable units of a sending area to be equal to the number of units being transferred to a receiving area for any site if they determine the sending area site should not retain any development rights due to its environmental sensitivity or public interest.

b. Development rights may be transferred from all City owned or public property at the maximum allowed as determined by the City Commission within the City regardless of assigned future land use designation, based on the gross acreage of the site.

4. Computation of Development Rights.

The number of development rights assigned to a sending area parcel of land shall be determined by the Administrative Official pursuant to Section. 9.0.E.2, Eligible Sending Areas, and Section 9.0.I, TDR – Sending Area Procedure, as calculated below:

a. All development rights shall be in whole numbers, no fractions shall be permitted. Any fractional residential unit that may occur during calculations shall be converted upward, if one-half or more of a whole unit, or downward, if less than one-half of a whole unit, to the nearest whole unit.

b. The amount of development rights assigned to a sending area parcel shall be reduced by one dwelling unit for every conforming residential structure situated on the property at the time of approval.

5. Restriction on Future Use.

Upon City Commission or Administrative Official approval of the TDR transfer, a conservation easement shall be recorded for the sending area.

a. Prior to recordation of the easement, a legally enforceable maintenance plan, in a form approved by the City Attorney, providing for perpetual maintenance of the sending area shall be established by the property Owner and approved by the Administrative Official.

b. No further development orders for the designated receiving area shall be issued by City Commission or Administrative Official until the applicable easement is recorded.

c. The easement shall restrict the use of the sending area in perpetuity.

d. The easement shall, in a form approved by the City Attorney, require that the sending area be maintained in its natural state or may restrict the use of the sending area to bona fide agriculture, fallow land, passive or active park uses, or City utilities permitted in the future land use category; all other development rights of the subject property shall be considered transferred in perpetuity.

7. Existing Uses.

Conforming residential dwelling units that existed prior to making TDR application shall be permitted to remain as legal conforming uses. All other existing uses on the sending area shall cease.

8. Remaining Land Area.

If all of the development rights assigned to a sending area are not transferred off the site, the remaining land, if proposed for development, shall be developed in accordance with the *LDRs* and in a manner that is compatible with the surrounding area.

If the owner of land in a sending area only transfers a portion of the development rights available for the property, the City Commission, upon a recommendation from Planning and Zoning Commission and the Administrative Official may determine which portion of the land is subject to the applicable conservation easement. The intent is to link environmentally sensitive land, to link agricultural land, and to link open space areas, when feasible, and allow compatible development to occur on the remainder of such sites.

F. TDR Receiving Areas.

Development rights shall only be transferred to those parcels which meet the qualifications for designation as receiving areas.

1. Eligible Receiving Areas.

a. Planned Developments (PD); and

b. Residential subdivisions which are not within a PD.

2. Qualify as a Receiving Area.

a. Total site area has a minimum of 75% existing upland area.

b. Be compatible with surrounding land uses and consistent with the *Comprehensive Plan*;

c. Meet all concurrency requirements;

d. Meet all requirements as outlined in the *LDRs*;

e. Be compatible with adjacent environmentally sensitive lands; and

f. Not have density limitations from an interlocal agreement or other determination.

g. Not be located contiguous or adjacent to the sending area.

3. Compatibility with Adjacent Environmentally Sensitive Lands.

A receiving area shall not degrade adjacent environmentally sensitive lands. Receiving areas, therefore, shall reduce the intensity/density of that portion of the development which is contiguous to any regionally significant natural resource as defined by the Administrative Official, or sites designated as preserve areas. So that the development is compatible with, and does not negatively impact the environmentally sensitive area, a buffer zone shall be provided of native vegetation according to the following Table.

Table 5.G.3.H – Required Buffer Zone

Density Bonus of Development Area	Required Buffer Zone of Native Vegetation
Density ≤ 3 Units per ac.	25’ buffer
Density > 3 Units per ac. ≤ 7 Units per ac	50’ buffer
Density > 7 Units per ac.	75’ buffer

4. Prohibitions.

Under no circumstances may a receiving area contain a sending area as defined in Section 9.0.E.2, Eligible sending areas. This shall not apply if the project is providing all of the units at prices attainable by persons making between 30 to 120 percent of annual median income as calculated by the United States Department of Housing and Urban Development.

G. Transfer of Development Rights Bank.

1. General.

The purpose of this Section is to authorize the establishment of a TDR bank. The TDR bank is hereby created in order to, among other things, facilitate the purchase and transfer of development rights as hereinafter provided and maintain an inventory of those development rights purchased or maintained by the City.

2. Establishment of Development Rights for the Bank.

Development rights for the TDR bank shall be generated from the purchase or designation of environmentally sensitive lands by the City, beginning at the adoption date of this provision. The TDR bank shall be maintained by the Administrative Official of the City and shall be reviewed to determine the need for additional units.

Development rights in the TDR bank generated under the TDR program shall remain in the TDR bank until sold by the City, the TDR bank is dissolved, or the units are otherwise disposed of.

3. Transfer Rate from the TDR Bank.

The number of development rights within the TDR bank shall equal the maximum density allowed by the future land use designation, of City owned properties, as established by the *Comprehensive Plan*.

4. Pricing and Sale of TDR Bank Development Rights.

The City may sell development rights to Property Owners who meet the receiving area criteria pursuant to this Section.

a. A property Owner seeking an increase in density must apply to become a receiving area and submit a draft contract for sale and purchase of development rights.

b. The price of a development right shall be set annually pursuant to a methodology approved by the City Commission. No TDR price or price reduction other than those included in this Section shall be permitted. The Administrative Official shall utilize the appropriately calculated median sales price data for Seminole County for the month of March to set the price each year:

   1) For single-family units (single-family and two-family Units) the full price shall be ten percent of the median sales price of single-family, existing homes.
   2) For multifamily units, the full price shall be ten percent of the median sales price of existing condominiums and townhouses.

c. For proposals including a mix of single-family and multifamily units, the pricing of TDR units shall proportionally reflect the proposal's unit type mix.

d. Additional prices adjustments are available for TDR units as indicated below:

   1) The price for TDRs used to provide workforce housing units on site shall be five percent of the applicable TDR price as established in Section 9.0.G.4.b.1) or Section 9.0.G.4.b.2) above.; and,
   2) Affordable housing TDR units are required to be provided on site and shall be priced at one percent of the applicable TDR price as established in Section 9.0.G.4.b.1) or Section 9.0.G.4.b.2) above. The dollar difference between the TDR price and the affordable housing TDR price can be used as a price waiver to be counted as part of the local government contribution for housing funding application purposes. These units cannot be used in conjunction with any project utilizing the Live Local Act as that program already allows maximum density of the highest district.

5. Revenue from the Sale of TDRs.

The revenue generated from the sale of development rights from the TDR Bank shall be allocated to the TDR fund administered by the City Commission for acquisition and management of environmentally sensitive lands, wetlands, or other projects as directed by the City Commission.

H. Housing Program Requirements.

1. Affordable Housing.

In accordance with affordable housing policies of the *Comprehensive Plan* TDR density bonus units acquired from the TDR bank shall have an affordable housing obligation of 40 percent for the applicable project. These affordable housing program units shall be constructed on site and shall comply with the affordability range requirements of 30 to 120 annual median income (AMI).

2. Permitted Density Ranges.

The maximum number of development rights which may be transferred to the receiving parcel shall be determined in accordance with Section 9.0.F, TDR Receiving Areas, Section 9.0.J, TDR – Receiving Area Procedure, and the following:

a. Standard Density Bonus.

Receiving areas meeting one or both of the following criteria shall be eligible for one additional dwelling units/per acre density bonus.

1) Receiving areas within one-quarter mile radius of a public park, (excluding golf courses), community commercial facility, or mass transit facility; and
2) Receiving areas within one-quarter mile radius of a regional commercial facility or a major industrial facility.

In order to be eligible for the additional dwelling unit per acre density bonus, at least 25 percent of the receiving area must be located within the required radius. The density bonus shall apply to the entire receiving area.

b. A Development's Affordable Housing Program Density Bonus Increase.

A density bonus increase will be given consideration when assigning the number of TDR units recommended to the development. Other factors to be considered include: the location of the proposed development and its relationship to the surrounding area; the housing type(s) proposed; if the development site is located within:

1) one-quarter mile radius of a:
    a) public park (not a golf course);
    b) civic uses (schools/libraries);
    c) a mass transit facility;
    d) child care facilities;
    e) medical facilities;
    f) a supermarket;
    g) a community commercial facility;
    h) employment opportunities;
2) one-half mile radius of a:
    a) social services center;
    b) regional commercial facility;
    c) industrial facility;
    d) additional civic uses,
    e) employment opportunities.

I. TDR – Sending Area Procedure.

1. Sending Parcel Application.

The property Owner of lands which are designated sending areas as defined under Section 9.0.E.2, Eligible Sending Areas, must make application, per Article I, Section 7.0, to the City for an administrative determination in order to be designated as a sending area. The purpose of this administrative determination is to ascertain the exact number of development rights the property Owner is entitled to. The application shall include, at a minimum:

a. Proof of ownership;

b. A legal description of the property; and,

c. Contract, or option, for the purchase and sale of development rights (unless requesting a TDR certificate, as outlined in Section 9.0.J.6, development rights certificates). The application shall be submitted to the Administrative Official. Applications for a sending area designation may be accepted for review and processing at any time,

d. An application fee as determined by the fee schedule.

2. Review Process.

a. Environmentally Sensitive Lands.

The Administrative Official shall review the TDR application and make a determination of the number of TDR's applicable to the parcel. As part of review of the application, the Administrative Official shall request that a site check be conducted by the appropriate City personnel.

The site check shall be completed to ensure that the site has not been altered and the site meets the criteria provided in Section 9.0.E.2, Eligible Sending Areas. The City personnel shall complete a written recommendation to the Administrative Official regarding the site. Sending area applications for environmentally sensitive lands must be submitted in conjunction with a receiving area application.

b. Non-Environmentally Sensitive Lands.

The Administrative Official shall review the TDR application and provide a recommendation to the Administrative Official as to the number of TDRs applicable to the site. The Administrative Official shall review the recommendation for the sending area application and make a determination regarding the number of units associated with the parcel. As part of review of the application, the Administrative Official shall direct a site check to ensure that the site is suitable for bona fide agriculture or other open space purposes. Sending area applications which are not submitted in conjunction with a receiving area application shall be reviewed and acted upon within 25 days.

3. Written Determination.

The property Owner shall receive a written determination from the Administrative Official indicating how many TDRs can be transferred from the property. The number of TDRs for the site shall be documented and be kept on file in the Planning Division. The written document shall be valid for a period of 12 months. If any modifications or alterations are made to the property during the 12-month period, the property Owner shall not be permitted to participate in the TDR program.

4. Easement Agreement/Restriction.

Prior to engineering plan approval, the conservation easement, in a form and content acceptable to the City Attorney shall be recorded. The easement shall restrict future use of the land consistent with the requirements in Section 9.0.E.5, Restriction on Future Use. Prior to recordation of the easement, a legally enforceable maintenance plan, in a form approved by the City Attorney, providing for perpetual maintenance of the sending area shall be established by the property Owner and approved by the Administrative Official.

5. **Resubmittal of Application.**

   The owner of a sending parcel may reapply until all development rights have been severed from the property.

6. **Development Rights Certificates.**

   Environmentally sensitive lands shall be managed by the property Owner in perpetuity as provided in the maintenance plan. The maintenance plan must be approved by the City before the certificate can be issued.

   a. **Eligibility.**

      Development rights certificates shall only be issued to property Owners of environmentally sensitive land (ESL) that record a conservation easement and follow the procedures in this Section. The development rights certificate shall require restrictions be placed on the sending area prior to the sale of those TDRs.

   b. **Issuance of the Certificate.**

      Upon completion of the application process, and recordation of the conservation easement and approval by the Administrative Official of a legally enforceable maintenance plan providing for perpetual maintenance of the sending area, the property Owner shall be issued a development rights certificate. The certificate shall indicate the exact number of development rights which can be sold, transferred, or traded, by the holder of such certificate. The certificate shall remain in effect until applied to a TDR receiving area in accordance with provisions of this Section.

   c. **Unused Certificates.**

      A property Owner of land, with a conservation easement recorded, may reassociate development rights to the original sending parcel provided that no development rights have been sold. A written request to reassociate the development rights shall be submitted to the Administrative Official along with proof of ownership and a legal description of the property. Prior to approval of a request to the reassociate development rights, the Applicant must petition and receive City Commission approval to release the easement recorded against the sending area parcel.

7. **Limitations.**

   The amount of development rights assigned to a sending area parcel, or indicated on a certificate, shall be reduced by one for every conforming residential structure situated on the property at the time of application.

J. TDR – Receiving Area Procedure.

1. **General.**

   Receiving areas shall be approved concurrent with issuance of a development order for a planned development or a residential subdivision. The following procedures shall be followed in order to become a receiving area to obtain the density bonus.

2. **Pre-Application Conference.**

   Prior to submittal of an application requesting a receiving area density bonus, the Applicant must attend a pre-application conference, pursuant to Article I, Section 7.0.A, pre-application conference (PRE), to review the proposed development, and the requirements and procedures of the TDR Program.

3. **Review Process.**

   The review process for TDR applications is based upon the density and type of residential development proposed. A general application by a property Owner for receiving area status and a density bonus shall be accepted for review and processing. A development requesting to utilize TDR units must have the TDR units approved prior to the approval of a use or subdivision. TDR requests must be processed as a separate application.

a. The transfer of one unit per acre or less to a residential subdivision is reviewed by the Administrative Official and shall be subject to the provisions of Article III, Section 3.0.B.2, Administrative Use Approval process, except as provided below.

b. The transfer of more than two to four units per acre to a residential subdivision is reviewed by the Planning and Zoning Commission and shall be subject to the provisions of Article III, Section 3.0.B.3, Conditional Use Approval process.

c. The transfer of more than four units per acre to a residential subdivision is reviewed by the City Commission, with recommendation from the Planning and Zoning Commission and shall be subject to the provisions of Article III, Section 3.0.B.4, Exceptional Use Approval process.

d. The transfer of any density to a planned development is reviewed by the City Commission, with recommendation by Planning and Zoning Commission, and shall be subject to the provisions of Schedule D, Section 2.0, Planned Development.

e. The Administrative Official may approve any number of TDR units for a project that is requesting a density increase for Affordable Housing Units. The Administrative Official may require the TDR units to be approved by the City Commission if the project will result in a density of more than 60 units per acre.

4. Contents of Application.

In conjunction with the general application for a rezoning or subdivision approval, an Applicant for receiving area status and a density bonus must submit a supplemental TDR application. The application shall:

a. be submitted in a form established by the Administrative Official;

b. include a site or subdivision plan;

c. include architectural elevations for TDR applications that require public hearing. Elevations shall not be required for single-family dwellings or multifamily dwellings less than 8 units. However, the Applicant shall ensure these units are architecturally compatible with the other units in the development by using consistent colors, materials, layouts, etc.; and,

d. include an application fee as determined by the fee schedule.

5. Standards.

In addition to fulfilling the requirements of Section 9.0.F, TDR Receiving Areas, to qualify as a receiving area and be eligible for an increase in density, all applications requesting receiving area designation shall comply with these standards:

a. The TDR is accomplished by deed, and the deed shall be recorded before engineering plan or subdivision improvement plan approval. A subdivision of any number of lots requesting TDR units must be processed as a major preliminary subdivision.

b. The transfer is to a parcel of land that meets all the requirements of the *LDRs* and within which the transferred densities have been included and amended.

c. The proposed development meets all concurrency requirements at the level of impact calculated to include the TDR density.

d. If the transfer is between two private parties, at the time the transfer is approved, the sending area from which the transfer will occur shall be subject to a conservation easement and shall be identified on the Zoning District Map. Pending recording of the conservation easement, no development order approvals shall be issued for the sending area or receiving area.

e. If the transfer of rights is from the City TDR bank, all rights have been accounted for and there are enough development rights in the bank to cover the project.

f. The proposed development and density are compatible with the surrounding area and land use.

g. The proposed development and density do not negatively impact adjacent environmentally sensitive lands.

6. Contract for Sale and Purchase of Development Rights.

A contract for sale and purchase of development rights is required. A deed of TDR shall also be required as part of the approval of a TDR transfer. The contract shall be executed prior to engineering plan or subdivision improvement plan approval of a TDR receiving area. 100 percent of the funds must be received by the City prior to subdivision approval for TDR's obtained from the TDR Bank. For private TDR's a fund transfer receipt must be provided to the city showing the total amount paid to the owner of the sending area prior to first Building Permit. The deed must be recorded before issuance of the first Building Permit for a project designated as a receiving area. This paragraph shall not apply to building permits for sales models permitted pursuant to the *LDRs*.

K. Notification to Property Appraiser's Office.

Upon recordation of the deed of transfer, the Administrative Official shall notify the Property Appraiser's Office in writing that development rights have been transferred from the sending area or TDR bank to the receiving area in perpetuity.

L. City Initiated Land Use Amendment.

Following recording of the deed, the Administrative Official, upon direction from the City Commission, shall initiate a *Comprehensive Plan* amendment to designate the property with a CONS, AG, or PUBSRVC future land use designation. Densities obtained through the TDR program shall be placed on the Future Land Use Map as notations following approval of the TDR receiving area.

M. Overall Accounting System for TDR Density.

The Administrative Official shall maintain an overall accounting system for monitoring density availability and density transfers in the TDR program. The accounting system shall include both private development rights and development rights in the City's TDR bank. Density needed for the TDR program may be derived from different sources including, but not limited to:

1. Density Reduction.

Approved *Comprehensive Plan* amendments that result in a density reduction; and

2. PD Unused Density.

At such a time that the TDR Program, any subsequent density bonus programs, or amendments to the *Comprehensive Plan* requesting an increase in density, deplete the number of units available, the Administrative Official shall begin to monitor the PD units that have been approved through the Zoning process, but have remained unused. The later units may at that time be considered as a source for density for the TDR Program.

SECTION 10.0 APPEALS

A. Right of Appeal.

Appeals to the City Commission may be taken by any person aggrieved by a decision of the Administrative Official, Historic Preservation Board, or the Planning and Zoning Commission.

B. Procedure For Appeal; Time Limitation.

1. Formal Application.

An appeal to the City Commission shall be submitted to the Administrative Official, in accordance with the application process prescribed within Article I, Section 7.0.C, within 30 calendar days after rendition of the order, requirement, or determination by the Planning and Zoning Commission, Historic Preservation Board, or the Administrative Official to which the appeal is directed.

2. Submittal Time Period.

For purposes of computing the time for filing an appeal, "rendition" of an order, requirement, decision, or determination shall be the date at which a written, dated, and signed instrument expressing such decision is filed in the records of the Administrative Official.

3. Required Materials.

A justification statement identifying how the decision was made in conflict with the *Comprehensive Plan* or the *LDRs* and include supporting documentation or materials to the position.

4. Transmittal to City Commission.

The notice of appeal on a form provided by the Administrative Official shall be filed with the Administrative Official who shall forthwith transmit to the City Commission all the documents, plans, papers, or other materials constituting the record upon which the action appealed from was taken and the original notice of appeal.

C. Hearing.

Appeals to the City Commission shall be held in conformity with the provisions of this Section as a regularly scheduled agenda item at a City Commission meeting.

D. Scope of Review of City Commission.

In reviewing orders, requirements, decisions or determinations of the Planning and Zoning Commission, Historic Preservation Board, or the Administrative Official upon appeal thereof in conformity with this Section, the City Commission shall review the documents, plans, papers, or other materials constituting the record upon which the action was taken and any new material, documents or testimony that may have bearing on the decision. Appeals shall be de novo.

The City Commission may, upon appeal, reverse or affirm wholly or partly, or may modify the order, requirement, decision, or determination made by the Planning and Zoning Commission, Historic Preservation Board, or the Administrative Official, and may make any necessary further orders, requirements, decisions or determinations respecting the subject of the appeal and, to that end, shall have all the powers of the Planning and Zoning Commission and/or the Administrative Official, respecting such matter.

E. Effect of Appeal; Stay of Proceedings.

An appeal to the City Commission shall, upon filing, stay all work on the premises and all proceedings in furtherance of the order, requirement, decision of determination appealed from, unless the Administrative Official certifies to the City Commission that, by reason of facts stated in the certificate, a stay would cause immediate peril to life or property in which case, proceedings or work shall not be stayed except by an order issued by the City Commission for due cause shown after notice to the party filing the appeal. If a party accomplishes work or engages in proceedings after an appeal is filed, the party does so at their own risk and the City is not responsible for any costs or expenses incurred by the party.

F. Rules of Procedure.

The City Commission has adopted processes and procedures relating to quasi-judicial procedures relating to hearings, which shall be applicable to all processes and procedures in these LDRs and shall prevail in the event of conflict.

G. Notice and Hearing Procedure for Administrative Appeals.

In considering and acting upon an appeal, the following procedures shall be observed:

1. Date of Hearing for Appeals.

Hearing shall be held by the City Commission at a date and time fixed by the City Manager and shall in no event be less than 30 days nor more than 60 days after the filing of a notice of appeal.

2. Notice.

Upon notification by the City Manager of the date fixed for hearing on any matter subject to the provisions of this Section, the City Clerk shall cause a notice of the time, place, and purpose of such hearing to be published at least once in a newspaper of general circulation in the City with the first such publication to be at least ten days prior to the date of the hearing.

a. The Administrative Official shall mail similar notices setting forth the time, place, and purpose of the hearing to:
   1) the applicant; and
   2) the owner of the property described in the application, if other than the applicant.

b. When the hearing is an appeal of a Planning and Zoning Commission decision, the Administrative Official will mail notices to all property owners as required for the original hearing.

c. The Administrative Official shall cause notices setting forth the time, place, and purpose of the hearing to be posted in a conspicuous place or places on or about the land described in the application. Affidavit proof of the required publication, mailing and posting of the notices shall be presented at the hearing.

3. Appearance and Argument.

At any hearing upon any matter subject to the provisions of this Section, the applicant seeking action by the City Commission and any other party desiring to be heard upon the application may appear in person, by agent or by attorney. The applicant shall be entitled to make an initial presentation respecting the application and, at the conclusion of presentations or statements by all other parties, shall be entitled to offer a statement in rebuttal to such presentations if the applicant so desires. The Mayor may, at the commencement of the hearing upon each application or at any time during such hearing, require that parties desiring to make a presentation identify themselves and may specify the time to be allowed each such party within which to make such presentation.

4. Decision and Order by the City Commission.

Action by the City Commission upon any matter subject to the provisions of this Section shall be announced by the Mayor immediately following the vote determining such action and shall thereafter be embodied in a written order prepared by the City Clerk, in conjunction with the City Attorney, and executed by the Mayor and the City Clerk.

H. Finality Of Decision

When the City Commission has taken action respecting an administrative appeal, no application for the same relief shall be accepted by the Administrative Official for consideration by the City Commission for a period of one year from the date of such action, provided however, that an applicant may request waiver of the time for reapplication, and the City Commission may waive, the provision of this section for proper cause after hearing in conformity with the provisions of this section.

I. Judicial Review of Decisions

Any person aggrieved by any decision of the City Commission may appeal such decision in the manner provided by law, to the Circuit Court in the Eighteenth Judicial Circuit for judicial relief within 30 days after rendition of the decision.

SECTION 11.0 WAIVERS

Waivers allow flexibility and minor adjustments to the *LDRs* in site design or applicable criteria. Waivers are not intended to relieve specific financial hardship nor circumvent the intent of the *LDR*. A waiver may not be granted if it conflicts with other sections of the *LDR*, the *Comprehensive Plan or* the Florida Building Code.

A. Applicability.

Requests for waivers shall only be permitted where expressly stated within the *LDR* or indicated in the following Table 11.0. – List of Permitted Waivers. Waivers may be applied to an active application. Waivers applied to a project must be shown on an approving plan in a table format.

Table 11.0 – List of Permitted Waivers

Schedule and Section	Title Request
Article I, Section 7.0.C.5.a.3)a)	Denial – With Prejudice
Article IV, Section 10.0.H	Finality of Decision
Schedule E, Section 13.2.O	Wireless Communication Facilities
Schedule E, Section 14.0.D	1,500 Foot Distance Limitation
Schedule J, Section 2.4.A	Required Landscaping
Schedule J, Section 2.7	Comprehensive Landscape Program
Schedule J, Section 3.5.A	Modifications to Land use Compatibility Requirements
Schedule J, Section 4.4.B	Exceptions and Exemptions
Schedule O, Section 10.0.D	Finished Floor - Topography
Schedule Q, Section 4.0.E	Transit Facility Evaluation
Schedule S, Section 12.0.C	Waiting Period

B. Standards.

When considering a waiver, the following Standards in addition to any other standards applicable to the specific waiver as contained in the *LDRs* shall be considered.

1. The waiver does not create additional conflicts with other requirements of the *LDR* and is consistent with the stated purpose and intent of the zoning district or overlay;
2. The waiver will not cause a detrimental effect on the overall design and development standards of the project and will be in harmony with the general site layout and design details of the development; and,
3. The alternative design option recommended as part of the waiver approval, if granted, will not adversely impact adjacent properties.

C. Effect of Waiver.

Any granted waiver shall be in effect with the issuance of a development order pursuant to Article I, Section 7.0.C.9. Waivers utilized for a project must be recognized within the development order.