

ORDINANCE NO. 2024-O-43

AN ORDINANCE GRANTING A CHANGE IN ZONING CLASSIFICATION FROM COUNTY A-3 (TRANSITIONAL AGRICULTURE) TO CITY BPUD (BUSINESS PLANNED UNIT DEVELOPMENT) FOR 42.8± ACRES OF CERTAIN REAL PROPERTY GENERALLY LOCATED AT 3145 WEST INDIAN RIVER BOULEVARD, 3149 WEST INDIAN RIVER BOULEVARD, AND 3199 WEST INDIAN RIVER BOULEVARD (PARCEL IDENTIFICATION NUMBERS 8438-02-00-0020, 8438-02-00-0010, AND 8438-02-00-0110), EDGEWATER, FLORIDA; AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF EDGEWATER; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY AND APPLICABILITY; PROVIDING FOR AN EFFECTIVE DATE, RECORDING AND ADOPTION.

WHEREAS, the City Council of the City of Edgewater, Florida, has made the following determinations:

1. FL EDGEWATER VILLAGE LLC, applicant, on behalf of NSB OHM2, LLC & Barbara Lynn Kaufman Trust, owners, of property generally located 3145 West Indian River Boulevard, 3149 West Indian River Boulevard, and 3199 West Indian River Boulevard, within Volusia County, Florida. Subject property contains approximately 42± acres.
2. The owner has submitted an application for a change in zoning classification from County A-3 (Transitional Agriculture) to City BPUD (Business Planned Unit Development) for the property described herein.
3. On August 14, 2024, the Local Planning Agency (Planning and Zoning Board) considered the application for change in zoning classification.
4. The proposed change in zoning classification is consistent with all elements of the Edgewater Comprehensive Plan.
5. The proposed change in zoning classification is not contrary to the established land use pattern.

6. The proposed change in zoning classification will not adversely impact public facilities.

7. The proposed change in zoning classification will not have an adverse effect on the natural environment.

8. The proposed change will not have a negative effect on the character of the surrounding area.

NOW, THEREFORE, BE IT ENACTED by the People of the City of Edgewater, Florida:

PART A. CHANGE IN ZONING CLASSIFICATION OF CERTAIN REAL PROPERTY WITHIN THE CITY OF EDGEWATER, FLORIDA.

The zoning classification for the property described in Exhibit “A” is hereby changed from County A-3 (Transitional Agriculture) to City BPUD (Business Planned Unit Development) pursuant to the BPUD Agreement (attached and hereto incorporated as Exhibit “C”).

PART B. AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF EDGEWATER, FLORIDA.

The Development Services Director is hereby authorized and directed to amend the Official Zoning Map of the City of Edgewater, Florida, to reflect the change in zoning classification for the above described property.

PART C. CONFLICTING PROVISIONS.

All conflicting ordinances and resolutions, or parts thereof in conflict with this ordinance, are hereby superseded by this ordinance to the extent of such conflict.

PART D. SEVERABILITY AND APPLICABILITY.

If any portion of this ordinance is for any reason held or declared to be unconstitutional, inoperative, or void, such holding shall not affect the remaining portions of this ordinance. If this

ordinance or any provisions thereof shall be held to be inapplicable to any person, property, or circumstances, such holding shall not affect its applicability to any other person, property, or circumstance.

PART E. RECORDING.

Upon approval and execution, this document shall be delivered to the Clerk of Court for recording into the public records of Volusia County, Florida.

PART F. EFFECTIVE DATE.

This Ordinance shall take place upon adoption.

PART G. ADOPTION.

PASSED AND DULY ADOPTED this ____ day of _____, 2024.

Diezel DePew, Mayor

ATTEST:

Bonnie Zlotnik, CMC, City Clerk

Passed on first reading on the ____ day of _____, 2024

REVIEWED AND APPROVED: _____
Aaron R. Wolfe, City Attorney

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 1

A portion of Section 38 of the Samuel Betts Grant, Township 18 South, Range 34 East, Volusia County, Florida, being a portion of Lots 11 and 12, as depicted on Map of Harris' First Subdivision of a Part of Samuel Betts Grant, recorded in Map Book 7, page 73, and as re-recorded in Map Book 20, page 128, of the Public Records of said county, being the same lands described and recorded in Official Records Book 7028, page 438, of said Public Records, being more particularly described as follows:

For a Point of Beginning, commence at the Southeasterly corner of Tract M, as depicted on Coral Trace, a plat recorded in Map Book 51, page 97, of said Public Records, said corner lying on the Southerly boundary line of said Coral Trace; thence along said Southerly boundary line the following 7 courses: Course 1, thence North 21°27'26" West, 35.00 feet to the Northeasterly corner of said Tract M; Course 2, thence South 68°22'27" West, 24.97 feet to the Northwesterly corner of said Tract M, said corner lying on the Easterly right of way line of Coral Trace Boulevard, a public 100 foot right of way as depicted on said Coral Trace; Course 3, thence Northerly along said Easterly right of way line and along the arc of a non-tangent curve concave Easterly having a radius of 460.00 feet, through a central angle of 17°08'33", an arc length of 137.63 feet to the point of tangency of said curve, said arc subtended by a chord bearing and distance of North 12°11'23" West, 137.12 feet; Course 4, thence North 03°37'06" West, continuing along said Easterly right of way line, 71.28 feet to the point of curvature of a curve concave Westerly having a radius of 540.00 feet; Course 5, thence Northerly, continuing along said Easterly right of way line and along the arc of said curve, through a central angle of 17°50'20", an arc length of 168.13 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of North 12°32'16" West, 167.45 feet; Course 6, thence North 21°27'26" West, continuing along said Easterly right of way line and along the Easterly line of Tract I, as depicted on said Coral Trace, 447.52 feet to the Northeasterly corner of said Tract I, said corner lying on the Southeasterly line of Tract J, as depicted on said Coral Trace; Course 7, thence North 68°22'03" East, along the Southeasterly lines of Tract J and Tract E, both as depicted on said Coral Trace, 1000.00 feet to the Southeasterly corner of said Tract E and the Southeasterly corner of said Coral Trace, said corner lying on the former Westerly right of way line of Lybrand Avenue, a former 35 foot right of way as depicted on said Map of Harris' First Subdivision of a Part of Samuel Betts Grant (closed per Florida Department of Transportation Right of Way Map Section No. 79210-2505); thence South 21°27'26" East, along said former Westerly right of way line, 851.03 feet to its intersection with the Northerly right of way line of State Road No. 442 (Indian River Boulevard), a public variable width right of way as depicted on said Florida Department of Transportation Right of Way Map Section No. 79210-2505; thence South 68°22'27" West, departing said former Westerly right of way line and along said Northerly right of way line, 1044.91 feet to the Point of Beginning.

Containing 19.86 acres, more or less.

PARCEL 2

A portion of Section 38 of the Samuel Betts Grant, Township 18 South, Range 34 East, Volusia County, Florida, being a portion of Lots 1, 2 and 3, as depicted on Map of Harris' First Subdivision of a Part of Samuel Betts Grant, recorded in Map Book 7, page 73, and as re-recorded in Map Book 20, page 128, of the Public Records of said county, being Lot 1 and Lots 2 and 3, as described and recorded in Official Records Book 6716, page 1296, of said Public Records, being more particularly described as follows:

For a Point of Reference, commence at the Southeasterly corner of Tract M, as depicted on Coral Trace, a plat recorded in Map Book 51, page 97, of said Public Records, said corner lying on the Northerly right of way line of State Road No. 442 (Indian River Boulevard), a variable width right of way as depicted on Florida Department of Transportation Right of Way Map Section No. 79210-2505; thence North $68^{\circ}22'27''$ East, along said Northerly right of way line, 1079.91 feet to its intersection with the former Easterly right of way line of Lybrand Avenue, a former 35 foot right of way as depicted on said Map of Harris' First Subdivision of a Part of Samuel Betts Grant (closed per said Florida Department of Transportation Right of Way Map Section No. 79210-2505) and the Point of Beginning.

From said Point of Beginning, thence North $21^{\circ}27'08''$ West, departing said Northerly right of way line of State Road No. 442 and along said former Easterly right of way line of Lybrand Avenue, 951.71 feet to its intersection with the Southerly right of way line of an unnamed road, a 30 foot right of way as depicted on said Map of Harris' First Subdivision of a Part of Samuel Betts Grant; thence North $68^{\circ}32'34''$ East, departing said former Easterly right of way line and along said Southerly right of way line, 1126.51 feet to its intersection with the Westerly right of way line of Old Mission Road, a variable width right of way as depicted on said Florida Department of Transportation Right of Way Map Section No. 79210-2505; thence Southeasterly along said Westerly right of way line the following 5 courses: Course 1, thence South $18^{\circ}26'17''$ East, departing said Southerly line, 721.22 feet; Course 2, thence South $71^{\circ}33'43''$ West, 22.50 feet; Course 3, thence South $18^{\circ}26'17''$ East, 194.95 feet; Course 4, thence South $65^{\circ}06'27''$ West, 9.84 feet; Course 5, thence South $24^{\circ}53'33''$ East, 34.38 feet to its intersection with said Northerly right of way line of State Road No. 442; thence South $68^{\circ}22'27''$ West, departing said Westerly right of way line and along said Northerly right of way line, 1048.11 feet to the Point of Beginning.

Containing 23.90 acres, more or less.

EXHIBIT "B"
LOCATION MAP

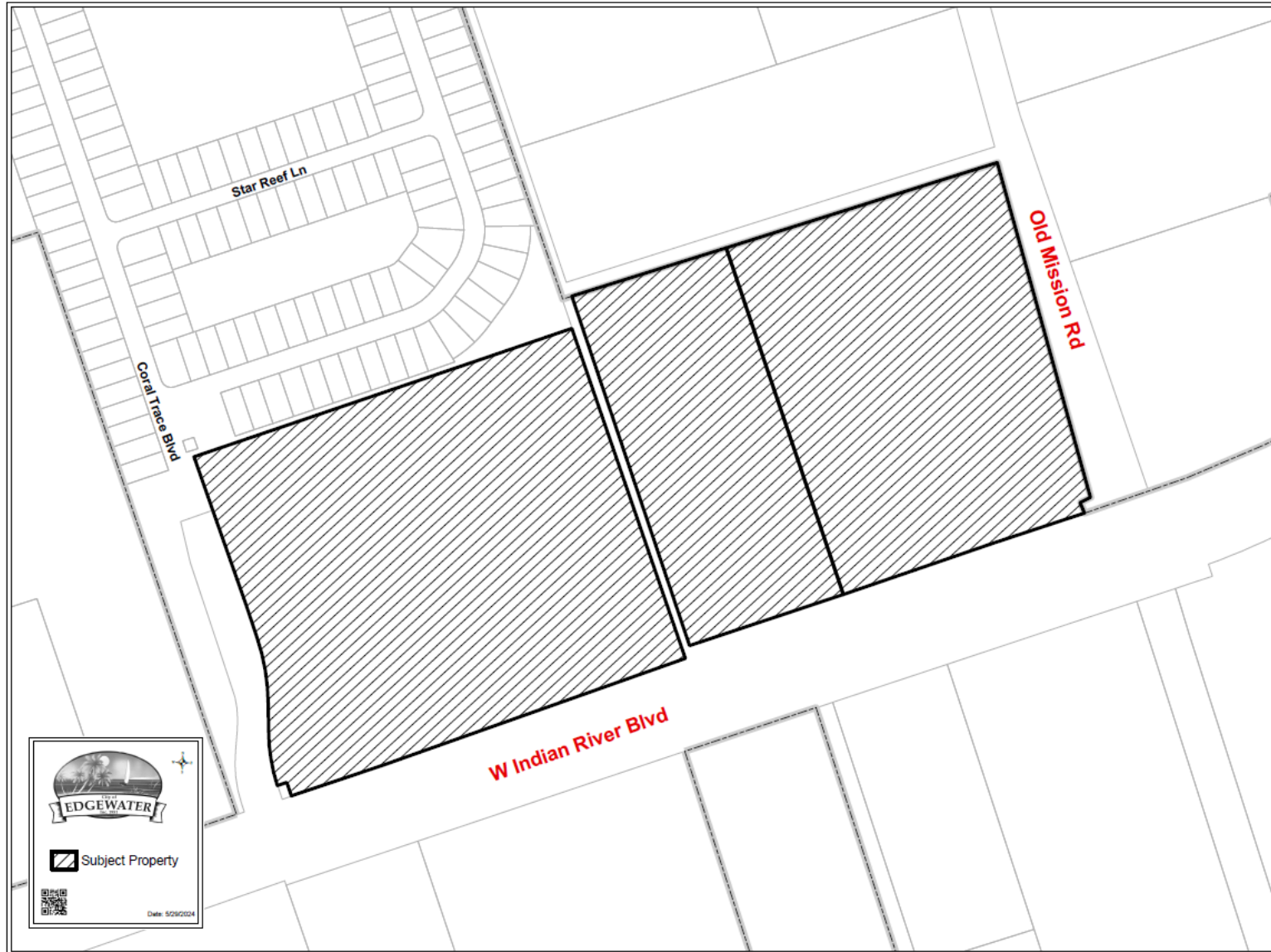


EXHIBIT "C"
BUSINESS PLANNED UNIT DEVELOPMENT AGREEMENT

Prepared by: Bonnie Zlotnik, City Clerk
City of Edgewater
104 N. Riverside Drive
Edgewater, FL 32132

BUSINESS PLANNED UNIT DEVELOPMENT (BPUD) AGREEMENT
EDGEWATER VILLAGE

THIS AGREEMENT is made and entered into this ____ day of _____, 2024

by and between, the CITY OF EDGEWATER, FLORIDA, a municipal corporation, whose mailing address is P.O. Box 100, 104 N. Riverside Drive, Edgewater Florida 32132, (hereinafter referred to as "City") and, FL Edgewater Village LLC., whose address is 189 S. Orange Avenue, Suite 1550, Orlando, FL 32801, (herein after referred to as " Developer"). The purpose of this Agreement is to define the terms and conditions granting the development approval of the subject property.

NOW, THEREFORE, in consideration of the agreements, premises, and covenants set forth herein and other good and valuable consideration, the parties agree as follows:

1. LEGAL DESCRIPTION AND OWNER

The land subject to this Agreement is approximately 43 ± acres located at 3145, 3149, AND 3199 West Indian River Boulevard, in Edgewater, Volusia County, Florida. The legal description of the property is attached hereto as **Exhibit "A" - Legal Description**. The record owners of the subject property are NSB OHM2 LLC, and Barbara Lynn Kaufman Trust.

2. DURATION OF AGREEMENT

The duration of this Agreement shall be thirty (30) years and run with the land. The Developer shall commence construction as defined by the Master Plan, dated August 19th, 2024 (**Exhibit "B"**) within thirty-six (36) months of the effective date of this Agreement. The Agreement may be extended by mutual consent of the governing body and the Developer, subject

to a public hearing. Developer must receive site plan approval from the City prior to commencing construction of Edgewater Village. Developer's failure to initiate construction within thirty-six (36) months of the date of this Agreement may result in the City's termination of the Agreement. Commencement of construction means to begin performing on-site modification, fabrication, erection or installation of a treatment facility or a conveyance system for the discharge of wastes and on-site modification, fabrication, erection or installation of a treatment facility or a transmission system for the conveyance of potable water. Land clearing and site preparation activities related to this construction are not included herein; however, before undertaking land clearing activities, other permits for stormwater discharges from the site may be required. Final approval shall include, but not be limited to utilities stormwater, traffic, fire rescue, hydrants, law enforcement, environmental, solid waste containment, and planning elements.

3. DEVELOPMENT STANDARDS-

Development of this Property is subject to the terms of this Agreement and in accordance with the City of Edgewater's current Land Development Code (LDC). Final project approval may be subject to change based upon final environmental, permitting, and planning considerations and/or Federal and State regulatory agencies permit requirements. Edgewater Village shall be developed consistent with the City's development procedures for an adult living facility and medical outparcels. Final project approval may be subject to change based upon final environmental, permitting, and planning considerations. Said changes shall be approved by the City. Use of this property will be as follows:

a. Development Uses Permitted

Assisted living facilities, memory care/Alzheimer care, independent living facilities and accessory uses to the complex, medical facilities including but not limited to: hospital,

emergency room, urgent care, rehabilitation facility, medical billing, and medical offices.

On-site emergency services including but not limited to fire and EMS services are permitted within the BPUD.

OVERALL SITE DEVELOPMENT STANDARDS

Maximum Building Coverage:	60%
Maximum Impervious Coverage:	75%
Minimum Open Space:	20% (shall include any areas utilized for stormwater treatment, active recreation amenities, and landscape buffers not consisting of impervious surface)
Maximum Density/Intensity:	7.4 dwelling units per acre / 0.5 floor area ratio
Height Restriction:	35' in height within 250' of Coral Trace Subdivision. Specific height standards are indicated in each phase.
Roads:	An interior road shall be provided adjacent to Indian River Boulevard/ SR442 connecting Phase 1 and Phase 2. All interior roads shall be privately owned and maintained with names approved from Volusia County. If electronic gates are utilized, entry access shall utilize a Knox© box with override switch and Click2Enter radio-controlled gate entry system. Activation of either the override switch or the Click2Enter system must simultaneously open both the ingress and egress gates.
Trees:	Minimum Tree Protection Requirements shall be ten (10) percent and may be calculated across all three phases. Preservation Areas depicted on the Master Plan may be utilized to meet said requirements.
Landscape Buffer:	Canopy trees shall be defined as a tree with a caliper of 2.5", twelve (12) feet in height at the time of planting and shall grow to a minimum of twenty-five (25) feet in height and fifteen (15) feet in width. Understory trees shall be defined as a tree with a caliper of 1.5", 8 feet in height at the time of planting and shall grow to a minimum of fifteen (15) feet in height and ten (10) feet in width. Shrubs shall be defined as three (3) gallon plants with a minimum height of eighteen (18) inches at the time of planting.
Photometric Plan/Lighting:	A photometric plan shall be provided with each site plan for each phase. Each photometric plan shall demonstrate 0.0 lumens at the property boundaries when adjacent to residential properties. Street lights and lights on the buildings shall be downward facing and shielded to direct light downward instead of outward. Up lighting shall only

be permitted on the front façade of buildings facing 442, monument signs, and the landscape buffers along Indian River Boulevard/SR 442.

Signage: Each phase has a specific number of allowable monument signs. Signage shall conform to the current regulations within the Land Development Code.

Architecture: All building facades and renderings shall be submitted for each site plan in every phase. The City of Edgewater reserves the right to review and implement any architectural façade element, treatment, or design.

The Business Planned Unit Development shall limit the unit count to 317 residential units. Although the future land use allows for a maximum of 12 units per acre, the Business Planned Unit Development has restricted this density to 7.4 residential units per acre. The maximum square footage allowed within the development shall be 450,000 square feet based upon a floor to area ratio of 0.5. Although the Business Planned Unit Development is a phased project, the BPUD shall calculate density based upon the entire site, while the floor to area ratio shall be calculated based upon the acreage within parcels 843802000010 and 843802000110. Independent living units are residential units and shall be calculated against density. Assisted living units and memory care units, urgent care beds, medical care beds, or hospital beds are institutional uses and shall be counted towards the floor to area ratio.

PHASE 1 -INDEPENDENT LIVING FACILITY STANDARDS

Maximum Number of Units

Independent Living Apartment Units:	272 units
Villas:	45 (2-Bedroom units)

Independent Living Apartment Unit Standards

SR-442 Building Setback:	75 feet
Coral Trace Boulevard Building Setback:	75 feet
Coral Trace Subdivision Setback:	250 feet
Villa Building Setback:	50 feet
Maximum Building Height:	70 feet
Parking:	1.55 spaces per unit.

Villa Standards

Coral Trace Subdivision Building Setback:	30 feet
Coral Trace Boulevard Building Setback:	25 feet
Front Yard Setback (internal roadway):	25 feet
Side Yard Setback:	10 feet
Maximum Height:	28 feet
Minimum Square Footage Under Air:	1,200
Minimum Driveway Width:	16 feet
Minimum Garage:	Two-Car

Amenities

The independent living apartments as well as the villas shall share the amenities within Phase 1. Said amenities shall include a pool, clubhouse, two (2) outdoor grills, a six (6') foot concrete walking path around the interior water retention pond (as depicted on master plan), and a dog park with a dog waste station.

Landscape Buffers

1. Rear (Abutting Coral Trace Subdivision): Landscape buffer shall be a minimum of 30 feet in width and consist of one (1) canopy tree per fifty (50') linear feet with two (2) understory trees per twenty (20') linear feet, and sixty (60) shrubs per one hundred (100) linear feet. A minimum of 50% of the required plantings in this landscape buffer shall be native vegetation as defined by the University of Florida Institute of Food and Agricultural Sciences. To maintain a natural look, trees and shrubs shall be placed in an organic or curvilinear manner. Linear arrangements are prohibited.
2. Front (Abutting Indian River Blvd.): Landscape buffer shall be a minimum of twenty-five feet (25') in width and consist of one (1) canopy tree per thirty (30') linear feet with two (2) understory trees per twenty (20') linear feet, and seventy (70) shrubs per one hundred (100) lineal feet. A minimum of 50% of the required plantings in this landscape buffer shall be native vegetation as

defined by the University of Florida Institute of Food and Agricultural Sciences. To maintain a natural look, trees and shrubs shall be placed in an organic or curvilinear manner that is similar to and consistent with natural adjoining areas, which have been preserved. Linear arrangements are prohibited.

3. Side (Phase 1 West, Abutting Coral Trace Blvd.): Landscape buffer shall be a minimum of twenty-five (20') feet in width and consist of one (1) canopy tree per thirty (30') linear feet with two (2) understory trees per twenty (20') linear feet, and seventy (70) shrubs per one hundred (100) lineal feet. A minimum of 50% of the required plantings in this landscape buffer shall be native vegetation as defined by the University of Florida Institute of Food and Agricultural Sciences. To maintain a natural look, trees and shrubs shall be placed in an organic or curvilinear manner that is similar to and consistent with natural adjoining areas, which have been preserved. Linear arrangements are prohibited.
4. Side (Phase 1 to Phase 2): The landscape islands separating phase 1 and phase 2 shall be planted with a minimum of one (1) understory tree per twenty-five feet (25') and a minimum grass sod width of eight (8') feet.

Note: The east side of Phase 1 abuts the west side Phase 2. In lieu of a landscape buffer fragmenting the contiguous nature of the development, landscaping within the project around amenities and parking islands will be enhanced.

Entrance/Roads

Phase 1 shall have one (1) entrance along Indian River Boulevard and one (1) entrance

along Coral Trace Boulevard.

Lighting

Lighting from the interior units facing the Coral Trace subdivision will limit the transmission of indoor to outdoor lighting by 45 percent. The installation of tinted glass and the use of window treatments such as shades, blinds, etc. shall be used to shield interior lights from emitting more than 45 percent of the indoor lighting outside. *Tinted glass* means any glass treated to achieve an industry-approved inside-to-outside light transmittal value of 45 percent or less. Such transmittance is limited to the visible spectrum (400 to 700 nanometers) and is measured as the percentage of light that is transmitted through the glass.

Landscaping and Irrigation

Landscaping and irrigation plans, including required buffer yards, must be submitted with the site plan and meet the requirements within the BPUD for landscape buffers and LDC (Land Development Code).

Signage

One Monument sign shall be permitted near the intersection of Coral Trace Boulevard and Indian River Boulevard. All signs shall meet the City of Edgewater's Land Development Code.

Easements

Developer agrees to provide, at no cost to the City, all required utility easements (on and off-site) for drainage and utility service consistent with this Agreement.

PHASE 2 -MEMORY CARE AND ASSISTED LIVING FACILITY

Bed Count and FAR

A maximum of 169 beds shall be permitted. The Assisted Living Facility and Memory Care Facility shall not exceed 450,000 square feet.

Assisted Living and Memory Care Standards

SR-442 Building Setback:	75 feet
Northern Property Line Building Setback:	75 feet
Adjacent Phase Building Setback:	75 feet
Maximum Building Height:	50 feet
Parking:	A minimum of one-hundred and twenty six (126) spaces shall be provided between the Memory Care and Assisted Living Facility.
Amenities:	The Assisted Living Facility shall provide a pool within the interior courtyard.

Landscape Buffers

1. Front (Abutting Indian River Blvd.): Landscape buffer shall be a minimum of twenty-five (25') feet in width and consist of one (1) canopy tree per thirty (30') linear feet with two (2) understory trees per twenty (20') linear feet, and seventy (70) shrubs per one hundred (100) lineal feet. A minimum of 50% of the required plantings in this landscape buffer shall be native vegetation as defined by the University of Florida Institute of Food and Agricultural Sciences. To maintain a natural look, trees and shrubs shall be placed in an organic or curvilinear manner that is similar to and consistent with natural adjoining areas, which have been preserved. Linear arrangements are prohibited.
2. Rear (Abutting Parcel: 843802000040): Landscape buffer shall be a minimum of twenty-five (25') feet in width and will be a natural undisturbed landscape buffer. No clearing or grading shall be performed in the natural landscape buffer.

3. Side (Phase 1 to Phase 2): The landscape islands separating phase 1 and phase 2 shall be planted with a minimum of one (1) understory tree per twenty five (25') feet and a minimum grass sod width of eight (8') feet.
4. Side (Phase 2 to Phase 3): The existing tree canopy and vegetation on parcel 843802000020 will serve as a natural landscape buffer. Parcel 843802000020 denoted in phase three is to be utilized as passive open space.

Entrance/Roads

Phase 2 shall have one (1) entrance along Indian River Boulevard subject to approval from Florida Department of Transportation.

Landscaping and Irrigation

Landscaping and irrigation plans, including required buffer yards, must be submitted with the site plan and meet the requirements within the BPUD for landscape buffers and LDC (Land Development Code).

Signage

One Monument Sign shall be permitted along Indian River Boulevard. All signs shall meet the City of Edgewater's Land Development Code.

Easements

Developer agrees to provide, at no cost to the City, all required utility easements (on and off-site) for drainage and utility service consistent with this Agreement.

PHASE 3 -OPEN SPACE

Parcel 843802000020 will be reserved as passive open space. No clearing or grading shall be allowed on Parcel 843802000020.

5. FUTURE LAND USE AND ZONING DESIGNATION

The Future Land Use designation for Edgewater Village is Mixed-Use and the zoning designation is BPUD (Business Planned Unit Development) as defined in the City Land Development Code. The City of Edgewater's permitted uses for BPUD (Business Planned Unit Development) are applicable to the development of the property and consistent with the adopted Comprehensive Plan/Future Land Use Map.

6. PUBLIC FACILITIES

A. Developer agrees to connect to and utilize the City's water distribution system of sufficient capacity as determined by the Director of Environmental Services. Developer agrees to connect to the City's potable water system at the nearest point of connection. All water main distribution system improvements will be installed by the Developer and all water main distribution system improvements within public right of ways and/or dedicated utility easements shall be conveyed to the City by Bill of Sale in a form acceptable to the City and dedicated to the City prior to or at the time of Certificate of Occupancy.

B. Developer agrees to connect to and utilize the City's wastewater transmission and collection system. All wastewater collection and transmission system improvements will be installed by the Developer and all wastewater collection and transmission system improvements within public right of ways and/or dedicated utility easements shall be conveyed to the City by Bill of Sale in a form acceptable to the City and dedicated to the City prior to or at the time of Certificate of Occupancy.

C. Reclaimed water is available in along SR-442 right-of-way. Therefore, all site landscaping shall be irrigated with reclaimed water.

D. Developer agrees to provide on and off site current and future utility and drainage

easements for drainage and utility service consistent with this provision.

E. All utility services will be underground.

F. Off-site improvements (including but not limited to intersection improvements, turn lanes, acceleration lanes, deceleration lanes, and signalization) are the Developer's responsibility and shall meet all City, County and/or State requirements and approval.

G. Impact fees for each dwelling unit will be paid in accordance with the following schedule:

- 1) Water - Pay 100% of the applicable impact fees per phase to the city by applicant at the time the applicable permit application is signed by the city, thereby reserving requisite water capacity. A minimum water charge shall be applied to each E.R.U. reserved and not connected within one (1) year.
- 2) Sewer - Pay 100% of the applicable impact fees per phase to the city by applicant at the time the applicable permit application is signed by the city, thereby reserving requisite sewer capacity. A minimum sewer charge shall be applied to each E.R.U. reserved and not connected within one (1) year.
- 3) Police, Fire, Recreation, if applicable - Paid to City by applicant at the time of Building Permit application.
- 4) Roads - Paid to City by applicant at the time of Building Permit Application.
- 5) Volusia County Impact fees for Roads and Schools (if deemed applicable by the Volusia County School District) - Paid prior to a Building Certificate of Occupancy.

The amount of all required impact fees shall be at the prevailing rate authorized at the time of payment of impact fees.

H. All infrastructure facilities and improvements shall be constructed in compliance

with applicable federal, state, and local standards.

I. A concurrency review shall be conducted to ensure that all required public facilities are available concurrent with the impacts of the development.

J. Developer agrees to reimburse the City of Edgewater for direct costs associated with the legal review, engineering review and construction inspection related to the Edgewater Village development approval and the construction of required infrastructure improvements.

K. The Developer shall provide all public facilities to support this project including the following:

1. Water Distribution System including fire hydrants.
2. Sewage Collection and Transmission System.
3. Stormwater collection/treatment system, including outfall system to public conveyance with sufficient capacity.
4. Connection to reclaimed utility for private irrigation system.
5. Provide all required pavement marking and signage (stop signs, road signs, etc.) within each site plan. All signage shall comply with Florida Department of Transportation (FDOT) standards.

L. Recreational Facilities

Active and passive recreation areas and facilities for Edgewater Village will include a dog park, pool, and clubhouse as provided on the Conceptual Plan. All amenities shall be maintained by the owner.

7. CONSISTENCY OF DEVELOPMENT

The City agrees to issue the required permits for the development in the manner defined in the Agreement after having determined it is not contrary to the City of Edgewater Comprehensive

Plan and Land Development Code and is compliant with all concurrency requirements set forth in said documents.

8. PERMITS REQUIRED

The Developer will obtain required development permits or letters of exemption as needed for this development. Permits may include but not be limited to the following:

1. Department of Environmental Protection, St. Johns River Water Management District, Army Corps of Engineers and Florida Fish and Wildlife Conservation Commission.
2. City of Edgewater – Site Plan approval and all applicable clearing, removal, construction and building permits.

Developer agrees to reimburse the City of Edgewater for direct costs associated with the engineering review, construction inspections, construction of required infrastructure improvements, and the review and approval of the site plan related to the development, including recording fees.

10. DEVELOPMENT REQUIREMENTS

Failure of this Agreement to address a particular permit, condition, term or restriction shall not relieve the Developer of the necessity of complying with those permitting requirements, conditions, terms or restrictions and any matter or thing required to be done under the existing ordinances of the City. Existing ordinances shall not be otherwise amended, modified, or waived unless such modification, amendment or waiver is expressly provided for in this Agreement with specific reference to the ordinance provisions so waived.

Unless otherwise noted in this Agreement, development standards shall be those contained in the Land Development Code.

11. HEALTH SAFETY AND WELFARE REQUIREMENTS

The Developer shall comply with such conditions, terms, restrictions or other requirements determined to be necessary by the City for the public health, safety or welfare of its citizens.

12. APPEAL

If the Developer is aggrieved by any City official interpreting the terms of this Agreement, the Developer shall file a written appeal to the City Manager. After receiving the written appeal, the appeal will be reviewed by the City Manager and City Attorney. If the City Manager cannot resolve the dispute, the issue shall be scheduled for the City Council agenda. The action of the City Council is the final authority concerning this Agreement.

13. PERFORMANCE GUARANTEES

During the term of this Agreement, regardless of the ownership of the Property, the Property shall be developed in compliance with the terms of this Agreement and applicable regulations of the City not inconsistent with, or contrary to, this Agreement.

14. BINDING AFFECT

The provisions of this Agreement, including any and all supplementing amendments, and all final site plans, shall bind and inure to the benefit of the Developer or its successors in interest and assigns and any person, firm, corporation, or entity who may become the successor in interest to the land subject to this Agreement or any portion thereof and shall run with the land and shall be administered in a manner consistent with the laws of the State of Florida.

15. RECORDING

Upon execution by all parties, the City shall record the Agreement with the Clerk of the Court in Volusia County. The cost of recording shall be paid by the Developer.

16. PERIODIC REVIEW

The City shall review the development subject to this Agreement every 12 months, commencing 12 months after the date of this Agreement to determine if there has been good faith compliance with the terms of this Agreement. If the City finds on the basis of competent substantial evidence that there has been a failure to materially comply with the terms of this Agreement, the Agreement may be revoked or modified by the City. Any such revocation or modification shall only occur after the City has notified the Developer in writing of Developer's failure to materially comply with the terms of this Agreement and Developer fails to cure such breach after receiving written notice and a reasonable opportunity to cure such breach from the City.

17. APPLICABLE LAW

This Agreement and provisions contained herein shall be construed, controlled and interpreted according to the laws of the State of Florida.

18. TIME OF THE ESSENCE

Time is hereby declared of the essence of the lawful performance of the duties and obligations contained in the Agreement.

19. AGREEMENT/AMENDMENT

This Agreement constitutes the entire agreement between the parties, and supersedes all previous discussions, understandings, and agreements, with respect to the subject matter hereof. Amendments to and waivers of the provisions of this Agreement shall be made by the parties only in writing by formal amendment. Substantial changes, as determined by the City Manager, shall require City Council approval.

20. FURTHER DOCUMENTATION

The parties agree that at any time following a request therefore by the other party, each

shall execute and deliver to the other party such further documents and instruments, in form and substance reasonably necessary to confirm and/or effectuate the obligations of either party hereunder.

21. SPECIFIC PERFORMANCE

Both the City and the Developer shall have the right to enforce the terms and conditions of this Agreement by an action for specific performance.

22. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

23. CAPTIONS

Captions of the sections of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, amplify or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

24. SEVERABILITY

If any sentence, phrase, paragraph, provision or portion of this Agreement is for any reason held invalid or unconstitutional by any court of the competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be made and entered into the date and year first written above.

ATTEST:

**CITY COUNCIL OF THE
CITY OF EDGEWATER, FLORIDA**

**Bonnie Zlotnik,
City Clerk/CMC**

By: _____
**Diezel DePew,
Mayor**

Witnessed by:

OWNER
NSB OHM2, LLC

By: _____

Tejal Patel
Agent

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me on this ____ day of _____ 2024,
by _____, who is personally known to me or
has produced _____ as identification and who did (did not) take an oath.

Notary Public
Stamp/Seal

Witnessed by:

OWNER

Barbara Lynn Kaufman Trust

By: _____
Barbara Lynn Kaufman,
Trustee

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me on this ____ day of _____ 2024,
by _____, who is personally known to me or
has produced _____ as identification and who did (did not) take an oath.

Notary Public
Stamp/Seal

EXHIBIT "A"
LEGAL DESCRIPTION

SURVEYOR'S DESCRIPTION:

PARCEL 1

A portion of Section 38 of the Samuel Betts Grant, Township 18 South, Range 34 East, Volusia County, Florida, being a portion of Lots 11 and 12, as depicted on Map of Harris' First Subdivision of a Part of Samuel Betts Grant, recorded in Map Book 7, page 73, and as re-recorded in Map Book 20, page 128, of the Public Records of said county, being the same lands described and recorded in Official Records Book 7028, page 438, of said Public Records, being more particularly described as follows:

For a Point of Beginning, commence at the Southeasterly corner of Tract M, as depicted on Coral Trace, a plat recorded in Map Book 51, page 97, of said Public Records, said corner lying on the Southerly boundary line of said Coral Trace; thence along said Southerly boundary line the following 7 courses: Course 1, thence North 21°27'26" West, 35.00 feet to the Northeasterly corner of said Tract M; Course 2, thence South 68°22'27" West, 24.97 feet to the Northwesterly corner of said Tract M, said corner lying on the Easterly right of way line of Coral Trace Boulevard, a public 100 foot right of way as depicted on said Coral Trace; Course 3, thence Northerly along

said Easterly right of way line and along the arc of a non-tangent curve concave Easterly having a radius of 460.00 feet, through a central angle of 17°08'33", an arc length of 137.63 feet to the point of tangency of said curve, said arc subtended by a chord bearing and distance of North 12°11'23" West, 137.12 feet; Course 4, thence North 03°37'06" West, continuing along said Easterly right of way line, 71.28 feet to the point of curvature of a curve concave Westerly having a radius of 540.00 feet; Course 5, thence Northerly, continuing along said Easterly right of way line and along the arc of said curve, through a central angle of 17°50'20", an arc length of 168.13 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of North 12°32'16" West, 167.45 feet; Course 6, thence North 21°27'26" West, continuing along said Easterly right of way line and along the Easterly line of Tract I, as depicted on said Coral Trace, 447.52 feet to the Northeasterly corner of said Tract I, said corner lying on the Southeasterly line of Tract J, as depicted on said Coral Trace; Course 7, thence North 68°22'03" East, along the Southeasterly lines of Tract J and Tract E, both as depicted on said Coral Trace, 1000.00 feet to the Southeasterly corner of said Tract E and the Southeasterly corner of said Coral Trace, said corner lying on the former Westerly right of way line of Lybrand Avenue, a former 35 foot right of way as depicted on said Map of Harris' First Subdivision of a Part of Samuel Betts Grant (closed per Florida Department of Transportation Right of Way Map Section No. 79210-2505); thence South 21°27'26" East, along said former Westerly right of way line, 851.03 feet to its intersection with the Northerly right of way line of State Road No. 442 (Indian River Boulevard), a public variable width right of way as depicted on said Florida Department of Transportation Right of Way Map Section No. 79210-2505; thence South 68°22'27" West, departing said former Westerly right of way line and along said Northerly right of way line, 1044.91 feet to the Point of Beginning.

Containing 19.86 acres, more or less.

PARCEL 2

A portion of Section 38 of the Samuel Betts Grant, Township 18 South, Range 34 East, Volusia County, Florida, being a portion of Lots 1, 2 and 3, as depicted on Map of Harris' First Subdivision of a Part of Samuel Betts Grant, recorded in Map Book 7, page 73, and as re-recorded in Map Book 20, page 128, of the Public Records of said county, being Lot 1 and Lots 2 and 3, as described and recorded in Official Records Book 6716, page 1296, of said Public Records, being more particularly described as follows:

For a Point of Reference, commence at the Southeasterly corner of Tract M, as depicted on Coral Trace, a plat recorded in Map Book 51, page 97, of said Public Records, said corner lying on the Northerly right of way line of State Road No. 442 (Indian River Boulevard), a variable width right of way as depicted on Florida Department of Transportation Right of Way Map Section No. 79210-2505; thence North 68°22'27" East, along said Northerly right of way line, 1079.91 feet to its intersection with the former Easterly right of way line of Lybrand Avenue, a former 35 foot right of way as depicted on said Map of Harris' First Subdivision of a Part of Samuel Betts Grant (closed per said Florida Department of Transportation Right of Way Map Section No. 79210-2505) and the Point of Beginning.

From said Point of Beginning, thence North 21°27'08" West, departing said Northerly right of way line of State Road No. 442 and along said former Easterly right of way line of Lybrand

Avenue, 951.71 feet to its intersection with the Southerly right of way line of an unnamed road, a 30 foot right of way as depicted on said Map of Harris' First Subdivision of a Part of Samuel Betts Grant; thence North 68°32'34" East, departing said former Easterly right of way line and along said Southerly right of way line, 1126.51 feet to its intersection with the Westerly right of way line of Old Mission Road, a variable width right of way as depicted on said Florida Department of Transportation Right of Way Map Section No. 79210-2505; thence Southeasterly along said Westerly right of way line the following 5 courses: Course 1, thence South 18°26'17" East, departing said Southerly line, 721.22 feet; Course 2, thence South 71°33'43" West, 22.50 feet; Course 3, thence South 18°26'17" East, 194.95 feet; Course 4, thence South 65°06'27" West, 9.84 feet; Course 5, thence South 24°53'33" East, 34.38 feet to its intersection with said Northerly right of way line of State Road No. 442; thence South 68°22'27" West, departing said Westerly right of way line and along said Northerly right of way line, 1048.11 feet to the Point of Beginning. Containing 23.90 acres, more or less.

EXHIBIT “B”
MASTER PLAN

