

**ORDINANCE NO. 2018-O-33**

**AN ORDINANCE GRANTING A CHANGE IN ZONING CLASSIFICATION FROM B-4 (TOURIST COMMERCIAL) TO BPUD (BUSINESS PLANNED UNIT DEVELOPMENT) FOR 1.26± ACRES OF CERTAIN REAL PROPERTY LOCATED AT 2001 SOUTH RIVERSIDE DRIVE, 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 findings of fact and determinations:

1. Richard Kowalski is the applicant on behalf of ASKI Development, LLC, owner of property located at 2001 South Riverside Drive within Volusia County, Florida. Subject property contains approximately 1.26± acres.
2. The applicant has submitted an application for a change in zoning classification from B-4 (Tourist Commercial) to BPUD (Business Planned Unit Development) for the property described herein.
3. On May 8, 2019, 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 relevant goals, objectives and policies of the Edgewater Comprehensive Plan.
5. The proposed change in zoning classification is not contrary to the established land use pattern and is compatible with existing and proposed uses in the adjacent area.
6. The proposed change in zoning classification will not adversely impact public facilities and meets the Concurrency Management System requirements in Article XI of the

Land Development Code.

~~Struck through~~ passages are deleted.  
Underlined passages are added

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 B-4 (Tourist Commercial) to BPUD (Business Planned Unit Development), pursuant to the associated Planned Unit Development (PUD) Agreement (attached and hereto incorporated as Exhibit "B").

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

The GIS Technician 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.**

Councilwoman Yaney made a Motion to table this Ordinance until the next meeting, the **Motion DIED** for lack of second.

After Motion to approve by Councilwoman Power, with Second by Councilwoman O'Keefe, the vote on the first reading of this ordinance held on June 3, 2019, was as follows:

	AYE	NAY
Mayor Mike Thomas	<u>X</u>	<u>          </u>
Councilwoman Christine Power	<u>X</u>	<u>          </u>
Councilwoman Kimberley Yaney	<u>          </u>	<u>X</u>
Councilwoman Megan O'Keefe	<u>X</u>	<u>          </u>
Councilman Gary T. Conroy	<u>          </u>	<u>X</u>

After Motion to approve by Councilwoman Power with  
 Second by Councilwoman O'Keefe, the vote on the second  
 reading/public hearing of this ordinance held on July 1, 2019, was as follows:

	AYE	NAY
Mayor Mike Thomas	<u>/</u>	<u>      </u>
Councilwoman Christine Power	<u>/</u>	<u>      </u>
Councilwoman Kimberley Yaney	<u>      </u>	<u>/</u>
Councilwoman Megan O'Keefe	<u>/</u>	<u>      </u>
Councilman Gary T. Conroy	<u>      </u>	<u>/</u>

**PASSED AND DULY ADOPTED** this 1<sup>st</sup> day of July, 2019.

**ATTEST:**

Robin Matusick  
 Robin Matusick  
 City Clerk/Paralegal

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

By: Mike Thomas

Mike Thomas  
 Mayor

For the use and reliance only by the City of  
 Edgewater, Florida. Approved as to form and  
 legality by: Aaron R. Wolfe, Esquire  
 City Attorney  
 Doran, Sims, Wolfe & Ciocchetti

Approved by the City Council of the City of  
 Edgewater at a meeting held on this 1<sup>st</sup> day of  
 July, 2019 under Agenda Item No. 8 cl.



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Lot 1, Block 4, Riveredge Acres, according to the map or plat thereof, as recorded in Map Book 9, Page 260, of the Public Records of Volusia County, Florida.

Containing 1.26± acres more or less and being in Volusia County, Florida

**BUSINESS PLANNED UNIT DEVELOPMENT (BPUD)  
AGREEMENT  
EDGEWATER MARINA**

THIS AGREEMENT is made and entered into this 12<sup>th</sup> day of July, 2019 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 ASKI DEVELOPMENT, LLC., a Florida Corporation, with Richard Kowalski as the Manager whose address is 524 Greeley Street, Orlando, FL 32804, (hereinafter 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 1.26± acres located at 2001 South Riverside Drive, Edgewater, Volusia County, Florida. The legal description of the property is attached hereto as **Exhibit "A" – Legal Description**. The record owner of the subject property is Aski Development, LLC and the City of Edgewater.

**2. DURATION OF AGREEMENT**

The duration of this Agreement shall be thirty (30) years and run with the land. Development must be consistent with the Master Plan dated April 18, 2018, revised March 20, 2019 hereto as **Exhibit "B" - Conceptual Plan**. Developer must receive site plan approval from the City prior to commencing construction. Developer's failure to initiate construction before February 1, 2020, may result in the city's termination of the Agreement. Developer may request an extension of the Agreement for an additional 12-months for extraordinary circumstances as determined by the City. The Agreement may be extended by mutual consent of the governing body and the Developer, subject to a public hearing. 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 USES PERMITTED

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.

#### a. Restaurant/Tackle Shop/Rental Office

<u>Minimum Yard Size and Setbacks</u>		<u>Minimum Landscape Buffer</u>	
Front (Riverside Dr.):	40-feet	Front (Riverside Dr)	10-feet
Rear:	10-feet	Side (North)	25-feet in Boston to include a minimum 4-foot opaque fence
Side (South):	10-feet		
Boston Road R/W (North)	0-feet	Side (South)	10-feet
Maximum Building Coverage	30%		
Maximum Impervious Coverage	70%		
Maximum Height	30-feet		

#### b. Parking

1. Fifty-Six (56) parking spaces will be permitted with a minimum size of 20-feet by 9-feet. A minimum of three (3) handicap parking spaces meeting ADA requirements will be required.

The location and number of parking spaces in a row shall be permitted per **Exhibit "B"** Master Plan.

2. Four (4) parking spaces will be permitted with a minimum size of 20-feet by 10-feet at the NE corner of Boston Road right-of-way for the exclusive use of the residents to the North East as shown on Exhibit B Master Plan.

c. Use of Boston Road

Boston Road right-of-way to be improved and paved, as shown on Exhibit "B" Master Plan, by Developer. The City and Developer shall enter into a Non-Exclusive Right-of Way Agreement for access, drainage, parking, and utilities, which will provide perpetual access and parking to the residences to the North, prior to the issuance of a Development Order.

d. Stormwater Management

The retention pond(s) and perforated pipe with rock exfiltration shall meet the requirements for the Florida Department of Environmental Protection and the City of Edgewater LDC. The Developer shall meet all requirements pertaining to flood plain development standards as defined in the City LDC.

e. Signage

Any signage shall meet the current LDC.

f. Trees

The Developer shall meet the minimum landscaping requirements and tree protection standards as set forth in the current LDC.

g. Entrance to Project

Two (2) entrances, per master plan, Exhibit B, shall be permitted for accessing the development from Riverside Drive.

h. Construction of Marina

It is anticipated that the marina will be constructed in the same or similar footprint as the marina that previously existed on the site and permits and/or approvals associated with the marina will need to be obtained prior to construction of the marina.



#### 4. FUTURE LAND USE AND ZONING DESIGNATION

The Future Land Use designation for Aski Development, LLC is Commercial. 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.

#### 5. PUBLIC FACILITIES

a. Developer agrees to connect to and utilize the City's water distribution system. 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 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 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. The City has determined that reclaimed water may be available in the foreseeable future. Therefore, the Developer shall convert and connect all irrigation system piping to reclaimed water within one-hundred-eighty (180) days of written notification by the City to the Developer of the availability and cost, but Developer shall only be required to convert and connect such systems if the connection point is immediately adjoining the Developer's property.

d. All utility services will be underground.

e. Impact fees will be paid in accordance with the following schedule:

i. Water, Sewer, Police, Fire, Parks and Recreation, Road and Transportation impact

fees and Utility Connection Fees, to be paid by applicant at the time the Building Permit is issued by the City, thereby reserving requisite water and sewer capacity. A minimum water and sewer charge shall be applied to each E.R.U. reserved and not connected within one (1) year. Capacity reservation shall not be guaranteed if not utilized within thirty-six (36) months of the date fees paid.

- ii. Volusia County Road (if deemed applicable by Volusia County) – Paid to County by applicant with proof of payment provided to the City 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.

f. All infrastructure facilities and improvements shall be constructed in compliance with applicable federal, state, and local standards.

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

h. Developer, at the time of development 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.
4. Piping for future reclaimed service.
5. All required pavement marking and signage (stop signs, road signs, etc.) within the Development. All permanent markings and signage shall comply with Florida Department of Transportation (FDOT) standards. Enhanced special signage may be used if it meets FDOT standards and approved by the City.



**6. 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.

**7. DEDICATION OF EASEMENTS**

The developer to provide access, drainage, and utility easements as required by the City.

**8. PERMITS REQUIRED**

The Developer will obtain required development permits or letters of exemption. Permits may include but not 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, all applicable clearing, removal, construction and building permits.

**9. 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.

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

**10. 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.

**11. 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 within fifteen (15) days of the adverse decision being communicated to such person. After receiving the written appeal, the appeal will be reviewed by the City Manager and City Attorney and render a decision of the appeal within 30-days of receipt of the written notice or appeal. 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.

**12. 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. The property owner will be responsible for maintaining the property in accordance with the approved BPUD Agreement and site plan. Any changes to the site design shall require approval by the TRC and/or City Council.

**13. BINDING EFFECT**

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.

**14. 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.



**15. 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.

**16. APPLICABLE LAW**

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

**17. TIME OF THE ESSENCE**

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

**18. 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, will require City Council approval.

**19. 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.

**20. 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.

**21. ATTORNEYS' FEES**

In the event that either party finds it necessary to commence an action against the other party to enforce any provision of this Agreement or because of a breach by the other party of any terms hereof, the prevailing party shall be entitled to recover from the other party its reasonable attorney's fees, legal assistant's fees and costs incurred in connection therewith, at both trial and appellate levels, including bankruptcy proceedings, without regard to whether any legal proceedings are commenced or whether or not such action is prosecuted to judgment.

**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.

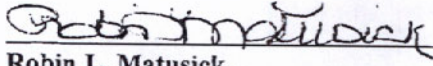
**24. SEVERABILITY**

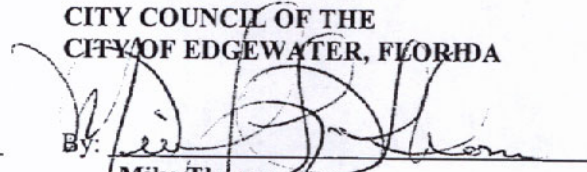
If any sentence, phrase, paragraph, provision, or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining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

  
Robin L. Matusick,  
City Clerk/Paralegal

CITY COUNCIL OF THE  
CITY OF EDGEWATER, FLORIDA  
By:   
Mike Thomas  
Mayor

Witnessed By:

DEVELOPER  
ASKI DEVELOPMENT, LLC  
A Florida Corporation

Bonnie Brown

By:

[Signature]

Richard Kowalski, Manager

Lynne Buckingham

STATE OF FLORIDA  
COUNTY OF Volusia

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of June, 2019, by  
Richard Kowalski, who is personally known to me or has  
produced identification and who did (did not) take an oath.

Bonnie Brown  
Notary Public



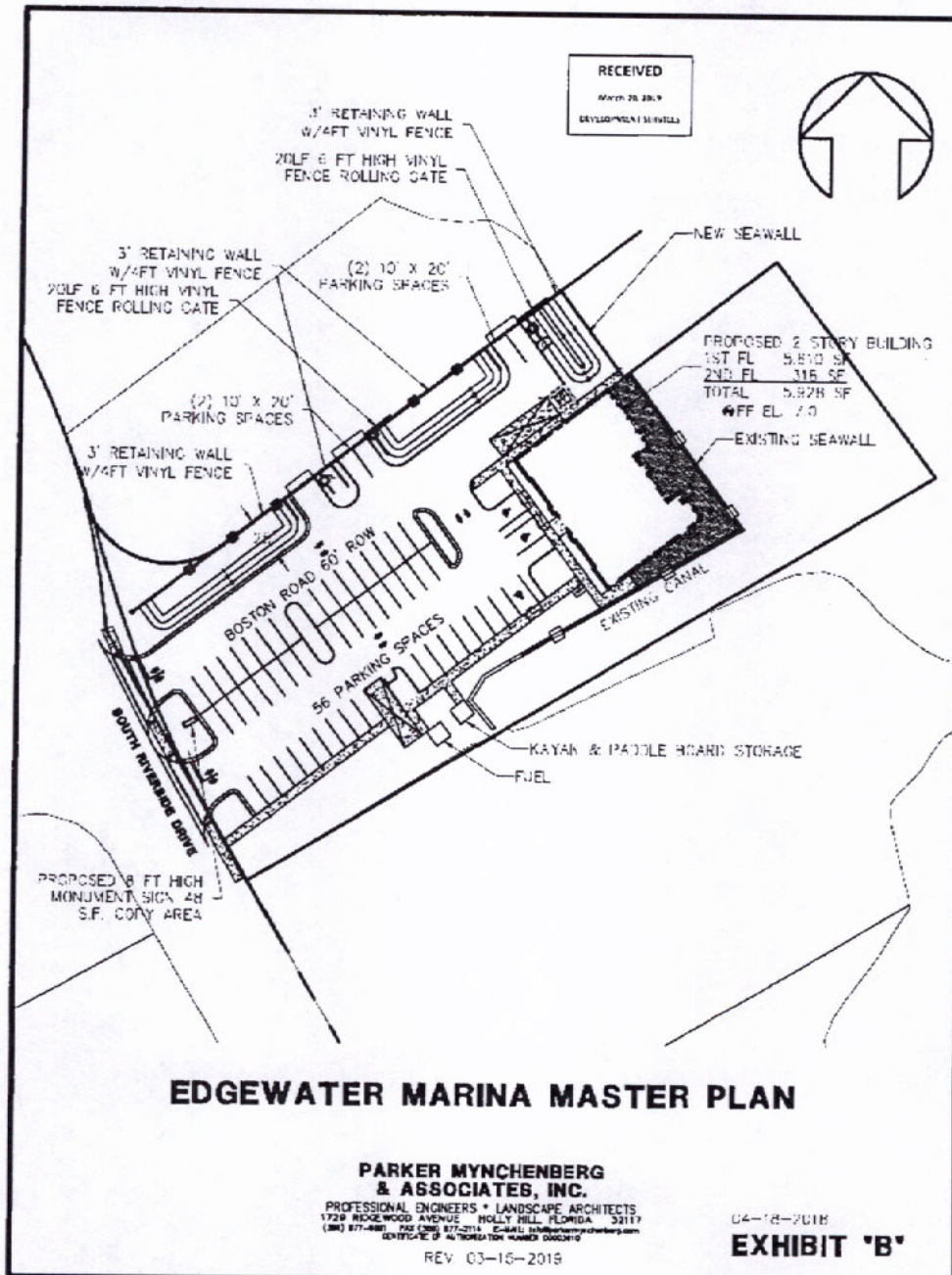
Stamp/Seal



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Lot 1, Block 4, Riveredge Acres, according to the map or plat thereof, as recorded in Map Book 9, Page 260, of the Public Records of Volusia County, Florida.

**EXHIBIT "B"**  
**MASTER PLAN**





## NON-EXCLUSIVE RIGHT OF WAY AGREEMENT

This NON-EXCLUSIVE RIGHT OF WAY AGREEMENT ("Agreement") is made this 15 day of July, 2019, by and between the CITY OF EDGEWATER, FLORIDA, a municipal corporation whose address is 104 North Riverside Drive, Edgewater, Florida 32132 ("City") and ASKI DEVELOPMENT, LLC, a Florida limited liability company, with Richard Kowalski as Manager, whose address is 524 Greeley Street, Orlando, Florida 32804 ("Developer").

### RECITALS

WHEREAS, Developer is the owner/lessee of approximately 1.26± acres of property (the "Property") located at 2001 South Riverside Drive, Edgewater, Volusia County, Florida; and

WHEREAS, Developer recently received approval of a BPUD rezoning of the Property by the City to permit the construction of a 4,432 square foot restaurant (under roof), a 1,496 square retail area, to include a bait and tackle shop, as well as a rental office and an owner's office (the "Project"); and

WHEREAS, as part of the Project, certain improvements to the public right of way controlled by the City and referred to as Boston Road will be completed by the Developer for the benefit of the public (see Exhibit "A," attached hereto and incorporated herein by reference, for a description of the Boston Road right of way area which shall be subject to the use described herein); and

WHEREAS, the City supports the Project and is willing to permit the uses outlined herein within the Boston Road right of way; and

WHEREAS Developer's use of the Boston Road right of way is in the public interest and will benefit the residents of the City and the general public; and

WHEREAS, Developer's use of the Boston Road right of way is in the public interest and will benefit the public as Developer will pave the unpaved right of way, east of Riverside Drive, which has not been previously improved; and

WHEREAS, Developer's use of the Boston Road right of way is in the public interest and will benefit the public as Developer will construct a portion of the proposed fifty-six (56) parking spaces in the right of way for use by the public; and

WHEREAS, Developer's use of the Boston Road right of way is in the public's interest and will benefit the public as Developer will construct stormwater improvements, including retention ponds, in the right of way to include addressing off-site stormwater deficiencies for Boston Road; and



WHEREAS, Developer's use of the Boston Road right of way is in the public interest and will benefit the public as Developer will maintain all of the improvements it makes to the right of way and relieve the City of that responsibility; and

WHEREAS, the Developer's use will not impair the use and safety of the right of way or interfere with the free flow of traffic on said right of way.

NOW THEREFORE, in consideration of the promises and undertakings herein made and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are true and correct and are hereby incorporated by the parties of this Agreement as if fully set forth herein.

2. Obligations and Duties of Developer. Developer intends to construct the Project, which will provide numerous benefits to the City, including but not limited to increasing the non-residential tax base. In connection with its development of the Project, Developer will incorporate the elements outlined below which will benefit the City, its residents and the general public.

a. *Boston Road Improvements.* Developer intends to develop the property which is directly east of the termination of Boston Road. As part of the Project, certain improvements, more specifically described in the Edgewater Marina Master Plan, attached hereto as Exhibit "B," will be installed within the right of way for Boston Road (the "Boston Road Improvements"). The Boston Road Improvements will be open and accessible to the general public. Emergency vehicles will also be permitted in substantially the manner currently permitted.

b. *Parking.* Developer will construct a total of sixty (60) parking spaces as part of the Project, twenty-one (21) of the parking spaces will be located in the Boston Road right of way. Seventeen (17) of the parking spaces located in the Boston Road right of way will be constructed with a minimum size of 20-feet by 9-feet. A minimum of three (3) handicap parking spaces meeting ADA requirements will be constructed on the Developer's property, which the Developer agrees to provide for public use. The location and number of parking spaces in a row shall conform to Exhibit "B" Master Plan. Four (4) of the 21 parking spaces to be constructed in the Boston Road right of way, will be constructed with a minimum size of 20-feet by 10-feet at the northeast corner of the Boston Road right-of-way for the exclusive use of the residents to the northeast as shown on Exhibit "B" Master Plan.

c. *Stormwater Management.* Developer will construct the retention ponds in the Boston Road right of way as shown on Exhibit "B" Master Plan. The retention ponds and perforated pipe with rock exfiltration shall meet the requirements for the Florida Department of



Environmental Protection and the City of Edgewater LDC. Developer shall meet all requirements pertaining to flood plain development standards as defined in the City LDC.

d. *Change to Improvements.* Any change in the design or construction of the Boston Road Improvements shall require prior written approval from the City. Approval from the City shall not be unreasonably withheld.

e. *Maintenance.* Developer, at its sole cost and expense, shall maintain the Boston Road Improvements so as to assure that the structures and the area within the right of way boundaries will be kept in good condition, as to operation, safety and appearance, except for the rolling gates to be installed within the Boston Road right of way and adjacent to the property owned by the residents to the northeast where the four (4) dedicated parking spaces are required to be constructed, which gates are being installed at the Developer's expense, at the request of property owner to the northeast. These gates, may be, but are not required to be maintained or repaired by the Developer. Such maintenance will be accomplished in a manner so as to cause no unreasonable interference with the right of way use. In the event that Developer fails to so maintain the Boston Road Improvements, with the exception to the rolling gates as described herein and as denoted on Exhibit B referenced above, the City, through its duly authorized representatives, employees, and contractors, shall provide written notice of the deficiencies in reasonable detail (the "Maintenance Notice"). Developer shall have fourteen (14) business days from receipt of the Maintenance Notice to commence actions to cure the deficiencies set forth in the Maintenance Notice. If Developer does not cure or commence to cure the deficiencies set forth in the Maintenance Notice within fourteen (14) business days from receipt of same, the City may enter the Boston Road right of way to perform such work, and the cost thereof shall be chargeable to Developer and shall be immediately due and payable to the City upon receipt by Developer of an invoice from the City.

f. *Indemnification.* To the extent provided by law, Developer shall indemnify, defend, and hold harmless the City and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by Developer, its officers, agents, or employees, during the performance of the Agreement, except that neither Developer, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the City or any of its officers, agents, or employees during the performance of the Agreement.

When the City receives a notice of claim for damages that may have been caused by Developer in the performance of services required under this Agreement, the City will immediately forward the claim to Developer. Developer and the City will evaluate the claim and report their findings to each other within fourteen (14) business days and will jointly discuss options in defending the claim. After reviewing the claim, the City will determine whether to require participation of Developer in the defense of the claim or to require that Developer defend the City in such claim as described in this section. The City's failure to promptly notify



Developer of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by Developer. The City and Developer will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any.

g. *Insurance.* Developer shall, provide and keep in force the following schedule of insurance coverage with an insurance company licensed to do business in Florida. The City shall be named as an additional insured under all of the Commercial General Liability coverage identified below:

(i) During construction of the Project –

Schedule	Limits
Workers' Compensation	Florida Statutory Coverage
Commercial General Liability	\$2,000,000.00 General Aggregate
Premises-Operations	\$2,000,000.00 Products/CompOps Aggregate \$1,000,000.00 Personal/Advertising Injury \$1,000,000.00 Per Occurrence
Independent Contractors	\$50,000.00 Damage to Rented Premises \$5,000.00 Medical
Auto Liability	\$1,000,000.00 CSL for all autos-owned, hired or no-owned (Symbol 1 coverage)
Umbrella Liability	\$5,000,000.00 Per Occurrence
Builder's Risk	Estimated Value of the Project

(ii) After completion of the Project –

Schedule	Limits
Commercial General Liability	\$2,000,000.00 General Aggregate
Premises-Operations	\$2,000,000.00 Products/CompOps Aggregate \$1,000,000.00 Personal/Advertising Injury



	\$1,000,000.00 Per Occurrence
Umbrella Liability	\$3,000,000.00 Per Occurrence
Property Policy	Value of New Construction

3. Obligations and Duties of the City. The City has reviewed, accepted and approved the Edgewater Marina Master Plan, Exhibit "B," for all improvements over, under, above, through and upon the Boston Road right of way. The City hereby:

a. *Boston Road Right of Way Use Permit.* Grants a use permit to Developer for the installation and use of the Boston Road right of way improvements set forth in the Edgewater Marina Master Plan, Exhibit "B."

b. *Project License.* Grants Developer, its parents, subsidiaries, successors, assigns, future owners and/or occupants of the Property, guests, invitees, agents, consultants, employees, independent contractors, and any other person or persons that may reasonably need access to the Property, a non-exclusive perpetual license to enter upon and utilize the Boston Road right of way described in Exhibit "A" for:

(i) Ingress and egress;

(ii) Construction, operation and maintenance of existing and future improvements associated with the Project set forth in the Edgewater Marina Master Plan, Exhibit "B," including but not limited to, parking spaces, utilities, stormwater improvements, and stormwater retention; and

(iii) Access.

Developer shall be responsible for the design, permitting and construction of all improvements over, under, through and upon the Boston Road right of way, and ongoing maintenance and repairs to the improvements of the Boston Road right of way, with the exception of the gates to be installed as described in Paragraph 2.(b) above. Developer shall keep said Boston Road right of way in good condition and repair. The license granted hereby shall run with the land and shall inure to the benefit of, be binding upon, and be enforceable by the City and Developer and their representatives, parents, subsidiaries, successors and assigns, as applicable.

4. Termination of Agreement. It is understood and agreed to by Developer and the City that the authorization provided for herein for the construction of the Boston Road Improvements is intended to be perpetual in nature. It is understood and agreed to by Developer and the City that the City reserves the right to terminate this Agreement only in the event that Developer violates any of the conditions of this Agreement, except for issues associated with the maintenance of the Boston Road Improvements, which shall follow the procedures set forth in Paragraph 2(e) herein



to address same. Prior to terminating this Agreement, the City, through its duly authorized representatives, employees, and contractors, shall provide written notice of Developer's alleged violation of the conditions of this Agreement in reasonable detail (the "Violation Notice"). Developer shall have twenty one business (21) days from receipt of the Violation Notice to commence actions to cure such deficiencies set forth in the Violation Notice. If Developer does not cure or commence to cure the deficiencies set forth in the Violation Notice within twenty-one (21) business days from receipt of the Violation Notice, the City reserves the right to terminate this Agreement. In the event the Agreement is terminated, Developer shall be prohibited from using the Boston Road right of way until Developer receives appropriate authorization from the City. Notwithstanding the above provisions of this Paragraph 4, the license provided for in Paragraph 3(b) is terminable by the City in the event that the Boston Road Improvements are abandoned by Developer.

5. Governing Law, Binding Effect, Construction and Venue.

(a) This Agreement shall be interpreted and governed by Florida Law.

(b) Each of the parties hereto warrants and represents that this Agreement is valid, binding and enforceable against them in accordance with the terms and conditions of Florida law.

(c) Each of the parties agrees that they have participated in the drafting of this Agreement. Therefore the presumption that any ambiguity or vagueness in the construction of the Agreement shall be construed against the drafter shall not apply. The terms and provisions of this Agreement shall be guided by the express intent of the parties as determined by the overall effect of the Agreement provisions.

(d) In the event of litigation regarding the terms of this Agreement or documents executed as a result of this Agreement, venue of the action shall be in Volusia County. Trial shall be non-jury for any issues subject to trial.

6. Remedies and Attorney Fees. The parties hereto shall have all rights and remedies provided hereunder and under Florida Law with respect to the enforcement of this Agreement and hereby acknowledge and agree that each party hereto shall have the right and remedy to bring an action or actions for specific performance and such other equitable or injunctive relief as appropriate or necessary to enforce this Agreement. The parties agree that the venue for any enforcement action shall be the Circuit Court in and for Volusia County. In the event of litigation to enforce the terms of this Agreement, each party shall be responsible for its own attorney's fees and costs of suit, including any and all attorney's fees and costs incurred in pursuit of any appeal.

7. Notices. All notices, demands, or other writings required or permitted to be given or made or sent under this Agreement, by any party to another, shall be in writing and shall be deemed to have been fully delivered upon (i) receipt of such notice when hand delivered (by



personal courier or overnight delivery service) to the party to whom such notice is addressed as set forth below, (ii) receipt of such notice as indicated by the signature and date on the return receipt of a certified mailing, or (iii) on the same day if sent by facsimile and a printed confirmation of transmission is obtained by the sender, and addressed and transmitted to the party to whom such notice is to be delivered as set forth below.

CITY:

Glenn Irby, City Manager  
City of Edgewater  
Post Office Box 100  
Edgewater, FL 32132

With a Copy To:

Robin Matusick, City Clerk/Paralegal  
City of Edgewater  
Post Office Box 100  
Edgewater, FL 32132

DEVELOPER:

Aski Development, LLC  
Richard Kowalski, Manager  
524 Greeley Street  
Orlando, FL 32804

With a Copy To:

8. Amendments. No amendment, modification or other changes in this Agreement shall be binding upon the parties unless in writing executed by all of the parties.

9. Successors and Assigns Bound. The rights and obligations contained in this Agreement shall be binding upon and shall inure to the benefit of the agents, contractors, employees, invitees, guests, and customers of the parties hereto, and the parents, subsidiaries, successors and assigns of the parties hereto.

10. Effective Date. This Agreement shall become effective upon the date it is executed by the last party to it.

11. Counterparts. This Agreement may be executed via counterparts, each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute duplicates of one and the same instrument.

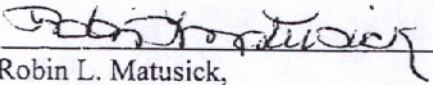
12. Headings. The headings above the various provisions herein are for ease of reference and are not to be used in constructing this Agreement or ascertaining the intent of the parties.

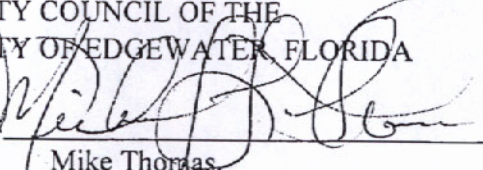
13. Recording. This Agreement shall be recorded by the Developer in the Public Records of Volusia County, Florida within five (5) business days of its complete execution by all parties.

14. Sovereign Immunity. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of the City for damages, attorney's fees and costs, regardless of the number or nature of claims in tort, equity or contract shall not exceed the dollar amount set by the Legislature for tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the City which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

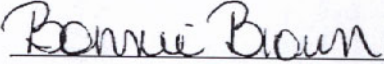
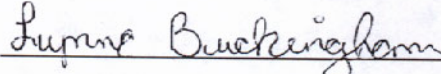
IN WITNESS WHEREOF, the parties have caused this Agreement to be made and entered into the date and year first written above.

ATTEST:

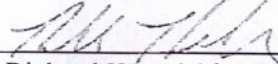
  
Robin L. Matusick,  
City Clerk/Paralegal

CITY COUNCIL OF THE  
CITY OF EDGEWATER, FLORIDA  
By:   
Mike Thomas,  
Mayor

Witnessed by:

DEVELOPER:  
ASKI DEVELOPMENT, LLC  
a Florida corporation

By:   
Richard Kowalski, Manager