

Document prepared by:

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City of New Smyrna Beach Records Clerk
210 Sams Avenue
New Smyrna Beach, FL 32168

**NEW SMYRNA BEACH MIXED-USE/GARAGE BUILDING
PLANNED UNIT DEVELOPMENT
MASTER DEVELOPMENT AGREEMENT**

The CITY OF NEW SMYRNA BEACH, FLORIDA, a Florida municipal corporation located in Volusia County, Florida ("City"), and NSB Capital Group, LLC, the record title property owner ("Owner" or "Developer"), hereby agree and covenant, and bind their heirs, successors, and assigns, as follows:

1. PROPERTY DESCRIPTION AND OWNERSHIP.

A. The property subject to this Agreement consists of approximately 1.01 acres of real property ("Property") and is described in Exhibit "A", attached hereto and by reference made a part hereof.

B. The Property is under the sole ownership of Owner.

C. Owner proposes redevelopment of the existing bank and associated parking pursuant to the conditions of this Agreement. Approval of this Master Development Agreement (and subsequent construction permits) will allow the demolition of the existing structures on the Property.

2. EXHIBITS.

The Exhibits listed below are by reference made a part hereof, and copies or reduced size copies are attached hereto. Full-sized copies of the Exhibits shall be retained by the City Clerk and shall be controlling in case of any ambiguity in the Exhibits. In the event of a conflict between the graphic illustrations of any Exhibit and the textual provisions of this Agreement, the textual provisions shall control.

Exhibit A1: Cover Sheet with Legal Description

Exhibit B1: Existing Conditions Plan

Exhibit B2: Conceptual Site Plan

Exhibit C1: Landscape Plan

Exhibit D1-D13: Floor Plan and Elevations

3. **DEVELOPMENT PLAN.**

A. Developer has designated the Property as "**New Smyrna Beach Mixed-Use Building**".

B. The Property will be developed as a Commercial Planned Unit Development (PUD) pursuant to the City's Land Development Regulations (LDRs). Development shall be controlled by the LDRs and the terms and provisions of this Agreement. In the event of a conflict between this Agreement and the LDRs or other ordinances, this Agreement shall control. If this Agreement fails to address a particular subject or requirement, the applicable requirements of the LDRs or other City ordinance shall control.

C. Development of the Property shall be consistent with Exhibit B (Conceptual Development Plan). Exhibit B generally depicts the planned layout of buildings, parking areas, driveways, common areas, and other planned features or improvements to the Property.

D. **SITE DEVELOPMENT CRITERIA.** The following development criteria shall apply to the Property:

- (1) Minimum lot size: N/A
- (2) Maximum building height: 65 feet
- (3) Maximum individual building size: 150,000 sq. ft. (Including rooftop areas and the parking garage area)
- (4) Minimum building separation: N/A
- (5) Setbacks: East Front Yard-15 ft, South Front yard-11.0 ft, North Front Yard- 10 ft and West Rear Yard 7.0 ft.
- (6) FAR: 0.64 (maximum of 2.0) – Not including the Parking Garage area, per ZT-1-23.
- (7) Maximum density: N/A
- (8) Maximum footprint building area: 34,500 SF
- (9) Minimum open space: 20% (including plaza areas, which may contain tables and chairs)
- (10) Maximum impervious surface area; 80%
- (11) Natural vegetation: 15% (minimum tree protection area)
- (12) Off-street parking: 320 spaces (219 required) – 101 Excess spaces
- (13) Off-street parking area minimum interior landscaping: 0%
- (14) Landscape buffers: Front (east)=14 ft, Front (north)=10 ft, Front (south)=11 ft, Rear (west)=7 ft. (not including minor architectural features)
- (15) Loading zone: 125 LF within South Atlantic Avenue right-of-way
Tree protection area: 15%

E. Owner is permitted to lease, on a daily or hourly basis, excess parking spots

within the parking garage for offsite uses including but not limited to beachgoers or adjacent businesses.

F. Owner agrees to coordinate with Volusia County to provide pedestrian access to the beach.

4. CONFORMANCE WITH COMPREHENSIVE PLAN: CONCURRENCY: PERMITS.

A. The City has determined that the Property is suitable in size, location, and character for the uses proposed, and that the uses proposed are consistent with the City's comprehensive plan.

B. Developer shall be responsible for obtaining all development permits required by the LDRs and applicable federal and state laws. Developer specifically acknowledges that approval of this Agreement does not constitute a Concurrency Certificate as required by the LDRs, and that Developer will be required to separately obtain a Concurrency Certificate or, where applicable, to enter into proportionate fair share agreement. Approval of this agreement and exhibits is not a permit to begin clearing, to begin site work, or to begin construction without necessary permits.

C. The City agrees to issue the required permits for development of the Property in the manner set forth in this Agreement and the LDRs.

5. PERMITTED USES.

The following uses are permitted within the Property, subject to compliance with the standards set forth in the LDRs for such uses, except to the extent specifically provided otherwise herein:

- **Bars**
- **Parking Lots**
- **Parking Structures**
- **Restaurants, Type (A, B & D)**
- **Retail, Sales and Services**
- **Retail, Specialty Shops**

6. INFRASTRUCTURE.

A. Stormwater retention and drainage facilities. An on-site stormwater retention facility will be constructed in conjunction with the development. The stormwater retention facility will be maintained at a level consistent with the standards of the St. Johns River Water Management District. Collection and transmission facilities shall be located pursuant to the approved site plan, or site plans approved for individual lots or structures.

B. Utilities and utility easements. All utilities will be installed underground and constructed to New Smyrna Beach Utilities latest standards.

7. ARCHITECTURAL AND DESIGN STANDARDS.

A. All buildings and accessory structures constructed within the Property shall be developed in compliance with the requirements of this section, and with the applicable provisions of the LDRs relating to architectural standards where they do not conflict with the provisions of this section.

B. All of the following requirements shall be met within the Property:

(1) All buildings and accessory structures shall be consistent with a common architectural theme. The theme shall be established by harmoniously coordinating the general appearance of all buildings and accessory structures, including but not limited to: exterior wall finishes or materials; roof styles, slopes, and materials; colors; and architectural details and ornamentation.

(2) All structures shall complement one another and shall convey a sense of quality and permanence. Lower grade materials, such as unfinished concrete and pre-fabricated metal, shall be prohibited.

(3) Corporate prototype design and materials shall be permitted provided they comply with the provisions of this section.

(4) False or real windows shall be provided on all elevations visible from public right of way in sufficient size and number to complement the proportions of the building.

(5) All buildings and accessory structures shall generally be consistent with the Exhibit C (Architectural Elevations).

(6) Through the LDR site plan review process, the City reserves the right to review the proposed construction of all buildings and structures, to recommend the substitution or inclusion of colors, materials, architectural details, and ornamentation, and to require or prohibit the use of the same to ensure compliance with the requirements of this section.

(7) No outside display or storage shall be permitted.

(8) No vending machines shall be permitted on outside walkways or other outdoor pedestrian areas.

(9) The physical appearance of all parking lot lighting fixtures shall be consistent.

(10) All Building signs shall meet the City's code requirements.

(11) The area of the building may decrease in size during the final design. An amendment to this MDA shall only be required for a proposed increase in the building size.

8. ENVIRONMENTAL CONSIDERATIONS.

Development of the Property shall comply with the LDR tree preservation requirements. Developer shall comply with all rules, statutes, and regulations pertaining to protected wildlife species, including but not limited to the rules and permitting requirements of the Florida Fish and Wildlife Conservation Commission concerning gopher tortoises.

No burning of materials will be undertaken on site.

9. EFFECTIVE DATE: COMPLETION SCHEDULE.

A. This Agreement shall be effective upon execution by all parties. The restrictions on use and development imposed by this Agreement shall be binding upon all successors in interest in the Property, unless and until the City alters or eliminates such restrictions in the course of its actions as zoning authority.

B. Application shall be submitted for all construction permits for the development, or for the first phase of a phased development, within 24 months of the approval of this Agreement by the City Commission. The filing of an appeal of the land development order by any person shall toll the time for permitting until final resolution of the appeal.

C. One 12-month extension of the scheduled application or completion dates may be permitted as a minor modification to this Agreement.

D. Failure to comply with the schedule set out above shall cause the development rights granted pursuant to this Agreement to lapse.

10. MINOR MODIFICATIONS.

A. The following may be administratively authorized as minor modifications to this Agreement:

(1) Amendments to an Exhibit that are necessary for compliance with the provisions of this Agreement, the LDRs, or extra-jurisdictional permitting requirements, and address technical considerations that could not reasonably be anticipated during the Planned Unit Development approval process;

(2) Have no material effect on the character of the approved PUD district, the basic concept and terms of the PUD Master Development Agreement. These may include, but are not limited to, the following:

a) Structural alterations that do not significantly affect the basic, form, style, and appearance of principal structures;

- b) Minor changes in the location and configuration of streets and driveways that do not adversely affect vehicular access and circulation on or off the site;
- c) Minor changes in the location or configuration of, parking areas, landscaping, or other site features;
- d) Minor changes in the location and configuration of public infrastructure facilities that do not have a significant impact on the City's utility and stormwater management systems;

B. Requests for minor modifications shall be submitted in writing on forms provided by the City. Requests shall be reviewed pursuant to the general technical review process described in the LDRs.

C. Denial of a requested minor modification shall be issued in writing to the applicant. Upon denial, or if more than 60 days elapses after the submittal of a completed application without a decision by the City, the applicant may apply for an amendment to the Agreement.

D. Approved modifications shall be noted on the official plan documents.

11. **AMENDMENTS.**

A. Any revision to this Agreement other than a minor modification as described above shall require an amendment approved by the City Commission after review and recommendation by the Planning and Zoning Board. Requests for an amendment must be submitted in writing and, except as otherwise provided herein, shall be processed in accordance with the LDRs. Notice of public hearings shall be provided as if the application is one to rezone property.

12. **POLICE POWER AND SOVEREIGN IMMUNITY NOT WAIVED.**

Nothing contained in this Agreement shall be construed as a waiver of or contract with respect to the regulatory and permitting authority of the City as it now or hereafter exists under applicable laws, rules, and regulations. Further, nothing contained in this Agreement shall be construed as a waiver of or attempted waiver by the City of its sovereign immunity under the constitution and laws of the State of Florida.

13. COMPLETE AGREEMENT: AGREEMENT TO BE RECORDED.

A. This Agreement represents the complete understanding by and between the parties with respect to the development and use of the Property. Any and all prior agreements between the parties with respect to any subject comprehended by this Agreement is hereby voided and superseded by this Agreement.

B. This Agreement shall be recorded in the Public Records of Volusia County, Florida, at Developer's expense. The restrictions on use and development imposed by this Agreement shall be binding upon all successors in interest in the Property.

14. VENUE AND SEVERABILITY.

A. In the event of any claim, action, litigation, or proceeding under this Agreement, venue shall be in Volusia County, Florida.

B. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or otherwise unenforceable, such holding shall not affect the validity or enforceability of any other provision of this Agreement unless the holding so states.

IN WITNESS WHEREOF, the parties hereto attached their hands and seals on the dates set forth below.

[Signature pages following]

Signed, sealed and delivered in the presence of:

**THE CITY OF NEW SMYRNA BEACH,
FLORIDA, a Florida municipal corporation**

Witness 1

By: _____
Fred E. Cleveland, Mayor

Print Name of Witness 1

Attest:

Witness 2

By: _____
Kelly McQuillen City Clerk

Print Name of Witness 2

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2024 by _____ and _____, Mayor and City Clerk, respectively, of The City of New Smyrna Beach, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public
Commission No: _____

Signed, sealed and delivered in the presence of: **[OWNER]**

Witness 1

Print Name of Witness 1

By: _____
Name: _____
Title: _____

Date: _____

[Corporate Seal]

Witness 2

Print Name of Witness 2

Signed, sealed and delivered in the presence of: **[DEVELOPER, IF DIFFERENT FROM OWNER]**

Witness 1

Print Name of Witness 1

By: _____
Name: _____
Title: _____

Date: _____

[Corporate Seal]

Witness 2

Print Name of Witness 2

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by _____ as _____ of _____, referred to in this agreement as "Owner." He or she is personally known to me or produced as identification and did not take an oath.

Notary Public
Commission No. _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____ as _____ of _____, referred to in this agreement as "Developer". He/she is personally known to me and did not take an oath.

Notary Public
Commission No: _____

Approved as to legal form:

By: _____
Carrie Avallone, City Attorney

EXHIBITS A - D
