

AN ORDINANCE OF THE CITY OF ST. PETERSBURG APPROVING AND ADOPTING A DEVELOPMENT AGREEMENT WITH SKYWAY MARINA, LLC, RELATING TO THE DEVELOPMENT OF PROPERTY GENERALLY LOCATED BETWEEN 34<sup>th</sup> STREET SOUTH AND I-275 FROM 30<sup>th</sup> AVENUE SOUTH TO 32<sup>nd</sup> AVENUE SOUTH; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; APPROVING A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF \$300,000 FROM THE UNAPPROPRIATED BALANCE OF THE MULTIMODAL IMPACT FEES CAPITAL IMPROVEMENT FUND (3071) TO THE TRAFFIC SIGNAL MAST ARM FY 17 PROJECT (15367); AND PROVIDING AN EFFECTIVE DATE.

THE CITY OF ST. PETERSBURG DOES ORDAIN:

**Section One.** The Development Agreement between the City of St. Petersburg and Skyway Marina, LLC, a copy of which is attached hereto and incorporated herein as Exhibit "A," is hereby approved and adopted.

**Section Two.** The Mayor is authorized to execute the Development Agreement on behalf of the City.

**Section Three.** The Development Agreement shall be valid for a period of three (3) years from the date of execution.

**Section Four.** A supplemental appropriation in the amount of \$300,000 from the unappropriated balance of the Multimodal Impact Fees Capital Improvement Fund (3071) to the Traffic Signal Mast Arm FY 17 Project (15367) for the construction of a traffic signal mast arm at the intersection of 34<sup>th</sup> Street and 30<sup>th</sup> Avenue South is approved.

**Section Five.** In the event this ordinance is not vetoed by the Mayor in accordance with the City Charter, it shall become effective upon the expiration of the fifth (5<sup>th</sup>) business day after adoption unless the Mayor notifies the City Council through written notice filed with the City Clerk that the Mayor will not veto the ordinance, in which case the ordinance shall become effective immediately upon filing of such written notice with the City Clerk. In the event this ordinance is vetoed by the Mayor in accordance with the City Charter, it shall not become

effective unless and until the City Council overrides the veto in accordance with the City Charter, in which case it shall become effective immediately upon a successful vote to override the veto.

Approved as to form and content:



City Attorney (designee)



Planning & Economic Development Dept.



Budget Dept.

## **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of April, 2017, by and between Skyway Marina, LLC, a Florida limited liability company, whose mailing address is 142 W. Platt Street, Tampa, Florida 33606 (hereinafter the "Developer"), and the CITY OF ST. PETERSBURG, FLORIDA, a Florida municipal corporation, whose mailing address is City Attorney's Office, P.O. Box 2842, St. Petersburg, Florida 33731 (hereinafter the "City") (Developer and the City shall hereinafter collectively be referred to as the "Parties").

### **WITNESSETH:**

WHEREAS, Developer is the fee simple title owner of approximately 8.98 acres of land located within the boundaries of the City, the legal description of which is attached hereto as Exhibit "A" (hereinafter the "Property"); and

WHEREAS, the Developer proposes to construct and operate on the Property a residential apartment complex comprising a minimum of two hundred and eighty five (285) dwelling units, in addition to one full service sit-down restaurant having a minimum of 4,500 square feet, a minimum of 3,500 square feet of additional restaurant/retail/commercial use, and in addition to a climate controlled vertical self-storage building of up to one hundred thousand (100,000) square feet (comprehensively, the "Project"), a site plan of which is attached hereto as Exhibit "B"; and

WHEREAS, the City, in order to further induce the Developer to construct the Project, has obligated itself to provide and finance infrastructure improvements in and around the Project Site; and

WHEREAS, on January 4, 2017, the City's Development Review Commission ("DRC") approved a site plan (Case No.16-31000014) ("Approved Site Plan") presented by the Developer for development of the Project, and

WHEREAS, the Parties desire to establish certain terms and conditions relating to the proposed development of the Property in accordance with Sections 163.3220-163.3243, Florida Statutes, the Florida Local Government Development Agreement Act (hereinafter the "Act") and Section 16.05 of the City's Land Development Regulations ("LDRs"); and

WHEREAS, the City is authorized by the Act and the City's LDRs to enter into this Agreement; and

WHEREAS, the Developer acknowledges that the requirements and conditions of this Agreement result from the impacts of the Project on public facilities and systems, are reasonably attributable to the development of the Project, are based upon comparable requirements and commitments that the City or other agencies of government would reasonably expect to require a developer to expend or provide, and are consistent with sound and generally accepted land use planning and development practices and principles; and

WHEREAS, the first properly noticed public hearing on this Agreement was held by the City's Community Planning and Preservation Commission ("CPPC") on March 14, 2017; and

WHEREAS, the first properly noticed reading of this Agreement was held by the City Council on April 6, 2017; and

WHEREAS, the second properly noticed reading and public hearing of this Agreement was held by the City Council on April 20, 2017; and

WHEREAS, the Developer desires to develop the Property in accordance with the conditions and limitations set forth in this Agreement.

### **DEFINITIONS**

The terms used in this Agreement shall have the following meanings, except as herein otherwise expressly provided:

**“Agreement”** means this Development Agreement, including any Exhibits, and any amendments hereto or thereto.

**“Authorized Representative”** means the person or persons designated and appointed from time to time as such by the Developer or the City.

**“City Council”** means the governing body of the City, by whatever name known or however constituted from time to time.

**“City's Comprehensive Plan”** means the City of St. Petersburg Comprehensive Plan, as most recently amended prior to the date hereof.

**“Construction Documents”** means any applications, including all supporting documents, plans, and drawings, for building permits for the development of land, filed with the City and deemed complete by City staff.

**“Development”** means all improvements to real property, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas and areas devoted to exterior display, storage, or activities. Development includes improved open areas such as plazas and walkways, but does not include natural geologic forms or unimproved real property.

**“Development Permit”** includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

**“Exhibits”** means those agreements, diagrams, drawings, specifications, instruments, forms of instruments, and other documents attached hereto and designated as exhibits to, and incorporated in and made a part of, this Agreement.

**“Florida Statutes”** means all references herein to “Florida Statutes” are to Florida Statutes (2016), as amended from time to time.

**“Governmental Authority”** means the City, the County or any other governmental entity having regulatory authority over the Project and that issues a Development Permit for the Project to be constructed and opened for business.

**“Land Development Regulations”** means Chapter 16 of the City of St. Petersburg City Code.

**“Project”** means the proposed development to be known as "Phillips Skyway Development" to be located on the Property as contemplated by this Agreement.

**“Property”** means the real property more particularly described in the legal description in Exhibit “A”.

### **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals, Definitions and Exhibits. The foregoing recitations are true and correct and are hereby incorporated herein by reference. The foregoing Definitions are hereby incorporated herein by reference. All exhibits to this Agreement are essential to this Agreement and are hereby deemed a part hereof.

2. Intent. It is the intent of the Parties that this Agreement shall be adopted in conformity with the Act and that this Agreement should be construed and implemented so as to effectuate the purposes and intent of the Act. This Agreement shall not be executed by or binding upon any Party until adopted in conformity with the Act.

3. Recording and Effective Date. After the Agreement has been executed by the Parties, the City shall record the Agreement in the Public Records of Pinellas County, Florida, at the Developer's expense and shall forward a copy of the recorded Agreement to the Florida Department of Economic Opportunity (“DEO”). Thirty (30) days after receipt of the recorded Agreement by the DEO, this Agreement shall become effective (the “Effective Date”).

4. Duration. The initial term of this Agreement shall be for three (3) years from the Effective Date. Construction Documents for vertical construction of the residential or restaurant/retail/commercial buildings shall be submitted within 24 months from the Effective Date. The Parties agree that this Agreement may be extended by mutual consent at the end of the initial term for an additional renewal term, subject to all necessary requirements in accordance with the Florida Statutes and the City's then-existing LDRs.

5. Permitted Development Uses, Building Intensities, and Height.

- a. Permitted Development Uses and Height. The Property is zoned "RC-1" and has a future land use map designation of PR-C. The Property may be used for the purposes permitted in the applicable zoning districts, subject to all height limitations in the City's LDRs and to the additional limitations and conditions set forth in this Agreement.
- b. Proposed Development Uses and Permitted Intensity. The permitted intensity of the development uses on the Property shall be a residential apartment complex comprising a minimum of two hundred and eighty five (285) dwelling units, one full service sit-down restaurant having a minimum of 4,500 square feet, a minimum of 3,500 square feet of additional restaurant/retail/commercial use, and a climate controlled vertical self-storage building of up to one hundred thousand (100,000) square feet. Under no circumstance shall the square footage of the climate controlled vertical self-storage building exceed twenty-five percent (25%) of the total built square footage, excluding the parking garage,

of the Project upon its completion. The self-storage building will not be issued a Certificate of Occupancy until evidence of financing for the Project has been submitted and Construction Documents have been submitted by Developer for review by the City for construction of both the Residential and Restaurant/Retail/Commercial components of the Project.

- c. Approved Site Plan. The Project shall be developed in accordance with the Approved Site Plan (Case No.16-31000014), which is attached hereto as Exhibit "B." Any proposed site plan to develop the Property beyond the limitations and conditions set forth in this Agreement and the Approved Site Plan, or modification of the Approved Site Plan thereto, is subject to site plan review in accordance with then-existing procedures and requirements established by the City's LDRs.

6. Public Facilities: Concurrency. The Project shall be required to meet all level of service standards in the City's Comprehensive Plan and all requirements of the City's concurrency management system. The following existing and needed public facilities are identified as serving the Project:

- a. Potable Water: There currently exists City potable water service to the property line of the Project site. The Developer will be responsible for any and all improvements necessary to provide potable water to a structure on the Project site. Sufficient supply capacity is available to service the Project, consistent with the requirements of the City's concurrency management regulations.
- b. Sanitary Sewer: There currently exists City sanitary sewer service to the property line of the Project site. The Developer will be responsible for any and all improvements necessary to provide sanitary sewer service to a structure on the Project site. Sufficient treatment capacity is available to service the Project, consistent with the requirements of the City's concurrency management regulations.
- c. Stormwater Management: Stormwater management level of service is project-dependent rather than based on the provision and use of public facilities and is not directly provided by the City. The design and construction of the proposed stormwater facilities on the Project site shall be in compliance with the requirements of the City of St. Petersburg City Code and the Southwest Florida Water Management District, shall meet concurrency requirements for stormwater, and shall not result in degradation of the level of service below City's adopted level of service. A stormwater utility fee shall be assessed to the owner or owners of the Property or any portion thereof.
- d. Solid Waste: Solid waste collection services will be provided by the City using facilities, equipment and service capacity already in place, while waste disposal services will be handled by Pinellas County. The cost of such solid waste collection services will be billed by the City to the owner or owners of the Property or any portion thereof. Capacity is sufficient to allow the Project to meet the applicable level of service requirements, and no new public facilities will be needed to service the Project.
- e. Transportation: Transportation facilities will be provided by the City using available facilities and service capacity already in place. Such capacity is sufficient to allow the Project to meet the applicable level of service requirements and no new transportation facilities will be needed to service the Project. A multimodal impact fee shall be assessed to the owner or owners of the Property or any portion thereof, unless substitute projects



that meet the Pinellas County Multimodal Impact Fee Ordinance and regulations are approved and provided.

- f. Utility Improvements: Utility improvements on the Project site necessary to provide service to a structure shall be constructed by Developer at Developer's expense prior to issuance of the Certificate of Occupancy for the structure.

7. Funding of Public Improvements. The City shall complete and/or reimburse the Developer for all costs incurred by the Developer, not to exceed \$1,000,000 ("City Reimbursement"), in completing the following public improvements to the Project:

- a. Extend the current walking/biking trail to the Project Site, which the Parties estimate will cost approximately \$250,000. The City shall commence such improvements no earlier than the issuance of the building permits for the Residential and Restaurant/Retail/Commercial components of the Project, and shall complete such improvements no later than the date that the Certificate of Occupancy is issued for such Project components;
- b. Install new traffic signal/intersection and crosswalk, subject to FDOT approval, which the Parties estimate will cost approximately \$400,000.00. The Developer, as project manager, shall commence such improvements no earlier than the commencement of construction of the first Restaurant/Retail/Commercial and the Residential components, of the Project. The City shall have the right to review and approve all contracts entered into by Developer in connection with such improvements. The City shall reimburse Developer for all costs, fees and expenses incurred in connection with such improvements (including, without limitation, for the relocation of any utility lines or pipes) within sixty (60) days following the acceptance of such improvements by the City and submittal of all necessary reimbursement documents to the City by the Developer;
- c. Revise the current configuration of 32<sup>nd</sup> Avenue South to reduce the vehicle traffic lanes to two, remove medians, and add sidewalks, lighting and angled parking, which the Parties estimate will cost approximately \$250,000.00 (not including resurfacing that is currently in the City's budget). The Developer, as project manager, shall commence such improvements no earlier than the commencement of construction of the first Restaurant/Retail/Commercial and the Residential components, of the Project. The City shall have the right to review and approve all contracts entered into by Developer in connection with such improvements. The City shall reimburse Developer for all costs, fees and expenses incurred in connection with such improvements (including, without limitation, for the relocation of any utility lines or pipes) within sixty (60) days following the acceptance of such improvements by the City and submittal of all necessary reimbursement documents to the City by the Developer;
- d. Reimburse the Developer for up to \$100,000.00 for mutually acceptable art scape and signage for the Skyway Marina District along the planned vertical self-storage building/parking deck after completion, which includes lighting and design, such reimbursement to be made within sixty (60) days following the issuance of the Certificate of Occupancy for the self/storage building; and
- e. Use its best efforts to obtain FDOT approval of "Skyway Marina District" signage on Interstate 275.

- f. The City reimbursement for public improvement costs shall be only for the actual engineering, design and construction costs, including a proportionate share of insurance, bonding, and other “soft” costs for the project’s public improvements, and shall not be for any management or overhead charges of the Developer.
  - g. All public improvements must be completed (or eligible fees paid), and requests for payment therefor must be received by the City, within three (3) years after the effective date of this Agreement or within ninety (90) days after the entire development has received a certificate of occupancy, whichever occurs sooner.
  - h. The City and Developer will work in cooperation to phase and build the public and private improvements.
8. Supplemental Agreement. Prior to the reimbursement of any portion of the public improvement costs by the City, the Owner and City staff will, by Supplemental Agreement, agree upon the following so long as the Supplemental Agreement complies with this Agreement and with applicable City Codes and state laws:
- a. A budget (including but not limited to an estimate and description of intended reimbursable costs) and a method and sequence of payment by the City for the engineering plans and specifications and required permits for the work, including documentation required for each payment, withholding payment until completion, and satisfaction of normal City conditions to final payment, including but not limited to, acceptance of work by the City and affidavit of payment of all laborers, suppliers, and subcontractors.
  - b. Adequate insurance to protect the City from liability in connection with the work, including but not limited to, public liability insurance and builder’s risk insurance.
  - c. Performance and payment bonds as required by law for construction on public property, as per Section 255.05, Florida Statutes, and performance and financial guarantees required by City Code for public infrastructure improvements.
  - d. Assurance that the work will meet all construction standards and requirements of the City and other appropriate public agencies at the federal, state, county, and municipal levels.
  - e. Inspection and acceptance of the work by the City.
  - f. The City will pay only the actual engineering, design, and construction costs for any public improvements funded under this Agreement, and shall not pay for any management or overhead charges of the Developer.
  - g. The Developer shall comply with Section 255.05, Florida Statutes, to the extent that the work is done on public lands or facilities or lands and facilities.
  - h. The Developer shall comply with Section 287.055, Florida Statutes (the Consultants’ Competitive Negotiation Act (CCNA)), to the extent deemed necessary by the City in its sole and absolute discretion.
  - i. All references to the Florida Statutes in this Agreement refer to the 2017 edition of the Florida Statutes, as the same may be subsequently amended from time to time.



9. Reservation or Dedication of Land. Developer shall not be required to reserve or dedicate land within the Property for municipal purposes other than: (a) public utility easements for utilities servicing the Property; (b) as applicable for roadways and other transportation facilities; and (c) subject to reasonable reservation and dedications during site plan review and approval.

10. Local Development Permits. Local development approvals, including the following, will be required to develop the Property:

- Final site plan and, if applicable, special exception approval;
- Water, sewer, paving and drainage permits;
- Building permits;
- Certificates of Occupancy;
- Certificates of Concurrency;
- Subdivision approvals, if applicable;
- Right-of-way utilization permits;
- Any other development permits that may be required by City ordinances and regulations; and
- Such other City, County, State or Federal permits as may be required by law.

11. Consistency with Comprehensive Plan. Development of the Property shall be consistent with the City's Comprehensive Plan.

12. Necessity of Complying with Local Regulations Relative to Permits. The Parties agree that the failure of this Agreement to address a particular permit, condition, fee, term or restriction shall not relieve Developer of the necessity of complying with regulations governing said permitting requirements, conditions, fees, terms or restrictions. Development of the Project shall comply with all applicable federal, state, and local laws, codes, ordinances, rules and regulations, including the City's Comprehensive Plan and its LDRs, which are hereby incorporated herein by reference.

13. Compliance with State and Federal Law. If state or federal laws are enacted after the execution of this Agreement that are applicable to and preclude the Parties' compliance with this Agreement, this Agreement shall be modified or revoked as is necessary to comply with the relevant state or federal laws, with mutual consent.

14. Binding Effect. The obligations imposed pursuant to this Agreement upon the Parties and upon the Property shall run with and bind the Property as covenants running with the Property. This Agreement shall be binding upon and enforceable by and against the Parties hereto, their personal representatives, heirs, successors, grantees and assigns.

15. Concurrency and Comprehensive Plan Findings. The City has determined that the concurrency requirements of Sections 16.03.050 and 16.03.060 of the City's LDRs and the City's Comprehensive Plan will be met for the Project, as per the Approved Site Plan (Case No.16-31000014). The City has found that the Project and this Agreement are consistent with and further the goals, objectives, policies and action strategies of the City's Comprehensive Plan and with the City's LDRs.

16. Disclaimer of Joint Venture. The Parties represent that by the execution of this Agreement it is not the intent of the Parties that this Agreement be construed or deemed to represent a joint venture or common undertaking between the Parties, or between any Party and any third party.

While engaged in carrying out and complying with the terms of this Agreement, Developer is an independent principal and not a contractor for or officer, agent, or employee of the City. Developer shall not at any time or in any manner represent that it or any of its agents or employees are employees of the City.

17. Amendments. The Parties acknowledge that this Agreement may be amended by mutual consent of the Parties subsequent to execution in accordance with Section 163.3237, Florida Statutes and Section 16.05 of the City's LDRs. All amendments to this Agreement shall be ineffective unless reduced to writing and executed by the Parties in accordance with the City's LDRs.

18. Notices. All notices, demands, requests for approvals or other communications given by any Party to another shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested, by a recognized national overnight courier service, or by facsimile transmission to the office for each Party indicated below and addressed as follows:

- (a) To the Developer: Skyway Marina, LLC  
142 W. Platt Street  
Tampa, Florida 33606  
Attention: Glen Stygar

With a copy to: The Law Office of William Collins, P.A.  
503 E. Jackson Street #332  
Tampa, Florida 33602  
Attention: William Collins

- (b) To the City: City of St. Petersburg  
Planning and Economic Development Department  
Attention: Gary Jones  
(Physical Address)  
Municipal Services Center  
One 4<sup>th</sup> Street North  
St. Petersburg, Florida 33701

(Mailing Address)  
P.O. Box 2842  
St. Petersburg, Florida 33731

With a copy to: City of St. Petersburg  
Legal Department  
Attention: Michael Dema, Esq.

(Physical Address)  
Municipal Services Center One 4th Street North  
St. Petersburg, Florida 33701

(Mailing Address)  
  
P.O. Box 2842  
St. Petersburg, Florida 33731

19. Effectiveness of Notice. Notices given by courier service or by hand delivery shall be effective upon delivery and notices given by mail shall be effective on the fifth (5th) business day after mailing. Refusal by any person to accept delivery of any notice delivered to the office at the address indicated above (or as it may be changed) shall be deemed to have been an effective delivery as provided in this Paragraph. The addresses to which notices are to be sent may be changed from time to time by written notice delivered to the other Parties and such notices shall be effective upon receipt. Until notice of change of address is received as to any particular Party hereto, all other Parties may rely upon the last address given. Notices given by facsimile transmission shall be effective on the date sent.

20. Default. In the event any Party is in default of any provision hereof, any non-defaulting Party, as a condition precedent to the exercise of its remedies, shall be required to give the defaulting Party written notice of the same pursuant to this Agreement. The defaulting Party shall have thirty (30) business days from the receipt of such notice to cure the default. If the defaulting Party timely cures the default, this Agreement shall continue in full force and effect. If the defaulting Party does not timely cure such default, the non-defaulting Party shall be entitled to pursue its remedies available at law or equity.

21. Non-Action or Failure to Observe Provisions of this Agreement. The failure of any Party to promptly or continually insist upon strict performance of any term, covenant, condition or provision of this Agreement, or any Exhibit hereto, or any other agreement, instrument or document of whatever form or nature contemplated hereby shall not be deemed a waiver of any right or remedy that the Party may have, and shall not be deemed a waiver of a subsequent default or nonperformance of such term, covenant, condition or provision.

22. Applicable Law and Venue. The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement. Venue for any proceeding arising under this Agreement shall be in the Sixth Judicial Circuit, in and for Pinellas County, Florida, for State actions and in the United States District Court for the Middle District of Florida for federal actions, to the exclusion of any other venue.

23. Construction. This Agreement has been negotiated by the Parties, and the Agreement, including, without limitation, the Exhibits, shall not be deemed to have been prepared by any Party, but by all equally.

24. Entire Agreement. This Agreement, and all the terms and provisions contained herein, including without limitation the Exhibits hereto, constitute the full and complete agreement between the Parties hereto to the date hereof, and supersedes and controls over any and all prior agreements, understandings, representations, correspondence and statements whether written or oral. With the exception of conditions that may be imposed by the City in approving any Development Permit, no Party shall be bound by any agreement, condition, warranty or representation other than as expressly stated in this Agreement, and this Agreement may not be amended or modified except by written instrument signed by the Parties hereto, in accordance with this Agreement, Florida Statutes Section 163.3237, and Section 16.05 of the City's LDRs.

25. Holidays. It is hereby agreed and declared that whenever a notice or performance under the terms of this Agreement is to be made or given on a Saturday or Sunday or on a legal holiday observed by the City, it shall be postponed to the next following business day.

26. Certification. The Parties shall at any time and from time to time, upon not less than ten (10) days prior notice by the other Party execute, acknowledge and deliver to the other Party (and, in the case of the City, to a Project Lender) a statement in recordable form certifying that this Agreement has not been modified and is in full force and effect (or if there have been modifications that this Agreement as modified is in full force and effect and setting forth a notation of such modifications), and that to the knowledge of such Party, neither it nor any other Party is then in default hereof (or if another Party is then in default hereof, stating the nature and details of such default), it being intended that any such statement delivered pursuant to this Paragraph may be conclusively relied upon by any prospective purchaser, mortgagee, successor, assignee of any mortgage or assignee of the respective interest in the Project, if any, of any Party made in accordance with the provisions of this Agreement.

27. Termination. This Agreement shall automatically terminate and expire upon the occurrence of the first of the following:

(a) The expiration of three (3) years from the Effective Date of this Agreement, as defined herein, unless the Parties mutually agree to extend the initial term for an additional renewal term pursuant to the terms of this Agreement and subject to all necessary requirements in accordance with the Florida Statutes and the City's then- existing LDRs; or

(b) The revocation of this Agreement by the City Council in accordance with the Act and the City's LDRs; or

(c) The execution of a written agreement by all Parties, or by their successors in interest, providing for the cancellation and termination of this Agreement.

28. Deadline for Execution. The Developer shall execute this Agreement prior to the date on which the City Council considers this Agreement for final approval.

29. Covenant of Cooperation. The Parties shall cooperate with and deal with each other in good faith and assist each other in the performance of the provisions of this Agreement and in achieving the completion of development of the Project site, including processing amendments to this Agreement.

30. Approvals.

(a) For the purposes of this Agreement any required written permission, consent, approval or agreement ("Approval") by the City means the Approval of the Mayor or his designee unless otherwise set forth herein and such approval shall be in addition to any and all permits and other licenses required by law or this Agreement.

(b) For the purposes of this Agreement any right of the City to take any action permitted, allowed or required by this Agreement, may be exercised by the Mayor or his designee, unless otherwise set forth herein.

31. Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance is declared invalid or unenforceable, the remainder of this Agreement, including any valid portion of the invalid term or provision and the application of such invalid term or provision to circumstances other than those as to which it is held invalid or unenforceable by a court of competent jurisdiction, shall not be affected thereby and shall, with the remainder of this Agreement, continue unmodified and in full force and effect. If, however, the result of the severance of the provision results in harm to the public health, safety

or welfare, results in a public harm, or substantially negates a public benefit or imposes a public burden, then the provisions of this Agreement shall be deemed not severable and this Agreement shall be reformulated and reconstituted to avoid that consequence.

32. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute a single instrument.

33. Third Party Beneficiaries. The rights and obligations of the Parties set forth in this Agreement are personal to the Parties, and no third parties are entitled to rely on or have an interest in any such rights and obligations.

34. Caption or Section Headings. Captions and section headings contained in this Agreement are for convenience and reference only, and in no way define, describe, extend or limit the scope or intent of this Agreement, nor the intent of any provision hereof.

35. Force Majeure. All time periods or deadlines provided in this Agreement shall be automatically extended for delays caused by Acts of God, strikes, riots, hurricanes or other causes beyond the reasonable control of the affected party.

36. Changes in City Code and LDRs Specifically Anticipated. It is specifically anticipated that the City Code and LDRs will change during the duration of this Agreement, and, in accordance with Florida Statutes Section 163.3233(2), the City may apply such subsequently adopted laws and policies to the Project. However, the permitted intensity of the development uses on the Property shall be a minimum of two hundred and eighty five (285) dwelling units, in addition to one full service sit-down restaurant having a minimum of 4,500 square feet, a minimum of 3,500 square feet of additional restaurant/retail/commercial use, and in addition to a climate controlled vertical self-storage building of up to one hundred thousand (100,000) square feet. This permitted intensity of development and permitted uses specifically shall not be affected by subsequent changes to the City Code or the LDRs.

**[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGES AND  
EXHIBITS FOLLOW]**



WITNESSES:

Sign: [Signature]

Print: Parker A Homans

Sign: [Signature]

Print: Matt Murphy

"DEVELOPER"

SKYWAY MARINA, LLC

By: [Signature]

Print: Donald E. Phillips

Title: Manager

Date: 3/20/17

STATE OF FLORIDA

COUNTY OF PINELLAS

The forgoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017 by \_\_\_\_\_ and \_\_\_\_\_, to me known as the \_\_\_\_\_ and St. Petersburg City Clerk, respectfully, who acknowledged before me that they have executed the foregoing instrument for the purposes therein expressed and that they were duly authorized to do so.

NOTARY PUBLIC:

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

State of Florida at Large

My Commission Expires: \_\_\_\_\_

(SEAL)

STATE OF FLORIDA

COUNTY OF PINELLAS

The forgoing instrument was acknowledged before me this 20<sup>th</sup> day of March, 2017 by Donald E. Phillips on behalf of Skyway Marina, LLC, who is personally known to me or produced \_\_\_\_\_ as identification.

NOTARY PUBLIC:

Sign: Mary C. Miller

Print: Mary C. Miller

State of Florida at Large

My Commission Expires: 7/12/18

(SEAL)



**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the day and year first above written.

ATTEST:

“CITY”

CITY OF ST. PETERSBURG, FL

\_\_\_\_\_  
CITY CLERK

By: \_\_\_\_\_

As Its: \_\_\_\_\_

\_\_\_\_\_ day of \_\_\_\_\_, 2017

Approved as to form and content

By Office of City Attorney

\_\_\_\_\_

**EXHIBIT A**

**Legal Description of Property**

### LEGAL DESCRIPTION

Lots 1, 2 and 3, Block A, LAKEWOOD OFFICE PARK, according to the plat thereof recorded in Plat Book 57, Pages 39 and 40, of the Public Records of Pinellas County, Florida.



**EXHIBIT B**  
**Approved Site Plan**





**CITY OF ST. PETERSBURG  
COMMUNITY PLANNING & PRESERVATION COMMISSION  
PUBLIC HEARING  
March 14, 2017**

**PUBLIC HEARING**

**A. Proposed Development Agreement**

**Contact Person: Gary Jones, 893-7877**

**Request:** Proposed Development Agreement for 8.98 acres (mol) of land generally located on the southeast corner of 34<sup>th</sup> Street South and 30<sup>th</sup> Avenue South.

**Staff Presentation**

Gary Jones gave a PowerPoint presentation based on the staff report.

Commissioner Burke asked about the \$1 million incentive that was a one-time deal to get the first developer to step-up. Mr. Jones stated that this incentive was put into the plan because they are looking for catalyst development; hoping this first development project will provide an incentive for other development projects to follow.

Commissioner Burke asked if the site plan shown today is what will be developed or is it something close to what will be developed. Matt Murphy, Phillips Development Manager, responded that the key points to the site plan approved by the DRC were the multi-family residential and the restaurant components. They are still working on the lazy river sizing.

Commissioner Burke commented that this development will be a great thing for this district and is pleased the way self-storage is being addressed (available to the people but out of public view).

Commissioner Reese asked how and who the decision will be made on the selection of restaurants to be included in this development. Mr. Jones stated that Phillips Development will make that decision.

Commissioner Reese asked how much attention will be given to the residents that reside in this area on what they would like to see there. Mr. Murphy stated that they are paying a lot of attention but their primary focus is to find a local St. Petersburg or Tampa Bay entrepreneur that is already established or looking to "set-up shop" affording an opportunity for them and for us.

Commissioner Michaels added his applause for this project. It is nice to see the downtown renaissance extending to the Skyway Marina District and it is impressive to see the amount of investment being proposed with this development (\$70 million).

Acting Commission Chair Wolf asked about the public improvements phase of the project. Mr. Jones stated that the City will not begin paying for public improvements until the key components (multi-family residential and restaurants) were submitted for City permitting.

Acting Commission Chair Wolf asked about the competitive bidding. Mr. Jones stated that this yet to be determined but the developer may have to competitively bid the projects just like it was a City project that we were doing ourselves.

### **Applicant Presentation**

Don Phillips, the developer with Phillips Development and Realty and representing the Applicant/Property Owner, Skyway Marina, LLC, did not speak but was present to answer questions.

### **Public Hearing**

No speakers present.

### **Executive Session**

**MOTION:** *Commissioner Michaels moved and Commissioner Winters seconded a motion finding the Development Agreement is consistent with the City's Comprehensive Plan in accordance with the staff report.*

**VOTE:** *YES – Bell, Burke, Michaels, Reese, Whiteman, Winters, Wolf*  
*NO – None*

*Motion passed by a vote of 7 to 0.*



**Staff Report to the St. Petersburg Community Planning & Preservation Commission**  
Prepared by the Planning & Economic Development Department,  
Economic Development Division

For Public Hearing and Executive Action on March 14, 2017  
at **3:00 p.m.**, in the City Council Chambers, City Hall,  
175 Fifth Street North, St. Petersburg, Florida.

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According to Planning & Economic Development Department records, no Commission members reside or have a place of business located within 2,000 feet of the subject property. All other possible conflicts should be declared upon announcement of the item.

**SUBJECT:** Proposed Development Agreement for 8.98 acres (mol) of land generally located on the southeast corner of 34<sup>th</sup> Street South and 30th Avenue South.

**APPLICANT/**

**PROPERTY OWNER:** Skyway Marina, LLC  
142 West Platt Street  
Tampa, FL 33606

**DEVELOPER:**

Phillips Development and Realty, LLC  
142 West Platt Street  
Tampa, FL 33606

**REPRESENTATIVE:**

Don Phillips  
Phillips Development and Realty, LLC

**REQUEST:** To approve a Developer Agreement for a mixed-use project with a minimum of the following: 4,500 sq. ft. restaurant, 3,500 sq. ft. of additional commercial use, 285 multi-family residential units; and a maximum of 100,000 sq. ft. of self-storage, all at a maximum height of 72 feet.

**BACKGROUND:** The subject property is located within the Skyway Marina District, and adjacent to the Clam Bayou, Perry Bayview and Lakewood Estates Neighborhood Associations. This nine (9) acre site has been vacant since 2007 and was previously approved for a 147,417 retail center consisting primarily of a Home Depot store. The downturn in the economy lead to the property being placed for sale shortly thereafter.



The Skyway Marina District Plan was adopted in May 2014 to create more redevelopment opportunities, improve the retail experience, and increase the population and buying power of the area. This parcel was identified as a prime redevelopment opportunity within the Plan, and has been promoted as such. Activity Center designation was approved in 2015 as recommended in the Plan to provide developers additional density and intensity of development District-wide. The Plan also had a recommendation to provide a \$1 million incentive to the first mixed use development to be constructed within the District. The rationale is that a successful large development will serve as a catalyst for additional development and businesses in this area.

**ANALYSIS:** On January 4, 2017, the Development Review Commission (DRC) approved a site plan (16-31000014) to allow a mixed-use development of 316 multi-family units, up to 13,000 sq. ft. commercial, and a 100,000 sq. ft. self-storage facility with variances to setbacks and green yards. The parking garage and self-storage building will be constructed at the far east of the property and adjacent to Interstate 275, and will serve as a buffer to the apartment buildings immediately to the west. The commercial/retail buildings will be located adjacent to 34<sup>th</sup> Street South. Phillips Development has estimated the construction costs for the entire project at approximately \$70 million.

This development agreement is needed to administer the sequencing of desired development with City incentives. The Skyway Marina District Plan emphasizes the need for additional restaurants, retail, residents, employees and tourists within the District. The City has based the provision of this incentive on the developer providing one full service sit-down restaurant having a minimum 4,500 square feet, 3,500 square feet minimum of additional restaurant, retail and commercial use, and a minimum of 285 multi-family residential units. The Developer will be required to submit proof of financing and construction documents for the residential and retail uses within 24 months of the effective date of this agreement which is anticipated to be May, 2019. The self-storage component will not be issued a certificate of occupancy until the Developer submits proof of financing and construction documents for the residential and retail components.

The agreement specifically provides the City's obligation to fund the following public improvements, three of which are reimbursements to the developer:

**1. City Trail Extension.** The City Trail will be extended from 34<sup>th</sup> Avenue South to 30<sup>th</sup> Avenue along 37<sup>th</sup> Street South, and follow 30<sup>th</sup> Avenue South easterly to the project site at an estimated cost of \$250,000. The City will not construct this improvement before the issuance of building permits for the residential and retail components of the project, and will complete this improvement no later than the date that the Certificate of Occupancy is issued for both components. The funding source for this project will be City Trails FY15.

**2. Traffic Signal and Intersection Improvements.** A new traffic mast arm signal, crosswalk and sidewalk improvements will be constructed at 34<sup>th</sup> Street and 30<sup>th</sup> Avenue South, subject to FDOT approval, at an estimated cost of \$400,000. The Developer will construct these improvements once construction starts for the residential and first retail building of the project.

The initial funding source for this project will be Traffic Signal Mast Arm Program FY17 in the amount of \$100,000. An additional \$300,000 will be required to be appropriated.

**3. 32<sup>nd</sup> Avenue South Improvements.** 32<sup>nd</sup> Avenue South will be reconfigured and improved through the reduction of vehicle travel lanes from four to two, the removal of medians, the installation of new lights, the construction of new sidewalks and the addition of angled parking, at an estimated cost of \$250,000 (not including resurfacing that is currently in the City's budget). The Developer will construct these improvements once construction starts for the residential and first retail building of the project. The funding source for this project will be Comp Streetscape/Greenscape FY13.

**4. Art Scape on Building Faces along I-275.** Art Components, lighting and Skyway Marina District signage is planned for the self-storage building and parking deck that is visible from I-275 with a maximum City reimbursement of \$100,000. The Developer will be responsible for the design and construction of these art scape components. The funding source of this project will be from the Economic Development Division's Aid to Private Organizations budget.

The City will also work with FDOT to approve and install Skyway Marina District signage within the right-of-way of I-275, subject to their approval. No funding is needed.

The agreement will expire in three years and requires the Developer to complete the entire project within three years of the agreement's effective date (May 2020) to receive City incentives. The City will have the right to review and approve all contracts entered into by Developer in connection with all improvements. The City will reimburse the Developer, up to the limits set forth in the Development Agreement, for all actual costs, fees and expenses incurred in connection with these improvements, except for management or overhead charges.

**CONSISTENCY WITH COMPREHENSIVE PLAN:**

The proposed Development Agreement is consistent with the following policies set forth in the Comprehensive Plan:

- LU2.2        The City shall concentrate growth in the designated Activity Centers and prioritize infrastructure improvements to service demand in those areas.
- LU2.3        To attract large scale quality development and assure the proper coordination, programming and timing of City services in the activity centers the City shall continue to develop, evaluate and implement appropriate activity center development incentives.
- LU3.5        The tax base will be maintained and improved by encouraging the appropriate use of properties based on their locational characteristics and the goals, objectives and policies within this Comprehensive Plan.
- T1.6         The City shall support high-density mixed-use developments and redevelopments in and adjacent to Activity Centers, redevelopment areas and locations that are

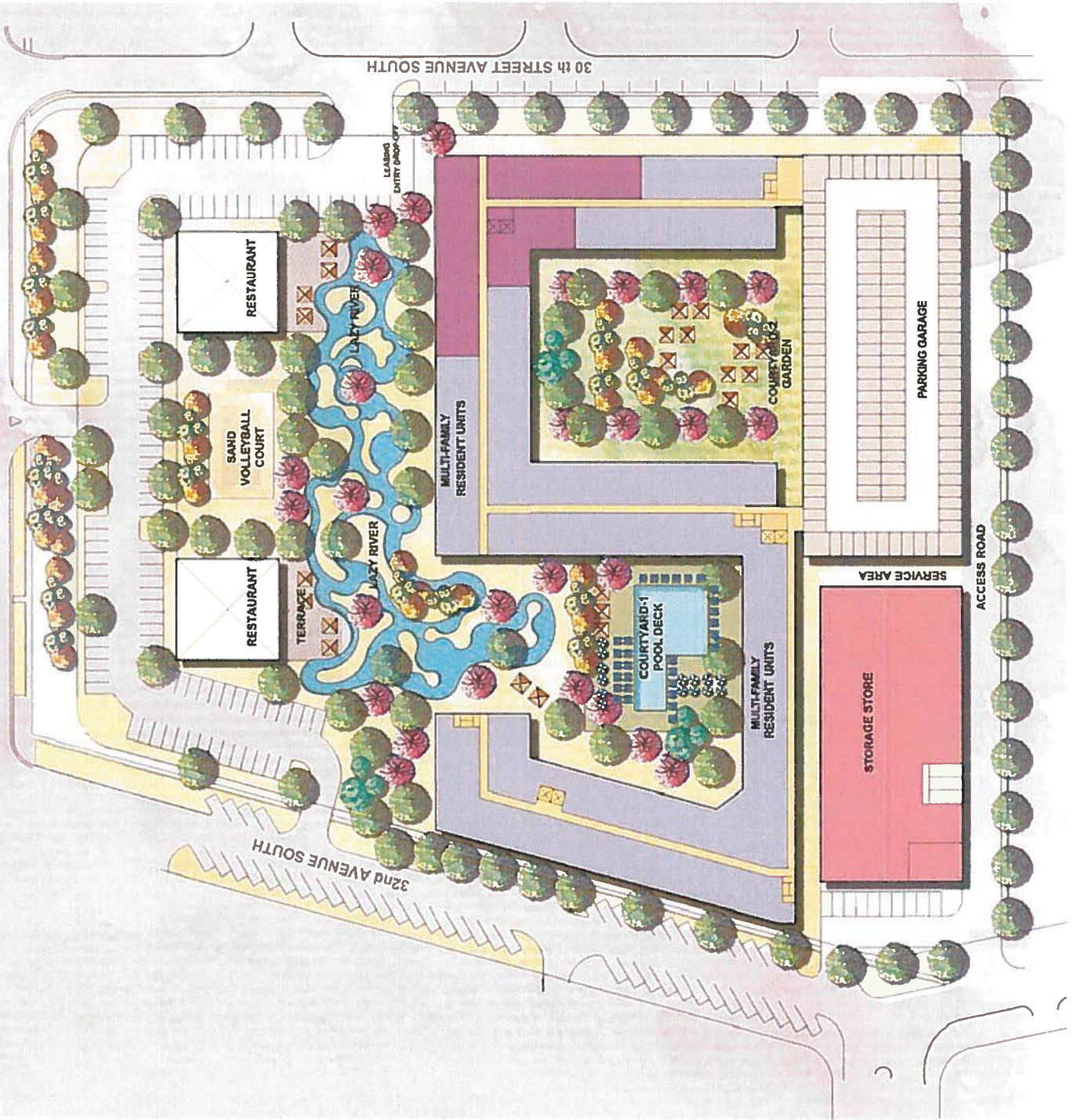
supported by mass transit to reduce the number and length of automobile trips and encourage transit usage, bicycling and walking.

**RECOMMENDATION:** City staff recommends APPROVAL of the proposed development agreement, based on consistency with the Comprehensive Plan.

Attachments: Developer Agreement, Location Map and Site Plan



34th STREET U.S. HIGHWAY NO. 19



"NOT FOR CONSTRUCTION"



CONCEPTUAL SITE PLAN  
DECEMBER 9, 2016  
SKYWAY MARINA  
ST. PETERSBURG, FL