

NOTICE OF PUBLIC MEETING

FREEPORT REDEVELOPMENT AUTHORITY/LGC

Tuesday, October 1, 2013, 6:30 PM

Freeport Police Department Municipal Courtroom

430 North Brazosport Boulevard

Freeport, Texas

1. Call to order.
2. Discuss and consider approving a development agreement with Skymark Development related to its Urban Renewal Tract Development project proposal.

Adjourn

Items not necessary discussed in the order they appear on the agenda. The Council at its discretion may take action on any or all of the items as listed. This notice is posted pursuant to the Texas Open Meeting Act. (Chapter 551, Government Code).

In compliance with the Americans with Disabilities Act, the City of Freeport will provide for reasonable accommodations for persons attending City Council Meetings. Request should be received 48 hours prior to the meeting. Please contact the City Secretary office at 979-233-3526.

I, Delia Munoz City Secretary for the City of Freeport, Texas certify that this agenda was posted on the official bulletin board/glass door of City Hall, facing the rear parking lot of the building, with 24 hours a day public access, 200 West 2nd Street, Freeport Texas, September 28TH, 2013 at or before 5:00 p.m.

Delia Munoz - City Secretary

- City of Freeport, Texas

**PROPOSED
ROUGH DRAFT
DEVELOPMENT AGREEMENT**

**DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FREEPORT, TEXAS,
FREEPORT REDEVELOPMENT AUTHORITY,**

AND SKYMARK DEVELOPMENT COMPANY, INC.

This Development Agreement (this "Agreement") is made and entered into as of the Effective Date (as defined below), by the City of Freeport, ("the City") a Home-Rule city lying and situated in Brazoria County, Texas, acting by and through its City Council; the Freeport Redevelopment Authority, (the "Authority"), a Texas Local Government Corporation, created by the City, acting by and through its board of directors; and SKYMARK DEVELOPMENT COMPANY, INC., a Texas corporation and the proposed developer of the land that is subject to this Agreement acting by and through its Board of Directors.

RECITALS

The Freeport Redevelopment Authority, has entered into an Ernest Money Contract with the City and the Urban Renewal Agency of the City whereby the Authority will acquire and the Authority has entered into an Ernest Money Contract with the Developer whereby the Authority will sell to the Developer approximately 327 acres of land in Brazoria County, Texas, all of which is located in the City's corporate limits, said land ("the Property") being described in Exhibit "A" attached hereto and incorporated herein by reference for all purposes. A vicinity map of the Property is attached as Exhibit "B" hereto and incorporated herein by reference for all purposes. It is located near a railway right-of-way owned by the Union Pacific Railroad Co.

The City and the Authority wish to provide for the orderly, safe and healthful development of the Property.

The Developer desires to develop the Property as a planned development for commercial, light-industrial, and residential purposes, as designated on the General Plan, as attached as Exhibit "C" hereto and incorporated herein by reference for all purposes ; however, the Developer represents that securing the financing for the development of the Property requires an agreement providing for long term certainty in public infrastructure financing and regulatory requirements and development standings by the City regarding the Property.

It is anticipated that the Developer will commence the initial development of the Property within 2 years following governmental and Union Pacific approvals and development will be completed within 12 years depending on market conditions.

It is the intent of this Agreement to establish certain restrictions and commitments imposed and made in connection with the development of the Property. The City and the Developer agree that the provisions of the Agreement, and the goods and services to be provided to the City by the Developer, substantially advance legitimate interests of the City and the Developer. The City and the Developer are proceeding in reliance on the enforceability of this Agreement.

NOW, THEREFORE, for an in consideration of the premises and of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the City, the Authority and the Developer agree as follows:

ARTICLE I DEFINITIONS

Section 1.01 Terms. Unless the context requires otherwise, and in addition to the terms defined elsewhere herein, the following terms and phrases used in this Agreement shall have the meanings set out below:

Residential Development is defined as that permitted in a Residential District (R-1 or R-2) under the City's Comprehensive Zoning Ordinance.

Light Commercial Development is defined as that permitted in a Retail Business District (C-1) under the City's Comprehensive Zoning Ordinance.

Commercial Development is defined as that permitted in a General Commercial District (C-2) under the City's Comprehensive Zoning Ordinance.

Light Industrial Development is defined as that permitted in Light Industrial District (M-1) under the City's Comprehensive Zoning Ordinance.

Authority shall mean the Freeport Redevelopment Authority, a Local Government Corporation.

Bonds shall have the meaning set forth in the Utility Agreement.

Chapter 380 Agreement means an agreement between the City and the Developer meeting the requirements of Chapter 380 of the Texas Local Code.

City means the City of Freeport, Texas.

City Council means the City Council of the City or any successor governing body.

City Drainage System means all the storm drainage lines, channels, levees, facilities, components and equipment owned and used by the City to collect, convey, detain, drain and monitor storm water.

City System means the City Drainage System, the City Wastewater System and the City Water System.

City Wastewater System means all the wastewater treatment facilities, lines, components and equipment owned and used by the City to collect, convey, treat, monitor, regulate and dispose of wastewater.

City Water System means all the water wells, water production pumps, lines, meters, components, facilities, and equipment owned or used by the City to pump, treat, monitor, convey, supply, and distribute water to the public.

County means Brazoria County, Texas.

Designated Mortgagee means, whether one or more, any mortgagee or security interest holder that has been designated to have certain rights pursuant to Article IV hereof.

Developer means Skymark Development Company, Inc., a Texas corporation, and its successors and assigns.

Development Ordinances means, unless otherwise provided herein, all ordinances adopted by the City as they may be amended from time to time.

Drainage District means Velasco Drainage District of Brazoria County, Texas.

Effective Date means the date when the last party to this agreement has signed it.

General Plan means the conceptual land use plan for the proposed development of the Property, a copy of which is attached to this Agreement as Exhibit "C", and incorporated herein for all purposes, as it may be revised from time to time in accordance with the requirements in Section 2.02.

MUD means a Municipal Utility District, proposed to be created over the Property, the purpose of which is to supply public water supply services, sanitary sewer services, drainage services, roads, and/or parks and recreational services to the Property.

Person means any individual, partnership, association, firm, trust, estate, public or private corporation, or any other legal entity whatsoever.

Property means all the land described in the attached Exhibit "A".

TCEQ means the Texas Commission on Environmental Quality and its successors.

Ultimate Consumer means the purchaser of a tract or lot within the Property who does not intend to subdivide the tract or lot in the ordinary course of business but intends to utilize the tract or lot for commercial purposes.

Utility Agreement means that certain Utility Agreement, by and between the City and the Developer on behalf of the proposed Municipal Utility District.

Section 1.02 Exhibits. The following Exhibits attached or to be attached to this Agreement are a part of this Agreement as though fully incorporated herein:

- | | | |
|-------------|---|--|
| Exhibit "A" | - | Metes and Bounds Description of the Property |
| Exhibit "B" | - | Vicinity Map of the Property |
| Exhibit "C" | - | General Plan |
| Exhibit "D" | - | Protective Covenants |

ARTICLE II GENERAL PLAN, PLATTING, AND MUNICIPAL UTILITY DISTRICT

Section 2.01 Introduction. The Property is planned to be developed as a commercial, light industrial and residential development to meet market demand in accordance with the General Plan as detailed in Section 2.02.

Section 2.02 General Plan and Amendments Thereto. The City hereby approves the general plan and will update the Zoning Maps to reflect the mixed uses of the property. The Developer agrees to develop or cause any undeveloped Property to be developed in accordance with the latest General Plan approved by the City that accomplish all or part of a mixed use of residential, light commercial or commercial development. The City and the Developer acknowledge that the General Plan is the conceptual plan for the development of the Property. The parties acknowledge and agree that the General Plan will be revised and refined by the Developer as the Developer continues its investigation of the Property and prepares a feasible and detailed plan for the development of the Property, all in accordance with the Development Ordinances, the Utility Agreement, and this Agreement.

Section 2.03 Municipal Utility District. The City agrees to approve a petition to create a MUD on the Property and execute related Utility Agreements. The City agrees that it will not dissolve the MUD created on the Property until one of the earlier of: (i) thirty (30) years have elapsed since the Effective Date of this Agreement; or (ii) the System has been substantially completed and the Developer has received payment for the System by the MUD to the maximum extent permitted by the rules of the TCEQ (iii) the City assumes the obligation of the MUD to make such payment under said rules, or if the Municipal Utility District fails to perform timely duties within the MUD.

Section 2.04 Chapter 380 Agreement. The City and the Developer agree to enter into a Chapter 380 agreement at such time requested by the Developer, for the benefit of the development of the Property to reimburse mutually agreeable predetermined costs associated with public roadway improvements and public infrastructure that are not reimbursed or a financial function of the MUD. The agreement will be jointly prepared and must be approved by the Developer and the City before it becomes effective.

**ARTICLE III
DESIGN AND CONSTRUCTION STANDARDS AND
APPLICABLE ORDINANCES**

Section 3.01 Regulatory Standards and Development Quality. The City and the Developer agree that one of the primary purposes of this Agreement is to provide for the quality development of the Property. The Developer agrees to comply with all applicable federal, state, city and local laws, rules and regulations in the development of the Property as they may be amended from time to time. By the terms of this Agreement, the City and the Developer intend to establish development and design rules and regulations which will ensure a quality, unified development, yet afford the Developer predictability of regulatory requirements. The City and the Developer agree that the Property will be developed in accordance with the City of Freeport Code of Ordinances in effect at the time of this agreement, unmodified for a period of ten (10) years, excluding any ordinances amendments related to public safety or health. Development after this period shall meet the City requirements in effect at the time of the development.

Section 3.02 Development Ordinances; Special Requirements.

- (a) The Developer and the City agree that the development of the Property shall be in accordance with the General Plan and the Development Ordinances.
- (b) The City acknowledges that a temporary residence consisting of a manufactured home will need to be installed for initial MUD election purposes.
- (c) The Developer agrees to record or cause to be recorded protective covenants to apply to the Property in substantially the same form attached hereto as **Exhibit "D"**. The protective covenants shall be recorded prior to the sale of any portion of the Property.
- (d) Currently the Property is subdivided under the plat or map of the Velasco Townsite. The City will take actions necessary to vacate the subdivision within the Property including all lots and roadways, and consolidate the Property into one parcel. The City will continue to work with the developer within the applicable laws and restrictions with reasonable means to vacate the approximate 4 acre park designated as Sam Houston Park on the plat map and include the 4 acre area as a part of the development.

Section 3.03 Payment of Impact Fees. The parties recognize that the City imposes an impact fee on users connecting to the City System at the time a building permit for above-ground improvements is issued. The impact fees must be paid by the owner of the land for which they are purchased and building permits will not be issued until the impact fee is paid for the land in question.

Section 3.04 System Services. The plan for an integrated water distribution system, wastewater collection system, and storm water control and drainage system and appropriate roadways and recreational facilities to serve the Property shall be developed in accordance with the Development Ordinances and the Utility Agreement. The Developer intends to make provisions for retail public water distribution and wastewater collection services and for storm water drainage for the Property through the System.

Section 3.05 Construction Standards for Public Improvements. The City agrees that the timing of plan and plat approvals are important to the orderly development of the Property. The City agrees to endeavor to have its staff perform plan and plat (preliminary and final) reviews and provide a comment or approval letter within thirty (15) business days of submission.

Section 3.06 Liability of Ultimate Consumer. Ultimate Consumers shall have no liability for the failure of the Developer to comply with the terms of this Agreement.

ARTICLE IV

PROVISIONS FOR DEVELOPER

Section 4.01 Vested Rights. Upon execution of this Agreement, the City, the Authority and the Developer agree that the rights of the parties as set forth in this Agreement shall be deemed to have vested.

Section 4.02 Developer's Right to Sell Land. The City, the Authority and the Developer hereby acknowledge and agree that the Developer may sell a portion of the Property to one or more Persons. The Developer agrees to provide each purchaser of the Property or portion thereof a copy of this Agreement and, to the extent such purchasers are successor developers of any portion of the Property, to require such purchasers to enter into an enforceable agreement to develop in accordance with this Agreement, provided however, that such sale and the subsequent obligation of the

purchaser to develop in accordance with this Agreement shall not relieve the Developer of its obligations under this Agreement. The City shall have the right to pursue the Developer or purchaser for its respective breach of this Agreement, at the City's sole election. The failure of Developer to require purchasers to enter into an enforceable contract to comply with this Agreement shall be deemed a material breach of this Agreement.

ARTICLE V

MATERIAL BREACH, NOTICE AND REMEDIES

Section 5.01 Material Breach of Agreement. It is the intention of the parties to this Agreement that the Property be developed in accordance with the terms of this Agreement.

(a) The parties acknowledge and agree that any substantial deviation by the Developer from the material terms of this Agreement would frustrate the intent of this Agreement, and therefore, would be a material breach of this Agreement. A material breach of this Agreement by the Developer shall be deemed to have occurred in the event of failure of the Developer to comply with a provision of this Agreement or a Development Ordinance applicable to the Property.

(b) The parties acknowledge and agree that any substantial deviation by the City from the material terms of this Agreement would frustrate the intent of this Agreement and, therefore, would be a material breach of this Agreement. A material breach of this Agreement by the City shall be deemed to have occurred in the following instances:

1. An attempt by the City to dissolve the MUD prior to the occurrence of the conditions set forth in Section 2.03(b) of this Agreement or in violation of the provisions of the Utility Agreement; or
2. An attempt by the City to enforce any City ordinance within the Property that is inconsistent with the terms and conditions of this Agreement.

In the event that a party to this Agreement believes that another party has, by act or omission, committed a material breach of this Agreement, the provisions of this Article VI shall provide the remedies for such default.

Section 5.02 Notice of Developer's Default.

(a) The City shall notify the Developer and each Designated Mortgagee in writing of an alleged failure by the Developer to comply with a provision of this

Agreement, which notice shall specify the alleged failure with reasonable particularity. The alleged defaulting party shall, within thirty (30) days after receipt of such notice or such longer period of time as the City may specify in such notice, either cure such alleged failure or, in a written response to the City, present facts and arguments in refutation or excuse of such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure.

(b) The City shall determine (i) whether a failure to comply with a provision has occurred; (ii) whether such failure is excusable; and (iii) whether such failure has been cured or will be cured by the alleged defaulting party. The alleged defaulting Party shall make available to the City, if requested, any records, documents or other information necessary to make the determination.

(c) In the event that the City determines that such failure has not occurred, or that such failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the City, or that such failure is excusable, such determination shall conclude the investigation.

(d) If the City determines that a failure to comply with a provision has occurred and that such failure is not excusable and has not been or will not be cured by the alleged defaulting Developer in a manner and in accordance with a schedule reasonably satisfactory to the City, then the City may pursue any and all remedies it has at law or equity, including without limitation the right to refuse to issue any building permits for tracts within the Property until the default is remedied.

Section 5.03 Notice of City's Default.

(a) The Developer shall notify the City in writing of an alleged failure by the City to comply with a provision of this Agreement, which notice shall specify the alleged failure with reasonable particularity. The City shall, within thirty (30) days after receipt of such notice or such longer period of time as the Developer may specify in such notice, either cure such alleged failure or, in a written response to the Developer, present facts and arguments in refutation or excuse of such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure.

(b) The Developer, as the case may be, shall determine (i) whether a failure to comply with a provision has occurred; (ii) whether such failure is excusable; and (iii) whether such failure has been cured or will be cured by the City. The City shall make available to the Developer, if requested, any records, documents or other information necessary to make the determination that are subject to the Public Information Act, Chapter 551, Texas Government Code.

(c) In the event that the Developer determines that such failure has not occurred, or that such failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the Developer, as the case may be, or that such failure is excusable, such determination shall conclude the investigation.

(d) If the Developer determines that a failure to comply with a provision has occurred and that such failure is not excusable and has not been or will not be cured by the City in a manner and in accordance with a schedule reasonably satisfactory to the Developer, then the Developer may pursue any and all remedies it has at law or equity.

Section 5.04 Remedies. In addition to all the rights and remedies provided under Section 5.05 below and by the laws of the State of Texas, because of the peculiar damage each party hereto might suffer by virtue of a default by the other party, each party shall be entitled to the equitable remedy of specific performance or mandamus, as well as all other legal and equitable remedies available.

Section 5.05 Additional Remedies.

In enforcing the performance of the provisions of this Agreement, but subject to the above, each party shall have the right to the exercise of all remedies provided at law or in equity. No waiver of any breach or default of any provision of this Agreement shall be deemed a waiver of any subsequent waiver or default.

If either party hereto is the prevailing party in any legal proceedings against the other brought under this Agreement, such prevailing party shall additionally be entitled to recover court costs and reasonable and necessary attorney's fees from the non-prevailing party to such proceedings.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.01 Beneficiaries. This Agreement shall bind and inure to the benefit of the City, the Authority and the Developer and shall not be construed to confer any benefit on any other person or entity except as expressly provided for herein.

Section 6.02: Force Majeure. In the event either party is rendered unable, wholly or in part, by force majeure, to carry out any of its obligations under this Agreement, it is agreed that on such party's giving notice and full particulars of such force majeure in writing to the other party as soon as possible after the occurrence of the cause relied upon, then the obligations of the party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any

inability so caused to the extent provided, but for no longer period. Such cause shall as far as possible be remedied with all reasonable dispatch.

The term "force majeure" as used herein shall include, but not be limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy or of terrorism, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to machinery or pipelines and any other incapacities of any party, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

Section 6.03: Approval. Whenever this Agreement requires or permits approval or consent to be hereafter given by a party, such approval or consent may be evidenced by, with respect to the City or the Authority, a resolution adopted by the governing body of the City or the Board of Directors of the Authority or a letter from the City Manager or the President of the Authority, respectively; or, with respect to the Developer, by an appropriate certificate or a letter executed by a person, firm or entity previously authorized by its Board of Directors to determine and give such approval or consent on behalf of the Developer. The parties agree that no such approval or consent shall be unreasonably withheld, conditioned or delayed.

Section 6.04: Address and Notice. Unless otherwise provided in this Agreement, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by a party to the other must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of the party to be notified with a signed receipt. Notice deposited in the mail or delivered in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the date reflected on the signed receipt.

Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of Notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the City:

City Manager
City of Freeport
200 W. 2nd Street
Freeport, Texas 77541

If to the Authority: President
Freeport Development Authority
200 W. 2nd Street
Freeport, Texas 77541

If to the Developer: Skymark Development Company, Inc.
1616 Voss
Suite 618
Houston, Texas 77063
Attn: Mr. Clinton Wong

The parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address in Harris County, Texas, by at least fifteen (15) days written Notice to the other party.

Section 6.05: Assignability. This Agreement shall bind and benefit the respective parties but shall not otherwise be assignable without the prior written consent of the other parties. Such consent not to be unreasonably withheld.

Section 6.06: Regulatory Agencies; Texas Law to Apply; Venue. This Agreement shall be subject to all present and future valid laws, orders, rules and regulations of the United States of America, the State of Texas, and of any regulatory body having jurisdiction; provided, however, that this Agreement shall be construed under the laws of the State of Texas. Venue shall be in a court of appropriate jurisdiction in Brazoria County, Texas.

Section 6.07: No Additional Waiver Implied. The failure of either party hereto to insist, in anyone or more instances, upon performance of any of the terms, covenants or conditions of this Agreement, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition by the other party hereto, but the obligation of such other party, with respect to such future performance shall continue in full force and effect.

Section 6.08: Captions. The captions appearing at the first of each numbered Article and Section in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement, or any provision hereof, or in connection with the duties, obligations or liabilities of the respective parties hereto or in ascertaining intent, if any question of intent should arise.

Section 6.09: Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or

circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement of other persons or circumstances shall not be affected thereby.

Section 6.10: Merger. This Agreement, and the Utility Agreement incorporated herein by reference above, embodies the entire understanding between the parties and there are no prior effective representations, warranties or agreements between the parties except as set forth in the Consent Resolution.

Section 6.11: Construction of Agreement. The parties agree that this Agreement shall not be construed in favor of or against a party on the basis that the party did or did not author this Agreement.

Section 6.12: Term. This Agreement shall terminate of the earlier of thirty (30) years from the Effective Date or dissolution of the MUD.

Section 6.13 Authority for Execution. The City hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the laws of the State of Texas and City ordinances. The Authority hereby certifies, represents and warrants that the execution of this Agreement is duly authorized and adopted in conformity with its certificate of formation and bylaws. The Developer hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws of the Developer.

[EXECUTION

PAGES

FOLLOW]

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement to be effective as of the Effective Date.

CITY OF FREEPORT, TEXAS

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

By: _____

Name: _____

Title: _____

(CITY SEAL)

FREEPORT DEVELOPMENT AUTHORITY

A Local Government Corporation

By _____

Name: _____

Title: _____

Date: _____

DEVELOPER:

**SKYMARK DEVELOPMENT COMPANY,
INC., a Texas corporation**

By: _____

Name: _____

Title: _____

Date: _____

THE STATE OF TEXAS §

§

COUNTY OF HARRIS §

This instrument was acknowledged before me on this ___ day of _____, 2013, by _____, _____ of SKYMARK DEVELOPMENT COMPANY, INC., a Texas corporation, on behalf of said corporation.

Notary Public in and for the
State of TEXAS

(SEAL)

EXHIBIT A

PENDING

EXHIBIT D

"RESTRICTIONS"

The conveyance of the Property is expressly made subject to the following agreement, covenants and restrictions, which shall survive the Closing and will be contained in the Deed, as follows:

1. The Property shall be prohibited from having any of the following types of businesses conducted thereon: (a) Storage or sale in bulk of junk (b) automotive wrecking yard, or (c) the storage for the sale of automobiles and (d) the storage, sale or manufacture of explosives.
2. The Property shall not be used for any purpose which is considered by local law to be pornographic in nature. Businesses which operate as adult book stores, bars or restaurants featuring topless, bottomless, or nude performers, waiters, waitresses or other personnel, or which provide recorded entertainment featuring nude or semi-nude persons performing sexual acts, or which operate as a massage parlor shall be prohibited.
3. The Property shall not be put to a use which is an annoyance or nuisance by reason of fumes (excluding normal automotive and trucking fumes emanating from automobiles and trucks (including delivery trucks) and fumes in the ordinary course of a retail shopping center, including without limitation, fumes from garbage receptacles and restaurants), pollution or which is hazardous by reason of excessive danger of fire or any oil or natural gas production operations or any other mining operations.