DEVELOPMENT AGREEMENT

AMONG

CITY OF HAMMOND, INDIANA

CITY OF HAMMOND REDEVELOPMENT COMMISSION

CITY OF HAMMOND ECONOMIC DEVELOPMENT COMMISSION

AND

THRUPORT INTERMODAL, LLC

RE: REDEVELOPMENT OF EAST GIBSON YARD PROJECT

DATED: _____, 2015

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (the "Agreement") made as of this ____ day of _____, 2015 by and among the City of Hammond, Indiana, an Indiana municipal corporation (the "City"), the City of Hammond Redevelopment Commission (the "Redevelopment Commission"), the governing body of the Hammond, Indiana Department of Redevelopment, and the Redevelopment District of the City of Hammond, Indiana (the "District"), the City of Hammond Economic Development Commission (the "Economic Development Commission"), and ThruPort Intermodal, LLC (the "Developer"), an Indiana limited liability company.

WITNESSETH:

A. The City has established a Redevelopment Commission in accordance with the RDC Act (as defined herein) and the Economic Development Commission in accordance with the EDC Act (as defined herein);

B. The Redevelopment Commission has the responsibility to investigate, study and survey areas and promote the use of land in a manner that best serves the City, and has the responsibility to cooperate with departments and agencies of the City that best serve the development or redevelopment of areas of the City;

C. The City, the Redevelopment Commission, and Economic Development Commission (collectively, the "City Parties") desire to stimulate and promote economic development activities in or about the East Gibson Yard Economic Development Area (as defined herein);

D. The Developer and Affiliate has acquired certain real estate located in the East Gibson Yard Economic Development Area and has submitted to the City Parties a proposal for

the development of a multi-tenant rail and intermodal center, consisting of ±155 acres, as more specifically hereinafter set forth on Exhibit "A" hereto. The Developer shall develop the property in phases, Phase I of which will consist of the construction of a railroad repair and maintenance center, consisting of approximately thirty (30) acres, which is identified on Exhibit "A" hereto (the "Project");

E. The Redevelopment Commission, pursuant to a Declaratory Resolution and a Confirmatory Resolution (each as defined herein), has taken or will take such actions as shall be reasonably necessary to adopt an "economic development plan" for the Gibson Yard Economic Development Area and to cause the Gibson Yard Economic Development Area to be designated as an "allocation area" within the meaning of the RDC Act to be known as the "Gibson Yard Allocation Area and/or amending the Woodmar Allocation Area to include the Gibson Yard Economic Development Area;"

F. The City Parties desire to induce the Developer to proceed with the Project in the City, by providing to the Developer financial incentives, including the amount of Two Million Nine Hundred Thousand Dollars ($2,900,000) through the sale of TIF Bonds to be applied to the cost of the Project (the "Incentive");

G. The City Parties may desire to take all steps as shall be reasonably necessary to issue Economic Development Revenue Bonds, Series 2014 (East Gibson Yard Project) (the "Bonds"), to finance all or a portion of the Incentive;

H. The City Parties have determined that it is in the best interest of the citizens of the City to assist in: (i) the development of the Project, (ii) the provision of the Incentive to be applied to the costs of the Project, and (iii) the taking of such other actions as are hereinafter set

forth, all for the promotion of economic development in or about the Gibson Yard Economic Development Area; and

I. The City Parties and the Developer desire to enter into this Agreement to effectuate the foregoing recitals, to the end that the Project shall be constructed in the East Gibson Yard Economic Development Area.

NOW, THEREFORE, in consideration of the foregoing premises the mutual covenants of the parties herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, the Redevelopment Commission, the Economic Development Commission, and the Developer agree as follows:

DEFINED TERMS

"Affiliate" means any entity or business that is owned or controlled by, controls or is under common control with, the Developer.

"Agreement" means this Development Agreement among the City, the Redevelopment Commission, the Economic Development Commission, and the Developer.

"Applicable Laws" means all laws, rules, regulations, ordinances, codes, administrative actions and/or orders of any Court or governmental agency or unit, whether federal, state or local properly exercising or having jurisdiction with respect to or over the subject matter in question.

"Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in the City are authorized or obligated by law or executive order to close.

"City" means the City of Hammond, Indiana, a municipal corporation, duly organized and existing under the laws of the State; provided, that it is expressly understood and agreed by the Developer that, except as otherwise expressly provided in this Agreement, any obligations of

the City under this Agreement may be fulfilled by the duly authorized and appropriate (as the context so requires) subdivision, unit, agency, commission, department, authority, instrumentality, common council, mayor, or other officer, executive or representative or any combination, of the municipal corporation of the City.

"City Parties" means, collectively, the City, the Redevelopment Commission, and the Economic Development Commission.

"Confirmatory Resolution" means the resolution of the Redevelopment Commission confirming all prior actions of the Redevelopment Commission in connection with the creation of the Gibson Yard Economic Development Area and the Gibson Yard Allocation Area and/or the amendment of the Woodmar Allocation Area.

"Declaratory Resolution" means the resolution of the Redevelopment Commission declaring the Gibson Yard Economic Development Area to be an "economic development area" within the meaning of the RDC Act, approving the Economic Development Plan for the Gibson Yard Economic Development Area and designating the Gibson Yard Allocation Area as a tax increment finance "allocation area" within the meaning of the RDC Act and/or amending the Woodmar Allocation Area to include the Gibson Yard Economic Development Area.

"Developer" means ThruPort Intermodal, LLC, an Indiana limited liability company, and its agents, assigns and subsidiaries.

"Economic Development Commission" means the City of Hammond Economic Development Commission, established pursuant to the EDC Act.

"Economic Development Plan" means the East Gibson Yard Economic Development Plan approved and adopted by the Redevelopment Commission in the Declaratory Resolution.

"Environmental Law" means any and all federal, state or local statutes, laws, regulations, ordinances, codes, rules, orders, licenses, judgments, decrees or requirements relating to public health and safety and the environment now or hereafter in force as amended and hereafter amended, including, but not limited to: (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.); (ii) the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.); (iii) the Clean Air Act (42 U.S.C. §7401 et seq.); (iv) the Clean Water Act (33 U.S.C. §11251 et seq.); (v) the Toxic Substances Control Act (15 U.S. C. §2601 et seq.); and (vi) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et seq.).

"EDC Act" means Indiana Code 36-7-11.9 and 12, et seq., as supplemented and amended.

"East Gibson Yard Allocation Area" means the real property described in the allocation provision of the Declaratory Resolution.

"East Gibson Yard Economic Development Area" means the geographic area within the District that has been designated by the Declaratory Resolution as an economic development area.

"Hazardous Materials" means any substance, chemical, material or waste (a) the presence of which causes a nuisance or trespass of any kind; (b) which is regulated by any federal, state or local governmental authority because of its toxic, flammable, corrosive, reactive, carcinogenic, mutagenic, infectious, radioactive, or other hazardous property or because of its effect on the environment, natural resources or human health and safety, including, but not limited to, petroleum and petroleum products, asbestos-containing materials, polychlorinated biphenyls, lead and lead-based paint, radon, radioactive materials, flammables and explosives; or

(c) which is designated, classified, or regulated as being a hazardous or toxic substance, material, pollutant, waste (or a similar such designation) under any federal, state or local law, regulation or ordinance, including under any Environmental Law such as the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §11001 et seq.), the Hazardous Substances Transportation Act (49 U.S.C. §1801 et seq.), or the Clean Air Act (42 U.S.C. §7401 et seq.).

"Incentive" means all of the Incentives defined in Section 1.11, including but not limited to the sale of TIF Bonds to net the amount of Two Million Nine Hundred Thousand Dollars ($2,900,000) provided to the Developer by the City Parties to be applied to the costs of the Project.

"Incentive Date" means October 1, 2015.

"Mayor" means the Mayor of the City or the duly authorized representative of the mayor of the City serving solely at the Mayor's pleasure and designated by the Mayor to carry out certain actions and responsibilities required to be performed by the Mayor of the City hereunder.

"Project" means the development of the East Gibson Yards into a railroad repair and maintenance center, as more specifically described on Exhibit "B" hereto. It is anticipated that the overall investment into this Project will be excess of $15,000,000 Million Dollars, and will create approximately fifty (50) full-time jobs. As part of the Project, Developer will mitigate the wetlands to the satisfaction of the U.S. Army Corps of Engineers.

"Project Implementation Plan" means the concept site plan for the Project submitted to the Redevelopment Commission by the Developer.

"Project Site" means the real property described on Exhibit "B" hereto and which is the site of the Project.

"RDC Act" means Indiana Code 36-7-14 and 36-7-25, et seq., as supplemented and amended.

"Redevelopment Commission" means the City of Hammond Redevelopment Commission, the governing body of the Hammond, Indiana Department of Redevelopment and the Redevelopment District of the City of Hammond, Indiana, duly organized and validly existing under the RDC Act.

"State" means the State of Indiana.

ARTICLE I

CONSTRUCTION

Section 1.1 Construction of Project.

A. The Developer shall commence or cause the commencement of construction of the Project within One Hundred Twenty (120) days of: (i) the Developer obtaining all necessary permits and governmental approvals, and (ii) the City Parties depositing in separate account and designating, by such means as approved by the Developer, funds in the amount of Two Million Nine Hundred Thousand Dollars ($2,900,000) to be used for the sole purpose of providing the Incentive to the Developer, as described in Section 1.11 of this Agreement. However, notwithstanding anything in this Development Agreement to the contrary, Developer shall begin construction no later than October 1, 2015; provided all construction permits are issued and the City Parties have sold the Bonds as provided herein. The Developer shall substantially complete construction of the Project no later than November 30, 2017, subject to force majeure as set forth in Section 7.4 below.

B. If the Developer is unable to obtain any required zoning variance or any other local, state or federal approval necessary to complete the construction or operation of the Project, the

Developer shall have no obligation to complete the construction of the Project or any other obligation under the terms of this Agreement and the City Parties shall have no obligation to make any further payments of the Incentive.

Section 1.2 Construction and Operation of the Project.

The Developer shall not cause or permit any Hazardous Materials to be brought upon, kept, used, stored, discharged, released or transported at, or, to or from the Project Site without the prior written consent of the City.

Section 1.3 Developer to Construct the Project.

The Developer shall commence or cause the commencement of the construction of the Project in a good and workmanlike manner in accordance with all applicable building codes of the City and the terms of this Agreement. The Developer shall complete or cause the completion of the Project in accordance with the schedule set forth in Section 1.1 of this Agreement.

Section 1.4 Project Cooperation Between Developer and the City.

The City Parties acknowledge and agree to the right of the Developer to develop, acquire, lease, construct, equip and operate the Project in accordance with Applicable Laws, without undue interference from or disruption by the City Parties, as a successful commercial venture. The City Parties and the Developer recognize that, by creating additional jobs and investment, the construction of the Project benefits the community. Accordingly, the City Parties and the Developer agree to work together towards the successful completion and operation of the Project.

Section 1.5 Areas Affected by Work.

The City Parties shall not be liable or responsible for any damage to any land or area, or the owner/occupant of any land or area that results from construction of the Project or relates to

the performance of work or the non-performance of the Developer's obligation under this Agreement.

Section 1.6 Project Documents.

The Developer shall maintain in a safe place at the Project Site one (1) set of all plans, specifications, drawings, addenda, written amendments, shop drawings, change orders, work directive changes, field orders and written interpretations and clarifications in good order and annotated to show all changes made during construction, relating to the performance of the work or construction of the Project or any component thereof, which documents shall be available to the City and the Mayor for such reference as may reasonably be required. The Developer will provide five (5) architectural renderings for the Project to the City for display at various City government buildings during the construction of the Project. Upon completion of the construction of the Project, a copy of all "as built" and recorded drawings shall be properly delivered to the City of Hammond Building Commissioner.

Section 1.7 Project Safety.

The Developer's general contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the development, and construction of the Project and performance of the work. The Developer's general contractor shall take all legally necessary precautions for the safety of, and provide protection as reasonably necessary to prevent damage, injury or loss to:

A. All workers and laborers providing labor for the construction of the Project;

B. All materials and equipment incorporated in the Project whether in storage or located at the Project Site; and

C. Other property at the Project Site or adjacent or in proximity thereto including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in connection with the construction.

Section 1.8 Drug Free Work Place.

The Developer agrees to undertake reasonable best efforts at all times to provide and maintain a drug free workplace at the Project Site.

Section 1.9 Labor Objectives – Prevailing Wage.

A. The Developer agrees that the Project shall be subject to all applicable City Ordinances, including but not limited to Prevailing Wage Ordinances.

B. Hammond Contractors and/or Lake County Contractors.

1. Local Labors Force. The Developer acknowledges the creation of construction jobs in the City of Hammond, Lake County, Indiana, and the Northwestern part of the State, in particular, and other portions of the State, in general, as a principal goal which the Redevelopment Commission wishes to achieve as a result of the Project. In that regard, Developer shall use reasonable good faith efforts to contract with and engage contractors and subcontractors, with principal places of business first in the City of Hammond, second in Lake County, Indiana, and third in other areas of the State, for employment opportunities relating to the construction of the Project, to the extent such contractors and subcontractors are reasonably available on a competitive basis (including the economic, quality, performance, workforce availability and other relative considerations). Reasonable good faith efforts shall mean that the Developer shall include in all bid packages or request for proposals a provision that each contractor, construction manager, and subcontractor shall be given an incentive or other priority in

awarding of a bid to: (i) hire supervisory labor and construction workers that perform any of the work, first from the City of Hammond, second from Lake County, Indiana, and third from other areas of the State of Indiana; and (ii) to have at least a majority of its non-supervisory laborers and construction workers that perform any of the work hired from such areas, with priorities set forth in (i) above. Developer shall maintain evidence of the notices or request for proposals/bids that are sent out, the identity of the bidders, the name of the successful bidders, and the reason any bidders with principal places of business in Hammond, Lake County, Indiana, or the State of Indiana, that otherwise comply with the bids were rejected, and will present said evidence to the Redevelopment Commission upon reasonable request. Developer will meet with Hammond Contractors group prior to publication of the bid.

2. Record-keeping. The Developer agrees to maintain a record of all relevant data with respect to compliance with this section and to provide the Redevelopment Commission with such information, no less frequently than quarterly, until completion of the construction of the Project.

C. **Non-Discrimination.**

The Developer shall not discriminate against any applicant for employment with respect to the employee's hire, tenure, terms, conditions of employment or any manner directly or indirectly related to employment, because of the employee's race, religion, color, sex, age, genetic information, handicap, national origin, ancestry, disabled veterans status or Vietnam era veterans status.

Section 1.10 Developer and Commission Covenants.

Developer covenants and agrees that it will:

A. Provide a full and complete site plan to the City, the Redevelopment Commission and appropriate agencies for approval, as and when the applications provided in Section 1.1 hereof are submitted to the City.

B. Construct a railroad repair and maintenance center that consists of ±30 acres and approximately $15,000,000 Million Dollars of development, all as described in Exhibit "A" and as depicted in Exhibit "B".

C. Developer shall complete the wetland mitigation necessary for the Project to the satisfaction of the U.S. Army Corps of Engineers and the City.

In the event that Developer provides all of the above and complies with all other terms and obligations of this Agreement and thereafter proceeds with the construction and development of the Project in accordance with this Agreement, the Redevelopment Commission agrees to effectuate the release of the Incentive as set forth in Section 1.11 (provided the City Parties have completed the sale of Bonds required to finance the Incentive of the City Parties).

In the event that there is a material Event of Default on the part of Developer, which Event of Default is not cured within the time extension periods provided in Section 5.2 hereof, Developer shall reimburse the Redevelopment Commission all funds disbursed pursuant to this Agreement, if and to the extent that such funds were applied to purposes other than those listed in Section 1.10B hereof.

Section 1.11 Incentive; Issuance of Bonds.

The City Parties shall provide the Incentive to the Developer in the aggregate amount of Two Million Nine Hundred Thousand Dollars ($2,900,000) to be applied to the costs of the Project. The City's obligation to provide this Incentive is specifically conditioned upon the City successfully completing the bond process and closing on the sale of Bonds (in an amount

sufficient to pay the $2,900,000 Million Dollars in a net Incentive as set forth herein) to finance the Incentive as specifically set forth herein. Prior to the commencement of the Project and not later than October 1, 2015 (provided the Bonds have sold), the City Parties shall deposit in a separate account and designate, by such means as approved by the Developer, funds in the amount of Two Million Nine Hundred Thousand Dollars ($2,900,000) to be used for the sole purpose of providing the Incentive to the Developer. For so long as this Agreement is in effect, the deposit in a separate account and designation of such funds for the sole purpose of providing the Incentive by the City Parties shall be irrevocable.

The Incentive in the total amount of Two Million Nine Hundred Thousand Dollars ($2,900,000) shall be disbursed to Developer to pay costs of the Project (including but not limited to soft costs) as follows:

A. $500,000 will be disbursed to Developer upon Developer obtaining all construction permits.

B. $900,000 will be disbursed upon Developer completing the wetland mitigation project.

C. $1,500,000 will be disbursed to Developer upon substantial completion (90%) of the track and buildings for the Project.

The City Parties may pledge as security for the Bonds (i) all of the East Gibson Yard TIF Revenues generated by the Project, and (ii) such other tax revenues or funds of the City Parties as may be required to sell the Bonds. The Developer shall have no obligation to pledge its own revenues or third-party credit enhancement as additional security for the Bonds for any reason, including in order to make the Bonds marketable or to increase the principal amount of Bonds to be issued.

The City Parties agree, in conjunction with the Developer, to submit an Application for the Installation of an Automated Traffic Signal located on US 20 (Michigan Avenue) at its intersection with the entrance to the Project. The cost and construction of installation of said automated traffic signal shall be the responsibility of the State of Indiana by and through the IEDC (Indiana Economic Development Corp.) or INDOT and the City Parties and Developer pledge to cooperate with the several State agencies in the construction and installation of said automated traffic signal. In addition, the Developer shall pay for the construction of an acceleration/deceleration lane on U.S. 20 (Michigan Avenue) for access to the development.

Section 1.12 Permits and Compliance with Applicable Laws.

The Developer shall be responsible for (a) giving all necessary notices to and obtaining all necessary permits, approvals, consents and authorizations of the proper governmental authorities having jurisdiction over the construction of the Project and (b) complying with all Applicable Laws bearing on the construction of the Project and shall notify the City of any of the plans and specifications for construction that are at variance therewith, The City shall cooperate with the Developer in obtaining all such permits, approvals, consents and authorizations to the extent permitted by law. In addition, the City shall process all such necessary permits, approvals, consents and authorizations that it issues or over which it has authority in an expedited manner and shall waive all fees relating to such permits, approvals, consents and authorizations.

Section 1.13 Site Management.

During the performance of the construction of the Project, the Developer shall cause the Project Site to be kept free from accumulation of waste materials, rubbish and other debris resulting from such construction in amounts beyond those typically accumulated in a well

managed and well maintained construction project of comparable scope. Upon final completion of the construction of the Project or any specified portion thereof; the Developer shall cause all refuse and debris, tools, construction equipment, machinery and surplus materials (to the extent such items are not going to be used in the Developer's operation of the Project) to be removed from that portion of the Project Site upon which the work or specified portion thereof has been completed.

Section 1.14 Utility Service During Construction.

The Developer, at its expense and in compliance with applicable rules and regulations of relevant utility companies and government agencies, shall be responsible for (a) arranging for provision to the Project Site during the construction phase of the Project of such water, electrical, waste disposal and other utility services as are reasonably required for completion of such construction in the time and manner contemplated by this Agreement, and (b) payment for all such services.

Section 1.15 Access to Work.

Prior to final completion of the Project, the City and all governmental agencies having legal jurisdiction thereover shall be afforded such access to the Project Site as may reasonably be necessary for their observation and inspection of the Project. The City and any such governmental agencies shall notify the Developer of their desire to access the Project Site, not less than one Business Day prior to the desired date of the access to the Project Site. The City and any such governmental agencies accessing the Project Site shall not interfere with the construction or operation the Project by the Developer and shall be accompanied at all times by personnel of the Developer. The Developer shall advise persons with such access of the Developer's site safety procedures and programs so that they may comply therewith as

applicable. This Section 1.15 shall not limit the rights, otherwise provided by law, of the building inspector, fire inspector or other similar regulatory office to inspect the Project.

Section 1.16 Insurance.

A. The Developer shall purchase and maintain insurance at all times during the term of this Agreement as required by law.

B. The Developer shall obtain and maintain or cause its contractors to obtain and maintain in force builder's risk insurance in an amount equal to one hundred percent (100%) of the insurable value of the Project protecting against risks of physical loss of the work. Such insurance shall insure against the perils of fire, extended coverage, vandalism and malicious mischief. The Developer shall furnish the City with a certificate of insurance showing coverage of such risks. If a fire or other insured casualty shall occur during the construction of the Project, the Developer shall apply any related insurance proceeds received by the Developer to the construction of the Project.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER

The Developer makes the following representations and warranties, which representations and warranties are true and correct on the date hereof:

Section 2.1 Organization and Existence.

The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and is qualified to do business in the State. The Developer has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being conducted and as contemplated under this Agreement.

Section 2.2 Power and Authority.

The Developer has all requisite corporate power and authority to enter into this Agreement and to perform its obligations under this Agreement.

Section 2.3 Due Authorization.

All corporate acts and other proceedings required to be taken by the Developer to authorize the execution, delivery and performance of this Agreement have been duly and properly taken.

Section 2.4 Due Execution.

This Agreement has been duly executed and properly delivered by the Developer and constitutes the valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to (i) bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally heretofore or hereafter enacted and (ii) to the exercise of judicial discretion in accordance with the general principle of equity.

Section 2.5 No Violation.

The execution and delivery of this Agreement by the Developer does not, and the consummation of the transactions contemplated hereby and compliance with the terms hereof will not, (a) conflict with or result in a violation of (i) its organizational documents; (ii) any judgment, order, writ, injunction, decree, statute, law, ordinance, rule or regulation applicable to the Developer; or (iii) Applicable Laws; or (b) conflict with, or result in or cause any material breach, violation of or default under, any material contract, agreement, other instrument, commitment, arrangement of understanding to which the Developer is a party or which otherwise applies to the Developer which would have a material adverse effect on Developer's ability to perform its obligations hereunder.

Section 2.6 No Consents Required.

No authorization, consent or approval of, or filing with or notice to, any person (including any governmental authority or body) is required in connection with the execution or delivery of this Agreement by the Developer which has not been obtained and which, if not obtained, would have a material adverse effect on the ability of the Developer to perform its obligations hereunder.

Section 2.7 No Material Non-Arm's-Length Transactions.

The Developer has not entered into any transaction or agreement with any Affiliate of the Developer on other than commercially reasonable terms which transaction or agreement could have a materially adverse effect on the Developer's ability to perform its obligation under this Agreement.

Section 2.8 Financial Capacity to Complete Project.

As of the date hereof, the Developer has or will have sufficient assets or has or will have otherwise secured all financing necessary to carry out and complete its obligations under this Agreement.

Section 2.9 Survival of Representations and Warranties.

The Developer covenants that the representations and warranties made by it in this Agreement shall be true and correct on each day that this Agreement remains in full force and effect, with the same effect as if such representations and warranties had been made and given on and as of such day; except that if any such representation and warranty is specifically given in respect of a particular date or particular period of time and related only to such date or period of time, then such representation and warranty shall continue to be given only as of such date or for such period of time.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CITY, THE REDEVELOPMENT COMMISSION, AND THE ECONOMIC DEVELOPMENT COMMISSION

Each of the City Parties makes the following representations and warranties, which representations and warranties are true and correct on the date hereof, and makes the following covenants and agreements:

Section 3.1 Power and Authority.

Each of the City Parties has all requisite corporate power and authority to enter into this Agreement and to perform their respective obligations under this Agreement.

Section 3.2 Due Authorization.

All acts and other proceedings required to be taken by the City Parties to authorize the execution, delivery and performance of this Agreement have been duly and properly taken.

Section 3.3 Due Execution.

This Agreement has been duly executed and properly delivered by the City Parties and constitutes the valid and binding obligation of each of the City Parties, enforceable in accordance with this Agreement's twins, subject to (i) bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally heretofore or hereafter enacted; (ii) the exercise of judicial discretion in accordance with the general principles of equity; (iii) the valid exercise of the constitutional powers of the City Parties, the State and the United States of America; and (iv) public policy of the State and the United States of America.

Section 3.4 No Violation.

The execution and delivery of this Agreement by the City Parties do not, and the consummation by the City Parties of the transactions contemplated hereby and compliance by the City Parties with the terms hereof will not:

A. Conflict with or result in a violation of (i) any provision of any instrument governing any of the City Parties (including, without limitation, the State Constitution, and any City, Commission or state enabling legislation) or (ii) any judgment, order, writ, injunction, decree, statute, law, ordinance, rule or regulation applicable to any of the City Parties; or

B. Conflict with or result in or cause any material breach, violation of or default under any material contract, agreement, other instrument, commitment, arrangement, or understanding, or grant to which any of the City Parties is a party or which is otherwise applicable to any of the City Parties, including, without limitation, the terms of all bond indentures, resolutions or other similar documentation, arising from or in any way related to the planning, development, construction and maintenance of the Project.

Section 3.5 Operation of Project.

There is no law, ordinance, regulation or rule of any of the City Parties enacted or, to the best knowledge of the City Parties, proposed that would prohibit the Developer from fully utilizing the Project on a 24-hours-a-day, seven-days-a-week basis in the manner currently contemplated.

Section 3.6 No Consents Required.

No authorization, consent or approval of, or filing with or notice to, any person (including any governmental authority or body) is required in connection with the execution or delivery of this Agreement by the City Parties.

Section 3.7 No Litigation.

There is no proceeding against or involving any of the City Parties (whether in progress or to the best of knowledge of any of the City Parties threatened) which, if determined adversely to any of the City Parties would materially adversely affect its or their ability to perform any of the provisions of this Agreement or which purports to affect the legality, validity and enforceability of this Agreement; to each of the City Party's knowledge, no event has occurred which might give rise to any proceeding; and there is no judgment, decree, injunction, rule, aware or order of any governmental body outstanding against any of the City Parties which has or may have a material adverse affect on its or their ability to perform any of the provisions of this Agreement or which purports to affect the legality, validity and enforceability of this Agreement.

Section 3.8 Survival of Representations and Warranties.

Each of the City Parties covenants that the representations and warranties made by it in this Agreement shall be true and correct on each day that this Agreement remains in force and effect, with the same effect as if such representations and warranties had been made and given on and as of such day; except that if any such representation and warranty is specifically given in respect of a particular date or particular period of time and related only to such date or period of time, then such representation and warranty shall continue to be given only as of such date or for such period of time.

Section 3.9 Joint and Several Liability.

The City Parties shall be jointly and severally liable for all obligations of any of the City Parties under this Agreement, including, but not limited to, the payment of the Incentive to the Developer.

ARTICLE IV

AFFIRMATIVE COVENANTS OF THE DEVELOPER

The Developer covenants and agrees as follows:

Section 4.1 Conduct of Business.

The Developer shall do or cause to be done all things reasonably necessary to maintain its corporate existence and maintain its qualifications to do business in the State, to maintain its organizational power and capacity to own its properties and assets and to carry on its business in accordance with normal industry standards so as not to adversely affect Developer's ability to perform its obligations under this Agreement.

Section 4.2 Compliance with Applicable Laws, Sublease and Contracts.

The Developer shall comply in all material respects with the requirements of all Applicable Laws applicable to Developer's construction of the Project. In addition, the Developer shall comply in all material respects with all obligations, insurance policies and contracts to which it is a party and which, if contravened, could have a material adverse effect on the Developer's ability to perform its obligations under this Agreement.

Section 4.3 Payment of Taxes and Claims.

The Developer shall or shall cause any contractor, with respect to the construction of the Project, to (i) pay and discharge all lawful claims for labor, material and supplies; (ii) pay and discharge all taxes payable by it; and (iii) withhold and collect all taxes required to be withheld and collected by it and remit such taxes to the appropriate governmental body at the time and in the manner required; provided, however, that no such claim or taxes need by paid, collected or remitted if (a) it is being actively and diligently contested in good faith by appropriate proceedings; (b) reserves considered adequate by the Developer and its accountants shall have

been set aside; and (c) all enforceable proceedings with respect to such claim or taxes have been stayed and appropriate security shall have been given, if required, to prevent the commencement or continuation of proceedings.

Section 4.4 Site Visit.

Except to the extent prohibited by Applicable Law or as may be necessary to protect the Developer's proprietary information, the Developer shall permit the City and its authorized employees, representatives and agents, upon giving notice at least one Business Day in advance, to inspect the construction of the Project during normal business hours. All personnel of the City making such an inspection shall not interfere with the construction or operation of the Project by the Developer, shall comply with all safety rules of the Developer, and shall he accompanied by the Developer.

ARTICLE V

DEFAULT AND REMEDIES

Section 5.1 Events of Default.

The following events, if not remedied, as hereinafter provided, shall be deemed an "Event of Default" by the respective party:

A. The Developer's failure to construct the Project in accordance with the schedule set forth in Section 1.1 hereof;

B. The failure by any of the City Parties to perform any covenant or agreement herein on such City Party's part to be kept or performed.

Section 5.2 Extensions Upon Default.

In the event of an Event of Default by either party, or any successor, the defaulting or breaching party (or successor) shall, upon written notice from the other party specifying such

default or breach, proceed immediately to cure or remedy such default or breach, and shall, in any event, within thirty (30) days after receipt of notice, commence to cure or remedy such default or breach. In the event that the defaulting or breaching party (or successor) diligently and in good faith commences to cure or remedy such default or breach but is unable to cure or remedy such default or breach within thirty (30) days after receipt of notice, the defaulting or breaching party (or successor) shall, prior to the end of such thirty (30) days, provide notice to the other party that it has in good faith commenced to cure or remedy such default or breach, whereupon the defaulting or breaching party (or successor) shall have an additional ninety (90) days to cure or remedy such default or breach. In case such cure or remedy is not taken or not diligently pursued, or the default or breach shall not be cured or remedied prior to the end of the additional ninety (90) day period, the remedy to the aggrieved party shall be as set forth below in Section 5.3.

Section 5.3. Remedies.

Upon the occurrence of any Event of Default the remedies to aggrieved party shall be as follows:

A. In the case of an Event of Default by the Developer as stated in subsection (A) of Section 5.1, the City shall he entitled to seek any and all remedies available to it at law or in equity.

B. In the case of an Event of Default by any of the City Parties, the Developer shall be entitled to seek any and all remedies available to it at law or in equity.

Section 5.4 Exclusion of Certain Damages.

The City Parties and the Developer shall be entitled to make claims against each other solely tor direct damages. The City Parties and the Developer waive all claims against each other

(and against each other's respective Affiliates members, shareholders, officers, directors, agents and employees) for any consequential, incidental, indirect, special, exemplary or punitive damages, regardless of whether any such claim arises out of breach of contract, tort, product liability, indemnity, contribution, strict liability, or any other legal theory.

ARTICLE VI

TERM OF AGREEMENT AND TERMINATION

The term ("Term") of this Agreement, and its effectiveness, shall commence upon the full execution of this Agreement by each of the parties hereto and shall continue in full force and effect until the first to occur of (i) the Developer completes construction of the Project and receives the entire amount of the Incentive, or (ii) the termination of this Agreement by the City Parties upon not less than thirty (30) days' prior written notice to the Developer due to a failure by the Developer to complete the construction of the Project in accordance with Section 1.1 hereof following the applicable cure periods set forth in Section 5.2 hereof or elsewhere in this Agreement, or (iii) the termination of this Agreement by the Developer upon not less than thirty (30) days' prior written notice to the City Parties due to a failure by the City Parties to deliver to the Developer any portion of the Incentive pursuant to Section 1.11 or the inability of the Developer to receive the zoning variance or any other local, state or federal approval necessary to complete the construction or operation of the Project. The parties hereto acknowledge that, notwithstanding the termination of this Agreement, each of them may have continuing obligations under the financing agreements entered into with respect to the issuance of the Bonds.

ARTICLE VII

MISCELLANEOUS

Section 7.1 No Agency, Partnership or Joint Venture.

Nothing contained in this Agreement nor any act of the City Parties or the Developer, or any other person, shall he deemed or construed by any person to create any relationship of third-party beneficiary, or if principal and agent, limited or general partnership, or joint venture between the City Parties and the Developer.

Section 7.2 Negotiated Document.

The Developer and the City Parties acknowledge that the provisions and the language of this Agreement have been negotiated at arm's-length and agree that no provision of this Agreement shall be construed against either the Developer or the City Parties by reason of either party having drafted such provision of this Agreement.

Section 7.3 Compliance with Laws.

The Developer and the City Parties each acknowledge that the obligations of the City Parties described in this Agreement, including without limitation any obligation to acquire property, or to sell, lease or dispose of any interest in property owned by the City Parties, may involve certain and various legally required proceedings and/or approvals, and any and all such obligations or undertakings of the City Parties described herein are accordingly subject to compliance with such proceedings and all other Applicable Laws to which the City Parties may be subject.

Section 7.4 Force Majeure.

Neither the Developer nor any successor in interest to Developer shall be considered in breach or default of its obligations under this Agreement, and times for performance of

obligations hereunder shall be extended in the event of any delay caused by an event of force majeure, including with limitation, an Act of God, strike, lockout or other industrial disturbance (whether or not such strike, lockout or other industrial disturbance could be avoided or mitigated by acceding to worker demands), acts of vandals, criminals or public enemies, act of terrorism, war, blockade, public riot, lightning, fire, storm, flood, explosion, blackout, orders of the government of the United States of America, the State or municipality or any of their departments, agencies or officials, orders of any civil military authority, unavailability, disruptions, shortages or failure to perform (as applicable) of transportation, carriers, suppliers, contractors, subcontractors, product or equipment, breakage or accident to machinery, transmission pipes or canals, partial or entire failure of utilities, and any other cause which is not reasonably within the control of the Developer; provided that such event of force majeure shall not be deemed to exist as to any matter initiated or sustained by either party in bad faith, and further provided that the Developer notifies the City Parties in writing within sixty (60) days of the commencement of such claimed event of force majeure.

Section 7.5 Exhibits.

All Exhibits identified in or attached to this Agreement are incorporated herein and made part hereof by this reference.

Section 7.6 Captions.

The captions, headings and arrangements in this Agreement are for convenience only and do not in any way define, limit or modify the terms or provisions hereof.

Section 7.7 Number and Gender.

Whenever the singular number is used in this Agreement, the same shall include the plural where appropriate and words of any gender shall include the other gender where appropriate.

Section 7.8 Notices.

No notice, approval, consent or other communication authorized or required by this Agreement shall be effective unless the same shall be in writing. Any such communications shall be effective (i) upon receipt if it is hand delivered, with signed receipt therefore obtained, (ii) seventy two (72) hours after it is sent postage prepaid by United States registered or certified mail, return receipt requested, (iii) twenty four (24) hours after it is deposited with a national courier for overnight delivery, or (iv) twenty four (24) hours after it is sent by fax, with written confirmation therefore obtained, directed or addressed in each case set forth in (i) through (iv) above to the other party at its address (or fax number) set forth below.

The addresses and fax numbers for notices are:

To the City Parties: City of Hammond
5925 Calumet Avenue
Hammond, Indiana 46320
Attention: Mayor
Fax No.: 219-931-0831

Department of Planning and Development
5925 Calumet Avenue, Suite 111
Hammond, Indiana 46320
Attention: Executive Director
Fax No.: 219-853-6334

With a copy to: David W. Westland, Esq.
Westland & Bennett P.C.
141 W. Lincoln Hwy, Second Floor
Schererville, IN 46375
Fax: 219.440.7551

To the Developer: ThruPort Intermodal, LLC
6939 Kennedy Avenue
Hammond, Indiana 46323
Attention: J. Justin Murphy, CEO
Fax No.: 219-844-3400

With a copy to: James L. Wieser, Esq.
Wieser & Wyllie, LLP
429 West Lincoln Highway
Schererville, Indiana 46375
Fax No.: 219-865-7408

Any party may, in substitution of the foregoing, designate a different address and addresses (and/or fax number or numbers) within the continental United States for purposes of this Section by written notice delivered to all other parties in the manner prescribed in this Section at least ten (10) days in advance of the date upon which such change of address is to be effective.

Section 7.9 Survival.

All representations, warranties and indemnities set forth in this Agreement shall survive the termination hereof for a period equal to the term of the Bonds.

Section 7.10 Counterparts.

This Agreement may be executed in a number of identical counterparts and, if so, executed, each such counterpart is deemed an original for all purposes, and all such counterparts shall collectively constitute one Agreement.

Section 7.11 Binding Effect.

The Developer may assign its rights and obligations under this Agreement to an Affiliate of the Developer without the consent of the City Parties, and may otherwise assign its rights and obligations under this Agreement with the consent of the City Parties, which consent shall not be unreasonably withheld. The rights of the Developer and the City under this Agreement shall inure to the Developer and the City, respectively, and upon their respective successors and

permitted assigns. However, the respective obligations of the Developer and the City under this Agreement shall not extend to their shareholders, officers, directors, office holders, employees, agents, consultants, contractors, members, partners, joint ventures or Affiliates of the Developer.

Section 7.12 Time of the Essence.

Time is of the essence in the performance of this Agreement and each and every provision contained herein.

Section 7.13 Costs of Proceedings.

In the event of the institution of any proceeding relating to the performance of this Agreement, the parties agree that costs and expenses, including reasonable attorneys' fees and expenses, incurred by the prevailing party (as defined herein) in connection with such proceeding, will be paid by the prevailing party. The prevailing party shall be defined as (i) the party which ultimately is awarded an amount (net of any offsets or counterclaims awarded to the other party) in excess of the last settlement offer made in writing by the other party, or (ii) the party which made the last settlement offer in writing, if the amount ultimately awarded (net of any offsets or counterclaims awarded to the other party) is less than such last settlement offer, or (iii) the party which ultimately is awarded an amount, regardless of sum, if no settlement offer was ever made in writing by the other party, or (iv) if no amount is awarded, but instead equitable relief is granted, the party in whose favor such equitable relief is granted.

Section 7.14 Severability.

If and in the event any provision of this Agreement is determined to be invalid for any reason, it shall be severed and all other provisions not determined invalid shall continue with full force and effect; provided, however, that if (i) such declaration of invalidity relieves a party of a material obligation to the other, or eliminates a material benefit to a party, and (ii) the effect of

either of the foregoing is to deprive the other party of substantially all of the benefits to such party of the transactions contemplated by this Agreement, then the adversely affected party shall have the right to terminate this Agreement, by giving notice of such termination to the other party.

Section 7.15 Non-Waiver.

No failure by either party hereto, at any time, to require the performance by the other of an term of this Agreement, shall in any way affect the right of either party to enforce such terms, nor shall any waiver by either party of any term hereof by taken or held to be a waiver of any other provision of this Agreement. No waiver of any term or provision of this Agreement shall be effective unless the same is in writing, signed by the parties hereto.

Section 7.16 Governing Law.

This Agreement is entered into in the State and shall be governed by and construed (and all of the rights and obligations hereunder shall be determined) in accordance with the internal laws of the State, without reference to the choice of law principles thereof.

Section 7.17 No Third Party Beneficiaries.

Nothing in this Agreement shall be construed as creating any rights of entitlement that inure to the benefit of any person or entity not a party of this Agreement.

Section 7.18 Jurisdiction and Consent to Suit.

Subject to the provisions of this Agreement, each of the City Parties and the Developer hereby agrees and consents to the exclusive personal and subject matter jurisdiction of the United States District Court for the Northern District of Indiana, Hammond Division, which shall be the sole and exclusive forum in connection with any claim, cause of action or other dispute by either of them against the other arising out of or relating to the terms, obligations and conditions of this

Agreement. The parties agree that service shall be effective by notice under the Federal Rules of Civil Procedure to any individual listed in Section 7.8 or authorized representative or agent; provided, however, that each party shall retain any rights in may have under Applicable Laws then in effect to seek a change of judge in any proceeding before such designated court. Each of the City Parties covenants that it shall not assert in any such action, as a defense to any claim by the Developer for breach or violation by the City Party of this Agreement, any defense of sovereign or governmental immunity to which the City Party might otherwise claim to be entitled under Applicable Laws then in effect.

Section 7.19 Confidentiality.

The parties acknowledge that the Agreement shall be subject to public disclosure under the laws of the State, if; as and when it is executed and becomes effective.

Section 7.20 Standards for Consent.

Where any provision of this Agreement requires the consent or approval of either party, each party agrees that it will not unreasonably withhold, condition, or delay such consent or approval, except as otherwise expressly provided in this Agreement, and the reasonableness of each party's determination shall be evaluated in accordance with any particular standards governing such particular consent or approval as expressly set forth in this Agreement, or if no standards are expressly set forth, then in accordance with all relevant facts and circumstances. Where any provision of this Agreement requires one party to do anything to the satisfaction of the other party, the other party agrees that it will not unreasonably refuse to state its satisfaction with such action. Any dispute over the reasonableness of either party withholding or conditioning its consent or satisfaction shall be resolved pursuant to this article of this Agreement.

ARTICLE VIII

DISPUTE RESOLUTION AND TERMINATION

Section 8.1 Alternative Dispute Resolution.

If a dispute arises between the Developer and the City Parties relating to this Agreement, the Developer and the City Parties, to the fullest extent permitted by applicable law, agree to use the following procedure to resolve the dispute:

A. A meeting shall be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute; and

B. If, within fourteen (14) days after that meeting, the parties have not succeeded in negotiating a resolution to the dispute, they hereby agree to submit the dispute to mediation in accordance with the Commercial Mediation Rules of the American Arbitration Association and to bear equally the costs of the mediation.

1. The parties will jointly appoint a mutually acceptable mediator, seeking assistance in this regard from the American Arbitration Association if they are unable to agree upon this appointment within twenty-one (21) days from the conclusion of the negotiation period; and

2. The parties agree to participate in good faith in the mediation and negotiation related thereto for a period of thirty (30) days.

C. If, upon the completion of the mediation process described in subparagraphs A and B, the parties have not succeeded in reaching a resolution to the dispute, then the parties may assert claims or bring actions in a court of law, or pursue any other remedy with respect to

any rights of the parties under this Agreement or in connection with the transactions contemplated this Agreement.

ARTICLE IX

DEVELOPER'S INDEMNIFICATION OBLIGATIONS

Section 9.1 Environmental Indemnification.

The Developer agrees, at the Developer's sole cost and expense, to protect, defend, indemnify and save harmless the City Parties from and against any and all liabilities, obligations, claims damages, penalties, causes of action, response and clean up costs, and other costs expenses (including, without limitation, reasonable attorneys' fees, the cost of any remedial action, consultant fees, investigation and laboratory fees, court costs and litigation expenses) arising out of or relating to, the presence, disposal, escape, seepage, leakage, spillage discharge, emission, release or threatened release of any Hazardous Materials on, from or affecting the Project Site to the extent caused by the Developer in the construction of the Project and as a result of a breach of this Agreement.

Section 9.2 General Indemnification.

A. The Developer shall hold harmless, indemnify and defend the City Parties and their governing body members, officers, agents, employees and independent contractors for any damage or injury to the persons or property of the Developer or its officers, agents, employees, independent contractors or any other persons who may he about the Project during construction thereof, except for matters arising out of the gross negligence or willful misconduct of the City Parties and their governing body members, officers, agents, employees and independent contractors.

B. The City Parties and their governing body members, officers, agents, employees and independent contractors shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, employees, independent contractors or any other persons who may be about the construction of the Project except for matters arising out of the gross negligence or willful misconduct of the City Parties and their governing body members, officers, agents, attorneys, employees and independent contractors.

C. All covenants, stipulations, promises, agreements and obligations of the City Parties contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City Parties and not of any of their governing body members, officers, agents, attorneys, employees or independent contractors in their individual capacities.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above, to be effective on the Effective Date of this Agreement.

[signature pages follow this page]

SIGNATURE PAGE OF CITY OF HAMMOND, INDIANA
TO
DEVELOPMENT AGREEMENT

CITY OF HAMMOND, INDIANA

BY:_____
Thomas M. McDermott, Jr., Mayor

BY:_____
Michael Opinker, Council President

ATTEST:

_____
Robert J. Golec, Clerk

SIGNATURE PAGE OF CITY OF HAMMOND REDEVELOPMENT COMMISSION
TO
DEVELOPMENT AGREEMENT

CITY OF HAMMOND
REDEVELOPMENT COMMISSION

By: _____

Title: PRESIDENT

ATTEST:

By: _____
Secretary

SIGNATURE PAGE OF
CITY OF HAMMOND ECONOMIC DEVELOPMENT COMMISSION
TO
DEVELOPMENT AGREEMENT

CITY OF HAMMOND ECONOMIC
DEVELOPMENT COMMISSION

By: Richard M. Bloster

Title: President + HEDC

ATTEST:

By: _____
Secretary

SIGNATURE PAGE OF THRUPORT INTERMODAL, LLC
TO
DEVELOPMENT AGREEMENT

THRUPORT INTERMODAL, LLC

By: _____
J. Justin Murphy, Chief Executive Officer

ATTEST:

By: _____

EXHIBIT A

Description of Project

[To be inserted]

EXHIBIT B

Description of Project Site

[To be inserted]