

PETITIONER: \_\_\_\_\_  
Department of Planning & Development

SPONSOR: \_\_\_\_\_  
Councilman Pete Torres, 2<sup>nd</sup> District

RESOLUTION NO. 2022-   R09  

A RESOLUTION OF THE HAMMOND COMMON COUNCIL APPROVING THE DEVELOPMENT AGREEMENT AMONG THE CITY OF HAMMOND, INDIANA, THE CITY OF HAMMOND REDEVELOPMENT COMMISSION, AND NWI HOHMAN LLC REGARDING THE BANK CALUMET BUILDING PROJECT

**WHEREAS**, the City of Hammond Redevelopment Commission (the "Commission"), the governing body of the Hammond Indiana Department of Redevelopment (the "Department"), pursuant to I.C. § 36-7-14-1, et seq. (the "Act"), approved and adopted the Development Agreement among the City of Hammond, Indiana, (the "City"), the Commission, and NWI Hohman LLC. (the "Developer") on May 5, 2022;

WHEREAS, the Development Agreement provides that the City and the Commission (collectively the "City Parties") will provide a financial incentive as more fully set forth therein to be applied to the development costs for the project of the Developer; and

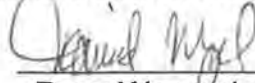
**WHEREAS**, the Department and Commission, pursuant to the Act, have conducted investigations and have thoroughly studied the project proposed by the Developer, and believe the development is in the best interest of the City and its citizens; and

**WHEREAS**, the Commission and the Department are requesting that the Hammond Common Council ratify and approve the Development Agreement;

**NOW, THEREFORE, BE IT RESOLVED** by the Hammond Common Council, as follows:

1. The Development Agreement among the City of Hammond, Indiana, the City of Hammond Redevelopment Commission, and NWI Hohman LLC attached hereto as Exhibit "A", is hereby in all respects approved, ratified and confirmed.
2. This Resolution shall remain in full force and effect after its adoption by the Common Council and approval by the Mayor.

HAMMOND COMMON COUNCIL

By:   
Dave Woerpel, President

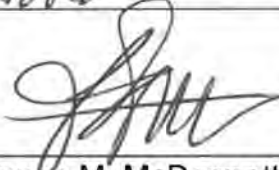
ATTEST:

  
Robert J. Golec, City Clerk

PRESENTED BY ME, the undersigned City Clerk of the City of Hammond to the Mayor of said City for his approval on the 24th day of May, 2022.

  
Robert J. Golec, City Clerk

The foregoing Resolution No. R09, consisting of two (2) typewritten pages including this page, was APPROVED by the Mayor on the 29<sup>th</sup> day of May, 2022.

  
Thomas M. McDermott, Jr.  
Mayor, City of Hammond

Passed by the Common Council on the 23rd day of May, 2022, and APPROVED by the Mayor on the 29<sup>th</sup> day of May, 2022.

  
Robert J. Golec, City Clerk

**DEVELOPMENT AGREEMENT**

AMONG

CITY OF HAMMOND, INDIANA

CITY OF HAMMOND REDEVELOPMENT COMMISSION

AND

NWI HOHMAN LLC

RE:

BANK CALUMET BUILDING PROJECT

DATED: May 5, 2022

## DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (the "Agreement") made as of this 5<sup>th</sup> day of May, 2022, 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"), and NWI Hohman, LLC, an Indiana limited liability company (the "Developer").

### WITNESSETH:

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

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; and

C. The City, the Redevelopment Commission, and the Economic Development Commission (collectively, the "City Parties") desire to stimulate and promote economic development activities in or about the downtown area, which is part of the Downtown Allocation Area (as defined below and as depicted on Exhibit A); and

D. Simultaneously herewith, Developer has acquired or will acquire a certain portion of the real estate located in the Downtown Allocation Area, commonly known as 5231 Hohman Avenue, Hammond, Indiana and has submitted to the City Parties a proposal for the development

of the building for approximately 100 units of Market Rate rental apartments and approximately 10,000 sq. ft. of ground floor commercial; and

E. It is intended that: (i) the development include the rehabilitation of the first floor lobby as common area and retail space; (ii) the residential apartments include convertible, studio, 1 bedroom and 2 bedroom apartments, with up to 40% of such units having balconies on the east and south façade; (iii) the rehabilitation and restoration, but not preservation, of the north and west façades of the building to allow for the continued historic and iconic character of the building on the Hohman/Fayette side; and (iv) new windows be installed throughout to serve the residential use, including on the 9th floor of the building; and

F. The City Parties have taken or will take such actions (including public hearings) as are prescribed by law and as may be necessary to enter into and perform this Agreement; and

G. The City Parties desire to induce the Developer to proceed with the Project in the City, by providing to the Developer (or an Affiliate) financial incentives, including a loan with net proceeds of \$5,000,000.00 funded through the City's sale of the hereinafter defined Bonds to be applied to the cost of the Project (the "TIF Loan"), a \$150,000.00 façade grant (the "Façade Grant") and other incentives listed in Section 1.11 of this Agreement; and

H. The City Parties will take all steps as shall be reasonably necessary to issue Economic Development Revenue Bonds, Series 2022B (Bank Calumet Building Project) (or with such further series or different designations as determined to be necessary or appropriate) (the "Bonds"), to finance the TIF Loan, provided the Developer has met all requirements herein at the time the bonds are marketed, sold, and issued; and

I. In order to facilitate the Project, the City Parties desire to provide the Developer access to City-owned land adjacent to the Project for staging for the Project construction and a

minimum of 100 parking spaces for the Project's exclusive use (the "Parking Incentive") in accordance with the terms of the Lease Agreement; and

J. The City Parties shall take all steps as shall be reasonably necessary to review the application for the Façade Grant, and thereafter, if appropriate, approve and disburse the Façade Grant; and

K. 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 Incentives 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 Downtown Allocation Area; and

L. The City Parties acknowledge that the Project is a vital component of the Jeff Speck Downtown Master Plan (established/adopted 2019) implementation, and in accordance with the Jeff Speck Downtown Master Plan, the City Parties (assuming sufficient funding is legally available for such purposes) will begin said infrastructure improvements and "Downtown Placemaking" prior to August 1, 2022, including, but not limited to, the realignment of Rimbach Street, the installation of Rimbach Plaza, and the installation of additional parking and landscaping on Hohman Avenue from Sibley Street to Russell Street (Phase I) (collectively, the "Downtown Placemaking Improvements"); and

M. The City Parties acknowledge that conducting Downtown Hammond Placemaking and community events, as well as adopting a larger branding and communication plan for Downtown Hammond are key components to the success of the Project and that the City Parties (assuming sufficient funding is legally available for such purposes) will use their best efforts to attract new residents and businesses to Downtown Hammond prior to the Project's completion (collectively, the "Downtown Community Development Programs"); and

N. Assuming sufficient funding is legally available for such purposes, the City Parties are committed to constructing a Downtown Hammond train station following the completion of the West Lake South Shore expansion improvement; and

O. City Parties and Developer acknowledge that the Property is identified on the Indiana Historic Site and Structures Inventory as an outstanding property and is eligible for listing on the National Register of Historic Places. The Developer as a recipient of state tax credits will determine whether any approvals are necessary from the State of Indiana. Provided no federal money is being received by the Developer, City Parties acknowledge that a Section 106 Process is not required; and

P. The City Parties and the Developer have determined that the zoning classification that best suits the Project is a C-3, Central Business District Classification, with a conditional use to allow residential units on upper floors and such other uses as may reflect the planned development of the Project (the "Conditional Use"); and

Q. Pursuant to due notice and advertisement in the manner provided by law, the City's Board of Zoning Appeals has held such public hearing as prescribed by law and after due consideration and public participation has approved the conditional use to allow residential units on the upper floors; and

R. 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 Downtown Allocation Area in accordance with this Agreement.

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 Parties, 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, 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.

**“Conditional Use”** means the conditional use (once approved or already approved) that

allows residential units on upper floors of the Project and such other uses as may reflect the planned development of the Project.

**“Developer”** means NWI Hohman, LLC, an Indiana limited liability company, and its agents, assigns and subsidiaries.

**“Downtown Allocation Area”** means the Downtown No. 1 Urban Renewal Area Allocation Area previously established by the Redevelopment Commission pursuant to Resolution No. TIF-9-96, adopted by the Redevelopment Commission on August 16, 1996, as confirmed and amended, in accordance with IC 36-7-14-39 for the purposes of capturing incremental ad valorem property taxes levied and collected on all taxable real property in such allocation area.

**“Economic Development Commission”** means the City of Hammond Economic Development Commission, established pursuant to the EDC Act.

**“EDC Act”** means Indiana Code 36-7-11.9 and 12, as supplemented and amended.

**“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.).

**“Façade Grant”** means the \$150,000.00 façade grant to preserve the iconic attributes of the north and west façades of the Project.

**“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 items covered by the Comprehensive Environmental Response Compensation and Liability Act of 1980 42 U.S.C. §§ 9601-75 (1986), as amended by the Superfund Amendment and Reauthorization Act, Pub. L. No. 99-499, 100 Stat. 1613 (1986) (“CERCLA”), The Toxic Substances Control Act, 15 U.S.C. §2601 et seq., The Clean Water Act, 33 U.S.C. §1251 et seq., The Safe Drinking Water Act, 42 §§300(f)-300(j), and other federal, state and local laws now or hereafter in effect governing the existence, removal, or disposal of toxic or hazardous substances or materials existing at the Project Site (except to the extent such rules, regulations and statutes allow limited quantities of such materials to be present).

**“Incentives”** means all consideration defined in Section 1.11, including, but not limited to, the TIF Loan, the Façade Grant and the Parking Incentive.

**“Lease Agreement”** means the separate agreement to be entered into between the City and

Developer regarding the rights, duties and use of the Parking Lot(s) for the Parking Incentive.

**“Market Rate”** means the residential rental rates as defined in the reports entitled “An Analysis of Residential Market Potential for Downtown Hammond,” July 2019 – Zimmerman/Volk Associates Inc. and “An Analysis of the Market Potential for Residential Development – 5231 Hohman Apartments – Hammond, Indiana,” March 2021 – Tracy Cross & Associates, Inc. Market Rate will be reviewed and updated on or about January 1, 2023, and at least every two (2) years thereafter to account for fluctuations in market rate, inflation, supply and demand in the downtown Hammond area, and other market factors that may impact Market Rate. Market Rate shall be adjusted to truly and accurately reflect the residential rental rates in Downtown Hammond without adjustment for any subsidy or government program that would impact a true Market Rate.

**“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 property at 5231 Hohman Avenue, Hammond, Indiana (“Project Site”) into approximately 100 units of Market Rate rental apartments and approximately 10,000 sq. ft. of ground floor commercial space; including: (i) the rehabilitation of the first floor lobby as common area and retail space; (ii) the development of residential apartments, including convertible, studio, 1 bedroom and 2 bedroom apartments, with up to 40% of such units having balconies on the east and south façade; (iii) the rehabilitation of the north and west façades of the building to allow for the continued character of the building on the Hohman/Fayette side; and (iv) the installation of new windows throughout to serve the residential

use, including on the 9th floor of the building.

**“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, 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.

**“TIF Revenues”** means the incremental *ad valorem* property tax proceeds received by the Redevelopment Commission, subject to certain parity claims thereon, which proceeds are derived from the assessed valuation of real property in the Downtown Allocation Area in excess of the assessed valuation described in IC 36-7-14-39(b)(1), as such statutory provision exists on the date of the issuance of the Bonds.

## **ARTICLE I** **CONSTRUCTION**

### **Section 1.1 Construction of Project.**

A. The Developer shall acquire the property for the Project at 5231 Hohman Avenue, Hammond, Indiana, within 90 days of execution of this Agreement. Developer shall commence or cause the commencement of construction of the Project within One Hundred Twenty (120) days

after the later of (i) the closing on the property for the Project at 5231 Hohman, Avenue, Hammond, Indiana or (ii) the execution of the Lease Agreement or such other agreement providing the Parking Incentive (the "Commencement Date"). The Developer shall substantially complete construction of the Project no later than eighteen (18) months following the Commencement Date, subject to force majeure as set forth in Section 7.4 below.

B. If the Developer is unable, after using commercially reasonable efforts excluding litigation, to obtain the Conditional Use or 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 provide the Incentives.

**Section 1.2 Hazardous Materials – Consent Required.**

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 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 obligations under this Agreement.

**Section 1.6 Project Documents.**

The Developer shall maintain during construction of the Project 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, including all necessary worker's compensation insurance;

B. all materials and equipment incorporated in the Project whether in storage or located at the Project Site including an appropriate builder's or owner's risk policy; 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 best reasonable efforts at all times to provide and maintain a drug free workplace at the Project Site.

**Section 1.9 Labor Objectives and Requirements.**

A. The Developer agrees that the Project shall be subject to all applicable City labor-related ordinances and resolutions.

B. All construction contractors of whatever tier will use the United States Department of Labor Bureau of apprenticeship and training registered apprentices and journeyman, to best assure all construction work is performed in a safe and skilled manner.

C. All construction contractors of whatever tier shall comply with drug testing policies and procedures which shall be implemented through the building construction resource center, to best assure all construction work is performed in a safe manner.

D. All construction contractors of whatever tier shall perform a pre-job conference with the Affiliates of the Northwestern Indiana Building and Construction Trades Council before any construction work begins.

E. Hammond Contractors and/or Lake County Contractors.

1. Local Labor 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 who 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 who 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 the 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.

F. 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, disability, sexual orientation, gender identity, national origin, ancestry, disabled veteran status or veteran status.

**Section 1.10 Developer 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 1.11 hereof are submitted to the City.

B. Construct and develop the property at 5231 Hohman Avenue, Hammond, Indiana with approximately 100 units of Market Rate rental apartments and approximately 10,000 sq. ft. of ground floor commercial space; including: (i) the rehabilitation of the first floor lobby as common area and retail space; (ii) the development of residential apartments, including convertible, studio, 1 bedroom and 2 bedroom apartments, with up to 40% of such units having balconies on the east and south façade; (iii) the rehabilitation of the north and west façades of the building to allow for the continued character of the building on the Hohman/Fayette side; and (iv) the installation of new windows throughout to serve the residential use, including on the 9th floor of the building.

**Section 1.11 Incentives; Issuance of Bonds.**

In the event that Developer provides all of the above and complies with all of its obligations pursuant to this Development Agreement (and specifically the obligations in Section 1.10 above), and thereafter acquires the property for the Project as specified in Section 1.1, provides the City Parties with written proof of its financial capacity to complete the Project as described in Section 2.8, and continues with the construction and development of the Project in accordance with this Agreement, the Redevelopment Commission agrees to effectuate the release of the Incentives as set forth below, subject to any restrictions set forth herein.

In the event that there is an Event of Default on the part of Developer as defined in Section 5.1, which Event of Default is not cured within the time extension periods provided in Section 5.2 hereof, the City Parties shall be entitled to seek any of its remedies pursuant to Section 5.3, and

Developer shall reimburse the Redevelopment Commission all funds expended and/or disbursed pursuant to this Agreement.

The City Parties shall provide a Façade Grant of no less than \$150,000.00 to reimburse Developer's façade costs, subject to the successful application process of the City's Façade Grant program. The Façade Grant shall be issued when the Developer has incurred sufficient costs to be reimbursed, has submitted a successful application for the Façade Grant that complies with the grant program requirements.

The City Parties shall further provide a TIF Loan in the aggregate amount of \$5,000,000.00 (without further fees or expenses of the City Parties). The City Parties' obligation to provide this TIF Loan and the Developer's obligation to commence construction of the Project is specifically conditioned upon the City Parties' successfully completing the bond process and closing on the sale of Bonds to finance the entire amount of the TIF Loan as specifically set forth herein. In addition to the ability of the City Parties to obtain all local government approvals required by law, the City Parties' obligation to provide the TIF Incentive is specifically conditioned upon the ability of the parties to the Bond sale to agree on the specific terms of the financing structure, including without limitation terms relating to the following: (a) size and requirement of any debt service reserve fund; (b) requirements for the issuance of additional parity bonds; (c) bond call provisions; (d) any requirements relating to capitalized interest; (e) bond interest rate, and whether such interest is taxable or tax-exempt; (f) maximum principal amount of bonds; (g) principal and interest repayment dates; (h) City's intention not to seek a bond rating; (i) no imposition of any reporting requirements by the City parties to the bondholder/lender; (j) provision by the bondholder of a "sophisticated investor letter", which will require minimum bond denominations of at least \$100,000; and (k) payment of all costs of issuance from the proceeds of the bonds.

The City Parties shall not be required to provide any security for the Bonds other than TIF Revenues generated by the Project (the "Pledged TIF Revenues"). The TIF Loan proceeds shall be disbursed to pay costs of the Project as follows:

A. \$2 million will be disbursed to the Developer when the Developer has commenced construction of the Project, and the City has acquired sufficient funds from the issuance of Bonds, which the City will pursue with all deliberate speed.

B. \$1 million shall be disbursed to the Developer when the Developer has completed fifty percent (50%) of the construction Project (as determined by Project costs).

C. The balance of the TIF Loan of \$2 million will be disbursed to the Developer at such time as Developer has obtained certificates of occupancy for a majority of residential units in the Project.

For each year, beginning in 2025 (2024 assessment, 2025 payment) through and including 2046 (2045 assessment, 2046 payment), Developer agrees to minimum annual property tax payment equal to the sum of (a) \$250,000 plus (b) any existing and/or future referendums (such total, the "Minimum Tax Payment"), with such Minimum Tax Payment secured by a taxpayer agreement (the "Taxpayer Agreement") which shall constitute a lien against the Project Site equal in priority to the property tax lien granted under IC 6-1.1-22-13, as permitted by IC 36-7-25-6. To evidence the TIF Loan, the City and the Developer will enter into a Loan Agreement (the "Loan Agreement") and the Developer will execute a draw note in favor of the City in an amount not to exceed \$5,000,000 ("Developer Note") along with any other security or documentation required under the Loan Agreement. The Developer Note shall provide for interest and principal payments based upon an agreed upon amortization schedule (which interest and principal payments shall be

referred to herein as "Debt Service Obligations"); provided however, that the Developer shall receive a credit each year against the Debt Service Obligations for making the Minimum Tax Payment each year. The Taxpayer Agreement shall provide additional security for any delinquent Debt Service Obligations in accordance with and as contemplated by Indiana Code 36-7-25-6.

Additionally, the City Parties will provide the Parking Incentive to the Developer (or its designee) and in satisfaction thereof, subject to the completion of certain governmental processes, the City and the Developer are anticipated to enter into a lease for the City-owned land depicted on Exhibit C attached hereto as a staging location for Project construction and for parking to accommodate a minimum of 100 parking spaces for the Project's exclusive use (the "Parking Lot(s)") for a term set forth in the Lease Agreement, all as more particularly described in the Lease Agreement. The Parking Lot(s) will be maintained by the Developer in accordance with the Lease Agreement. Developer will also create a painted, striped, cross-walk from the Parking Lot across Fayette Street to the Project for easy connectivity for residents.

In the event the parties hereto are for any reason unable to agree on the specific terms of the Loan Agreement, Taxpayer Agreement or the Lease Agreement, the Developer shall pay the City Parties attorneys' fees, financial advisory fees and any other costs related to the negotiation of this Agreement, the Loan Agreement, Taxpayer Agreement and the Lease Agreement up to \$20,000.

In the event that it is determined, prior to the issuance of the Incentives, that the Project will be owned by an Affiliate, the Incentives and its corresponding obligations will be those of the Affiliate to the extent determined by the City Parties pursuant to and in accordance with the Loan Agreement and Taxpayer Agreement.

**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. In addition, Developer shall cause and ensure that the Project Site is secure and if determined that the Project Site is left unreasonably insecure, the City may secure the site and bill Developer for said work.

**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 ensure that its contractor 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 portion of Project being constructed 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, or to reimburse the City entities for any incentive paid if the Project is not completed.

**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 of Indiana. 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 and is the fee simple owner of all property that is subject of the Project.

**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.**

Prior to commencement of construction, Developer will have sufficient assets or will have otherwise secured all financing necessary to carry out and complete its obligations with respect to the Project under this Agreement and shall provide the City Parties written proof from a bank or other financial institution of the presence of financial capacity to complete the Project.

**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 AND THE REDEVELOPMENT 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 terms, 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 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 Legal Procedural Requirements.**

Execution of this Development Agreement is subject to all legal procedural requirements. The City Parties have taken, or will take, such actions (including public hearings) as are prescribed by law to satisfy any such procedural requirements.

**Section 3.7 Conditional Use.**

The Conditional Use was properly granted or will be before the Board of Zoning Appeals for consideration and, if granted, is or will be in full force and effect. The City has taken or will take such actions (including public hearings) as are prescribed by law to satisfy any procedural requirements for the approval of a conditional use provided that the Board of Zoning Appeals and/or the Hammond Common Council favorably recommend and approve said Conditional Use.

**Section 3.8 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 effect 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 3.9 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 3.10 Intentionally Omitted**

**Section 3.11 Placemaking.**

The City Parties will begin the Downtown Placemaking Improvements prior to August 1, 2022 and will, upon execution of this Agreement, implement the Downtown Community Development Programs. In addition, the City Parties will construct a Downtown Hammond train

station following the completion of the West Lake South Shore expansion improvement and permission from NICTD to construct said station.

**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 each 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 be paid, collected or

remitted if (a) it is being actively and diligently contested in good faith by appropriate proceedings; reserves considered adequate by the Developer and its accountants shall have been set aside; and (b) 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 written 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 be 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, failure to construct the Project per the description in Section 1.10, or violation of any other Developer covenant;

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 undertaken 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 an 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 be entitled to seek any and all remedies available to it at law or in equity; provided however, the acceleration of the repayment of the Developer Note may only occur upon

an Event of Default by Developer under, and in accordance with the terms of, the Loan Agreement and the Taxpayer Agreement.

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 for direct damages. The City Parties and the Developer waive all claims against each other (and against each other's respective Affiliates members, managers, 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's completion of construction of the Project and receipt of the entire amount of the Incentive, or (ii) the termination of this Agreement by the City Parties upon prior written notice to the Developer due to a failure by the Developer to cure an Event of Default under Article V or 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 Incentives pursuant to Section 1.11 or the inability of the

Developer to receive the Conditional Use or any 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 be 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 without limitation, an Act of God, pandemic, 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 emailed or hand delivered, with signed receipt of such hand delivery therefor 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 therefor 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  
Westland & Bennett P.C.  
2929 Carlson Drive, Suite 300  
Hammond, Indiana 46323  
Fax No.: 219.440.7551  
Email: dwestland@westlandbennett.com

To the Developer: NWI Hohman, LLC  
100 Anchor Road  
Michigan City IN 46360  
Attention:  
Email:

With a copy to: Gould & Ratner LLP  
222 North LaSalle Street  
Suite 300  
Chicago, IL 60601  
Attn: John H. Mays  
Fax: 312-236-3241  
Email: jmays@gouldratner.com

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 without the consent of the City Parties. The rights of the Developer and the City Parties under this Agreement shall inure to the Developer and the City Parties, respectively, and upon their respective successors and assigns. Developer's obligations under this Agreement are the obligations of Developer alone and shall not be the obligations of its members, officers, agents, employees or independent contractors. City Parties' obligations under this Agreement are the obligations of the City Parties alone and shall not be the obligations of their governing body members, officers, agents, employees and independent contractors.

**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 any 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 of Indiana 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 of Indiana, 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 it 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 INDEMNIFICATION OBLIGATIONS**

### **Section 9.1 Developer's 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 and 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; provided, however, in no event shall Developer have any liability or obligation to

indemnify the City Parties for any such claims, damages, penalties, causes of action, response and clean-up costs, and other costs and 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 such action occurred prior to the Developer taking possession of the Project Site.

**Section 9.2 Developer's 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 be 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 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

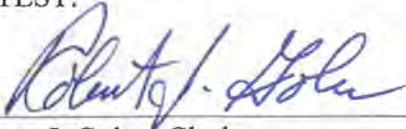
BY: 

Thomas M. McDermott, Jr., Mayor

BY: 

Dave Woerpel, Council President

ATTEST:



Robert J. Golec, Clerk

SIGNATURE PAGE OF CITY OF HAMMOND REDEVELOPMENT  
COMMISSION TO  
DEVELOPMENT AGREEMENT

CITY OF HAMMOND  
REDEVELOPMENT  
COMMISSION

By: *Amy Haymit*

Title: *PRESIDENT*

ATTEST:

By: *Dan Smei*  
Secretary

SIGNATURE PAGE  
OF NWI HOHMAN LLC  
TO  
DEVELOPMENT AGREEMENT

NWI Hohman LLC

By: Anestacia Fratto

Title: Managing Member

**EXHIBIT A**  
**DOWNTOWN ALLOCATION AREA**

**EXHIBIT B**  
**LEGAL DESCRIPTION OF PROJECT SITE**

**EXHIBIT C**  
**PARKING LOT**