

MEMORANDUM

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KNOW ALL MEN BY THESE PRESENTS, that the undersigned, Hammond Port Authority, did enter into that certain Memorandum of Understanding and Consent ("MOU") made and entered into as of the 13th day of October, 1995, pertaining to the following described real estate located in Lake County, Indiana, to-wit:

PARCEL 1A

An "L" shaped parcel of land, lying in the West one-half of Section 6, Township 37 North, Range 9 West of the Second Principal Meridian, Lake County, Indiana, described as commencing at the intersection of the West line of Section 6 and the Northerly line of the Baltimore and Ohio Railroad right-of-way; thence North 00 degrees 00 minutes 00 seconds East along the West section line 154.93 feet; thence South 40 degrees 12 minutes 11 seconds East 61.97 feet to a cross in the concrete walk; thence continuing South 40 degrees 12 minutes 00 seconds East 90.97 feet to an iron rod; thence on a curve to the left 230.01 feet said curve having a radius of 2,814.93 feet a central angle of 4 degrees 40 minutes 54 seconds and a chord that bears South 42 degrees 32 minutes 27 seconds East, 229.94 feet to a point marking the point of beginning; Then along said curve to the left 40.45 feet, said curve having a central angle of 0 degrees 49 minutes 24 seconds and a chord that bears South 45 degrees 17 minutes 36 seconds East, 40.45 feet to a point; thence North 36 degrees 10 minutes 42 seconds East, 799.93 feet to a point; thence South 53 degrees 43 minutes 37 seconds East, 110.0 feet to a point; thence North 36 degrees 16 minutes 42 seconds East, 90.00 feet to a point on the present shoreline of Lake Michigan; thence along the lakeside face of the sheet piling North 53 degrees 43 minutes 37 seconds West 98.83 feet to a corner of the sheet piling; thence South 81 degrees 10 minutes 15 seconds West, 72.38 feet to a corner of the sheet piling; thence South 36 degrees 10 minutes 42 seconds West, 832.73 feet to a point of beginning.

The above referenced real estate is a portion of the real estate the subject of that certain Lease Agreement entered into under

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Beckman, Kelly & Smith
5920 Hohman
→ Blvd 46320

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date of June 30, 1989, wherein DMS of Hammond, Inc. is Lessor, recorded in the Office of the Recorder of Lake County, Indiana, on the 14th day of July, 1989, as Document Number 046882, as well as to that certain Trust Indenture among DMS of Hammond, Inc. and Hammond Port Authority and INB National Bank k/n/a NBD Bank, N.A. as trustee date as of June 30, 1989, and recorded in the Office of the Recorder of Lake County, Indiana the 14th day of July, 1989, as Document Number 046883; a copy of which said Memorandum of Understanding and Consent is attached hereto and made part hereof and incorporated herein by this reference.

ALL OF WHICH DONE this ^{2nd} day of ^{APRIL} ~~March~~, 1996 at Hammond, Indiana as evidenced by the duly authorized signatures hereunder affixed of the Chairman and Secretary respectively of Hammond Port Authority.

HAMMOND PORT AUTHORITY

BY: Bernadette C. Costa
Bernadette C. Costa, Chairman

ATTEST:

Dennis H. Terry
Dennis Terry, Secretary



MEMORANDUM OF UNDERSTANDING AND CONSENT

09/20/95 FINAL

This Memorandum of Understanding and Consent ("MOU") made and entered as of the 13th day of October, 1995 by and between the Hammond Port Authority hereinafter ("Authority") and H. Joseph Vaughn, President, DMS of Hammond, Inc., Lessor Representative, hereinafter ("Representative");

WHEREAS the Authority is a body corporate and politic organized pursuant to Ind. Code § 8-10-5 et seq. pursuant to Ordinance No. 6015 adopted by the City of Hammond on the 26th day of January, 1987 and is a governmental entity in accordance with Ind. Code § 36-1-11-8; and

WHEREAS, Authority is the owner and operator of a recreational marina facility located on the shores of Lake Michigan at Hammond, Indiana commonly known as the Hammond Marina; and

WHEREAS, Authority is a party to a certain Trust Indenture among DMS of Hammond, Inc. and Hammond Port Authority and INB National Bank now known as NBD Bank, N.A. as Trustee (the "Trustee") dated as of June 30, 1989 (the "Indenture"); and

WHEREAS, the Authority is facilities Lessee under a certain Lease Agreement ("Lease") dated as of June 30, 1989 wherein DMS of Hammond, Inc., is Lessor which interest was assigned on or about July 14, 1989, to the Trustee; and

WHEREAS, Representative is the duly appointed and acting Lessor Representative pursuant to the Lease; and

WHEREAS, Authority anticipates that certain new activities, including riverboat gaming, may commence operations at the Hammond Marina (the "New Activities"); and

WHEREAS, the New Activities may necessitate certain modifications to the Authority's facilities which may also be modifications to the Project (as defined in the Lease); and

WHEREAS, Authority has in place an embarkation fee of \$1.00 per passenger and has collected said sum from time to time and the New Activities anticipated at the Hammond Marina are projected by the Authority to provide the Authority with embarkation fees of 3.2 million dollars per year; and

WHEREAS, it is desired that the financial integrity of the Project be protected and enhanced;

NOW, THEREFORE, in consideration of the mutual covenants hereof, the parties agree upon the following:

1. Authority does hereby so certify that the New Activities will not adversely affect the operation and development of the existing marina facilities and that any and all modifications to the Project in connection with the New Activities will be in conformance with the general purposes and activities of the Hammond Marina.

2. Authority agrees to pay legal fees and other out-of-pocket costs of the Original Purchaser (as defined in the Lease),

if any, associated with the modification process set forth in this MOU.

3. Authority agrees that embarkation fees to be received from the New Activities at the Hammond Marina (the "Supplemental Revenues") shall be deposited with the Trustee no later than 12:00 o'clock noon Wednesday of each week for the immediately preceding calendar week ending with the preceding midnight Saturday and the Trustee shall treat said Supplemental Revenues as Revenues (as defined in the Lease) to be applied essentially in accordance with the flow of funds as set forth in the Lease at Section 6.1, et seq. except as follows with respect to Supplemental Revenues:

- a. That the Trustee shall use such Supplemental Revenues, to the extent necessary, to fully fund the immediately next succeeding semi annual payment due to Participation Certificate holders as defined in Section 1.02 of the Indenture (Certificate Payment).
- b. That once the immediately next succeeding Certificate Payment is fully funded, then 50% of all incoming dollars from the Supplemental Revenues shall follow the flow of funds as set forth in the above recited Section 6.1 et seq. and the other 50% shall be placed in the Project Operation and Maintenance Fund to be made available to the Authority for its general operation and maintenance needs until the aggregate amount deposited in the Project Operation and Maintenance Fund in each calendar year from Supplemental Revenues shall equal \$700,000.00.

- c. That upon funding the Project Operation and Maintenance Fund in the amount of \$700,000, as set forth in 3(b) above, beginning with the calendar year starting January 1, 1996 and each year thereafter, the Trustee shall then use the 50% of the Supplemental Revenues otherwise used to fund the Project Operation and Maintenance Fund to fund the Replacement Fund described in the Lease at Section 6.6 et seq, until the aggregate amount deposited in the Replacement Fund in each calendar year from Supplemental Revenues and any other sources shall equal \$300,000.
- d. That thereafter the full amount of the Supplemental Revenues received by the Trustee shall follow the flow of funds as set forth in the above recited Lease at Section 6.1 et seq. thereof.
- e. That the Supplemental Revenues shall be Revenues as defined in the Lease and Indenture for all purposes and treatment except as set forth immediately above in paragraph 3(a)-(d).
4. That Authority as party to the Indenture and as Lessee, and Trustee, as Trustee under the Indenture and Assignee of rights of Lessor under the Lease, agree that the above and foregoing provisions of Section 3 are and shall be amendments to the Lease and Indenture and further agree that the following provisions of the Lease/Indenture as indicated be amended in the following particulars:
- a. That Article 2 Section 2.1(g) of the Lease be amended to read as follows: That on or before February 1 of each year, Lessee shall cause to be fixed, maintained and enforced charges for docking

fees or slip rentals that are in the sole judgment of the Authority competitively priced with other southern basin Lake Michigan Recreational Marinas. On or before February 1 of each year, the Authority shall certify that the rates as established are competitively priced and the Authority shall provide the Trustee and holder of greater than sixty-six and two thirds percent (66-2/3%) of all outstanding Participation Certificates with a copy of said certification and copies of at least three current rate schedules from other southern basin Lake Michigan Recreational Marinas. In addition, commencing with the fiscal year ending December 31, 1996 the Authority shall cause Revenues (a) in each fiscal year in which the Authority receives Supplemental Revenues to equal or exceed 150% of the Rental Payments due under the Lease for such fiscal year and (b) in each fiscal year in which the Authority receives no Supplemental Revenues to equal or exceed 120% of the Rental Payments due under the Lease for such fiscal year. Failure to meet either coverage test set forth in the preceding sentence shall not constitute an event of default under the Lease if, within thirty days of receiving notification from the Trustee of the amount of the deficiency under the applicable coverage test, the Authority deposits to the Revenue Fund (as defined in the Indenture) cash from sources other than Revenues at least equal to the amount of the deficiency. In addition to depositing such amount, in the event of any failure to meet the coverage test as set forth above, the Authority shall retain a consultant to advise it on means of improving the Marina's performance and follows the recommendations of

the consultant (except to the extent prohibited by law); provided, however, that so long as the coverage requirement is 120%, the making of such payment will not cure failure to meet such requirement for any period that the actual coverage was less than 100%.

b. That Article 6 Section 6.2 of the Lease be amended to read as follows: Section 6.2. Pledges and Uses of Revenues. [Section 6.2 is unchanged except with respect to the placement of the following language following the word "Revenues" in line 4 of Article 6, Section 6.2] . . . and all right, title and interest of Lessee and City in and to all moneys and investments in each of the Special Funds established under Section 6.3 hereof. . . .

c. That Article 7 Section 7.1 of the Lease be amended to read as follows: Section 7.1. Maintenance and Modification of Project by Lessee. At all times that Lessee is in possession of the Project, Lessee shall maintain, preserve and keep the Project in good repair, working order and condition, and from time to time make all repairs, replacements and improvements necessary to keep the Project in such condition; provided that Lessee shall not be obligated to make expenditures except from and to the extent of Revenues and lawfully appropriated or available funds. Lessor shall have no responsibility for such maintenance or for any of these repairs, replacements or improvements. In addition, Lessee shall, from and to the extent of Revenues and lawfully appropriated or available funds as provided in this Lease and the Indenture, have the right to remodel the Project or to make additions, modifications and improvements thereto. All such

additions, modifications and improvements shall thereafter comprise part of the Project and be subject to the provisions of this Lease. Such additions, modifications and improvements must be approved by the Lessor Representative and must not in any manner cause a diminution of Revenues nor damage the Project nor cause it to be used for purposes other than those authorized under the provisions of State and Federal Law; and the Project, upon completion of any additions, modifications and improvements made pursuant to this Section, must be verified in writing by a registered Architect, registered Engineer or professional Appraisal Engineer, selected by the Authority to be of a value not less than the value of the Project immediately prior to the making of such additions, modifications and improvements.

Any property for which a substitution or replacement is made pursuant to this Section 7.1 may be disposed of by Lessee in such manner and on such terms as are determined by Lessee. Lessee will not permit any mechanic's or other lien to be established or remain against the Project for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by Lessee pursuant to this Section; provided that if any such lien is established and Lessee shall first notify Lessor of Lessee's intention to do so, Lessee may in good faith contest any lien filed or established against the Project, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless Lessor shall notify Lessee that in the opinion of Independent Counsel,

by non-payment of any such item the interest of Lessor in the Project will be materially endangered or the Project or any part thereof will be subject to loss or forfeiture, in which event Lessee shall, from and to the extent of Revenues as provided in this Lease and the Indenture, promptly pay and cause to be satisfied and discharged all such unpaid items or provide Lessor with full security against any such loss or forfeiture, in form satisfactory to Lessor. Lessor will cooperate fully with Lessee in any such contest, upon request of Lessee, if Lessee agrees to pay Lessor's expenses.

- d. That Article 7 Section 7.5 of the Lease be amended to read as follows: Section 7.5. Property and Rental Value Insurance. At all times that Lessee is in possession of the Project, from and after the date hereof Lessee shall have and assume the risk of loss with respect to the Project, and shall, from and to the extent of Revenues and lawfully appropriated or available funds as provided in this Lease and the Indenture, procure and maintain continuously in effect during the Term of the Lease with respect to the Project, all-risk insurance, subject only to the standard exclusions contained in the policy. Such insurance shall be in an amount equal to One Hundred Five percent (105%) of the full replacement cost of all Project components (except binwall, inner breakwater, outer breakwater, rip rap embankment and fishing stations) as certified on the effective date of this Lease and on or before the 1st day of April of each year thereafter by a registered Architect, registered Engineer or professional Appraisal Engineer, selected by the

Authority. Such appraisal may be based upon a recognized index of conversion factors. During the full Term of this Lease, Lessee will also, from and to the extent of Revenues and lawfully appropriated funds as provided in this Lease and the Indenture, maintain rent or rental value insurance or business interruption insurance in an amount equal to the lesser of: (1) the Lease Payments of the Project plus operation and maintenance expenses (which expenses shall be deemed for purposes of this Section 7.5 to be \$700,000.00 per year) for a period of two (2) years; and (2) the greater of (i) the Lease Payments of the Project plus operation and maintenance expenses (which expenses shall be deemed for purposes of this Section 7.5 to be \$700,000.00 per year) for a period of one (1) year, and (ii) the amount certified by an officer of the Authority following due diligence as the largest amount of such insurance commercially available at reasonable cost. All policies (or endorsements or riders) evidencing insurance required in this Section shall be carried in the names of Lessee, Lessor and Trustee as their respective interests may appear and shall name Trustee as Loss Payee. The Net Proceeds of insurance required by this Section shall be applied as provided in Section 8.1. In the event that the minimum insurance coverages requirements set forth above are not commercially available, the Authority shall deposit with the Trustee cash in an amount equal to the difference between that insurance coverage which the Authority is able to secure and the minimum coverage requirement set forth above and the Trustee shall deposit and hold such amount in an

escrow account, which sum shall be released: (1) to the Authority in the event that the Authority obtains and certifies to the Trustee the existence of insurance coverage in the minimum amounts required by this Lease, or (2) in the event of compensable loss in excess of existing insurance coverages, to the Trustee to be applied as Revenues of the Project.

- e. That Article 5 Section 5.03(b) (i) and (ii) of the Indenture be amended to read as follows:

5.03(b) (i) Insurance on the Project against physical loss or damage thereto, however caused, with such exceptions as are ordinarily required by insurers of buildings or facilities of a similar type, which insurance shall be in an amount equal to One Hundred Five percent (105%) of the full replacement cost of all Project components (except binwall, inner breakwater, outer breakwater, rip rap embankment and fishing stations) as certified on the effective date of such insurance and on or before April 1 of each year thereafter by a registered Architect, a registered Engineer, or a professional Appraisal Engineer selected by the Authority (such appraisal may be based on a recognized index of conversion factors);

and 5.03(b) (ii) During the full Term of this Lease, Lessee will also, from and to the extent of Revenues and lawfully appropriated funds as provided in this Lease and the Indenture, maintain rent or rental value insurance or business interruption insurance in an amount equal to the lesser of (a) the Lease Payments of the Project plus operation and maintenance expenses shall be deemed for purposes of

this Section 7.5 to be \$700,000.00 per year) for a period of two (2) years; and (2) the greater of (i) the Lease Payments of the Project plus operation and maintenance expenses (which expenses shall be deemed for purposes of this Section 7.5 to be \$700,000.00 per year) for a period of one (1) year, and (ii) the amount certified by an officer of the Authority following due diligence as the largest amount of such insurance commercially available at reasonable cost. All policies (or endorsements or riders) evidencing insurance required in this Section shall be carried in the names of Lessee, Lessor and Trustee as their respective interests may appear and shall name Trustee as Loss Payee. The Net Proceeds of insurance required by this Section shall be applied as provided in Section 8.1. In the event that the minimum insurance coverages requirements set forth above are not commercially available, the Authority shall deposit with the Trustee cash in an amount equal to the difference between that insurance coverage which the Authority is able to secure and the minimum coverage requirement set forth above and the Trustee shall deposit and hold such amount in an escrow account, which sum shall be released: (1) to the Authority in the event that the Authority obtains and certifies to the Trustee the existence of insurance coverage in the minimum amounts required by this Lease, or (2) in the event of compensable loss in excess of existing insurance coverages, to the Trustee to be applied as Revenues of the Project.

5. The Authority shall provide that the temporary removal of any docks or slips in connection with the New Activities be

accompanied by the following assurances from the licensed gaming entity:

- a. That all such docks or slips will be removed and stored at the expense of the licensed gaming entity to the satisfaction of Authority.
- b. That said docks or slips shall be considered to be in service and the licensed gaming entity shall pay the annual established rental rate for docks or slips at the Hammond Marina.
- c. That a custody account shall be established and held by NBD Bank, N.A. as Custodial Agent, in an amount, as certified by an Architect or Engineer sufficient to pay the cost of reinstallation of the temporarily removed docks or slips. The income earned in said account shall accrue in said account for the benefit of the Authority for purposes of compensating for time value concerns.
- d. That an additional custody account shall be established and held by NBD Bank, N.A. as Custodial Agent, in an amount sufficient to provide for two years (seasons) of dock or slip rental payments following cessation of gaming activities which amount as certified by the Authority shall be two times the current dock or slip rental rate for said docks or slips removed from service. The income in said account shall accrue in said account for the benefit of Authority for purposes of compensating for time value concerns.

6. Lessor Representative, pursuant to Section 7.1 of the Lease, approves and consents to any modifications to the Project

which may be undertaken from time to time in connection with the New Activities, conditioned upon delivery of the following to the Lessor Representative and Original Purchaser with a copy delivered to the Trustee.

- a. Written notification of the additions, modifications, and improvements requested and a description of such additions, modifications, or improvements.
- b. A certification from the Authority that the additions, modifications, and improvements to the Project (i) will not cause a diminution of Revenues, (ii) will not damage the Project or alter the general character of the Project as a marina, and (iii) will not cause the Project to be used for purposes other than those authorized under the provisions of state and federal law.
- c. Written verification by a registered Architect, registered Engineer, or professional Appraisal Engineer, that upon completion of the additions, modifications, and improvements the Project will not be of a value less than the value of the Project immediately prior to the making of such additions, modifications, and improvements.
- d. An opinion of nationally recognized bond counsel stating that the change in use and other aspects relating to the proposed additions, modifications, and improvements and the amendments to the Lease Agreement and the Indenture set forth herein will not adversely affect the tax-exempt status of the Participation Certificates.

In the absence of written notice to the contrary delivered by the Lessor Representative to the Authority, approval and consent of

Lessor Representative pursuant to this Section 6 shall become effective ten (10) days after delivery of the documents set forth above, without any further action by the Lessor Representative.

7. Lessor Representative acknowledges receipt of the documents set forth in Section 6 hereof relating to certain additions, modifications, and improvements (which documents are attached as Exhibit "A" hereto), and expressly approves such additions, modifications, and improvements.

8. In the event that (a) any of the conditions in Section 6 hereof are not met (b) the Supplemental Revenues are not deposited with the Trustee when due pursuant to Section 3 hereof, or (c) any other provisions of this MOU are materially breached in the future by Authority, upon notice from Representative to Authority and failure to cure within thirty (30) days thereafter, Authority shall immediately terminate the Sub-Lease Agreement attached hereto as Exhibit "B".

9. That the covenants, conditions, rights and duties under the Lease and Indenture shall not be changed, modified, or affected except as expressly set forth in this MOU.


10. This MOU will terminate upon the termination of the Lease and Indenture or at such time as the Participation Certificates have been defeased and are no longer outstanding under the Indenture.

11. All defaults, if any, currently existing under the provisions of the Lease and/or Indenture that are amended or as amended in this MOU are hereby waived by and at the direction of

the Original Purchaser for the 1995 fiscal year and Authority represents that following such waiver, there exists no default under the Lease the Indenture or any related documents. In the event that the Indiana Gaming Commission has not approved Riverboat Casino Gaming at Hammond, Indiana on or before December 31, 1995, and/or the Sub-Lease has not been entered in a manner consistent with the requirements of the MOU by such date or does not remain in effect on such date then the amendment of Section 2.1(g) of the Lease and the waiver of alleged defaults as set forth above will be null and void, unless such date shall have been extended or the provision of this sentence waived in writing by the beneficial owners of not less than two-thirds (2/3) of the aggregate principal amount of the Participation Certificates (as defined in the Lease).

12. The Original Purchaser as current owner of more than sixty-six and two-thirds percent (66-2/3%) of the outstanding Participation Certificates, expressly consents to and approves of this Memorandum, including all exhibits hereto and all amendments to the Lease and the Trust Indenture set forth herein, and hereby authorizes and directs the Trustee to execute this Memorandum. This Agreement shall be effective when signed by all parties and approved in writing by the current owners of 66-2/3% of the outstanding Participation Certificates.

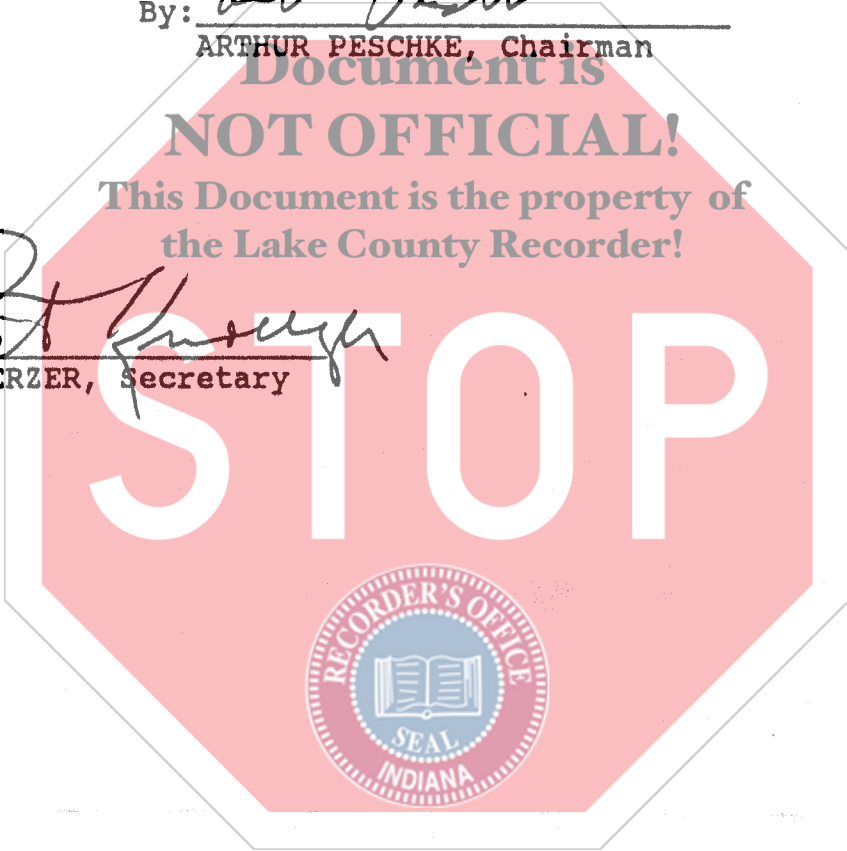
HAMMOND PORT AUTHORITY

By: 
ARTHUR PESCHKE, Chairman

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Attest: 
PETER KNOERZER, Secretary



SEPARATE SIGNATURE PAGE ONLY
MEMORANDUM OF UNDERSTANDING FINAL 09/20/95

LESSOR REPRESENTATIVE

By: 

H. Joseph Vaughn, President
DMS of Hammond, Inc.

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STOP



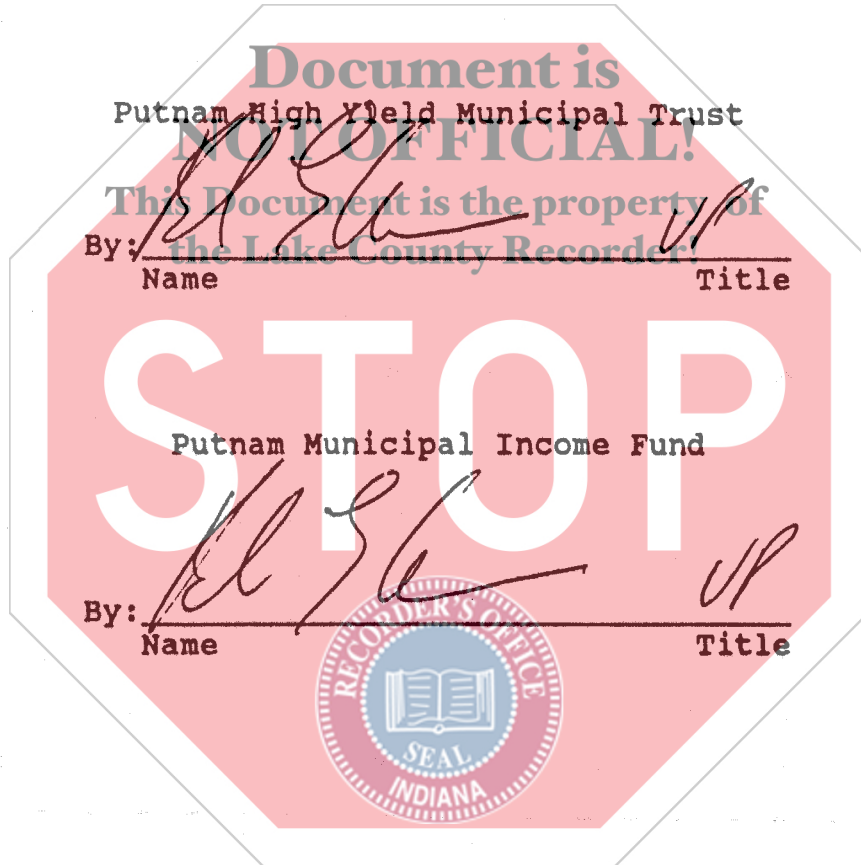
SEPARATE SIGNATURE PAGE ONLY
MEMORANDUM OF UNDERSTANDING FINAL 09/20/95

16(a)

Approved:

Putnam Tax Free High Yield Fund

By: [Signature] VP
Name Title



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By: [Signature] VP
Name Title

Putnam Municipal Income Fund

By: [Signature] VP
Name Title

SEPARATE SIGNATURE PAGE ONLY
MEMORANDUM OF UNDERSTANDING FINAL 09/20/95

16(b)

NBD BANK, N.A., TRUSTEE

By: 

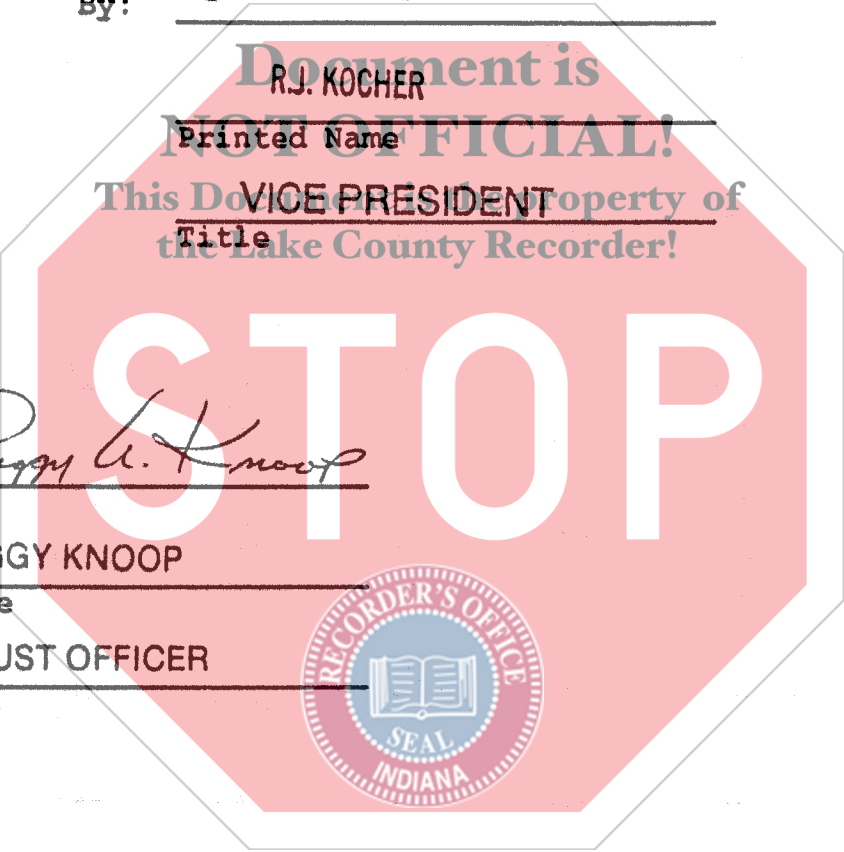
R.J. KOCHER
Printed Name

VICE PRESIDENT
Title

Attest: 

PEGGY KNOOP
Printed Name

TRUST OFFICER
Title



SEPARATE SIGNATURE PAGE ONLY
MEMORANDUM OF UNDERSTANDING FINAL 09/20/95

September 20, 1995

Mr. H. Joseph Vaughn
Diversified Municipal Services, Inc.
132 Ulen Blvd.
Lebanon, IN 46052

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Re: Our File No. H7550-1M.9
Hammond Marina 1995 proposed modifications

Dear Mr. Vaughn:

The Hammond Port Authority (HPA) wishes to notify you in your capacity as Lessor Representative pursuant to a certain Lease dated as of June 30, 1989 wherein DMS of Hammond, Inc., is Lessor and HPA is Lessee and specifically pursuant to Section 7.1 of that Lease, that the HPA proposes to make certain additions, modifications, and improvements at and about the Hammond Marina, which facility is the subject of the aforementioned lease. Whereas the overall development project is comprehensive involving the construction of an overpass, parking garage facilities, and staging area, the actual additions, modifications, and improvements to the original Project are rather modest in scope and are as follows:


- A. The improvement of parcel 1A for access purposes (most of 1A is currently used for roadway purposes).
- B. The construction of a staging building which will be constructed partially upon parcel 1A which will be used for staging, restaurants, general activities and offices.
- C. Access to the gaming boat from the facility mentioned in B above including a pier for the gaming boat.

Mr. H.J. Vaughn
September 20, 1995
Page 2

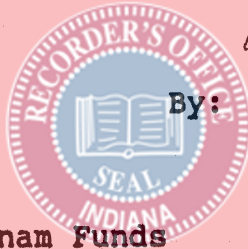
- D. Relocation of fuel pier to the stub breakwall and relocation/expansion of the fuel tank field. It may be recalled that the Project Supervisor authorized installation of the tanks in a manner that was never satisfactory to HPA or Lessor Representative and those tanks have been inadequate in number and capacity. Boty capacity and number will be increased and there will be improved safety.
- E. Installation of a larger sewer line to replace that sewer main currently in existence.

General lay-outs of the additions, modifications, and improvements are shown on exhibit "A" attached hereto. We are certain that you will wish to visit the site and make both a fiscal inspection of the site and closer review of plans and specifications and we do invite to you do so at your early convenience.

HAMMOND PORT AUTHORITY



By: Arthur Peschke, Chairman



AP/pmp
Enclosure

ccs: James Steggall - Putnam Funds
Daniel Lane, Trustee NBD Bank

EXHIBIT "A"

Parcel 1A

Current Location of Fuel Tanks

Relocated Fuel Tanks

Now Service

Three plus story Gaming Support Building

Parking Garage cap. 1200 + Cars

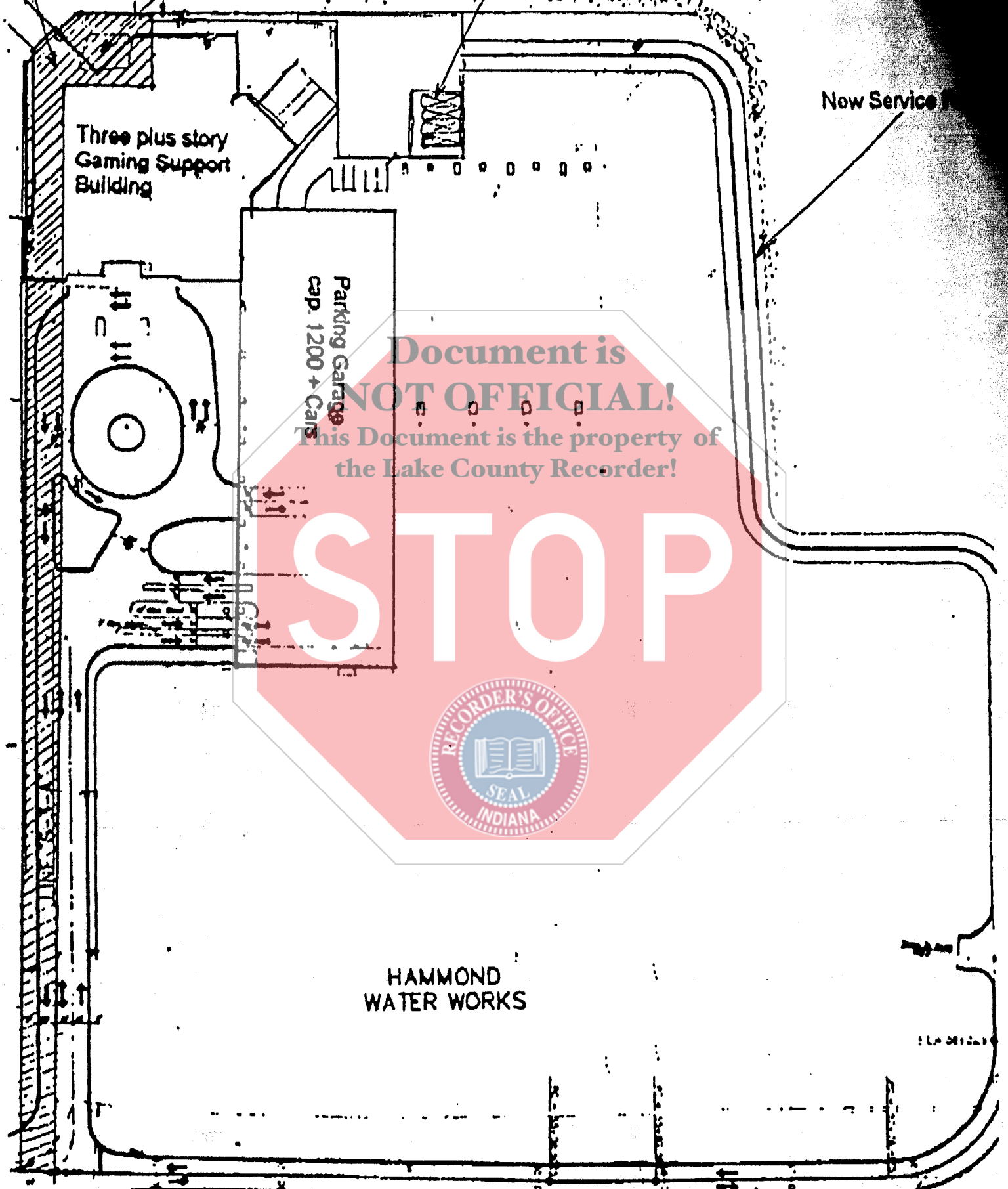
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HAMMOND WATER WORKS

PUBLIC ROAD





September 20, 1995

Mr. H.J. Vaughn
Diversified Municipal Services, Inc.
132 Ulen Blvd.
Lebanon, IN 46052

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Re: Our File No.: H7550-1.M9
Hammond Marina 1995 proposed modifications

Dear Mr. Vaughn:

With respect to certain additions, modifications, of which you have been informed to be made at and about the Hammond Marina located on the shores of Lake Michigan. The Hammond Port Authority (HPA) certifies that the additions, modifications, and improvements to the Project (i) will not cause a diminution of revenues, (ii) will not damage the Project or alter the general character of the Project as a Marina, and (iii) will not cause the Project to be used for purposes other than those authorized under the provisions of State and Federal law.

HAMMOND PORT AUTHORITY

By: Arthur Peschke, Chairman

AP/pmp

**ICE
MILLER
DONADIO
& RYAN**

October 9, 1995

Hammond Port Authority
c/o J.B. Smith, Esq.
Beckman, Kelly & Smith
5920 Hohman Avenue
Hammond, Indiana 46320-2423

Re: Hammond Port Authority Lease Financing

Dear Mr. Smith:

We served as tax counsel in connection with the issuance of Participation Certificates, Series 1989 ("Participation Certificates"), pursuant to the Trust Indenture, dated as of June 30, 1989 ("Indenture") among DMS of Hammond, Inc. ("DMS"), the Hammond Port Authority ("Authority") and NBD Bank, N.A., as trustee. We delivered an approving opinion dated July 14, 1989.

We have been informed that the Authority intends to make or have made certain additions, modifications and improvements to the Project as defined in the Lease Agreement ("Lease") dated as of June 30, 1989, between DMS and the Authority. The proposed improvements to land included within the Lease will impinge upon less than 10% of the total area of the Project as defined in the Lease. None of the improvements will be financed with the proceeds of the Participation Certificates.

We have reviewed the resolution adopted by the Authority on September 20, 1995 entitled "Resolution Authorizing the Revision Of A Certain Indenture And Lease Agreement; the September 20, 1995 draft of the Memorandum of Understanding and Consent ("MOU"); and the September 20, 1995 draft of the Intergovernmental Sub-Lease Agreement ("Sub-Lease") included as Exhibit B to the MOU; for the purpose of providing the opinions required by paragraph 6(d) of the MOU and paragraph 6(C) of the Sub-Lease. We have assumed that the MOU and Sub-Lease have been or will be executed in substantially the form of the September 20, 1995 drafts of each. We have relied upon the letter of Arthur Peschke, Chairman of the Authority, dated September 20, 1995, for a description of the improvements to be constructed in part on Parcel 1-A. We have not undertaken any independent review of the facts

With offices in Indianapolis and South Bend

One American Square • Box 82001 • Indianapolis, Indiana 46282-0002 • (317) 236-2100 • FAX (317) 236-2219
211 West Washington • Suite 2420 • South Bend, Indiana 46601-1785 • (219) 234-7933 • FAX (219) 234-7965

and circumstances relating to the proposed additions, modifications and improvements to the property which is the subject of the Lease.

Based upon this review, we are of the opinion that the use of such a limited portion of the Project and the improvements and amendments to the Lease and the Indenture will not adversely affect the tax status of the Participation Certificates.

This opinion expresses the professional judgment of the attorneys participating in the transaction as to the legal issues addressed herein. By rendering such opinions, the undersigned does not become an insurer or guarantor of that expression of professional judgment or of the transaction opined upon. Nor does the rendering of this opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

This opinion is limited exclusively to the effect of the transaction described in the MOU and Sub-Lease and does not purport to address any events, actions, or omissions which may have occurred since July 14, 1989, and shall not be construed as a reissuance or republication of our opinion of July 14, 1989.

Very truly yours,

Lee Miller Donahoe Ryan

287737.1



BauerLatoza

STUDIO

September 6th, 1995

Mr. Robert Nelson
Marina Director
Hammond Port Authority
1111 Calumet Avenue
Hammond, Indiana 46320

Re: Putman Adjustment

Dear Mr. Nelson:

The undersigned, a registered Architect, certifies that I have reviewed plans for modification of the Project as defined in a certain Lease Agreement dated as of June 30th, 1989 by and among DMS of Hammond, Inc. an Indiana corporation as Lessor and the Hammond Port Authority an Indiana Municipal Corporation as Lessee and state that upon completion of the proposed additions, modifications, and improvements the Project will not be of less value than the value of the Project immediately prior to the making of such additions, modifications, and improvements.

Respectfully,


Bill Latoza



1006 South Michigan Avenue,
Suite 602, Chicago, Illinois 60605
Phone 312.986.1000
Fax 312.986.5085

ARCHITECTURE HISTORIC PRESERVATION PLANNING

**INTERGOVERNMENTAL SUB-LEASE AGREEMENT
HAMMOND PORT AUTHORITY AND
HAMMOND REDEVELOPMENT COMMISSION**

September 20, 1995

THIS INTERGOVERNMENTAL SUB-LEASE AGREEMENT made and entered as of the 13th day of October, 1995 ("Sub-Lease") by and between the Hammond Port Authority hereinafter ("Authority") and Hammond Redevelopment Commission, hereinafter ("Commission").

WHEREAS, Authority is a body corporate and politic organized pursuant to Ind. Code §8-10-5 et seq. pursuant to Ordinance No. 6015 adopted by the City of Hammond on the 26th day of January, 1987, and is a governmental entity in accordance with Ind. Code §36-1-11-8; and

WHEREAS, Commission is organized pursuant to Ind. Code §36-7-14 and is a governmental entity in accordance with Ind. Code §36-1-11-8; and

WHEREAS, Authority is the owner and operator of a recreational Marina facility located on the shores of Lake Michigan at Hammond, Indiana commonly known as the Hammond Marina; and

WHEREAS, the Authority is facilities Lessee under a certain Lease Agreement ("Lease") dated as of June 30, 1989 wherein DMS of Hammond, Inc. is Lessor, (which interest was assigned on or about July 14, 1989, to INB National Bank - n/k/a as NBD Bank, N.A. as Indenture Trustee ("Trustee") pursuant to a Trust Indenture dated as of June 30, 1989 ("Indenture") among DMS of Hammond, Inc., the Authority and the Trustee); and

WHEREAS, Ind. Code §4-33-1, et seq., allows certain activities commonly known as riverboat gaming and further authorizes the Indiana Gaming Commission to award a riverboat gaming license to an applicant operating from Hammond, Indiana; and

WHEREAS, the Authority is the fee owner/Facilities Lessee of a certain parcel of real estate located at the Hammond Marina located on the shores of Lake Michigan at Hammond, Indiana, being more particularly described as follows:

Parcel-1A Legal Description: An "L" Shaped parcel of land, lying in the West one-half of Section 6, Township 37 North, Range 9 West of the Second Principal Meridian, Lake County, Indiana, described as commencing at the intersection of the West line of Section 6 and the Northerly line of the Baltimore and Ohio Railroad right-of-way; thence North 00 degrees 00 minutes 00 seconds East along the West section line 154.93 feet; thence South 40 degrees 12 minutes 11 seconds East 61.97 feet to a cross in the concrete walk; then continuing South 40 degrees 12 minutes 00 seconds East 90.97 feet to an iron rod; thence on a curve to the left 230.01 feet said curve having a radius of 2,814.93 feet a central angle of 4 degrees 40 minutes 54 seconds and a chord that bears South 42 degrees 32 minutes 27 seconds East, 229.94 feet to a point marking the point of beginning: Then along said curve to the left 40.45 feet said curve having a central angle of 0 degrees 49 minutes 24 seconds and a chord that bears South 45 degrees 17 minutes 36 seconds East, 40.45 feet to a point; thence North 36 degrees 10 minutes 42 seconds East, 799.93 feet to a point; thence South 53 degrees 43 minutes 37 seconds East, 110.0 feet to a point; thence North 36 degrees 16 minutes 42 seconds East, 90.00 feet to a point on the present shoreline of Lake Michigan; then along the lakeside face of the sheet piling North 53 degrees 43 minutes 37 seconds West 98.83 feet to a corner of the sheet piling; thence South 81 degrees 10 minutes 15 seconds West, 72.38 feet to a corner of the sheet piling; thence South 36 degrees 10 minutes 42 seconds West, 832.73 feet to the point of beginning.

(hereinafter, "Parcel 1-A")

WHEREAS, the City of Hammond (the "City") has determined that the Commission is the most appropriate entity to develop and control the real estate where gaming and lakefront recreational activities will occur and to coordinate the land side development of gaming activities and other related recreational activities for itself and on behalf of the City; and

WHEREAS, the City, acting by and through the Commission, desires to construct certain infrastructure and other facilities on Parcel 1-A to serve the public and to facilitate recreational and riverboat gaming activities at the Hammond Marina; and

WHEREAS, Ind. Code 36-1-11-8 provides for the lease of real property between governmental entities such as the Authority and the Commission, upon terms and conditions agreed upon by the entities as evidenced by the adoption of substantially identical resolutions by each entity; and

WHEREAS, it is in the interest of the City and the development of recreational and riverboat gaming activities at the Hammond Marina that the Authority enter a Sub-Lease Agreement with the Commission for Parcel 1-A; and

NOW, THEREFORE, in consideration of the mutual promises and conditions as set forth herein the parties agree as follows:

1. That the Authority does hereby lease Parcel 1-A to the Commission for a period of five (5) years commencing on the ____ day of _____, 1995 and terminating on the ____ day of _____, 2000 and as may be extended as hereinafter set forth.

2. That the Commission shall pay to Authority the sum of \$10.00 for each year or portion of the year that this Sub-Lease might be in force, such sum payable on the commencement date of this Sub-Lease and on each anniversary thereof.

3. That the Commission may use Parcel 1-A for any proper activities of the City and Commission with respect to the development and operation of gaming activities including but not limited to the construction of a support building and gaming boat access facilities to be located upon Parcel 1-A in substantial conformity to the design foot-print(s) as shown on Exhibit "B" attached hereto, all of which activities will be undertaken by a third-party licensee.

4. That Authority specifically reserves a license and easement upon Parcel 1-A for access to and regulation, maintenance and repair of its Marina facilities including the harbor, breakwalls, fuel piers and any and all hulls or vessels that may be owned, operated, used or permitted by the Authority including but not limited to the Milwaukee Clipper. Additionally, the Commission and the Authority, recognize and agree that the Authority as owner and operator of the Hammond Marina has a standing embarkation fee for use of the facilities of the Authority in the current amount of \$1.00 per embarkee which is payable by commercial vessel operators for each of their embarkees and is imposed whether the commercial vessel leaves the Hammond Marina or not. It is recognized and agreed that the Authority does retain the right under this Sub-Lease and will be

entitled to impose the embarkation fee upon and retain the revenue from any gaming operator utilizing the facilities of the Authority should said embarkation occur from Parcel 1-A or any other portion of the Hammond Marina. In the event that said embarkation fees are not paid in full on a timely basis (by deposit with the Trustee no later than 12:00 p.m., noon Wednesday of each week for the immediately preceding calendar week ending with the preceding midnight Saturday), this Sub-Lease shall terminate and the Commission shall forthwith surrender the Parcel 1-A to the Authority. Any such termination of this Sub-Lease shall terminate any sub-lease or assignment of all or any portion of the rights of the Commission hereunder and shall terminate any license or other right(s) granted by the Commission with respect to the leased property or any portion thereof.

5. That the Commission shall be solely responsible for all planning and construction activities of any improvements on Parcel 1-A and shall have full responsibility for providing all insurance and liability coverages. Liability coverages shall be provided naming the Authority and the Trustee as additional insureds on any policies and such policies shall have limits no less than the limits on similar policies carried by the Authority from time to time and certificates evidencing such coverages shall be furnished to Trustee and Authority upon the commencement of any activities by or under the Commission upon Parcel 1-A and annually upon each anniversary of this Sub-Lease Agreement.

6. That the Authority approves and consents to any further modifications to Parcel 1-A which may be undertaken from time to time in connection with the development of gaming and lakefront recreational activities (beyond those set forth on Exhibit B attached hereto), conditioned upon the Commission providing to the Authority, solely at Commission expense, the following:

- A. A certification from the Commission that the additions, modifications, and improvements to the Project (i) will not cause a diminution of Revenues, (ii) will not damage the Project or alter the general character of the Project as a marina, and (iii) will not cause the Project to be used for purposes other than those authorized under the provisions of state and federal law.
- B. Written verification by a registered Architect, registered Engineer, or professional Appraisal Engineer, that upon completion of the additions, modifications, and improvements the Project will not be of a value less than the value of the Project immediately prior to the making of such additions, modifications, and improvements.
- C. An opinion of nationally recognized bond counsel stating that the change in use and other aspects relating to the proposed additions, modifications, and improvements and the amendments to the Lease and the Indenture set forth herein will not adversely affect the tax-exempt status of the Participation Certificates (as defined in the Indenture).

7. That in the event the improvements to Parcel 1-A constructed by the Commission result in property taxes being

assessed against said improvements or Parcel 1-A, the Commission agrees to discharge and pay all said taxes at its costs or from such source that might be made available to the Commission, but in no event shall any such taxes be a charge upon the Authority or the Trustee. Likewise any and all maintenance and/or utility charges for Parcel 1-A and/or the improvements thereon of any kind shall be the sole responsibility of the Commission and shall not be a charge upon the Authority or the Trustee.

8. That the Commission shall have the right with prior written consent of Authority to assign this Sub-Lease, and any interest therein, and to sub-let Parcel 1-A, or any part thereof, or any right or privilege pertinent thereto, provided that each assignee assumes in writing all of Commission's obligations under this Sub-Lease, including without limitation the payment of all fees, assessments or charges of any kind or nature due hereunder and the Commission shall remain liable for each and every obligation under this Sub-Lease.

9. That the Authority is expressly given the right to assign any or all of its interests under the terms of this Sub-Lease.

10. That this Sub-Lease shall be binding upon and enure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns.

11. That in the event that gaming activities at the Hammond Marina are continuing on the termination date as set forth in Section 1 hereof, then this Sub-Lease shall renew for successive

one year periods upon the same terms and conditions as set forth herein so long as gaming activities continue on each successive anniversary of the termination date set forth in Section 1 hereof. Any of the following events shall constitute a default under this Sub-Lease:

- (a) Cessation of gaming activities at the Hammond Marina for a period of twelve (12) consecutive months as a result of termination of a gaming entity's license by the Indiana Gaming Commission;
- (b) Cessation of gaming activities at the Hammond Marina for a period of six (6) consecutive months as a result of a voluntary withdrawal by the gaming entity;
- (c) Material breach by the Authority under the Memorandum of Understanding and Consent, attached hereto as Exhibit "C" (the "Memorandum").

In the event of any such default, the Authority shall notify the Commission in writing of such default and if such default is not cured within thirty (30) days after receipt of such notice by the Commission or with respect to default set forth in (a) or (b) above if the Indiana Gaming Commission has not granted a new authorization to conduct gaming or a license to a gaming entity, this Sub-Lease shall thereupon immediately cease and terminate whether within or beyond the initial five year term.

Additionally this Sub-Lease shall automatically terminate upon the termination of the Lease pursuant to sub-section 5.2(a) or 5.2(c) thereof. The Commission may, at its costs, perform such duties of the Authority as may be required in the event of breach

or termination of the Lease or the Memorandum so that such breach or termination might be avoided or cured.

12. That this Sub-Lease constitutes the sole and only agreement of the parties hereto respecting the subject matter of this agreement and supersedes any prior understanding or written or oral agreements between the parties with respect to this subject matter.

13. That no amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

14. That the rights and remedies provided by this Sub-Lease are cumulative and the use of any right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

15. That no waiver by the parties hereto of any default or breach of any terms, condition or covenant of this Sub-Lease shall be deemed to be a waiver of any other breach of the same or any other term, condition, or covenant of this Sub-Lease shall be deemed to be a waiver of any other breach of the same or any other term, condition or covenant contained herein.

16. That this Sub-Lease shall be construed under and in accordance with the laws of the State of Indiana.

HAMMOND PORT AUTHORITY

By: *Arthur Peschke*
ARTHUR PESCHKE, CHAIRMAN

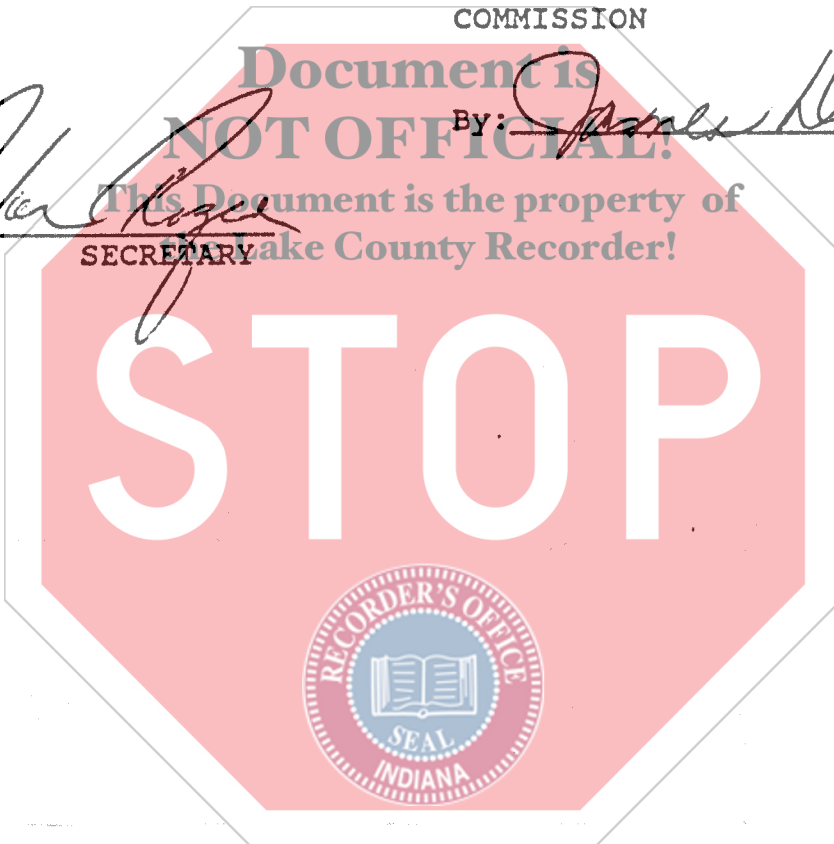
Attest: *Peter Knoerzer*
PETER KNOERZER, SECRETARY

HAMMOND REDEVELOPMENT
COMMISSION

Attest: *Robert Rogers*
ROBERT ROGERS, SECRETARY

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By: *James Davis*
JAMES DAVIS, PRESIDENT

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Parcel 1A

Current Location of Fuel Tanks

Relocated Fuel Tanks

New Service Road

Three plus story Gaming Support Building

Parking Garage cap. 1200 + Cars

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STOP



HAMMOND WATER WORKS

PUBLIC ROAD

