

RESOLUTION 2011-198

A RESOLUTION (A) MODIFYING PRIOR
COMMISSION RESOLUTIONS CONCERNING
EAST CHICAGO LOCAL DEVELOPMENT AGREEMENT
AND (B) AUTHORIZING DISTRIBUTION OF
FUNDS FROM SEGREGATED ACCOUNTS

The Indiana Gaming Commission ("Commission"), based upon its consideration of the following factors, adopts the following Resolution pursuant to the authority granted to the Commission under I.C. 4-33 and Title 68 of the Indiana Administrative Code:

FACTORS

1. The Commission, with the assistance of the Office of Indiana Attorney General, commenced an investigation into the local development agreement ("the Agreement") concerning the riverboat casino in East Chicago, Indiana. As a result of the investigation which had been conducted prior to the June 8, 2006 Commission business meeting, the Commission adopted Resolution 2006-58, entitled *A Resolution Disapproving in Part the East Chicago Local Development Agreement*, at the June 8, 2006 meeting. Resolution 2006-58 disapproved that part of the Agreement by which payments were being made to East Chicago Second Century, Inc. under the Agreement. Resolution 2006-58 remains in effect.

2. Pursuant to Resolution 2006-58 and related court order, RIH Acquisitions IN, LLC ("Resorts") and Ameristar Casino East Chicago, LLC ("Ameristar") have deposited into a segregated account local development funds which formerly had been paid to East Chicago Second Century before the adoption of Resolution 2006-58. The account to which said funds have been paid since the adoption of Resolution 2006-58 is referred to herein as the 0.75% Account. Funds required to be paid into the 0.75% Account have consisted of 0.75% of the adjusted gross revenue of the East Chicago riverboat casino operations.

3. Pursuant to court order, Ameristar also has deposited into a separate segregated account local development funds which formerly had been paid to Foundations of East Chicago and its predecessors. The account to which said funds have been paid is referred to herein as the 2.0% Account. Funds required to be paid into the 2.0% Account have consisted of 2.00% of the adjusted gross revenue of the East Chicago riverboat casino operations.

4. Pursuant to Resolution 2006-58, I.C. 4-33-23, and applicable law, the Commission maintains continuing jurisdiction over the Agreement and the operation thereof, including the flow of local development funds provided for in the Agreement, the 0.75% Account, and the 2.0% Account.

5. On March 17, 2011, the Commission adopted Resolution 2011-82, entitled *A Resolution to Direct Ameristar Casino East Chicago, LLC to (A) Request Modification of Current Local Development Agreement and (B) Refrain From Disbursing Funds From Segregated Accounts and Paying Future Payments to Certain Entities*. Among other things,

Resolution 2011-82 directed Ameristar to refrain from disbursing any present or future funds from the 0.75% Account and the 2.0% Account and from paying East Chicago Second Century, Inc., the Foundations of East Chicago, and other named entities any future payments provided for in the Agreement, without further Commission approval.

6. On June 2, 2011, the Commission adopted Resolution 2011-139, entitled *A Resolution (A) Modifying Local Development Agreement, and (B) Authorizing Distribution of Held Funds*. Among other things, Resolution 2011-139 granted Ameristar's Petition to Modify the Agreement by adopting a new Modified Agreement, directed Ameristar to continue to make payments into the 0.75% Account and 2.0% Account, and restricted Ameristar from disbursing any funds from either of said Accounts until there is a full and final resolution of pending litigation involving the Agreement, or until such time as a court of competent jurisdiction orders otherwise, all in accordance with Resolution 2011-139.

7. On June 2, 2011, the Commission adopted Resolution 2011-140, entitled *A Resolution (A) Modifying Prior Commission Resolution 2011-82 Concerning East Chicago Local Development Agreement and (B) Authorizing Distribution of Funds From One Segregated Account*. Among other things, Resolution 2011-140 modified Resolution 2011-82 by rescinding those parts of Resolution 2011-82 which had directed Ameristar to refrain from disbursing and paying to Foundations of East Chicago, Inc. any present or future funds from the 2.0% Account, and by authorizing Ameristar to distribute and pay the 2.0% Account to Foundations of East Chicago, Inc., subject to approval by the identified court of competent jurisdiction, all in accordance with Resolution 2011-140.

8. Extensive and protracted litigation has been filed by various parties involving the Agreement and the Modified Agreement, which litigation is now pending.

9. On September 12, 2011, the Commission staff was provided an executed copy of a document entitled *Final Settlement Agreement*, purportedly entered into by and among Ameristar Casinos, Inc., Ameristar Casino East Chicago, LLC d/b/a Ameristar East Chicago, City of East Chicago, Indiana, Foundations of East Chicago, Inc., East Chicago Second Century, Inc., Michael Pannos, and Thomas Cappas and effective September 9, 2011. The *Final Settlement Agreement* purports to settle and resolve various lawsuits identified therein involving the Agreement and Modified Agreement. Among other things, the *Final Settlement Agreement* provides for the distribution and payment of the 0.75% Account and the 2.0% Account, both of which Accounts are subject to the jurisdiction of the Commission.

10. Section 9 of the *Final Settlement Agreement* provides that "(t)he effectiveness of this Agreement is subject to approval by the Commission of the distribution of the money in the 0.75% Account and the 2.0% Account as set forth in this Agreement." Section 2.1 of the *Final Settlement Agreement* provides, in substance, that all amounts in the 0.75% Account shall be paid to the City of East Chicago, Indiana. Section 2.2 of the *Final Settlement Agreement* provides, in substance, that all amounts in the 2.0% Account shall be paid in accordance with that Section of the document.

IN CONSIDERATION OF THE FOREGOING FACTORS, THE COMMISSION NOW RESOLVES:

RESOLUTIONS

1. Subject to approval of the distribution and payment by the court in which the *Second Century Action* is pending, as that term is defined in the *Final Settlement Agreement*, the Commission hereby authorizes and approves Ameristar to distribute and pay all money in the 0.75% Account to the City of East Chicago, Indiana in accordance with Section 2.1 of said Agreement. Said funds shall thereafter be used by the City of East Chicago, Indiana in accordance with, and subject to, Section 3.03 of the Modified Local Development Agreement approved by the Commission on June 2, 2011.

2. Subject to any approval of the distribution and payment which may be necessary by the court in which the *Foundations Action* is pending, as that term is defined in the foregoing *Final Settlement Agreement*, the Commission hereby authorizes and approves Ameristar to distribute and pay all money in the 2.0% Account in accordance with Section 2.2 of said Agreement. Said funds which are distributed to the Foundations of East Chicago pursuant to said Section 2.2 shall be used in accordance with, and subject to, Section 3.03 of the Modified Local Development Agreement approved by the Commission on June 2, 2011.

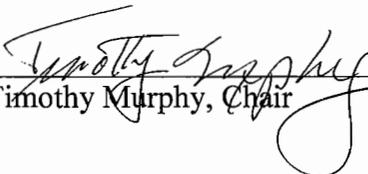
3. Except as expressly provided in this Resolution, the Commission neither approves nor disapproves the *Final Settlement Agreement* identified hereinabove.

4. Nothing in this Resolution is intended by the Commission to limit, defeat, bar, or otherwise compromise any present or future claims by the Office of Indiana Attorney General in the litigation identified in the *Final Settlement Agreement*.

5. Resolution 2006-58, Resolution 2011-82, Resolution 2011-139, and Resolution 2011-140 are herewith amended to comport with this Resolution:

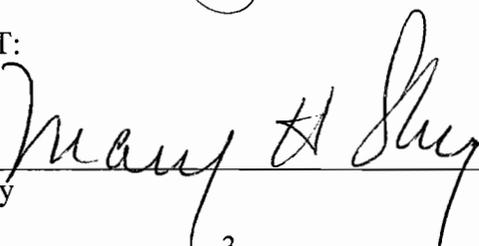
IT IS SO RESOLVED AND DIRECTED effective on and after the 15th day of September, 2011.

THE INDIANA GAMING COMMISSION:



Timothy Murphy, Chair

ATTEST:



Secretary