

**FIRST AMENDMENT  
TO  
REVISED AND RESTATED  
GAMING REVENUE AGREEMENT**

**First Amendment to Revised and Restated Gaming Revenue Agreement**

dated as of March 12, 2005, by, between and among the **CITY OF LAKEVILLE**, a Minnesota municipal corporation (the "City"), the **LAKEVILLE HOUSING AND REDEVELOPMENT AUTHORITY** (the "HRA"), **INDEPENDENT SCHOOL DISTRICT NO. 194** (the "District"), the **LAKEVILLE COMMUNITY CORPORATION** (the "Corporation"), the **LAKEVILLE HOCKEY BOOSTERS, INC.** (the "Boosters"), and the **LAKEVILLE HOCKEY ASSOCIATION** (the "LHA").

1. Boosters and the City previously entered into a Revised and Restated Gaming Revenue Agreement as of February 16, 1999 ("Gaming Agreement"). The Gaming Agreement shall remain in full force and effect except as modified by this First Amendment.

2. The parties, not including the LHA, previously entered into a Memorandum of Understanding Seating Project dated as of February 19, 2002 ("MOU"). Paragraph 3F of the MOU provides that the City will consider modifying the Gaming Agreement to reduce the debt service obligation of the Boosters (erroneously referred to in the MOU as "LHA") to \$95,000 per year after the LMCIT loan for the seating project has been paid in full.

3. Contemporaneously with the execution of the First Amendment, the Boosters shall pay off in full the LMCIT loan.

4. Effective upon the Boosters making the final payment on the LMCIT loan, Section 2.1 of the Gaming Agreement is amended to provide:

Section 2.1. *Payment of Net Gaming Revenues.* Boosters shall pay to the City, on each January 25 and July 25 (or the next Business Day thereafter if the 25<sup>th</sup> is not a Business Day) from the Net Gaming Revenues, the sum of \$47,500 for a total payment of \$95,000 per year.

5. LHA and the Boosters shall each maintain and preserve their separate existence and shall not splinter into new entities or merge with other entities during the term of the Gaming Agreement.

CITY OF LAKEVILLE

By: Robert D. Johnson  
Robert D. Johnson, Mayor

By: Charlene Friedges  
Charlene Friedges, City Clerk

LAKEVILLE HOUSING AND REDEVELOPMENT AUTHORITY

By: Mark Bell  
Chair

By: Daniel A. L...  
Secretary

INDEPENDENT SCHOOL DISTRICT NO. 194

By: T. J. ...  
Chair

LAKEVILLE COMMUNITY CORPORATION

By: [Signature]  
President

LAKEVILLE HOCKEY BOOSTERS, INC.

By: Timothy L. Shaw  
President  
[Signature]

LAKEVILLE HOCKEY ASSOCIATION

By: Timothy L. Shaw  
Chris Heuts

# GAMING REVENUE AGREEMENT

THIS GAMING REVENUE AGREEMENT, dated as of October 4, 1993, between the CITY OF LAKEVILLE, MINNESOTA (the "City"), a political subdivision of the State of Minnesota and LAKEVILLE HOCKEY BOOSTERS, INC. ("Boosters"), a nonprofit corporation organized and existing under the laws of the State of Minnesota.

## WITNESSETH:

WHEREAS, the City is authorized by law to acquire, construct, repair, maintain and/or operate land, buildings, equipment and/or other facilities necessary for its governmental and proprietary purposes; and

WHEREAS, the City has determined that it is necessary and desirable to acquire an ice arena facility (the Project) in order to provide recreational opportunities for citizens of the City; and

WHEREAS, the Housing and Redevelopment Authority of the City (the Authority) has agreed to finance the acquisition and construction of the Project by the issuance of Ice Arena Revenue Bonds in the principal amount of \$1,375,000 and to lease the Project to the City pursuant to the terms of a Lease-Purchase Agreement, dated October 4, 1993, between the Authority and the City; and

WHEREAS, the City will sublease the Project to the Lakeville Community Corporation, a Minnesota nonprofit corporation (the Corporation), for operation and the Corporation will agree to pay certain sublease rentals to the City which the City will use to pay rentals due to the Authority under the Lease-Purchase Agreement; and

WHEREAS, Boosters is an organization composed of citizens of the City interested in the development and promotion of ice hockey and other skating activities in the City and is desirous of promoting and facilitating the acquisition, construction and operation of the Project, and contributing to the financing of the Project.

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

ARTICLE I  
DEFINITIONS

Section 1.1. *Defined Terms.* The following terms when used herein shall have the following meanings:

*Authority:* The Housing and Redevelopment Authority of the City of Lakeville, Minnesota.

*Bonds:* The Ice Arena Lease Revenue Bonds, Series 1992, in the principal amount of \$1,375,000 to be issued by the Authority to finance the acquisition and construction of the Project.

*Business Day:* Each day other than a Saturday, a Sunday or a bank holiday in Minnesota.

*City:* The City of Lakeville, Minnesota, its successors and assigns

*Code:* The Internal Revenue Code of 1986, as now or hereafter amended, and the regulation and revenue rulings and procedures issued pursuant thereto from time to time.

*Corporation:* Lakeville Community Corporation, a Minnesota nonprofit corporation, its successors and assigns.

*Default:* Any event which, with the giving of notice or lapse of time (whether such notice or lapse of time is required under Section 6.1 or under some other provision of this Agreement), or otherwise, or both, would constitute an Event of Default.

*Gross Revenues:* All receipts from the pull-tab operations and other gaming operations, if any, conducted by Boosters.

*Lease:* The Lease-Purchase Agreement, dated October 4, 1993, between the City and the Authority, and any duly authorized and executed amendment hereto.

*Net Revenues:* For any period, the Gross Revenues for such period less the Operating Expenses for such period.

*Operating Expenses:* The current expenses of the pull-tab operations and other gaming operations, if any, conducted by Boosters including, without limitation, prizes, wages, the cost of materials and supplies used for current operation and maintenance, advertising, insurance premiums, and charges for the accumulation of appropriate reserves for current expenses that are not recurrent monthly but may reasonably be expected to be incurred in accordance with generally accepted accounting principles or state regulatory guidelines.

*Project:* The approximate 40,000 square foot ice arena facility to be constructed in the City pursuant to the terms of the Lease.

*Sublease Rental Payment:* Any payment due from the Corporation to the City under Section 5.1 of the Sublease

*Sublease:* The Sublease Agreement, dated October 4, 1993, between the City and the Corporation.

*State:* The State of Minnesota.

## ARTICLE II

### PAYMENT OF REVENUES; BUDGET

Section 2.1. *Payment of Net Revenues.* Boosters shall pay to the City, on each January 25 and July 25 (or the next Business Day thereafter if the 25th is not a Business Day) from Net Revenues, the sum of \$35,000 plus 90% of the Net Revenues in excess of \$35,000 earned by Boosters during the preceding six month period ended December 31 and June 30, respectively.

Section 2.2. *Deposit of Net Revenues.* The City shall deposit the sum of \$35,000 received from Boosters pursuant to Section 2.1 into the fund from which the City shall make the rental payments required to be made by the City pursuant to Section 5.1 of the Lease. The City shall deposit any Net Revenues in excess of the required \$35,000 payment into a separate account (hereinafter the Excess Revenues Account), which Excess Revenues Account may be used, at the option of the City, to prepay rentals due under the Lease and redeem Bonds at a time when such Bonds are optionally redeemable. Additionally, amounts on deposit in the Excess Revenues Account shall be used to make up any deficiency in payments made by Boosters under Section 2.1 hereof if the Net Revenues available as of any January 25 or July 25 are insufficient to make the required \$35,000 payment. The City shall invest sums from time to time on deposit in the Excess Revenues Account in investments permitted by Section 475.66, Minnesota Statutes.

Section 2.3. *Annual Budget; Books and Records.* Prior to the beginning of each bond year (i.e. on or before each August 1), Boosters shall provide the City with a budget setting forth estimated Gross Revenues and Operating Expenses for the coming bond year (i.e. through August 1 of the following year) in form reasonably satisfactory to the City. Boosters will keep and maintain complete records of the Gross Revenues, the Operating Expenses and its general financial operations. Boosters will, at all reasonable times, permit the City or its representatives to examine or inspect Booster's books and records concerning the Gross Revenues, the Operating Expenses and its general financial operations, wherever located. Boosters shall file with the City copies of all financial and other reports of whatever nature which Boosters is required to file with the State Gambling Control Board, or other agency or board of the State, with respect to its charitable gaming activities, at the same time said reports are filed with Gambling Control Board or other agency.

## ARTICLE III

### REPRESENTATIONS AND WARRANTIES

Section 3.1. *Representations and Warranties of Boosters.* Boosters represents and warrants to the City that as of the date hereof:

(a) Due Incorporation. Boosters is a nonprofit corporation, duly organized and existing and in good standing under the laws of the State of Minnesota. Boosters has full power and authority to enter into this Agreement, to perform its obligations hereunder, and to carry on its business, including its charitable gaming activities, as presently conducted and as proposed to be conducted.

(b) Authorization. The execution and delivery by Boosters of this Agreement and the performance by Boosters of its obligations hereunder, have been duly authorized by all necessary action of its board of directors, and do not and will not conflict with, result in a violation of, or constitute a default under, any provision of its Articles of Incorporation or bylaws or any agreement or other instrument binding upon Boosters or any law or governmental regulation or court decree or order applicable to Boosters.

(c) Litigation. No litigation or governmental proceeding is pending against Boosters which, if decided adversely to Boosters, would have a material adverse effect on Boosters or its business or financial condition.

(d) Non-Default. Boosters is not in default in the payment of any of its indebtedness, nor is it aware of any facts or circumstances that would give rise to any such default and, to the best of its knowledge, it is not in violation of any law or government regulation, or court decree or order affecting a substantial part of its property or business.

(e) Binding Obligation. This Agreement is the legal, valid and binding obligation of Boosters enforceable against Boosters in accordance with its terms, subject only to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforceability generally of rights of creditors and applicable principles of equity.

(f) Prior Pledges. Boosters has made no pledge of any of its interest in or to any portion of the Gross Revenues other than those made pursuant to this Agreement.

ARTICLE IV  
COVENANTS

Section 4.1. *Covenants of Boosters*. So long as the Lease-Purchase Agreement shall remain Outstanding, Boosters will observe and comply with the following requirements, unless the City shall otherwise consent in writing.

- (a) Maintain Existence. Boosters will maintain and preserve its separate existence as a nonprofit corporation organized under the laws of the State of Minnesota and shall at all times be qualified to conduct its business in the State.
- (b) Legal Requirements. Boosters will promptly and faithfully comply with, conform to and obey all applicable present and future laws, ordinances, rules, regulations and other requirements that could materially affect the conduct of the operations of Boosters, including particularly its charitable gaming operations.
- (c) Notice. Boosters shall give to the City written notice of the occurrence of any Default or Event of Default immediately after any officer of Boosters becomes aware thereof.
- (d) Further Assurance. Boosters will promptly execute and deliver all instruments and documents, and take all actions, that may be necessary or that the City may reasonably request, in order to enable the City to exercise and enforce its rights and remedies hereunder with respect to any Net Revenues.

## ARTICLE V

### EVENTS OF DEFAULT

Section 5.1. *Events of Default.* Each of the following occurrences shall constitute an Event of Default:

(a) Any material representation or warranty made by or on behalf of Boosters herein or in any report, certificate or other document furnished by or on behalf of Boosters pursuant to this Agreement shall prove to be false or misleading in any material respect when made.

(b) Boosters shall default in the due observance or performance of any of its obligations hereunder and such default shall continue for thirty (30) days after written notice thereof has been sent to Boosters by the City.

(c) Boosters shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) commence a voluntary case under the federal bankruptcy laws (as now or hereafter in effect), (v) be adjudicated insolvent or be the subject of an order for relief under any chapter of the Bankruptcy Code, (vi) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, or (vii) acquiesce to, or fail to controvert in a timely manner, any petition filed against it in an involuntary case under such bankruptcy laws;

(e) A case or other proceeding shall be commenced, without the application or consent of Boosters, in any court of competent jurisdiction, seeking the liquidation, reorganization, dissolution, winding up, or composition or readjustment of debts, of Boosters, the appointment of a trustee, receiver, custodian, liquidator or the like of Boosters or of all or any substantial part of its assets, or any similar action with respect to Boosters under the federal bankruptcy laws (as now or hereafter in effect) or any other laws relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, and such case or proceeding shall continue undismissed, or unstayed and in effect, for a period of sixty (60) days, or an order for relief against Boosters shall be entered in an involuntary case under such bankruptcy laws.

Section 5.2. *Remedies on Default.* Whenever an Event of Default shall have occurred and be continuing, the City shall be entitled to:

(i) retain and apply any and all funds on deposit with the City pursuant to Section 2.2 hereof; and

(ii) take whatever action at law or in equity may appear necessary or appropriate to collect any Net Revenues and other amounts then due and thereafter to become due hereunder, or to enforce performance and observance of any obligation, agreement or covenant of Boosters under this Agreement.

Any proceeds of the exercise of any remedy by the City hereunder shall be applied by the City (i) first to the payment by the City of all expenses of the exercise of such remedies, including the reasonable attorneys' fees and legal expenses incurred in connection therewith by the City and

(ii) second, to the satisfaction of the obligations of Boosters pursuant to Section 2.1 hereof. Boosters agrees to pay all reasonable expenses incurred by the City in connection with the exercise of any remedy hereunder, including the reasonable attorneys' fees incurred in connection therewith by the City.

Section 5.3. *Waivers; Remedies.* Any waiver given by the City hereunder shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any rights and remedies available to the City. All rights and remedies of the City shall be cumulative and may be exercised singly in any order or concurrently, at the City's option, and the exercise or enforcement of any such right or remedy shall neither be a condition to nor a bar to the exercise or enforcement of any other.

## ARTICLE VI

### MISCELLANEOUS

Section 6.1. *Governing Law.* This Agreement shall be construed in accordance with and governed by the laws of the State of Minnesota.

Section 6.2. *Severability.* If any provision of this Agreement is prohibited by, or is unlawful or unenforceable under, any applicable law of any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidation of the remaining provisions hereof.

Section 6.3. *Limited Indemnity.* Boosters agrees to indemnify and hold City harmless against any loss, cost, expense, damage or liability arising out of or resulting from any misrepresentation by Boosters under this Agreement or from the failure by Boosters to observe or perform any agreement or undertaking made by it in this Agreement or pursuant hereto.

Section 6.4. *Notices.* Any notice to any party to this Agreement shall be in writing and shall be sent by manual delivery, telegram, telex, facsimile transmission, overnight courier or United States mail (postage prepaid), addressed to such party at the address specified on the signature page hereof, or at such other address as such party shall have specified to the other parties hereto in writing.

Section 6.5. *Captions.* Captions herein are for convenience only and shall not be deemed part of this Agreement.

Section 6.6. *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of Boosters, the City and their respective successors and assigns.

Section 6.7. *Amendments.* This Agreement may not be amended, modified, waived, canceled or terminated, except in writing executed by Boosters and the City.

Section 6.8. *Entire Agreement.* This Agreement constitutes the entire understanding of Boosters and the City with respect to the subject matter addressed and supersedes any prior representations or agreements, whether written or oral, with respect to the subject matter hereof.

Section 6.9. *Termination.* This Agreement shall terminate at such time the Bonds have been fully paid or discharged in accordance with the terms of the resolution authorizing their issuance.

