

ORDINANCE NO. 9332

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF HAMMOND, INDIANA, ECONOMIC DEVELOPMENT REVENUE REFUNDING BONDS, SERIES 2016 (HAMMOND URBAN ACADEMY, INC. PROJECT) FOR THE PURPOSE OF REFUNDING THE CITY'S OUTSTANDING ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 2010A (HAMMOND URBAN ACADEMY, INC. PROJECT), AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, the City of Hammond, Indiana (the "City"), a municipality and political subdivision duly organized and validly existing under the laws of the State of Indiana, is authorized and empowered pursuant to Indiana Code, Title 36, Article 7, Chapters 11.9 and 12, as supplemented and amended (collectively, the "Act"), to issue and sell its revenue bonds to finance and refinance the costs of "economic development facilities", as defined in the Act, to promote opportunities for gainful employment and economic development, and to benefit the health, safety, morals and general welfare of the citizens of the City, and to lend the proceeds of such bonds to developers for such purposes; and

WHEREAS, the City has previously issued, pursuant to the Act and the Trust Indenture between the City and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), dated as of April 1, 2010 (the "Trust Indenture"), its Economic Development Revenue Bonds, Series 2010A (Hammond Urban Academy, Inc. Project), dated April 20, 2010, in the aggregate principal amount of \$13,160,000 of which \$12,580,000 is now outstanding (the "2010 Bonds"); and

WHEREAS, the proceeds of the 2010 Bonds were loaned to Hammond Urban Academy, Inc. (the "Academy") pursuant to the terms of the Loan Agreement, between the Academy and the City, dated as of April 1, 2010 (the "Loan Agreement"), to construct and equip a new charter school located in the City; and

WHEREAS, the 2010 Bonds are secured under the Trust Indenture by, among other security, (i) loan payments made by the Academy pursuant to the Loan Agreement and (ii) to the extent such loan payments are insufficient, certain riverboat gaming revenues (the "Gaming Revenues") pledged and assigned by the City to the Trustee for the payment of the 2010 Bonds pursuant to a Pledge Agreement dated as of April 1, 2010, between the City and the Trustee (the "Pledge Agreement"); and

WHEREAS, the Academy's obligations to make loan payments under the Loan Agreement for the 2010 Bonds are further secured by a Real Estate Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing, dated as of April 1, 2010, in favor of the City (the "Mortgage and Security Agreement"); and

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WHEREAS, the 2010 Bonds are eligible for refunding and the Common Council of the City (the "Council") has been advised by its financial advisors that a refunding of the 2010 Bonds will result in a debt service savings to the City and the Academy; and

WHEREAS, the Council has been advised by representatives of the Academy that it desires for the City to proceed with the refunding of the 2010 Bonds and that the Academy will provide funds on hand in the estimated amount of \$3,426,978.93 from a Common School Fund loan provided to the Academy by the Indiana State Board of Education (the "Academy Funds") to the refunding of the 2010 Bonds; and

WHEREAS, the City desires to issue its bonds pursuant to the Act and Indiana Code 5-1-5, in an amount not to exceed Ten Million Dollars (\$10,000,000) designated as the City of Hammond, Indiana, Economic Development Revenue Refunding Bonds, Series 2016 (Hammond Urban Academy, Inc. Project) (the "Bonds") in one or more series to pay, together with the Academy Funds, for costs of refunding the 2010 Bonds, cost of issuance and funding a debt service reserve; and

WHEREAS, the Council finds that the Bonds to be issued will provide net present value savings to the City and the Academy through the refunding of the 2010 Bonds; and

WHEREAS, the City desires to keep the security for the Bonds the same as that provided to the 2010 Bonds and will therefore continue the pledge of Gaming Revenues to the payment of the Bonds which Gaming Revenues are hereby pledged to the Bonds in accordance with Indiana Code 5-1-14-4 and as further specified in the hereinafter defined First Amendment to Pledge Agreement; and

WHEREAS, Indiana Code 5-1.4 provides that a "qualified entity", which term includes the City, may issue and sell its bonds to The Hammond Local Public Improvement Bond Bank (the "Bond Bank"); and

WHEREAS, the Board of Directors of the Bond Bank has adopted a resolution authorizing the purchase of the Bonds from the City in a negotiated sale; and

WHEREAS, the Council has determined that it will be in the best interest of the City and the Academy to sell the Bonds to the Bond Bank in a negotiated sale;

NOW, THEREFORE, BE IT ORDAINED, BY THE COMMON COUNCIL OF THE CITY OF HAMMOND, INDIANA, AS FOLLOWS:

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Section 1. Issuance of Bonds. The issuance of the Bonds by the City for the purpose of, together with the Academy Funds, refunding the outstanding 2010 Bonds in order to create substantial savings for the City and the Academy is hereby authorized and approved. The Bonds may be issued in one or more series in an aggregate principal amount not to exceed Ten Million Dollars (\$10,000,000), pursuant to, and in accordance with the First Supplemental Indenture (as hereinafter defined) and are hereby authorized to be sold at a price not less than ninety-eight percent (98%) of the par amount thereof, at an average annual interest rate not to exceed six percent (6.00%). The proceeds of the Bonds, together with the Academy Funds, shall be delivered to the Trustee and applied by the Trustee in accordance with the First Supplemental Indenture. The Controller of the City is hereby authorized and directed to sell the Bonds to the Bond Bank pursuant to Indiana Code 5-1.4. The Bonds shall mature no later than July 15, 2035.

Section 2. Forms of First Supplemental Indenture and Bonds. Subject to and in accordance with the provisions of Section 8 of this Ordinance, the First Supplemental Indenture, to be dated as of the first day of the month in which the Bonds are delivered (the "First Supplemental Indenture", collectively with the Trust Indenture, the "Indenture"), between the City and the Trustee, which supplements and amends the Trust Indenture, is hereby approved substantially in the form submitted at this meeting, a copy of which First Supplemental Indenture is attached hereto and incorporated herein and in the minute books of the Council. The form of the Bonds included within the First Supplemental Indenture is hereby approved substantially in the form set forth in the First Supplemental Indenture.

Section 3. Form of First Supplemental Loan Agreement. Subject to and in accordance with the provisions of Section 8 of this Ordinance, the First Supplemental Loan Agreement, to be dated as of the first day of the month in which the Bonds are delivered, between the Academy and the City (the “First Supplemental Loan Agreement”), which supplements and amends the Loan Agreement, is hereby approved substantially in the form submitted at this meeting, a copy of which First Supplemental Loan Agreement is attached hereto and incorporated herein and in the minute books of the Council.

Section 4. Form of Qualified Entity Purchase Agreement. Subject to and in accordance with the provisions of Section 8 of this Ordinance, the Qualified Entity Purchase Agreement, to be dated as of the date of sale of the Bonds to the Bond Bank, between the City and the Bond Bank as purchaser of the Bonds (the “Qualified Entity Purchase Agreement”), is hereby approved substantially in the form submitted at this meeting, a copy of which Qualified Entity Purchase Agreement is attached hereto and incorporated herein and in the minute books of the Council.

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Section 5. Form of First Amendment to Mortgage and Security Agreement. Subject to and in accordance with the provisions of Section 8 of this Ordinance, the First Amendment to Real Estate Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing, to be dated as of the first day of the month in which the Bonds are delivered, by the Academy in favor of the City (the “First Amendment to Mortgage and Security Agreement”), which amends the Mortgage and Security Agreement, is hereby approved substantially in the form submitted at this meeting, a copy of which First Amendment to Mortgage and Security Agreement is attached hereto and incorporated herein and in the minute books of the Council.

Section 6. Form of First Amendment to Pledge Agreement. Subject to and in accordance with the provisions of Section 8 of this Ordinance, the First Amendment to Pledge Agreement, to be dated as of the first day of the month in which the Bonds are delivered, by the City in favor of the Trustee (the “First Amendment to Pledge Agreement”), which amends the Pledge Agreement, is hereby approved substantially in the form submitted at this meeting a copy of which First Amendment to Pledge Agreement is attached hereto and incorporated herein and in the minute books of the Council.

Section 7. Approval of Refunding. The refunding and defeasance of the outstanding 2010 Bonds, and the release of the 2010 Bonds from the lien of the Trust Indenture, are hereby approved, confirmed and ratified.

Section 8. Approval of and Changes to Financing Documents. The forms of the First Supplemental Indenture, the First Supplemental Loan Agreement, the Qualified Entity Purchase Agreement, the First Amendment to Mortgage and Security Agreement, the First Amendment to Pledge Agreement and the Bonds attached hereto or described herein and approved and adopted hereby are substantially final forms, and the Council hereby authorizes the Mayor, the Controller and the Clerk (each an “Authorized Officer”), to approve such changes in form or substance to such instruments and documents as may be necessary or appropriate to accomplish the purposes of this Ordinance, the issuance of the Bonds and effect the refunding of the outstanding 2010 Bonds, with any such approval to be conclusively evidenced by such authorized execution of such instruments or documents.

Section 9. Gaming Revenues. The City hereby pledges the Gaming Revenues to the Trustee for payment of the Bonds and further disposition in accordance with the Indenture, the terms of such pledge shall be further evidenced and outlined by the Pledge Agreement as amended by the First Amendment to Pledge Agreement. The pledge contained in the preceding sentence shall be binding from the time made in accordance with Indiana Code 5-1-14-4. The pledge of Gaming Revenues to the payment of principal of and interest on the Bonds shall be on a parity with the pledge of Gaming Revenues to the payment of (i) the City of Hammond,

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Indiana, General Obligation Judgment Funding Bonds, Series 2005, currently outstanding in the principal amount of \$570,000; (ii) the City of Hammond Redevelopment District Special Taxing District Bonds, Series 2005, currently outstanding in the principal amount of \$570,000; (iii) the City of Hammond, Indiana, Revenue Loan, Series 2012, currently outstanding in the principal amount of \$8,985,000; and (iv) the City of Hammond, Indiana Revenue Bonds, Series 2015A (Taxable), currently outstanding in the principal amount of \$35,085,000.

Section 10. Offering Documents. The Authorized Officers, individually, are hereby authorized and empowered to approve any forms of offering documents prepared in connection with the issuance of the Bond Bank Bonds containing City information. The determination shall

be conclusively evidenced by the execution of a certificate approving such sections of any such offering documents.

Section 11. Other Documents. The Authorized Officers, together and/or individually, are hereby authorized and directed to execute such documents and instruments as may be necessary for the issuance of the Bonds and the refunding and defeasance of the outstanding 2010 Bonds, including any federal tax compliance certificate necessary to assure the tax-exempt status of any series of the Bonds for purposes of federal income tax laws.

Section 12. Execution of Financing Documents. On behalf of the City, the Authorized Officers are authorized to execute and deliver the First Supplemental Indenture, the First Supplemental Loan Agreement, the Qualified Entity Purchase Agreement, the First Amendment to Mortgage and Security Agreement, the First Amendment to Pledge Agreement and the Bonds, each in substantially the form described herein and, as applicable, presented to this meeting, with such changes in form or substance as are acceptable to the Authorized Officers executing the same as provided in Section 8 of this Ordinance.

Section 13. Other Actions. The Authorized Officers and such other City employees, service providers and firms as they may direct are hereby authorized and directed to take any and all other actions on behalf of the City as may be necessary or appropriate to implement the refunding of the outstanding 2010 Bonds and carry out the purposes of this Ordinance and the issuance and sale of the Bonds in accordance with the First Supplemental Indenture, the First Supplemental Loan Agreement and the Qualified Entity Purchase Agreement.

Section 14. Bond Bank Reserve Fund. The Council hereby acknowledges that the Bonds will be purchased with proceeds of the Bond Bank Bonds pursuant to the Qualified Entity Purchase Agreement and that the Bond Bank Bonds will be supported by a debt service reserve fund that will be subject to the provisions of Indiana Code 5-1.4-5-4.

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Section 15. Ordinance as Contract. The provisions of this Ordinance and the Indenture securing the Bonds shall, upon execution, constitute contracts binding between the City and the owners of the Bonds, and after the issuance of the Bonds, this Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holders so long as any of

the Bonds or the interest thereon remain unpaid.

Section 16. Invalidity. If any section, paragraph, clause or provision of this Ordinance shall be ruled by any court of competent jurisdiction to be invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining sections, paragraphs, clauses or provisions.

Section 17. Conflicts. All ordinances, resolutions and orders, or parts thereof, in conflict with the provisions of this Ordinance, are, to the extent of such conflict, hereby repealed.

Section 18. Headings. The headings or titles of the several sections of this Ordinance shall be solely for convenience or reference and shall not affect the meaning, construction or effect of this Ordinance.

Section 19. Effective Date. This Ordinance and the findings herein shall be in full force and effect immediately upon its passage and execution by the Mayor.

BE IT FURTHER ORDAINED by the Common Council that this Ordinance shall be in full force and effect from and after its passage by the Common Council, signing by the President thereof, and approval by the Mayor.

ADOPTED AND APPROVED BY the Common Council of the City of Hammond, Indiana, this 8th day of February, 2016.

Michael Opinker, President /s/
Hammond Common Council

ATTEST:

Robert J. Golec, City Clerk /s/
City of Hammond, Indiana

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PRESENTED BY ME, the undersigned City Clerk of the City of Hammond, Indiana, to the Mayor, for approval and signature, this 9th day of February, 2016.

Robert J. Golec, City Clerk /s/
City of Hammond, Indiana

The foregoing Ordinance No. 9332 consisting of seven (7) typewritten pages, including this page, was APPROVED AND SIGNED BY ME, the undersigned Mayor of the City of Hammond, Indiana, this 9th day of February, 2016.

Thomas M. McDermott, Jr., Mayor /s/
City of Hammond, Indiana

PASSED by the Common Council on the 8th day of February, 2016 and approved by the Mayor on the 9th day of February, 2016.

Robert J. Golec, City Clerk /s/
City of Hammond, Indiana