

AN ORDINANCE APPROVING AND ADOPTING THAT CERTAIN "PROJECT PLAN RELATING TO INCREMENT DISTRICT NUMBER ONE, CITY OF CLINTON, OKLAHOMA (CLINTON WATER PARK INCREMENT DISTRICT)", DATED OCTOBER 1, 2010; RATIFYING AND CONFIRMING ACTIONS, RECOMMENDATIONS AND FINDINGS; ESTABLISHING "INCREMENT DISTRICT NUMBER ONE, CITY OF CLINTON, OKLAHOMA"; DESIGNATING AND ADOPTING PROJECT AREA AND INCREMENT DISTRICT BOUNDARIES; ADOPTING CERTAIN FINDINGS; APPORTIONING INCREMENTAL AD VALOREM REVENUES; APPORTIONING INCREMENTAL CITY SALES TAX REVENUES; APPORTIONING INCREMENTAL CITY LODGING TAX REVENUES; CREATING THE CLINTON WATER PARK INCREMENT DISTRICT APPORTIONMENT FUND; DESIGNATING THE CLINTON INDUSTRIAL AUTHORITY AS THE PUBLIC ENTITY TO CARRY OUT AND ADMINISTER THE PROJECT PLAN AND AUTHORIZING THE AUTHORITY TO MAKE MINOR PLAN AMENDMENTS; AUTHORIZING THE AUTHORITY TO ISSUE TAX APPORTIONMENT BONDS OR NOTES; DESIGNATING THE CITY MANAGER OF THE CITY OF CLINTON, OKLAHOMA AS THE PERSON IN CHARGE OF THE ADMINISTRATION OF THE PLAN; PROVIDING FOR SEVERABILITY; AND CONTAINING OTHER PROVISIONS RELATING THERETO.

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WHEREAS, by letter dated August 3, 2010, HotelMacher, L.L.C., an Oklahoma limited liability company (hereinafter, the "Developer"), has requested the establishment of a "tax increment district" within the City of Clinton, Oklahoma (hereinafter, the "City") to provide development financing assistance in connection with the Developer's proposal to develop, construct and operate: (i) an 87-room hotel; (ii) a 20,000 square-foot water park; (iii) a 25-unit RV camping pad; and (iv) a 2,400 square-foot convenience store, all to be located along the south side of Interstate 40 between 28th Street and Neptune Drive in Clinton, Oklahoma (hereinafter, the "Project"); and

WHEREAS, the Developer's proposal has been incorporated into the terms of that certain "Project Plan Relating to Increment District Number One, City of Clinton, Oklahoma (Clinton Water Park Increment District)" dated October 1, 2010 (hereinafter, the "Project Plan"), pursuant to the provisions of the Oklahoma Local Development Act, Title 62, Sections 850 et seq. of the Oklahoma Statutes (hereinafter, the "Local Development Act"); and

WHEREAS, the City of Clinton Local Development Act Review Committee (hereinafter, the "Local Development Act Review Committee"), representing each of the taxing jurisdictions in which the proposed district is located, as well as the public at large, has reviewed the Project Plan and the proposed increment district in accordance with the criteria specified in the Local Development Act; and

WHEREAS, the Local Development Act Review Committee has also considered the financial impact of the Project Plan on each taxing jurisdiction, and has made its findings as to the financial impact which will result from the adoption of the Project Plan; and

WHEREAS, the City of Clinton Planning Commission has adopted a resolution declaring the Project Plan to be in compliance with the Comprehensive Plan of the City of Clinton and recommending approval of the Project Plan; and

WHEREAS, all reasonable efforts have been made to allow full public knowledge and participation in the application of the Local Development Act in the review and approval of the proposed Project Plan and related tax increment district; and

WHEREAS, all required notices have been given and all required hearings have been held in connection with the proposed Project Plan, in accordance with the provisions of the Local Development Act, the Oklahoma Open Meetings Act, Title 25, Sections 301 et seq. of the Oklahoma Statutes, and other applicable laws; and

WHEREAS, implementation of the Project Plan will be facilitated by the designation of the Clinton Industrial Authority (hereinafter, the "Authority") as the public entity authorized to carry out and administer the Project Plan and to exercise certain powers necessary thereto; and

WHEREAS, it is in the best interests of the City of Clinton and its citizens to approve the Project Plan, to establish the proposed increment district and to authorize the Authority to undertake those projects described therein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLINTON, OKLAHOMA, TO-WIT:

SECTION 1. Approving and Adopting the Project Plan Relating to Increment District Number One, City of Clinton, Oklahoma. The Project Plan, as recommended by the Local Development Act Review Committee and the City of Clinton Planning Commission, is hereby adopted and approved in the form attached hereto as Exhibit "A".

SECTION 2. Ratifying and Confirming Actions, Recommendations and Findings. All actions taken, recommendations, findings and conclusions made in connection with the Project Plan by the Local Development Act Review Committee and the City of Clinton Planning Commission are hereby ratified and confirmed.

SECTION 3. Establishing "Increment District Number One, City of Clinton, Oklahoma". There is hereby established "Increment District Number One, City of Clinton, Oklahoma", in accordance with the provisions of Section 861 and other applicable provisions of the Local Development Act, which district shall be effective as of April 1, 2011. For identification purposes, the name of the tax increment district being established by this Ordinance may also be referred to herein as the "Clinton Water Park Increment District".

SECTION 4. Designating and Adopting Project Area and Increment District Boundaries. The boundaries of the Clinton Water Park Increment District and the related Project Area are hereby adopted as set forth in Exhibit "B" and Exhibit "C", respectively, both attached hereto and made a part hereof.

SECTION 5. Adopting Certain Findings. In accordance with the Local Development Act, the City Council hereby finds:

A. That boundaries of the proposed district are within an area requiring public improvements to reverse economic stagnation or decline, to serve as a catalyst for retaining or expanding employment, to attract major investment in the area or to preserve or enhance the tax base. Therefore, the proposed district qualifies as a “reinvestment area” pursuant to Section 853 of the Local Development Act, and is eligible for designation as a tax increment district.

B. That contemplated private and public projects within the Clinton Water Park Increment District are likely to enhance the value of other real property, increase ad valorem tax revenues to taxing jurisdictions, increase sales taxes for the City of Clinton and Custer County, Oklahoma, and effectuate an increase in employment opportunities within the Clinton Water Park Increment District, as well as promote the general public interest.

C. That the guidelines specified in Section 852 of the Local Development Act have been and shall be followed in relation to the Clinton Water Park Increment District and the Project Plan relating thereto.

D. That the aggregate net assessed value of all taxable property in all districts within the City of Clinton, as determined pursuant to Section 862 of the Local Development Act, does not exceed thirty-five (35%) of the total net assessed value of taxable property within the City of Clinton, Oklahoma.

E. That the aggregate net assessed value of the taxable property in all districts, as determined pursuant to Section 862 of the Local Development Act, within the City of Clinton, Oklahoma, does not exceed twenty-five percent (25%) of the total net assessed value of any school district located within the City of Clinton.

F. That the land area contained within all districts, as determined pursuant to Section 862 of the Local Development Act, within the City of Clinton does not and shall not exceed twenty-five percent (25%) of the total land area of the City of Clinton, Oklahoma.

G. That the Project Plan is feasible and conforms to the Comprehensive Plan of the City of Clinton, Oklahoma.

SECTION 6. Apportioning Incremental Ad Valorem Tax Revenues. In accordance with the provisions of the Local Development Act, increments of all ad valorem taxes generated within the Clinton Water Park Increment District, as such increments are determined and defined by the Local Development Act (hereinafter, the “Ad Valorem Increment Revenues”), are hereby apportioned and set aside from all other ad valorem taxes levied within the Clinton Water Park Increment District, to be used exclusively for:

- (i) the payment of “project costs” (as defined in the Local Development Act) incurred in connection with the development or construction of those projects listed in the Project Plan;
- (ii) the reimbursement of the City, or any agency thereof which has paid “project costs” from funds which were not increments derived from the Clinton Water Park Increment District, but only to the extent that such sums were actually paid; and
- (iii) the payment of principal, interest and premium, if any, on any “tax apportionment bonds or notes” issued pursuant to Section 863 of the Local Development Act, all or a portion of the proceeds of which are to be used in accordance with clauses (i) or (ii) above.

The apportionment of ad valorem taxes pursuant to this section shall terminate upon the final payment of, or reimbursement for, all “project costs” incurred in connection with the projects listed in the Project Plan, and the payment of all outstanding principal, accrued interest, and premium due on any “tax apportionment bonds or notes” issued hereunder; provided, however, that in no case shall the apportionment of revenues pursuant hereto extend beyond fifteen (15) years from the original effective date of this Ordinance, unless such period is modified by subsequent action of the City Council. In the event that a portion of the principal of or interest on any “tax apportionment bonds or notes” issued in connection herewith, remains unpaid as of the fifteenth (15th) anniversary of the original effective date of this Ordinance, it is the intent of this City Council that the District shall not terminate until the increment revenues apportioned during the fifteenth (15th) year are actually received by the Apportionment Fund, even if the receipt of such revenues occurs subsequent to the fifteenth (15th) anniversary of the original effective date of this Ordinance.

Section 7. Apportioning Incremental City Sales Tax Revenues. In accordance with the provisions of the Local Development Act, increments of all municipal sales taxes levied by the City of Clinton, and generated within the District, as such increments are hereinafter determined and defined, are hereby apportioned and set aside from all other sales taxes levied within the Clinton Water Park Increment District, to be used exclusively for:

- (i) the payment of “project costs” (as defined in the Local Development Act) incurred in connection with the development, acquisition or construction of those projects listed in the Project Plan; and
- (ii) the reimbursement to the City, or any agency thereof which has paid “project costs” from funds which were not increments derived from the Clinton Water Park Increment District, but only to the extent that such sums were actually paid; and
- (iii) the payment of principal, interest and premium, if any, on any “tax apportionment bonds or notes” issued pursuant to Section 863 of the Local Development Act, the proceeds of which shall be used in accordance with clauses (i) or (ii) above.

For purposes of determining the incremental portion of the City sales taxes generated within the Clinton Water Park Increment District, the City Manager shall certify as the “base sales tax amount” the annual City sales taxes that were generated within the area comprising the Clinton Water Park Increment District between January 1, 2010 and December 31, 2010. All City sales tax revenue generated within the Clinton Water Park Increment District and received by the City which are in excess of such base amount, shall be considered to be the “increment” subject to apportionment by this section (hereinafter referred to as the “City Sales Tax Increment Revenues”).

The apportionment of City Sales Tax Increment Revenues pursuant to this section shall terminate upon the final payment of, or reimbursement for, all “project costs” incurred in connection with the projects listed in the Project Plan, and the payment of all outstanding principal, accrued interest, and premium due on any “tax apportionment bonds or notes” issued hereunder; provided, however, that in no case shall the apportionment of revenues pursuant hereto extend beyond fifteen (15) years from the original effective date of this Ordinance, unless such period is modified by subsequent action of the City Council. In the event that a portion of the principal of or interest on any “tax apportionment bonds or notes” issued in connection herewith, remains unpaid as of the fifteenth (15th) anniversary of the original effective date of this Ordinance, it is the intent of the City Council that the Clinton Water Park Increment District shall not terminate until the increment revenues apportioned during the fifteenth (15th) year are actually received by the Apportionment Fund, even if the receipt of such revenues occurs subsequent to the fifteenth (15th) anniversary of the original effective date of this Ordinance.

Section 8. Apportioning Incremental City Lodging Tax Revenues. In accordance with the provisions of the Local Development Act, increments of all municipal lodging taxes generated within the Clinton Water Park Increment District, as such increments are determined and defined by the Local Development Act, as such increments are hereinafter determined and defined, are hereby apportioned and set aside from all other lodging taxes levied within the Clinton Water Park Increment District, to be used exclusively for:

- (i) the payment of “project costs” (as defined in the Local Development Act) incurred in connection with the development or construction of those projects listed in the Project Plan;
- (ii) the reimbursement of the City, or any agency thereof which has paid “project costs” from funds which were not increments derived from the Clinton Water Park Increment District, but only to the extent that such sums were actually paid; and
- (iii) the payment of principal, interest and premium, if any, on any “tax apportionment bonds or notes” issued pursuant to Section 863 of the Local Development Act, all or a portion of the proceeds of which are to be used in accordance with clauses (i) or (ii) above.

For purposes of determining the incremental portion of the City sales taxes generated within the District, the City Manager shall certify as the “base lodging tax amount” the annual City lodging taxes that were generated within the area comprising the Clinton Water Park Increment District

between January 1, 2010 and December 31, 2010. All City lodging tax revenue generated within the Clinton Water Park Increment District and received by the City which are in excess of such base amount, shall be considered to be the "increment" subject to apportionment by this section (hereinafter referred to as the "City Lodging Tax Increment Revenues").

The apportionment of City Lodging Tax Increment Revenues pursuant to this section shall terminate upon the final payment of, or reimbursement for, all "project costs" incurred in connection with the projects listed in this Project Plan, and the payment of all outstanding principal, accrued interest, and premium due on any "tax apportionment bonds or notes" issued hereunder; provided, however, that in no case shall the apportionment of revenues pursuant hereto extend beyond fifteen (15) years from the original effective date of this Ordinance establishing the Clinton Water Park Increment District, unless such period is modified by subsequent action of the City Council. In the event that a portion of the principal of or interest on any "tax apportionment bonds or notes" issued in connection herewith, remains unpaid as of the fifteenth (15th) anniversary of the original effective date of this Ordinance, it is the intent of the City Council that the Clinton Water Park Increment District shall not terminate until the increment revenues apportioned during the fifteenth (15th) year are actually received by the Apportionment Fund, even if the receipt of such revenues occurs subsequent to the fifteenth (15th) anniversary of the original effective date of this Ordinance.

SECTION 9 Creating the Clinton Water Park Increment District Apportionment Fund. During the period of apportionment, and subject to the City's right to subsequently repeal, modify or amend this Ordinance, the increments apportioned hereunder shall be transferred by the respective taxing authorities to the "Clinton Water Park Increment District Apportionment Fund" (herein, the "Apportionment Fund"), which fund shall be held by and be the property of, the Clinton Industrial Authority (except that such fund may also be held by a trustee bank acting on behalf of the Authority). No portion of such increments and no portion of the Apportionment Fund shall constitute a part of the general fund of the City of Clinton.

SECTION 10. Designating the Clinton Industrial Authority As the Public Entity to Carry Out and Administer the Project Plan and Authorizing the Authority to Make Minor Amendments to the Project Plan. The Clinton Industrial Authority shall be and is hereby designated and authorized as the public entity to carry out and administer the provisions of the Project Plan, in accordance with its respective responsibilities, and to exercise all powers deemed necessary and appropriate for public trusts as set forth in the Local Development Act or the Public Trust Act, Title 60, Section 176 et seq. of the Oklahoma Statutes, including the right to make minor amendments to the Project Plan. For these purposes, an amendment shall be considered to be "minor" if: (i) such amendment does not change the character or purpose of the Project Plan; (ii) does not affect more than five percent (5%) of the district's area; or (iii) does not affect more than five percent (5%) of the public costs of the plan to be financed by apportioned tax increments, all as determined on a cumulative basis.

SECTION 11. Authorizing the Clinton Industrial Authority to Issue Tax Apportionment Bonds or Notes. The Clinton Industrial Authority shall have the authority to issue tax apportionment bonds or notes and to pay costs of issuance and to fund appropriate reserves, in connection therewith, all in accordance with the provisions of the Project Plan. The Clinton

Industrial Authority is also authorized to irrevocably pledge all or part of the apportioned increments and other revenue for the payment of the tax apportionment bonds or notes. The part of the apportioned increments pledged in payment may be used only for the payment of the bonds or notes or interest on the bonds or notes until the bonds or notes have been fully paid. In authorizing the irrevocable pledging of such increments, it is the express intention of the City Council that the Clinton Water Park Increment District will remain in place until all of the outstanding principal, accrued interest and premium, if any, on any such tax apportionment bonds or notes have been paid in full. Notwithstanding such intention, the City, by these provisions, does not waive any right which it has now or may have in the future, to repeal, modify or amend this Ordinance, by subsequent action of the City Council, as provided in Section 856(C) of the Local Development Act. In adopting this Ordinance, the City does not purport to create any contractual obligation extending beyond the City's current or any subsequent fiscal year with regard to the establishment or maintenance of the Clinton Water Park Increment District, or the apportionment of ad valorem or sales tax increments; provided, however, that the City may, on a year-to-year basis, agree to transfer to the Apportionment Fund, any apportioned increments which it receives. All tax apportionment bonds or notes issued pursuant to this section shall state that such bond or note is not a debt, general or special, liability or obligation of the City of Clinton or the State of Oklahoma or any other agency or authority of such entities, other than the Clinton Industrial Authority. The bond or note shall further state:

- (i) that the issuance of such bond or note does not give rise to a charge against the general credit or taxing powers of the City of Clinton, or a claim on the revenues or resources of the State of Oklahoma, and
- (ii) that such bond or note is a special, limited obligation of the Clinton Industrial Authority, payable solely from the income, revenues and receipts derived or to be derived from the proceeds of certain tax increments paid over to the Authority and the funds and accounts held pursuant to the terms of any indenture or agreement authorizing the issuance of such bonds or notes.

SECTION 12. Designating the City Manager as the Person In Charge of the Administration of the Plan. The City Manager of the City of Clinton, Oklahoma, or his or her successor-in-office shall be the person in charge of implementation of the Project Plan.

SECTION 13. Providing for Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional, such portion shall not affect the validity of the remaining portions of this Ordinance.

SECTION 14. Effective Date. This Ordinance shall become effective thirty (30) days following its final adoption, as provided by Oklahoma law.

PASSED by the City Council of the City of Clinton, Oklahoma this \_\_\_ day of February, 2011.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk  
(SEAL)

APPROVED:

\_\_\_\_\_  
City Attorney

EXHIBIT "A"

COPY OF THE  
PROJECT PLAN RELATING TO  
INCREMENT DISTRICT NO. ONE, CITY OF CLINTON, OKLAHOMA

EXHIBIT "B"

BOUNDARIES OF THE  
CLINTON WATER PARK INCREMENT DISTRICT

The legal description of Increment District Number One, City of Clinton, Oklahoma is that tract of land located in the South Half of Section 22, Township 12 North, Range 17 West of the Indian Meridian, Custer County, Oklahoma, more particularly described, as follows:

Beginning at a point which is the Southwest Corner of said Section 22; thence North  $89^{\circ}33'28''$  East along the South Boundary Line of Section 22 a distance of 3,632.93 feet; thence North  $0^{\circ}26'32''$  West a distance of 330 feet; thence North  $89^{\circ}33'28''$  East a distance of 209.40 feet; thence North  $0^{\circ}26'32''$  West a distance of 347.80 feet; thence North  $89^{\circ}20'31''$  East a distance of 516.06 feet; thence Northeasterly on a curve to the right with a radius of 3949.72 feet a distance of 150 feet (with a long chord bearing of North  $13^{\circ}37'46''$  East 149.99 feet); thence North  $16^{\circ}25'02''$  East a distance of 15.07 feet; thence North  $89^{\circ}44'37''$  East a distance of 249.70 feet to a point on the Westerly right-of-way of old U.S. Highway 66; thence Northeasterly on a curve to the right with a radius of 3949.83 feet and along said right-of-way a distance of 178.20 feet (with a long chord bearing of North  $16^{\circ}33'30''$  178.19 feet) to a point on the Southern right-of-way boundary of Interstate Highway No. I-40; thence northwesterly and southwesterly along the Southern right-of-way boundary of Interstate Highway No. I-40 to a point where such right-of-way intersects the West Boundary Line of Section 22; thence South and along said West Boundary Line of Section 22 to the point of beginning.

EXHIBIT "C"

BOUNDARIES OF THE  
CLINTON WATER PARK PROJECT AREA

The legal description of the Clinton Water Park Project Area is that tract of land located in the South Half of Section 22, Township 12 North, Range 17 West of the Indian Meridian, Custer County, Oklahoma, more particularly described, as follows:

Beginning at a point which is the Southwest Corner of said Section 22; thence North  $89^{\circ}33'28''$  East along the South Boundary Line of Section 22 a distance of 3,632.93 feet; thence North  $0^{\circ}26'32''$  West a distance of 330 feet; thence North  $89^{\circ}33'28''$  East a distance of 209.40 feet; thence North  $0^{\circ}26'32''$  West a distance of 347.80 feet; thence North  $89^{\circ}20'31''$  East a distance of 516.06 feet; thence Northeasterly on a curve to the right with a radius of 3949.72 feet a distance of 150 feet (with a long chord bearing of North  $13^{\circ}37'46''$  East 149.99 feet); thence North  $16^{\circ}25'02''$  East a distance of 15.07 feet; thence North  $89^{\circ}44'37''$  East a distance of 249.70 feet to a point on the Westerly right-of-way of old U.S. Highway 66; thence Northeasterly on a curve to the right with a radius of 3949.83 feet and along said right-of-way a distance of 178.20 feet (with a long chord bearing of North  $16^{\circ}33'30''$  178.19 feet) to a point on the Southern right-of-way boundary of Interstate Highway No. I-40; thence northwesterly and southwesterly along the Southern right-of-way boundary of Interstate Highway No. I-40 to a point where such right-of-way intersects the West Boundary Line of Section 22; thence South and along said West Boundary Line of Section 22 to the point of beginning.