



## *Agenda Commentary*

**Item Title/ Subject:** Subordination Agreement – Hotelmacher LLC TIF Agreement/Project

**Staff Source:** City Manager, Steve Hewitt, City Attorney Ryan Meacham

**History/Background Information:** City Attorney Ryan Meacham informed me that one document (Subordination Agreement) needed to be approved by the City Council. This document was delivered and approved by all parties the day of the project closing. Council needs to approve.

**Item/Subject Summary:** This document was one of the final documents being negotiated by all parties involved. This is the financial position that all financial parties needed for the Tax Increment Financing.

**Price/Cost:** Included in TIF project.

**Recommendation:** Recommend Approval.

**MEACHAM AND MEACHAM**  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
801 FRISCO AVENUE  
P.O. BOX 996  
CLINTON, OKLAHOMA 73601

DENVER MEACHAM II

TELEPHONE 580-323-6323  
FAX 580-323-1100

April 4, 2011

Mr. Ryan A. Meacham  
Attorney at Law  
P.O. Box 1236  
Clinton, OK 73601

Re: Hotelmacher, L.L.C./Schumacher Investments South L.L.C./Clinton  
Industrial Authority/Bank of Hydro  
Agreement

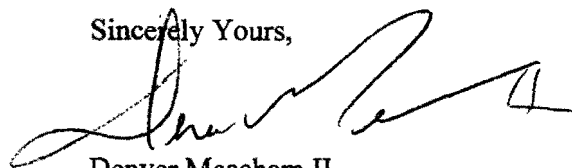
Dear Ryan:

I talked to Walt last Friday afternoon after he returned to the United States and he verified that the five acres on which the water park will be located (which is not covered by the Bank of Hydro's existing mortgage) is either owned or will be conveyed today or tomorrow to Schumacher Investments South, L.L.C.

Therefore, I have revised the Agreement, which I sent to Fred Schamburg and you on March 23<sup>rd</sup> to make Schumacher Investments South, L.L.C. an additional party. Please review the enclosed Agreement and let me know if you have any suggested changes or additions. I am also sending a copy of this Agreement to Fred and Walt to insure that it meets with their approval.

As soon as everyone has approved this Agreement, we need to discuss the procedure to be used in getting this Agreement signed by the parties. You will note that there is language stating that the Agreement can be signed in counterparts.

Sincerely Yours,



Denver Meacham II

DMII:hl

Enc.

Cc: Mr. Walt Schumacher  
Mr. Fred Schamburg

## AGREEMENT

THIS AGREEMENT made and entered into as of \_\_\_\_\_, 2011, by and among HOTELMACHER, L.L.C., an Oklahoma limited liability company, hereinafter referred to as "Hotelmacher"; SCHUMACHER INVESTMENTS SOUTH, L.L.C., an Oklahoma limited liability company, hereinafter referred to as "SIS"; CLINTON INDUSTRIAL AUTHORITY, an Oklahoma public trust, hereinafter referred to as "Authority"); and BANK OF HYDRO, hereinafter referred to as "Lender", is as follows:

WHEREAS, Hotelmacher and SIS are the owners of all of the real estate described in Appendix "1" (hereinafter referred to as the "Project Site") on which Hotelmacher plans to construct and develop (i) an 87 room Holiday Inn Express; (ii) a 25 unit "supersite" RV camping pad; and (iii) a 2,400 square foot convenience store and SIS plans to construct and develop a 20,000 square foot water park, (which are all referred to herein as the "Project Facilities"); and

WHEREAS, Hotelmacher and SIS (collectively referred to herein as "the Companies") have requested development financing assistance from the Authority in paying for the costs of certain street, storm water drainage and other infrastructure improvements to the Project Site; and

WHEREAS, the Authority has, by resolution, authorized the sale and issuance of its "Tax Apportionment Note, Series 2011 (Taxable) (Clinton Water Park Increment District Project)" in the principal amount of \$1,575,000.00 to the City of Clinton, Oklahoma, and the loan of a portion of the proceeds thereof to the Companies in order to finance the costs associated with the construction of the Project, and the costs related to the issuance of the Tax Apportionment Note; and

WHEREAS, in order to secure the performance of all covenants and agreements contained in the Development Financing Assistance Agreement, the Companies are required to grant the Authority a mortgage lien covering the Project Site and a Security interest in certain personal property and fixtures used in connection with the Project Facilities; and

WHEREAS, Lender made a construction loan to Hotelmacher in which First Bank and Trust Company, Clinton, Oklahoma, and Oklahoma Bank and Trust Company, Clinton, Oklahoma, are participants that is guaranteed by USDA, Rural Development, and is secured by a first mortgage lien, executed by Hotelmacher, recorded on December 3, 2010, recorded in Book 1493, Pages 369-388 of the Records in the office of the County Clerk of Custer County, covering all of the Project Site (except for the water park site, which is owned by SIS), which construction loan is also secured by a security interest in the personal property and fixtures used in connection with the Project Facilities; and

WHEREAS, the parties anticipate that Lender will, in the future, make a similar construction loan to SIS to finance the construction and development of the water park.

WHEREAS, the parties to this Agreement desire to agree upon the terms by which Lender will allow the Companies to grant a lien to the Authority covering the real estate and personal property owned by the Companies.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement agree and contract as follows:

1. In order to secure the performance of all covenants and agreements contained in the Development Financing Assistance Agreement and to secure the timely repayment of the Companies' loan from the Authority, Lender agrees that the Companies can grant to the Authority a mortgage lien on the real property comprising the Project Site and a security interest in the personal property and fixtures used in connection with the Project Facilities with the understanding that the Authority's mortgage lien and security agreement will expressly state that its lien is subject to Lender's prior mortgage lien and security interest executed by Hotelmacher.

2. The Authority's mortgage lien and security interest shall also be subject to any future loans, which Lender may hereafter make to Hotelmacher or to SIS to finance the construction, completion or development of any improvements on the Project Site or the construction, completion or development of the Project Facilities, including the water park.

3. Upon request by Lender, the Authority will execute a written subordination agreement consenting, stipulating and agreeing that the lien created by its mortgage and security agreement and UCC-1 Financing Statement covering the Project Site and the Project Facilities shall be junior and inferior in priority to the lien of any new mortgage, security agreement or financing statement from either Hotelmacher or SIS to Lender in connection to any future construction or other loans made by Lender to either Company to construct or complete any improvements on the Project Site or to construct and complete the Project Facilities.

4. This Agreement may not be amended or modified in any way, except by an instrument, executed in writing by all parties hereto.

5. Time of the essence in connection with the performance of this Agreement.

Upon the failure of any party to the Agreement to perform any of their obligations under this Agreement, any other party may pursue any remedy available to them, in law or in equity. In the event of a suit to enforce any of the terms of this Agreement, the prevailing party shall have the right to recover all of such party's expenses and costs incurred by reason of such litigation, including but not limited to attorney fees, court costs and costs of suit preparation.

6. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, legal representatives and assigns.

7. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original but all of such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed this \_\_\_\_\_ day of April, 2011.

HOTELMACHER, L.L.C.

By: \_\_\_\_\_  
Walter Schumacher, Manager

By: \_\_\_\_\_  
Carolyn Schumacher, Manager

SCHUMACHER INVESTMENTS  
SOUTH, L.L.C.

By: \_\_\_\_\_  
Walter Schumacher, Manager

By: \_\_\_\_\_  
Carolyn Schumacher, Manager

ATTEST:

CLINTON INDUSTRIAL AUTHORITY

By: \_\_\_\_\_  
Its Secretary

By: \_\_\_\_\_  
Its Chairman

BANK OF HYDRO

By: \_\_\_\_\_  
Its \_\_\_\_\_

State Oklahoma,

:ss

County of \_\_\_\_\_,

The aforesaid instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011, by Walter Schumacher, Manager of HOTELMACHER, L.L.C., an Oklahoma limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public

State Oklahoma,

:SS

County of \_\_\_\_\_,

The aforesaid instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011, by Carolyn Schumacher, Manager of HOTELMACHER, L.L.C., an Oklahoma limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public

State Oklahoma,

:SS

County of \_\_\_\_\_,

The aforesaid instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011, by Walter Schumacher, Manager of SCHUMACHER INVESTMENTS SOUTH, L.L.C., an Oklahoma limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public

State Oklahoma,

:SS

County of \_\_\_\_\_,

The aforesaid instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011, by Carolyn Schumacher, Manager of SCHUMACHER INVESTMENTS SOUTH, L.L.C., an Oklahoma limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public

State Oklahoma,

:ss

County of \_\_\_\_\_,

The aforesaid instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2011, by \_\_\_\_\_, Chairman of CLINTON INDUSTRIAL AUTHORITY, an  
Oklahoma public trust, on behalf of said trust.

\_\_\_\_\_  
Notary Public

State Oklahoma,

:ss

County of \_\_\_\_\_,

The aforesaid instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2011, by \_\_\_\_\_, \_\_\_\_\_ of BANK OF HYDRO,  
on behalf of said Bank.

\_\_\_\_\_  
Notary Public

APPROVAL

The execution of the above and foregoing Agreement by BANK OF HYDRO is hereby approved by the loan participants, FIRST BANK AND TRUST COMPANY, CLINTON, OKLAHOMA; OKLAHOMA BANK AND TRUST COMPANY, CLINTON, OKLAHOMA; and by loan guarantor, USDA, RURAL DEVELOPMENT.

FIRST BANK AND TRUST COMPANY,  
CLINTON, OKLAHOMA

By: \_\_\_\_\_  
Its \_\_\_\_\_

OKLAHOMA BANK AND TRUST  
COMPANY, CLINTON, OKLAHOMA

By: \_\_\_\_\_  
Its \_\_\_\_\_

USDA, RURAL DEVELOPMENT

By: \_\_\_\_\_  
Its \_\_\_\_\_

## Appendix "1"

A tract of land lying in the South Half (S½) of Section 22, Township 12 North, Range 17 W.I.M., Custer County, Oklahoma, described by metes and bounds as follows: Beginning at the Southwest corner of the Southeast Quarter of said Section 22; thence North 89°33'28" East and along the South line of said Southeast Quarter a distance of 992.93 feet; thence North 0°26'32" West a distance of 330.00 feet; thence North 89°33'28" East a distance of 209.40 feet; thence North 0°26'32" West a distance of 347.80 feet; thence North 89°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 150.0 feet (with a long chord bearing of North 13°37'46" East 149.99 feet); thence North 16°25'02" East a distance of 15.70 feet; thence North 89°44'37" East a distance of 249.70 feet to a point on the Westerly right-of-way of old U.S. 66 Highway; 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°33'30" East 178.19 feet) to a point on the Southerly right-of-way of Interstate Highway No. I-40; thence North 70°47'58" West and along said right-of-way a distance of 732.55 feet; thence Northwesterly on a curve to the left with a radius of 1065.92 feet and along said right-of-way a distance of 318.05 feet (with a long chord bearing of North 79°20'52" West 316.88 feet); thence South 76°45'34" West and along said right-of-way a distance of 1077.44 to a point on the West line of said Southeast Quarter; thence South 0°03'19" West and along said West line and Southerly right-of-way a distance of 154.37 feet; thence North 89°56'41" West and along said right-of-way a distance of 60.18 feet; thence Southwesterly and Northwesterly on a curve to the right with a radius of 722.96 feet and along said right-of-way a distance of 1010.59 feet (with a long chord bearing of South 69°01'45" West 930.30 feet); thence North 70°55'32" West and along said right-of-way a distance of 196.16 feet; thence Northwesterly and Southwesterly on a curve to the left with a radius of 804.93 feet and along said right-of-way a distance of 453.97 feet (with a long chord bearing of North 87°04'59" West 447.98 feet); thence South 76°45'34" West and along said right-of-way a distance of 83.73 feet to a point 124.00 feet Easterly and perpendicular to the center line of the A.T. & S.F. Railroad; thence South 6°44'34" West and parallel to said railroad 671.26 feet to a point on the South line of the Southwest Quarter of said Section 22; thence North 89°44'26" East and along said South line a distance of 1721.16 feet to the point of beginning, containing 65.545 computed acres, more or less,