

**TAX INCENTIVE AGREEMENT  
(NEW BUSINESS)**

THIS Tax Incentive Agreement (the "Agreement") is entered into by and among the City of Clinton, Oklahoma (the "City") and \_\_\_\_\_ an Oklahoma Corporation (the "Owner").

**RECITALS:**

**WHEREAS**, the City adopted Resolution IA09-02 to provide a means to attract business and economic growth within the Clinton Community;

**WHEREAS**, Owner owns a leasehold interest in the real property described in **Exhibit "A"** (the "Property") and has made application for the Tax Incentives as contained in Resolution IA09-02;

**WHEREAS**, Owner's application has been approved and Owner meets the qualification requirements within Resolution IA09-02;

**NOW THEREFORE**, in consideration of the mutual benefits and promises contained herein and for good and other valuable consideration, the adequacy and receipt of which is hereby acknowledged, including the expansion of primary employment, the attraction of major investment in the City, which contributes to the economic development of the City and the enhancement of the tax base in the City, the parties agree as follows:

**GENERAL PROVISIONS**

**DEFINITIONS**

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

- A. "Permanent Sales Tax" means monies collected on a Quarterly Basis by the City from the Oklahoma Tax commission, which have been paid as City Sales Tax by a qualifying business, less monies earmarked, (including the three (3) cents of permanent sales tax) and less monies retained by the Oklahoma Tax Commission as collection fees.

**TERM**

This Agreement shall be effective from the date executed for the period of one (1) year, but shall be renewable by Owner for a period of four (4) additional terms. Owner must request this Incentive each fiscal year, which shall run from July 1, through June 30, by making application with the Clinton City Clerk on or before May 1 of the preceding year.

## **TAX INCENTIVE AUTHORIZED**

Owner shall be entitled to a reimbursement of sixty percent (60%) of the Permanent Sales Tax collection for taxes paid by Owner ("Incentive"). The Incentive shall be paid to the Owner quarterly within thirty (30) days of receipt of the funds by the Industrial Authority from the City of Clinton.

## **DEFAULT: RECAPTURE OF REBATED TAX**

If Business should abandon or close business operations for a period of thirty (30) calendar days, the Business shall lose their Incentive qualification for the quarter during which the abandonment or closing occurred and for the remainder of that fiscal year. If the business is reopened before the next application date of May 1, then, the business may re-apply for Incentives for the succeeding fiscal year; however, it will only be eligible for Incentives for the balance of the five (5) year period that business is entitled to receive incentives. Exceptions may be made by the City Manager for natural disasters and circumstances beyond the control of the business.

Upon breach by Owner of any obligations under this Agreement, the City shall notify the "Defaulting Party" in writing. Owner shall have five (5) days from receipt of the notice in which to cure any such breach. If the breach cannot reasonably be cured within a five (5) day period, and the Owner has diligently pursued such remedies as shall be reasonably necessary to cure such breach, then the City may extend the period in which the breach must be cured.

## **SUCCESSORS AND ASSIGNS**

This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. This Agreement may be assigned with the written consent of the City Council. After any permitted assignment, all references to Owner herein shall thereafter be a reference to such successor with respect to any obligations or liabilities occurring or arising after the date of such assignment.

## **NOTICE**

All notices required by this Agreement shall be addressed to the following, or other such party or address as either party designates in writing, by certified mail, postage prepaid, or by hand or overnight delivery:

If intended for Owner, to:

If intended for City, to:  
Grayson Bottom, City Manager  
City of Clinton  
P.O. Box 1177  
Clinton, OK 73601

## **CITY COUNCIL AUTHORIZATION**

This Agreement was authorized by resolution of the City Council approved by its Council meeting authorizing the City Manager to execute this Agreement on behalf of the City.

## **SEVERABILITY**

In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

## **APPLICABLE LAW**

This Agreement shall be construed under the laws of the State of Oklahoma. Venue for any action under this Agreement shall be in Custer County, Oklahoma.

## **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

## **ENTIRE AGREEMENT**

This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.

## **INCORPORATION OF RECITALS**

The determination recited and declared in the preambles to this Agreement is hereby incorporated herein as part of this Agreement.

## **INCORPORATION OF EXHIBITS**

All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

**EXECUTED** in duplicate originals this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

City of Clinton, Oklahoma

By: \_\_\_\_\_  
Grayson Bottom, City Manager

ATTEST:

By: \_\_\_\_\_  
Lisa Anders, Secretary

**EXECUTED** in duplicate originals this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Owner

By: \_\_\_\_\_  
, President

**CITY'S ACKNOWLEDGEMENT**

State of Oklahoma    )  
                                  ) :ss  
County of Custer     )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, by Grayson Bottom, City Manager of the City of Clinton, an Oklahoma municipality, on behalf of said municipality.

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

My commission expires: \_\_\_\_\_

**OWNER'S ACKNOWLEDGEMENT**

State of OKLAHOMA    )  
                                  ) :ss  
County of CUSTER    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, being the President of \_\_\_\_\_, Inc., (the "Company"), on behalf of said Company.

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

My commission expires: \_\_\_\_\_

# TAX INCENTIVE AGREEMENT APPLICATION FOR NEW BUSINESS

## OWNER INFORMATION

Company Name: The Hub Diner, LLC. Contact Person: Tracie Sperle  
Mailing Address: 2020 Gary Blvd Phone Number: 580-660-0321  
Physical Address: Same Fax Number: \_\_\_\_\_  
City, State, Zip: Clinton, OK 73601 E-mail address: traciesperle@yahoo.com  
Additional Contact Information: \_\_\_\_\_

## OPERATOR INFORMATION (if different than above):

Company Name: \_\_\_\_\_ Contact Person: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Physical Address: \_\_\_\_\_ FAX Number: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_ E-mail Address: \_\_\_\_\_  
Additional Contact Information: \_\_\_\_\_

## SITE & BUILDING INFORMATION

Project Address: 2020 Gary Blvd Project Type: Restaurant  
Site Dimensions: \_\_\_\_\_ Building Size: \_\_\_\_\_  
Anticipated Development Cost: \$ 200,000.00

Please attach a rendering of the purposed building and/or a site plan for Council review.

**EMPLOYMENT INFORMATION**

Number of FTE: 4      Number of Part Time: 15      Number of Management Staff: 2

Average <sup>Wage</sup> ~~Wage~~ Per hour of FTE: \$ 12.00      average <sup>Wage</sup> ~~Wage~~ Per Hour of Part Time: \$ 3.00

Is Management Staff covered by a benefit plan? \_\_\_\_\_ FTE \_\_\_\_\_ Part Time? \_\_\_\_\_

Additional Employment Information: \_\_\_\_\_

**PRO-FORMA FINANCIAL INFORMATION:**

Total Sales Subject to Sales Tax: Low: To be determined  
High: To be determined

Tracie Spude  
Signature of Submitter

2-20-18  
Date

Tracie Spude  
Printed Name

RESOLUTION IA09-02

A RESOLUTION PROVIDING FOR MEANS TO ATTRACT BUSINESS AND ECONOMIC GROWTH WITHIN THE CLINTON COMMUNITY

**WHEREAS**, many companies are looking to relocate or expand in today's competitive market; and

**WHEREAS**, private sector investments create jobs and provide economic benefits to the City; and

**WHEREAS**, existing businesses which expand also create new jobs and provide economic benefits to the City; and

**WHEREAS**, the providing of incentives to new and relocating retail businesses must be balanced against fairness to existing retail businesses which have remained and operated in Clinton over a period of time; and

**WHEREAS**, the City of Clinton needs economic growth for the economic betterment of the City and its residents; and

**WHEREAS**, the Clinton Industrial Authority is a public trust, organized and operating according to the laws of the State of Oklahoma, 60 O.S. Sec. 176 et seq., which has, for one of its purposes, the economic welfare and betterment of the community, and of which the City of Clinton is its sole benefactor; and

**WHEREAS**, the City of Clinton collects a permanent sales tax of three (3) cents and

**WHEREAS**, the City of Clinton collects a fourth cent in Sales Tax, thirty-three hundredths percent (.33%) of which is in excise on gross receipts of certain sales for the purpose of acquiring, constructing, equipping, operating and maintaining the facilities and properties known as Clinton's Acme Brick Park, and for economic development within the City of Clinton, all of which but one/twentieth percent (.05%), expire March 31, 2011; a sixteen hundredths percent (.16%) excise tax on gross receipts of certain sales, the purpose of which is to acquire, construct, and equip educational and training facilities and properties for the economic development within the City of Clinton, and to pay the principal and interest on indebtedness incurred on behalf of the City for such purposes, which shall expire on March 31, 2011; and a fifty-one hundredths percent (.51%) excise tax on gross receipts of certain sales for the purpose of economic development within the City of Clinton, and to pay the principal and interest on indebtedness incurred on behalf of the City for such purposes, which tax shall expire on March 31, 2011; and

**WHEREAS**, the City Council of the City of Clinton has determined that it would be in the interests of the public health, safety, and welfare to provide the Clinton

Industrial Authority with amounts matching those portions of the amounts of City sales tax paid by the respective businesses not earmarked for other purposes or retained by the Oklahoma Tax Commission, including but not limited to the three (3) cents of permanent sales tax collected for qualifying new retail businesses and expanding existing businesses on a quarterly basis (hereinafter referred to as "Net Tax") for transfer to the respective businesses as an incentive to establish and expand businesses within the corporate boundaries of Clinton; and

**WHEREAS**, the Trustees of the Clinton Industrial Authority have determined that it would be in the interests of the public health, safety, and welfare to provide qualifying businesses with an amount matching those portions of the amounts of City Net Tax paid by the respective businesses, and collected by the City as an incentive to establish and expand businesses within the corporate boundaries of Clinton.

**BE IT THEREFORE RESOLVED BY THE CLINTON INDUSTRIAL AUTHORITY:**

1. Monies, in the amount of City sales tax monies, collected from the Oklahoma Tax Commission and paid by qualifying new and existing businesses, not otherwise earmarked, including but not limited to the three (3) cents of permanent sales tax; and transferred to the Clinton Industrial Authority.

2. Definitions:

1) Qualifying Business shall mean:

A. Those new retail businesses locating within the corporate boundaries of Clinton after the effective date of this Resolution.

B. Existing retail businesses of at least one year which expand by adding at least 25 percent to the square feet of the interior business premises after the effective date of this Resolution as evidenced by tax or building records or other acceptable proof. The incentive entitlement of such expanding businesses shall be the excess over the average of taxes paid over the past years, of at least one year but not to exceed three. For example, an existing retail business which maintained an establishment of 1000 interior square feet and adds 250 square feet of interior space would be entitled to an incentive from City since the expansion exceeds 25 percent of the pre-existing interior space. If this business paid an average of Net Tax of \$5,000.00 per quarter over the past three years, and after the expansion, the business paid \$7,500.00 the first quarter, the Incentive amount for the first quarter would be calculated as the difference between \$7,500.00 and \$5,000.00, or \$2,500.00 by 60%. If that same business paid \$8,500.00 in the second quarter, the incentive would be \$3,500.00 by 60% for the second quarter. After the first year, the base year will remain the same for all calculations of eligible incentive funds.

The percentage of eligible incentive funds to be paid will be calculated based on the percentages below.

2) Net Tax shall mean:

Monies collected on a Quarterly Basis by the City from the Oklahoma Tax Commission, which have been paid as City Sales Tax by a qualifying business, less monies earmarked, (including but not limited to the three (3) cents of permanent sales tax) and less monies retained by the Oklahoma Tax Commission as collection fees.

3. Businesses must request this Incentive each fiscal year, which shall run from July 1, through June 30, by making application with the Clinton City Clerk on or before May 1 of the preceding year. New businesses which begin operations during the fiscal year or existing businesses which expand during the fiscal year may apply for the next quarter of the current fiscal year, by making application at least 30 days prior to the beginning of the succeeding quarter. New businesses will not be entitled to additional incentives for expansion.

4. Incentives will be calculated at sixty percent (60%) of the permanent sales tax collection, at the Qualifying business, and paid to the Qualifying businesses quarterly within 30 days of receipt of the funds from the City of Clinton.

5. Loss of Incentives: Businesses which abandon or close business operations for a period of 30 calendar days or which fail to maintain minimum square footage interior expansion for a period of 30 calendar days shall lose their Incentive qualification for the quarter during which the abandonment or closing or reduction of interior square footage occurred and for the remainder of that fiscal year. If the business is reopened or the expansion is re-established before the application date of May 1, then, the business may apply for Incentives for the succeeding fiscal year; however, it will only be eligible for Incentives at the percentage rate for the next year. For example, if an expanded business qualifying for Year 1 Incentives closes for 30 days, it will lose Incentives for the remaining quarters of the fiscal year. If the business is reopened during the fiscal year, it may apply for the next year, but will only qualify for Incentives at the Year 2 amount. Exceptions may be made by the City Manager for natural disasters and circumstances beyond the control of the business.

6. Qualifying businesses agree to submit to the City necessary documentation, as required, to support the qualification status.

7. Any abuse of these provisions will subject the business to immediate revocation of Incentive Qualification status by the City Manager who will notify the business of the revocation within 10 days of revocation. Within 10 days after the notice of revocation, business may appeal to the City Council, whose decision shall be final.

8. Upon satisfactory proof of qualification, the City shall forward City sales tax collected less amounts earmarked in the amounts determined to be correct for the respective qualifying businesses to the Clinton Industrial Authority for appropriate distribution to the businesses within 30 days of transfer of funds from the City. Such transfers of funds from the City will be made each quarter within 30 days of collection from the Oklahoma Tax Commission.

9. The Clinton Industrial Authority will maintain complete and accurate records of all monies paid and the recipients of all funds which records will be kept at City Hall and shall be available to the City Manager and City Council and other interested persons upon request. The Clinton Industrial Authority will maintain all such funds, and will take no action contrary to the terms of this Resolution. The Clinton Industrial Authority will provide an annual audit to the City of Clinton.

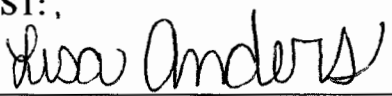
10. This Resolution will automatically renew at the end of the fiscal year unless Resolution No. IA09-02 is terminated by the City Council of the City of Clinton in which case this Resolution shall automatically and simultaneously terminate after seven years from the date of its adoption. However, any business which is entitled to receive benefits under the provisions of this resolution, which meets those requirements within the seven year existence of the resolution, shall be entitled to the full term of benefits, per the Development Agreement.

This Resolution shall become effective upon passage and approval by the Trustees of the Clinton Industrial Authority.

Any Resolution or parts thereof inconsistent with this Resolution are hereby repealed.

Passed and Approved by the Chairman and Trustees Clinton Industrial Authority this 21 day of July, 2009.

  
\_\_\_\_\_  
Chairman

ATTEST: ,  
  
\_\_\_\_\_  
Secretary

~~Approved as to form this \_\_\_\_\_ day of \_\_\_\_\_, 2009.~~ *JA, GB*

~~\_\_\_\_\_  
Attorney for the Clinton Industrial Authority~~ *JA, GB*