

FILED

MAR 17 2010

SPECIAL ORDINANCE NO. 9, 2010

CITY CLERK

**AN ORDINANCE AUTHORIZING THE CITY OF TERRE HAUTE, INDIANA TO
ISSUE ITS "RECOVERY ZONE FACILITY BONDS, SERIES 2010
(HOLIDAY INN EXPRESS PROJECT)"
AND APPROVING OTHER ACTIONS IN RESPECT THERETO**

WHEREAS, the Terre Haute Economic Development Commission (the "EDC") has rendered its Project Report for the Project (as hereinafter defined) regarding the financing of an economic development facility for Sycamore Hotel Partners, LLC; and

WHEREAS, the EDC conducted a public hearing at 4:00 p.m. on April 8, 2010, and thereafter adopted a resolution regarding the financing for the Project (the "Resolution") which Resolution has been transmitted hereto, finding that the financing of such an economic development facility for Sycamore Hotel Partners, LLC complies with the purposes and provisions of I.C. 36-7-11.9 and 12 and that such financing will be of benefit to the health and welfare of the City of Terre Haute, Indiana (the "City") and its citizens; and

WHEREAS, the EDC has heretofore approved and recommended the adoption of this form of Ordinance by this Common Council, has considered the issue of adverse competitive effect and has approved the form of and has transmitted the Bond Purchase and Loan Agreement to this Common Council for approval; and

WHEREAS, the Board of Commissioners of Vigo County, Indiana designated the entire County of Vigo, including the City of Terre Haute, as a Recovery Zone within the meaning of Section 1400U-1 of The American Recovery and Reinvestment Act of 2009 (the "Stimulus Act") and has allocated \$3,544,000 of Recovery Zone Facility Bond Volume to the Project for the issuance of tax exempt bonds; and

WHEREAS, the Project is expected to create opportunities for gainful employment in the City, now, therefore

BE IT ORDAINED BY THE COMMON COUNCIL OF TERRE HAUTE, INDIANA THAT:

Section 1. It is hereby found that the financing of the economic development facility referred to in the Bond Purchase and Loan Agreement, approved by the EDC and presented to this Common Council, the issuance and sale of one or more series of taxable or tax exempt bonds, known as City of Terre Haute, Indiana Recovery Zone Facility Bonds, Series 2010 (Holiday Inn Express Project) (the "Bonds"), the loan of the proceeds of the Bonds to Sycamore Hotel Partners, LLC (the "Borrower") to be used for the acquisition, construction and equipping of the Project, the payment of the Bonds by the Borrower pursuant to the Bond Purchase and Loan Agreement, and the securing of said Bonds under such Bond Purchase and Loan Agreement complies with the purposes and provisions of I.C. 36-7-11.9 and 12, and will be of benefit to the health and welfare of the City and its citizens.

Section 2. The proceeds of the Bonds will be used for the financing of the acquisition, construction and equipping of a hotel to be located at the intersection of State Road 46 and I-70 in the City (the "Project").

Section 3. At the public hearing held before the EDC, the EDC considered whether the Project would have an adverse competitive effect on any similar facilities located in or near the City, and subsequently found, based on special findings of fact set forth in the Resolution transmitted hereto, that the Project would not have an adverse competitive effect. This Common Council hereby confirms the findings set forth in the EDC's Resolution, and concludes that the Project will not have an adverse competitive effect on any other similar facilities in or near the City, and the facility will be of benefit to the health and welfare of the citizens of the City.

Section 4. The form of the Bond Purchase and Loan Agreement approved by the EDC is hereby approved (herein referred to as the "Financing Agreement" referred to in I.C. 36-7-11.9 and 12), and the Financing Agreement shall be incorporated herein by reference and shall be inserted in the minutes of the Common Council and kept on file by the Clerk. In accordance with the provisions of I.C. 36-1-5-4, two (2) copies of the Financing Agreement are on file in the office of the Clerk for public inspection.

Section 5. The City shall issue its taxable and tax exempt Bonds in the total principal amount not to exceed \$7,250,000, and maturing in no more than thirty (30) years. Said Bonds are to be issued for the purpose of procuring funds to pay the costs of acquisition, construction and equipping of the Project, as more particularly set out in the Financing Agreement, incorporated herein by reference, which Bonds will be payable as to principal, premium, if any, and interest from the payments made by the Borrower under the Financing Agreement. The Bonds shall be issued in fully registered form and shall be redeemable as provided in the final Financing Agreement, but in all events the Bonds shall be subject to redemption, anytime, at par. Payments of principal and interest are payable in lawful money of the United States of America by check or draft mailed or delivered to the registered owners as provided in the Financing Agreement. The Bonds shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the City nor are the Bonds payable in any manner from revenues raised by taxation.

Section 6. The Mayor and Clerk are authorized and directed to approve the sale of the Bonds to First Financial Bank, N.A. as original purchaser (the "Purchaser") at the price of 100% of the principal amount thereof. The Bonds shall bear interest at a variable rate which is periodically reset at rates per annum established pursuant to the Financing Agreement, provided that the interest rate on the Bonds shall not exceed 12% per annum.

Section 7. The Mayor and Clerk are authorized and directed to execute, attest, affix or imprint by any means the City seal to the Financing Agreement approved herein on behalf of the City and any other document or certificate which may be necessary or desirable prior to, on or after the date hereof to consummate or facilitate the transaction, including the Bonds authorized herein. The Mayor and Clerk are hereby expressly authorized to approve any modifications or additions to the Financing Agreement which take place after the date of this Ordinance with the review and advice of counsel to the City; it being the express understanding of this Common Council that said Financing Agreement may change; however, the statutorily required approvals of the Common Council shall not change after the date of this Ordinance. The approval of said modifications or additions shall be conclusively evidenced by the

execution and attestation thereof and the affixing of the seal thereto or the imprinting of the seal thereon; provided, however, that no such modification or addition shall change the maximum principal amount of, interest rate on or term of the Bonds as approved by the Common Council by this Ordinance without further consideration by the Common Council. The signatures of the Mayor and Clerk on the Bonds may be either manual or facsimile signatures. The Clerk is authorized to arrange for delivery of such Bonds to the Purchaser and the Purchaser will make such payment for the Bonds available to Borrower as provided in the Financing Agreement. The Bonds shall be originally dated the date of issuance and delivery thereof.

Section 8. The provisions of this Ordinance and the Financing Agreement securing the Bonds shall constitute a contract binding between the City, the Purchaser and the Borrower, and after the issuance of said Bonds, this Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holders so long as said Bonds or the interest thereon remains unpaid.


Section 9. The City hereby confirms the designation by Vigo County, Indiana of the entire County of Vigo County, Indiana as a Recovery Zone and the City ratifies such declaration as it applies to the City of Terre Haute within the meaning of the Stimulus Act due to such area having "significant poverty, unemployment, rate of home foreclosures, or general distress" as found by the Vigo County Commissioners.

Section 10. The City hereby designates the \$3,544,000 of tax exempt City of Terre Haute, Indiana Recovery Zone Facility Bonds, Series 2010 (Holiday Inn Express Project) issued hereunder as a Recovery Zone Facility Bond pursuant to the Stimulus Act.

Section 11. This Ordinance shall be in full force and effect from and after its passage.

Introduced by:  Don Morris, Councilman

Passed in open Council this 15 day of April, 2010.

 Neil Garrison, President

ATTEST: Charles P. Hanley Charles P. Hanley, City Clerk

Presented by me to the Mayor this 16th day of April, 2010.

Charles P. Hanley Charles P. Hanley, City Clerk

Approved by me, the Mayor, this 16th day of April, 2010.

Duke A. Bennett Duke A. Bennett, Mayor

ATTEST: Charles P. Hanley Charles P. Hanley, City Clerk