

## **SPECIALLY CONDITIONED PROMISSORY NOTE AND PERSONAL GUARANTEE**

FOR AND IN CONSIDERATION of the mutual undertakings of the parties hereto, the Village of Antioch, a municipal corporation of the State of Illinois ("Village") and DDC Investments-Antioch Theater, LLC, a corporation ("DDC"), and Timothy Downey, ("Guarantor") do hereby agree as follows:

### **Recitals**

1. The Village Board, on behalf of its residents, acknowledges that the unique vibrancy of this community is dependent in large measure on the character of their downtown business district, and in particular on the multiple entertainment venues it offers, including, but not limited to restaurants, live theater, community concerts, farmers' markets, bars, municipally sponsored special events, a broad range of retail establishments and in particular, the Antioch Theater.

2. The Village Board further acknowledges that in the modern era, one of the signature signs of a failing community, or failing downtown business district is a shuttered movie theater.

3. The Antioch Theater has occupied the same location on Lake Street for approximately 100 years, and during that century, it has provided the backdrop for countless nights of wholesome entertainment, family outings and first dates for generations of citizens of this community.

4. The movie theater business is in the throes of a digital revolution caused by the big Hollywood studios who are changing their business model to one in which sending film reels to local theaters is being replaced by sending digital signals over the internet or over the airwaves via secured radio links.

5. This digital revolution is an expensive undertaking for old movie theaters, requiring complete replacement of projection and sound equipment, and older single-screen theaters are finding it more and more difficult to survive and compete with multi-plexes and the constant improvement of home-based entertainment equipment, such as wide-screen TVs and digital streaming of movies.

6. The Antioch Theater has been examined by agents of the Village and it does have much deterioration due to deferred maintenance and functional obsolescence.

7. At the time that this document and the transaction reflected herein was negotiated, reduced to writing and executed, the Antioch Theater has been closed and the secured lender holding the first mortgage on the property is in the process of foreclosing its note.

8. DDC has entered into negotiations with the owner of record of the Antioch Theater and also with the first mortgagee on that property and has determined that it is a proper business investment for him to purchase the property, extinguish the first mortgage,

rebuild the interior and exterior of the building, install a second movie theater, upgrade and modernize the interior to meet necessary building and access codes and to restore the premises to operating condition.

9. DDC has presented the Village Board with a pro-forma in which he has shown that the Antioch Theater can continue to be a significant asset to the Village and its residents for a long time to come with an investment as described herein.

10. DDC has further presented the Village Board with the financial data necessary to show that purely private investment of funds is not going to provide an adequate basis to bring the Antioch Theater building into an operating condition and to fund the investment in the projection and sound equipment for the two theaters envisioned.

11. DDC has requested that the Village Board consider the positive impact the continued existence of an operating and improved movie theater will have on the viability of the Village's downtown business district and to consider providing a secured loan to him for use on specified areas of restoration that will impact not only the theater reconstruction project, but also will provide spin-off benefits to surrounding properties.

12. As a condition for the loan aforesaid, DDC has suggested that the Village adopt a movie ticket tax at the rate of \$0.75 per stub, and use that as the primary source for funds to amortize the amount of the loan, and that the Village accept his personal guaranty as a secondary security for the loan.

13. The Village acted on DDC's suggestion and has recently passed an ordinance establishing a ticket tax, set forth as Chapter 3-7 of the Antioch Municipal Code.

14. In addition, the Village has committed to providing up to a 6-inch water line and to surface improvements to relieve flooding within the alley located south of the theater, which improvements will benefit other properties as well as the theater. Said Improvements shall be installed and completed no later than October 31, 2014, weather permitting.

15. The Village Board, following all necessary requirements of the Illinois Municipal Code and the Antioch Municipal Code, having duly deliberated about the merits of DDC's proposal and considering specifically the benefits of an operating, modern theater and contrasting them with the likely impact of a closed, shuttered building, has determined that making a loan of \$200,000.00 to DDC for specific purposes meets a proper municipal goal and constitutes an appropriate investment of Village funds.

**NOW THEREFORE**, the parties enter into the following substantive agreements:

A. The recitals set forth hereinabove are repeated and incorporated herein as substantive terms and conditions.

B. The Village hereby lends a sum of not more than \$200,000.00 to DDC on the terms and conditions set forth herein.

C. The Village will release the borrowed funds to DDC for use in the rebuilding, restoration and repair of the Antioch Theater, and for no other purpose whatsoever.

D. DDC covenants that the borrowed funds will be used strictly in accordance with the terms and provisions of this instrument and the resolution formally authorizing the execution hereof by the Mayor and Village Clerk.

E. The borrowed funds will be used for the following specific purposes, and no others:

- a. Sprinkler systems, including all related work and control installations;
- b. Fire alarm systems, including all related work and control installations;
- c. New marquee design, construction and delivery, as well as installation, power feeds and all related work and control installations;
- d. Exterior façade renovation, including demolition, new wall construction, new façade construction, windows, doors, lighting and all related materials and labor;
- e. Sidewalk reconstruction, including allowance for installation of engraved granite sidewalk stars (provided separately via private sources) and a winter heating system utilizing heating tubes and a boiler;

F. On an ongoing basis throughout the project, DDC shall present invoices to the Village Administrator for the specified work and materials, the Administrator shall review the same for compliance with the terms of this agreement and shall determine whether it is appropriate to release the funds. In the event any work or materials are expended on public utility work performed directly by the Village, the Administrator shall present DDC with invoices or statements reflecting the work performed, the materials used and any other similar information to allow him to verify that the cost is reported and included into the loan amounts accurately and fairly.

G. Other than any work on public utilities that it may decide to perform directly, the Village shall have no responsibility whatsoever in the oversight of the construction, remodeling or repair; it shall not hire contractors or fire them; it shall not purchase or order materials; and it shall not have the right to stop work in the event of an unsafe condition except to the exact same extent it has as the jurisdictional governmental agency enforcing the building codes generally.

H. The fact that the funds are being lent by the Village for private use does not, and is not intended to, make this a public project, and as such, the provisions of the Illinois Prevailing Wage Act are not applicable.

I. DDC agrees to provide the Village with copies of contracts or invoices to verify the borrowed funds are being put to proper purposes at such time as the release of any funds are requested and at such times as the Village may wish to audit the project for compliance hereunder.

J. To ensure compliance with the ticket tax and the pledge to repay the loan, the Village shall have a full and unfettered right to audit DDC's records and books of theater

operations upon 5 business days' notice at all times up and until the loan described herein shall have been paid in full.

K. Attached hereto as Exhibit A is an amortization schedule and it is premised upon the Village's movie ticket tax being used to make primary repayment of the loan described herein, at the rate of \$20,000.00 in principal plus applicable interest per year. The parties agree to replace Exhibit A with a final amortization schedule based on the exact amount of loan proceeds and the staging of payments made of those loan proceeds once the project is complete, the Village has lent the maximum \$200,000.00 hereunder or Downey advises the Village that he will not seek additional distributions of loan proceeds from the Village.

L. DDC and Downey personally guarantee any shortage between the actual movie ticket tax collected and the \$20,000.00 per year plus applicable interest described in Exhibit A, and shall promptly remit the same when invoiced by the Village annually; provided that DDC and Downey's personal guarantee shall expire and become void once the principal and all accrued interest thereon is paid in full.

M. Any movie ticket tax receipts in excess of \$20,000.00 plus applicable interest in any given year shall be applied to the outstanding principal balance due to the Village.

N. In the event any other movie theater shall open within the Village prior to the repayment in full of the sums borrowed hereunder, the movie ticket tax attributable to that theater or theaters shall be applied first, to any shortfall in the \$20,000.00 plus applicable interest due annually, and second, to the outstanding principal balance.

O. In the event of a default in payment, the Village shall have the following remedies:

- a. The right to file a lawsuit to collect;
- b. The right to record a lien on the Theater property;
- c. The right to full reimbursement of all costs and attorney's fees incurred in enforcing this agreement or collecting the loan described herein;
- d. Any further rights available to the Village in law or in equity;
- e. All enumerated and described rights are deemed to be cumulative and the Village shall not be bound to make an election of remedies, but shall be allowed to pursue any and all remedies as it may deem fit.

P. Upon full repayment of the principal amount and all accrued interest, the Village shall provide DDC and Downey with a written Release of this Promissory Note.

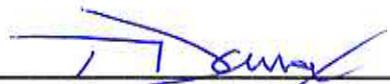
Q. This document is negotiated on an arm's length basis, with full opportunities for all parties to require such terms as they deem appropriate into it, and as such, any court or arbitrator considering the same shall consider this document as the joint product of the parties, not using the rule of construction that disfavors the drafter.

R. This constitutes the full and final agreement of the parties on all matters described herein. It is intended to replace and supplant any and all oral discussions or understandings between the parties and their agents preceding their execution hereof.

S. No modifications of this agreement shall be effective unless formally ratified in a subsequent writing, duly considered and approved by the Village Board, and in no event shall any modifications be made by any oral agreement or statement by any person whatsoever.

T. This agreement is governed by the Laws of the State of Illinois and the sole venue for resolving any claim or issue hereunder shall be the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois.

IN WITNESS WHEREOF, we have set our hands hereunto on the dates following our signatures.

  
\_\_\_\_\_  
TIMOTHY DOWNEY  
on behalf of DDC Investments-Antioch Theater, LLC

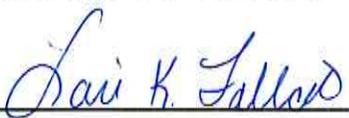
Date: 10/28, 2014

  
\_\_\_\_\_  
TIMOTHY DOWNEY,  
as Guarantor

Date: 10/28, 2014

  
\_\_\_\_\_  
LAWRENCE M. HANSON, Mayor  
on behalf of the Village of Antioch

Date: September 17, 2014

  
\_\_\_\_\_  
LORI K. FOLBRICK, Clerk, Witness.

Date: September 17, 2014