

# Request For Board Action

**REFERRED TO BOARD:** 10/26/2022

**AGENDA ITEM NO:** 5

**ORIGINATING DEPARTMENT:** ADMINISTRATION

**SUBJECT:** CONSIDERATION AND APPROVAL OF AN ORDINANCE APPROVING A TICKET SALES TAX REBATE AGREEMENT

## **SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

PREVIOUSLY THE VILLAGE BOARD APPROVED ORDINANCES IMPOSING A TICKET TAX, AND A REBATE AGREEMENT RELATED TO THE TICKET TAX. SINCE THOSE APPROVALS, THE SELLER OF THE THEATER HAS IDENTIFIED A NEW PURCHASER, AND WOULD LIKE TO UPDATE THE REBATE AGREEMENT TO REFLECT THAT CHANGE.

THERE ARE 3 COPIES OF THE AGREEMENT INCLUDED IN THE PACKET. ALL ARE THE SAME WITH THE EXCEPTION OF PARAGRAPH 14.4 WHICH HAS DIFFERENT VERSIONS: A) A RIGHT OF FIRST OFFER B) RIGHT OF FIRST REFUSAL AND C) NEITHER.

## **DOCUMENTS ATTACHED:**

ORDINANCE

REBATE AGREEMENTS

## **RECOMMENDED MOTION:**

**If the board is comfortable with the proposal, the proposed motion would be to approve an ordinance approving a ticket sales tax rebate agreement with Option "A" that has a Right of First Offer provision, waiving the second reading.**

**OR**

**A motion to approve an ordinance approving a ticket sales tax rebate agreement with Option "B" that has a Right of First Refusal provision, waiving the second reading.**

**OR**

**A motion would be to approve an ordinance approving a ticket sales tax rebate agreement with Option "C", waiving the second reading.**

**VILLAGE OF ANTIOCH**

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**22-09-XX**

***AN ORDINANCE APPROVING A TICKET SALES TAX REBATE AGREEMENT***

**ADOPTED BY THE PRESIDENT AND BOARD OF TRUSTEES  
OF THE  
VILLAGE OF ANTIOCH, ILLINOIS  
ON  
SEPTEMBER 28, 2022**

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**Published in pamphlet form by authority of the Village Board of the Village of  
Antioch, Lake County, Illinois,  
this 29<sup>th</sup> day of September, 2022.**

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SCOTT J. GARTNER	<b>President</b>	MARY C. DOMINIAK	<b>Trustee</b>
		MARY J. PEDERSEN	<b>Trustee</b>
LORI K. ROMINE	<b>Clerk</b>	ED MACEK	<b>Trustee</b>
		SCOTT A. PIERCE	<b>Trustee</b>
OTTOSEN, DINOLFO, HASENBALG & CASTALDO, LTD.	<b>Attorney</b>	PETRINA A. BURMAN	<b>Trustee</b>
		BRENT C. BLUTHARDT	<b>Trustee</b>

**Ordinance No. 22-09-xx**

***AN ORDINANCE APPROVING A TICKET SALES TAX REBATE AGREEMENT***

**WHEREAS**, the Village of Antioch (“Village”) is an Illinois non-home rule municipality organized and operating under the Illinois Municipal Code (65 ILCS 5/1, *et seq.*) (the “Code”); and

**WHEREAS**, the Village President (the “President”) and the Village Board of Trustees (the “Village Board”, and together with the President, the “Corporate Authorities”) are committed to promoting, protecting and preserving the health, safety, and welfare of its residents; and

**WHEREAS**, Illinois law allows the Village to incentivize and provide subsidies to stimulate the economic growth of the Village; and

**WHEREAS**, attached hereto and incorporated herein as Exhibit A is a copy of a ticket sales tax rebate agreement, which sets forth the terms and conditions under which the Village will provide a subsidy to stimulate the economic growth of the Village (the “Agreement”); and

**WHEREAS**, based on the foregoing, the Corporate Authorities have determined that it is necessary, advisable, and in the best interests of the Village, and its residents, to approve and enter into the Agreement;

**NOW, THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Antioch, Lake County, Illinois, as follows:

SECTION 1: The Corporate Authorities hereby approve the Agreement. The Corporate Authorities hereby authorize and direct the President, or his designee, to execute the Agreement in accordance with its terms, or any modification thereof, and to ratify all previous action taken to effectuate the intent of this Ordinance. The Corporate Authorities hereby authorize the Village to conduct due diligence on the Property. The Corporate Authorities hereby further authorize and direct the President, or his designee, to perform all necessary acts to effectuate the intent of this Ordinance and to authorize and direct the expenditure of all costs related thereto or resulting therefrom including paying the seller the purchase price of the Property.

SECTION 2: All ordinances, resolutions and orders or parts of ordinances in conflict with this Ordinance are superseded to the extent of such conflict.

SECTION 3: The Village Clerk shall cause this Ordinance to be published in pamphlet form.

SECTION 4: This Ordinance shall be in full force and effect after passage and publication as provided by law.

PASSED by the President and Board of Trustees of the Village this 22<sup>nd</sup> day of June, 2022.

Voting Aye (list names):

Voting Nay (list names):

Abstaining (list names):

Absent (list names):

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SCOTT J. GARTNER, MAYOR

ATTEST:

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LORI K. ROMINE, VILLAGE CLERK

STATE OF ILLINOIS        )  
                                  ) SS  
COUNTY OF LAKE        )

**CERTIFICATE**

I, Lori K. Romine, certify that I am the duly appointed Municipal Clerk of the Village of Antioch, Lake County, Illinois.

I certify that on September 28, 2022, the Corporate Authorities of such municipality passed and approved Ordinance No. 22-09-xx, entitled “*AN ORDINANCE APPROVING A TICKET SALES TAX REBAE AGREEMENT*” which provides that it should be published in pamphlet form.

The pamphlet form of **Ordinance No. 22-09-xx**, including the Ordinance and cover sheet thereof, was prepared, and a copy of such Ordinance was posted in the municipal building, commencing on September 29, 2022 and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the Municipal Clerk.

DATED at Antioch, Illinois, this 29<sup>th</sup> day of September, 2022

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Lori K. Romine, RMC/CMC  
Village Clerk

**EXHIBIT A**  
***[AGREEMENT]***

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**TICKET SALES TAX REBATE AGREEMENT**

**BY AND BETWEEN**

**THE VILLAGE OF ANTIOCH,  
AN ILLINOIS MUNICIPAL CORPORATION**

**AND**

**DDC INVESTMENTS, LLC - ANTIOCH THEATER  
AN ILLINOIS LIMITED LIABILITY COMPANY**

**AND**

\_\_\_\_\_  
**[BUYER]**

**DATED: \_\_\_\_\_ 2022**

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\* \* \* \* \*

The mailing, delivery or negotiation of this Ticket Sales Tax Rebate Agreement by the Village of Antioch (the "Village") or its agent or attorney shall not be deemed an offer by the Village to enter into any transaction or to enter into any other relationship with DDC Investments, LLC - Antioch Theater (the "Owner") and contract buyer(the "Buyer"), whether on the terms contained herein or on any other terms. This Agreement shall not be binding upon the Village, nor shall the Village have any obligations or liabilities or the Owner and the Buyer any rights with respect thereto, unless and until the Village has executed and delivered this Agreement. Until such execution and delivery of this Agreement, the Village may terminate all negotiation and discussion of the subject matter hereto, without cause and for any or no reason, without recourse or liability.

\* \* \* \* \*



## TICKET SALES TAX REBATE AGREEMENT

This TICKET SALES TAX REBATE AGREEMENT (this "**Agreement**") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 (the "**Effective Date**"), by and between the Village of Antioch, Lake County, Illinois, an Illinois municipal corporation, (the "**Village**"), DDC Investments, LLC - Antioch Theater, a Illinois limited liability company authorized to conduct business in the state of Illinois, (the "**Owner**") and contract buyer, (the "**Buyer**") (collectively, the Village, the Owner and the Buyer may, for convenience, be referred to as the "**Parties**" and each individually as a "**Party**").

### RECITALS

WHEREAS, the Village is a duly organized and existing municipality and unit of local government created under the provisions of the laws of the State of Illinois, and is operating under the provisions of the Illinois Municipal Code (65 ILCS 5/1-1-1, *et seq.*), and all laws amendatory thereof; and

WHEREAS, the Owner is the owner and contract seller of certain real property located at 378 Lake Street in the Village (the "**Property**"), which is identified by Permanent Index Number 02-08-310-006; and

WHEREAS, the Owner is selling the Property and movie theater located thereon (collectively, the "**Antioch Theater**") to the contract Buyer or Buyer's affiliated entity for a purchase price of \$400,000; and

WHEREAS, the Buyer has been unable to secure a conventional loan from a bank to finance \$300,000 of the purchase price, and the Owner is willing to provide the Buyer with seller financing in the amount of \$300,000 if the Village is willing to assist the Buyer with its loan payment obligation over a ten-year period; and

WHEREAS, the Village President and the Board of Trustees of the Village (collectively, the "**Corporate Authorities**") have determined that the continued operation of the Antioch Theater is essential to the economic health and vitality of the downtown business district; and

WHEREAS, the Corporate Authorities find that the continued operation of the Antioch Theater will promote, preserve and protect the social and economic welfare of the Village and will further the public interest; and

WHEREAS, to ensure that the Antioch Theater continues to operate and contribute to the vibrancy of the downtown business district, the Corporate Authorities are willing to provide loan payment assistance to the Buyer over a ten-year period if the Antioch Theater continues to operate as a movie theater; and

WHEREAS, the Corporate Authorities have determined that to generate the necessary tax revenues to assist the Buyer with its financial obligation to the Owner or any subsequent lender, a ticket sales tax of one dollar and fifty cents (\$1.50) should be imposed on each ticket sold for a movie viewing, a ticket sales tax of two dollars and fifty cents (\$2.50) should be imposed on each ticket sold for a live performance event, and a ten dollar (\$10.00) sales tax on private theater rentals; and

WHEREAS, the Village intends to support, encourage and facilitate the continued operation of the Antioch Theater by rebating to the Buyer payable to the order of Owner, without recourse, a portion of the Ticket Sales Taxes (as defined below) collected by the Village, which are generated from the sale of movie tickets and live performance event tickets and certain rental agreements, subject to the conditions precedent to payment as provided for in this Agreement; and

WHEREAS, the Corporate Authorities find that this Agreement is made in the best interests of the Village and its residents;

NOW, THEREFORE, in consideration of the foregoing, the mutual promises and covenants contained herein, and for other good and valuable consideration, the sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

**1. INCORPORATION OF RECITALS; WARRANTIES AND REPRESENTATIONS RELATED TO FINANCIAL SOLVENCY.**

1.1. Recitals. The representations, covenants and recitations set forth in the preceding paragraphs (the "**Recitals**") evidence the intent of the Parties, are material to this Agreement, constitute an inducement by one Party towards the other Parties to enter into this Agreement and are hereby made part of this Agreement as substantive representations and covenants as though fully set forth herein.

**2. DEFINITIONS.** Whenever used in this Agreement, the following terms shall have the meanings set forth below, unless a different meaning is required by the context:

**“Force Majeure”** means any act of God or other event or cause not reasonably within the control of the Buyer or the Village including, but not limited to: damage or destruction caused by fire or other casualty; inclement weather, floods, natural catastrophes; strikes; inability to procure or a general shortage of labor, equipment, facilities, materials or supplies; lockouts; acts of labor unions (whether legal or not); court orders, laws or orders of governmental or military authorities; embargos, storms, wars or riots; and building material shortages.

**“Gross Receipts”** means all revenue in whatever form received or accrued from whatever source at the Property.

**“Lender”** means an individual, partnership, association or corporation that has loaned to the Buyer to purchase the Property from the Seller.

**“Operate” or “Operating” or “Operation”** means the Antioch Theater is open for business as a movie and live performance theater for a minimum of 20 days per each calendar month.

**“Payment Period”** means a period of ten (10) consecutive years commencing on the first day of the calendar month following the closing of the purchase and sale of the Property and continuing until October 31, 2032, unless terminated earlier pursuant to this Agreement.

**“Tax Rebate”** means the monthly rebate payment to the Buyer of the Ticket Sales Taxes that the Village is required to make pursuant to this Agreement during the Payment Period. The Tax Rebate shall be equal to one hundred percent (100%) of the Tax Revenue (as defined below) collected by the Village during the preceding month.

**“Tax Rebate Limit”** means no more than three hundred thousand dollars (\$300,000) of the Tax Rebate payments made by the Village to the Buyer over the duration of this Agreement.

**“Tax Revenues”** is the amount of Ticket Sales Taxes the Village receives for each month.

**“Ticket Sales Taxes”** means all sales taxes that the Village imposes for viewing of movies and live performance events and for rental of the Antioch Theater during the Payment Period or upon full payment of the Tax Rebate Limit at which time the Ticket Sales Tax shall be terminated.

3. **OWNER'S PROPERTY TRANSFER OBLIGATION.**

3.1. Property Transfer Obligations of the Owner. The Owner shall enter into an agreement acceptable to the Owner and Buyer where it agrees to sell and transfer title, real property and business assets to the Antioch Theater to the Buyer upon the Buyer's performance of all terms of such agreement. The Buyer shall consider all Tax Rebate amounts received from the Village under this Agreement as part of and in satisfaction of the Buyer's loan payment obligation to the Owner.

3.2. Insurance. If requested by the Village, the Buyer shall obtain and maintain commercially reasonable policies of insurance for the Property.

4. **CONDITIONS PRECEDENT TO PAYMENT.**

4.1. Conditions Precedent to Initial Payment. The Buyer shall evidence full satisfaction of the following conditions precedent to the initial payment of Tax Rebate payment (the "**Conditions Precedent to Initial Payment**"), in addition to any other conditions precedent as otherwise set forth in this Agreement, prior to the Village being required to make the initial Tax Rebate:

4.1.1. The Owner has entered into a written agreement with the Buyer for the sale of the Property and business assets; and

4.1.2. The Owner is financing the purchase of the Property and business assets, and has not been paid in full for the Property; and

4.1.3. The Antioch Theater is operating as a theater.

4.2. Additional Conditions Precedent to Payment. The Buyer shall be entitled to receive the subsequent payments to the initial payment provided (i) the Buyer is operating the Antioch Theater on the Property during the duration of this Agreement, (ii) the Owner or a lender is financing the purchase of the Property and has not been paid in full for the Property (iii) the Buyer remains compliant with the terms of this Agreement, and (iv) the Village receives the Ticket Sales Taxes.

4.3. Determination of Conditions Precedent to Payment. The Village shall have the right, in its sole discretion, to determine if the Buyer satisfied the Conditions Precedent to Initial Payment or any other

conditions precedent in this Agreement. The Village shall have the right to request commercially reasonable documentation to support the Buyer's claim that it has satisfied the Conditions Precedent to Initial Payment and any other conditions precedent in this Agreement. The Buyer, no later than ten (10) business days after its receipt of the Village's request for the same, shall deliver to the Village all requested documentation to the extent such documentation is in the Buyer's possession or under the Buyer's control.

**5. SALES TAX REBATE PROVISIONS.**

- 5.1. Calculation of Sales Tax Rebate. During the Payment Period, and in accordance with the procedures set forth in Section 5.2 below, the Village shall pay a Tax Rebate to the Buyer that is equal to one hundred percent (100%) of the Tax Revenues for a month. However, the Village's obligation to pay the Buyer any Tax Rebate for a month is conditioned upon (i) the Buyer continuing to operate the Antioch Theater, (ii) the Village collecting Ticket Sales Taxes for the preceding month, and (iii) the Buyer having an obligation under a valid written agreement to make periodic loan payments to the Owner and the written agreement is in effect during the Payment Period.
- 5.2. Payment of Ticket Sales Tax Rebate. Buyer shall submit a revenue report, tax calculation, and tax deposit report to the Village no later than the 10<sup>th</sup> of each calendar month. In consideration of the Antioch Theater continuing to operate on the Property during the Payment Period, the Village agrees to pay the Tax Rebate to the Buyer during the Payment Period subject to the conditions set forth herein until the total amount of all Sales Tax Rebate payments equal the Tax Rebate Limit. The Tax Rebate payment shall be based upon the Village's Sales Tax reports for the Property and, as set forth below, the Village's receipt of the Ticket Sales Taxes and appropriate supporting documentation. Within thirty (30) calendar days following the end of the preceding month, the Village shall pay to the Buyer the applicable Tax Rebate for the preceding month. If, at the end of a month, there is a need to adjust and reconcile the amount of any monthly Tax Rebate payment to account for any provision of this Agreement or to account for the Ticket Sales Taxes actually paid to the Village, the Village and the Buyer agree to cooperate with each other to accomplish such reconciliation.

- 5.3. Supporting Documentation. Together with every monthly payment delivered to the Buyer, the Village shall deliver to the Buyer copies of all Ticket Sales Tax information and other supporting documentation in the Village's possession relating to such monthly payment.
- 5.4. Reduction of Payment of Ticket Sales Tax Rebate. Any payments determined to be due to the Buyer from the Village shall be reduced by the amount of all collection fees incurred by the Village for collection of the Ticket Sales Taxes.
- 5.5 [Reserved.]

**6. TICKET SALES TAX INFORMATION.**

- 6.1. Village's Rights. The Village may take reasonable steps to obtain all pertinent information regarding the Ticket Sales Taxes including, without limitation, the amount of Ticket Sales Taxes collected by the Antioch Theater.
- 6.2. Receipt of Funds. The actual receipt by the Village of Ticket Sales Taxes from sales made at the Antioch Theater shall be an express condition precedent to any obligation of the Village to pay the Tax Rebate to the Buyer or Lender and, as such, the Village shall have no obligation to pay the Tax Rebate unless the Village has first received during any preceding month, Tax Revenues from Ticket Sales at the Property.
- 6.3. Gross Receipts. All Gross Receipts generated by the Buyer from ticket sales at the Property shall be deemed to have originated in the Village for the purpose of Ticket Sales Taxes.

**8. LIMITATIONS OF LIABILITY.** No recourse under or upon any obligation or covenant of this Agreement or for any claim based thereon or otherwise in respect thereof shall be made against the Village or its past and present officials (whether elected or appointed), including the Mayor and Board of Trustees of the Village, department heads, officers, employees, independent contractors, insurers, architects, attorneys, engineers, agents, representatives, consultants, financial analysts, contractors, subcontractors and the successors, predecessors, executors, administrators, heirs, beneficiaries, legatees and assigns of such persons and entities (collectively, the "**Village Indemnified Parties**"), in excess of

any specific sum agreed by the Village to be paid to the Buyer hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by the Village Indemnified Parties, in excess of their obligations hereunder, and the same are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village. No recourse under or upon any obligation or covenant of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against the Buyer or its directors, officers, members, parents, employees, independent contractors, insurers, architects, attorneys, engineers, agents, representatives, consultants, financial analysts, subsidiaries, affiliates, contractors, subcontractors and the successors, predecessors, executors, administrators, heirs, beneficiaries, legatees and assigns of such persons and entities (collectively, the “**Buyer Indemnified Parties**”) in excess of their obligations to the Village hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by the Buyer Indemnified Parties, in excess of their obligations hereunder.

9. **MUTUAL ASSISTANCE.** The Village and the Buyer agree to do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms hereof.
10. **VILLAGE CODE AND REGULATIONS.** As a condition to the receipt of the Tax Rebate, the Buyer agrees to comply with all duly adopted Village codes, ordinances, resolutions, rules and regulations and variances thereto including, without limitation, any land use, subdivision, zoning and building code regulations, subject to any conditions currently existing on the Property that are legal non-conforming uses, grandfathered or otherwise exempted under such codes, ordinances, resolutions, rules and/or regulations. If, in the Village’s reasonable determination, the Buyer fails to comply with such codes, ordinances, resolutions, rules and/or regulations, then such failure shall be deemed to be a default under this Agreement and the Village may, in its sole and absolute discretion, after notice and expiration of applicable cure periods as provided herein, withhold payments until the aforementioned violation is cured, provided that no payment obligations shall be offset or eliminated on account of such violation.
11. **PROVISIONS CONCERNING LIMITATION ON DEBT.** As set forth herein, the actual receipt of Ticket Sales Taxes by the Village from the Antioch Theater shall be a condition precedent to any obligation of the Village to

pay monies to the Buyer and, as such, no debt from the Village to the Buyer shall exist unless the Village has first received, during any preceding month Tax Revenues. **NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY BY IMPLICATION OR OTHERWISE, ANY OBLIGATIONS OF THE VILLAGE CREATED BY OR ARISING OUT OF THIS AGREEMENT SHALL NOT BE A GENERAL DEBT OR OBLIGATION DUE AND OWING FROM THE VILLAGE OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS BUT SHALL BE PAYABLE SOLELY OUT OF THE TICKET SALES TAXES AS SET FORTH HEREIN.**

12. **NOTICES.** Any notices, demands, requests, consents, approvals, communications or other instruments required or permitted to be given under this Agreement shall be in writing (unless otherwise set forth herein) and shall be executed by a Party or an authorized representative, agent or attorney of the Party, and shall be deemed to have been duly received upon: (a) actual receipt if personally delivered and the sender received written confirmation of personal delivery; (b) receipt as indicated by the written or electronic verification of delivery when delivered by overnight courier; (c) receipt as indicated by the electronic transmission confirmation when sent via telecopy or facsimile transmission; (d) three (3) calendar days after the sender posts notice with the U.S. Post Office when sent by certified or registered mail, return receipt requested; or (e) when delivery is refused. Notice shall be sent to the addresses set forth below, or to such other address as either Party may specify in writing.

All notices to the Village shall be sent to:

The Village President  
Village of Antioch  
874 Main Street  
Antioch, Illinois 60002

With copies to:

The Village Attorney  
James M. Vasselli  
1804 N. Naper Blvd. Suite 350  
Naperville, IL 60563

All notices to the Owner shall be sent to:



**DDC INVESTMENTS, LLC - ANTIOCH THEATER,**  
Attn: Timothy Downing\_  
475 East Westminster Ave  
Lake Forest, IL 60045

With copies to:

Carlson Dash, LLC  
Attn: Mona Naser  
216 South Jefferson Street,  
Suite 504  
Chicago, IL 60661

- 13. DEFAULT, REMEDIES; CURE.** Upon a breach of this Agreement, either of the Parties, by any action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained. Notwithstanding the forgoing, the Village shall suspend all payments during the period of the breach prior to the expiration of cure period and terminate payment obligation in the event the Buyer fails to cure the complained of default as provided below. No Party may exercise the rights to suspend or withhold any payment hereunder or to bring any suit, action, mandamus or any other proceeding pursuant to this Section without first providing written notice to the offending Party by describing in detail the breach or alleged breach and allowing a period of thirty (30) calendar days for the curing of said breach or alleged breach, provided, however, that in the event such violation or failure cannot be cured within said thirty (30) calendar day period, as long as the breaching Party has promptly commenced to cure the violation or failure and thereafter continues to make a diligent and continuous effort to cure the same, then the period for curing such violation or failure shall be extended for such period as may be necessary to cure said violation.
- 14. OTHER MUTUAL COVENANTS.** The Parties agree to the following other mutual covenants:
- 14.1. Entire Agreement and Binding Effect. The foregoing is the entire agreement between the Parties hereto as it now exists at the execution hereof and it is expressly understood, agreed and distinctly acknowledged that all previous communications and negotiations between the Parties, either written or oral, that are not contained herein are hereby withdrawn, nullified and void. This Agreement shall be binding upon the Parties and inure to the

benefit of and be enforceable by and against their respective successors, personal representatives, heirs, legatees and assigns.

14.2. Severability. The provisions of this Agreement shall be deemed to be severable and the invalidity or unenforceability of any one or more of the provisions contained herein shall not affect the validity and enforceability of the other provisions hereof, and the remainder of this Agreement shall continue to be valid and enforceable to the fullest extent permitted by law, provided, however, if the judgment or decree relieves the Village of all of its monetary obligations under this Agreement, then this Agreement shall terminate. The Village agrees to defend at its sole cost any court action that may be brought attacking the Village's power or authority to enter into this Agreement or perform any of its provisions, including any appeals therefrom reasonably required by law.

14.3. Amendment. Except as otherwise provided for herein, this Agreement may not be amended, modified or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination or waiver shall be effective for any purpose unless it is in writing and bears the signatures of all of the Parties hereto.

14.4 Grant of Right of First Offer. Buyer hereby grants to the Village the exclusive right of first offer to acquire the Property (the "Right") upon the following terms and conditions:

If, at any time prior to the termination of this Agreement, Buyer determines, in its sole and absolute discretion, to offer the Property for sale, thirty (30) calendar days prior to the date that the Property would be marketed and/or offered for sale (other than to the Village), Buyer shall offer the Village the opportunity to purchase the Property (the "Offer") in the manner provided for herein. The Offer shall be accompanied by an appraisal of the Property and the business comprising the Antioch Theater, which shall be completed by an appraiser licensed in the State of Illinois. The Offer shall give the Village the exclusive right to purchase the Property for the purchase price contained in the Offer; provided, however, that the closing of the sale of the Property pursuant to the Offer shall occur no earlier than thirty (30) calendar days after the Village has been notified of the Offer. The Village shall give Buyer written notice of the Village's election to acquire or forego

acquiring the Property within fifteen (15) calendar days after the Village's receipt of the Offer.

- 14.5. Prevailing Party. In the event of a default and/or litigation arising out of the enforcement of this Agreement, the Parties hereto acknowledge and agree that the prevailing Party shall be entitled to recover all costs, charges, expenses and reasonable attorneys' fees arising as a result thereof. Prevailing Party shall mean any defendant found not liable on all counts and/or any plaintiff recovering on all counts.
- 14.6. Section and Other Headings. Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 14.7. Assignment. The Buyer shall not assign this Agreement to any other person or entity without the prior written consent of the Mayor, which shall be countersigned by the Village Attorney and which determination shall be in the sole and absolute discretion of the Village. In any event, no assignment of this Agreement shall be effective unless and until the assignee assumes in writing the obligations of the Buyer hereunder. No assignment, even if consented to by the Village (which consent may be granted or withheld in the Village's sole discretion) shall in any way reduce or eliminate the liability of the Buyer under this Agreement.
- 14.8. Applicable Law. This Agreement shall be governed by, construed under and interpreted in accordance with the laws of the State of Illinois, without giving effect to its principals of conflicts of law or choice of law. All suits, actions, claims and causes of action relating to the construction, validity, performance and enforcement of this Agreement shall be filed in the Circuit Court of Lake County, Illinois or the United States District Court for the Northern District of Illinois, Eastern Division. This Agreement is made pursuant to and in accordance with the Constitution of the State of Illinois, the Illinois Compiled Statutes (including, but not limited to, the Illinois Municipal Code) and all ordinances, resolutions, laws, codes, rules and orders and all interpretations thereof (whether judicial or administrative), enacted by or applicable to the Village as of the Effective Date, including the Village of Antioch Municipal Code (collectively, the "Laws").

- 14.9. Authorization to Execute. The Parties hereby acknowledge and agree that all required notices, meetings and hearings have been properly given and held by the Village with respect to the approval of this Agreement and agree not to challenge this Agreement or any of the obligations created by it on the grounds of any procedural infirmity or any denial of any procedural right. The Village hereby warrants and represents to the Buyer and Owner that the person executing this Agreement on its behalf has been properly authorized to do so by the Corporate Authorities of the Village. The Buyer hereby warrants and represents that the Buyer has the full and complete right, power and authority to enter into this Agreement and that the person executing this Agreement on its behalf has been properly authorized to do so by the Buyer. The Buyer, Owner and the Village shall deliver, upon request, to each other at the respective time such entities cause their authorized agents to affix their signatures hereto, copies of all articles of incorporation, by-laws, resolutions, ordinances or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective Parties, to the extent such materials exist and are in the possession of a Party.
- 14.10. Term. This Agreement shall remain in effect beyond the Payment Period for purposes of audit and final accounting and for purposes of enforcement actions hereon. Once such final accounting is completed and any remaining monies to be paid to the Buyer pursuant to the terms of this Agreement are paid, this Agreement shall automatically expire and shall thereafter have no further force or effect.
- 14.11. Appropriation of Funds. To the extent the Village is required to do so by law, the Village shall take such actions as may be required from time to time to appropriate funds pursuant to Illinois law to satisfy its obligations to the Buyer under this Agreement.
- 14.12. Time is of the Essence; Cooperation. Time is of the essence of this Agreement and of each provision hereof. The Parties shall make every reasonable effort to expedite the subject matters hereof, subject to Force Majeure, and they hereby acknowledge that the operation of the Antioch Theater is in the best interests of the Parties and requires their continued cooperation. The Buyer hereby evidences its intent to fully comply with all Village requirements in effect on the Effective Date, its willingness to

facilitate the operation of the Antioch Theater as contemplated by the provisions of this Agreement and assist the Village in carrying out the terms of this Agreement. The Village hereby evidences its intent to fully cooperate with the Buyer and to cooperate, to the fullest extent possible, in the resolution of mutual problems and the Village's willingness to facilitate the operation of the Antioch Theater as contemplated by the provisions of this Agreement and assist the Buyer in carrying out the terms of this Agreement.

- 14.13. Third-Party Beneficiaries. This Agreement is intended and shall be deemed to benefit the Buyer or Buyer's affiliated entity.
- 14.14. Waiver. Except as herein expressly provided, no waiver by a Party of any breach of this Agreement by the other Party shall be deemed to be a waiver of any other breach by such other Party (whether preceding or succeeding and whether or not of the same or similar nature), and no acceptance of payment or performance by a Party after any breach by the other Party shall be deemed to be a waiver of any breach of this Agreement or of any representation or warranty hereunder by such other Party whether or not the first Party knows of such breach at the time it accepts such payment or performance. No failure or delay by a Party to exercise any right it may have by reason of a default by the other Party shall constitute a waiver of default or a modification of this Agreement or shall prevent the exercise of any right by the first Party while the other Party continues to be in default.
- 14.15. Drafter Bias. The Parties acknowledge and agree that the terms of this Agreement are the result of on-going and extensive negotiations between the Parties, both of which are represented by independent legal counsel, and that this Agreement is a compilation of said negotiations. As a result, if a court is asked to interpret any portion of this Agreement, neither of the Parties shall be deemed the drafter hereof and neither shall be given the benefit of such presumption as may be set out by law.
- 14.16. Partnership Not Intended Nor Created. Nothing in this Agreement is intended nor shall be deemed to constitute a partnership or joint venture between the Parties.
- 14.17. The Village's Non-Waiver of Immunity. By entering into this Agreement, the Village does not waive any immunity provided by

local, state or federal law including, but not limited to, the immunities provided by the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101, *et seq.*).

- 14.18. Counterparts. This Agreement may be executed in counterpart originals, each of which shall be deemed to be an original with the same effect as if the signatures thereto were on the same instrument. A signature affixed to this Agreement and transmitted by facsimile or electronic mail shall have the same effect as an original signature.
- 14.19. Recording. Either Party may record this Agreement or a memorandum thereof in the office of the Lake County Recorder of Deeds.

(Signature page follows)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the later date written below.

**VILLAGE:**  
**THE VILLAGE OF ANTIOCH,**  
**an Illinois municipal corporation:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**OWNER AND SELLER:**  
**DDC INVESTMENTS, LLC - ANTIOCH THEATER,**  
**an Illinois limited liability company:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**BUYER:**  
\_\_\_\_\_  
**an Illinois limited liability company:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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**TICKET SALES TAX REBATE AGREEMENT**

**BY AND BETWEEN**

**THE VILLAGE OF ANTIOCH,  
AN ILLINOIS MUNICIPAL CORPORATION**

**AND**

**DDC INVESTMENTS, LLC - ANTIOCH THEATER  
AN ILLINOIS LIMITED LIABILITY COMPANY**

**AND**

\_\_\_\_\_  
**[BUYER]**

**DATED: \_\_\_\_\_ 2022**

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\* \* \* \* \*

The mailing, delivery or negotiation of this Ticket Sales Tax Rebate Agreement by the Village of Antioch (the "Village") or its agent or attorney shall not be deemed an offer by the Village to enter into any transaction or to enter into any other relationship with DDC Investments, LLC - Antioch Theater (the "Owner") and contract buyer(the "Buyer"), whether on the terms contained herein or on any other terms. This Agreement shall not be binding upon the Village, nor shall the Village have any obligations or liabilities or the Owner and the Buyer any rights with respect thereto, unless and until the Village has executed and delivered this Agreement. Until such execution and delivery of this Agreement, the Village may terminate all negotiation and discussion of the subject matter hereto, without cause and for any or no reason, without recourse or liability.

\* \* \* \* \*

## TICKET SALES TAX REBATE AGREEMENT

This TICKET SALES TAX REBATE AGREEMENT (this "**Agreement**") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 (the "**Effective Date**"), by and between the Village of Antioch, Lake County, Illinois, an Illinois municipal corporation, (the "**Village**"), DDC Investments, LLC - Antioch Theater, a Illinois limited liability company authorized to conduct business in the state of Illinois, (the "**Owner**") and contract buyer, (the "**Buyer**") (collectively, the Village, the Owner and the Buyer may, for convenience, be referred to as the "**Parties**" and each individually as a "**Party**").

### RECITALS

WHEREAS, the Village is a duly organized and existing municipality and unit of local government created under the provisions of the laws of the State of Illinois, and is operating under the provisions of the Illinois Municipal Code (65 ILCS 5/1-1-1, *et seq.*), and all laws amendatory thereof; and

WHEREAS, the Owner is the owner and contract seller of certain real property located at 378 Lake Street in the Village (the "**Property**"), which is identified by Permanent Index Number 02-08-310-006; and

WHEREAS, the Owner is selling the Property and movie theater located thereon (collectively, the "**Antioch Theater**") to the contract Buyer or Buyer's affiliated entity for a purchase price of \$400,000; and

WHEREAS, the Buyer has been unable to secure a conventional loan from a bank to finance \$300,000 of the purchase price, and the Owner is willing to provide the Buyer with seller financing in the amount of \$300,000 if the Village is willing to assist the Buyer with its loan payment obligation over a ten-year period; and

WHEREAS, the Village President and the Board of Trustees of the Village (collectively, the "**Corporate Authorities**") have determined that the continued operation of the Antioch Theater is essential to the economic health and vitality of the downtown business district; and

WHEREAS, the Corporate Authorities find that the continued operation of the Antioch Theater will promote, preserve and protect the social and economic welfare of the Village and will further the public interest; and

WHEREAS, to ensure that the Antioch Theater continues to operate and contribute to the vibrancy of the downtown business district, the Corporate Authorities are willing to provide loan payment assistance to the Buyer over a ten-year period if the Antioch Theater continues to operate as a movie theater; and

WHEREAS, the Corporate Authorities have determined that to generate the necessary tax revenues to assist the Buyer with its financial obligation to the Owner or any subsequent lender, a ticket sales tax of one dollar and fifty cents (\$1.50) should be imposed on each ticket sold for a movie viewing, a ticket sales tax of two dollars and fifty cents (\$2.50) should be imposed on each ticket sold for a live performance event, and a ten dollar (\$10.00) sales tax on private theater rentals; and

WHEREAS, the Village intends to support, encourage and facilitate the continued operation of the Antioch Theater by rebating to the Buyer payable to the order of Owner, without recourse, a portion of the Ticket Sales Taxes (as defined below) collected by the Village, which are generated from the sale of movie tickets and live performance event tickets and certain rental agreements, subject to the conditions precedent to payment as provided for in this Agreement; and

WHEREAS, the Corporate Authorities find that this Agreement is made in the best interests of the Village and its residents;

NOW, THEREFORE, in consideration of the foregoing, the mutual promises and covenants contained herein, and for other good and valuable consideration, the sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

**1. INCORPORATION OF RECITALS; WARRANTIES AND REPRESENTATIONS RELATED TO FINANCIAL SOLVENCY.**

1.1. Recitals. The representations, covenants and recitations set forth in the preceding paragraphs (the "**Recitals**") evidence the intent of the Parties, are material to this Agreement, constitute an inducement by one Party towards the other Parties to enter into this Agreement and are hereby made part of this Agreement as substantive representations and covenants as though fully set forth herein.

2. **DEFINITIONS**. Whenever used in this Agreement, the following terms shall have the meanings set forth below, unless a different meaning is required by the context:

**“Force Majeure”** means any act of God or other event or cause not reasonably within the control of the Buyer or the Village including, but not limited to: damage or destruction caused by fire or other casualty; inclement weather, floods, natural catastrophes; strikes; inability to procure or a general shortage of labor, equipment, facilities, materials or supplies; lockouts; acts of labor unions (whether legal or not); court orders, laws or orders of governmental or military authorities; embargos, storms, wars or riots; and building material shortages.

**“Gross Receipts”** means all revenue in whatever form received or accrued from whatever source at the Property.

**“Lender”** means an individual, partnership, association or corporation that has loaned to the Buyer to purchase the Property from the Seller.

**“Operate” or “Operating” or “Operation”** means the Antioch Theater is open for business as a movie and live performance theater for a minimum of 20 days per each calendar month.

**“Payment Period”** means a period of ten (10) consecutive years commencing on the first day of the calendar month following the closing of the purchase and sale of the Property and continuing until October 31, 2032, unless terminated earlier pursuant to this Agreement.

**“Tax Rebate”** means the monthly rebate payment to the Buyer of the Ticket Sales Taxes that the Village is required to make pursuant to this Agreement during the Payment Period. The Tax Rebate shall be equal to one hundred percent (100%) of the Tax Revenue (as defined below) collected by the Village during the preceding month.

**“Tax Rebate Limit”** means no more than three hundred thousand dollars (\$300,000) of the Tax Rebate payments made by the Village to the Buyer over the duration of this Agreement.

**“Tax Revenues”** is the amount of Ticket Sales Taxes the Village receives for each month.

**“Ticket Sales Taxes”** means all sales taxes that the Village imposes for viewing of movies and live performance events and for rental of the Antioch Theater during the Payment Period or upon full payment of the Tax Rebate Limit at which time the Ticket Sales Tax shall be terminated.

3. **OWNER'S PROPERTY TRANSFER OBLIGATION.**

3.1. Property Transfer Obligations of the Owner. The Owner shall enter into an agreement acceptable to the Owner and Buyer where it agrees to sell and transfer title, real property and business assets to the Antioch Theater to the Buyer upon the Buyer's performance of all terms of such agreement. The Buyer shall consider all Tax Rebate amounts received from the Village under this Agreement as part of and in satisfaction of the Buyer's loan payment obligation to the Owner.

3.2. Insurance. If requested by the Village, the Buyer shall obtain and maintain commercially reasonable policies of insurance for the Property.

4. **CONDITIONS PRECEDENT TO PAYMENT.**

4.1. Conditions Precedent to Initial Payment. The Buyer shall evidence full satisfaction of the following conditions precedent to the initial payment of Tax Rebate payment (the "**Conditions Precedent to Initial Payment**"), in addition to any other conditions precedent as otherwise set forth in this Agreement, prior to the Village being required to make the initial Tax Rebate:

4.1.1. The Owner has entered into a written agreement with the Buyer for the sale of the Property and business assets; and

4.1.2. The Owner is financing the purchase of the Property and business assets, and has not been paid in full for the Property; and

4.1.3. The Antioch Theater is operating as a theater.

4.2. Additional Conditions Precedent to Payment. The Buyer shall be entitled to receive the subsequent payments to the initial payment provided (i) the Buyer is operating the Antioch Theater on the Property during the duration of this Agreement, (ii) the Owner or a lender is financing the purchase of the Property and has not been paid in full for the Property (iii) the Buyer remains compliant with the terms of this Agreement, and (iv) the Village receives the Ticket Sales Taxes.

4.3. Determination of Conditions Precedent to Payment. The Village shall have the right, in its sole discretion, to determine if the Buyer satisfied the Conditions Precedent to Initial Payment or any other

conditions precedent in this Agreement. The Village shall have the right to request commercially reasonable documentation to support the Buyer's claim that it has satisfied the Conditions Precedent to Initial Payment and any other conditions precedent in this Agreement. The Buyer, no later than ten (10) business days after its receipt of the Village's request for the same, shall deliver to the Village all requested documentation to the extent such documentation is in the Buyer's possession or under the Buyer's control.

**5. SALES TAX REBATE PROVISIONS.**

- 5.1. Calculation of Sales Tax Rebate. During the Payment Period, and in accordance with the procedures set forth in Section 5.2 below, the Village shall pay a Tax Rebate to the Buyer that is equal to one hundred percent (100%) of the Tax Revenues for a month. However, the Village's obligation to pay the Buyer any Tax Rebate for a month is conditioned upon (i) the Buyer continuing to operate the Antioch Theater, (ii) the Village collecting Ticket Sales Taxes for the preceding month, and (iii) the Buyer having an obligation under a valid written agreement to make periodic loan payments to the Owner and the written agreement is in effect during the Payment Period.
- 5.2. Payment of Ticket Sales Tax Rebate. Buyer shall submit a revenue report, tax calculation, and tax deposit report to the Village no later than the 10<sup>th</sup> of each calendar month. In consideration of the Antioch Theater continuing to operate on the Property during the Payment Period, the Village agrees to pay the Tax Rebate to the Buyer during the Payment Period subject to the conditions set forth herein until the total amount of all Sales Tax Rebate payments equal the Tax Rebate Limit. The Tax Rebate payment shall be based upon the Village's Sales Tax reports for the Property and, as set forth below, the Village's receipt of the Ticket Sales Taxes and appropriate supporting documentation. Within thirty (30) calendar days following the end of the preceding month, the Village shall pay to the Buyer the applicable Tax Rebate for the preceding month. If, at the end of a month, there is a need to adjust and reconcile the amount of any monthly Tax Rebate payment to account for any provision of this Agreement or to account for the Ticket Sales Taxes actually paid to the Village, the Village and the Buyer agree to cooperate with each other to accomplish such reconciliation.

- 5.3. Supporting Documentation. Together with every monthly payment delivered to the Buyer, the Village shall deliver to the Buyer copies of all Ticket Sales Tax information and other supporting documentation in the Village's possession relating to such monthly payment.
- 5.4. Reduction of Payment of Ticket Sales Tax Rebate. Any payments determined to be due to the Buyer from the Village shall be reduced by the amount of all collection fees incurred by the Village for collection of the Ticket Sales Taxes.
- 5.5 [Reserved.]

**6. TICKET SALES TAX INFORMATION.**

- 6.1. Village's Rights. The Village may take reasonable steps to obtain all pertinent information regarding the Ticket Sales Taxes including, without limitation, the amount of Ticket Sales Taxes collected by the Antioch Theater.
- 6.2. Receipt of Funds. The actual receipt by the Village of Ticket Sales Taxes from sales made at the Antioch Theater shall be an express condition precedent to any obligation of the Village to pay the Tax Rebate to the Buyer or Lender and, as such, the Village shall have no obligation to pay the Tax Rebate unless the Village has first received during any preceding month, Tax Revenues from Ticket Sales at the Property.
- 6.3. Gross Receipts. All Gross Receipts generated by the Buyer from ticket sales at the Property shall be deemed to have originated in the Village for the purpose of Ticket Sales Taxes.

**8. LIMITATIONS OF LIABILITY.** No recourse under or upon any obligation or covenant of this Agreement or for any claim based thereon or otherwise in respect thereof shall be made against the Village or its past and present officials (whether elected or appointed), including the Mayor and Board of Trustees of the Village, department heads, officers, employees, independent contractors, insurers, architects, attorneys, engineers, agents, representatives, consultants, financial analysts, contractors, subcontractors and the successors, predecessors, executors, administrators, heirs, beneficiaries, legatees and assigns of such persons and entities (collectively, the "**Village Indemnified Parties**"), in excess of

any specific sum agreed by the Village to be paid to the Buyer hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by the Village Indemnified Parties, in excess of their obligations hereunder, and the same are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village. No recourse under or upon any obligation or covenant of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against the Buyer or its directors, officers, members, parents, employees, independent contractors, insurers, architects, attorneys, engineers, agents, representatives, consultants, financial analysts, subsidiaries, affiliates, contractors, subcontractors and the successors, predecessors, executors, administrators, heirs, beneficiaries, legatees and assigns of such persons and entities (collectively, the “**Buyer Indemnified Parties**”) in excess of their obligations to the Village hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by the Buyer Indemnified Parties, in excess of their obligations hereunder.

9. **MUTUAL ASSISTANCE.** The Village and the Buyer agree to do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms hereof.
10. **VILLAGE CODE AND REGULATIONS.** As a condition to the receipt of the Tax Rebate, the Buyer agrees to comply with all duly adopted Village codes, ordinances, resolutions, rules and regulations and variances thereto including, without limitation, any land use, subdivision, zoning and building code regulations, subject to any conditions currently existing on the Property that are legal non-conforming uses, grandfathered or otherwise exempted under such codes, ordinances, resolutions, rules and/or regulations. If, in the Village’s reasonable determination, the Buyer fails to comply with such codes, ordinances, resolutions, rules and/or regulations, then such failure shall be deemed to be a default under this Agreement and the Village may, in its sole and absolute discretion, after notice and expiration of applicable cure periods as provided herein, withhold payments until the aforementioned violation is cured, provided that no payment obligations shall be offset or eliminated on account of such violation.
11. **PROVISIONS CONCERNING LIMITATION ON DEBT.** As set forth herein, the actual receipt of Ticket Sales Taxes by the Village from the Antioch Theater shall be a condition precedent to any obligation of the Village to



pay monies to the Buyer and, as such, no debt from the Village to the Buyer shall exist unless the Village has first received, during any preceding month Tax Revenues. **NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY BY IMPLICATION OR OTHERWISE, ANY OBLIGATIONS OF THE VILLAGE CREATED BY OR ARISING OUT OF THIS AGREEMENT SHALL NOT BE A GENERAL DEBT OR OBLIGATION DUE AND OWING FROM THE VILLAGE OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS BUT SHALL BE PAYABLE SOLELY OUT OF THE TICKET SALES TAXES AS SET FORTH HEREIN.**

12. **NOTICES.** Any notices, demands, requests, consents, approvals, communications or other instruments required or permitted to be given under this Agreement shall be in writing (unless otherwise set forth herein) and shall be executed by a Party or an authorized representative, agent or attorney of the Party, and shall be deemed to have been duly received upon: (a) actual receipt if personally delivered and the sender received written confirmation of personal delivery; (b) receipt as indicated by the written or electronic verification of delivery when delivered by overnight courier; (c) receipt as indicated by the electronic transmission confirmation when sent via telecopy or facsimile transmission; (d) three (3) calendar days after the sender posts notice with the U.S. Post Office when sent by certified or registered mail, return receipt requested; or (e) when delivery is refused. Notice shall be sent to the addresses set forth below, or to such other address as either Party may specify in writing.

All notices to the Village shall be sent to:

The Village President  
Village of Antioch  
874 Main Street  
Antioch, Illinois 60002

With copies to:

The Village Attorney  
James M. Vasselli  
1804 N. Naper Blvd. Suite 350  
Naperville, IL 60563

All notices to the Owner shall be sent to:

**DDC INVESTMENTS, LLC - ANTIOCH THEATER,**

Attn: Timothy Downing\_  
475 East Westminster Ave  
Lake Forest, IL 60045

With copies to:

Carlson Dash, LLC  
Attn: Mona Naser  
216 South Jefferson Street,  
Suite 504  
Chicago, IL 60661

- 13. DEFAULT, REMEDIES; CURE.** Upon a breach of this Agreement, either of the Parties, by any action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained. Notwithstanding the forgoing, the Village shall suspend all payments during the period of the breach prior to the expiration of cure period and terminate payment obligation in the event the Buyer fails to cure the complained of default as provided below. No Party may exercise the rights to suspend or withhold any payment hereunder or to bring any suit, action, mandamus or any other proceeding pursuant to this Section without first providing written notice to the offending Party by describing in detail the breach or alleged breach and allowing a period of thirty (30) calendar days for the curing of said breach or alleged breach, provided, however, that in the event such violation or failure cannot be cured within said thirty (30) calendar day period, as long as the breaching Party has promptly commenced to cure the violation or failure and thereafter continues to make a diligent and continuous effort to cure the same, then the period for curing such violation or failure shall be extended for such period as may be necessary to cure said violation.
- 14. OTHER MUTUAL COVENANTS.** The Parties agree to the following other mutual covenants:
- 14.1. Entire Agreement and Binding Effect. The foregoing is the entire agreement between the Parties hereto as it now exists at the execution hereof and it is expressly understood, agreed and distinctly acknowledged that all previous communications and negotiations between the Parties, either written or oral, that are not contained herein are hereby withdrawn, nullified and void. This Agreement shall be binding upon the Parties and inure to the

benefit of and be enforceable by and against their respective successors, personal representatives, heirs, legatees and assigns.

- 14.2. Severability. The provisions of this Agreement shall be deemed to be severable and the invalidity or unenforceability of any one or more of the provisions contained herein shall not affect the validity and enforceability of the other provisions hereof, and the remainder of this Agreement shall continue to be valid and enforceable to the fullest extent permitted by law, provided, however, if the judgment or decree relieves the Village of all of its monetary obligations under this Agreement, then this Agreement shall terminate. The Village agrees to defend at its sole cost any court action that may be brought attacking the Village's power or authority to enter into this Agreement or perform any of its provisions, including any appeals therefrom reasonably required by law.
- 14.3. Amendment. Except as otherwise provided for herein, this Agreement may not be amended, modified or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination or waiver shall be effective for any purpose unless it is in writing and bears the signatures of all of the Parties hereto.
- 14.4. Right of First Refusal. If, at any time during the term of this Agreement, the Buyer shall, in response to a bona fide written or oral offer to purchase all or part of its interest in the Antioch Theater from a third party, desire to sell or otherwise dispose of any interest, default in any covenant or obligation in any loan document or other lending obligation, or the Antioch Theater remains closed for business for a period of 20 consecutive calendar days (collectively, a "Triggering Event") the Buyer shall within one (1) day after the Triggering Event notify the Village in writing of the Triggering Event, and if applicable, the price at which and the terms upon which it desires to sell the Antioch Theater or the amount the Buyer is in default or arrears on a lending obligation. The Village shall, within 30 days after receipt of the notice of the Triggering Event, notify the Buyer in writing whether it wishes to purchase the Antioch Theater on (or pursuant to) the terms set forth in the notice of the Triggering Event. If the Village elects to purchase the Antioch Theater, the Buyer shall be bound to convey, assign, or otherwise transfer the Antioch Theater to the Village promptly and no more than 30

business days after receipt of the notice of the Village's intent to proceed and at such price and on such terms as set forth in the notice of the Triggering Event. If the Village elects not to purchase or fails to give notice of its intention to the Buyer within the 30-day period, the Buyer, as applicable, shall be free to convey, assign, or otherwise transfer such interest to the third party at a price not less than stated in the notice or on more favorable terms than those stated in the notice and the Village shall have irrevocably waived its rights to exercise its option to purchase as set forth above. If the Buyer shall not have so disposed of such interest to said third party within 90 days after receipt of notice that the Village elects not to exercise its right of first refusal or after expiration of that party's 30-day period within which to give notice, the provisions of this Section shall again apply to the disposition by the Buyer of any such interest. Any conveyance by the Buyer to a third party or lending instrument involving the Antioch Theater shall be subject to the terms of this Agreement and specifically this provision of the Agreement. In the event a memorandum of this Agreement is recorded in the office of the Lake County Recorder of Deeds the memorandum shall contain a specific reference to this provision in the Agreement. All written notifications made under this provision of this Agreement shall be by certified mail (USPS) return receipt requested or commercial carrier with delivery dates provided.

- 14.5. Prevailing Party. In the event of a default and/or litigation arising out of the enforcement of this Agreement, the Parties hereto acknowledge and agree that the prevailing Party shall be entitled to recover all costs, charges, expenses and reasonable attorneys' fees arising as a result thereof. Prevailing Party shall mean any defendant found not liable on all counts and/or any plaintiff recovering on all counts.
- 14.6. Section and Other Headings. Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 14.7. Assignment. The Buyer shall not assign this Agreement to any other person or entity without the prior written consent of the Mayor, which shall be countersigned by the Village Attorney and which determination shall be in the sole and absolute discretion of the Village. In any event, no assignment of this Agreement shall be effective unless and until the assignee assumes in writing the

obligations of the Buyer hereunder. No assignment, even if consented to by the Village (which consent may be granted or withheld in the Village's sole discretion) shall in any way reduce or eliminate the liability of the Buyer under this Agreement.

- 14.8. Applicable Law. This Agreement shall be governed by, construed under and interpreted in accordance with the laws of the State of Illinois, without giving effect to its principals of conflicts of law or choice of law. All suits, actions, claims and causes of action relating to the construction, validity, performance and enforcement of this Agreement shall be filed in the Circuit Court of Lake County, Illinois or the United States District Court for the Northern District of Illinois, Eastern Division. This Agreement is made pursuant to and in accordance with the Constitution of the State of Illinois, the Illinois Compiled Statutes (including, but not limited to, the Illinois Municipal Code) and all ordinances, resolutions, laws, codes, rules and orders and all interpretations thereof (whether judicial or administrative), enacted by or applicable to the Village as of the Effective Date, including the Village of Antioch Municipal Code (collectively, the "**Laws**").
- 14.9. Authorization to Execute. The Parties hereby acknowledge and agree that all required notices, meetings and hearings have been properly given and held by the Village with respect to the approval of this Agreement and agree not to challenge this Agreement or any of the obligations created by it on the grounds of any procedural infirmity or any denial of any procedural right. The Village hereby warrants and represents to the Buyer and Owner that the person executing this Agreement on its behalf has been properly authorized to do so by the Corporate Authorities of the Village. The Buyer hereby warrants and represents that the Buyer has the full and complete right, power and authority to enter into this Agreement and that the person executing this Agreement on its behalf has been properly authorized to do so by the Buyer. The Buyer, Owner and the Village shall deliver, upon request, to each other at the respective time such entities cause their authorized agents to affix their signatures hereto, copies of all articles of incorporation, by-laws, resolutions, ordinances or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective Parties, to the extent such materials exist and are in the possession of a Party.

- 14.10. Term. This Agreement shall remain in effect beyond the Payment Period for purposes of audit and final accounting and for purposes of enforcement actions hereon. Once such final accounting is completed and any remaining monies to be paid to the Buyer pursuant to the terms of this Agreement are paid, this Agreement shall automatically expire and shall thereafter have no further force or effect.
- 14.11. Appropriation of Funds. To the extent the Village is required to do so by law, the Village shall take such actions as may be required from time to time to appropriate funds pursuant to Illinois law to satisfy its obligations to the Buyer under this Agreement.
- 14.12. Time is of the Essence; Cooperation. Time is of the essence of this Agreement and of each provision hereof. The Parties shall make every reasonable effort to expedite the subject matters hereof, subject to Force Majeure, and they hereby acknowledge that the operation of the Antioch Theater is in the best interests of the Parties and requires their continued cooperation. The Buyer hereby evidences its intent to fully comply with all Village requirements in effect on the Effective Date, its willingness to facilitate the operation of the Antioch Theater as contemplated by the provisions of this Agreement and assist the Village in carrying out the terms of this Agreement. The Village hereby evidences its intent to fully cooperate with the Buyer and to cooperate, to the fullest extent possible, in the resolution of mutual problems and the Village's willingness to facilitate the operation of the Antioch Theater as contemplated by the provisions of this Agreement and assist the Buyer in carrying out the terms of this Agreement.
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- 14.14. Waiver. Except as herein expressly provided, no waiver by a Party of any breach of this Agreement by the other Party shall be deemed to be a waiver of any other breach by such other Party (whether preceding or succeeding and whether or not of the same or similar nature), and no acceptance of payment or performance by a Party after any breach by the other Party shall be deemed to be a waiver of any breach of this Agreement or of any representation or warranty hereunder by such other Party whether or not the first Party knows of such breach at the time it

accepts such payment or performance. No failure or delay by a Party to exercise any right it may have by reason of a default by the other Party shall constitute a waiver of default or a modification of this Agreement or shall prevent the exercise of any right by the first Party while the other Party continues to be in default.

- 14.15. Drafter Bias. The Parties acknowledge and agree that the terms of this Agreement are the result of on-going and extensive negotiations between the Parties, both of which are represented by independent legal counsel, and that this Agreement is a compilation of said negotiations. As a result, if a court is asked to interpret any portion of this Agreement, neither of the Parties shall be deemed the drafter hereof and neither shall be given the benefit of such presumption as may be set out by law.
- 14.16. Partnership Not Intended Nor Created. Nothing in this Agreement is intended nor shall be deemed to constitute a partnership or joint venture between the Parties.
- 14.17. The Village's Non-Waiver of Immunity. By entering into this Agreement, the Village does not waive any immunity provided by local, state or federal law including, but not limited to, the immunities provided by the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101, *et seq.*).
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(Signature page follows)

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**THE VILLAGE OF ANTIOCH,**  
**an Illinois municipal corporation:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**OWNER AND SELLER:**  
**DDC INVESTMENTS, LLC - ANTIOCH THEATER,**  
**an Illinois limited liability company:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**BUYER:**  
\_\_\_\_\_  
**an Illinois limited liability company:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



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**TICKET SALES TAX REBATE AGREEMENT**

**BY AND BETWEEN**

**THE VILLAGE OF ANTIOCH,  
AN ILLINOIS MUNICIPAL CORPORATION**

**AND**

**DDC INVESTMENTS, LLC - ANTIOCH THEATER  
AN ILLINOIS LIMITED LIABILITY COMPANY**

**AND**

\_\_\_\_\_  
**[BUYER]**

**DATED: \_\_\_\_\_ 2022**

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\* \* \* \* \*

The mailing, delivery or negotiation of this Ticket Sales Tax Rebate Agreement by the Village of Antioch (the "Village") or its agent or attorney shall not be deemed an offer by the Village to enter into any transaction or to enter into any other relationship with DDC Investments, LLC - Antioch Theater (the "Owner") and contract buyer(the "Buyer"), whether on the terms contained herein or on any other terms. This Agreement shall not be binding upon the Village, nor shall the Village have any obligations or liabilities or the Owner and the Buyer any rights with respect thereto, unless and until the Village has executed and delivered this Agreement. Until such execution and delivery of this Agreement, the Village may terminate all negotiation and discussion of the subject matter hereto, without cause and for any or no reason, without recourse or liability.

\* \* \* \* \*

## TICKET SALES TAX REBATE AGREEMENT

This TICKET SALES TAX REBATE AGREEMENT (this "**Agreement**") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 (the "**Effective Date**"), by and between the Village of Antioch, Lake County, Illinois, an Illinois municipal corporation, (the "**Village**"), DDC Investments, LLC - Antioch Theater, a Illinois limited liability company authorized to conduct business in the state of Illinois, (the "**Owner**") and contract buyer, (the "**Buyer**") (collectively, the Village, the Owner and the Buyer may, for convenience, be referred to as the "**Parties**" and each individually as a "**Party**").

### RECITALS

WHEREAS, the Village is a duly organized and existing municipality and unit of local government created under the provisions of the laws of the State of Illinois, and is operating under the provisions of the Illinois Municipal Code (65 ILCS 5/1-1-1, *et seq.*), and all laws amendatory thereof; and

WHEREAS, the Owner is the owner and contract seller of certain real property located at 378 Lake Street in the Village (the "**Property**"), which is identified by Permanent Index Number 02-08-310-006; and

WHEREAS, the Owner is selling the Property and movie theater located thereon (collectively, the "**Antioch Theater**") to the contract Buyer or Buyer's affiliated entity for a purchase price of \$400,000; and

WHEREAS, the Buyer has been unable to secure a conventional loan from a bank to finance \$300,000 of the purchase price, and the Owner is willing to provide the Buyer with seller financing in the amount of \$300,000 if the Village is willing to assist the Buyer with its loan payment obligation over a ten-year period; and

WHEREAS, the Village President and the Board of Trustees of the Village (collectively, the "**Corporate Authorities**") have determined that the continued operation of the Antioch Theater is essential to the economic health and vitality of the downtown business district; and

WHEREAS, the Corporate Authorities find that the continued operation of the Antioch Theater will promote, preserve and protect the social and economic welfare of the Village and will further the public interest; and

WHEREAS, to ensure that the Antioch Theater continues to operate and contribute to the vibrancy of the downtown business district, the Corporate Authorities are willing to provide loan payment assistance to the Buyer over a ten-year period if the Antioch Theater continues to operate as a movie theater; and

WHEREAS, the Corporate Authorities have determined that to generate the necessary tax revenues to assist the Buyer with its financial obligation to the Owner or any subsequent lender, a ticket sales tax of one dollar and fifty cents (\$1.50) should be imposed on each ticket sold for a movie viewing, a ticket sales tax of two dollars and fifty cents (\$2.50) should be imposed on each ticket sold for a live performance event, and a ten dollar (\$10.00) sales tax on private theater rentals; and

WHEREAS, the Village intends to support, encourage and facilitate the continued operation of the Antioch Theater by rebating to the Buyer payable to the order of Owner, without recourse, a portion of the Ticket Sales Taxes (as defined below) collected by the Village, which are generated from the sale of movie tickets and live performance event tickets and certain rental agreements, subject to the conditions precedent to payment as provided for in this Agreement; and

WHEREAS, the Corporate Authorities find that this Agreement is made in the best interests of the Village and its residents;

NOW, THEREFORE, in consideration of the foregoing, the mutual promises and covenants contained herein, and for other good and valuable consideration, the sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

**1. INCORPORATION OF RECITALS; WARRANTIES AND REPRESENTATIONS RELATED TO FINANCIAL SOLVENCY.**

1.1. Recitals. The representations, covenants and recitations set forth in the preceding paragraphs (the "**Recitals**") evidence the intent of the Parties, are material to this Agreement, constitute an inducement by one Party towards the other Parties to enter into this Agreement and are hereby made part of this Agreement as substantive representations and covenants as though fully set forth herein.

**2. DEFINITIONS.** Whenever used in this Agreement, the following terms shall have the meanings set forth below, unless a different meaning is required by the context:

**“Force Majeure”** means any act of God or other event or cause not reasonably within the control of the Buyer or the Village including, but not limited to: damage or destruction caused by fire or other casualty; inclement weather, floods, natural catastrophes; strikes; inability to procure or a general shortage of labor, equipment, facilities, materials or supplies; lockouts; acts of labor unions (whether legal or not); court orders, laws or orders of governmental or military authorities; embargos, storms, wars or riots; and building material shortages.

**“Gross Receipts”** means all revenue in whatever form received or accrued from whatever source at the Property.

**“Lender”** means an individual, partnership, association or corporation that has loaned to the Buyer to purchase the Property from the Seller.

**“Operate” or “Operating” or “Operation”** means the Antioch Theater is open for business as a movie and live performance theater for a minimum of 20 days per each calendar month.

**“Payment Period”** means a period of ten (10) consecutive years commencing on the first day of the calendar month following the closing of the purchase and sale of the Property and continuing until October 31, 2032, unless terminated earlier pursuant to this Agreement.

**“Tax Rebate”** means the monthly rebate payment to the Buyer of the Ticket Sales Taxes that the Village is required to make pursuant to this Agreement during the Payment Period. The Tax Rebate shall be equal to one hundred percent (100%) of the Tax Revenue (as defined below) collected by the Village during the preceding month.

**“Tax Rebate Limit”** means no more than three hundred thousand dollars (\$300,000) of the Tax Rebate payments made by the Village to the Buyer over the duration of this Agreement.

**“Tax Revenues”** is the amount of Ticket Sales Taxes the Village receives for each month.

**“Ticket Sales Taxes”** means all sales taxes that the Village imposes for viewing of movies and live performance events and for rental of the Antioch Theater during the Payment Period or upon full payment of the Tax Rebate Limit at which time the Ticket Sales Tax shall be terminated.

3. **OWNER'S PROPERTY TRANSFER OBLIGATION.**

3.1. Property Transfer Obligations of the Owner. The Owner shall enter into an agreement acceptable to the Owner and Buyer where it agrees to sell and transfer title, real property and business assets to the Antioch Theater to the Buyer upon the Buyer's performance of all terms of such agreement. The Buyer shall consider all Tax Rebate amounts received from the Village under this Agreement as part of and in satisfaction of the Buyer's loan payment obligation to the Owner.

3.2. Insurance. If requested by the Village, the Buyer shall obtain and maintain commercially reasonable policies of insurance for the Property.

4. **CONDITIONS PRECEDENT TO PAYMENT.**

4.1. Conditions Precedent to Initial Payment. The Buyer shall evidence full satisfaction of the following conditions precedent to the initial payment of Tax Rebate payment (the "**Conditions Precedent to Initial Payment**"), in addition to any other conditions precedent as otherwise set forth in this Agreement, prior to the Village being required to make the initial Tax Rebate:

4.1.1. The Owner has entered into a written agreement with the Buyer for the sale of the Property and business assets; and

4.1.2. The Owner is financing the purchase of the Property and business assets, and has not been paid in full for the Property; and

4.1.3. The Antioch Theater is operating as a theater.

4.2. Additional Conditions Precedent to Payment. The Buyer shall be entitled to receive the subsequent payments to the initial payment provided (i) the Buyer is operating the Antioch Theater on the Property during the duration of this Agreement, (ii) the Owner or a lender is financing the purchase of the Property and has not been paid in full for the Property (iii) the Buyer remains compliant with the terms of this Agreement, and (iv) the Village receives the Ticket Sales Taxes.

4.3. Determination of Conditions Precedent to Payment. The Village shall have the right, in its sole discretion, to determine if the Buyer satisfied the Conditions Precedent to Initial Payment or any other

conditions precedent in this Agreement. The Village shall have the right to request commercially reasonable documentation to support the Buyer's claim that it has satisfied the Conditions Precedent to Initial Payment and any other conditions precedent in this Agreement. The Buyer, no later than ten (10) business days after its receipt of the Village's request for the same, shall deliver to the Village all requested documentation to the extent such documentation is in the Buyer's possession or under the Buyer's control.

**5. SALES TAX REBATE PROVISIONS.**

- 5.1. Calculation of Sales Tax Rebate. During the Payment Period, and in accordance with the procedures set forth in Section 5.2 below, the Village shall pay a Tax Rebate to the Buyer that is equal to one hundred percent (100%) of the Tax Revenues for a month. However, the Village's obligation to pay the Buyer any Tax Rebate for a month is conditioned upon (i) the Buyer continuing to operate the Antioch Theater, (ii) the Village collecting Ticket Sales Taxes for the preceding month, and (iii) the Buyer having an obligation under a valid written agreement to make periodic loan payments to the Owner and the written agreement is in effect during the Payment Period.
- 5.2. Payment of Ticket Sales Tax Rebate. Buyer shall submit a revenue report, tax calculation, and tax deposit report to the Village no later than the 10<sup>th</sup> of each calendar month. In consideration of the Antioch Theater continuing to operate on the Property during the Payment Period, the Village agrees to pay the Tax Rebate to the Buyer during the Payment Period subject to the conditions set forth herein until the total amount of all Sales Tax Rebate payments equal the Tax Rebate Limit. The Tax Rebate payment shall be based upon the Village's Sales Tax reports for the Property and, as set forth below, the Village's receipt of the Ticket Sales Taxes and appropriate supporting documentation. Within thirty (30) calendar days following the end of the preceding month, the Village shall pay to the Buyer the applicable Tax Rebate for the preceding month. If, at the end of a month, there is a need to adjust and reconcile the amount of any monthly Tax Rebate payment to account for any provision of this Agreement or to account for the Ticket Sales Taxes actually paid to the Village, the Village and the Buyer agree to cooperate with each other to accomplish such reconciliation.

- 5.3. Supporting Documentation. Together with every monthly payment delivered to the Buyer, the Village shall deliver to the Buyer copies of all Ticket Sales Tax information and other supporting documentation in the Village's possession relating to such monthly payment.
- 5.4. Reduction of Payment of Ticket Sales Tax Rebate. Any payments determined to be due to the Buyer from the Village shall be reduced by the amount of all collection fees incurred by the Village for collection of the Ticket Sales Taxes.
- 5.5 [Reserved.]

**6. TICKET SALES TAX INFORMATION.**

- 6.1. Village's Rights. The Village may take reasonable steps to obtain all pertinent information regarding the Ticket Sales Taxes including, without limitation, the amount of Ticket Sales Taxes collected by the Antioch Theater.
- 6.2. Receipt of Funds. The actual receipt by the Village of Ticket Sales Taxes from sales made at the Antioch Theater shall be an express condition precedent to any obligation of the Village to pay the Tax Rebate to the Buyer or Lender and, as such, the Village shall have no obligation to pay the Tax Rebate unless the Village has first received during any preceding month, Tax Revenues from Ticket Sales at the Property.
- 6.3. Gross Receipts. All Gross Receipts generated by the Buyer from ticket sales at the Property shall be deemed to have originated in the Village for the purpose of Ticket Sales Taxes.

**8. LIMITATIONS OF LIABILITY.** No recourse under or upon any obligation or covenant of this Agreement or for any claim based thereon or otherwise in respect thereof shall be made against the Village or its past and present officials (whether elected or appointed), including the Mayor and Board of Trustees of the Village, department heads, officers, employees, independent contractors, insurers, architects, attorneys, engineers, agents, representatives, consultants, financial analysts, contractors, subcontractors and the successors, predecessors, executors, administrators, heirs, beneficiaries, legatees and assigns of such persons and entities (collectively, the "**Village Indemnified Parties**"), in excess of



any specific sum agreed by the Village to be paid to the Buyer hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by the Village Indemnified Parties, in excess of their obligations hereunder, and the same are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village. No recourse under or upon any obligation or covenant of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against the Buyer or its directors, officers, members, parents, employees, independent contractors, insurers, architects, attorneys, engineers, agents, representatives, consultants, financial analysts, subsidiaries, affiliates, contractors, subcontractors and the successors, predecessors, executors, administrators, heirs, beneficiaries, legatees and assigns of such persons and entities (collectively, the "**Buyer Indemnified Parties**") in excess of their obligations to the Village hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by the Buyer Indemnified Parties, in excess of their obligations hereunder.

9. **MUTUAL ASSISTANCE.** The Village and the Buyer agree to do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms hereof.
10. **VILLAGE CODE AND REGULATIONS.** As a condition to the receipt of the Tax Rebate, the Buyer agrees to comply with all duly adopted Village codes, ordinances, resolutions, rules and regulations and variances thereto including, without limitation, any land use, subdivision, zoning and building code regulations, subject to any conditions currently existing on the Property that are legal non-conforming uses, grandfathered or otherwise exempted under such codes, ordinances, resolutions, rules and/or regulations. If, in the Village's reasonable determination, the Buyer fails to comply with such codes, ordinances, resolutions, rules and/or regulations, then such failure shall be deemed to be a default under this Agreement and the Village may, in its sole and absolute discretion, after notice and expiration of applicable cure periods as provided herein, withhold payments until the aforementioned violation is cured, provided that no payment obligations shall be offset or eliminated on account of such violation.
11. **PROVISIONS CONCERNING LIMITATION ON DEBT.** As set forth herein, the actual receipt of Ticket Sales Taxes by the Village from the Antioch Theater shall be a condition precedent to any obligation of the Village to

pay monies to the Buyer and, as such, no debt from the Village to the Buyer shall exist unless the Village has first received, during any preceding month Tax Revenues. **NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY BY IMPLICATION OR OTHERWISE, ANY OBLIGATIONS OF THE VILLAGE CREATED BY OR ARISING OUT OF THIS AGREEMENT SHALL NOT BE A GENERAL DEBT OR OBLIGATION DUE AND OWING FROM THE VILLAGE OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS BUT SHALL BE PAYABLE SOLELY OUT OF THE TICKET SALES TAXES AS SET FORTH HEREIN.**

12. **NOTICES.** Any notices, demands, requests, consents, approvals, communications or other instruments required or permitted to be given under this Agreement shall be in writing (unless otherwise set forth herein) and shall be executed by a Party or an authorized representative, agent or attorney of the Party, and shall be deemed to have been duly received upon: (a) actual receipt if personally delivered and the sender received written confirmation of personal delivery; (b) receipt as indicated by the written or electronic verification of delivery when delivered by overnight courier; (c) receipt as indicated by the electronic transmission confirmation when sent via telecopy or facsimile transmission; (d) three (3) calendar days after the sender posts notice with the U.S. Post Office when sent by certified or registered mail, return receipt requested; or (e) when delivery is refused. Notice shall be sent to the addresses set forth below, or to such other address as either Party may specify in writing.

All notices to the Village shall be sent to:

The Village President  
Village of Antioch  
874 Main Street  
Antioch, Illinois 60002

With copies to:

The Village Attorney  
James M. Vasselli  
1804 N. Naper Blvd. Suite 350  
Naperville, IL 60563

All notices to the Owner shall be sent to:

**DDC INVESTMENTS, LLC - ANTIOCH THEATER,**  
Attn: Timothy Downing\_  
475 East Westminster Ave  
Lake Forest, IL 60045

With copies to:

Carlson Dash, LLC  
Attn: Mona Naser  
216 South Jefferson Street,  
Suite 504  
Chicago, IL 60661

- 13. DEFAULT, REMEDIES; CURE.** Upon a breach of this Agreement, either of the Parties, by any action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained. Notwithstanding the forgoing, the Village shall suspend all payments during the period of the breach prior to the expiration of cure period and terminate payment obligation in the event the Buyer fails to cure the complained of default as provided below. No Party may exercise the rights to suspend or withhold any payment hereunder or to bring any suit, action, mandamus or any other proceeding pursuant to this Section without first providing written notice to the offending Party by describing in detail the breach or alleged breach and allowing a period of thirty (30) calendar days for the curing of said breach or alleged breach, provided, however, that in the event such violation or failure cannot be cured within said thirty (30) calendar day period, as long as the breaching Party has promptly commenced to cure the violation or failure and thereafter continues to make a diligent and continuous effort to cure the same, then the period for curing such violation or failure shall be extended for such period as may be necessary to cure said violation.
- 14. OTHER MUTUAL COVENANTS.** The Parties agree to the following other mutual covenants:
- 14.1. Entire Agreement and Binding Effect. The foregoing is the entire agreement between the Parties hereto as it now exists at the execution hereof and it is expressly understood, agreed and distinctly acknowledged that all previous communications and negotiations between the Parties, either written or oral, that are not contained herein are hereby withdrawn, nullified and void. This Agreement shall be binding upon the Parties and inure to the

benefit of and be enforceable by and against their respective successors, personal representatives, heirs, legatees and assigns.

- 14.2. Severability. The provisions of this Agreement shall be deemed to be severable and the invalidity or unenforceability of any one or more of the provisions contained herein shall not affect the validity and enforceability of the other provisions hereof, and the remainder of this Agreement shall continue to be valid and enforceable to the fullest extent permitted by law, provided, however, if the judgment or decree relieves the Village of all of its monetary obligations under this Agreement, then this Agreement shall terminate. The Village agrees to defend at its sole cost any court action that may be brought attacking the Village's power or authority to enter into this Agreement or perform any of its provisions, including any appeals therefrom reasonably required by law.
- 14.3. Amendment. Except as otherwise provided for herein, this Agreement may not be amended, modified or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination or waiver shall be effective for any purpose unless it is in writing and bears the signatures of all of the Parties hereto.
- 14.4. **Intentionally Omitted**
- 14.5. Prevailing Party. In the event of a default and/or litigation arising out of the enforcement of this Agreement, the Parties hereto acknowledge and agree that the prevailing Party shall be entitled to recover all costs, charges, expenses and reasonable attorneys' fees arising as a result thereof. Prevailing Party shall mean any defendant found not liable on all counts and/or any plaintiff recovering on all counts.
- 14.6. Section and Other Headings. Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 14.7. Assignment. The Buyer shall not assign this Agreement to any other person or entity without the prior written consent of the Mayor, which shall be countersigned by the Village Attorney and which determination shall be in the sole and absolute discretion of the Village. In any event, no assignment of this Agreement shall

be effective unless and until the assignee assumes in writing the obligations of the Buyer hereunder. No assignment, even if consented to by the Village (which consent may be granted or withheld in the Village's sole discretion) shall in any way reduce or eliminate the liability of the Buyer under this Agreement.

- 14.8. Applicable Law. This Agreement shall be governed by, construed under and interpreted in accordance with the laws of the State of Illinois, without giving effect to its principals of conflicts of law or choice of law. All suits, actions, claims and causes of action relating to the construction, validity, performance and enforcement of this Agreement shall be filed in the Circuit Court of Lake County, Illinois or the United States District Court for the Northern District of Illinois, Eastern Division. This Agreement is made pursuant to and in accordance with the Constitution of the State of Illinois, the Illinois Compiled Statutes (including, but not limited to, the Illinois Municipal Code) and all ordinances, resolutions, laws, codes, rules and orders and all interpretations thereof (whether judicial or administrative), enacted by or applicable to the Village as of the Effective Date, including the Village of Antioch Municipal Code (collectively, the "Laws").
- 14.9. Authorization to Execute. The Parties hereby acknowledge and agree that all required notices, meetings and hearings have been properly given and held by the Village with respect to the approval of this Agreement and agree not to challenge this Agreement or any of the obligations created by it on the grounds of any procedural infirmity or any denial of any procedural right. The Village hereby warrants and represents to the Buyer and Owner that the person executing this Agreement on its behalf has been properly authorized to do so by the Corporate Authorities of the Village. The Buyer hereby warrants and represents that the Buyer has the full and complete right, power and authority to enter into this Agreement and that the person executing this Agreement on its behalf has been properly authorized to do so by the Buyer. The Buyer, Owner and the Village shall deliver, upon request, to each other at the respective time such entities cause their authorized agents to affix their signatures hereto, copies of all articles of incorporation, by-laws, resolutions, ordinances or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective Parties, to the extent such materials exist and are in the possession of a Party.

- 14.10. Term. This Agreement shall remain in effect beyond the Payment Period for purposes of audit and final accounting and for purposes of enforcement actions hereon. Once such final accounting is completed and any remaining monies to be paid to the Buyer pursuant to the terms of this Agreement are paid, this Agreement shall automatically expire and shall thereafter have no further force or effect.
- 14.11. Appropriation of Funds. To the extent the Village is required to do so by law, the Village shall take such actions as may be required from time to time to appropriate funds pursuant to Illinois law to satisfy its obligations to the Buyer under this Agreement.
- 14.12. Time is of the Essence; Cooperation. Time is of the essence of this Agreement and of each provision hereof. The Parties shall make every reasonable effort to expedite the subject matters hereof, subject to Force Majeure, and they hereby acknowledge that the operation of the Antioch Theater is in the best interests of the Parties and requires their continued cooperation. The Buyer hereby evidences its intent to fully comply with all Village requirements in effect on the Effective Date, its willingness to facilitate the operation of the Antioch Theater as contemplated by the provisions of this Agreement and assist the Village in carrying out the terms of this Agreement. The Village hereby evidences its intent to fully cooperate with the Buyer and to cooperate, to the fullest extent possible, in the resolution of mutual problems and the Village's willingness to facilitate the operation of the Antioch Theater as contemplated by the provisions of this Agreement and assist the Buyer in carrying out the terms of this Agreement.
- 14.13. Third-Party Beneficiaries. This Agreement is intended and shall be deemed to benefit the Buyer or Buyer's affiliated entity.
- 14.14. Waiver. Except as herein expressly provided, no waiver by a Party of any breach of this Agreement by the other Party shall be deemed to be a waiver of any other breach by such other Party (whether preceding or succeeding and whether or not of the same or similar nature), and no acceptance of payment or performance by a Party after any breach by the other Party shall be deemed to be a waiver of any breach of this Agreement or of any representation or warranty hereunder by such other Party whether or not the first Party knows of such breach at the time it

accepts such payment or performance. No failure or delay by a Party to exercise any right it may have by reason of a default by the other Party shall constitute a waiver of default or a modification of this Agreement or shall prevent the exercise of any right by the first Party while the other Party continues to be in default.

- 14.15. Drafter Bias. The Parties acknowledge and agree that the terms of this Agreement are the result of on-going and extensive negotiations between the Parties, both of which are represented by independent legal counsel, and that this Agreement is a compilation of said negotiations. As a result, if a court is asked to interpret any portion of this Agreement, neither of the Parties shall be deemed the drafter hereof and neither shall be given the benefit of such presumption as may be set out by law.
- 14.16. Partnership Not Intended Nor Created. Nothing in this Agreement is intended nor shall be deemed to constitute a partnership or joint venture between the Parties.
- 14.17. The Village's Non-Waiver of Immunity. By entering into this Agreement, the Village does not waive any immunity provided by local, state or federal law including, but not limited to, the immunities provided by the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101, *et seq.*).
- 14.18. Counterparts. This Agreement may be executed in counterpart originals, each of which shall be deemed to be an original with the same effect as if the signatures thereto were on the same instrument. A signature affixed to this Agreement and transmitted by facsimile or electronic mail shall have the same effect as an original signature.
- 14.19. Recording. Either Party may record this Agreement or a memorandum thereof in the office of the Lake County Recorder of Deeds.

(Signature page follows)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the later date written below.

**VILLAGE:**  
**THE VILLAGE OF ANTIOCH,**  
**an Illinois municipal corporation:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**OWNER AND SELLER:**  
**DDC INVESTMENTS, LLC - ANTIOCH THEATER,**  
**an Illinois limited liability company:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**BUYER:**  
\_\_\_\_\_  
**an Illinois limited liability company:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_