

FINE ARTS THEATER TERM SHEET

Date: 8/31/2023

Parties Involved:

- **City of Denton** (hereinafter referred to as "the City")
- **Fine Arts Theater of Denton, LLC** (hereinafter referred to as "the Developer")

Purpose: The proposed Project seeks a \$2,000,000 economic development incentive to support the rehabilitation and transformation of the Fine Arts Theater located at 113-115 N. Elm Street, Denton, TX into a multi-use entertainment facility. The envisioned features of the renovated facility include:

- A main theater with approximately 200 seats and a V.I.P. mezzanine accommodating 25-30 seats.
- A smaller movie theater on the second level with a seating capacity of approximately 50.
- A new concession area at the entrance.
- A bar overlooking the Courthouse-on-the-Square, catering to both theater patrons and the public.

Capital Investment Requirement: To ensure the success and sustainability of the Project, the Developer commits to the following capital investments:

- **Hard Construction Costs:** A minimum of \$5,000,000 dedicated to essential construction related expenses, including structural modifications, electrical, HVAC and plumbing.
- **Furniture, Fixtures, and Equipment (FF&E):** An investment of at least \$600,000 to equip and furnish the theater, enhancing the experience for patrons.

Terms:

1. **Incentive Structure:** The City will provide an incentive of \$2,000,000 in the form of a forgivable 0% loan. This \$2,000,000 includes \$1,075,366 for rehabilitation and \$924,634 for an operating/debt service reserve. Payments on this loan will be deferred until 10 years after the rehabilitation is completed. The disbursement of the City's funds will occur only upon the Project's completion and the issuance of a Certificate of Occupancy.
2. **Loan Forgiveness:** For each year the Project remains operational under the same continued ownership, 10% of the loan principal will be forgiven. After 10 continuous years of operation, the loan will be 100% forgiven. Any unused incentive funds reserved for operating/debt service will be returned to the City after 10 years.
3. **Quarterly Updates and Inspection Rights:** During the construction phase of the Fine Arts Theater, the Developer agrees to provide the City with quarterly updates on the progress of the Project. These updates will include, but are not limited to, details on construction milestones achieved, any challenges faced, and updated timelines for completion. In addition to the quarterly updates, the City reserves the right to inspect the construction site at reasonable times and with reasonable notice to ensure that the Project is progressing in accordance with the terms outlined in this term sheet and any subsequent agreements. The Developer will ensure that all necessary permissions and access are granted to City representatives for these inspections.

4. **Annual Financial Reporting:** For the 10 year operating period following the completion of the Fine Arts Theater rehabilitation, the Developer will provide the City with annual financial reports. These reports will detail the operational performance of the theater, including revenues, expenses, and any other relevant financial metrics. The purpose of these reports is to ensure transparency and to monitor the financial health and sustainability of the Project during the loan forgiveness period.
5. **Lien Positions, Intercreditor Agreement, and Fund Disbursement:**
 - The City will negotiate an intercreditor agreement with ABN&T to establish priority lien positions on Project assets in case of default/liquidation.
 - The City's loan will be secured by a second lien position on the Project's real estate, subject only to a prior lien filed by ABN&T Bank in the amount of \$3,150,000. The City will have a first position on all other assets (furniture, fixtures, and equipment).
 - City funds will be disbursed to the Project only upon its completion and the issuance of a Certificate of Occupancy.
 - In the event that the Developer owes any outstanding ad valorem, mixed beverage or sales and use taxes to the City, a 60- day cure period will be given to remedy or resolve any past due taxes. If the Developer fails to address the outstanding taxes within this period, payment will not be made and may result in the revocation of the provided incentive.
6. **Developer Notes Conversion:** Short Term Developer Notes valued at \$346,593 on the 2/28/2023 Balance Sheet must be converted to equity before the award of any City incentive.
7. **Sale and Refinance Restrictions:**
 - **Sale:** The Project (real estate and/or business) cannot be sold until the City incentive loan has been 100% forgiven. If the Developer wishes to sell before this benchmark:
 - The outstanding balance of the City incentive loan must be repaid in full.
 - The Developer must obtain written consent from the City.
 - **Cash Out Refinance:** A cash out refinance of the Project is subject to the same terms and conditions as a sale. If the Developer wishes to proceed with a cash out refinance:
 - The outstanding balance of the City incentive loan must be repaid in full.
 - The Developer must obtain written consent from the City for the cash out refinance.
8. **Management Assistance:** Non-voting Member ACI North LLC will assist the Developer in the operations/management of the Project. The City's review and approval of the consulting/operating agreement is a preliminary condition for any incentive award.
9. **Historic Tax Credits (HTCs):**
 - The Developer must identify the transactional costs of using HTCs in their estimate of potential net HTC equity available to the Project.
 - The minimum net HTC equity must be at least \$2,694,918. The Developer is required to inject cash to cover any shortfall in HTC net equity to reach this amount.

- The Developer must identify potential HTC buyers.
 - Any excess HTC equity (if the net HTC equity exceeds \$2,694,918) must be injected into a replacement reserve account for the Project. These are preliminary conditions for any incentive award.
10. **Historic Preservation Compliance:** The Developer is required to consult with the City's Historic Preservation Officer prior to commencing any renovation work on the Fine Arts Theater. The Developer must obtain a Certificate of Appropriateness, ensuring that all renovation and rehabilitation efforts align with the City's historic preservation standards and guidelines. Any work conducted without this certificate or in violation of its terms may result in penalties or the revocation of the provided incentive.
 11. **Commencement of Construction:** Construction must begin within six (6) months from the date of this agreement. Any delays beyond this period will require written justification and will be subject to review and approval by the City.
 12. **Completion of Construction:** Once construction has commenced, the Developer commits to completing the project within eighteen (18) months. Should there be any anticipated delays, the Developer is required to notify the City in writing, detailing the reasons for the delay, providing an updated timeline for completion and justification and will be subject to review and approval by the City.
 13. **Community Engagement Encouragement:** In alignment with the City's vision of fostering community ties and enhancing the cultural fabric of Denton, the Developer is encouraged to seek partnerships and collaborations with the following community groups and organizations:
 - Greater Denton Arts Council (GDAC)
 - Thin Line Film Festival
 - Denton Black Film Festival
 - KUZU Radio
 - University of North Texas (UNT)
 - Denton Independent School District (Denton ISD)

The Developer is encouraged to ensure, wherever feasible, that the Fine Arts Theater serves as a venue for events and programs associated with these organizations.

Non-Binding Clause: This term sheet is intended solely as a basis for further discussion and is not intended to be and does not constitute a legally binding obligation. Neither party shall have any liability or obligation to the other party with respect to the transactions contemplated hereby unless and until a definitive agreement has been fully executed and delivered by both parties.

This term sheet is intended for discussion purposes only and does not constitute a binding agreement or commitment by either party to enter into such an agreement. By signing below, the parties acknowledge that they have reviewed the terms outlined in this term sheet.

City of Denton:

Signature: Wayne Emerson Digitally signed by Wayne Emerson
DN: cn=wayne_emerson, o=Department Users and
Groups, ou=General Government, ou=Economic Development,
c=us, email=Wayne.Emerson@edpenn.com
Date: 2023.09.01 08:54:06 -05'00' Date: 8//2023

Name: Wayne Emerson

Title: Director of Economic Development

Fine Arts Theater, LLC:

Signature:  Date: 8/31/23

Name: BRAD ANDREWS

Title: MANAGER