



Beach Theatre
Foundation, Inc.

October 18, 2010

Members of the City Council
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BOARD OF TRUSTEES

Steve Jackson - President
Ray Roberts - Vice President
Bernie Haas - Treasurer
Susan Tischler - Secretary
Harley Shuler
James A. Testa

Re: Certain Beach Theatre Foundation Loan Matters

Ladies and Gentlemen:

We were very distressed to see a recent letter from the Cape May City solicitor to several dozen of our financial supporters seeking new promissory notes to replace their 2007 pledge instruments designed to protect against shortfalls in collecting upon our \$100,000 City loan. We are writing to object to that communication, which we feel inappropriately by-passed the Beach Theatre Foundation, and which has resulted in unnecessary confusion and undue stress to our pledgors.

As you should all know, we have yet to receive a response from the City directly addressing the merits of our request dated September 24, 2009 for a waiver and amendment of the loan to revert to its presumptive term of five years. Without such a response, and by simply serving a demand for payment as the City did in April 2010, the conclusion is that the City, as a creditor, is acting in bad faith toward the BTF, as a borrower, in respect of our 2007 loan agreement. Further, considering the timing and other circumstances, it appears this is being done with the intent to put the BTF out of business. This approach does nothing to further the City's purposes in making the loan and stymies BTF activities at a crucial time to save and restore a site of historic and cultural significance to the community.

Under those circumstances, we see the City's rights to accelerate the note as disputable, and if the City has no present entitlement to collection (an issue that cannot be determined without a court ruling), the best that can be said about enforcing third party rights in respect of our pledgors is that those efforts are premature.

Aside from a dispute with the BTF over collection, we believe the City's proposal to substitute new promissory notes for the original 2007 pledge instruments is detrimental to pledgors and was given without full disclosure of the ramifications accompanying the new note. For example, the City gives no assurance to pledgors of continued favorable tax consequences for re-directed payments outside the BTF as an IRC 501(c) (3) conduit. Further, it seeks to accelerate timing without disclosing the 2007 pledge language is arguably ambiguous on that point, resulting in payment on the new promissory note sooner, and possibly without certain defenses, than under the original pledges. In short, it seeks to take advantage of the pledgors with a new form of security more favorable to the City than the 2007 documentation and with no explanation as to the resultant waiver of their rights. It follows that we have serious concerns the tactics being employed by the City to modify the pledges may be in violation of federal statutes.

Returning to the heart of the matter, the fundamental purpose of the BTF is to save the Beach Theatre, first by preventing its destruction for inappropriate uses (like an apartment complex) that would deprive the community of an arts-oriented facility complementary to the new Convention Hall, and then by improving the site to be an engine of re-vitalization in the central Beach Avenue commercial district. Still in pursuit of a rational explanation as to why our 2009 request should not have been granted, we point out the following:

- the \$100,000 loan made in 2007, all of which was used as intended, thus far has accomplished its purpose(s)—the Beach Theatre has not been demolished; short term jobs were, and if redevelopment goes forward long-term jobs will be, created in furtherance of the State guidelines relating to the loan proceeds sourcing;
- the BTF continues its efforts to defend the Theatre against demolition-- thus far all successfully-- and has pending an intervention in upcoming Zoning Board of Adjustment proceedings to do so—all without cost to the City;
- despite a recession of unparalleled severity beginning in 2008, the BTF held its Theatre lease for 18 months, providing cultural and economic betterment to the community, generating hundreds of thousands of dollars of revenue and contributions and could well be operating today, but for the uncontrollable intransigence of the landlord and its dereliction of the site, much of which had been remedied by the BTF for the public safety and benefit—all without cost to the City; and

- notwithstanding that same recession, the BTF designed, promoted and actively sought, and continues to seek, developers for alternative types of development of the site, all of which, at a minimum, preserve a movie venue and, in some alternative configurations, could offer attractive benefits directly to the City--if allowed to play out in normal time-- of far greater value than the repayment of a \$100,000 note, not a cent of which will augment City revenues.

Finally, in terms of the integrity of the backers of the City note indebtedness, all members of the BTF Board who signed pledges reiterate that they stand behind their original pledges as signed, and we call to your attention the fact that BTF Board itself comprises over 40% of principal amount of the pledges. Moreover, we are confident, even after considering the damage done by the ill-advised City promissory note substitution attempt, the vast majority of the remaining pledgors will do likewise. We also note, as proof of the intense backing of our cause, that BTF Board members also stand behind a substantial line of credit for the BTF at a local bank. That line of credit could be accelerated at virtually any time, but the commercial lender involved, mindful of the BTF's prospects and unlike the City, has not tried to do.

Accordingly, we ask again for the City Council as a whole to reconsider its acceleration attempt. We ask you to allow us to continue our quest and permit us to maintain the **original term** of our loan-- requiring final payment in October 2012. With the Convention Hall project close to being finalized and if the BTF is able to prevent demolition of the Theatre in the latest round of hearings, we believe two important results will follow in the next 18 to 24 months. First, the acquisition costs for the site will drop to more closely approach true fair market value, and second, the much greater prospects for successful redevelopment of the site will result in our being able to attract a lead developer and financing to move forward with a project—all of that would be at no cost to the City, except for cooperation in reverting to the **original term** of our 2007 loan. We think such a conclusion is merited, fair and in the best interests of the City and its residents.

We believe you could not find more dedicated and passionate people who want to see the plight of the Beach Theatre end on a positive note for the benefit of our community with minimal cost to the taxpayers. All we seek now is what we have sought since 2007-- your reasonable cooperation in doing so.

Very truly yours,

Bernie Haas
Steve Jackson

Ray Roberts
Harley Shuler
James A. Testa
Susan Tischler

*Trustees of the
Beach Theatre Foundation, Inc.*

cc: **BTF Pledgors**
Bruce MacLeod, City Manager, City of Cape May
Anthony P. Monzo, Solicitor, City of Cape May