



Beach Theatre  
Foundation, Inc.

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**BOARD OF TRUSTEES**

Steve Jackson - President  
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Dear Friend of The Beach Theatre and Pledgor:

Over the last few days, the City of Cape May has mailed notices to our founding pledgors demanding that they fulfill certain pledges to the Beach Theatre Foundation, Inc. (the "BTF") regarding its \$100,000 note issued to the City in October 2007. The City seeks to have recipients sign notes and pay sums directly to the City.

As you may recall, the 2007 BTF note was intended to evidence an obligation with a five year term to pay back funds borrowed from the City (but sourced from the New Jersey State Small Cities Program). The loan proceeds were used by the BTF primarily for lease acquisition and improvement costs, enabling the Foundation to stop imminent demolition of the theatre, create short and potentially long term local jobs and buy time to find a developer/buyer for the property.

Unfortunately, after a successful 2008 season, the owners of the theatre determined to pursue a demolition permit for the premises and refused to renew the BTF's lease for the 2009 season, despite our requests to do so. Although it could no longer operate the theatre, the Foundation has continued its efforts to preserve and restore it in the context of a redevelopment of the site. Under the terms of the note, the loss of the lease permitted the City of Cape May to accelerate the note for earlier payment. In view of the manner of the lease termination and because its overall purpose was not yet completed, beginning in mid 2009, the BTF requested the City to waive the acceleration provisions. Until April 2010, the City failed to respond to the BTF requests and then, without explanation or discussion, served a declaration of acceleration and demanded full payment of the note.

The BTF Board believes the acceleration was without business sense or justification, was politically motivated, and done in bad faith. Although it made the noted demand and purported acceleration, the City has not sought to collect the note by legal proceedings against the BTF, and, accordingly, it is unknown at this time, if the City were to sue the BTF, whether defenses the BTF would raise would prevail in court.

It appears, rather than have the issues settled properly in court, the City has now attempted to bypass the BTF as note maker and approach those pledgors who made commitments to donate funds if there were a shortfall in payment on the note by demanding payment directly from them. While every pledgor must

determine for himself or herself how to respond , the BTF Board believes pledgors should consider the following:

- The documents signed in 2007 were pledges to make contributions to the BTF (an IRC Section 501(c) (3) entity) to which contributions are generally tax deductible—as far as we can tell, payment of sums to the City of Cape May in accordance with its demand would be without the benefit of the expected charitable deduction, making them significantly more expensive.
- Failure to disclose the vastly more expensive tax treatment by the City, in our view, is materially misleading –so misleading that it may amount to fraud in connection with buying, selling or modifying a security, a possible violation of the federal securities laws
- Aside from misconstruing the signed pledges as guarantees, the City papers also would supersede the pledge instruments by using promissory notes—anyone who signs a note likely would be giving up any number of defenses against enforcement of the pledge for virtually no defenses on the note—again, there has been no attempt to disclose these important differences, conduct that may be misleading all by itself
- The terms of the pledge instrument differ from the terms of the note the city is seeking pledgors to sign, particularly as to the length of time for repayment—signing the note could mean an obligation that is not only non deductible, but also needs to be paid back up to three years sooner.

It goes without saying the BTF is in the process of consulting its counsel on whether and what kind of response can be made to the City action approaching the BTF's pledgors directly. We believe the City cannot sidestep the BTF and collect pledges on its behalf, certainly not without court authorization.

In the meantime, we counsel all pledgors to use caution. Under the bad faith approach being shown by the City in this matter, we think it would be prudent for you not to volunteer something that you are not legally required to do.

Please visit [www.beachtheatre.org](http://www.beachtheatre.org) for updates concerning this matter.

Very truly yours,

Beach Theatre Foundation, Inc. Board of Trustees