

COUNTY OF UNION

STATE OF NORTH CAROLINA

AGREEMENT

THIS AGREEMENT is made and entered into as of the ____ day of March, 2011, by and between the TOWN OF INDIAN TRAIL, North Carolina (the “Town”) and STONE THEATER GROUP, a _____ organized and existing under the laws of the State of _____ (“Grantee”).

WITNESSETH

WHEREAS, pursuant to N.C. Gen. Stat. § 158-7.1, et seq., the Town Council desires to promote economic development by inducing new industries and companies to locate within the Town and to induce existing industries and companies to expand within the Town; and

WHEREAS, Grantee is a company involved in the development of certain entertainment industries including movie theaters; and

WHEREAS, Grantee has plans to construct a new theater complex within the Town with an estimated investment of no less than \$12,000,000.00 (the “Facility”); and

WHEREAS, Grantee plans to create ____ new full time jobs at the Facility; and

WHEREAS, the facility is expected to generate a significant amount of property tax and sales tax; and

WHEREAS, the Town Council held a public hearing on March 22, 2011, to receive comments regarding the incentive grant to Grantee in accordance with the terms stated herein as an inducement for Grantee to make its planned investment within the Town, and voted to approve a grant (the “Grant”).

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, the parties agree as follows:

1. Grant Terms and Conditions. Grantee shall comply with the following requirements (the “Grant Terms”) in order to qualify for the Grant:

a. On or before July 1, 2012, Grantee shall invest not less than \$12,000,000.00 for the construction and upfitting of a theater complex located at Sun Valley Commons /Old Monroe Road (the "Facility"). Grantee shall provide the Town such information evidencing compliance with this requirement as the Town may request.

b. Grantee must complete a traffic study for the area around the Facility as may be required by the Town and/or the North Carolina Department of Transportation by July 1, 2011. Grantee agrees that it will provide the Town with a copy of the final traffic study as well as all of the data collected as a part of the traffic study.

2. Town Commitment. In return for the Grantee's obligation under this Agreement the Town agrees as follows:

a. The Town will provide a grant to the Grantee to pay for the actual cost of the traffic study, up to the amount of \$30,000.00. Such payment will be made to Grantee upon the completion of the traffic study and the Town's receipt of a copy of the traffic study and underlying data.

3. Reduction and Recapture of Incentives.

a. If Grantee is not current on all taxes, assessments or other amounts owed to the Town by Grantee, the Town may set off from any grant any amounts owed by the Grantee to the Town.

b. If for any reason Grantee fails to make the investment required by Section 1(a) of this Agreement within the time allotted, then any grant made by the Town shall be repaid by Grantee.

c. Grantee agrees to open the Facility no later than July 1, 2010, and if Grantee ceases to operate the Facility at any time within three (3) years of its opening date, then any grant made by the Town shall be repaid by Grantee. This provision shall survive the termination of this Agreement.

4. Indemnification.

a. Grantee specifically agrees that in the event that all or any portion of this Agreement or any incentive grant or payment to be made hereunder is declared to be unconstitutional, illegal or otherwise enjoined by a court of competent jurisdiction, Grantee shall indemnify and hold harmless the Town and its officers, employees and elected officials, individually and collectively, from any loss or liability and shall

reimburse the Town the amount of any such grant or payment. The provisions of this section shall survive the termination of this Agreement.

5. Termination of Agreement.

a. This Agreement shall terminate on December 31, 2012. After such termination, this Agreement shall be null and void, and the parties shall have no other obligations to one another, except as specifically noted in this Agreement.

6. Assignment. No party may sell or assign any interest in or obligation under this Agreement without the prior written consent of all the parties.

7. Miscellaneous.

a. Construction of Agreement. Each party acknowledges that it has participated in the negotiation of this Agreement, and no provision of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured, dictated or drafted such provision. The Town and Grantee at all times had access to an attorney in the negotiation of the terms of and in the preparation and execution of this Agreement, and have had the opportunity to review and analyze this Agreement for a sufficient period of time prior to the execution and delivery thereof. No representations or warranties have been made by or on behalf of the Town or relied upon by Grantee pertaining to the subject matter of this Agreement, other than those set forth in this Agreement. This Agreement embodies the entire agreement and understanding among the parties relating to the subject matter hereof and supersedes all prior proposals, negotiations, agreements and understandings relating to such subject matter.

b. Governing Law. This Agreement, its execution, interpretation and performance, shall be governed by and construed in accordance with the laws of the State of North Carolina. Any controversy or claim arising out of or in any way related to this Agreement or the relationship established by it, or the alleged breach thereof, whether at common law, in contract, in tort, or under statute, shall be governed by the laws of the State of North Carolina. Legal proceedings involving any such controversy or claim may be instituted only in the state or federal courts located in North Carolina.

c. No Modifications. The terms of this Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument or instruments in writing signed by the party against whom the enforcement of the change, modification, waiver, discharge or termination is asserted.

d. Invalid Provision to Affect No Others. If, from any circumstances whatsoever, fulfillment of any provision of this Agreement or any transaction related thereto shall be held invalid, then such provision only shall be deemed invalid and the remainder of this Agreement shall remain operative and in full force and effect.

e. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all counterparts together shall constitute one and the same instrument.

f. Notice of Potential Disclosure of Confidential Grantee Information. The Grantee acknowledges that it has been informed by the Town that the Town is required by statute to disclose “Public Records” as that term is defined by N.C. Gen. Stat. § 132-1, upon request. All information disclosed to the Town by the Grantee which is subject to that definition and whose disclosure is not otherwise protected by law will be released by the Town upon request as provided by N.C. Gen. Stat. § 132-6. The Grantee acknowledges that this disclosure of the Town’s public records requirements is given pursuant to N.C. Gen. Stat. § 132-1.8(b) and that such disclosure is full and sufficient to the satisfaction of the Grantee.

g. Limitation of Agreement. **NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE TOWN WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS DELEGATING GOVERNMENTAL POWERS NOR AS A DONATION OR A LENDING OF THE CREDIT OF THE TOWN WITHIN THE MEANING OF THE STATE CONSTITUTION. THIS AGREEMENT SHALL**

NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE TOWN TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE TOWN FOR ANY FISCAL YEAR IN WHICH THIS AGREEMENT SHALL BE IN EFFECT. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED TO PLEDGE OR CREATE A LIEN ON ANY CLASS OR SOURCE OF THE TOWN'S MONIES, NOR SHALL ANY PROVISION OF THE AGREEMENT RESTRICT TO ANY EXTENT PROHIBITED BY LAW, ANY ACTION OR RIGHT OF ACTION ON THE PART OF ANY FUTURE TOWN GOVERNING BODY. TO THE EXTENT OF ANY CONFLICT BETWEEN THIS SECTION AND ANY OTHER PROVISION OF THIS AGREEMENT, THIS SECTION TAKES PRIORITY AND SHALL CONTROL.

IN WITNESS WHEREOF, the parties, acting under the authority of their respective duly authorized officers, have caused this Agreement to be duly executed as of the date first written above.

ATTEST

THE TOWN OF INDIAN TRAIL

By: _____

By: _____
Joseph Fivas, Town Manager

ATTEST

STONE THEATER

By: _____

By: _____

Its: _____

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Marsha Sutton, Finance Director

Date

Approved as to Legal Form:

Keith J. Merritt