

**CITY OF HILLSDALE MICHIGAN TAX INCREMENT FINANCE
AUTHORITY
INSTALLMENT PURCHASE AGREEMENT AND ASSIGNMENT
(ACT 99, P.A. 1933)**

THIS INSTALLMENT PURCHASE AGREEMENT AND ASSIGNMENT (the "Agreement") is made and executed by and between the City of Hillsdale, Michigan Tax Increment Finance Authority, a Michigan Political subdivision organized and existing under the constitution and laws of the State of Michigan, whose address is 97 N. Broad Street, Hillsdale, Michigan 49242 ("Hillsdale TIFA"), Foulke Construction Company, whose address is 149 Lewis Street, Hillsdale, Michigan 49242 (the "Contractor") and Southern Michigan Bank & Trust, whose address is 51 West Pearl Street, PO Box 309, Coldwater, Michigan 49036 (the "Bank") (Collectively, the "Parties"), as of January __, 2021.

WITNESSETH:

WHEREAS, Hillsdale TIFA intends to acquire from the Contractor new Roofing Improvements and related equipment and services to a Building commonly referred to as The Dawn Theater that is owned by Hillsdale TIFA and is located within the Hillsdale TIFA District, within the City of Hillsdale, Michigan (collectively referred to as the "Roofing Improvements"), for use by Hillsdale TIFA for public purposes); and

WHEREAS, Hillsdale TIFA desires to pay for the Roofing Improvements in installments as authorized by Act 99 of the Public Acts of Michigan of 1933, as amended (referred to as "Act 99"); and

WHEREAS, the Bank is willing to provide the required funding that will enable the Hillsdale TIFA to pay the Contractor and acquire the Roofing Improvements, to be repaid pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the respective representations and agreements herein contained, the Parties hereto agree as follows:

1. Definitions. The following terms, wherever used in this Agreement, shall have the following meanings, unless the context shall indicate another or different meaning:

"Act 99" means Act 99 of the Public Acts of Michigan of 1933, as amended.

"Agreement" means this Installment Purchase Agreement.

"Assignment" means that portion of this Agreement in which the Contractor assigns to the Bank the right to receive Payments in accordance with this Agreement.

"Bank" means Southern Michigan Bank & Trust.

"Code" means the Internal Revenue Code of 1986, as amended. Reference to the Code

shall also include applicable final or temporary regulations and proposed regulations thereunder and any successor provisions thereof

“Contractor” means Foulke Construction Company.

“Installment Purchase Amount” means the amount borrowed from the Bank pursuant to the Agreement, excluding the payment of interest, in the amount of not to exceed \$400,000.00.

“Interest Rate” means an interest rate of .90 per annum, computed on the basis of a 360-day year, assuming monthly Payment periods of 30 days each, for a total term of ten years.

“Note” means the Installment Note evidencing the Hillsdale TIFA’s obligation to repay the Installment Purchase Amount with interest at the Interest Rate, substantially as set forth in Exhibit A attached hereto.

"Payment" means the payment of a principal and/or interest installment in the accordance with the Note

"Payment Date" means the date a Payment is due and payable in accordance with the Note. The first Payment Date shall be May 1, 2021, and subsequent semi-annual Payment Dates shall be on the 1st day of November and May for each succeeding semi-annual period to and including November 1, 2030.

“Prepayment Amount” means the amount due after a scheduled Payment is made in accordance with the Note.

“Property” means the land on which the Roofing Improvements are to be constructed, located in the City of Hillsdale, Hillsdale County, Michigan.

“Services” means the contracted work to build the Roofing Improvements.

"Roofing Improvements" means the new Roofing materials and installation services for the building commonly referred to as The Dawn Theater that is owned by Hillsdale TIFA and is located within the Hillsdale TIFA District, within the City of Hillsdale, Michigan and related equipment to be financed hereunder.

“State” means the State of Michigan.

“Hillsdale TIFA” means the City of Hillsdale, Michigan Tax Increment Finance Authority.

2. Installment Payments. The Bank, upon execution of this Agreement, agrees to pay the Installment Purchase Amount to the Contractor in immediately available funds, and TIFA agrees to pay to the Bank as assignee of the Contractor, the Payments of principal and interest on the Payment Dates in accordance with the Note, as set forth on Schedule 1 attached to the Note.

3. Nature of Interest. The Parties acknowledge that this transaction is authorized by Act 99, and acknowledge their intention that because TIFA's obligation hereunder is a purchase money obligation of a Michigan Municipal Authority that is backed by the Authority's limited tax, full faith and credit, general obligation, the interest to be paid to the Bank hereunder shall be excludable from gross income for purposes of federal income tax and State of Michigan income tax. TIFA shall provide the Bank with an opinion of its counsel, Lovinger & Thompson. P.C., of Hillsdale, Michigan, in a form acceptable to the Bank.

4. Payments Unconditional. TIFA's obligation to the Bank to pay the Payments and any other amounts owed pursuant to the Note is absolute and unconditional and shall remain in full force and effect until the amounts owed under the Note shall have been paid, and such obligation shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation, any of the following:

- (a) Any failure of title with respect to TIFA's interest in the Property;
- (b) The invalidity, unenforceability, or termination of this Agreement;
- (c) The modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in this Agreement;
- (d) The voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization arrangement, composition with creditors or readjustment or other similar proceedings affecting the Contractor or any of their assets or any allocation or contest of the validity of this Agreement or the Note, or the disaffirmance of this Agreement or the Note in any such proceeding;
- (e) To the extent permitted by law, any event or action which would, in the absence of this clause, result in release or discharge by operation of law of the Contractor from the performance or observation of any obligation, covenant or agreement contained in this Agreement;
- (f) The default or failure of the Contractor to perform fully any of their obligations set forth in any agreement with TIFA or any other agreement;
or
- (g) Any casualty or destruction of the Roofing Improvements.

TIFA shall make Payments when due and shall not withhold any such Payments as a result of any disputes arising between TIFA and the Contractor or any other person, nor shall TIFA assert any right of set-off or counterclaim against its obligation to make such Payments or be entitled to any abatement of such Payments as a result of accident or unforeseen circumstances, or the Roofing Improvements being defective.

5. Title to the Roofing Improvements. Upon delivery to and acceptance by TIFA, title to the Roofing Improvements shall vest in TIFA, free and clear of any lien or other security interest.

6. Useful Life of the Roofing Improvements. TIFA represents that the useful life of the Roofing Improvements is equal to or longer than the date of the final Payment on the Note.

7. Security for Payment Limited Tax, Full Faith and Credit. TIFA agrees to include in its budget for each fiscal year during the term hereof an amount sufficient to pay when due the Payments coming due under this Agreement during such fiscal year.

8. No Security Interest in Property. The Bank shall have no security interest in the Property or the Roofing Improvements.

9. Term of Agreement. This Agreement shall terminate on the final Payment Date of the Note, or such earlier date that all amounts due to the Bank hereunder are paid in full by TIFA.

10. Representations of TIFA. TIFA makes the following representations:

- (a) TIFA is a Michigan Municipal Authority duly organized and legally existing under the Constitution and laws of the State of Michigan.
- (b) TIFA will do or cause to be done all things necessary to preserve and keep in full force and affect its existence as a Michigan Municipal Authority.
- (c) TIFA is authorized under the constitution and laws of the State to enter into this Agreement and the transactions contemplated hereby and to perform all of its obligations hereunder.
- (d) This Agreement constitutes a legal, valid, binding, and enforceable obligation of TIFA in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, or other laws affecting creditors' rights generally.
- (e) TIFA's name indicated in the opening paragraph and on the signature page of this Agreement is its true, correct, and complete legal name.
- (f) During the term of this Agreement, the Property and the Roofing Improvements will be used by TIFA only for the purpose of performing

one or more governmental public functions of TIFA consistent with the permissible scope of TIFA's authority.

- (g) TIFA will provide the Bank with such information regarding its financial affairs and condition as the Bank may reasonably request from time to time, including but not limited to status, budget and cash flows of the Roofing Improvements project; general fund budget, as adopted and amended for the current fiscal year; and financial statements within 150 days after the close of TIFA's fiscal year, including a balance sheet, statement of revenue and expenditures and cash flow, and such other comments and financial details customarily seen in such reports.
- (h) Neither the making of the Payments under the Note nor any portion thereof is directly or indirectly (a) secured by any interest in (i) property used or to be used for a private business use within the meaning of Section 141(b) of the Code or (ii) payments in respect of such property, or (b) to be derived from payments (whether or not to TIFA) in respect of property, or borrowed money, used or to be used for a private business use within the meaning of Section 141(b). The Roofing Improvements will not be used for any private business use within the meaning of Section 141(b).
- (i) TIFA has designated the Payments under the Note to be "qualified tax-exempt obligations" for purposes of Section 265(b)(3)(B) of the Code.

11. Representations of the Bank. The Bank makes the following representations:

- (a) It has the legal capacity to execute this Agreement and to carry out its obligations and undertakings hereunder and the persons executing the Agreement on its behalf have been duly authorized to do so.
- (b) This Agreement is valid, binding, and enforceable in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, or other laws affecting creditors' rights generally.

12. Representations of the Contractor. The Contractor makes the following representations:

- (a) It has the legal capacity to execute this Agreement and to carry out its obligations and undertakings hereunder and the persons executing the Agreement on its behalf have been duly authorized to do so.
- (b) This Agreement is valid, binding, and enforceable in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, or other laws affecting creditors' rights generally.

13. Event of Taxability. If an Event of Taxability shall occur, as hereinafter defined, all outstanding Payments of principal plus accrued and unpaid interest shall be due and payable, and TIFA, not later than 30 days following receipt from the Bank. An "Event of Taxability" shall mean the issuance of a statutory Notice of Deficiency by the Internal Revenue Service or a ruling of the National Office of the Internal Revenue Service, or a final decision of a court of competent jurisdiction which hold in effect that, by reason of TIFA's violation or failure to comply with any applicable provision of the Code, the Payments of interest under the Note are includable in the gross income of the Bank for federal income tax purposes.

14. Disclaimer of Warranties by Bank. The Bank makes no warranty or representation, either expressed or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of the Roofing Improvements, or warranty with respect thereto. In no event shall the Bank be liable for any incidental, indirect, special, or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning or TIFA's use of the Roofing Improvements.

15. Indemnification by TIFA. To the extent permitted by the laws and the constitution of the State, TIFA shall protect, hold harmless and indemnify the Bank from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereto, and expenses in connection therewith, including, without limitation, reasonable counsel fees and expenses arising out of the acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of the Roofing Improvements or any accident in connection with the operation, use, condition, possession, storage or return of the Roofing Improvements resulting in damage to the Roofing Improvements or injury or death to any person. This indemnification shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of this Agreement for any reason.

16. Events of Default. The following shall be an "Event of Default" under this agreement:

- (a) Failure by TIFA to make the Payments at the times specified in the Note;
or
- (b) Failure of TIFA to observe and perform any other covenant, condition, or

agreement on its part to be observed or performed, and continuation of such failure for a period of 30 days after written notice specifying such failure and requesting that it be remedied, unless the Bank shall agree in writing to an extension of such time prior to its expiration, and shall be such that with due diligence it cannot be corrected within such period; provided, however, it shall not constitute an Event or Default if corrective action is instituted by TIFA within such period and diligently pursued until corrected; or

- (c) TIFA shall: (i) admit in writing its inability to pay its debts generally as they become due; (ii) commence a proceeding under any federal or state bankruptcy, insolvency, reorganization or other similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed or unstayed for 60 days; (iii) make an assignment for the benefit of creditors or provide for the entry into any agreement for the composition of creditors; or (iv) have applied for the appointment of a receiver, purchaser or liquidator for it or the whole or any substantial part of its property; or
- (d) TIFA shall materially breach any representation or warranty under this Agreement.

17. Remedies upon Default. Whenever an Event of Default referred to in Section 16 hereof shall occur and be continuing, the Bank may:

- (a) Upon the occurrence of an Event of Default described in Section 15(a) hereof and the failure to cure such Event of Default within seven (7) days after receipt of written request from the Bank, declare all of the unpaid principal and interest on the Note (the portion thereof accrued) to be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived; and
- (b) Take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Agreement.

18. Assignment. The Contractor's right to receive Payments under this Agreement, and the obligation of TIFA to make the Payments hereunder, are hereby assigned by the Contractor to the Bank and may be reassigned by the Bank in whole or in part to one or more assignees at any time subsequent to its execution, without the necessity of obtaining the consent of TIFA. The Bank agrees to give notice of assignment to TIFA, and upon receipt of such notice TIFA agrees to make all Payments to the assignee, notwithstanding any claim, defense, set off or counterclaim whatsoever (whether arising from a breach of this Agreement, the Note or otherwise) that TIFA may from time to time have against the Bank, or the assignee. The Bank's interest in this Agreement and the Note may not be assigned or reassigned in whole or in part unless (i) the document by which such assignment or reassignment is made discloses the name and address of the assignee, and (ii) TIFA receives written notification of the name and address

of the assignee. TIFA hereby designates the Bank or its assignee as its agent to maintain a book entry system in conformance with Section 149(a) of the Code, consisting of a record of ownership that identifies the owner of any interest in the Agreement, which record may be examined by TIFA at its request. The right to payment of the amounts due hereunder may be transferred only through such book entry system. Anything in the foregoing to the contrary notwithstanding, the Bank's interest in this Agreement may be assigned in whole or in part upon terms which provide in effect that the assignor or assignee will act as a collection and paying agent for holders of certificates of participation in this Agreement.

19. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when dispatched by registered or certified mail, return receipt requested, postage prepaid. Or by hand delivery, or by email and confirmed the same day by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to TIFA:

City of Hillsdale, Michigan Tax Increment Finance Authority
97 N. Broad Street, Hillsdale, MI 49242
Attn: David Mackie, City Manager

If to the Bank:

Southern Michigan Bank & Trust
51 West Pearl Street, PO Box 309,
Coldwater, Michigan 49036
Attn: _____

If to the Contractor:

Foulke Construction Company,
149 Lewis Street, Hillsdale, Michigan 49242
Attn: _____

The Parties may designate, by notice given hereunder, any further or different address to which subsequent notices, certificates or other communications may be sent.

20. Governing Law. This Agreement and the Note shall be construed in all respects in accordance with the laws of the State.

21. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

22. Binding Effect. The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective successors and assigns of the Parties hereto.

23. Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute the same in instrument.

24. Captions. The captions or headings in the Agreement are for convenience only and in no way define, limit or describe the scope or intent or any provisions or sections of the Agreement.

25. Entire Agreement. This Agreement and the Note constitute the entire agreement between the Parties, and there are no representations, warranties, promises, guarantees or agreements, oral or written, express or implied, between the Parties hereto with respect to the Agreement and the Note.

26. Amendments. Neither this Agreement nor the Note may be effectively amended, changed, modified, altered or terminated without the prior written consent of TIFA and the Bank.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed all as of the day and year first above written.

CITY OF HILLSDALE, MICHIGAN TAX INCREMENT FINANCE AUTHORITY

By: _____
_____, its Chairman

By: _____
David Mackie, City Manager

SOUTHERN MICHIGAN BANK & TRUST

By: _____
_____, its _____

FOULKE CONSTRUCTION COMPANY

By: _____
_____, its _____