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FILED
Kansas City, KS
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Clerk
U.S. Bankruptcy Court

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13 *Attorneys for Maricopa County Treasurer*

14 **IN THE UNITED STATES BANKRUPTCY COURT**
15 **FOR THE DISTRICT OF KANSAS**

16 In Re:

17 Dickinson Theatres, Inc.,
18 Debtor.

Case No. 2:12-bk-22602-DLS

Chapter 11 Proceedings

**OBJECTION TO FIRST AMENDED AND
RESTATED PLAN OF REORGANIZATION**

[Relates to Docket No. 194]

19 Maricopa County Treasurer ("MCT"), a secured tax lien creditor, by and through
20 its undersigned counsel, hereby objects to confirmation of Debtor's *First Amended and*
21 *Restated Plan of Reorganization* filed on November 5, 2012 (the "Plan"). MCT objects
22 to confirmation of the Plan as it (1) fails to provide for payment of the MCT Claim
23 (defined below) as a Secured Tax Claim, (2) fails to include a provision that MCT shall
24 retain its liens for unpaid property taxes until such time as the taxes and any related
interest is paid in full, (3) fails to provide for the accrual of post-petition statutory interest,

1 and (4) appears to extend payments beyond the five (5) years allowed by the
2 Bankruptcy Code.

3 **1. MCT's Claims:**

4 On October 30, 2012, MCT filed a secured proof of claim (the "MCT Claim") in
5 the amount of \$15,569.58 representing the 2012 personal property taxes due on parcels
6 943-39-270 and 990-68-394. Interest accrues on the MCT Claim at the statutory rate of
7 16% per annum, if not timely paid. See 11 U.S.C. § 511 and A.R.S. § 42-18053.

8 In addition, on January 1, 2013, personal property tax liens will attach to any
9 property in Maricopa County owned by the Debtor to secure payment of personal
10 property taxes due in 2013. A.R.S. § 42-17153. The 2013 personal property taxes will
11 be liquidated in amount around September 1, 2013 and constitute secured
12 administrative expenses.

13 **2. No Provision for MCT Claim as a Secured Tax Claim:**

14 There is no provision in the Plan for the MCT Claim as a Secured Tax Claim.
15 The Plan provides treatment for Priority Tax Claims only. Arizona law grants Maricopa
16 County valid liens that are "prior and superior to all other liens and encumbrances on
17 the property." See A.R.S. § 42-17153. While the Plan may treat Secured Tax Claims in
18 a similar manner to Priority Tax Claims, there should be language in the Plan indicating
19 the treatment of Secured Tax Claims. Therefore, the Plan should include a provision for
20 the treatment of Secured Tax Claims.

21 **3. No Provision for Lien Retention:**

22 Arizona law grants Maricopa County valid liens that are "prior and superior to all
23 other liens and encumbrances on the property." See A.R.S. § 42-17153. Section 11.1
24 of the Plan provides that on the Effective Date, the Reorganized Debtor shall be vested

1 with all estate assets "free and clear of all Claims, liens, charges, encumbrances, rights
2 and Interest of creditors and equity security holders (other than as expressly provided
3 herein)." The Plan should include a provision for the retention of MCT's property tax
4 liens securing the payment of the MCT Claims and any post-petition administrative tax
5 claims.

6 **4. Post-Petition Interest:**

7 The Plan only provides for the accrual of interest at the interest rate available on
8 ninety (90) day United States Treasuries on the Effective Date. The Arizona Revised
9 Statutes provide that all taxes bear interest from the date of delinquency at the rate of
10 16% per annum. A.R.S. § 42-18053. Further, personal property tax obligations are first
11 priority, secured obligations. A.R.S. § 42-17153. There is no dispute that the properties
12 securing the MCT Claims are worth more than the amount of the respective claims.
13 MCT is therefore entitled to interest on the MCT Claims pursuant to 11 U.S.C. §506(b)
14 as an oversecured creditor. The Debtor is required to pay MCT (a) its entire secured
15 claim and (b) post-petition interest on its secured claim until the claim is paid in full. See
16 11 U.S.C. §§ 506, 511, 1129(a)(7) and 1129(a)(9). The Plan should provide for the
17 accrual of post-petition statutory interest on the MCT Claims at the statutory rate of
18 16%.

19 **5. Plan Extends Payments Beyond Five Years:**

20 Assuming Secured Tax Claims are to be treated in a similar manner to Priority
21 Tax Claims, the Plan impermissibly extends payment beyond the allowed five (5) years
22 from the Petition Date. 11 U.S.C. § 1129(a)(9)(C)(ii). The Plan provides for payments
23 over a period up to six years after the assessment of the tax on which such Claim is
24 based. Section 2.3 of Plan. The Plan should provide for payment of the MCT Claim

1 over a period ending not later than 5 years after the date of the order for relief under
2 section 301, 302, or 303.

3 Based on the foregoing, Maricopa County respectfully requests that the Court
4 deny confirmation of the Plan unless Debtor further amends the Plan to (1) provide for
5 payment of the MCT Claim as a Secured Tax Claim, (2) include a provision for the
6 retention of MCT's tax liens securing the MCT Claims and any post-petition
7 administrative tax claims, (3) provide for the accrual of post-petition statutory interest on
8 the MCT Claims, and (4) provide for payment of the MCT Claim over a period ending
9 not later than 5 years after the Petition Date.

10 RESPECTFULLY SUBMITTED this 20th day of November, 2012.

11 WILLIAM G. MONTGOMERY
12 MARICOPA COUNTY ATTORNEY

13 BY: /s/ Lori A. Lewis

LORI A. LEWIS

14 Deputy County Attorney

Attorney for Maricopa County Treasurer

15
16 ORIGINAL of the foregoing Mailed for Filing
this 20th day of November, 2012 with:

17 Clerk, United States Bankruptcy Court
18 District of Kansas
19 161 Robert J. Dole US Courthouse
500 State Avenue
Kansas City, KS 66101

20 COPY of the foregoing mailed/e-mailed,
21 this 20th day of November, 2012, to:

22 U.S. Trustee
23 Office of the United States Trustee
301 North Main Suite 1150
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11 /s/ Shelley Pulve _____

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