

**GUARANTY AGREEMENT**  
**Pertaining to**  
**NORSHOR THEATRE PROJECT**

**THIS GUARANTY AGREEMENT**, effective as of the date of attestation thereto by the City of Duluth City Clerk, by and between SHERMAN ASSOCIATES, INC., a Minnesota Corporation, hereinafter referred to as "Guarantor", and the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority under Minnesota Statutes, 1989, Chapter 469, hereinafter referred to as "DEDA", and the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota, hereinafter referred to as "City".

WHEREAS, DEDA, as an economic development authority created by the City to promote and assist in creating economic development activity in the City of Duluth, is the owner of the Property and of the NorShor Theatre located thereon; and

WHEREAS, DEDA is entering into the Development Agreement of even date herewith with Guarantor, Developer, SA Development and Playhouse pursuant to which DEDA will convey the Property and the NorShor Theatre to Developer and said parties, along with other parties, will enter into a series of agreements resulting in the redevelopment of the NorShor Theatre into a community theatre and performance venue and the operation thereof, all as provided for in said agreements; and

WHEREAS, DEDA is making the Property and the NorShor Theatre available to the Project and to the other parties to the Development Agreement at no current cost and is providing other and significant financing to the Project, imparting substantial benefit to the Project which will benefit said parties, including Guarantor, and without which the Project would not be developed; and

WHEREAS, upon completion of the Project, DEDA may assign its remaining role in the Development and the Project to City along with any benefits or obligations pertaining thereto and that, thus, the City is an intended beneficiary of this Agreement; and

WHEREAS, Guarantor, or Guarantor's affiliate, is and will be the controlling member of the managing member of Developer during the term that new market tax credits and historic tax credits are outstanding obligations of the funding of the Project, and will thus receive benefit from the investment of DEDA in the Project; and

WHEREAS, Guarantor, in consideration for DEDA's assistance and facilitation in the development and financing of the Project and in consideration of the above-referenced benefits conferred on the Project by DEDA, is willing to make the guarantees set forth herein for the benefit of DEDA and the City.

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto hereby agree as follows:

1. Definitions:

To the extent that capitalized terms appear in this Agreement that are defined in the Development Agreement, such terms shall have the same meaning ascribed to them in the Development Agreement. To the extent that capitalized terms in the Agreement are hereinafter defined, such terms shall have the meanings hereinafter ascribed to them.

- A. DEDA/City: shall mean DEDA and City as set forth first above, jointly and severally.
- B. Development Agreement: shall mean that certain Development Agreement of even date herewith between DEDA, Guarantor, Developer, SA Development and Playhouse for the Development and operation of the Project.
- C. Guarantor: shall mean the Guarantor hereinbefore named.
- D. Hard Costs: shall mean those costs designated as "hard costs" on the Project Budget.
- E. Managing Member: NorShor Theatre Managing Member LLC, a Minnesota limited liability company.
- E. Project Budget: shall mean the Project Budget attached hereto as Exhibit A.
- F. Soft Costs: shall mean those costs designated as "soft costs" on the Project Budget.
- G. Tax Credits: shall mean the New Market Tax Credits, Federal Historic Tax Credits or State of Minnesota Historic Tax Credits or any combination thereof which were used to providing any portion of the financing used in the development or construction of the Project.

2. Construction Obligations. Guarantor hereby guaranties that the Project, including the Additional Temple Work as described in the Agreement Pertaining To Temporary And Permanent Easements Pertaining To Temple Opera Building between DEDA, the City and Sherman Associates, Inc. of even date herewith, shall be completed in accordance with the project plans as approved in accordance with Article IV of the Development Agreement and that upon such completion the Project and the Property shall be free and clear of any liens or claims of liens on the Project and the Property. Provided that DEDA, the City and Playhouse have satisfied each of their material obligations, including those related to providing Project financing and Project approvals, under the Development Agreement and other documents related to the Project, Guarantor further guarantees that Guarantor shall pay all Project costs of all cost elements described in the Project Budget to the extent that such costs exceed those funding amounts available from those sources shown on the Project Budget without resort to any



additional funding from DEDA or from City, provided that Developer and Guarantor shall have the right to do the following, all without seeking consent of DEDA or the City:

- A. Developer and Guarantor may seek and use for the Project any source other than from DEDA or from the City; and
  - B. Developer and Guarantor may allocate, reduce, and in all respects manage the Soft Costs shown on the Project Budget. Guarantor, DEDA and the City acknowledge that any change to Hard Costs shown on the Project Budget shall be made in accordance with the Development Agreement.
3. Theater Operating Obligations. During the Term of this Guaranty Agreement, Guarantor hereby guarantees due and punctual payment and performance of all obligations set forth below.
- A. Operating Covenant. Guarantor acknowledges that the Project will be subject to the Theatre Operating Covenant which will run with the land for the benefit of the City and DEDA. Guarantor agrees and commits that the Project will be operated as provided in the Theatre Operating Covenant and that Guarantor will not take any action in violation of the Theatre Operating Covenant.
  - B. Liens. Guarantor agrees and commits that except for encumbrances permitted pursuant to the Development Agreement or otherwise agreed to by DEDA and the City, the Developer shall not create or permit any mortgage (other than mortgages related to additional New Market Tax Credits or similar financing), encumbrance, or mechanic's or materialmen's liens to be filed or established or to remain against the Project and the Property or any part thereof which would materially or adversely affect the DEDA's interest in this Agreement during the term of this Agreement, provided that if Developer shall first notify DEDA of its intention to do so and post such security as DEDA reasonably deems necessary, Developer may, in good faith, contest any such mechanic's or other liens filed or established as long as DEDA does not deem its interest or rights in this Agreement to be subject to foreclosure by reason of such context.
  - B. Insurance. Guarantor shall guaranty that all insurance coverage required to be secured and provided pursuant to the Development Agreement is acquired and kept in force in accordance with the requirements of the Development Agreement, provided that (i) DEDA and the City agree that such insurance requirements may be adjusted to then current commercially reasonable and available coverages throughout the term of this Guaranty; and (ii) DEDA and the City acknowledge that the cost of such insurance requirements are the primary responsibility of the Developer, as the owner of the Project, and the Playhouse, as tenant under a lease of the Project, and that the Guarantor's obligations to pay any costs related to insurance coverage required to be secured and provided pursuant to the Development Agreement shall apply only if the Developer, the Playhouse, or any other tenant, fail to pay such costs when due.

- C. Real Estate Taxes. Guarantor shall guaranty that all ad valorem property taxes on the Property are paid in full on or before their due date.
4. Payments. Any amounts paid by Guarantor hereunder shall not be refundable to Guarantor but shall be paid in consideration of DEDA's investment in the Project, which investment benefits Guarantor and the sufficiency of which is hereby acknowledged by Guarantor. This provision shall not apply to any reimbursements made to Guarantor pursuant to the TIF Payment Agreement of even date herewith by and among DEDA, Guarantor, Developer and Playhouse.
5. Term. The Term of this Guaranty Agreement shall run from the effective date of this Guaranty Agreement and shall terminate in accordance with the following:
- A. All of Guarantor's obligations under this Guaranty Agreement, other than with respect to the Theatre Operating Covenant under Section 3.A, shall terminate on the date that third party lenders and investors no longer hold any ownership interest or debt in connection with the construction, development and financing of the Project;
- B. All of Guarantor's obligations under this Guaranty Agreement, including with respect to the Theatre Operating Covenant under Section 3.A, shall terminate on date Guarantor, or any Guarantor affiliate, no longer has any ownership interest, directly or indirectly, in the Project or the Property, including the date on which the City, DEDA or Playhouse is conveyed fee title to the Property.
6. Representations. Guarantor represents and warrants that, as of the date hereof:
- A. It is a lawfully constituted corporation under the laws of the State of Minnesota, is not in material violation of any provisions of State law and that it has full power and authority to enter into this Agreement and to perform its obligations hereunder.
- B. That the execution of this Guaranty has been duly authorized and the person executing this Guaranty on behalf of the Corporation has been duly authorized to do so.
- C. That the consummation of all transactions contemplated herein to be performed by Guarantor does not and will not result in any material breach or violations of, or default under, any agreement by which Guarantor or any of its property is bound, or under any applicable law, administrative regulation or court decree and execution of this Guaranty is binding and enforceable against Guarantor.
7. Burden and Benefit. This Guarantee and each covenant and agreement contained herein shall be binding upon Guarantor and its successors and assigns, if any, and shall inure to the benefit of DEDA/City and their respective successors in interest. Guarantor shall not have the right to assign its obligations hereunder without the prior written consent of DEDA/City.



8. Payment and Performance Guaranty. Guarantor hereby agrees that this is a guaranty of payment and performance, not collection, and that this Guaranty is an unconditional, irrevocable primary guaranty and may be enforced by DEDA/City directly against Guarantor without first resorting to or exhausting any other rights or remedy against any party. Guarantor further covenants that this guaranty shall remain and continue in full force and effect, notwithstanding any assignment, modification, extension, compromise or renewal of any other agreement or document pertaining to the Project to which the Guarantor is a party or the release or exchange of any real or personal property or any forbearance that may be granted under any or all of the documents, all of which may be made, done or suffered without notice to or further consent of Guarantor. Guarantor agrees and confirms that its liability hereunder shall not be affected, impaired, or reduced in any way by any action taken under the foregoing provisions, or any other provisions, hereof, or by any delay, failure or refusal of DEDA/City to exercise any right or remedy it may have against any party to the Development Agreement.
9. No Discharge. Guarantor acknowledges that all of its obligations under this Guaranty are primary, absolute, irrevocable and unconditional and that its liability shall not be limited or affected by any release or discharge of any party, whether by operation of law or otherwise, unless and until all guaranteed obligations have been paid and performed in full, regardless of whether or not notice has been given to Guarantor.
10. Defenses Not Valid. Guarantor further agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated, affected, or impaired by reason of any failure to exercise or delay in exercising any right or remedy or any right or remedy hereunder or in respect to this Guaranty or by reason of the adjudication of bankruptcy of Guarantor or the filing of a petition for any relief under any federal, state, or local bankruptcy law by Guarantor.
11. Continuing Guaranty. It is expressly understood and agreed that, subject to the express terms hereof, this is a primary, continuing guaranty and that the obligations of Guarantor hereunder are and shall be absolute under any and all circumstances, without regard to any other instrument executed in connection with the Project.
12. Default. If Guarantor shall fail or refuse to perform or continue performance of any or all of Guarantor's obligations under this Guaranty, then DEDA or City or both may at their sole, respective options, have the right to take all necessary action to cause payment or performance of any obligations(s) guaranteed hereunder to be performed and/or paid and to take any other actions necessary or advisable to cure and Guarantor's default hereunder, either before or after the exercise of any other remedy. The amounts of any and all expenditures and advances so made by DEDA or City or both shall be due and payable by Guarantor immediately upon the incurrence or advancement thereof and, if not then paid shall bear interest at two percent (2%) above the from time to time prime rate of Wells Fargo Bank National Association and shall be an additional amount guaranteed hereunder.
13. Collection. Guarantor agrees that, in the event that this Guaranty is placed in the hands of an attorney for enforcement following notice of demand for payment or performance ads

required herein, Guarantor will reimburse DEDA/City for all expenses incurred in enforcing this Guaranty, including reasonable attorneys' fees (whether or not suit is brought heron), and all such expenses incurred in connection with any trial, appeal, arbitration or bankruptcy proceeds. All amounts not time paid shall bear interest at the rate provided for in Paragraph 11 above.

14. Certain Waivers. To the extent permitted by law, Guarantor hereby waives notice of the acceptance hereof, presentment, demand for payment, protest, notice of protest and any and all notices of nonpayment, non-performance and non-observance, and other proof, and notice of demand, and Guarantor hereby waives all suretyship defenses and defenses in the nature thereof.

15. Notices. Notices to be provided to any party hereto shall be given as provided for in the Development Agreement, provided that notices to City shall be sufficient if so provided to DEDA.

16. Counterparts. This guaranty may be executed in several counterparts, including execution by facsimile or other electronic signature, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed at the same counterpart.

17. Governing Law. This Guaranty Agreement, together with all of its terms, covenants and conditions, is made and entered into in the State of Minnesota and shall be interpreted in accordance with the laws of the State of Minnesota.

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Signature page follows.]

**SIGNATURE PAGE  
TO  
GUARANTY AGREEMENT  
Pertaining to  
NORSHOR THEATRE PROJECT**

IN WITNESS WHEREOF, the parties have hereunto set their hands.

CITY OF DULUTH, a Minnesota  
Municipal Corporation

SHERMAN ASSOCIATES, INC.  
a Minnesota Corporation

By: \_\_\_\_\_  
\_\_\_\_\_  
Its Mayor

By: \_\_\_\_\_  
\_\_\_\_\_  
Its: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Jeffry J. Cox  
Its City Clerk

DULUTH ECONOMIC  
DEVELOPMENT AUTHORITY  
a Minnesota EDA

Date: \_\_\_\_\_

Approved:

By: \_\_\_\_\_  
Nancy Norr  
It's President

\_\_\_\_\_  
Assistant City Attorney

Countersigned:

By: \_\_\_\_\_  
Zack Filipovich  
It's Secretary

\_\_\_\_\_  
City Auditor



**EXHIBIT A  
TO  
GUARANTY AGREEMENT  
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**Project Budget**