

CONDITIONAL SUBGRANT AGREEMENT
DULUTH, ECONOMIC DEVELOPMENT
AUTHORITY, GRANTOR
DULUTH PLAYHOUSE, INCORPORATED
GRANTEE

THIS AGREEMENT entered into this ____ day of ____, 2016, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, hereinafter referred to as "DEDA" and the DULUTH PLAYHOUSE, INCORPORATED, a Minnesota non-profit corporation, hereinafter referred to as the "Playhouse".

WHEREAS, DEDA and Playhouse, in combination with and cooperation with numerous other entities, are, contemporaneously with this Subgrant Agreement, entering into a series of agreements and other documents (the "Documents") to cause the renovation and redevelopment of the historic NorShor Theatre into a community performance venue on the Property and in the form of the Project as said terms are defined and explained in the Development Agreement of even date herewith (the "Development Agreement") between the parties to this Subgrant Agreement, NorShor Theatre LLC, a Minnesota limited liability company (the "Developer"), Sherman Associates, Inc., a Minnesota corporation (the "Guarantor") and Sherman Associates Development LLC, a Minnesota limited liability company ("SA Development"); and

WHEREAS, pursuant to Laws of Minnesota, 2014, Chapter 295, Section 10, Subd. 3 (the "Act") and the General Fund Grant Agreement Construction Grant for the NorShor Theatre Project dated March 21, 2014, authorized pursuant to the Act, a copy of which is attached hereto and made a part hereof and is hereinafter referred to as the "Grant Agreement", DEDA has been awarded a grant from the State of Minnesota through the State of Minnesota Department of Employment and Economic Development ("DEED") in the amount of \$6,950,000 to pay for the cost of certain of the improvements ("Grant Eligible Improvements") to be constructed as part of the Project which improvements are described in the Act and the Grant Agreement, the costs of which are eligible for reimbursement with grant funds pursuant to the Act and the Grant Agreement ("Grant Eligible Costs"); and

WHEREAS, pursuant to the Development Agreement, the Developer will be the owner of the Project, which will ultimately be leased to Playhouse to operate as a community theater; and

WHEREAS, DEDA is desirous of subgranting the Grant proceeds to Playhouse to facilitate the financing of the Project; and

WHEREAS, the Playhouse will advance Grant proceeds for the reimbursement of costs of Grant Eligible Improvements incurred by the Developer as provided for in the Development Agreement and the Documents; and

WHEREAS, Playhouse is willing to so accept the Grant proceeds and to cause them to be expended as provided for herein and in accordance with the Documents for the purposes set forth above.

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

1. “Whereas” Provisions; Definitions.

The “Whereas” provisions set forth above shall be deemed to be a part of this Agreement as if hereinafter set forth. The definitions of capitalized terms specifically defined herein shall be deemed to be controlling on this Subgrant Agreement. All other capitalized terms herein shall have the meanings ascribed to them in the Development Agreement.

2. Subgrant of Grant Proceeds

DEDA hereby grants to Playhouse the right to draw upon the proceeds of the Grant on behalf of DEDA as hereinafter set forth to pay for Grant Eligible Costs of the Project in accordance with the requirements of the Act, the Grant Agreement and this Agreement up to the full amount of the Grant, including to reimburse Developer for Grant Eligible Costs. All requests for payment of Grant Eligible Costs shall be in a form and include such documentation as shall be required pursuant to the terms of the Grant Agreement and in addition shall provide such information and documentation as shall be reasonably requested by DEED or by DEDA. No request for payment shall be made to DEED unless and until said request and supporting information and documentation is approved for submission by DEDA’s Executive Director.

3. Request for Payment

All requests for payment of Grant Eligible Costs shall be transmitted to Playhouse and to DEDA by the Developer no more than monthly. All such requests shall be accompanied by documentation consisting of and establishing the following:

- A. Proof that contractors and suppliers providing labor and materials to the construction of the Project have provided such labor and materials to the construction of Grant Eligible Improvements of the Project as shown in the approved Plans for which Developer has not been previously reimbursed.
- B. Proof that the contractors and suppliers supplying the labor and materials referenced in Subparagraph A above have been paid therefore, including necessary lien waivers evidencing the same.
- C. Proof that contractors and suppliers providing labor and materials to the construction of the Project have provided, in aggregate, such labor and materials to the construction of non-Grant Eligible Improvements of the Project in amounts at least equal to twice the amounts of all previous reimbursement paid to Developer for Grant Eligible Costs together with twice the amount of the current request for reimbursement of Grant Eligible Costs for which Developer has not been previously reimbursed.
- D. In addition to the foregoing documentation, DEDA or Playhouse or both shall be entitled to request such additional information as they deem reasonably necessary to establish the costs for which reimbursement are requested comply with all requirements of the State of Minnesota pursuant to the Act and the Grant Agreement.

4. Playhouse Approval

Upon receipt of a request for payment from Developer as set forth in Paragraph 3 above, Playhouse shall within Five (5) days of receipt thereof review said request to determine whether it meets the requirements set forth above. Within said Five (5) day period it shall either: (a) approve such request for disbursement and transmit it for approval to DEDA as hereinafter provided for; or (b) shall reject said request as not conforming to the requirements set forth in Paragraph 3 above. If it rejects such request it shall immediately inform Developer of said determination and shall provide in writing the reasons for such rejection to Developer.

Developer shall have the option of rectifying any deficiencies in such request and may then re-submit a modified request for payment to Playhouse for its review.

5. DEDA Approval

Upon receipt of a request for payment from Playhouse, DEDA shall within Five (5) days of receipt thereof review said request to determine whether it meets the requirements set forth above. Within said Five (5) day period it shall either: (a) approve such request for disbursement; or (b) shall reject said request as not conforming to the requirements set forth in Paragraph 3 above. If it rejects such request it shall immediately inform Playhouse and Developer of said determination and shall provide in writing the reasons for such rejection to Playhouse and Developer. Developer shall have the option of rectifying any deficiencies in such request and re-submitting a modified request for payment to Playhouse for its review. Upon approving any such request for payment and upon receiving the approval of such request from Playhouse, DEDA shall promptly transmit said request with its approval thereof to DEED for payment.

6. DEDA to Playhouse

DEDA and Playhouse agree that, upon receipt of payments from DEED under the Grant as provided for in this Agreement, DEDA shall promptly pay all such payment received to the Playhouse in accordance with this Agreement and the Disbursing Agreement (or if so directed by Playhouse, to BMO Harris Bank N.A. "Lender"). Provided, however, in the event that DEDA, Playhouse or DEED determines that any previous payment request contained errors which resulted in DEDA receiving a payment or payments in excess of or less than the amount or amounts properly due to DEDA under the terms of the Act or the Grant, DEDA shall have the right to reduce or increase the amount or amounts paid to Playhouse with regard to any subsequent request to correct any such over or under payment.

7. Act & Grant Agreement Controlling

It is understood and agreed between the parties that the rights and obligations of the parties hereto are subordinate to and controlled by DEDA's rights and obligations pursuant to the Act and the Grant Agreement and that, to the extent that any obligation of DEDA under this Agreement shall not conform to its obligations under the Act and the Grant Agreement, its obligations under the Act and the Grant Agreement shall be controlling and its obligations under this Agreement shall be superseded and of no effect.

8. Term

The term of this Agreement shall be deemed to commence on the date first above shown and shall run until all Grant funds have been drawn upon and expended in accordance with the terms of this Agreement and the Development Agreement; provided, however, that in the event that it is determined that any Grant funds have been disbursed in a manner not complying with the requirements of the Act or the Grant Agreement, nothing herein shall be deemed to prevent DEDA from recovering any overpayments from Playhouse to the extent that Playhouse's failure to perform its obligations under this Agreement caused or contributed to such overpayment.

9. Indemnity

Playhouse will to the fullest extent permitted by law, protect, indemnify and save DEDA and the City of Duluth and their officers, agents, servants, employees and any person who controls DEDA within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgments of any nature arising from Playhouse's failure to perform its obligations under this Agreement.

10. Playhouse Default and Remedies

A. Default

An event of default shall be deemed to occur in the event that Playhouse shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it or any successor or assigns of Playhouse pursuant to this Agreement and such failure shall continue for a period of sixty (60) calendar days after DEDA has, pursuant to the provisions of this Agreement, given written notice to Playhouse of such default or, in the event that such default shall be incapable of cure during said sixty (60) day period, shall have failed to commence to cure said default within sixty (60) days of the date of said notice and to diligently pursue the same to completion.

B. Remedies

Except as otherwise set forth in this Agreement, DEDA shall have the following remedies in the event of a default by Playhouse:

1. Seek and be entitled to monetary damages from Playhouse for any damages.

2. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Playhouse's violation of the terms and conditions of this Agreement or to compel Playhouse's performance of its obligations hereunder.
3. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.

C. Non-Waiver

The waiver by either party of any default on the part of the other party or the failure of said party to declare default on the part of the other party of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of the defaulting party of the same or of any other obligation of the defaulting party hereunder. And, to be effective, any waiver of any default by the defaulting party hereunder shall be in writing by the non-defaulting party.

D. Remedies Cumulative

Except as specifically set forth herein, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.

E. Attorneys' Fees

In the event that either party is in Default of any of the terms and conditions of this Agreement and the non-defaulting party shall successfully take legal action to enforce said rights herein, in addition to the foregoing, such non-defaulting party shall be entitled to reimbursement for its reasonable attorney's fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder.

F. Third Party Notice and Cure. During any cure period afforded Playhouse under this Agreement, no action shall be taken to effect a termination of this Agreement by reason of an event of default by Playhouse, and DEDA shall accept performance during any such cure period from Lender on behalf of Playhouse. Playhouse and DEDA shall concurrently provide a copy of any notice of default

given or received under the Subgrant Agreement to BMO Harris Bank N.A., Attn: Tania Kadakia, 115 S. LaSalle 20 W, Chicago, IL 60603. DEDA agrees to provide written notice to Lender and each third party listed as third parties in Section 11 of this Agreement of any notice of default under the Grant Agreement

11. Notices

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of DEDA:

Duluth Economic Development Authority
Room 402 City Hall
411 West First Street
Duluth, MN 55802

In the case of Playhouse:

Duluth Playhouse, Incorporated
506 West Michigan Street
Duluth, MN 55802

In the case of Developer:

NorShor Theatre LLC
233 Park Avenue South, Suite 201
Minneapolis, Minnesota 55415

For purposes of Section 10.F.,
in the case of notice to third parties:

Chase NMTC Norshor Investment Fund, LLC OR
CNMC Sub-CDE 113, LLC
c/o JPMorgan Chase Bank, N.A.
10 S. Dearborn Street, Floor 19
Mail Code: IL1-0953
Chicago, IL 60603-5506
Attention: NMTC Asset Manager
Facsimile: 312-325-5050
Email: nmtc.reporting@chase.com

With copies to:

Chase Community Equity, LLC
c/o JPMorgan Chase Bank, N.A.

300 S. Grand Avenue, Suite 400
Los Angeles, CA 90071
Attention: Timothy C. Karp
Facsimile: 213-621-8401
Email: timothy.c.karp@chase.com

And to:

Applegate & Thorne-Thomsen, P.C.
626 W. Jackson Boulevard, Suite 400
Chicago, IL 60661
Attention: Debra A. Kleban
Facsimile: (312) 491-4411
Email: dkleban@att-law.com

BH New Markets Sub-CDE X, LLC
M&I New Markets Fund, LLC
1 East Main Street
Madison, WI 53703

New Markets Investment 93, LLC
c/o New Markets Support Company, LLC
10 S. Riverside Plaza, Suite 1700
Chicago, Illinois 60606
Attention: Matthew Huber, Senior Vice President
Facsimile: (312) 441-0484
Email: mhuber@newmarkets.org

With copies to:

New Markets Support Company, LLC
10 S. Riverside Plaza, Suite 1700
Chicago, Illinois 60606
Attention: General Counsel
Facsimile: (312) 697-5694
Email: mleitson@newmarkets.org

And to:

Future Unlimited Law PC
P.O. Box 2776
Yelm, Washington 98597
Attention: Ruth Sparrow
Facsimile: (360) 458-2509
Email: rsparrow@futureunlimitedlaw.com

12. Applicable Law

This Agreement together with all of its Articles, paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREAS, the parties have hereunto set their hands the day and date first above shown.

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY, an economic development
authority under Minn. Stat. § 469 (1989)

DULUTH PLAYHOUSE, INCORPORATED,
A Minnesota Non-profit Corporation

Its President

By: _____

Its: _____

Its Secretary