

**FIRST AMENDMENT TO
AMENDED AND RESTATED
PEDESTRIAN PASSAGEWAY AGREEMENT
PERTAINING TO GREYSOLON PLAZA**

THIS FIRST AMENDMENT (this "Amendment") is made as of _____, 2016, by and between the **CITY OF DULUTH** ("City") and **GREYSOLON APARTMENTS LIMITED PARTNERSHIP**, a Minnesota limited partnership ("Owner").

INTRODUCTION:

(A) City owns a municipal parking ramp located on the real property legally described on Exhibit A attached hereto (the "Medical District Ramp").

(B) Owner owns a senior rental apartment building located on the real property legally described on Exhibit B attached hereto (the "Greysolon Building") and a parcel of land west of the Greysolon Building located on the real property legally described on Exhibit C attached hereto ("West Parking Lot").

(C) City and Owner entered into a Pedestrian Passageway Agreement, dated September 7, 2005, and filed of record in the office of the County Recorder for St. Louis County Minnesota on March 14, 2006, as Document No. 1012495 and in the office of the Registrar of Titles for St. Louis County, Minnesota on March 14, 2006 as Document No. 814395, hereinafter referred to as the "Original Agreement".

(D) City and Owner amended and restated the Original Agreement pursuant to that certain Amended and Restated Pedestrian Passageway Agreement Pertaining to Greysolon Plaza ("Amended and Restated Agreement"), dated as of May 11, 2009, and filed of record in the office of the County Recorder for St. Louis County Minnesota on _____, as Document No. _____, and in the office of the Registrar of Titles for St. Louis County, Minnesota on _____ as Document No. _____ (the Original Agreement as amended by the Amended and Restated Agreement is hereinafter referred to as the "Agreement").

(E) Pursuant to the Agreement, Owner constructed a Temporary Passageway (as defined in the Agreement) and Bridge (as defined in the Agreement) connecting the Medical District Ramp to the Greysolon Building as depicted in the Original Agreement.

(F) The Agreement contemplated the future expansion of the City's Skywalk System (as defined in the Agreement) by construction of a skywalk con-

nection from the Greysolon Building to the Temple Opera building located at 201–205 East Superior Street (the “Temple Opera Building”), referred to in the Agreement as the “Temple Opera Skywalk Connection”.

(G) Owner, City, NorShor Theatre LLC, a Minnesota limited liability company (“NorShor”) and the Duluth Economic Development Authority, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 (“DEDA”) have entered into a Pedestrian Passageway Agreement Pertaining to the NorShor Theatre Property (the “NorShor Skywalk Agreement”) dated _____, 2016 whereby NorShor has agreed to construct the Temple Opera Skywalk Connection consisting of a bridge (the “NorShor Bridge”) connecting the NorShor Theatre building (the “NorShor Building”) to the Greysolon Building, a passageway through the NorShor Building to the Temple Opera Building (the “NorShor Passageway”) and an elevator and stairway connecting the NorShor Passageway to Superior Street.

(H) The City and Owner desire to amend the Agreement (i) to acknowledge that the NorShor Bridge, NorShor Passageway and related improvements constitute the Temple Opera Skywalk Connection contemplated by the Agreement, and (ii) to provide for the construction of the Permanent Passageway (as defined in the Agreement), and (iii) to provide easements over and through the Permanent Passageway as provided in the Agreement, and to otherwise modify certain terms and conditions of the Agreement.

NOW, THEREFORE, in consideration of the foregoing, and the mutual benefits to be derived from the performance hereof, the parties agree as follows:

1. **Defined Terms.** Unless otherwise indicated in this Amendment, capitalized terms shall be defined in the manner set forth in the Agreement.

2. **Temple Opera Skywalk Connection.** City and Owner agree that the NorShor Bridge, the NorShor Passageway and related improvements contemplated by the NorShor Agreement constitute the Temple Opera Skywalk Connection for the purposes of the Agreement. The parties agree further that upon completion of construction of the NorShor Bridge, the NorShor Passageway, and related improvements, City will have performed its obligations under the Agreement regarding construction of the Temple Opera Skywalk Connection.

3. **Permanent Passageway.** Owner agrees to construct the Permanent Passageway pursuant to the plans attached hereto as Exhibit D which have been approved by the City. The Permanent Passageway shall be constructed at the cost of Owner in accordance with the terms of Section 3.4 of the Agreement. Construction of the Permanent Passageway shall be completed no later than the date the Temple Opera Skywalk Connection is open to the public.

4. **Easement for Permanent Passageway.** In accordance with Section 4.3(b) of the Agreement and subject to completion of construction of the Temple Opera Skywalk Connection, Owner hereby grants to the City and its successors and assigns as owner of the Bridge, for the benefit of the Bridge and City's customers, contractors and invitees with respect to the Bridge, a non-exclusive easement for pedestrian ingress and egress over and through the Permanent Passageway, subject to the terms and conditions of the Agreement. Owner also grants to City the right to approve or disapprove of activities, traffic and signs within the Permanent Passageway to the extent necessary to carry out the elements of the Agreement, on the condition that the City's right to approve or disapprove shall not be unreasonably exercised or withheld and that such right shall be exercised in a manner consistent with the manner in which City exercises such rights of control over the remainder of the Skywalk System and in a manner that is reasonably consistent with the operational requirements of the Greysolon Building.

5. **Term.** The term of the easements granted in this Amendment shall remain in effect only when and for so long as the Temple Opera Skywalk Connection connects the Greysolon Building to the Temple Opera Building.

6. **Interpretation of Agreement and Amendment.** Wherever there exists a conflict between this Amendment and the Agreement, the provisions of this Amendment shall control. Except as modified and supplemented herein, the Agreement is in full force and effect.

[Remainder of page left blank intentionally.
Signature pages follow.]

**SIGNATURE PAGE TO
FIRST AMENDMENT TO
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PEDESTRIAN PASSAGEWAY AGREEMENT
PERTAINING TO GREYSOLON PLAZA**

IN WITNESS WHEREOF, the parties have set their hands effective as of the date of attestation shown below.

CITY OF DULUTH, a Minnesota Municipal Corporation

Mayor

Attest:

City Clerk

Date: _____

Approved:

Countersigned:

City Attorney

City Auditor

STATE OF MINNESOTA)
) ss
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____ and _____, Mayor and City Clerk respectively of the City of Duluth, a Minnesota municipal corporation on behalf of the City.

Notary Public

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IN WITNESS WHEREOF, the parties have set their hands effective as of the date of attestation shown below.

GREYSOLON APARTMENTS LIMITED PARTNERSHIP,
a Minnesota limited partnership

By: Sherman Associates, Inc.
Its: General Partner

By: _____
Its: President

STATE OF MINNESOTA)
) ss
COUNTY OF HENEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by George E. Sherman, the President of Sherman Associates, Inc., a Minnesota Corporation, the general partner of Greysolon Apartments Limited partnership, a Minnesota limited partnership, on behalf of the limited partnership.

Notary Public

This instrument drafted by:
Robert E. Asleson
Assistant City Attorney
City of Duluth
411 West First Street
Room 410 city Hall
Duluth, MN 550802
(218) 730-5490

**EXHIBIT A
TO
FIRST AMENDMENT TO
AMENDED AND RESTATED
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PERTAINING TO GREYSOLON PLAZA**

Legal Description of Medical District Ramp Parcel

Block 26, PORTLAND DIVISION.

**EXHIBIT B
TO
FIRST AMENDMENT TO
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PERTAINING TO GREYSOLON PLAZA**

Legal Description of Greysolon Building Parcel

Real property in the County of St. Louis, State of Minnesota, described as follows:

Lots 43 and 45 EAST SUPERIOR STREET, DULUTH PROPER FIRST DIVISION

Lots 11-16 Block 6 PORTLAND DIVISION OF DULUTH

That part of Lot 41, East Superior Street, DULUTH PROPER, FIRST DIVISION, lying Easterly of a line drawn through said Lot 41, at right angles to the Northerly line of Superior Street and parallel to and equidistant from the Easterly and Westerly lines of said Lot 41, East Superior Street, DULUTH PROPER, FIRST DIVISION;

also the following described property, to-wit: Commencing at the point of intersection of the center line of Third Avenue East with the center line of the alley between Block 6 and Block 27 Portland Division of Duluth; thence Southeasterly along the center line of Third Avenue East to the center line of East Superior Street; thence in a Southwesterly direction along the center line of East Superior Street to the Southerly boundary of Portland Division of Duluth; thence Westerly along said boundary line to the Westerly line of said Portland Division of Duluth; thence Northerly along said Westerly boundary line to the center line of said alley, between Block 6 and Block 27, of said Portland Division of Duluth; thence Northeasterly along said center line to the place of beginning; EXCEPTING therefrom, however, Lot 9 and all that part of Lot 10, Block 6, Portland Division of Duluth, necessary to make the Westerly one-half of Lot 41, East Superior Street, Duluth Proper, First Division, a rectangular piece of land 25 X 140 feet in size

**EXHIBIT C
TO
FIRST AMENDMENT TO
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Legal Description of West Parking Lot Parcel

**EXHIBIT D
TO
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Permanent Passageway Approved Plans

CONSENT OF MORTGAGEE

MINNESOTA HOUSING FINANCE AGENCY ("MHFA") is the holder or the beneficiary of the following documents with respect to the Greysolon Building and the North Parking Lot (the "MHFA Documents"):

1. Minnesota Housing Finance Agency HUD Risk-Sharing Program Combination Mortgage, Security Agreement, and Fixture Financing Statement dated as of February 27, 2006, and recorded on March 14, 2006, in the office of the St. Louis County Recorder as Document No. 1012497 and in the office of the St. Louis County Registrar of Titles as Document No. 814397.
2. Minnesota Housing Finance Agency HUD Risk-Sharing Program Regulatory Agreement dated as of February 27, 2006, and recorded on March 14, 2006, in the office of the St. Louis County Recorder as Document No. 1012498 and in the office of the St. Louis County Registrar of Titles as Document No. 814398.
3. Minnesota Housing Finance Agency HUD Risk-Sharing Program Assignment of Rents and Leases dated as of February 27, 2006, and recorded on March 14, 2006, in the office of the St. Louis County Recorder as Document No. 1012499 and in the office of the St. Louis County Registrar of Titles as Document No. 814399.
4. Bond Compliance Agreement dated as of February 27, 2006, and recorded on March 14, 2006, in the office of the St. Louis County Recorder as Document No. 1012496 and in the office of the St. Louis County Registrar of Titles as Document No. 814396.
5. Minnesota Housing Finance Agency Preservation Affordable Rental Investment Fund Program Combination Mortgage, Security Agreement, and Fixture Financing Statement dated as of February 27, 2006, and recorded on March 14, 2006, in the office of the St. Louis County Recorder as Document No. 1012502 and in the office of the St. Louis County Registrar of Titles as Document No. 814402.
6. Minnesota Housing Finance Agency Preservation Affordable Rental Investment Fund Program Regulatory Agreement dated as of February 27, 2006, and recorded on March 14, 2006, in the office of the St. Louis County Recorder as

Document No. 1012503 and in the office of the St. Louis County Registrar of Titles as Document No. 814403.

7. Minnesota Housing Finance Agency Preservation Affordable Rental Investment Fund Program Assignment of Rents and Leases dated as of February 27, 2006, and recorded on March 14, 2006, in the office of the St. Louis County Recorder as Document No. 1012504 and in the office of the St. Louis County Registrar of Titles as Document No. 814404.
8. Minnesota Housing Finance Agency Preservation Affordable Rental Investment Fund Program Declaration of Covenants, Conditions and Restrictions dated as of February 27, 2006, and recorded on March 14, 2006, in the office of the St. Louis County Recorder as Document No. 1012505 and in the office of the St. Louis County Registrar of Titles as Document No. 814405.
9. Minnesota Housing Finance Agency Agreement Pledge Agreement dated as of February 27, 2006, and recorded on March 14, 2006, in the office of the St. Louis County Recorder as Document No. 1012500 and in the office of the St. Louis County Registrar of Titles as Document No. 814400.

MHFA hereby consents to the execution and recording of this Amendment and agrees that the MHFA Documents shall be subject and subordinate to the terms and conditions of the Agreement.

MINNESOTA HOUSING FINANCE
AGENCY

By: _____
Name: _____
Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____, the _____ of the Minnesota Housing Finance Agency, a public body corporate and politic of the State of Minnesota, on behalf of the Agency.

Notary Public