

TIF PAYMENT AGREEMENT
DULUTH ECONOMIC DEVELOPMENT AUTHORITY
SHERMAN ASSOCIATES, INC.
NORSHOR THEATRE LLC
DULUTH PLAYHOUSE, INCORPORATED

THIS AGREEMENT, entered into this _____ day of _____, 2016, between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority under Minnesota Statutes (1989) Chapter 469, hereinafter referred to as “DEDA”, SHERMAN ASSOCIATES, INC., a Minnesota Corporation, hereinafter referred to as “Sherman”, NORSHOR THEATRE LLC, a Minnesota limited liability company, hereinafter referred to as “Developer” and the DULUTH PLAYHOUSE, INCORPORATED, a Minnesota non-profit corporation, hereinafter referred to as “Playhouse”.

WHEREAS, on September 7, 2005, DEDA and Sherman entered the Sheraton Agreement as defined below; and

WHEREAS, the Sheraton Agreement provided for DEDA to retain one-half of the Eligible Sheraton Tax Increments as defined therein, not including any Value Adjustment Tax Increments as defined therein, to be applied to DEDA’s administrative expenses and to other developments at DEDA’s discretion; and

WHEREAS, DEDA, Sherman, the Playhouse and Developer have undertaken to redevelop the NorShor Theatre in the Duluth Arts and Entertainment District and for that purpose have, with other parties thereto, entered into the below-defined NorShor Agreement along with related documents and in conjunction with other parties to provide for the development and financing of the “Project” as defined and described in the NorShor Agreement; and

WHEREAS, after careful analysis of the projected costs of the entire development and of the financial resources available to pay for the Project, DEDA has determined that:

- (I) a gap exists between the cost to Developer of developing the Project and the funds presently available to or known to Developer and DEDA to finance those costs other than those identified in the existing budget for the Project;
- (II) Developer, with the assistance of DEDA has explored all known and available sources of both public and private funding and has secured from such sources all funds reasonably available to the Project but there remains a gap between available resources and the cost of the Project that cannot be filled except as provided for herein;
- (III) exclusive of the tax increment assistance to be provided pursuant to this Agreement, the available resources would be inadequate to construct the entire development and that therefore, but for the tax increment assistance to be provided for hereunder, the Project could not reasonably be expected to be constructed in the foreseeable future; and
- (IV) the increased market value of the Property as defined in the NorShor Agreement that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the market value estimated to result from the proposed development after subtracting the present value of the projected tax increment for the maximum duration of a redevelopment tax increment financing district created under the authority of Minnesota Statutes Chapter 469.

WHEREAS, DEDA, Sherman, the Playhouse and Developer are desirous of using various funds having as their source tax increment proceeds as hereinafter specified to assist in the funding of the Project.

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

1. Definitions

The following terms shall have the meanings hereinafter ascribed to them. Any other capitalized terms not herein defined shall have the meanings ascribed to them in the NorShor Agreement as hereinafter defined.

- A. Additional Property: shall mean St. Louis County, Minnesota Tax Parcel Nos. 010 0910 00180 and 010 3957 00010.
- B. Developer: shall mean NorShor Theatre LLC.
- C. Disbursing Agent: shall mean Commercial Partners Title LLC, the disbursing agent pursuant to the Disbursing Agreement.
- D. Captured Tax Increment: shall mean all real estate taxes (i) resulting solely from the payment of real estate taxes on the Captured Net Tax Capacity of the Property resulting from the Project, or (ii) resulting from the Sheraton Agreement, or (iii) resulting from the payment of real estate taxes on the Captured Net Tax Capacity of the Additional Property, as applicable, remitted to DEDA by the St. Louis County Auditor and received by DEDA.
- E. Disbursing Agreement: shall mean that agreement between the parties to the NorShor Agreement and the other parties to the development of the Project providing for the payment of all costs associated with the development of the Project and the funding thereof.
- F. Eligible Costs: shall mean those costs which may be legally funded with the use of Tax Increment proceeds under Minnesota Statutes and case law.

- G. Eligible Additional Property Tax Increment: shall mean the combined total of the first half and the second half payments of Captured Tax Increment from the Additional Property.
- H. Eligible Project Tax Increment: shall mean the combined total of the first half and the second half payments of Captured Tax Increment from the Project for any year in which the Project is valued at its full value as “substantially completed” as authorized by Minnesota Statutes Section 469.176 subd. 3.
- I. Eligible Sheraton Tax Increment: shall mean forty (40%) percent of the combined total of the first half and the second half payments of Captured Tax Increment received by DEDA pursuant to the Sheraton Agreement as authorized by Minnesota Statutes Section 469.176 subd. 3.
- J. Executive Director: shall mean DEDA’s Executive Director or his or her designee.
- K. NorShor Agreement: shall mean that Development Agreement of even date herewith between DEDA, Developer, Sherman, Sherman Associates Development LLC and the Playhouse for the development of the Project in the Duluth Arts and Entertainment District in conjunction with other parties necessary to the financing of the Project.
- L. NorShor TIF Note: shall mean a note in the form of Exhibit B attached hereto and made a part hereof from DEDA to Developer payable solely from the Eligible Project Tax Increment proceeds and Eligible Additional Property Tax Increment proceeds, bearing an interest rate of zero percent (0%) per annum to repay Developer for Eligible Costs of the Project which have not otherwise been reimbursed by DEDA or by Grant Proceeds. The amount of the NorShor TIF Note shall be the lesser of the following: (i) the Eligible Costs of the Project which have not otherwise been reimbursed

by DEDA or by Grant Proceeds; (ii) the sum of Eligible Project Tax Increment proceeds and the Eligible Additional Property Tax Increment proceeds actually paid to and received by DEDA; or (iii) Five Hundred Sixty-Five Thousand Dollars (\$565,000).

M. Sheraton Agreement: shall mean that Amended and Restated Development Agreement entered into on September 7, 2005 by DEDA and Sherman filed of record in the Office of the St. Louis County Recorder as Document No. 01008397 and in the office of the St. Louis County Registrar of Titles as Document No. 812206.0 which provided for the development of Hotel/Condo Project as described in said agreement and for the payment of a portion of the Eligible Sheraton Tax Increment to Sherman to compensate it for Eligible Costs of the development as provided for in said agreement.

N. Sheraton TIF Note: shall mean a note in the form of Exhibit A attached hereto and made a part hereof from DEDA to Developer payable solely from the Eligible Sheraton Tax Increment proceeds, not including the Value Adjusted Tax Increment as defined in the Sheraton Agreement, bearing an interest rate of zero percent (0%) per annum to repay Developer for Eligible Costs of the Project which have not otherwise been reimbursed by DEDA or by Grant Proceeds. The amount of the Sheraton TIF Note shall be the lesser of the following: (i) the Eligible Costs of the Project which have not otherwise been reimbursed by DEDA or by Grant Proceeds; (ii) the amount of Eligible Sheraton Tax Increment proceeds actually paid to and received by DEDA; or (iii) One Million Eight Hundred Thousand Dollars (\$1,800,000).

2. Condition Precedent to Agreement

This Agreement is intended to be part of the financing of the Project and is entered into to facilitate the development and operation of that Project. Therefore

this Agreement shall be effective and binding on the parties only upon the closing on the financing of the Project and the execution by all necessary parties of the NorShor Agreement and all other documents and agreements deemed necessary by the Executive Director to insure the development, construction and operation of the Project.

3. TIF Cash Commitment

As part of the financing of the Project and subject to the provisions of Paragraph 7 below, DEDA has pledged the sum of Six Hundred Thousand Dollars (\$600,000) to be paid to the Disbursing Agent for the benefit of the Playhouse to be used to pay Eligible Costs of the Project. Developer acknowledges that DEDA has previously advanced \$300,000 of that amount to Developer pursuant to the Interim Pre-development Loan Agreement between DEDA and Developer to reimburse Developer for Eligible Costs of the Project. Upon the execution of all documents required to finalize the obligations of all of the parties to the transaction as approved by the Executive Director, Developer agrees to repay said Three Hundred Thousand Dollar (\$300,000) advance to DEDA and DEDA hereby commits to advance Six Hundred Thousand Dollars \$600,000 to the Escrow Agent for the benefit of Playhouse to be used by the Disbursing Agent on behalf of Playhouse to pay Eligible Costs of the Project in accordance with the procedures and requirements set forth in Paragraph 4 below, thus fulfilling its obligations described in this Paragraph to provide TIF proceeds in the form of cash to the Project.

4. DEDA/Sheraton TIF-Project Cost Reimbursement

Subject to the provisions of this Paragraph below, DEDA hereby agrees to reimburse Developer for up to One Million Eight Hundred Thousand Dollars (\$1,800,000) in Eligible Costs of constructing the Project, including the cost of constructing the Skywalk within the Project, as hereinafter provided for. DEDA's

reimbursement obligation under this Paragraph shall be limited to and payable solely in the form of the issuance of the Sheraton TIF Note. Upon issuance of the Certificate of Completion provided for in Paragraph D of Article V of the NorShor Agreement or at such time as Developer shall have incurred Eligible Costs of the Project which have not otherwise been reimbursed by DEDA or from Grant proceeds, Developer may submit a written request for reimbursement of such Eligible Costs incurred by Developer in constructing those portions of the Project which constitute Eligible Cost portions of the Project. Such reimbursement request shall be accompanied by evidence that such work has been performed and that the costs therefore, qualify for reimbursement from tax increment proceeds as Eligible Costs under Minnesota Statutes Chapter 469, together with proof that such Eligible Costs have been paid by Developer and such other documentation as the Executive Director shall reasonably request. DEDA agrees to reimburse Developer for such Eligible Costs by the issuance of the Sheraton TIF Note.

6. DEDA/NorShor TIF-Project Cost Reimbursement

Subject to the provisions of this Paragraph below, unless otherwise prevented from doing so by law, DEDA hereby agrees to reimburse Developer for up to Five Hundred Sixty-Five Thousand Dollars (\$565,000) in Eligible Costs of constructing the Project, including the cost of constructing the Skywalk within the Project, as hereinafter provided for. DEDA's reimbursement obligation under this Paragraph shall be limited to and payable solely in the form of the issuance of the NorShor TIF Note. Upon issuance of the Certificate of Completion provided for in Paragraph D of Article V of the NorShor Agreement or at such time as Developer shall have incurred Eligible Costs of the Project which have not otherwise been reimbursed by DEDA or from Grant proceeds, Developer may submit a written request for reimbursement of such Eligible Costs incurred by Developer in constructing those portions of the Project which constitute Eligible Cost portions of

the Project. Such reimbursement request shall be accompanied by evidence that such work has been performed and that the costs therefore, qualify for reimbursement from tax increment proceeds as Eligible Costs under Minnesota Statutes Chapter 469, have been paid by Developer, together with such other documentation as the Executive Director shall reasonably request. DEDA agrees to reimburse Developer for such Eligible Costs by the issuance of the NorShor TIF Note.

7. TIF Payment Obligations Limited

DEDA's obligation to make payments under the Sheraton TIF Note and the NorShor TIF Note is agreed by the parties hereto to be strictly revenue based and shall be payable only from the proceeds of Captured Tax Increment actually received by DEDA from the St. Louis County Auditor's Office. In the event that DEDA fails to receive any Captured Tax Increment for any reason whatsoever, including but not limited to changes in State statutes or procedures of the St. Louis County Auditor's Office, DEDA shall be relieved of the obligation to make payments otherwise due under the Sheraton TIF Note and the NorShor TIF Note until such time as DEDA receives the payment of Captured Tax Increment from the St. Louis County Auditor. DEDA will make payment thereof within thirty (30) days of receipt thereof from the St. Louis County Auditor.

8. Term

The term of this agreement shall run through December 31, 2029 unless sooner terminated; provided that if the Property shall become exempt from ad valorem taxes, DEDA's obligation to make payments to Developer under the NorShor TIF Note shall cease when DEDA no longer receives such taxes from the Property.

9. Notices.

Notices to be provided to any party hereto shall be given as provided for in the Development Agreement.

10. Counterparts.

This Agreement 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.

11. Governing Law.

This 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.

IN WITNESS WHEREOF, 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)

NORSHOR THEATRE LLC, a
Minnesota Limited Liability Company

By: _____

It's: _____

Its President

Its Secretary

SHERMAN ASSOCIATES, INC.,
a Minnesota corporation

By: _____

Its: _____

DULUTH PLAYHOUSE,
INCORPORATED, a
Minnesota Non-profit corporation

By: _____

Its: _____

Date April , 2016

NOTE

Name of Borrower: Duluth Economic Development Authority ("DEDA").

Address of Borrower: 402 West First Street, Room 402 City Hall, Duluth, MN 55802

Name of "Lender": NorShor Theatre LLC

Address of "Lender": 233 Park Avenue South, Suite 201, Minneapolis, MN 55415

For Value received, the undersigned promises to pay to the order of the Lender at the above location or at any other place designated at any time by the holder hereof, in lawful money of the United States of America, the principal sum of the amount of Eligible Costs determined to be eligible for reimbursement pursuant to Paragraph 5 of the TIF Payment Agreement of even date herewith between DEDA, Lender, Sherman Associates, Inc. and the Duluth Playhouse Incorporated (the "TIF Agreement") or up to One Million Eight Hundred Thousand and 00/100 dollars (\$1,800,000.00), whichever is less. This Note shall bear interest at an annual rate of Zero percent.

The undersigned promises to pay the principal hereof as follows:

Commencing with the first receipt by DEDA of Eligible Sheraton Tax Increment as defined in the TIF Agreement after the date of this Note and semi-annually thereafter until the entire unpaid principal amount set forth above shall have been paid or until December 31, 2029, whichever is sooner, DEDA agrees to pay to Lender an amount equal to the Eligible Sheraton Tax Increment within Thirty (30) days of receipt thereof from the St. Louis County Auditor up to the amount set forth above and subject to the following. DEDA's obligation to make payments of any kind pursuant to this Note is limited to and shall be payable only from Eligible Sheraton Tax Increment as defined in the TIF Agreement actually received by DEDA and from no other source. In the event that Eligible Sheraton Tax Increment received by DEDA prior to December 31, 2029 is insufficient to pay the entire amount of this Note hereunder, this being One Million Eight Hundred Thousand and 00/100 dollars (\$1,800,000.00), on December 31, 2029 the unpaid balance thereof shall be deemed to be forgiven and DEDA shall have no further obligation to make any payments of any kind on any obligations under this Note.

The undersigned may prepay the principal amount outstanding in whole or in part without penalty or premium

If any installment of principal hereunder is not paid when due or if the holder hereof shall at any time in good faith believe that the prospect of due and punctual payment of this Note is impaired, then in any such event, the holder hereof may, at its option, declare this Note to be immediately due and payable and thereupon this Note shall be immediately due and payable together with all

unpaid interest accrued hereon, without notice or demand. Upon the occurrence of an event of default, the Lender shall also have the right to set off the indebtedness evidenced by this Note against any indebtedness of Lender to the undersigned.

Unless prohibited by law, the undersigned agrees to pay all costs of collection, including reasonable attorney's fees and legal expenses, incurred by the holder hereof in the event this Note is not duly paid. The holder hereof may change any term of payment of this Note, including extensions of time and renewals, and release any security for or any part to, this Note without notifying or releasing any accommodation maker, endorser or guarantor from liability on this Note. Presentment or other demand for payment, notice of dishonor and protest are hereby waived by the undersigned and each endorser or guarantor. The undersigned agrees that this Note may not be changed orally, but only upon agreement in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought. Any holder of this Note may assign this Note without the consent of the undersigned. This Note shall be governed by the substantive Laws of the State of Minnesota.

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

By: _____
It's President

By: _____
It's Secretary

Date April , 2016

NOTE

Name of Borrower: Duluth Economic Development Authority ("DEDA").

Address of Borrower: 402 West First Street, Room 402 City Hall, Duluth, MN 55802

Name of "Lender": NorShor Theatre LLC

Address of "Lender": 233 Park Avenue South, Suite 201, Minneapolis, MN 55415

For Value received, the undersigned promises to pay to the order of the Lender at the above location or at any other place designated at any time by the holder hereof, in lawful money of the United States of America, the principal sum of the amount of Eligible Costs determined to be eligible for reimbursement pursuant to Paragraph 5 of the TIF Payment Agreement of even date herewith between DEDA, Lender, Sherman Associates, Inc. and the Duluth Playhouse Incorporated (the "TIF Agreement") or up to Five Hundred Sixty-five Thousand Dollars (\$565,000), whichever is less. This Note shall bear interest at an annual rate of Zero percent.

The undersigned promises to pay the principal hereof as follows:

Commencing with the first receipt by DEDA of Eligible Project Tax Increment or Eligible Additional Property Tax Increment as defined in the TIF Agreement after the date of this Note and semi-annually thereafter until the entire unpaid principal amount set forth above shall have been paid or until December 1, 2023, whichever is sooner, DEDA agrees to pay to Lender an amount equal to the total sum of Eligible Project Tax Increment and any tax increment funds actually received by DEDA from real property taxes paid on the Eligible Additional Property Tax Increment within Thirty (30) days of receipt thereof from the St. Louis County Auditor up to the amount set forth above and subject to the following. DEDA's obligation to make payments of any kind pursuant to this Note is limited to and shall be payable only from Eligible Project Tax Increment and Eligible Additional Property Tax Increment as defined in the TIF Agreement actually received by DEDA and from no other source. In the event that Eligible Project Tax Increment and Eligible Additional Property Tax Increment received by DEDA prior to December 1, 2023 is insufficient to pay the entire amount of this Note hereunder, this being Five Hundred Sixty-five Thousand Dollars (\$565,000), on December 1, 2023 the unpaid balance thereof shall be deemed to be forgiven and DEDA shall have no further obligation to make any payments of any kind on any obligations under this Note.

The undersigned may prepay the principal amount outstanding in whole or in part without penalty or premium

If any installment of principal hereunder is not paid when due or if the holder hereof shall at any time in good faith believe that the prospect of due and punctual payment of this Note is impaired,

then in any such event, the holder hereof may, at its option, declare this Note to be immediately due and payable and thereupon this Note shall be immediately due and payable together with all unpaid interest accrued hereon, without notice or demand. Upon the occurrence of an event of default, the Lender shall also have the right to set off the indebtedness evidenced by this Note against any indebtedness of Lender to the undersigned.

Unless prohibited by law, the undersigned agrees to pay all costs of collection, including reasonable attorney's fees and legal expenses, incurred by the holder hereof in the event this Note is not duly paid. The holder hereof may change any term of payment of this Note, including extensions of time and renewals, and release any security for or any part to, this Note without notifying or releasing any accommodation maker, endorser or guarantor from liability on this Note. Presentment or other demand for payment, notice of dishonor and protest are hereby waived by the undersigned and each endorser or guarantor. The undersigned agrees that this Note may not be changed orally, but only upon agreement in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought. Any holder of this Note may assign this Note without the consent of the undersigned. This Note shall be governed by the substantive Laws of the State of Minnesota.

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

By: _____
It's President

By: _____
It's Secretary