

**DEVELOPMENT AGREEMENT
DULUTH ECONOMIC DEVELOPMENT AUTHORITY
NORSHOR THEATRE LLC
SHERMAN ASSOCIATES, INC.
SHERMAN ASSOCIATES DEVELOPMENT LLC
DULUTH PLAYHOUSE, INCORPORATED
THE NORSHOR PROJECT**

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”, NORSHOR THEATRE LLC, a limited liability company under the laws of the State of Minnesota, hereinafter referred to as “Developer”, SHERMAN ASSOCIATES, INC., a Minnesota Corporation, hereinafter referred to as “Guarantor”, SHERMAN ASSOCIATES DEVELOPMENT LLC, a Minnesota limited liability company, hereinafter referred to as “SA Development” and the DULUTH PLAYHOUSE, INCORPORATED, a Minnesota non-profit corporation, hereinafter referred to as the “Playhouse” .

WHEREAS, DEDA, along with the City of Duluth, has its Old Downtown District generally located from Lake Avenue to Third Avenue East along Superior Street as a historically significant area but one which is in need of substantial redevelopment in order maximize its benefits to the community in a manner which respects and fosters its historical significance; and

WHEREAS, DEDA is the owner of the hereinafter described Property consisting of the NorShor Theatre and NorShor Annex, which Property DEDA wishes to have improved or redeveloped as a community theater with skywalk connections from the Greysolon Plaza through

the Temple Opera Building to the Downtown Skywalk System to the west, the hereinafter-described "Project"; and

WHEREAS, Developer is in need of the assistance of DEDA in financing the costs of the Project in order for the Project to be financially feasible; 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; and
- (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 and in other Project documents executed contemporaneously herewith; and
- (III) Exclusive of the tax increment assistance to be provided pursuant to the TIF Payment Agreement, the available resources would be inadequate to construct the entire development and that therefore, but for the tax increment assistance to be provided pursuant to the TIF Payment Agreement, the Project could not reasonably be expected to be constructed in the foreseeable future.

WHEREAS, in order to make the Project financially feasible, it will be necessary for DEDA to lend additional funds as hereinafter provided for to Playhouse for payment of Project costs; and

WHEREAS, Guarantor and Playhouse or affiliated entities as approved by DEDA will be members of a managing member entity created to manage the Developer during the construction and initial operation of the Project and will perform those functions as are set forth in this Agreement and in those documents referenced herein.

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

ARTICLE I

Definitions

For the purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context:

- A. City: shall mean the City of Duluth, Minnesota.
- B. Construction Plans: shall mean the final working drawings and specifications prepared for Developer by Westlake, Reed, Leskowsky and TKDA, listed on Exhibit A attached hereto.
- C. DEED: shall mean the State of Minnesota Department of Employment and Economic Development or the Commissioner thereof, as appropriate.
- D. Contingent Development Payment: shall mean an amount which shall be payable to SA Development in accordance with the provisions of Paragraph B. of Article VIII below as consideration for the development services provided to the Project in accordance with this Development Agreement and as provided for in the Development Services Agreement.
- E. Deferred Development Payment: shall mean an amount of not to exceed One Million Four Hundred Thousand Dollars (\$1,400,000) which shall be payable to SA Development as consideration for the development services provided to the Project in accordance with this Development Agreement and as provided for in the Development Services Agreement and shall be considered Eligible Costs of the Project.
- F. Developer Mortgage: shall mean that mortgage in the form of that attached hereto as Exhibit B and made a part hereof securing the payment of the Developer Note to DEDA.
- G. Developer Note: shall mean that Note in the amount of \$2,300,000 in the form of that attached hereto and made a part hereof as Exhibit C from Developer to DEDA evidencing Developer's debt to DEDA for the conveyance of the Property to Developer.

- H. Developer Operating Agreement: shall mean the Operating Agreement between NorShor Theatre Managing Member LLC and the Master Tenant, as the same is approved by the Executive Director.
- I. Developer Services Agreement: shall mean the agreement between Developer and SA Development pursuant to which SA Development provides development services to the Project as provided for therein.
- J. Disbursing Agent: shall mean Commercial Partners Title LLC, the entity providing disbursing services with regard to the Project as set forth in the Disbursing Agreement.
- K. Disbursing Agreement: shall mean the agreement or agreements between certain of the parties providing funds for the construction of the Project and Disbursing Agent providing for the aggregation of all such funds and the payment of the costs of constructing and developing Project as set forth therein.
- L. Downtown Skywalk System: shall mean the public downtown skywalk system providing enclosed pedestrian passageways and skywalk bridges connecting numerous buildings within the downtown area of the City, the location and nature of which are illustrated on Exhibit D attached hereto and made a part hereof.
- M. Executive Director: shall mean DEDA's Executive Director or the person designated to act on behalf of him/her with regard to this Agreement or any portion thereof.
- N. Grant: shall mean a grant from the State of Minnesota Commissioner of Employment and Economic Development to DEDA, pursuant to Laws of Minnesota, 2014, Chapter 295, Section 10, Subd. 3, of up to Six Million Nine Hundred Fifty Thousand Dollars (\$6,950,000) to DEDA to defray a portion of the costs of the Project which constitute Grant Eligible Costs as determined by the State of Minnesota.
- O. Grant Agreement: shall mean that certain grant agreement between DEDA and DEED setting forth the terms and conditions of the Grant, a copy of which Grant Agreement is attached hereto and made a part hereof as Exhibit E.

- P. Grant Eligible Costs: shall mean costs associated with the design, construction, furnishing, and equipping of public improvements eligible for reimbursement under the Grant, including skywalk access from adjacent public parking, interior circulation, street and utility upgrades connection between the skywalk and street level, handicapped access, and restoration of the lobby, entrance and marquee as part of the restoration and the enhancement and provision of public access to the Project which are eligible to be funded pursuant to the Grant Agreement.
- Q. Guaranty: shall mean that agreement of Guarantor, a copy of which is attached hereto and made a part hereof as Exhibit F, guarantying certain of the obligations of Developer under this Development Agreement and other obligations set forth therein during the term of the guaranty as set forth in said Guaranty Agreement.
- R. Guarantor: shall mean Sherman Associates, Inc., a Minnesota Corporation.
- S. Living Wage: shall mean those packages of wages and benefits required by the Living Wage Ordinance.
- T. Living Wage Ordinance: shall mean Article XXVI of Chapter 2 of the Duluth City Code, 1959, as amended.
- U. Managing Member: shall mean NorShor Theatre Managing Member LLC, a Minnesota limited liability company.
- V. Managing Member Put and Call Agreement: shall mean Managing Member Put and Call Agreement between NorShor Developer LLC, a Minnesota limited liability company and the Playhouse.
- W. Master Tenant: shall mean NorShor Theatre Leasing LLC, a Minnesota limited liability company.
- X. Master Tenant Operating Agreement: shall mean the Operating Agreement between NorShor Leasing Managing Member LLC, and Chase Community Equity, LLC, a Delaware limited liability company, as the same is approved by the Executive Director.
- Y. NorShor Skywalk: shall mean the bridge from the Greysolon Plaza Building Parking Lot on the East, the interior passageway running through the Property and

to the east wall of the Temple Opera Property on the west, and the elevator and stairway access to Superior Street, all as described in the Skywalk Agreement.

- Z. Playhouse: shall mean the Duluth Playhouse, Incorporated, a Minnesota non-profit corporation and as applicable an affiliate thereof formed to serve as a leveraged lender with regard to the provision of new market tax credits to the Project or formed to be a member of Managing Member.
- AA. Playhouse Loan: shall mean a loan from DEDA to the Playhouse in the amount of up to \$3,500,000 to be advanced by Playhouse to Disbursing Agent pursuant to the Playhouse Loan Agreement and the Disbursing Agreement to pay for the costs of construction of the Project, the terms and conditions of which are set out in the Playhouse Loan Agreement.
- BB. Playhouse Loan Agreement: shall mean that agreement between DEDA and the Playhouse setting forth the terms and conditions of the Playhouse Loan.
- CC. Project: shall mean the construction and operation on the Property of the Project having a total development cost of approximately Thirty Million Five hundred Thousand Dollars (\$30,500,000) including a “hard” construction cost of approximately Eighteen Million, Six Hundred Thousand Dollars (\$18,600,000), exclusive of the cost to Developer of acquiring the Property from DEDA, as shown on the Project Budget, and consisting of the following elements. A final Project Budget showing projected total development costs and construction costs will be agreed to between DEDA, Developer and Playhouse and approved in writing by said parties at the time of Closing on the financing of the Project and such final Project Budget shall replace the Project Budget attached hereto as Exhibit G:
- 1.) A theater/performing arts venue having seating for at least 625 patrons.
 - 2.) Performing arts support space including handicapped accessible restroom facilities, studio space, theater offices, orchestra pit, dressing rooms, scenery shop and storage facilities, lobby space, concessions areas and ticketing facilities necessary to support the theater/performing arts space.
 - 3.) Bar and kitchen areas to support food and beverage service to patrons.

- 4.) Office facilities for community arts entities including but not limited to the Playhouse.
 - 5.) Space devoted to uses and activities which will foster and promote community arts activities and uses, the exact nature of which will be subject to on-going discussion and subsequent approval by DEDA, Playhouse and Developer
 - 6.) Skywalk connections from the west wall of the Greysolon Plaza Property to the east wall of NorShor Theatre, through the Property and the Project to the east wall of the Temple Opera Property with a Skywalk connection by means of stairway and elevator to the Superior Street level, through the Theatre and connecting to Superior Street, all as further described in the Skywalk Agreement.
 - 7.) A stairway and elevator complying with requirements of the Minnesota State Fire Code providing access to the first, second and third floors of both the NorShor Theatre and the Temple Opera Property.
- DD. Project Budget: shall mean the budget for the Project showing projected total development costs and construction costs as of the date hereof attached hereto Exhibit G.
- EE. Project Construction Contingency Savings: shall mean the amount of any construction contingency as shown as such in the Project Budget which is not expended to construct the Project in accordance with the Construction Plans and which shall be used in accordance with the provisions of Paragraph B. of Article VIII below.
- FF. Property: shall mean that property in St. Louis County, Minnesota legally described as Tract B, Registered Land Survey No. 132.
- GG. QLICI Mortgage: shall mean the mortgage securing the loans made by CNMC Sub-CDE 113, LLC, BH New Markets Sub-CDE X, LLC, and New Markets Investment 93, LLC to Developer.
- HH. Skywalk Agreement: shall mean the an Agreement pertaining to the NorShor Skywalk substantially in the form of that attached hereto and made a part hereof

as Exhibit H, which grants to the City in trust for the general public easements through the Property and from Greysolon Plaza on the East to the Temple Opera Building to the West with the rights necessary for structural support of the NorShor Skywalk through the Property, structural support for the NorShor Skywalk bridge at the east end of the NorShor Skywalk, ingress and egress to and from the elevator and stairway from the NorShor Skywalk to Superior Street, and which provides for the maintenance and operation of the NorShor Skywalk.

- II. Skywalk Amendment: shall mean an amendment to the Amended and Restated Pedestrian Passageway Agreement Pertaining to Greysolon Plaza, dated as of May 11, 2009, for the extension of the Downtown Skywalk System from the point where a Downtown Skywalk System bridge enters the Greysolon Plaza property over First Alley through the west wall of said property, approved by City, all as described in the Skywalk Amendment.
- JJ. Sub-Grant Agreement: shall mean that Sub-Grant Agreement between DEDA and Playhouse attached hereto as Exhibit I pursuant to which Playhouse will be entitled to draw upon Grant proceeds to pay Grant Eligible costs of constructing the Project subject to the terms and conditions of the Grant.
- KK. Temple Easement Agreement: shall mean the Agreement and which pertains to the elevator and stairway providing access from the NorShor Skywalk to Superior Street and construction of certain improvements to the Temple Opera Building in connection therewith, in the form of that attached hereto and made a part hereof as Exhibit J.
- LL. Temple Opera Building: shall mean the building adjacent to the NorShor Theatre and NorShor Annex and located on the Temple Opera Property that is currently occupied by commercial office and retail tenants.
- MM. Temple Opera Property: shall mean that property in St. Louis County, Minnesota legally described as Tract A, Registered Land Survey No. 132, St. Louis County, Minnesota.
- NN. Theater Lease Agreement: shall mean that lease agreement between the Master Tenant and the Playhouse that describes the rights and obligations of the parties

for the operation and maintenance of the Property and the Project in accordance with this Agreement, including the Theatre Operating Covenant.

OO. Theatre Operating Covenant: shall mean a covenant running with the land for the benefit of the City of Duluth and DEDA guarantying that, for a term of Thirty (30) years after the completion of the Project, the Property and the Project:

- (i) must be operated as a community theater, performing arts and cultural venue as such terms are commonly used in the industry, including live theater, film, music, dance, and education; and
- (ii) must be operated in a first-class manner so as to meet the needs of the performing arts community in the City of Duluth and of the general public; and
- (iii) must be operated in a manner which allows access to and use of the Performance Venue, by a wide and diverse variety of users in the arts and performance community, locally, regionally and nationally;

provided, that said covenant is applied in a manner that allows the Developer:

- (i) to exercise sound business practices pursuant to Paragraph C of Article IX of this Agreement, including a requirement that all users of the Project pay the then current fees applicable to such use;
- (ii) to exercise control over the use of the Performance Venue as is reasonable and customary in the industry including but not limited to availability of the Performance Venue or any portion of the Performance Venue, the payment of then current fees applicable to the use of the Performance Venue or any portion of the Performance Venue, booking practices, ticket sales, and other reasonable and customary terms of uses; or
- (iii) to use its best efforts to find an appropriate theater manager or user to operate the Project during any period that the Project is not in operation to bring the operation of the Project into full compliance with the Covenant.

For the purposes of the Theatre Operating Covenant, the “Performance Venue” shall mean all spaces in the Project except the following spaces which are depicted on Exhibit K attached hereto:

Basement – Wardrobe room and storage spaces

Ground Floor – Tenant space, Warming Kitchen

2nd Floor – Scene Shop, all private office spaces, conference room and private restrooms

3rd Floor – Rehearsal Studios, storage spaces.

PP. TIF Eligible Costs: shall mean those costs which are eligible to be reimbursed from tax increment proceeds under Minnesota Statutes Chapter 469.

QQ. TIF Payment Agreement: shall mean that agreement between Developer, Guarantor, Playhouse and DEDA pursuant to which DEDA agrees to provide certain tax increment assistance to the Project and to reimburse Developer and Guarantor for TIF Eligible Costs of constructing the Project from Eligible Tax Increment in accordance with the terms and conditions set forth in the TIF Payment Agreement.

ARTICLE II

Conditions Precedent to Closing on the Project

As a condition to closing on the Project and DEDA’s performance of its various obligations pertaining to the Project including the conveyance of the Property to Developer and to the commencement of the construction of the Project, the following documentation and the following agreements with regard to the Project shall have received the Executive Director's prior approval thereof in writing as hereinafter required and shall have been executed by the appropriate parties thereto and shall at closing be delivered to the parties appropriate thereto:

A. Project Finance

Copies of loan commitments, proof of allocation and commitments to purchase tax credits and other financial commitments in forms acceptable to the Executive Director obtained by Developer together with evidence of the extent of Developer's equity

participation, if any, in the Project. The financial commitments required by this Paragraph shall be such that they demonstrate to the reasonable satisfaction of the Executive Director that sufficient funding is committed by the documents and agreements to fund all of the costs of constructing the Project in accordance with the approved plans and specifications therefore, to pay all costs associated with designing and permitting the construction of the Project and all costs associated with or required by the financing of the Project and in addition that provide for the long-term operation of the Project without resort to public subsidy of any kind.

B. Construction Plans

Approved plans, specifications and elevations for the construction of the Project, including the NorShor Skywalk as described above and in Article IV below.

C. Construction Contract

A copy of an executed contract between Developer and a general contractor for the construction of the Project and an executed Project Labor Agreement between Developer and the contractor in the form of that approved by the City's City Council, certified by Developer to be a true and correct copy thereof. Said contract shall include a requirement, in a form satisfactory to the Executive Director, requiring the contractor to separately state the amounts of Grant Eligible Costs and TIF Eligible Costs in any request for partial or final payment for work on the Project.

D. Performance Bond

A copy of executed payment and performance bonds provided by the Developer in connection with the construction of the Project, which bonds shall be in the penal amount of not less than one hundred (100%) percent of Project Cost as set forth in Paragraph H below written by a bonding company licensed to do business in the State of Minnesota, certified by Developer to be true and correct copies thereof which name the DEDA as a beneficiary thereof.

E. Project Indemnification and Insurance

Developer will ensure that the contract with the general contractor performing services on the Property shall include requirements that such general contractor agrees to defend, indemnify and hold harmless DEDA and the City of Duluth and to include DEDA and

the City on insurance similar to that ordinarily required by the City for contracts of those types.

F. Developer Loan Documents

A fully executed copy in recordable form of the Developer Mortgage and a fully executed copy of the Developer Note.

G. Playhouse Loan Documents:

A fully executed copy of the Playhouse note and a fully executed copy of the Playhouse Loan Agreement.

H. Project Cost

A sworn construction cost statement showing that upon completion of the Project, it will have a “hard” construction cost of approximately Eighteen Million Six Hundred Thousand and 00/100s (\$18,600,000.00) Dollars, exclusive of the cost to Developer of acquiring the Property from DEDA as set forth in Article III below. The aforesaid construction cost statement shall be subject to the approval of the Executive Director, which approval shall not be unreasonably withheld. Provided, however, if the Executive Director determines in the reasonable exercise of his discretion that the Project will be completed in accordance with the approved Construction Plans at a cost less than the amount set forth above, he may waive the requirements of this paragraph in writing.

I. Theater Lease Agreement

A copy of a fully executed Theater Lease Agreement in a form satisfactory to the Executive Director guarantying the operation of the Property and the Project for the term of the Theater Lease Agreement at no cost to DEDA or the City of Duluth unless otherwise agreed to by separate agreement.

J. Skywalk Agreements

A fully executed Skywalk Agreement, Skywalk Amendment and Temple Easement Agreement in recordable form.

K. District Heating Commitment

A commitment to use the City’s district heating system to heat the property for at least the term of this Agreement unless the City terminates said district heating system or releases Developer and the property from the obligations of this Paragraph, which

agreement shall be subject to the approval of the Executive Director. Developer's commitment hereunder is contingent on the City receiving a commitment of funds from the State of Minnesota to modernize and convert said system by May 25, 2016.

L. Disbursing Agreement

The Disbursing Agreement in a form approved by Executive Director and by DEED and of the office of Minnesota Management and Budget of the State of Minnesota fully executed by all necessary parties.

M. Additional Documents

Fully executed copies of the Guaranty Agreement, the TIF Payment Agreement, the Sub-Grant Agreement and the Development Services Agreement, executed by the appropriate parties thereto.

ARTICLE III

Sale of DEDA Property

Upon fulfillment of Developer's obligation pursuant to Article II above, DEDA agrees to convey to Developer by quit claim deed (the "Deed") and Developer shall take from DEDA the Property for the amount of Two Million Three Hundred Thousand Dollars (\$2,300,000), payable at closing in the form of the Developer Note and Developer Mortgage, subject to all of the terms, covenants and conditions of this Agreement.

A. Title

DEDA agrees that it will convey "insurable title" to the Property and will provide a title commitment for an ALTA Form B owner's policy of title insurance, insuring title to the Property, in the amount of Two Million Three Hundred Thousand Dollars (\$2,300,000), issued by a title company and agent authorized to do business in the State of Minnesota at least fifteen (15) days prior to the closing date agreed to by the parties. Developer shall pay all premiums required for the issuance of any owner's title policy.

B. Conditions and Restrictions

The conveyance of title shall be subject to covenants, conditions, restrictions, declarations, easements and encumbrances of record; the reservation of minerals

and mineral rights by the State of Minnesota; unpaid real estate taxes and assessments; restrictions related to the use or improvement of the Property without effective forfeiture provision; and any law, ordinance, or governing regulations including but not limited to building and zoning ordinances restricting, regulating or prohibiting the occupancy, use, enjoyment, improvement or subdivision of the property. In addition, but subject to the subordination provisions of Article XXVI of this Development Agreement, the conditions and restrictions under this Development Agreement shall be conditions and restrictions under the Deed.

C. M.S. 469.105 Conditions

In addition to the foregoing the Deed shall be conditioned upon the fulfillment by Developer of its construction obligations under this Agreement and shall incorporate, as a covenant running with the land, the conditions of Minnesota Statutes Sections 469.090 to 469.108 related to the land. It shall further provide that if the covenant required pursuant to Minnesota Statutes Section 469.105 Subd. 5 is violated, DEDA may declare a breach of the covenant and seek a judicial decree from the District Court declaring a forfeiture and cancellation of the Deed. DEDA agrees that the rights granted to DEDA hereunder are subordinate to the Project's lenders approved by DEDA but only to the extent legally permissible under the above-cited Statutes.

D. Theatre Operating Covenant

In addition to the foregoing the Deed shall contain the Theatre Operating Covenant and the Theatre Operating Covenant shall run with the land for the benefit of the City of Duluth and DEDA.

E. Notes and Mortgages

Consideration for the purchase of the Property shall be in the form of the Developer Note bearing interest at the rate of Zero (0%) Percent in the amount of \$2,300,000 secured by the Developer Mortgage with a maturity date of forty (40) years after the date of Project completion.

F. Recording

Developer shall promptly file the Deed conveying the Property in the Office of the Saint Louis County Registrar of Titles and shall pay all costs associated with recording the Deed. Upon recordation of the Deed, Developer shall, as soon as it is available to Developer from St. Louis County, submit to DEDA an executed original of the Deed showing the date and document numbers of record, or a fully-conformed copy of the filed original showing the date and document numbers of record.

ARTICLE IV

Project Plans

A. Plans, Specifications and Elevations

The Construction Plans are hereby approved.

B. Changes After Initial Approval

Any changes made to Construction Plans by Developer after initial approval shall be submitted to the Executive Director and if such changes are determined to be material or significant by the Executive Director in his or her reasonable discretion, they shall be subject to approval by the Executive Director pursuant to the following process: no less than fifteen (15) days prior to the commencement of construction of any such changes but specifically including plans and specifications for the NorShor Skywalk, or such lesser time as approved by the Executive Director, Developer shall submit working drawings, specifications and elevations for the changes to the Project together with detailed site, grading, utility and landscaping plans and elevations, as the Executive Director reasonably deems necessary, to the Executive Director for approval except as hereinafter provided for. Said Plans and specifications shall provide for the structures on the Property to be heated exclusively by energy supplied by the City's district heating system, subject to the limitation of such commitment as set forth in Article II, Paragraph K above. All such plans, specifications and elevations shall be in conformity with this Agreement, with the construction Plans and with all applicable laws, ordinances, rules, regulations and requirements of the City, State

of Minnesota and United States of America Authorities; said plans and specifications shall also conform substantially with any environmental assessment worksheet or environmental impact Statement for the Project required by law therefore. The Executive Director shall have ten (10) days to accept or reject any changes to the plans, specifications or elevations. If the Executive Director rejects such plans, specifications and elevation in whole or in part as not being in compliance with the foregoing requirements, and upon notification to Developer of said rejection together with the reason or reasons therefore, Developer shall submit new or corrected plans, specifications and elevations meeting said objections within thirty (30) days of said notice. The provisions of this Subparagraph relating to approval, rejection and resubmission of corrected plans hereinabove provided for with respect to the originally submitted plans, specifications and elevations shall continue to apply until said plans, specifications and elevations have been approved by the Executive Director. The Executive Director's acceptance of Developer's plans, specifications and elevations shall not constitute a waiver of building code or ordinance or other developmental duties imposed in the future upon Developer by law. Developer expressly agrees to be solely responsible for all costs, including architectural fees connected with said changes to the Construction Plans and any revisions thereto.

ARTICLE V

Construction

A. Construction of Project

Upon the fulfillment of the Conditions Precedent to Closing provided for in Article II above and subject to the provisions of Article III above but in no event later than May 31, 2016, Developer shall promptly commence construction of the Project in conformance with the plans developed pursuant to Article IV above. Construction of the Project as herein defined shall be completed no later than December 31, 2018 except as hereinafter set forth in this Agreement.

B. Developer to Bear All Costs of Project

Subject to the terms and conditions of this Agreement, Developer specifically guarantees and agrees to bear all costs related to the development, completion and operation of the Project and any modifications thereto.

C. Progress Reports

Until construction of the Project has been completed, Developer shall make reports in such detail and at such times as may reasonably be requested by DEDA as to the actual progress of construction with respect to each such Project.

D. Certificate of Completion

Promptly upon completion by Developer, in accordance with this Agreement, of the construction of the Project, DEDA shall furnish to Developer an appropriate certificate so certifying. No such certification shall be issued until all elements of the Project have been completed. Such certification by DEDA shall constitute a conclusive determination of satisfaction of construction obligations of Developer undertaken pursuant to this Agreement.

ARTICLE VI

The Grant, Grant Funds and Grant Eligible Costs

A. Grant Agreement

The Grant is for the purpose of facilitating the development of the Project. It includes conditions, limitation and requirements and obligations, many of which will need to be fulfilled by Developer, as the owner of the Project, or which cannot be performed solely by DEDA without the cooperation and assistance of Developer. Therefore, Developer hereby agrees, for itself and its successors in interest if any, that it will be bound to perform all obligations of DEDA under the Grant Agreement to the extent that it can perform such obligations and, to the extent that any such obligation is of such a nature or character that it can only be performed by DEDA, it will cooperate fully and assist to the extent that it can DEDA in the performance of such obligations.

B. Reimbursement of Grant Eligible costs

Developer may from time to time seek reimbursement of Grant Eligible Costs incurred in the construction of the Project in accordance with the terms of the Disbursing Agreement. Developer shall be entitled to request such reimbursement from Grant proceeds in accordance with the terms of the Grant Agreement and the Sub-Grant Agreement.

ARTICLE VII

Playhouse Loan Funds

Pursuant to the Playhouse Loan Agreement, DEDA has agreed to lend to Playhouse up to \$3,500,000 for disbursement by the Disbursing Agent under the terms of the Disbursing Agreement to pay for a portion of the costs of constructing the Project. The terms and conditions of said loan to Playhouse shall be those set forth in the Playhouse Loan Agreement and the Playhouse Note. It is understood and agreed that the form of said Loan must be agreed to by new market tax credit and historic tax credit investors providing funds for the construction of the Project.

ARTICLE VIII

Construction Cost Disbursements

A. Generally

All payments for costs of constructing the Project, including so-called “soft-costs” shall be paid by the Developer, the Playhouse and the Guarantor to the Disbursing Agent or by other parties providing funds to the Disbursing Agent who shall make all payments to the appropriate payees thereof in accordance with the terms of the Disbursing Agreement, this Development Agreement and the Grant Agreement. In addition all payments to be made from Grant Funds shall conform to requirements of DEED and of the office of Minnesota Management and Budget of the State of Minnesota. Developer may allocate, reduce, and in all respects manage the “soft-costs” shown on the Project Budget. Developer and DEDA agree that any change to “hard-costs” shown on the Project Budget shall be made in accordance with this Agreement.

B. Unexpended Contingency

The budget for the Project includes a construction contingency amount of [\$1,662,324]. To the extent that said contingency is not required to complete the Project in accordance with the Construction Plans, such unexpended amount shall be used as follows:

(1) first, up to \$700,000 of the unexpended contingency shall be allocated in the following order: (a) up to the first \$300,000 shall be used to reimburse Guarantor or its affiliate for advances made for Project costs; (b) up to the next \$352,941 shall be allocated 85% to Guarantor or its affiliate and 15% to Playhouse, to reimburse each of them respectively for advances made for Project costs; and (c) any remaining balance of the \$700,000 shall be used to reimburse Playhouse for advances made for Project costs; and

(2) second, to incorporate any enhancements to the Project mutually agreed to by the Developer, DEDA, the Playhouse and the Guarantor, and

(3) third, any remaining balance net of adjustment to credits available to the Project, shall be applied fifty percent (50%) to the Contingent Developer Fee and fifty percent (50%) to reduce the balance of the Playhouse Loan.

DEDA, Developer, Guarantor and SA Development agree to work cooperatively together to locate additional contingency funds for the Project after the Closing. Any such additional contingency funds shall be applied in the order set forth above. The Playhouse agrees to accept any such additional contingency funds and advance the funds to the Project or to otherwise work cooperatively with the other parties hereto to structure any such additional contingency funds in any manner that may be necessary or desirable to the Project that does not create any financial or any other potential liability that is not acceptable to the Playhouse.

ARTICLE IX

Developer's Operating Covenant

Developer further covenants and agrees that in its operations and use of the Project and the Property it will:

A. Theater Operating Commitment

Developer agrees and commits to operate the Project and the Property in conformance with the Theatre Operating Covenant.

B. Nondiscrimination

Agree and commit to not engage in discriminatory employment practices or discriminate in granting access to the Project for various elements of the arts and performance community in its operation or management of the Project and the Facility, and shall, with respect to such activities, fully comply with all of the provisions contained in Minn. Stat. Chapters 363A and 181 that exist as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

C. Sound Business Practices

Subject to the other requirements of this Agreement, agree and commit to use its best efforts to operate the Project in manner consistent with sound business practices in order to insure that the Project can generate sufficient revenues to meet its operating obligations and to insure the long-term financial stability and operating success of the Project.

D. Maintenance

At all times cause the Project and the Property to be operated, and maintained in a neat, orderly condition, to maintain and preserve and keep in good repair, working order and condition said Project and Property and to perform all needful and proper repairs, renewals and replacements necessary to be made thereto. The obligation to maintain the Project and the Property shall include but not be limited to maintenance of all foundations, external walls, doors, windows, utility openings and all roofing systems. Developer shall also be responsible for maintenance of the Property outside of the Project, including snow removal and landscape maintenance and all other exterior maintenance to said Property.

E. Utilities

Pay any and all charges for utilities furnished to the Project and the Property including but not limited to hook-up charges and assessments related to all utilities, including but not limited to steam, water, sewer, gas, telephone, cable TV and electrical power.

F. Licenses and Permits

Preserve Developer's existence and all of its licenses, permits and consents to the extent necessary and desirable to the operation of its business and affairs and to be qualified to do business in each jurisdiction where its ownership of property or the conduct of its business requires such qualifications; provided, however, that nothing herein contained shall be construed to obligate it to retain or preserve any of its licenses, permits or consents which are no longer useable.

G. ObeY All Laws

Conduct its affairs and carry on its business and operations in such a manner as to comply with any and all applicable laws of the United States and the several states thereof and duly observe and conform to all valid orders, regulations and requirements of any governmental authority related to the conduct of its business and the ownership of the Property; provided that nothing herein contained shall require it to comply with, observe and conform to any such law or regulation or requirement so long as the validity thereof shall be contested by Developer in good faith through proper legal action provided that such protest shall in no way affect Developer's title to the Property.

H. Payment of Taxes

Promptly pay or cause to be paid all lawful taxes and governmental charges, including real estate taxes and assessments at any time levied upon or against it or the Property.

I. Assessment Fees and Charges

To pay or cause to be paid when due or payable all special assessments levied upon or with respect to the Property, or any part thereof, except as the same is paid by City and to pay all fees, charges and rentals for utilities, service or

extensions for the Property and all other charges lawfully made by any governmental body for public improvements, except as the same are paid by City.

J. Obligations and Claims

Promptly to pay or otherwise satisfy and discharge all of the obligations and indebtedness and all demands and claims against as and when the same becomes due and payable other than any thereof whose validity, amount or collectability is being contested in good faith by appropriate proceedings.

ARTICLE X

Conveyance of the Property

A. Generally

Developer hereby covenants and agrees that for a term of at least ten (10) years from and after the date of this Agreement Developer will not sell or convey in any manner whatsoever, unless compelled to do so by valid order of a court of competent jurisdiction, the Property or any interest therein to any third party. The limitation in the immediately preceding sentence does not prohibit liens or encumbrances necessary for the financing of the Property or the Project, any lease of the Property or the Project, including the Theatre Lease Agreement, nor the acquisition of the Property by way of foreclosure, deed-in-lieu of foreclosure or other proceeding by a lender holding a mortgaged interest in the Property nor any of its successors, assigns, nominees or any purchaser. As a condition of any conveyance of the Property or of any structure located thereon, Developer, Guarantor and Playhouse shall have met all of their obligations under this Agreement as of the date of such conveyance. If any amount remains outstanding on the Developer Note or the Playhouse Note at the time of conveyance, the transferee may assume either or both Notes if approved by DEDA pursuant as resolution of the Board thereof and subject to such terms as the DEDA Board shall approve.

B. Conveyance to the City.

If the Playhouse or an affiliate of the Playhouse does not become the 100% owner of the Managing Member pursuant to the terms of the Managing Member Put and Call Agreement, then Developer may convey the Project to City and the City shall accept such conveyance subject to existing encumbrances described in the Deed, obligations to DEDA under the Grant, the Developer Note and Developer Mortgage, the Playhouse Loan Agreement and the Playhouse Note, and other liens, encumbrances or restrictions that have been placed on the Project for the development described herein and accepted by City.

ARTICLE XI

Provision Against Liens, Assignments and Transfers

A. Provision Against Liens

Except for encumbrances permitted pursuant to Paragraph B below, the Developer shall not create or permit any mortgage, encumbrance or allow any 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. Provision Against Assignments, Transfers or Change in Identity of Developer

The parties hereto acknowledge that DEDA is relying upon the qualifications and identity of Developer to develop and construct the Project. Therefore, except for the purposes of obtaining financing as hereinafter described and otherwise approved by this Agreement (which transfers are hereby deemed approved), Developer represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or

their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Project, the Property, the Developer, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder prior to the issuance of the Certificate of Completion described in Paragraph D of Article V above; and except for mortgaging approved in writing by the Executive Director and the admission of the Master Tenant as a member of Developer, Developer will not make or create or suffer to be made any such transfer of Developer's rights hereunder without the prior approval of DEDA. For the avoidance of doubt, the acquisition of the Property by way of foreclosure, deed-in-lieu of foreclosure or other proceeding by a lender holding a mortgaged interest in the Property or by any of its successors, assigns, nominees or any purchaser pursuant to such foreclosure, deed-in-lieu of foreclosure or other proceeding shall not require any consent.

ARTICLE XII

First Source Commitment

Developer agrees that it will provide an advanced opportunity to entry-level employment to participants in the City's Job Training Program by notifying the City of its intent to hire employees to such positions, giving the number of positions to be filled, position descriptions and requirements before generally advertising said positions to the general public. The obligation of Developer pursuant to this Paragraph shall continue for a period of ten (10) years after the date first above shown or the termination of the Program, whichever occurs first.

ARTICLE XIII

Living Wage Covenant

Developer specifically agrees that it shall abide by the requirements of the Living Wage Ordinance and that it shall specifically pay its employees in conformance therewith. Developer further commits to DEDA that, as an obligation running with the land, it will require that

employees of any non-residential person or entity occupying the Property also be paid in conformance with the Living Wage Ordinance.

ARTICLE XIV

Indemnification By Developer

A. Generally

Developer 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:

1. Any injury to or death of any person or damage to property in or upon the Project or the Property or growing out of or in connection with the use or non-use, condition or occupancy of the Project or the Property or any part thereof and the construction or installation of the Project on any portion of the Project and the Property. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the Developer, and Playhouse customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.
2. Any violation by Developer, Guarantor and Playhouse of any provision of this Agreement.
3. Any violation of any contract, agreement or restriction related to the Project which shall have existed at the commencement of the term of this Agreement or shall have been approved by the Developer, Guarantor and Playhouse.
4. Any violation of any law, ordinance, court order or regulation affecting the Project or the Property, or the ownership, occupancy or use thereof.

B. Environmental Indemnification

In addition to the generality of the foregoing above, Developer, Guarantor and Playhouse hereby agree that for themselves, their successors and assigns that they will indemnify and save the DEDA and the City of Duluth and their officers, agents, servants and employees and any person who controls the DEDA or the City within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition created in the Project or the Property after the date of the signing of this Agreement which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence in the Project or the Property of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons or damage to property and that indemnification granted hereby shall include all costs of clean-up, remediation, together with the costs incurred in proceedings before court of law or administrative agency including attorney's fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems, including expert witnesses, the costs of preparing and securing approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies and any other costs and expenses of any kind whatsoever arising out of such conditions existing in the Project or on the Property. Notwithstanding the foregoing, the Guarantor and the Playhouse shall each only be responsible for an indemnity obligation under this Section if and to the extent the Developer, the Guarantor or the Playhouse, or any of their officers, agents, servants, employees, contractors and subcontractors, as applicable, actually caused or failed to prevent the environmental violation. If the Guarantor or Playhouse incurs an indemnity

obligation under this Paragraph due to a failure to prevent an environmental violation, the Guarantor and the Playhouse each retain any rights they may have to seek recovery from the person who caused the environmental violation.

C. Indemnification Procedures

Promptly after receipt by DEDA or the City of notice of the commencement of any action with respect to which the other party is required to indemnify the party receiving such notice under this Article, such indemnitee shall notify the indemnitor in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, the indemnitor shall assume the defense of such action, including the employment of counsel satisfactory to the indemnitee and the payment of expenses. In so far as such action shall relate to any alleged liability of the indemnitee with respect to which indemnity may be sought against the indemnitor, the indemnitee shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of the indemnitor.

ARTICLE XV

Insurance

Developer shall provide for purchase and maintenance of such insurance as will protect Developer, DEDA and the City against risk of loss or damage to the Project and the Property and any other property permanently located or exclusively used at the Project site and against claims which may arise or result from the maintenance and use of the Project, including operations conducted in connection with construction of improvements thereupon. Such coverages shall include but shall not necessarily be limited to the following.

A. Insurance During Construction

Developer, prior to entering on the Property for construction work, shall procure or cause to be procured and maintain or require all contractors to procure and maintain the following insurance at not less than the limits of coverage or liability indicated during the period of construction as follows:

1. Property Insurance

Developer shall provide All Risk builders' risk insurance under a completed value form on all work on the Project, including foundations, permanent fixtures and attachments, machinery and equipment included in or installed under the construction contract, debris removal, architects' and engineers' fees, temporary structures, materials, equipment and supplies of all kinds located on the project, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed Fifty Thousand and 00/100ths (\$50,000.00) Dollars per occurrence. Said insurance shall be endorsed to provide consent for occupancy of the Project and shall be maintained in effect until permanent property coverage as provided for hereinafter is in force. Such insurance shall be written in the names of Developer, DEDA, any subtenant and contractor, as their interest may appear. Contractor, all subcontractors, and suppliers and Developer shall waive all rights against DEDA for damages caused by fire or insured perils, except such rights as are set forth hereunder to the proceeds of such insurance payable in the event of such loss. The State of Minnesota shall be named as an additional insured with regard to the insurance required by this sub-subparagraph.

2. Public Liability Insurance

Public Liability Insurance written on an occurrence basis under a Comprehensive General Liability Form with Broad Form property damage liability coverage, with XCU exclusion removed, in limits of not less than Five Million and 00/100ths (\$5,000,000.00) Dollars aggregate per occurrence for personal injury, bodily injury and death, and limits of Five Hundred Thousand and 00/100ths (\$500,000.00) Dollars for property damage liability. If per person limits are specified, they shall be for not less than One Million Five Hundred Thousand and 00/100ths (\$1,500,000.00) Dollars per person and be for the same coverages. Contractor shall also require such liability coverage of its subcontractors

unless they be insured under contractor's policies. Contractor's and subcontractors' liability coverages shall include:

- a. Contractors' public liability--premises and operations;
- b. Independent contractors' protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned, and hired vehicles;
- e. Contractual liability covering customary construction contract and subcontract indemnify provisions; and
- f. Workers' Compensation coverage in required statutory limits. Policy shall carry an all states endorsement. In addition, employers' liability coverage shall be maintained in limits of One Hundred Thousand and 00/100ths (\$100,000.00) Dollars per employee.

B. Permanent Insurance

Developer shall procure and continuously maintain, except as otherwise provided below, insurance covering all risks of injury to or death of persons or damage to property arising in any way out of or as a result of Developer's ownership of, occupancy of or use of the Project and the Property, carried in the names of the Developer, any subtenant and DEDA as their respective interests may appear, as follows:

1. Property Insurance

From and after the date of acceptance of the project and prior to expiration of the buildings' risk coverage specified above, the Project and the Property, including all fixtures, equipment and machinery, shall be insured to the full replacement value thereof against all risk of Direct Physical Loss, except that such insurance may provide for a deductible amount not to exceed Fifty Thousand and 00/100ths (\$50,000.00) Dollars per occurrence. For the purposes hereof, all risk means insurance equivalent in scope to protect against all risks of direct physical loss ordinarily insured against in the region. Developer hereby waives any and all claims

or causes of action against DEDA for damages caused by an insured peril hereunder, except such rights hereinafter set forth to an interest in the insurance proceeds payable in the event of such loss. In time of war in which the United States of America is a belligerent, the Developer will procure and maintain continuously in effect such insurance as may be available from the United States of America to the extent of the full replacement value of the project and insuring against loss thereof or damage thereto from the risks and hazards of war, provided that the cost of such insurance is economically reasonable. The State of Minnesota shall be named as an additional insured with regard to the insurance required by this sub-subparagraph.

2. Liability Insurance

During the construction period (unless covered under the policies required previously) and permanently thereafter for the balance of the term of this Agreement, the Developer shall procure and maintain continuously in force Public Liability Insurance written on an occurrence basis under a Comprehensive General Liability Form in limits of not less than Five Million and 00/100ths (\$5,000,000.00)

Dollars aggregate per occurrence for personal bodily injury and death, and limits of Five Million and 00/100ths (\$5,000,000.00) Dollars for property damage liability. If person limits are specified, they shall be for not less than One Million Five Hundred Thousand and 00/100ths (\$1,500,000.00) Dollars per person and be for the same coverages. DEDA shall be named as an additional insured therein. Insurance shall cover:

- a. Public liability, including premises and Operations coverage;
- b. Independent contractors—protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned and hired vehicles;

- e. Contractual liability covering the indemnity obligations set forth herein; and
- f. Products--completed operations.

3. Workers' Compensation

Worker's Compensation Coverage in statutory amounts with all states endorsement unless qualified as a self-insurer under Minnesota Law, and evidence of such qualification is furnished to the DEDA. Employees' liability insurance shall be carried in limits of One Hundred Thousand and 00/100ths (\$100,000.00) Dollars per employee.

C. Modification of Insurance Requirements

It is agreed between the parties that DEDA shall have the right to modify the forms of the insurance provided for in Paragraphs A and B above and the limits set forth with regard thereto provided that any such modification and policy forms or limits shall be of such a character and in such amounts as are reasonably necessary to provide DEDA with the types and amounts of protection provided for in this Agreement at the time of its execution. In the event that DEDA shall desire to so modify said insurance requirements, DEDA shall notify Developer of the proposed modifications not less than sixty (60) days prior to the date set by DEDA for said modifications to go into effect. In the event that Developer believes said modifications to be unjustified under the standards set forth in this Paragraph, Developer shall promptly notify DEDA and the parties hereto agree to meet as soon as practical thereafter and to negotiate in good faith the character and amounts of any said modifications meeting the standards hereinbefore set forth.

D. Requirements for All Insurance

All insurance required in this Article XV shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in Minnesota.

E. Certifications

The Developer shall be required to supply to the DEDA written certifications of insurance as required by the DEDA requiring the insurer to give the DEDA thirty (30) days' written notice prior to cancellation or modification of said insurance.

F. Reconstruction Obligation and Uninsured Loss

In the event the Project or any portion thereof is damaged by fire or other casualty, the Developer shall forthwith repair, reconstruct, and restore the improvements to substantially the same scale and condition, quality, and value as existed prior to the event causing such damage, and to the extent necessary to accomplish such repair, reconstruction, and restoration, the Developer shall apply the proceeds of any insurance received by the Developer to the payment or reimbursement of the costs thereof. The Developer shall, however, complete the repair, reconstruction and restoration of the improvements whether or not the proceeds of any insurance received by the Developer are sufficient to pay for such repair, restoration, and reconstruction. Provided, however, in the event that Developer can demonstrate to the reasonable satisfaction of the Executive Director that the damage to the Project is so extensive as to render physical restoration of the Project impractical or, if restored as required by this Paragraph, the Project would not be economically viable due to circumstances beyond the control of Developer, the Executive Director may relieve Developer of such restoration obligations. For purposes of the immediately preceding sentence, if the Minnesota State Historic Preservation Office determines that the Project is no longer eligible for historic tax credits, restoration of the Project shall be deemed no longer economically viable and the Developer shall be relieved of any restoration obligations. In the event that Developer is so relieved of its restoration obligations, the obligations of both parties hereunder are terminated, including any obligation of DEDA to pay to Developer all or any portion of the Eligible Tax Increment from the Property as provided for in the TIF Payment Agreement and neither party shall thereafter have any rights or obligations to the other under this Agreement.

ARTICLE XVI

Defaults and Remedies Therefore

A. Developer Defaults and Remedies

1. General Events of Default

The following shall be deemed to be general events of default by Developer under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable except as otherwise set forth in this Agreement.

- a. Failure to pay Ad Valorem Real Estate Taxes as and when due and payable.
- b. Developer 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 Developer 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 Developer 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 said (60) day period and to diligently pursue the same to completion.
- c. Developer shall permit valid liens, not cured or contested within sixty (60)) days, to be placed on the Building or Property or Developer loses title to the Building or Property or both with the exception of assignments approved pursuant to the terms of this Agreement.
- d. Developer makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency as made as to Developer or its business; or Developer files a petition of bankruptcy or files a petition seeking any reorganization,

dissolution, liquidation, or rearrangement, composition, readjustment or similarly under any present or future bankruptcy or insolvency, statute, law or regulation; or Developer files an answer admitting to or not contesting to the material allegations of a petition filed against in such proceeding or fails to have dismissed or vacated within sixty (60) days after its filing such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of Developer's properties or fails to have dismissed or vacated within sixty (60) days after the appointment without the consent or acquiescence of Developer of any trustee, receiver or liquidator of any material part of Developer's properties.

- e. Developer fails to complete its obligations under Article V as set forth above on or before December 31, 2018.
- f. Developer sells, conveys, transfers or assigns in any manner its interest in the Property or any portion thereof other than as provided in Article X as set forth above without the prior written consent of DEDA or of its successors in interest if any.

2. General Remedies

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

- a. Seek and be entitled to monetary damages from Developer for any damages, which damages shall be subordinate to the payments due under the loans secured by the lien of the QLICI Mortgage.
- b. Suspend making payments of Captured Tax Increment to Developer as provided for in the TIF Payment Agreement unless and until such default is cured to the Executive Director's reasonable satisfaction.
- d. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Developer's violation of the terms and

conditions of this Agreement or to compel Developer's performance of its obligations hereunder.

- e. At the request of DEDA or its assignee, transfer ownership of the Property, including the structures thereon to DEDA or such assignee free and clear of all encumbrances or liens of any kind except liens approved by DEDA for the construction of the Project. Notwithstanding the forgoing, DEDA agrees that it shall not exercise the remedy described in this Subparagraph e. for as long as any party providing financing for the Project that is approved by DEDA that holds a mortgage having priority over the Developer Mortgage continues to hold such Mortgage, including the QLICI Mortgage. Further, the remedy described in this Subparagraph e. shall not survive any foreclosure of the QLICI Mortgage by the lenders thereunder. .
- f. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.

3. Notice to and Cure available to Third Parties.

DEDA agrees to provide written notice to each third party listed as third parties in Article XXIV of this Agreement of any event of Default by Developer under this Agreement and to allow such third party (a) thirty (30) days after receipt by the third party of such notice to cure such default, or (b) such longer period after such date of receipt as may have otherwise been available to the Developer pursuant to Section 1 above, together with a reasonable period of time in addition thereto during and after any litigation action including a foreclosure, bankruptcy, possessory action or a combination thereof, if the default is of such a nature that possession of the Property is required.

B. DEDA Defaults and Remedies

1. General Events of Default

The following shall be deemed to be general events of default by DEDA under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable except as otherwise set forth in this Agreement.

- a. DEDA shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar days after Developer has, pursuant to the provisions of this Agreement, given written notice to DEDA of such default or, in the event that such default shall be incapable of cure during said thirty (30) 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. The failure of DEDA to abide by any of the terms and conditions of the TIF Payment Agreement, the Grant Agreement, any Playhouse Loan documents, or other agreements or documents, which constitute obligations of DEDA with respect to the Project.

2. General Remedies

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

- a. Seek and be entitled to monetary damages from DEDA for any damages, including consequential damages incurred by Developer as a result of DEDA's default.
- b. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent DEDA's violation of the terms and conditions of this Agreement or to compel DEDA's performance of its obligations hereunder.
- c. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to Developer.

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.

ARTICLE XVII

Force Majeure

Under the terms of this Agreement, neither the DEDA nor Developer shall be considered in default or in breach of any of the terms with respect to the performance to their respective obligations under this Agreement in the event of enforced delay in the performance of its obligations due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to acts of God, acts of a public enemy, acts of the federal government, acts of another party, fire, floods, epidemics, strikes or embargoes, or for delays of subcontractors due to such causes. In the event of any such delay, any time for completion or

delivery under this Agreement shall be extended for the period of any such delay upon written notice from the party seeking the extension to the other party.

ARTICLE XVIII

Representations by DEDA

DEDA represents and warrants that as of the date hereof:

- A. It is a lawfully constituted economic development authority under the laws of the State of Minnesota, it is not a material violation of any provisions of State law and that it has full power and authority to enter into this Agreement and perform its obligations hereunder.
- B. There are not actions, suits or proceedings pending, or to the knowledge of DEDA, threatened against DEDA or any property of DEDA in any court or before any Federal, State, municipal or governmental agency which, if decided adversely to DEDA, would have a material adverse effect upon DEDA or any business or property of DEDA or the DEDA Portion and DEDA is not in default with respect to any order of any court or government agency.
- C. DEDA has investigated and has no knowledge that the DEDA Executive Director or other member, official, or employee of DEDA is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement.
- D. DEDA shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement or otherwise delivered to any third parties under this Agreement to be true, correct and complete in all material respects.

ARTICLE XIX

Developer's Representations and Warranties

Developer represents and warrants that as of the date hereof:

- A. It is a lawfully constituted limited liability company 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. It is fully competent to acquire the Property and to construct and equip the Project thereon under all laws, rulings, regulations and ordinances of any governmental authority having jurisdiction and that it agrees to comply with all applicable State, Federal acquisition and relocation laws, wages and hours laws, including Davis-Bacon and local versions thereof or similar laws at its own expense.
- C. There are no actions, suits or proceedings pending or, to the knowledge of Developer, threatened against Developer or any property of Developer in any court or before any Federal, State or municipal or other governmental agency which, if decided adversely to Developer could have a material adverse effect upon Developer or the Property and the Project, and that Developer is not in default of any order of any court or governmental agency.
- D. It is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been occurred.
- E. That Developer has investigated and has no knowledge that any officer, director, agent or employee of Developer is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement.
- F. Developer shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement delivered to any third party under this Agreement to be true, correct and complete in all material and respects. If necessary Developer agrees to perform any survey work prior to construction and all descriptions and exhibits hereto and definitions herein shall be subject to such revisions as are necessary after completion of any survey.
- G. Despite its best efforts to do so, Developer has been unable to secure sufficient financing from other sources of funds at interest rates which were not prohibitive to finance the cost of construction of the Project and, therefore, that without the

provision of the amount of tax increment assistance provided by DEDA pursuant to the TIF Payment Agreement, Developer could not have developed the Project on the Property and operated the same in the reasonably foreseeable future.

ARTICLE XX

Playhouse's Representations and Warranties

Playhouse represents and warrants that as of the date hereof:

- A. It is a lawfully constituted non-profit 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. It is fully competent to participate in the acquisition of the Property and construction and equip the Project thereon as described in this Agreement under all laws, rulings, regulations and ordinances of any governmental authority having jurisdiction and that it agrees to comply with all applicable State, Federal acquisition and relocation laws, wages and hours laws, including Davis-Bacon and local versions thereof or similar laws at its own expense.
- C. There are no actions, suits or proceedings pending or, to the knowledge of Playhouse, threatened against Playhouse or any property of Playhouse in any court or before any Federal, State or municipal or other governmental agency which, if decided adversely to Playhouse could have a material adverse effect upon Playhouse or the Property and the Project, and that Playhouse is not in default of any order of any court or governmental agency.
- D. It is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been occurred.
- E. That Playhouse has investigated and has no knowledge that any officer, director, agent or employee of Playhouse is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement.

- F. Playhouse shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement delivered to any third party under this Agreement to be true, correct and complete in all material and respects.

ARTICLE XXI

Guarantor's Representations and Warranties

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. It is fully competent to participate in the acquisition of the Property and construction and equip the Project thereon as described in this Agreement under all laws, rulings, regulations and ordinances of any governmental authority having jurisdiction and that it agrees to comply with all applicable State, Federal acquisition and relocation laws, wages and hours laws, including Davis-Bacon and local versions thereof or similar laws at its own expense.
- C. There are no actions, suits or proceedings pending or, to the knowledge of Guarantor, threatened against Guarantor or any property of Guarantor in any court or before any Federal, State or municipal or other governmental agency which, if decided adversely to Guarantor could have a material adverse effect upon Guarantor or the Property and the Project, and that Guarantor is not in default of any order of any court or governmental agency.
- D. It is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been occurred.
- E. Guarantor shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this

Agreement delivered to any third party under this Agreement to be true, correct and complete in all material and respects.

ARTICLE XXII

Term

Except as otherwise specifically provided for herein, the term of this Agreement shall run from the date first above shown until twenty-five (25) years after the first receipt of Project Captured Tax Increment by DEDA unless this Agreement is otherwise terminated as herein before provided for.

ARTICLE XXIII

Runs With the Land

This Agreement shall be deemed to run with the land and shall inure to the benefit of the parties hereto and to their successors and assigns.

ARTICLE XXIV

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 Developer:

NorShor Theatre LLC
Attn: Asset Management
233 Park Avenue South #201
Minneapolis, MN 55415

In the case of Guarantor:

Sherman Associates, Inc.
Attn: General Counsel
233 Park Avenue South # 201
Minneapolis, MN 55415

In the case of Playhouse:

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

In the case of SA Development:

Sherman Associates, Inc.
Attn: General Counsel
233 Park Avenue South # 201
Minneapolis, MN 55415

For purposes of Article XVI.A.3
in the case of notice and cure
rights of 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

BMO Harris Bank N.A.
115 S. LaSalle Street 20W
Chicago, Illinois 60603

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

ARTICLE XXV

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.

ARTICLE XXVI

Subordination

Except for the terms and conditions of Article II, Paragraph D of Article III, Article V and Paragraphs A and D of Article IX of this Agreement, this Agreement is subordinate to any

mortgage filed by any party providing financing for the Project that such mortgage has been approved by DEDA. DEDA hereby approves of the QLICI Mortgage.

[Remainder of this page intentionally left blank.]

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)

Its President

Its Secretary

SHERMAN ASSOCIATES, INC.,
a Minnesota Corporation

By: _____

Its: _____

SHERMAN ASSOCIATES DEVELOPMENT
LLC, a Minnesota limited liability company

By: _____

Its: _____

NORSHOR THEATRE LLC, a Minnesota
Limited Liability Company

By: NorShor Managing Member LLC, its
Managing Member

By: _____

Its: _____

DULUTH PLAYHOUSE, INCORPORATED,
a Minnesota Non-Profit Corporation

By: _____

Its: _____

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by George E. Sherman, the Chief Manager NorShor Theatre Managing Member LLC a Minnesota limited liability company, the Managing Member of NorShor Theatre, LLC, a Minnesota limited liability company, on behalf of the company.

Notary Public

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

The foregoing instrument was acknowledged before me this _th day of _____, 2016, by Nancy Norr and Emily Larson, the President and Secretary, respectively, of DEDA, an economic development authority created and existing under the Laws of the State of Minnesota, on behalf of DEDA.

Notary Public

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by George E. Sherman, the President of Sherman Associates, Inc, a Minnesota Corporation, on behalf of the corporation.

Notary Public

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

The foregoing instrument was acknowledged before me this _____ day of _____,
2016, by _____ the _____ of Duluth Playhouse,
Incorporated, a Minnesota non-profit corporation, on behalf of the corporation.

Notary Public

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

The foregoing instrument was acknowledged before me this _____ day of _____,
2016, by George E. Sherman, the President and Chief Manager of Sherman Associates
Development LLC, a Minnesota limited liability company, on behalf of the company.

Notary Public

This instrument was drafted by:
Robert E. Asleson
Attorney for the Duluth Economic
Development Authority
Room 410 DEDA Hall
Duluth, MN 55802
(218) 730-5490

INDEX

MORTGAGE - BY CORPORATION OR PARTNERSHIP

By Corporation or Partnership

(reserved for mortgage registry tax
payment data)

MORTGAGE REGISTRY TAX DUE
HEREON:

\$ 7,590.00

(reserved for record data)

THIS LIEN, is granted this _____ day of _____, 2016 by
NORSHOR THEATRE LLC, a limited liability company under the laws of the State of
Minnesota (Mortgagor), to the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an
economic development authority under Minnesota Statutes, (1989) Chapter 469
(DEDA).

WITNESSETH, that MORTGAGOR, in consideration of the sum of Two Million
Three Hundred Thousand and No/100 Dollars (\$2,300,000), to MORTGAGOR in hand
paid by the DEDA, the receipt of which is hereby acknowledged, does hereby convey
unto the DEDA, forever, real property located at 207-213 East superior Street, Duluth,
Minnesota and legally described as follows:

Tract B, Registered Land Survey No. 132, St. Louis County, Minnesota

together with all hereditaments and appurtenances belonging thereto (the Property.)

TO HAVE AND TO HOLD THE SAME, to the DEDA forever.

MORTGAGOR covenants with DEDA as follows: That MORTGAGOR is lawfully seized of the Property and has good right to convey the same; that the Property is free from all encumbrances, except as set forth on Exhibit A attached hereto (the "Permitted Encumbrances"); that DEDA shall quietly enjoy and possess the same; and that MORTGAGOR will warrant and defend the title to the same against all lawful claims not hereinbefore specifically excepted.

PROVIDED, NEVERTHELESS, that if MORTGAGOR shall pay to DEDA the sum of Two Million Three Hundred Thousand and No/100 Dollars (\$2,300,000), according to the terms of a promissory note of even date herewith (the Note), the entire principal balance being due and payable on or before _____, 2056 as provided for in that Development Agreement between MORTGAGOR and DEDA dated _____, 2016 (DEDA Contract No. _____) (the "Agreement"), and shall repay to DEDA, at the times and with interest as specified, all sums advanced in protecting the lien of this Mortgage, in payment of taxes on the Property and assessments payable therewith, insurance premiums covering buildings thereon, principal or interest on any prior liens, expenses and attorneys' fees herein provided for and sums advanced for any other purpose authorized herein, and shall keep and perform all the covenants and agreements contained in the Agreement and herein contained, then this Mortgage shall be null and void, and shall be released at MORTGAGOR's expense.

AND MORTGAGOR covenants with DEDA as follows:

1. to pay the principal sum of money as specified in the Note;
2. to pay all taxes and assessments now due or that may hereafter become liens against the Property before penalty attaches thereto;
3. to keep all buildings, improvements and fixtures now or later located on or a part of the Property insured against loss by fire, extended coverage perils, vandalism, malicious mischief and, if applicable, steam boiler explosion, for at least the amount of provided for in the Agreement at all times while any amount remains unpaid under this Mortgage. If any of the buildings, improvements or fixtures are located in a federally designated flood prone area, and if flood insurance is available for that area, MORTGAGOR shall procure and maintain flood insurance in amounts reasonably satisfactory to DEDA. Each insurance policy shall contain a loss payable clause in favor of DEDA affording all rights and privileges customarily provided under the so-called standard mortgage clause. In the event of damage to the Property by fire or other casualty, MORTGAGOR shall promptly give notice of such damage to DEDA and the insurance company. The insurance shall be issued by an insurance company or companies licensed to do business in the State of Minnesota and acceptable to DEDA. The insurance policies shall provide for not less than thirty days written notice to DEDA before cancellation, non-renewal, termination, or

change in coverage, and MORTGAGOR shall deliver to DEDA a duplicate original or certificate of such insurance policies;

4. to pay, when due, both principal and interest of all prior liens or encumbrances, if any, and to keep the Property free and clear of all other prior liens or encumbrances;
5. to commit or permit no waste on the Property and to keep it in good repair;
6. to complete forthwith any improvements which may hereafter be under course of construction on the Property; and
7. to pay any other expenses and attorneys' fees incurred by DEDA by reason of litigation with any third party for the protection of the lien of this Mortgage.

In case of failure to pay said taxes and assessments, prior liens or encumbrances, expenses and attorneys' fees as above specified, or to insure said buildings, improvements, and fixtures and deliver the policies as aforesaid, DEDA may pay such taxes, assessments, prior liens, expenses and attorneys' fees and interest thereon, or obtain such insurance, and the sums so paid shall bear interest from the date of such payment at the annual rate of five percent (5%), or the maximum rate allowed by law, whichever is less, until paid in full, and shall be impressed as an additional lien upon the Property and be immediately due and payable from MORTGAGOR to DEDA and this Mortgage shall from date thereof secure the repayment of such advances with interest.

In case of default in any of the foregoing covenants, MORTGAGOR confers upon the DEDA the option of declaring the unpaid balance of the Note, together with all sums advanced hereunder, immediately due and payable without notice, and hereby authorizes and empowers DEDA to foreclose this Mortgage by judicial proceedings or to sell the Property at public auction and convey the same to the purchaser in fee simple in accordance with the statute, and out of the moneys arising from such sale to retain all sums secured hereby, with interest and all legal costs and charges of such foreclosure and the maximum attorneys' fee permitted by law, which costs, charges and fees MORTGAGOR agrees to pay.

(INTENTIONALLY LEFT BLANK)

The terms of this Mortgage shall run with the Property and bind the parties hereto and their respective heirs, assignees and successors in interest.

IN TESTIMONY WHEREOF, MORTGAGOR has hereunto set its hand the day and year first above written.

NORSHOR THEATRE LLC, a Minnesota
Limited Liability Company

By: NorShor Theatre Managing Member
LLC, its Managing Member

By: _____

Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by George E. Sherman, the Chief Manager NorShor Theatre Managing Member LLC a Minnesota limited liability company, the Managing Member of Norshor Theatre LLC, a Minnesota limited liability company, on behalf of the company.

THIS INSTRUMENT WAS DRAFTED BY (NAME AND ADDRESS):

Robert E. Asleson
Assistant DEDA Attorney
Room 402 DEDA Hall
Duluth, MN 55802
(218) 730-5490

**EXHIBIT A
TO
MORTGAGE**

Permitted Encumbrances

Date _____, 2016

NOTE

Name of Borrower: NorShor Theatre LLC

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

Name of "Lender": Duluth Economic Development Authority

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

For Value received, the undersigned promises to pay to the order of the Duluth Economic Development Authority (DEDA) 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 Two Million Three Hundred Thousand and 00/100 dollars (\$ 2,300,000.00) together with accrued interest (calculated on the basis of actual days elapsed in a 360 day year) on the unpaid balance hereof until _____, 2056 or until this Note has been fully paid, whichever shall occur first, at an annual rate of zero percent (0%).

The undersigned promises to pay the principal and interest thereof as follows:

On _____, 2056, the entire unpaid principal and accrued and unpaid interest if any hereon shall become due and payable. Any partial payment when paid shall be applied first in payment of accrued interest and the balance thereof shall be applied in reduction of principal.

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

If any installment of principal and/or interest hereunder is not paid when due, or if any other indebtedness of the undersigned to the DEDA is not paid when due, or if any event of default shall occur under any mortgage, security agreement or other instrument securing this Note, or if a garnishment summons or writ of attachment is issued against or served upon the DEDA for the attachment of any property of the undersigned in the DEDA's possession or any indebtedness owing to the undersigned, 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 DEDA shall also have the right to set off the indebtedness evidenced by this Note against any indebtedness of DEDA to the undersigned and interest shall accrue on the indebtedness at an annual rate of five percent (5.0%).

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 agree(s) that each provision whose box is checked is part of this Note and 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. This Note shall be governed by the substantive Laws of the State of Minnesota.

This Note is secured by the undersigned's Mortgage dated _____, 2016 covering certain collateral therein described.

NORSHOR THEATRE LLC, a Minnesota
limited liability company

By: NorShor Theatre Managing Member LLC,
its Managing Member

By: _____

Its: Chief Manager