

**AGREEMENT PERTAINING TO
TEMPORARY AND PERMANENT
EASEMENTS PERTAINING
TO TEMPLE OPERA BUILDING**

THIS EASEMENT AGREEMENT (this "Agreement") is dated as of the ____ day of _____, 2016, by and among the **CITY OF DULUTH** ("City"), the **DULUTH ECONOMIC DEVELOPMENT AUTHORITY**, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 ("DEDA") and **NORSHOR THEATRE LLC**, a limited liability company under the laws of the State of Minnesota ("NorShor").

INTRODUCTION:

(A) NorShor is the owner of the real property legally described as Tract B, Registered Land Survey No. 132, St. Louis County, MN (the "NorShor Property"), improved by the buildings commonly known as the historic NorShor Theatre and NorShor Annex and including a portion of the building referenced below as the Temple Building, all of which are hereinafter referred to collectively as the "NorShor Theatre".

(B) DEDA is the owner of the real property legally described as Tract A, Registered Land Survey No. 132, St. Louis County, MN (the "Temple Property"), attached hereto improved by the building commonly known as the Temple Opera Building, less that portion referenced in Paragraph A above (the "Temple Building").

(C) Pursuant to the terms and conditions of the Development Agreement (the "Development Agreement") for the NorShor Project (the "Project") and the Pedestrian Passageway Agreement Pertaining to the NorShor Theatre Project of even date herewith (the "NorShor Skywalk Agreement"), said agreements collectively hereinafter referred to as the "Agreements":

- (i) NorShor will construct a pedestrian passageway within the NorShor Theatre that provides access via a hallway from the east wall of the NorShor Theatre to the east wall of the Temple Building and an elevator and stairway within that portion of the NorShor Theatre previously part of the Temple Building as depicted on Exhibit A attached hereto and made a part hereof; the afore-said passageway and elevator and stairway when referred to collectively herein are referred to as the "NorShor Skywalk"; the elevator and stairway when referred to separately are referred to as "Temple Vertical Facilities"; and
- (ii) NorShor, in addition to the afore-said Skywalk-related improvements, will construct and install certain improvements to the Temple Building related to and necessitated by the redevelopment of the NorShor Theatre and the aforesaid NorShor Skywalk including a new roof on the Temple Building and installation of a fire suppression sprinkling system in the Temple Building, which work is

included in the Construction Plans as approved pursuant to Article IV of the Development Agreement, which work is hereinafter referred to as the "Additional Temple Work".

(D) City, DEDA and NorShor desire to enter into this Agreement to set forth their agreements relating (i) to certain easements for construction of improvements in the Temple Building; and (ii) to certain easements for use of the Temple Vertical Facilities.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

SECTION 1. Improvements Related to Additional Temple Work.

1.1. Plans for Additional Temple Work. Plans for the Additional Temple Work and the process for making any changes thereto are included in Article IV of the Development Agreement.

1.2. Construction and Completion of Additional Temple Work. As part of the construction of the Project as defined in the Development Agreement, NorShor agrees that it will cause to be constructed the Additional Temple Work in accordance with the Construction Plans as approved pursuant to Article IV of the Development Agreement.

1.3. Costs of Construction of Additional Temple Work. Upon signing of this Agreement and of the Guaranty as defined in the Development Agreement, DEDA hereby agrees to advance the sum of Two Hundred Forty-Seven Thousand Dollars (\$247,000) in full compensation to Duluth Playhouse, Incorporated, a Minnesota non-profit corporation (the "Playhouse") to be contributed by the Playhouse to the NorShor Theatre to pay all costs of designing and constructing the Additional Temple Work, including but not limited to design, engineering and testing, construction, construction supervision, and soft costs

1.4. Assignment and Assumption of Construction Warranties. Upon completion of the Additional Temple work, NorShor agrees to assign and DEDA agrees to assume all warranties relating to the construction of the Additional Temple Work, pursuant to an Assignment and Assumption Agreement mutually agreeable to NorShor, DEDA and the City, and containing any necessary consent of the general contractor under the construction contract for the Additional Temple Work.

SECTION 2. Easements.

2.1. Temporary Easements for Construction. DEDA hereby grants for the benefit of NorShor, and its agents, employees, and contractors, a temporary construction easement over, upon and through the portions of the Temple Building necessary for the purpose of constructing and installing the Additional Temple Work. In addition, DEDA grants for the benefit of NorShor and its agents, employees and contractors a temporary easement for the purposes of constructing and installing the Temple Vertical Facilities. The construction and installation of the Additional Temple Work and the Temple Vertical Facilities shall be subject to the terms of conditions of the

Development Agreement pertaining to the Construction of the Project including but not limited to the provisions thereof pertaining to bonds, insurance and indemnification. These Temporary Easements shall run from the date hereof until the Certificate of Completion is issued for the construction of the Project. Further NorShor agrees that it shall cause its contractor performing such work to work cooperatively with DEDA and DEDA's tenants in the Temple Building to minimize to the extent practical the impact of the construction of the Additional Temple Work and the Temple vertical Facilities on such tenants and their business operations in the Temple Building.

2.2. Permanent Easements for Temple Skywalk Connection. NorShor grants to DEDA a permanent non-exclusive easement for pedestrian ingress and egress over and through the Temple Vertical Facilities for the benefit of the Temple Building for use by DEDA, occupants of the Temple Building and their guests and invitees. The permanent easement granted hereunder shall be available for use by the Temple Building and by said parties on a 24 hour per day, every day of the year basis, , provided that the Temple Skywalk Connection includes controls as necessary to allow access only to DEDA, occupants of the Temple Building and their guests and invitees during any period NorShor Skywalk is not required to be open to the public pursuant to the NorShor Skywalk Agreement.

2.3. Easements Run With the Land. The easements granted hereby run with the land and bind and benefit the parties hereto and their successors and assigns.

2.4 Recording of Easements. NorShor shall be responsible for the recording of this Agreement and any amendments hereto in the land records of St. Louis County, Minnesota, and shall be responsible for all related fees.

SECTION 3. Operation, Repair, and Maintenance.

DEDA shall be responsible for, and pay one hundred percent (100%) of the costs associated with, the operation, repair and maintenance of the Temple Building, other than the NorShor Skywalk Connection located on the NorShor Property which is operated, repaired and maintained pursuant to the NorShor Skywalk Agreement.

SECTION 4. Insurance, Damage and Destruction.

4.1. Insurance. DEDA agrees to provide and retain, at its own cost, adequate property insurance and liability insurance on the Temple Building, other than the NorShor Skywalk Connection located on the NorShor Property which will be insured pursuant to the NorShor Skywalk Agreement.

4.2 Damage or Destruction of Temple. If the Temple Building or any portion thereof is destroyed by fire or other casualty, DEDA shall forthwith repair, reconstruct, and restore the Temple Building sufficiently to permit the continued use and operation of the NorShor Skywalk Connection, and to the extent necessary to accomplish such repair, reconstruction, and restoration, DEDA shall apply the proceeds of any insurance received by DEDA to the payment or reimbursement of the costs thereof. DEDA shall, however, complete the repair, reconstruction

and restoration of the Temple Building sufficiently to permit the continued use and operation of the NorShor Skywalk Connection whether or not the proceeds of any insurance received by DEDA are sufficient to pay for such repair, restoration, and reconstruction. Notwithstanding the foregoing, if the NorShor Skywalk Connection or any portion thereof is destroyed by fire or other casualty, it shall be repaired, reconstructed and restored pursuant to the NorShor Skywalk Agreement.

SECTION 5. Notice.

A notice, demand or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or by reputable overnight carrier, or delivered personally and delivered to:

In the case of City:

Skyway Administrator
Development District Nos. 2 and 22
c/o City Clerk
Room 402, City Hall
Duluth, MN 55802

In the case of DEDA:

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

In the case of NorShor:

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

Copy to:

William Burns
Hanft Fride, P.A.
1000 US Bank Place
130 West Superior Street
Duluth, MN 55802

The address of either party may be changed upon notice to the other party, and notices shall be sent to the last address designated.

SECTION 6. Delay Beyond Control.

Under the terms of this Agreement, no party shall be considered in default or in breach of any of its terms with respect to the timing of the commencing or completion of construction, or the availability of the premises for construction in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without fault or

negligence, including but not restricted to, acts of God, acts of the public enemy, acts of the Federal Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes or other similar causes beyond the control of party or delays of subcontractors due to such causes. In the event of such delays, any time for completion or delivery under this Agreement will be extended for the period of delay upon written notice of the party seeking extension.

SECTION 7. Miscellaneous.

7.1. Binding Agreement. All parties to this Agreement agree that this Agreement, together with all of the terms, covenants and conditions contained herein, shall be deemed to run with the land and to be binding on the respective parties, successors and assigns, if any, and any purchasers, transferees or assignees.

7.2. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

7.3. Estoppel Letters. The parties hereto each agree from time to time upon request of the other to certify to the requesting party or a party or parties designated by it (i) whether this Agreement is in full force and effect, (ii) whether this Agreement has been amended (and, if so, specifying the amendment(s)), (iii) whether to the knowledge of the certifying party any party is in default under this Agreement (and, if so, specifying the default), and (iv) other matters relating to this Agreement as the requesting party may reasonably request.

7.4 Successors and Assigns. When used in this Agreement the terms NorShor and DEDA include such parties' successors and assigns as owners of the NorShor Theatre and Temple Building respectively.

7.5 Counterparts. This Agreement may be executed in one or more counterparts, and all so executed shall constitute one agreement, binding on all the parties hereto, even though all parties are not signatories to the original or the same counterpart.

7.6 Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties and supersedes any prior oral or written agreements with respect to the matters stated herein.

7.7 Severability. If any term of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of the Agreement and any other application of such term shall not be affected thereby.

7.8 Continuing Obligations. The parties to this Agreement further agree that this Agreement, together with all of the terms, covenants and conditions contained herein, shall be deemed to run with the land and to be binding on the respective parties successors and assigns, if any, and that if a party shall at any time sell its property subject to this Agreement or otherwise assign or transfer its interest therein, any such purchaser, transferor or assignee shall be liable for the performance of the obligations assumed by the party hereunder.

SECTION 8. Mediation.

8.1 Mediation. All claims, disputes or other matters in question between the parties arising out of or relating to this Agreement or breach thereof shall be referred to non-binding mediation, which, unless the parties mutually agree otherwise, shall be in accordance with the Commercial Mediation Rules of the American Arbitration Association. Request for mediation shall be filed in writing with the other party and with the American Arbitration Association. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Duluth, Minnesota unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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

**SIGNATURE PAGE TO
EASEMENT AGREEMENT PERTAINING
TO TEMPLE OPERA BUILDING**

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

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 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

**SIGNATURE PAGE TO
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TO TEMPLE OPERA BUILDING**

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

Its President

Its Secretary

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by Nancy Norr and Zack Filipovich, 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

**SIGNATURE PAGE TO
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CITY OF DULUTH, a Minnesota Municipal
Corporation

Mayor

Attest:

City Clerk

Date: _____

Approved:

Countersigned:

City Attorney

City Auditor

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

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

Notary Public

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