

(space above reserved for recording information)

## PARTY WALL AGREEMENT

THIS AGREEMENT is made as of \_\_\_\_\_, 2016 by and between NORSHOR THEATRE LLC, a Minnesota limited liability company ("NorShor") and DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 ("DEDA").

### RECITALS:

WHEREAS, on the date hereof, NorShor has acquired from DEDA the fee interest in certain real property legally described as:

Tract B, REGISTERED LAND SURVEY NO. 132, St. Louis County, Minnesota (together with the buildings and other improvements located thereon, the "Theater Property");

and

WHEREAS, DEDA is the fee owner of certain real property legally described as:

Tract A, REGISTERED LAND SURVEY NO. 132, St. Louis County, Minnesota (together with the buildings and other improvements located thereon, the "Temple Opera Property");

and

WHEREAS, there currently exists or will exist a shared party wall between the building on the Theater Property and the building on the Temple Opera Property as depicted on Exhibit A attached hereto (the "Party Wall"); and

WHEREAS, NorShor and DEDA desire to enter into this Agreement regarding the Party Wall; and

WHEREAS, NorShor and DEDA are sometimes referred to herein collectively as the "Parties" and individually as a "Party".

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

1. **Location of Wall.** NorShor and DEDA acknowledge and agree that the Party Wall is located on the common lot line between the Theater Property and the Temple Opera Property (each, a "Property," and together, the "Properties") with the width of the Party Wall extending equally onto both properties.

2. **Party Wall Declaration.** NorShor and DEDA acknowledge and agree that either Party has the right to full use of the Party Wall facing the Party's respective property for whatever purposes the Party chooses to make of it, subject to the limitations that such use shall not infringe on the right of the other Party's enjoyment of the Party Wall or in any manner impair the value of such wall to the other Party. Each Party shall have a perpetual easement in that part of the Property of the other Party, for the purposes of maintaining and supporting the Party Wall and any other additional area necessary to repair, replace, and maintain same.

3. **Modifications.** Neither Party shall alter or change the Party Wall in any manner (non-structural interior decorations excepted) without the consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Party Wall shall remain in the same location as shown on Exhibit A.

4. **Repairs.** NorShor and DEDA acknowledge and agree that if at any time it becomes necessary to repair or rebuild the Party Wall, the cost of repair or replacement shall be paid equally by both Parties unless the repairs or replacement are needed because of the negligent or intentional acts or omissions of either Party. In that event, the Party causing the need for repair or replacement, shall pay 100% of the costs needed to repair or replace the Party Wall. If either Party shall neglect or refuse to pay its share of the repair or replacement cost (or all of such costs in case of repairs or replacements required due to the negligent or intentional acts or omissions of such party), the other Party may have the Party Wall repaired or restored and shall be deemed to have a lien on the Property of the Party so failing to pay, for the amount of such defaulting Party's share of the repair or replacement costs together with interest at the rate of 8% per annum. The party having the Party Wall repaired shall, in addition to the lien, be entitled to recover attorney's fees and shall be entitled to all other remedies provided herein or by law.

5. **Indemnity Provisions.** NorShor agrees to indemnify and hold harmless DEDA, from any claims, demands, suits, costs, expenses (including reasonable attorneys' fees), actions or other proceedings whatsoever by any person or entity arising or purportedly arising from the actions or inactions of NorShor (or other persons acting on its behalf or under its direction or control) under this Agreement. DEDA agrees to indemnify and hold harmless NorShor, from any claims, demands, suits, costs, expenses (including reasonable attorneys' fees), actions or other proceedings whatsoever by any person or entity arising or purportedly arising from the actions or inactions of DEDA (or other persons acting on its behalf or under its direction or control) under this Agreement.

6. **Insurance.** NorShor and DEDA will obtain and continuously maintain insurance on the Theater Property and the Temple Opera Property, respectively, including the Party Wall, and, from time to time at the request of the each other, furnish proof that the premiums for such insurance have been paid and the insurance is in effect.

7. **Agreement Remains in Effect.** The invalidation of any provision of this Agreement by judgement or court order shall in no way affect any of the other provisions, which shall thereafter remain in full force and effect.

8. **Covenants to Run With Land.** The covenants and agreements contained herein shall run with the land and shall be binding upon the Parties to this Agreement and their respective successors and assigns.

9. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

[SIGNATURE PAGES FOLLOW]



**SIGNATURE PAGE TO  
TO  
PARTY WALL AGREEMENT**

The parties have executed this Party Wall Agreement as of the date first written above.

NORSHOR THEATRE LLC, a Minnesota  
limited liability company

By: NorShor Theatre Managing Member  
LLC, its Managing Member

By: \_\_\_\_\_  
Name: George E. Sherman  
Its: Chief Manager

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

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**SIGNATURE PAGE TO  
TO  
PARTY WALL AGREEMENT**

The parties have executed this Party Wall Agreement as of the date first written above.

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 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

THIS INSTRUMENT WAS DRAFTED BY:

Sherman Associates, Inc.  
233 Park Avenue South, Suite 201  
Minneapolis, MN 55415  
(612) 332-3000

**EXHIBIT A  
TO  
PARTY WALL AGREEMENT**

Depiction of Party Wall