

**PEDESTRIAN PASSAGEWAY AGREEMENT PERTAINING TO THE  
NORSHOR THEATRE PROJECT**

**THIS AGREEMENT** (this "Agreement") is dated as of the \_\_\_\_ day of \_\_\_\_\_, 2016, by and among the **CITY OF DULUTH** ("City"), the **DULUTH ECONOMIC DEVELOPMENT AUTHORITY** ("DEDA"), **NORSHOR THEATRE LLC** ("NorShor"), and **GREYSOLON APARTMENTS LIMITED PARTNERSHIP** ("Greysolon").

**INTRODUCTION:**

(A) City has constructed or will construct a public downtown skywalk system providing enclosed pedestrian passageways and skywalk bridges connecting numerous buildings within the downtown area of Duluth, Minnesota (the "Skywalk System"). The location and nature of the passageways and bridges are illustrated on Exhibit A attached hereto and made a part hereof.

(B) City wishes to include the skywalk bridge, pedestrian passageway and connections that are the subject of this Agreement in the Skywalk System.

(C) NorShor is the owner of the real property legally described as Tract B on Registered Land Survey No. 132, St. Louis County, Minnesota improved by the buildings commonly known as the historic NorShor Theatre and NorShor Annex Annex and which includes a portion of the Building to the west of said buildings commonly referred to as the Temple Opera Building (the "NorShor Theatre").

(D) Greysolon owns a senior rental apartment building (the "Greysolon Building") located on the parcel legally described on Exhibit C attached hereto and made a part hereof (the "Greysolon Land") and a parcel of land to the west of the Greysolon Building legally described on Exhibit D attached hereto and made a part hereof (the "West Parking Lot").

(E) DEDA is the owner of the real property legally described Exhibit E attached hereto improved by the building commonly known as the Temple Opera Building (the "Temple Building").

(F) Pursuant to the terms and conditions of this Agreement, NorShor shall connect the Greysolon Building to the NorShor Theatre by constructing an exterior skywalk (the "Bridge") from the Greysolon Building across the West Parking Lot to the NorShor Theatre as depicted on Exhibit F-1 attached hereto and made a part hereof.

(G) Pursuant to the terms and conditions of this Agreement, NorShor shall construct a pedestrian passageway within the NorShor Theatre that connects with the Bridge and provides access via a hallway to the east wall of the Temple Building (the "NorShor Passageway") as depicted on Exhibit F-2 attached hereto and made a part hereof.

(H) Pursuant to the terms and conditions of this Agreement and as part of the NorShor Passageway, NorShor shall construct and install an elevator and stairway from the NorShor Passageway to Superior Street (the "Temple Vertical Facilities" as described in the described in the Agreement Pertaining to Temporary and Permanent Easements Pertaining to Temple Opera Building between DEDA, the City and Sherman Associates, Inc. of even date herewith,) as depicted on Exhibit F-3 attached hereto and made a part hereof.

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

## **SECTION 1. Construction of Bridge.**

### **1.1. Plans for Bridge.**

(a) Bridge Plans. The Bridge shall be constructed substantially in accordance with the plans attached hereto as Exhibit G (the "Bridge Plans"). The Bridge Plans shall be in conformity with this Agreement, with all applicable state and local laws and regulations.

(b) Changes in Bridge Plans. If NorShor wishes to make any changes to the Bridge Plans, NorShor shall prepare and submit to the City's Mayor or his or her designee (the "Skywalk Administrator"), for approval as agent for City, revised Bridge Plans in sufficient completeness and detail to show that the construction of the Bridge will be in accordance with the provisions of this Agreement. Within fifteen (15) days after submission to the Skywalk Administrator by NorShor, the Skywalk Administrator shall approve or disapprove the revised Bridge Plans, and approval of the revised Bridge Plans shall not be unreasonably withheld, conditioned or delayed. If the revised Bridge Plans are approved, no further filing by NorShor or approval by the Skywalk Administrator thereof shall be required except with respect to any later material change. If the Skywalk Administrator rejects the revised Bridge Plans in whole or in part as not being in conformity with this Agreement, NorShor shall submit new or corrected Bridge Plans that are in conformity with this Agreement within fifteen (15) days after written notification to NorShor of the rejection. The provisions of this Section 1.1(b) relating to approval, rejection, and resubmission of corrected Bridge Plans shall continue to apply until the Bridge Plans have been approved by the Skywalk Administrator. If there are changes in the Bridge Plans, NorShor shall not commence construction of the Bridge prior to the approval of the revised Bridge Plans by the Skywalk Administrator.

1.2 Construction and Completion of Bridge. NorShor agrees that it will enter into a contract with a reputable contractor (the "Contractor") for the construction of the Bridge in accordance with the Bridge Plans. NorShor shall require the Contractor to obtain payment and performance bonds in connection with the construction of the Bridge. NorShor shall require the Contractor to commence construction of the Bridge such that completion of the Bridge will occur simultaneously with completion of the rehabilitation of the NorShor Theatre, subject only to minor punch-list items. All construction work shall be done in conformity with all applicable



state and local laws and regulations. The parties agree that NorShor will be the owner of the Bridge.

1.3 Progress Reports. Until construction of the Bridge has been completed, NorShor shall make reports in such detail and at such times as may be reasonably requested by City (but no more than monthly) as to the actual progress of NorShor with respect to such construction.

1.4 Costs of Construction of Bridge. All costs for the construction of the Bridge of any kind whatsoever, including but not limited to design, engineering and testing, construction, construction supervision, and soft costs shall be paid by NorShor.

1.5 Certificate of Completion. Promptly after NorShor completes the construction of the Bridge in conformance with this Agreement, including final punch-list items, NorShor shall obtain from the Project Architect a certificate of completion. Promptly after receipt of the Project Architect's certificate of completion, City will furnish NorShor with a certificate of completion in recordable form. Such certification by City shall be (and it shall be so provided in the certification itself) a conclusive determination of satisfaction and termination of the agreements and covenants contained herein with respect to the construction of the Bridge. The issuance of such certificate by City shall not unreasonably be withheld or delayed.

1.6 Parking During Construction. During Construction of the Bridge, City shall provide up to forty (40) parking spaces for Greysolon and the residents of the Greysolon Building free of charge in the a municipal parking ramp located at 302 East 1st Street, Duluth, Minnesota (the "Medical District Ramp").

## **SECTION 2. Construction of NorShor Passageway**

### **2.1 Plans for NorShor Passageway.**

(a) NorShor Passageway Plans. The NorShor Passageway shall be constructed substantially in accordance with the plans attached hereto as Exhibit H (the "NorShor Passageway Plans"). The NorShor Passageway Plans shall be in conformity with this Agreement, with all applicable state and local laws and regulations. The parties recognize that the location and design of the NorShor Passageway must not jeopardize the historic designation status of the NorShor Theatre and must not interfere with the operation of the theatre.

(b) Changes in NorShor Passageway Plans. If NorShor wishes to make any changes to the NorShor Passageway Plans, NorShor shall prepare and submit to the City's Skywalk Administrator, for approval as agent for City, revised NorShor Passageway Plans in sufficient completeness and detail to show that the construction of the NorShor Passageway will be in accordance with the provisions of this Agreement. Within fifteen (15) days after submission to the Skywalk Administrator by NorShor, the Skywalk Administrator shall approve or disapprove the revised NorShor Passageway Plans, and approval of the revised NorShor Passageway Plans shall not be unreasonably withheld, conditioned or delayed. If the revised NorShor Passageway Plans are approved,



no further filing by NorShor or approval by the Skywalk Administrator thereof shall be required except with respect to any later material change. If the Skywalk Administrator rejects the revised NorShor Passageway Plans in whole or in part as not being in conformity with this Agreement, NorShor shall submit new or corrected NorShor Passageway Plans that are in conformity with this Agreement within fifteen (15) days after written notification to NorShor of the rejection. The provisions of this Section 2.1(b) relating to approval, rejection, and resubmission of corrected NorShor Passageway Plans shall continue to apply until the NorShor Passageway Plans have been approved by the Skywalk Administrator. If there are changes in the NorShor Passageway Plans, NorShor shall not commence construction of the NorShor Passageway prior to the approval of the revised NorShor Passageway Plans by the Skywalk Administrator.

(c) Modification of Passageway Locations. NorShor may modify the location of the NorShor Passageway at any time subject to approval by City, which approval shall not unreasonably be withheld or delayed. The modified NorShor Passageway shall be of at least similar area and dimensions as the original NorShor Passageway. Along with its request for approval of a NorShor Passageway modification, NorShor shall submit to City complete plans and specifications for the modification showing that the modification will be of at least comparable character, quality and functionality as the original NorShor Passageway, including but not limited to factors of size, configuration, and signing, and shall also submit proof of ability and methodology for payment therefor. All costs involved in modifying the NorShor Passageway of any kind whatsoever, including the costs of removing skywalk indicia from the original NorShor Passageway, shall be borne by NorShor exclusively. If City approves the modification, the parties shall join in the execution and delivery of an amendment to this Agreement in recordable form designating the modified NorShor Passageway and terminating the original easement for that NorShor Passageway upon completion of construction approved by City within the modified NorShor Passageway.

2.2 Construction and Completion of Passageway. NorShor agrees that it will enter into a contract with a Contractor for the construction of the NorShor Passageway in accordance with the NorShor Passageway Plans. NorShor shall require the Contractor to obtain payment and performance bonds in connection with the construction of the NorShor Passageway. NorShor shall require the Contractor to commence construction of the NorShor Passageway such that completion of the NorShor Passageway will occur simultaneously with completion of the rehabilitation of the NorShor Theatre, subject only to minor punch-list items. All construction work shall be done in conformity with all applicable state and local laws and regulations. The parties agree that NorShor will be the owner of the NorShor Passageway.

2.3 Progress Reports. Until construction of the NorShor Passageway has been completed, NorShor shall make reports in such detail and at such times as may be reasonably requested by City (but no more than monthly) as to the actual progress of NorShor with respect to such construction.



2.4 Costs of Construction of Passageway. All costs for the construction of the NorShor Passageway of any kind whatsoever, including but not limited to design, engineering and testing, construction, construction supervision, and soft costs shall be paid by NorShor.

2.5 Certificate of Completion. Promptly after NorShor completes the construction of the NorShor Passageway in conformance with this Agreement, including final punch-list items, NorShor shall obtain from the Project Architect a certificate of completion. Promptly after receipt of the Project Architect's certificate of completion, City will furnish NorShor with a certificate of completion in recordable form. Such certification by City shall be (and it shall be so provided in the certification itself) a conclusive determination of satisfaction and termination of the agreements and covenants contained herein with respect to the construction of the NorShor Passageway. The issuance of such certificate by City shall not unreasonably be withheld or delayed.

### **SECTION 3. Easements.**

#### **3.1. Temporary Easements for Initial Construction.**

(a) West Parking Lot. Greysolon hereby grants for the benefit of NorShor and its successors and assigns, and its agents, employees, and contractors, a temporary construction easement over, upon, and through the portions of the West Parking Lot necessary for the purpose of constructing the Bridge, providing all necessary supports for the Bridge, and performing all other acts necessary to complete construction of the Bridge, subject to the terms and conditions of this Agreement.

(b) Greysolon Building. Greysolon hereby grants for the benefit of NorShor and its successors and assigns, and its agents, employees, and contractors, a temporary construction easement over, upon and through the portions of the Greysolon Building necessary for the purpose of connecting the Bridge to the Greysolon Building, and performing all other acts necessary to connect the Bridge to the Greysolon Building in accordance with the Bridge Plans, subject to the terms and conditions of this Agreement.

(c) Temple Building. DEDA hereby grants for the benefit of NorShor and its successors and assigns, 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 Temple Vertical Facilities, and performing all other acts necessary to complete the Temple Temple Vertical Facilities in accordance with the NorShor Passageway Plans, subject to the terms and conditions of this Agreement. This temporary easement is in conjunction with the temporary construction easement granted to NorShor pursuant to the easement described in the Agreement Pertaining to Temporary and Permanent Easements Pertaining to Temple Opera Building between DEDA, the City and Sherman Associates, Inc. of even date herewith.

#### **3.2. Permanent Easements.**



(a) Bridge over West Parking Lot. Greysolon, for itself and its successors and assigns as owner of the West Parking Lot, grants to NorShor and its successors and assigns as owner of the Bridge, and to City a non-exclusive easement over that portion of the West Parking Lot depicted on Exhibit J attached hereto and made a part hereof for the purpose of the Bridge and the operation, maintenance, repair and replacement thereof, subject to the terms and conditions of this Agreement.

(b) Bridge Connection to Greysolon. Greysolon, for itself and its successors and assigns as owner of the Greysolon Building, grants to NorShor and its successors and assigns as owner of the Bridge, an easement for connection of the Bridge to the Greysolon Building, all necessary support of the Bridge, and the operation, maintenance, repair and replacement thereof, subject to the terms and conditions of this Agreement. NorShor shall not alter the Greysolon Building without the consent of Greysolon.

(c) Temple Vertical Facilities Encroachments. DEDA, for itself and its successors and assigns as owner of the Temple Building, grants to NorShor and its successors and assigns as owner of the Temple Vertical Facilities, an easement for any encroachment of the Temple Vertical Facilities into the Temple Building, and the operation, maintenance, repair and replacement thereof, subject to the terms and conditions of this Agreement. NorShor shall not alter the Temple Building without the consent of DEDA.

(d) Operation and Maintenance. If the work to be performed in connection with NorShor's operation, maintenance, repair and replacement obligations with respect to any of the improvements located in the easement areas described herein will be more intrusive than routine maintenance, NorShor shall, at least thirty (30) days prior to exercising the right granted herein, first provide the affected owner a written notice identifying the nature of the work to be done and the anticipated commencement and completion dates for the work. Notwithstanding the preceding sentence, in the event of an emergency, NorShor shall provide the affected owner with whatever notice is feasible. NorShor shall cause the work (including general clean-up and proper surface and/or subsurface restoration) to be completed as quickly as possible and in a manner so as to minimize interference with the use of the owner's property any more than is absolutely necessary under the circumstances.

(e) Uniform Relocation Assistance Act. Greysolon acknowledges that it has been informed of its rights under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and hereby knowingly and specifically waives all rights and benefits thereunder.

(f) Relocation of Passageways. NorShor may modify the location of the NorShor Passageway at any time subject to approval by City, which approval shall not unreasonably be withheld or delayed, in accordance with Section 2.1(c) hereof.



3.3. 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.

3.4 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 4. Operation, Repair, and Maintenance.**

4.1. Operation, Repair and Maintenance of Bridge. NorShor shall provide adequate heat and lighting to the Bridge and shall make all necessary capital improvements. NorShor shall provide routine interior maintenance and housekeeping services and any security deemed desirable by NorShor with respect to the Bridge. Nothing contained herein is intended to or shall in any way create any obligations of any kind on the part of the parties hereto to any third parties or confer any benefits or protections of any kind on such third parties not otherwise existing at law or in equity.

4.2. Operating Costs of Bridge. NorShor and Greysolon shall share equally the actual costs incurred in connection with the operation, maintenance and security of the Bridge (the "Operating Costs"). The Operating Costs shall include, but shall not be limited to, utilities, housekeeping services and security, capital improvements, taxes and insurance.

4.3. Building on West Parking Lot. Greysolon, an affiliate of Greysolon, or any owner of the West Parking Lot may construct a building on the West Parking Lot (the "New Building") and may relocate the Bridge to accommodate such New Building. The design and location of any skywalk in the New Building or any relocated Bridge that accommodates the New Building shall connect to the easterly connection to the Skywalk in the NorShor Theatre constructed pursuant to this Agreement and to the location in the Greysolon Building, constructed pursuant to this Agreement, at a location substantially similar to that constructed pursuant to this Agreement and shall be similar in area and dimensions as the original Bridge, unless otherwise agreed to by NorShor, DEDA and the City. NorShor's obligations of hereunder shall not be affected by the construction of the New Building.

4.4. Operation, Repair, and Maintenance of Passageway. NorShor agrees to operate, maintain and repair the NorShor Passageway, including but not limited to providing heat and lighting to the NorShor Passageway. Nothing contained herein is intended to or shall in any way create any obligations of any kind on the part of the parties hereto to any third parties or confer any benefits or protections of any kind on such third parties not otherwise existing at law or in equity. NorShor shall pay one hundred percent (100%) of the costs of incurred by NorShor in connection with the operation, repair, maintenance, and security of the NorShor Passageways.

4.5. Operation, Repair, and Maintenance of Connection. NorShor agrees to operate, maintain and repair the Temple Opera Skyway Connection, including but not limited to providing heat and lighting to the Temple Opera Skyway Connection. Nothing contained herein is intended to or shall in any way create any obligations of any kind on the part of the parties hereto to any third parties or confer any benefits or protections of any kind on such third parties



not otherwise existing at law or in equity. Costs incurred by NorShor in connection with the operation, repair, maintenance, and security of the Temple Opera Skyway Connection shall be shared equally by NorShor and DEDA.

4.6. Hours. The parties agree to keep the Bridge, the NorShor Passageway and the Temple Opera Skyway Connection open to pedestrian traffic for the minimum hours of 7:00 a.m. to 1:00 a.m., seven (7) days a week, unless otherwise agreed to by NorShor, City, DEDA and Greysolon, taking into account both the needs of City with respect to the Skywalk System and its users and the operational and security needs of the NorShor Theatre. NorShor may, in its sole discretion, keep the Bridge, the NorShor Passageway and the Temple Opera Skyway Connection open longer than the minimum hours set forth above.

4.7. Temporary Closing. Nothing contained in this Agreement shall prevent NorShor from temporarily closing off access to the Bridge, the NorShor Passageway or the Temple Opera Skyway Connection when necessary to permit repairs and maintenance of the Bridge, the NorShor Passageway or the Temple Opera Skyway Connection, to permit repairs, replacements, maintenance, alterations or additions to the respective buildings including relocation of interior passageways, to comply with governmental orders, to respond to any emergency threatening pedestrian or property safety, or to prevent loitering or other disturbances and occurrences inconsistent or incompatible with the nature, character or use of those portions of the NorShor Theatre, Temple Building, Greysolon Building, or West Parking Lot adjacent to or in the vicinity of the Bridge, the NorShor Passageways or the Temple Opera Skyway Connection

## **SECTION 5. Insurance, Damage and Destruction.**

### **5.1. Insurance.**

(a) Greysolon shall not provide any insurance with respect to the Bridge, which shall be owned by NorShor.

(b) NorShor agrees to provide and retain, at its own cost and cause, the following insurance: (i) adequate fire and property insurance in an amount sufficient to restore the Bridge and NorShor Passageway to the specifications of this Agreement taking into account normal wear and tear and standard insurance coverage limits; and (ii) liability insurance in an amount of at least \$1,500,000. Further, NorShor agrees to indemnify and hold harmless City, DEDA and Greysolon from liability arising from the operation, repair, or maintenance of the Bridge and NorShor Passageway due to the negligence or willful misconduct of NorShor. NorShor will provide to City annual certificates of insurance to evidence said insurance coverage.

(c) All insurance provided by NorShor under this Section 6 will be issued by financially responsible insurance companies licensed to do business in the State of Minnesota. Each policy will provide for at least thirty (30) days' written notice to the parties prior to cancellation, non-renewal or material modification. NorShor shall deposit certificate evidence of each policy with City within thirty (30) days of the date of completion of the Bridge and NorShor Passageway and, for renewals, not less than five



(5) days prior to the expiration of the term of the expiring policy. All insurance required by this Section 6 may be provided in one or more blanket insurance policies.

(d) Notwithstanding anything apparently to the contrary contained herein, each party, on behalf of itself and anyone claiming through it, by way of subrogation or otherwise, hereby releases the other from and against any and all liability or responsibility that the released party would otherwise have for loss or damage to property and improvements located within the Bridge, NorShor Passageway, NorShor Theatre, Greysolon Building or Temple Building, as the case may be, to the extent that such property and improvements are coverable by standard fire and extended coverage insurance, even if such loss or damage was caused by the fault or negligence of a related party or anyone for whom such party may be legally responsible.

5.2. Damage or Destruction of Bridge. If the Bridge or any portion thereof is destroyed by fire or other casualty, NorShor shall forthwith repair, reconstruct, and restore the Bridge to substantially the same scale and condition, quality, and value as existed prior to the event causing such damage or destruction, and to the extent necessary to accomplish such repair, reconstruction, and restoration, NorShor shall apply the proceeds of any insurance received by NorShor to the payment or reimbursement of the costs thereof. NorShor shall, however, complete the repair, reconstruction and restoration of the Bridge whether or not the proceeds of any insurance received by NorShor are sufficient to pay for such repair, restoration, and reconstruction.

5.3 Damage or Destruction of NorShor Passageway. If the NorShor Passageway is constructed in accordance with this Agreement and thereafter the NorShor Passageway or any portion thereof is destroyed by fire or other casualty, NorShor shall forthwith repair, reconstruct, and restore the NorShor Passageway to substantially the same scale and condition, quality, and value as existed prior to the event causing such damage or destruction, and to the extent necessary to accomplish such repair, reconstruction, and restoration, NorShor shall apply the proceeds of any insurance received by NorShor to the payment or reimbursement of the costs thereof. NorShor shall, however, complete the repair, reconstruction and restoration of the NorShor Passageway whether or not the proceeds of any insurance received by NorShor are sufficient to pay for such repair, restoration, and reconstruction.

5.4 Damage or Destruction of Temple Vertical Facilities. If the Temple Vertical Facilities is constructed in accordance with this Agreement and thereafter the Temple Vertical Facilities or any portion thereof is destroyed by fire or other casualty, NorShor shall forthwith repair, reconstruct, and restore the Temple Vertical Facilities to substantially the same scale and condition, quality, and value as existed prior to the event causing such damage or destruction, and to the extent necessary to accomplish such repair, reconstruction, and restoration, NorShor shall apply the proceeds of any insurance received by NorShor to the payment or reimbursement of the costs thereof. NorShor shall, however, complete the repair, reconstruction and restoration of the Temple Vertical Facilities whether or not the proceeds of any insurance received by NorShor are sufficient to pay for such repair, restoration, and reconstruction.



## **SECTION 6. 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
In the case of Greysolon:	Greysolon Apartments Limited Partnership c/o Sherman Associates, Inc. 233 Park Avenue South, Suite 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 7. 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 8. Miscellaneous.**

8.1. 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. Notwithstanding the perpetual nature of the easements and licenses granted herein, if Greysolon ever demolishes or redevelops the Greysolon Building such that it is no longer feasible for the Bridge to be connected to the Greysolon Building, Greysolon may terminate this Agreement upon sixty (60) days' notice to NorShor, DEDA and the City in which case Greysolon, NorShor, DEDA and City shall execute an agreement, in recordable form, indicating the same.

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

9.3. 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.

8.4 Purpose. The principal purpose of the Bridge and the NorShor Passagewa, and the easements provided herein is to provide pedestrian access between the Medical District Ramp, the Greysolon Building, Sheraton Hotel, NorShor Theatre, Temple Building, the Skywalk System, and Superior Street, and the Bridgeand NorShor Passageway shall be not be operated or used for the purpose of advertising any names, products, or business or for any commercial purpose other than pedestrian access, except for necessary or appropriate directional signs and identifying signs, and such signs and other advertising for the NorShor Theatre, the Greysolon Building, the Sheraton Hotel (and any successor hotel flag thereto), all in accordance with applicable city zoning requirements and approvals.

8.5 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.



8.7 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.

8.8 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.

8.9 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 9. Mediation .**

9.1 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 request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration, which shall be stayed pending mediation for a period of thirty (30) days from the date of filing, unless stayed for a longer period by agreement of the parties. 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.]

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



**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 \_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







**GREYSOLON APARTMENTS LIMITED PARTNERSHIP,**  
a Minnesota limited partnership

By: Sherman Associates, Inc.  
Its: General Partner

By: \_\_\_\_\_  
Its: President

STATE OF MINNESOTA    )  
  ) ss  
COUNTY OF HENEPIN    )

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

Notary Public

\_\_\_\_\_

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



## **CONSENT OF GREYSOLON MORTGAGEE**

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

1. Minnesota Housing Finance Agency HUD Risk-Sharing Program Combination Mortgage, Security Agreement, and Fixture Financing Statement dated as of February 27, 2006, and recorded on March 14, 2006, in the office of the St. Louis County Recorder as Document No. 1012497 and in the office of the St. Louis County Registrar of Titles as Document No. 814397.
2. Minnesota Housing Finance Agency HUD Risk-Sharing Program Regulatory Agreement dated as of February 27, 2006, and recorded on March 14, 2006, in the office of the St. Louis County Recorder as Document No. 1012498 and in the office of the St. Louis County Registrar of Titles as Document No. 814398.
3. Minnesota Housing Finance Agency HUD Risk-Sharing Program Assignment of Rents and Leases dated as of February 27, 2006, and recorded on March 14, 2006, in the office of the St. Louis County Recorder as Document No. 1012499 and in the office of the St. Louis County Registrar of Titles as Document No. 814399.
4. Bond Compliance Agreement dated as of February 27, 2006, and recorded on March 14, 2006, in the office of the St. Louis County Recorder as Document No. 1012496 and in the office of the St. Louis County Registrar of Titles as Document No. 814396.
5. Minnesota Housing Finance Agency Preservation Affordable Rental Investment Fund Program Combination Mortgage, Security Agreement, and Fixture Financing Statement dated as of February 27, 2006, and recorded on March 14, 2006, in the office of the St. Louis County Recorder as Document No. 1012502 and in the office of the St. Louis County Registrar of Titles as Document No. 814402.
6. Minnesota Housing Finance Agency Preservation Affordable Rental Investment Fund Program Regulatory Agreement dated as of February 27, 2006, and recorded on March 14, 2006, in the office of the St. Louis County Recorder as Document No. 1012503 and in the office of the St. Louis County Registrar of Titles as Document No. 814403.
7. Minnesota Housing Finance Agency Preservation Affordable Rental Investment Fund Program Assignment of Rents and Leases dated as of February 27, 2006, and recorded on March 14, 2006, in the office of the St. Louis County Recorder as Document No. 1012504 and in the office of the St. Louis County Registrar of Titles as Document No. 814404.
8. Minnesota Housing Finance Agency Preservation Affordable Rental Investment Fund Program Declaration of Covenants, Conditions and Restrictions dated as of February 27, 2006, and recorded on March 14, 2006, in the office of the St. Louis County Recorder as

Document No. 1012505 and in the office of the St. Louis County Registrar of Titles as Document No. 814405.

9. Minnesota Housing Finance Agency Agreement Pledge Agreement dated as of February 27, 2006, and recorded on March 14, 2006, in the office of the St. Louis County Recorder as Document No. 1012500 and in the office of the St. Louis County Registrar of Titles as Document No. 814400.

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

MINNESOTA HOUSING FINANCE AGENCY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF RAMSEY    )

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

\_\_\_\_\_  
Notary Public