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## MASTER SUBORDINATION AGREEMENT

**THIS MASTER SUBORDINATION AGREEMENT** (this “**Agreement**”) is dated as of the \_\_\_\_ day of April, 2016, and is made and entered into by and among **NORSHOR THEATRE LLC**, a Minnesota limited liability company (the “**Developer**”), the **DULUTH ECONOMIC DEVELOPMENT AUTHORITY**, an economic development authority under Minnesota Statutes (1989) Chapter 469 (“**DEDA**”), the **DULUTH PLAYHOUSE INCORPORATED**, a Minnesota non-profit corporation (the “**Playhouse**”), **BMO HARRIS BANK N.A.**, a national banking association (“**BMO**”), and **NEW MARKETS INVESTMENT 93, LLC**, a Delaware limited liability company (“**LISC CDE**”), **BH NEW MARKETS SUB-CDE X, LLC**, a Delaware limited liability company (“**BMO CDE**”), and **CNMC SUB-CDE [ ]**, LLC, a Delaware limited liability company (“**CNMC CDE**” and collectively with LISC CDE and BMO CDE, the “**CDEs**” and each a “**CDE**”). **DEDA**, the **Playhouse**, **BMO**, and the **CDEs** are sometimes referred to herein collectively as the “**Lenders**” and individually as a “**Lender**”.

### WITNESSETH:

**WHEREAS**, **Developer** is the owner of that certain building located in Duluth, Minnesota having a street address of 211 E. Superior Street and commonly known as “The NorShor Theater” (the “**Building**”), and located on the tract of land, as more particularly described in **Exhibit A** attached hereto and made a part hereof together with certain other improvements and all appurtenances, easements, rights of way and other rights belonging to or in any way pertaining thereto or to the **Building** (collectively, the “**Land**”; the **Building** and the **Land** shall be referred to collectively as the “**Project**”); and

**WHEREAS**, Developer intends to rehabilitate or cause the rehabilitation of the Building in a manner that qualifies for the historic rehabilitation tax credit allowed for qualified rehabilitation expenditures incurred in connection with the “certified rehabilitation” of a “certified historic structure” (the “**Federal Historic Credits**”) pursuant to Section 47 of the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of prior or succeeding law (the “**Code**”); and

**WHEREAS**, Developer is expected to constitute a “qualified active low-income community business” (as that term is defined in Section 45D of the Code); and

**WHEREAS**, the Lenders have agreed to make the Loans (as defined below) to Developer upon and subject to all of the terms, conditions, covenants and agreements of this Agreement and the Loan Documents (as defined below) to finance the acquisition and rehabilitation of the Project; and

**WHEREAS**, the following is a listing and description of the loans that the Developer has obtained from the parties hereto (individually, a “**Loan**”, and, collectively, the “**Loans**”), together with a listing of the documents that evidence and secure the repayment of such Loan (collectively, the “**Loan Documents**”):

<u>Description of Loan</u>	<u>Loan Amount</u>	<u>Loan Documents Evidencing and Securing Repayment</u>
A bridge loan from BMO (the “ <b>BMO Bridge Loan</b> ”)	\$ _____	Those documents set forth in <b>Exhibit B</b> attached hereto.
Loans from the CDEs (the “ <b>CDE Loans</b> ”)	\$ _____	Those documents set forth in <b>Exhibit C</b> attached hereto.
A loan from DEDA to acquire the Project (“ <b>DEDA Loan</b> ”)	\$2,300,000	Those documents set forth in <b>Exhibit D</b> attached hereto.
A loan from the Playhouse (the “ <b>Playhouse Loan</b> ”)	\$ _____	Those documents set forth in <b>Exhibit E</b> attached hereto.

**WHEREAS**, the CDE Loan consists of the following:

(a) Loans in the original principal amounts of \$4,679,500 (“**LISC CDE A Loan**”) and \$2,075,500 (“**LISC CDE B Loan**”), respectively to Developer (collectively, the “**LISC CDE Loans**”); and

(b) Loans in the original principal amounts of \$5,937,250 (“**BMO CDE A Loan**”) and \$2,477,750 (“**BMO CDE B Loan**”), respectively to Developer (collectively, the “**BMO CDE Loans**”); and

(c) Loans in the original principal amounts of \$668,500 (“**CNMC CDE A Loan**”) and \$331,500 (“**CNMC CDE B Loan**”) respectively to Developer; and



**WHEREAS**, it is intended that the Loans, the corresponding Loan Documents, and other documents referred to herein and the liens created thereby shall have a certain order of priority; and

**WHEREAS**, it is further intended that the parties hereto wish to specify how the terms and conditions contained in the Loan Documents shall be interpreted in the event of a conflict or inconsistency therein.

**NOW, THEREFORE**, in consideration of One Dollar (\$1.00) and other good and valuable consideration, and in further consideration of the parties hereto making and entering into the Loans, the parties hereto agree as follows:

1. **Definitions.** For the purposes of this Agreement, the definitions set forth above shall be incorporated into this Section 1 by reference. The following terms shall have the meanings set out respectively after each such term, and such meaning shall be equally applicable to both the singular and plural forms of the term defined:

(a) **"BMO Bridge Loan Documents"** means those documents listed on **Exhibit B** attached hereto and incorporated herein by reference, which evidence and secure repayment of the BMO Bridge Loan.

(b) **"CDE Loans"** means, collectively, the LISC CDE A Loan, the LISC CDE B Loan, the BMO CDE A Loan, the BMO CDE B Loan, the CNMC CDE A Loan and the CNMC CDE B Loan.

(c) **"CDE Loan Documents"** means those documents listed on **Exhibit C** attached hereto and incorporated herein by reference, which evidence and secure repayment of the CDE Loans.

(d) **"DEDA Loan Documents"** means those documents listed on **Exhibit E** attached hereto and incorporated herein by reference, which evidence and secure repayment of the DEDA Loan.

(e) **"First Mortgage Lender"** means BMO until the BMO Bridge Loan is repaid and then the CDEs.

(f) **"First Mortgage Lender Loan"** means the BMO Bridge Loan until it is repaid and then the CDE Loans.

(g) **"First Mortgage Lender Loan Documents"** means the BMO Bridge Loan Documents until the BMO Bridge Loan is repaid and then the CDE Loan Documents.

(h) **"Guarantors"** means, collectively, George E. Sherman, an individual, and Sherman Associates, Inc., a Minnesota corporation.

(i) **"Playhouse Loan Documents"** means those documents listed on **Exhibit F** attached hereto and incorporated herein by reference, which evidence and secure repayment of the Playhouse Loan.

(j) **"Subordinate Lender Loans"** means CDE Loans, the DEDA Loan and the Playhouse Loan, as applicable.

(k) **“Subordinate Lenders”** means the CDEs, DEDA and the Playhouse, as applicable.

2. **Consent to Loans, Liens and Encumbrances.** The parties hereto consent and agree to all of the Loans and further agree that all of the liens and/or encumbrances created by the Loan Documents shall be deemed to be permitted encumbrances under their respective Loan Documents, subject to the terms of this Agreement. The parties hereto further agree to execute any and all documents that any party hereto may reasonably request in order to document that such liens and/or encumbrances are permitted encumbrances under their respective Loan Documents, subject to the terms of this Agreement.

3. **Use of Documents.** The parties hereto agree and consent to the use of the Loan Documents set forth in the Exhibits attached hereto in conjunction with the Loan referenced in each Exhibit. In addition, each party hereto, as to the Loan Documents that correspond to its Loan(s), does hereby covenant, warrant, consent and agree that (i) the described Loan Documents are all of the documents that the party has entered into regarding the corresponding Loan, (ii) there are no documents relating to such Loan other than the described Loan Documents for such Loan, (iii) it will not enter into any other document for such Loan that would adversely impact any other party or parties hereto without the prior written consent of such party or parties, (iv) any existing document or documents that may come into existence in the future to which a party hereto is or becomes a party or from which a party hereto obtains a benefit that is different from the benefits that the other parties hereto have received or will receive, and that is not listed in the Loan Documents set forth herein for such Loan, shall be of no force or effect until approved and consented to in writing by all of the parties hereto upon which such document has, or will have, an adverse effect, and upon such written approval, such document(s) shall be automatically considered to be included in the Exhibit hereto setting forth the Loan Documents for such Loan. The other parties hereto shall execute any document that may reasonably be requested in order to include such document in such exhibit. If a party requests in writing the consent of another party in connection with this Section 3, such consent shall be deemed given if the other party does not respond within thirty (30) days.

4. **Subordination of Loans and Loan Documents.** Except as specifically provided below, each party hereto agrees to the following priority for the provisions contained in the Loan Documents and any and all liens and/or encumbrances created thereby and each of the Subordinate Lenders subordinates its respective Loan Documents and liens and/or encumbrances created thereby to those Loan Documents and liens and/or encumbrances that are listed as having a priority over its Loan Documents and liens and/or encumbrances created thereby:



<u>Loan Documents and Liens and/or Encumbrances Created Thereby</u>	<u>Party to the Loan Documents and Holder of Liens and/or Encumbrances Created Thereby</u>	<u>Order of Priority</u>
BMO Bridge Loan Documents	BMO	First
CDE Loan Documents	CDEs	Second
DEDA Loan Documents	DEDA	Third
Playhouse Loan Documents	Playhouse	Fourth

#### 5. **First Mortgage Lender Priority.**

(a) Priority. In the event of the bankruptcy of, or the appointment of a trustee, receiver or other representative or liquidator for any of the property of Developer or any Guarantor, or in the event Developer or any Guarantor shall become the subject of any proceeding of any character under any federal or state bankruptcy or insolvency act or law, (a) all moneys and other property allocated or allocable to the Subordinate Lender Loans and which would be payable or deliverable to any of the Subordinate Lenders in the absence of the provisions of this Agreement shall be paid and delivered directly to the First Mortgage Lender for application by the First Mortgage Lender to the First Mortgage Lender Loan, in such order as the First Mortgage Lender shall elect, until full payment of the First Mortgage Lender Loan with the excess, if any, to be paid to the Subordinate Lenders, in the order of priority as set forth herein, regardless of whether any of the Subordinate Lenders or the First Mortgage Lender or any file a claim on behalf of the Subordinate Lenders in any such proceeding; and (b) First Mortgage Lender is hereby irrevocably appointed attorney-in-fact for the Subordinate Lenders with full power to act in the place and stead of the Subordinate Lenders in all matters relating to or affecting the Subordinate Lender Loans, including the right to make, present, file and vote such proofs of claim against Developer or any Guarantor on account of all or any part of said Subordinate Lender Loans, as First Mortgage Lender may deem advisable and to receive and collect any and all payments made thereon and to apply the same on account of the First Mortgage Loans. The Subordinate Lenders will execute and deliver to First Mortgage Lender such instruments as may be required by First Mortgage Lender to enforce the Subordinate Loans, to effectuate the aforesaid power of attorney and to effect collection of any and all payments which may be made at any time on account thereof. As collateral securing payment of the First Mortgage Lender Loan, the Subordinate Lenders hereby transfer and assign to First Mortgage Lender all collateral security therefor to which the Subordinate Lenders may be entitled, provided that such transfer and assignment shall be effective (i) only in the event of a bankruptcy of, or the appointment of a trustee, receiver or other representative or liquidator for any of the property of Developer or any Guarantor, (ii) in the order of priority set forth herein, and (iii) only in the amount necessary for the full payment of the First Mortgage Lender Loan. First Mortgage Lender may file one or more financing statements concerning any security interest hereby created without the signature of any of the Subordinate Lenders.

(b) Limitations on Payment. None of the Subordinate Lenders will receive, nor take action to collect or enforce, payment from Developer or any Guarantor, and Developer



will not make payment to any of the Subordinate Lenders, of any amounts outstanding under the Subordinate Lender Documents or any part thereof; except that Developer may pay regularly scheduled installments of principal and accrued interest under the Subordinate Lender Documents as long as, but only in the event that, no Event of Default (as defined in the applicable Loan Documents) then exists with respect to the First Mortgage Lender Loan Documents or the Subordinate Lenders' Loan Documents, and any such regularly scheduled installments of principal and accrued interest may be retained by such Subordinate Lenders. Upon the occurrence of an Event of Default under the First Mortgage Lender Loan Documents, and upon receipt of notification thereof from First Mortgage Lender, each of the Subordinate Lenders agrees that it will not, without the prior written consent of First Mortgage Lender, receive, take or continue any action to collect or enforce, payment or other performance of any of the Subordinate Lender's Loan Documents or any part thereof from Developer, any Guarantor or any trustee in bankruptcy, receiver, or other liquidator of any part of Developer's or any Guarantor's property, or from any other person. Until payment in full of the First Mortgage Lender Loan, any payment received by any of the Subordinate Lenders pursuant to the immediately preceding sentence shall promptly be delivered to First Mortgage Lender for application to the First Mortgage Lender Loan, in such order as BMO shall elect. None of the Subordinate Lenders will exercise any right of set-off against Developer or any Guarantor otherwise available to it until the First Mortgage Lender Loan are paid in full.

(c) Pay Over of Monies. If any of the Subordinate Lenders receive any payment of the Subordinate Loans in violation of the terms of this Agreement, such payments shall be held in trust by the Subordinate Lender and the Subordinate Lender will forthwith pay over or deliver the same to First Mortgage Lender to be applied as provided in the First Mortgage Lender Loan Documents.

6. **Interpretation.** The parties hereto are entering into and executing this Agreement in order to establish the subordination and priority of the Loan Documents and any liens and/or encumbrances created thereby, and, accordingly, such parties hereby agree, understand, and acknowledge that the enforceability of this Agreement is not, and shall not be, restricted, limited, or impaired by the fact that not all of the parties hereto are signatories to each or any of the Loan Documents. In the event of a conflict between the provisions of this Agreement and any of the Loan Documents, this Agreement shall control to the extent of such conflict.

7. **Developer to Comply with all Loan Documents.** Notwithstanding the order of priority and subordinations granted herein, the Developer shall comply not only with the Loan Documents having first priority but with all Loan Documents. For example, if a Subordinate Lender's Loan Documents contain rent, income or occupancy requirements that are more restrictive than Loan Documents that are more senior in priority, then the Developer shall comply with the more restrictive Subordinate Lender's Loan Documents for as long as they remain in effect.

8. **Use of Insurance and Condemnation Proceeds.** Notwithstanding any provisions to the contrary contained herein or in any of the Loan Documents, the parties hereto agree that any and all insurance and/or condemnation proceeds shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the First Mortgage Lender Loan) in the manner set forth in the First Mortgage Lender Loan Documents; provided,

however, First Mortgage Lender agrees to consult with the Subordinate Lenders in determining the application of insurance proceeds; provided, further, that in the event of any disagreement between First Mortgage Lender and the Subordinate Lenders over the application of insurance proceeds, the decision of First Mortgage Lender, in its sole discretion, shall prevail. First Mortgage Lender will give the Subordinate Lenders notice of defaults under the First Mortgage Lender Loan Documents and an opportunity to cure such defaults as provided in the First Mortgage Lender Loan Documents.

9. **Absence of Events of Default and Compliance with Closing Requirements.** Each party hereto states, represents, and warrants that as to each of its individual Loans, (i) such Loans have been duly closed, (ii) to the best of its knowledge there are no Events of Default, or events that with the passage of time could constitute an Event of Default, currently existing with respect to any of its Loans, and (iii) all of its Loans are in good standing.

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

[The remainder of this page has been left blank intentionally.]

**IN WITNESS WHEREOF**, the parties hereto have executed this Master Subordination Agreement Certificate on the date indicated immediately below their signatures.

**DEVELOPER:**

**NORSHOR THEATRE LLC,**  
a Minnesota limited liability company

By: NorShor Theatre Managing Member LLC,  
a Minnesota limited liability company  
Its Managing Member

By:

\_\_\_\_\_  
Name: George E. Sherman  
Its: President and Chief Manager

STATE OF MINNESOTA    )  
  )ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2016, by George E. Sherman, the President and Chief Manager of 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 such limited liability company.

\_\_\_\_\_



**DEDA:**

**DULUTH ECONOMIC DEVELOPMENT**

**AUTHORITY**, an economic development authority under  
Minnesota Statutes, (1989) Chapter 469

By: \_\_\_\_\_

Name:

Its:

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, the \_\_\_\_\_ of the Duluth Economic Development Authority, an economic development authority under Minnesota Statutes (1989) Chapter 469, on behalf of such authority.

\_\_\_\_\_

**PLAYHOUSE:**

**DULUTH PLAYHOUSE INCORPORATED,**  
a Minnesota non-profit corporation

By: \_\_\_\_\_

Name:

Its:

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 such corporation.

\_\_\_\_\_



**LISC CDE:**

**NEW MARKETS INVESTMENT 93, LLC**, a  
Delaware limited liability company

By: New Markets Support Company, LLC, a Delawa  
limited liability company, its managing member

By: \_\_\_\_\_  
Robert Poznanski, Senior Vice President

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2016, by Robert Poznanski, the Senior Vice President of New Markets Support Company, LLC,  
a Delaware limited liability company, the Managing Member of New Markets Investment 93,  
LLC, a Delaware limited liability company, on behalf of such limited liability company.

\_\_\_\_\_

**BH CDE:**

**BH NEW MARKETS SUB-CDE X, LLC,**  
a Delaware limited liability company

By: M&I New Markets Fund, LLC, a  
Wisconsin limited liability company, its  
managing member

By: \_\_\_\_\_ D.  
Devon Osborn, Vice President

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by D. Devon Osborn, the Vice President of M&I New Markets Fund, LLC, a Wisconsin limited liability company, the Managing Member of BH New Markets Sub-CDE X LLC, a Delaware limited liability company, on behalf of such limited liability company.

\_\_\_\_\_



**CNMC CDE:**

**CNMC SUB-CDE [ ], LLC**, a Delaware limited liability company

By: Chase New Markets Corporation, a Delaware corporation,  
its managing member

By: \_\_\_\_\_  
Timothy C. Karp, Vice President

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by Timothy C. Karp, Vice President, Vice President of Chase New Markets Corporation, a Delaware corporation, Managing Member of CNMC Sub-CDE [ ], LLC, a Delaware limited liability company, on behalf of such limited liability company.

\_\_\_\_\_

**BMO:**

**BMO HARRIS N.A.,**  
a national banking association

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

STATE OF MINNESOTA    )  
  )ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, the \_\_\_\_\_ of BMO Harris N.A., a national banking association, on behalf of such association.

\_\_\_\_\_

This instrument was prepared by:  
Sherman Associates, Inc.  
233 Park Avenue South, Suite 201  
Minneapolis, MN 55415



**EXHIBIT A**  
**LEGAL DESCRIPTION**

Tract B, REGISTERED LAND SURVEY NO. 132, St. Louis County, Minnesota.

**EXHIBIT B**  
**BMO BRIDGE LOAN DOCUMENTS**

**EXHIBIT C**  
**CDE LOAN DOCUMENTS**



**EXHIBIT D**  
**DEDA LOAN DOCUMENTS**

**EXHIBIT E**  
**PLAYHOUSE LOAN DOCUMENTS**