RESOLUTION 14D-20

RESOLUTION APPROVING SECOND AMENDMENT TO MEMORANDUM OF UNDERSTANDING WITH SHERMAN ASSOCIATES, INC FOR REDEVELOPMENT OF THE NORSHOR THEATRE EXTENDING THE TIME FOR PERFORMANCE THEREUNDER

RESOLVED by the Duluth Economic Development Authority (DEDA) that the proper DEDA officials are hereby authorized to enter into a Second Amendment to Memorandum of Understanding, substantially in the form of that attached hereto (DEDA Contract No. 12 865 668²), with Sherman Associates, Inc. extending the time for performance thereunder to September 30, 2014.

Approved by the Duluth Economic Development Authority this 23th day of April, 2014.

ATTEST:

APPROVED AS TO FORM

REA

DEDA Attorney

APPROVED FOR PRESENTATION

CTE

Executive Director

_____

Executive Director

STATEMENT OF PURPOSE: The purpose of this resolution is to approve an extension of the Memorandum of Understanding ("MOU") between DEDA and Sherman Associates, Inc. (Developer) to September 30, 2014 for the redevelopment of the NorShor Theatre and the Temple Opera Building.

The Developer has been working on the design of the project and has been securing funding necessary for the completion of the project. At this time, the necessary funding is in place except for approximately $6.9 Million in funds anticipated to be appropriated by the State Legislature. This funding is in current funding packages before the Legislature but passage is still to be finalized.

Once the funding is finalized the Developer and DEDA will be able to finalize the development agreement in line with the project memorandum of understanding. It is anticipated that this process will be completed within the time frame provided for in this amendment.

SECOND AMENDMENT TO AGREEMENT

The Memorandum of Understanding, as previously amended, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, ("DEDA"), and SHERMAN ASSOCIATES, INC., ("Developer") is further amended by the SECOND AMENDMENT as set forth below. Capitalized terms used in this Amendment but not defined herein shall have the meanings ascribed to them in the Agreement.

WHEREAS, on or about February 22, 2012, the parties entered into an Memorandum of Understanding (DEDA Contract #12 865 668) related to redevelopment of the NorShor Theatre, which Memorandum was amended by an Amendment to Agreement approved by DEDA pursuant to its Resolution No. 12D-67 which bears DEDA Contract No. 12 865 668(1) and which memorandum and First Amendment are hereinafter referred to as the "Agreement"; and

WHEREAS, the parties desire to amend the Agreement to extend certain timeframes therein.

NOW, THEREFORE, the parties agree as follows:

1. Paragraph 2.C. is modified as follows:

   C. Exclusive Option to Develop
   Notwithstanding the provisions of Subparagraph B above, this MOU shall constitute the grant by DEDA of the exclusive option to develop the Property and the Project in conformance with the terms and conditions of this MOU through September 30, 2014 by DEDA subject to the right of either party to terminate said option upon Thirty (30) days prior notice to the other party but only if

   1. The Developer fails to achieve the tasks and milestones set forth on Amended Exhibit C attached hereto and made a part hereof, in the time frames set forth in said Amended Exhibit C; and

   2. Developer fails to demonstrate to the reasonable satisfaction of DEDA that, regardless of any such failure to achieve any of the aforesaid tasks or milestones in said time frames, that Developer can still close on the financing for the Project and otherwise be able to enter into the Development Agreement for the Project by September 30, 2014.

   Provided, however, that upon the giving of such notice, the party receiving such notice may request reconsideration by the terminating party and may present evidence and argument in support thereof within such Thirty (30) day period and the terminating party agrees to consider approval of the receiving party's request. Within ninety (90) days of the date of approval of this MOU by DEDA and every Ninety (90) days thereafter during the term of the option granted hereunder, Developer shall appear at a meeting of the DEDA Board of Commissioners and demonstrate, to the reasoned satisfaction of the Board, Developer's accomplishments of the tasks and milestones set forth in Amended Exhibit C and progress in the preceding Ninety (90) days and set forth Developer's prognosis for completing said tasks within said term.

2. Exhibit C is amended and replaced with Amended Exhibit C attached hereto.

3. Paragraph 3.G. is modified as follows:

   G. It is the intention of the parties that the Development Agreement for the Project be executed no later than September 30, 2014 and that construction of the Project shall be commenced no

later than three (3) months after the date of execution of said Development Agreement. The parties agree that the Development Agreement shall contain a Completion Date, which shall be the date by which construction of the Project is completed, agreed to by the Parties.

4. Paragraph 7 is amended as follows:

7. Execution of Agreement
It is the intention of the parties that they will finalize and execute the Development Agreement and the Property Operating Agreement no later than no later than September 30, 2014 and that they will both use their best efforts to attain this goal.

5. Except as specifically amended pursuant to this Amendment, the Agreement remains in full force and effect. In the event of a conflict between the provisions of this Amendment and the provisions of the Agreement, the provisions of this Amendment shall govern.

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

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

By:_____
Its President

Attest: _____
Its Secretary
Date: _____

SHERMAN ASSOCIATES, INC.

By: _____
Its Chair
Date: _____

By: _____
Its Secretary
Date: _____

AMENDED EXHIBIT C

Development Tasks and Milestones

First Quarter Milestones

- Concept plan review with user groups complete (Completed)
- Architect selection (Completed)
- Design development drawing commence (Completed)
- Contractor selection (Completed)
- Construction cost estimate – preliminary (Completed)

Second Quarter Milestones

- 90% construction documents (70-80% Completed)
- Historic Part 1application submittal (Completed)
- Commitment letter of NMTC interest ($10 of $20 million completed)
- Proposed legal descriptions
- Construction cost estimate –update (Completed)
- Draft Operating Agreements -- Playhouse & City (Completed)

May 30, 2014 Deadline

- 100% construction drawing
- Historic Part 2 application submittal
- Guaranteed max price
- Commitment letter of Lender interest

September 30, 2014 Deadline

- Historic Part 2 approval
- State historic credit approval
- Construction permits secured
- Closing