

RESOLUTION 14D-40

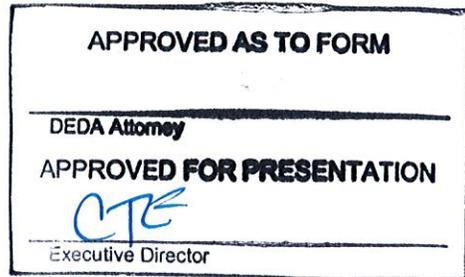
RESOLUTION APPROVING A PRE-DEVELOPMENT LOAN AGREEMENT WITH SHERMAN ASSOCIATES, INC FOR THE NORSHOR THEATRE SKYWALK

RESOLVED by the Duluth Economic Development Authority (DEDA) that the proper DEDA officials are hereby authorized to enter into a loan agreement, substantially in the form of that attached hereto (DEDA Contract No. _____), with Sherman Associates, Inc. authorizing the loan of up to \$300,000 to fund a portion of the costs associated with designing those elements of the NorShor Theatre development, including the skywalk, which are eligible for funding with tax increment proceeds, payable from fund 865, District No. 22.

Approved by the Duluth Economic Development Authority this 24th day of September, 2014.

ATTEST:

Executive Director



STATEMENT OF PURPOSE: The purpose of this resolution is to authorize an interim loan to Sherman Associates, the Developer, for a portion of the design costs related to the development of the NorShor Theatre project and Skywalk through the project, up to \$300,000. The source of the funds is Tax Increment proceeds from the Sheraton Hotel project which were reserved for extension of the Skywalk to the west of the Greysolon Apartments which will be part of the NorShor Project.

While it is not normal for DEDA to lend funds for pre-development costs prior to having entered into a Development Agreement with the Developer, this project is unique in several respects. First, DEDA did not acquire the property as part of an established development project. Rather the property was acquired in order to protect the Old Downtown neighborhood from an operation that was having a negative impact on the viability of East Superior Street and the entertainment district. Thus DEDA owns the property and is in need of developing in a way which will enhance rather than denigrate the area.

Also the building has historical character and, in addition, a history which makes preservation of it as an entertainment venue a worthwhile goal. But it is also understood in the historic community that redevelopment of historic properties such as this is an arduous and expensive process, especially at the "front end" where design costs are high and approvals from reviewing entities are often time-consuming and expensive.

In addition DEDA and the City have a concept plan for the area that involves redevelopment of the property in a manner which will be compatible with the historic character of the district and with the plans for making it a focus of the Downtown arts and entertainment area. And there is a need for a community performing venue of this type, size and character in the Downtown.

But it is also true that venues of this type often need to be assisted by the public as well as the private sector in order to make them viable.

For all of these reasons, it is appropriate for DEDA to take unusual steps to foster this development by assisting to address the unusual costs associated with getting such a development to the place where a development agreement can be negotiated and approved and construction can begin.

It is anticipated that such a development agreement will be forthcoming to DEDA in October. As part of the development agreement, the terms of the predevelopment loan will be included when the development occurs. If the development does not occur, Sherman & Associates will pay half of the loan plus interest back to DEDA and we will keep the plans for the NorShor Theatre project and skywalk through the project.

INTERIM PRE-DEVELOPMENT LOAN AGREEMENT
NORSHOR THEATRE/ANNEX/TEMPLE OPERA BUILDING
NORSHOR THEATRE LLC
DULUTH ECONOMIC DEVELOPMENT AUTHORITY

THIS INTERIM PRE-DEVELOPMENT LOAN AGREEMENT entered into this 24th day of September, 2014 (the "Effective Date") by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, hereinafter referred to as "DEDA", and NORSHOR THEATRE LLC, a Minnesota limited liability Company, hereinafter referred to as "Developer".

WHEREAS, DEDA is the owner of those properties in the Old Downtown neighborhood of Duluth known as the Norshor Theatre Building, the Theatre Annex Building and the Temple-Opera Building, which buildings are hereinafter collectively referred to as "Buildings"; and

WHEREAS, DEDA and Developer are negotiating a development agreement (the "Development Agreement") for the sale of the Buildings to Developer, and/or an affiliate of Developer, and redevelopment of the Buildings to include a community theater and performing arts center with skywalk system connections through the Buildings and to the Greysolon Plaza Building to the east and to the Fond du Luth Casino to the west (the "Project"), which development is currently in the design phase; and

WHEREAS, it is contemplated that, upon the successful completion and approval of the Development Agreement, DEDA will agree to share in the cost of the redevelopment of Buildings, including the cost of design related to the Skywalk connections to and through the Buildings; and

WHEREAS, Developer has requested that DEDA assist in paying for some of the costs associated with Skywalk system design, based upon the understanding between the parties that the Development Agreement for the development of the Project will be approved by both parties which will include the Skywalk connections through and within the Buildings connecting to the neighboring buildings as hereinafter set forth, including DEDA's contribution to the design and construction of the Project and which will include as an element thereof DEDA's contribution to the design costs referenced above; and

WHEREAS, DEDA is willing to enter into an interim loan for the purpose of assisting in the funding of those costs on an interim basis under the terms and conditions hereinafter set

forth.

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto hereby agree as follows:

1. Architectural Contract

Developer, or its affiliate, had previously entered into an architectural design agreement with the firm of Toltz, King, Duvall, Anderson and Associates, d/b/a TKDA, to perform design services related to the development of the Project (the "Architect Agreement") and a portion of the needed design services have been performed and paid for by Developer under that Architect Agreement. In order to address issues involved in the final design and financing of the Project, Developer has extended its agreement with TKDA to encompass all design services necessary to bring the design and design documents for the Project to the to the stage of completion necessary to allow the Project to be competitively bid by contractors competent to construct the Project and has authorized TKDA to perform said work (the "Architect Agreement Amendment").

2. DEDA Interim Loan

DEDA hereby agrees to provide a loan to Developer for the work to be authorized under Paragraph 1. above attributable to the design of those portions of the Project the costs of which would be legally eligible for the use of tax increment proceeds under Minnesota Statutes Chapter 469 as interpreted by the office of the Minnesota State Auditor, including but not limited to the costs of the Skywalk design to and through the Buildings and design and redesign of areas impacted by the Skywalk (the "Eligible Costs"), for work performed from the effective date of the Architect Agreement Amendment until the Termination date as hereinafter described up to the amount of Three Hundred Thousand Dollars (\$300,000) under the terms and conditions hereinafter set forth (the "Loan"). Said loan funds shall be subject to being drawn by Developer upon the presentation of evidence reasonably satisfactory to DEDA's Executive Director that Eligible Costs have been incurred. Requests for reimbursement shall be made no more frequently than monthly. The loaned funds shall bear no interest during the Term set forth below; thereafter any loan funds which have not been repaid to DEDA will bear interest at the rate of five (5%) percent per year simple annual interest. Provided, however, that it is anticipated by the parties that the repayment of any funds loaned under this Agreement will be addressed as part of the Development Agreement or otherwise as described in Section 3.C of this Agreement. The debt of loaned funds and any accrued interest shall be evidenced by a Note substantially in the form of that approved by the Executive Director and any funds loaned to Developer hereunder will be paid from Fund 865. The parties acknowledge that loaned funds under this Agreement are less than one-half the total amount of the

Architect Agreement, as amended.

3. Term and Termination

A. Generally

The Term of this Agreement and any loan of funds thereunder will commence as of the Effective Date of this Agreement and will terminate on the sooner of the date when the Developer closes on the construction financing for the Project or date two (2 yrs.) years from the Effective Date described above, unless sooner terminated as provided for in Paragraph B below.

B. Early Termination

In the event that either party shall reasonably determine that there is no reasonable probability that the parties will successfully negotiate and agree to a Development Agreement which will result in the development of the Project, either party may give written notice to the other party of said determination and Thirty (30 days) days after the giving of such notice, this Agreement shall terminate except as to prepayment and interest obligations as referenced in Paragraph 2 above. Provided that during said Thirty (30) day period, the non-noticing party may request the opportunity to negotiate with the noticing party regarding said termination and if the noticing party withdraws its notice of termination during the Thirty (30) day period, said notice shall be of no effect and the Agreement shall continue as if no such notice had been given. The parties hereto agree that upon receipt of such request for negotiation, the parties will negotiate in good faith regarding the reasons for the giving of the notice and continuation of the Agreement.

C. Termination

In the event that this Agreement is terminated in any other manner than by the Parties hereto entering into of the Development Agreement, in full satisfaction of repayment of the Loan as herein provided, Developer agrees that it will pay to DEDA fifty percent (50%) of the amount of the Loan that has been advanced on or before the date two (2 yrs.) years from the Effective Date described above, and DEDA agrees that upon such payment, the Loan shall be fully satisfied.

4. Guaranty

As a condition of entering into this Interim Loan Agreement and as a precondition of the loan of any funds thereunder, Developer shall have provided to DEDA the corporate guaranty of Sherman Associates, Inc., a Minnesota corporation guarantying the repayment of the loan

funds by DEDA to Developer pursuant to Paragraph 3.C. Such guaranty shall be in the form of that approved by the Executive Director.

5. Independent Contractor

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting Developer as an agent, representative or employee of DEDA for any purpose or in any manner whatsoever. Developer and any officers or employees thereof shall not be considered an employee of DEDA, and any and all claims that may or might arise under the Workers Compensation Act of the State of Minnesota on behalf of Developer while so engaged and any and all claims whatsoever on behalf of Developer arising out of employment or alleged employment, including without limitation, claims of discrimination against DEDA, its officers, agents, contractors or employees shall in no way be the responsibility of DEDA. Developer and its officers, agents, contractors and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers Compensation, Unemployment Insurance, disability pay or severance pay. Furthermore, DEDA shall not, in any way, be responsible to defend, indemnify or save harmless Developer from liability or judgments arising out of the intentional or negligent acts or omissions of Developer while performing the work specified by this Agreement.

6. Rules and Regulations

Developer agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and DEDA and their respective agencies which are applicable to its activities under this Agreement.

7. Liens-Indemnification

Developer agrees to prevent the placing of any liens of any kind, including but not limited to mechanics liens on the Buildings and the properties upon which they are located arising out of the Project or services or goods or materials related thereto or to successfully contest or satisfy the same if they arise and to indemnify DEDA from and against any and all costs, including attorney's fees arising out of the placing of such liens on the Buildings or such property. The indemnification obligation under this paragraph shall be deemed to have been effective from the date of Developer's entry upon the Buildings and such property.

8. Notices

Notice to DEDA or Developer provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time:

DEDA: Duluth Economic Development Authority
Executive Director
Room 402 City Hall
Duluth, MN 55802

Developer: NorShor Theatre LLC
233 Park Avenue South
Suite 201
Minneapolis, MN 55415

Copy to: Hanft Fride
1000 US Bank Place
130 West Superior Street
Duluth, MN 55802

9. Waiver

Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

10. Applicable Law

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

11. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

12. Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

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

DULUTH ECONOMIC DEVELOPMENT AUTHORITY,
an economic development authority under
Minnesota Statutes (1989) Chapter 469

NORSHOR THEATRE LLC, a Minnesota
limited liability company

By: _____

Its: _____

By: _____

Its: _____

By: _____

Its: _____

Approved:

Assistant City Attorney