RESOLUTION 14D-11

RESOLUTION AUTHORIZING A FIFTH AMENDMENT TO OPTION RENEWAL AND PRE-DEVELOPMENT AGREEMENT WITH PIER B HOLDING, LLC FOR THE PIER B PROPERTY IN BAYFRONT

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to enter into a Fifth Amendment to Option Renewal and Pre-development Agreement, substantially in the form of that attached hereto (DEDA Contract No. 11 860 639[5]) with Pier B Holding, LLC extending the conditional option to redevelop the property in conjunction with the redevelopment of the former LaFarge property through June 30, 2014 for an option price of $10,000, payable to Fund 860..

Approved by the Duluth Economic Development Authority this 26th day of March, 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 authorize the fifth extension of the existing Option Renewal and Pre-development Agreement with Pier B Holding, LLC to acquire DEDA-owned property adjacent to Slip No. 2 ("Lot C") and to develop the property in partnership with DEDA to create a project having great public and private benefits for all parties and for the City as a whole. Pier B Holding, LLC is the owner of the property in Bayfront which is called Pier B, previously occupied by the Lafarge cement plant.

DEDA entered into the original Option Renewal and Pre-development Agreement with Pier B in November of 2011 after first having granted Pier B options to redevelop the property. While the re-development process has been proceeding, it has proven more intractable than anticipated and therefore additional time was needed to secure necessary financing commitments. A first amendment to the Agreement that extended the term of the Agreement to December 31, 2012 was approved by DEDA in October 2012 and a second amendment extending the term to June 30, 2013 was approved in December of 2012. A third amendment to the Agreement was approved in May 2013 extending the term to September 30, 2013, and a fourth amendment was approved in September 2013 extending the term until March 31, 2014.

The Developer has received "term sheets" from two financing entities that set forth their

intention to jointly finance the project and that set forth the terms and conditions that will attach to that financing; the "capital stack" for the project is in place. The Developer and its financing partners are confident that three-month extension provides a time line that allows for DEDA to consider the final Development Agreement and for approval of the TIF Plan, which will result in closing on the Lot C property no later than June 30, 2014.

As provided for in the Conditional Option Agreement, upon exercise of the option the option fee paid for this extension will be applied against the purchase price of DEDA's property.

FIFTH AMENDMENT TO
OPTION RENEWAL AND PRE-DEVELOPMENT
AGREEMENT
BAYFRONT PROPERTY
DULUTH ECONOMIC DEVELOPMENT AUTHORITY, SELLER
PIER B HOLDING, LLC, PURCHASER

THIS FIFTH AMENDMENT TO OPTION RENEWAL AND PRE-DEVELOPMENT AGREEMENT entered into this _____ day of _____, 2014, 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 PIER B HOLDING, LLC, a Minnesota limited liability company, hereinafter referred to as "Developer".

WHEREAS, on November 16, 2011, DEDA and Developer entered into the Option Renewal and Pre-development Agreement, bearing DEDA Contract No. 11 860 639_Agreement, which agreement was amended by a First Amendment thereto dated November 16, 2012, by a Second Amendment thereto dated January 23, 2013, by a Third Amendment approved by DEDA on May 22, 2013, and by a Fourth Amendment approved by DEDA on September 25, 2013, which agreement and amendments are hereinafter referred to as the "Agreement", for the development and redevelopment of property in the Bayfront area of Duluth; and

WHEREAS, despite the diligent efforts of Developer and DEDA staff, the parties are not ready to enter into a formal development agreement for the proposed development and are therefore in need of extending the term of the agreement through June 30, 2014in order to finalize the plans for the project and the development agreement.

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

1.) That Expiration Date as contained in Paragraph L of Article I of the Agreement is hereby amended by deleting the date "March 31, 2014" therefrom and by inserting the date, "June 30, 2014" therefore.

2. In all other respects the Agreement, together with all of its terms, covenants and conditions, is hereby confirmed in its entirety.

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

DULUTH ECONOMIC DEVELOPMENT AUTHORITY, a Minnesota economic development authority

By: _____

Its President

By: _____

Its Secretary

PIER B HOLDING LLC, a Minnesota Limited Liability Company

By:

Its