

RESOLUTION 14D-32

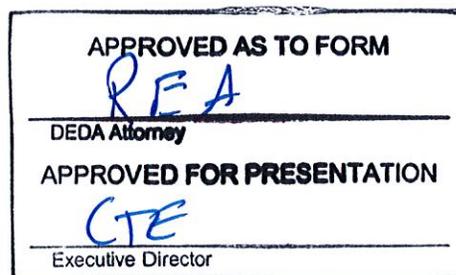
RESOLUTION AUTHORIZING A DEVELOPMENT AGREEMENT WITH PIER B HOLDING, LLC FOR THE SALE OF LAND AND DEVELOPMENT OF THE PIER B PROJECT

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to enter into a Development Agreement, substantially in the form of that attached hereto (DEDA Contract No. 14 860____) with Pier B Holding, LLC authorizing the conveyance of property described therein known as DEDA Lot C to Pier B, the development on said property and adjacent property of a project which will include a 140 room resort hotel, restaurant and banquet facilities, multiuse facilities and marina facilities and providing financial assistance therefore, as described in said development agreement.

Approved by the Duluth Economic Development Authority this 4th day of June, 2014.

ATTEST:

Executive Director



STATEMENT OF PURPOSE: The purpose of this resolution is to authorize the development agreement with the developer of the Pier B project.

Pursuant to the Development Agreement DEDA agrees to convey the property commonly known as Lot C and DEDA's interest in adjacent Slip No. 2 to the Developer. DEDA will receive the appraised value of the property but the payment will be deferred for 5 years during which time the purchase price will accrue market rate interest. The Developer will be obligated to develop the "Project" which will include a 140 room, first-class resort hotel, not less than 5,400 square feet of banquet and convention room facilities, a full-service restaurant, almost 10,000 square feet of multi-purpose space, a transient marina, a pedestrian bridge across Slip No. 2 and accommodation for the extension of the Baywalk Trail through the Project to Lot D on the other side of Slip No. 3 and stabilization/reconstruction of the slip walls along all sides of Slip No. 2.

The TIF Plan for the Project and the Development Agreement will be subject to City Council approval. As soon as possible after Council approves the TIF Plan and agreements and a separate agreement between the City and Pier B which will address "City issue", such as the City's rights in Slip No. 2, access from Canal Park through

Bayfront Festival Park and storm water issues related to the City's existing storm water discharges into Slip No. 2, the Developer will commence construction of the project.

Approximately 82.5% of the project will be financed by private recourse funding from the developers, local equity partners and major financial entities, to whom participation will be marketed. The remainder of the project has been funded by various state grants or will be funded through the use of Tax Increment generated by the Project.

Because of the environmental and physical conditions of the property upon which the project will be built and the Slip itself, and because of the economic environment for developments of this sort in the Duluth-Superior market, the project will require tax increment support to make it possible and the Development Agreement so provides, in accordance with the TIF Plan approved by DEDA at its meeting of April 23, 2014.

**DEVELOPMENT AGREEMENT
DULUTH ECONOMIC DEVELOPMENT AUTHORITY
PIER B HOLDING, LLC..
THE SILOS AT PIER B
PROJECT**

_____, 2014

**DEVELOPMENT AGREEMENT
DULUTH ECONOMIC DEVELOPMENT AUTHORITY
PIER B HOLDING, LLC.
THE SILOS AT PIER B PROJECT**

THIS 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 limited liability company under the laws of the State of Minnesota, hereinafter referred to as "Developer".

WHEREAS, DEDA, along with the City of Duluth, has identified that portion of its existing lakefront area lying immediately west of the City of Duluth's Bayfront Festival Park and adjacent to the St. Louis River Estuary as a historically significant area but one which is in need of substantial redevelopment in order maximize its benefits to the community in a manner which respects and fosters its historical significance; and

WHEREAS, DEDA is the owner of the hereinafter described DEDA Property immediately to the west of Bayfront Festival Park which DEDA desires to have redeveloped to support the area's growing tourism industry, creating jobs and foster general economic growth in the region; and

WHEREAS, Developer has acquired the hereinafter described Developer Property previously owned and occupied by LaFarge Cement Company and commonly referred to

as the Pier B property lying directly to the west of the DEDA Property with the intention of developing their property, in conjunction with the DEDA Property for a waterfront resort hotel, restaurant, meeting center and recreation uses (the hereinafter-described "Project"); and

WHEREAS, Developer has requested the assistance of DEDA in financing the costs of the Project; and

WHEREAS, after careful analysis of the projected costs of the entire development and of the financial resources available to pay for the Project, DEDA has determined that:

- (I) a "gap" exists between the cost to Developer and DEDA of constructing the Project and the DEDA Project and the funds presently available to or known to Developer and DEDA to finance those costs other than those identified in the existing budget for the Projects;
- (II) there are no available and affordable sources of other governmental programs or funds known to Developer or DEDA available to fund the aforesaid "gap";
- (III) there is no private market financing known to Developer or DEDA available at affordable rates to fund said "gap";
- (IV) exclusive of the tax increment assistance to be provided pursuant to this Agreement, the available resources would be inadequate to construct the entire development and that therefore, but for the tax increment assistance to be provided for hereunder, the Project could not reasonably be expected to be constructed in the foreseeable future; and
- (V) the increased market value of the Property that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the market value estimated to result from the proposed development after subtracting the present value of the projected tax increment for the maximum duration of a redevelopment tax increment financing district created under the authority of Minnesota Statutes Chapter 469.

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

ARTICLE I

Definitions

For the purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context

- A. Approved by the Executive Director: shall mean the written approval of the Executive Director, or such person or persons to whom he or she may delegate such approval authority in writing, in the exercise of his or her sole discretion, provided that such approval shall not be unreasonably withheld.
- B. City: shall mean the City of Duluth, Minnesota.
- C. Eligible Costs: shall mean those costs as referenced in the TIF Plan which may be legally funded with the use of Tax Increment proceeds under Minnesota Statutes and case law.
- D. City Property: shall mean that property in St. Louis County, Minnesota generally legally described as:
 - Lots 1-9, Odd Numbered Lots, Block 6,
BAYFRONT DIVISION; and
 - City's rights to use Slip No. 2 as set forth on the Plat of BAYFRONT DIVISION..
- E. DEDA Property: shall mean that property in St. Louis County Minnesota, legally described on Exhibit A attached hereto and made a party hereof and DEDA's rights to use Slip No. 2 as set forth on the Plat of Bayfront Division..
- F. Developer Property: shall mean that property in St. Louis County, Minnesota, legally described on Exhibit B attached hereto and made a part hereof.
- G. Eligible Tax Increment: shall mean ninety (90%) percent of the combined total of the July and December payments of Original Captured Tax Increment for any year in which the Project is valued at its full value, as "substantially

completed”.

- H. Excluded Costs: shall mean fees or other costs for the provision of professional services incurred by the parties to this Agreement to assist such party in fulfilling its obligations under this Agreement, including but not limited to costs for attorneys, real estate brokers, relocation consultants, economic planners and fiscal advisers; the term, “Excluded Costs”, shall not include the fees or other costs for professional services related to the design of the Project.
- I. Executive Director: shall mean DEDA's Executive Director or the person designated to act on behalf of him/her with regard to this Agreement or any portion thereof.
- J. Living Wage: shall mean those packages of wages and benefits required by the Living Wage Ordinance.
- K. Living Wage Ordinance: shall mean Article XXVI of Chapter 2 of the Duluth City Code, 1959, as amended.
- L. Project: shall mean the construction and operation on the Property of the Project having a total “hard” construction cost of not less than Twenty-one Million Five Hundred Thousand Dollars (\$21,500,000) and consisting of the following elements:
 - 1.) A first class resort hotel having at least one Hundred Forty (140) rooms.
 - 2.) Not less than Fifty-four Hundred square feet (5,400 sq.ft.) of banquet and conference room facilities .
 - 3.) A full service restaurant at least Three Thousand square feet (3,000 sq.ft.) In size having seating for not less than 150 patrons at a time and supporting full-service kitchen
 - 4.) A Ninety-six Hundred square foot (9,600 sq.ft.) multipurpose facility.
 - 5.) A transient marina.
 - 6.) A pedestrian connectivity bridge connecting the Project to the

Bayfront Festival Park to the East.

- 7.) Stabilization of the east, north and west slip face walls of Slip No. 2 and partial fill of said slip.
- M Property: shall mean the combination of the Developer Property and the DEDA Property when referenced together.
- N. Original Net Tax Capacity of the Project: shall mean the amount of the Captured Net Tax Capacity, as defined in MinnStat. Section 469.174 Subd. 4, of the Property resulting from the Project as certified by the City Assessor on January 2nd of the year following completion of construction of the Project.
- O. Original Captured Tax Increment: shall mean all real estate taxes resulting solely from the payment of real estate taxes on the Original Captured Net Tax Capacity of the Property resulting from the Project paid by Developer and remitted to DEDA by the St. Louis County Auditor.
- P. Schematic Designs: shall mean the Schematic Design Draft prepared for Developer by the firm of DSGW, Architects, Inc, dated May 22, 2014.
- Q. TIF Plan: shall mean the Tax Increment Financing Plan for Duluth Tax Increment Financing District No. 27 authorized in accordance with Minnesota Statutes Chapter 469.

ARTICLE II

Ownership, Title and Control of Property

Developer hereby represents and warrants to DEDA that, upon the conveyance of the DEDA property to Developer, it will own the Property in fee simple absolute and that the Property is subject to no liens or encumbrances of any kind which would prevent or interfere in any way with Developer performing its obligations under this Agreement.

ARTICLE III

Conditions Precedent to Construction of the Project

Prior to closing on the conveyance of the DEDA Property to Developer and the

commencement of the construction of the Project, Developer shall have presented the following documentation to DEDA with regard to the Project and shall have received the Executive Director's prior approval thereof in writing as hereinafter required:

A. Construction Finance

Copies of loan commitments and/or other financial commitments in forms acceptable to the Executive Director obtained by Developer together with evidence of the extent of Developer's equity participation, if any, in the Project, the total of said commitments and said equity participation to be in amount not less than the total anticipated cost of developing the Project.

B. Construction Plans

Approved plans, specifications and elevations for the construction of the Project as described above and in Article V below.

C. Construction Contract

A copy of an executed contract between Developer and a general contractor for the construction of the Project, certified by Developer to be a true and correct copy thereof.

D. Construction Bonds

Copies of executed payment and performance bonds provided by the above contractor in connection with the construction of the Project, which bonds shall be in the penal amount of not less than one hundred (100%) percent of the contract price under the aforesaid construction contract written by a bonding company or bonding companies licensed to do business in the State of Minnesota, certified by Developer to be true and correct copies thereof which name the DEDA as an additional beneficiary thereof.

E. Project Cost

Proof, that upon completion of the Project, that it will have a "hard" construction cost of not less than Twenty-one Million Five Hundred Thousand and 00/100s (\$21,500,000.00) Dollars. The aforesaid costs shall be substantially those set forth in detail in Exhibit C attached hereto and

made a part hereof.

F. TIF Plan

It is understood between the parties that Tax Increment Proceeds arising out of the construction of the Project are necessary to the successful development of said Project. It is further understood between the parties that it will be necessary to create a new tax increment district and to secure approval of the TIF Plan in order for such funding to be legally available for such use, this Development Agreement and the obligations of the parties thereunder shall be subject to the approval of said Plan to allow such expenditures. DEDA hereby commits to use its best efforts to secure such approval of the TIF Plan and Developer agrees to cooperate with DEDA to the extent necessary in securing said approval.

G. City License

Developer shall have received and provided to DEDA a license across Bayfront Festival Park and adjacent City-owned property and across the City Property allowing Developer or DEDA or both to cause to be constructed, operated and maintained two pedestrian, hard-surface pathways from the southeasterly corner of Bayfront Festival Park to Slip No. 2 and along the southwesterly slip face of Slip No. 2 at a location or locations approved by the Executive Director as generally shown on the site plan attached hereto and made a part hereof as Exhibit D. One such pathway will commence at the southeasterly corner of Bayfront Festival Park, proceed along the east side of said Park to the northerly line of said Park, then along the northerly line of said Park to Slip No. 2 and then along the east side of Slip No. 2 to the location approved as described above; said pathway shall be open and available to the public at all times. The other such pathway shall commence at the southeasterly corner of Bayfront Festival Park, proceed along the south side of said Park to the southwest corner thereof and then along the east side of Slip No. 2 to the location approved as described above; said

pathway shall be open and available to the public as set forth in an agreement between Developer and the City, which agreement shall be subject to the approval of the Executive Director, which approval shall not be unreasonably withheld. DEDA agrees to use its best efforts to assist Developer in securing said license from City.

H. City Commitments

Developer shall have received and provided to DEDA the following commitments from the City in a form acceptable to the Executive Director committing the City to provide the following commitments; DEDA agrees to use its best efforts to assist Developer in securing said commitments from City.

1. Provide improvements to Railroad Street, including street lighting, of such a design and configuration to provide a smooth and encouraging traffic flow from the 5th Avenue West freeway interchange with Interstate Highway 35 to the Project, as approve by the Executive Director.
2. Vacate 8th Avenue West from Railroad Street to the St. Louis Bay.
3. Convey by quit claim deed all of City's rights, title and interest in Slip No. 2 to Developer in a form subject to the approval of the Executive Director.

I. DEDA-related Work

Nothing to the contrary herein withstanding Developer has agreed to construct certain improvements to Slip No. 2 on behalf of DEDA including slip wall stabilization or reconstruction or both on the northeast side of Slip No. 2 and constructing the Baywalk along the northeast side of Slip No. 2. The plans and specifications therefore shall be subject to the prior written approval of the Executive Director and the City Architect. DEDA hereby agrees to reimburse Developer In the amount of not to exceed One Million Dollars (\$1,000,000), payable from Fund 865 for the costs to Developer of performing such work on behalf of DEDA. Upon

completion of said work Developer, in order to be entitled to reimbursement of costs, shall submit a written request for reimbursement of such costs incurred by Developer, accompanied by "as-built" drawing of said work and evidence that such work has been performed and that the costs therefore have been paid by Developer, together with such other documentation as the Executive Director shall reasonably request.

ARTICLE IV

Sale of DEDA Property

Upon fulfillment of Developer's obligation pursuant to Article III above, DEDA agrees to convey to Developer by quit claim deed and Developer shall take from DEDA the DEDA Property for the amount of Six Hundred Fifty Thousand Dollars (\$650,000), payable at closing, subject to all of the terms, covenants and conditions of this Agreement.

A. Title

DEDA agrees that it will convey "insurable title" to the Property and will provide a title commitment for an ALTA Form B owner's policy of title insurance, insuring title to the Property, in the amount of the fair market value, issued by a title company and agent authorized to do business in the State of Minnesota at least fifteen (15) days prior to the closing date agreed to by the parties. Developer shall pay all premiums required for the issuance of any owner's title policy.

B. Deed Conditional

The deed conveying the Property shall be conditioned upon the fulfillment by Developer of its construction obligations under this Agreement and shall incorporate, as a covenant running with the land, the conditions of Minnesota Statutes Sections 469.090 to 469.108 related to the land. It shall further provide that if said covenant is violated, DEDA may declare a breach of the covenant and seek a judicial decree from the District Court declaring a

forfeiture and cancellation of the deed. In addition to the foregoing provisions, the conveyance of title shall be subject to covenants, conditions, restrictions, declarations, easements and encumbrances of record; the reservation of minerals and mineral rights by the State of Minnesota; unpaid real estate taxes and assessments; restrictions related to the use or improvement of the property without effective forfeiture provision; and any law, ordinance, or governing regulations including but not limited to building and zoning ordinances restricting, regulating or prohibiting the occupancy, use, enjoyment, improvement or subdivision of the property.

C. Note and Mortgage

In consideration for conveyance of the DEDA Property to Developer, at the time of conveyance, Developer agrees to execute and deliver to DEDA a Note in the amount of \$650,000 less those amounts which have been received by DEDA pursuant to Paragraph N of Article I of the Option Renewal and Pre-development Agreement between the parties hereto dated November 16, 2011, as amended, which Note shall be substantially in the form of that attached hereto as Exhibit E and a Mortgage substantially in the form of that attached hereto as Exhibit F securing the prepayment to DEDA of the hereinbefore-referenced purchase price.

D. Recording

Developer shall promptly file the deed and Mortgage referenced in this Article conveying the DEDA Property in the Office of the Saint Louis County Recorder and shall pay all costs associated with recording said deed and Mortgage. Upon recordation of said deed and Mortgage, Developer shall immediately submit to DEDA an executed original of the deed and Mortgage showing the date and document numbers of record, or a fully-conformed copy of the filed original showing the date and document numbers of record.

ARTICLE V

Project Plans

A. Plans, Specifications and Elevations

No less than thirty (30) days prior to the commencement of construction of the Project or any portion thereof, or such lesser time as approved by the Executive Director, Developer shall submit working drawings, specifications and elevations for the Project together with detailed site, grading, utility and landscaping plans and elevations, as the Executive Director reasonably deems necessary, to the Executive Director for approval except as hereinafter provided for. All such plans, specifications and elevations shall be in conformity with this Agreement, with the Schematic Design and with all applicable laws, ordinances, rules, regulations and requirements of the City, State of Minnesota and United States of America Authorities; said plans and specifications shall also conform substantially with any environmental assessment worksheet or environmental impact Statement for the Project required by law therefore. If the Executive Director rejects such plans, specifications and elevation in whole or in part as not being in compliance with the foregoing requirements, and upon notification to Developer of said rejection together with the reason or reasons therefore, Developer shall submit new or corrected plans, specifications and elevations meeting said objections within thirty (30) days of said notice. The provisions of this Subparagraph relating to approval, rejection and resubmission of corrected plans hereinabove provided for with respect to the originally submitted plans, specifications and elevations shall continue to apply until said plans, specifications and elevations have been approved by the Executive Director. The Executive Director's acceptance of Developer's plans, specifications and elevations shall not constitute a waiver of building code or ordinance or other developmental duties imposed in the future upon Developer by law. Developer expressly agrees to be solely responsible for all costs, including

architectural fees connected with said plans, specification and elevations and any revisions thereto.

B. Changes After Initial Approval

Any changes made to plans by Developer after initial approval of the Executive Director deemed to be material or substantial shall be submitted to him or her for acceptance in the same manner provided for in Paragraph A above.

ARTICLE VI

Construction

A. Construction of Developer Projects

Upon the fulfillment of the Preconditions to Construction provided for in Article IV above and subject to the provisions of Article IV above but in no event later than August 1, 2014, Developer shall promptly commence construction of the Project in conformance with the plans developed pursuant to Article V above. Construction of the Project as herein defined shall be completed no later than December 31, 2015 except as hereinafter set forth in this Agreement. Provided, that the Executive Director may, in the exercise of his or her discretion, extend the time for completion of the Project for up to nine (9) months, which extension shall be in writing.

B. Developer to Bear All Costs of Project

Subject to the terms and conditions of this Agreement, Developer specifically guarantees and agrees to bear all costs related to the development, completion and operation of the Project and any modifications thereto.

C. Progress Reports

Until construction of the Project has been completed, Developer shall make reports in such detail and at such times as may reasonably be requested by DEDA as to the actual progress of construction with respect to each such Project.

D. Certificate of Completion

Promptly upon completion by Developer, in accordance with this Agreement, of the construction of the Project, DEDA shall furnish to Developer an appropriate certificate so certifying. No such certification shall be issued until all elements of the Project have been completed. Such certification by DEDA shall constitute a conclusive determination of satisfaction of construction obligations of Developer undertaken pursuant to this Agreement.

E. Developer Property Easement

Upon completion of construction of the Project, Developer hereby agrees to grant to DEDA an easement granting to the general public a right of access from the northeast side of Slip No. 2 along and across the Property to the northeasterly side of Slip No. 3. The size, location and configuration shall be subject to the mutual agreement of the parties; provided, however, that both parties commit to work together cooperatively to locate said easement to the extent possible at a location on the Property at a location which will best meet the present and future development needs of the Project, of the "Lot D" property on the southwest side of Slip No. 3 and of the Baywalk trail system. In addition Developer will grant to DEDA the right to construct a bridge across Slip No. 3 which is superior to Developer's rights to use Slip No. 3 and the right of the general public to have access to said bridge to have access from the Developer Property to the southwest side of Slip No. 3. DEDA agrees that this easement shall not unreasonably interfere with Developer's use of the Property, subject to the utility of the easement for its intended purpose as set forth herein. Developer and DEDA further agree to work together to determine the future use of Slip No. 3 what will best meet the needs of the Project and of DEDA and the City.

ARTICLE VII

DEDA Project Construction

Upon conveyance of the DEDA Property to Developer and the commencement of construction of the Project by Developer in conformance with the provisions of Articles III, V and VI above, DEDA agrees that it will undertake to cause the construction of the DEDA Project in conformance with the plans therefore and will cause such construction to be completed no later than December 31, 2015 unless the Executive Director shall have granted an extension to Developer for completion of the Project in which case the time for completion of the DEDA Project set forth above shall be extended for a similar time or unless the Developer shall have agreed in writing to extend the time for completion of the DEDA Project.

ARTICLE VIII

DEDA Payment to Developer

A. TIF-Eligible Cost Reimbursement

In addition to other assistance herein provided by DEDA to the Project and subject to the terms of this Paragraph, DEDA hereby agrees to reimburse Developer for up to the net present value of Three Million Four Hundred Sixty Thousand, Six Hundred Five Dollars (\$3,460,605, calculated at an assumed interest rate of Five (5%) Percent simple annual interest approved by the Executive Director, in Eligible Costs of constructing the Project, including those cost items, in the estimated amounts, shown on the attached Exhibit G. Any such payments shall be payable solely from the Captured Tax Increment. Upon issuance of the Certificate of Completion provided for in Paragraph D of Article VI above, Developer shall submit a written request for reimbursement of such costs incurred by Developer in constructing the Project, accompanied by evidence that such work has been performed and that the costs therefore, qualifying for reimbursement from tax increment proceeds under Minnesota Statutes Chapter 469, have been paid by

Developer, together with such other documentation as the Executive Director shall reasonably request. DEDA agrees to reimburse Developer for such Eligible Costs by paying to Developer the Eligible Tax Increment generated for any year during the term of this Agreement until Developer has received the entire maximum amount of the Eligible Costs or until this Agreement has terminated, whichever occurs first.

B. TIF Revenue Obligation Only

DEDA's obligation to make payments under this Agreement is agreed by the parties hereto to be strictly revenue based and shall be payable only from the proceeds of Captured Tax Increment actually received by DEDA from the St. Louis County Auditor's Office. In the event that DEDA fails to receive any Captured Tax Increment, whether in whole or in part, for any reason whatsoever, including but not limited to changes in State statutes or procedures of the St. Louis County Auditor's Office, DEDA shall be relieved of the obligation to make payments otherwise due under Paragraph A of this Article until such time as DEDA receives the payment of Captured Tax Increment from the St. Louis County Auditor.

ARTICLE IX

Developer's Operating Covenant

Developer further covenants and agrees that in its operations and use of the Project and the Property it will:

A. Maintenance

At all times cause the Project and the Property to be operated, and maintained in a neat, orderly condition, to maintain and preserve and keep in good repair, working order and condition said Project and Property and to perform all needful and proper repairs, renewals and replacements necessary to be made thereto. The obligation to maintain the Project and the Property shall include but not be limited to maintenance of all

foundations, external walls, doors, windows, utility openings, and all roofing systems and the seawalls adjacent to all sides of Slip No. 2. Developer shall also be responsible for maintenance of the Property outside of the Project, including snow removal and landscape maintenance and all other exterior maintenance to said Property.

B. Utilities

Pay any and all charges for utilities furnished to the Project and the Property including but not limited to hook-up charges and assessments related to all utilities, including but not limited to steam, water, sewer, gas, telephone, cable TV and electrical power.

C. Licenses and Permits

Preserve Developer's existence and all of its licenses, permits and consents to the extent necessary and desirable to the operation of its business and affairs and to be qualified to do business in each jurisdiction where its ownership of property or the conduct of its business requires such qualifications; provided, however, that nothing herein contained shall be construed to obligate it to retain or preserve any of its licenses, permits or consents which are no longer useable.

D. Obey All Laws

Conduct its affairs and carry on its business and operations in such a manner as to comply with any and all applicable laws of the United States and the several states thereof and duly observe and conform to all valid orders, regulations and requirements of any governmental authority related to the conduct of its business and the ownership of the Property; provided that nothing herein contained shall require it to comply with, observe and conform to any such law or regulation or requirement so long as the validity thereof shall be contested by Developer in good faith through proper legal action provided that such protest shall in no way affect Developer's title to the Property.

E. Payment of Taxes

Promptly pay or cause to be paid all lawful taxes and governmental charges, including real estate taxes and assessments at any time levied upon or against it or the Property.

F. Assessment Fees and Charges

To pay or cause to be paid when due or payable all special assessments levied upon or with respect to the Property, or any part thereof, except as the same is paid by City and to pay all fees, charges and rentals for utilities, service or extensions for the Property and all other charges lawfully made by any governmental body for public improvements, except as the same are paid by City.

G. Obligations and Claims

Promptly to pay or otherwise satisfy and discharge all of the obligations and indebtedness and all demands and claims against as and when the same becomes due and payable other than any thereof whose validity, amount or collectability is being contested in good faith by appropriate proceedings.

ARTICLE X

Provision Against Liens, Assignments and Transfers

A. Provision Against Liens

Except for encumbrances permitted pursuant to Paragraph B below, the Developer shall not create or permit any mortgage, encumbrance or allow any mechanic's or materialmen's liens to be filed or established or to remain against the Project and the Property or any part thereof which would materially or adversely affect the DEDA's interest in this Agreement during the term of this Agreement, provided that if Developer shall first notify DEDA of its intention to do so and post such security as DEDA reasonably deems necessary, Developer may, in good faith, contest any such mechanic's or other liens filed or established as long as DEDA does not deem its interest or rights in this Agreement to be subject to foreclosure by reason of such

context.

B. Provision Against Assignments, Transfers or Change in Identity of Developer

The parties hereto acknowledge that DEDA is relying upon the qualifications and identify of Developer to develop and construct the Project. Therefore, except for the purposes of obtaining financing as hereinafter described and otherwise approved by this Agreement, Developer represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Project, the Property, the Developer, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder prior to the issuance of the Certificate of Completion described in Paragraph D of Article VI above; and except for mortgaging approved in writing by the Executive Director, Developer will not make or create or suffer to be made any such transfer of Developer's rights hereunder without the prior approval of DEDA. Provided that a first mortgage to a first mortgage lender to secure a loan the proceeds of which are used entirely to finance the acquisition of the Property and the construction and development of the Project shall not be deemed to be prohibited under this Article.

ARTICLE XI

First Source Commitment

Developer agrees that it will provide an advanced opportunity to entry-level employment to participants in the City's Job Training Program by notifying the City of its intent to hire employees to such positions, giving the number of positions to be filled, position descriptions and requirements before generally advertising said positions to the general public. The obligation of Developer pursuant to this Paragraph shall continue for a period

of ten (10) years after the date first above shown or the termination of the Program, whichever occurs first.

ARTICLE XII

Living Wage Covenant

Developer specifically agrees that it shall abide by the requirements of the Living Wage Ordinance and that it shall specifically pay its employees in conformance therewith. Developer further commits to DEDA that, as an obligation running with the land, it will require that employees of any non-residential person or entity occupying the Property also be paid in conformance with the Living Wage Ordinance.

ARTICLE XIII

Indemnification By Developer

A. Generally

Developer will to the fullest extent permitted by law, protect, indemnify and save DEDA and the City of Duluth and their officers, agents, servants, employees and any person who controls DEDA within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgements of any nature arising from:

1. Any injury to or death of any person or damage to property in or upon the Project or the Property or growing out of or in connection with the use or non-use, condition or occupancy of the Project or the Property or any part thereof and the construction or installation of the Project on any portion of the Project and the Property. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the Developer, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.

2. Any violation by Developer of any provision of this Agreement.
3. Any violation of any contract, agreement or restriction related to the Project which shall have existed at the commencement of the term of this Agreement or shall have been approved by the Developer.
4. Any violation of any law, ordinance, court order or regulation affecting the Project or the Property, or the ownership, occupancy or use thereof.

B. Environmental Indemnification

In addition to the generality of the foregoing above, Developer hereby agrees that for itself, its successors and assigns that it will indemnify and save the DEDA and the City of Duluth and their officers, agents, servants and employees and any person who controls the DEDA or the City within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition created in the Project or the Property after the date of the signing of this Agreement which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence in the Project or the Property of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons or damage to property and that indemnification granted hereby shall include all costs of clean-up, remediation, together with the costs incurred in proceedings before court of law or administrative agency including attorney's fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems, including expert witnesses, the costs of preparing and securing

approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies and any other costs and expenses of any kind whatsoever arising out of such conditions existing in the Project or on the Property.

C. Indemnification Procedures

Promptly after receipt by DEDA or the City of notice of the commencement of any action with respect to which the other party is required to indemnify the party receiving such notice under this Article, such indemnitee shall notify the indemnitor in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, the indemnitor shall assume the defense of such action, including the employment of counsel satisfactory to the indemnitee and the payment of expenses. In so far as such action shall relate to any alleged liability of the indemnitee with respect to which indemnity may be sought against the indemnitor, the indemnitee shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of the indemnitor.

ARTICLE XIV

Insurance

Developer shall provide for purchase and maintenance of such insurance as will protect Developer, DEDA and the City against risk of loss or damage to the Project and the Property and any other property permanently located or exclusively used at the Project site and against claims which may arise or result from the maintenance and use of the Project, including operations conducted in connection with construction of improvements thereupon. Such coverages shall include but shall not necessarily be limited to the following.

A. Insurance During Construction

Developer, prior to entering on the Property for construction work, shall procure or cause to be procured and maintain or require all contractors to

procure and maintain the following insurance at not less than the limits of coverage or liability indicated during the period of construction as follows:

1. Property Insurance

Developer shall provide "All Risk" builders' risk insurance under a completed value form on all work on the Project, including foundations, permanent fixtures and attachments, machinery and equipment included in or installed under the construction contract, debris removal, architects' and engineers' fees, temporary structures, materials, equipment and supplies of all kinds located on the project, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed Fifty Thousand and 00/100ths (\$50,000.00) Dollars per occurrence. Said insurance shall be endorsed to provide consent for occupancy of the Project and shall be maintained in effect until permanent property coverage as provided for hereinafter is in force. Such insurance shall be written in the names of Developer, DEDA, any subtenant and contractor, as their interest may appear. Contractor, all subcontractors, and suppliers and Developer shall waive all rights against DEDA for damages caused by fire or insured perils, except such rights as are set forth hereunder to the proceeds of such insurance payable in the event of such loss.

2. Public Liability Insurance

Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form with "Broad Form" property damage liability coverage, with XCU exclusion removed, in limits of not less than Five Million and 00/100ths (\$5,000,000.00) Dollars aggregate per occurrence for personal injury, bodily injury and death, and limits of Five Hundred Thousand and 00/100ths (\$500,000.00) Dollars for property damage liability. If per person limits are specified, they shall be for not less than One Million Five Hundred Thousand

and 00/100ths (\$1,500,000.00) Dollars per person and be for the same coverages. Contractor shall also require such liability coverage of its subcontractors unless they be insured under contractor's policies. Contractor's and subcontractors' liability coverages shall include:

- a. Contractors' public liability--premises and operations;
- b. Independent contractors' protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned, and hired vehicles;
- e. Contractual liability covering customary construction contract and subcontract indemnify provisions; and
- f. Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement. In addition, employers liability coverage shall be maintained in limits of One Hundred Thousand and 00/100ths (\$100,000.00) Dollars per employee.

3. Alternative Insurance

In the alternative Developer may secure or cause to be secured an Owner-Controlled Insurance Policy or a Contractor-Controlled Insurance Policy providing at least the same or better protection to the City, subject to the approval thereof by the City's Attorney.

B. Permanent Insurance

Developer shall procure and continuously maintain, except as otherwise provided below, insurance covering all risks of injury to or death of persons or damage to property arising in any way out of or as a result of Developer's ownership of, occupancy of or use of the Project and the Property, carried in the names of the Developer, any subtenant and DEDA as their respective interests may appear, as follows:

1. Property Insurance

From and after the date of acceptance of the project and prior to

expiration of the buildings' risk coverage specified above, the Project and the Property, including all fixtures, equipment and machinery, shall be insured to the full replacement value thereof against all risk of Direct Physical Loss, except that such insurance may provide for a deductible amount not to exceed Fifty Thousand and 00/100ths (\$50,000.00) Dollars per occurrence. For the purposes hereof, "all risk" means insurance equivalent in scope to protect against all risks of direct physical loss ordinarily insured against in the region. Developer hereby waives any and all claims or causes of action against DEDA for damages caused by an insured peril hereunder, except such rights hereinafter set forth to an interest in the insurance proceeds payable in the event of such loss. In time of war in which the United States of America is a belligerent, the Developer will procure and maintain continuously in effect such insurance as may be available from the United States of America to the extent of the full replacement value of the project and insuring against loss thereof or damage thereto from the risks and hazards of war, provided that the cost of such insurance is economically reasonable.

2. Liability Insurance

During the construction period (unless covered under the policies required previously) and permanently thereafter for the balance of the term of this Agreement, the Developer shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than Five Million and 00/100ths (\$5,000,000.00) Dollars aggregate per occurrence for personal bodily injury and death, and limits of Five Million and 00/100ths (\$5,000,000.00) Dollars for property damage liability. If person limits are specified, they shall be for not less than One Million Five Hundred Thousand and 00/100ths

(\$1,500,000.00) Dollars per person and be for the same coverages. DEDA shall be named as an additional insured therein. Insurance shall cover:

- a. Public liability, including premises and operations coverage;
- b. Independent contractors--protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned and hired vehicles;
- e. Contractual liability covering the indemnity obligations set forth herein; and
- f. Products--completed operations.

3. Workers' Compensation

Worker's Compensation Coverage in statutory amounts with "all states" endorsement unless qualified as a self-insurer under Minnesota Law, and evidence of such qualification is furnished to the DEDA. Employees liability insurance shall be carried in limits of One Hundred Thousand and 00/100ths (\$100,000.00) Dollars per employee.

C. Modification of Insurance Requirements

It is agreed between the parties that DEDA shall have the right to modify the forms of the insurance provided for in Paragraphs A and B above and the limits set forth with regard thereto provided that any such modification and policy forms or limits shall be of such a character and in such amounts as are reasonably necessary to provide DEDA with the types and amounts of protection provided for in this Agreement at the time of its execution. In the event that DEDA shall desire to so modify said insurance requirements, DEDA shall notify Developer of the proposed modifications not less than sixty (60) days prior to the date set by DEDA for said modifications to go into effect. In the event that Developer believes said modifications to be unjustified under the standards set forth in this Paragraph, Developer shall

promptly so notify DEDA and the parties hereto agree to meet as soon as practical thereafter and to negotiate in good faith the character and amounts of any said modifications meeting the standards hereinbefore set forth.

D. Requirements for All Insurance

All insurance required in this Article XIV shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in Minnesota.

E. Certifications

The Developer shall be required to supply to the DEDA written certifications of insurance as required by the DEDA requiring the insurer to give the DEDA thirty (30) days' written notice prior to cancellation or modification of said insurance.

F. Reconstruction Obligation and Uninsured Loss

In the event the Project or any portion thereof is destroyed by fire or other casualty, the Developer shall forthwith repair, reconstruct, and restore the improvements 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, the Developer shall apply the proceeds of any insurance received by the Developer to the payment or reimbursement of the costs thereof. The Developer shall, however, complete the repair, reconstruction and restoration of the improvements whether or not the proceeds of any insurance received by the Developer are sufficient to pay for such repair, restoration, and reconstruction. Provided, however, in the event that Developer can demonstrate to the reasonable satisfaction of the Executive Director that, if restored as required by this Paragraph, the Project would not be economically viable due to circumstances beyond the control of Developer, the Executive Director may relieve Developer of such restoration obligations. In the event that Developer is so relieved of its restoration

obligations, the obligations of both parties hereunder are terminated, including any obligation of DEDA to pay to Developer all or any portion of the Eligible Tax Increment from the Property and neither party shall thereafter have any rights or obligations to the other under this Agreement.

ARTICLE XV

Defaults and Remedies Therefore

A. Developer Defaults and Remedies

1. General Events of Default

The following shall be deemed to be general events of default by Developer under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable except as otherwise set forth in this Agreement.

- a. Failure to pay Ad Valorem Real Estate Taxes as and when due and payable.
- b. Developer shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it or any successor or assigns of Developer pursuant to this Agreement and such failure shall continue for a period of sixty (60) calendar days after DEDA has, pursuant to the provisions of this Agreement, given written notice to Developer of such default or, in the event that such default shall be incapable of cure during said sixty (60) day period, shall have failed to commence to cure said default within sixty (60) days of the date of said notice and to diligently pursue the same to completion.
- c. Developer shall permit valid liens, not cured or contested within sixty (60)) days, to be placed on the Building or Property or Developer loses title to the Building or Property or both with the

exception of assignments approved pursuant to the terms of this Agreement.

- d. Developer makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency as made as to Developer or its business; or Developer files a petition of bankruptcy or files a petition seeking any reorganization, dissolution, liquidation, or rearrangement, composition, readjustment or similarly under any present or future bankruptcy or insolvency, statute, law or regulation; or Developer files an answer admitting to or not contesting to the material allegations of a petition filed against in such proceeding or fails to have dismissed or vacated within sixty (60) days after its filing such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of Developer's properties or fails to have dismissed or vacated within sixty (60) days after the appointment without the consent or acquiescence of Developer of any trustee, receiver or liquidator of any material part of Developer's properties.
- e. Developer fails to complete its obligations under Articles IV or V as set forth above on or before December 1, 2008.

2. General Remedies

Except as otherwise set forth in this Agreement, DEDA shall have the following remedies in the event of a default by Developer:

- a. Seek and be entitled to monetary damages from Developer for any damages, including consequential damages incurred by DEDA as a result of Developer's default.
- b. Cease making payments of Captured Tax Increment to

Developer and, at DEDA's option.

- c. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Developer's violation of the terms and conditions of this Agreement or to compel Developer's performance of its obligations hereunder.
- d. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.

B. DEDA Defaults and Remedies

1. General Events of Default

The following shall be deemed to be general events of default by DEDA under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable except as otherwise set forth in this Agreement.

- a. DEDA shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar days after Developer has, pursuant to the provisions of this Agreement, given written notice to DEDA of such default or, in the event that such default shall be incapable of cure during said thirty (30) day period, shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.
- b. The failure of DEDA to abide by any of the terms and conditions of the Lease which, when taken together pursuant to those documents, constitute obligations of DEDA.

2. General Remedies

Except as otherwise set forth in this Agreement, Developer shall have the following remedies in the event of a default by DEDA:

- a. Seek and be entitled to monetary damages from DEDA for any damages, including consequential damages incurred by Developer as a result of DEDA's default.
- b. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent DEDA's violation of the terms and conditions of this Agreement or to compel DEDA's performance of its obligations hereunder.
- c. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to Developer.

C. Non-Waiver

The waiver by either party of any default on the part of the other party or the failure of said party to declare default on the part of the other party of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of the defaulting party of the same or of any other obligation of the defaulting party hereunder. And, to be effective, any waiver of any default by the defaulting party hereunder shall be in writing by the non-defaulting party.

D. Remedies Cumulative

Except as specifically set forth herein, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.

E. Attorneys' Fees

In the event that either party is in Default of any of the terms and conditions of this Agreement and the non-defaulting party shall successfully take legal action to enforce said rights herein, in addition to the foregoing, such non-defaulting party shall be entitled to reimbursement for its reasonable attorney's fees and costs and otherwise for its costs and disbursements

occasioned in enforcing its rights hereunder.

ARTICLE XVI

Force Majeure

Under the terms of this Agreement, neither the DEDA nor Developer shall be considered in default or in breach of any of the terms with respect to the performance to their respective obligations under this Agreement in the event of enforced delay in the performance of its obligations due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to acts of God, acts of a public enemy, acts of the federal government, acts of another party, fire, floods, epidemics, strikes or embargoes, or for delays of subcontractors due to such causes. In the event of any such delay, any time for completion or delivery under this Agreement shall be extended for the period of any such delay upon written notice from the party seeking the extension to the other party.

ARTICLE XVII

Representations by DEDA

DEDA represents and warrants that as of the date hereof:

- A. It is a lawfully constituted economic development authority under the laws of the State of Minnesota, it is not a material violation of any provisions of State law and that it has full power and authority to enter into this Agreement and perform its obligations hereunder.
- B. There are not actions, suits or proceedings pending, or to the knowledge of DEDA, threatened against DEDA or any property of DEDA in any court or before any Federal, State, municipal or governmental agency which, if decided adversely to DEDA, would have a material adverse effect upon DEDA or any business or property of DEDA or the DEDA Portion and DEDA is not in default with respect to any order of any court or government agency.
- C. DEDA has investigated and has no knowledge that the DEDA Executive

Director or other member, official, or employee of DEDA is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement.

- D. DEDA shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement or otherwise delivered to any third parties under this Agreement to be true, correct and complete in all material respects.

ARTICLE XVIII

Developer's Representations and Warranties

Developer represents and warrants that as of the date hereof:

- A. It is a lawfully constituted limited liability company under the laws of the State of Minnesota, is not in material violation of any provisions of State law and that it has full power and authority to enter into this Agreement and to perform its obligations hereunder.
- B. It is fully competent to acquire the Property and to construct and equip the Project thereon under all laws, rulings, regulations and ordinances of any governmental authority having jurisdiction and that it agrees to comply with all applicable State, Federal acquisition and relocation laws, wages and hours laws, including Davis-Bacon and local versions thereof or similar laws at its own expense.
- C. There are no actions, suits or proceedings pending or, to the knowledge of Developer, threatened against Developer or any property of Developer in any court or before any Federal, State or municipal or other governmental agency which, if decided adversely to Developer could have a material adverse affect upon Developer or the Property and the Project, and that Developer is not in default of any order of any court or governmental agency.
- D. It is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or

agreement pursuant to which the indebtedness has been occurred.

- E. That Developer has investigated and has no knowledge that any officer, director, agent or employee of Developer is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement.
- F. Developer shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement delivered to any third party under this Agreement to be true, correct and complete in all material and respects. If necessary Developer agrees to perform any survey work prior to construction and all descriptions and exhibits hereto and definitions herein shall be subject to such revisions as are necessary after completion of any survey.
- G. Despite its best efforts to do so, Developer has been unable to secure sufficient financing from other sources of funds at interest rates which were not prohibitive to finance the cost of construction of the Project and, therefore, that without the provision of the amount of Tax Increment Financing provided by DEDA pursuant to this Agreement, Developer could not have developed the Project on the Property and operated the same in the reasonably foreseeable future.

ARTICLE XIX

Term

The term of this Agreement shall run from the date first above shown until twenty-five (25) years after the first receipt of Captured Tax Increment by DEDA unless this Agreement is otherwise terminated as herein before provided for.

ARTICLE XX

Runs With the Land

This Agreement shall be deemed to run with the land and shall enure to the benefit of the

parties hereto and to their successors and assigns.

ARTICLE XXI

Notices

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of DEDA:

Duluth Economic Development Authority
Room 402 City Hall
411 West First Street
Duluth, MN 55802

In the case of Developer:

Pier B Holding LLC
210 West Michigan Street
Suite 300
Duluth, MN 55802

Copy to:

Mark Pilon
Hanft Fride, P.A.
1000 US Bank Place
130 West Superior Street
Duluth, MN 55802

INDEX

Exhibit A	Legal Description DEDA Property
Exhibit B	Legal Description of Pier B/Former LaFarge Property
Exhibit C	"Hard" Construction Costs
Exhibit D	Bayfront Redevelopment: Conceptual Connectivity Map
Exhibit E	Note
Exhibit F	Mortgage
Exhibit G	TIF-Eligible Items

Exhibit A

DEDA PROPERTY

All of lots 2, 4, 6, 8, 10, 12, 14 16 & 18, Block 8, Bay Front Division of Duluth, according to the recorded plat thereof on file and of record in the Office of the Register of Deeds, St. Louis County, together with any and all streets, alleys and harbor slips adjacent thereto, vacated or to be vacated, and with any and all riparian and other appurtenant rights; St. Louis County, Minnesota.

That part of Lots four (4) to Eight (8), inclusive, Block Seven (7), which lies Southeasterly of the following described line: Beginning at a point on the Northeasterly line of Lot 14, Block 7, distant 47 feet Northwesterly of the most easterly corner thereof; thence run Northeasterly to the most Easterly corner of Lot 1, said Block 7, and there terminating, all in BAY FRONT DIVISION OF DULUTH.

Lots 20, 22, 24, 26, 28, 30, 32, 34 and 36, Block Eight (8) BAY FRONT DIVISION OF DULUTH: and those part of lots 9 through (16) inclusive, Block Seven (7), BAY FRONT DIVISION OF DULUTH, lying southeasterly of the following described line: From the point of intersection of the center line of Michigan Street with the center line of 15th Avenue West run southeasterly along the center line of said 15th Avenue West for 261.49 feet; thence deflect to the left at an angle of $91^{\circ} 22' 10''$ for 2034.48 feet; thence deflect to the right on a $4^{\circ} 00'$ curve (delta angle $25^{\circ} 35' 22''$) for 639.74 feet; thence on tangent to said curve for 136.02 feet; thence deflect to the left on a $3^{\circ} 00'$ curve (delta angle $24^{\circ} 15' 01''$) having a length of 808.34 feet for 379.96 feet; thence deflect to the right at an angle of 90° with the tangent of said $3^{\circ} 00'$ curve at said point for 54 feet to the point of beginning of the line to be described; thence run northeasterly to a point on the northeast line of Lot 14, said Block 7, distant 47 feet northwesterly of the most easterly corner thereof; thence run northeasterly to the most easterly corner of Lot 1, said Block 7, and there terminating; and Excepting therefrom that part of lot 16, Block 7, Bay Front Division of Duluth, which lies southwesterly of Line A described below and southeasterly of Line B described below: Line A: Beginning at the most northerly corner of Lot 15, said Block 7, thence run southeasterly to a point on the southwesterly line of said Lot 16, distant 70 feet southeasterly on the most westerly corner thereof, and there terminating. Line B: From the point of intersection of the center line of Michigan Street with the center line of 15th Avenue West; run southeasterly along the center line of 15th Avenue West for 263.43 feet; thence deflect to the left at an angle of $91^{\circ} 22' 50''$ for 2034.56 feet; thence deflect to the right on a $4^{\circ} 00'$ curve (delta angle $25^{\circ} 35' 22''$) for 639.74 feet; thence on tangent to said curve for 136.02 feet; thence deflect to the left on a $3^{\circ} 00'$ curve (delta angle $24^{\circ} 15' 01''$) having a length of 808.34 feet; for 379.96 feet; thence run southeasterly at right angles to the tangent of said curve at said point for 54 feet to the point of beginning of a line to be described; thence run northeasterly to a point on the northeasterly line of Lot 14, Block 7, said Bay Front Division of Duluth, distant 47 feet northwesterly of the most easterly corner thereof, and there terminating. And;

DEDA's rights to use Slip No. 2 as set forth in the PLAT OF BAYFRONT DIVISION.

Exhibit B

Legal Description of Pier B/Former LaFarge Property:

PARCEL I:

Lot 5 and all that part of Lot 7 lying South of a line drawn parallel to and 25 feet distant N'ly from the boundary line between said Lots 5 and 7, All in Block 9, BAY FRONT DIVISION OF DULUTH.

PARCEL II:

Lots 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31 and 33, Block 9; also Lot 4, Block 10; all in BAY FRONT DIVISION OF DULUTH.

PARCEL III:

Lot 7, EXCEPT that part lying South of a line drawn parallel to and 25 feet distant N'ly from the boundary line between said Lots 5 and 7 and all of Lot 9, all in Block 9, BAY FRONT DIVISION OF DULUTH.

PARCEL IV:

Lots 1, 2 and 3, Block 10, BAY FRONT DIVISION OF DULUTH, EXCEPT that part which lies NW'ly of a line run parallel with and distant 54 feet SE'ly of the following described line:

From the point of intersection of the center line of Michigan Street with the center line of 15th Avenue West, run SE'ly along the center line of 15th Avenue West for 263.43 feet to the point of beginning of the line to be described; thence deflect to the left at an angle of 91 degrees 22 minutes 50 seconds for 2034.56 feet; thence deflect to the right on a 4 degree 00 minute curve (delta angle 25 degrees 35 minutes 22 seconds) for 639.74 feet; thence on tangent to said curve for 136.02 feet; thence deflect to the left on a 3 degree 00 minute curve (delta angle 24 degrees 15 minutes 01 seconds) for 808.34 feet and there terminating.

TOGETHER with all that part of the above described tract adjoining and SE'ly of the above described strip, which lies NW'ly of the following described line; from a point on the above described line, distant 428.38 feet SW'ly of its point of termination, run SE'ly at right angles to said line for 54 feet to the point of beginning of the line to be described; thence run NE'ly to a point on the NE'ly line of Lot 14, Block 7, BAY FRONT DIVISION OF DULUTH, distant 47 feet NW'ly of the most E'ly corner thereof and there terminating.

PARCEL V:

Lots 1 and 3, Block 9, BAY FRONT DIVISION OF DULUTH.

Exhibit C: "Hard" Construction Costs

Land	\$2,250,000
Site Improvements	\$6,038,222
Building & Demolition	\$14,879,278
Total "Hard" Construction Costs	\$23,167,500

Bayfront Redevelopment: Conceptual Connectivity



beach

geo-cell pavement
overflow parking

entrance gateway

boat landing

parking

Lot D

office building

BAG Building

perimeter boardwalk

proposed hotel and
convention center

repurposed existing
grain elevators

lakeside hotel plaza

pedestrian bridge

Railroad Street

Bayfront
Festival
Park

Cross-city Trail

Improved Lot B
events parking

Main Entrance area

enhanced Bayfront
pedestrian paths

security fence

Great Lakes
Aquarium

Music Pavilion

Exhibit D

Exhibit E

Date July 1, 2014

NOTE

Name of Borrower: Pier B Holding LLC.

Address of Borrower: 301 West First Street, Suite 715, Duluth, MN 55802

Name of "Lender": Duluth Economic Development Authority

Address of "DEDA": 402 West First Street, Room 402 City Hall, Duluth, MN 55802

For Value received, the undersigned promises to pay to the order of the Duluth Economic Development Authority (DEDA) at the above location or at any other place designated at any time by the holder hereof, in lawful money of the United States of America, the principal sum of Six Hundred Ten Thousand and 00/100 dollars (\$ 610,000.00) together with accrued interest (calculated on the basis of actual days elapsed in a 360 day year) on the unpaid balance hereof from the date hereof until this Note has been fully paid at an annual rate of Five percent (5%).

The undersigned promises to pay the principal and interest thereof as follows:

Interest on the principal amount of the Note as set forth above shall commence to accrue on July 1, 2014 and shall continue until the entire principal and interest on the loan are paid in full. No payments on the principal or accrued interest shall be payable during the term of this Note until July 1, 2019, when the entire unpaid principal and accrued and unpaid interest hereon shall become due and payable. Any partial payment when paid shall be applied first in payment of accrued interest and the balance thereof shall be applied in reduction of principal.

The undersigned may prepay the principal amount outstanding in whole or in part without penalty or premium

If any installment of principal and/or interest hereunder is not paid when due, or if any other indebtedness of the undersigned to the DEDA is not paid when due, or if any event of default shall occur under any mortgage, security agreement or other instrument securing this Note, or if a garnishment summons or writ of attachment is issued against or served upon the DEDA for the attachment of any property of the undersigned in the DEDA's possession or any indebtedness owing to the undersigned, or if the holder hereof shall at any time in good faith believe that the prospect of due and punctual payment of this Note is impaired, then in any such event, the holder hereof may, at its option, declare this Note to be immediately due and payable and thereupon this Note shall be immediately due and payable together with all unpaid interest accrued hereon, without notice or demand. Upon the occurrence of an event of default, the DEDA shall also have the right to set off the indebtedness evidenced by this Note against any indebtedness of DEDA to the undersigned.

Unless prohibited by law, the undersigned agrees to pay all costs of collection, including reasonable attorney's fees and legal expenses, incurred by the holder hereof in the event this Note is not duly paid. The holder hereof may change any term of payment of this Note, including extensions of time and renewals, and release any security for or any part to, this Note without notifying or releasing any accommodation maker, endorser or guarantor from liability on this Note. Presentment or other demand for payment, notice of dishonor and protest are hereby waived by the undersigned and each endorser or guarantor. The undersigned agree(s) that each provision whose box is checked is part of this Note and that this Note may not be changed orally, but only upon agreement in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought. This Note shall be governed by the substantive Laws of the State of Minnesota.

This Note is secured by the undersigned's Security Agreement dated July 1, 2014 covering certain collateral therein described.

X _____

Exhibit G: TIF-Eligible Items

	"Extraordinary Costs"			Other TIF Eligible Costs			
	Eligible Hard Costs	Eligible Related A&E & Finance	Total Extraordinary	Eligible Hard Costs	Eligible Related A&E & Finance	Additional TIF Eligible	Total TIF Eligible
Demo Bag House	125,000	11,250	136,250				136,250
Foundation removal	25,000	2,250	27,250				27,250
Pilings	480,000	43,200	523,200				523,200
Site Work							
Area 2 - Boardwalk Pier B	451,280	27,077	478,357				478,357
Area 3 - Sheet pile wall	627,144	56,443	683,587				683,587
Area 4 - Sheet pile wall Pier B	678,972	61,107	740,079				740,079
Area 6 - Sheetwall pile outfall enclosure	80,300	7,227	87,527				87,527
Area 7 - Slip 2 inner dock wall				31,550	2,840	34,390	34,390
Area 9 - Bridge	381,500	34,335	415,835	381,500	34,335	415,835	831,670
Area 10 - Utilities				518,276	46,645	564,921	564,921
Area 11 - Land site work	101,000	9,090	110,090	748,900	67,401	816,301	816,301
Area 13 - Raise slip bottom							110,090
Environmental	<u>1,332,000</u>	<u>29,970</u>	<u>1,361,970</u>				<u>1,361,970</u>
Totals			4,564,145			1,831,446	6,395,592
Less Grants			<u>(1,494,909)</u>			<u>(472,865)</u>	<u>(1,967,774)</u>
Net Costs			<u>3,069,236</u>			<u>1,358,581</u>	<u>4,427,818</u>

Notes: