

**RESOLUTION 14D-34**

**RESOLUTION AUTHORIZING A MINIMUM ASSESSMENT AGREEMENT WITH  
PIER B HOLDING, LLC FOR THE PIER B PROJECT**

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to enter into a Minimum Assessment Agreement, substantially in the form of that attached hereto (DEDA Contract No. 14 860 \_\_\_\_\_) with Pier B Holding, LLC for the Pier B Project, subject to the approval of the St. Louis County Assessor, acting as the assessor for the City of Duluth.

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 Minimum Assessment Agreement with the developer of the Pier B project.

Minnesota Statutes allow the developer of a project to enter into an agreement with the provider of tax increment assistance to establish a minimum value of the development for tax purposes subject to the approval of the Assessor. Under such an agreement the value of a property for tax purposes may increase over the amount agreed to if the actual value justifies such an increase but it cannot fall below the agreed-upon level.

As the tax increment obligation is this project is a "pay-as-you-go" obligation, the agreement serves to provide assurances to the holders of the tax increment obligation that the anticipated tax increment revenues will be there to pay the obligation.

## ASSESSMENT AGREEMENT

THIS ASSESSMENT AGREEMENT ("Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2014, between PIER B HOLDING, LLC ("Pier B"), DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 ("DEDA"), and the COUNTY ASSESSOR FOR ST. LOUIS COUNTY, MINNESOTA, acting as assessor for the CITY OF DULUTH (the "Assessor").

### BACKGROUND:

A. DEDA and Pier B are entering into a Development of even date herewith (the "Development Agreement"), for the development of a waterfront hotel, restaurant, meeting center and recreation facility (the "Project") on certain real property located in the City of Duluth ("City") legally described on Exhibit A attached hereto and hereby make a part hereof (the "Land").

B. The development of the Project will be financed in part with the proceeds of tax increment revenue bonds as defined in Minnesota Statutes Sections 469.174 through 469.1794, inclusive (the "TIF Act") to be issued by DEDA, the debt service on certain on which note is to be paid from tax increments generated by the Project.

C. The Development District (Development District No. 26—Pier B) for the Project has been approved by DEDA and by the City.

D. In accordance with the Development Agreement, Pier B desires to establish a minimum market value for the Land and the improvements constructed or to be constructed thereon, pursuant to Minnesota Statutes, Section 469.177, Subdivision 8.

E. The Assessor has reviewed plans and specifications for the Project.

### AGREEMENT:

In consideration of the foregoing and other valuable consideration, the parties agree as follows:

1. The minimum market value assessed for the Project ("Assessor's Minimum Market Value"), shall not, from and after January 2, 2016, be less than \$10,500,000 and that annually thereafter for the duration of this Agreement the Assessor's Minimum Market Value for the Project shall be increased by an additional Two (2%) Percent over the Assessor's Minimum Market Value for the most recent preceding year.

2. If the Assessor determines that the actual market value of the Project as of January 2, 2017 or on any January 2 in any succeeding year thereafter exceeds the value for such date specified in Section 1 hereof, then such actual amount shall be

deemed the "Adjusted Assessor's Minimum Market Value". Such Adjusted Assessor's Minimum Market Value shall be the Assessor's Minimum Market Value specified in this Agreement for taxes payable in the year following such determination and thereafter until termination of this Agreement in accordance with its terms. Any adjustment of the Assessor's Minimum Market Value under this Section shall be evidenced by a certificate signed by the Assessor and dated no later than the date of final determination of market value for purposes of real property taxes payable in the year following such determination, which certification shall be recorded in the office of the county recorder of registrar of titles of St. Louis County. If the Assessor's Minimum Market Value is not adjusted in accordance with the terms of this Section, the Assessor's Minimum Market Value shall remain as specified in Section 1 hereof for the term of this Agreement. The Assessor's Minimum Market Value shall be as specified in this Agreement, as of the dates specified in this Agreement, regardless of actual market values that may result from incomplete construction of the Project, destruction of the Project or any portion thereof, or diminution by any cause whatsoever.

3. Pier B agrees that, solely with respect to ad valorem taxes (including taxes payable under Minn. Stat. 272.01, subd. 2) arising from the Assessor's Minimum Market Value, during the term of this Agreement:

a) Pier B will not seek administrative review or judicial review of the applicability or constitutionality of any tax statute relating to the taxation of real property in the Project determined by any tax official to be applicable to the Project or any of them or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; provided, however, that "tax statute" does not include any local ordinance or resolution levying a tax; and

b) Pier B will not seek any deferral or abatement of the ad valorem taxes arising from the Assessor's Minimum Market Value, including all taxes payable under Minnesota Statutes, Section 272.01, Subd. 2, and penalties or interest payable on all taxes, either presently or prospectively authorized under Minnesota Statutes, Section 469.181, Minnesota Statutes, Chapter 270, or any other State or federal law.

4. The Assessor's Minimum Market Value established pursuant to this Agreement shall be of no further force and effect and this Agreement shall terminate on this date that the Tax Increment District terminates.

5. This Agreement shall be promptly recorded by Pier B. Pier B shall pay all costs of recording.

6. The Assessor represents that the Assessor has reviewed the plans and specifications for the Project, and the market value previously assigned to the Site, and represents that the Assessor's Minimum Market Value as set forth in this Agreement is reasonable.

7. Nothing in this Agreement limits the discretion of the Assessor to assign to the Project a market value in excess of the Assessor's Minimum Market Value or prohibits Pier B from seeking through the exercise of legal or administrative remedies a reduction in such market value for property tax purposes; provided however, that a reduction of such market value shall not be sought below the Assessor's Minimum Market Value so long as this Agreement remains in effect.

8. Neither the preamble nor provisions of this Agreement are intended to modify, nor shall they be construed as modifying, the terms of the Development Agreement.

9. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

**EXECUTION:**

The parties have executed this Assessment Agreement as of the date first stated above.

PIER B HOLDING, LLC

By \_\_\_\_\_

Its \_\_\_\_\_

DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY

By

\_\_\_\_\_  
Its President

By

\_\_\_\_\_  
Its Secretary

COUNTY ASSESSOR

By \_\_\_\_\_

STATE OF MINNESOTA )

) SS

COUNTY OF ST. LOUIS )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Nancy Aronson Norr and Emily Larson, the President and Secretary respectively, of the Duluth Economic Development Authority, an economic

