

RESOLUTION 15D-04

RESOLUTION AUTHORIZING EXECUTION OF A CONSENT AND ESTOPPEL CERTIFICATE AND A THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH PIER B HOLDING, LLC

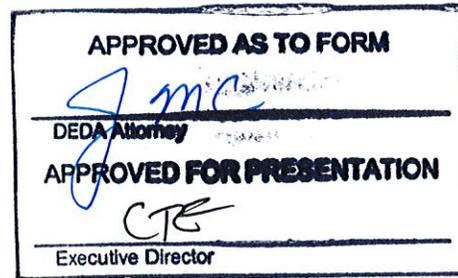
RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to execute a Consent and Estoppel Certificate, substantially in the form of that attached hereto (DEDA Contract No. _____).

BE IT FURTHER RESOLVED that the proper DEDA officials are hereby authorized to enter into a Third Amendment to the Development Agreement, substantially in the form of that attached hereto (DEDA Contract No. 14 860 749³) with Pier B Holding, LLC.

Approved by the Duluth Economic Development Authority this 28th day of January, 2015.

ATTEST:

Executive Director



STATEMENT OF PURPOSE: The purpose of this resolution is to authorize a Third Amendment to the Development Agreement with Pier B Holding LLC ("Pier B") for the development of a destination resort hotel project on the Bayfront property located between Slips 2 and 3.

This amendment changes the DEDA's collateral in its sale of Lot C to Pier B. The Development Agreement, as currently approved and amended, refers to a recorded mortgage based upon a principal balance of \$610,000 with interest accruing at 5%, with a balloon payment at the end of five years.

Dougherty Funding, LLC ("Dougherty"), which is the project's primary source of financing, did not recognize this loan structure until December when financing closing documents were going through final review. Dougherty then informed its client, who in turn informed DEDA staff, that it had marketed the financing package without this type of subordinated debt for the acquisition of Lot C. With the financing package in place, DEDA was asked to consider alternative collateral.

This amendment provides personal guarantees from each of the fifteen Pier B investors

at a pro rata coverage ratio of 125% principal plus 5% interest. DEDA's negotiated requirement of 125% coverage further improves DEDA's position. The amendment also calls for principal and interest payments to commence as soon as one month after the project receives its Certificate of Completion (project completion is targeted for April 2016) on a cash-available basis that is clearly defined in the amendment. This will provide cash payments to DEDA on an earlier basis than originally anticipated, again with a balloon at the end of five years.

Staff believes that this provides DEDA with an improved collateral position while also preserving Dougherty's financing structure.

CONSENT AND ESTOPPEL CERTIFICATE

THIS CONSENT AND ESTOPPEL CERTIFICATE (this "Estoppel Certificate"), is dated as of January __, 2015, and is from the DULUTH ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF DULUTH, MINNESOTA, an economic development authority created and existing pursuant to Minnesota Statutes Chapter 469 (the "Authority"), to DOUGHERTY FUNDING LLC, a Delaware limited liability company (the "Lender"), and its successors and assigns. The Authority hereby agrees with Lender as follows:

1. Unless the context otherwise indicates, capitalized terms not otherwise defined herein shall have the definitions given such terms in that certain Development Agreement dated as of August 14, 2014, as amended by a First Amendment to Development Agreement dated October 31, 2014, by a Development Agreement Second Amendment dated December 17, 2014 and by a Development Agreement Third Amendment dated January __, 2015 (as amended, the "Development Agreement") by and between the Authority and Pier B Holding, LLC (the "Borrower").

2. The Authority understands that the Lender contemplates making (A) a construction and term loan to the Borrower in the maximum principal amount of \$18,500,000.00 (the "Construction Loan"), which Construction Loan is secured by, among other things, a Mortgage, Security Agreement and Fixture Financing Statement, dated as of December 31, 2014, executed by Borrower in favor of Lender, encumbering the Project (the "Mortgage"), and (B) a loan to Borrower in the maximum principal amount of \$3,228,000.00 (the "TIF Loan"; the Construction Loan and TIF Loan are, collectively, the "Loans"), which TIF Loan is secured by, among other things, a Pledge and Security Agreement, dated as of December 31, 2014 (the "Pledge Agreement"), between the Borrower and the Lender, an Assignment of Development Agreement, dated as of December 31, 2014 (the "Assignment of Development Agreement"), between the Borrower and the Lender, and a Deposit Account Pledge Agreement, dated as of December 31, 2014 (the "Account Pledge Agreement"), executed by Borrower in favor of Lender. Pursuant to the Pledge Agreement, the Borrower granted to the Lender a security interest in, among other things, all of the following property: (i) all right, title, and interest of the Borrower in the TIF Note; (ii) all right, title and interest of Borrower in the Development Agreement; and (iii) all right, title and interest of the Borrower in the Assessment Agreement dated August 14, 2014 (the "Assessment Agreement"), between the Authority and the Borrower, and certified by the County Assessor for Saint Louis County, Minnesota. Pursuant to the Account Pledge Agreement, the Borrower granted to Lender a security interest in, among other things, all right, title and interest of the Borrower in Borrower's Account No. _____ (the "Account") maintained with Wells Fargo Bank, National Association.

3. The Authority understands that the Lender has required this certificate as a condition of making the Loans and that the Lender will rely on this certificate in connection therewith.

4. The Authority acknowledges that, in exchange for developing the Project, the Borrower has received or will receive from the Authority, among other things, that certain Pay-As-You-Go Tax Increment Note (the "TIF Note"). Further, the Authority acknowledges that, to secure the payment of the debt owed by the Borrower to the Lender arising by reason of the Construction Loan, the Borrower has granted to the Lender a mortgage lien encumbering the Project pursuant to the Mortgage, and to secure the payment of the debt owed by the Borrower to the Lender arising by reason of the TIF Loan, the Borrower has granted to the Lender a security interest in, among other things, the TIF Note, the Development Agreement, the Assessment Agreement and the Account.

5. The Authority further covenants, represents, and warrants to and agrees with Lender as follows:

- a. That it has received good and valuable consideration for the TIF Note;
- b. That it will deposit all payments due with respect to the TIF Note, and any optional prepayments, either in whole or in part, into the Account, and upon such deposit its obligations under the TIF Note shall be deemed discharged to the extent deposited into the Account;
- c. That it has received and approved the plans, specifications and elevations for the Project as contemplated by Article V(A) of the Development Agreement;
- d. That it has received and approved the plans and specifications for the improvements to Slip No. 2 as contemplated by Article III(I) of the Development Agreement;
- e. That it hereby consents to the execution and delivery of the Mortgage, and to the liens and security interests created therein, as security for the Construction Loan;
- f. That it hereby consents to the execution and delivery of the Pledge Agreement, the Assignment of Development Agreement and the Account Pledge Agreement, and to the liens and security interests created therein, as security for the TIF Loan;
- g. That the covenant that Borrower commence construction of the Project on or before August 1, 2014, as required by Article VI(A) of the Development Agreement, has been satisfied or waived;
- h. That neither Lender nor its successors or assigns shall be obligated to construct or complete the Project; provided, however, that if Lender or its successors or assigns acquires the Project by foreclosure or a conveyance in lieu of foreclosure, the Authority acknowledges and agrees that, upon substantial completion of the Project, Lender shall be entitled to seek from the Authority a Certificate of Completion for the Project in accordance with the terms set forth in

the Development Agreement; provided, further, that the Authority shall have no obligation to issue such certificate unless and until Borrower or Lender (or Lender's successors or assigns) complete construction of the Project pursuant to and in accordance with the terms of the Development Agreement; and

i. In the event that Lender exercises its remedies under the Pledge Agreement and becomes the holder of the TIF Note, the Authority will either (i) issue a new fully registered note to Lender or its nominee or (ii) evidence the transfer of the TIF Note to Lender or its nominee on the registration records for the TIF Note maintained by the Authority.

j. The TIF Note has been duly authorized, executed and delivered by the Authority and is a valid and binding special obligation of the Authority, payable solely from the sources provided therefor in the TIF Note and the Development Agreement.

k. The Authority has the corporate power to issue the TIF Note and to perform the agreements on its part to be performed under the Development Agreement.

6. The Development Agreement has not been amended or modified in any respect and represents the entire agreement of the parties thereto as to all of the subject matters dealt with therein. The Development Agreement is in full force and effect, and the Authority has given no notice of any default thereunder. As of the date hereof, no payments have been made on the TIF Note. To the best of the Authority's knowledge, the Borrower has performed all of its obligations under the Development Agreement with respect to the Project which are required to be performed as of the date hereof. To the best of the Authority's knowledge, the Borrower is not in default in the performance or observance of any of its covenants or agreements under the Development Agreement or pursuant to any other agreement with the Authority as of the date hereof and the Authority is not aware of any current defenses, setoffs, or counterclaims against or with respect to the TIF Note, the Development Agreement or the indebtedness evidenced thereby.

7. Until the termination of the Pledge Agreement, the Assignment of Development Agreement and the Account Pledge Agreement, the Authority agrees to give the Lender a copy of each notice or demand given to the Borrower with respect to any breach or default by the Borrower in its obligations under the Development Agreement at the same time such notice, demand or other communication is given to the Borrower under the Development Agreement, addressed to Lender as follows:

Dougherty Funding LLC
90 South Seventh Street
Suite 4300
Minneapolis, Minnesota 55402
Attention: Loan Servicing Department

8. The Authority agrees to accept the cure by the Lender of any default by the Borrower under the Development Agreement, but acknowledges that the Lender shall be under no obligation to cure any such default. No commencement of any performance by Lender or any obligation of Borrower required under the Development Agreement shall obligate Lender to continue or complete such performance or otherwise perform any of Borrower's obligations under the Development Agreement. Notwithstanding that Lender shall have no obligation to cure Borrower's defaults or otherwise perform under the Development Agreement, those obligations of the Authority under the Development Agreement that are contingent upon performance of the terms and conditions of the Development Agreement by or on behalf of Borrower remain so.

9. The Authority agrees to provide the Lender with notice of any modifications or amendments to be made to the Development Agreement and the right to consent to such modifications or amendments.

10. The Authority acknowledges and understands that:

a. Pursuant to the Pledge Agreement, the payments to be made under the TIF Note have been assigned to the Lender.

b. The Borrower has assigned and granted to the Lender all of its right, title and interest in and to the TIF Note, the Development Agreement, the Assessment Agreement and the Account, including but not limited to the ability to remedy an event of default under the Development Agreement, and enforce the Borrower's rights with respect to the TIF Note and the use of tax increment for the payment of the TIF Note and the Assessment Agreement.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned officers of the Authority have executed this Consent and Estoppel Certificate as of the date and year first written above.

**DULUTH ECONOMIC
DEVELOPMENT AUTHORITY OF
THE CITY OF DULUTH, MINNESOTA**

By: _____
Nancy Norr, its President

By: _____
Emily Larson, its Secretary

Approved as to form and as to
the statements set forth in Sections
5(a), 5(j) and 5(k):

Attorney for the Duluth Economic
Development Authority

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

THIS THIRD AMENDMENT entered into this _____ day of January, 2015, 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, on August 14, 2014, DEDA and Developer entered into a Development Agreement for The Silos at Pier B Project bearing DEDA Contract No. 14 860 749 ; and

WHEREAS, on October 31, 2014, and on December 17, 2014, DEDA and Developer entered into a First Amendment and a Second Amendment, respectively, to the Development Agreement (the Development Agreement and First and Second Amendments thereto are hereinafter referred to as the "Agreement"); and

WHEREAS, the parties desire to further amend the Agreement as hereinafter provided.

NOW, THEREFORE, the parties do mutually agree as follows:

1. New Paragraphs T, U and R to ARTICLE I, Definitions, are added as follows:
 - T. Loan Agreement: shall mean that first mortgage loan agreement between Developer and Developer's lender, Dougherty Funding LLC, dated as of December 31, 2104.
 - U. Net Operating Income: shall mean for any period, the net operating income of the Property as determined by Dougherty Funding LLC in its sole but reasonable discretion and on a cash basis of accounting, after (a) deducting therefrom (i) deposits to (but not withdrawals from) any reserves specifically required under Article 3 of the Loan Agreement, (ii) any Rents, as that term is defined in the Loan Agreement, from tenants operating under bankruptcy protection or from tenants that are not open for business (i.e., have "gone dark"), (iii) non-recurring extraordinary items of income, and (iv) payments of principal and interest due to Dougherty Funding, LLC from Developer during the applicable period, and (b) making adjustments for market vacancies, leasing costs and capital items.
 - R. Personal Guarantees: shall mean personal guarantees of the fifteen (15) members of Developer in an amount of 125% of each member's proportional share of the amount due on the Note plus interest at the rate of 5% based on each member's percentage of ownership of Developer, the form of which is set forth on Exhibit F-1.
2. Paragraph C of ARTICLE IV, Note and Mortgage, is hereby amended in its entirety as follows:
 - C. Note and Personal Guarantees

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 Personal Guarantees of each member of Developer substantially in the form of that attached

hereto as Exhibit F-1 securing the payment to DEDA of the hereinbefore-referenced purchase price.

Additionally, Developer agrees that it shall use Net Operating Income which would otherwise be distributable to its members under applicable covenants in the Loan Agreement to make prepayments on the Note in accordance with the amortization schedule attached hereto as Exhibit H. Such prepayments shall be made quarterly sixty (60) days after the end of each calendar quarter, the first such quarter to commence in the quarter during which the Certificate of Completion is issued, and to the extent that distribution of the same funds to Developer's members would be permitted under the Loan Agreement. Such prepayments shall be applied first to interest and then to principal.

3. Paragraph D of ARTICLE IV, Recording, is hereby amended to delete all references to recording a Mortgage in the Office of the St. Louis County Recorder and to providing a copy of the recorded Mortgage to DEDA.
4. Exhibit E, the form of the Note, is hereby amended to delete the reference to a Security Agreement dated July 1, 2014.
5. Exhibit F, the form of the Mortgage, is deleted in its entirety and replaced with Exhibit F-1, form of Personal Guarantee.
6. A new Exhibit H, Amortization Schedule, is hereby attached and incorporated into this Agreement.
7. Upon execution of this Third Amendment, Developer shall promptly file the Development Agreement, the First Amendment, the Second Amendment and this Third Amendment in the Office of the Saint Louis County Recorder and shall pay all costs associated with recording the Development Agreement, the First Amendment, the Second Amendment and this Third Amendment. Upon recordation, Developer shall immediately submit to DEDA an executed original of the Development Agreement, the First Amendment, the Second Amendment and

EXHIBIT F-1

GUARANTY

THIS GUARANTY, made and executed as of this ____ day of January, 2015, by the undersigned _____ (the "Guarantor") to DULUTH ECONOMIC DEVELOPMENT AUTHORITY, (the "Lender").

PRELIMINARY STATEMENT OF FACTS

A. Pier B Holding, LLC, a Minnesota limited liability company (the "Borrower"), is the owner of certain real property situated in Saint Louis County, Minnesota, as described on Exhibit A attached hereto (the "Premises").

B. The Duluth Economic Development Authority of the City of Duluth, Minnesota (the "DEDA") and Borrower entered into that certain Development Agreement dated as of August 14, 2014, as amended by a First Amendment to Development Agreement dated October 31, 2014, by a Development Agreement Second Amendment dated December 17, 2014 and by a Development Agreement Third Amendment dated January ____, 2015 (as amended, the "Development Agreement"), related to the development of a 140 room waterfront hotel project with related amenities in Duluth, Minnesota to be known as Silos at Pier B Hotel (the "Project") located on the Premises.

C. Pursuant to the Development Agreement, DEDA agreed to convey property adjacent to the Premises to Borrower for the purchase price, as of the date hereof, of \$610,000, the payment of said amount to be made at a later date (the "Loan"), as evidenced by a Note of even date herewith (the "Note"), executed by Borrower in favor of Lender.

C. Guarantor is a member of Borrower and/or is financially interested in the Project and its financing.

D. Lender requires as a condition to the making of the Loan that Guarantor executes and delivers this Guaranty.

NOW, THEREFORE, FOR VALUE RECEIVED, and in order to induce Lender to make the Loan to Borrower, subject to the limitations on liability set forth in Section 28 below, Guarantor, absolutely and unconditionally, guarantees to Lender:

- (i) The due and prompt payment of the indebtedness evidenced by the Note; and
- (ii) The payment of all costs incurred, including, without limitation, reasonable attorneys' fees, in enforcing payment and performance of this Guaranty or the Note.

the aforesaid being herein collectively referred to as the "Indebtedness Guaranteed".

GUARANTOR FURTHER COVENANTS AND AGREES:

1. Lender may from time to time without notice to or consent of Guarantor and upon such terms and conditions as Lender may deem advisable without affecting this Guaranty or impairing the rights of Lender hereunder:
 - a. Release any guarantor, or any maker, surety or other person liable for payment of all or any part of the Indebtedness Guaranteed;
 - b. Make any agreement extending or otherwise altering the time for or the terms of payment of all or any part of the Indebtedness Guaranteed;
 - c. Modify, waive, compromise, release, subordinate, resort to, exercise or refrain from exercising any right Lender may have hereunder, under the Note or the Development Agreement;
 - d. Accept additional security or guarantees of any kind;
 - e. Endorse, transfer or assign the Note or the Development Agreement to any other party;
 - f. Accept partial payment or payments on account of the Indebtedness Guaranteed;
 - g. From time to time hereafter advance further loan monies or give or extend credit to or for the benefit of Borrower;
 - h. Release, settle or compromise any claim of Lender against Borrower, or against any other person, firm or corporation whose obligation is held by Lender as collateral security for the Indebtedness Guaranteed; or
 - i. Make any election under Section 1111(b)(2) of the United States Bankruptcy Code.
2. Guarantor unconditionally and absolutely waives:
 - a. Any obligation on the part of Lender to protect, secure or insure any of the security given for the payment of the Indebtedness Guaranteed;
 - b. Any right to participate in any of the security given for the payment of the Note;
 - c. Notice of acceptance of this Guaranty by Lender;
 - d. Notice of presentment, demand for payment, notice of non-performance, protest, notice of protest and notice of dishonor, notice of non-payment or partial payment;

- e. Notice of any default under the Development Agreement in the performance of any of the covenants and agreements contained therein or in any instrument given as security for the Note;
 - f. Any defense, offset or claim Borrower may have against Lender;
 - g. Any limitation or exculpation of liability on the part of Borrower whether contained in the Note, the Development Agreement or otherwise;
 - h. The transfer or sale by Borrower or the diminution in value thereof of any security given for the Indebtedness Guaranteed;
 - i. Any failure, neglect or omission on the part of Lender to realize or protect the Indebtedness Guaranteed or any security given therefor;
 - j. Any right to insist that Lender prosecute collection of the Note or resort to any instrument or security given to secure the Indebtedness Guaranteed or to proceed against Borrower or against any other guarantor or surety prior to enforcing this Guaranty; provided, however, at its sole discretion, Lender may pursue its remedies against Borrower or any other guarantor or surety, either in a separate action or an action pursuant to this Guaranty, without affecting its rights under this Guaranty;
 - k. Notice to Guarantor of the existence of, or the extending to, Borrower of the Indebtedness Guaranteed;
 - l. Any order, method or manner of application of any payments on the Indebtedness Guaranteed; or
 - m. Any right to insist that Lender disburse the full principal amount of the Loan to Borrower or to dictate to Lender the order, method, manner or amounts disbursed under the Note.
3. To the fullest extent permitted by applicable law, Guarantor will not assert against Lender any defense of waiver, release, discharge in bankruptcy of Borrower, statute of limitations, res judicata, statute of frauds, anti-deficiency statute, fraud, merger of clauses under this Guaranty with the Indebtedness Guaranteed, ultra vires acts, usury, illegality or unenforceability which may be available to Borrower in respect of the Indebtedness Guaranteed, or any setoff available against Lender to Borrower whether or not on account of a related transaction. The liability of Guarantor shall not be affected or impaired by any voluntary or involuntary dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar event or proceeding affecting Borrower or any of its assets and that upon the institution of any of the above actions, at Lender's sole discretion and without notice thereof or demand therefor, Guarantor's

obligations shall become due and payable and enforceable against Guarantor, whether or not the Indebtedness Guaranteed is then due and payable.

4. In the event of the filing of a petition in bankruptcy or a petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the bankruptcy laws of the United States or any other similar federal, state or other statute relating to relief from indebtedness whether involuntary or voluntary or should a receiver, trustee or liquidator be approved or upon a voluntary or involuntary dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar event or proceeding ("Bankruptcy Action") affecting Borrower or any of its assets, Guarantor's obligations shall become due and payable and enforceable against Guarantor, whether or not the Indebtedness Guaranteed is then due and payable. Guarantor and Lender specifically intend that Lender will be able to enforce this Guaranty notwithstanding any such Bankruptcy Action even if Borrower files a petition in bankruptcy and is discharged. For purposes of determining the Indebtedness Guaranteed under this provision notwithstanding any such Bankruptcy Action interest will be deemed to continue to accrue on the Note as though no such Bankruptcy Action had been taken.
5. Notwithstanding the fact that an Event of Default shall not have occurred under the Note and the Loan is in good standing, in the event that Guarantor shall be the subject of a Bankruptcy Action, then Lender may declare the party who is the subject of the Bankruptcy Action in default under this Guaranty and may enforce this Guaranty and collect the entire Indebtedness Guaranteed from such party upon the happening of such event regardless of whether the Note is accelerated in accordance with its terms; provided that notwithstanding the foregoing, the procedure and timelines set forth in Paragraph 18 hereof for Borrower to provide a substitute guarantor who is/are acceptable to Lender in its sole discretion or increase one or more other guaranties shall be applicable in the event of Guarantor's bankruptcy before such enforcement occurs.
6. No act or thing, except for payment in full, which, but for this provision, might or could in law or in equity act as a release of the liabilities of Guarantor shall in any way affect or impair this Guaranty and this shall be a continuing absolute and unconditional Guaranty and shall be in full force and effect until the Indebtedness Guaranteed has been paid in full.
7. If any payment applied to the Indebtedness Guaranteed is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, a Bankruptcy Action), the Indebtedness Guaranteed to which such payment was applied shall for the purpose of this Guaranty be deemed to have continued in existence notwithstanding such application, and this Guaranty shall be enforceable as to such Indebtedness Guaranteed as fully as if such application

had never been made. If any payment is reclaimed in a Bankruptcy Action, Guarantor shall pay to Lender the dollar amount so reclaimed.

8. Notwithstanding any other provision herein to the contrary, Guarantor agrees that he shall not assert any right of subrogation, indemnity, exoneration, contribution or reimbursement whatsoever or any right of recourse to the security given by Borrower to Lender for the debts and obligations of Borrower to Lender. In addition, Guarantor waives and renounces any and all rights Guarantor has or may have for subrogation, indemnity, exoneration, contribution, reimbursement or contribution against Borrower for amounts paid under this Guaranty. This waiver is expressly intended to (i) prevent and waive any requirement that Lender preserve, protect or enforce for the benefit of Guarantor any of the security given by Borrower to Lender in connection with the Loan, (ii) prevent the existence of any claim with respect to such reimbursement by Guarantor against the estate of Borrower within the meaning of Section 101 of the United States Bankruptcy Code, and (iii) to prevent Guarantor from being constituted a creditor of Borrower in respect of such reimbursement within the meaning of Section 547(b) of the United States Bankruptcy Code. Guarantor understands that Guarantor may have rights under applicable law to be subrogated to such security and knowingly waive and relinquish such rights and any claim that any subrogation rights were abrogated by any acts of Lender.
9. In the event that Guarantor shall advance or become obligated to pay any sums hereunder, or in the event that for any reason Borrower and/or any subsequent owner of any portion of or interest in the Project is now or shall hereafter become indebted or obligated to Guarantor, the amount of such sums and of such indebtedness and obligations shall at all times be subordinate as to lien, time of payment and in all other respects to the amounts owing to Lender under the Note or the Development Agreement. Guarantor shall have no right to participate in any way in the Note or the Development Agreement or in the right, title or interest of Lender in the Project or to receive payments from Borrower or such owner upon any such indebtedness or obligation, notwithstanding any payments made by Guarantor hereunder, all rights of reimbursement, indemnification, setoff, subrogation and participation being hereby expressly waived and released, unless and until the entire indebtedness owing to Lender under the Note has been paid in full and all other obligations of Borrower under the Note, have been fully performed, discharged and satisfied. Guarantor agrees that if a Default or Event of Default occurs or is continuing, and until the indebtedness evidenced by the Note shall have been paid in full and all other obligations of Borrower under the Development Agreement have been fully performed, Guarantor will not accept any payment or satisfaction of any kind of any indebtedness or obligation of Borrower to Guarantor, and Guarantor hereby assigns to Lender all right, title and interest in such indebtedness and obligations, including the right to file a proof of claim and to vote thereon in connection with any bankruptcy, insolvency or reorganization proceeding, and including the right to vote on any plan of arrangement or reorganization.

10. This Guaranty is executed in order to induce Lender to make and disburse the Loan, with the intent that it will be relied upon by Lender in making and disbursing the Loan and with the knowledge that Lender would not disburse the Loan but for this Guaranty. Disbursement of any part of the Loan, without any further action or notice, shall constitute conclusive evidence of the reliance hereon by Lender.
11. Guarantor is a citizen of the United States of America, resident of the State of Minnesota whose address is _____, is of legal age and is under no legal disability, and has the full legal right and power to execute, deliver and perform this Guaranty so as to constitute the Guaranty the valid and binding obligations of Guarantor, enforceable in accordance with its terms. The execution, delivery and performance by Guarantor of the Guaranty: (i) will not violate any provision of any law, statute, rule or regulation, or any order, writ, judgment, injunction, decree, determination or award of any court, governmental agency, arbitrator or governmental instrumentality presently in effect having applicability to Guarantor or any of Guarantor's properties; (ii) will not conflict with or result in the breach or termination of, constitute a default under or accelerate any performance required by, any indenture, mortgage, deed of trust, lease, agreement or other instrument to which Guarantor is a party or by which Guarantor or any of Guarantor's property is bound; and (iii) will not result in the creation or imposition of any lien upon any of Guarantor's property. The execution, delivery and performance by Guarantor, and the legality, validity, binding effect or enforceability of, the Guaranty does not require the consent, order, license, authorization, validation or approval of, or filing, recording or registration with, or exemption by, any governmental or public body, agency, authority or any other person.
12. Guarantor represents and warrants to Lender that: (a) Guarantor is not in material default under or in violation of any such law, statute, rule or regulation, order, writ, judgment, injunction, decree, determination or award or any such indenture, loan or credit agreement or other agreement, lease or instrument in any case in which the consequences of such default or violation could have a material adverse effect on the business, operations, properties, assets or condition (financial or otherwise) of Guarantor; (b) Guarantor has filed all federal, state and local tax returns required to be filed and has paid or made provision for the payment of all taxes due and payable pursuant to such returns and pursuant to any assessments made against Guarantor or any of Guarantor's properties and all other taxes, fees and other charges imposed on Guarantor or any of Guarantor's properties by any governmental authority (other than taxes, fees or charges the amount or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in accordance with generally accepted accounting principles have been provided); (c) no tax liens have been filed and no material claims are being asserted with respect to any such taxes, fees or charges; and (d) the charges, accruals and reserves of Guarantor in respect of taxes and other governmental charges are adequate and Guarantor knows of no proposed material tax assessment against him, as applicable, or any basis therefor.

13. Guarantor is not a party to or otherwise bound by any indenture, loan or credit agreement, guaranty or other contingent obligation, or any lease or other agreement or instrument which would foreseeably have a material adverse effect on the business, properties, assets, operations or condition (financial or otherwise) of Guarantor or on the ability of Guarantor to carry out his obligations under the Guaranty.
14. To the knowledge of Guarantor, there are no actions, suits or proceedings pending or threatened against or affecting him or any of Guarantor's properties before any court or arbitrator, or any governmental department, board, agency or other instrumentality which, if determined adversely to Guarantor, would have a material adverse effect on his business, operations, property or condition (financial or otherwise) or Guarantor's ability to perform Guarantor's obligations under the Guaranty.
15. Guarantor expects to derive benefits from the transactions resulting in the creation of the obligations of Borrower guaranteed pursuant to this Guaranty. Lender may rely conclusively on the continuing warranty, hereby made, that Guarantor continues to be benefited by Lender's extension of credit accommodations to Borrower and Lender shall have no duty to inquire into or confirm the receipt of any such benefits, and the Guaranty shall be effective and enforceable by Lender without regard to the receipt, nature or value or any such benefits.
16. No right or remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other available remedy or remedies but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty, the Note or the Development Agreement, or as may now or hereafter exist at law or in equity. No waiver, amendment, release or modification of this Guaranty shall be established by conduct, custom or course of dealing, but only by an instrument in writing duly executed by Lender.
17. Whenever the context requires or permits the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.
18. This Guaranty and each and every part hereof shall be binding upon Guarantor and any heirs, administrators, representatives, executors, successors and assigns of Guarantor and shall inure to the pro rata benefit of each and every future holder of the Note. This Guaranty shall run with the Note and without the need for any further assignment of this Guaranty to any subsequent holder of the Note or the need for any notice to Guarantor. Upon endorsement or assignment of the Note to any subsequent holder, said subsequent holder of the Note shall be substituted for Lender and may enforce this Guaranty as if said holder had been originally named as Lender hereunder. Notwithstanding anything herein to the contrary, in the event of the death of the Guarantor, this Guaranty shall be binding upon the Guarantor's estate unless within the ninety (90) day period immediately following such Guarantor's death (i) (A) Borrower provides Lender with a substitute

guarantor or guarantors who is/are acceptable to Lender in its sole discretion and (B) such substitute guarantor(s) execute(s) a guaranty in favor of Lender in form and substance substantially similar to this Guaranty or such other form that is satisfactory to Lender in its sole discretion or (ii) one or more of the Other Guarantors (as hereinafter defined) execute(s) and deliver(s) to Lender an amendment(s) to such Other Guarantor's guaranty to increase the liability of such Other Guarantors by an amount equal to or greater than the liability of the deceased Guarantor under this Guaranty.

19. Guarantor submits and consents to the personal jurisdiction of the courts of the county in which the Premises is located, the courts of St. Louis County, Minnesota and the courts of the United States of America located in such state or states for the enforcement of this instrument and waives any and all personal rights under the laws of any such state or the United States of America to object to jurisdiction in such courts. Litigation may be commenced in any state court of general jurisdiction for such counties or in the United States District Court located in such state or states, at the election of Lender. Nothing contained herein shall prevent Lender from bringing any action in any other state or jurisdiction against any other person or exercising any rights against any security given to Lender, or against Guarantor personally or against any property of Guarantor in any other state or jurisdiction. Commencement of any such action or proceeding in any other state or jurisdiction shall not constitute a waiver of consent to jurisdiction of or the submission made by Guarantor to personal jurisdiction in any of such courts. In the event an action is commenced in another jurisdiction or venue under any tort or contract theory arising directly or indirectly from the relationship created by this Guaranty, Lender, at its option, shall be entitled to have the case transferred to one of the jurisdictions and venues above described or any other jurisdiction, or if such transfer cannot be accomplished under applicable law, to have such case dismissed without prejudice.
20. Notwithstanding the place of execution of this Guaranty, the parties to this Guaranty have contracted for the law of the State of Minnesota to govern this Guaranty and it is agreed that this Guaranty is made pursuant to and shall be construed and governed by the laws of such state without regard to the principles of conflicts of law.
21. Any notices and other communications permitted or required by the provisions of this Guaranty (except for telephonic notices expressly permitted) shall be in writing and shall be deemed to have been properly given or served by (i) personal delivery, (ii) depositing the same with the United States Postal Service, or any official successor thereto, designated as Registered or Certified Mail, Return Receipt Requested, bearing adequate postage, or (iii) depositing the same with a reputable private courier or overnight delivery service, and addressed as hereinafter provided. Each such notice shall be effective (a) immediately upon personal delivery, (b) three (3) days after being deposited in the U.S. Mail, or (c) one (1) business day after delivery to such courier or delivery service. The time period within which a response to any such notice must be given, however, shall

commence to run from the date of receipt of the notice by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of a changed address of which no notice was given to the other party shall be deemed to be receipt of the notice sent. By giving to the other party hereto at least ten (10) days' notice thereof, either party hereto shall have the right from time to time to change its or his address and shall have the right to specify as its or his address any other address within the United States of America.

Each notice to Guarantor shall be addressed as follows:

With a copy to:

Hanft Fride, PA
1000 U.S. Bank Place
130 West Superior Street
Duluth, MN 55802
Attention: Mark D. Pilon, Esq.

22. The Guarantor's liability for the Indebtedness Guaranteed shall be several as between Guarantor and (here, list 14 other guarantors) (collectively, the "Other Guarantors") under those certain Guaranties dated of even date herewith executed by Other Guarantors in favor of Lender.
23. GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING TO WHICH GUARANTOR IS INVOLVED DIRECTLY OR INDIRECTLY AND WHICH IN ANY WAY ARISES OUT OF, IS RELATED TO, OR IS CONNECTED WITH THIS GUARANTY OR THE RELATIONSHIP ESTABLISHED HEREUNDER, WHETHER ARISING OR ASSERTED BEFORE OR AFTER THE DATE OF THIS GUARANTY.
24. In addition to the other remedies set forth herein and in the Development Agreement, Guarantor hereby irrevocably authorizes Lender, at any time while an Event of Default continues, to set off any sum due to or incurred by Lender hereunder against all deposits and credits of Guarantor with, and any and all claims of Guarantor against Lender. Such right shall exist whether or not Lender shall have made any demand hereunder or under the Development Agreement, whether or not said sums, or any part thereof, or deposits and credits held for the account of Guarantor is or are matured or unmatured, and regardless of the existence or adequacy of any collateral, guaranty or any other security, right or remedy available to Lender. Lender agrees that, as promptly as is reasonably possible after the exercise of any such setoff right, it shall notify Guarantor of its exercise of such setoff right; provided, however, that the failure of Lender to provide such notice shall not affect the validity of the exercise of such setoff

rights. Nothing in this Guaranty shall be deemed a waiver or prohibition of or restriction on Lender to all rights of banker's lien, setoff and counterclaim available pursuant to law.

25. This Guaranty has been reviewed by all the parties hereto and incorporates the requirements of such parties. Each party waives the rule of construction that any ambiguities are to be resolved against the party drafting the same and agrees such rules will not be employed in the interpretation of this Guaranty.
26. Notwithstanding anything herein to the contrary, the payment obligations of the Guarantor shall be limited to the sum of \$(insert sum that equals 125% of the Guarantor's proportional share of the amount due on the Note based on the Guarantor's percentage of ownership of Borrower) plus all accrued and unpaid interest due on the Loan which interest shall accrue at the annual rate of 5%.

Under no circumstances shall Guarantor's liability hereunder be reduced by, from or as a result of any payment to or amount realized by Lender from any rents, deposits, insurance proceeds, condemnation awards, proceeds from bankruptcy sale, foreclosure or any conveyance in lieu of foreclosure or from any other profits, avails, revenues or proceeds derived from the Project, and only payments made to Lender by Guarantor out of his personal funds not derived from the Project after demand therefor by Lender shall be applied against such liability. Furthermore, the foregoing limitation on liability shall not limit in any way the liability of Guarantor pursuant to or arising from any of the other covenants, representations, warranties or other provisions hereof, other than the liability of Guarantor arising for the Payment and Performance Obligations.

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IN FURTHERANCE WHEREOF, Guarantor has executed this Guaranty as of the date first above written.

EXHIBIT A

LEGAL DESCRIPTION

[to be inserted]

Pier B – DEDA Loan Amortization Schedule

Mortgage Summary

Loan amount	\$610,000.00
Term	20 years
Interest rate	5%
Annual home insurance	\$0.00
Annual property taxes	\$0.00
Monthly payment (PI)	\$4,025.73
Monthly payment (PITI)*	\$4,025.73
Total principal and interest payments	\$966,175.19
Total interest	\$356,175.19

Payment Schedule

Year	Total Payments	Principal Paid	Interest Paid	Ending Principal Balance
				\$610,000.00
1	\$48,308.76	\$18,222.59	\$30,086.17	\$591,777.41
2	\$48,308.76	\$19,154.89	\$29,153.87	\$572,622.52
3	\$48,308.76	\$20,134.91	\$28,173.85	\$552,487.61
4	\$48,308.76	\$21,165.04	\$27,143.72	\$531,322.57
5	\$48,308.76	\$22,247.90	\$26,060.86	\$509,074.67
6	\$48,308.76	\$23,386.15	\$24,922.61	\$485,688.52
7	\$48,308.76	\$24,582.62	\$23,726.14	\$461,105.90
8	\$48,308.76	\$25,840.31	\$22,468.45	\$435,265.59
9	\$48,308.76	\$27,162.34	\$21,146.42	\$408,103.25
10	\$48,308.76	\$28,552.02	\$19,756.74	\$379,551.23
11	\$48,308.76	\$30,012.79	\$18,295.97	\$349,538.44
12	\$48,308.76	\$31,548.31	\$16,760.45	\$317,990.13
13	\$48,308.76	\$33,162.38	\$15,146.38	\$284,827.75
14	\$48,308.76	\$34,859.02	\$13,449.74	\$249,968.73
15	\$48,308.76	\$36,642.46	\$11,666.30	\$213,326.27
16	\$48,308.76	\$38,517.18	\$9,791.58	\$174,809.09
17	\$48,308.76	\$40,487.80	\$7,820.96	\$134,321.29
18	\$48,308.76	\$42,559.22	\$5,749.54	\$91,762.07
19	\$48,308.76	\$44,736.63	\$3,572.13	\$47,025.44
20	\$48,308.75	\$47,025.44	\$1,283.31	\$0.00