

RESOLUTION 16D-31

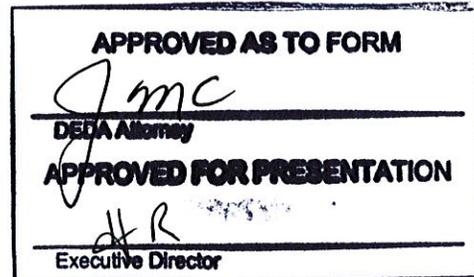
**RESOLUTION AUTHORIZING A THIRD AMENDMENT TO AN ESCROW AND
DISBURSEMENT AGREEMENT WITH PIER B HOLDING, LLC AND FIRST
AMERICAN TITLE D/B/A CONSOLIDATED TITLE AND ABSTRACT COMPANY**

RESOLVED, that the proper DEDA officials are hereby authorized to enter into a third amendment to an Escrow and Disbursement Agreement, substantially in the form of that attached hereto (DEDA Contract No. 15 860 760³) with Pier B Holding, LLC and First American Title d/b/a Consolidated Title and Abstract Company extending the time for completion of the Slip No. 2 Project.

Approved by the Duluth Economic Development Authority this 24th day of August, 2016.

ATTEST:

Executive Director



STATEMENT OF PURPOSE: The purpose of this resolution is to authorize a Third Amendment to an Escrow and Disbursement Agreement to extend the time for completion of the work.

The DEDA funds held in escrow are tied to Pier B's DEDA Development Agreement and City License Agreement. The DEDA agreement required the DEDA to provide Pier B with \$1 million of TIF funds in reimbursement for the stabilization/reconstruction of the eastern side of the Slip 2 (adjacent to Festival Park) and for the construction of the extension of the City's Baywalk along the park side of Slip 2. The City agreement required Pier B to perform this work on behalf of the City in conjunction with the overall Pier B construction project.

At the time that the Escrow and Disbursement Agreement was approved (January 2015), the construction schedule anticipated the entire slip wall and Baywalk project to be completed by the end of the 2015 construction season. The slip wall project, and the construction of the Baywalk extension, was scheduled for spring 2016 completion.

This amendment extends the time for completion of the Project to September 30, 2016 and allows the second and final draw at the time of project completion and acceptance by the City.

THIRD AMENDMENT TO
ESCROW AND DISBURSEMENT AGREEMENT

THIS THIRD AMENDMENT TO ESCROW AGREEMENT, dated as of August 24, 2016 (the "Third Amendment") is by and among the DULUTH ECONOMIC DEVELOPMENT AUTHORITY ("DEDA"), PIER B HOLDING, LLC ("Developer"), and FIRST AMERICAN TITLE COMPANY d/b/a Consolidated Title and Abstract Company ("Title Company").

RECITALS:

- A. As of January 28, 2015, DEDA, Developer and Title Company entered into an Escrow and Disbursement Agreement bearing DEDA contract No. 15 860 760 governing the escrow and disbursement of \$1,000,000 of DEDA funds for the "Slip No. 2 Project" as defined in the Agreement.
- B. The Agreement contemplated that the Slip No. 2 Project would be completed no later than December 31, 2015 and that the entire amount of the escrowed funds would be disbursed by that date.
- C. The Developer completed a significant portion of the work by late 2015, but due to delays largely from permitting, the completion of the Slip No. 2 Project was pushed back to spring 2016. Consequently, the parties entered into a First Amendment approved on January 28, 2016 that authorized disbursement of escrowed fund in two installments: reimbursement for the 2015 work and for the project's completion by July 1, 2016.
- D. Due to further delays caused by permitting issues and the weather, parties entered into a Second Amendment approved on June 22, 2016 that extended the second and final disbursement to August 15, 2016.
- E. Due to more recent, additional delays caused by permitting issues, weather and the need to restrict construction during Festival Park events, the completion of the Slip No. 2 Project has been further delayed.
- F. The parties to the Agreement have agreed to enter into a Third Amendment to extend the date for completion to September 30, 2016 and that the entire amount of the escrowed funds would be disbursed by that date.

G. The original agreement and the First, Second and Third agreements thereto are hereinafter referred to as the "Agreement".

NOW, THEREFORE, in consideration of the covenants and conditions herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties agree that the Agreement is hereby amended as follows:

1. That Recital B. of the Agreement is hereby amended to deleting therefrom the date of "August 15, 2016" and substituting therefore the date of "September 30, 2016"; the parties further agree that the date of September 30, 2016 shall be deemed to be end of term of the Agreement.
2. In all other respects the Agreement, together with all of its terms, covenants and conditions is hereby affirmed in its entirety.

IN WITNESS WHEREOF, DEDA, Developer and Title Company have caused this Agreement to be duly executed as of the date first above set forth.

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

PIER B HOLDING, LLC

By _____
Its President

By _____
Its Chief Manager

By _____
Its Secretary

FIRST AMERICAN TITLE COMPANY
d/b/a Consolidated Title and Abstract Company

By _____
Its Manager

This instrument was drafted by:

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