

GUARANTY AGREEMENT

This GUARANTY AGREEMENT (the “Guaranty”) is made as of September __, 2015, by DAVID W. PETERS, an individual (“Peters”), TERRATRON, INC., a Utah corporation (“Terratron”), MERCURY INVESTMENTS LIMITED PARTNERSHIP OF UTAH, a Utah limited partnership (“Mercury,” and collectively with Peters and Terratron, the “Guarantors”), the CITY OF BLOOMINGTON, MINNESOTA, a Minnesota municipal corporation (the “City”), and the PORT AUTHORITY OF THE CITY OF BLOOMINGTON, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”).

RECITALS:

WHEREAS, the Authority, the City, and South Loop Investments, LLC, a Minnesota limited liability company (the “Developer”), entered into that certain Purchase and Redevelopment Contract, dated December 10, 2014 (the “Redevelopment Agreement”), as amended by the First Amendment to Purchase and Development Agreement, dated September __, 2015 relating to the development of certain land located in the City and legally described in Exhibit A attached to the Redevelopment Agreement (the “Development Property”); and

WHEREAS, pursuant to the Redevelopment Agreement, the Authority agreed to convey the Development Property to the Developer, and the Developer agreed to undertake certain improvements to the Development Property to be completed in two phases as described and defined in the Redevelopment Agreement as the “Minimum Improvements,” including but not limited to (i) the construction of an approximately 74,000 square foot hotel (the “Hotel”), including approximately 148 units, an approximately 2,000 square foot coffee shop (the “Coffee Shop”), an approximately 9,500 square foot restaurant (the “Restaurant”), approximately 81 surface parking spaces, and a public plaza area on a portion of the Development Property (the “Phase I Property”); and (ii) the construction of a structured parking ramp on a portion of the Development Property (the “Parking Ramp Property”) with approximately 320 parking spaces (collectively, the “Phase I Minimum Improvements”); and

WHEREAS, in accordance with the terms of the Redevelopment Agreement, the Authority will retain ownership of the Parking Ramp Property and the Parking Ramp, and the Developer will be provided a leasehold interest in the Parking Ramp Property and the Parking Ramp pursuant to the Parking Lease and Management Agreement, dated September __, 2015 (the “Parking Lease and Management Agreement”), between the City, the Authority, and the Developer; and

WHEREAS, the Authority and the Developer entered into a Parking Ramp Development Agreement, dated September __, 2015 (the “Parking Ramp Development Agreement”), pursuant to which the Developer agreed to construct, or cause the construction of, the Parking Ramp; and

WHEREAS, in accordance with the Redevelopment Agreement, the City and the Authority agreed to finance the costs of the Parking Ramp in an amount not to exceed \$5,620,000 (the “Public Assistance”) with moneys from the South Loop Development Fund; and

WHEREAS, the development purposes for the Public Assistance include promotion of density in the area and the development of a high-quality restaurant and grocery or pharmacy retail store in the area; and

WHEREAS, the Developer has not secured users for the Coffee Shop and the Restaurant to date, and therefore the Developer intends to postpone the construction of this portion of the Phase I Improvements; notwithstanding the postponement, the parties to the Redevelopment Agreement intend to

proceed with the construction of the Hotel and the Parking Ramp and will amend the Redevelopment Agreement accordingly on the date hereof; and

WHEREAS, as a condition to the agreement by the City and the Authority to agree to allow the construction of the Coffee Shop and Restaurant to be postponed, the City and the Authority are requiring that the Guarantors execute this Guaranty; and

NOW, THEREFORE, as an inducement to the City and the Authority to extend the timeline for constructing the Coffee Shop and the Restaurant, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Guarantors, intending to be legally bound hereby, both jointly and severally, represent and warrant to the City and the Authority and covenant and agree with the City and the Authority as follows:

AGREEMENT

1. **Guaranty.** The Guarantors hereby guarantee for the benefit of the City and the Authority the following (the “Guaranteed Obligations”):

(a) The Developer shall obtain users for the Coffee Shop and the Restaurant, execute leases for the Coffee Shop and the Restaurant, and secure and close on financing for the Coffee Shop and the Restaurant no later than October 31, 2016.

(b) Pursuant to the terms of the Redevelopment Agreement, the Developer shall commence construction of the Coffee Shop and the Restaurant no later than October 31, 2016.

(c) In the event that the requirements of Section 1(a) and 1(b) have not been satisfied by October 31, 2016, the Guarantors shall repay to the Authority, for the benefit of the City, the amount of Public Assistance directly related to the Coffee Shop and the Restaurant (approximately 38% or \$2,135,600), less the actual amount of Common Area Costs (as defined in Reciprocal Covenants, Easements, Maintenance and Use Agreement, dated September __, 2015, between the Developer, the City and the Authority) constructed or installed by Developer on or under Parcel 2, or which are attributable to or apportioned to Parcel 2 (Lot 2, Block One, Lindau Link 2nd Addition) (approximately \$461,678 but in no event shall exceed \$500,000) (the “Guarantor’s Repayment Obligation”).

(d) In the event the requirements of Section 1(a) and 1(b) have not been satisfied by October 31, 2016 but are satisfied prior to October 31, 2018, a portion of the Guarantor’s Repayment Obligation will be repaid to the Guarantors by the Port and/or the City on a pro rata basis dependent on what date the requirements of Section 1(a) and 1(b) are met. By way of example, if the requirements of Section 1(a) and 1(b) are met on October 31, 2017, the Authority will repay the Guarantors fifty percent (50%) of the Guarantor’s Repayment Obligation calculated as follows:

$$\frac{\text{days following October 31, 2016 to satisfaction of Section 1(a) and 1(b) conditions}}{730} \times \text{Guarantor's Repayment Obligation}$$

(e) The obligation of each Guarantor under this Guaranty is a joint and several obligation.

2. **Term of Guaranty.** The Guarantors’ obligations under this Guaranty shall commence on the date hereof and terminate, without further action of any party, upon the satisfaction of the requirements of Section 1(a) and 1(b) or the payment of the Guarantor’s Repayment Obligation.

Notwithstanding the foregoing, the Authority's obligation to repay all or a portion of the Guarantors' Repayment Obligation pursuant to Section 1(d) shall continue until the earlier of the date such repayment has been provided to the Guarantors or October 31, 2018.

3. **Obligations Unconditional.** The Guarantors' obligations under this Guaranty shall be unconditional; provided, however, that no payment shall be made under this Guaranty during a period in which there is a continuing default on the part of the City or the Authority specifically related to their obligations to finance the construction of the Parking Ramp with the Public Assistance pursuant to the provisions of the Redevelopment Agreement, the Parking Ramp Development Agreement, or the Disbursing Agreement, dated September __, 2015, between the Authority, the Developer, and Land Title, Inc.

4. **Restrictions on Additional Guaranties.** During the term of this Guaranty, the Guarantors shall not agree in writing that any other guaranty agreement shall be superior in payment to this Guaranty. If any of the Guarantors enter into additional guaranty agreements during the term of this Guaranty, the respective Guarantor shall inform the City and the Authority of the nature and amount of such additional guaranty. The Authority and the City acknowledge and agree that Guarantors may enter into a guaranty of the loan for the Hotel Improvements to be located on Lot 1, Block 2, Lindau Link 2nd Addition.

5. **Liquidity Requirement; Restrictions on Sale of Assets.** Collectively the Guarantors shall maintain liquid assets (cash or marketable securities) of at least \$1,000,000 during the term of this Guaranty. In addition, each of the Guarantors shall not sell, transfer, convey, or assign more than 20% of its assets during the term of this Guaranty.

6. **Set-Offs, Counterclaims.** No set-off, counterclaim, reduction, or diminution of any obligation or any defense of any kind or nature which the Guarantors have or may have against the City or the Authority shall be available hereunder to the Guarantors against the City or the Authority. Notwithstanding the foregoing, during a period in which there is a continuing default on the part of the City or the Authority specifically related to their obligations to finance the construction of the Parking Ramp with the Public Assistance pursuant to the provisions of the Redevelopment Agreement, the Parking Ramp Development Agreement, or the Disbursing Agreement, dated September __, 2015, between the Authority, the Developer, and Land Title, Inc., any right to set-off, counterclaim, reduction, or diminution of any obligation or any defense of any kind or nature which the Guarantors have or may have against the City or the Authority shall be available hereunder to the Guarantors against the City or the Authority.

7. **Remedies.** If the Guarantors fail to cure any default in their performance of the Guaranteed Obligations within thirty (30) days after receipt of written notice of default from the City or the Authority, the City or the Authority may, in addition to all other remedies available to the City and the Authority under this Guaranty or the Redevelopment Agreement, bring any action at law or in equity or both to compel the Guarantors, jointly and severally, to perform their obligations under this Guaranty, and may collect in any such action compensation for all out-of-pocket losses, including reasonable attorneys' fees and expenses, sustained or incurred by the Authority as a direct consequence of the failure of the Guarantors to perform such Guaranteed Obligations, together with interest thereon at an annual rate of interest of 4.0%; provided, however, and notwithstanding any contrary provision hereof, in no event shall the Guarantors be liable for (a) any consequential, punitive, or exemplary damages under this Guaranty; or (b) sums in excess of \$2,235,600.

8. **Waivers.** The Guarantors waive: (a) any defense based upon any legal disability or other defense of the Developer; (b) any defense based upon any lack of capacity of the Developer or any lack of

authority of the officers, directors, partners, members, managers, trustees, attorneys in fact or agents acting or purporting to act on behalf of the Developer or any principal of the Developer or any defect in the formation of the Developer or any principal of the Developer (and the City and the Authority will have no obligation to inquire into any of the foregoing); (c) all rights and defenses arising out of an election of remedies by the City and the Authority; (d) any defense based upon the City's or the Authority's failure to disclose to the Guarantors any information concerning the Developer's financial condition or any other circumstances bearing on the Developer's ability to construct the Phase I Minimum Improvements; (e) any defense based upon any statute or rule of law providing that the obligation of a surety must be neither larger in amount nor in any other respect more burdensome than that of a principal; (f) any and all claims for subrogation, reimbursement, indemnification or contribution against the Developer; (g) acceptance of this Guaranty by the City and the Authority; and (h) presentment, demand, protest and notice of any kind (except as otherwise required by this Guaranty). Notwithstanding anything herein to the contrary, the Guarantors expressly reserve and retain any and all defenses they may possess, whether now or in the future, arising from any failure by the Developer's contractors to perform its obligations under the Redevelopment Agreement and the Parking Ramp Development Agreement.

9. **Additional and Independent Obligations.** This Guaranty is independent of the obligations of the Developer under the Redevelopment Agreement. Nothing contained in this Guaranty will prevent the Authority or the City from exercising concurrently or successively any rights available to them under applicable law or under the Redevelopment Agreement, the Parking Ramp Development Agreement, or other documents related to the Minimum Improvements and that the exercise of any of such rights will not constitute a legal or equitable discharge of the Guarantors. The Guarantors hereby authorize and empower the City and the Authority to exercise, in their reasonable discretion, any rights and remedies, or any combination thereof, that may then be available, because it is the intent and purpose of the Guarantors that, except as provided in Section 3, the Guaranteed Obligations will be absolute, independent and unconditional under any and all circumstances. The City or the Authority may bring a separate action to enforce the provisions of this Guaranty against the Guarantors without taking action against the Developer, or without joining the Developer as a party to such action.

10. **Representations and Warranties.** To induce the City to provide the Public Assistance to the Developer and to induce the City and the Authority to extend the timeline for constructing the Coffee Shop and the Restaurant, the Guarantors represent and warrant to the City and the Authority as follows:

10.1 **Benefit.** The Guarantors are affiliated with the Developer and have received, or will receive, direct or indirect benefit from the making of this Guaranty with respect to the Guaranteed Obligations.

10.2 **No Representation by the City or the Authority.** Neither the City, the Authority nor any other party has made any representation, warranty or statement to the Guarantors in order to induce the Guarantors to execute this Guaranty.

10.3 **Legality.** To the best of Guarantors' knowledge, the execution, delivery and performance by the Guarantors of this Guaranty and the consummation of the transactions contemplated hereunder do not, and will not, contravene or conflict with any law, statute or regulation whatsoever to which the Guarantors are subject or constitute a default (or an event which with notice or lapse of time or both would constitute a default) under, or result in the breach of, any indenture, mortgage, deed of trust, charge, lien, or any contract, agreement or other instrument to which any Guarantor is a party or which may be applicable to any Guarantor. This Guaranty is a legal and binding joint and several obligation of the Guarantors and is enforceable in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to the enforcement of creditors' rights.

10.4 Defaults. None of the Guarantors are in default and no event has occurred that with the passage of time and/or the giving of notice will constitute a default under any agreement to which one or more Guarantors are a party, the effect of which will impair performance by one or more of the Guarantors of their obligations under this Guaranty.

10.5 Maintenance of Existence.

10.5.1 Terratron. Terratron shall maintain its corporate existence, shall not dissolve or otherwise dispose of all or substantially all of its assets, and shall not consolidate with or merge into another corporation, association or entity or permit any other corporation, association or entity to consolidate with or merge into it, unless: (i) the surviving, resulting or transferee corporation, association or other entity, as the case may be, if other than Terratron, assumes in writing all of the obligations of Terratron under this Guaranty; (ii) the net worth of the surviving, resulting or transferee corporation, association or other entity, as the case may be, is at least ninety percent (90%) of that of Terratron immediately prior to such merger, consolidation or transfer; and (iii) Terratron certifies in writing to the City and Authority at the same time notice of such sale, transfer, consolidation or merger is given to Terratron's stockholders or members that such action will not result in a default under any loan agreement or other instrument by which Terratron is bound. In the event of such sale, transfer, consolidation or merger, Terratron shall be relieved of all its obligations under this Guaranty.

10.5.2 Mercury. Mercury shall maintain its limited partnership status, and shall require the Developer to maintain its corporate existence, shall not dissolve or otherwise dispose of all or substantially all of its assets, and shall not consolidate with or merge into a corporation, association or entity or permit any corporation, association or entity to consolidate with or merge into it, unless: (i) the surviving, resulting or transferee corporation, association or other entity, as the case may be, if other than Mercury, assumes in writing all of the obligations of Mercury under this Guaranty; (ii) the net worth of the surviving, resulting or transferee corporation, association or other entity, as the case may be, is at least ninety percent (90%) of that of Mercury immediately prior to such merger, consolidation or transfer; and (iii) Mercury certifies in writing to the City and Authority at the same time notice of such sale, transfer, consolidation or merger is given to Mercury's stockholders or members that such action will not result in a default under any loan agreement or other instrument by which Mercury is bound. In the event of such sale, transfer, consolidation or merger, Mercury shall be relieved of all its obligations under this Guaranty.

10.6. Survival. All representations and warranties made by the Guarantors herein shall survive the execution hereof and performance or satisfaction of the Guaranteed Obligations in full.

11. Enforcement Costs. If the City and the Authority incur costs and expenses in order to collect payment from one or more of the Guarantors under this Guaranty, the Guarantors shall pay to the City and the Authority upon demand all fees, costs, and expenses incurred in connection with such enforcement action, including reasonable attorneys' fees, court costs and filing fees.

12. Miscellaneous.

12.1 Waiver. No failure to exercise, and no delay in exercising, on the part of the City or the Authority, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right. The rights of the City and the Authority hereunder shall be in addition to all other rights provided by law. No modification or waiver of any provision of this Guaranty, nor consent to departure therefrom, shall be effective unless in writing and no such consent or waiver shall extend beyond the particular case and purpose involved.

No notice or demand given in any case shall constitute a waiver of the right to take other action in the same, similar or other instances without such notice or demand.

12.2 Notices. All notices, demands, certificates, requests, or other communications required hereunder shall be sufficient only if given only in writing and shall be deemed given only when delivered personally or by next day delivery or five (5) days after mailing when mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

- Peters: David W. Peters
340 Main St., Suite 200
P.O. Box 3208
Park City, Utah 84060-3208
E-mail: dpeters@terratron.org
- Terratron: Terratron, Inc.
340 Main St., Suite 200
P.O. Box 3208
Park City, Utah 84060-3208
Attn: David Peters
E-mail: dpeters@terratron.org
- Mercury: Mercury Investments Limited Partnership of Utah
340 Main St., Suite 200
P.O. Box 3208
Park City, Utah 84060-3208
Attn: David Peters
E-mail: dpeters@terratron.org
- With a copy to: Michael P. Jacobs, Esq.
Stinson Leonard Street, LLP
The Graif Building
3 Civic Center Plaza, Suite 400
Mankato, MN 56001
E-mail: michael.jacobs@stinsonleonard.com
- City: City of Bloomington
1800 West Old Shakopee Road
Bloomington, Minnesota 55431
Attn: City Manager
E-mail: jverbrugge@bloomingtonmn.gov
- Authority: Port Authority of the City of Bloomington
1800 West Old Shakopee Road
Bloomington, Minnesota 55431
Attn: Administrator
E-mail: srudlang@bloomingtonmn.gov

12.3 Governing Law. THE CONTRACTUAL AND OTHER GENERAL AGREEMENTS EVIDENCED BY THIS GUARANTY WILL BE GENERALLY GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MINNESOTA. ANY ACTION OR PROCEEDING AGAINST THE GUARANTORS UNDER OR IN CONNECTION WITH THIS

GUARANTY MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT IN HENNEPIN COUNTY, MINNESOTA. THE GUARANTORS HEREBY IRREVOCABLY (A) SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS, AND (B) WAIVE ANY OBJECTION THEY MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN SUCH COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM, AND (C) CONSENT TO THE SERVICE OF PROCESS IN ANY MANNER AUTHORIZED BY MINNESOTA LAW. ANY ACTION OR PROCEEDING BY THE GUARANTORS AGAINST THE CITY OR THE AUTHORITY SHALL BE BROUGHT ONLY IN A STATE OR FEDERAL COURT LOCATED IN HENNEPIN COUNTY, MINNESOTA. THE CITY AND THE AUTHORITY HEREBY IRREVOCABLY (A) SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS, AND (B) WAIVE ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN SUCH COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM, AND (C) CONSENT TO THE SERVICE OF PROCESS IN ANY MANNER AUTHORIZED BY MINNESOTA LAW.

12.4 Invalid Provisions. If any provision of this Guaranty is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Guaranty, such provision shall be fully severable and this Guaranty shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Guaranty, and the remaining provisions of this Guaranty shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Guaranty, unless such continued effectiveness of this Guaranty, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

12.5 Amendments. This Guaranty may be amended only by an instrument in writing executed by the party or an authorized representative of the party against whom such amendment is sought to be enforced.

12.6 Parties Bound; Assignment. This Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives; provided, however, that Guarantors may not, without the prior written consent of the City and the Authority, assign any of their rights, powers, duties or obligations hereunder.

12.7 Headings. Section headings are for convenience of reference only and shall in no way affect the interpretation of this Guaranty.

12.8 Recitals. The recital and introductory paragraphs hereof are a part hereof, form a basis for this Guaranty and shall be considered prima facie evidence of the facts and documents referred to therein.

12.9 Entirety. THIS GUARANTY EMBODIES THE FINAL, ENTIRE AGREEMENT OF GUARANTORS, THE CITY, AND THE AUTHORITY WITH RESPECT TO GUARANTORS' GUARANTY OF THE GUARANTEED OBLIGATIONS AND SUPERSEDES ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF. THIS GUARANTY IS INTENDED BY GUARANTORS, THE CITY, AND THE AUTHORITY AS A FINAL AND COMPLETE EXPRESSION OF THE TERMS OF THE GUARANTY, AND NO COURSE OF DEALING BETWEEN THE GUARANTORS, THE CITY, AND THE AUTHORITY, NO COURSE OF PERFORMANCE, NO TRADE PRACTICES, AND NO EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OR OTHER

EXTRINSIC EVIDENCE OF ANY NATURE SHALL BE USED TO CONTRADICT, VARY, SUPPLEMENT OR MODIFY ANY TERM OF THIS GUARANTY.

(The remainder of this page is intentionally left blank.)

Execution page of the City to the Guaranty Agreement, dated as of the date and year first written above.

CITY OF BLOOMINGTON, MINNESOTA

By _____
Gene Winstead
Its Mayor

By _____
James D. Verbrugge
Its City Manager

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of September, 2015, by Gene Winstead, the Mayor of the City of Bloomington, Minnesota, on behalf of the City.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of September, 2015, by James D. Verbrugge, the City Manager of the City of Bloomington, Minnesota, on behalf of the City.

Notary Public

Approved as to form:

By: _____
Sandra Johnson
City Attorney

Execution page of the Authority to the Guaranty Agreement, dated as of the date and year first written above.

PORT AUTHORITY OF THE CITY OF BLOOMINGTON

By _____
Robert Erickson
Its President

By _____
Schane Rudlang
Its Administrator

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of September, 2015, by Robert Erickson, the President of the Port Authority of the City of Bloomington, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of September, 2015, by Schane Rudlang, the Administrator of the Port Authority of the City of Bloomington, on behalf of the Authority.

Notary Public

Reviewed and approved by Port General Counsel.

Julie Eddington
Port General Counsel