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**DISBURSING AGREEMENT**

**between**

**PORT AUTHORITY OF THE CITY OF BLOOMINGTON, MINNESOTA,**

**SOUTH LOOP INVESTMENTS, LLC,**

**and**

**LAND TITLE, INC.**

**Dated September \_\_, 2015**

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This document was drafted by:  
KENNEDY & GRAVEN, CHARTERED (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, Minnesota 55402  
Telephone: 612-337-9300

## DISBURSING AGREEMENT

THIS DISBURSING AGREEMENT, dated September \_\_, 2015 (the “Disbursing Agreement”), is made and entered into between the PORT AUTHORITY OF THE CITY OF BLOOMINGTON, a public body corporate and politic organized under the laws of the State of Minnesota (the “Authority”), SOUTH LOOP INVESTMENTS, LLC, a Minnesota limited liability company (the “Developer”), and Land Title, Inc., a Minnesota corporation (the “Disbursing Agent”).

### RECITALS

WHEREAS, the City of Bloomington, Minnesota (the “City”), the Authority, and the Developer have entered into that certain Purchase and Redevelopment Contract, dated December 10, 2014, as amended by the First Amendment to Purchase and Redevelopment Contract, dated September \_\_, 2015 (as amended, the “Redevelopment Agreement”), which sets forth the terms of redevelopment of certain property located within Industrial Development District No. 1 – South Loop District in the City; and

WHEREAS, the Developer has determined to undertake certain improvements to the Development Property to be completed in two phases as described in the Redevelopment Agreement as the “Minimum Improvements,” including but not limited to the construction of (i) an approximately 74,000 square foot hotel, including approximately 148 units, an approximately 2,000 square foot coffee shop, an approximately 9,500 square foot restaurant, approximately 81 surface parking spaces, and a public plaza area; (ii) structured parking ramp with approximately 320 parking spaces (the “Parking Ramp,” and collectively with the construction projects listed in clause (i), the “Phase I Minimum Improvements”); and (iii) an approximately 14,500 square foot grocery or pharmacy and approximately 21 surface parking spaces (the “Phase II Minimum Improvements”); and

WHEREAS, pursuant to the Redevelopment Agreement and the Parking Ramp Development Agreement, dated September \_\_, 2015 (the “Parking Ramp Development Agreement”), between the Authority and the Developer, and in consideration of the assistance provided by the Authority and the City as described therein and subject to the conditions set forth herein, the Developer will construct the Phase I Minimum Improvements, including the Parking Ramp; and

WHEREAS, pursuant to a Loan Agreement, dated September \_\_, 2015 (the “Lender Agreement”), between the Developer and U.S. Bank National Association, a national banking association (“Lender”), Lender has agreed to loan the Developer up to \$13,130,000 to finance the acquisition, construction and equipping of the hotel portion of the Phase I Minimum Improvements (“Hotel Improvements”); and

WHEREAS, unless otherwise provided herein, capitalized terms not defined in this Disbursing Agreement shall have the meanings assigned to such terms on EXHIBIT A attached hereto and made a part hereof.

**NOW, THEREFORE**, in consideration of the agreement by the City to advance funds to finance the Parking Ramp in the amount of up to \$5,749,739 (the “City Assistance”) and of the mutual covenants and agreements hereinafter set forth, it is agreed by and between the parties hereto as follows:

**Section 1. Conditions to Disbursements of Project Funds.** In addition to any documents required to be provided as a condition to any disbursement of City Assistance under any provision of the Redevelopment Agreement, prior to the initial disbursement of the City Assistance, the Disbursing Agent shall have received the following:

(a) A Project Budget for the Hotel Improvements and Parking Ramp, certified by the Developer as true, correct and complete, and setting forth in form and substance satisfactory to the Disbursing Agent;

(b) A Sworn Construction Statement executed by the General Contractor with respect to the Parking Ramp itemizing all costs to be incurred with respect to the construction and equipping of the Parking Ramp and all related costs to be paid from Project Funds;

(c) The title policy and the plat;

(d) A copy of the Plans and Specifications in detail sufficient to enable the Developer to authorize commencement of construction of the Parking Ramp, certified by the Architect and approved by the Developer;

(e) Copies of the Architect's contract, the Construction Contract, and a current list of all Subcontractors with respect to the Parking Ramp;

(f) A total project cost statement, incorporating estimates of the construction costs as shown on the Sworn Construction Statement and setting forth all other costs and expenses of any kind anticipated to be incurred in completion of the Parking Ramp and sworn to by the Developer to be a true, complete and accurate account of all costs actually incurred and a reasonably accurate estimate of all costs to be incurred in the future; and

(g) Copies of any licenses and permits which the Architect certifies as necessary and sufficient to construct the Parking Ramp including, prior to the first draw for construction expenditures, all foundation and grading permits and building permits from time to time necessary for such construction (provided that licenses and permits may be provided in stages as construction of the Parking Ramp progresses but must always be delivered prior to any draw for work relating to such license or permit), and written confirmation that all required permits for construction have been obtained.

The Authority shall provide such additional documents and instruments as may be reasonably requested by the Disbursing Agent during the term of this Disbursing Agreement.

**Section 2. Sources of Project Funds.** The following funds shall be made available and shall be applied to finance the Hotel Improvements, including the Parking Ramp:

City Assistance	\$5,749,739
Loan Proceeds	\$15,000,000
Developer Equity	\$7,402,090
Total	\$28,151,829

The Loan Proceeds will be disbursed pursuant to a separate disbursing agreement.

**Section 3. Disbursements for the Parking Ramp.**

(a) The City Assistance is available to the Developer only to pay for the costs of the Parking Ramp. The maximum amount of City Assistance available to pay for the costs of the Parking Ramp is \$5,749,739.

(b) Draws for disbursements of the City Assistance for payment of the costs of the Parking Ramp shall be initiated by the Developer pursuant to the terms of this Disbursing Agreement. Each Draw Request shall clearly set forth the amounts due to the General Contractor and/or each Subcontractor out of the requested disbursement, shall include a list of the payees with wire instructions for the Disbursing Agent, and shall be accompanied by the documentation set forth on EXHIBIT B to this Disbursing Agreement. Each Draw Request shall be submitted to SRF for its review in accordance with the Design Peer Review and Construction Monitoring Services Agreement, dated as of April 6, 2015 (the “SRF Agreement”), between LSA Design, Inc., the Authority, and the Developer and later assigned to SRF Consulting Group Inc. (which has merged with LSA Design, Inc.) (“SRF”). On or before the 5<sup>th</sup> calendar day before the end of each month, or if such 5<sup>th</sup> day before is not a Business Day, then on or before the first Business Day thereafter, the Developer shall submit to SRF and review with SRF a “pencil draw” draft of each of the Developer’s Draw Requests for the upcoming month, and shall coordinate with SRF for SRF’s inspection of the work to be included in such Draw Requests. Such draft Draw Requests and inspections are for the purpose of giving SRF sufficient preparatory information to expedite SRF’s review of the actual Draw Requests. SRF shall complete its review and within three (3) Business Days from the date of receipt of such Draw Request shall either (A) issue a report (an “SRF Report”) to the Authority and the Disbursing Agent (i) confirming the progress of the Work done to date, (ii) confirming that such Work has been completed in a good and workmanlike manner and in accordance with the Contract Documents and (iii) agreeing with the percentage of completion stated in the Draw Request, or (B) provide written notice of insufficiency of the Draw Request to the Authority, the Developer, and the Disbursing Agent specifying any such insufficiency in reasonable detail and, if applicable, setting forth any action required to be taken to address the stated insufficiencies (the “Insufficiency Notice”). At the same time the Developer submits the Draw Request to SRF, the Draw Request will be simultaneously submitted to the Authority, and the Disbursing Agent for their concurrent review and approval. The Authority, the Developer, and the Disbursing Agent shall complete their respective reviews of the Draw Request within six (6) Business Days from the date of receipt of such Draw Request. The Authority and/or the Disbursing Agent shall send written notice of their approval or disapproval of the Draw Request to the Developer within said six (6) Business Day period, it being understood and agreed that the Authority and/or the Disbursing Agent may disapprove a Draw Request only if: (1) SRF fails to issue a SRF Report with respect to a Draw Request, and instead, SRF issues an Insufficiency Notice; or (2) Developer is in default of this Agreement, or any other written agreement between Developer, the City, or the Authority pertaining to the Project, beyond any cure periods (if any) specified in such agreements. If notice of approval or disapproval is not timely delivered by any one or more of the foregoing parties, said party or parties shall be deemed to have approved such Draw Request unless SRF issues an Insufficiency Notice, in which case failure to respond shall be deemed to be notice of disapproval.

(c) Upon receipt of a Draw Request for which SRF has issued an SRF Report and that has been reviewed and approved by the Authority, if the Disbursing Agent determines that the Draw Request is in substantially proper form, the Disbursing Agent shall submit the approved Draw Request within two (2) Business Days following Disbursing Agent’s receipt of SRF Report and Authority’s approval to:

Chief Financial Officer  
City of Bloomington  
1800 West Old Shakopee Road  
Bloomington, Minnesota 55431-3027  
952-563-8791  
952-563-8789 (fax)  
leconomy@ci.bloomington.mn.us

Upon receipt of the approved Draw Request, the Authority shall cause the Chief Financial Officer of the City (or such officer of the Authority to whom the powers of the Chief Financial Officer have been

delegated) to pay the aggregate amount set forth in the Draw Request by a wire transfer to the Disbursing Agent within three (3) Business Days after receipt of such approved Draw Request. Within one (1) Business Day of receipt of the aggregate amount set forth in the Draw Request, the Disbursing Agent shall pay the costs set forth in such Draw Request as provided in Section 3(e) below.

(d) If the Disbursing Agent shall have received an Insufficiency Notice for a Draw Request as provided in Section 3(b) above, then until such insufficiency is cured to the reasonable satisfaction of SRF, the Disbursing Agent may suspend its obligation to disburse the proceeds of such Draw, but only to the extent reasonably necessary to address the stated insufficiency.

(e) Any money delivered to the Disbursing Agent for the payment of costs pursuant to an approved Draw Request shall be paid by Disbursing Agent wire transfer within one (1) Business Day of the date of receipt of such money. Except as provided in this Section 3(e), such money shall be paid to the General Contractor in the amount due to the General Contractor (including all of its Subcontractors) as set forth in the Draw Request, then to any third party to the extent so stated in the Draw Request. Following the occurrence of a default under the Redevelopment Agreement or the Parking Ramp Development Agreement and the expiration of any applicable notice, grace or cure period applicable thereto, or following the occurrence and during the continuance of an Event of Default, at the Authority's direction, all payments shall be paid by Disbursing Agent via check issued and payable jointly to both the General Contractor and the applicable Subcontractor.

(f) With respect to the disbursement procedure for City Assistance, if there is a conflict between this Disbursing Agreement, the Redevelopment Agreement, and the Parking Ramp Development Agreement, the terms of this Disbursing Agreement shall control.

#### **Section 4. Additional Terms and Conditions of Disbursements.**

(a) With each request for a disbursement of City Assistance under this Disbursing Agreement, the Developer shall be deemed to have represented and warranted to the Authority and the Disbursing Agent that there are no "Defaults" or "Events of Default" on the part of the Developer under any documents executed and delivered by the Developer in connection with the Redevelopment Agreement (including but not limited to the Recapture Agreement, the Parking Lease and Management Agreement, and the Parking Ramp Development Agreement) as of the date of such request for disbursement, and that all conditions to be satisfied by the Developer for such disbursements set forth in the Redevelopment Agreement and this Disbursing Agreement have been satisfied.

(b) In order for the Authority to continue to be informed of the progress of the Hotel Improvements, the Developer will provide copies of all draw requests related to the construction of the Hotel Improvements to the Authority.

(c) In the event that the remaining undisbursed City Assistance is not sufficient to complete the Parking Ramp, the Disbursing Agent may withhold any disbursement of City Assistance until the Disbursing Agent receives a deposit of sufficient money from the Developer to complete the Parking Ramp in accordance with the terms of the Redevelopment Agreement and the Parking Ramp Development Agreement. All monies so deposited shall be advanced by the Disbursing Agent to pay costs of the Parking Ramp.

(d) In the event that the Disbursing Agent shall determine that proper documentation to support a given disbursement, as required by this Disbursing Agreement, including, without limitation, the documentation set forth in EXHIBIT B to this Disbursing Agreement has not been furnished, the Disbursing Agent shall withhold payment of such portion of such disbursement, and shall promptly notify

in writing the Authority and the Developer of the discrepancy or omission of such documentation. Until such time as such discrepancy or omission is corrected to the reasonable satisfaction of the Disbursing Agent, it shall continue to withhold such amount. In the event that such discrepancy or omission is not corrected within five (5) Business Days of providing written notice of the discrepancy or omission, the Disbursing Agent shall provide written notice to the Authority, and the Developer and shall upon written request from the Authority return such portion of the funds constituting City Assistance to the Authority.

(e) Draw Requests may include offsite work warehoused for delivery to the Project as well as materials stored onsite or in a yard with suitable security.

(f) All approvals, consents and determinations to be given by the Disbursing Agent pursuant to this Disbursing Agreement shall be given or withheld solely on the basis of compliance with reasonable disbursement procedures that are not more restrictive than those customarily employed to mitigate the risks of mechanic's liens in the context of an insured mortgage that has the benefit of statutory priority over mechanic's liens, and on such basis such approvals, consents and determinations shall not be unreasonably withheld or delayed.

(g) The Developer acknowledges and agrees that each Draw Request and Application for Payment shall be submitted simultaneously to the parties entitled to receive the same pursuant to the terms of this Disbursing Agreement.

#### **Section 5. Miscellaneous Provisions.**

(a) The Developer shall be responsible for making inspections of the Parking Ramp during the course of construction and shall determine to its own satisfaction that the work done or material supplied by the payees to whom payment is to be made out of each disbursement has been properly done or supplied in accordance with applicable contracts with such payees. The Disbursing Agent shall not be required to conduct any inspections of the Parking Ramp. Any inspections by any party to this Disbursing Agreement are intended to be for the sole benefit of such party and the Authority, the Developer or any other person shall not be entitled to rely on such inspections.

(b) It is expressly understood and agreed that the Authority and the Disbursing Agent do not assume any liability or responsibility for the satisfactory completion of the Parking Ramp, for the payment of the costs of the Parking Ramp, for the adequacy of funds deposited with or advanced pursuant hereto to complete the Parking Ramp, for inspections during construction, nor for any other acts on the part of the General Contractor to be performed in the construction of the Parking Ramp; provided, however, that the Authority shall pay the costs of the Parking Ramp from the City Assistance pursuant to the terms of the Redevelopment Agreement and the Parking Ramp Development Agreement.

(c) All obligations of the Authority and the Disbursing Agent hereunder, including the obligation to make disbursements, are imposed solely and exclusively for the benefit of the parties hereto, and no other person, shall have standing to require satisfaction of such obligations in accordance with their terms or be deemed to be a beneficiary of such obligations, any and all of which may be freely waived in whole or in part.

(d) The Disbursing Agent and the Authority make no representations and assume no duties or obligations as to third parties concerning the quality of the construction of the Parking Ramp, or the absence therefrom of defects. In this connection, the Developer agrees to and shall indemnify the Disbursing Agent and the Authority from any liabilities, claims, or losses resulting from the condition of the Parking Ramp, prior to any foreclosure sale or deed in lieu of foreclosure, whether related to the quality of construction or otherwise, it being understood and agreed that this provision shall survive the

termination of the Redevelopment Agreement and shall continue in full force and effect so long as the possibility of any such liabilities, claims, or losses exists.

(e) Any condition of this Disbursing Agreement which requires the submission of evidence of the existence or non-existence of a specified fact or facts implies as a condition the existence or non-existence, as the case may be, of such fact or facts, and the Disbursing Agent shall, at all times, be free independently to establish to its satisfaction and in its commercially reasonable discretion such existence or non-existence.

(f) The Developer may not assign this Disbursing Agreement or any of its rights or obligations hereunder, except in connection with a transfer permitted under the Redevelopment Agreement without the prior written consent of the Authority and the Disbursing Agent, in their sole discretion.

(g) Whenever in this Disbursing Agreement one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be included and all covenants and agreements contained in this Disbursing Agreement by or on behalf of the Authority, the Developer, or the Disbursing Agent shall bind and inure to the benefit of their respective legal representatives, successors and assigns, whether so expressed or not.

(h) The Disbursing Agent shall disburse the Project Funds with the same degree of care that it would use in its general construction loan disbursing activities on behalf of third parties with respect to projects comparable to the Parking Ramp described herein; provided, however, the Disbursing Agent shall be liable to such parties for its negligence or misconduct in performing such duties. The Disbursing Agent shall have and may exercise such powers under this Disbursing Agreement as are specifically delegated to the Disbursing Agent by the terms hereof, together with such powers as are reasonably incidental thereto. As to any matters not expressly provided for in this Disbursing Agreement, the Disbursing Agent shall not be required to exercise any discretion or take any action, but may request the consent of the Authority and/or the Developer to any such action not so provided for. The Disbursing Agent shall not be required to take any action which exposes the Disbursing Agent to personal liability or which is contrary to this Disbursing Agreement or applicable law. The Disbursing Agent shall not have any implied duties or any implied obligations to take any action under this Disbursing Agreement, including, without limitation, any implied duties or implied obligations that expose the Disbursing Agent to personal liability or are contrary to applicable law, and shall only have such duties and obligations as are specifically provided by this Disbursing Agreement to be taken by the Disbursing Agent. The Disbursing Agent shall act as an independent contractor in performing its obligations as the Disbursing Agent hereunder and nothing contained herein shall be deemed to create a fiduciary, joint venture, agency or partnership relationship between the Disbursing Agent and the Developer or between the Disbursing Agent and the Authority.

(i) The Disbursing Agent shall be obligated on the terms set forth herein for performance of its express obligations hereunder. Notwithstanding anything in this Disbursing Agreement to the contrary, the Disbursing Agent shall not be relieved of any liability imposed by law for its negligence or misconduct.

(j) The Developer agrees to indemnify and hold harmless the Disbursing Agent and its officers, directors, employees, and agents from and against any and all claims, liabilities, obligations, losses, damages, penalties, actions, judgments and suits, of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Disbursing Agent or any of its officers, directors, employees, or agents, as well as commercially reasonable costs, expenses or disbursements incurred by any of such parties in connection therewith, in any way relating to or arising out of any investigation,

litigation, or proceeding concerning or relating to or in connection with the performance of its duties under this Disbursing Agreement to the extent related to or arising in connection with the Parking Ramp or any action taken or omitted to be taken by the Disbursing Agent or any of its officers, directors, employees, or agents under this Disbursing Agreement to the extent related to or arising in connection with the Parking Ramp, except to the extent arising from the negligence or willful misconduct of the respective party. Without limitation of the foregoing, the Authority agrees to reimburse the Disbursing Agent promptly upon demand for any commercially reasonable out-of-pocket expenses (including counsel fees) incurred by the Disbursing Agent or its officers, directors, employees, or agents in connection with the preparation, execution, administration, or enforcement of, or obtaining legal advice in respect of rights or responsibilities under, this Disbursing Agreement to the extent related to or arising in connection with the Parking Ramp.

(k) The Disbursing Agent may resign at any time as the Disbursing Agent under this Disbursing Agreement by giving not less than sixty (60) days' written notice thereof to the Authority and the Developer. Upon any such resignation, the Authority shall appoint a successor disbursing agent hereunder with the consent of the Authority and the Developer, which consent will not be unreasonably withheld. If the Authority fails to appoint a successor disbursing agent within thirty (30) days after such notice has been given, then the Authority shall appoint a successor disbursing agent hereunder subject to the same consents required for an appointment by the Authority.

(l) The Disbursing Agent may conclusively rely upon and shall be protected in acting upon any document believed by the Disbursing Agent to be genuine and to have been signed or presented by the proper parties in good faith after reasonable due diligence on the Disbursing Agent's part to ascertain the genuineness and execution of such document. The Disbursing Agent does not insure that the Parking Ramp will be completed, nor does it insure that the Parking Ramp, when completed, will be in accordance with the Plans and Specifications, nor that sufficient Project Funds will be available for the completion, nor does it make the certification of SRF or the Inspecting Architect its own, nor does it assume any liability for same other than procurement as one of the conditions precedent to each disbursement. The Disbursing Agent has no liability for loss caused by an error in the certification furnished it hereunder as to work in place. The Disbursing Agent shall not be responsible for any loss of documents or Project Funds while such documents or Project Funds are not in its custody. Documents or funds which are deposited in the United States mail shall not be construed as being in the custody of the Disbursing Agent.

(m) The parties acknowledge that the Disbursing Agent and the Authority shall not be responsible for creating, furnishing or reporting any IRS 1099 notices or filings for any payments the Disbursing Agent disburses under this Disbursing Agreement for the parties.

(n) The headings of the sections, paragraphs, and subdivisions of this Disbursing Agreement are for the convenience of reference only, and are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

(o) Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the other.

(p) Neither this Disbursing Agreement nor any provision hereof may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

(q) Any notice which any party hereto may desire or may be required to give to any of the parties shall be in writing and shall be deemed to have been properly given or served by personal delivery, depositing the same with a reputable private courier or overnight delivery service, or electronic

mail with delivery receipt, in each case addressed as hereinafter provided. Each such notice shall be effective (a) immediately upon personal delivery or upon delivery by electronic mail, or (a) one (1) Business Day after being deposited with such courier 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 and provided further any notice received after 2:00 p.m. shall be deemed to have been received on the next Business Day. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent. By giving to the other parties hereto at least ten (10) days' notice thereof, any party hereto shall have the right from time to time to change its address and shall have the right to specify as its address any other address within the United States of America. Notwithstanding the foregoing, each Draw Request, each Application for Payment and each notice of approval or disapproval of the same shall be given by electronic mail with delivery receipt and shall be effective immediately upon delivery by electronic mail.

To the Authority: Port Authority of the City of Bloomington  
1800 West Old Shakopee Road  
Bloomington, Minnesota 55431-3027  
Attn: Administrator  
Facsimile No.: 952-563-8949  
Email: srudlang@bloomingtonmn.gov

With a copy to: City Attorney  
City of Bloomington  
1800 West Old Shakopee Road  
Bloomington, Minnesota 55431-3027  
Attn: City Attorney  
Facsimile No.: 952-563-4892  
Email: sjohnson@bloomingtonmn.gov

And to: Kennedy & Graven, Chartered  
200 South Sixth Street, Suite 470  
Minneapolis, Minnesota 55402  
Attn: Julie Eddington  
Facsimile No.: 612-337-9310  
Email: jeddington@kennedy-graven.com

To the Developer: South Loop Investments, LLC  
340 Main Street, Suite 200  
P.O. Box 3208  
Park City, Utah 84060  
Attention: David Peters, Chief Manager  
Email: dpeters@terratron.org

With a copy to: Stinson Leonard Street LLP  
3 Civic Center Plaza, Suite 400  
Mankato, MN 56001  
Attention: Michael P. Jacobs  
Email: michael.jacobs@stinsonleonard.com

To the Disbursing Agent: Land Title, Inc.  
2200 W County Road C, Suite 2205  
Roseville, MN 55113

Attn: Jeff Christian  
Email: jchristian@landtitleinc.com

(r) In consideration of the performance of Disbursing Agent's obligations hereunder, the Disbursing Agent will be paid a disbursing fee of \$200 for each Draw Request and Application for Payment. Such fees will be paid directly by the Developer and shall not be paid from the City Assistance.

(s) This Disbursing Agreement may be executed in any number of counterparts with same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument.

(t) The parties hereto agree that the exclusive jurisdiction and venue for any proceeding relating to a dispute arising under this Disbursing Agreement shall be any state or federal court in the State of Minnesota.

IN FURTHERANCE WHEREOF, the parties hereto have caused this Disbursing Agreement to be executed as of the date and year first above written.

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

IN WITNESS WHEREOF, the Authority, the Developer, and the Disbursing Agent have caused this Disbursing Agreement to be duly executed in their respective name and behalf, all 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

Reviewed and approved by Port General Counsel.

\_\_\_\_\_  
Julie Eddington  
Port General Counsel

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

**SOUTH LOOP INVESTMENTS, LLC**

By \_\_\_\_\_  
David W. Peters  
Its Chief Manager

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

**LAND TITLE, INC.**

By \_\_\_\_\_

Its \_\_\_\_\_

**EXHIBIT A**  
**DEFINITIONS**

In addition to the definitions provided in the Redevelopment Agreement, the following terms shall have the definitions provided herein.

“Application for Payment” means a completed AIA Form G702/703 and supporting schedules and certificates in the form attached to this Disbursing Agreement as EXHIBIT D requesting an advance of City Assistance.

“Approved Plans” means the Plans prepared by ESG Architects dated September \_\_, 2015.

“Architect” means ESG Architects and Walker Parking Consultants.

“Business Day” means any day that banks are open for business in Minneapolis, Minnesota.

“Change Order” means any change or modification of any Construction Contract, including, without limitation, any change directive or other change that affects pricing, schedule, or the scope of the work to be performed thereunder.

“City Assistance” means City funds in the amount of up to \$5,749,739 to be disbursed by the Authority to reimburse the Developer for the construction of the Parking Ramp.

“Construction Contract” means the standard form of agreement between Developer and General Contractor dated September \_\_, 2015.

“Contract Documents” means the Construction Contract, the Approved Plans and any Change Orders and other addenda thereto.

“Disbursement Schedule” means the schedule or schedules of the amounts of advances to be funded from Project Funds anticipated to be requested each month during the term of construction of the Parking Ramp (including an itemization of Project Costs to be included in each such request), attached hereto as EXHIBIT C, as such disbursement schedule may change from time to time.

“Draw” means partial payments of the Project Costs made on behalf of the Developer from time to time pursuant to the Redevelopment Agreement or the Loan Agreement, as applicable.

“Draw Request” means an Application for Payment or a statement executed by the Developer setting forth the amount of the Draw being requested and containing such other information as required by EXHIBIT B, as applicable.

“Force Majeure” means delays by reason of acts of God; strikes; shortages or unavailability of labor or materials; lockouts or labor difficulty; explosion; sabotage; accident; riot or civil commotion; act of war, fire or other casualty; legal requirements; and causes beyond the reasonable control of the Developer.

“General Contractor” means Stahl Construction Company.

“Intervening Liens” means any lien against the Parking Ramp or any portion thereof filed with respect to any portion of the Work. Intervening Lien does not include any lien caused by or on account of the Developer or the Authority, or any agent, contractors, subcontractors, suppliers, vendor or affiliate of the Developer, or any lien on account of work which is not included in Work and which is done at the request of the Developer, or any judgment lien resulting from any act or omission of the Developer.

“Lien” means any lien that may be imposed by law or by contract against the Parking Ramp or any portion thereof for the payment of labor or materials rendered by a person or entity in connection with the Work.

“Lien Rights” means the right of a person to assert a Lien.

“Loan Agreement” means the Loan Agreement between Developer and U.S. Bank National Association dated September \_\_, 2015.

“Loan Proceeds” means the proceeds of the Loan to be provided by the Lender to the Developer pursuant to the Loan Agreement for reimbursement of the costs of the Phase I Minimum Improvements, excluding the costs of the Parking Ramp.

“Plans and Specifications” means respectively the graphic documents showing the design, location and dimensions of the Phase I Minimum Improvements and the written documents designating the materials, equipment, construction systems, standards and workmanship required in the construction and installation of the Phase I Minimum Improvements, as such plans are updated, revised or completed.

“Project” means the Phase I Minimum Improvements, including the Parking Ramp.

“Project Budgets” means the budgets set forth in EXHIBIT F.

“Project Costs” means all expenditures incurred or to be incurred for work, labor or materials furnished in connection with the design, development and construction of the Work, the cost categories of which are set forth in the project budgets. Project Costs also includes all indirect costs of the Hotel Improvements enumerated in the project budget, including without limitation, costs of title disbursing services, costs of surveys, environmental assessments, development fees, appraisal fees, fees for zoning reports, governmental approvals and consultants’ fees.

“Project Funds” means the City Assistance and the Loan Proceeds.

“Redevelopment Agreement” means the Redevelopment Agreement, dated December 10, 2014 (the “Redevelopment Agreement”), between the City, the Authority, the Master Developer, and the Developer, as amended.

“Subcontractor(s)” means those persons furnishing labor or materials for the Hotel Improvements or the Parking Ramp under a contract with General Contractor.

“Substantial Completion Deadline” means 460 days after the date of this Disbursing Agreement, subject to Force Majeure, provided that no such Force Majeure event shall extend any such deadline by more than 120 days.

“Sworn Construction Statement” means a statement signed by the General Contractor which (A) lists each construction contract or purchase agreement and each subcontract for the Project with the name and address of each contractor, vendor and subcontractor, the work, equipment or materials to be

furnished, the amounts paid to them thereon, and the balance due thereon, all with respect to the Project; and (B) shows that the funds available to the Developer are sufficient to assure completion of the Project.

“Unconditional Lien Release” means such instrument as is required by applicable law to extinguish and completely release any Lien Rights available to a person, including any contractor, subcontractor or supplier, supplying materials or labor and/or performing Work in the Parking Ramp or any portion thereof.

“Work” means all labor and materials required to complete the construction of the Hotel Improvements, including all improvements, site grading, demolition of existing improvements, if any, landscaping, signage, installation of utilities, curb and gutter and parking areas.

## **EXHIBIT B**

### **DOCUMENTS TO ACCOMPANY EACH DRAW REQUEST**

Each Draw Request shall be accompanied by:

- (1) A certificate of the Developer to the effect that:
  - (a) the construction of the Parking Ramp to date has been performed in accordance with the Approved Plans and the progress thereof is such that the Parking Ramp will be completed by the Substantial Completion Deadline, subject to Force Majeure, delays caused by the Developer or the Authority or parties under any of their control, Change Orders or Intervening Liens,
  - (b) the amount of the Project Costs for which such Draw is required is due to General Contractor for work, labor or materials furnished for the construction and installation of the applicable portion of the Parking Ramp insofar as actually incorporated therein up to the date of such Draw Request (in the case of the first Draw Request) or to the date of such Draw Request from the date of the previous Draw Request (in the case of any subsequent Draw Request),
  - (c) no part of the Project Costs described in such Draw Request has been made the basis for any previous Draw,
  - (d) a statement that no uncured event of default by the Developer has occurred under the terms of any Development Agreement, and
  - (e) a statement that the undisbursed proceeds of the sum of the City Assistance equals or exceeds the amount necessary to pay all unpaid costs to complete construction of the Parking Ramp.
- (2) The Developer and General Contractor's Application for Payment.
- (3) A detailed written description and copies of all Change Orders issued through the date of the Draw Request.
- (4) The General Contractor's schedule of the disbursements due to and already made by the General Contractor to Subcontractors on account of the work to be completed and the amount due to each Subcontractor in the current Draw Request.
- (5) The Architect's approval of the Draw Request.
- (6) An Unconditional Lien Release (conditioned only upon payment to the General Contractor of the amount requested) from the General Contractor in the total amount of the progress payment being requested.
- (7) Unconditional lien waivers from each Subcontractor covering the amounts disbursed to such Subcontractor from the immediately preceding Draw. Notwithstanding the foregoing, if the Disbursing Agent has not received a lien waiver covering the amounts disbursed to a Subcontractor for all work, labor or materials furnished for the construction and installation of the applicable portion or portions of the Parking Ramp paid through the date of the previous Draw Request, the absence of such lien waiver shall not delay any Draw, provided that either (1) (a) the aggregate cost of all such work,

labor or materials for which lien waivers have not been received at any time does not exceed \$1,000,000, and (b) the Disbursing Agent may withhold from such Draw an amount equal to 150% of the aggregate cost of all work, labor or materials for which lien waivers have not been received or (2) such lien waivers have been received by the Disbursing Agent after the submission of the Draw Request and prior to the date that is five (5) Business Days prior to the date Developer requests as the date of disbursement of such Draw.

**EXHIBIT C**  
**DISBURSEMENT SCHEDULE**

### Exhibit C

	Developer	General Contractor	Total
Sep-15	146,023	235,458	381,481
Oct-15	146,023	260,925	406,948
Nov-15	10,000	37,275	47,275
Dec-15	5,000	-	5,000
Jan-16	-	-	-
Feb-16	-	-	-
Mar-16	-	-	-
Apr-16	-	359,182	359,182
May-16	-	292,875	292,875
Jun-16	-	2,363,795	2,363,795
Jul-16	32,000	752,520	784,520
Aug-16	-	316,305	316,305
Sep-16	-	412,155	412,155
Oct-16	-	380,205	380,205
Nov-16	-	-	-
	339,045	5,410,695	5,749,740

**EXHIBIT D**  
**PROJECT BUDGETS**

## Exhibit D

	Hotel	Ramp	Total
Land	1,230,000	-	1,230,000
Cat 2, Building Divisions 1-26	13,239,063	4,259,852	17,498,915
Cat 2, Site Costs	395,786	354,569	750,355
Cat 2, Soils Correction	87,800	101,224	189,023
Cat 2, General Conditions, Site	32,511	29,394	61,905
Cat 2, General Conditions, Building	706,067	149,969	856,036
Cat 2, GC Overhead/Profit	521,202	174,787	695,989
Cat 2, Contingency Site	31,412	28,400	59,812
Cat 2, Contingency	650,000	200,000	850,000
Cat 2, Owner Supplied Items	200,822	6,000	206,822
Cat 2, Indirect Construction Costs	225,039	71,260	296,299
Cat 2, Permits, Tap Fees, Impact Fees	324,754	58,240	382,994
Cat 3, Communications & Technology	191,008	26,000	217,008
Cat 4, Equipment: Laundry, Kitchen, Market	313,000	-	313,000
Cat 5a, Systems: PMS, POS HW/SW	55,000	-	55,000
Cat 5b, Supplies	325,152	-	325,152
Cat 6, Decorative: FF&E, TV's, Fitness...	2,081,750	-	2,081,750
Cat 7, Fees: Arch, MEP, Civil, Consult...	611,867	272,045	883,912
Bank and Development Soft Costs	134,857	18,000	152,857
Construction Interest	-	-	-
Marriott Pre-Opening Training/Services	45,000	-	45,000
Pre-Opening Services	175,000	-	175,000
Development Services	825,000	-	825,000
<b>Total Project Costs</b>	<b>22,402,089</b>	<b>5,749,740</b>	<b>28,151,829</b>