

## ASSIGNMENT AND SUBORDINATION AGREEMENT

THIS ASSIGNMENT AND SUBORDINATION AGREEMENT (this "Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015, between the PORT AUTHORITY OF THE CITY OF BLOOMINGTON, a public body corporate and politic of the State of Minnesota (the "Authority"), the CITY OF BLOOMINGTON, a Minnesota municipal corporation (the "City"), SOUTH LOOP INVESTMENTS, LLC, a Minnesota limited liability company ("SLI"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association (the "Lender") with the acknowledgement and consent of SOUTH LOOP INVESTMENTS 2, LLC, a Minnesota limited liability company ("SLI 2").

### WITNESSETH:

WHEREAS, the Lender and SLI have entered into a Construction Loan Agreement dated as of \_\_\_\_\_, 2015 (the "Loan Agreement"), pursuant to which the Lender has agreed to lend to SLI up to \$\_\_\_\_\_ to finance construction of a 74,000 square foot, 148 unit, hotel and related improvements (the "Improvements") on land described on Exhibit A attached hereto ("Land"), which, together with the Improvements, is referred to herein as the "Premises," located at the Project Site as defined in the Loan Agreement; and

WHEREAS, in accordance with the Loan Agreement, SLI has executed and delivered to Lender one promissory note in the face principal amount of \$\_\_\_\_\_, which is secured by, among other instruments, a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing covering SLI's right, title and interest in and to the Premises and other property; and

WHEREAS, the Authority, the City, and SLI entered into a Purchase and Redevelopment Contract, dated December 10, 2014, as amended by the First Amendment to Purchase and Redevelopment Contract, dated September \_\_, 2015 (together, the "Redevelopment Contract"), between the Authority, the City, SLI, and SLI 2, with respect to the development of the Improvements; and

WHEREAS, SLI has assigned its rights related to the development of a portion of the Development Property (the parcel legally described as Lot 2, Block 1, Lindau Link 2nd

Addition) to South Loop Investments 2, LLC, a Minnesota limited liability company and affiliate of SLI (“SLI 2”), pursuant to an Assignment and Assumption Agreement, dated September \_\_, 2015 and SLI 2 has assumed certain of SLI’s rights and obligations with respect to Lot 2 under the Redevelopment Contract;

WHEREAS, the Authority and SLI have entered into a Parking Ramp Development Agreement, dated September \_\_, 2015 (the “Parking Ramp Development Agreement”), pursuant to which SLI has agreed to construct on Lot 4, Block 1, Lindau Link 2<sup>nd</sup> Addition, Hennepin County, Minnesota, the Parking Ramp (as defined in the Redevelopment Contract); and

WHEREAS, the Authority, the City, and SLI have entered into a Parking Lease and Management Agreement, dated September \_\_, 2015 (the “Parking Lease and Management Agreement”), pursuant to which SLI will lease from the Authority and manage the Parking Ramp to be constructed; and

WHEREAS, true, correct and complete copies of the Redevelopment Contract, the Parking Ramp Development Agreement, and the Parking Lease and Management Agreement (collectively, the “Development Agreements”) have been delivered to the Lender; and

WHEREAS, Lender will not advance funds to pay Costs (as that term is defined in the Loan Agreement) of the Improvements pursuant to the Loan Agreement unless and until this Agreement is fully executed; and

WHEREAS, SLI desires to execute this Agreement, in accordance with the terms and provisions hereof, and requests that Authority and the City execute this Agreement in order to induce the Lender to advance such funds pursuant to the Loan Agreement; and

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises and considerations contained herein, and in the Development Agreements, the receipt and sufficiency of which the Authority, the City and SLI hereby acknowledge, SLI and the Lender hereby agree that the foregoing recitals are true and correct, the City and the Authority hereby agree that the third, fourth, fifth, and sixth such recitals are true and correct, and all such recitals are by this reference hereby made a part hereof as if fully set forth below, and SLI, the Authority, and the City further covenant and agree with the Lender as follows:

1. SLI hereby assigns to the Lender all of its right, title and interest in, under and pursuant to the Development Agreements to secure the Loan. This Agreement shall constitute a perfected collateral assignment, provided that the Lender shall have no right under this Agreement to enforce the provisions of the Contract or exercise any rights or remedies under this Agreement until an Event of Default (as that term is defined in the Loan Agreement) shall occur and be continuing.

2. SLI hereby represents and warrants that there have been no prior assignments of the Development Agreements other than as described above, that the Development Agreements are each a valid and enforceable agreement and that SLI is not in default thereunder and that all covenants, conditions and agreements have been performed as required herein, except those not

to be performed until after the date hereof. To the knowledge of SLI, neither the Authority or City is in default of the Development Agreements. Except for purposes of the 1031 Exchange, SLI agrees not to sell, assign, pledge, mortgage or otherwise transfer or encumber its interests in the Development Agreements without the prior written consent of Lender, City and Authority as long as this Agreement is in effect. Upon the occurrence and during the continuance of an Event of Default, SLI hereby irrevocably constitutes and appoints the Lender as its attorney-in-fact to demand, receive and enforce the rights of SLI with respect to the Development Agreements for and on behalf of and in the name of SLI or, at the option of the Lender, in the name of the Lender, with the same force and effect as SLI could do if this Agreement had not been made.

3. Upon the occurrence and during the continuance of an Event of Default, the Lender may, without affecting any of its rights or remedies against SLI under any other instrument, document or agreement, exercise its rights under this Agreement as the attorney-in-fact of SLI in any manner permitted by law and in addition the Lender shall have the right to exercise and enforce any and all rights and remedies available after a default to a secured party under the Uniform Commercial Code as adopted in the State of Minnesota. If notice to SLI of any intended disposition of collateral or of any intended action is required by law in any particular instance, such notice shall be deemed commercially reasonable if given in writing at least ten (10) days prior to the intended disposition or other action.

4. The Authority hereby consents and agrees to the terms and conditions of this Agreement. The Authority represents and warrants to the Lender that the Development Agreements are valid agreements enforceable in accordance with its terms. The Authority is not in default under the Development Agreements and that all covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date hereof. To the best knowledge of the Authority, SLI is not in default under the Development Agreements.

5. The City hereby consents and agrees to the terms and conditions of this Agreement. The City represents and warrants to the Lender that the Development Agreements to which it is a party are valid agreements enforceable in accordance with its terms. The City is not in default under the Development Agreements to which it is a party and that all covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date hereof. To the best knowledge of the City, SLI is not in default under the Development Agreements.

6. Pursuant to Article VIII of the Redevelopment Contract, (a) the Authority and the City hereby acknowledge that the Lender is the “Developer’s lender” and is a “Holder” of a “Mortgage” on the Project, as those terms are defined in the Redevelopment Contract, and (b) the Authority and the City have received sufficient evidence of mortgage financing and approves the Loan to the extent such approval is required under Section 8.1(b) of the Redevelopment Contract.

7. The Authority expressly subordinates its interest under the Redevelopment Contract (including, without limitation, the rights of reversion under Sections 10.3 and 10.4 of

the Redevelopment Contract and any deed given in connection therewith) and its interest in and to the Property to the lien of the Mortgage.

8. Pursuant to Section 10.3(g) of the Redevelopment Contract, if construction of the Coffee Shop and the Restaurant (as those terms are defined in the Redevelopment Contract) has not commenced prior to October 31, 2018, the Authority has the option (in its sole discretion) to buy the Coffee Shop and Restaurant Parcel (as that term is defined in the Redevelopment Contract) from SLI 2 at the purchase price originally paid by SLI 2 (\$1,110,898). The Authority may exercise this option by providing written notice of exercise to SLI 2 within ninety (90) days of October 31, 2018. If the Authority does not provide such written notice within such 90 day period, the Authority's option specified in this Section 10.3(g) shall terminate and lapse without further action of any party. The Authority's right to repurchase the Coffee Shop and Restaurant Parcel is not subordinated pursuant to this Agreement.

9. The Authority and the City agree to provide the Lender with copies of any notices of default given by the Authority or the City under the Development Agreements, and further agree that the Lender shall have the right, but not the obligation, to cure any such default on behalf of SLI within ninety (90) days from the date the notice has been received by the Lender. If a default occurs under the Development Agreements that cannot by its nature be cured within ninety (90) days, the Development Agreements shall not be terminated by Authority while Lender is promptly, diligently and actively prosecuting such a cure; provided that Authority shall not be obligated to continue to perform under the Development Agreements during the cure period. SLI shall not terminate, or accept termination of, the Development Agreements without Lender's prior written consent.

10. Notwithstanding any provisions to the contrary contained in the Development Agreements, the obligations of SLI to (a) pay real estate taxes, assessments, costs of the City or the Authority or any penalties, or (b) indemnify the City or the Authority, is not the personal obligation of, nor shall any such provisions impose any personal obligation or recourse upon, SLI or the Lender.

11. Subject to the provisions hereof, this Assignment of Agreements shall be binding upon SLI and Authority, and their successors and assigns, and shall inure to the benefit of Lender, its successors and assigns. Lender may assign its rights under this Assignment of Agreements without the consent of Authority or SLI but neither Authority nor SLI may assign its obligations under the Development Agreements or under this Assignment of Agreements without the prior written consent of Lender, which shall not be unreasonably withheld, conditioned or delayed.

12. Except as amended to date, the parties hereto agree that no change or amendment shall be made to the terms of the Development Agreements, and no party shall terminate the Development Agreements, without the prior written consent of the Lender. Authority shall not terminate, or accept termination of, the Development Agreements without giving at least thirty (30) days' prior written notice to Lender.

13. This Agreement can be waived, modified, amended, terminated or discharged only explicitly in a writing signed by the parties hereto. All rights and remedies of the Lender shall be cumulative and shall be exercised singularly or concurrently, at the Lender's option, and any exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other.

14. No provision of this Agreement shall be deemed or construed to alter, amend or modify, in any way, the rights and obligations of the City, the Authority, or SLI contained in the Development Agreements.

15. Any notice, request, demand or other communication hereunder shall be deemed duly given if delivered or postage prepaid, certified or registered, addressed to the party as set forth below:

If to the Authority:

Port Authority of the City of Bloomington  
Bloomington Civic Plaza  
1800 West Old Shakopee Road  
Bloomington, MN 55431  
Attention: Administrator

If to the City:

City of Bloomington  
Bloomington Civic Plaza  
1800 West Old Shakopee Road  
Bloomington, MN 55431  
Attention: City Manager

If to SLI:

South Loop Investments, LLC  
340 Main Street, Suite 200  
P.O. Box 3208  
Park City, UT 84060-3208  
Attention: David Peters

If to the Lender:

U.S. Bank National Association  
115 East Hickory Street  
Mankato, MN 56001  
Attn: Terry Keller

16. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

17. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Amendment by signing any such counterpart.

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





Execution page of SLI to the Assignment and Subordination Agreement, dated as of the date and year first written above.

**SOUTH LOOP INVESTMENTS, LLC**

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

STATE OF MINNESOTA    )  
                                          ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of September, 2015, by David W. Peters, the Chief Manager of South Loop Investments, LLC, a Minnesota limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public

South Loop Investments 2, LLC hereby acknowledges and consents to this Assignment and Subordination Agreement.

**SOUTH LOOP INVESTMENTS 2, LLC**

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

STATE OF MINNESOTA    )  
                                          ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of September, 2015, by David W. Peters, the Chief Manager of South Loop Investments 2, LLC, a Minnesota limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public

Execution page of the Lender to the Assignment and Subordination Agreement, dated as of the date and year first written above.

**U.S. BANK NATIONAL ASSOCIATION**

By \_\_\_\_\_  
Terry Keller  
Its Vice President

STATE OF MINNESOTA    )  
                                          ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of September, 2015, by Terry Keller, the Vice President of U.S. Bank National Association, a national banking association, on behalf of the national banking association.

\_\_\_\_\_  
Notary Public

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

**EXHIBIT A**

Lot 1, Block 1, Lindau Link 2<sup>nd</sup> Addition, according to the plat thereof recorded in the office of the County Recorder of Hennepin County, Minnesota.