

City of South St. Paul

Economic Development Authority Agenda

Monday, August 5, 2024

IMMEDIATELY FOLLOWING THE CONCLUSION OF THE 7:00 P.M. MEETING OF THE
City Council

1. CALL TO ORDER:

2. ROLL CALL:

3. AGENDA:

A. *Approval of Agenda*

Action – Motion to Approve

Action – Motion to Approve as Amended

4. CONSENT AGENDA:

All items listed on the Consent Agenda are items, which are considered to be routine by the Economic Development Authority and will be approved by one motion. There will be no separate discussion of these items unless a Commissioner or citizen so requests, in which event the item will be removed from the consent agenda and considered at the end of the Consent Agenda.

A. EDA Special Meeting Minutes of July 15, 2024

B. Accept Proposal and Authorize Execution of Services Agreement by and between the South St. Paul Housing and Redevelopment Authority and Nan McKay & Associates, Inc.

C. Termination of Preliminary Development Agreement – Wakota Crossing

5. GENERAL BUSINESS:

A. Approval of Tax Increment Revenue Note, Series 2024A – 225 Concord Exchange North (The Backyards), Resolution 2024 - 15

6. ITEMS FOR FUTURE FOLLOW-UP:

General communications of the President and Commissioners are provided and may be considered for inclusion on a future agenda. There will be no discussion or decisions made related to these items at this meeting.

7. ADJOURNMENT:

Respectfully Submitted,



Ryan Garcia, EDA Executive Director

This meeting is being taped by Town Square Television (NDC4).
Replays can be viewed on Government Channel 19.
Replay Times – Friday following Meeting at 1:00 p.m. & 7:00 p.m.
651-451-7834

MINUTES OF
THE ECONOMIC DEVELOPMENT AUTHORITY
CITY OF SOUTH ST. PAUL
DAKOTA COUNTY, MINNESOTA

Special Meeting
July 15, 2024
City Hall Council Chambers, 125 3rd Avenue North, South St. Paul, MN 55075

1. CALL TO ORDER

The Special Meeting of the South St. Paul Economic Development Authority was held on July 15, 2024, in the Council Chambers of City Hall, 125 3rd Avenue North, South St. Paul. President Francis called the meeting to order at 8:14 PM.

2. ROLL CALL

Members Present: President Francis, Commissioners Bakken, Seaberg and Thompson.

Members Absent: Commissioners Hansen, Kaliszewski, Podgorski

Staff Present: EDA Executive Director Ryan Garcia, City Clerk Deanna Werner, City Attorney, Amanda Johnson

3. AGENDA

Motion/Second: Commissioner Thompson moved, and Commissioner Bakken seconded approval of the agenda.

Vote: 4 ayes / 0 nays, motion carried.

4. CONSENT

A. EDA Meeting Minutes of June 3, 2024

B. Rescinding Resolutions 2022 – 12, 2022 – 14 and 2022 – 15 (Vaquero TIF District), Resolution 2024 - 13

Motion/Second: Commissioner Thompson moved, and Commissioner Seaberg seconded approval of the consent agenda.

Vote: 4 ayes / 0 nays, motion carried.

5. GENERAL BUSINESS:

A. Approval of a Purchase Agreement with Vo-Dang Family Revocable Trust for Real Property located at 240 Concord Street North, Resolution 2024 - 14

Motion/Second: Commissioner Bakken moved, and Commissioner Thompson approval of Resolution 2024-14, a purchase agreement with Vo-Dang Family Revocable Trust for Real Property located at 240 Concord Street North.

Vote: 4 ayes / 0 nays, motion carried.

6. ITEMS FOR FUTURE FOLLOW-UP:

General communications of the President and Commissioners are provided and may be considered for inclusion on a future agenda. There will be no discussion or decisions made related to these items at this meeting.

7. ADJOURNMENT:

Motion/Second: Commissioner Seaberg moved, and Commissioner Thompson seconded the motion to adjourn the meeting.

Vote: 4 ayes / 0 nays, motion carried.

The meeting was adjourned at 8:37 PM.

Approved: August 5, 2024

Deanna Werner, EDA Secretary



EDA Agenda Item Report

Date: August 5, 2024

EDA Executive Director:

4-B

AGENDA ITEM:

Accept Proposal and Authorize Execution of Services Agreement by and between the South St. Paul Housing and Redevelopment Authority and Nan McKay & Associates, Inc.

ACTION TO BE CONSIDERED:

Through consent, motion to authorize the execution of a services agreement by and between the HRA and Nan McKay & Associates to conduct a remote Public Housing Program Assessment.

SUMMARY:

From 2019 – 2022, the Public Housing Program in South St. Paul involved day-to-day owners representation, lease administration, property management and maintenance by a third-party contractor, with most “high-level” ownership and financial functions managed by the City’s Community & Economic Development and Finance Staff. In June 2022, the City Council authorized the creation of several new positions and approved job descriptions to “fully staff” the Public Housing program internally, and terminated the Property Management Agreement with Nath Management, Inc.

It has been two years since the City internalized the public housing program, and significant strides have been made to improve waitlist management, tenant recertifications, lease administration, capital improvements, and much more. Nonetheless, Public Housing Staff has indicated a need to consider modifications to the staffing structure to optimize efficiencies and service delivery.

Considering the highly specialized nature of Public Housing Management and Operations, the Administration suggests that it would be most prudent to engage a specialized consultant in an objective, informed analysis of our current public housing program, including an assessment of the existing organizational structure. Staff requested proposals from Nan McKay & Associates (NMA) and from David Drown Associates (DDA). DDA replied that they would not be able to complete this assignment until early 2025. Nan McKay & Associates, the nation’s foremost leader in public housing consulting, advisory, and training services, has responded to the City’s request for proposal with the attached proposal. Staff recommends approval of the proposal and authorization to proceed with a services agreement to complete this assessment.

FUNDING SOURCE & OTHER FINANCIAL CONSIDERATIONS:

NMA proposes to conduct a comprehensive, remote Program Assessment for an estimated total cost of \$7,424. These costs are considered eligible operating costs in the Public Housing Program, which is funded through rent collection at the public housing properties and an annual operating subsidy from HUD.

ATTACHMENTS:

Proposal and Services Agreement – Nan McKay & Associates.

REMOTE PUBLIC HOUSING PROGRAM ASSESSMENT

Nan McKay & Associates, Inc. (NMA) is prepared to provide the South St. Paul Housing & Redevelopment Authority (HRA) with a remote assessment of its public housing program and operations.

Our Approach & Strategy

For the proposed project, the NMA team will review and analyze the HRA's public housing program remotely for up to forty (40) hours over several weeks. The review will include the following:

- **Operational review**
 - Review the HRA's reports that track performance of essential functions:
 - Eligibility and waiting list management
 - Denials and informal hearings
 - Unit offers and lease-up
 - Occupancy rate
 - Rent collection
 - Maintenance repairs and make-readies
 - Annual and interim reexaminations
 - Transfers
 - Reasonable accommodation and physical modification requests
 - Lease enforcement; and
 - Hearings.
 - Review HRA job descriptions to assess whether essential functions (above) are reflected in job duties.
 - Interview HRA staff to assess whether staff is performing essential function(s) per job description and tracking performance of function(s) through logs, software and/or essential reports.
 - Review quality control (QC) systems used for supervision of staff.
- **Professional report**
 - Provide a professionally prepared report that summarizes the findings from the project assignment
 - Identify functions that are not assigned or, not performing adequately, per HUD requirements and standards
 - Identify functions that are not tracked adequately
 - Provide templates for best-practice reports
 - Formulate recommendations, particularly for the functions described above
 - Provide recommendations for further staffing, training and/or technical assistance

The NMA team will follow a four (4) phased approach to provide the requested services:



PHASE I Initiating

During the *Initiating Phase*, NMA will facilitate an introductory conference call with the HRA’s key stakeholders. During this call, the team will review the scope of services, clarify goals and expectations, and review the project approach. The NMA team will also request necessary materials for remote review.

Following the conference call, a proposed project schedule will be developed for review and approval by the HRA. The schedule will include review of job descriptions, essential reports, and management and staff interviews, with consideration to the HRA’s schedule and workload.

PHASE II Discovery

NMA consultants will conduct discovery activities before conduction interviews. The NMA team will also work in close coordination with the HRA to obtain remote access to any systems and documents necessary to perform the assessment during this phase.

Discovery work will consist of review of available HRA documents, including:

- Admissions and continued occupancy policy (ACOP)
- HUD program findings
- PHAS scores
- Occupancy reports, including occupancy rate, and vacant unit turnaround time
- Waiting list and unit offer tracking reports
- Average number of days to complete nonemergency work orders
- Make-ready times
- Rent collection rate reports
- Organizational chart(s)
- Any reasonable accommodation tracking reports
- Hearing log
- Timeliness of annual reexaminations.
- HRA’s QC of rent calculation (note: review of tenant rent calculations will not be conducted)
- Transfer log

PHASE III Executing

Provided below is a brief description of the proposed agenda and assessment areas that the NMA team will cover during the review process.

- Review job descriptions
- Review program performance reports and assess performance of the essential functions listed above
- Conduct one-on-one interviews to include:
 - Program Director
 - Compliance Manager
 - Program Manager
 - Administrative Assistant if necessary, depending on job description/duties
 - Maintenance Technicians depending on performance reports
 - Temp Admin Staff assisting with the waiting list, if needed
- Assess effectiveness of job duties
- Conduct close-out interview with designated management to discuss preliminary observations and any issues or questions that may require management input

HRA Responsibilities

- Participation by management, supervisors, and decision-makers throughout the event as needed.

PHASE IV Deliverables

NMA will analyze all data collected and prepare a draft report for HRA's review. The professionally prepared report will include:

- A summary of the findings from the project assignment
- Assessment of HRA's effectiveness of monitoring and tracking of the following essential functions:
 - Eligibility and waiting list management
 - Denials and informal hearings
 - Unit offers and lease-up
 - Occupancy rate
 - Rent collection
 - Maintenance repairs and make-readies
 - Annual and interim reexaminations
 - Transfers
 - Reasonable accommodation and physical modification requests
 - Lease enforcement
 - Hearings
- Explanation of the findings from the project assignment that effectively communicates the information reviewed:
 - Identify essential functions that are not effectively assigned to management or staff

- Identify essential functions that are not performing adequately, per HUD requirements and standards
- Identify essential functions that are not monitored or tracked adequately
- Provide templates for best-practice reports
- Formulate recommendations, particularly for the functions described above
- Recommendations for further staffing, assignment of duties, policy, or tracking reports to improve or enhance performance of essential functions and overall effectiveness
- Recommendations for training and/or further technical assistance.

All recommendations provided within the report will be specific. NMA will schedule a conference call to review the draft report with the HRA’s key stakeholders. Following receipt of input from the HRA on the draft report, NMA will submit an electronic version of a final report.

Proposed Investment

NMA will invoice the HRA monthly at the hourly rates listed below for services performed under each phase, as outlined in the scope of services provided above.

Description	Rate	Onsite Hours	Remote Hours	Estimated Cost
Phase I: Initiating				
Project Manager	\$96	0	2	\$192
Senior Consultant	\$150	0	1	\$150
Phase II: Discovery				
Project Manager	\$96	0	2	\$192
Senior Consultant	\$150	0	3	\$450
Phase III: Executing				
Project Manager	\$96	0	0	\$0
Senior Consultant	\$150	0	28	\$4,200
Phase IV: Deliverables				
Senior Project Manager	\$130	0	8	\$1,040
Senior Consultant	\$150	0	8	\$1,200
Estimated Project Total				\$7,424

Services Agreement

Limitation of Liability

In no event will NMA's aggregate liability arising out of or related to this agreement, whether in contract, tort (including, without limitation, negligence), or under any other theory of liability, exceed the total fees paid by the HRA to NMA in the six (6) months preceding the initial event giving rise to the claim under this agreement.

Pricing & Billing

Please note that the pricing presented herein is valid for thirty (30) days. NMA will invoice this Agreement via email as outlined within the *Proposed Investment* section. **Please enter contact information below for the person who will receive monthly invoices:**

Name: _____

Title: _____

Email Address: _____

Phone: _____

Term

This Agreement, when duly executed by both parties, shall constitute a binding Agreement between the HRA and NMA and their respective successors and assigns for a term of one (1) year from the date of contract execution, defined as the day when the contract was signed by both parties. If agreed upon by both parties, the term may be extended for up to four (4) additional periods of one (1) year each and prices will be updated at the time of each extension to reflect the current rate for the selected services. Either party may terminate this Agreement for any reason by providing the other party with thirty (30) days written notice specifying that the Agreement is being terminated pursuant to this Subparagraph. No further notice shall be required.

Offering of Employment

Per this Agreement, the HRA may not extend an offer of employment to the consultants assigned to this project.

Publicity

Neither party shall issue a press release or other public statement regarding the relationship of the parties or this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, the HRA agrees that NMA may list the HRA as one of its clients in NMA's marketing materials.



Governing Law

The final Agreement shall be governed by and construed in accordance with the laws of the State of California and the laws applicable therein.

Acceptance

The HRA indicates their acceptance of this Agreement by signing in the appropriate space provided below and returning a signed copy to NMA. Once received by NMA, it will be countersigned, and a fully executed copy will be provided to the HRA.

IN WITNESS WHEREOF, the HRA and NMA have executed this Agreement through their duly authorized officers.

For Nan McKay and Associates, Inc.:

For South St. Paul Housing & Redevelopment Authority:

Date: _____

Date: _____

By: _____

By: _____

Signature

Signature

Catherine Ures

Printed Name

Printed Name

Vice President of Professional Services

Title

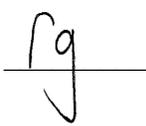
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Title



EDA Agenda Item Report

Date: August 5, 2024

EDA Executive Director: 

4-C

AGENDA ITEM:

Termination of Preliminary Development Agreement – Wakota Crossing

ACTION TO BE CONSIDERED:

Through consent, motion to approve Termination of Purchase Agreement by and between the City of South St. Paul, the South St. Paul Economic Development Authority, and Capital Partners, LLC.

SUMMARY:

Beginning in late 2022, the EDA and Capital Partners Development, LLC had been working towards the strategic redevelopment of approximately 15 acres south of I-494 for a speculative light industrial development. This area is located immediately south and west of a complex of public outdoor uses including the new “Wakota Trailhead”, the City’s compost facility, the City’s community gardens, and the DNR boat launch. This property, which has been publicly owned for decades, was first identified as a potential infill development site for light industrial development through a 2018 study for the “Wakota Crossing” development area, a 50-acre site situated between the Mississippi River, Hardman Avenue, the Kinder-Morgan Dakota Bulk Terminal, and I-494. In February 2023, the City and Capital Partners Development entered a preliminary development agreement in order to frame a public-private partnership through its early stages, and the agreement was extended in November 2023 and again in June 2024 to run through December 31, 2024.

As the developer progressed more deeply into its due diligence on this speculative development, the challenges of extraordinary soil correction and remediation costs, persistently elevated financing rates, and suboptimal access to the site emerged as obstacles to their investment team’s financial underwriting of this project to meet their requirements. While the EDA made significant efforts in utilizing the economic development financing tools we have at our disposal, ultimately the Developer and their Investor notified Staff that they desired to terminate the Preliminary Development Agreement and thereby stop working towards this redevelopment opportunity. As such, Staff suggests that it is appropriate to terminate the Preliminary Development Agreement, in writing and in accordance with the terms of that Agreement.

ATTACHMENTS:

Orientation Map

Termination of Preliminary Development Agreement

ATTACHMENT 1 – ORIENTATION MAP



TERMINATION OF PURCHASE AGREEMENT

THIS TERMINATION OF PRELIMINARY DEVELOPMENT AGREEMENT (“Termination”) is executed and delivered as of the ____ day of _____, 2024 (“Effective Date”), by and between the City of South St. Paul (“City”), the South St. Paul Economic Development Authority, a Minnesota public body corporate and politic (“EDA”), and Capital Partners Development, LLC, a Minnesota limited liability company (“Developer”).

Subject to the terms and conditions hereafter stated and based on the representations, warranties, covenants, agreements and recitals herein contained, the parties recite as follows:

RECITALS

WHEREAS, the City, EDA and Developer entered into a Preliminary Development Agreement dated February 8, 2023, as amended by that certain First Amendment to Preliminary Development Agreement dated November 6, 2023 and as further amended by that certain Second Amendment to Preliminary Development Agreement dated June 17, 2024 (collectively “Preliminary Development Agreement”); and

WHEREAS, in accordance with Article 8 of the Preliminary Development Agreement, the City, the EDA and the Developer mutually desire to terminate the Preliminary Development Agreement.

NOW, THEREFORE, the EDA, City and Developer hereby confirm and terminate the following:

1. The Preliminary Development Agreement is hereby terminated and released.
2. The Property identified in the Preliminary Development Agreement is hereby released from the Preliminary Development Agreement.

[The remainder of this page was intentionally left blank.]

IN AGREEMENT, the parties hereto have hereunto set their hands as of the Effective Date.

**CITY:
THE CITY OF SOUTH ST. PAUL**

By _____
James P. Francis
Its Mayor

By _____
Deanna Werner
Its Clerk

**EDA:
SOUTH ST. PAUL ECONOMIC
DEVELOPMENT AUTHORITY**

By _____
James P. Francis
Its President

By _____
Ryan Garcia
Its Executive Director

DEVELOPER:
CAPITAL PARTNERS DEVELOPMENT LLC

By: _____
Peter A. Mork
Its Managing Partner



EDA AGENDA ITEM REPORT

Date: August 5, 2024

EDA Executive Director:

5-A

AGENDA ITEM:

Approval of Tax Increment Revenue Note, Series 2024A – 225 Concord Exchange North (The Backyards), Resolution 2024 - 15

ACTION TO BE CONSIDERED:

Motion to adopt Resolution No. 2024 – 15.

OVERVIEW:

At its meeting on October 4, 2021, the Economic Development Authority (EDA) adopted Resolution 2021-25, approving the execution of a Contract for Private Redevelopment with SSP QOZB LLC and SSP SPE II LLC for “The Backyards” apartment project. This Agreement provided the contract terms and conditions for the EDA to provide tax increment finance assistance for the construction of minimum improvements on the west side of Concord Exchange North (now 225 Concord Exchange North), on a former EDA-owned surface parking lot across from the post office. As the EDA will recall, the Agreement provided that the redeveloper could receive no more than \$2,500,000 in tax increment finance assistance through what is commonly referred to as a “PayGo” TIF Note. “PayGo”, or “Pay as you Go” financing provides that the developer, only after paying their property taxes, receives a certain portion of the tax payment in installments over a number of years in return for investing in redevelopment costs at the front end of the project. The amount of PayGo financing is based upon the increase in tax capacity that is generated by the new project – an increase that would not have occurred but for the redevelopment and new construction.

The Redeveloper has met all obligations and conditions found under Section 3.3 of the Contract for Private Development, and the EDA is therefore obligated to issue its Tax Increment Revenue Note (Series 2024A) to SSP QOZB LLC. Following adoption of Resolution 2024 – 15, the note will be delivered to the Redeveloper and payment according to the terms of the Note and the Agreement will commence beginning August 12, 2024.

FUNDING SOURCES AND OTHER FISCAL CONSIDERATIONS:

The Tax Increment Revenue Note Series 2024A is backed by revenues from the Grand Avenue Gateway TIF District specifically and exclusively on the Backyards Property. It should be noted that the property upon which the Backyards now sits was valued at \$210,800 by Dakota County in 2021 and was publicly owned and therefore property tax exempt. For Pay 2024, the Property has a total Estimated Market Value of \$14,209,400, increasing property tax assessable to the property by more than \$235,000 each year versus the “pre-development” condition.

SOUTH ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. 2024 – 15

RESOLUTION APPROVING THE ISSUANCE OF, AND PROVIDING THE FORM, TERMS, COVENANTS AND DIRECTIONS FOR THE ISSUANCE OF ITS TAXABLE TAX INCREMENT REVENUE NOTE, SERIES 2024A IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$2,500,000

BE IT RESOLVED BY the South St. Paul Economic Development Authority (the “EDA”), as follows:

Section 1. Authorization; Award of Sale.

1.01. Authorization. The South St. Paul Housing and Redevelopment Authority (the “HRA”) heretofore approved the establishment of the Concord Street Redevelopment Project Area (“Redevelopment Project”), and adopted a Redevelopment Plan related thereto. The EDA is the successor in interest to the HRA and has authority over the Redevelopment Project. The EDA has established the Grand Avenue Gateway Tax Increment Financing District (the “TIF District”) within the Redevelopment Project and has adopted a tax increment financing plan for the purpose of financing certain improvements within the Redevelopment Project.

Pursuant to Minnesota Statutes, Section 469.178, the EDA is authorized to issue and sell its bonds for the purpose of financing a portion of the public development costs of the Redevelopment Project. The bonds are payable from all or any portion of revenues derived from the TIF District and pledged to the payment of the bonds. The EDA hereby finds and determines that it is in the best interests of the EDA that it issue and sell its taxable Tax Increment Revenue Note, Series 2024A (the “Note”), in the aggregate principal amount of \$2,500,000 for the purpose of financing certain public costs of the Phase II Minimum Improvements.

1.02. Agreement Approved; Issuance, Sale and Terms of the Note. The EDA has previously approved the Contract for Private Development (Phase II) (the “Agreement”) between the EDA and SSP QOZB LLC, a Minnesota limited liability company and SSP SPE II LLC, a Minnesota limited liability company (collectively, the “Owner”), and authorized the President and Executive Director to execute the Agreement. Pursuant to the terms and conditions of the Agreement, the Note will be issued to the Owner, or its designee. The Note will be dated as of the date of delivery and will bear interest at an annual rate of 4.0 percent. In exchange for the EDA’s issuance of the Note to the Owner, the Owner will pay certain costs related to the Phase II Minimum Improvements (the Qualifying Costs, as defined in the Agreement) pursuant to Section 3.2 of the Agreement. The Note will be delivered in the principal amount of \$2,500,000 for reimbursement of the Owner’s costs in accordance with the terms of Sections 3.2 and 3.3 of the Agreement.

Section 2. Form of Note. The Note will be in substantially the following form, with the blanks to be properly filled in and the principal amount and payment schedule adjusted as of the date of issue:

UNITED STATE OF AMERICA
STATE OF MINNESOTA
DAKOTA COUNTY
SOUTH ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY

No. R-1

\$2,500,000

TAXABLE TAX INCREMENT REVENUE NOTE
SERIES 2024A

<u>Rate</u>	<u>Date of Original Issue</u>
4.0%	August 6, 2024

The South St. Paul Economic Development Authority (the “EDA”), for value received, certifies that it is indebted and hereby promises to pay to SSP SPE II LLC, or registered assigns (the “Owner”), the principal sum of up to \$2,500,000 and to pay interest thereon at the rate of 4.0 percent per annum, as and to the extent set forth herein.

1. Payments. Payment of principal and interest amounts (“Payments”) will be paid beginning on August 12, 2024, and each February 1 and August 1 thereafter until February 1, 2040 (“Payment Dates”), in the amounts, from the sources and subject to the terms and conditions set forth in Section 3 herein. Payments will be first applied to accrued interest and then to unpaid principal.

Payments are payable by mail to the address of the Owner or any other address as the Owner may designate upon 30 days written notice to the EDA. Payments on this Note are payable in any coin or currency of the United States of America which, on the Payment Date, is legal tender for the payment of public and private debts.

2. Interest. Interest at the rate stated herein will accrue on the unpaid principal, commencing on the date of original issue. Interest will be computed on the basis of a year of 360 days and charged for actual days principal is unpaid.

3. Available Tax Increment. Payments on this Note are payable on each Payment Date in the amount of and solely payable from “Available Tax Increment,” which will mean, on each Payment Date, the Available Tax Increment attributable to the Phase II Minimum Improvements on Lot 2 in the EDA’s Grand Avenue Gateway Tax Increment Financing District and paid to the EDA by Dakota County, all as the terms are defined in the Contract for Private Development (Phase II) between the EDA and Owner dated as of February 2, 2022 (the “Agreement”). Available Tax Increment will not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default by the Owner under the Agreement.

The EDA will have no obligation to pay principal of and interest on this Note on any Payment Date from any source other than Available Tax Increment, and the failure of the EDA to pay the entire amount of principal and interest on this Note on any Payment Date will not constitute a default hereunder as long as the EDA pays principal hereon to the extent of Available Tax Increment and in accordance with this Note.

The EDA will have no obligation to pay unpaid balance of principal or accrued interest that may remain after the final Payment on February 1, 2040.

4. Optional Prepayment. The principal and accrued interest payable under this Note is prepayable in whole or in part by the EDA without premium or penalty. No partial prepayment will affect the amount or timing of any other regular payment otherwise required to be made under this Note.

5. Defined Terms. All capitalized terms used in this Note which are not defined herein shall have the same meaning as given to them in the Agreement unless the context clearly indicates to the contrary.

6. Suspension of Payment for Default. At the EDA's option, the EDA's obligation to make any payments under this Note will be suspended upon the occurrence of an Event of Default on the part of the Developer as defined in Section 6.1 of the Agreement, but only if the Event of Default has not been cured in accordance with Section 6.2 of the Agreement.

7. Nature of Obligation. This Note is a single note in the total principal amount of \$2,500,000 issued to aid in financing certain public costs of a Redevelopment Project undertaken by the EDA pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended, and is issued pursuant to an authorizing resolution (the "Resolution") duly adopted by the EDA on August 5, 2024, pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Sections 469.174 to 469.179, as amended. This Note is a limited obligation of the EDA which is payable solely from Available Tax Increment and is subject to such restrictions and limitations outlined in the Agreement and herein. This Note will not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the EDA or the city of South St. Paul. Neither the State of Minnesota, nor any political subdivision thereof will be obligated to pay the principal of or interest on this Note or other costs incident hereto except out of Available Tax Increment, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof is pledged to the payment of the principal of or interest on this Note or other costs incident hereto.

8. Estimated Tax Increment Payments. Any estimates of Tax Increment or Available Tax Increment prepared by the EDA or its financial advisors in connection with the Phase II Minimum Improvements, the TIF District or the Agreement are solely for the benefit of the EDA, and are not intended as representations on which the Owner may rely.

THE EDA MAKES NO REPRESENTATION OR WARRANTY THAT THE AVAILABLE TAX INCREMENT WILL BE SUFFICIENT TO PAY THE PRINCIPAL OF AND INTEREST ON THIS NOTE.

9. Registration and Transfer. As provided in the Resolution, and subject to certain limitations set forth herein, this Note is issuable only as a fully registered note without coupons. This Note is transferable upon the books of the EDA kept for that purpose at the principal office of the Executive Director of the EDA as Registrar, by the Owner hereof in person or by the Owner's attorney duly authorized in writing, upon surrender of this Note together with a written instrument of transfer satisfactory to the EDA, duly executed by the Owner. Upon the transfer or exchange and the payment by the Owner of any tax, fee, or governmental charge required to be paid by the EDA with respect to the transfer or exchange, there will be issued in the name of the transferee a new Note of the same aggregate principal amount and maturing on the same dates.

This Note may be transferred, assigned or pledged without the approval of the EDA; provided that this Note will not be transferred to any person other than an affiliate, or other related entity, of the Owner unless the EDA has been provided with an investment letter in a form substantially similar to the investment letter submitted by the Owner or a certificate of the transferor, in a form satisfactory to the EDA, that the transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws. Notwithstanding anything to the contrary in this Note, in no event will a lender providing funds to the Developer and taking an assignment of the Note as security for such funds be required to sign an investment letter at either the time of execution of an assignment or transfer of the Note as a result of the assignment.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to exist, to happen, and to be performed in order to make this Note a valid and binding limited obligation of the EDA according to its terms, have been done, do exist, have happened, and have been performed in due form, time and manner as so required.

IN WITNESS WHEREOF, the board of commissioners of the South St. Paul Economic Development Authority has caused this Note to be executed with the manual signatures of its President and Executive Director, all as of the Date of Original Issue specified above.

**SOUTH ST. PAUL ECONOMIC
DEVELOPMENT AUTHORITY**

James P. Francis, President

Ryan Garcia, Executive Director

REGISTRATION PROVISIONS

The ownership of the unpaid balance of the within Note is registered in the bond register of the Executive Director of the EDA, in the name of the person last listed below.

<u>Date of Registration</u>	Registered Owner	<u>Signature of EDA Executive Director</u>
	SSP SPE II LLC 750 Second Street, NE Hopkins, MN 55343 Attn: William H. Beard Federal Tax ID #86-3260278	

[End of Form of Note]

Section 3. Terms, Execution and Delivery.

3.01. Denomination, Payment. The Note will be issued as a single typewritten note numbered R 1.

The Note will be issuable only in fully registered form. Principal of and interest on the Note will be payable by check or draft issued by the Registrar described herein.

3.02. Dates. Principal of and interest on the Note will be payable by mail to the owner of record thereof as of the close of business on the fifteenth day of the month preceding the Payment Date, whether or not the day is a business day.

3.03. Registration. The EDA hereby appoints the Executive Director to perform the functions of registrar, transfer agent and paying agent (the "Registrar"). The effect of registration and the rights and duties of the EDA and the Registrar with respect thereto will be as follows:

(a) Register. The Registrar will keep at his office a bond register in which the Registrar will provide for the registration of ownership of the Note and the registration of transfers and exchanges of the Note.

(b) Transfer of Note. Upon surrender for transfer of the Note duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form reasonably satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar will authenticate and deliver, in the name of the designated transferee or transferees, a new Note of a like aggregate principal amount and maturity, as requested by the transferor. Notwithstanding the foregoing, the Note will not be transferred to any person other than an affiliate, or other related entity, of the Owner unless the EDA has been provided with an investment letter in a form substantially similar to the investment letter submitted by the Owner or a certificate of the transferor, in a form satisfactory to the EDA, that the transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws. The Registrar may close the books for registration of any transfer after the fifteenth day of the month preceding each Payment Date and until the Payment Date.

(c) Cancellation. The Note surrendered upon any transfer will be promptly cancelled by the Registrar and thereafter disposed of as directed by the EDA.

(d) Improper or Unauthorized Transfer. When the Note is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until he is satisfied that the endorsement on the Note or separate instrument of transfer is legally authorized. The Registrar will incur no liability for his refusal, in good faith, to make transfers which he, in his judgment, deems improper or unauthorized.

(e) Persons Deemed Owners. The EDA and the Registrar may treat the person in whose name the Note is at any time registered in the bond register as the absolute owner of the Note, whether the Note is overdue or not, for the purpose of receiving payment of, or on account of, the principal of the Note and for all other purposes, and all the payments so made to any registered owner or upon the owner's order will be valid and effectual to satisfy and discharge the liability of the EDA upon the Note to the extent of the sum or sums so paid.

(f) Taxes, Fees and Charges. For every transfer or exchange of the Note, the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee, or other governmental charge required to be paid with respect to the transfer or exchange.

(g) Mutilated, Lost, Stolen or Destroyed Note. In case the Note becomes mutilated or is lost, stolen, or destroyed, the Registrar will deliver a new Note of like amount, maturity dates and tenor in exchange and substitution for and upon cancellation of the mutilated Note or in lieu of and in substitution for the Note lost, stolen, or destroyed, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case the Note lost, stolen, or destroyed, upon filing with the Registrar of evidence satisfactory to it that the Note was lost, stolen, or destroyed, and of the ownership thereof, and upon furnishing to the Registrar of an appropriate bond or indemnity in form, substance, and amount satisfactory to it, in which both the EDA and the Registrar will be named as obligees. The Note so surrendered to the Registrar will be cancelled by him and evidence of the cancellation will be given to the EDA. If the mutilated, lost, stolen, or destroyed Note has already matured or been called for redemption in accordance with its terms, it will not be necessary to issue a new Note prior to payment.

3.04. Preparation and Delivery. The Note will be prepared under the direction of the Executive Director and will be executed on behalf of the EDA by the signatures of its President and Executive Director. In case any officer whose signature appears on the Note ceases to be the officer before the delivery of the Note, the signature will nevertheless be valid and sufficient for all purposes, the same as if the officer had remained in office until delivery. When the Note has been so executed, it will be delivered by the EDA to the Owner following the delivery of the necessary items delineated in Section 3.3 of the Agreement.

Section 4. Security Provisions.

4.01. Pledge. The EDA agrees to pay the principal of and interest on the Note from Available Tax Increment as defined in the Note. Available Tax Increment will be applied to payment of the principal of and interest on the Note in accordance with the terms of the form of Note set forth in Section 3 of this resolution.

4.02. Bond Fund. Until the date the Note is no longer outstanding and no principal thereof or interest thereon (to the extent required to be paid pursuant to this resolution) remains unpaid, the EDA will maintain a separate and special “Bond Fund” to be used for no purpose other than the payment of the principal of and interest on the Note. The EDA irrevocably agrees to appropriate to the Bond Fund in each year Available Tax Increment. Any Available Tax Increment remaining in the Bond Fund will be transferred to the EDA’s account for the TIF District upon the payment of all principal and interest to be paid with respect to the Note.

Section 5. Certification of Proceedings.

5.01. Certification of Proceedings. The officers of the EDA are hereby authorized and directed to prepare and furnish to the Owner of the Note certified copies of all proceedings and records of the EDA, and the other affidavits, certificates, and information as may be required to show the facts relating to the legality and marketability of the Note as the same appear from the books and records under their custody and control or as otherwise known to them, and all the certified copies, certificates, and affidavits, including any heretofore furnished, will be deemed representations of the EDA as to the facts recited therein.

Section 6. Effective Date. This resolution will be effective upon execution by the President and Executive Director following authorization by the board of commissioners of the EDA.

Adopted by the board of commissioners of the South St. Paul Economic Development Authority, this 5th day of August, 2024.

James P. Francis, President

Ryan Garcia, Executive Director

DRAFT
September 21, 2021

CONTRACT
FOR
PRIVATE DEVELOPMENT
The Backyards (Phase II)
By and Between
THE SOUTH ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY
and
SSP QOZB LLC and SSP SPE II LLC

This document drafted by:

KENNEDY & GRAVEN, CHARTERED (RHB)
150 South Fifth Street
Suite 700
Minneapolis, MN 55402
(612) 337-9300

TABLE OF CONTENTS

PAGE

PREAMBLE 1

ARTICLE I

Definitions

Section 1.1. Definitions..... 2
Section 1.2. Exhibits 4
Section 1.3. Rules of Interpretation 5

ARTICLE II

Representations and Warranties

Section 2.1. Representations by the EDA..... 5
Section 2.2. Representations and Warranties by the Developer 6
Section 2.3. Developer Responsible for Costs..... 6

ARTICLE III

Acquisition and Development of Lot 2; Development Assistance

Section 3.1. Acquisition and Development of Lot 2..... 7
Section 3.2. Issuance of Note; Substitution 7
Section 3.3. Conditions Precedent to Issuance of the Note 7
Section 3.4. No Business Subsidy..... 8
Section 3.5. Records 8

ARTICLE IV

Payment of Taxes; Use of Tax Increment

Section 4.1. Taxes 8
Section 4.2. Use of Tax Increment..... 8

ARTICLE V

Restrictions on Sale of Phase II Minimum Improvements; Termination of Agreement; Financing

Section 5.1. Prohibition Against Sale of Phase II Minimum Improvements..... 8
Section 5.2. Termination of Agreement..... 9
Section 5.3. Financing..... 9

ARTICLE VI
Events of Default

Section 6.1. Events of Default Defined 9
Section 6.2. Remedies on Default..... 10
Section 6.3. No Remedy Exclusive..... 10
Section 6.4. No Additional Waiver Implied by One Waiver 10

ARTICLE VII
Additional Provisions

Section 7.1. Conflict of Interests; Representatives Not Individually Liable 10
Section 7.2. Restrictions on Use 11
Section 7.3. Notices and Demands 11
Section 7.4. Counterparts 11
Section 7.5. Disclaimer of Relationships 11
Section 7.6. Amendment..... 12
Section 7.7. Recording..... 12
Section 7.8. Indemnification 12
Section 7.9. Titles of Articles and Sections 12
Section 7.10. Governing Law; Venue..... 12

TESTIMONIUM.....13
SIGNATURES..... 13-14

EXHIBIT A	LEGAL DESCRIPTION OF THE DEVELOPMENT PROPERTY
EXHIBIT B	FORM OF AUTHORIZING RESOLUTION
EXHIBIT C	FORM OF INVESTMENT LETTER

CONTRACT FOR PRIVATE DEVELOPMENT

This Contract for Private Development (Phase II) (the “Agreement”) is made this _____ day of _____, 2021, by and between the South St. Paul Economic Development Authority, a public body corporate and politic under the laws of Minnesota, having its principal office at 125 Third Avenue North, South St. Paul, Minnesota 55075-2097 (the “South St. Paul Economic Development Authority” or the “EDA”), and SSP QOZB LLC, a Minnesota limited liability company, and SSP SPE II LLC, a Minnesota limited liability company, both having their principal office at 750 Second Street, NE, Hopkins, Minnesota 55343 (collectively, the “Developer”).

WITNESSETH:

WHEREAS, the EDA has found there to exist within the community buildings that have a blighting influence on surrounding properties because they are vacant or underutilized due to their poor physical condition or functional obsolescence and which, because of those conditions, threaten the health, safety and welfare of the community; and

WHEREAS, the EDA has found that it is in the public interest, helpful for the tax base and beneficial for the health, safety and welfare of the community as a whole to remove structurally substandard buildings and to redevelop those properties with new projects compatible with surrounding land uses and consistent with the community’s land use plans; and

WHEREAS, the EDA finds that, due to market conditions which exist today and are likely to persist for the foreseeable future, the private sector alone is not able to accomplish redevelopment of the type needed within the identified area and, therefore, such will not occur without public intervention; and

WHEREAS, to foster the redevelopment described above, the South St. Paul Housing and Redevelopment Authority (the “HRA”) in 2009 adopted the Redevelopment Plan for the Concord Street Redevelopment Project Area to more fully implement the goals and objectives thereof, all pursuant to Minnesota Statutes, sections 469.001 through 469.047; and

WHEREAS, authority over the Concord Street Redevelopment Project Area was subsequently transferred to the EDA; and

WHEREAS, the EDA has established the Grand Avenue Gateway Tax Increment Financing District within the Concord Street Redevelopment Project Area and adopted a Tax Increment Financing Plan, all pursuant to Minnesota Statutes, sections 469.174 through 469.1799; and

WHEREAS, the Developer has proposed to develop the property identified and described on Exhibit A attached hereto by constructing a 111-unit market rate rental multi-family housing project as more fully described herein; and

WHEREAS, the EDA believes the Developer’s project is in the vital and best interests of South St. Paul and the health, safety and welfare of its residents, and is in accord with the public purposes and provisions of the applicable state and local laws and requirements for which the

Concord Street Redevelopment Project Area and the Grand Avenue Gateway Tax Increment Financing District were established.

NOW, THEREFORE, in consideration of the covenants and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I

Definitions

Section 1.1. Definitions. In this Agreement the following terms shall have the meanings given below unless a different meaning clearly appears from the context:

“Administrative Costs” means the administrative expenses incurred by the EDA regarding the TIF District as defined in section 469.174, subd. 14 of the TIF Act.

“Agreement” means this Contract for Private Development (Phase II), as the same may be from time to time modified, amended, or supplemented.

“Approvals” means, but is not limited to all governmental approvals, such as platting, zoning approvals, conditional use permits, variances, access permits, signage permits, building permits, required licenses, site plan approvals, architectural approvals and other regulatory permits and approvals granted in connection with Phase I of the project but applicable to Phase II as well plus those approvals granted by the City on August 16, 2021 in Resolution No. 2021-123 and specific to Phase II.

“Approved Plans” means the plans and sketches of the Phase II Minimum Improvements approved by the City in connection with the Approvals.

“Authorizing Resolution” means the EDA resolution, in substantially the form attached hereto as Exhibit B, which authorizes the issuance of the Note by the EDA Executive Director to the Developer.

“Available Tax Increment” means 90 percent of the Tax Increment paid by the County to the EDA with regards to the Phase II Minimum Improvements on Lot 2.

“Certificate of Completion” means the certificate, which will be issued by the City following completion of the Phase II Minimum Improvements.

“City” means the city of South St. Paul, a municipal corporation under the laws of Minnesota.

“County” means Dakota County, Minnesota.

“Developer” means SSP QOZB LLC, a Minnesota limited liability company and SSP SPE II LLC, a Minnesota limited liability company.

“Development Agreement” means the agreement among the EDA, the City, SSP QOZB, LLC, SSP SPE I, LLC and SSP SPE II LLC, approved by the EDA and the City on December 21, 2020, regarding the sale of Lot 1 and Lot 2 and construction of the Phase I Minimum Improvements and Phase II Minimum Improvements.

“Development Assistance” means the financial assistance to be offered by the EDA to the Developer outlined in Article III of this Agreement.

“Development Property” means the property legally described in Exhibit A attached hereto.

“Economic Development Authorities Act” or “EDA Act” means Minnesota Statutes, sections 469.090 through 469.108, as amended.

“Economic Development Authority” or “EDA” means the South St. Paul Economic Development Authority, a public body corporate and politic under the laws of Minnesota, which is the successor in interest to the HRA.

“Event of Default” means an action by the Developer or the EDA listed in Article VI of this Agreement.

“Housing and Redevelopment Authorities Act” or “HRA Act” means Minnesota Statutes, sections 469.001 through 469.047, as amended.

“Housing and Redevelopment Authority” or “HRA” means the South St. Paul Housing and Redevelopment Authority, which is the predecessor in interest to the EDA.

“Lot 1” means the property where the Phase I Minimum Improvements are being constructed. Such property is currently defined by the legal description on Exhibit A, but the parties expect this property will be replatted into Lot 1, Block 1, The Yards Addition, Dakota County, Minnesota.

“Lot 2” means the property where the Phase II Minimum Improvements will be constructed. Such property is currently defined by the legal description on Exhibit A, but the parties expect this property will be replatted into Lot 2, Block 1, The Yards Addition, Dakota County, Minnesota.

“Maturity Date” means i) February 1, 2040; ii) the date the Note has been paid in full; or iii) the date the Note is terminated, whichever occurs first.

“Note” means the taxable Tax Increment Revenue Note, in substantially the form set forth in the Authorizing Resolution, to be delivered by the EDA to the Developer to reimburse the Developer for a portion of the Qualifying Costs for the Phase II Minimum Improvements pursuant to Article III of this Agreement.

“Phase I Minimum Improvements” means the construction of approximately 154 units of market rate multi-family residential housing and related improvements on Lot 1 and grading and site preparation on Lot 2, as depicted in the Development Agreement.

“Phase II Minimum Improvements” means the construction of approximately 111 units of market rate multi-family residential housing and related improvements on Lot 2, as depicted in the Development Agreement and Approvals.

“Qualifying Costs” means the cost of soil correction, site preparation, infrastructure improvements, underground parking and other qualifying expenditures made by the Developer related to completion of the Phase II Minimum Improvements which the EDA intends to reimburse partially through the Note.

“Redevelopment Plan” means the Redevelopment Plan for the Concord Street Redevelopment Project Area, which was adopted on June 29, 2009 and was modified on December 21, 2020.

“Redevelopment Project” or “Project” means the Concord Street Redevelopment Project.

“Sale” means any conveyance of Lot 2 or the Phase II Minimum Improvements, as more fully defined in Article V of this Agreement. The term “Sale” does not include the granting of any lien as security for purposes of financing the Minimum Improvements, or a sale of ownership, control or voting interests.

“State” means the state of Minnesota.

“Tax Increment” means the tax increment, as that term is defined in Minnesota Statutes, section 469.174, subd. 25, which is paid to the EDA by the County with respect to the Phase II Minimum Improvements on Lot 2.

“Tax Increment Financing Act” or “TIF Act” means Minnesota Statutes, sections 469.174 through 469.1799, as amended.

“Tax Increment Financing District” or “TIF District” means the EDA’s Grand Avenue Gateway Tax Increment Financing District, a redevelopment district.

“Tax Increment Financing Plan” or “TIF Plan” means the tax increment plan for the Grand Avenue Gateway Tax Increment Financing District, which was adopted on December 21, 2020.

“Tax Official” means the County assessor or auditor, County or state board of equalization, the commissioners of revenue of the State, or any State or federal district court, the tax court of the State, or the State Supreme Court.

“Termination Date” means the date the Grand Avenue Gateway Tax Increment Financing District terminates, which is the date it is required to terminate pursuant to the TIF Act or such earlier date if, after all of the EDA’s financial obligations with regard to the TIF District have been satisfied, the EDA elects to terminate the TIF District, but no later than December 31, 2048.

Section 1.2. Exhibits. The following exhibits are attached to and by reference made a part of this Agreement:

Exhibit A Legal Description of the Development Property

- Exhibit B Form of Authorizing Resolution
- Exhibit C Form of Investment Letter

Section 1.3. Rules of Interpretation. (a) This Agreement shall be interpreted in accordance with and governed by the laws of Minnesota.

(b) The words “herein” and “hereof” and words of similar import, without reference to any particular section or subdivision, refer to this Agreement as a whole rather than any particular section or subdivision hereof.

(c) References herein to any particular section or subdivision hereof are to the section or subdivision of this Agreement as originally executed.

(d) Any titles of the several parts, articles and sections of this Agreement are inserted for convenience and reference only and shall be disregarded in construing or interpreting any of its provisions.

ARTICLE II

Representations and Warranties

Section 2.1. Representations by the EDA. The EDA makes the following representations as the basis for the undertaking on its part herein contained:

(a) The EDA is an economic development authority duly organized and existing under the EDA Act and also having the powers of a housing and redevelopment authority under the HRA Act. The EDA is the successor in interest to the HRA and has authority over the Redevelopment Project and the TIF District. The EDA has the authority to enter into this Agreement and carry out its obligations hereunder.

(b) The individuals executing this Agreement and related agreements and documents on behalf of the EDA have the authority to do so and to bind the EDA by their actions.

(c) The Concord Street Redevelopment Project is a redevelopment project within the meaning of the HRA Act, was created, adopted and approved in 2009 in accordance with the HRA Act, and was modified on December 21, 2020 in connection with establishment of the Grand Avenue Gateway Tax Increment Financing District.

(d) The Grand Avenue Gateway Tax Increment Financing District is a redevelopment tax increment financing district within the meaning of the TIF Act and was created, adopted and approved in accordance with the TIF Act.

(e) There are no previous agreements to which the EDA is a party pertaining to the Development Property which would preclude the parties from entering into this Agreement or which would impede the fulfillment of the terms and conditions of this Agreement or the Note.

(f) The activities of the EDA pursuant to this Agreement are undertaken pursuant to the Redevelopment Plan and the TIF Plan, and are for the purpose of assistance in redevelopment of Lot 2 into a market rate multi-family rental housing project.

(g) The EDA will act in a timely manner to consider all approvals required under this Agreement and will cooperate with the Developer in seeking consideration of the Approvals which must be granted by the City or other governmental entities.

Section 2.2. Representations and Warranties by the Developer. The Developer makes the following representations and warranties as the basis for the undertaking on its part herein contained:

(a) The Developer is a limited liability company organized and operating under the laws of the State. The Developer has the authority to enter into this Agreement and carry out its obligations hereunder.

(b) The persons executing this Agreement and related agreements and documents on behalf of the Developer have the authority to do so and to bind the Developer by their actions.

(c) The Developer has acquired the Development Property.

(d) The Developer will construct the Phase II Minimum Improvements in substantial accordance with the terms of the Development Agreement.

(e) The Developer will apply for and use all reasonable efforts to obtain, in a timely manner, all required permits, licenses and approvals from the City, and will meet, in a timely manner, the requirements of all applicable local, State and federal laws and regulations which must be obtained or met before the Phase II Minimum Improvements may be lawfully constructed or used for their intended purpose.

(f) The Developer has analyzed the cost associated with the Phase II Minimum Improvements, including land acquisition, grading, soil correction, site preparation, installation of utilities, landscaping, and structured and surface parking and concluded that, absent the Development Assistance to be offered under this Agreement, construction of the Phase II Minimum Improvements would not be financially feasible and it would not undertake this project.

(g) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any corporate organizational documents or any evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

Section 2.3. Developer Responsible for Costs. The Developer agrees to pay the EDA an administrative fee in the amount necessary to reimburse the EDA for its reasonable costs and expenses in reviewing the redevelopment proposal, including the drafting and negotiating of this Agreement.

ARTICLE III

Acquisition and Development of Lot 2; Development Assistance

Section 3.1. Acquisition and Development of Lot 2. The Developer has acquired the Development Property. The Developer agrees to construct the Phase II Minimum Improvements on the Development Property in conformance with the Approvals, including but not limited to the approved plans referenced in City Resolution No. 2021-123. The Developer expects to start construction of the Phase II Minimum Improvements in January, 2022 and to complete the project in April, 2023.

Section 3.2. Issuance of Note; Substitution. (a) In consideration of the Developer incurring the Qualifying Costs while constructing the Phase II Minimum Improvements, the EDA will issue to the Developer the Note in substantially the form set forth in the Authorizing Resolution attached hereto as Exhibit B. The Note will be in the principal amount of \$2,500,000 or the actual and reasonable amount expended by the Developer on the Qualifying Costs, whichever is less, and will bear interest at an annual rate of 4.0 percent. The first payment on the Note will be made on August 1, 2024 and the last payment will be made on February 1, 2040 unless the Note has been terminated earlier. The EDA and the Developer agree that the consideration from the Developer for the purchase of the Note will consist of the Developer's payment of the Qualifying Costs which are eligible for reimbursement with Available Tax Increment and which are incurred by the Developer in at least the principal amount of the Note. The Authorizing Resolution will authorize delivery of the Note by the EDA Executive Director upon satisfaction by the Developer of all the conditions precedent specified in section 3.3 of this Agreement.

(b) The Developer understands and acknowledges that the EDA makes no representations or warranties regarding whether the amount of Available Tax Increment prior to the Maturity Date will be sufficient to pay the principal and interest of the Note. Any estimates of Tax Increment or Available Tax Increment prepared by the EDA or its financial advisors in connection with the TIF District or this Agreement are for the benefit of the EDA and are not intended as representations on which the Developer may rely.

Section 3.3. Conditions Precedent to Issuance of the Note. Notwithstanding anything in this Agreement to the contrary, the EDA Executive Director is authorized to issue the Note to the Developer only after adoption of the Authorizing Resolution by the EDA after all of the following conditions precedent have been satisfied:

- (a) This Agreement has been executed by the parties and recorded against Lot 2;
- (b) The Developer has completed the Phase II Minimum Improvements and the City has issued the Certificate of Completion for the Phase II Minimum Improvements;
- (c) The Developer has submitted evidence, including paid receipts and lien waivers, that it has incurred and paid for the Qualifying Costs for the Phase II Minimum Improvements in an amount not less than the principal amount of the Note;

(d) The Developer has submitted the Investment Letter in the general form attached hereto as Exhibit C; and

(e) There has been no Event of Default on the part of the Developer under this Agreement or the Development Agreement pertaining to the Phase II Minimum Improvements which has not been cured.

Section 3.4. No Business Subsidy. All of the financial assistance offered herein to the Developer is related to the construction of a market rate multi-family rental housing project. Therefore, the assistance offered by the EDA under this Agreement is not a “business subsidy” within the meaning of Minnesota Statutes, sections 116J.993 to 116J.995.

Section 3.5. Records. The EDA and its representatives will have the right at all reasonable times after reasonable notice to inspect, examine and copy invoices paid by the Developer and/or its general contractor relating to the Minimum Improvements and the Qualifying Costs for which the Developer will be reimbursed under the Note for the Phase II Minimum Improvements.

ARTICLE IV

Payment of Taxes; Use of Tax Increment

Section 4.1. Taxes. The Developer agrees to pay before delinquency all real estate taxes, general and special assessments and other public charges levied upon or assessed against Lot 2 and the Phase II Minimum Improvements during the term of this Agreement. The Developer understands that any failure to pay such taxes will reduce the amount of Available Tax Increment and may adversely affect the EDA’s ability to pay the Note in full by the Termination Date.

Section 4.2. Use of Tax Increment. Except as provided for in this Agreement and the Note, the EDA shall be free to use any Tax Increment it receives from the County with respect to the Tax Increment District for any purpose for which such increment may lawfully be used and the EDA shall have no obligations to the Developer with respect to the use of such Tax Increment.

ARTICLE V

Restrictions on Sale of Phase II Minimum Improvements; Termination of Agreement; Financing

Section 5.1. Prohibition Against Sale of Phase II Minimum Improvements. The Developer represents and agrees that its use of Lot 2 and its other undertakings pursuant to the Agreement, are, and will be, used for the purpose of construction of the Phase II Minimum Improvements on the Development Property and not for speculation in land holding. The Developer represents and agrees that, prior to the issuance of a Certificate of Completion for the Phase II Minimum Improvements, there shall be no Sale of Lot 2 or the Phase II Minimum Improvements constructed thereon nor shall the Developer suffer any such Sale to be made, without the prior written approval of the EDA; provided, however, notwithstanding the foregoing, the Developer shall be entitled to (a) lease rental units or other portions of the Development Property to third parties, and (b) sell, transfer and convey ownership, control or voting rights in the Developer pursuant to the Development Agreement, without the prior written approval of the EDA. As a condition of

approval of any such Sale, the EDA shall require, at a minimum, that the proposed transferee shall have entered into an agreement whereby the transferee expressly assumes all of the Developer's obligations under this Agreement. Any such agreement shall include the EDA as a party and otherwise be in form and substance reasonably acceptable to the EDA. No approval of the EDA shall be needed for any Sale after the issuance of a Certificate of Completion regarding the Phase II Minimum Improvements.

Section 5.2. Termination of Agreement. Upon the occurrence of the Termination Date, the parties agree to execute and record a document terminating this Agreement and providing for the release of the Developer's obligations under this Agreement.

Section 5.3. Financing. If the Developer obtains mortgage financing for construction of the Phase II Minimum Improvements, the EDA agrees to consent to the Developer making a collateral assignment of this Agreement to the lender or lenders securing construction or permanent financing. In connection with such financing, the EDA agrees to subordinate its rights under this Agreement to the lender or lenders securing construction or permanent financing and the EDA agrees to consent to such subordination, in accordance with the terms of a customary form of subordination agreement or agreements, subject to the EDA's reasonable approval, not to be unreasonably withheld, delayed or conditioned.

ARTICLE VI

Events of Default

Section 6.1. Events of Default Defined. Each and every one of the following shall be an Event of Default under this Agreement:

(a) Failure by the Developer to seek from the EDA, the City and other governmental entity any permit or approval necessary in order to construct the Phase II Minimum Improvements and to pursue same diligently and in good faith;

(b) Failure by the Developer to commence and complete construction of the Phase II Minimum Improvements pursuant to the terms, conditions and limitations of the Development Agreement and the Approvals;

(c) If the Developer shall file a petition in bankruptcy, or shall make an assignment for the benefit of its creditors or shall consent to the appointment of a receiver;

(d) If there is an Event of Default by the Developer under the Development Agreement or the Approvals pertaining to the Phase II Minimum Improvements which is not cured in accordance therewith;

(e) Sale of Lot 2 or the Phase II Minimum Improvements, or any portion thereof, by the Developer in violation of Article V of this Agreement; or

(f) Failure by either party to observe or perform any material covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

Section 6.2. Remedies on Default. Whenever any Event of Default referred to in section 6.1 of this Agreement occurs, the non-defaulting party may take any one or more of the following actions after providing 30 days written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said 30 days from the receipt of Notice or, if the Event of Default is by its nature incurable within 30 days, the defaulting party does not provide assurances to the non-defaulting party reasonably satisfactory to the non-defaulting party that the Event of Default will be cured and will be cured as soon as reasonably possible:

(a) Suspend its performance under this Agreement until it receives assurances from the defaulting party, deemed adequate by the non-defaulting party, that the defaulting party will cure its default and continue its performance under this Agreement;

(b) Prior to issuance of the Certificate of Completion for the Phase II Minimum Improvements, cancel and rescind or terminate this Agreement;

(c) If the default occurs after issuance of the Certificate of Completion for the Phase II Minimum Improvements, the EDA may cancel or suspend payments under the Note; and

(d) Take whatever action, including legal or administrative action, which may appear necessary or desirable to the non-defaulting party to collect any payments due under this Agreement or to enforce performance and observance of any obligation, agreement, or covenant of the defaulting party under this Agreement.

Section 6.3. No Remedy Exclusive. No remedy conferred herein or reserved to the parties 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 Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the EDA or the Developer to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required under Section 7.3 of this Agreement.

Section 6.4. No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

ARTICLE VII

Additional Provisions

Section 7.1. Conflict of Interests; Representatives Not Individually Liable. No member, official, or employee of the EDA shall have any personal financial interest, direct or indirect, in the Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his or her personal financial interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the EDA shall be personally liable to the Developer, or any

successor in interest, in the event of any default or breach or for any amount which may become due or on any obligations under the terms of this Agreement.

Section 7.2. Restrictions on Use. The Developer agrees that through the Termination Date it will use or allow the use of the Phase II Minimum Improvements for only such purposes and uses as permitted under the City's land use regulations and in compliance with the Approvals.

Section 7.3. Notices and Demands. Except as otherwise expressly provided in this Agreement, any notice, demand, or other communication under the Agreement or any related document by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified United States mail, postage prepaid, return receipt requested, or delivered personally to:

(a) in the case of the Developer: SSP QOZB LLC and SSP SPE II LLC
750 Second Street, NE
Hopkins, MN 55343
Attn: William H. Beard
Email: Billb@beardgroupinc.com

and with a copy to: Laura Krenz
Ballard Spahr LLP
IDS Center, 80 South Eighth Street
Minneapolis, MN 55402-2119
Email: krenzl@ballardspahr.com

(b) in the case of the EDA: South St. Paul Economic
Development Authority
125 Third Avenue North
South St. Paul, MN 55075
Attn: Ryan Garcia, Executive Director
Email: rgarcia@southstpaul.org

and with a copy to: Kennedy & Graven, Chartered
150 South Fifth Street
Suite 700
Minneapolis, MN 55402
Attn: Ronald H. Batty
Email: rbatty@kennedy-graven.com

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this section 7.3.

Section 7.4. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 7.5. Disclaimer of Relationships. The Developer acknowledges that nothing contained in this Agreement nor any act by the EDA or the Developer shall be deemed or construed

by the Developer or by any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between the EDA and the Developer.

Section 7.6. Amendment. This Agreement may be amended only by the written agreement of the parties.

Section 7.7. Recording. The EDA intends to record this Agreement among the County land records and the Developer agrees to pay for the cost of recording same.

Section 7.8. Indemnification. The Developer agrees that the EDA and its governing body members, officers, agents and employees shall not be liable for, and hereby agrees to indemnify and hold harmless the same, against any loss or claims arising under this Agreement, except for losses or claims arising out of the acts or omissions of the EDA.

Section 7.9. Titles of Articles and Sections. Any titles of the several parts, articles, and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 7.10. Governing Law; Venue. This Agreement shall be construed in accordance with the laws of Minnesota. Any dispute arising from this Agreement shall be heard in the State or federal courts of Minnesota, and all parties waive any objection to the jurisdiction thereof, whether based on convenience or otherwise.

* * * * *

IN WITNESS WHEREOF, the EDA and the Developer have caused this Agreement to be duly executed in their names and behalf on or as of the date first above written.

SOUTH ST. PAUL ECONOMIC
DEVELOPMENT AUTHORITY

By: _____
James P. Francis, President

By: _____
Ryan Garcia, Executive Director

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument as acknowledged before me this _____ day of _____, 2021, by James P. Francis and Ryan Garcia, the President and Executive Director, respectively, of the South St. Paul Economic Development Authority, a public body corporate and politic under the laws of Minnesota, on behalf of the Economic Development Authority.

Notary Public

**EXHIBIT A TO
AGREEMENT**

LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY

LOT 2: Phase II Pre-Plat Legal Description

Parcel 1B

That part of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18, Block 4, The Stockyards Rearrangement of Blocks one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve of South St. Paul, according to the plat thereof now on file and of record in the office of the County Recorder.

Part of the above being registered land, legally described on Certificate of Title No. 168742 as follows: Lots 5 and 6, Block 4, The Stockyards Rearrangement of Blocks one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve of South St. Paul.

Part of the above being registered land, legally described on Certificate of Title No. 168743 as follows: Lots 8, Block 4, The Stockyards Rearrangement of Blocks one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve of South St. Paul.

Lying northwesterly, northeasterly and northerly of the following described line,

Commencing at the most southeasterly corner of Lot 24 of said Block 4; thence North 26 degrees 29 minutes 02 seconds West, assumed bearing along the northeasterly line of said Block 4, 294.51 feet to the point of beginning; thence South 62 degrees 54 minutes 51 seconds West, 120.37 feet; thence North 27 degrees 00 minutes 04 seconds West, 153.04 feet; thence South 88 degrees 59 minutes 56 seconds West, 25.76 feet to the centerline of vacated Pitt Street and there terminating.

Parcel 3B

That part of Lots 1, 2, ,3, and 4, Block 5, The Stockyards Rearrangement of Blocks One, Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Eleven and Twelve, of South St. Paul

Except that part within: That part of Union Addition and Stockyards Rearrangement of Blocks One, Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Eleven and Twelve of South St. Paul, according to the recorded plats thereof, Dakota County, Minnesota, described as follows:

Beginning at the southwest corner of Lot 7, Block 9 of said Stockyards Rearrangement; thence North 26 degrees 34 minutes 14 seconds West along the southwesterly line of said Block 9, a distance of 276.01 feet to the angle point in the westerly line of Lot 1 of said Block 9; thence bearing North along the west line of said Lot 1 and along the westerly line of Lots 55, 56, 57, 58 and 59, Block 3 of said Union Addition a distance of 158.88 feet to the angle point in the westerly line of said Lot 59; thence North 26 degrees 38 minutes 50 seconds West along the southwesterly

line of said Block 3, Union Addition a distance of 112.00 feet; thence North 63 degrees 21 minutes 10 seconds East a distance of 214.00 feet; thence South 22 degrees 49 minutes 14 seconds East a distance of 125.93 feet; thence South 45 degrees 10 minutes 46 seconds West a distance of 79.48 feet; thence South 2 degrees 10 minutes 46 seconds West a distance of 50.12 feet; thence South 15 degrees 49 minutes 14 seconds East; a distance of 55.34; thence South 33 degrees 49 minutes 14 seconds East a distance of 59.54 feet; thence South 53 degrees 34 minutes 14 seconds East a distance of 56.64 feet; thence South 26 degrees 34 minutes 14 seconds East parallel with the northeasterly line of Block 5, Stockyards Rearrangement, to its intersection with the southeasterly line of Lot 4 of said Block 5; thence South 63 degrees 25 minutes 46 seconds West along the southeasterly line of said Lot 4, Block 5 and along the Southeasterly extension of said southeasterly line of Lot 4, Block 5 and along the southeasterly line of Lot 7, Block 9 of said Stockyards Rearrangement a distance of 200.00 feet to the point of beginning Dakota County, Minnesota, together with those parts of vacated Pitt Street accruing thereto by virtue of the vacations thereof.

Lying northerly of the following described line,

Commencing at the most southeasterly corner of Lot 24 of Block 4 of said Stockyards Rearrangement; thence North 26 degrees 29 minutes 02 seconds West, assumed bearing along the northeasterly line of said Block 4, 294.51 feet; thence South 62 degrees 54 minutes 51 seconds West, 120.37 feet; thence North 27 degrees 00 minutes 04 seconds West, 153.04 feet; thence South 88 degrees 59 minutes 56 seconds West, 25.76 feet to the centerline of vacated Pitt Street; thence continuing at South 88 degrees 59 minutes 56 seconds West, 121.54 feet to the southeasterly line of said Lot 4 and the point of beginning; thence continuing South 88 degrees 59 minutes 56 seconds West, 45.73 feet to the southwesterly boundary of said parcel and there terminating.

Parcel 4B

That part of those parts of Lots 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, Block 5, Stockyards Rearrangement of Blocks one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve of South St. Paul, according to the recorded plat thereof, Dakota County, Minnesota lying northeasterly and northerly of the following described line:

Commencing at the most southwesterly corner of Lot 7, Block 9 said Stockyards Rearrangement of Blocks one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve of South St. Paul; thence North 63 degrees 25 minutes 46 seconds East, assumed bearing, along the southerly line of said Lot 7, Block 9 and the northerly line of said Lot 5, Block 5, and their extensions, a distance of 190.00 feet, to the point of beginning of the line to be described; thence South 29 degrees 25 minutes 53 seconds East a distance of 320.43 feet to the northeasterly corner of Lot 16, said Block 5; thence South 26 degrees 34 minutes 14 seconds East, along the northeasterly line of said Lot 16 a distance of 101.21 feet, more or less, to an intersection with a line 34.00 feet northerly of measured at right angles to and parallel with, the southerly line of said Lot 16, Block 5; thence North 89 degrees 22 minutes 16 seconds East, along the easterly extension of said parallel line, a distance of 133.40 feet, to the easterly line of said Lot 13, Block 5 and there terminating, together with those parts of vacated Pitt Street accruing thereto by virtue of the vacations thereof.

Lying northerly of the following described line,

Commencing at the most southeasterly corner of Lot 24 of Block 4 of said Stockyards Rearrangement; thence North 26 degrees 29 minutes 02 seconds West, assumed bearing along the northeasterly line of said Block 4, 294.51 feet; thence South 62 degrees 54 minutes 51 seconds West, 120.37 feet; thence North 27 degrees 00 minutes 04 seconds West, 153.04 feet; thence South 88 degrees 59 minutes 56 seconds West, 25.76 feet to the centerline of vacated Pitt Street and the point of beginning; thence continuing at South 88 degrees 59 minutes 56 seconds West, 121.54 feet to the northwesterly line of said Lot 5 and there terminating.

Abstract and Torrens

All the foregoing expected to be platted as Lot 2, Block 1, The Yards Addition, Dakota County, Minnesota.

**EXHIBIT B TO
AGREEMENT**

FORM OF AUTHORIZING RESOLUTION

SOUTH ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. _____

**RESOLUTION APPROVING THE ISSUANCE OF, AND PROVIDING THE
FORM, TERMS, COVENANTS AND DIRECTIONS FOR THE ISSUANCE
OF ITS TAXABLE TAX INCREMENT REVENUE NOTE, SERIES 202__
IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$2,500,000**

BE IT RESOLVED BY the South St. Paul Economic Development Authority (the “EDA”),
as follows:

Section 1. Authorization; Award of Sale.

1.01. Authorization. The South St. Paul Housing and Redevelopment Authority (the “HRA”) heretofore approved the establishment of the Concord Street Redevelopment Project Area (“Redevelopment Project”), and adopted a Redevelopment Plan related thereto. The EDA is the successor in interest to the HRA and has authority over the Redevelopment Project. The EDA has established the Grand Avenue Gateway Tax Increment Financing District (the “TIF District”) within the Redevelopment Project and has adopted a tax increment financing plan for the purpose of financing certain improvements within the Redevelopment Project.

Pursuant to Minnesota Statutes, Section 469.178, the EDA is authorized to issue and sell its bonds for the purpose of financing a portion of the public development costs of the Redevelopment Project. The bonds are payable from all or any portion of revenues derived from the TIF District and pledged to the payment of the bonds. The EDA hereby finds and determines that it is in the best interests of the EDA that it issue and sell its taxable Tax Increment Revenue Note, Series 202__ (the “Note”), in the aggregate principal amount of \$2,500,000 for the purpose of financing certain public costs of the Phase II Minimum Improvements.

1.02. Agreement Approved; Issuance, Sale and Terms of the Note. The EDA has previously approved the Contract for Private Development (Phase II) (the “Agreement”) between the EDA and SSP QOZB LLC, a Minnesota limited liability company and SSP SPE II LLC, a Minnesota limited liability company (collectively, the “Owner”), and authorized the President and Executive Director to execute the Agreement. Pursuant to the terms and conditions of the Agreement, the Note will be issued to the Owner, or its designee. The Note will be dated as of the date of delivery and will bear interest at an annual rate of 4.0 percent. In exchange for the EDA’s issuance of the Note to the Owner, the Owner will pay certain costs related to the Phase II Minimum Improvements (the Qualifying Costs, as defined in the Agreement) pursuant to Section 3.2 of the Agreement. The Note will be delivered in the principal amount of \$2,500,000 for

reimbursement of the Owner’s costs in accordance with the terms of Sections 3.2 and 3.3 of the Agreement.

Section 2. Form of Note. The Note will be in substantially the following form, with the blanks to be properly filled in and the principal amount and payment schedule adjusted as of the date of issue:

UNITED STATE OF AMERICA
STATE OF MINNESOTA
DAKOTA COUNTY
SOUTH ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY

No. R-1

\$2,500,000

TAXABLE TAX INCREMENT REVENUE NOTE
SERIES 202__

<u>Rate</u>	<u>Date of Original Issue</u>
4.0%	_____, 202__

The South St. Paul Economic Development Authority (the “EDA”), for value received, certifies that it is indebted and hereby promises to pay to SSP SPE II LLC, or registered assigns (the “Owner”), the principal sum of up to \$2,500,000 and to pay interest thereon at the rate of 4.0 percent per annum, as and to the extent set forth herein.

1. Payments. Payment of principal and interest amounts (“Payments”) will be paid beginning on August 1, 2024, and each February 1 and August 1 thereafter until February 1, 2040 (“Payment Dates”), in the amounts, from the sources and subject to the terms and conditions set forth in Section 3 herein. Payments will be first applied to accrued interest and then to unpaid principal.

Payments are payable by mail to the address of the Owner or any other address as the Owner may designate upon 30 days written notice to the EDA. Payments on this Note are payable in any coin or currency of the United States of America which, on the Payment Date, is legal tender for the payment of public and private debts.

2. Interest. Interest at the rate stated herein will accrue on the unpaid principal, commencing on the date of original issue. Interest will be computed on the basis of a year of 360 days and charged for actual days principal is unpaid.

3. Available Tax Increment. Payments on this Note are payable on each Payment Date in the amount of and solely payable from “Available Tax Increment,” which will mean, on each Payment Date, the Available Tax Increment attributable to the Phase II Minimum

Improvements on Lot 2 in the EDA's Grand Avenue Gateway Tax Increment Financing District and paid to the EDA by Dakota County, all as the terms are defined in the Contract for Private Development (Phase II) between the EDA and Owner dated as of _____, 2021 (the "Agreement"). Available Tax Increment will not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default by the Owner under the Agreement.

The EDA will have no obligation to pay principal of and interest on this Note on any Payment Date from any source other than Available Tax Increment, and the failure of the EDA to pay the entire amount of principal and interest on this Note on any Payment Date will not constitute a default hereunder as long as the EDA pays principal hereon to the extent of Available Tax Increment and in accordance with this Note.

The EDA will have no obligation to pay unpaid balance of principal or accrued interest that may remain after the final Payment on February 1, 2040.

4. Optional Prepayment. The principal and accrued interest payable under this Note is prepayable in whole or in part by the EDA without premium or penalty. No partial prepayment will affect the amount or timing of any other regular payment otherwise required to be made under this Note.

5. Defined Terms. All capitalized terms used in this Note which are not defined herein shall have the same meaning as given to them in the Agreement unless the context clearly indicates to the contrary.

6. Suspension of Payment for Default. At the EDA's option, the EDA's obligation to make any payments under this Note will be suspended upon the occurrence of an Event of Default on the part of the Developer as defined in Section 6.1 of the Agreement, but only if the Event of Default has not been cured in accordance with Section 6.2 of the Agreement.

7. Nature of Obligation. This Note is a single note in the total principal amount of \$2,500,000 issued to aid in financing certain public costs of a Redevelopment Project undertaken by the EDA pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended, and is issued pursuant to an authorizing resolution (the "Resolution") duly adopted by the EDA on _____, 202 __, pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Sections 469.174 to 469.179, as amended. This Note is a limited obligation of the EDA which is payable solely from Available Tax Increment and is subject to such restrictions and limitations outlined in the Agreement and herein. This Note will not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the EDA or the city of South St. Paul. Neither the State of Minnesota, nor any political subdivision thereof will be obligated to pay the principal of or interest on this Note or other costs incident hereto except out of Available Tax Increment, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof is pledged to the payment of the principal of or interest on this Note or other costs incident hereto.

8. Estimated Tax Increment Payments. Any estimates of Tax Increment or Available Tax Increment prepared by the EDA or its financial advisors in connection with the Phase II

Minimum Improvements, the TIF District or the Agreement are solely for the benefit of the EDA, and are not intended as representations on which the Owner may rely.

THE EDA MAKES NO REPRESENTATION OR WARRANTY THAT THE AVAILABLE TAX INCREMENT WILL BE SUFFICIENT TO PAY THE PRINCIPAL OF AND INTEREST ON THIS NOTE.

9. Registration and Transfer. As provided in the Resolution, and subject to certain limitations set forth herein, this Note is issuable only as a fully registered note without coupons. This Note is transferable upon the books of the EDA kept for that purpose at the principal office of the Executive Director of the EDA as Registrar, by the Owner hereof in person or by the Owner's attorney duly authorized in writing, upon surrender of this Note together with a written instrument of transfer satisfactory to the EDA, duly executed by the Owner. Upon the transfer or exchange and the payment by the Owner of any tax, fee, or governmental charge required to be paid by the EDA with respect to the transfer or exchange, there will be issued in the name of the transferee a new Note of the same aggregate principal amount and maturing on the same dates.

This Note may be transferred, assigned or pledged without the approval of the EDA; provided that this Note will not be transferred to any person other than an affiliate, or other related entity, of the Owner unless the EDA has been provided with an investment letter in a form substantially similar to the investment letter submitted by the Owner or a certificate of the transferor, in a form satisfactory to the EDA, that the transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws. Notwithstanding anything to the contrary in this Note, in no event will a lender providing funds to the Developer and taking an assignment of the Note as security for such funds be required to sign an investment letter at either the time of execution of an assignment or transfer of the Note as a result of the assignment.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to exist, to happen, and to be performed in order to make this Note a valid and binding limited obligation of the EDA according to its terms, have been done, do exist, have happened, and have been performed in due form, time and manner as so required.

IN WITNESS WHEREOF, the board of commissioners of the South St. Paul Economic Development Authority has caused this Note to be executed with the manual signatures of its President and Executive Director, all as of the Date of Original Issue specified above.

**SOUTH ST. PAUL ECONOMIC
DEVELOPMENT AUTHORITY**

President

Executive Director

REGISTRATION PROVISIONS

The ownership of the unpaid balance of the within Note is registered in the bond register of the Executive Director of the EDA, in the name of the person last listed below.

<u>Date of Registration</u>	Registered Owner	<u>Signature of EDA Executive Director</u>
	SSP SPE II LLC 750 Second Street, NE Hopkins, MN 55343 Attn: William H. Beard Federal Tax ID # _____	

[End of Form of Note]

Section 3. Terms, Execution and Delivery.

3.01. Denomination, Payment. The Note will be issued as a single typewritten note numbered R 1.

The Note will be issuable only in fully registered form. Principal of and interest on the Note will be payable by check or draft issued by the Registrar described herein.

3.02. Dates. Principal of and interest on the Note will be payable by mail to the owner of record thereof as of the close of business on the fifteenth day of the month preceding the Payment Date, whether or not the day is a business day.

3.03. Registration. The EDA hereby appoints the Executive Director to perform the functions of registrar, transfer agent and paying agent (the "Registrar"). The effect of registration and the rights and duties of the EDA and the Registrar with respect thereto will be as follows:

(a) Register. The Registrar will keep at his office a bond register in which the Registrar will provide for the registration of ownership of the Note and the registration of transfers and exchanges of the Note.

(b) Transfer of Note. Upon surrender for transfer of the Note duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form reasonably satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar will authenticate and deliver, in the name of the designated transferee or transferees, a new Note of a like aggregate principal amount and maturity, as requested by the transferor. Notwithstanding the foregoing, the Note will not be transferred to any person other than an affiliate, or other related entity, of the Owner unless the EDA has been provided with an investment letter in a form substantially similar to the investment letter submitted by the Owner or a certificate of the transferor, in a form satisfactory to the EDA, that the transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws. The Registrar may close the books for registration of any transfer after the fifteenth day of the month preceding each Payment Date and until the Payment Date.

(c) Cancellation. The Note surrendered upon any transfer will be promptly cancelled by the Registrar and thereafter disposed of as directed by the EDA.

(d) Improper or Unauthorized Transfer. When the Note is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until he is satisfied that the endorsement on the Note or separate instrument of transfer is legally authorized. The Registrar will incur no liability for his refusal, in good faith, to make transfers which he, in his judgment, deems improper or unauthorized.

(e) Persons Deemed Owners. The EDA and the Registrar may treat the person in whose name the Note is at any time registered in the bond register as the absolute owner of the Note, whether the Note is overdue or not, for the purpose of receiving payment of, or on account of, the principal of the Note and for all other purposes, and all the payments so made to any registered owner or upon the owner's order will be valid and effectual to satisfy and discharge the liability of the EDA upon the Note to the extent of the sum or sums so paid.

(f) Taxes, Fees and Charges. For every transfer or exchange of the Note, the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee, or other governmental charge required to be paid with respect to the transfer or exchange.

(g) Mutilated, Lost, Stolen or Destroyed Note. In case the Note becomes mutilated or is lost, stolen, or destroyed, the Registrar will deliver a new Note of like amount, maturity dates and tenor in exchange and substitution for and upon cancellation of the mutilated Note or in lieu of and in substitution for the Note lost, stolen, or destroyed, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case the Note lost, stolen, or destroyed, upon filing with the Registrar of evidence satisfactory to it that the Note was lost, stolen, or destroyed, and of the ownership thereof, and upon furnishing to the Registrar of an appropriate bond or indemnity in form, substance, and amount satisfactory to it, in which both the EDA and the Registrar will be named as obligees. The Note so surrendered to the Registrar will be cancelled by him and evidence of the cancellation will be given to the EDA. If the mutilated, lost, stolen, or destroyed Note has already matured or been called for redemption in accordance with its terms, it will not be necessary to issue a new Note prior to payment.

3.04. Preparation and Delivery. The Note will be prepared under the direction of the Executive Director and will be executed on behalf of the EDA by the signatures of its President and Executive Director. In case any officer whose signature appears on the Note ceases to be the officer before the delivery of the Note, the signature will nevertheless be valid and sufficient for all purposes, the same as if the officer had remained in office until delivery. When the Note has been so executed, it will be delivered by the EDA to the Owner following the delivery of the necessary items delineated in Section 3.3 of the Agreement.

Section 4. Security Provisions.

4.01. Pledge. The EDA agrees to pay the principal of and interest on the Note from Available Tax Increment as defined in the Note. Available Tax Increment will be applied to payment of the principal of and interest on the Note in accordance with the terms of the form of Note set forth in Section 3 of this resolution.

4.02. Bond Fund. Until the date the Note is no longer outstanding and no principal thereof or interest thereon (to the extent required to be paid pursuant to this resolution) remains unpaid, the EDA will maintain a separate and special “Bond Fund” to be used for no purpose other than the payment of the principal of and interest on the Note. The EDA irrevocably agrees to appropriate to the Bond Fund in each year Available Tax Increment. Any Available Tax Increment remaining in the Bond Fund will be transferred to the EDA’s account for the TIF District upon the payment of all principal and interest to be paid with respect to the Note.

Section 5. Certification of Proceedings.

5.01. Certification of Proceedings. The officers of the EDA are hereby authorized and directed to prepare and furnish to the Owner of the Note certified copies of all proceedings and records of the EDA, and the other affidavits, certificates, and information as may be required to show the facts relating to the legality and marketability of the Note as the same appear from the books and records under their custody and control or as otherwise known to them, and all the certified copies, certificates, and affidavits, including any heretofore furnished, will be deemed representations of the EDA as to the facts recited therein.

Section 6. Effective Date. This resolution will be effective upon execution by the President and Executive Director following authorization by the board of commissioners of the EDA.

Adopted by the board of commissioners of the South St. Paul Economic Development Authority, this ____ day of _____, 202__.

President

Executive Director

**EXHIBIT C TO
AGREEMENT**

FORM OF INVESTMENT LETTER

To the South St. Paul Economic Development Authority (the “EDA”)
Attention: Executive Director

Dated: _____, 202__

Re: \$2,500,000 Taxable Tax Increment Revenue Note, Series 202__ (The Backyards-Grand Avenue Gateway Tax Increment Financing District)

The undersigned, as Purchaser of \$2,500,000 in principal amount of the above-captioned Taxable Tax Increment Revenue Note, Series 202__ (The Backyards-Grand Avenue Gateway Project) (the “Note”), approved by the Board of Commissioners of the South St. Paul Economic Development Authority on _____, 202__, hereby represents to you and to Kennedy & Graven, Chartered, Minneapolis, Minnesota, as legal counsel to the EDA, as follows:

1. We understand and acknowledge that the Note is delivered to the Purchaser on this date pursuant to the Contract for Private Development (Phase II) by and between the EDA and the Purchaser dated _____, 2021 (the “Agreement”).

2. The Note is payable as to principal and interest solely from Available Tax Increment from the Phase II Minimum Improvements on Lot 2 within the EDA’s Grand Avenue Gateway Tax Increment Financing District, subject to the limitations contained in the Note and the Agreement.

3. We have sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the above-stated Note.

4. We acknowledge that no offering statement, prospectus, offering circular or other comprehensive offering document or disclosure containing material information with respect to the EDA and the Note has been issued or prepared by the EDA, and that, in due diligence, we have made our own inquiry and analysis with respect to the EDA, the Note and the security therefor, and other material factors affecting the security and payment of the Note.

5. We acknowledge that we have either been supplied with or have access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and we have had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the EDA, the Note and the security therefor, and that as reasonable investors we have been able to make our decision to purchase the above-stated Note.

