



City of South St. Paul
COUNCIL AGENDA – SPECIAL MEETING

Monday, August 28, 2023

6:45 p.m.

Meeting Location: Training Room

1. CALL TO ORDER:

2. ROLL CALL:

3. AGENDA:

A. Approval of Agenda

Action – Motion to Approve

Action – Motion to Approve as Amended

4. GENERAL BUSINESS:

A. Beard Group – The Yards

i. First Amendment to Development Agreement

ii. First Amendment to Escrow Agreement

iii. First Amendment to Sidewalk Easement

5. ADJOURNMENT:



AGENDA ITEM: Beard Group – The Yards

ACTIONS TO BE CONSIDERED:

Motion to Approve First Amendment to Development Agreement.

Motion to Approve First Amendment to Escrow Agreement.

Motion to Approve First Amendment to Sidewalk Easement.

OVERVIEW:

In December 2020, the EDA (and City) approved a Development Agreement with entities affiliated with the Beard Group, the developer of the Yards and Backyards Apartments. The Developer has been in discussions with Staff about completing the streetscape improvements along Concord Exchange, which they were required to do according to the definition of “Minimum Improvements” in their Development Agreement. Beard and the City worked closely through the design and planning process for these streetscape improvements over the course of the past two years, but ultimately the developer struggled to get competitive bids and effectively manage that component of the project. Beard has requested, and staff supports, the forfeit of their escrow for Streetscape on this project (\$625,000) and to have the City do the work as part of the Streetscape Project identified in our 2024 Capital Improvement Plan. The Amendment to the Development Agreement and Escrow Agreement, as presented, eliminates the developer’s obligation to complete the portion of the streetscape that is not immediately adjacent to their property, as well as the financial escrow related to streetscape work. These agreements require both EDA and City Council approval.

In addition to modifying the Development Agreement and Escrow Agreement, Beard has finalized its Plat for the Yards and the Backyards and it was discovered that the sidewalk easement legal description needed to be modified. The attached proposed amendment corrects the legal description for the sidewalk to clear up any remaining title issues.

FUNDING SOURCES AND OTHER FISCAL CONSIDERATIONS:

The Developer has agreed to release the \$625,000 escrow to the City for the Concord Exchange Streetscape. The remaining escrow per the amendment (\$320,350) is held in escrow until the Phase II improvements to Concord Exchange – namely sidewalk, angle parking, curb – are complete.

ATTACHMENTS:

First Amendment to Development Agreement
First Amendment to Escrow Agreement
First Amendment to Sidewalk Easement

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BY AND BETWEEN
SOUTH ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY AND THE CITY OF
SOUT ST. PAUL AND SSP QOZB LLC, SSP SPE I LLC AND SSP SPE II LLC**

THIS FIRST AMENDMENT (this “Amendment”) made effective as of _____, 2023, by and among the South St. Paul Economic Development Authority, a public body corporate and politic under the laws of Minnesota (“EDA”), the City of South St. Paul, a municipal corporation (“City”), and SSP QOZB LLC, a Minnesota limited liability company (“Developer”), SSP SPE I LLC (“Phase I Owner”), and SSP SPE II LLC, a Minnesota limited liability company (“Phase II Owner”).

WITNESSETH:

WHEREAS, the Authority, City, Developer, Phase I Owner and Phase II Owner (collectively, the “Parties”) entered into that certain Development Agreement, dated March 22, 2021 (the “Development Agreement”), which is evidenced by a Memorandum of Development Agreement recorded in the records of the Dakota County Recorder and Registrar of Titles on April 30, 2021, as Documents Nos. 3459245 (abstract) and 842623 (Torrens);

WHEREAS, the Parties desire to amend certain terms and conditions of the Development Agreement;

NOW, THEREFORE, in consideration of the covenants and the mutual obligations contained herein, the Parties hereby covenant and agree that the following sections of the Development Agreement are hereby amended and revised as follows:

Section 1.1. Definitions. The following definitions in Section 1 of the Development Agreement are hereby deleted in their entirety and replaced as follows:

“Minimum Improvements” means the improvements depicted on the plan sets submitted to the City as of February 24, 2021, as amended by the Building Permit Set dated October 27, 2021, but excluding the Deleted Phase II Public Improvements .

“Phase II” or “Phase II Minimum Improvements” means the improvements described in the Building Permit Set dated October 27, 2021, but excluding the Deleted Phase II Public Improvements attached hereto as Exhibit L.

Section 1.2. Definitions. The following definition in Section 1 of the Development Agreement is hereby added:

“Deleted Phase II Public Improvements” means those Phase II Minimum Improvements being removed from the Phase II Public Improvements and are depicted in the area outlined on Exhibit L, attached hereto and incorporated herein.

Section 1.3 Amendments.

A. Section 1(Y) of the Development Agreement is hereby deleted in its entirety and replaced as follows:

“Minimum Improvements” means the improvements depicted on the plan sets submitted to the City as of February 24, 2021, as may be amended, to be described by reference on attached Exhibit D, and shall specifically apply to the applicable Phase:

- (1) Phase I Minimum Improvements; and
- (2) Phase II Minimum Improvements; and
- (3) Construction of public parking on the west side of Concord Exchange (Phase I); and
- (4) Construction and installation of the streetscape improvements included in the Phase II Minimum Improvements, excluding the Deleted Phase II Public Improvements. City assumes any and all responsibility, if any, to complete the Deleted Phase II Public Improvements and any additional streetscape improvements not included in the Phase II Minimum Improvements. The Parties agree that Developer and Phase II Owner are hereby released from all obligations related to the Deleted Phase II Public Improvements.
- (5) Exhibit D of the Development Agreement and any references thereto and references to the Minimum Improvements or Phase II Minimum Improvements are hereby amended to exclude the Deleted Phase II Public Improvements.
- (6) Exhibit I of the Development Agreement is deleted and replaced by in its entirety by the Amended Exhibit I attached hereto.

Section 1.3. Ratification. Except as specifically amended herein, all terms and conditions of the Development Agreement and Escrow Agreement shall remain in full force and effect.

[Signature Pages Follow]

IN AGREEMENT, the parties hereto have hereunto set their hands as of the date hereinbefore first written.

**SOUTH ST. PAUL ECONOMIC
DEVELOPMENT AUTHORITY**

By _____
James P. Francis
Its President

By _____
Ryan Garcia
Its Executive Director

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, 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 organized and existing under the Constitution and laws of Minnesota, on behalf of the EDA.

Notary Public

CITY OF SOUTH ST. PAUL

By _____
James P. Francis
Its Mayor

By _____
Deanna Werner
Its City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this ___ day of _____, 2023, before me a Notary Public within and for said County, personally appeared James P. Francis and Deanna Werner, to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of South St. Paul, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipality..

Notary Public

SSP QOZB LLC

**B SQUARED MANAGEMENT LLC,
Its Manager**

By: _____
Benjamin H. Beard
Its Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Benjamin H. Beard, Vice President of B Squared Management LLC, a Minnesota limited liability company, the Manager of SSP QOZB LLC, a Minnesota limited liability company, on behalf of the limited liability company.

Notary Public

SSP SPE I LLC

By: _____
Benjamin H. Beard
Its Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Benjamin H. Beard, the Vice President of SSP SPE I LLC, a Minnesota limited liability company, on behalf of the limited liability company.

Notary Public

SSP SPE II LLC

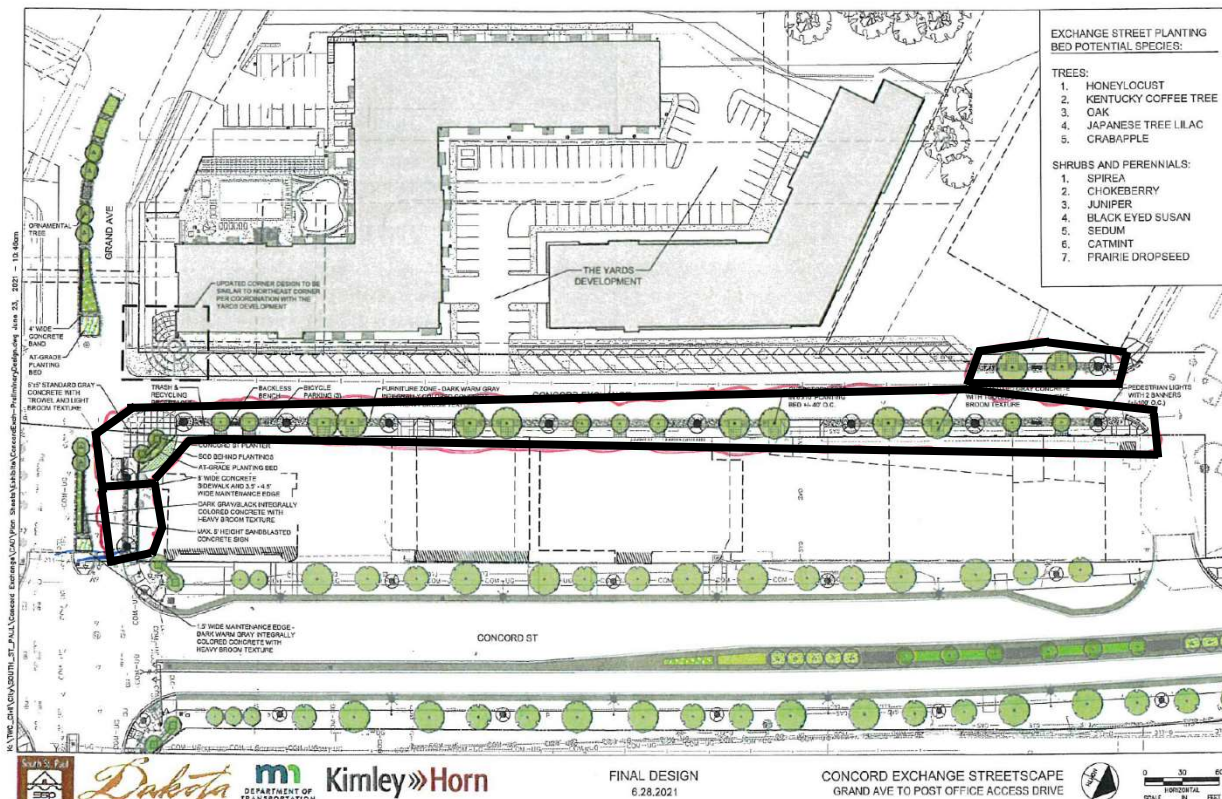
By: _____
Benjamin H. Beard
Its Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Benjamin H. Beard, the Vice President of SSP SPE II LLC, a Minnesota limited liability company, on behalf of the limited liability company.

Notary Public

EXHIBIT L DELETED PHASE II PUBLIC IMPROVEMENTS



AMENDED EXHIBIT I
DEVELOPER FEES PHASE II

CASH REQUIREMENTS

City Fees	Qty	Unit Cost	Total
Water/Sewer Connection Charge Fee (Residential)	109 units	\$2,485	\$270,865
Total Fees			\$270,865

PUBLIC SITE IMPROVEMENTS
LOC OR CASH ESCROW

Public Site Improvement Escrow	Estimated Construction Cost
Concord Exchange	\$256,310
x 125%	
Total Site Improvement Escrow:	\$320,350

**FIRST AMENDMENT TO
PHASE II IMPROVEMENTS ESCROW AGREEMENT**

THIS FIRST AMENDMENT TO PHASE II IMPROVEMENTS ESCROW AGREEMENT (the “First Amendment”) made and entered into as of _____, 2023, by and among the City of South St. Paul, a municipal corporation (“City”), SSP QOZB LLC, a Minnesota limited liability company (“QOZB”), SSP SPE II LLC, a Minnesota limited liability company (“Phase II Owner”) (QOZB and the Phase II Owner together referred to as the “Developer”), and Guaranty Commercial Title, Inc., a Minnesota corporation (“Escrow Agent”).

RECITALS

WHEREAS, City and Developer entered into that certain Development Agreement, dated March 22, 2021 (the “Development Agreement”). Pursuant to the Development Agreement, the Developer has agreed to escrow certain Developer Fees and Public Site Improvement Costs (collectively, the “Improvements”) pursuant to Exhibit I of the Development Agreement in the amount of \$945,350 (the “Escrow Funds”) with the Escrow Agent to ensure the completion of the Improvements.

WHEREAS, the City and Developer have removed a portion of the Improvements and have agreed to reduce the escrow accordingly.

NOW, THEREFORE, in consideration of the covenants hereinafter set forth, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. The escrow amount is hereby reduced to reflect the amended amount on Amended Exhibit I to the Development Agreement, which is \$320,350.
2. Ratification. Except as specifically amended herein, all terms and conditions of the Escrow Agreement shall remain in full force and effect.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY:

City of South St. Paul

By _____
James P. Francis
Its Mayor

By _____
Deanna Werner
Its City Clerk

DEVELOPER:

SSP QOZB LLC

By B Squared Management LLC, a
Minnesota limited liability company
Its Manager

By _____
Benjamin H. Beard
Its: Vice President

SSP SPE II LLC, a Minnesota limited liability
company

By B Squared Management LLC, a
Minnesota limited liability company
Its Manager

By _____
Benjamin H. Beard
Its: Vice President

ESCROW AGENT:

Guaranty Commercial Title, Inc.

By _____
Wendy Ethen

Its: _____

**FIRST AMENDMENT
TO
PERMANENT SIDEWALK EASEMENT**

THIS FIRST AMENDMENT TO PERMANENT SIDEWALK EASEMENT is made effective as of _____, 2023, by and among SSP SPE I LLC, a Minnesota limited liability company (“SPE I”), and SSP SPE II LLC, a Minnesota limited liability company (“SPE II”, together with SPE I, are collectively the “Landowners”) and the City of South St. Paul, a Minnesota municipal corporation (“City”).

PROPERTY DESCRIPTION

SPE I owns real property legally described as Lot 1, Block 1, THE YARDS, according to the recorded plat thereof, Dakota County, Minnesota (“Lot 1”).

SPE II owns real property legally described as Lot 2, Block 1, THE YARDS, according to the recorded plat thereof, Dakota County, Minnesota (“Lot 2”).

Landowners and the City entered into that certain Permanent Sidewalk Easement, dated February 2, 2022, recorded on February 10, 2022, in the office of the Dakota County Recorder as Document No. 3523941, and in the office of the Dakota County Registrar of Titles as Document No. 859143, encumbering title to the Landowners’ respective properties, which have been platted into Lot 1 and Lot 2, for the benefit of the City (the “Easement”).

The parties agree to amend the Easement to amend and restate the definition of Permanent Easement Area and replace Exhibit B on the Easement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree to amend the Easement as follows:

1. Amendment. The parties agree to amend the Easement to amend and restate the definition of Permanent Easement Area and replace Exhibit B on the Easement with the following legal description:

The most easterly 2.50 feet of Lots 1 and 2, Block 1, THE YARDS, according to the recorded plat thereof, Dakota County, Minnesota, as measured at right angles to the most easterly lines of said Lots 1 and 2 (“Amended Permanent Easement Area”).

2. Clarification. Exhibit C of the Easement depicts the general location of the City’s permanent sidewalk in areas either dedicated to the public by the Landowners in THE YARDS plat or granted to the City in the Easement, as amended by this amendment.

3. Ratification. Except as modified herein, all of the terms and conditions of the Easement remain unchanged and in full effect as of the date hereof.

[Signature pages follow]

IN AGREEMENT, this First Amendment is executed effective as of the date first shown above.

LANDOWNER:

SSP SPE I LLC

By: _____
Benjamin H. Beard
Its Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Benjamin H. Beard, the Vice President of SSP SPE I LLC, a Minnesota limited liability company, on behalf of said company.

Notary Public

SSP SPE II LLC

By: _____
Benjamin H. Beard
Its Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Benjamin H. Beard, the Vice President of SSP SPE II LLC, a Minnesota limited liability company, on behalf of said company.

Notary Public

CITY:
CITY OF SOUTH ST. PAUL

By: _____
James P. Francis
Mayor

By: _____
Deanna Werner
City Clerk

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

On this ___ day of _____, 2023, before me a Notary Public within and for said County, personally appeared James P. Francis and Deanna Werner, to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of South St. Paul, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipality..

Notary Public

Drafted by:
Ballard Spahr LLP (LLK)
2000 IDS Center
80 S. 8th Street
Minneapolis, MN 55402

