



SPECIAL CITY COUNCIL MEETING

City Hall Council Chambers, 298 West Washington Street
Tuesday, November 17, 2020 at 5:30 PM

AGENDA

CALL TO ORDER

RECESS TO TAX INCREMENT REINVESTMENT ZONE BOARD MEETING

1. Call to Order
- [2.](#) Consider Approval of the First Amendment to Tax Increment Reinvestment Zone No. 1
- [3.](#) Consider Approval of an Assignment of Development Agreement between STX Washington Partners, LLC, the City of Stephenville, Texas, and the Board of Directors for Tax Increment Reinvestment Zone No. 1
4. Adjourn

REGULAR AGENDA

- [5.](#) Consider Approval of the First Amendment to Tax Increment Reinvestment Zone No. 1
- [6.](#) Consider Approval of an Assignment of Development Agreement between STX Washington Partners, LLC, the City of Stephenville, Texas, and the Board of Directors for Tax Increment Reinvestment Zone No. 1

ADJOURN

Notice is hereby given that members of the Stephenville City Council may participate in this meeting via teleconference or videoconference as allowed by Governor's Order due to the COVID-19 pandemic. As allowed by this Order, a quorum may not be present in a physical location.

Pursuant to Section 418.108(g) of the Texas Government Code, a Declaration of Local Disaster issued on April 22, 2020, and in the interest of public health, the city has exercised its right to limit ingress and egress in public buildings. As such, the public will be allowed into city facilities to attend the meeting on a limited basis.

The meeting is available for viewing via livestream on the City's Facebook Page (City of Stephenville – City Hall).

In accordance with the Americans with Disabilities Act, persons who need accommodation to attend or participate in this meeting should contact City Hall at 254-918-1287 within 48 hours prior to the meeting to request such assistance.

**FIRST AMENDMENT TO
TAX INCREMENT FINANCING REINVESTMENT
ZONE REIMBURSEMENT AGREEMENT**

THIS FIRST AMENDMENT TO TAX INCREMENT FINANCING REINVESTMENT ZONE REIMBURSEMENT AGREEMENT (this “First Amendment”) is entered into as of the ____ day of November, 2020, by and between **REINVESTMENT ZONE NUMBER ONE, CITY OF STEPHENVILLE, TEXAS, CITY OF STEPHENVILLE**, (hereinafter referred to as the “TIRZ #1”), a tax increment reinvestment zone created by the **CITY OF STEPHENVILLE**, a Texas home-rule municipality (hereinafter referred to as the “City”) pursuant to Chapter 311 of the Texas Tax Code, as amended (also referred to as the “Act”), acting by and through its governing body, the Board of Directors (hereinafter referred to as the “Board”) and **STX WASHINGTON PARTNERS, LLC**, a Texas limited liability company (hereinafter referred to as the “Developer”) (each party to this First Amendment being individually a “Party” and collectively the “Parties”).

WITNESSETH THAT:

WHEREAS, the Parties entered into that certain Tax Increment Financing Reinvestment Zone Reimbursement Agreement dated as of November 22, 2019 (the “Reimbursement Agreement”) with respect to Developer’s acquisition and development of the Project within the boundaries of TIRZ #1 (all as more particularly described in the Reimbursement Agreement);

WHEREAS, due to the COVID-19 pandemic and other matters beyond the reasonable control of the Parties, the acquisition and development of the Project has been delayed and the Parties desire to amend the Reimbursement Agreement to account for said delays and restate certain dates and other provisions as herein provided;

NOW THEREFORE, for and in consideration of the premises, the sum of Ten and No/100 Dollars (\$10.00), the mutual covenants contained herein, and for other good and valuable considerations, the receipt, adequacy, and sufficiency of which is hereby acknowledged, the parties agree to amend and modify the Reimbursement Agreement as follows:

1. Capitalized terms used in this First Amendment which are not otherwise defined herein shall have the same meaning ascribed to such capitalized terms in the Reimbursement Agreement.

2. Effective as of the date hereof, the third sentence of Section 4(a) of the Reimbursement Agreement is deleted in its entirety and the following substituted in lieu thereof:

“Subject to force majeure, Developer shall commence construction of the Qualified Expenditures by January 1, 2021.”

3. Effective as of the date hereof, Section 4(e) of the Reimbursement Agreement is deleted in its entirety and the following substituted in lieu thereof:

“(e) **Completion of Construction.** Subject to force majeure and any tenant-caused delays, Developer covenants and agrees to complete construction of the Minimum SF

Building Improvements within the Project, which is constructed in conformity with the City's Code of Ordinances, by March 1, 2022."

4. Effective as of the date hereof, Section 8(i) of the Reimbursement Agreement is amended to add "COVID-19, or another epidemic, pandemic, plague, outbreak of infectious disease, or any other public health crisis" to the definition of Force Majeure.

5. Effective as of the date hereof, Section 8(o) of the Reimbursement Agreement is deleted in its entirety and the following substituted in lieu thereof:

"(o) Acquisition Contingency. The Parties acknowledge and agree that this Agreement is contingent in all respects upon Developer's successful acquisition of the Project from the current fee owner(s). In the event Developer fails to acquire the Project on or before January 1, 2021, either party shall have the right to terminate this Agreement upon written notice to the other Party whereupon the Parties shall have no further rights or obligations hereunder."

6 Except as modified by this First Amendment, the parties hereby reaffirm each and every provision, term, covenant, agreement and condition of the Reimbursement Agreement. In the event of any conflict between the terms of the Reimbursement Agreement and the terms of this First Amendment, the terms of this First Amendment shall control.

7. This First Amendment may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same instrument.

[signatures on following 2 pages]

THE PARTIES ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS FIRST AMENDMENT, AND THE PARTIES AGREE TO ITS TERMS. THIS AGREEMENT IS EFFECTIVE AS OF THE EFFECTIVE DATE AS DEFINED HEREIN.

CITY:

CITY OF STEPHENVILLE, TEXAS,
a Texas home-rule municipality

By: _____
Doug Svien, Mayor

Date: _____

ATTEST:

Staci L. King, City Secretary

Reviewed by Allen L. Barnes,
City Manager

Approved as to form and legality by
Randy Thomas, City Attorney

BOARD:

**BOARD OF DIRECTORS, REINVESTMENT Z
ONE NUMBER ONE,
CITY OF STEPHENVILLE, TEXAS**

By: _____
Chairperson

Date: _____

DEVELOPER:

STX WASHINGTON PARTNERS, LLC,
a Texas limited liability company,

By: _____
Name: Michael E. Robbe
Title: Manager
Date: _____

ASSIGNMENT OF DEVELOPMENT AGREEMENT

THIS ASSIGNMENT OF DEVELOPMENT AGREEMENT (this "Assignment") dated December __, 2020, is made by STX WASHINGTON PARTNERS, LLC, a Texas limited liability company ("Assignor"), whose address for purposes of notice is 1111 Metropolitan Ave., Suite 700, Charlotte, North Carolina 28204, in favor of PROSPERITY BANK, a Texas banking association (as successor-by-merger to LegacyTexas Bank, a Texas state bank), whose address for purposes of notice is 5851 Legacy Circle, 12th Floor, Plano, Texas 75024, Attention: Scott Cortez, its successors and assigns ("Assignee"), and is executed in connection with that certain Construction Loan Agreement dated as of December __, 2020, by and between Assignor and Assignee (the "Loan Agreement") pursuant to which the Assignee has agreed to make a construction loan (the "Loan") to Assignor subject to the terms and conditions set forth therein for the construction of a project and related improvements on the land in Erath County, Texas, described on Exhibit A attached hereto and incorporated herein by this reference (the "Premises"), including construction of approximately 149,375 rentable square foot retail project and related improvements and amenities, to be constructed, all as more particularly described in the Plans, together with any and all buildings, covered garages, air conditioning towers, open parking areas, structures and other improvements, and any and all additions, alterations, betterments or appurtenances thereto; all as more particularly described in the plans and specifications (all of which is herein called the "Project"). Assignor has agreed to construct certain Public Improvements (as defined in the Loan Agreement) which are required to be constructed in connection with the Project. Reference is hereby made to that certain Reimbursement Agreement dated November 22, 2019 (the "Development Agreement") by and between the City of Stephenville, Texas whose address for purposes of notice is _____ (the "City"), the Board of Directors, Reinvestment Zone Number One, City of Stephenville, Texas whose address for purposes of notice is _____ ("Board"), and Assignor which authorized an economic development grant from future revenues of the TIRZ #1, subject to all those limitations and superior interests outlined in the Development Agreement. All words and phrases used in this Assignment with their initial letters capitalized shall have the meaning assigned to them in the Loan Agreement, unless such words and phrases are otherwise specifically defined herein.

1. **Assignment.** As security for the performance of all obligations of Assignor to the Assignee under the Loan Documents, Assignor hereby collaterally assigns and transfers to Assignee all of Assignor's right, title and interest in the Development Agreement, including any TIRZ Reimbursement Amount (as defined in the Development Agreement) to be paid to Assignor pursuant to the Development Agreement for the development of the Project. This Assignment shall become void and of no further force or effect upon performance in full of all of Assignor's obligations under the Loan.

2. **Representations and Warranties.** Assignor represents and warrants that (a) it has not assigned or granted a security interest in the Development Agreement to any Person other than Assignee; (b) to Assignor's current actual knowledge, its interest in the Development Agreement is not subject to any claims, set offs, encumbrances or deductions; (c) as to Assignor and, to Assignor's current actual knowledge, as to the City, the Development Agreement constitutes the valid and binding obligation of the parties thereto, is enforceable in accordance with its terms and has not been amended except as disclosed to Assignee; (d) to Assignor's current, actual knowledge, it is not in default under the terms of the Development Agreement; and (e) as to Assignor and, to Assignor's current actual knowledge, as to the City, all covenants, conditions and agreements have been performed in all material respects as required by the Development Agreement by all parties thereto, except those which are not due to be performed until after the date of this Assignment.

3. **No Assumption By Assignee and Assignor's Covenants.** Neither this Assignment nor any action or actions on the part of Assignee shall constitute an assumption of any obligations on the part of Assignee under the Development Agreement, and Assignor shall continue to be liable for all obligations thereunder

place and stead of Assignor or in Assignee's name, with the same force and effect as Assignor could do if this Assignment had not been made. Assignor authorizes any third party to exclusively rely on the certificate of an officer of Assignee for the establishment of an Event of Default and hereby waives and releases any claim Assignor may have against such third party for such reliance. Assignor hereby agrees to deliver to Assignee, upon Assignee's written demand, the original and such other instruments and documents as Assignee may reasonably require in order to permit Assignee's succession to the right, title and interest of Assignor in and to the Development Agreement as provided herein. It is hereby recognized that the power of attorney herein granted is coupled with an interest and is irrevocable.

7. **Consent of The City.** By its execution hereof, the City and the Board acknowledge and consent to this Assignment, and each of the terms and conditions herein set forth. Furthermore, the City and the Board shall: (i) give written notice to Assignee of any default by Assignor under the Development Agreement at the address of Assignee set forth herein; (ii) give Assignee a reasonable opportunity to cure any such default; and (iii) upon written notice from Assignor or Assignee that an occurrence of an Event of Default has occurred and is continuing under the Loan Documents permit Assignee to succeed to the rights and interests of Assignor under the Development Agreement in accordance herewith and continue to be bound by the same if Assignee forecloses on the Project or accepts a deed-in-lieu of foreclosure.

8. **Binding Effect.** This Assignment shall be binding upon Assignor and Assignor's heirs, executors, administrators, legal representatives, successors and assigns, and shall inure to the benefit of the Assignee and its successors and assigns, including without limitation any purchaser upon foreclosure of the lien and security interests created by the deed of trust or mortgage or any other Loan Document securing payment of the Loan, or under a deed in lieu of such foreclosure and any receiver in possession of the Project. Assignee may reassign its right, title and interest in and to the Development Agreement in whole or in part, to any person or entities succeeding to Assignee's or the Assignor's interest in the Loan or the Project, in Assignee's sole discretion without any requirement for the Assignor's consent, and any such reassignment shall be valid and binding upon Assignor as fully as if Assignor had expressly approved the same.

9. **Notice.** All notices required or provided under this Assignment shall be timely copied to both the City and the Board.

10. GOVERNING LAW. THIS ASSIGNMENT SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS, EXCEPT TO THE EXTENT PREEMPTED BY FEDERAL LAW, IN WHICH CASE FEDERAL LAW SHALL CONTROL.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

NOW THEREFORE, this Assignment is hereby executed as of the date first written above.

ASSIGNOR:

STX WASHINGTON PARTNERS, LLC,
a Texas limited liability company

By: _____
Name: Michael E. Robbe
Title: Manager

ASSIGNEE:

PROSPERITY BANK,
a Texas banking association

By: _____
Name: _____
Title: _____

ACKNOWLEDGED AND CONSENTED TO,
as of this ___ day of March, 2020, by:

CITY:

CITY OF STEPHENVILLE, TEXAS

By: _____
Name: _____
Title: _____

BOARD:

BOARD OF DIRECTORS, REINVESTMENT ZONE NUMBER ONE,
CITY OF STEPHENVILLE, TEXAS

By: _____
Name: _____
Title: _____

EXHIBIT A
THE PREMISES

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NOW THEREFORE, for and in consideration of the premises, the sum of Ten and No/100 Dollars (\$10.00), the mutual covenants contained herein, and for other good and valuable considerations, the receipt, adequacy, and sufficiency of which is hereby acknowledged, the parties agree to amend and modify the Reimbursement Agreement as follows:

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CITY:

CITY OF STEPHENVILLE, TEXAS,
a Texas home-rule municipality

By: _____
Doug Svien, Mayor

Date: _____

ATTEST:

Staci L. King, City Secretary

Reviewed by Allen L. Barnes,
City Manager

Approved as to form and legality by
Randy Thomas, City Attorney

BOARD:

**BOARD OF DIRECTORS, REINVESTMENT Z
ONE NUMBER ONE,
CITY OF STEPHENVILLE, TEXAS**

By: _____
Chairperson

Date: _____

DEVELOPER:

STX WASHINGTON PARTNERS, LLC,
a Texas limited liability company,

By: _____
Name: Michael E. Robbe
Title: Manager
Date: _____

ASSIGNMENT OF DEVELOPMENT AGREEMENT

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2. **Representations and Warranties.** Assignor represents and warrants that (a) it has not assigned or granted a security interest in the Development Agreement to any Person other than Assignee; (b) to Assignor's current actual knowledge, its interest in the Development Agreement is not subject to any claims, set offs, encumbrances or deductions; (c) as to Assignor and, to Assignor's current actual knowledge, as to the City, the Development Agreement constitutes the valid and binding obligation of the parties thereto, is enforceable in accordance with its terms and has not been amended except as disclosed to Assignee; (d) to Assignor's current, actual knowledge, it is not in default under the terms of the Development Agreement; and (e) as to Assignor and, to Assignor's current actual knowledge, as to the City, all covenants, conditions and agreements have been performed in all material respects as required by the Development Agreement by all parties thereto, except those which are not due to be performed until after the date of this Assignment.

3. **No Assumption By Assignee and Assignor's Covenants.** Neither this Assignment nor any action or actions on the part of Assignee shall constitute an assumption of any obligations on the part of Assignee under the Development Agreement, and Assignor shall continue to be liable for all obligations thereunder

place and stead of Assignor or in Assignee's name, with the same force and effect as Assignor could do if this Assignment had not been made. Assignor authorizes any third party to exclusively rely on the certificate of an officer of Assignee for the establishment of an Event of Default and hereby waives and releases any claim Assignor may have against such third party for such reliance. Assignor hereby agrees to deliver to Assignee, upon Assignee's written demand, the original and such other instruments and documents as Assignee may reasonably require in order to permit Assignee's succession to the right, title and interest of Assignor in and to the Development Agreement as provided herein. It is hereby recognized that the power of attorney herein granted is coupled with an interest and is irrevocable.

7. **Consent of The City.** By its execution hereof, the City and the Board acknowledge and consent to this Assignment, and each of the terms and conditions herein set forth. Furthermore, the City and the Board shall: (i) give written notice to Assignee of any default by Assignor under the Development Agreement at the address of Assignee set forth herein; (ii) give Assignee a reasonable opportunity to cure any such default; and (iii) upon written notice from Assignor or Assignee that an occurrence of an Event of Default has occurred and is continuing under the Loan Documents permit Assignee to succeed to the rights and interests of Assignor under the Development Agreement in accordance herewith and continue to be bound by the same if Assignee forecloses on the Project or accepts a deed-in-lieu of foreclosure.

8. **Binding Effect.** This Assignment shall be binding upon Assignor and Assignor's heirs, executors, administrators, legal representatives, successors and assigns, and shall inure to the benefit of the Assignee and its successors and assigns, including without limitation any purchaser upon foreclosure of the lien and security interests created by the deed of trust or mortgage or any other Loan Document securing payment of the Loan, or under a deed in lieu of such foreclosure and any receiver in possession of the Project. Assignee may reassign its right, title and interest in and to the Development Agreement in whole or in part, to any person or entities succeeding to Assignee's or the Assignor's interest in the Loan or the Project, in Assignee's sole discretion without any requirement for the Assignor's consent, and any such reassignment shall be valid and binding upon Assignor as fully as if Assignor had expressly approved the same.

9. **Notice.** All notices required or provided under this Assignment shall be timely copied to both the City and the Board.

10. GOVERNING LAW. THIS ASSIGNMENT SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS, EXCEPT TO THE EXTENT PREEMPTED BY FEDERAL LAW, IN WHICH CASE FEDERAL LAW SHALL CONTROL.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

NOW THEREFORE, this Assignment is hereby executed as of the date first written above.

ASSIGNOR:

STX WASHINGTON PARTNERS, LLC,
a Texas limited liability company

By: _____
Name: Michael E. Robbe
Title: Manager

ASSIGNEE:

PROSPERITY BANK,
a Texas banking association

By: _____
Name: _____
Title: _____

ACKNOWLEDGED AND CONSENTED TO,
as of this ___ day of March, 2020, by:

CITY:

CITY OF STEPHENVILLE, TEXAS

By: _____
Name: _____
Title: _____

BOARD:

BOARD OF DIRECTORS, REINVESTMENT ZONE NUMBER ONE,
CITY OF STEPHENVILLE, TEXAS

By: _____
Name: _____
Title: _____

EXHIBIT A
THE PREMISES