

NOTICE OF SPECIAL JOINT MEETING

June 29, 2017

**MONTGOMERY CITY COUNCIL and
MONTGOMERY ECONOMIC DEVELOPMENT CORPORATION**

STATE OF TEXAS

AGENDA

COUNTY OF MONTGOMERY

CITY OF MONTGOMERY


NOTICE IS HEREBY GIVEN that a Special Joint Meeting of the Montgomery City Council and Montgomery Economic Development Corporation will be held on Thursday, June 29, 2017 at 6:00 p.m. at the City of Montgomery City Hall, 101 Old Plantersville Road, Montgomery, Texas for the purpose of considering the following:

CALL TO ORDER

1. Consideration and possible action regarding the Monument Agreement with the Spirit of Texas Bank.

ADJOURNMENT




Susan Hensley, City Secretary

I certify that the attached notice of meeting was posted on the bulletin board at City of Montgomery City Hall, 101 Old Plantersville Road, Montgomery, Texas, on the 26th day of June 2017 at 3:30 o'clock p.m. I further certify that the following news media was notified of this meeting as stated above: The Courier

This facility is wheelchair accessible and accessible parking spaces are available. Please contact the City Secretary's office at 936-597-6434 for further information or for special accommodations.

MONUMENT ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS MONUMENT ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is made as of June ____, 2017, by and between the CITY OF MONTGOMERY, a Texas Type-A general law municipality ("City"), MONTGOMERY ECONOMIC DEVELOPMENT CORPORATION, a Texas 4B Development Corporation (the "EDC"), MILESTONE PROPERTIES INC., a Texas corporation ("Developer") and SPIRIT OF TEXAS BANK, SSB, a Texas state savings bank ("Spirit"). City, EDC, Developer and Spirit are sometimes hereinafter referred to individually as a "Party" or collectively as the "Parties".

RECITALS:

- A. City, EDC and Developer entered into that certain Economic Development Agreement dated June 15, 2015 (the "City Agreement").
- B. Article II, Section 5 of the Agreement requires Developer to construct and maintain a City gateway monument at the corner of State Highway 105 and Lone Star Parkway.
- C. Milestone 105 Investments, Ltd., a Texas limited partnership, an affiliate of Developer ("Milestone") and Spirit have entered into an agreement pursuant to which Milestone has agreed to sell to Spirit and Spirit has agreed to purchase from Milestone that certain tract of land described on Exhibit "A" attached hereto which is located at the corner of State Highway 105 and Lone Star Parkway (the "Property").
- D. As a condition to such purchase and sale, Spirit shall assume all of Developer's obligations under Article II, Section 5 of the Agreement.
- E. City and EDC approve of such assignment and assumption.

AGREEMENTS:

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, City, EDC, Developer and Spirit agree as follows:

1. All capitalized terms used but not defined in this Agreement shall have the meanings assigned to them in the City Agreement.
2. City and EDC represent and warrant to Developer and Spirit that notwithstanding the terms of Article II, Section 5 of the Agreement, there does not exist any separate agreement between the City and Developer pertaining to a City gateway monument and that the sole agreement between the City, EDC, and Developer regarding a City gateway monument being the provisions set forth in Article II, Section 5 of the Agreement (the "Monument Agreement").
3. In the event of and effective upon the conveyance by Milestone to Spirit of the Property, then, without the need for any further action:
 - a. Developer hereby assigns to Spirit all of the rights and obligations of the Developer under the Monument Agreement.
 - b. Spirit hereby accepts the assignment of the Monument Obligations and agrees to assume and discharge, in accordance with the terms thereof, all of the Monument

Obligations and agrees to indemnify, defend (by counsel acceptable to Developer) and hold harmless Developer and Milestone from and against any and all claims, demands, actions, proceedings, costs, liabilities, damages and expenses (including reasonable attorneys' fees) arising out of or relating to Spirit's failure to perform any of the Monument Obligations or the terms and conditions of this Agreement.

c. City and EDC hereby release and discharge Developer from any and all obligations, liabilities and responsibilities for and under the Monument Obligations.

d. Spirit hereby agrees to construct and maintain the City gateway monument on the Property in accordance with drawings, plans and specifications prepared by or on behalf of Spirit, at Spirit's expense, and approved in advance in writing by City, EDC, Developer and Spirit (the "Approved Plans"). City, EDC, Developer and Spirit agree that attached hereto as Exhibit "B" is the current approved drawing of the monument.

4. City acknowledges that it has been provided sufficient evidence that Developer and Spirit are in good standing with the Secretary of State of Texas and Comptroller of Public Accounts of Texas and are not delinquent in the payment of any taxes or other assessments due the State of Texas, Montgomery County, Texas or the City of Montgomery, Texas on any property.

5. In the event a Party fails to perform any obligations under this Agreement or the Monument Obligations, any other Party shall be entitled to pursue any and all rights and remedies available at law or in equity.

6. Spirit shall not have the right to transfer or assign any rights or obligations under this Agreement or the City Agreement without Developer's prior written consent.

7. The terms, provisions, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and, subject to the terms of Paragraph 7 of this Agreement, their respective successors and assigns.

8. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

9. This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the law of the State of Texas.

10. Each person or entity executing this Agreement on behalf of City, EDC, Developer and Spirit represents to each other Party that the undersigned has the authority to execute and deliver this Agreement and that this Agreement, once executed, is the legal, valid and binding obligation of City, EDC, Developer and Spirit, respectively.

11. This Agreement contains the entire undertaking by the Parties and there are no other terms, expressed or implied, except as contained herein.

12. Should any provision of this Agreement be declared invalid by a legislative, administrative or judicial body of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect and shall be unaffected by same.

13. All notices required or permitted hereunder shall be in writing and shall be served on the Parties at the addresses set forth in this Section below. Any such notices shall be given or served (1)by depositing the same in the United States mail, postage paid, certified and addressed to the Party to be notified, with return receipt requested, (2)by overnight delivery using a nationally recognized overnight courier, (3)by personal delivery, or (4)by electronic mail addressed to the electronic mail address set forth in this Section below for the Party to be notified with a confirmation copy delivered by another method permitted under this Paragraph 14. Notice given in accordance herewith for all permitted forms of notice other than by electronic mail, shall be effective upon the earlier to occur of actual delivery to the address of the addressee or refusal of receipt by the addressee (even if such addressee refuses delivery thereof). Notice given by electronic mail in accordance herewith shall be effective upon the entrance of such electronic mail into the information processing system designated by the recipient's electronic mail address. Except for electronic mail notices as described above, no notice hereunder shall be effective if sent or delivered by electronic means. A Party's address may be changed by written notice to the other Parties; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

City: _____

EDC: _____

Developer: _____

Spirit: Spirit of Texas Bank
1836 Spirit of Texas Way
Comroe TX 77301

14. This Agreement may be amended or supplemented only by an instrument in writing executed by each of the Parties.

15. The failure by any Party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such Party's right to enforce against any other Party the same or any other such term or provision in the future.

[End of page. Next pages are signature pages.]

CITY:

CITY OF MONTGOMERY

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS §

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COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____, 2017 by _____, the _____ of the City of Montgomery, Texas, a Texas Type-A general law municipality on behalf of said municipality and in the capacity stated therein.

Notary Public, State of Texas

[Signature page to Monument Assignment and Assumption Agreement]

EDC:

MONTGOMERY ECONOMIC DEVELOPMENT CORPORATION

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS §

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COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____, 2017 by _____, the _____ of Montgomery Economic Development Corporation, a Texas 4B Development Corporation, on behalf of said corporation and in the capacity stated therein.

Notary Public, State of Texas

[Signature page to Monument Assignment and Assumption Agreement]

MILESTONE:

MILESTONE PROPERTIES, INC.

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS §

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COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____, 2017 by Jacobo Malca, the President of Milestone Properties, Inc., a Texas corporation, on behalf of said corporation and in the capacity stated therein.

Notary Public, State of Texas

[Signature page to Monument Assignment and Assumption Agreement]

SPIRIT:

SPIRIT OF TEXAS BANK, SSB

By: [Signature]
Name: Michael L. Duchan
Title: General Counsel

THE STATE OF TEXAS §
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COUNTY OF HARRIS §

This instrument was acknowledged before me on the 23rd day of June, 2017 by Michael L. Duchan, the General Counsel of Spirit of Texas Bank, SSB, a Texas state savings bank, on behalf of said bank and in the capacity stated therein.

[Signature]
Notary Public, State of Texas

~~[Signature page to Monument Assignment and Assumption Agreement]~~


EXHIBIT "A"
PROPERTY DESCRIPTION

EXHIBIT "B"
DRAWINGS