

ORDINANCE 2015-169

AN ORDINANCE OF THE CITY OF DENTON, TEXAS APPROVING A FIRST AMENDMENT TO A REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF DENTON, THE BOARD OF DIRECTORS OF THE TAX INCREMENT REINVESTMENT ZONE NUMBER TWO, CITY OF DENTON, TEXAS, AND WESTRAY GROUP, LP.; AND PROVIDING AN EFFECTIVE DATE.

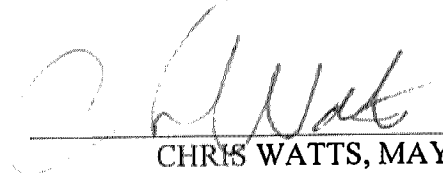
THE COUNCIL OF THE CITY OF DENTON, TEXAS HEREBY ORDAINS:

SECTION 1. The City Manager, or his designee, is hereby authorized to execute a First Amendment to a Reimbursement Agreement (the "First Amendment"), in substantially the form of the First Amendment which is attached hereto and made a part of this ordinance for all purposes.

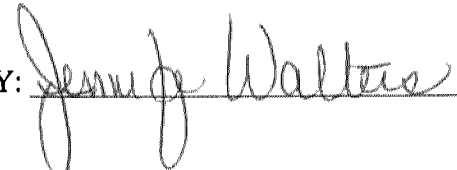
SECTION 2. The City Manager, or his designee, is authorized to exercise the City of Denton's rights and duties as set forth in the Amendment.

SECTION 3. This ordinance shall become effective immediately upon its passage and approval.

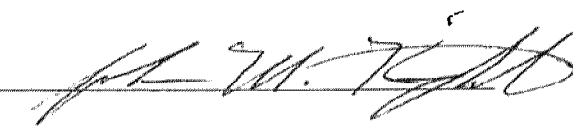
PASSED AND APPROVED this the 16 day of June, 2015.


CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM
ANITA BURGESS, CITY ATTORNEY

BY: 

**First Amendment
to
Reimbursement Agreement**

This First Amendment to the Reimbursement Agreement (hereinafter referred to as the "Amendment") is hereby entered into by and between the City of Denton, Texas, a Texas home-rule municipality (hereinafter referred to as the "City"), the Board of Directors of Reinvestment Zone Number Two, City of Denton, Texas (hereinafter referred to as the "Board"), and Westray Group, LP, a Texas limited partnership (hereinafter referred to as "Westray"), to be effective as of date the Subject Tract Completion has occurred, if the Subject Tract Completion occurs at all, as discussed below (hereinafter referred to as the "Effective Date").

ARTICLE I. RECITALS

1.1. **WHEREAS**, the City, Board, and Westray are individually referred to as a "Party" and collectively as the "Parties" of this Amendment; and

1.2. **WHEREAS**, on or about May 13, 2014, the City, the Board, and Westray executed the original Reimbursement Agreement (hereinafter referred to as the "Agreement") concerning reimbursement from the tax increment fund (hereinafter referred to as the "Tax Increment Fund") for Tax Increment Reinvestment Zone Number Two, City of Denton, Texas (hereinafter referred to as the "Zone"); and

1.3 **WHEREAS**, all capitalized terms used herein not otherwise defined herein shall have the meaning set forth in the Agreement;

1.4 **WHEREAS**, DENTON-TARRANT PRW, LLC, a Delaware limited liability company ("Purchaser") is under contract to acquire a certain tract of land within the Zone from one of the Rayzor Owners, said tract being an approximately 77.212 acre tract of land as more particularly described on Exhibit 1 attached to this Amendment (the "Subject Tract"); and

1.5. **WHEREAS**, the Purchaser of the Subject Tract desires to assume responsibility to complete the design and construction of substantially all of the Phase I Public Improvements under the Agreement (other than the Traffic Lights as discussed below) (as further detailed below, the "**Assumed Phase I Improvements**") and seek reimbursement for costs associated therewith through Economic Incentive Agreements or a separate reimbursement agreement; and

1.6 **WHEREAS**, the parties desire to facilitate the Purchaser's assumption of the Assumed Phase I Improvements by relieving Westray of its obligations to complete such Assumed Phase I Improvements under the Agreement, while maintaining Westray's right to proceed with and obtain reimbursement for the Traffic Lights portion of the existing Phase I Improvements, as well as Phase II and Phase III of the Public Improvements, all subject to the terms and conditions specified herein; and

1.7 **WHEREAS**, the parties desire to amend the Agreement to accomplish the forgoing and to authorize consent for the execution of certain Economic Incentive Agreements.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, the Board, and Westray agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Amendment and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. AMENDMENTS TO AGREEMENT.

- (a) **Phase I Improvements.** Effective as of the Effective Date, Exhibit G-1 of the Agreement describing the Phase I Public Improvements shall be deleted (except for the last paragraph relating to Additional Drainage Improvements), and in lieu thereof, the Phase I Public Improvements shall consist solely of the following: installation of traffic signals ("Traffic Signals") at the following intersections: (i) Western Boulevard and US 380 (University Drive), (ii) Western Boulevard and Jim Christal Road and (iii) Western Boulevard and Airport Road. For avoidance of doubt, the "Assumed Phase I Improvements" as used herein shall be defined to mean all Phase I Public Improvements that were originally contemplated under Exhibit G-I of the Agreement, save and except only the Traffic Signals. From and after the Effective Date, (i) the Phase I Public Improvements shall consist only of the Traffic Signals and shall not include any of the Assumed Phase I Improvements and (ii) "Public Improvements" as used throughout the Reimbursement Agreement shall refer only to the Phase I Public Improvements as amended hereby (i.e., the Traffic Signals only), the Phase II Public Improvements and the Phase III Public Improvements. Notwithstanding the above, the last paragraph of the existing Exhibit G-1 relating to Additional Drainage Improvements shall remain in full effect, and any Westray Advanced Funds for Additional Drainage Improvements shall be considered Project Costs which are reimbursable to Westray as provided therein.
- (b) **Conditions to Proceeding with Traffic Signals.** The parties acknowledge and agree that the Traffic Signals are not permitted to be constructed until such time, if ever, that the Texas Department of Transportation determines that the Traffic Signals are warranted and has issued notices to the City of Denton regarding same ("TxDot Traffic Signal Notice"), which determination has not occurred and is not expected to occur in the near future. Accordingly it is not certain if the Traffic Signals will ever be constructed, and construction of the Traffic Signals is not a condition to Westray proceeding with Phase II and/or Phase III of the Public Improvements. The second to last sentence of section 2.3.3 of the Agreement is hereby amended so that receipt by the City of Denton of the TxDot Traffic Signal Notice shall be an additional condition to Westray's obligation to proceed with the construction of Phase I Public Improvements (as re-defined to include only the Traffic Signals under this Amendment).
- (c) **Tax Increment.** Although nothing herein shall limit or impair the obligation of the City

and County to pay all Tax Increment created within the entire Zone into the overall Tax Increment Fund, it is agreed that, for purposes of disbursements under Section 2.7.4 of the Agreement, the Tax Increment Fund shall be segregated into two sub-funds, one of which shall consist only of the amounts paid into the Tax Increment Fund which are attributable to the Tax Increment created by the Subject Tract after the Effective Date hereof (the "Subject Tract Sub-fund") and the other of which shall consist of the amounts paid into the Tax Increment Fund which are attributable to the Tax Increment created by all property within the Zone other than the Subject Tract (the "Westray Sub-Fund"). Only the amounts in the Westray Sub-Fund shall be available for the disbursements contemplated under Section 2.7.4.

- (d) **City Pre-TIRZ Administrative Costs.** Only 90% of the scheduled Pre-TIRZ Administrative Costs shall be subject to reimbursement to the City out of the Westray Sub-Fund under Section 2.7.4.2 of the Agreement. The other 10% of such Pre-TIRZ Administrative Costs may only be funded out of the Subject Tract Sub-Fund.
- (e) **City Administrative Costs.** Only 90% of any ongoing Administrative Costs of the City shall be subject to reimbursement to the City out of the Westray Sub-Fund under Section 2.7.4.3 of the Agreement. The other 10% of such Administrative Costs may only be funded out of the Subject Tract Sub-Fund.
- (f) **Existing Pre-Development Costs and Project Costs.** Notwithstanding that the Phase I Public Improvements are being modified to eliminate the Assumed Phase I Improvements as provided in this Amendment, all Project Costs incurred to the Effective Date by Westray with respect to the Assumed Phase I Improvements shall nonetheless be deemed to be part of the Phase I Public Improvements Project Costs, and, subject to verification of such Project Costs under the terms of the Agreement, all such Project Costs shall remain reimbursable to Westray under Section 2.7.4.5 of the Agreement.
- (g) **Other Reimbursable Amounts to Westray.** Nothing herein shall limit or abridge Westray's rights to receive reimbursements under Sections 2.7.4.4 – 2.7.4.7 of the Agreement (including with respect to the existing Pre-Development Costs), except that disbursements for such items shall be made solely from the Westray Sub-fund.
- (h) **Conditions of Reimbursement.** Section 2.8 of the Agreement is amended by deleting the first sentence thereof.
- (i) **Conveyance of Easements.** Section 2.4 of the Agreement is hereby amended so that the Easement Areas shall, with respect to the waterline extensions, also include the easement areas under instrument recorded as Instrument Number 2015-39964, as amended by Instrument Number 2015-63357, both recorded in the Real Property Records of Denton County, Texas, as permitted in such instruments.

SECTION 3. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Amendment:

- (a) **Amendments.** This Amendment constitutes the entire understanding and agreement of the parties as to the matters set forth in this Amendment. No alteration of or amendment to this Amendment shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Amendment shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Amendment shall lie in the state district courts of Denton County, Texas.
- (c) **Assignment.** This Amendment may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This Amendment shall become a binding obligation on the signatories upon execution by all signatories hereto. Westray warrants and represents that the individual or individuals executing this Amendment on behalf of Westray has full authority to execute this Amendment and bind Westray to the same. The Board warrants and represents that the individual executing this Amendment on its behalf has full authority to execute this Amendment and bind it to the same. The City warrants and represents that the individual executing this Amendment on its behalf has full authority to execute this Amendment and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Amendment are for convenience purposes only and are not to be used to interpret or define the provisions of the Amendment.
- (f) **Consent to Economic Incentive Agreements.** Pursuant to Section 5.4 of the Agreement, Westray and Rayzor Owners consent to the City entering into a 380 Economic Development Agreement authorized by Chapter 380 of the Texas Local Government Code and/or a tax abatement agreement authorized by Chapter 312 of the Texas Tax Code and/or reimbursement agreement similar to the Agreement with Purchaser as to the Assumed Phase I Improvements, but such consent is given only if and so long as: (i) any reduction in the City Tax Increment as a result thereof shall apply only with respect to the Tax Increment created by the Subject Tract and (ii) there shall be no reduction in the City Tax Increment with respect to the balance of the property within the Zone other than the Subject Tract and (iii) there shall be no other impairment of funds that would otherwise flow into the Westray Sub-fund. In addition, pursuant to Section 5.4 of the Agreement, Westray and Rayzor Owners consent to the County entering into a 381 Economic Development Agreement authorized by Chapter 381 of the Texas Local Government Code and/or a tax abatement agreement authorized by Chapter 312 of the Texas Tax Code with the Purchaser, but such consent is given only if and so long as: (i) any reduction in the County Tax Increment as a result thereof shall apply only with respect to the Tax Increment created by the Subject Tract and (ii) there shall be no reduction in the County Tax Increment with respect to the balance of the property within

the Zone other than the Subject Tract and (iii) there shall be no other impairment of funds that would otherwise flow into the Westray Sub-fund.

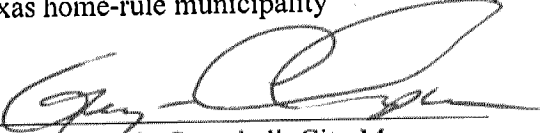
- (g) **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (h) **Agreement and Amendment.** All of the terms, conditions, and obligations of the original Agreement, and any amendments remain in full force and effect except where specifically modified by this Amendment.
- (i) **Severability.** The provisions of this Amendment are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Amendment is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Amendment shall be enforced as if the invalid provision had never been included.
- (j) **Time is of the Essence.** Time is of the essence in the performance of this Amendment.
- (k) **Contingency.** The Purchaser's completion of the acquisition of the Subject Tract from the Rayzor Owners so that Purchaser is vested with fee simple title to the entire Subject Tract shall be referred to herein as the "Subject Tract Completion". Notwithstanding anything herein to the contrary, the occurrence of the Subject Tract Completion shall be a condition precedent to the effectiveness of this Amendment. If Purchaser has not completed its acquisition of the Subject Tract so that the Subject Tract Completion has occurred on or before October 31, 2015, then this Amendment shall be null and void and shall have no effect whatsoever, and the Agreement shall remain in full force and effect without any amendment thereto and as if this Amendment had never been executed.

THIS AMENDMENT IS DATED EFFECTIVE AS OF THE EFFECTIVE DATE AS DEFINED HEREIN.

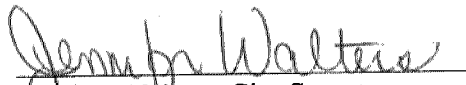
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CITY:

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

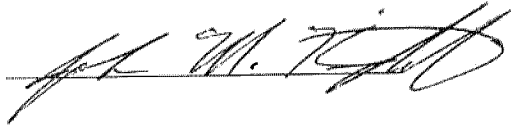
By: 
George C. Campbell, City Manager
Date Signed: 6/16/15

ATTEST:


Jennifer Walters, City Secretary

APPROVED AS TO FORM:

ANITA BURGESS, CITY ATTORNEY

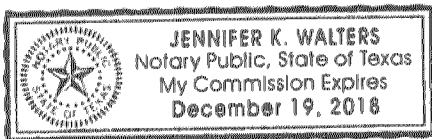
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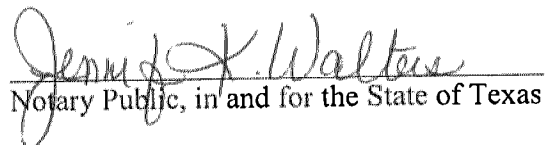
STATE OF TEXAS

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COUNTY OF DENTON

This instrument was acknowledged before me on the 16th day of June, 2015,
by George C. Campbell, City Manager of the City of Denton, Texas, a Texas home-rule
municipality, on behalf of said municipality.




Notary Public, in and for the State of Texas

BOARD:

**BOARD OF DIRECTORS
REINVESTMENT ZONE NUMBER TWO
CITY OF DENTON, TEXAS**

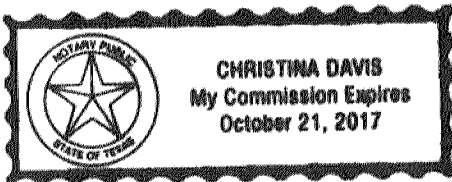
By: [Signature]
Name: Cleve Breedlove
Title: TIRZ Board Chair
Date Signed: 6/16/15

STATE OF TEXAS

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COUNTY OF DENTON

This instrument was acknowledged before me on the 16th day of June, 2015,
by Cleve Breedlove, Chair of the Board of Directors of
Reinvestment Zone Number Two, City of Denton, Texas, on behalf of said Board.




Christina Davis
Notary Public, in and for the State of Texas

WESTRAY:

WESTRAY GROUP, LP.,
A Texas limited partnership

Rayzor Denton Management, LLC,
A Texas limited liability company

By: The Rayzor Company

By: 
Name: Philip A. Baker
Title: Vice-President
Date Signed: 6-12-15

STATE OF TEXAS

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COUNTY OF DENTON

This instrument was acknowledged before me on the 15th day of June, 2015, by Philip A. Baker, Vice-President of The Rayzor Company, a Texas corporation, as the sole member of Rayzor Denton Management, LLC, a Texas limited liability company, as the sole general partner of Westray Group, LP, a Texas limited partnership, on behalf of said limited partnership.





Notary Public, in and for the State of Texas

Exhibit 1

**Legal Description and/or Depiction
of the
Subject Tract**

Being a tract of land situated in the J. Scott Survey, Abstract No. 1222, and in the Jacob Bacon Survey, Abstract No. 1541, and also in the J. Perry Survey, Abstract No. 1040, in the City of Denton, Denton County, Texas, and also being a part of Lot 1, Block B, of the CONVEYANCE PLAT WEST PARK ADDITION, an addition to the City of Denton, as recorded under Document No. 2013-0318, of the Official Records, Denton County, Texas (O.R.D.C.T.), and also being a part of Section 1, Tract Seven, as described by deed to Rayzor Investments, Ltd., as recorded in Volume 1796, Page 601, of the Deed Records, Denton County, Texas (D.R.D.C.T.), and also being a portion of that tract of land described by deed to Westpark Group, L.P., as recorded under Instrument No. 2006-40956, O.R.D.C.T., said tract being more particularly described as follows:

COMMENCING at a 5/8" iron rod with a plastic cap stamped "RPLS 1640" found for the southwesterly corner of said Lot 1, same being in the northwesterly monumented line of Western Boulevard (Variable Width Right-of-Way) (Inst. No. 2007-81316);

THENCE North 00°07'00" East, along the westerly line of said Lot 1, same being over and across said Westpark Group, L.P. tract, a distance of 643.18' to a 1/2" iron rod with a yellow plastic cap stamped "RPLS 5686" set (herein after referred to as a capped iron rod set) in the southerly line of the herein described property;

THENCE South 90°00'00" East, along the southerly line of the herein described property, and over and across said Lot 1 and Westpark Group, L.P. tract, a distance of 104.15' to a capped iron rod set at the POINT OF BEGINNING of the herein described property, said capped iron rod set being in the westerly monumented line of said Western Boulevard;

THENCE North 90°00'00" West, over and across said Lot 1, Westpark Group, L.P. and Tract Seven, a distance of 2012.18' to a capped iron rod set for the southwesterly corner of the herein described property, same being in the easterly line of a tract of land described by deed to Ed Wolski, Trustee and Virginia Fryman, as recorded in Volume 2895, Page 470, D.R.D.C.T.;

THENCE North 00°20'22" East, along said easterly line of the Wolski/Fryman tract, a distance of 1693.45' to a capped iron rod set at the northwesterly corner of the herein described property;

THENCE North 90°00'00" East, over and across said Tract Seven, a distance of 1758.98' to a capped iron rod set in the southwesterly monumented line of said Western Boulevard;

THENCE in a southeasterly and southerly direction along said Western Boulevard, the following courses and distances:

South 27°54'04" East, a distance of 98.46' to a 1/2" iron rod found;

South 22°11'25" East, a distance of 50.25' to a 1/2" iron rod with a yellow plastic cap stamped "ARTHUR SURVEYING" found (herein after referred to as a capped iron rod set);

South 27°54'04" East, a distance of 159.75' to a capped iron rod found at the beginning of a curve to the right, having a radius of 1127.50', a central angle of 09°05'03", and a chord which bears, South 23°21'32" East, a chord distance of 178.58';

Thence along said curve to the right, in a southeasterly direction, passing a capped iron rod set for the most northerly corner of said Lot 1 at an arc length of 4.48' and continuing along said curve to the right, a total arc length of 178.76' to a 1/2" iron rod found;

South 23°41'05" East, a distance of 47.34' to a capped iron rod found at the beginning of a curve to the right, having a radius of 1132.50', a central angle of 12°11'49", and a chord which bears, South 10°19'54" East, a chord distance of 240.63';

Thence along said curve to the right, in a southeasterly direction, an arc length of 241.08' to a 1/2" iron rod found for corner;

South 01°09'10" West, a distance of 288.05' to a 1/2" iron rod found for corner;

South 04°33'28" East, a distance of 50.25' to a 1/2" iron rod found for corner;

South 01°09'10" West, a distance of 450.00' to a capped iron rod found for corner;

South 06°51'48" West, a distance of 150.75' to a 1/2" iron rod found for corner;

South 01°09'10" West, a distance of 37.02' to the POINT OF BEGINNING and containing 77.212 acres of land, more or less.