

ORDINANCE NO. 2009-113

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, APPROVING AN AMENDMENT TO AN ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT DATED MARCH 23, 2004 BETWEEN THE CITY OF DENTON AND WINDJAMMER, LTD. ASSIGNING THE AGREEMENT TO NORTHSTAR BANK OF TEXAS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on March 23, 2004, the City Council adopted Ordinance No. 2004-093 which approved a Developers Agreement between the City of Denton and Windjammer to stimulate business activity in the City and promote the public interest; and

WHEREAS, it is in the public interest to authorize the City Manager to approve an amendment ("Amendment") to the Agreement, which Amendment is attached hereto and made a part of; NOW, THEREFORE;

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The recitations in the preamble are true and correct and are incorporated herewith as part of this Ordinance.

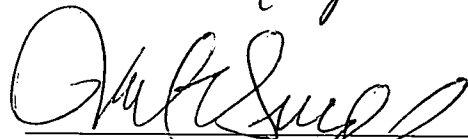
SECTION 2. The City Manager is hereby authorized to execute an Amendment to the Agreement with Windjammer, Ltd., which Amendment is attached hereto and incorporated herein by reference.

SECTION 3. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Ordinance, or application thereof to any person or circumstances is held invalid by any court of competent jurisdiction, such holding shall not effect the validity of the remaining portions of this Ordinance, and the City Council of the City of Denton, Texas hereby declares it would have enacted such remaining portions despite any invalidity.

SECTION 4. Save and except as amended hereby, all the provisions, sections, subsections, paragraphs, sentences, clauses, and phrases of Ordinance No. 2004-093 shall remain in full force and effect.

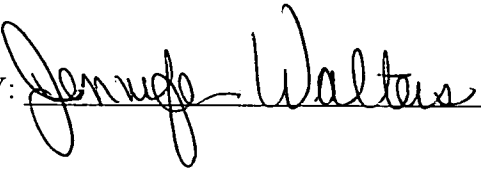
SECTION 5. This Ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the 5th day of May, 2009.

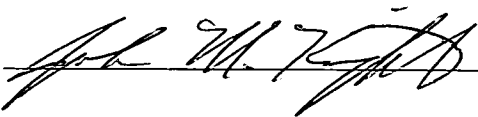


MARK A. BURROUGHS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY:  _____

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY:  _____

THE STATE OF TEXAS}
COUNTY OF DENTON}

AMENDMENT TO ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT

This Amendment to Economic Development Grant Agreement ("Amendment") is made as of the 5th day of May, 2009 between the City of Denton, a Texas municipal corporation ("City") and Windjammer Ltd., a Texas Limited Liability Company (Assignor) and NorthStar Bank of Texas, a state banking association, (Assignee).

WITNESSETH

WHEREAS, The City and Windjammer, Ltd. entered into that certain Economic Development Program Grant Agreement, dated as March 23, 2004, ("Agreement"), which Agreement relates to the Property legally described on Exhibit A attached hereto; and

WHEREAS, Windjammer, Ltd. ("Assignor") wishes to assign all of its rights, title and interest in, to and under the Agreement as the Grantee therein to NorthStar Bank of Texas ("Assignee") as security for loan proceeds; and

WHEREAS, as required by the Agreement, NorthStar Bank of Texas provided written notice of the Assignment to the City; and

WHEREAS, by virtue of the Assignment, NorthStar Bank of Texas has succeeded to all of the rights of Windjammer, Ltd under the Agreement as the "Grantee" therein; and

WHEREAS, NorthStar Bank of Texas is not responsible for the construction or maintenance of certain infrastructure improvements as defined within the Agreement. The City accepted the final submission by Windjammer, Ltd. for the Connector Road (Unicorn Lake Boulevard) contemplated in the Agreement on February 7, 2005, and the Commercial Improvements consisting of a minimum of 35,000 square feet on January 25, 2005; and

WHEREAS, the Assignor, Assignee and City agree to do all things necessary and appropriate to carry out the terms of the Agreement and to assist each other in carrying out those terms; and

WHEREAS, Assignor, Assignee and City desire to formally document the agreements outlined in the above recitals and make certain amendments under the Agreement.

NOW THEREFOR, in consideration of the covenants and agreements herein contained, Assignor, Assignee and City hereby agree as follows:

- 1. Program Grant. The Program Effective Date has not commenced as of the Date Hereof and no Program Grant Installment Payments have been made. Assignee will provide written notice the City to commence the Program Grant Installment Payments as described in the Agreement, and may direct the City to make Program Grant Installment Payments to Windjammer, Ltd. ("Assignor"). At any time under the term of the

Program, the Assignee may notify the City in writing to make subsequent Program Grant Installment Payments directly to NorthStar Bank of Texas.

2. Recitals/Defined Terms. That (a) the recitals set forth above are true and correct and are incorporated herein by this reference, and (b) that any capitalized terms utilized in this Amendment and not herein defined shall have the meanings ascribed to such terms in the Agreement.
3. Full Force and effect; Authority to Execute. Grantee and City acknowledge and agree that the Agreement, as amended hereby, is and remains in full force and effect between them. Grantee and City, respectively, further represent and warrant to each other that this Amendment has been approved by all necessary corporate or municipal authorities, as the case may be, and that the person(s) executing the agreement their behalf have full power and authority to bind them to the terms and provisions hereof.
4. Counterparts/Recording. This Amendment may be executed in multiple counterpart by the parties, each of which shall be deemed an original and which, when taken together shall constitute a single instrument. This Amendment may be filed for record with the Clerk of Denton County Texas by either party hereto.

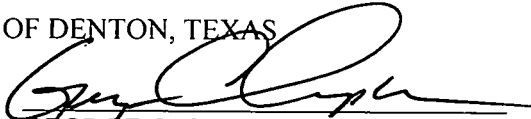
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Signature Page follows}

IN WITNESS WHEREOF, the parties have executed this Amendment to Economic Development Grant Agreement effective as of the 5th day of May, 2009.

CITY:

CITY OF DENTON, TEXAS

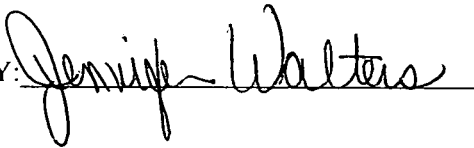
By:


GEORGE C. CAMPBELL
CITY MANAGER

ATTEST:

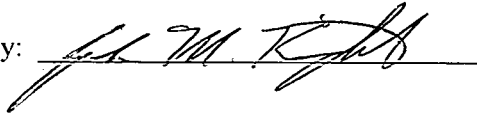
JENNIFER WALTERS, CITY SECRETARY

BY:



APPROVED AS TO LEGAL FORM:

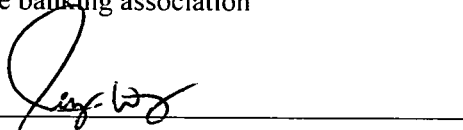
By:



ASSIGNEE:

NorthStar Bank of Texas,
a state banking association

By:



Title:

Vice President

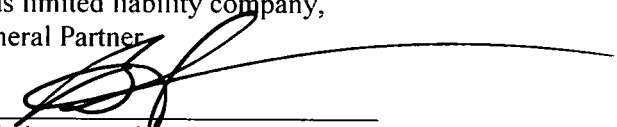
ASSIGNOR:

WINDJAMMER, LTD.,
a Texas limited partnership

By: BOB SHELTON ENTERPRISES, LTD.,
a Texas limited partnership,
its General Partner

By: BOB SHELTON ENTERPRISES
MANAGEMENT COMPANY, LLC
a Texas limited liability company,
its General Partner

By:

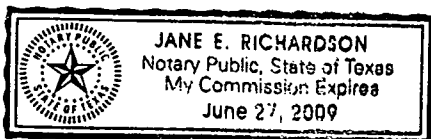

Bob Shelton, President

Acknowledgements

CITY:

State of Texas)
County of Denton)

This instrument was acknowledged before me on the 5th day of May, 2009 by George C. Campbell, the City Manager of the City of Denton, Texas, and attested to by Jennifer Walters, the City Secretary of such City, on behalf of such City.



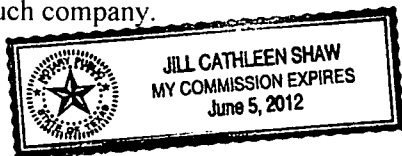
Jane E. Richardson
Notary Public in and for the State of Texas

My Commission expires: 6/27/09

Assignee:

State of Texas)
County of Denton)

This instrument was acknowledged before me on the 28 day of April, 2009 by Jeremy Fyles, the Vice President of NorthStar Bank of Texas, a state banking association, on behalf of such company.



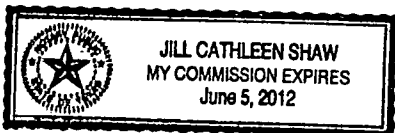
Jill Shaw
Notary Public in and for the State of Texas

My Commission expires: 6-5-12

Assignee:

State of Texas)
County of Denton)

This instrument was acknowledged before me on the 28 day of April, 2008 by Bob Shelton, as General Partner of Bob Shelton Enterprises Management company, LLC., a Texas limited liability company, on behalf of such company.



Jill Shaw
Notary Public in and for the State of Texas

My Commission expires: 6-5-12

EXHIBIT "A"
THE "PROPERTY"

133.50 acres of land, more or less, being all of Tract One described below less and except all of Tract Two described below:

Tract One:

BEING A TRACT OF LAND SITUATED IN THE M.E.P. & P.R.R. CO. SURVEY, A-950 IN DENTON COUNTY, TEXAS, AND BEING ALL OF THAT TRACT OF LAND AS DESCRIBED IN DEED TO J.B. MORROW AS RECORDED IN VOLUME 763, PAGE 850 OF THE DEED RECORDS OR DENTON COUNTY, TEXAS (DRDCT) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at a found $\frac{3}{4}$ -inch iron pipe with cap at the north corner of a tract of land to Jostene, Inc., and in the southerly line of Interstate Highway 35E (variable with right-of-way), and from said point a found $\frac{1}{2}$ -inch iron rod bears S 36° 14' 43" W, a distance of 1.25 feet;

THENCE S 38° 14' 43" W, leaving the southerly line of said Interstate Highway 35E and along the northwesterly line of said Jostene tract, a distance of 346.69 feet to a found $\frac{1}{2}$ -inch iron rod;

THENCE S 02° 27' 27" W, leaving the northwesterly line of said Jostene tract, a distance of 2,391.72 feet to a found $\frac{1}{2}$ -inch iron rod at an inner corner of a tract of land described in deed to Denton State School as recorded in Volume 435, Page 12, DRDCT;

THENCE S 89° 32' 29" W, along the most southerly north line of said Denton State School tract and generally with a fence, a distance of 1,881.30 feet to a found $\frac{1}{2}$ -inch iron rod;

THENCE N 00° 11' 16" E, leaving the most southerly north line of said Denton State School tract and generally with a fence, a distance of 1,915.59 feet to a found $\frac{1}{2}$ -inch iron rod at the southeast corner of a tract of land previously described in deed to Dimension Development Company as recorded in Volume 1284, Page 718, DRDCT;

THENCE N 00° 20' 14" E, along the most easterly line of said Dimension Development tract and generally with a fence, a distance of 1,113.33 feet to a found $\frac{3}{4}$ -inch iron pipe at the southwest corner of a save and except tract of land previously described in deed to J.B. Morrow as recorded in Volume 763, Page 850, DRDCT, from which a found $\frac{1}{2}$ -inch iron rod bears S 89° 50' 43" W, a distance of 0.29 feet;

THENCE N 89° 50' 43" E, leaving the most easterly line of said Dimension Development tract and along the south line of said save and except tract, a distance of 1,274.85 feet to a found $\frac{1}{2}$ -inch iron rod;

THENCE N 39° 48' 17" E, along the southeasterly line of said save and except tract, a distance of 309.86 feet to a fence post in the southerly line of said Interstate Highway 35E, from which a found $\frac{1}{2}$ -inch iron rod bears S 01° 58' 05" E, a distance of 0.55 feet;

THENCE S 50° 11' 43" E, leaving the southeasterly line of said save and except tract and along the southerly line of said Interstate Highway 35E, a distance of 927.27 feet to the POINT OF BEGINNING and containing 136.50 acres of land.

LESS AND EXCEPT

Tract Two:

BEING a 3.000 acre tract of land situated in the M.E.P. & P.R.R. Co. Survey, A-950, Denton County, Texas, and being a portion of that certain 136.50 acre tract of land described in deed to WINDJAMMER, LTD, and recorded in Volume 4131, Page 604 of the Deed Records of Denton County, Texas (DRDCT); said 3.000 acre tract of land being more particularly described as follows:

BEGINNING at a ¾-inch diameter iron pipe with cap found in the southwesterly right-of-way line of Interstate Highway 35, a variable width right-of-way, at the most easterly northeast corner of the 136.50 acre tract, the same being the most northerly corner of a tract of land described in deed to JOSTEN'S, INC., recorded in Volume 571, Page 39, DRDCT;

THENCE, along the common line between the 136.50 acre tract and the Josten's tract, S 37° 56' 22" W, a distance of 1.25 feet passing a ½ inch diameter iron rod found, in all a distance of 346.69 feet to a ½ inch diameter iron rod found at the southerly corner of the Josten's tract and the northwest corner of the Jestens Addition, an addition to the City of Denton, Texas as shown on plat recorded in Book H, Page 362 of the Map Records of Denton County, Texas;

THENCE, along the easterly line of the 136.50 acre tract and the westerly line of the Jostens Addition, S 02° 11' 00" W, a distance of 260.45 feet to a 5/8 inch diameter iron rod with Carter & Burgess cap set for the most southerly corner of the tract of land herein described;

THENCE N 50° 30' 07" W, a distance of 367.31 feet to a 5/8 inch diameter iron rod with Carter & Burgess cap set for corner;

THENCE N 39° 29' 53" E, a distance of 553.70 feet to a 5/8 inch diameter iron rod with Carter & Burgess cap set in the northeasterly line of the 136.50 acre tract, the same being the southwesterly line of Interstate Highway 35;

THENCE, along said common line, S 05° 30' 07" E, a distance of 200.00 feet to the POINT OF BEGINNING;

CONTAINING an area of 3.000 acres or 130,665 square feet of land, more or less.

LEAVING A BALANCE OF 133.50 ACRES, MORE OR LESS, COVERED BY THIS LEASE