

DEFERMENT AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This Agreement is entered into between the City of Corpus Christi, Texas, a Texas home rule municipality, (hereinafter "City") and Thomas Davis, (hereinafter "Developer"), and pertains to deferral of the required completion of certain required improvements prior to filing the final plat of Saxet Industrial, Block 2, Lot 1 (the "plat"), which was recommended by the Planning Commission on February 15, 2012. A copy of the plat is attached and incorporated as **Exhibit 1**.

WHEREAS, the Developer is obligated under Section 8.1.11, of the Unified Development Code to construct seventy-five percent (75%) of the required improvements, before the final plat is endorsed by the City Engineer. Detailed construction drawings must be provided by the Developer and approved by the City's Departments of Development Services and Engineering prior to the start of construction;

WHEREAS, the Developer is seeking to defer, for a period up to one year, the construction of the wastewater improvements (hereinafter the "deferred improvements"), as shown in **Exhibit 2**, and further, on March 14, 2012, the Planning Commission made a finding that there exists probable cause to delay the completion of public improvements, in accordance with 8.1.10.B of the Unified Development Code;

WHEREAS, the Developer is seeking to have the plat filed immediately with the County Clerk of Nueces County, Texas, before completion of seventy-five percent (75%) of the required improvements as required by Section 8.1.11 of the Unified Development Code;

WHEREAS, the Developer will deposit, with the City, an irrevocable letter of credit in, the amount of Forty-Nine Thousand Nine Hundred Seventy-Eight Dollars and 50/100 (\$49,978.50), representing 110% of the estimated cost of constructing the deferred improvements, all as shown on the attached cost estimate, which is attached and incorporated as **Exhibit 3**;

WHEREAS, the City Attorney and Director of Finance have approved this transaction;

WHEREAS, the Developer has completed all other subdivision requirements, park dedications, park deferment agreements, and maintenance agreements and all special covenants;

WHEREAS, the Developer is entering into this Deferment Agreement as required by Section 8.1.10.B. of the Unified Development Code;

NOW, THEREFORE, for the consideration set forth hereinafter, the City and Developer agree as follows:

1. The City shall waive the requirement that construction of the deferred improvements be completed before the final plat is endorsed by the City Engineer and filed for record with the County Clerk of Nueces County and further agrees to allow the Developer to defer construction of the deferred improvements as shown in **Exhibit 2**, for up to one (1) year from the date of this Deferment Agreement.
2. The Developer agrees to deposit Forty-Nine Thousand Nine Hundred Seventy-Eight Dollars and 50/100 (\$49,978.50), in the form of an irrevocable letter of credit issued by a bank with offices in Corpus Christi, TX, for 110% of the estimated cost of constructing the required improvements, as shown in **Exhibit 3**, which is attached to and incorporated into this Agreement, with the City of Corpus Christi on or before the plat is filed with the County Clerk, and if the deposit is not made by that time this Agreement shall become null and void. The form of the letter of credit must be approved by the City's Director of Financial Services.
3. The Developer shall construct the deferred improvements, in accordance with the City's engineering standards in effect at the time of construction.
4. Upon completion of the deferred improvements by Developer within one (1) year from the date of this Agreement, or later time as may be mutually agreed upon in writing by both parties, and upon acceptance of the deferred improvements by the City Engineer and upon compliance by the Developer with the remaining terms of the Deferment Agreement, the City Engineer shall:
 - a. Immediately release Developer from the obligations to construct the deferred improvements by mailing a Release Letter to:

Thomas Davis
P.O. Box 248
Corpus Christi, TX 78403
 - b. Return to the Developer within sixty (60) days of the completion of the construction of the deferred improvements and settlement of the construction costs, or within sixty (60) days of acceptance of the deferred improvements, whichever is later, any balance remaining of all monies received by the City from the Developer, including any interest earned.
5. If the deferred improvements have not been completed within one (1) year from the date of this Agreement, or if the Developer fails to deposit any increased security as set out below, after notice to the Developer and opportunity to cure as stated in Paragraph 9 below, the City will transfer the money received, including

any interest earned, to the appropriate City fund and the City may begin completion of the construction of the deferred improvements. If City constructs all or any part of the required improvements, the Developer shall reimburse the City for any additional cost of the deferred improvements, if the sum of money and interest prove inadequate to complete deferred improvements within thirty (30) days after City completes the required improvements and bills the Developer.

6. The City and Developer agree that if the Developer formally vacates the current plat, with approval of the Planning Commission, prior to the deadline for completion of the construction of the deferred improvements, any money received by the City from the Developer remaining on deposit, plus interest earned, will be released and immediately returned to the Developer.
7. If Developer defaults in any of its covenants or obligations under this Deferment Agreement, the City Engineer will send the Developer and the Project Engineer written notice by certified mail, return receipt requested, advising Developer of the default and giving Developer thirty (30) days from date of receipt of the letter to cure the default. If the Developer fails to cure the default after receipt of the notice and opportunity to cure, the City Engineer may transfer any monies received and interest earned to the appropriate fund of the City to complete the deferred improvements. In the event there are any monies received by the City from the Developer, plus interest earned, remaining after the City has completed construction of the deferred improvements, the excess monies, both principal and interest, shall be refunded to the Developer, within sixty (60) days of the completion of construction of the wastewater improvements and settlement of construction contracts.
8. The City reserves the right not to issue Certificates of Occupancy for this development until the deferred improvements are installed and accepted by the City Engineer.
9. The Developer agrees that the City, after notice in writing to the Developer and Project Engineer, may accelerate payment or performance or require additional financial security when the City Engineer deems itself insecure as to the prospect of payment or performance on a demonstrated reasonable basis.
10. The Developer covenants to construct the deferred improvements, and that this covenant shall be a covenant running with the land.
11. The City Engineer, at Developer's expense, shall file of record this Deferment Agreement in the records of Nueces County.
12. No party may assign this Deferment Agreement or any rights under this Agreement without the prior written approval of the other party.

13. Unless otherwise stated herein, any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery, by fax, or by certified mail, and if given personally, by fax or by certified mail, shall be deemed sufficiently given if addressed to the appropriate party at the address noted above the signature of the party. Any party may, by notice to the other in accord with the provisions of this paragraph, specify a different address or addressee for notice purposes.
14. This Agreement shall be construed under and in accord with the laws of the State of Texas and all obligations of the parties created hereunder are performable in Nueces County, Texas, and all lawsuits pursuant hereto shall be brought in Nueces County, Texas.
15. The Developer further agrees, in compliance with the City of Corpus Christi Ordinance No. 17113, to complete, as part of this Agreement, the Disclosure of Ownership interests form attached to this Agreement as **Exhibit 4**.
16. All signatories signing this Agreement warrant and guarantee that they have the authority to act on behalf of the entity represented and make this Agreement binding and enforceable by their signature.
17. This Agreement shall be executed in triplicate, all original copies of which shall be considered one instrument. *This Agreement becomes effective and is binding upon, and inures to the benefit of the City and Developer from and after the date that all original copies have been executed by all signatories.

EXECUTED IN Triplicate originals this* 4th day of April, 2012.

DEVELOPER:

Thomas Davis
PO Box 248
Corpus Christi, TX 78403

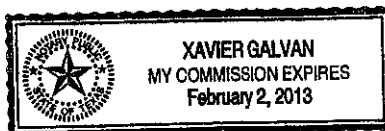
By: _____

Thomas Davis

THE STATE OF TEXAS §
COUNTY OF NUECES §

This instrument was acknowledged before me on April 4th, 2012, by
Thomas Davis

Notary Public, State of Texas



CITY OF CORPUS CHRISTI ("City")
P. O. Box 9277
Corpus Christi, Texas 78469
Telephone: (361) 880-3500
Facsimile: (361) 880-3501

ATTEST:

By: _____
Armando Chapa
City Secretary

By: _____
Toby Futrell
Interim Assistant City Manager

THE STATE OF TEXAS §
COUNTY OF NUECES §

This instrument was acknowledged before me on the ____ day of _____, 2012,
by Armando Chapa, City Secretary, for the City Of Corpus Christi, a Texas municipal
corporation, on behalf of the corporation.

Notary Public, State Of Texas

THE STATE OF TEXAS §
COUNTY OF NUECES §

This instrument was acknowledged before me on the ____ day of _____, 2012,
by Toby Futrell, Interim Assistant City Manager, for the City Of Corpus Christi, a Texas
municipal corporation, on behalf of the corporation.

Notary Public, State Of Texas

APPROVED AS TO FORM: This 10TH day of APRIL, 2012.

Carlos Valdez, City Attorney

BY:

Lilia K. Castro
Lilia K. Castro
Assistant City Attorney
For the City Attorney

Jan. 27, 2012
Job No. 23241.B2.00