

**ORDINANCE NO. 154**

**AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR OF THE CITY OF WALLIS TO SIGN AND EXECUTE FOR AND ON BEHALF OF THE CITY OF WALLIS A TAX ABATEMENT AGREEMENT WITH GOKI DEVELOPMENT CORPORATION IN A FORM AS ATTACHED HERETO AND MARKED EXHIBIT "1" AND MAKING CERTAIN FINDINGS OF FACT IN ACCORDANCE WITH THE REQUIREMENTS OF LAW.**

**WHEREAS**, heretofore previously, the City Council of the City of Wallis by Ordinance No. 153 did create a Reinvestment Zone upon a certain tract and parcel of property as described in said Ordinance on file; and

**WHEREAS**, an agreement has been reached by and between the City of Wallis and the applicant to enter into a tax abatement agreement; and

**WHEREAS**, said agreement provides for tax abatement in accordance with certain conditions, restrictions, and limitations as therein set out; and

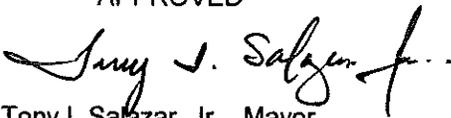
**WHEREAS**, the City Council of the City of Wallis finds and determines that the tax abatement agreement, as attached hereto and marked Exhibit "1" is in accordance with the requirements of law and the City of Wallis' duly adopted Guidelines and Criteria for Granting Tax Abatements, and therefore should be approved;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WALLIS, TEXAS:**

**Section 1.** That the Mayor for and on behalf of the City of Wallis is herewith authorized to sign and executed a tax abatement agreement with Goki Development Corporation for the pupose of providing tax abatement with certain conditions, limitations, and restrictions as set out in said Agreement and under the requirements of law as specifically set out in Chapter 312 of the Texas Local Government Code.

**PASSED AND APPROVED** at a legally held meeting of the City Council of the City of Wallis, Austin County, Texas on the 18<sup>th</sup> day of December, 2003.

APPROVED

  
Tony I. Salazar, Jr., Mayor

ATTEST

  
D.J. Sommers, City Secretary

## EXHIBIT "1"

### TAX ABATEMENT AGREEMENT FOR PROPERTY LOCATED IN THE CITY OF WALLIS REINVESTMENT ZONE NO. 1

This Tax Abatement Agreement (hereinafter referred to as "Agreement") is executed by and between the City of Wallis, Texas (hereinafter referred to as "Wallis"), acting through an Ordinance duly adopted by the City Council of Wallis, and Goki Development Corporation (hereinafter referred to as "Goki"), the owner of taxable property within the area and territory of the City of Wallis Reinvestment Zone No. 1.

#### DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

- A. Certified Appraised Value - means the value certified as of January 1, 2003 of the property within the City of Wallis Reinvestment Zone No. 1 by the Austin County Central Appraisal District as of that date.
- B. Improvements - means the buildings or portions thereof or other improvements, including fixed machinery, equipment and process units, used for commercial or industrial purposes that are erected by Goki on the property on or after January 1, 2003.
- C. Construction Phase - means a material and substantial improvement of the property which represents a separate and distinct construction operation undertaken for the purpose of erecting the improvements. The period of Construction Phase ends when Goki is able to operate in accordance with its operating plans.
- D. Abatement - means the full or partial exemption from ad valorem tax of certain property, including real and personal property, in the City of Wallis Reinvestment Zone No. 1 designated for economic development purposes.
- E. Eligible Property - means the building(s) erected on the property necessary for Goki's intended use of the property.
- F. New Eligible Property - means real property, the construction of which commences subsequent to January 1, 2003 and is completed prior to January 1, 2005. A description of the New Eligible Property is set forth in Goki's Application for Tax Abatement, which is incorporated herein by reference and made a part hereof. During the construction phase of the New Eligible Property, Goki may make such changes to the New Eligible Property as are reasonably necessary to accomplish its intended use.

- G. Ineligible Property - means land, inventories, supplies, tools, furnishings, and other forms of movable personal property which are not integral to the operation of facility.

### GUIDELINE ADOPTION

The guidelines and other criteria for granting tax abatements in a Reinvestment Zone created in the City of Wallis, Austin County Texas were adopted by Resolution R 01-03 enacted by the City Council of Wallis, Texas as finally passed and approved on the 13<sup>th</sup> day of February, 2003, and the same are incorporated herein by reference, together with any applicable amendments.

### SUBJECT PROPERTY

The City of Wallis Reinvestment Zone No. 1 is an area within the City of Wallis, Austin County, Texas, being legally described in Exhibit "A" attached hereto and incorporated herein for all purposes.

### BASE YEAR VALUE

The Austin County Central appraisal District has established the base year values for the subject property as of January 1, 2003, as reflected on the Austin County Appraisal District rendition statement released on or about May 1, 2003.

### VALUE AND TERM OF ABATEMENT

This Agreement shall be effective with the January 1<sup>st</sup>, 2005 valuation date. In each year that this Agreement is in effect, the amount of abatement shall be an amount equal to the percentage indicated below of the taxes assessed upon the increase in market value of the property resulting from construction of the improvements ( building(s) ) over the market value of tax year 2003. The value of New Eligible Property shall be abated in accordance with the following scale:

<u>Tax Year Abated</u>	<u>Percentage of Value Abated</u>
2005	75%
2006	75%
2007	75%
2008	50%
2009	25%
2010	25%

In the event that the total assessed value of the improvements subject to abatement are assessed at less than \$250,001 in tax year 2005, then the percentage and term of abatement shall be adjusted to the following:

<u>Tax Year Abated</u>	<u>Percentage of Value Abated</u>
2005	75%
2006	75%
2007	50%
2008	50%
2009	25%

In the event that the total assessed value of the improvements subject to abatement are assessed at less than \$100,001 in tax year 2005, then the percentage and term of abatement shall be adjusted to the following:

<u>Tax Year Abated</u>	<u>Percentage of Value Abated</u>
2005	75%
2006	75%
2007	50%
2008	25%

#### TAXABILITY

During the period that this tax abatement is effective, taxes shall be payable as follows:

1. The value of Ineligible Property shall be fully taxable.
2. The Certified Appraised Value of the existing Eligible Property as determined each year shall be fully taxable.
3. The full value of New Eligible Property shall be abated as set forth above under the section entitled "Value And Term Of Abatement".

#### CONTEMPLATED IMPROVEMENTS

As set forth in its Abatement Application, Goki represents that it will make the following improvement to its property located in the City of Wallis Reinvestment Zone No. 1:

Construct a new 11,375 sq. ft. building

During the construction phase, Goki may make such changes to the building as are reasonably necessary.

It is contemplated that this project will add 5 new sales clerk jobs with an annual payroll of \$90,000, and provide additional retail sales tax revenues of \$13,500 to the City of Wallis. Goki further contemplates that construction of the improvements will be completed prior to June 30, 2004. All improvements shall be completed in accordance with applicable laws, ordinances, rules or regulations.

## EVENT OF DEFAULT

During the abatement period covered by this Agreement, Wallis may declare a default hereunder by Goki if one or more of the following events occur:

1. Willful failure and neglect by the Goki or any of its agents or representatives to comply with the terms and provisions of this Agreement.
2. Failure by Goki to maintain the subject improvement(s) in good repair including but not limited to, a clean appearance(including removal of any graffiti), and in a safe and occupiable condition.
3. Failure by Goki to maintain the Reinvestment Zone premises in a clean and safe condition including but not limited to, litter free, mowed and trimmed landscaping, operational lighting, pothole free parking areas, and clean functioning signage.
4. Failure by Goki to operate the abated improvement as a retail sales facility.
5. If Goki allows its ad valorem taxes owed to Wallis or any taxing entity to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, or if Goki violates any of the terms and conditions and fails to cure during the cure period, this Agreement may be terminated and all taxes previously abated by this Agreement will be recaptured and paid within sixty (60) days of the date of termination. In the event of recapture, Wallis shall be entitled to recover interest and penalty in accordance with the requirements of law if said taxes have not been timely paid.
6. Any other act or conduct by Goki which is deemed by Wallis to be not in accord with the spirit and intent of this Agreement, or be in violation of any law or ordinance, including but not limited to Ordinances of Wallis.

Should Wallis determine that Goki is in default of this Agreement, Wallis shall notify Goki in writing of such default and shall provide a period of sixty (60) days for the cure thereof ("cure period"), and if the same is not cured by the expiration of said period as shall be determined by the City Council of Wallis, the City Council may unilaterally terminate this Agreement.

However, in the case of default for causes beyond Goki's reasonable control which cannot with due diligence be cured within such sixty (60) period, the cure period may be deemed extended if Goki shall immediately upon receipt of such notice advise Wallis of its intention to initiate all steps necessary to cure such defaults and thereafter prosecuted to completion with reasonable dispatch all steps necessary to cure such default.

## SUBSEQUENT DEFAULT

In the event the improvement(s) upon which the taxes are herein abated is completed and goes into service, but subsequently discontinues service for any reason excepting fire, explosion, or other casualty, accident or natural disaster for a one (1) year period during the term of this abatement, this Agreement shall terminate. In the event of termination, the abatement of taxes for the calendar year in which the improvement is no longer in service shall terminate, and additionally all taxes previously abated shall be fully recaptured and Goki shall pay the same to Wallis within sixty (60) days, or within fourteen (14) days when demand for payment is made.

## TERMINATION AND APPEAL

If Wallis terminates this Agreement, it shall provide Goki written notice of such termination. If Goki believes termination was improper, it may file suit in the Austin County District Courts appealing such termination within ninety (90) days after receipt of a written notice of termination from Wallis. If an appeal suit is filed, Goki shall remit to recapture to Wallis, within fifteen (15) days of filing, all taxes previously abated along with penalty and interest in accordance with the requirements of law. During the period of pendency of litigation tax abatement will be suspended, and Goki shall be liable for normal taxation of the subject property. If the final determination of appeal is in Goki's favor all recaptured taxes, interest, and penalties paid by Goki, along with taxes subject to abatement which were paid during the pendency of litigation shall be refunded to Goki within fifteen (15) days of a finding in Goki's favor, and the terms and application of this Agreement shall resume. A finding in Wallis' favor shall terminate this Agreement.

## ADMINISTRATION AND INSPECTION

This Agreement shall be administered on behalf of Wallis by the Mayor of Wallis or his designee. Goki shall allow employees or other representatives of Wallis who have been designated by the Mayor to have access to the Reinvestment Zone during the term of this Agreement to inspect the facility to determine compliance with the terms and conditions of this Agreement. All inspections shall be made only after twenty-four (24) hours prior notice and will be conducted in such a manner as not to unreasonably interfere with the construction and/or operation of the facility. A representative of Goki may accompany the inspector if Goki so desires.

Upon completion of the contemplated construction, Wallis may annually evaluate the facility to ensure compliance with the terms and provisions of this Agreement. Any possible defaults shall be reported to Goki. Additionally, Goki shall make available such documentation as Wallis may deem necessary to evaluate change in employment, payroll, sales tax, property, and inventory tax.

The Chief Appraiser of the Austin County Appraisal District shall annually determine

1. The taxes due under the terms of this abatement for property subject to this Agreement.
2. The full taxes due for the property subject to this Agreement as if no abatement was granted.

The Chief Appraiser shall record both the taxes due in accord with this abatement Agreement and what the full taxes due without any abatement would be in the appraisal records. The full taxes due figure listed in the appraisal records shall be used to compute the amount of abated taxes that are due for recapture, should recapture become necessary.

Goki shall certify annually, annual being the anniversary date of this Agreement, by letter to Wallis that the terms and conditions of this Agreement are being complied with by Goki.

Goki shall furnish the Chief Appraiser annually such information as provided for under Chapter 22 of the Texas Tax Code as may be necessary for the administration of the abatement. Such information shall also be provide to Wallis upon request when deemed necessary for Wallis' evaluation of compliance with the terms and provisions of this Agreement.

It shall be the full responsibility of Goki to annually file Comptroller of Public Accounts Form 50-116 with the Chief Appraiser's office. Such filing to take place between January 1<sup>st</sup> and April 30<sup>th</sup> of the tax year. Failure to do so can result in the company not receiving tax abatement for the subject tax year. Such failure to receive abatement does not impose upon Wallis any responsibility to grant additional abatement in lieu of abatement not received.

#### ASSIGNMENT

Goki may assign this Agreement to a new owner or lessee of the facility only with written consent of the City Council of Wallis as shall be contained in an Ordinance approving such assignment. Any assignment shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in this Agreement. Any assignment of the Agreement shall be to an entity that contemplates the same improvements to the property and the same usage as contemplated in the Application For Abatement.

#### NOTICES

Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in an envelop or wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to Goki or Wallis at the mailing address as hereinafter set out. If mailed, any notice of communication shall be deemed to be received three (3) days after the date of deposit in the United States Mail. Unless otherwise provided in this Agreement, all notices shall be delivered to Goki or Wallis at the following addresses:

To Goki Development Corporation:

Goki Development Corporation  
PO Box 158  
Fulshear, TX 77441

To Wallis:

City of Wallis  
PO Box 190  
Wallis, TX 77485

Either party may designate a different mailing address by giving the other party ten (10) days written notice thereof.

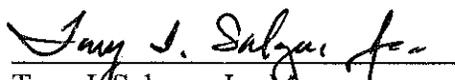
EXECUTION

Goki and Wallis jointly execute this Agreement as duly authorized in the case of Goki by action of the Board of Directors of Goki, and in the case of Wallis by formal action of the City Council of Wallis through an ordinance duly passed and approved authorizing such action.

This Agreement is intended to be executed in multiple originals with each party hereof having a duly signed copy.

SIGNED and EXECUTED by the Mayor of the City of Wallis pursuant to the authority granted to him by Ordinance No. 154 duly passed, approved and adopted by the City Council of the City of Wallis on the 18<sup>th</sup> day of December, 2003.

**CITY OF WALLIS**

  
Tony I. Salazar, Jr., Mayor

Date Dec. 18, 2003

**ATTEST:**

  
D.J. Sommers, City Secretary

SIGNED and EXECUTED by the President of Goki Development Corporation, and attested to by the Corporate Secretary, said action and signature having been specifically authorized by action of the Board of Directors of Goki Development Corporation. A copy of said corporate resolution is attached hereto, marked Exhibit "B", and incorporated herein for all purposes.

**GOKI DEVELOPMENT CORPORATION**

\_\_\_\_\_  
Winter Gordon, President

Date

Clinton King, Secretary