

RESOLUTION 2017-___

A RESOLUTION OF THE GARIBALDI CITY COUNCIL APPROVING A PERSONAL GUARANTEE BETWEEN THE CITY OF GARIBALDI AND RONALD AND JANET HALTER, AND AN AGREEMENT BETWEEN THE CITY OF GARIBALDI AND THE BANK OF THE PACIFIC FOR THE SUBORDINATION OF AN SDC AGREEMENT WITH GARIBALDI LEASING AND DEVELOPMENT

WHEREAS, the City of Garibaldi (City) has entered into an Installment Payment Agreement for Assessed Systems Development Charges (SDC Agreement) with Garibaldi Leasing and Development, Inc. (GLAD) for the amount of \$188,666, attached to this resolution as **Exhibit A**; and,

WHEREAS, GLAD has requested the City subordinate this agreement to the Bank of the Pacific, by an instrument presented to the Council as **Exhibit B**, as the principal debtor for property described as 1N 10 22 BA, Lot 1300; and,

WHEREAS, GLAD has provided evidence to the City Manager that it has invested sufficient funds in the project, including the land, sufficient to have an equity upon completion of the project sufficient to provide a coverage ratio in excess of three times the principal amount of the SDC Agreement; and,

WHEREAS, Ronald L. and Janet L. Halter (the Halter's), principal members of GLAD, have offered to guarantee payment of the SDC Agreement to the City as evidenced by a Personal Guarantee Agreement attached to this resolution as **Exhibit C**, in consideration of the City's subordination to the Bank of the Pacific; and,

WHEREAS, the City Manager has reviewed the personal financial statements of the Halter's and has determined that they possess unrestricted liquid assets that provide a coverage ratio well in excess of three times the principal amount of the SDC Agreement and would be able to pay the entire balance of the current debt to the City on demand; and,

WHEREAS, the Garibaldi City Council finds that subordination of GLAD's SDC Agreement in conjunction with the Personal Guarantee Agreement between the Halter's and the City does not present a significant risk of default to the City,

NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF GARIBALDI RESOLVES AS FOLLOWS:

Section 1. The Garibaldi City Council authorizes the City Manager to execute the Subordination Agreement as presented to the council in consideration for the Personal Guarantee of the Halter's as presented to the council, and attached to this resolution.

Section 2. This Resolution shall become effective immediately upon its adoption.

PASSED BY THE COMMON COUNCIL AND APPROVED BY THE COUNCIL PRESIDENT, this 11th Day of April, 2017.

Eugene Tish, Council President

ATTEST:

John O'Leary, City Manager

Attached: *Exhibit A – Installment Payment Agreement for Assessed System Development Charges*
Exhibit B – Subordination Agreement – Bank of the Pacific
Exhibit C – Personal Guarantee Agreement – Halter's

1 -- A RESOLUTION OF THE GARIBALDI CITY COUNCIL APPROVING A PERSONAL GUARANTEE BETWEEN THE CITY OF GARIBALDI AND RONALD AND JANET HALTER, AND AN AGREEMENT BETWEEN THE CITY OF GARIBALDI AND THE BANK OF THE PACIFIC FOR THE SUBORDINATION OF AN SDC AGREEMENT WITH GARIBALDI LEASING AND DEVELOPMENT

When recorded return to:

THE BANK OF THE PACIFIC
PO BOX 1826
ABERDEEN, WA 98520

SUBORDINATION AGREEMENT

Date: **March 17, 2017**

Assessor's Tax Account No(s): **Account No. 16976 Map No: IN1022BA01300**

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

The undersigned subordinator and owner agree as follows:

1. **City of Garibaldi** referred to herein as "subordinator," is the owner and holder of an Installment Agreement dated January 12, 2017 which is recorded **January 12, 2017** under auditor's file No. **2017-000215** records of **Tillamook** County, Oregon.
2. **Bank of the Pacific**, referred to herein as "lender," is the owner and holder of a Deed of Trust, in the original principal amount not to exceed **\$2,205,400.00**, dated **February 3, 2017** executed by **Garibaldi Leasing and Development, Inc.** which is recorded under auditor's file No. 2017-001394, records of **Tillamook** County, Oregon.
3. **Garibaldi Leasing and Development, Inc.** referred to herein as "owner," is the owner of all the real property described in the Deed of Trust identified above in Paragraph 2.

4. In consideration of benefits to "subordinator" from "owner," receipt and sufficiency of which is hereby acknowledged, and to induce "lender" to advance funds under its Deed of Trust and all agreements in connection therewith, the "subordinator" does hereby unconditionally subordinate the lien of his Deed of Trust identified in Paragraph 1 above to the lien of "lender's" Deed of Trust, identified in Paragraph 2 above, and all advances or charges made or accruing there under, including any extension or renewal thereof.
5. "Subordinator" acknowledges that, prior to the execution hereof, he has had the opportunity to examine the terms of "lender's" Deed of Trust, note and agreements relating thereto, consents to and approves same, and recognizes that "lender" has no obligation to "subordinator" to advance any funds under its Deed of Trust or see to the application of "lender's" Deed of Trust funds, and any application or use of such funds for purposes other than those provided for in such Deed of Trust, note or agreements shall not defeat the subordination herein made in whole or in part.
6. It is understood by the parties hereto that "lender" would not have made the loan secured by the Deed of Trust in Paragraph 2 without this agreement.
7. This agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the lien or charge of the Deed of Trust first above mentioned to the lien or charge of the Deed of Trust in favor of "lender" above referred to and shall supersede and cancel any prior agreements as to such, or any, subordination including, but not limited to, those provisions, if any, contained in the Deed of Trust first above mentioned, which provide for the subordination of the lien or charge thereof to a Deed of Trust or Deed of Trusts to be thereafter executed.
8. The heirs, administrators, assigns and successors in interest of the "subordinator" shall be bound by this agreement. Where the word "Deed of Trust" appears herein it shall be considered as "deed of trust," and gender and number of pronouns considered to conform to undersigned.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND. IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS SUBORDINATION AGREEMENT, THE PARTIES CONSULT WITH HIS/HER/THEIR ATTORNEYS WITH RESPECT THERETO.

Dated: _____

SUBORDINATOR:

City of Garibaldi

By: _____

STATE OF: Oregon

COUNTY OF:

I acknowledge that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person(s) acknowledged that he/she signed this instrument and acknowledged it as the _____ of **City of Garibaldi** to be the free and voluntary act of such party(ies) for the uses and purposes mentioned in this instrument..

Dated: _____

Notary Public in and for the State of
Residing at
My appointment expires:

OWNER: Garibaldi Leasing and Development, Inc.

Paul A. Daniels: President, Garibaldi Leasing and Development, Inc.

STATE OF: Oregon

COUNTY OF:

I acknowledge that I know or have satisfactory evidence that **Paul A. Daniels** is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it as the **President, Garibaldi Leasing and Development, Inc.** to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: _____

Notary Public in and for the State of
Residing at
My appointment expires: