RESOLUTION 2015-01

A RESOLUTION OF THE GARIBALDI CITY COUNCIL ESTABLISHING A PAYMENT PLAN FOR SYSTEM DEVELOPMENT CHARGES AND CITY LAND USE FEES FOR JOSEPH L. TAYLOR AND REAL PROPERTY DESCRIBED AS LOT 1, BLOCK 4, WENDLINGS ADDITION, TILLAMOOK COUNTY, OREGON

WHEREAS, the owner of real property (Property) described as Lot 1, Block 4, Wendlings Park Addition, Tillamook County, Oregon, has requested an installment payment plan for System Development Charges (SDCs) required by the City of Garibaldi (City), for the development of Property; and,

WHEREAS, the Garibaldi City Council has reviewed Joseph L. Taylor's request of the council and directed the city manager to prepare an agreement for payment of SDCs conditional upon the sale of Property; and,

WHEREAS, the city manager has prepared a draft trust deed and promissory letter for this purpose attached to this resolution as ***Exhibit A***; and,

WHEREAS, the Garibaldi City Council has reviewed this agreement and determines it to be the in the best interests of the City,

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

Section 1. The City Manager and Mayor are hereby authorized to execute an agreement with Joseph L. Taylor for the purpose creating a payment plan for SDCs and land use fees, which are attached as ***Exhibit A***.

Section 2. The City Manager is directed to have the documents attached as Exhibit A reviewed by the City Attorney and revised as needed before execution.

Section 3. This resolution is effective upon passage by the Garibaldi City Council.

PASSED BY THE COMMON COUNCIL AND APPROVED BY THE MAYOR, this 16th day of March, 2015.

Hon. Suzanne McCarthy, Mayor

ATTEST:

John O'Leary, City Manager

Attached ***Exhibit A*** – Trust Deed, Promissory Letter and Request Letter from Joseph L. Taylor

INSTALLMENT PAYMENT AGREEMENT
Port of Garibaldi to City of Garibaldi

RECITALS

A. The City of Garibaldi ("City") has received an application from the Port of Garibaldi ("Owner") for commercial development of property located on Tillamook County Tax Assessors Lot 14127, on Map Number 1, N, 10, 21, AC-sup1, and also identified as Tract 24-A on the Tillamook County Surveyor Map Number B-1865 ("Property").

B. Development of the Property as proposed in the Land Use Permit Application Number GLU-2013-14, as approved on 14 August 2013, requires payment of the following System Development Charges ("SDCs") pursuant to Garibaldi Municipal Code ("GMC") §13.25 and City Council Resolution 2012-02:

Water	9,312.00
Sewer	10,532.00
Storm Water	25,561.05
Transportation	165,123.36
Total	210,528.41

C. As Owner of the Property, the Port of Garibaldi is responsible for payment of SDCs to the City in the amount of $210,528.41 as a result of proposed and permitted development of the Property.

D. The SDCs are due and payable at the time Permit No. GLU-2013-14 is issued.

E. Owner may enter into an installment payment agreement with the City pursuant to Garibaldi Municipal Code §13.25.080(D) and (E), and make payment of the SDCs in regular annual installments, upon Owner's request and consent of the Garibaldi City Council by Council Resolution.

F. Garibaldi Municipal Code requires such an installment payment agreement to be secured by property, bond, deposits, letter of credit or other security acceptable to the city recorder in order to secure payment of the outstanding amount of SDCs.

TERMS

Section 1. Obligation.

For the purpose of securing the obligation to pay SDCs in the amount of $210,528.41, Owner hereby assures and certifies that it will make funds available to the City of Garibaldi sufficient to pay such amount with accrued interest within a period of not more than two years from the date of this agreement. Owner shall provide City documentation demonstrating its ability to make installment payments over the term of this agreement. Documentation shall include a current balance sheet for Owner showing available cash balance, a copy of Owner's adopted budget for the current fiscal year, and a letter to City indicating the intended funding source for payment of SDCs to City. Owner shall certify that it will not encumber itself beyond its ability to meet the terms of this agreement. Owner shall include in its annual audit as debt the amount of SDCs due as of June 30, 2014, and shall provide a copy of the Owner's audited financial statements to the City within 180 days of the end of each fiscal year for the duration of this agreement.

Section 2. Payments.

Owner will make an initial payment of $55,000 when Permit No. GLU-2013-14 is issued to the applicant and will make a final installment payment in the amount of $155,528.41, payable on 1

September 2014. The last payment will be applied first to payment of any late charges, second to the interest on the principal as of the date of the payment, and third to the balance of the principal. Checks will constitute payment only when collected. Owner has the right to prepay this Agreement, in whole or in part, at any time with no prepayment penalties. Owner agrees to pay interest at the rate of 5% per annum on the outstanding principal. Interest shall begin to accrue 240 days after the first payment or beginning 1 May 2014.

Section 3. Acceleration.

The City may declare the principal of this Agreement, together with interest, to be immediately due and payable if the Owner neglects or refuses to pay any installment as it becomes due and payable, and such neglect or refusal continues for a period of one month. In the event of nonpayment on the date the final installment is due and payable, the City shall give not less than ten days' written notice to Owner stating that Owner is delinquent, and that if failure to make such payment continues for a period of one month, that the City may declare all principal and interest due under this Agreement to be immediately due and payable, and the City may proceed to collect all unpaid installments, plus interest, through legal action. Any forbearance or failure to exercise this right will not constitute a waiver of the City's right to exercise the right with respect to the default and any subsequent default.

Section 4. Transfer of Property.

In the event the Property is transferred or sold prior to full payment of all SDCs, Owner agrees to pay at the time of sale or transfer the outstanding principal and interest on the balance of SDCs owed. This Agreement may not be assigned except on the express consent of the City Council through Council Resolution. The City may attach such conditions to its consent as the City may determine in its sole discretion, including payment of transfer or assumption fees, and the payment of administrative and legal fees and costs incurred by the City. In the event this Agreement is assigned, this Agreement shall be binding on the successors and assigns of the Owner.

Section 5. Modification.

The terms of this Agreement may be modified, amended, or extended only upon the express approval of the Garibaldi City Council by resolution.

Section 6. Governing Law.

This Agreement is to be governed by and construed in accordance with the laws of Oregon. If any provision or clause of this Agreement is construed by a court of competent jurisdiction for Tillamook County, Oregon to be void, invalid, or unenforceable, that construction will not affect other provisions of this Agreement that can be given effect without the void, invalid, or unenforceable provision, and to this end the provisions of this Agreement are declared to be severable.

Section 7. Sole Agreement.

This Agreement contains the entire agreement of the parties with respect to the Property. No prior agreement or promise made by any party to this Agreement that is not contained herein shall be binding or valid. If this Agreement is executed by two or more persons as Owner, all of such persons shall be liable, jointly and severally, for payment of all sums and performance of all other requirements of this Agreement.

Section 8. Other Provisions

By Owner's signature, Owner waives all irregularities or defects, jurisdictional or otherwise, in regard to the obligation to pay SDCs.

The Owner acknowledges the SDCs are not subject to Section 11b, Article XI, of the Oregon Constitution and that the charge is outside the $10 limited for each $1,000 of real market value for ad valorem property tax purposes.

Port of Garibaldi

_____

_____

State of Oregon)
) SS.
County of Tillamook)

This instrument was acknowledged before me on _____

_____, 2013, By _____

_____

_____
Notary Public – State of Oregon
My commission expires _____

Accepted by the City of Garibaldi

_____

_____

State of Oregon)
) SS.
County of Tillamook)

This instrument was acknowledged before me on _____

_____, 2013, By _____

_____

_____
Notary Public – State of Oregon
My commission expires _____

After Recording Return To:
City of Garibaldi
Attn: City Manager
P.O. Box 708
Garibaldi, OR 97118

Send Tax Statement To:
Joseph L. Taylor
P.O. Box 371
Garibaldi, OR 97118

City of Garibaldi
Attn: City Manager
P.O. Box 708
Garibaldi, OR 97118

AGREEMENT
FOR
PAYMENT OF LAND USE APPLICATION FEES

CITY OF GARIBALDI ("City")

JOSEPH L. TAYLOR ("Developer")

RECITALS

1. Developer has submitted a Land Use Application for the construction of a new single family home, ("Application") pertaining to real property described as 601 First Street, Garibaldi, OR 97118, also known as "Lot 1, Block 4, WENDLINGS ADDITION, in Tillamook County, Oregon", also known as "Tillamook County Tax Assessors Map 1N 21 AA, Lot 5700", together with all buildings, improvements, and fixtures thereon (collectively hereafter the "Property"), within the City of Garibaldi, Tillamook County, Oregon, and as more particularly described in the legal description attached as Exhibit A (Property).

2. The parties acknowledge that Developer has agreed to pay all fees and costs established in Resolution No. 2008-09 as part of Developer's Application within one year of the date of this agreement. The parties agree that the City will provide a complete invoice of all costs at the time water and wastewater utility service has been made available to the subject property.

3. The parties also acknowledges that City has deemed the Developer's Land Use Application complete and has released the approved application to the Developer for the purpose of applying for a structural building permit. Developer agrees that the city will not be obligated to install water and sewer service until this

agreement has been completed and approved by the City, and then recorded in the Deeds and Records of Tillamook County, Oregon.

AGREEMENT

Based upon the above recitals, the parties agree as follows:

Section 1. Payment. Developer agrees to pay all City costs associated with processing Application, including technical and legal review and public notice costs, over the base fee amount, in a lump-sum due within one year of the date of this agreement. Said costs shall include but are not limited to City's planning, public works, engineering, administrative staff at the employee's applicable hourly rate, and including all direct costs for contracted work for professional services, including but not limited to a surveyor, appraiser, attorney, land use planner, engineer, building inspector, traffic consultant, arborist or wetlands specialist at the rate set in Resolution 2010-16, or, if not listed in Resolution 2010-16, at the rate charged to the City.

Section 2. Recordation. The covenants and restrictions contained herein touch and concern, and relate to the use of Property, and are intended by the parties to run with the land, until revoked as provided herein. Applicant shall therefore record this document in the Deeds and Records of Tillamook County, Oregon, to serve as notice to any future owners or occupants of Property of the terms and conditions of this Agreement.

Section 3. Binding Effect. The terms of this Agreement shall extend to and be binding upon the heirs, administrators, executors, personal representatives, successors and assigns of the parties hereto.

Section 4. Remedies. Failure to pay City fees and costs, as charged to the Developer by the City, shall result in City pursuing any and all legal remedies available, including but not limited to liening Property in the amounts owed; prosecution for violation of Resolution No. 2008-09, City Zoning Code, and Subdivision Regulations; issuance of a stop work order and/or non-issuance of building permits for Property; the right to refuse municipal utility service; and turning amounts owed over to a collection agency.

Section 5. Arbitration. If any disputes, disagreements, or controversies arise between the parties pertaining to the interpretation, validity, or enforcement of this Agreement, the parties shall, upon the written request of either party, submit such dispute to binding arbitration. Such arbitration shall be conducted in accordance with the Oregon Uniform Arbitration Act, ORS 36.600, *et seq.* and any additional rules mutually agreed to by both parties. If the parties cannot agree on rules within ten (10) days after a written request, the presiding Judge of the Tillamook County Circuit Court

will appoint an arbitrator and establish any additional rules needed to govern the arbitration. The arbitrator's decision will be final and judgment may be entered upon it in Tillamook County Circuit Court, and will not be subject to modifications or appeals except to the extent permitted by Oregon law.

Section 6. Attorney Fees and Costs. If suit, action or arbitration is brought either directly or indirectly to enforce the terms of this Agreement, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney fees incurred in such proceeding, in both the trial and appellate courts, as well as the prevailing party's costs and disbursements. Further, if it becomes necessary for the City to contract for the services of an attorney to enforce any provision of this Agreement without initiating litigation, Developer agrees to pay City's attorney fees so incurred.

CITY OF GARIBALDI:

By:_____
Date:_____

DEVELOPER:

By:_____
Date:_____

STATE OF OREGON)
) ss.
County of Tillamook)

This instrument was acknowledged before me on this _____ day of _____

_____, 201_, by _____, an authorized representative for CITY OF GARIBALDI.

_____
Notary Public for Oregon

STATE OF OREGON)
) ss.
County of Tillamook)

This instrument was acknowledged before me on this _____ day of _____
_____, 201_, by _____.

_____
Notary Public for Oregon