



AGENDA

ASTORIA DEVELOPMENT COMMISSION

December 21, 2015
Immediately Follows City Council Meeting
2nd Floor Council Chambers
1095 Duane Street · Astoria OR 97103

1. CALL TO ORDER

2. ROLL CALL

3. REPORTS OF COMMISSIONERS

4. CHANGES TO AGENDA

5. CONSENT CALENDAR

The items on the Consent Calendar are considered routine and will be adopted by one motion unless a member of the Astoria Development Commission requests to have any item considered separately. Members of the community may have an item removed if they contact the City Manager by 5:00 p.m. the day of the meeting.

(a) Astor Hotel Subordination Agreement (Community Development)

6. REGULAR AGENDA ITEMS

All agenda items are open for public comment following deliberation by the City Council. Rather than asking for public comment after each agenda item, the Mayor asks that audience members raise their hands if they want to speak to the item and they will be recognized. In order to respect everyone's time, comments will be limited to 3 minutes.

THIS MEETING IS ACCESSIBLE TO THE DISABLED. AN INTERPRETER FOR THE HEARING IMPAIRED MAY BE REQUESTED UNDER THE TERMS OF ORS 192.630 BY CONTACTING JULIE YUILL, CITY MANAGER'S OFFICE, 503-325-5824.



CITY OF ASTORIA

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December 16, 2015

MEMORANDUM

TO: ASTORIA DEVELOPMENT COMMISSION (ADC)

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: ADC MEETING OF DECEMBER 21, 2015

CONSENT CALENDAR

Item 5(a): Astor Hotel Subordination Agreement (Community Development)

In 2009, local developers Paul Caruana and Brian Faherty purchased the Astor Hotel in Downtown Astoria. In 2009 the Astoria Development Commission (ADC) approved a loan for exterior improvements. In March 2015 the ADC reviewed and approved a Subordination Agreement with Astor Hotel owners Paul Caruana and Brian Faherty. In June 2015, the ADC authorized an increase to the loan amount and put the loan in the name of Paul Caruana as Mr. Caruana acquired Mr. Faherty's interest in the property and is now sole owner. Verizon Wireless owns a cell tower on top of the hotel that provides service to local customers. As part of the Loan Agreement, a new Subordination Agreement is required between Astor, LLC, the real estate entity owned by Mr. Caruana, and Verizon Wireless LLC to reflect this change in ownership. The Subordination Agreement reflects the change in ownership, but does not change the original terms and conditions of the Loan Agreement. It is recommended that the Astoria Development Commission accept the revised Subordination Agreement with Astor Hotel LLC (Paul Caruana) and authorize signing of the Agreement.



**CITY OF ASTORIA
COMMUNITY DEVELOPMENT
DEPARTMENT**

MEMORANDUM

December 15, 2015

TO: ASTORIA DEVELOPMENT COMMISSION
FROM:  BRETT ESTES, CITY MANAGER
SUBJECT: SUBORDINATION AGREEMENT FOR ASTOR HOTEL
EXTERIOR IMPROVEMENTS

BACKGROUND

In 2009, local developers Paul Caruana and Brian Faherty purchased the Astor Hotel located at the southeast corner of Commercial and 14th Streets in Downtown Astoria. In 2009 the Astoria Development Commission (ADC) approved a loan for exterior improvements. March 2, 2015 the ADC reviewed and approved a Subordination Agreement with Astor Hotel owners Paul Caruana and Brian Faherty. In June 2015, the ADC authorized an increase to the loan amount and put the loan in the name of Paul Caruana as Mr. Caruana acquired Mr. Faherty's interest in the property and is now sole owner. Verizon Wireless owns a cell tower on top of the hotel that provides service to local customers. As part of the loan agreement, a new subordination agreement is required between Astor, LLC – the real estate entity owned by Mr. Caruana - and Verizon Wireless LLC to reflect this change in ownership. A subordination agreement is a legal arrangement that allows various interests in real property to secure an interest in priority order. In this case, the change in ownership dictated a new subordination agreement.

Attached to this memorandum is a subordination agreement that reflects the change in ownership, but does not change the original terms and conditions of the loan agreement. The City consulted with Urban Renewal Attorney Jeanette Launer who has reviewed the agreement as to form.

Should the ADC accept the amendment, the City Manager will execute said agreement.

RECOMMENDATION

It is recommended that the Astoria Development Commission accept the revised subordination agreement with Astor Hotel LLC (Paul Caruana) and authorize the City Manager to sign the agreement.

By: 
Kevin A Cronin, Community Development Director

FILED FOR RECORD AT REQUEST OF
AND WHEN RECORDED RETURN TO:
Davis Wright Tremaine LLP
Attn: C. Eng
777 108th Avenue NE, Suite 2300
Bellevue, WA 98004-5149

(Space above this line is for Recorder's use.)

**SUBORDINATION, CONSENT, NON-DISTURBANCE, AND
ATTORNMEN T AGREEMENT**

Grantor: The Astor Building LLC

Grantee: Verizon Wireless (VAW) LLC d/b/a Verizon Wireless

Legal Description: Clatsop County, State of Oregon
Official legal description as Exhibit "A"

Assessor's Tax Parcel ID#: 22475, 22476, and 22477

Reference # (if applicable): N/A

**SUBORDINATION, CONSENT, NON-DISTURBANCE, AND
ATTORNMEN T AGREEMENT**

This SUBORDINATION, CONSENT, NON-DISTURBANCE, AND ATTORNMEN T AGREEMENT ("Agreement") is made as of the _____ day of _____, 201__, among Astoria Development Commission, whose address is 1095 Duane Street, Astoria, Oregon 97103 ("Lender"), The Astor Building LLC, whose address is 1431 Commercial Street, Astoria, Oregon 97103 ("Landlord"), and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, with offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 ("Tenant").

RECITALS

A. Tenant is the lessee pursuant to a Building and Rooftop Lease Agreement ("Lease") dated _____, 201__, between Landlord and Tenant, of premises located at 342 14th Street and 1405 Commercial, Astoria, County of Clatsop, State of Oregon ("Landlord's Property") as shown on Exhibit "A" attached hereto and made a part hereof.

B. Lender intends to make, or has made, a loan to Landlord. This loan is to be, or was, secured by a deed of trust on Landlord's Property ("Trust Deed"). A certain Trust Deed was executed by Landlord and Lender on June 26, 2015 and recorded on July 23, 2015 under Recording No. 201505924 of the records of Clatsop County, in the State of Oregon.

C. In the Lease, Tenant has agreed to attorn to the beneficiary of any deed of trust given by Landlord that may encumber the Landlord's Property as Tenant's landlord under the Lease in the event of a foreclosure of Landlord's interest, provided that Tenant receives from every such deed of trust beneficiary a nondisturbance agreement that recognizes the validity of the Lease in the event of a foreclosure of Landlord's interest and also Tenant's right to remain in occupancy of the portion of the Landlord's Property leased by the Tenant ("Leased Premises"), pursuant to the terms of the Lease, as long as the Tenant is not in default of the Lease.

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement, the parties hereby agree as follows:

1. **Subordination.** Notwithstanding anything to the contrary set forth in the Lease, the Lease, and the leasehold estate created thereby, and all of Tenant's rights thereunder, shall be and shall at all times remain subject, subordinate, and inferior to the Trust Deed, and the lien thereof, and all rights of Lender thereunder.

2. **Consent.** Lender consents to the Lease and to the Tenant's use and occupancy of the Leased Premises under the Lease.

3. Non-Disturbance. So long as the Tenant is not in default (after the expiration of any applicable cure period) in the payment of rent or in the performance of any of the other covenants of the Lease that Tenant is to perform, the Tenant's possession of the Leased Premises and the Tenant's other rights under the Lease, or any extensions or renewals thereof, shall not be diminished or interfered with by Lender. In addition, Lender shall not join Tenant as a party defendant in any action or proceeding for the purpose of terminating the Tenant's interest under the Lease or otherwise.

4. Nondisturbance, Foreclosure and Attornment.

a. If Lender, or any other purchaser at a foreclosure sale or sale under private power contained in the Trust Deed, becomes the owner of Landlord's Property, by reason of any foreclosure of the Trust Deed, the acceptance by Lender of a deed in lieu of foreclosure, or by any other manner, Lender or such other purchaser shall not terminate the Lease, and the Lease shall continue in full force and effect as a direct lease between Tenant and Lender, or such other purchaser, under all of the terms, covenant and conditions of the Lease for the remainder of the term thereof and any extensions or renewals thereof, with the same force and effect as if Lender or such other purchaser were the landlord under the Lease.

b. Immediately upon the succession of Lender or such other purchaser to the interest of the Landlord under the Lease, Tenant does hereby agree to attorn to Lender or such other purchaser as Tenant's landlord. The parties agree that such attornment shall be effective and self-operative without the execution of any further documents. Such attornment shall be subject to all terms, provisions and conditions of the Lease and all amendments and modifications thereof. So long as Tenant is not in default (after the expiration of any applicable cure periods) in the payment of rent and otherwise has not been determined by a court of competent jurisdiction to be in default under any of the material terms and conditions of the Lease, Lender or such other purchaser shall not disturb Tenant in Tenant's possession of the Leased Premises during the term of the Lease and any extensions or renewals thereof, or in the enjoyment of Tenant's rights under the Lease. Nothing in this Agreement shall be construed to limit Tenant's rights against Landlord for any breach of a Lease obligation that occurred prior to the date of takeover, or any claims arising out of such takeover. Tenant shall, from and after Lender's or such other purchaser's succession to the interest of Landlord under the Lease, have the same remedies against such party that Tenant might have had under the Lease against Landlord.

5. Modifications. This Agreement may be modified only by an agreement in writing signed by the parties hereto or their respective successors in interest. Nothing in this Agreement shall be construed as to require the consent of Lender to any amendments, modifications, renewals, or extensions of the Lease.

6. Binding Effect. This Agreement shall run with the land and shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, legal representatives, successors and assigns of the parties hereto.

7. Attorneys' Fees. If any of the parties hereto institutes any action or proceeding in court to enforce any of the provisions hereof, or any action for damages by reason of any alleged breach of any of the provisions hereof, then the prevailing parties in any such action or proceeding shall be entitled to receive from the losing parties such amount as the court may adjudge to be reasonable attorneys' fees for the services rendered to the prevailing parties, together with the prevailing parties' other reasonable litigation costs and expenses.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state in which Landlord's Property is located without giving effect to the choice of law rules thereof.

LENDER: Astoria Development Commission

By: _____
Name: _____
Title: _____
Date: _____

LANDLORD: The Astor Building LLC

By: 
Name: Paul Carusina
Title: Member
Date: 12-7-2016

TENANT: Verizon Wireless (VAW) LLC
d/b/a Verizon Wireless

By: _____
James A. Wales
Executive Director - Network
Date: _____

LANDLORD ACKNOWLEDGMENT

STATE OF Oregon)
COUNTY OF Clatsop) ss.

On this 7th day of December, 2015, before me, a Notary Public in and for the State of Oregon, personally appeared Paul Camana, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that He/She was authorized to execute the instrument, and acknowledged it as the owner of The Astor Building LLC, to be the free and voluntary act and deed of said banking association for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Jordan Maki
NOTARY PUBLIC, in and for the State of Oregon
residing at Columbia Bank
My appointment expires 7/19/19
Print Name Jordan Maki

EXHIBIT A
“Landlord’s Property”

Lots 4, 5 and 6, Block 135, SHIVELY’S, in the City of Astoria, Clatsop County, Oregon.