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 PIERCE COUNTY, WASHINGTON

Return Address:

City Clerk
 City of Gig Harbor
 3105 Judson Street
 Gig Harbor, WA 98335

Please print legibly or type information.

Document Title(s) (Or transaction contained therein):

1. **STEP SYSTEM MANAGEMENT AGREEMENT – CANTERWOOD DIVISION 12**
- 2.
- 3.
- 4.

Grantor(s) (Last name first, then first name and initials):

1. **CITY OF GIG HARBOR**
- 2.
- 3.
- 4.
5. Additional Names on Page ___ of Document.

Grantee(s) (Last name first, then first name and initials):

1. **Rush Division 12 LLC**
- 2.
- 3.
- Additional Names on Page ___ of Document.

Legal Description (Abbreviated: i.e., lot, block, plat; or section, township, range):

**Metes and Bounds Legal Description of the Southeast Quarter of the Northwest
 Quarter of Section 19, Township 22 North, Range 2 East, W.M.**
 Legal Description is on Page 11 of Document.

Reference Number(s) (Of documents assigned or released):

Additional Reference numbers on Page ___ of Document.

Assessor's Property Tax Parcel/Account Number

02 22 19

The Auditor/Recorder will rely on the information provided on this cover sheet. The staff will not read the Document to verify the accuracy or completeness of the indexing information provided herein.

**STEP SYSTEM MANAGEMENT AGREEMENT
BETWEEN THE CITY OF GIG HARBOR
AND CANTERWOOD DIVISION 12 STEP ASSOCIATION**

THIS AGREEMENT, made this 8th day of September, 2003, by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Rush Division 12 LLC, a Washington limited liability company, (hereinafter the "Owners").

RECITALS

WHEREAS, the City owns and operates a sewer system within and adjacent to its limits; and

WHEREAS, the Owners own property located outside the city limits of the City of Gig Harbor, but such property is within the City's Urban Growth Area; and

WHEREAS, the Owners' property is legally described in Exhibit A, attached hereto and incorporated herein by this reference; and

WHEREAS, the Owners have applied to Pierce County for a plat approval on the Property, and plan to construct a STEP System for the handling of sanitary sewer waste for the development;

WHEREAS, the Owners desire that this System will be connected to the City's sewer system by pressure sewer line and extensions more particularly described on Exhibit B attached hereto and incorporated herein by this reference; and

WHEREAS, the Owners acknowledge that in order to connect their property to the City's sewer system, they must comply with the requirements set forth in Gig Harbor Municipal Code Section 13.34.060 by executing a separate agreement with the City; and

WHEREAS, the parties have agreed to enter into this Agreement describing the terms and conditions of operation and maintenance of the STEP System;

NOW, THEREFORE, in consideration of the City's agreement to allow the Owners to connect to the City's sewer system with the STEP System, and the mutual covenants and agreements hereafter set forth, it is agreed by and between the parties hereto as follows:

TERMS

Section 1. Recitals are Material Terms of Agreement. All of the recitals set forth above are adopted by the parties as material elements of this Agreement.

Section 2. Affected Property. The Owners warrant that they own the property described in Exhibit A, and that they are authorized to enter into this Agreement.

Section 3. Definitions. As used in this Agreement:

A. The word "plat" refers to Canterwood, Division 12, and any other plat or plats, including short plats, covering all real property which may hereafter be made subject to the provisions of this Agreement by a written instrument signed by the Owner, its successors and assigns, in accordance with this agreement.

B. The word "Owner" or "Owners" refers to the entity, whether an individual or corporation, joint venture or partnership which is an owner in fee simple or of a substantial beneficial interest in the Property (legally described in Exhibit A) or the Plat. A "substantial beneficial interest" shall include both legal and equitable interests in the Property or Plat.

C. The words "Owners' Association" refer to nonprofit corporation which may be formed for the purpose of operating and maintaining the facilities described in Exhibit B on the Property, which may be independently conveyed by the Owner or its successors and assigns to an Owners' Association, and to which the Owners' Association may provide other services in order to benefit the owners of property within the Plat or the Property.

Section 4. Maintenance Obligations. The Owner and/or Owners' Association hereby covenant and agree that they are jointly and severally responsible for the installation, operation, repair, ownership and perpetual maintenance of the Step System, which has been or will be constructed on the Property at their own cost. The Owner or Owners' Association shall also be responsible for the installation, operation, repair, ownership and perpetual maintenance of the support facilities to the STEP system, and including off-gassing and sodium hypochlorite or other City-approved injection equipment and corrosion protection, as well as the point of connection to the City's sewer system at Canterwood Blvd. At no time shall the City have any responsibility for the STEP System, support facilities or any other facilities constructed or installed by the Owners and /or Owners' Association.

Section 5. Point of Connection. The City hereby authorizes the Owners to connect to the City's sewer system in the location designated by the City of Gig Harbor Engineer, which shall be generally located at Baker Way and Canterwood Blvd.

Section 6. Responsibilities of Owners or Owners' Association. The Owners and/or Owners' Association agree as follows:

A. In the construction, installation, repair and operation of the Step System, the Owners and Owners' Association shall comply with all applicable laws, ordinances and/or other regulations applicable to this project as the same are adopted by any agency with jurisdiction.

B. The Owner and Owners' Association shall grant and convey to the City a perpetual, non-exclusive easement, under, over, along through and in the Property, in the location shown on Exhibit C, attached hereto and incorporated herein by this reference. The Easement shall be granted to the City for the purpose of providing the City with ingress and egress in order to access the STEP System for inspection, and to reasonably monitor the system for performance, operational flows, defects and/or conformance with this Agreement, or applicable rules and regulations. The Easement shall be in a form approved by the City Attorney, and shall be delivered to the City in order to receive the City's approval of the as-built plans and civil drawings, mentioned in subsection D below.

C. The Owner shall sign the City's utility extension and capacity agreement for provision of sewer service outside the City limits, as required by GHMC Section 13.34.060.

D. The Owners shall furnish to the City plans and civil drawings of the STEP System consistent with the utility extension and capacity agreement for approval, and the City shall not approve such plans and civil drawings unless and until the Owners/Owners' Association provides the Easements required in subsection B above.

E. The Owners shall pay \$3,000 to the City as a share of the total cost of rehabilitating deteriorated manholes along Canterwood Blvd.

F. The Owners shall pay all connection fees for all residential units that will be hooked up to the STEP system prior to connection of the STEP system to the city system.

G. This Agreement is subject to approval of all necessary permits for the Plat.

Section 7. No Liability to City. The Owners and Owners' Association agree that the City shall not be responsible for costs, claims or damages to the Owners or the Owners' Association for the City's inability to provide sanitary sewage disposal as a result of a unintentional or unforeseen disruption/failure of the City's sewage system and/or facilities. (See also, Section 10 below). In addition, the Owners and Owners' Association agree that the City shall not be responsible for any costs, claims or damages to any third parties, the Owners or Owners' Association due to any need to

damages to any third parties, the Owners or Owners' Association due to any need to provide alternative arrangements for sewage detention, treatment and/or disposal in the event that such alternative arrangements are necessary during the repair, maintenance or operation of the Owners' STEP System or the disruption/failure of the City's sewer system.

The Owners and Owners' Association agrees to defend, indemnify and hold harmless the City of Gig Harbor, its officials, officers, employees and agents, for any and all claims, demands, actions, injuries, losses, damages, costs or liabilities of any kind or amount whatsoever, whether known or unknown, foreseen or unforeseen, fixed or contingent, liquidated or unliquidated, arising from an alleged defect in the design of the STEP System installed by the Owners, or arising by reason of any omission or performance of any of the obligations under this Agreement by the Owners or Owners' Association.

Section 8. Treatment Standards.

A. The existing and the new STEP System shall treat and neutralize the sewerage effluent at the source with sodium hypochlorite or another City-approved oxidant on a continual basis. It is understood by and between the parties that the City will allow the Owners to connect to the City's sewer system only if the Owners meet the acceptable parameters for domestic sanitary sewage of pH 6 to pH 9, install off-gassing and sodium hypochlorite injection or other equivalent city-approved injection equipment and corrosion protection before discharging to the City's system. This Agreement does not address the Owner's (or any subsequent homeowner's) purchase of capacity in or hook-up to the City's sewer system. Discharges from the Owners' STEP System into the City's sewer system shall not exceed the capacity purchased from the City in separate agreements with the City. Any additional discharge into the City's system without the City's prior written consent is strictly prohibited. Per City Ordinance 13.28.170, any noxious or malodorous gas or substance capable of creating a public nuisance is a prohibited discharge and shall not be introduced into the City's sewage system.

B. Throughout the term of this agreement, the Owners and Owners' Association shall execute a maintenance agreement with a maintenance contractor approved by the City Engineer for the effluent treatment and neutralization consistent with Section 8.A. above, and shall provide a copy of the agreement to the City.

Section 10. Inability to Perform. In the event that either party is unable to perform any of its obligations under this Agreement because of a natural disaster, actions or decrees of governmental agencies or other unforeseen failure not the fault of the affected party, the party who has been so affected immediately shall give notice to the other party and shall do everything possible to resume performance. If the period of nonperformance exceeds fifteen (15) days' written notice, the parties have

the option of issuing notice to the other party to enforce this Agreement as provided herein.

Section 11. Enforcement.

A. Pursuant to RCW 35.67.310, if the terms of this Agreement are not kept or performed, the City may disconnect the sewer and for that purpose may at any time enter upon the property described in Exhibit A, Exhibit B, and Exhibit C.

B. If the City determines that there is a violation of this Agreement, the Community Development Director (or his/her designee) shall give written notice to the Owners or Owners Association of the specific violations, and the corrections required. The Director shall also establish a reasonable time in which the Owners or Owners Association shall perform such work. If the work is not performed by the deadline established by the Director, the City may take the action described in this section.

C. In order to ensure that there will be no damage to the City's sanitary sewer system, the City shall have the right as provided below, but not the option, to maintain/repair the STEP System, if the Owners or Owners' Association fails to do so by the deadline established by the Director, and such failure continues for more than five (5) days after written notice of the failure is sent to the Owner or Owners' Association. However, no notice shall be required in the event that the City determines that an emergency situation exists in which injury to person or damage to property may result if the situation is not remedied prior to the time required for notice.

D. If the City takes the action described in subsection C above, and enters onto the Property in order to correct the violation, the Owner or Owners' Association shall reimburse the City on demand for all reasonable and necessary expenses incurred incident thereto. In addition, the City is hereby given the right, power and authority acting in the name of the Owners' Association to exercise and enforce on behalf of the Association and at the Association's cost, the assessment of due and charges for such costs and to enforce the Association's lien right for any assessments, dues and charges as herein specified. The City may also enforce this provision through the lien attachment and collection process as allowed under chapter 35.67 RCW, or to impose materialmen's and/or laborer's liens and to foreclose on any and all properties owned by the Owners and Owners' Association.

Section 12. Assignment to Owners' Association. In the event that an Owner's Association is formed under a Declaration of Covenants, Conditions and Restrictions which includes all of the Property in Exhibit A, the Owner may assign responsibility for installation and perpetual maintenance/repair of the STEP System to the Owners' Association for as long as the Owners' Association remains in existence and upon the conditions that the Owners' Association assumes all of the obligations, liabilities, covenants and agreements of the Owners under this Agreement. Such assignment of

the Owner's obligations shall be in a duly executed instrument in recordable form, and for so long as such assignment remains effective, the Owner shall have no further responsibility or liability under this Agreement.

Section 13. Conveyances of the Property. In the event that the Owner shall convey its interest in any Property in the Plat, the conveying Owner shall be free from all liabilities respecting the performance of this Agreement; PROVIDED, HOWEVER, that the conveying Owner shall remain liable for any acts or omissions during such Owners' period of ownership of such Property.

Section 14. Terms Run with the Property. The promises, conditions, covenants and restrictions contained herein shall constitute a covenant or equitable servitude, the burden and benefit of which shall run with the land and bind successive owners with equitable or legal interests in the Property or Plat. Accordingly, by its acceptance of a deed or other instrument vesting a substantial beneficial interest in all or any lot, or other portion of the Property or the Plat in such Owner, each Owner shall covenant to be bound by all the obligations incumbent upon an Owner as set forth herein, and shall be entitled to all rights and benefits accruing to an Owner hereunder. This Agreement shall be recorded in the Pierce County Auditor's Office and shall serve as notice to holders of after-acquired interests in the Property or Plat.

Section 15. Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary.

Attn: City Engineer
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

Gordon Rush, President
Rush Division 12, LLC
5715 Wollochet Dr. NW
Gig Harbor, WA 98335

Section 16. Construction. This Agreement shall be construed in accordance with the laws of the State of Washington, and jurisdiction of any resulting dispute shall be in Pierce County Superior Court, Pierce County, Washington. The prevailing party in any legal action shall be entitled to all other remedies provided herein, and to all costs and expenses, including reasonable attorneys' fees, expert witness fees or other witness fees and any such fees and expenses incurred on appeal.

Section 17. Severability. If a court of competent jurisdiction finds any section, phrase or portion of this Agreement to be unconstitutional or invalid, the validity of the remaining provisions shall not be affected.

Section 18. Waiver. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented.

Section 19. Integration. This Agreement, including its exhibits and all documents referenced herein, constitutes the entire agreement between the City of the Owner, and supersedes all proposals, oral or written, between the parties on the subject.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF GIG HARBOR

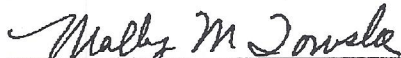

Gretchen A. Wilbert, Mayor

OWNERS



Gordon Rush, President


Robin Lerum, Vice President

ATTEST:

By: 
Molly Towslee, City Clerk

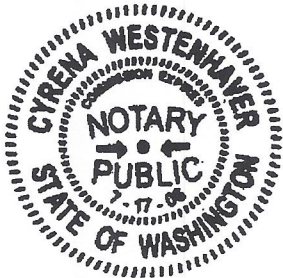
APPROVED AS TO FORM
OFFICE OF THE CITY ATTORNEY

By: 
Carol Morris, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Gordon Rush is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the President of Rush Division 12 LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 9/3/03



Cyrena Westenhaver
CYRENA WESTENHAVER
(print or type name)

NOTARY PUBLIC in and for the State of Washington, residing at: GIG HARBOR
My Commission expires: 7/17/06

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Robin Lerum is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Vice President of Rush Division 12 LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 9/3/03



Cyrena Westenhaver
CYRENA WESTENHAVER
(print or type name)

NOTARY PUBLIC in and for the State of Washington, residing at: GIG HARBOR
My Commission expires: 7/17/06

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Gretchen Wilbert is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 9-8-03

Molly M Towselee

Molly M. Towselee
(print or type name)



NOTARY PUBLIC in and for the State of Washington, residing at: Gig Harbor
My Commission expires: 12/2/03

Exhibit A

Legal Description:

Metes and Bounds Legal Description of the Southeast Quarter of the Northwest Quarter of Section 19, Township 22 North, Range 2 East, W.M.

Commencing at the Northwest corner of Section 19, Township 22 North, Range 2 East of the Willamette Meridian; thence S 88°18'44" E, 2570.51 feet to the North Quarter corner of said section; thence S 02°10'30" W, 1317.97 feet to the northeast corner of the southeast quarter of the Northwest Quarter of said section and the TRUE POINT OF BEGINNING; thence continuing S 02°10'30" W, 1317.97 feet to the center of said section; thence N 88°39'59" W, 1303.75 feet to the southwest corner of the southeast quarter of the Northwest Quarter of said section; thence N 02°00'10" E, 1321.98 feet to the northwest corner of the southeast quarter of the Northwest Quarter of said section; thence S 88°29'17" E, 1307.67 feet to the TRUE POINT OF BEGINNING.

Containing 1,723,375 Sq. Ft. (39.56 Acres) more or less.

Situate in Pierce County, Washington.

EXHIBIT B

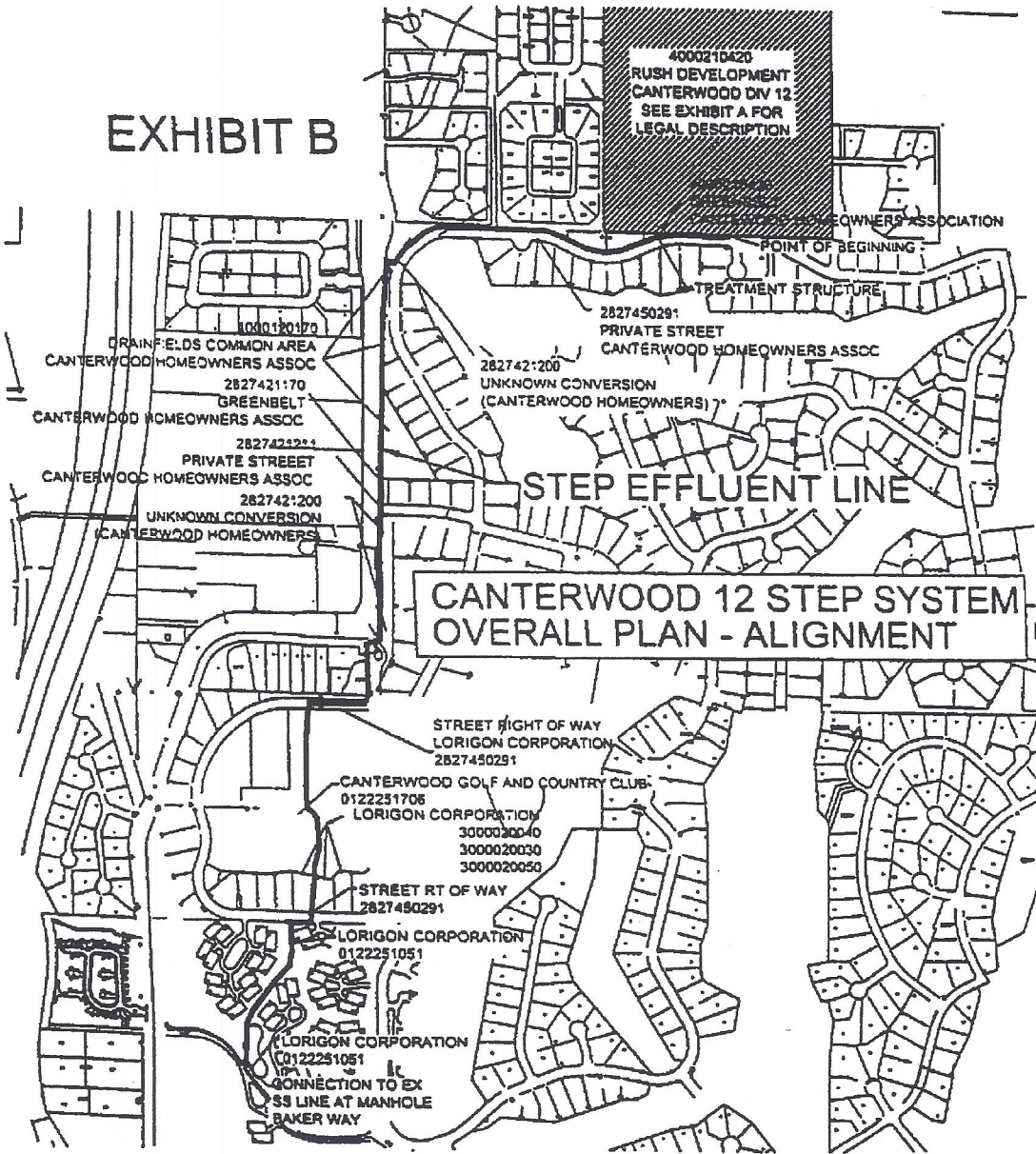


EXHIBIT C

