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 09-15-2003 03:21pm \$30.00  
 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. **UTILITY EXTENSION, CAPACITY AGREEMENT AND AGREEMENT WAIVING RIGHT TO PROTEST LID**  
 2. **TO PROTEST LID**  
 3.  
 4.

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**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.

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**Grantee(s)** (Last name first, then first name and initials):  
 1. **Rush Division 12 LLC**  
 2.  
 3.  
 Additional Names on Page \_\_\_ of Document.

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**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 10 of Document.

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**Reference Number(s)** (Of documents assigned or released):  
 Additional Reference numbers on Page \_\_\_ of Document.

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**Assessor's Property Tax Parcel/Account Number**  
**02 22 19**

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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.

**UTILITY EXTENSION, CAPACITY AGREEMENT  
AND AGREEMENT WAIVING RIGHT TO PROTEST LID**

THIS AGREEMENT is entered into on this 8<sup>th</sup> day of Sept, 2003, between the City of Gig Harbor, Washington, hereinafter referred to as the "City", and Rush Division 12 LLC, a Washington limited liability company, hereinafter referred to as "the Owner".

WHEREAS, the Owner is the owner of certain real property located in Pierce County which is legally described as set forth in Exhibit 'A' attached hereto and incorporated herein by this reference as though set forth in full, and

WHEREAS, the Owner's property is not currently within the City limits of the City, and

WHEREAS, the Owner desires to connect to the City water and sewer utility system, hereinafter referred to as "the utility," and is willing to allow connection only upon certain terms and conditions in accordance with Title 13 of the Gig Harbor Municipal code, as now enacted or hereinafter amended, NOW, THEREFORE,

FOR AND IN CONSIDERATION OF the mutual benefits and conditions hereinafter contained, the parties agree as follows:

1. **Warranty of Title.** The Owner warrants that he/she is the Owner of the property described in Exhibit 'A' and is authorized to enter into this Agreement.
2. **Extension Authorized.** The City hereby authorizes the Owner to extend service to Owner's property from the existing utility line on Canterwood Blvd (street or right-of-way) at the following location: Baker Way and Canterwood Blvd.
3. **Costs.** Owner will pay all costs of designing, engineering and constructing the extension. All construction shall be done to City standards and according to plans approved by the City's Public Works Director. Any and all costs incurred by the City in reviewing plans and in inspecting construction shall be paid for by the Owner.
4. **Sewer Capacity Commitment.** The City agrees to provide to the Owner sewer utility service and hereby reserves to the Owner the right to discharge to the City's sewerage system 71 ERUs; provided however, that the City retains the authority to temporarily suspend such capacity where necessary to protect public health and safety, or where required to comply with the City's NPDES permit, or any other permits required by any agency with jurisdiction. These capacity rights are allocated only to the Owner's system as herein described. Any addition to this system must first be approved by the City. Capacity rights acquired by the Owner pursuant to this agreement shall not constitute ownership by the Owner of any facilities

comprising the City sewerage system. The City agrees to reserve to the Owner this capacity for a period of 36 months ending on August 25, 2006, provided this agreement is signed and payment for sewer capacity is commitment received within 45 days after City Council approval of extending sewer capacity to the Owner's property. Sewer capacity shall not be committed beyond a three-year period.

**5. Capacity Commitment Payment.** The Owner agrees to pay the City the sum of \$ 32,482.50 to reserve the above specified time in accordance with the schedule set forth below.

Commitment period	Percent (%) of Connection Fee
Three years	Fifteen percent (15%)

In no event, however, shall the Owner pay the City less than five hundred dollars (\$500) for commitment for sewer reserve capacity. In the event the Owner has not made connection to the City's utility system by the date set forth above, such capacity commitment shall expire and the Owner shall forfeit one hundred percent (100%) of this capacity commitment payment to cover the City's administrative and related expenses. Also, consistent with the Canterwood Division 12 STEP system agreement, all fees for sewer connection under this contract (71 ERUs) shall be paid prior to the connection of the Canterwood Division 12 STEP System to the city sewer system.

In the event the Pierce County Boundary Review Board should not approve extension of the City's sewer system prior to the extension of the commitment period, the Owner shall be entitled to a full refund (without interest) from the City of the capacity agreement.

**6. Extension of Commitment Period.** In the event the Owner chooses to permanently reserve sewer capacity by paying the entire connection fee for the number of equivalent residential units desired to be reserved before the expiration date set forth above, the Owner shall be responsible for paying each year for the sewer utility system's depreciation based on the following formula: (Owner's reserved capacity divided by the total plant capacity times the annual budgeted depreciation of the sewer facilities.)

**7. Permits - Easements.** Owner shall secure and obtain, at Owner's sole cost and expense any necessary permits, easements and licenses to construct the extension, including, but not limited to, all necessary easements, excavation permits, street use permits, or other permits required by state, county and city governmental departments including the Pierce County Public Works Department, Pierce County Environmental Health Department, State Department of Ecology, Pierce County Boundary Review Board, and City of Gig Harbor Public Works Department.

**8. Turn Over of Capital Facilities.** If the extension of utility service to Owner's property involves the construction of water or sewer main lines, pump stations, wells, and/or other city required capital facilities, the Owner agrees if required by the city to turn over and dedicate such facilities to the City, at no cost, upon the completion of construction and approval and acceptance of the same by the City. As a prerequisite to such turn over and acceptance, the Owner will furnish to the City the following:

- A. As built plans or drawings in a form acceptable to the City Public Works Department;
- B. Any necessary easements, permits or licenses for the continued operation, maintenance, repair or reconstruction of such facilities by the City, in a form approved by the City Attorney;
- C. A bill of sale in a form approved by the City Attorney; and
- D. A bond or other suitable security in a form approved by the City Attorney and in an amount approved by the City Public Works Director, ensuring that the facilities will remain free from defects in workmanship and materials for a period of 2 year(s).

**9. Connection Charges.** The Owner agrees to pay the connection charges, in addition to any costs of construction as a condition of connecting to the City utility system at the rate schedules applicable at the time the Owner requests to actually connect his property to the system. Any commitment payment that has not been forfeited shall be applied to the City's connection charges. Should the Owner not initially connect 100% of the Sewer Capacity Commitment, the Capacity Commitment payment shall be credited on a pro-rated percentage basis to the connection charges as they are levied.

**10. Service Charges.** In addition to the charges for connection, the Owner agrees to pay for utility service rendered according to the rates for services applicable to properties outside the city limits as such rates exist, which is presently at 150% the rate charged to customers inside city limits, or as they may be hereafter amended or modified.

**11. Annexation.** Owner understands that annexation of the property described on Exhibit 'A' to the City will result in the following consequences:

- A. Pierce County ordinances, resolutions, rules and regulations will cease to apply to the property upon the effective date of annexation;

B. City of Gig Harbor ordinances, resolutions, rules and regulations will begin to apply to the property upon the effective date of annexation;

C. Governmental services, such as police, fire and utility service, will be provided to the property by the City of Gig Harbor upon the effective date of annexation;

D. The property may be required to assume all or any portion of the existing City of Gig Harbor indebtedness, and property tax rates and assessments applicable to the property may be different from those applicable prior to the effective date of annexation;

E. Zoning and land use regulations applicable to the property after annexation may be different from those applicable to the property prior to annexation; and

F. All or any portion of the property may be annexed and the property may be annexed in conjunction with, or at the same time as, other property in the vicinity.

With full knowledge and understanding of these consequences of annexation and with full knowledge and understanding of Owner's decision to forego opposition to annexation of the property to the City of Gig Harbor, Owner agrees to sign a petition for annexation to the City of the property described on Exhibit A as provided in "ch. 331, SSB 5409, Washington Laws 2003", as it now exists or as it may hereafter be amended, at such time as the Owner is requested by the City to do so. The Owner also agrees and appoints the Mayor of the City as Owner's attorney-in-fact to execute an annexation petition on Owner's behalf in the event that Owner shall fail or refuse to do so and agrees that such signature shall constitute full authority from the Owner for annexation as if Owner had signed the petition himself. Owner further agrees not to litigate, challenge or in any manner contest, annexation to the City. This Agreement shall be deemed to be continuing, and if Owner's property is not annexed for whatever reason, including a decision by the City not to annex, Owner agrees to sign any and all subsequent petitions for annexations. In the event that any property described on Exhibit 'A' is subdivided into smaller lots, the purchasers of each subdivided lot shall be bound by the provisions of this paragraph.

**12. Land Use.** The Owner agrees that any development or redevelopment of the property described on Exhibit 'A' shall meet the following conditions after execution of Agreement:

A. The use of the property will be restricted to uses allowed in the following City zoning district at the time of development or redevelopment: R-1

B. The development or redevelopment of the property shall comply with all requirements of the City Comprehensive Land Use Plan, Zoning Code, Design Review Guidelines, Building Regulations, and City Public Works Standards for similar zoned development or redevelopment in effect in the City at the time of such development or redevelopment, except that roadway geometrics, pedestrian amenities, and street lighting shall be consistent with standards applied to the Canterwood subdivision and except for Subsection C., Tracts 'G' and 'H' identified in Exhibit 'B', which follows this section. With the exceptions noted above, the intent of this section is that future annexation of the property to the City of Gig Harbor shall result in a development which does conform to City standards.

C. Tracts 'G' and 'H' shall be supplemented with six (6) foot evergreen trees and native shrubs to meet the definition of dense vegetative screen: "...a physical buffer which is opaque to a height of six feet and broken to a height of 20 feet" (GHMC 17.04.269). No clearing, grading, fill or construction of any kind shall be allowed in Tracts 'G' and 'H' except for the placement of pervious trails no wider than four (4) feet and removal of diseased and dangerous trees as recommended by a certified arborist. All trees removed within Tracts 'G' and 'H' shall be replaced with at least three 6-foot native evergreen trees. All shrubs and understory plants removed with Tracts 'G' and 'H' shall be replaced with native shrubs and ground cover, which will ultimately cover 75 percent of ground area within three years. Underground utilities, paved trails and trails wider than four (4) feet are not allowed in Tracts 'G' and 'H'. The development shall proceed in conformance with the above conditions; the plat dated September 21, 2001, received by the City on June 3, 2003; and the landscape plan dated April 2003, received by the City on June 3, 2003. The plat and landscape plans are located in City file SUB 03-04 Canterwood Division 12.

13. **Liens.** The Owner understands and agrees that delinquent payments under this agreement shall constitute a lien upon the above-described property. If the extension is for sewer service, the lien shall be as provided in RCW 35.67.200, and shall be enforced in accordance with RCW 35.67.220 through RCW 35.67.280, all as now enacted or hereafter amended. If the extension is for water service, the lien shall be as provided in RCW 35.21.290 and enforced as provided in RCW 35.21.300, all as currently enacted or hereafter amended.

14. **Termination for Non-Compliance.** In the event Owner fails to comply with any term or condition of this Agreement, the City shall have the right to terminate utility service to the Owner's property in addition to any other remedies available to it.

15. **Waiver of Right to Protest LID.** Owner acknowledges that the entire property legally described in Exhibit 'A' would be specially benefited by the following improvements (specify):

*none*

Owner agrees to sign a petition for the formation of an LID or ULID for the specified improvements at such time as one is circulated and Owner hereby appoints the Mayor of the City as his attorney-in-fact to sign such a petition in the event Owner fails or refuses to do so.

With full understanding of Owner's right to protest formation of an LID or ULID to construct such improvements pursuant to RCW 35.43.180, Owner agrees to participate in any such LID or ULID and to waive his right to protest formation of the same. Owner shall retain the right to contest the method of calculating any assessment and the amount thereof, and shall further retain the right to appeal the decision of the City Council affirming the final assessment roll to the superior court. Notwithstanding any other provisions of this Agreement, this waiver of the right to protest shall only be valid for a period of ten (10) years from the date this Agreement is signed by the Owner.

16. **Specific Enforcement.** In addition to any other remedy provided by law or this Agreement, the terms of this Agreement may be specifically enforced by a court of competent jurisdiction.

17. **Covenant.** This agreement shall be recorded with the Pierce County Auditor and shall constitute a covenant running with the land described on Exhibit 'A', and shall be binding on the Owner, his/her heirs, successors and assigns. All costs of recording this Agreement with the Pierce County Auditor shall be borne by the Owner.

18. **Attorney's Fees.** In any suit or action seeking to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, in addition to any other remedy provided by law or this agreement.


19. **Severability.** If any provision of this Agreement or its application to any circumstance is held invalid, the remainder of the Agreement or the application to other circumstances shall not be affected.

DATED this 8<sup>th</sup> day of September, 2003.

CITY OF GIG HARBOR

  
\_\_\_\_\_  
Mayor Gretchen Wilbert

OWNER

  
\_\_\_\_\_  
Name: GORDON RUSH  
Title: PRESIDENT

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
City Clerk, Molly Towslee



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 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



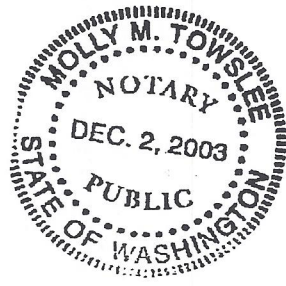
Signature  
Cyrena Westenhaver

NOTARY PUBLIC for the State of Washington,  
residing at GIG HARBOR, WA.  
My commission expires: 7/17/06

STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that Gretchen A. Wilbert is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she is 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



Signature  
Molly M Towse

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

**Exhibit A**

**Legal Description:**

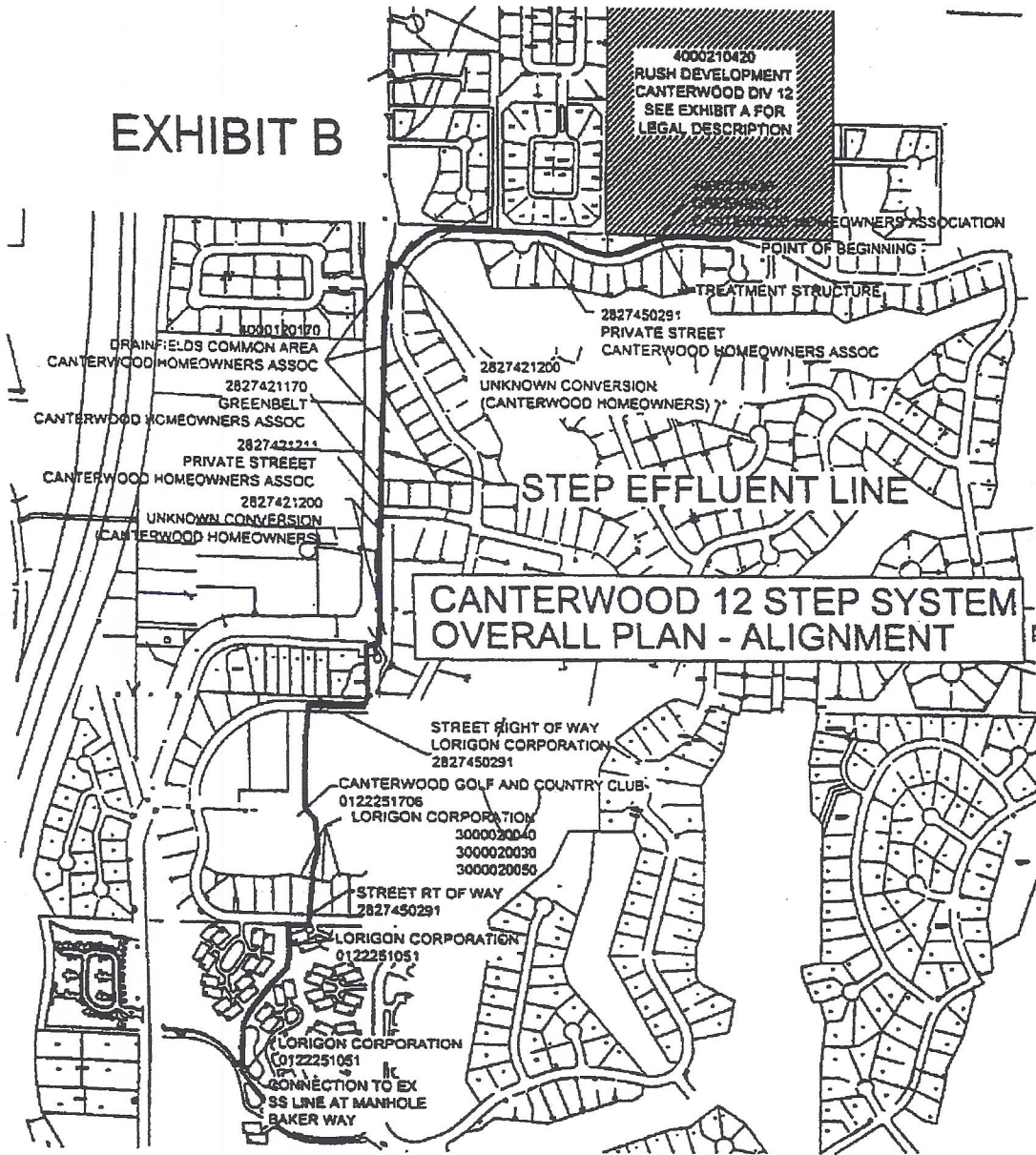
**Metes and Bounds Legal Description of the Southeast Quarter of the Northwest Quarter of Section 19, Township 22 North, Range 2 East, W.M.**

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

