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08-12-2004 09:41am \$32.00
PIERCE COUNTY, WASHINGTON

Name & Return Address:

North Pacific Design - ANN TOWN
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Please print legibly or type information.

Document Title(s) <u>Grant of Easement</u>
Grantor(s) <u>Canterwood Golf & Country Club</u> ____ Additional Names on Page ____ of Document
Grantee(s) <u>Rush Div 12 LLC</u> ____ Additional Names on Page ____ of Document
Legal Description (Abbreviated: i.e., lot, block & subdivision name or number OR section/township/range and quarter/quarter section) <u>Sec 25, T22, N1E</u> Complete Legal Description on Page <u>713</u> of Document
Auditor's Reference Number(s) <u>AFN 920440491, AFN 8905170206</u>
Assessor's Property Tax Parcel/Account Number(s) <u>0122251706,</u> <u>60222192002</u>
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. I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.
Signature of Requesting Party (Required for non-standard recordings only) Gpcovst.doc rev 4/02

EXCISE TAX EXEMPT DATE 8-12-04
Pierce County

By AK Auth. Sig

After Recording Return to:

Roy F. Kussmann, Esq.
7350 Cirque Drive West, Suite 102
University Place, WA 98467

Reference # (if applicable):
Grantor: Canterwood Golf and Country Club
Grantee: Rush Division 12, LLC
Legal Description (abbreviated): Sec 25, T 22 N, R 1 E, WM
Add. legal ls on page 11
Assessor's Property Tax Parcel #:0122251706

GRANT OF SEWER EASEMENT

CANTERWOOD GOLF AND COUNTRY CLUB, a Washington nonprofit corporation ("Grantor"), which is the owner of the real property described on Exhibit "A" attached hereto (the "Grantor Property"), hereby grants to RUSH DIVISION 12, LLC, a Washington limited liability company ("Grantee"), on the terms and conditions hereof:

A. a perpetual nonexclusive easement (the "Easement") over, under and across the real property described on Exhibit "B" attached hereto (the "Easement Area"); and

B. the right of entry onto the Grantor Property (the "Access Rights") as necessary for the construction, repair and maintenance of the Easement Improvements (as defined below).

for the purposes and subject to the restrictions described herein.

1. Use. The Easement Area shall be used by Grantee only for the installation, operation, repair and maintenance of a three inch diameter sewer main and related facilities described on Exhibit "C" attached hereto (the "Easement Improvements"), which, except as expressly provided herein, will serve only the Grantee's real property described on Exhibit "D" attached hereto.

2. Construction and Operation.

(a) Grantee shall construct the Easement Improvements within the Easement Area solely at its expense. All construction work shall be undertaken using directional boring, rather than trenching, and in a manner so as to minimize impact to the Grantor Property. All construction work shall be conducted so as not to interfere with Grantor's use of the Grantor Property, and, specifically, no construction work shall

be undertaken on any portion of the golf driving range, which is part of the Grantor Property, except on Mondays, and prior to 10:30 a.m. on other days. Construction of the Easement Improvements shall be completed on or before December 31, 2004.

(b) Immediately upon completion of construction, repair or maintenance work, and, as practical during such work, Grantee shall restore the Grantor Property, including the Easement Area, and any personal property of Grantor affected by such construction, to the same condition as prior to commencement of any work.

(c) Grantee shall immediately repair any damage caused to any portion of the Grantor Property, or any personal property of Grantor, or any of its members, employees or agents.

(d) Prior to commencing any construction work, or work preparatory thereto, and throughout the term of this Easement, Grantee shall:

(i) obtain and maintain all permits or consents from any governmental agencies required for construction, maintenance, repair, or use of the Easement Improvements;

(ii) obtain and maintain, and provide to Grantor, a policy of public/contractor's liability insurance, with combined limits of not less than One Million Dollars (\$1,000,000.00), including Grantor as an additional insured and covering all activities of Grantee under this Easement; and

(iii) provide to Grantor, at Grantee's option, either (a) a surety bond, with a bonding company acceptable to Grantor, or (b) a cash deposit, in the principal amount of Six Thousand Dollars (\$6,000.00), securing Grantee's obligations hereunder, including Grantee's obligations under paragraph 7 below. If Grantee elects to use a cash deposit, the deposit shall be paid to Grantor upon execution of this Easement and retained by Grantor as long as Grantee has any obligations hereunder. Grantor may apply the deposit to any obligations of Grantee hereunder and, if any portion of the deposit is so applied, Grantee shall pay to Grantor, on demand, the amount so applied, so that the amount of the deposit is not less than Six Thousand Dollars (\$6,000.00) at any time.

3. Access Rights. Grantee shall have Access Rights only for the purpose of surveying, constructing, repairing and maintaining the Easement Improvements. Grantor hereby also grants to the City of Gig Harbor (the "City") Access Rights for the purposes of inspecting the Easement Improvements and reasonably monitoring the sewer main and related facilities for performance, operational flows, defects and/or conformance with City rules and regulations. Except in the event of an emergency or in the case of minor maintenance, in which case Grantee shall make reasonable efforts to

notify the Manager of Grantor, prior to using its Access Rights, Grantee and the City shall notify the Manager of Grantor of the time and purpose of access. In exercising their Access Rights, Grantee and the City shall comply with any reasonable restrictions imposed by the Grantor and shall not interfere with activities of Grantor and its members, employees and agents.

4. As-Built Drawings/Location. Within thirty (30) days after completion of construction of the Easement Improvements, Grantee shall provide to Grantor a detailed "as-built" drawing, prepared by a licensed civil engineer, showing the exact location of the Easement Improvement, including the depth and location of any such facilities.

In the event Grantor requires a determination of the exact physical location of the Easement Improvements, Grantee, promptly after request from Grantor, shall mark the location thereof.

5. Grantor Use of Easement Improvements. Grantee agrees that, in the event Grantor wishes to use the Easement Improvements, including but not limited to use for disposal of waste from the club house, recreational facilities, and any future facilities developed on the Grantor Property, Grantee will allow such use, at no cost to Grantor, except the cost of construction of connections to the easement facilities, waive latecomer fees and fully cooperate with Grantor in making necessary physical connections to the Easement Improvements. However, Grantor agrees that all other expenses and other requirements associated with its hook up and use of the Easement Improvements, to include but not limited to professional fees, City of Gig Harbor permitting costs, utility extension fees and the cost of construction of connections to the Easement Improvements, shall be paid by Grantor.

6. Relocation of Easement and Easement Improvements. Grantee agrees that, in the event Grantor, in its discretion, determines that it requires the Easement Area for other purposes, Grantor shall provide a substitute location (the "Substitute Easement Area") for the Easement over the Grantor Property and Grantee, at its sole cost and expense, shall promptly prepare plans and specifications for location of the Easement Improvements on the Substitute Easement Area and relocate or re-construct the Easement Improvements on the Substitute Easement Area. In constructing the Easement Improvements in the Substitute Easement Area, all provisions of this Easement applicable to initial construction of the Easement Improvements shall apply. Prior to commencement of construction of the Easement Improvements in the Substitute Easement Area, this Easement shall be amended by attachment of a substitute Exhibit "B" describing the Substitute Easement Area.

7. Indemnification. Grantee expressly agrees to indemnify Grantor, its members, employees and agents ("Indemnified Parties") for, and hold the Indemnified Parties harmless from, any claim, liability, loss or damage, including any costs and

attorney's fees, arising out of or relating to (a) the use of or access to the Easement Area, or any of the Grantor Property, by Grantee or its officers, directors, managers, members, employees of agents, (b) the maintenance, repair or operation of the Easement Improvements, or (c) a breach by Grantee of any of the provisions of this Easement.

8. STEP Association. Grantee agrees that, promptly after completion of the Easement Improvements, it shall, at its expense, form a Division 12 STEP association (the "STEP Association"), which shall assume all of Grantee's obligations herein, including the responsibility for the maintenance and repair of the Easement Improvements, provided the formation of a STEP Association, and the assignment of any of Grantee's rights or obligations thereto, shall not in any way release or discharge Grantee from the primary responsibility to perform all of its obligations herein.

9. Compliance. Grantee agrees that, in using the Easement Area and accessing the Grantor Property, and in constructing, operating, repairing and maintaining the easement facilities, it will comply with all applicable rules, regulations, laws and ordinances relating thereto, and any rules or regulations established by the Grantor for use or operation of the Grantor Property. Upon Grantor's request at any time or times, Grantee shall promptly provide written evidence of compliance with all of the foregoing requirements.

10. Termination. The Grantee agrees that, in the event Grantee, or any successor thereto, breaches any material provision of this Easement, and such breach is not cured within thirty (30) days after written notice of breach, or, if such breach cannot be cured within thirty (30) days, if Grantee does not commence all actions to cure such breach and complete such cure within a reasonable time, Grantor may terminate this Easement by recording a termination of easement, in which event all of Grantee's rights hereunder shall terminate and Grantee shall promptly remove all Easement Improvements from the Grantor Property.

11. Payments. In partial consideration for the grant of the Easement the Grantee shall pay to Grantor, within ten (10) days after the date of full execution hereof, and before commencing any work on the Grantor Property, all of Grantor's costs and expenses incurred in connection with the negotiation and preparation of this Easement, including any attorney's and consultant's fees.

12. Miscellaneous.

(a) This Easement will be construed, and the rights, duties, and obligations of the parties will be determined in accordance with the laws of the State of Washington.

(b) Any disagreement, dispute, controversy, or claim arising out of or relating to this Easement or the interpretation of validity hereof shall be settled exclusively and finally by arbitration in accordance with RCW 7.04 as now in effect or hereafter amended.

(c) The parties to this Easement agree that the proper venue of any action on this Easement shall be in Pierce County, in the State of Washington.

(d) This Easement represents the entire understanding of the parties with respect to the subject matter of the Agreement. There are no other prior or contemporaneous agreements, either written or oral, among the parties with respect to this subject.

(e) The Grantee's rights under this Easement may only be assigned as described in paragraph 8 above. Any other purported assignment of any portion of Grantee's rights hereunder shall be void.

(f) This Easement shall not be deemed to grant to Grantee any rights except as expressly stated herein.

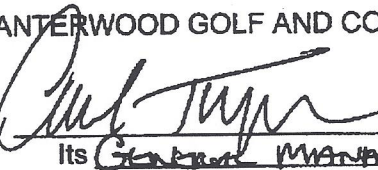
(g) Time is of the essence of Grantee's obligations hereunder.

DATED this 28 day of MAY, 2004.

GRANTOR:

CANTERWOOD GOLF AND COUNTRY CLUB

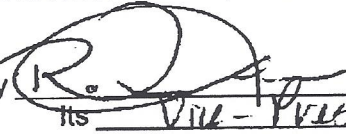
By


Its General Manager

GRANTEE:

RUSH DIVISION 12, LLC

By


Its Vice-President

STATE OF WASHINGTON)
) ss.
County of Pierce)

On this day before me, a Notary Public in and for said State, personally appeared Carl Turpin, to me known to be the General Manager of Canterwood Golf and Country Club that executed the within and foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such company, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute such instrument.



GIVEN under my hand and seal this 27th day of May, 2004.

Meleam Buerbero
NOTARY PUBLIC
My appointment expires: 2-11-2007

STATE OF WASHINGTON)
) ss.
County of Pierce)

On this day before me, a Notary Public in and for said State, personally appeared ROBIN LERUM, to me known to be the VICE PRESIDENT of Rush Division 12, LLC, that executed the within and foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such company, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute such instrument.

GIVEN under my hand and seal this 27th day of MAY, 2004.



Cyrena Westenhaver
NOTARY PUBLIC
My appointment expires: 7/17/06

Exhibit A.**Description of Grantor Property**

Assessor's Parcel Number 0122251706
Generally Described as Follows

That portion of Section 25, Township 22 North Range 1 East as follows: That portion of the southeast quarter of the northeast quarter lying easterly of the Plat of the Canterwood Division 2 Phase 1 Subdivision approved by Pierce County Planning on August 20, 2002., specifically the parcel A described in Boundary Line Revision at Book 0765 Pg 0557 of the records of the Pierce County Auditor recorded on April 14, 1992. AFN 9204140491.

AND

Tract B of Canterwood Division 5 recorded at AFN 8905170206, Pierce County, Washington.

EXHIBIT "B"
EASEMENT AREA

(SEE ATTACHED)

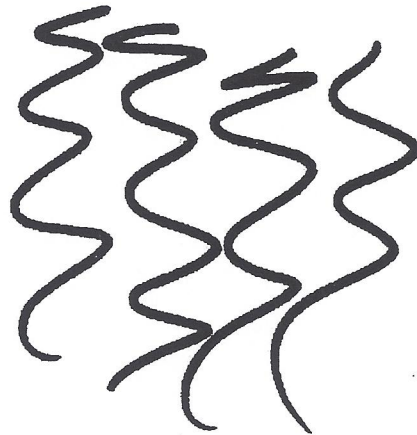


EXHIBIT B-1 (ZONES X)

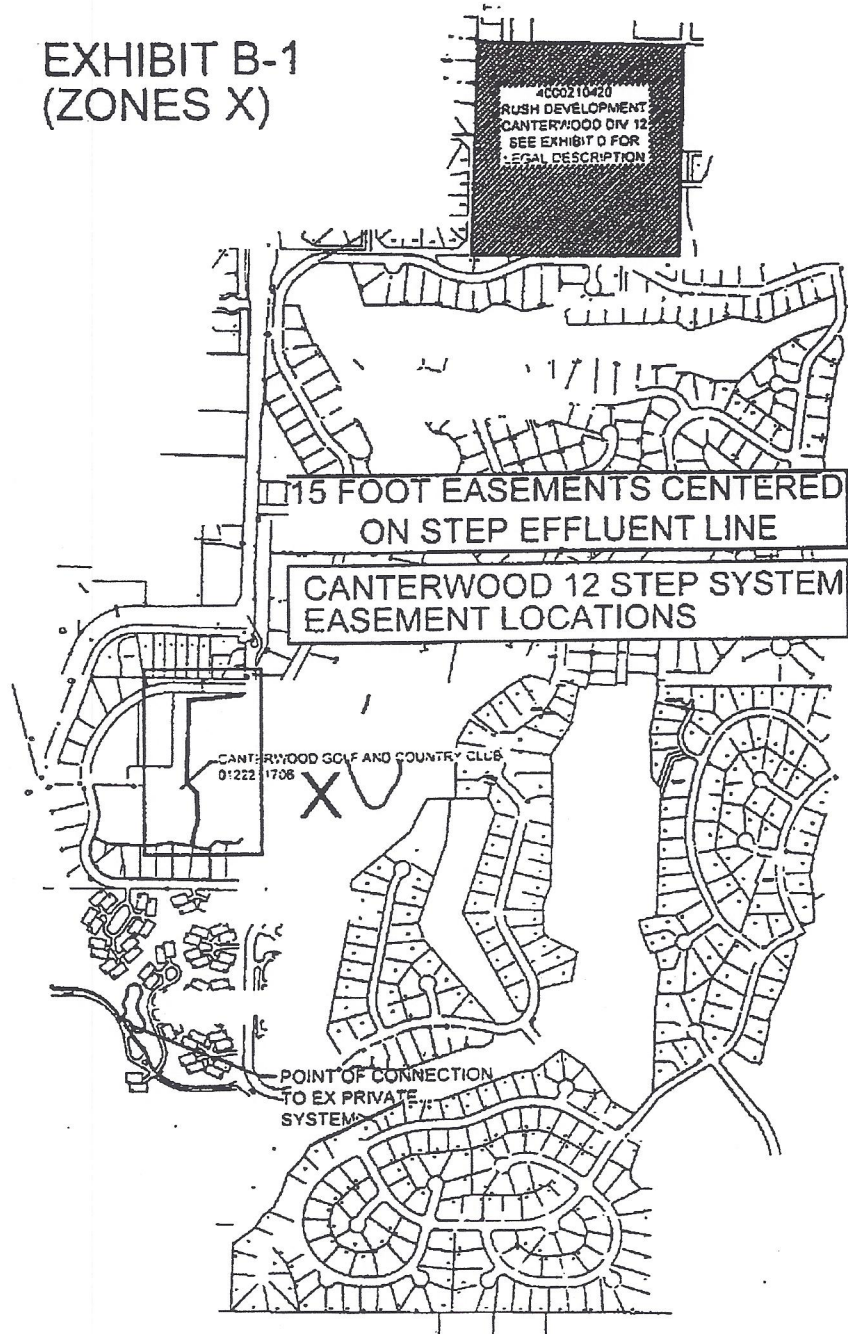


EXHIBIT B2 (ZOOM OF ZONE X)

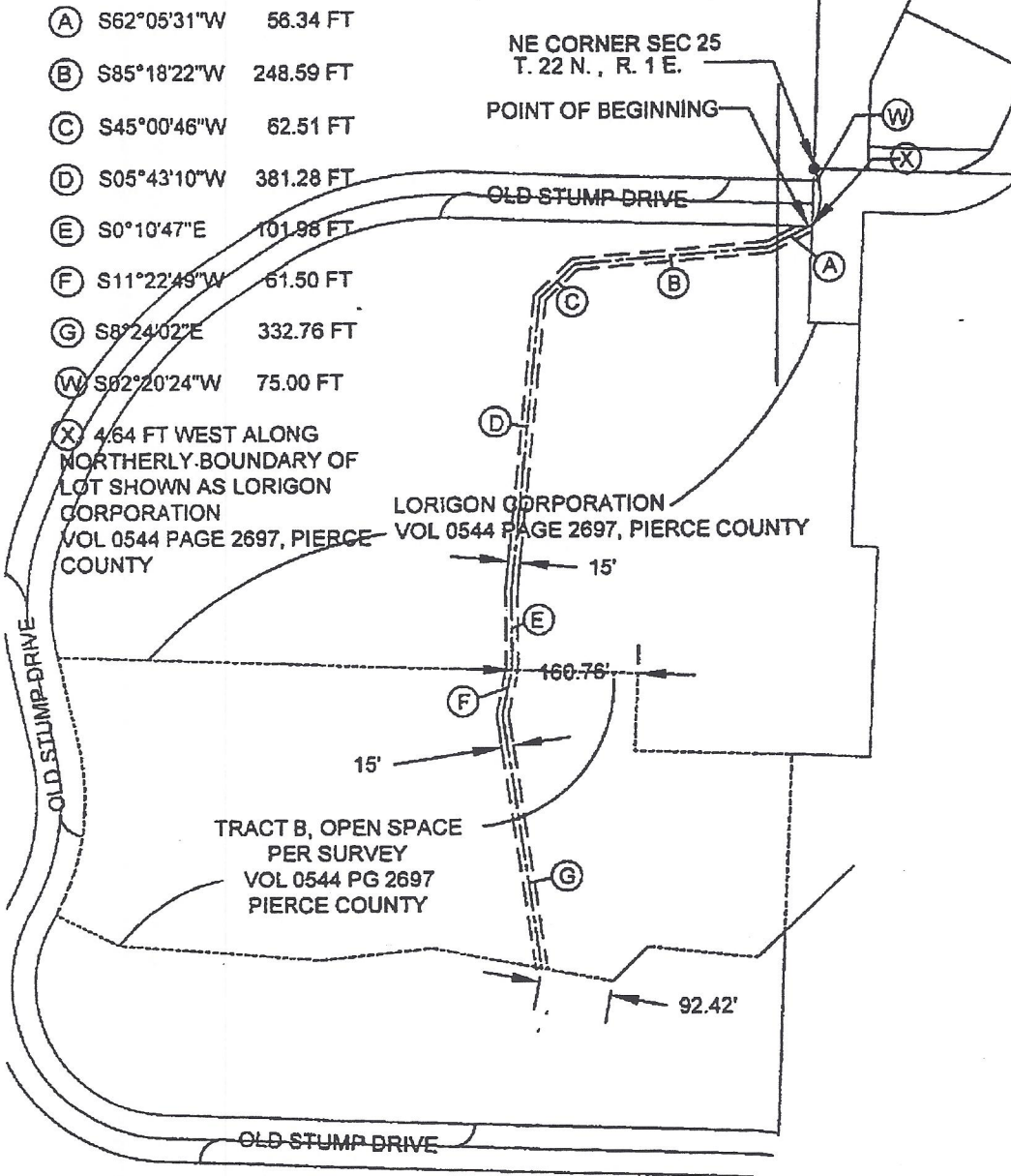


EXHIBIT B3**LEGAL DESCRIPTION OF SANITARY SEWER EASEMENT:**

BEGINNING at the Northeast corner of Section 25, Township 22 North, Range 1 East, Willamette Meridian, in Pierce County Washington, thence southerly along the east section line of section 25, 75.00 feet more or less to the northeast property corner of the grantor parcel, thence 4.64 feet west along the northerly boundary of the grantor parcel to the **TRUE POINT OF BEGINNING**.

The easement consists of the area within the grantor parcels 7.5 feet on both sides of the following described line for a total easement width of 15 feet.

From the **TRUE POINT OF BEGINNING** thence S 62° 05' 31" W 56.34 feet to a point, thence S 85° 18' 22" W 284.59 feet to a point, thence S 45° 00' 46" W 62.51 feet to a point, thence S 5° 43' 10" W 381.28 feet to a point, thence S 0° 10' 47" E 101.98 feet to a point, thence S 11° 22' 49" W 61.50 feet to a point, thence S 8° 24' 02" E 332.76 feet to a point on the south property line of said grantor parcels.

EXHIBIT C

EASEMENT IMPROVEMENTS

CENTRALLY LOCATED WITHIN THE EASEMENT AREA WILL EXIST A 3"
DIAMETER SANITARY SEWER FORCE MAIN WITH VALVES, CONTROLS AND
APPURTENANCES.

Exhibit D

Description of Grantee Property

**Assessor's Parcel Number 00222192002
Generally Described as Follows**

The southeast quarter of the northwest quarter of Section 19, Township 22 North, Range 2 East, W.M., Situate in Pierce County, Washington