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PIERCE COUNTY, WASHINGTON

AFTER RECORDING RETURN TO:  
Law Office of Jacob L. Potak, P.S.  
5801 Soundview Dr., Ste. 258  
Gig Harbor, WA 98335

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR A STEP SEWERAGE SYSTEM

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR A STEP SEWERAGE SYSTEM is made on the 17 day of March, 2005, by Rush Division 12 LLC, a Washington limited liability company, hereinafter referred to as "Declarant."

### I. BACKGROUND

A. Declarant was originally the owner of certain property in Pierce County, Washington, which it is developing into a community called Canterwood Division 12. The Declarant has sold certain lots within that property to others, and Declarant has retained ownership of the balance of the property, which is described in Exhibit "A," and attached to this Declaration and incorporated by this reference, hereafter referred to as "Canterwood Division 12".

B. Declarant has contracted with the City of Gig Harbor, UTILITY EXTENSION, CAPACITY AGREEMENT, dated September 8, 2003, to provide sewer utility service for connection of the Canterwood Division 12 STEP System, which serves lots 1-71 within Canterwood Division 12.

C. Declarant has contracted with the City of Gig Harbor, through the STEP MANAGEMENT AGREEMENT - CANTERWOOD DIVISION 12, dated September 8, 2003 to provide operation and maintenance of the Canterwood Division 12 STEP Sewerage system.

D. Declarant has incorporated the Canterwood Division 12 STEP System Association to provide a means for operating and managing said systems, meeting the purposes of this Declaration, the requirements of Pierce County Health Department, and the provisions of WAC 248-272.

## II. DECLARATION

A. Declarant hereby declares that the property described in Exhibit "A," and such additions as may be made pursuant to Article II, is, are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration.

B. Further, Declarant delegates and assigns to the Canterwood Division 12 STEP System Association, a Washington non-profit corporation, the power of maintaining and administering the STEP system, administering and enforcing these covenants and conditions, and collecting and disbursing the assessments and charges created in this Declaration.

### ARTICLE I

#### Definitions

Section 1.1. "Approval" shall mean the issuance of written approval, the approval at any meeting, any written waiver of approval rights, or the issuance of a letter of "no objection."

Section 1.2. "Association" shall mean the Canterwood Division 12 STEP System Association, a Washington non-profit corporation, its successors and assigns.

Section 1.3. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

Section 1.4. "Declarant" shall mean Rush Division 12 LLC, a Washington limited liability company, and its successors and assigns; provided, however, that no successor or assignee of Declarant shall have any rights or obligations of Declarant under the Declaration unless such rights and obligations are specifically set forth in the instrument of succession or assignment. Notwithstanding this provision, the obligations of Declarant under this instrument shall be binding upon any successor or assign who acquires all or substantially all of the remaining property in the Canterwood Division 12 development.

Section 1.5. "Declarant Control" shall mean the right of Declarant or persons designated by the Declarant to appoint and remove officers and members of the Board of Directors.

Section 1.6. "Declaration" shall mean the covenants, conditions and restrictions and all other provisions set forth in this Declaration, as they may from time to time be amended.

Section 1.7. "Dwelling Unit" shall mean any portion of a building on the Properties, which portion is designed and intended as a residence for one family, and which is connected to a STEP System or as defined below. Without limiting the foregoing, the term shall include single-family houses, townhouses, and condominium units. The term "Dwelling Unit" shall encompass the Lot upon which a Dwelling Unit is located.

Section 1.8. "Lot" shall mean any numbered parcel of land shown upon any recorded subdivision map of the Properties, with the exception of common areas or other areas set aside for non-residential use.

Section 1.9. "Member" shall mean every person or entity who holds membership in the Association.

Section 1.10. "Notice" shall mean written notice delivered personally or mailed to the last known address of the intended recipient.

Section 1.11. "Owner" shall mean every person or entity, including Declarant, which is a record Owner of the fee simple title to any Dwelling Unit, or if any Dwelling Unit is sold under real estate contract, the vendee or vendees under that contract; provided, however, that the term "Owner" shall not include those having such interest merely as security for the performance of an obligation.

Section 1.12. "Properties" shall mean the real property described on Exhibit "A," together with such other property as may be annexed thereto under the provisions of Article II from and after the time such other property is actually annexed.

Section 1.13. "STEP System" (Septic Tank Effluent Pumping System) shall mean a system which pumps effluent from a septic tank into either a community or individual subsurface sewage disposal system, or into a sewer system.

## ARTICLE II

### Property Subject To This Declaration And Additions Thereto

Section 2.1. The Properties. The real property which is subject to this Declaration is described on Exhibit "A."

Section 2.2. Additions to the Property. Additional property may become subject to this Declaration in the following manner:

(a) Automatic Additions. Additional properties shall automatically become subject to this Declaration upon connection to the Division 12 STEP System and satisfaction of all other conditions set forth in this Declaration.

(b) Canterwood Homeowners Association Sewer Easement recorded under Pierce County Auditor's No. 200408120022. As consideration for a sewer easement for construction and continuing operation of the Canterwood Division 12 STEP System, the Declarant agreed to the following conditions. In the event existing homes with certified failing septic systems within the Canterwood planned community, not to exceed 15 homes, wish to use the STEP System for disposal of STEP effluent, Declarant will allow such use, and will waive the latecomer's fees. Declarant will also fully cooperate with the Canterwood Homeowners Association in making necessary physical connections to the STEP System. However, Canterwood Homeowners Association agrees that all expenses and other requirements associated with its hook up and use of the STEP System, to include but not be limited to professional fees, City of Gig Harbor permitting costs to include utility extension fees and the cost of construction of connections to the STEP System shall be paid by Canterwood Homeowners Association.

(c) Canterwood Golf & Country Club Sewer Easement recorded under Pierce County Auditor's No. 200408120020. As consideration for the sewer easement to construction and operation of the Canterwood Division 12 STEP System, the Declarant agreed to the following conditions. In the event Canterwood Golf & Country Club wishes to use the STEP System, including but not limited to use for disposal of waste from the club house, recreational facilities, and any future facilities developed on the Canterwood Golf & Country Club property, the Declarant will allow such use, at no cost to Canterwood Golf & Country Club, except the cost of construction of connections to the easement facilities, waive latecomer fees and fully cooperate with Canterwood Golf & Country Club in making necessary physical connections to the STEP System. However, Canterwood Golf & Country Club agrees that all other expenses and other requirements associated with its hook up and use of the STEP System, 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 STEP System, shall be paid by Canterwood Golf & Country Club.

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## ARTICLE III

### Association

Section 3.1. Membership. Every Owner of a Dwelling Unit within Canterwood Division 12 and any dwelling unit which is connected to the STEP System shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Dwelling Unit which is connected to the STEP System.

Section 3.2. Voting Rights. Each Member shall be entitled to one vote for each Dwelling Unit owned. When more than one person holds an interest in any Dwelling Unit, all such persons shall be Members. The vote for such Dwelling Unit shall be divisible and exercised as the Owners determine, but in no event shall more than one vote be cast with respect to any Dwelling Unit.

Section 3.3. Commencement of Voting Rights. The right of a Member to vote shall commence on the date a Dwelling Unit is connected to the STEP System.

Section 3.4. Declarant Control. The Declarant reserves the right to amend this Declaration, to select all of the Directors and such Directors need not be Owners, and to add additional property to this Declaration, until the earliest of the following events happens:

- (a) Declarant sells 100 % of the 71 lots within Canterwood Division 12; or
- (b) Declarant elects to permanently relinquish its authority under this provision by written notice to all Owners.

## ARTICLE IV

### Easements

Section 4.1. Location of Easements. Declarant reserves for the Association, pursuant to Article V of the Canterwood Amended and Restated Declaration of Covenants, Conditions, and Restrictions recorded under Pierce County Auditor's File No. 8803180143, an easement over those portions of the Properties where STEP Systems are located. In addition, three (3) sewer easements for construction and operation of the Canterwood Division 12 STEP System are recorded under Pierce County Auditor's File Nos. 200408120020, 200408120020 and 200408120021. The exact location of the constructed systems and reserve areas are shown on drawings filed for record in the office of the Tacoma/Pierce County Health Department and in the office of the Canterwood Division 12 STEP System Association.

Section 4.2. Purpose of Easements. The Association and its agents shall have an easement for access to the exterior of any Dwelling Unit during reasonable hours as may be necessary to maintain, repair, replace, operate and improve any sewerage system covered by this Declaration, including but not limited to all lines, pumps, electrical equipment, and electrical service. The Association shall take reasonable steps to see that its activities on the Properties are performed in such a way as to minimize adverse effects on Owners. All improvements installed or constructed by the Declarant or the Association on the Properties shall remain the property of the Association. No Owner shall undertake to alter the installed system or cover or obstruct access to the pump basin, clean-outs, or the lock-outs, without the prior approval of the Association. Any damage caused by the Owner or the Owner's agents or invitees shall be repaired by the Association at the Owner's expense. All costs of such damage shall be a lien against the Owner's property in the same manner as the assessments described below.

## ARTICLE V

### Assessments

#### Section 5.1. Covenants for Maintenance Assessments.

- (a) Declarant, for each Dwelling Unit owned by it, agrees, and each Owner of a Dwelling Unit by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to agree to pay to the Association (i) monthly assessments or charges for connection, maintenance, operation, repairs, replacements, emergency work, or modifications to the sewerage system, and (ii) special assessments for capital improvements.
- (b) The monthly and special assessments, together with interest, costs and reasonable attorneys' fees shall be a charge and a continuing lien upon the Dwelling Unit against which each such assessment is made. Such lien may be foreclosed by the Association in like manner as a mortgage on real property.
- (c) Each assessment, together with interest, costs, and reasonable attorneys' fees shall also be the personal obligation of the person who was the Owner of the Dwelling Unit assessed at the time the assessment fell due. The personal obligation shall not pass to the Owner's successors in interest unless expressly assumed by them. The new Owner shall be personally liable for assessments which become due on and after the date of sale or transfer.

Section 5.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of maintenance, repairs, replacements, operation, emergency work, modifications or capital improvements of the sewerage systems and for such other purposes as the Association may deem consistent with this Declaration. It is further agreed that the Association will enter into a preventative maintenance contract with a service company to regularly service the STEP System.

Section 5.3. Rate of Assessments. Declarant shall initially contribute as a capital contribution to the Association a sufficient supplemental amount of funds to enable the reasonable ongoing operation of the STEP system prior the sale of twenty (20) Lots. Upon the sale of the 20<sup>th</sup> Lot, the Declarant shall evaluate the funding status of the Association to determine if further contribution by the Declarant is warranted and if deemed necessary a new time line will be established. The monthly assessment(s) shall be fixed at a uniform rate for all Dwelling Units by the Declarant and re-evaluated annually by the Association's Board of Directors.

The monthly assessment(s) shall be in addition to a monthly sewage service charge from the City of Gig Harbor. The monthly sewage service charge per dwelling unit will be proportioned based upon the total metered septic tank effluent flow of all current active connections divided by the current number of active connections. The monthly assessment and sewage service charge will commence upon occupancy of the residence.

Section 5.4. Effect of Non-Payment of Assessments: Remedies of Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within fifteen (15) days after the due date, the assessment shall bear interest from the date of delinquency at the highest rate provided by law, and the Association may bring an action at law against the Owner obligated to pay the assessment, or may foreclose the lien against the property, and in either event, interest, costs, and reasonable attorneys' fees shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for bi-monthly or special assessments by non-use or abandonment of the Owner's Dwelling Unit.

Section 5.5. Subordination of Lien to Mortgages. The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any first mortgage. Sale or transfer of any Dwelling Unit shall not affect the assessment lien. However, where the mortgagee of a mortgage of record or other purchaser of a Dwelling Unit obtains possession of the Dwelling Unit as the result of foreclosure of a mortgage, or by deed or assignment in lieu of foreclosure, such possessor, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Dwelling Unit which became due prior to such possession. Such unpaid share of common expenses or assessments shall be deemed

to be a common expense collectible from all of the Owners, including such possessor, his successors and assigns.

## ARTICLE VI

### General Provisions

Section 6.1. Binding Effect. All present and future Owners or occupants of Dwelling Units shall be subject to and shall comply with the provisions of this Declaration, and the Bylaws of the Association, as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into occupancy of any Dwelling Unit shall constitute an agreement that the provisions of this Declaration, and the Bylaws of the Association, as they may be amended from time to time, are accepted and ratified by such Owner or occupant, and all such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Dwelling Unit, as though such provisions were recited and stipulated at length in each and every deed and conveyance, or lease thereof.

Section 6.2. Enforcement. The Association and any Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Should the Association or any Owner employ counsel to enforce any of the foregoing restrictions, conditions, covenants, reservations, liens or charges, all costs incurred in such enforcement, including reasonable attorneys' fees, shall be paid by the Owner found to be in violation of said restriction, condition, covenant or reservation, or found to be delinquent in the payment of said lien or charge.

Section 6.3. Failure to Enforce. No delay or omission on the part of the Declarant or the Owners of Dwelling Units in exercising any rights, power, or remedy provided in this Declaration shall be construed as a waiver of or acquiescence in any breach of the covenants, conditions, reservations, or restrictions set forth in the Declaration. No action shall be brought or maintained by anyone whatsoever against the Declarant for or on account of its failure to bring any action for any breach of these restrictions, conditions, covenants or reservations, or for imposing restrictions which may be unenforceable.

Section 6.4. Severability. Invalidation of anyone of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

Section 6.5. Interpretation. In interpreting this Declaration, the term "person" may include natural persons, partnerships, corporations, associations, and personal

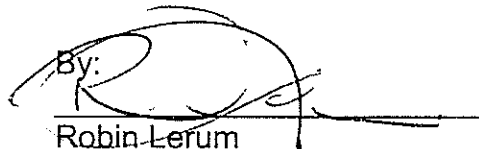


representatives. The singular may also include the plural and the masculine may include the feminine, or vice versa, where the context so admits or requires.

Section 6.6. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time it shall be automatically extended for successive periods of ten (10) years. After Declarant relinquishes control pursuant to Section 3.4, this Declaration may be amended by vote of seventy-five percent (75%) of the Members. Any amendment must be in writing and signed by the approving Members or Owners, and must be recorded.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed this 17 day of March, 2005.

RUSH DIVISION 12 LLC,  
a Washington limited liability  
company

By:   
Robin Lerum  
Its Authorized Agent

STATE OF WASHINGTON       )  
  ) ss.  
COUNTY OF PIERCE        )

On this day personally appeared before me Robin Lerum, to me known to be the Authorized Agent of Rush Division 12, LLC, the company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed on this 17 day of March 2005.

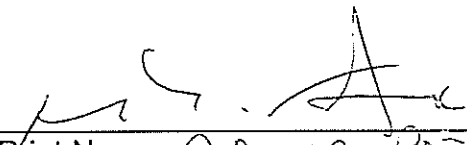
  
Print Name: Jacob Poterak  
NOTARY PUBLIC in and for the State of  
Washington, residing at: 614 Hub  
My commission expires: 6-10-07

EXHIBIT A

LEGAL DESCRIPTION

for

CANTERWOOD DIVISION 12

Metes and Bounds of 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°18'30" 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 – 71 LOTS TOTAL

Situated in Pierce County, Washington