

RESOLUTION NO. 912

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT WITH RUSH-TALMO, LLC.

WHEREAS, RCW 36.70B.170 authorizes the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction; and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement; and

WHEREAS, for the purposes of this development agreement, “development standards” includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, the Developer has a fee simple or other substantial beneficial interest in the real property located at the intersection of 72nd Street NW and 46th Avenue NW (parcel numbers 0221074082 and 0221074083), Gig Harbor, Washington, which is legally described in Exhibit A of the Development Agreement, attached hereto and incorporated herein by this reference; and

WHEREAS, the Mitigated Determination of Nonsignificance (MDNS) dated

8/24/06 described in Exhibit B of the Development Agreement requires a "Development Agreement for Street Improvement Monetary Contributions" for payment of a pro-rata share of the cost for a traffic signal at the intersection of Wollochet Drive and Wagner Way; and

WHEREAS, on September 10, 2012, the City Council held its public hearing on the development agreement during a regular public meeting; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. The City Council hereby authorizes the Mayor to execute the Development Agreement attached hereto as Exhibit A, with Rush-Talmo LLC.

Section 2. The City Council hereby directs the City Clerk to record the Development Agreement against the Property legally described in Exhibit A to the Development Agreement, pursuant to RCW 36.70B.190.

PASSED by the City Council this 10th day of September, 2012.

APPROVED:


MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:


CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: 
ANGELA S. BELBECK

FILED WITH THE CITY CLERK: 09/4/12
PASSED BY THE CITY COUNCIL: 09/10/12
RESOLUTION NO. 912

Return Address:
City Clerk
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

Please print legibly or type information.

Document Title(s) (Or transaction contained therein): 1. DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF GIG HARBOR AND <u>RUSH-TALMO, LLC</u> , FOR STREET IMPROVEMENT MONETARY CONTRIBUTIONS
Grantor(s) (Last name first, then first name and initials): 1. <u>Rush-Talmo, LLC</u>
Grantee(s) (Last name first, then first name and initials): 1. City of Gig Harbor
Legal Description (Abbreviated: i.e. lot, block, plat; or section, township, range): 1. See Attachment Exhibit A Section 07, Township 21, Range 02, Quarter 42
Property Tax Parcel No.: <u>#0221074082, #0221074083</u>
Reference Number(s) (Of documents assigned or released):

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

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF GIG HARBOR
AND RUSH-TALMO, LLC, FOR
STREET IMPROVEMENT MONETARY CONTRIBUTIONS**

THIS DEVELOPMENT AGREEMENT is made and entered into this 11 day of September, 2012, by and between the City of Gig Harbor, a noncharter, optional code Washington municipal corporation, hereinafter the "City," and _____, _____ Rush-Talmo, LLC, a limited liability corporation, organized under the laws of the State of Washington, hereinafter the "Developer."

RECITALS

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, the Developer has received a permit or approval from the City, and as a condition of such permit/approval, is required to either construct or make monetary contributions toward construction of an identified transportation improvement; and

WHEREAS, the City agrees to accept such monetary contribution; and

WHEREAS, on Sept 10, 2012, 2012, the City Council held a public hearing on this Development Agreement, and authorized the Mayor to sign this Development Agreement with the Developer; now, therefore, the parties hereto agree as follows:

General Provisions

Section 1. *The Project.* The Project is the development and use of the Property, consisting of 18.71 acres, located at 4510 – 72nd Street NW, in the City of Gig Harbor. The mitigation of adverse impacts is a requirement the Modified Mitigated Determination of Nonsignificance (MDNS), SEPA 05-1013, dated August 24, 2006.

Section 2. *The Subject Property.* The Project site is legally described in Exhibit A, attached hereto and incorporated herein by this reference.

Section 3. *The Street Improvements.* The Developer has been required to make a pro-rata share contribution toward the cost for intersection improvements and signal installation of traffic signal at the intersection of Wollochet Dr. and Wagner Way, as a condition of SEPA approval, Exhibit B, attached hereto and incorporated herein by this reference.

Section 4. Developer's Monetary Contribution to Public Improvement Financing.

a) The Developer has agreed to satisfy the condition in the permit/approval described above by paying the Developer's pro-rata share of the cost of the construction of the improvements required by #1 Traffic Mitigation of the MDNS (attached as Exhibit B) to the City. The amount of the pro rata share is Thirty-seven thousand, six hundred forty one and 51/100 Dollars (\$ 37,641.51). The City agrees to accept such payment towards the construction of the transportation improvements in accordance with this Agreement.

b) The City shall hold the Developer's payment in a reserve account. The payment may only be expended by the City to fund the transportation improvements shown in Exhibit B, attached hereto, or a transportation project which includes the transportation improvements shown in Exhibit B.

c) The City agrees that if the payment is not expended as set forth above within five years after the Effective Date of the Adopting Resolution, any payment not so expended shall be refunded by the City with interest to the Developer. The interest shall be calculated at the rate applied to judgments to the property owners of record at the time of the refund; PROVIDED, HOWEVER, that if the payment is not expended by the City within five years due to delay attributable to the Developer, the payment shall be refunded without interest.

Section 5. Effective Date and Termination. This Agreement shall commence upon the date it is executed by both parties, and shall continue in force for a period of five years or until the street improvement identified in Exhibit B, page 6 of 7 is actually constructed (and a maintenance bond has been signed by the Developer), whichever comes first. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect.

Termination shall not affect any of the Developer's obligations to comply with the terms and conditions of this Agreement, or any applicable zoning code(s) or subdivision map or other land use permits or approvals granted with respect to the Subject Property, any other conditions of the Project, which are specified as continuing after the termination of this Agreement, nor shall it affect the Developer's (or Landowner's) obligations to pay assessments, liens, fees or taxes.

Section 6. Assignment and Assumption. The Developer shall have the right to sell, assign or transfer this Agreement with all their rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement.

Section 7. Amendment to Agreement; Effect of Agreement on Future Actions. This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (*see*, RCW 36.70B.200).

Section 8. Notices. Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as set forth below. Notice to the City shall be to the attention of both the Community Development Director and the City Attorney. Notices to the Developer or any subsequent purchasers of the property described in Exhibit A shall be required to be given by the City only for those purchasers who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands, correspondence or refunds.

Section 9. Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action shall lie in Pierce County Superior Court or the U.S. District Court for Western Washington.

Section 10. Severability. If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the ordinance adopting this Development Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

[Remainder of page intentionally left blank.]

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Charles L Hunter 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 Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: Sept 11, 2012



Molly Towslee
Molly Towslee
(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing at:

Gig Harbor
My Commission expires: 12/2/2015

Exhibit A
Property Legal Description

PARCEL A:

SECTION 07 TOWNSHIP 21 RANGE 02 QUARTER 42 PARCEL A DBLR 2001-03-16-5001 DESC AS FOLL COM AT NE COR OF NW OF SE TH S 02 DEG 24 MIN 41 SEC W 30.08 FT TO POB TH CONT S 02 DEG 24 MIN 41 SEC W 632.39 FT TO S LI OF N 1/2 SD NW OF SE TH S 88 DEG 14 MIN 04 SEC W 207 FT TH N 02 DEG 24 MIN 41 SEC E 278.03 FT TH N 87 DEG 35 MIN 19 SEC W 25 FT TH N 02 DEG 24 MIN 41 SEC E 352.52 FT TH N 88 DEG 13 MIN 52 SEC E 232.07 FT TO POB OUT OF 4-000 SEG 2005-1464BL 04-18-05BL

PARCEL B:

SECTION 07 TOWNSHIP 21 RANGE 02 QUARTER 42 PARCEL B DBLR 2001-03-16-5001 DESC AS FOLL COM AT NE COR OF NW OF SE TH S 02 DEG 24 MIN 41 SEC W 662.47 FT TO S LI OF N 1/2 SD NW OF SE TH S 88 DEG 14 MIN 04 SEC W 207 FT TO POB TH CONT S 88 DEG 14 MIN 04 SEC W 1086.09 FT TO E MARG 46TH AVE NW TH N 02 DEG 37 MIN 08 SEC E 632.49 FT TO PT 30 FT S MEAS AT R/A FROM N LI SD SE TH N 88 DEG 13 MIN 52 SEC E PAR/W SD N LI 1058.73 FT TH S 02 DEG 24 MIN 41 SEC W 352.52 FT TH S 87 DEG 35 MIN 19 SEC E 25 FT TH S 02 DEG 24 MIN 41 SEC W 278.03 FT TO POB OUT OF 4-000 & 4-016 SEG 2005-1464BL 04-18-05BL

Exhibit B

Modified Mitigated Determination of Nonsignificance (MDNS)
SEPA 05-1013



COMMUNITY DEVELOPMENT DEPARTMENT

**Mitigated Determination of Nonsignificance (MDNS)
W.A.C. 197-11-355**

Environmental Review Application No.: SEPA 05-1013

Parcel Number: 0221074082

Action: Preliminary Plat Application

Proposal: The applicant proposes to subdivide 18.7 acres into 62 single-family residence lots. The proposal includes an average lot area of 7,652 square feet, wetland area of 140,296 square feet, public and private road area of 240,253 square feet, and a private storm pond area of 43,600 square feet. Wetland buffer averaging is proposed.

Location: 4510 72nd Street NW, Gig Harbor (0221074082)

Proponent: Rush-Talmo LLC, Attn: Thair Jorgensen, 2727 Hollycroft St. Ste. 410, Gig Harbor, WA 98335

Lead Agency: City of Gig Harbor

The lead agency has determined that the requirements for environmental analysis, protection, and mitigation measures pertaining to the proposed development have been adequately addressed in the development regulations and comprehensive plan adopted under chapter 36.70A RW and in other applicable local, state, or federal laws or rules pertaining to the proposed development. Our agency will not require any additional mitigation measures under SEPA except those stated herein.

ANALYSIS:

Traffic and Transportation: The applicant is required to demonstrate that the significant adverse environmental impacts associated with their application can be reasonably mitigated, (RCW 43.21.C.060). In addition, the applicant must demonstrate that if the proposed development resulting from approval of the application will cause the level of service on a transportation facility identified in the City's Comprehensive Plan to decline below the standards adopted in the transportation element of the Comprehensive Plan, that the applicant plans to install transportation improvements or strategies acceptable to the City to accommodate the impacts of the development, which shall be made concurrent

with the development, (RCW 36.70A.070(6)). The referenced traffic impact analysis by Health and Associates, Inc. and the referenced letter from Jeff Langhelm, Associate Engineer, to Eric Mendenhall, Assistant Planner, identifies traffic impacts related to the proposed development and identifies the following required mitigation and associated analysis to maintain adopted levels

Critical Areas: The proposed construction will take place adjacent to a Category II wetland as defined by GHMC 18.04.040(A)(2). A 50 foot buffer is required for category II wetlands. Buffer averaging is proposed with a net gain of wetland buffer. The wetland delineation report specifies that there will not be any adverse impacts to the wetland due to the buffer averaging. Potential adverse impacts caused by construction debris entering the wetland buffer during the construction phases of the site could occur without adequate mitigation. Additionally, due to previous agricultural activities has allowed invasive species to dominate the buffer area. Mitigation is necessary to reduce the negative impacts of the invasive species.

MITIGATION OF ADVERSE IMPACTS

In addition to compliance with adopted development standards, required mitigation will include the following:

1. **Traffic and Transportation.** The proposal will increase traffic onto surrounding streets and through Wollochet/Wagner Way intersection which could cause significant adverse impacts if not adequately mitigated.

Mitigation: The applicant shall be required to pay a pro-rata share of the cost for a traffic signal at the intersection of Wollochet Drive and Wagner Way. This share shall be calculated in a manner approved by the City Engineer and paid to the City of Gig Harbor prior to final City civil review and plan approval. The estimated cost for the signal installation is \$266,000. A "Development Agreement for Street Improvement Monetary Contributions" provided on City forms shall be executed by the applicant prior to payment of the pro-rata share. Payment shall be received prior to the City signing the mylar drawings for construction purposes.

2. **Critical Areas:** The proposal involves the subdivision and development of property which contains a category II wetland. The wetland delineation report specifies that there will not be any adverse impacts to the wetland due to the buffer averaging. Potential adverse impacts caused by construction debris entering the wetland buffer during the construction phases of the site could occur without adequate mitigation. Additionally, due to previous agricultural activities has allowed invasive species to dominate the buffer area. Mitigation is necessary to reduce the negative impacts of the invasive species.

Mitigation: The applicant shall be required to install silt fencing around wetland buffer during construction. The applicant shall be required to install fencing on the wetland buffer boundary with wetland boundary signs to be located on each proposed property.

THRESHOLD DETERMINATION:

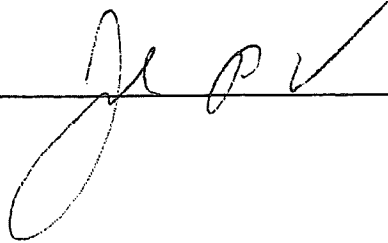
The City of Gig Harbor SEPA Responsible Official has determined that all environmental impacts associated with this proposal can be mitigated under existing City development standards and under the additional mitigation measures outlined herein. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public upon request.

[x] This MDNS is issued under WAC 197-11-355. The lead agency will not act on this proposal for at least 14 days from the date below, or by the date comments are due, which ever is longer. Comments must be submitted by September 13, 2006.

Any interested person may appeal the adequacy of this final threshold determination to the City of Gig Harbor Hearing Examiner pursuant to the procedures set forth under Title 19.06 of the Gig Harbor Municipal Code if a written request for appeal is received by **September 27, 2006**. The written appeal must be submitted with a filing fee of one hundred dollars (\$150).

SEPA Responsible Official: John Vodopich
Position Title: Community Development Director Phone: 851-6170

Address: City of Gig Harbor
 3510 Grandview Street
 Gig Harbor, WA. 98335

Signature 

Date: 8/24/06

**Wagner Way/Wollochet Drive Intersection Signalization
Pro-Rata Share Collection List**

Total Estimated Cost = \$266,000.00
 City Cost (25% of total) = \$66,500.00
 Developer Costs (75% of total) = \$199,500.00

Development	# of left turns at i/s (PM Peak Hr)	% of left turns at intersection	% of Developer Cost (2006 Dollars)	% of total Cost	Amrt Paid	Date Paid	Account No.
Bask Development (ML Lot 9)*	15	28.3	\$56,462.26	21.2	\$1,362.85	1/9/2007	
72nd St Plat	10	18.9	\$37,641.51	14.2	\$0.00	n/a	
Mallards Landing (ML Lots 2/3/7)	15	28.3	\$56,462.26	21.2	\$56,462.25	9/10/2007	101-000-345-84-00 TRNIMP
GH Sr Estates (ML Lots 6/8)	13	24.5	\$48,933.96	18.4	\$57,742.07	3/14/2008	101-000-345-84-00 TRNIMP
Total =	53	100.0	\$199,500.00	75.0	\$115,567.17		

*Pro-rata shares for SEPA determination accepted prior to calculation of pro-rata share based on left turn movements.